

Part 1 of 2
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS **08/10/1990**



State of Oregon
**Department of
Environmental
Quality**

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

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

A G E N D A

WORK SESSION -- August 9, 1990
High Desert Museum, south of Bend

- 11:00 a.m.** - 1. Program Discussion -- Hazardous Waste and Hazardous Materials: Problem Prevention and Problem Correction
- 12:30 p.m.** - Lunch (*Lunch will be provided for the Commission. Persons wishing to attend the full work session should bring their own lunch.*)
- 1:00 p.m.** - 2. Oregon Benchmarks: Review of Document
- 3:00 p.m.** - Break
- 3:15 p.m.** - 3. Discussion of Commission Meeting and Decision Processes (Potential issues for discussion include but are not limited to the agenda format, staff report format, management of the Public Forum section of the meeting, use of Advisory Committees, third party appeals, etc.)
- 5:00 p.m.** - Adjourn Work Session

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.

The Commission and staff will be guests of Commissioner Wessinger at his home near Sisters on Thursday evening.

Local officials have been invited to join the Commission for breakfast Friday Morning beginning at 7:00 a.m. at the "Touch of Class" Restaurant.

REGULAR MEETING -- August 10, 1990

High Desert Museum, south of Bend

9:00 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. Minutes of the June 28-29, 1990 Meeting

B. Approval of Tax Credit Applications

Authorization of Rulemaking Hearings

C. Waste Tire Financial Assistance: Proposed Rule to Delegate Approval Authority to the Director

D. Solid Waste: Out of State Waste Surcharge

E. Bear Creek TMDL: Proposed Amendment of Rule Establishing Deadline for Action

Adoption of Rules (No changes are proposed as a result of the rulemaking hearing.)

(None)

Action Items

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

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

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.

H. Regional Managers Report

III. Action Items

- I. Unified Sewerage Agency Report on Facilities Plan
- J. Unified Sewerage Agency of Washington County (USA) Wastewater Facilities Plan: Request for Extension of Compliance Deadline for the Durham Facility
- K. Tualatin Basin Watershed Management Plans: Review and Commission Action
- 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
- 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
- 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

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.

- 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
- O. Toxics Use Reduction and Hazardous Waste Reduction Rules (HB 3515)
- P. Used Oil Rules (SB 166)
- Q. Land Use Coordination: Proposed Rules
- R. Water Quality Rules: Proposed Rules on Use of Reclaimed Water

V. Informational Items

- S. Commission Member Reports: Governor's Watershed Enhancement Board (Sage)
- T. Legislative Update (Oral Report)

VI. Commission Deliberations

NOTE: This is an opportunity for Commission members to discuss information that has previously been provided to them. No testimony will be taken. However, the Commission may ask staff or members of the audience to respond to questions.

(None)

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 9:00 a.m. to avoid missing any item of interest. Lunch will be provided for the Commission on Friday. Persons wishing to attend the full meeting should bring their own lunch in the event the meeting extends beyond the lunch break.

The next Commission meeting will be Friday, September 21, 1990, at DEQ offices in Portland, Oregon. There will be a brief work session at the same location on September 20, 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.

July 24, 1990

Approved _____
Approved with corrections 8/10/90
Corrections made 8/14/90
(Corrections are shown underlined and
bracketed on pages 10 and 23.)

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Fifth Meeting
June 28-29, 1990

Work Session

The Environmental Quality Commission (Commission or EQC) Work Session was convened at about 1:10 p.m. in Conference Room 3a of the Department of Environmental Quality (Department or DEQ) at 811 S. W. 6th Avenue in Portland, Oregon. Commission members present were: Chairman Bill Hutchison, Vice Chairman Emery Castle, and Commissioners Bill Wessinger, Genevieve Sage and Henry Lorenzen. Also present were Director Fred Hansen of the Department of Environmental Quality and Department staff.

Chairman Hutchison announced that the agenda for the regular meeting on Friday would be rearranged to move items X, Y, and Z to the beginning of the Rule Adoption section to provide for consideration of these items before Commissioner Castle had to leave.

Director Hansen noted that the original agenda for the work session included a report on the Wood Heating Alliance In-Home Testing of Residential Wood Stoves in Klamath Falls. At the request of the Alliance, this item was removed from the agenda and will be rescheduled for a later date. In its place, a background briefing related to Drug Lab Cleanup was substituted.

Item 1: Drug Lab Cleanup: Background Briefing

Mike Downs, Administrator of the Environmental Cleanup Division, provided a background briefing for a special item added to the Friday agenda that requested Commission adoption of emergency rules to implement a drug lab cleanup cost-share program.

The Department was directed by the Emergency Board on May 18, 1990, to establish by rule a cost share requirement to begin by July 1, 1990, for agencies assisted by the drug lab cleanup program and to set conditions for a hardship exemption. The E-Board specifically instructed the Department to recover 50% of its costs from the agency requesting cleanup assistance unless the agency qualifies for a hardship exemption.

Hardship was defined to be a situation where the law enforcement agency's current budgeted effort in law enforcement would be reduced if they paid the 50% cost share.

Item 2: RCRA and UST Program Delegations: Background Discussion

Stephanie Hallock, Administrator of the Hazardous and Solid Waste Division, provided the Commission with an overview of issues related to upcoming "delegation" or "Authorization" of the RCRA/HSWA and UST programs. The Commission had been provided with an outline of the presentation. Handouts were provided at the work session which provided additional information on the outline topics.

In summary, the following were noted:

- The state puts more money into delegated/authorized programs than EPA would if it were running the programs in Oregon, therefore a greater level of protection is achieved by state operation of the programs.
- There is some frustration and tension associated with delegated/authorized EPA programs. The question is whether EPA is regulating the state or whether the State and EPA are acting as partners in regulating sources of pollution.
- Partial delegation is not an option in the RCRA/HSWA program. It is all or nothing. Approximately \$1.2 million per year of LUST Trust Funds for tank cleanups that Oregon gets are dependent on Authorization of the UST Program.
- Memorandums of agreement relating to delegation/authorization of programs should be negotiated by the Department based on the sense of direction already provided by the Commission. Draft Agreements should be routed to the Commission for review prior to signing in a manner similar to the recent field burning program agreement (accompanied by a memo from the Director outlining significant aspects of the agreement and providing a deadline for comments before the agreement will be signed). Where Commission approval and signatures are required, the matter should be handled as a consent item at a regular meeting.

Item 3: Waste Tire Program Slide Show

Brad Price of the Waste Tire Program in the Hazardous and Solid Waste Division presented a series of slides which described the waste tire program.

Item 4: Strategic Plan: Discussion of Operating Plans

The Department provided the Commission with current operating plans which display high priority projects or tasks currently underway in the Department.

Most of the discussion on the operating plans centered on the matter of environmental education. Chairman Hutchison asked about the status of an Education Coordinator. Director Hansen responded that such a position is included in the agency budget request for next biennium. Commissioner Castle noted that an educational program will need to provide substance rather than just create awareness. Commissioner Sage asked if the Department was pursuing educational objectives at any other level. She understood that the Department of Education had an Environmental Education Director position that was not being implemented. She asked if the Department could check into this.

Harry Demaray stated that the Operating Plan should be amended to insert a requirement to make Vancouver implement a vehicle inspection program.

Item 5: 1991-93 Budget: Discussion of Decision Packages

Pete Dalke, Administrator of the Management Services Division, and John Rist, Budget Manager for the Department, briefed the Commission on the status of preparation of the budget request for the 1991-93 biennium. Pete Dalke indicated that the unifying themes for the budget were **Prevention** and **Technical Assistance**. The number one priority will be enhancement of base budget activities to more adequately accomplish existing basic program functions. Graphs summarizing the request were reviewed.

Fred Hansen introduced Elana Stampfer and Leila Yim, two graduate students that are working in the Directors Office and Environmental Cleanup Division for the summer.

The Work Session was then adjourned.

Regular Meeting

The Environmental Quality Commission regular meeting was convened at about 8:30 a.m. in Conference Room 3a of the Department of Environmental Quality (DEQ) at 811 S. W. 6th Avenue in Portland, Oregon. Commission members present were: Chairman Bill Hutchison, Vice Chairman Emery Castle, and Commissioners Bill Wessinger, Genevieve Sage and Henry Lorenzen. Also present were Shelley McIntyre 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 welcomed the public to the meeting and asked people wishing to testify on any item to fill out a witness registration sheet.

Chairman Hutchison noted that Agenda Item C was being removed from the agenda because materials could not be prepared in time for review by Commission members prior to the meeting. He asked Commissioners Castle and Lorenzen to assist in preparing the necessary materials and indicated that the item would be reschedule at a later meeting -- hopefully the August meeting.

The Commission briefly discussed the agenda for the August Work Session. Commissioner Sage asked for a process discussion on how the Commission does its work and makes decisions. Commissioner Castle agreed that such a discussion was important and should be part of the Work Session agenda.

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 May 24-25, 1990 Meeting

A revision of page 21 of the minutes was presented and recommended for incorporation in the final minutes.

B. Approval of Tax Credit Applications

The Department presented recommendations that 18 applications for tax credit be approved as follows:

TC-2645	Byrnes Oil Company, Inc	New installation of one, three-compartment tank and piping, spill containment
---------	-------------------------	---

		basins, overfill prevention devices, and a monitoring well
TC-2857	Texaco Foodmart	Replacement of three bare steel tanks with fiberglass tanks, and installation of cathodic protection on fourth tank replacement of all steel piping with double wall fiberglass piping with interstitial monitors and emergency shutoff valves; tank monitor, spill containment basins, monitoring wells.
TC-3119	Dirksen Investments	Replacement of two steel tanks and piping with fiberglass tanks and piping; installation of spill containment basins, tank monitor.
TC-3158	Carson Oil Company, Inc.	Replacement of galvanized steel piping with fiberglass piping.
TC-3159	Carson Oil Company, Inc.	New installation of one STI-P3 tank and cathodic protection on the tank and steel piping, and a spill containment basin.
TC-3160	Carson Oil Company, Inc.	Replacement installation of four STI-P3 tanks (with cathodic protection) and fiberglass piping, and spill containment basins.
TC-3161	Carson Oil Company, Inc.	Installation of a tank monitor system connected to four tanks.
TC-3162	Carson Oil Company, Inc.	Installation of line leak detectors on four tank systems.
TC-3163	Carson Oil Company, Inc.	New installation of one STI-P3 tank and cathodic protection on the tank and steel piping, and a spill containment basin.
TC-3164	Carson Oil Company, Inc.	New installation of five STI-P3 tanks (with cathodic protection) and fiberglass piping, line leak detectors, tank monitor,

		spill containment basins, an oil/water separator, and a monitoring well.
TC-3165	Carson Oil Company, Inc.	Installation of epoxy lining in four steel tanks, cathodic protection on these and one other tank, and piping system, spill containment basins, line leak detectors, and a tank monitor.
TC-3166	Carson Oil Company, Inc.	Installation of line leak detectors and tank monitor system.
TC-3167	Carson Oil Company, Inc.	Installation of line leak detectors and tank monitor system.
TC-3176	Younger Oil Company	Installation of epoxy lining in four steel tanks, fiberglass piping, spill containment basins, line leak detectors, automatic shutoff breakaway devices, tank monitor, monitoring wells.
TC-3177	Younger Oil Company	Installation of epoxy lining in four steel tanks, replacement of bare steel with fiberglass piping, spill containment basins, line leak detectors, and the site stubbed in for a tank monitoring system.
TC-3178	Younger Oil Company	Installation of epoxy lining in five steel tanks, fiberglass piping, line leak detectors, oil/water separator and a tank monitoring system.
TC-3179	Younger Oil Company	Installation of cathodic protection on seven steel tanks.
TC-3180	Younger Oil Company	Installation of cathodic protection on six steel tanks and piping.

C. Commission Approval of Standards, Criteria, and Policy Directives for the DEQ Director Position

This item was removed from the agenda.

Authorization of Rulemaking Hearings

D. Air Quality Rules: Amendment to General Emission Standards for Volatile Organic Compounds

This item requested authorization to hold a public rulemaking hearing on proposed amendments to the air quality general emission standards for Volatile Organic Compounds (VOCs). The purpose of the amendments is to align state VOC rules with federal Environmental Protection Agency requirements and to revise the State Implementation Plan (SIP).

E. Grants Pass Particulate Matter (PM₁₀) Control Strategy

This item requested authorization to hold a public rulemaking hearing on proposed revisions to the State Implementation Plan to include the PM₁₀ air pollution control strategy for the Grants Pass non-attainment area.

F. Klamath Falls Particulate Matter (PM₁₀) Control Strategy

This item requested authorization to hold a public rulemaking hearing on proposed revisions to the State Implementation Plan to include the PM₁₀ air pollution control strategy for the Klamath Falls non-attainment area.

G. Medford-Ashland Particulate Matter (PM₁₀) Control Strategy

This item requested authorization to hold a public rulemaking hearing on proposed revisions to the State Implementation Plan to include the PM₁₀ air pollution control strategy for the Medford-Ashland non-attainment area.

H. Clear Lake (Near Florence): Proposed Amendments to Rules Concerning Protection of Clear Lake Water Quality and Rules Establishing a Moratorium on On-Site Sewage Disposal Systems in the Clear Lake Basin

This item requested authorization to hold a public rulemaking hearing on proposed rules modifying OAR 340-41-270 [Special Policies and Guidelines for the Mid Coast Basin] and OAR 340-71-460(7) [Moratorium Areas for On-Site Sewage Disposal Systems]. The proposed modifications would revise the existing requirements for protecting the very high quality water in Clear Lake near Florence, Oregon. The proposed rules would change the loading limitations in existing rules from Nitrogen to Total Phosphorus, allow a slight increase in phosphorus levels from existing levels, require installation of a sewage facility by October 1, 1993, unless demonstrated unnecessary to meet the lake loading

limitations, require a lake management plan consistent with lake loading limits before allowing any new on-site sewage disposal systems, and require routine monitoring of Clear Lake water Quality.

I. Land Use Coordination: Proposed Rules to Adopt State Agency Coordination Program

This item requested authorization to hold a public rulemaking hearing on proposed rules establishing the implementation procedure for the Land Use Coordination Program for the Department of Environmental Quality (referred to as the state agency coordination program). Under the land use laws and the rules of the Department of Land Conservation and Development, state agencies are directed to adopt a State Agency Coordination Program and the implementation procedures are to be adopted by administrative rule.

Action Items

J. Waste Tire Pile Cleanup: Approval of Funds From the Waste Tire Recycling Account to Assist Coos County

This item requested Commission approval for use of funds from the Waste Tire Recycling Account to assist Coos County to expedite the cleanup of approximately 200,000 tires at a permitted waste tire storage site. The county has requested assistance for 80% of the cleanup cost which is estimated to be \$96,000.

K. Waste Tire Pile Cleanup: Approval of Funds From the Waste Tire Recycling Account to Assist Klamath County

This item requested Commission approval for use of funds from the Waste Tire Recycling Account to assist Klamath County to expedite the cleanup of approximately 750,000 tires at a permitted waste tire storage site. The county has requested assistance for 80% of the cleanup cost which is estimated to be \$596,800. In addition, they have requested that the Department prepay the full cleanup cost, and that the county repay its 20% share in payments of \$30,000 per year until fully repaid.

L. Waste Tire Pile Cleanup: Approval of Funds From the Waste Tire Recycling Account to Assist Richard Mishler, Jr.

This item requested Commission approval for use of funds from the Waste Tire Recycling Account to assist Richard L Mishler, Jr. to expedite the cleanup of approxi-

mately 200,000 tires at a permitted waste tire storage site. Mr. Mishler has requested assistance for 90% of the cleanup cost which is estimated to be \$140,000.

The Commission removed items D, E, F, G, H, and K from the consent agenda by consensus to allow for requested testimony and discussion. (Item C was deleted entirely.)

It was **MOVED** by Commissioner Castle that the Department recommendation on Consent Items A, B, I, J, and L be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved.

Consideration of Consent Item D: (Air Quality Rules: Amendment to General Emission Standards for volatile Organic Compounds)

Brian Finneran, of the Air Quality Division staff, summarized the nature of the rule changes proposed by this agenda item. He explained that the proposed rules would primarily affect small surface coating operations located in the Portland area. The rule would reduce the emission level below which a source is exempted from the control requirements of the rules from 40 tons per year to 10 tons per year.

David J. Smukowski, representing the Boeing Company, advised the Commission that they would not be able to comply with the proposed rule. He indicated that Congress is considering an adjustment in the Clean Air Act that may affect the federal VOC emission standard for aircraft coatings, and urged the Commission to delay action. John Kowalczyk from the Air Quality Division replied that since it is not clear what changes will be made, if any, it would be better to proceed to hearing as proposed and develop information on the issue as part of the record.

Michael Davis, Manager of the Coatings Division of Anodizing, Inc., stated that his company does not believe they can comply with the tighter VOC emission limits proposed. Chairman Hutchison indicated that his comments would be more appropriate as part of the hearing record and urged him to testify at the hearing. Chairman Hutchison also urged Mr. Davis to consult with the Department staff in an effort to determine the specific nature of any problems that may exist.

It was **MOVED** by Commissioner Sage that the Department recommendation be approved. The motion was seconded by Commissioner Castle and unanimously approved. (The motion and action on this item occurred following the consideration of Consent Item H.)

Consideration of Consent Items E, F, G: (Particulate Matter (PM₁₀) Control Strategies for Grants Pass, Klamath Falls, and Medford-Ashland)

John Core of the Air Quality Division Program Planning Section noted that in 1987, the EPA revised the National Ambient Air Quality Standards to include PM₁₀ particulate matter and that states were required to revise their State Implementation Plans (SIPs) to assure that the new PM₁₀ air quality standards were attained and maintained. Medford, Klamath Falls and Grants Pass are all airsheds for which PM₁₀ control strategies must be adopted. He noted that over the past two years, the Department has worked with local governments to develop the plans before the Commission and that the schedule for adoption to the plans (November, 1990) was submitted to the Environmental Protection Agency in response to a law suit filed by the Sierra Club against EPA.

Commissioner Sage remarked that all three plans seemed to be only partially complete; the Klamath Falls SIP did not contain needed local ordinances, technical adequacy of the control strategies of the Medford SIP were being contested by a local environmental group and the voluntary curtailment program element for the Grants Pass SIP has not yet been developed. She questioned if hearings should be delayed pending resolution of these issues.

In response, Mr. Core noted that local ordinances to enforce the Klamath Falls strategy were essential prior to Commission adoption and that delay would mean that the Department could not meet its commitment under the Clean Air Act to EPA. Regarding the Medford SIP, he noted that over the past 2 years the Department had worked to resolve issues with the Coalition to Improve Air Quality with only partial success and that because of the very marginal nature of the Grants Pass nonattainment problem, the details of the voluntary curtailment program were not a critical element of the program. Merlyn Hough, Air Quality Division, then explained some of the Clean Air Coalition technical concerns in greater depth and indicated that the EPA had accepted the Department's position on them.

Harry Frederick, Chairman of the Board of Klamath County Commissioners, then testified noting that the Board would not consider adoption of a mandatory curtailment ordinance until some time in 1991 because he had promised the community at least 3 years of voluntary curtailment. He also said that the City of Klamath Falls did not intend to adopt an ordinance until the County acted.

John Kowalczyk of the Air Quality Division indicated that the citizens and local governments have continually sought delays in implementing effective wood heating strategies and that the Department did not want to contribute to further delay. Instead, the Department was trying to take formulated plans to hearing to bring about clean air

as soon as possible and within the time frame of current federal law. He indicated that the local ordinances needed by November 1990 to make the plans complete could give Klamath Falls a third year of voluntary curtailment since mandatory curtailment would only have to go into effect by the 1991-92 heating season which is the current Clean Air Act attainment date.

Ken Brooks, Director of the Oregon Operations Office of EPA, urged the Commission to authorize the hearings on these items. He noted that the levels of PM₁₀ monitored here were among the highest measured in the country and constitute a health concern.

It was MOVED by Commissioner Wessinger that the Department recommendation for Consent Items E, F, and G be approved. The motion was seconded by Commissioner Castle and unanimously approved on a roll call vote.

Consideration of Consent Item H: (Clear Lake (near Florence): Proposed Amendments to Rules Concerning Protection of Clear Lake Water Quality and Rules Establishing a Moratorium on On-Site Sewage Disposal Systems in the Clear Lake Basin)

Dick Nichols of the Water Quality Division introduced the agenda item with a short description of the issue.

Bill Finley, a Collard Lake resident and a representative of the Heceta Water District, testified that he thought that the proposed rules should not consider any additional degradation of the lake.

Mike Keating, representing Collard Lake Property Owners, also indicated his concern that action on the Clear Lake should not proceed until the Department has obtained the latest monitoring data from recent sampling of Clear and Collard Lake.

Dick Nichols indicated that the data would be available before the hearing. Chairman Hutchison asked if there were any other objections to proceeding to hearing. None were presented.

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

Consideration of Consent Item K: (Waste Tire Pile Cleanup: Approval of Funds from the Waste Tire Recycling Account to Assist Klamath County)

Commissioner Sage asked whether the Department recommendation on this item to prepay the cost of tire removal rather than to reimburse the County later would establish any precedent. (Klamath County had requested the Department to pay the full cleanup cost (estimated at \$596,800) and allow the county to repay its 20% share (\$119,360) to the Department in payments of \$30,000 per year until full payment is received.) Brad Price noted that a similar arrangement had been previously approved by the Commission. He also noted that the Department would be returning to the Commission with a proposed rule change to clarify such an option.

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

II. Public Forum

Harry Demaray read a statement which was intended to bring the Commission up to date on events since the meeting in Newport. Mr. Demaray continues to be concerned about Department follow-up on pollution violations he documented prior to his dismissal as an employee of DEQ, alleged Department efforts to declare enforcement files as confidential and off limits to him, alleged failure of the Department to comply with the law by summarizing his testimony in EQC meeting minutes rather than fully incorporating his testimony, and Department interpretation of enforcement authorities. A copy of Mr. Demaray's statement and attached references is included in the record of the meeting. Mr. Demaray supplemented his statement by indicating that he had filed suit yesterday (June 28, 1990) for injunctive relief and damages under the Whistleblower Law, ORS 659.510, and other statutes. Finally, Mr. Demaray reiterated a comment he made at the Work Session on the previous day that a vehicle inspection program is needed in Vancouver, Washington.

Tom Bispham, Administrator of the Regional Operations Division, advised the Commission that the Department had reviewed the potential enforcement cases Mr. Demaray referred to and was pursuing action on three cases. He indicated that a report on the matter was on its way to Director Hansen.

III. Action Items

M. Review of Contested Case in DEQ v Turnbull, Case No SW-SWR-89-03

On January 11, 1990, Linda Zucker, Hearings Officer for the Commission, entered the Hearings Officer's Findings of Fact and Conclusions of Law that Phillip R. Turnbull was liable for the \$3,750 civil penalty assessed by the Department on February 22, 1989, for operating a solid waste disposal site without the required permit in violation of ORS 459.205 and OAR 340-61-020.

Mr. Turnbull requested Commission review of the Hearings Officer's decision. Mr. Turnbull did not appear at the Commission meeting.

After review of the record, it was MOVED by Commissioner Lorenzen that the Commission affirm the Hearings Officer's order finding Mr. Turnbull liable for a \$3,750 civil penalty for unpermitted operation of a solid waste disposal site. The motion was seconded by Commissioner Castle and unanimously approved.

N. Asbestos Program: Request for Adoption of Finding and Order to Require Refresher Training for Small Scale Asbestos Abatement Workers

This item requested the Commission adopt a finding and order as presented in Attachment A of the staff report to require refresher training for small-scale asbestos abatement workers. Refresher training is necessary to assure that workers are trained on changes in work practices within the industry and recent administrative rule amendments. Small scale workers have also expressed a desire to receive refresher training as required for full-scale workers and supervisors. The need for refresher training was extensively debated when the rules were first adopted. The final rules for small scale workers allowed the Commission to require the refresher training if the Commission determined that a need existed.

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

O. Pollution Control Bonds: Review of Agreement Provisions and Authorization of Bond Sale for Mid-Multnomah County Sewers

This item requested that the Commission (1) approve the Intergovernmental Agreements between the Department and the Cities of Gresham (Attachment A1) and Portland

(Attachment A2), (2) approve the purchase of Special Assessment Improvement Bonds (SIABs) from the respective cities under the terms of the Agreement, recognizing the sequential risk shared by the parties under the contingent liability amount provisions, and (3) make a finding that the Gresham/Portland sewer development project will be self supporting and self liquidating (contained within the agreements).

Pete Dalke, Administrator of the Management Services Division, and Noam Stampfer of the Management Services Division, summarized the status of the agreements. Background information on this item was provided at the May Commission meeting. The Intergovernmental Agreements have been reviewed by the Attorney General and the State Treasurer. The cities have adopted the agreement. Portland's approval included additional language regarding a future State Treasurer. The Department has no problem with this addition. There will also be an added attachment to the Portland agreement relating to their sewer assessment contract. The Department will return at the September meeting for approval to proceed with sale of a \$7 million bond issue.

It was **MOVED** by Commissioner Castle that the Department Recommendation to approve the agreements and the findings be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved.

P. Timber Products Company: Request for Variance for Grants Pass Plant

This item requested that the Commission grant a variance of up to six months for the construction of facilities and a variance from the May 2, 1991 deadline for proof of compliance with newly adopted PM₁₀ emission limits to October 1, 1991, for the veneer dryers and wood-fired boiler at the Tim-Ply Division Facility in Grants Pass. The Department recommendation includes a specific compliance schedule and is based on the conclusion that the Company's request satisfies ORS 468.345 (b) and (c), two of the four conditions under which the Commission may grant a variance.

Q. Timber Products Company: Request for Variance for White City Plant

This item requested that the Commission grant a variance of up to six months for the construction of facilities and a variance from the May 2, 1991 deadline for proof of compliance with newly adopted PM₁₀ emission limits to October 15, 1991, for the veneer dryers at the White City Plywood Division Facility in White City. The Department recommendation includes a specific compliance schedule and is based on the conclusion that the Company's request satisfies ORS 468.345 under which the Commission may grant a variance.

The Commission considered agenda items P and Q at the same time. John Ruscigno of the Air Quality Division noted that under the proposed variances, the company would be required to have facilities operating prior to the start of the wood heating season.

It was MOVED by Commissioner Sage that the Department recommendation on agenda items P and Q be approved. The motion was seconded by Commissioner Castle and unanimously approved.

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

This item recommended that the Commission conditionally approve the Tualatin Basin Non-Point Source Watershed Management Plans submitted by six agencies (Department of Agriculture, Unified Sewerage Agency, Clackamas County and Rivergrove, Portland, Lake Oswego, West Linn) and defer action on the plan submitted by the Department of Forestry based on a request from the Board of Forestry to allow time to receive a report from the Technical Specialist Panel. The specific evaluation, recommendations, and conditions of approval on each plan are presented in Attachments A through G of the staff report. The conditions of approval recommended include additional requirements and compliance schedules for achieving full approval of the plans. OAR 340-41-470(3)(i) requires the Commission to approve or reject each plan within 120 days of submission (i.e., by July 7, 1990).

Lydia Taylor, Administrator of the Water Quality Division, and Don Yon of the Water Quality Division, advised that a public hearing was held to receive input on the proposed plans. In addition, the Department met with the agencies submitting the reports to discuss timelines, and that timelines were adjusted in some cases as a result of the discussions.

Commissioner Castle reported that the Technical Specialist Panel has held two meetings but has not achieved closure and completed a report.

Chairman Hutchison noted that 5 people had testified at the Department Hearing and 10 had signed up to testify before the Commission. Lydia Taylor reminded the Commission that this is not a rule making action. The public hearing that was held received input on the plans themselves, but not on the Department recommendations. Thus it would be appropriate to receive testimony on the Department recommendations. Chairman Hutchison expressed concern over the potential of a full hearing before the Commission and asked if it needed to be done at this time. Lydia Taylor advised that the Commission rule required Commission action within 120 days of plan submittal, thus action was needed at this meeting.

John Jackson, representing the Unified Sewerage Agency, stated that his agency had serious concerns on the conditions proposed by the Department. He felt the conditions would jeopardize plans for water quality improvement in the Tualatin Basin. He requested a delay to allow time for the agencies to meet with the Department in an effort to resolve differences prior to proceeding to a full hearing on the issues.

The Commission then recessed for a few minutes. Upon reconvening the meeting, Lydia Taylor indicated that the Department could meet with the agencies to resolve outstanding differences and return to the August meeting for Commission consideration and resolution of any remaining differences. Shelley McIntyre representing the Attorney General's office, advised that the Commission could adopt a temporary rule to extend the plan approval deadline in the existing rule.

Chairman Hutchison expressed concern with the number and nature of the conditions recommended and noted that the recommendation seemed closer to rejection than conditional approval. Director Hansen noted that substantial effort has gone into the preparation of the plans by the agencies and that he believed a real commitment existed to resolve the differences.

It was MOVED by Commissioner Castle that a Temporary Rule be adopted to extend the plan approval deadline in OAR 340-41-470(3)(i) by 45 days from July 7, 1990, based upon a finding that failure to act would seriously prejudice pollution control efforts in the Tualatin Basin and that new facts provided to the Commission require an extension of time for evaluation and an opportunity to resolve differences. The motion was seconded by Commissioner Lorenzen and unanimously approved.

Chairman Hutchison asked that all those who signed up to testify be notified of the action and that the matter would be returned to the Commission at the August meeting.

S. Strategic Plan: Request for Commission Approval

This item requested Commission approval of the Strategic Plan as revised following discussion at the May 24, 1990, Work Session. At that work session, the Commission reviewed public comments received and discussed recommendation of the Department for modification of the Draft Strategic Plan that was presented for public comment.

Chairman Hutchison thanked the staff for their commitment to the strategic planning process. He also noted that the Department will return at the September meeting with information on performance indicators.

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

Special Item: Pulp Mill Contested Cases

Three pulp mills have appealed permit modifications issued by the Department to the Commission. In order to process these cases, the Commission needed to designate a hearings officer for the proceeding.

It was MOVED by Commissioner Lorenzen that Herbert Schwab be appointed Hearings Officer for the Commission in this matter. The motion was seconded by Commissioner Wessinger and unanimously approved.

Special Item: Drug Lab Cleanup: Proposed Adoption of Emergency (Temporary) Rules to Implement Cleanup Cost-Share Program

This item requested that the Commission adopt temporary rules to establish a cost share requirement to begin July 1, 1990 for agencies assisted by the drug lab cleanup program, and to establish requirements for a hardship exemption from the cost share requirement. The proposed rules were presented in Attachment A of the staff report. The findings in support of temporary rule adoption were presented in Attachment B. This action is made necessary by a directive from the May 18, 1990, Emergency Board that the Department recover 50% of the cost of drug lab cleanup after July 1, 1990, from the local agency requesting state assistance in the cleanup unless the local agency qualifies for a hardship exemption. The Department also recommended that it be authorized to proceed to public hearing for permanent adoption of the rules.

Mike Downs, Administrator of the Environmental Cleanup Division, briefly reviewed the basis for the needed temporary rule adoption.

It was MOVED by Commissioner Castle that the Department recommendation for adoption of the temporary rule, adoption of the findings of need and authorization for to proceed to permanent rulemaking be approved. The motion was seconded by Commissioner Wessinger and unanimously approved.

Special Item: Washington County On-Site Fees

Washington County had requested that they be allowed to increase fees they charge for processing applications for on-site sewage disposal systems effective as soon as possible.

Such approval may be granted by the Commission by rule. In order to expedite the process, the Department proceeded immediately to issue a notice of a rule making hearing, and advised the Commission of this action and the opportunity to discuss it at the upcoming Commission meeting. Commissioner Sage asked why Washington County had not filed its request sooner. Lydia Taylor responded that the County was not aware that rulemaking would be required and thus was not aware of the time that would be required for favorable action on their request. By consensus, the Commission concurred in the Department action to proceed with the notice of a rulemaking hearing on the issue.

IV. Rule Adoptions

X. Water Quality Rules: Proposed Adoption of Rule Amendments to Clarify Requirements for Designation and Management of Water Quality Limited Segments

This item requested that the Commission adopt amendments to the Water Quality Rules, as presented in Attachment A of the staff report, to establish definitions for water quality limited and effluent limited receiving streams and establish requirements for the consideration of increasing waste loads in water quality limited streams. Three options were presented for consideration at the rulemaking hearings on this matter. Extensive testimony was received. The Department recommended approval of alternative 2 which could allow the Commission and Department to grant a new permit or modify an existing permit to allow a source to discharge additional pollutants into a water quality limited stream before all waste load and load allocations have been fully met.

Neil Mullane advised the Commission of two technical corrections that should be made to the rules as proposed in Attachment A. These included amending the first line on page A-6 to read "... would not unacceptably threaten..." and changing the word "establishment" to "established" in the 4th line of the third paragraph on page A-7.

Commissioner Lorenzen asked if the words "(i) and (ii)" in the seventh line of paragraph (IV) on page 7 shouldn't read "(i) or (ii)". After some discussion, it was decided that the change should be made.

Karl Anuta, representing Northwest Environmental Defense Center, stated that the staff did a good job on a complex rule. He noted that staff did not include his suggestion regarding bioaccumulation of toxins and that he will raise the issue again as part of the triennial standards review process. He also suggested that the presumption in the rules that if standards are met the uses are protected should be reversed. Commissioner Lorenzen disagreed since standards are established to protect the uses. Mr. Anuta also suggested that the term "designated uses" be substituted for "beneficial uses" to get away

from issues related to the Water Resource Department usage of the term. In closing, he supported the Department recommendation subject to his comments.

Patrick Parenteau, an attorney from the firm Perkins Coie, and representing WTD Industries, stated a preference for Alternative 3. With respect to the recommended alternative, he suggested that the words "on schedule" in paragraph (ii) on page A-6 would present problems due to the difficulty in making the required determinations. He recommended deleting the words "on schedule" to leave a little more flexibility for the Commission to consider the facts in a specific case. He suggested that a new clean discharge using the latest technology to reduce discharges should not be held hostage by other sources choice of being on schedule. Lydia Taylor made a suggestion that the word "is" in the 7th line of paragraph (ii) on page A-6 be changed to "will be" in order to better clarify the intent. Commissioner Castle suggested that a semi-colon be added after the word "established" in the sixth line of paragraph (ii) on page A-6, and that the words "and are being implemented on schedule;" be deleted entirely.

John Bonine, of Eugene, expressed concern that wording of the proposed rule might allow narrative criteria to be violated because numerical criteria are met.

Chairman Hutchison closed the hearing on the matter and called for Commission discussion.

Commissioner Sage stated that she understood the intent of the words "unacceptable threat" but she was concerned about the use. She expressed the view that any attempt to qualify the requirement to protect uses is an attempt to re-write the law. She further stated that she did not oppose a desire to keep a dynamic process, but was concerned that the process was unclear and thus not dynamic. Commissioner Sage expressed concern that if a discharge was permitted in advance, and all requirements were met, and the source went on line, there would be no incentive for improvement. She was also concerned that if water quality standards were not met, and the reserve assimilative capacity that was supposed to be there was in fact not there, that a source could sue to discharge in any event. Finally, she expressed the view that the proposed rule was a Pandora's box that would allow return to a technology based program.

Lydia Taylor stated that the proposed rule does move from a technology based program to a water quality based program and that a water quality based program does force the development of technology. In addition, the rule asserts that the state owns any excess capacity in water quality, and that there would have to be discussions before any decision to allocate any portion of it to a source.

Commissioner Castle urged that the Commission perfect these rules and then move on to discuss other options and philosophies that may be incorporated in the future.

It was MOVED by Commissioner Lorenzen that the Department recommendation as presented in Attachment A be approved with the following modifications:

- Page A-6, modify line 1 to read "... would not unacceptably threaten..."
- Page A-6, modify paragraph (ii) to read:
"...compliance plans under which enforcement action can be taken have been established; ~~[and are being implemented on schedule;]~~ and there [is] will be sufficient reserve capacity ..."
- Page A-7, modify paragraph (IV) to read:
"...compliance deadline [~~establishment~~] established for the waterbody. If this action will result in a permanent load increase, the action has to comply with subsections (i) [~~and~~] or (ii) of this rule."

The motion was seconded by Commissioner Castle. Commissioner Sage asked for a response to issues she raised. Commissioner Castle expressed support for discussion of the issues at a future work session. Chairman Hutchison called for a roll call vote on the motion. The motion was approved by a 4 to 1 vote with Commissioner Sage voting no.

The meeting was recessed for lunch. Commissioner Castle had to leave and was not present for the remainder of the meeting.

Y. Water Quality Rules: State Revolving Loan Fund Rule Amendments

This item requested Commission adoption of rule amendments to the State Revolving Loan Fund rules as presented in Attachment A of the staff report. The amendments were proposed to correct deficiencies discovered during the first year of operating experience.

Martin Loring of the Water Quality Division indicated that no oral testimony was received at the rulemaking hearing. The Environmental Protection Agency had submitted written comments, and the rule amendments were modified to address EPA's concerns.

It was MOVED by Commissioner Wessinger that the Department recommendation be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved (4 members present).

Z. Water Quality Rules: Adoption of Rule Changes Affecting Permits and Approvals for Industrial and Agricultural Sources

This item requested Commission adoption of rule amendments affecting water quality permits and approvals for industrial and agricultural sources as presented in Attachment A of the staff report. The rule amendments would make OAR Chapter 340, Division 45 consistent with Division 14 by adding language to clarify that a National Pollutant Discharge Elimination System permit will not expire until final action is taken on a timely filed renewal application. The rule amendments would also make permitting rules and confined animal feeding and holding rules consistent with HB 3445 adopted by the 1989 legislature, would identify circumstances under which the Director could issue a stipulated consent order in lieu of or in addition to a permit, and would exempt small impoundments and oil/water separators from requirements to have engineering plans approved by the Department.

Kent Ashbaker of the Water Quality Division reminded the Commission that this proposal was part of a recommendation for rule adoption that was tabled at the last meeting. In response to direction from the Commission, the Department had removed proposed rule amendments relating to gold mining activities pending further review. In addition, the Attorney General's office has provided a letter opinion (Attachment F) on the interpretation of federal and state rules relating to the proposed rule to have permits continue in effect pending action on a timely filed renewal application.

John Bonine noted his objection to the rule which would allow a permit to remain in effect after its expiration date while the Department acted on a timely filed renewal application. He indicated there was a good reason for the 5 year duration limit on permits and that all parties should be forced to address permit applications on a timely basis.

Kent Ashbaker noted that the Department does not want a backlog of pending permit applications. Director Hansen noted that there are two pieces to the issue -- a legal piece and a management piece. The proposed rules seek to clarify the legal issue. The management issue is being addressed by adjustment of resource assignments and budgeting for additional positions.

It was **MOVED** by Commissioner Lorenzen that the Department recommendation be approved. The motion was seconded by Commissioner Wessinger. The motion was approved with three yes votes. Commissioner Sage abstained.

T. Confirmed Release Inventory: Proposed Adoption of Rule Amendments to Implement HB 3235

This item requested Commission adoption of rules to establish criteria and procedures for implementation and administration of a hazardous substances site discovery program to implement HB 3235. The proposed rules are contained in Attachment A of the staff report. The proposed rules also amend rules pertaining to the fee for wastes entering hazardous waste disposal facilities to conform to amendments in the authorizing statute (ORS 465.375) and amend statutory citation in the environmental cleanup rules to conform to recodification of ORS Chapter 466.

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

U. UST Program: Proposed Adoption of Financial Responsibility Rules for Owners and Operators of 100 or More Tanks

This item requested Commission adoption of rules relating to financial responsibility for owners and operators of 100 or more underground storage tanks. The proposed rules are presented in Attachment A of the staff report. The proposed rules are consistent with federal requirements and are necessary for the state to qualify for approval of the Underground Storage Tank program.

Rich Reiter of the Hazardous and Solid Waste Division noted that the financial responsibility requirements for small businesses (less than 100 tanks) have been deferred by the Federal Government.

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

V. Oil Contaminated Soil Cleanup Contractors: Proposed Adoption of Amendments to Registration and Licensing Requirements for UST Service Providers to Add Certification and Licensing for Soil Cleanup Contractors and Supervisors (HB 3456)

This item requested Commission adoption of proposed rules to improve and regulate the quality of remedial action and cleanup work performed on releases from underground storage and heating oil tanks as presented in Attachment A of the staff report. The proposed rules apply to sites involving soil contamination that will be cleaned up utilizing the soil matrix rules, where DEQ oversight is minimal. The proposed rules do not apply

to contaminated groundwater sites which receive extensive DEQ oversight of work performed.

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

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

This item requested Commission adoption of proposed rules which establish criteria for DEQ approval of solid waste reduction programs required under ORS 459.055 and under ORS 468.220 (6) for local government jurisdictions disposing waste in Oregon. The proposed rules are contained in Attachments A and B of the staff report:

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

V. **Informational Items**

AA. Commission Member Reports

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 Sage reported on the Governor's Watershed Enhancement Board. At the June 14 meeting, the board voted to initiate a watershed inventory/assessment program. The effort will begin with a contract to compile existing data. The program will be expanded if additional funding is made available next biennium. The board is also seeking a proposal from the OSU extension service for initiating an active education program for watershed management. The board will have a retreat/work session to look at program issues for the next 2 years. Finally, Commissioner Sage reported on the 3rd annual Teachers Training Workshop on Watershed Education.

There was no further business and the meeting was adjourned.

Approved _____
Approved with corrections 8/10/90
Corrections made 8/14/90
(Corrections are shown underlined and
bracketed on pages 10 and 23.)

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Fifth Meeting
June 28-29, 1990

Work Session

The Environmental Quality Commission (Commission or EQC) Work Session was convened at about 1:10 p.m. in Conference Room 3a of the Department of Environmental Quality (Department or DEQ) at 811 S. W. 6th Avenue in Portland, Oregon. Commission members present were: Chairman Bill Hutchison, Vice Chairman Emery Castle, and Commissioners Bill Wessinger, Genevieve Sage and Henry Lorenzen. Also present were Director Fred Hansen of the Department of Environmental Quality and Department staff.

Chairman Hutchison announced that the agenda for the regular meeting on Friday would be rearranged to move items X, Y, and Z to the beginning of the Rule Adoption section to provide for consideration of these items before Commissioner Castle had to leave.

Director Hansen noted that the original agenda for the work session included a report on the Wood Heating Alliance In-Home Testing of Residential Wood Stoves in Klamath Falls. At the request of the Alliance, this item was removed from the agenda and will be rescheduled for a later date. In its place, a background briefing related to Drug Lab Cleanup was substituted.

Item 1: Drug Lab Cleanup: Background Briefing

Mike Downs, Administrator of the Environmental Cleanup Division, provided a background briefing for a special item added to the Friday agenda that requested Commission adoption of emergency rules to implement a drug lab cleanup cost-share program.

The Department was directed by the Emergency Board on May 18, 1990, to establish by rule a cost share requirement to begin by July 1, 1990, for agencies assisted by the drug lab cleanup program and to set conditions for a hardship exemption. The E-Board specifically instructed the Department to recover 50% of its costs from the agency requesting cleanup assistance unless the agency qualifies for a hardship exemption.

Hardship was defined to be a situation where the law enforcement agency's current budgeted effort in law enforcement would be reduced if they paid the 50% cost share.

Item 2: RCRA and UST Program Delegations: Background Discussion

Stephanie Hallock, Administrator of the Hazardous and Solid Waste Division, provided the Commission with an overview of issues related to upcoming "delegation" or "Authorization" of the RCRA/HSWA and UST programs. The Commission had been provided with an outline of the presentation. Handouts were provided at the work session which provided additional information on the outline topics.

In summary, the following were noted:

- The state puts more money into delegated/authorized programs than EPA would if it were running the programs in Oregon, therefore a greater level of protection is achieved by state operation of the programs.
- There is some frustration and tension associated with delegated/authorized EPA programs. The question is whether EPA is regulating the state or whether the State and EPA are acting as partners in regulating sources of pollution.
- Partial delegation is not an option in the RCRA/HSWA program. It is all or nothing. Approximately \$1.2 million per year of LUST Trust Funds for tank cleanups that Oregon gets are dependent on Authorization of the UST Program.
- Memorandums of agreement relating to delegation/authorization of programs should be negotiated by the Department based on the sense of direction already provided by the Commission. Draft Agreements should be routed to the Commission for review prior to signing in a manner similar to the recent field burning program agreement (accompanied by a memo from the Director outlining significant aspects of the agreement and providing a deadline for comments before the agreement will be signed). Where Commission approval and signatures are required, the matter should be handled as a consent item at a regular meeting.

Item 3: Waste Tire Program Slide Show

Brad Price of the Waste Tire Program in the Hazardous and Solid Waste Division presented a series of slides which described the waste tire program.

Item 4: Strategic Plan: Discussion of Operating Plans

The Department provided the Commission with current operating plans which display high priority projects or tasks currently underway in the Department.

Most of the discussion on the operating plans centered on the matter of environmental education. Chairman Hutchison asked about the status of an Education Coordinator. Director Hansen responded that such a position is included in the agency budget request for next biennium. Commissioner Castle noted that an educational program will need to provide substance rather than just create awareness. Commissioner Sage asked if the Department was pursuing educational objectives at any other level. She understood that the Department of Education had an Environmental Education Director position that was not being implemented. She asked if the Department could check into this.

Harry Demaray stated that the Operating Plan should be amended to insert a requirement to make Vancouver implement a vehicle inspection program.

Item 5: 1991-93 Budget: Discussion of Decision Packages

Pete Dalke, Administrator of the Management Services Division, and John Rist, Budget Manager for the Department, briefed the Commission on the status of preparation of the budget request for the 1991-93 biennium. Pete Dalke indicated that the unifying themes for the budget were **Prevention** and **Technical Assistance**. The number one priority will be enhancement of base budget activities to more adequately accomplish existing basic program functions. Graphs summarizing the request were reviewed.

Fred Hansen introduced Elana Stampfer and Leila Yim, two graduate students that are working in the Directors Office and Environmental Cleanup Division for the summer.

The Work Session was then adjourned.

Regular Meeting

The Environmental Quality Commission regular meeting was convened at about 8:30 a.m. in Conference Room 3a of the Department of Environmental Quality (DEQ) at 811 S. W. 6th Avenue in Portland, Oregon. Commission members present were: Chairman Bill Hutchison, Vice Chairman Emery Castle, and Commissioners Bill Wessinger, Genevieve Sage and Henry Lorenzen. Also present were Shelley McIntyre 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 welcomed the public to the meeting and asked people wishing to testify on any item to fill out a witness registration sheet.

Chairman Hutchison noted that Agenda Item C was being removed from the agenda because materials could not be prepared in time for review by Commission members prior to the meeting. He asked Commissioners Castle and Lorenzen to assist in preparing the necessary materials and indicated that the item would be reschedule at a later meeting -- hopefully the August meeting.

The Commission briefly discussed the agenda for the August Work Session. Commissioner Sage asked for a process discussion on how the Commission does its work and makes decisions. Commissioner Castle agreed that such a discussion was important and should be part of the Work Session agenda.

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 May 24-25, 1990 Meeting

A revision of page 21 of the minutes was presented and recommended for incorporation in the final minutes.

B. Approval of Tax Credit Applications

The Department presented recommendations that 18 applications for tax credit be approved as follows:

TC-2645	Byrnes Oil Company, Inc	New installation of one, three-compartment tank and piping, spill containment
---------	-------------------------	---

basins, overfill prevention devices, and a monitoring well

TC-2857	Texaco Foodmart	Replacement of three bare steel tanks with fiberglass tanks, and installation of cathodic protection on fourth tank replacement of all steel piping with double wall fiberglass piping with interstitial monitors and emergency shutoff valves; tank monitor, spill containment basins, monitoring wells.
TC-3119	Dirksen Investments	Replacement of two steel tanks and piping with fiberglass tanks and piping; installation of spill containment basins, tank monitor.
TC-3158	Carson Oil Company, Inc.	Replacement of galvanized steel piping with fiberglass piping.
TC-3159	Carson Oil Company, Inc.	New installation of one STI-P3 tank and cathodic protection on the tank and steel piping, and a spill containment basin.
TC-3160	Carson Oil Company, Inc.	Replacement installation of four STI-P3 tanks (with cathodic protection) and fiberglass piping, and spill containment basins.
TC-3161	Carson Oil Company, Inc.	Installation of a tank monitor system connected to four tanks.
TC-3162	Carson Oil Company, Inc.	Installation of line leak detectors on four tank systems.
TC-3163	Carson Oil Company, Inc.	New installation of one STI-P3 tank and cathodic protection on the tank and steel piping, and a spill containment basin.
TC-3164	Carson Oil Company, Inc.	New installation of five STI-P3 tanks (with cathodic protection) and fiberglass piping, line leak detectors, tank monitor,

spill containment basins, an oil/water separator, and a monitoring well.

- | | | |
|---------|--------------------------|--|
| TC-3165 | Carson Oil Company, Inc. | Installation of epoxy lining in four steel tanks, cathodic protection on these and one other tank, and piping system, spill containment basins, line leak detectors, and a tank monitor. |
| TC-3166 | Carson Oil Company, Inc. | Installation of line leak detectors and tank monitor system. |
| TC-3167 | Carson Oil Company, Inc. | Installation of line leak detectors and tank monitor system. |
| TC-3176 | Younger Oil Company | Installation of epoxy lining in four steel tanks, fiberglass piping, spill containment basins, line leak detectors, automatic shutoff breakaway devices, tank monitor, monitoring wells. |
| TC-3177 | Younger Oil Company | Installation of epoxy lining in four steel tanks, replacement of bare steel with fiberglass piping, spill containment basins, line leak detectors, and the site stubbed in for a tank monitoring system. |
| TC-3178 | Younger Oil Company | Installation of epoxy lining in five steel tanks, fiberglass piping, line leak detectors, oil/water separator and a tank monitoring system. |
| TC-3179 | Younger Oil Company | Installation of cathodic protection on seven steel tanks. |
| TC-3180 | Younger Oil Company | Installation of cathodic protection on six steel tanks and piping. |

C. Commission Approval of Standards, Criteria, and Policy Directives for the DEQ Director Position

This item was removed from the agenda.

Authorization of Rulemaking Hearings

D. Air Quality Rules: Amendment to General Emission Standards for Volatile Organic Compounds

This item requested authorization to hold a public rulemaking hearing on proposed amendments to the air quality general emission standards for Volatile Organic Compounds (VOCs). The purpose of the amendments is to align state VOC rules with federal Environmental Protection Agency requirements and to revise the State Implementation Plan (SIP).

E. Grants Pass Particulate Matter (PM₁₀) Control Strategy

This item requested authorization to hold a public rulemaking hearing on proposed revisions to the State Implementation Plan to include the PM₁₀ air pollution control strategy for the Grants Pass non-attainment area.

F. Klamath Falls Particulate Matter (PM₁₀) Control Strategy

This item requested authorization to hold a public rulemaking hearing on proposed revisions to the State Implementation Plan to include the PM₁₀ air pollution control strategy for the Klamath Falls non-attainment area.

G. Medford-Ashland Particulate Matter (PM₁₀) Control Strategy

This item requested authorization to hold a public rulemaking hearing on proposed revisions to the State Implementation Plan to include the PM₁₀ air pollution control strategy for the Medford-Ashland non-attainment area.

H. Clear Lake (Near Florence): Proposed Amendments to Rules Concerning Protection of Clear Lake Water Quality and Rules Establishing a Moratorium on On-Site Sewage Disposal Systems in the Clear Lake Basin

This item requested authorization to hold a public rulemaking hearing on proposed rules modifying OAR 340-41-270 [Special Policies and Guidelines for the Mid Coast Basin] and OAR 340-71-460(7) [Moratorium Areas for On-Site Sewage Disposal Systems]. The proposed modifications would revise the existing requirements for protecting the very high quality water in Clear Lake near Florence, Oregon. The proposed rules would change the loading limitations in existing rules from Nitrogen to Total Phosphorus, allow a slight increase in phosphorus levels from existing levels, require installation of a sewage facility by October 1, 1993, unless demonstrated unnecessary to meet the lake loading

limitations, require a lake management plan consistent with lake loading limits before allowing any new on-site sewage disposal systems, and require routine monitoring of Clear Lake water Quality.

I. Land Use Coordination: Proposed Rules to Adopt State Agency Coordination Program

This item requested authorization to hold a public rulemaking hearing on proposed rules establishing the implementation procedure for the Land Use Coordination Program for the Department of Environmental Quality (referred to as the state agency coordination program). Under the land use laws and the rules of the Department of Land Conservation and Development, state agencies are directed to adopt a State Agency Coordination Program and the implementation procedures are to be adopted by administrative rule.

Action Items

J. Waste Tire Pile Cleanup: Approval of Funds From the Waste Tire Recycling Account to Assist Coos County

This item requested Commission approval for use of funds from the Waste Tire Recycling Account to assist Coos County to expedite the cleanup of approximately 200,000 tires at a permitted waste tire storage site. The county has requested assistance for 80% of the cleanup cost which is estimated to be \$96,000.

K. Waste Tire Pile Cleanup: Approval of Funds From the Waste Tire Recycling Account to Assist Klamath County

This item requested Commission approval for use of funds from the Waste Tire Recycling Account to assist Klamath County to expedite the cleanup of approximately 750,000 tires at a permitted waste tire storage site. The county has requested assistance for 80% of the cleanup cost which is estimated to be \$596,800. In addition, they have requested that the Department prepay the full cleanup cost, and that the county repay its 20% share in payments of \$30,000 per year until fully repaid.

L. Waste Tire Pile Cleanup: Approval of Funds From the Waste Tire Recycling Account to Assist Richard Mishler, Jr.

This item requested Commission approval for use of funds from the Waste Tire Recycling Account to assist Richard L Mishler, Jr. to expedite the cleanup of approxi-

mately 200,000 tires at a permitted waste tire storage site. Mr. Mishler has requested assistance for 90% of the cleanup cost which is estimated to be \$140,000.

The Commission removed items D, E, F, G, H, and K from the consent agenda by consensus to allow for requested testimony and discussion. (Item C was deleted entirely.)

It was **MOVED** by Commissioner Castle that the Department recommendation on Consent Items A, B, I, J, and L be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved.

Consideration of Consent Item D: (Air Quality Rules: Amendment to General Emission Standards for volatile Organic Compounds)

Brian Finneran, of the Air Quality Division staff, summarized the nature of the rule changes proposed by this agenda item. He explained that the proposed rules would primarily affect small surface coating operations located in the Portland area. The rule would reduce the emission level below which a source is exempted from the control requirements of the rules from 40 tons per year to 10 tons per year.

David J. Smukowski, representing the Boeing Company, advised the Commission that they would not be able to comply with the proposed rule. He indicated that Congress is considering an adjustment in the Clean Air Act that may affect the federal VOC emission standard for aircraft coatings, and urged the Commission to delay action. John Kowalczyk from the Air Quality Division replied that since it is not clear what changes will be made, if any, it would be better to proceed to hearing as proposed and develop information on the issue as part of the record.

Michael Davis, Manager of the Coatings Division of Anodizing, Inc., stated that his company does not believe they can comply with the tighter VOC emission limits proposed. Chairman Hutchison indicated that his comments would be more appropriate as part of the hearing record and urged him to testify at the hearing. Chairman Hutchison also urged Mr. Davis to consult with the Department staff in an effort to determine the specific nature of any problems that may exist.

It was **MOVED** by Commissioner Sage that the Department recommendation be approved. The motion was seconded by Commissioner Castle and unanimously approved. (The motion and action on this item occurred following the consideration of Consent Item H.)

Consideration of Consent Items E, F, G: (Particulate Matter (PM₁₀) Control Strategies for Grants Pass, Klamath Falls, and Medford-Ashland)

John Core of the Air Quality Division Program Planning Section noted that in 1987, the EPA revised the National Ambient Air Quality Standards to include PM₁₀ particulate matter and that states were required to revise their State Implementation Plans (SIPs) to assure that the new PM₁₀ air quality standards were attained and maintained. Medford, Klamath Falls and Grants Pass are all airsheds for which PM₁₀ control strategies must be adopted. He noted that over the past two years, the Department has worked with local governments to develop the plans before the Commission and that the schedule for adoption to the plans (November, 1990) was submitted to the Environmental Protection Agency in response to a law suit filed by the Sierra Club against EPA.

Commissioner Sage remarked that all three plans seemed to be only partially complete; the Klamath Falls SIP did not contain needed local ordinances, technical adequacy of the control strategies of the Medford SIP were being contested by a local environmental group and the voluntary curtailment program element for the Grants Pass SIP has not yet been developed. She questioned if hearings should be delayed pending resolution of these issues.

In response, Mr. Core noted that local ordinances to enforce the Klamath Falls strategy were essential prior to Commission adoption and that delay would mean that the Department could not meet its commitment under the Clean Air Act to EPA. Regarding the Medford SIP, he noted that over the past 2 years the Department had worked to resolve issues with the Coalition to Improve Air Quality with only partial success and that because of the very marginal nature of the Grants Pass nonattainment problem, the details of the voluntary curtailment program were not a critical element of the program. Merlyn Hough, Air Quality Division, then explained some of the Clean Air Coalition technical concerns in greater depth and indicated that the EPA had accepted the Department's position on them.

Harry Frederick, Chairman of the Board of Klamath County Commissioners, then testified noting that the Board would not consider adoption of a mandatory curtailment ordinance until some time in 1991 because he had promised the community at least 3 years of voluntary curtailment. He also said that the City of Klamath Falls did not intend to adopt an ordinance until the County acted.

John Kowalczyk of the Air Quality Division indicated that the citizens and local governments have continually sought delays in implementing effective wood heating strategies and that the Department did not want to contribute to further delay. Instead, the Department was trying to take formulated plans to hearing to bring about clean air

as soon as possible and within the time frame of current federal law. He indicated that the local ordinances needed by November 1990 to make the plans complete could give Klamath Falls a third year of voluntary curtailment since mandatory curtailment would only have to go into effect by the 1991-92 heating season which is the current Clean Air Act attainment date.

Ken Brooks, Director of the Oregon Operations Office of EPA, urged the Commission to authorize the hearings on these items. He noted that the levels of PM₁₀ monitored here were among the highest measured in the country and constitute a health concern.

It was MOVED by Commissioner Wessinger that the Department recommendation for Consent Items E, F, and G be approved. The motion was seconded by Commissioner Castle and unanimously approved on a roll call vote.

Consideration of Consent Item H: (Clear Lake (near Florence): Proposed Amendments to Rules Concerning Protection of Clear Lake Water Quality and Rules Establishing a Moratorium on On-Site Sewage Disposal Systems in the Clear Lake Basin)

Dick Nichols of the Water Quality Division introduced the agenda item with a short description of the issue.

Bill Finley, a Collard Lake resident and a representative of the Heceta Water District, testified that he thought that the proposed rules should not consider any additional degradation of the lake.

Mike Keating, representing Collard Lake Property Owners, also indicated his concern that action on the Clear Lake should not proceed until the Department has obtained the latest monitoring data from recent sampling of Clear and Collard Lake.

Dick Nichols indicated that the data would be available before the hearing. Chairman Hutchison asked if there were any other objections to proceeding to hearing. None were presented.

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

Consideration of Consent Item K: (Waste Tire Pile Cleanup: Approval of Funds from the Waste Tire Recycling Account to Assist Klamath County)

Commissioner Sage asked whether the Department recommendation on this item to prepay the cost of tire removal rather than to reimburse the County later would establish any precedent. (Klamath County had requested the Department to pay the full cleanup cost (estimated at \$596,800) and allow the county to repay its 20% share (\$119,360) to the Department in payments of \$30,000 per year until full payment is received.) Brad Price noted that a similar arrangement had been previously approved by the Commission. He also noted that the Department would be returning to the Commission with a proposed rule change to clarify such an option.

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

II. Public Forum

Harry Demaray read a statement which was intended to bring the Commission up to date on events since the meeting in Newport. Mr. Demaray continues to be concerned about Department follow-up on pollution violations he documented prior to his dismissal as an employee of DEQ, alleged Department efforts to declare enforcement files as confidential and off limits to him, alleged failure of the Department to comply with the law by summarizing his testimony in EQC meeting minutes rather than fully incorporating his testimony, and Department interpretation of enforcement authorities. A copy of Mr. Demaray's statement and attached references is included in the record of the meeting. Mr. Demaray supplemented his statement by indicating that he had filed suit yesterday (June 28, 1990) for injunctive relief and damages under the Whistleblower Law, ORS 659.510, and other statutes. Finally, Mr. Demaray reiterated a comment he made at the Work Session on the previous day that a vehicle inspection program is needed in Vancouver, Washington.

Tom Bispham, Administrator of the Regional Operations Division, advised the Commission that the Department had reviewed the potential enforcement cases Mr. Demaray referred to and was pursuing action on three cases. He indicated that a report on the matter was on its way to Director Hansen.

III. Action Items

M. Review of Contested Case in DEQ v Turnbull, Case No SW-SWR-89-03

On January 11, 1990, Linda Zucker, Hearings Officer for the Commission, entered the Hearings Officer's Findings of Fact and Conclusions of Law that Phillip R. Turnbull was liable for the \$3,750 civil penalty assessed by the Department on February 22, 1989, for operating a solid waste disposal site without the required permit in violation of ORS 459.205 and OAR 340-61-020.

Mr. Turnbull requested Commission review of the Hearings Officer's decision. Mr. Turnbull did not appear at the Commission meeting.

After review of the record, it was MOVED by Commissioner Lorenzen that the Commission affirm the Hearings Officer's order finding Mr. Turnbull liable for a \$3,750 civil penalty for unpermitted operation of a solid waste disposal site. The motion was seconded by Commissioner Castle and unanimously approved.

N. Asbestos Program: Request for Adoption of Finding and Order to Require Refresher Training for Small Scale Asbestos Abatement Workers

This item requested the Commission adopt a finding and order as presented in Attachment A of the staff report to require refresher training for small-scale asbestos abatement workers. Refresher training is necessary to assure that workers are trained on changes in work practices within the industry and recent administrative rule amendments. Small scale workers have also expressed a desire to receive refresher training as required for full-scale workers and supervisors. The need for refresher training was extensively debated when the rules were first adopted. The final rules for small scale workers allowed the Commission to require the refresher training if the Commission determined that a need existed.

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

O. Pollution Control Bonds: Review of Agreement Provisions and Authorization of Bond Sale for Mid-Multnomah County Sewers

This item requested that the Commission (1) approve the Intergovernmental Agreements between the Department and the Cities of Gresham (Attachment A1) and Portland

(Attachment A2), (2) approve the purchase of Special Assessment Improvement Bonds (SIABs) from the respective cities under the terms of the Agreement, recognizing the sequential risk shared by the parties under the contingent liability amount provisions, and (3) make a finding that the Gresham/Portland sewer development project will be self supporting and self liquidating (contained within the agreements).

Pete Dalke, Administrator of the Management Services Division, and Noam Stampfer of the Management Services Division, summarized the status of the agreements. Background information on this item was provided at the May Commission meeting. The Intergovernmental Agreements have been reviewed by the Attorney General and the State Treasurer. The cities have adopted the agreement. Portland's approval included additional language regarding a future State Treasurer. The Department has no problem with this addition. There will also be an added attachment to the Portland agreement relating to their sewer assessment contract. The Department will return at the September meeting for approval to proceed with sale of a \$7 million bond issue.

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

P. Timber Products Company: Request for Variance for Grants Pass Plant

This item requested that the Commission grant a variance of up to six months for the construction of facilities and a variance from the May 2, 1991 deadline for proof of compliance with newly adopted PM₁₀ emission limits to October 1, 1991, for the veneer dryers and wood-fired boiler at the Tim-Ply Division Facility in Grants Pass. The Department recommendation includes a specific compliance schedule and is based on the conclusion that the Company's request satisfies ORS 468.345 (b) and (c), two of the four conditions under which the Commission may grant a variance.

Q. Timber Products Company: Request for Variance for White City Plant

This item requested that the Commission grant a variance of up to six months for the construction of facilities and a variance from the May 2, 1991 deadline for proof of compliance with newly adopted PM₁₀ emission limits to October 15, 1991, for the veneer dryers at the White City Plywood Division Facility in White City. The Department recommendation includes a specific compliance schedule and is based on the conclusion that the Company's request satisfies ORS 468.345 under which the Commission may grant a variance.

The Commission considered agenda items P and Q at the same time. John Ruscigno of the Air Quality Division noted that under the proposed variances, the company would be required to have facilities operating prior to the start of the wood heating season.

It was MOVED by Commissioner Sage that the Department recommendation on agenda items P and Q be approved. The motion was seconded by Commissioner Castle and unanimously approved.

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

This item recommended that the Commission conditionally approve the Tualatin Basin Non-Point Source Watershed Management Plans submitted by six agencies (Department of Agriculture, Unified Sewerage Agency, Clackamas County and Rivergrove, Portland, Lake Oswego, West Linn) and defer action on the plan submitted by the Department of Forestry based on a request from the Board of Forestry to allow time to receive a report from the Technical Specialist Panel. The specific evaluation, recommendations, and conditions of approval on each plan are presented in Attachments A through G of the staff report. The conditions of approval recommended include additional requirements and compliance schedules for achieving full approval of the plans. OAR 340-41-470(3)(i) requires the Commission to approve or reject each plan within 120 days of submission (i.e., by July 7, 1990).

Lydia Taylor, Administrator of the Water Quality Division, and Don Yon of the Water Quality Division, advised that a public hearing was held to receive input on the proposed plans. In addition, the Department met with the agencies submitting the reports to discuss timelines, and that timelines were adjusted in some cases as a result of the discussions.

Commissioner Castle reported that the Technical Specialist Panel has held two meetings but has not achieved closure and completed a report.

Chairman Hutchison noted that 5 people had testified at the Department Hearing and 10 had signed up to testify before the Commission. Lydia Taylor reminded the Commission that this is not a rule making action. The public hearing that was held received input on the plans themselves, but not on the Department recommendations. Thus it would be appropriate to receive testimony on the Department recommendations. Chairman Hutchison expressed concern over the potential of a full hearing before the Commission and asked if it needed to be done at this time. Lydia Taylor advised that the Commission rule required Commission action within 120 days of plan submittal, thus action was needed at this meeting.

John Jackson, representing the Unified Sewerage Agency, stated that his agency had serious concerns on the conditions proposed by the Department. He felt the conditions would jeopardize plans for water quality improvement in the Tualatin Basin. He requested a delay to allow time for the agencies to meet with the Department in an effort to resolve differences prior to proceeding to a full hearing on the issues.

The Commission then recessed for a few minutes. Upon reconvening the meeting, Lydia Taylor indicated that the Department could meet with the agencies to resolve outstanding differences and return to the August meeting for Commission consideration and resolution of any remaining differences. Shelley McIntyre representing the Attorney General's office, advised that the Commission could adopt a temporary rule to extend the plan approval deadline in the existing rule.

Chairman Hutchison expressed concern with the number and nature of the conditions recommended and noted that the recommendation seemed closer to rejection than conditional approval. Director Hansen noted that substantial effort has gone into the preparation of the plans by the agencies and that he believed a real commitment existed to resolve the differences.

It was MOVED by Commissioner Castle that a Temporary Rule be adopted to extend the plan approval deadline in OAR 340-41-470(3)(i) by 45 days from July 7, 1990, based upon a finding that failure to act would seriously prejudice pollution control efforts in the Tualatin Basin and that new facts provided to the Commission require an extension of time for evaluation and an opportunity to resolve differences. The motion was seconded by Commissioner Lorenzen and unanimously approved.

Chairman Hutchison asked that all those who signed up to testify be notified of the action and that the matter would be returned to the Commission at the August meeting.

S. Strategic Plan: Request for Commission Approval

This item requested Commission approval of the Strategic Plan as revised following discussion at the May 24, 1990, Work Session. At that work session, the Commission reviewed public comments received and discussed recommendation of the Department for modification of the Draft Strategic Plan that was presented for public comment.

Chairman Hutchison thanked the staff for their commitment to the strategic planning process. He also noted that the Department will return at the September meeting with information on performance indicators.

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

Special Item: Pulp Mill Contested Cases

Three pulp mills have appealed permit modifications issued by the Department to the Commission. In order to process these cases, the Commission needed to designate a hearings officer for the proceeding.

It was MOVED by Commissioner Lorenzen that Herbert Schwab be appointed Hearings Officer for the Commission in this matter. The motion was seconded by Commissioner Wessinger and unanimously approved.

Special Item: Drug Lab Cleanup: Proposed Adoption of Emergency (Temporary) Rules to Implement Cleanup Cost-Share Program

This item requested that the Commission adopt temporary rules to establish a cost share requirement to begin July 1, 1990 for agencies assisted by the drug lab cleanup program, and to establish requirements for a hardship exemption from the cost share requirement. The proposed rules were presented in Attachment A of the staff report. The findings in support of temporary rule adoption were presented in Attachment B. This action is made necessary by a directive from the May 18, 1990, Emergency Board that the Department recover 50% of the cost of drug lab cleanup after July 1, 1990, from the local agency requesting state assistance in the cleanup unless the local agency qualifies for a hardship exemption. The Department also recommended that it be authorized to proceed to public hearing for permanent adoption of the rules.

Mike Downs, Administrator of the Environmental Cleanup Division, briefly reviewed the basis for the needed temporary rule adoption.

It was MOVED by Commissioner Castle that the Department recommendation for adoption of the temporary rule, adoption of the findings of need and authorization for to proceed to permanent rulemaking be approved. The motion was seconded by Commissioner Wessinger and unanimously approved.

Special Item: Washington County On-Site Fees

Washington County had requested that they be allowed to increase fees they charge for processing applications for on-site sewage disposal systems effective as soon as possible.

Such approval may be granted by the Commission by rule. In order to expedite the process, the Department proceeded immediately to issue a notice of a rule making hearing, and advised the Commission of this action and the opportunity to discuss it at the upcoming Commission meeting. Commissioner Sage asked why Washington County had not filed its request sooner. Lydia Taylor responded that the County was not aware that rulemaking would be required and thus was not aware of the time that would be required for favorable action on their request. By consensus, the Commission concurred in the Department action to proceed with the notice of a rulemaking hearing on the issue.

IV. Rule Adoptions

X. Water Quality Rules: Proposed Adoption of Rule Amendments to Clarify Requirements for Designation and Management of Water Quality Limited Segments

This item requested that the Commission adopt amendments to the Water Quality Rules, as presented in Attachment A of the staff report, to establish definitions for water quality limited and effluent limited receiving streams and establish requirements for the consideration of increasing waste loads in water quality limited streams. Three options were presented for consideration at the rulemaking hearings on this matter. Extensive testimony was received. The Department recommended approval of alternative 2 which could allow the Commission and Department to grant a new permit or modify an existing permit to allow a source to discharge additional pollutants into a water quality limited stream before all waste load and load allocations have been fully met.

Neil Mullane advised the Commission of two technical corrections that should be made to the rules as proposed in Attachment A. These included amending the first line on page A-6 to read "... would not unacceptably threaten..." and changing the word "establishment" to "established" in the 4th line of the third paragraph on page A-7.

Commissioner Lorenzen asked if the words "(i) and (ii)" in the seventh line of paragraph (IV) on page 7 shouldn't read "(i) or (ii)". After some discussion, it was decided that the change should be made.

Karl Anuta, representing Northwest Environmental Defense Center, stated that the staff did a good job on a complex rule. He noted that staff did not include his suggestion regarding bioaccumulation of toxins and that he will raise the issue again as part of the triennial standards review process. He also suggested that the presumption in the rules that if standards are met the uses are protected should be reversed. Commissioner Lorenzen disagreed since standards are established to protect the uses. Mr. Anuta also suggested that the term "designated uses" be substituted for "beneficial uses" to get away

from issues related to the Water Resource Department usage of the term. In closing, he supported the Department recommendation subject to his comments.

Patrick Parenteau, an attorney from the firm Perkins Coie, and representing WTD Industries, stated a preference for Alternative 3. With respect to the recommended alternative, he suggested that the words "on schedule" in paragraph (ii) on page A-6 would present problems due to the difficulty in making the required determinations. He recommended deleting the words "on schedule" to leave a little more flexibility for the Commission to consider the facts in a specific case. He suggested that a new clean discharge using the latest technology to reduce discharges should not be held hostage by other sources choice of being on schedule. Lydia Taylor made a suggestion that the word "is" in the 7th line of paragraph (ii) on page A-6 be changed to "will be" in order to better clarify the intent. Commissioner Castle suggested that a semi-colon be added after the word "established" in the sixth line of paragraph (ii) on page A-6, and that the words "and are being implemented on schedule;" be deleted entirely.

John Bonine, of Eugene, expressed concern that wording of the proposed rule might allow narrative criteria to be violated because numerical criteria are met.

Chairman Hutchison closed the hearing on the matter and called for Commission discussion.

Commissioner Sage stated that she understood the intent of the words "unacceptable threat" but she was concerned about the use. She expressed the view that any attempt to qualify the requirement to protect uses is an attempt to re-write the law. She further stated that she did not oppose a desire to keep a dynamic process, but was concerned that the process was unclear and thus not dynamic. Commissioner Sage expressed concern that if a discharge was permitted in advance, and all requirements were met, and the source went on line, there would be no incentive for improvement. She was also concerned that if water quality standards were not met, and the reserve assimilative capacity that was supposed to be there was in fact not there, that a source could sue to discharge in any event. Finally, she expressed the view that the proposed rule was a pandora's box that would allow return to a technology based program.

Lydia Taylor stated that the proposed rule does move from a technology based program to a water quality based program and that a water quality based program does force the development of technology. In addition, the rule asserts that the state owns any excess capacity in water quality, and that there would have to be discussions before any decision to allocate any portion of it to a source.

Commissioner Castle urged that the Commission perfect these rules and then move on to discuss other options and philosophies that may be incorporated in the future.

It was MOVED by Commissioner Lorenzen that the Department recommendation as presented in Attachment A be approved with the following modifications:

- Page A-6, modify line 1 to read "... would not unacceptably threaten..."
- Page A-6, modify paragraph (ii) to read:
"...compliance plans under which enforcement action can be taken have been established; [~~and are being implemented on schedule;~~] and there [~~is~~] will be sufficient reserve capacity ..."
- Page A-7, modify paragraph (IV) to read:
"...compliance deadline [~~establishment~~] established for the waterbody. If this action will result in a permanent load increase, the action has to comply with subsections (i) [~~and~~] or (ii) of this rule."

The motion was seconded by Commissioner Castle. Commissioner Sage asked for a response to issues she raised. Commissioner Castle expressed support for discussion of the issues at a future work session. Chairman Hutchison called for a roll call vote on the motion. The motion was approved by a 4 to 1 vote with Commissioner Sage voting no.

The meeting was recessed for lunch. Commissioner Castle had to leave and was not present for the remainder of the meeting.

Y. Water Quality Rules: State Revolving Loan Fund Rule Amendments

This item requested Commission adoption of rule amendments to the State Revolving Loan Fund rules as presented in Attachment A of the staff report. The amendments were proposed to correct deficiencies discovered during the first year of operating experience.

Martin Loring of the Water Quality Division indicated that no oral testimony was received at the rulemaking hearing. The Environmental Protection Agency had submitted written comments, and the rule amendments were modified to address EPA's concerns.

It was MOVED by Commissioner Wessinger that the Department recommendation be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved (4 members present).

Z. Water Quality Rules: Adoption of Rule Changes Affecting Permits and Approvals for Industrial and Agricultural Sources

This item requested Commission adoption of rule amendments affecting water quality permits and approvals for industrial and agricultural sources as presented in Attachment A of the staff report. The rule amendments would make OAR Chapter 340, Division 45 consistent with Division 14 by adding language to clarify that a National Pollutant Discharge Elimination System permit will not expire until final action is taken on a timely filed renewal application. The rule amendments would also make permitting rules and confined animal feeding and holding rules consistent with HB 3445 adopted by the 1989 legislature, would identify circumstances under which the Director could issue a stipulated consent order in lieu of or in addition to a permit, and would exempt small impoundments and oil/water separators from requirements to have engineering plans approved by the Department.

Kent Ashbaker of the Water Quality Division reminded the Commission that this proposal was part of a recommendation for rule adoption that was tabled at the last meeting. In response to direction from the Commission, the Department had removed proposed rule amendments relating to gold mining activities pending further review. In addition, the Attorney General's office has provided a letter opinion (Attachment F) on the interpretation of federal and state rules relating to the proposed rule to have permits continue in effect pending action on a timely filed renewal application.

John Bonine noted his objection to the rule which would allow a permit to remain in effect after its expiration date while the Department acted on a timely filed renewal application. He indicated there was a good reason for the 5 year duration limit on permits and that all parties should be forced to address permit applications on a timely basis.

Kent Ashbaker noted that the Department does not want a backlog of pending permit applications. Director Hansen noted that there are two pieces to the issue -- a legal piece and a management piece. The proposed rules seek to clarify the legal issue. The management issue is being addressed by adjustment of resource assignments and budgeting for additional positions.

It was **MOVED** by Commissioner Lorenzen that the Department recommendation be approved. The motion was seconded by Commissioner Wessinger. The motion was approved with three yes votes. Commissioner Sage abstained.

T. Confirmed Release Inventory: Proposed Adoption of Rule Amendments to Implement HB 3235.

This item requested Commission adoption of rules to establish criteria and procedures for implementation and administration of a hazardous substances site discovery program to implement HB 3235. The proposed rules are contained in Attachment A of the staff report. The proposed rules also amend rules pertaining to the fee for wastes entering hazardous waste disposal facilities to conform to amendments in the authorizing statute (ORS 465.375) and amend statutory citation in the environmental cleanup rules to conform to recodification of ORS Chapter 466.

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

U. UST Program: Proposed Adoption of Financial Responsibility Rules for Owners and Operators of 100 or More Tanks

This item requested Commission adoption of rules relating to financial responsibility for owners and operators of 100 or more underground storage tanks. The proposed rules are presented in Attachment A of the staff report. The proposed rules are consistent with federal requirements and are necessary for the state to qualify for approval of the Underground Storage Tank program.

Rich Reiter of the Hazardous and Solid Waste Division noted that the financial responsibility requirements for small businesses (less than 100 tanks) have been deferred by the Federal Government.

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

V. Oil Contaminated Soil Cleanup Contractors: Proposed Adoption of Amendments to Registration and Licensing Requirements for UST Service Providers to Add Certification and Licensing for Soil Cleanup Contractors and Supervisors (HB 3456)

This item requested Commission adoption of proposed rules to improve and regulate the quality of remedial action and cleanup work performed on releases from underground storage and heating oil tanks as presented in Attachment A of the staff report. The proposed rules apply to sites involving soil contamination that will be cleaned up utilizing the soil matrix rules, where DEQ oversight is minimal. The proposed rules do not apply

to contaminated groundwater sites which receive extensive DEQ oversight of work performed.

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

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

This item requested Commission adoption of proposed rules which establish criteria for DEQ approval of solid waste reduction programs required under ORS 459.055 and under ORS 468.220 (6) for local government jurisdictions disposing waste in Oregon. The proposed rules are contained in Attachments A and B of the staff report.

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

V. Informational Items

AA. Commission Member Reports

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 Sage reported on the Governor's Watershed Enhancement Board. At the June 14 meeting, the board voted to initiate a watershed inventory/assessment program. The effort will begin with a contract to compile existing data. The program will be expanded if additional funding is made available next biennium. The board is also seeking a proposal from the OSU extension service for initiating an active education program for watershed management. The board will have a retreat/work session to look at program issues for the next 2 years. Finally, Commissioner Sage reported on the 3rd annual Teachers Training Workshop on Watershed Education.

There was no further business and the meeting was adjourned.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: July 24, 1990

TO: Environmental Quality Commission

FROM: Stephanie Hallock & Mike Downs

SUBJECT: August 9, 1990 EQC Work Session Item #1. Program Discussion - Hazardous Waste and Hazardous Materials: Problem Prevention and Problem Correction

Discussion Outline

I. Program Overview

A. Cleanup as a fact of life

1. Cleanup programs will always be with us and are an important component of prevention programs.
2. Why we have the Superfund, RCRA corrective action, environmental cleanup and UST cleanup programs.

B. Program relationships

1. Federal Superfund and state environmental cleanup programs.
2. RCRA corrective action and RCRA prevention programs.
3. UST cleanup and environmental cleanup programs.

C. Number, complexity, duration and cost of cleanups

1. Federal National Priority List (NPL) sites in Oregon.
2. Environmental cleanup sites.
3. RCRA corrective action sites.
4. UST cleanup sites.

II. RCRA Corrective Action: A Separate Cleanup Program?

A. Issue - should the Department operate two separate hazardous waste cleanup programs, one in Hazardous Waste and one in ECD?

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: July 24, 1990

TO: Environmental Quality Commission

FROM: Stephanie Hallock & Mike Downs

SUBJECT: August 9, 1990 EQC Work Session Item #1. Program Discussion - Hazardous Waste and Hazardous Materials: Problem Prevention and Problem Correction

Discussion Outline

I. Program Overview

A. Cleanup as a fact of life

1. Cleanup programs will always be with us and are an important component of prevention programs.
2. Why we have the Superfund, RCRA corrective action, environmental cleanup and UST cleanup programs.

B. Program relationships

1. Federal Superfund and state environmental cleanup programs.
2. RCRA corrective action and RCRA prevention programs.
3. UST cleanup and environmental cleanup programs.

C. Number, complexity, duration and cost of cleanups

1. Federal National Priority List (NPL) sites in Oregon.
2. Environmental cleanup sites.
3. RCRA corrective action sites.
4. UST cleanup sites.

II. RCRA Corrective Action: A Separate Cleanup Program?

- A. Issue - should the Department operate two separate hazardous waste cleanup programs, one in Hazardous Waste and one in ECD?

B. Background

1. RCRA hazardous waste program began in 1980 as preventative program.
2. Congress amended in 1984 to require corrective action program.
3. How the corrective action program works.

C. Effect of implementing corrective action requirements on remainder of RCRA program.

D. Major differences between corrective action program and the environmental cleanup program.

III. Environmental Cleanup Issues

A. Alternative drinking water supplies

1. Issue - 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?

2. Current ECD projects where public water supplies have been impacted or are threatened:

- a. East Portland Well Field
- b. City of Milwaukie Public Water Supply
- c. City of Lake Oswego Public Water Supply
- d. City of Springfield PUD
- e. Lakewood Estates

B. Acceptable risk

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

2. EPA Superfund regulations set the acceptable risk range at one in a million (10^{-6}) to one in ten thousand (10^{-4}), with one in a million being the preferred goal for residual risks from cleanups.

C. Soil cleanup standards

1. Issue - 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?

2. The Department is proposing to develop a soil cleanup approach for sites that have a release of hazardous substances limited to soils that is patterned after the UST soil matrix rules, OAR 340-122-305 to 340-122-360.

IV. UST Cleanup Issues

A. Ground Water Cleanup Standards

1. Issue - the Department is developing groundwater cleanup standards specifically for use at UST sites. It is important to ensure these standards will be consistent with groundwater requirements established by the Water Quality Division.

2. The UST program has drafted an internal policy establishing federal Maximum Contaminant Levels (MCL's) as the ground water cleanup targets at petroleum UST sites. Constituents of concern in petroleum are benzene (a known carcinogen), toluene, ethylbenzene, and xylene (BTEX).

3. The UST program has been advised by DOJ that setting target levels requires rule making, even if they are only used as guidelines. Proposed rules will be brought before the Commission within the next year.

B. Incidental Hazardous Substances

1. Issue - Quite often at petroleum UST sites contamination other than petroleum is found. It could be a result of a leaking waste oil tank where solvents or PCB's have been found or it could be through poor solvent management practices at the site. If the contamination is not severe (only soil) it makes sense that the UST Cleanup program would also help the responsible party deal with cleanup of this material. A major sub-issue is soil cleanup standards for these hazardous substances.

2. Internal policy has been drafted outlining which sites the UST Cleanup program will handle where

incidental hazardous substances are found. Cleanup standards for hazardous substances typically found at petroleum UST facilities have not been established. Like ground water (Issue 1), we will need to establish those standards through rule making.

C. Cost of Cleanups

1. Issue - the cost of UST cleanups continues to be a problem for many small businesses. Are there ways to reduce these costs and still protect public health and the environment?

2. This issue is not new and has been brought up by a variety of interests at one time or another. In fact, the Department's Soil Matrix rules were adopted in response to the petroleum industry's concern for a cost-effective and fast-track approach where only soil has been contaminated by petroleum. The most vocal group to date is the Oil Heat Commission (OHC) created by the 1989 legislature.

3. The OHC is charged with funding cleanup of heating oil releases. The OHC is concerned with cleanup costs in general, but their primary target now is the Soil Matrix rules. They are pressing the Department to research and consider alternate cleanup standards and/or develop specific cleanup methods for oil heat releases that are more cost effective than the current methods. If it is determined that changes are appropriate, it may require rule making.

D. UST Cleanup Rule Revisions

1. Issue - the current UST rules only address petroleum contamination from underground storage tanks. However, a significant number of releases are occurring from above ground tank systems.

2. A major change to the UST cleanup rules currently under consideration is to extend the rules to include above ground tanks that store petroleum.

E. Toxic Characteristic Leaching Procedure (TC Rule)

1. Issue - the new federal rule for classification of hazardous waste (Subtitle C wastes) may result in

petroleum contaminated soils being classified as hazardous waste.

2. EPA has temporarily exempted petroleum underground storage tanks subject to federal regulation (Subtitle I) from this rule. If petroleum contaminated soils are classified as a hazardous waste, cleanups will virtually come to a standstill. Furthermore, any treatment of soils on or off-site would probably require a Treatment, Storage or Disposal (TSD) permit (a lengthy process).

3. A further complication is that those petroleum UST's not currently subject to federal regulation, are not covered in EPA's deferral. What does this mean? It could mean, for example, that contaminated soil from a heating oil release (exempt from federal regulation) would be classified as a hazardous waste.

V. UST Compliance Issues

A. Three Prevention Approaches

1. Technical and financial responsibility standards for new and existing systems

- a. Corrosion protection
- b. Leak detection
- c. Spill and overflow prevention

2. Contractor licensing and supervisor certification

- a. Installation
- b. Decommissioning (tank removal)
- c. Tank tightness testing
- d. Cathodic protection testing
- e. UST soil cleanup
- f. Heating oil soil cleanup

3. Financial Assistance

- a. Grant Reimbursement
- b. Loan Guarantee
- c. Interest Rate Subsidy
- d. Pollution control facility tax credit

B. Closed/Abandoned Facilities

Issue - There are many closed/abandoned UST facilities throughout the state. Since there is no active dispensing of product, our typical outreach mechanisms haven't reached most of the current tank owners. It is not unusual for the buried tanks to still contain product. Should it be a high priority issue to discover and regulate these tanks? Should we have a passive program that waits for a property transaction to occur?

C. Technical Assistance versus Enforcement

Issue - Extremely large universe of small businesses (15,000 tanks - 5000 locations). Relatively small compliance staff - five regional inspectors. One-quarter staff in enforcement section. Is it more important to have a high quality public education, technical assistance program or should the limited resource be used principally for compliance inspections and necessary enforcement followup?

D. Financial Assistance - How much is enough?

Issue - New regulations can impose significant cost on existing businesses. These costs almost always impact small business more adversely. Should we only look at benefit to public health and the environment or should we be concerned about the cost to society of losing small businesses?


E. Heating Oil Tanks

Issue - Heating oil tanks are currently excluded from UST compliance program. Many technical assistance requests are coming in from heating oil tank owners. Should we try and help even though they are not currently covered by our administrative rules?

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 26, 1990

To: Environmental Quality Commission
From: Harold Sawyer 
Subject: Agenda Item 2; August 9, 1990 Work Session
Oregon Benchmarks: Review of Document

The Department has reviewed the document Oregon Benchmarks. Attached is a table which extracts the benchmarks most related to DEQ programs, and summarizes comments and recommendations relative to each for purposes of discussion at the Work Session.

The Department has generally assumed that the target levels for each benchmark are intended to establish direction toward desired results and are not intended to be "standards" that carry a penalty if not met. In some cases, staff find it difficult to get very far from the idea that any number written down must be achievable under current program approaches.

The Department has also noted that some benchmarks, if achieved, could conflict with other benchmarks. It is necessary to recognize that each benchmark and its targets may be appropriate in its own right, but that conflicts are inevitable and a dynamic balancing process must occur continuously as implementation occurs.

The Oregon Progress Board has asked for comments on the Oregon Benchmarks document by September 14, 1990. Following the Commission/Staff discussions on August 9, 1990, the Department will revise the attached table to reflect final Commission/Department comments and forward it to the Oregon Progress Board.

HLS:l

Attachment (Table, 7 pages)

Benchmarks Related to the Department of Environmental Quality Program Areas

July 26, 1990 Draft

No.	Goal	Topic	Benchmark	1990	1995	2000	2010	Recommendation	Comments
2-1	Exceptional Quality of Life	Clean Air, Water, and Land	Percentage of Oregonians living where the air meets government ambient air quality standards	89%	100%	100%	100%	No Change	<p>This Benchmark is duplicated as a Key Benchmark, but contains percentages that are different (and incorrect). The percentages reflected here are considered reasonable by the Air Quality Division.</p> <p>Question: Is it overly ambitious to reach 100% by 1995?</p>
2-2	Exceptional Quality of Life	Clean Air, Water, and Land	Number of Oregon's 90,000 miles of rivers and streams with water not clean enough for fishing or swimming	1,540	1,000	750	500	Needs Discussion and rewording	<p>WQ Division has assessed the quality of 3500 stream miles out of a statewide total of more than 90,000 miles. (The 3500 miles assessed are largely the lower basin miles most impacted by population concentrations and industrial development.) Problems were identified on 1500 of the miles assessed based on today's standards and level of monitoring. The benchmark and targets, as displayed, are only good if you assume that no additional miles of stream are assessed, and that standards do not change. In reality, as more data becomes available and more miles are assessed, and as standards change, it is probable that more miles will be identified to have problems. Thus, it would be better to move away from "miles" and move to percentages for a benchmark target. Perhaps something along the lines of "% of identified problems resolved by the benchmark year" would be a better measure.</p> <p>Perhaps this benchmark should be stated in a positive rather than negative way (% of 90,000 stream miles with water clean enough for fishing and swimming).</p>
2-3	Exceptional Quality of Life	Clean Air, Water, and Land	Percentage of groundwater that is contaminated					Remove this Benchmark	<p>Impossible to measure. Unable to identify a suitable alternative at present. At best, one could only relate to the percentage of identified problems that have been addressed or are being addressed.</p>

No.	Goal	Topic	Benchmark	1990	1995	2000	2010	Recommendation	Comments
2-4	Exceptional Quality of Life	Clean Air, Water, and Land	Number of confirmed hazardous waste sites not cleaned up					Discuss	<p>Benchmark will reflect total workload to be faced and is acceptable to ECD as written. Data source will be the Confirmed Release List required by statute and currently under development. ECD will not be able to propose reasonable benchmark target numbers until there is a better grasp on the universe of sites (several years).</p> <p>Perhaps this benchmark could be reworded to reflect the "percent of sites on the list that are cleaned up or proceeding with cleanup in compliance with an approved program and schedule" (ie. a more positive approach).</p>
2-5	Exceptional Quality of Life	Clean Air, Water, and Land	<p>Pounds of <u>Oregon</u> solid waste landfilled <u>or incinerated</u> per capita per year</p> <p>Pounds of <u>Oregon Solid Waste Recycled</u> per capita per year</p>	1,300	1,000 1,290	660 1,220	300 ?	Discuss -- Benchmark or targets or both need to be revised	<p>HSW staff indicate that waste produced per capita is projected to increase at 2% per year in spite of extraordinary efforts to reduce waste generation. Experts would be happy to simply see <u>rate of increase</u> in the quantity of waste generated per capita reduced (optimistically to zero). Recycling is projected to increase significantly (based on substantial efforts). The targets shown for this benchmark are viewed as totally unrealistic and impossible to reach. The revised benchmark statements and targets are considered to reflect a very optimistic view of what can be accomplished. In addition, data is available to support determination of pounds landfilled and recycled per capita per year. No system is available to directly track pounds produced per capita per year.</p> <p>To the layperson, "reduction in waste produced per capita" would seem to be better as a primary goal to drive waste reduction if a realistic way can be devised to reflect it.</p>
2-6	Exceptional Quality of Life	Clean Air, Water, and Land	Pounds of litter per mile picked up <u>deposited</u> on representative stretches of state highways each year	70	55	45	35	Should be revised -- note option suggested	Appears to miss the point. How much is picked up should not be the focus -- it should focus on the amount that is there to be picked up.
2-9	Exceptional Quality of Life	Natural Resource Conservation	Percentage of significant wetlands acreage designated in 1990 still preserved as wetlands	100%	100%	101%	102%	No Change	Many DEQ permit and approval actions have a relationship to wetlands. However, DEQ is not the lead agency on this benchmark.

No.	Goal	Topic	Benchmark	1990	1995	2000	2010	Recommendation	Comments
2-	Exceptional Quality of Life	Clean Air, Water, and Land						Discuss --	Should there be something included in this topic to better address: <ul style="list-style-type: none"> • Pollution Prevention • Water Conservation • Energy Conservation • Safe, Clean Drinking Water
3-1	Quality Public Facilities and Services	Land Connected with Facilities	Percentage of 5-year inventory of vacant industrial land that can be fully served by utilities and public works within one year			100%	100%		This benchmark would require all urban jurisdictions to be able and ready to finance and start construction of public facilities to serve industrial sites "at the drop of a hat". The problem is not an environmental problem but rather is an economic problem relating to municipal front-ending of the costs and the later recovery from industrial customers.
3-2	Quality Public Facilities and Services	Land Connected with Facilities	Percentages of residences within urban growth boundaries served by both water and sewer				99%		At present, there are some jurisdictions that have based urban densities so that sewers would not be required. Urban growth boundaries are established to envision needs for the next 20 years. Thus scattered development can occur. It is not desirable to build sewers too far in front of the actual use. Thus, it may be unrealistic to expect 99% of the residences within the UGB to be served by sewer.
3-7	Quality Public Facilities and Services	Sewer and Water	Percentage of <u>the total</u> population served by <u>community</u> sewer and water <u>systems</u> that <u>are connected to systems which meet state and federal standards for design and operation</u>			100%	100%	Should be reworded -- possible option suggested	Wording is ambiguous. Benchmark can be interpreted to establish a goal of providing water and sewer service to 100% of the population of the state. A single target covering both water and sewer is not appropriate. Some areas may be appropriate for service by a community water system but could be adequately served by individual on-site sewage disposal systems. Standards applicable to water, water systems, and sewer systems will be continually changing. Thus, the "standards" will be a moving target.

No.	Goal	Topic	Benchmark	1990	1995	2000	2010	Recommendation	Comments
3-8	Quality Public Facilities and Services	Sewer and Water	Percentage of <u>community water and sewer systems with capacity to finance and construct the necessary facilities</u> to serve associated urban growth boundary areas <u>in a timely manner</u>				100%	Needs discussion -- possible revision noted	It is not desirable to build sewers too far ahead of the actual need and use.
3-13	Quality Public Facilities and Services	Public Capital Outlay	Capital outlay for facilities as a percentage of gross state product	2.1%	3.0%	3.0%	3.0%	Needs Discussion	<p>It is assumed that this benchmark reflects capital outlay for new as well as reconstructed or replaced facilities. What about operation and maintenance of capital facilities? Also, the Goal mentions services, but none of the benchmarks deal with services.</p> <p>If the goal is to minimize "crisis financing" of facility replacement, perhaps it should be reworded to encourage surcharges on user fees to set aside the necessary funds for replacement of worn out facilities.</p> <p>Unable to determine whether the targets for this benchmark are realistic.</p>
3-14	Quality Public Facilities and Services	Public Capital Outlay	Real per capita capital outlays for facilities (Constant Dollars)	\$254	\$459	\$501	\$583	Needs Discussion	<p>What about Services?</p> <p>The goal should not be the dollars spent, but should be revised to reflect the level of service provided. The effort to signal to all that costs will necessarily increase is appropriate and should be applauded.</p> <p>Unable to determine whether the Dollar figure targets for this benchmark are realistic.</p>

No.	Goal	Topic	Benchmark	1990	1995	2000	2010	Recommendation	Comments
1-	Exceptional People	Work Force Quality							DEQ needs people who are highly qualified by education and experience to be able to cope with the complex technical issues involved in modern pollution control and prevention. Today, a newly hired staff person is often expected to step into a job and be producing at a level that used to be expected only after several years of "apprenticeship". If expectations remain as they appear at present, the Educational system will need to find a way to accomplish the equivalent of "apprenticeship" training. The goals do not seem to adequately address this aspect of a qualified work force.


No.	Goal	Topic	Benchmark	1990	1995	2000	2010	Recommendation	Comments
4-9	Business Sensitive Regulatory Environment	Streamlined Permitting	Average number of days required to obtain siting or expansion permits as a percentage of 1990 level					Needs Discussion	This benchmark is assumed to cover more than pollution discharge permits. It may not be possible to develop a single benchmark level that would be applicable to all agencies or even for all permits within DEQ. DEQ can assemble data on average days to process permit applications from the date of application receipt, and can establish benchmark levels either in relation to optimum processing under established procedural rules, or in relationship to 1990 levels.
4-10	Business Sensitive Regulatory Environment	Environmental Cleanup	Percentage of non-defined pollution cleanup funded through general government revenues (rather than fees assessed to businesses)		50%	100%	100%		The Department and the Governor had proposed general funding to address the issue of orphan site cleanup. The legislature debated the issue, and made the public policy decision to assess costs to industry through a fee at least through the next biennium. It will be necessary for the next Governor and future legislative assemblies to address this issue.
5-6	Diverse Industry, Productive Jobs, and Increasing Incomes	Balanced Distribution of Jobs and Income	Percentage of Oregonians employed outside the Portland metro Area	54%	53%	53%	53%	Needs Discussion	Should there be more of an effort to push jobs and people into other than the Portland area, based on environmental stress or other concerns? Clearly, healthy economic activity is desirable in all parts of the state. The issues of where people live, work, etc. and related environmental considerations are too complex and interrelated, however, to lend themselves to a single recommendation such as this.
6-	Equitable Tax Structure Responsive to Growth	??	??						Environmental Issues are closely tied to the ability to finance pollution controls. Thus they are tied to tax structure. The Benchmarks for this goal don't seem to recognize this -- they only focus on schools.

No.	Goal	Topic	Benchmark	1990	1995	2000	2010	Recommendation	Comments
3-	Quality Public Facilities and Services								<p>Most of the benchmarks relating to this goal are inputs and do not really reflect the desired result or output. The real outputs would be availability of adequate public facilities, not backlog of needs. Perhaps there is a role for public surveys reflecting the "perception of adequacy".</p> <p>The focus on eliminating the "backlog" of road repair and construction provide no incentive to consider alternative transportation options that may better match other goals and benchmarks. Thus these benchmarks may result in worsened air quality in urban areas.</p> <p>There should be a definite benchmark for miles of "light rail" public transit system.</p>
4-7	Business Sensitive Regulatory Environment	Water	Number of rivers not in compliance with EPA State and Federal standards and therefore unable to accommodate additional industrial development		0	0	0	Needs discussion and additional rewording	<p>Applicable standards are state standards with the potential that some additional federal standards may apply.</p> <p>Should be stated in a more positive way (ie number or number of miles in compliance)?</p> <p>This benchmark should also recognize the need to accommodate additional municipal waste load from a growing population.</p> <p>It is possible to be in compliance and still unable to accommodate growth.</p> <p>Should this relate in some way to designated Water Quality Limited stream segments, and establishment of reserve capacity within the wasteload allocation? Alternatively, should it relate to reducing the number of rivers not in compliance by a percentage?</p>
4-8	Business Sensitive Regulatory Environment	Air	Number of SMSAs/cities/areas where government standards have been reached or exceeded and industrial development is restricted not in compliance with EPA standards and therefore unable to accommodate additional industrial development	<u>1970=5</u> <u>1980=7</u> <u>1990=4</u>	0	0	0	Rewording is suggested	Perhaps this benchmark should be reworded further to state the desired result in a more positive way. (% of SMSAs, cities, or designated areas where municipal and industrial development is not restricted)

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 26, 1990

To: Environmental Quality Commission
From: Fred Hansen, Director 
Subject: Agenda Item 3, August 9 EQC Work Session

Discussion of Commission Meeting and Decision Processes

-- Staff Report Format

The Department has reviewed the Discussion Outline suggested by Commissioner Sage for the Work Session topic. With the exception of the issue of staff reports, the issues raised are ones affecting how the Commission does its business and needs to be discussed among Commission members. Although we certainly have strongly held views on a number of the issues, we offer no written comments at this time, but look forward to participating in the discussion.

With respect to the issue of staff report format, we have developed the additional material which follows to assist in the discussion:

Purposes of the Staff Report

1. Inform the Public of the:
 - problem being addressed or the need for action;
 - options considered and evaluated
 - proposed action with rationale for selection of recommended option
 - anticipated follow-up actions

2. Inform the Commission of the issue, the Department's thinking on the issue, the options that may be available, the recommended action, and provide the necessary information to support a decision to:
 - establish policy to guide the Department or the Public
 - adopt a rule
 - grant a variance
 - approve a plan or an action
 - resolve a contested case

3. Provide a record of the intent and rationale for decisions of the Commission for the sake of history and to provide support for agency actions in the event of litigation. (This purpose is met in conjunction with the minutes of the meeting.)

Issues Related to the Style and Format of the Staff Report

A. Oral vs. Written Report

- A written report is necessary to effectively accomplish purposes 1 and 3 above.
- An oral report could address purpose 2, and would aid in informing the public attending the meeting in the event they had not read any written report.

B. Short Report vs. Longer Report

- A Short Report (2 pages maximum) is preferred -- when accompanied by necessary attachments to provide such detail as is necessary to meet all of the purposes of the report.
- Long Reports are often not read.

C. Checklist Style vs. "Free" Format with limited standardization of major headings.

- A checklist style report tends to become quite long and "choppy" because the widely varied issues before the EQC don't adapt well (logically) to a single checklist format.
- A "free" format with limited headings has worked reasonably well in the past. The problem, when reports are written by different authors, is the ability to consistently:
 - (1) briefly and logically provide a statement of the problem or issue and the necessary background or foundation for the discussion,
 - (2) describe the alternatives evaluated by the department and the results of that evaluation,

- (3) summarize the significant facts upon which a recommendation is made,
- (4) state the recommendation for action, and
- (5) determine which attachments are essential to include as opposed to just reference.

Options for Report Format

1. Continue to use a "Checklist style" format -- either the current format with adjustments, or a more significantly revised format.
2. Return to something similar to the Old Format which was in the form of a Memo to the EQC with the following major features:

To:
From:
Subject: **Agenda Item ____, (Month day, year) EQC Meeting**
 Title for the Agenda Item

Background and Problem Statement

Alternatives and Evaluation

Note: The identification of alternatives has presented problems in the past. Sometimes, the action of the legislature or EPA that is being responded to effectively eliminates consideration of alternatives. In an effort to "fill in the section", alternatives were identified by staff were not realistic.

Summation

Recommendation

Listing of Attachments

3. Use the following format which draws on strengths of options 1 and 2 above:

(Month Day, Year) EQC Meeting Agenda Item _____

Title for the Agenda Item -- identifies subject and action requested from the Commission

Summation -- bulleted, brief statements that recap the critical facts that set the stage for and support the recommendation

Recommendation -- A clear statement of the action that is recommended

Signatures -- (Author, Division Administrator, Director)

(This first portion of the report should be limited to one page.)

Supporting Information

Background (Elaborate as needed for the issue)

Alternatives and Evaluation (Identify alternatives not pursued and the reasons for the decision; viewpoints of various groups including the regulated community, the environmental community, EPA, advisory groups, and other; etc.)

Rationale for Recommendation (Elaborate as needed on the reasons for various components of the recommendation)

References (Citation for related statutory, rule, or other references that a reader may wish to refer to if they are interested in more detail) [Do not include copy.]

Index of Attachments (Include only those attachments or portions of attachments that are critical for understanding the issue)

(This last portion of the report should be limited to three pages maximum, excluding attachments.)

HLS:l

Attachment: Mockup of Format Option 3

Title:

Summation:

Department Recommendation:

Report Author

Division Administrator

Director

Supporting Information:

Agenda Item ___; August 9, 1990 EQC Meeting

Background

Alternatives and Evaluation

Rationale for Recommendation

References

Index of Attachments

HLS:l
July 26, 1990

State of Oregon
Environmental Quality Commission

Memorandum

Date: July 30, 1990

To: Environmental Quality Commission
From: Commissioner Genevieve Pisarski Sage
Subject: Agenda Item 3, August 9, 1990 EQC Work Session

Discussion of Commission Meeting and Decision Processes

--- Discussion Outline

Following is a suggested outline for the August 9, 1990, Work Session discussion of Commission Meeting and Decision Processes.

The objective of this discussion is a routine, periodic review of the DEQ/EQC Process for the purpose of making any adjustments or improvements to achieve our Strategic Plan Goals of increased Commission effectiveness and smoother, more efficient, proactive operations.

Work Sessions

Work Sessions are an important tool created to allow the EQC to study and consider items in advance of their appearance on an agenda and to cover miscellaneous non-agenda kinds of items.

- Are items showing up soon enough in the process? For example, should items that will involve an Advisory Committee appear prior to the appointment of a committee?
- Is the format satisfactory?
- Should there be more time for discussion to identify needed information and frame policy questions?
- What are Staff and Commission getting/not getting out of the Work Sessions? What would they change?

Regular Commission Meetings

Minutes

- Do these arrive early enough to allow follow-up?
- What is the best way to report discussion, opinion, comments?

Consent Items

- How does one make the distinction between routine rulemaking and items with policy content?

Public Forum

The Commission noted briefly at the May meeting that the Public Forum is not appropriate as in "informal appeal" process. Information offered is incomplete. There is insufficient time to evaluate it. Often no action is possible. The Commission agreed to have the Department send those who appear a written response, with a copy to the EQC, to show that the matter has been addressed and to indicate the next appropriate course of action, if any.

- What are the goals for the Public Forum? Can they be defined better?
- Should the Commission invite comment on selected topics?
- Is it possible to do more to encourage public participation while discouraging frivolous, malicious, or inappropriate use?

Action Items

The Commission has taken the approach of limiting public testimony in the form of last-minute appearances and requests for changes on rule adoption items in order to be fair and to reach necessary closure.

- Are materials being sent out in time for interested parties and the public to respond without appearing?
- Are out-of-towners being treated fairly?
- Should selected parties be requested to appear for further questioning or discussion?

Deliberations

- How should agenda items be flagged for "deliberation"?
- How does this differ from "deliberation" on action items?
- Should the "deliberation" section be a part of a work session or a meeting?

Staff Reports

The goal of the reports is to present items as succinctly as possible and as completely as necessary to formulate good public policy.

- Are there any Staff or Commission questions, frustrations, or revisions regarding the staff report format?
- Should "Issues for the Commission" appear toward the beginning rather than the end of a report?
- Should the reports deal more with public policy questions and less with technical questions?
- Should reports more fully describe the controversy surrounding an item?
- How can the amount of paper used be reduced? What should be left out?

Other Issues

Advisory Committees

- What is the goal for committee input? To voice special interests? Achieve consensus? Hammer out compromise? Provide information for EQC policy decisions?
- If there is no consensus on a committee, is it necessary to have a single recommendation?
- What if committees were charged only with airing interests and gave majority, minority and dissenting recommendations?

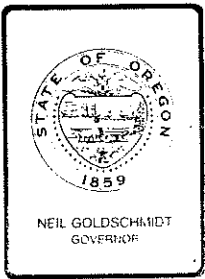
Memo To: Environmental Quality Commission
July 30, 1990
Page 4

- Should the EQC be involved prior to the selection of a committee in order to define the issues to be addressed? Should the EQC receive interim reports in some cases, as issues are defined by a committee?

Third Party Appeals

The Commission has introduced the concept of handling all appeals "in house" as a first step, rather than having third parties take their appeals to the courts as a first step.

- Advantages and disadvantages?
- Legalities



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: August 10, 1990
Agenda Item: C
Division: HSW
Section: Solid Waste

SUBJECT:

Waste Tire Financial Assistance: Proposed Rules to Delegate Approval Authority to Director.

PURPOSE:

- Delegates to the Director authority to approve financial assistance to waste tire storage permittees to clean up tire piles.
- Establishes as rule waste tire guidelines which determine the amount of financial assistance to a local government waste tire storage permittee for waste tire pile cleanup.
- Allows the Department of Environmental Quality (DEQ, Department) to advance up to 100 percent of the cost of tire pile cleanups to permittees, who will then be responsible for paying back their share of the cost over time.
- Makes housekeeping changes in the reimbursement and tire carrier permit programs, and adopts as rule existing guidelines for Department reimbursements to local governments which remove illegal waste tire piles in their jurisdictions.

ACTION REQUESTED:

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

Meeting Date: August 10, 1990
Agenda Item: C
Page 2

- Authorize Rulemaking Hearing
- Adopt Rules
 - Proposed Rules Attachment A
 - Rulemaking Statements Attachment B
 - Fiscal and Economic Impact Statement Attachment C
 - Public Notice Attachment D
- Issue a Contested Case Order
- Approve a Stipulated Order
- Enter an Order
 - Proposed Order Attachment
- Approve Department Recommendation
 - Variance Request Attachment
 - Exception to Rule Attachment
 - Informational Report Attachment
 - Other: (specify) Attachment

DESCRIPTION OF REQUESTED ACTION:

A public hearing is requested to receive public comment on the proposed rule changes listed above. Notice of the public hearing will be mailed to known interested persons, and will be published in newspapers of general circulation in Oregon.

AUTHORITY/NEED FOR ACTION:

- Required by Statute: _____ Attachment
 - Enactment Date: _____
- Statutory Authority: ORS 459.785, .775, .780 Attachment
- Pursuant to Rule: _____ Attachment
- Pursuant to Federal Law/Rule: _____ Attachment
- Other: Attachment
- Time Constraints:

DEVELOPMENTAL BACKGROUND:

- Advisory Committee Report/Recommendation Attachment
- Hearing Officer's Report/Recommendations Attachment
- Response to Testimony/Comments Attachment

Meeting Date: August 10, 1990
Agenda Item: C
Page 3

____ Prior EQC Agenda Items: Attachment ____
Agenda Item J, 1/19/90 EQC Meeting -
Amendments Regulating Waste Tire Beneficial
Use, and Adding Criteria for Financial Assistance
Agenda Item K, 4/14/89 EQC Meeting -
Amendments to Permitting Requirements for Waste
Tire Storage Sites and Waste Tire Carriers
Agenda Item G, 7/8/88 EQC Meeting -
Waste Tire Program Permitting Requirements
Permittee assistance approvals:
Agenda Item H, 9/8/89, to Larry Waliser;
Agenda Item N(1), 10/20/89, to DuBois;
Agenda Item E, 4/6/90, to Union County;
Agenda Item L, 6/29/90, to Richard Mishler;
Agenda Item J, 6/29/90, to Coos County;
Agenda Item K, 6/29/90, to Klamath County

____ Other Related Reports/Rules/Statutes: Attachment ____
X Supplemental Background Information Attachment E
List of major remaining waste tire sites
to be cleaned up

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

1. Delegation of authority to Director to approve financial assistance. Criteria for determining the amount of assistance to a permittee will not change. Approval for cleanup assistance to a permittee can be determined more quickly. The Department has identified about 35 significant waste tire piles still to be cleaned up. The major sites already have cleanups underway. The Department does not expect many additional sites to become permitted and ask for cleanup funds. Most are expected to be cleaned up under the abatement process. (See Attachment E for site list.)

The Waste Tire Advisory Committee considered this change at its June 19, 1990 meeting. Some Committee members asked who would make funding decisions if Waste Tire Recycling Account funds become scarce. Department staff will make recommendations to the Director, as they do now prior to consideration by the EQC. The Waste Tire Advisory Committee had no objection to the delegation.

2. Criteria for amount of financial assistance to local government permittees. The current rule contains criteria determining eligibility of local government permittees to receive financial assistance of up to 80 percent of the cost for waste tire cleanups. The proposed rule will add an index, currently a Department guideline, to determine the amount of assistance a local government permittee can receive.

The index is intended to serve as an indicator of the financial capability of the local government. It is created by dividing the local government's population by the number of waste tires at the site to be cleaned up. A low index number (less than 1.0) indicates that the site has a large number of tires compared to the population, and will receive assistance with the maximum 80 percent of the cleanup cost. Higher index numbers indicate relatively fewer tires per capita, and receive relatively lower amounts of assistance, down to 25 percent for sites with an index greater than 500.

3. DEQ payment of permittee portion of tire cleanup cost. The Department may "assist" permittees with the cost of tire pile cleanup. Program rules require that all permittees be responsible for payment of part of the cleanup cost. Some permittees are not able to provide up-front cash to pay a contractor for their share of the cleanup, although over time they will be able to pay. Under such circumstances, the cleanup cannot proceed unless the Department is willing to advance the whole sum, and allow the permittee to repay its share over time. This may also be the case for local governments, which may not have budgeted sufficient funds for tire pile cleanup in any one year. In general the Department will require filing of a lien to assure repayment.
4. Housekeeping changes. a) Reimbursement, paving jobs. The Department may reimburse a person who recycles the rubber from waste tires. The recipient of the reimbursement, by rule, is the "last person" who uses the tires or tire chips to make a product with economic value. Granulated rubber from waste tires may be used in road paving projects. The proposed rule adds flexibility as to the recipient, allowing either the paving contractor or the person for whom the paving is done to receive the reimbursement. Paving is generally done for a government entity. We have found that in some cases governments prefer to receive the reimbursement directly. In other cases, usually because of government accounting procedures, it is more

convenient for the reimbursement to go to the contractor using the granulated rubber in the paving job.

b) Reimbursement to local government for removal of illegal tire piles. The Department may, by statute, reimburse a local government for the cost of abating waste tires (ORS 459.780(7)). Department rules contain criteria for this assistance (OAR 340-64-150). The Department and the local government sign an Intergovernmental Agreement specifying how the waste tires are to be removed, and the amount the Department will reimburse. Local governments follow their own nuisance abatement procedure to remove problematic illegal tire piles located within their jurisdiction. The amount reimbursed by the Department, from 90 to 99 percent of the cost, has been in guidelines. The rule revision will incorporate it into rule.

c) Other. Other housekeeping changes address collection of waste tires by permitted waste tire carriers and clarify other permit requirements; and require use of a contractor with a clear performance history for all waste tire removals funded by the Waste Tire Recycling Account.

The Waste Tire Advisory Committee considered the proposed rule changes at their June 19, 1990 meeting. The Department's proposed revisions incorporate all the Committee's recommendations.

PROGRAM CONSIDERATIONS:

1. Delegation of Authority. The Department has reviewed several requests from permittees for financial assistance. In its recommendation to the Commission on the amount of financial assistance to be given, the Department follows rules and guidelines clearly specifying the amount of assistance. With the incorporation into this rule of the "index" determining amount of financial assistance to a local government permittee, the criteria will cover all categories of permittees (individual, corporation, local governments). Department review of these applications has found that the issues are fairly consistent, although bid amounts for removal of similar numbers of waste tires may vary because of site conditions (truck vs. passenger tires, dirty or inaccessible tires, etc.). Therefore, delegating approval authority to the Director should not

change the amount of assistance received by a permittee.

Department staff works with permitted sites to get the tires cleaned up as quickly as possible. Commission approval may delay cleanup implementation for up to three months with no corresponding benefit.

The statute states that the Department may use funds from the Waste Tire Recycling Account to assist a permittee in waste tire removal "only after the Commission finds that: (a) Special circumstances make such assistance appropriate; or strict compliance with the provisions of ORS 459.705 to 459.790 would result in substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee." (ORS 459.780(2)) The Attorney General informed us that the Commission's authority to make a finding on financial assistance could be delegated to the Director.

We do not expect any new policy issues to arise in providing financial assistance to permittees. Delegation of the decision-making authority will not change the basis on which financial assistance is given, but only the process. It will relieve the Commission from consideration of a fairly routine matter.

2. Criteria for amount of financial assistance to local government permittees. The proposed index provides a simple way to determine the amount of financial assistance appropriate for local governments. It also provides equity in offering more assistance to local governments with small populations and large waste tire piles, and less assistance to governments with larger populations and smaller tire piles.
3. DEQ payment of permittee portion of tire cleanup cost. The Department has an interest in timely removal of waste tire piles. Advancing the whole cost of removal may be the only way this can happen. The permittee will be required to sign a written payback agreement with the Department specifying the terms of the repayment. The Department has developed guidelines with minimum payback requirements for consistency among permittees.
4. Housekeeping changes. a) Flexibility for paving reimbursement recipient. The Department's goal is to make reimbursement procedures as convenient as possible for the recipients. This flexibility would meet that goal. b) Specifying reimbursement percentage to local

governments abating waste tires in their jurisdiction. This would not change existing procedures, but simply put Department guidelines into rule. c) Waste tire carrier permit changes. These will clarify administrative procedures for these permittees.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Request a public hearing to take testimony on the draft rules as proposed in Attachment A, including:
 - a. Delegating authority to the Director to approve financial assistance to waste tire storage permittees.
 - b. Establishing criteria for the amount of financial assistance to local government permittees.
 - c. Allowing the Department to advance 100 percent of the cost of waste tire pile cleanup to a waste tire permittee.
 - d. Making housekeeping changes for reimbursement recipients using waste tire materials for paving, local governments abating illegal waste tire piles, and waste tire carrier permits.

2. Other alternatives were considered to determine the level of financial assistance to local governments, such as basing the percentage of assistance on per capita or median household income, on the tax base, on the assessed per capita value of the county, etc. Amount of financial assistance should be based on the financial capability of the permittee; each of the preceding could be considered a measure of a local government's financial capability. However, each has limitations. Water Quality Division examined these and other potential methods for establishing loan interest rates based on the amount a local community can afford to pay in its analysis of "local ability to pay" in providing loans from the State Revolving Fund for water pollution control facilities (Agenda Item P, 3/3/89 EQC Meeting). Their task force rejected all the methods because of lack of current data, inherent inequities, lack of comparability, or undue complexity of the method.

Meeting Date: August 10, 1990
Agenda Item: C
Page 8

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt Alternative 1.

The proposed rule has the support of the Advisory Committee. It provides for efficient administration of the program. It establishes some Department guidelines as rule. It allows timely cleanup of sites for which a permittee cannot pay its share of the costs up front. Other housekeeping changes will improve administration of the waste tire program.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The rule follows agency policy in removing from Commission review a fairly routine set of decisions (amount of financial assistance) that do not involve policy and may not warrant continued Commission scrutiny.

The rule follows agency policy on specifying by rule what criteria are to be used in determining benefits.

ISSUES FOR COMMISSION TO RESOLVE:

1. Is it appropriate to delegate to the Director the Commission's responsibility to make a "finding" that financial assistance should be given to a waste tire permittee?
2. Is an index based on size of the waste tire pile related to the local government's population the correct way to determine amount of financial assistance to a local government permittee?

Meeting Date: August 10, 1990
Agenda Item: C
Page 9

INTENDED FOLLOWUP ACTIONS:

Publication of intent to hold a hearing in the Secretary of State's Bulletin on September 1, 1990, and publication of notice of public hearing in newspapers.

Hold a hearing in Portland on September 19, 1990.

Receive public comment until September 24, 1990.

Prepare a hearing officer's report for final rule adoption by the Commission on November 2, 1990.

Approved:

Section:

She Greenwood

Division:

Stephanie Hallock

Director:

Full House

Report Prepared By: Deanna Mueller-Crispin

Phone: 229-5808

Date Prepared: July 23, 1990

dmc
deleg.rul
7/23/90

Meeting Date: August 10, 1990
Agenda Item: C
Page 9

INTENDED FOLLOWUP ACTIONS:

Publication of intent to hold a hearing in the Secretary of State's Bulletin on September 1, 1990, and publication of notice of public hearing in newspapers.

Hold a hearing in Portland on September 19, 1990.

Receive public comment until September 24, 1990.

Prepare a hearing officer's report for final rule adoption by the Commission on November 2, 1990.

Approved:

Section:

She Greenwood

Division:

Stephanie Hallock

Director:

Fell Hume

Report Prepared By: Deanna Mueller-Crispin

Phone: 229-5808

Date Prepared: July 23, 1990

dmc
deleg.rul
7/23/90

ATTACHMENT A

Proposed Revisions: 7/5/90

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
DIVISION 64 - SOLID WASTE MANAGEMENT: WASTE TIRES

Proposed additions to rule are underlined.
Proposed deletions are in brackets [].

Definitions

340-64-010 As used in these rules unless otherwise specified:

(1) "Abatement" -- the processing or removing to an approved storage site of waste tires which are creating a danger or nuisance, following a legal nuisance abatement procedure.

(2) "Beneficial use" -- storage of waste tires in a way that creates an on-site economic benefit, other than from processing or recycling, to the owner of the tires, such as in using the tires for raised-bed planters.

(3) "Buffings" -- a product of mechanically scarifying a tire surface, removing all trace of the surface tread, to prepare the casing to be retreaded.

(4) "Commission" -- the Environmental Quality Commission.

(5) "Common carrier" -- any person who transports persons or property for hire or who publicly purports to be willing to transport persons or property for hire by motor vehicle; or any person who leases, rents, or otherwise provides a motor vehicle to the public and who in connection therewith in the regular course of business provides, procures, or arranges for, directly, indirectly, or by course of dealing, a driver or operator therefor.

(6) "Department" -- the Department of Environmental Quality.

(7) "Director" -- the Director of the Department of Environmental Quality.

(8) "Dispose" -- to deposit, dump, spill or place any waste tire on any land or into any water as defined by ORS 468.700.

(9) "DMV" -- Oregon Department of Motor Vehicles.

(10) "End user":

(a) For energy recovery: the person who utilizes the heat content or other forms of energy from the incineration or pyrolysis of waste tires, chips or similar materials.

(b) For other eligible uses of waste tires: the last person who uses the tires, chips, or similar materials to make a product with economic value. If the waste tire is processed by more than one person in becoming a product, the "end user" is the last person to use the tire as a tire, as tire chips, or as similar materials. A person who produces tire chips or similar materials and gives or sells them to another person to use is not an end user.

(c) For paving projects: either the paving contractor laying the paving, or the person for whom the paving is done, depending on the

agreement between the paving contractor and the person for whom the paving is done.

(11) "Energy recovery" -- recovery in which all or a part of the waste tire is processed to utilize the heat content, or other forms of energy, of or from the waste tire.

(12) "Financial assurance" -- a performance bond, letter of credit, cash deposit, insurance policy or other instrument acceptable to the Department.

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

(14) "Nonocean waters" -- fresh waters, tidal and nontidal bays and estuaries as defined in ORS 541.605.

(15) "Oversize waste tire" -- a waste tire exceeding a 24.5-inch rim diameter, or which is excluded from Federal excise tax (except a passenger tire).

(16) "Passenger tire" -- a tire with less than an 18-inch rim diameter.

(17) "Passenger tire equivalent" -- a measure of mixed passenger and truck tires, where five passenger tires are considered to equal one truck tire.

(18) "Person" -- the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(19) "Private carrier" -- any person who operates a motor vehicle over the public highways of this state for the purpose of transporting persons or property when the transportation is incidental to a primary business enterprise, other than transportation, in which such person is engaged.

(20) "PUC" -- the Public Utility Commission of Oregon.

(21) "Recycle" or "recycling" -- any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(22) "Retreader" -- a person engaged in the business of recapping tire casings to produce recapped tires for sale to the public.

(23) "Rick" -- to horizontally stack tires securely by overlapping so that the center of a tire fits over the edge of the tire below it.

(24) "Store" or "storage" -- the placing of waste tires in a manner that does not constitute disposal of the waste tires. "Storage" includes the beneficial use of waste tires as fences and other uses with similar potential for causing environmental risks. "Storage" does not include such beneficial uses as planters except when the Department determines such uses create environmental risks.

(25) "Tire" -- a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is transported, or by which they may be drawn, on a highway. This does not include tires on the following:

(a) A device moved only by human power.

(b) A device used only upon fixed rails or tracks.

(c) A motorcycle.

(d) An all-terrain vehicle, including but not limited to, three-wheel and four-wheel ATVs, dune buggies and other similar vehicles. All-terrain vehicles do not include jeeps, pick-ups and other four-wheel drive vehicles that may be registered, licensed and driven on public roads in Oregon.

(e) A device used only for farming, except a farm truck.

(26) "Tire carrier" -- a person who picks up or transports waste tires for the purpose of storage or disposal. This does not include the following:

(a) Solid waste collectors operating under a license or franchise from a local government unit and who transport fewer than 10 tires at a time.

(b) Persons who transport fewer than five tires with their own solid waste for disposal.

(27) "Tire processor" -- a person engaged in the processing of waste tires.

(28) "Tire retailer" -- a person in the business of selling new replacement tires at retail, whose local business license or permit (if required) specifically allows such sale.

(29) "Tire derived products" -- tire chips or other usable materials produced from the physical processing of a waste tire.

(30) "Truck tire" -- a tire with a rim diameter of between 18 and 24.5 inches.

(31) "Waste tire" -- a tire that is no longer suitable for its original intended purpose because of wear, damage or defect, and is fit only for:

(a) Remanufacture into something else, including a recapped tire; or

(b) Some other use which differs substantially from its original use.

(32) "Waste Tires Generated in Oregon" -- Oregon is the place at which the tire first becomes a waste tire. A tire casing imported into Oregon for potential recapping, but which proves unusable for that purpose, is not a waste tire generated in Oregon. Examples of waste tires generated in Oregon include but are not limited to:

(a) Tires accepted by an Oregon tire retailer in exchange for new replacement tires.

(b) Tires removed from a junked auto at an auto wrecking yard in Oregon.

Waste Tire Carrier Permit Required

340-64-055 (1) After January 1, 1989, any person engaged in picking up, collecting or transporting waste tires for the purpose of storage or disposal is required to obtain a waste tire carrier permit from the Department.

(2) After January 1, 1989, no person shall collect or haul waste tires or advertise or represent himself/herself as being in the business of a waste tire carrier without first obtaining a waste tire carrier permit from the Department.

(3) After January 1, 1989, any person who gives, contracts or arranges with another person to collect or transport waste tires for storage or disposal shall only deal with a person holding a waste tire carrier permit from the Department, unless the person is exempted by subsection (4)(a) or (b) of this rule.

(4) The following persons are exempt from the requirement to obtain a waste tire carrier permit:

(a) Solid waste collectors operating under a license or franchise from

any local government unit and who transport fewer than 10 tires at any one time.

(b) Persons transporting fewer than five tires.

(c) Persons transporting tire-derived products to a market.

(d) Persons who use company-owned vehicles to transport tire casings for the purposes of retreading between company-owned or company-franchised retail tire outlets and company-owned or company-franchised retread facilities while transporting casings between those retail tire outlets and those retread facilities.

(e) Tire retailers or retreaders who transport used tires between their retail tire outlet or retread operation and their customers, after taking them from customers in exchange for other tires, or for repair or retreading while transporting used tires between their retail tire outlet or retread operation and their customers.

(f) The United States, the State of Oregon, any county, city, town or municipality in this state, or any department of any of them [except when vehicles they own or operate are used as a waste tire carrier for hire].

(5) Persons exempt from the waste tire carrier permit requirement under subsection (4)(d) of this rule shall nevertheless notify the Department of this practice on a form provided by the Department.

(6) A combined tire carrier/storage permit may be applied for by tire carriers:

(a) Who are subject to the carrier permit requirement; and

(b) Whose business includes or wants to establish a site which is subject to the waste tire storage permit requirement.

(7) The Department shall supply a combined tire carrier/storage permit application to such persons. Persons applying for the combined tire carrier/storage permit shall comply with all other regulations concerning storage sites and tire carriers established in these rules.

(8) Persons who transport waste tires for the purpose of storage or disposal must apply to the Department for a waste tire carrier permit within 90 days of the effective date of this rule. Persons who want to begin transporting waste tires for the purpose of storage or disposal must apply to the Department for a waste tire carrier permit at least 90 days before beginning to transport the tires.

(9) Applications shall be made on a form provided by the Department. The application shall include such information as required by the Department. It shall include but not be limited to:

(a) A description, license number and registered vehicle owner for each truck used for transporting waste tires.

(b) The PUC authority number under which each truck is registered.

(c) Where the waste tires will be stored or disposed of.

(d) Any additional information required by the Department.

(10) A corporation which has more than one separate business location may submit one waste tire carrier permit application which includes all the locations. All the information required in section (9) of this rule shall be supplied by location for each individual location. The corporation shall be responsible for amending the corporate application whenever any of the required information changes at any of the covered locations.

(11) An application for a tire carrier permit shall include a \$25 non-refundable application fee and an annual compliance fee as listed in OAR 340-64-063.

(12) An application for a combined tire carrier/storage permit shall include a \$250 application fee, \$50 of which shall be nonrefundable, and an annual compliance fee as listed in OAR 340-64-063. The rest of the application fee may be refunded in whole or in part when submitted with an application if either of the following conditions exists:

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

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

(13) The application for a waste tire carrier permit shall also include a bond in the sum of \$5,000 in favor of the State of Oregon. In lieu of the bond, the applicant may submit financial assurance acceptable to the Department. The Department will accept as financial assurance only those instruments listed in and complying with requirements in OAR 340-61-034(3)(c)(A) through (G) and OAR 340-71-600(5)(a) through (c).

(14) The bond or other financial assurance shall be filed with the Department and shall provide that:

(a) In performing services as a waste tire carrier, the applicant shall comply with the provisions of ORS 459.705 through 459.790 and of this rule; and

(b) Any person injured by the failure of the applicant to comply with the provisions of ORS 459.705 through 459.790 or this rule shall have a right of action on the bond or other financial assurance in the name of the person. Such right of action shall be made to the principal or the surety company within two years after the injury.

(15) Any deposit of cash, certificate of deposit, letter of credit, or negotiable securities submitted under sections (13) and (14) of this rule shall remain in effect for not less than two years following termination of the waste tire carrier permit.

(16) A waste tire carrier permit or combined tire carrier/storage permit shall be valid for up to three years.

(17) Waste tire carrier permits shall expire on March 1. Waste tire carrier permittees who want to renew their permit must apply to the Department for permit renewal by February 1 of the year the permit expires. The application for renewal shall include all information required by the Department, and a permit renewal fee.

(18) A waste tire carrier permittee may add another vehicle to its permitted waste tire carrier fleet if it does the following before using the vehicle to transport waste tires:

(a) Submits to the Department:

(A) The information required in OAR 340-64-055 (9); and

(B) A fee of \$25 for each vehicle added.

(b) Displays on each additional vehicle decals from the Department pursuant to OAR 340-64-063 (1)(b).

(19) A waste tire carrier permittee may lease additional vehicles to use under its waste tire carrier permit without adding that vehicle to its fleet pursuant to section (18) of this rule, under the following conditions:

(a) The vehicle may not transport waste tires when under lease for a period of time exceeding 30 days ("short-term leased vehicles"). If the lease is for a longer period of time, the vehicle must be added to the permittee's permanent fleet pursuant to section (18) of this rule.

(b) The permittee must give previous written notice to the Department that it will use short-term leased vehicles.

(c) The permittee shall pay a \$25 annual compliance fee in advance to allow use of short-term leased vehicles, in addition to any other fees required by OAR 340-64-055 (11), (12) and (18), and 340-64-063 (7) and (9).

(e) Every permittee shall keep a daily record of all vehicles leased on short term, with beginning and ending dates used, license numbers, PUC authority, PUC temporary pass or PUC plate/marker, and person from whom the vehicles were leased. The daily record must be kept current at all times, subject to verification by the Department. The daily record shall be maintained at the principal Oregon office of the permittee. The daily record shall be submitted to the Department each year as part of the permittee's annual report required by OAR 340-64-063(5).

(f) The permittee's bond or other financial assurance required under OAR 340-64-055 (13) must provide that, in performing services as a waste tire carrier, the operator of a vehicle leased by the permittee shall comply with the provisions of ORS 459.705 through 459.790 and of this rule.

(g) The permittee is responsible for ensuring that a leased vehicle complies with OAR 340-64-055 through 340-64-063, except that the leased vehicle does not have to obtain a separate waste tire carrier permit pursuant to OAR 340-64-055 (1) while operating under lease to the permittee.

(20) A holder of a combined tire carrier/storage permit may purchase special block passes from the Department. A person located outside of Oregon who is a holder of a waste tire carrier permit issued by the Department may also purchase special block passes from the Department if he or she also holds a valid permit allowing storage of waste tires issued by the responsible state or local agency of that state, and if such permit is deemed acceptable by the Department. The block passes will allow the permittee to use a common carrier or private carrier which does not have a waste tire carrier permit. Use of a block pass will allow the unpermitted common carrier or private carrier to haul waste tires under the permittee's waste tire carrier permit.

(a) Special block passes shall be available in sets of at least five, for a fee of \$5 per block pass. Only a holder of a combined tire carrier/storage permit may purchase block passes. Any unused block passes shall be returned to the Department when the permittee's waste tire permit expires or is revoked.

(b) The permittee is responsible for ensuring that a common carrier or private carrier operating under a block pass from the permittee complies with OAR 340-64-055 through 340-64-063, except that the common carrier or private carrier does not have to obtain a separate waste tire carrier permit pursuant to OAR 340-64-055(1) while operating under the permittee's block pass.

(c) A block pass may be valid for a maximum of ten days and may only be used to haul waste tires between the origin(s) and destination(s) listed on the block pass.

(d) A separate block pass shall be used for each trip hauling waste tires made by the unpermitted common carrier or private carrier under the permittee's waste tire permit. (A "trip" begins when waste tires are picked up at an origin, and ends when they are delivered to a proper disposal site(s) pursuant to OAR 340-64-063(4).)

(e) The permittee shall fill in all information required on the block pass, including name of the common carrier or private carrier, license number, PUC authority if applicable, PUC temporary pass or PUC plate/marker if applicable, beginning and ending dates of the trip, address(es) of where

the waste tires are to be picked up and where they are to be delivered, and approximate numbers of waste tires to be transported.

(f) Each block pass shall be in triplicate. The permittee shall send the original to the Department within five days of the pass's beginning date, one copy to the common carrier or private carrier which shall keep it in the cab during the trip, and shall keep one copy.

(g) The permittee shall be responsible for ensuring that any common carrier or private carrier hauling waste tires under the permittee's waste tire permit has a properly completed block pass.

(h) While transporting waste tires, the common carrier or private carrier shall keep a block pass properly filled out for the current trip in the cab of the vehicle.

(i) An unpermitted common carrier or private carrier may operate as a waste tire carrier using a block pass no more than three times in any calendar quarter. Before a common carrier or private carrier may operate as a waste tire carrier more than three times a quarter, he or she must first apply for and obtain a waste tire carrier permit from the Department.

Waste Tire Carrier Permittee Obligations

340-64-063 (1) Each person required to obtain a waste tire carrier permit shall:

(a) Comply with OAR 340-64-025(1).

(b) Display current decals with his or her waste tire carrier identification number issued by the Department when transporting waste tires. The decals shall be displayed on the sides of the front doors of each truck used to transport tires.

(c) Maintain the financial assurance required under ORS 459.730(2)(d).

(2) When a waste tire carrier permit expires or is revoked or suspended, the former permittee shall immediately remove all waste tire permit decals from its vehicles and remove the permit from display. The permittee shall surrender a revoked or suspended permit, and certify in writing to the Department within fourteen days of revocation or suspension that all Department decals have been removed from all vehicles.

(3) Leasing, loaning or renting of permits is prohibited. No permit holder shall engage in any conduct which falsely tends to create the appearance that services are being furnished by the holder when in fact they are not.

(4) A waste tire carrier shall leave waste tires for storage or dispose of them only in a permitted waste tire storage site, at a land disposal site permitted by the Department, or at another site approved by the Department, such as a site authorized to accept waste tires under the laws or regulations of another state.

(5) The Department may allow a permittee to use up to two covered containers to collect waste tires. A maximum of 2,000 tires may be so collected at any one time, and for no longer than 90 days in each container, beginning with the date when a waste tire is first placed in a container. The containers must be located at the permittee's main place of business.

(6) A waste tire carrier permittee shall inform the Department within two weeks of any change in license plate number or ownership (sale) of any vehicle under his or her waste tire carrier permit.

(7) [(5)] Waste tire carrier permittees shall record and maintain for three years the following information regarding their activities for each month of operation:

(a) The approximate quantity of waste tires collected. Quantities may be measured by aggregate loads or cubic yards, if the carrier documents the approximate number included in each load;

(b) Where or from whom the waste tires were collected;

(c) Where the waste tires were deposited. The waste tire carrier shall keep receipts or other written materials documenting where all tires were stored or disposed of.

(8) [(6)] Waste tire carrier permittees shall submit to the Department an annual report that summarizes the information collected under section (7) [(5)] of this rule. The information shall be broken down by quarters. This report shall be submitted to the Department annually as a condition of holding a permit together with the annual compliance fee or permit renewal application.

(9) [(7)] A holder of a waste tire carrier permit shall pay to the Department an annual fee in the following amount:

Annual compliance fee (per company or corporation) \$175

Plus annual fee per vehicle used for hauling waste tires 25

(10) [(8)] A holder of a waste tire carrier permit who is a private carrier meeting requirements of subsection [(8)] (10)(b) of this rule shall, instead of the fees under section (9) [(7)] of this rule, pay to the Department an annual fee in the following amount:

(a) Annual compliance fee \$25

(b) To qualify for the fee structure under subsection (10) [(8)](a) of this rule, a private carrier must:

(A) Use a vehicle with a combined weight not exceeding 26,000 lbs;

(B) Transport only such waste tires as are generated incidentally to his business; and

(C) Use the vehicle to transport the waste tires to a proper disposal site.

(c) If a vehicle owned or operated by a private carrier is used for hire in hauling waste tires, the annual fee structure under section (9) [(7)] of this rule shall apply.

(11) [(9)] A holder of a combined tire carrier/storage permit shall pay to the Department by February 1 of each year an annual compliance fee for the coming calendar year in the following amount:

Annual compliance fee (per company or corporation) \$250

Plus annual fee per vehicle used for haul-

(12) [(10)] A holder of a waste tire carrier permit shall pay to the Department by February 15 of each year an annual compliance fee for the coming year (March 1 through February 28) as required by sections (9) [(7)] through (11) [(9)] of this rule. The permittee shall provide evidence of required financial assurance when the annual compliance fee is submitted. For the first year's operation, the full fee(s) shall apply if the carrier permit is issued on or before December 1. Any new waste tire carrier permit issued after December 1 shall not owe an annual compliance fee(s) until March 1.

(13) [(11)] The fee is \$10 for a decal to replace one that was lost or destroyed.

(14) [(12)] The fee for a waste tire carrier permit renewal is \$25.

(15) [(13)] The fee for a permit modification of an unexpired waste tire carrier permit, initiated by the permittee, is \$15. Adding a vehicle to the permittee's fleet pursuant to OAR 340-64-055 (18), dropping a vehicle from the permitted fleet, or updating a changed license plate number of a vehicle in the permitted fleet does not constitute a permit modification.

(16) (14) A waste tire carrier permittee should check with the PUC and DMV to ensure that he or she complies with all PUC and DMV regulations.

Application for Reimbursement

340-64-120 (1) Application for reimbursement for use of waste tires shall be made on a form provided by the Department.

(2) An applicant may apply in advance for certification ("advance certification") from the Department that his or her proposed use of waste tires shall be eligible for reimbursement.

(a) Such advance certification may be issued by the Department if the applicant proves to the Department's satisfaction that:

(A) The use being proposed is an eligible use under OAR 340-64-110;

(B) The applicant is an eligible end user under OAR 340-64-010(10) [and OAR 340-64-115];

(C) The applicant will be able to document that the waste tires used were generated in Oregon; and

(D) The applicant will be able to document the number of net pounds of waste tires used.

(b) The applicant must still apply to the Department for reimbursement for waste tires actually used, and document the amount of that use, pursuant to sections (3) and (4) of this rule.

(c) Advance certification issued by the Department to an applicant shall not guarantee that the applicant shall receive any reimbursement funds. The burden of proof shall be on the applicant to document that the use for which reimbursement is requested actually took place, and corresponds to the use described in the advance certification.

(3) An applicant may apply to the Department directly for the reimbursement each quarter without applying for advance certification. The application shall be on a form provided by the Department.

(4) To apply for reimbursement for the use of waste tires an applicant shall:

(a) Apply to the Department no later than thirty (30) days after the end of the quarter in which the waste tires were used.

(b) Unless the applicant holds an advance certification for the use of waste tires for which they are applying, prove to the Department's satisfaction that:

(A) The use being proposed is an eligible use under OAR 340-64-010; and

(B) The applicant is an eligible end user under OAR 340-64-010(10) and OAR 340-64-115.

(c) Provide documentation acceptable to the Department, such as bills of lading, that the tires, chips or similar materials used were from waste tires generated in Oregon.

(d) Provide documentation acceptable to the Department of the net amount of pounds of waste tires used (including embedded energy from waste tires) in the quantity of product sold, purchased or used. Examples of acceptable documentation are:

(A) For tire-derived fuel: receipts showing tons of tire-derived fuel purchased.

(B) For incineration of whole tires producing process heat, steam or electricity: records showing net tons of rubber burned.

(C) For pyrolysis plants producing electricity or process heat or steam: billings showing sales of kilowatt hours or tons of steam produced by the tire pyrolysis, calculations certified by a professional engineer showing how many net pounds of tires were required to generate that amount of energy, and receipts or bills of lading for the number of waste tires actually used to produce the energy.

(D) For pyrolysis technologies producing combustible hydrocarbons and other salable products: billings to customers showing amounts of pyrolysis-derived products sold (gallons, pounds, etc.) with calculations certified by a professional engineer showing the number of net pounds of waste tires, including embedded energy, used to produce those products.

(E) For end users of tire strips, chunks, rubber chips, crumbs and the like in the manufacture of another product: billings to purchasers for the product sold, showing net pounds of rubber used to manufacture the amount of product sold.

(F) For end users of tire chips in rubberized asphalt, or as road bed material and the like: billings or receipts showing the net pounds of rubber used.

(G) For end users of whole tires: documentation of the weight of the tires used, exclusive of any added materials such as ballast or ties.

(5) The Department may require any other information necessary to determine whether the proposed use is in accordance with Department statutes and rules.

(6) An applicant for a reimbursement for use of waste tires, and the person supplying the waste tires, tire chips or similar materials to the applicant, for which the reimbursement is requested, are subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule.

(7) In order to apply for a reimbursement, an applicant must have used an equivalent of at least 10,000 pounds of waste tires or 500 passenger tires after the effective date of this rule. Waste tires may be used in more than one quarter to reach this threshold amount.

Use of Waste Tire Site Cleanup Funds

340-64-150 (1) The Department may use cleanup funds in the Waste Tire Recycling Account to:

(a) Partially pay to remove or process waste tires from a permitted waste tire storage site, if the Commission or Director finds that such use is appropriate pursuant to ORS 459.780(2) and OAR 340-64-160.

(b) Pay for abating a danger or nuisance created by a waste tire pile, subject to cost recovery by the attorney general pursuant to OAR 340-64-165.

(c) Partially reimburse a local government unit for the cost it incurred in abating a waste tire danger or nuisance. The Department may reimburse from 90 to 99 percent of the cleanup cost based on the degree of environmental risk posed by the site, as determined by OAR 340-64-155.

(2) The Commission authorizes the Director to make a finding of whether use of cleanup funds is appropriate to assist a permittee, pursuant to ORS 459.780(2), provided that the Director's finding is based on criteria in OAR 340-64-150, 340-64-155 and 340-64-160.

(3) [(2)] Priority in use of cleanup funds shall go to sites ranking high in criteria making them an environmental risk, pursuant to OAR 340-64-155.

(4) [(3)] For the Department to reimburse a local government for waste tire danger or nuisance abatement, the following must happen:

(a) The Department must determine that the site ranks high in priority criteria for use of cleanup funds, OAR 340-64-155.

(b) The local government and the Department must have an agreement on how the waste tires shall be properly disposed of.

(5) The Department may condition use of Waste Tire Recycling Account funds on use of a contractor who has a clear compliance history with waste tire storage and carrier rules and statutes, free of significant violations for the three years prior to a subject cleanup.

Criteria for Use of Funds to Clean Up Permitted Waste Tire Sites

340-64-155 (1) The Department shall establish an environmental ranking of permittees requesting cleanup funds based [base its recommendations on use of cleanup funds] on potential degree of environmental risk created by the tire pile. Sites with a higher ranking will in general be cleaned up before lower ranked sites. The following special circumstances shall serve as criteria in determining the degree of environmental risk. The criteria, listed in priority order, include but are not limited to:

(a) Susceptibility of the tire pile to fire. In this, the Department shall consider:

(A) The characteristics of the pile that might make it susceptible to fire, such as how the tires are stored (height and bulk of piles), the absence of fire lanes, lack of emergency equipment, presence of easily combustible materials, and lack of site access control;

(B) How a fire would impact the local air quality; and

(C) How close the pile is to natural resources or property owned by third persons that would be affected by a fire at the tire pile.

(b) Other characteristics of the site contributing to environmental risk, including susceptibility to mosquito infestation.

(c) Other special conditions which justify immediate cleanup of the site.

(d) A local fire district or a local government deems the site to be a danger or nuisance, or an environmental concern that warrants immediate removal of all waste tires.

(2) In determining the degree of environmental risk involved in the two criteria above, the Department shall consider:

(a) Size of the tire pile (number of waste tires).

(b) How close the tire pile is to population centers. The Department shall especially consider the population density within five miles of the pile, and location of any particularly susceptible populations such as hospitals.

(3) In the case of a waste tire storage permittee which is also a local government:

(a) The following special circumstances may also be considered by the Department in determining whether financial assistance to remove waste tires is appropriate:

(A) The tire pile was in existence before January 1, 1988.

(B) The waste tires were collected from the public, and the local government did not charge a fee to collect the tires for disposal.

(C) The pile consists of at least 1,000 waste tires.

(b) If [both] all the above conditions are present, the Department may assist the local government with up to 80 percent of the net cost of tire removal[.], based on an index. The index will be determined by dividing the local government's population by the number of waste tires at the site. The percentage of cleanup cost which could be covered by financial assistance is as follows:

Table 1: Financial Assistance to Local Governments

<u>Index</u>	<u>% Financial Assistance</u>
<u>Less than 1.0</u>	<u>80%</u>
<u>1.0 - 9.9</u>	<u>70%</u>
<u>10.0 - 99.9</u>	<u>60%</u>
<u>100.0 - 499.9</u>	<u>50%</u>
<u>Greater than 500</u>	<u>25%</u>

(c) If a local government is out of compliance with its waste tire storage permit, the percentage of financial assistance from Table 1 may be reduced by 10 percentage points.

(4) Financial hardship on the part of the permittee [or responsible party] shall be an additional criterion in the Department's determination of the amount of cleanup funds appropriate to be spent on a site. Financial hardship means that strict compliance with OAR 340-64-005 through 340-64-045 would result in substantial curtailment or closing of the permittee's business or operation, or the bankruptcy of the permittee. The burden of proof of such financial hardship is on the permittee. In interpreting when "financial hardship" may result, the Department may use the following as guidelines:

(a) In the case of a permittee who is not a corporation or a local government, the cost of cleaning up the tires:

(A) Would cause the permittee's annual gross household income to fall below the state median income as determined by the U.S. Department of Housing and Urban Development; and/or

(B) Would reduce the permittee's net assets (excluding one automobile and homestead) to below \$20,000.

(b) In the case of a permittee which is a corporation, the cost of complying with the tire removal schedule required by the Department:

(A) Would cause the annual gross household income of each of the corporate officers who are also corporate stockholders to fall below the state median income as determined by the U.S. Department of Housing and Urban Development; and/or

(B) Would reduce the net assets (excluding basic assets of building, equipment and inventory) of the corporation to below \$20,000; and

(C) Would, as certified in a statement from the corporation's accountant or attorney, cause substantial curtailment or closing of the corporation, or bankruptcy.

(5) The Department may assist a permittee with the cost of tire removal to the following extent:

(a) For a permittee whose income and/or assets are above the thresholds in section (4) of this rule: the permittee is required to contribute its own funds to the cost of tire removal up to the point where "financial hardship," as specified in section (4), would ensue. The Department may pay the remaining cost of the cleanup up to a maximum of 90 percent (for individuals) or 80 percent (for corporations) of the total cost of the cleanup.

(b) For a permittee whose income and assets fall below the thresholds in section (4) of this rule, the Department may pay up to the following percentage of the cost of cleanup:

(A) For an individual or a partnership: up to 90 percent of the cost (plus any cost of waste tire storage permit fees paid by the permittee);

(b) For a corporation: up to 80 percent of the cost.

(6) The Department may reduce to \$1,500 the permittee's required contribution to the cleanup cost in the case of a permittee whose net equity in assets exempt under section (4) of this rule is less than \$50,000, or who is over 65 years of age and whose net exempt assets are less than \$100,000.

(7) A permittee may receive financial assistance for no more than one complete waste tire removal or processing job.

(8) The Department may advance funds for up to 100 percent of the cost of the cleanup of a permitted waste tire site, if:

(a) The permittee demonstrates that it cannot pay its share of the cleanup cost at the time the cleanup is completed;

(b) The permittee signs an agreement to repay the Department its share of the cleanup costs within a schedule agreeable to the Department, and with such guarantees as the Department deems appropriate.

Procedure for Use of Cleanup Funds for a Permitted Waste Tire Storage Site

340-64-160 (1) The [Department] Director may [recommend to the Commission] find that cleanup funds should be made available to partially

pay for cleanup of a permitted waste tire storage site, if all of the following are met:

(a) The site ranks high in the criteria making it an environmental risk, pursuant to OAR 340-64-155.

(b) The permittee submits to the Department a compliance plan to remove or process the waste tires. The plan shall include:

(A) A detailed description of the permittee's proposed actions;

(B) A time schedule for the removal and or processing, including interim dates by when part of the tires will be removed or processed.

(C) An estimate of the net cost of removing or processing the waste tires using the most cost-effective alternative. This estimate must be documented.

(c) The plan receives approval from the Department.

(2) A permittee claiming financial hardship under OAR 340-64-155(4) must document such claim through submittal of the permittee's state and federal tax returns for the past three years, business statement of net worth, and similar materials. If the permittee is a business, the income and net worth of other business enterprises in which the principals of the permittee's business have a legal interest must also be submitted.

(3) If the [Commission] Director finds that use of cleanup funds is appropriate, the Department shall agree to pay part of the Department-approved costs incurred by the permittee to remove or process the waste tires. Final payment shall be withheld until the Department's final inspection and confirmation that the tires have been removed or processed pursuant to the compliance plan.

Use of Cleanup Funds for Abatement by the Department

340-64-165 (1) The Department may use funds in the Account to contract for the abatement of:

(a) A tire pile for which a person has failed to apply for or obtain a waste tire storage site permit.

(b) A permitted waste tire storage site if the permittee fails to meet the conditions of such permit.

(2) The Department may abate any danger or nuisance created by waste tires by removing or processing the tires. The Department shall follow environmental risk criteria in OAR 340-64-155 in determining which sites shall be subject to abatement.

(3) Before taking any action to abate the danger or nuisance, the Department shall give any persons having the care, custody or control of the waste tires, or owning the property upon which the tires are located, notice of the Department's intentions and order the person to abate the danger or nuisance in a manner approved by the Department.

(4) Any order issued by the Department under this subsection shall be subject to appeal to the Commission and judicial review of a final order under the applicable provisions of ORS 183.310 to 183.550.

(5) If a person fails to take action as required under subsection (3) of this section within the time specified, the Director may contract to abate the danger or nuisance.

(6) The order issued under subsection (3) of this section may include

entering the property where the danger or nuisance is located, taking the tires into public custody and providing for their processing or removal.

(7) The Department may request the attorney general to bring an action to recover any reasonable and necessary expenses incurred by the Department for abatement costs, including administrative and legal expenses. The Department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary. The Department may consider the financial situation of the person in determining the amount of abatement costs to be recovered.

ATTACHMENT B

RULEMAKING STATEMENTS

for

Proposed Revisions to Existing Rules
Pertaining to Transportation of Waste Tires,
Cleanup of Tire Piles,
and Eligibility for Reimbursement for Use of Waste Tires

OAR Chapter 340, Division 64

Pursuant to ORS 183.335, these statements provide information on the intended action to adopt a rule.

STATEMENT OF NEED:

Legal Authority

The 1987 Oregon Legislature passed the Waste Tire Act regulating the disposal, storage and transportation of waste tires, and establishing a fund to clean up waste tire piles and reimburse persons who use waste tires. ORS 459.785 requires the Commission to adopt rules and regulations necessary to carry out the provisions of ORS 459.705 to 459.790. ORS 459.770 requires the Commission to adopt rules to carry out the provision of that section pertaining to reimbursement for use of waste tires. The Commission is adopting revisions to existing rules which are necessary to carry out the provisions of the Waste Tire Act.

Need for the Rule

Improper storage and disposal of waste tires represents a significant problem throughout the State. The Waste Tire Act establishes a comprehensive program to regulate disposal, storage and transportation of waste tires. The purpose of the reimbursement is to stimulate the market for waste tires, providing an alternative to landfill disposal. The rule revisions are needed to make changes the Department has found necessary in administering this program.

Principal Documents Relied Upon

- a. Oregon Revised Statutes, Chapter 459.
- b. Oregon Administrative Rules, Chapter 340, Division 64.

LAND USE CONSISTENCY STATEMENT:

The proposed rules appear to affect land use and appear to be consistent with Statewide Planning Goals and Guidelines.

With regard to Goal 6 (Air, Water and Land Resources Quality), the rules provide for the proper collection and storage of waste tires by waste tire carriers.

With regard to Goal 11 (Public Facilities and Services), the rule incorporates criteria for determining the amount of financial assistance for waste tire cleanup which can be given to a local government which is a waste tire storage permittee. This will assist local governments to properly dispose of waste tires.

The rules do not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

It is requested that local, state and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning Goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflicts brought to our attention by local, state or federal authorities.

rmkgst.del

ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction

The rule delegates financial assistance approval authority from the Environmental Quality Commission to the Director of the Department of Environmental Quality. This delegation will allow the Director to approve financial assistance requests to waste tire permittees to help them clean up tire piles. This will remove a fairly routine decision from consideration by the Commission. The delegation will result in no change from present policy, as the same criteria and rules will be used to determine the amount of financial assistance.

The rule also establishes as rule, criteria which determine the amount of financial assistance which may be given to a local government waste tire storage permittee for waste tire pile cleanup. The Department has used these same criteria as guidelines in previous recommendations, but now intends to adopt them as rule. Additionally, it establishes as rule criteria for the amount of reimbursement the Department could give a local government abating an illegal tire pile in its jurisdiction.

The rule allows the Department to advance up to 100 percent of the cost of tire pile cleanups for permittees who lack financial resources to pay their share of the cleanup costs at the time of the cleanup. All permittees are required to contribute some funds to the cleanup of their waste tire piles. The Department will require that a payback agreement be signed between the permittee and the Department specifying terms of the payment of the permittee's share of the cleanup costs.

II. General Public

The general public is not directly affected economically by these rule changes.

Members of the public who also hold waste tire storage permits may be eligible for financial assistance in removing waste tires. If they are unable to advance cash for their share of the cleanup costs, their payment may be made easier by the Department's willingness to advance up to 100 percent of the cost of tire removal. They can be allowed to repay the Department over time, in effect receiving an interest-free loan.

III. Small Business

Small businesses holding waste tire storage permits and requesting financial assistance for the removal of waste tires will be affected in the same way as members of the general public (above) by the Department's willingness to advance up to the total cost of the tire cleanup.

IV. Large Business

The same remarks are true for large businesses.

V. Local Governments

The rule establishes criteria for the amount (percentage of the cleanup cost) of financial assistance with waste tire cleanup which a local government waste tire permittee can receive from the Department. The criteria are based on an index, which divides the local government's population by the number of waste tires at the site. This is an indication of the financial capability of the local government. A local government with small population and a large number of waste tires to be cleaned up will receive a higher percentage of assistance (up to 80%) than a municipality with a larger population and a smaller waste tire pile. The Commission has approved three applications for financial assistance to local governments using this index as a guideline. The amount of assistance in each case has been 80% of the cost, ranging from a Department contribution of \$77,000 to \$480,000. There may be two or three more local governments which can take advantage of this rule.

The Department may reimburse a local government for the cost of abating illegal waste tires in its jurisdiction. The Department has used guidelines to determine the amount of the reimbursement it will pay. The Department is now proposing to adopt the guidelines as rule, to pay 90 to 99 percent of the cost of the cleanup. Typical cleanups have cost from about \$10,000 to \$80,000. Probably fewer than 10 additional waste tire removals will be done under this procedure. The benefit to a local government depends on the size and configuration of the illegal waste tire pile: the higher the environmental risk, the higher percentage reimbursement from the Department.

Another part of the rule revisions allows the reimbursement for use of waste tires in a paving project to go to either a local paving authority (a unit of local government) or a paving contractor. This allows administrative flexibility for a local government implementing a paving project using crumb rubber from waste tires, depending on the local government's bookkeeping procedures. This will have no direct economic impact, but can simplify accounting procedures.

VI. State Agencies

The impact discussed for local government paving projects using rubber from waste tire can also apply to state agencies conducting such projects.

fiscal.del

ATTACHMENT E

MAJOR REMAINING WASTE TIRE SITES TO BE CLEANED UP
(7/9/90)

<u>Site</u>	<u>County</u>	<u>Type of Cleanup</u>	<u>Status</u>	<u>No. Tires</u>	<u>Est. Cost</u>	<u>Est. Date Cleanup</u>
R. Mishler	Polk	permit	appr.	200,000	\$105,000	9/91
Joe Ney	Coos	permit	appr.	200,000	96,000	1/91
Harpold	Klamath	permit	appr.	750,000	596,800	7/92
Albany Tire	Polk	I.A.	in proc.	100,000(t)	180,000	4/91
C. Haas	Jackson	permit	EQC	85,000	150,000	8/91
S. Wilson	Jackson	permit	EQC	250,000	400,000	8/93
Douglas Co.	Douglas	permit	dev.	50,000	30,000	90?
Remoir	Yamhill	abate	dev.	60,000(t)	300,000	8/91
Walker	Jackson	abate	dev.	10,000(f)	10,000	91
J.C. Allen	Jackson	abate?	dev.	1,500(t.f.)	4,000	90?
5 other fences	Jackson	abate?	dev.	10,000(f)	20,000	90?
Galloway et al	Columbia	abate	dev.	30,000(f)	50,000	91
Borden	Deschutes	abate	dev.	8,000	10,000	8/91
Yenney	Umatilla	self	dev.	30,000	25,000	90
B&S Auto	Harney	permit	dev.	60,000	100,000	12/91
R. Busk	Josephine	abate	dev.	13,000	20,000	5/91
Tri-City	Polk	abate	hold	5,000	5,000	4/91
USFS	Clackamas?	I.A.	hold	10,000	30,000	91
G. Seifert	Lane	permit?	hold	5,000	5,000	91
K. Wilson	Jefferson	abate	hold	1,000	1,000	91
Petefish	Wasco	abate	hold	20,000	25,000	91
E. Benjamin	Multnomah	abate	hold	1,000	1,000	91
Steve's Bent.	Marion	self?	hold	5,000	5,000	90?
B. Haynes	Polk	abate?	hold	10,000?	10,000	91
Melcher	Clackamas	abate	hold	5,000	7,000	91
Worre	Clackamas	abate	hold	10,000	5,000	91
G. Dyer	Polk	self?	hold	10,000	10,000	90?
M. Esters	Multnomah	abate	hold	2,000	2,000	91
Scient. Dev. (new site)	Lane Jackson	abate abate	hold hold	12 M. lbs. 4,000	150,000 8,000	91 90-91?
Schommer	Multnomah	abate	hold	2,500?	2,000	91?
Dayton A Wrec.	Yamhill	abate?	hold	2,500?	2,000	92?
Longyear	Lincoln	abate?	hold	1,000	800	92?
Greenhill AW	Lane	abate?	hold	1,000	800	92?
O'lake Towing	Lincoln	abate?	hold	1,000	800	92?

Key: appr. = approved by EQC for financial assistance
 EQC = to be considered at 8/10/90 EQC meeting
 t = truck tires
 f = tire fence
 dev. = under development
 I.A. = Intergovernmental Agreement (with local government)

Note: Some sites need to have status and number of waste tires verified.



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: August 10, 1990
Agenda Item: D
Division: HSW
Section: Solid Waste

SUBJECT:

Solid Waste: Out-of-State Waste Surcharge

PURPOSE:

To authorize public hearings on a proposed rule establishing a per-ton surcharge on the disposal of out-of-state solid waste in Oregon. The surcharge was mandated by the 1989 Oregon Legislature, and will go into effect on January 1, 1991.

ACTION REQUESTED:

- Work Session Discussion
 - General Program Background
 - Potential Strategy, Policy, or Rules
 - Agenda Item ___ for Current Meeting
 - Other: (specify)
- Authorize Rulemaking Hearing
 - Adopt Rules
 - Proposed Rules Attachment A
 - Rulemaking Statements Attachment B
 - Fiscal and Economic Impact Statement Attachment C
 - Public Notice Attachment E
 - 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 ___

Meeting Date: August 10, 1990
Agenda Item: D
Page 2

___ Other: (specify)

Attachment ___

DESCRIPTION OF REQUESTED ACTION:

House Bill 3515, passed by the 1989 Oregon Legislature, requires the Environmental Quality Commission (EQC) to establish a surcharge on out-of-state solid waste disposed of in Oregon. Key parts of the legislation include:

"Beginning on January 1, 1991, every person who disposes of solid waste generated out-of-state in a disposal site or regional disposal site shall pay a surcharge as established by the Environmental Quality Commission.." (ORS 459.297).

The moneys collected through the surcharge are to be "continuously appropriated to (DEQ) to meet the costs of the department in administering the solid waste program" (ORS 459.297).

"The amount of the surcharge shall be based on the costs to the State of Oregon and its political subdivisions which are not otherwise paid for.." (ORS 459.298).

The 1989 legislature also created, through Senate Bill 1192, a Solid Waste Regional Policy Commission to study the impacts of accepting out-of-state waste and to recommend policies for addressing any identified problems. Under the chairmanship of Judge Kevin Campbell from Grant County, this commission has met several times, and has released an interim report to the Governor and the Legislature on its deliberations. Although the Department of Environmental Quality (Department, DEQ) has kept the Regional Policy Commission informed on the development of the out-of-state waste surcharge, the Regional Policy Commission's scope is much broader and it has no formal role in the establishment of the surcharge.

The Department has conducted an analysis of the costs of accepting out-of-state waste, and has discussed several options for the surcharge with the DEQ Solid Waste Advisory Committee. (See attachment D.) The Department is recommending that the EQC authorize public hearings on a range of possible surcharge rates: from \$1.50 per ton to \$3.50 per ton. This range reflects the range of costs expected from receiving out-of-solid waste, based upon the Department's analysis (see attachment D).

In conducting its analysis of the costs of accepting out-of-state waste, the Department made a number of assumptions, which are

Meeting Date: August 10, 1990
Agenda Item: D
Page 3

explained in more detail in the attached memorandum to the Solid Waste Advisory Committee (Attachment D):

1. The first assumption is that the surcharge cannot be based upon an actual accounting of costs to the state. Rather, it must be based upon a reasonable estimate of potential costs that take into account a range of possible circumstances.
2. The costs to the state to be included in determining the amount of the surcharge should not be limited to those directly related to solid waste management, even though the legislation specifically states that the funds generated by the surcharge shall go to meet the costs of "administering the solid waste program."
3. The amount of the surcharge is to be determined by a reasonable assessment of the costs to Oregon of accepting out-of-state waste. The amount shall not be inflated to discourage importation of waste, nor deflated to encourage importation of waste.
4. Alternative ways to address potential costs through changes in rule or statute were not considered as an alternative to levying the surcharge.
5. Estimates of the cost of tax credits and other subsidies are based upon eligibility. It is presumed that private companies will generally apply for and receive the maximum subsidy for which they are eligible.
6. Costs that are covered through other fees or taxes are not to be addressed by the surcharge. Other specific fees considered include permit fees, Public Utility Commission per-mile taxes, and host community fees. There should be no double counting.
7. Future cost increases in siting, construction, operation, and regulation of disposal sites should be considered when determining what is a "reasonable" surcharge on out-of-state waste.

The Department has separated the overall costs used to establish the surcharge into two main categories:

1. Costs related to solid waste management. This category includes all costs to the state of Oregon that are related to solid waste management and are not otherwise captured through other fees. These costs include all state activities conducted for the purpose of a)

reducing environmental impacts or risk, or b) ensuring adequate disposal capacity and solid waste management.

2. Other costs. These costs, not directly related to solid waste management, include a number of costs that are more difficult to quantify, but are considered "real" costs nevertheless.

Each of these categories has been evaluated by the Department. (see attachment D). Based upon the estimates developed in the Department's analysis, the range of figures for the out-of-state waste surcharge are:

Costs Related to Solid Waste Management

\$.50	Statewide activities for reducing environmental risk and improving solid waste management, paid for through the per-ton fee on domestic solid waste.
\$.25	Statewide activities for reducing environmental risk and improving solid waste management, paid for through general funds.
\$.31 - .75	Tax credits and other public subsidies
\$.05 - .15	Solid waste reduction activities related to the review and certification of waste reduction and recycling plans
\$.10 - .50	Unfunded environmental liability
\$.07 - .42	<u>Lost disposal capacity</u>
\$1.28 - 2.57	TOTAL COSTS RELATED TO SOLID WASTE MANAGEMENT

Other costs

\$.05 - .35	Image
\$.10 - .50	Publicly Supported Infrastructure
\$.02 - .10	<u>Nuisance Impacts and loss of "quiet enjoyment"</u>
\$.17 - .95	TOTAL OTHER COSTS

Meeting Date: August 10, 1990
Agenda Item: D
Page 5

The range of potential total costs of accepting out-of-state waste in Oregon is therefore \$1.45 to \$3.52 per ton. The Environmental Quality Commission needs to chose a "reasonable" surcharge from this range. The Department recommends taking to public hearing the same range, rounded to \$1.50 to \$3.50 per ton.

AUTHORITY/NEED FOR ACTION:

- | | |
|---|---------------------|
| <input checked="" type="checkbox"/> Required by Statute: <u>ORS 459.297</u> | Attachment <u>F</u> |
| Enactment Date: <u>July 1989</u> | |
| <input type="checkbox"/> Statutory Authority: _____ | Attachment _____ |
| <input type="checkbox"/> Pursuant to Rule: _____ | Attachment _____ |
| <input type="checkbox"/> Pursuant to Federal Law/Rule: _____ | Attachment _____ |
| <input type="checkbox"/> Other: _____ | Attachment _____ |
| <input checked="" type="checkbox"/> Time Constraints: (explain) | |

The legislature set January 1, 1991 as the date the surcharge is to go into effect. This requires authorization by the state Emergency Board at its November meeting and final approval of the rule by the EQC at its November 2, 1990 meeting.

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The size of the surcharge should be determined without regard to whether the surcharge would encourage or discourage importation of solid waste. The size of the surcharge should be based instead upon a reasonable estimate of the costs to the state and its political jurisdictions of receiving out-of-state waste.

Attorneys for at least one company wishing to import solid waste from other states have raised the issue of the constitutionality of this surcharge. They argue that the importation of solid waste is protected by the interstate commerce clause of the U.S. Constitution. The Department agrees that solid waste is covered by the commerce clause of the constitution. However, the Oregon Attorney General's office believes that there is sufficient legal precedent affirming a state's right to charge a fee on out-of-state waste to recover costs related to accepting out-of-state waste.

At this time, the primary target of this fee will be large regional disposal sites in Gilliam and Morrow counties, and communities in the state of Washington that are considering sending waste to these two sites. During the next biennium, these regional sites are expected to begin importing solid waste from the City of Seattle, Clark County, and several smaller jurisdictions at a rate of about 600,000 tons per year. The Department expects 800,000 tons to be imported during the 1991-1993 biennium.

During its July 17, 1990 meeting, the Solid Waste Advisory Committee made a number of recommendations to the Department on the out-of-state waste surcharge:

- . Cost ranges calculated using the ECO Northwest cost model should be revised to reflect 1990 dollars.
- . Transportation planning for the entire Columbia River/Interstate 84 corridor should be included as a separate sub-category under solid waste management costs. This new category reflects the possibility of other costs, particularly under the heading of "public infrastructure", that have not been anticipated.
- . The range for tax credit costs should be higher.
- . The range for image costs should be higher.
- . The Department should recommend to the Environmental Quality Commission a surcharge at the upper end of the range of possible costs: \$3.50 per ton.

Each of these recommendations has been incorporated into the Department's analysis.

PROGRAM CONSIDERATIONS:

As part of the public testimony, the Department will have an economic consultant review the assumptions and methodology used to calculate the range of costs of accepting out-of-state waste. The economic consultant review and evaluation will ensure that the Department's analysis is consistent with standard economic methodology.

The Department is bound by statute to expend the funds generated by the surcharge "to meet the cost of the department in administering the solid waste program." At \$1.50 per ton, the anticipated revenue for the 1991-1993 biennium would be \$1.2 million. At \$3.50 per ton, the revenue would be \$2.8 million for the biennium. These funds would be used to fund programs in solid waste management for the state, and would reduce reliance on other solid waste fees.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Take \$1.50 per ton (or some figure on the lower end of the range of expected costs to the state) to public hearing. This lower figure is the most conservative and therefore the most defensible as a "reasonable" charge.
2. Take \$3.50 per ton (or some figure on the higher end of the range of expected costs) to public hearing. This higher figure would be the most protective against potential costs, and incorporates pessimistic assumptions about the impacts on the state. The Solid Waste Advisory Committee recommends that the surcharge be set at this higher figure.
3. Take the range of \$1.50 to \$3.50 to public hearing. Before selecting a surcharge amount, allow the public to provide testimony on the range of potential costs and surcharge amounts.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the EQC authorize public hearings on the entire range of potential figures for the out-of-state waste surcharge. Public comment on all options will give the public an opportunity to consider the full range of options. Part of the public comment will include an

evaluation by an economic consultant of the Department's assumptions and methodology.

The Department has recommended that the EQC word the rule to divide the surcharge into two parts: one part that is variable, which includes any per-ton fee on in-state users (such as the current \$.50 per ton fee), plus one part that is a specific dollar amount. The proposed rule reads: "...a per-ton surcharge consisting of the amount of the per-ton fee as specified in Section 5 of this rule (the current \$.50 fee on domestic solid waste), plus _____". (see attachment A)

The surcharge may be reviewed at a later date and revised by the Commission to reflect inflation and new information based upon actually receiving out-of-state waste.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The surcharge is consistent with legislative policy to charge out-of-state users of Oregon disposal sites, as passed in the 1989 Legislature.

The Department's analysis of costs is also consistent with legislative policy in that it recognizes that every ton of solid waste disposed of in Oregon adds an incremental environmental risk and reduces Oregon's disposal capacity. The surcharge will address the need to reduce the environmental and capacity impacts that any solid waste disposal has on Oregon.

The surcharge is consistent with the interstate commerce clause of the U.S. Constitution, in that it is a charge to compensate for legitimate costs borne by Oregon because of the disposal of out-of-state waste.

ISSUES FOR COMMISSION TO RESOLVE:

1. What is a "reasonable" surcharge, based upon the range of potential costs of accepting out-of-state waste?
2. Should the Commission take only one option or the range of potential surcharge amounts out for public hearing?

Meeting Date: August 10, 1990
Agenda Item: D
Page 9

3. Has the Department adequately identified the categories and range of costs that can be anticipated as a result of accepting out-of-state waste?

INTENDED FOLLOWUP ACTIONS:

The Department will hold three public hearings on the out-of-state waste surcharge: in Arlington, Portland, and Medford.

The Department has selected an economics consultant who will review and evaluate the Department's methodology and assumptions in estimating the range of potential costs as part of the public comment period.

The Department will return to the Commission with a single recommended surcharge amount at the November 2, 1990 Commission meeting.

Approved:

Section:

Deanna Mueller-Craig

Division:

Stephanie Hallock

Director:

Jul Hansen

Report Prepared By: Steve Greenwood

Phone: 229-5782

Date Prepared: July 23, 1990

spg
suregc
7/24/90

Proposed Amendments to OAR 340-61

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
DIVISION 61 - SOLID WASTE MANAGEMENT
7/23/90

Proposed additions to rule are underlined.
Proposed deletions are in brackets [].

Permit Fees

340-61-115 (1) Beginning July 1, 1984, each person required to have a Solid Waste Disposal Permit shall be subject to a three-part fee consisting of a filing fee, an application processing fee and an annual compliance determination fee as listed in OAR 340-61-120. In addition, each disposal site receiving domestic solid waste shall be subject to an annual recycling program implementation fee as listed in Table 1, and a per-ton fee on domestic solid waste as specified in Section 5 of this rule. In addition, each disposal site or regional disposal site receiving solid waste generated out-of-state shall pay a surcharge as specified in Section 6 of this rule. The amount equal to the filing fee, application processing fee, the first year's annual compliance determination fee and, if applicable, the first year's recycling program implementation fee shall be submitted as a required part of any application for a new permit. The amount equal to the filing fee and application processing fee shall be submitted as a required part of any application for renewal or modification of an existing permit.

(2) As used in this rule unless otherwise specified, the term "domestic solid waste" includes, but is not limited to, residential, commercial and institutional wastes; but the term does not include:

- (a) Sewage sludge or septic tank and cesspool pumpings;
- (b) Building demolition or construction wastes and land clearing debris, if delivered to disposal sites that are not open to the general public;
- (c) Yard debris, if delivered to disposal sites that receive no other residential wastes.

(3) The annual compliance determination fee and, if applicable, the annual recycling program implementation fee must be paid for each year a disposal site is in operation. The fee period shall be the state's fiscal year (July 1 through June 30) and shall be paid annually by July 1. Any annual compliance determination fee and, if applicable, any recycling program implementation fee submitted as part of an application for a new permit shall apply to the fiscal year the permitted disposal site is put into operation. For the first year's operation, the full fee(s) shall apply if the disposal site is placed into operation

on or before April 1. Any new disposal site placed into operation after April 1 shall not owe a compliance determination fee and, if applicable, a recycling program implementation fee until July 1. The Director may alter the due date for the annual compliance determination fee and, if applicable, the recycling program implementation fee upon receipt of a justifiable request from a permittee.

(4) For the purpose of determining appropriate fees, each disposal site shall be assigned to a category in Table 1 based upon the amount of solid waste received and upon the complexity of each disposal site. Each disposal site which falls into more than one category shall pay whichever fee is the basis of estimated annual tonnage or gallonage of solid waste received unless the actual amount received is known. Estimated annual tonnage for domestic waste disposal sites will be based upon 300 pounds per cubic yard of uncompacted waste received, 700 pounds per cubic yard of compacted waste received, or, if yardage is not known, one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. Loads of solid waste consisting exclusively of soil, rock, concrete, rubble or asphalt shall not be included when calculating the annual amount of solid waste received.

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

(6) Upon the Department accepting an application for filing, the filing fee shall be non-refundable.

(7) The application processing fee may be refunded in whole or in part when submitted with an application if either of the following conditions exist:

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

(b) The applicant withdraws the application before the Department has granted or denied preliminary approval or, if no preliminary approval has been granted or denied, the Department has approved or denied the application.

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

Permit Fee Schedule

340-61-120 (1) Filing Fee. A filing fee of \$50 shall accompany each application for issuance, renewal, modification, or transfer of a Solid Waste Disposal Permit. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed.

(2) Application Processing Fee. An application processing fee varying between \$100 and \$2,000 shall be submitted with each

application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new facility (including substantial expansion of an existing facility):

- (A) Major facility¹ \$ 2,000
- (B) Intermediate facility² \$ 1,000
- (C) Minor facility³ \$ 300

¹Major Facility Qualifying Factors:

- a- Received more than 25,000 tons of solid waste per year; or
- b- Has a collection/treatment system which,, if not properly constructed, operated and maintained, could have a significant adverse impact on the environment as determined by the Department.

²Intermediate Facility Qualifying Factors:

- a- Received at least 5,000 but not more than 25,000 tons of solid waste per year; or
- b- Received less than 5,000 tons of solid waste and more than 25,000 gallons of sludge per month.

³Minor Facility Qualifying Factors:

- a- Received less than 5,000 tons of solid waste per year; and
- b- Received less than 25,000 gallons of sludge per month.

All tonnages based on amount received in the immediately preceding fiscal year, or in a new facility the amount to be received the first fiscal year of operation.

(b) Preliminary feasibility only (Note: the amount of this fee may be deducted from the complete application fee listed above):

- (A) Major facility \$ 1,200
- (B) Intermediate facility \$ 600
- (C) Minor facility \$ 200
- (c) Permit renewal (including new operational plan, closure plan or improvements):
- (A) Major facility \$ 500
- (B) Intermediate facility \$ 250
- (C) Minor facility \$ 125
- (d) Permit renewal (without significant change):
- (A) Major facility \$ 250
- (B) Intermediate facility \$ 150
- (C) Minor facility \$ 100

- (e) Permit modification (including new operational plan, closure plan or improvements):
 - (A) Major facility \$ 500
 - (B) Intermediate facility \$ 250
 - (C) Minor facility \$ 100
 - (f) Permit modification (without significant change in facility design or operation): All categories \$ 100
 - (g) Permit modification (Department initiated) All categories No fee
 - (h) Letter authorizations, new or renewal: \$ 100
- (3) Annual Compliance Determination Fee (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):
 - (a) Domestic Waste Facility:
 - (A) A landfill which received 500,000 tons or more of solid waste per year: \$60,000
 - (B) A landfill which received at least 400,000 but less than 500,000 tons of solid waste per year: \$48,000
 - (C) A landfill which received at least 300,000 but less than 400,000 tons of solid waste per year: \$36,000
 - (D) A landfill which received at least 200,000 but less than 300,000 tons of solid waste per year: \$24,000
 - (E) A landfill which received at least 100,000 but less than 200,000 tons of solid waste per year: \$12,000
 - (F) A landfill which received at least 50,000 but less than 100,000 tons of solid waste per year: \$ 6,000
 - (G) A landfill which received at least 25,000 but less than 50,000 tons of solid waste per year: \$ 3,000
 - (H) A landfill which received at least 10,000 but less than 25,000 tons of solid waste per year: \$ 1,500
 - (I) A landfill which received at least 5,000 but not more than 10,000 tons of solid waste per year: \$ 750
 - (J) A landfill which received at least 1,000 but not more than 5,000 tons of solid waste per year: \$ 200
 - (K) A landfill which received less than 1,000 tons of solid waste per year: \$ 100
 - (L) A transfer station which received more than 10,000 tons of solid waste per year: \$ 500
 - (M) A transfer station which received less than 10,000 tons of solid waste per year: \$ 50
 - (N) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives more than 100,000 tons of solid waste per year: \$ 8,000
 - (O) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives at least 50,000 tons but less than 100,000 tons of solid waste per year: \$ 4,000
 - (P) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives less than 50,000 tons of solid waste per year: \$ 2,000
 - (b) Industrial Waste Facility:

- (A) A facility which received 10,000 tons or more of solid waste per year: \$ 1,500
- (B) A facility which received at least 5,000 tons but less than 10,000 tons of solid waste per year: \$ 750
- (C) A facility which received less than 5,000 tons of solid waste per year: \$ 150
- (c) Sludge Disposal Facility:
 - (A) A facility which received 25,000 gallons or more of sludge per month: \$ 150
 - (B) A facility which received less than 25,000 gallons of sludge per month: \$ 100
 - (d) Closed Disposal Site: Each landfill which closes after July 1, 1984: 10% of fee which would be required, in accordance with subsections (3)(a), (3)(b), and (3)(c) above, if the facility was still in operation or \$50 whichever is greater.
 - (e) Facility with Monitoring Wells: In addition to the fees described above, each facility with one or more wells for monitoring groundwater or methane, surface water sampling points, or any other structures or locations requiring the collection and analysis of samples by the Department, shall be assessed a fee. The amount of the fee shall depend on the number of wells (each well in a multiple completion well is considered to be a separate well) or sampling points as follows: \$ 250 for each well or sampling point.
- (4) Annual Recycling Program Implementation Fee. An annual recycling program implementation fee shall be submitted by each domestic waste disposal site, except transfer stations and closed landfills. This fee is in addition to any other permit fee which may be assessed by the Department. The amount of the fee shall depend on the amount of solid waste received as follows:
 - (a) A disposal site which received 500,000 tons or more of solid waste per year \$20,000
 - (b) A disposal site which received at least 400,000 but less than 500,000 tons of solid waste per year: \$18,000
 - (c) A disposal site which received at least 300,000 but less than 400,000 tons of solid waste per year: \$14,000
 - (d) A disposal site which received at least 200,000 but less than 300,000 tons of solid waste per year: \$ 9,000
 - (e) A disposal site which received at least 100,000 but less than 200,000 tons of solid waste per year: \$ 4,600
 - (f) A disposal site which received at least 50,000 but less than 100,000 tons of solid waste per year: \$ 2,300
 - (g) A disposal site which received at least 25,000 but less than 50,000 tons of solid waste per year: \$ 1,200
 - (h) A disposal site which received at least 10,000 but less than 25,000 tons of solid waste per year: \$ 450
 - (i) A disposal site which received at least 5,000 but less than 10,000 tons of solid waste per year: \$ 225
 - (j) A disposal site which received at least 1,000 but less than 5,000 tons of solid waste per year: \$ 75
 - (k) A disposal site which received less than 1,000 tons of solid waste per year: \$ 50

(5) Per-ton fee on domestic solid waste. Each solid waste disposal site that receives domestic solid waste, except transfer stations, shall submit to the Department of Environmental Quality a fee of 50 cents per ton of domestic solid waste received at the disposal site.

(a) This per-ton fee shall apply to all domestic solid waste received after June 30, 1990.

(b) Submittal schedule:

(A) This per-ton fee shall be submitted to the Department on the same schedule as the waste volume reports required in the disposal permit, or quarterly, whichever is more frequent. Quarterly remittals shall be due on the 15th day of the month following the end of the calendar quarter.

(B) Disposal sites receiving less than 1,000 tons of solid waste per year shall submit the fee annually on July 1, beginning in 1991. If the disposal site is not required by the Department to monitor and report volumes of solid waste collected, the fee shall be accompanied by an estimate of the population served by the disposal site.

(c) As used in this section, the term "domestic solid waste" does not include:

(A) Sewage sludge or septic tank and cesspool pumpings;

(B) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes;

(C) Source separated recyclable material, or material recovered at the disposal site;

(D) Waste going to an industrial waste facility;

(E) Waste received at an ash monofill from a resource recovery facility; or

(F) Domestic solid waste which is not generated within this state.

(d) For solid waste generated within the boundaries of a metropolitan service district, the 50 cent per ton disposal fee established in this section shall be levied on the district, not on the disposal site.

(6) Surcharge on disposal of solid waste generated out-of-state. Each solid waste disposal site or regional solid waste disposal site that receives solid waste generated out-of-state

shall submit to the Department of Environmental Quality a per-ton surcharge consisting of the amount of the per-ton fee as specified in Section 5 of this rule, plus (\$1.00 to \$3.00). This surcharge shall apply to each ton of out-of-state solid waste received at the disposal site.

(a) This per-ton surcharge shall apply to all solid waste received after January 1, 1991.

(b) Submittal schedule: This per-ton surcharge shall be submitted to the Department on the same schedule as the waste volume reports required in the disposal permit, or quarterly, whichever is more frequent. Quarterly remittals shall be due on the 15th day of the month following the end of the calendar quarter.

(c) This surcharge shall be in addition to any other fee charged for disposal of solid waste at the site.

ossurcha

ATTACHMENT B

RULEMAKING STATEMENTS

for

Proposed Revisions to Existing Rules
Pertaining to a Surcharge on Out-of-State Solid Waste

OAR Chapter 340, Division 61

Pursuant to ORS 183.335, these statements provide information on the intended action to adopt a rule.

STATEMENT OF NEED: *

Legal Authority

ORS 459.045(1) and (3) require the Environmental Quality Commission to adopt reasonable and necessary rules governing the management of solid wastes to prevent pollution of the air, ground and surface waters. The 1989 Oregon Legislature passed House Bill 3515 which requires the Commission to establish by rule the amount of a surcharge to be collected from all persons disposing in Oregon of solid waste generated out-of-state (ORS 459.298).

Need for the Rule

HB 3515 establishes a requirement, beginning on January 1, 1991, that every person who disposes of solid waste generated out-of-state in a disposal site in Oregon shall pay a surcharge. The Commission is to establish the surcharge based on the costs to the State and its political subdivisions of disposing of solid waste generated out-of-state which are not otherwise paid for. The surcharge is to be used by the Department to meet its costs in administering the solid waste program.

The proposed rule will implement the legislation.

Principal Documents Relied Upon

- a. Oregon Revised Statutes 459.297, 459.298 and 459.235.
- b. 1989 House Bill 3515.
- c. Oregon Administrative Rules, Chapter 340, Division 61.
- d. July 11, 1990 memo to Oregon Department of Environmental Quality Solid Waste Advisory Committee from Steve Greenwood.
- e. Analysis of the Policy Implications of Regional MSW Disposal, Draft Report, June 4, 1990, U.S. Environmental Protection Agency.
- f. Final Environmental Impact Statement: Seattle Waste Transport and Disposal Project, Seattle Solid Waste Utility, July 1990.

- g. An Evaluation of the True Costs of Sanitary Landfills for the Disposal of Municipal Solid Waste in the Portland Metropolitan Area, Oregon Department of Environmental Quality, April 1986.
- h. Taxing the Solid Waste Stream, Matthew Montavon and Paul L. Shinn, Government Finance Officers Association, April 1990.
- i. Putting the Lid on Out-Of-State Garbage., J.S. Brown, State Government News, January 1990.
- j. Pricing Solid Waste Disposal at Marginal Cost: The New York City Experience, Mark Berkman and Lisa Mancini, Fifth International Conference on Solid Waste Management and Secondary Materials, Philadelphia, Pennsylvania, December 7, 1989.

LAND USE CONSISTENCY STATEMENT:

The proposed rule appears to affect land use and appears to be consistent with Statewide Planning Goals and Guidelines.

Goal 6 (Air, Water and Land Resources Quality): This proposed rule is designed to further the protection of surface and groundwater quality and air quality throughout the state. It is consistent with this Goal.

Goal 11 (Public Facilities and Services): The proposed rule would contribute to the disposal of solid waste in an environmentally sound manner by providing additional resources for management of solid waste, and is consistent with this Goal.

The proposed rule does not appear to conflict with other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

The Department requests that local, state and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any appropriate conflicts brought to its attention by local, state or federal authorities.

outstst.sur

ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction

ORS 459.297 requires the Environmental Quality Commission to adopt a surcharge to be paid by all persons disposing of out-of-state solid waste in Oregon after January 1, 1991. The amount of the surcharge is to be based on the costs to the State and its political subdivisions of disposing of solid waste generated out-of-state which are not otherwise paid for. The surcharge is in addition to any other fee charged for disposal of solid waste at the site.

This proposed rule puts forward a range of possible surcharge rates on solid waste which is generated out-of-state and disposed of in Oregon: from \$1.50 per ton to \$3.50 per ton. The final rule will adopt a single surcharge amount, either from among the proposed range, or another amount. The surcharge would be payable at least quarterly to the Department of Environmental Quality.

The moneys collected through the surcharge are to be used by the Department to meet its costs in administering the solid waste program.

Overall Economic Impacts:

The Department estimates that surcharge rates of \$1.50 to \$3.50 per ton will generate from \$600,000 to \$1.4 million respectively per year in surcharge funds in the 1991-1993 biennium. Thereafter \$900,000 or \$2.1 million, respectively, in surcharge funds will be generated annually by this action. These funds are to be deposited into a special account, and used by the Department for the purposes stated above.

II. General Public

The general public in Oregon is not directly affected economically by this rule. Solid waste generated in-state will not be subject to the surcharge. However if the surcharge is set "too low," it could encourage disposal of larger amounts of out-of-state solid waste in Oregon, and diminish the effective life of Oregon landfills. That would result in the lost landfill capacity having to be replaced sooner, with attendant public and private costs. If the surcharge is "too high," it could discourage the disposal of out-of-state solid waste. This might in turn indirectly discourage the establishment of new regional landfills (potentially with improved environmental safeguards) in Oregon, if the landfill developers anticipated that only minimal amounts of

out-of-state solid waste would be disposed of. In-state levels of solid waste generation might not be sufficient to warrant the development of new landfills; or in-state solid waste disposal rates might have to be raised more to cover the cost of new landfills when they eventually become necessary, without the contribution of out-of-state disposal fees to construction and operation costs.

III. Small Business

Small business in Oregon is not likely to be directly affected economically by this rule. Waste generated in-state is not subject to the surcharge, and the financial resources necessary to establish a new solid waste site (that would accept out-of-state waste) require financial resources which are probably beyond the ability of small business. However, small business could be indirectly affected in the same manner as the general public, above.

IV. Large Business

The general universe of large business is not likely to be directly affected economically by this rule.

Large businesses operating or wanting to develop landfills capable of accepting out-of-state waste will be affected. A landfill operator will either have to pass the surcharge on to its out-of-state customers, or will have to decrease its profits to absorb the surcharge itself. If the surcharge is passed on to the customer, the volume of waste to be disposed could decrease, depending on the price elasticity of solid waste disposal.

The Department is not aware of any work that has been done to identify this elasticity, so it is difficult to quantify what the resulting decrease in disposal volume might be. If the elasticity is one, a one percent rise in cost would result in a one percent decrease in volume. A typical per-ton waste disposal charge is \$25; a \$1.50 surcharge would increase this charge by 6%. Annual volume of waste disposed of is estimated to be about 600,000 tons eventually (total for all Oregon landfills expected to accept out-of-state waste). A 6% decrease in volume would be 36,000 tons, resulting in an annual revenue loss of \$900,000 (@ \$25/ton) to the landfill operator. A \$3.50 surcharge would cause a 14% increase in disposal charges, and, at an elasticity of one, would result in an annual revenue loss of \$2.1 million to the site operator.

For the 1991-93 biennium the anticipated volume of out-of-state waste to be disposed of in Oregon is 400,000 tons/year¹. At a \$1.50 surcharge per ton, landfills accepting this waste would be

¹This assumes no decrease in anticipated volume of waste disposed of due to imposition of the surcharge.

responsible for collecting and remitting \$600,000/year to the Department (or \$1.4 million from a \$3.50 surcharge). Thereafter, the volume of out-of-state waste is expected to increase to 600,000 tons/year¹, resulting in an annual surcharge collection of \$900,000 (or \$2.1 million at a \$3.50 surcharge rate).

In most cases the funds must be remitted to the Department monthly. The collected funds may in the meantime collect interest which the landfill operator may keep, resulting in a positive economic impact for the operator. Assuming that half of the funds will be available to the operator for any one-year period, and a 7% interest rate, landfill operators would earn a total of \$21,000 in annual interest (at the 400,000 ton volume) and \$31,500 (at the higher volume). With a \$3.50 surcharge, annual interest earned would be \$49,000 and \$73,500 respectively.

Some increased record-keeping will be required from operators of landfills accepting solid waste from out-of-state. Tonnage of out-of-state solid waste will have to be tracked separately from solid waste generated in Oregon (which is subject to a separate fee) and reported to the Department, together with the collected surcharge. This could amount to five to ten hours a week of extra staff time, or \$3,120 to \$6,240/year (at \$12 per hour) for each operator.

V. Local Governments

Some local governments operate landfills which now or in the future may accept out-of-state waste. They would be affected in the same way as large businesses (above); the surcharge would either contribute to a higher overall fee for landfill out-of-state customers, or would have to be absorbed by the landfill operator (since the surcharge must be paid to the state).

Local governments in which regional landfills accepting out-of-region (including out-of-state) wastes are located will be affected. The local government receives a "host fee" from the regional site. The fee ranges from \$.75 to \$1.25 per ton of solid waste depending on how much waste is accepted from outside the local community. If the surcharge results in reduced volume of out-of-state waste to the regional landfill as discussed in IV above, the amount of the "host fee" would decline correspondingly.

Local governments needing to ensure that sufficient solid waste disposal facilities are available to serve their constituencies would be subject to the same considerations noted above for the general public. However, a local government operating a landfill generally has the prerogative of establishing fees itself, so presumably the problem of "too low" a fee would not occur.

VI. State Agencies

The legislation stipulates that the surcharge is to go to the Department of Environmental Quality "to meet the costs of the Department in administering the solid waste program" (ORS 459.297), while the basis of the surcharge is broader: it is to be "based on the costs to the State of Oregon and its political subdivisions which are not otherwise paid for" (ORS 459.298). Thus it should be noted that the surcharge is not to be determined on a "cost of service" basis to simply fund the activity (of administering the increased costs of the solid waste program); its basis is rather to transfer the full cost of the out-of-state waste disposal to those that are benefitting from it (i.e. out-of-state generators of solid waste).

The Department will receive a positive fiscal impact of from \$1.2 to \$2.8 million in the 1991-93 biennium. This will be used to cover the Department's increased workload due to the additional volumes of out-of-state solid waste being disposed of in Oregon, and to fund a variety of programs in solid waste management for the state. These funds could reduce reliance on other solid waste fees.

One additional full-time employee will be required in the Department's Waste Reduction Section of the Hazardous and Solid Waste Division to review waste reduction and recycling plans from out-of-state jurisdictions sending solid waste to Oregon. This will come to about \$50,000 annually.

Other tasks in the Solid Waste Permitting and Enforcement Section will increase in proportion to the volume of the additional waste. These tasks include statewide activities for reducing environmental risk and improving solid waste management. A 400,000 ton increase represents a 20% increase in solid waste disposal in Oregon, and therefore a corresponding cost increase for additional solid waste staffing effort.

Other state agencies may be subject to increased costs due to the increased volume of waste, but, pursuant to statute, will not receive any of the surcharge funds to offset these costs. Such agencies could include State Police (emergency services for road accidents involving garbage trucks) and the State Highway Division for increased highway repairs due to garbage hauling or additional transportation planning costs.

surchfis

ATTACHMENT D

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: July 25, 1990

TO: Solid Waste Advisory Committee

FROM: Steve Greenwood, DEQ

SUBJECT: Out-of-State Waste Surcharge

This memorandum is intended to update the July 11, 1990 memorandum to you, and to reflect the discussion of the Solid Waste Advisory Committee at the July 17, 1990 meeting.

During that meeting, the Solid Waste Advisory Committee made a number of recommendations to the Department on the out-of-state waste surcharge:

- . Costs ranges calculated using the ECO Northwest cost model should be revised to reflect 1990 dollars.
- . Transportation planning for the entire Columbia River/Interstate 84 corridor should be included as a separate sub-category under solid waste management costs. This new category reflects the possibility of other costs, particularly under the heading of "public infrastructure," that have not been anticipated.
- . The range for tax credit costs should be higher.
- . The range for image costs should be higher.
- . The Department should recommend to the Environmental Quality Commission a surcharge at the upper end of the range of possible costs: \$3.50 per ton.

The Department has chosen to recommend to the EQC a range of costs, from \$1.50 per ton to \$3.50 per ton, to be taken to public hearing. We have chosen to include transportation planning under the sub-category of "publicly supported infrastructure," but have increased the range of that category by \$.50 per ton.

I. BACKGROUND

House Bill 3515, passed by the 1989 Oregon Legislature, requires the Environmental Quality Commission (EQC) to establish a surcharge on out-of-state solid waste disposed of in Oregon. Key parts of the legislation include:

"Beginning on January 1, 1991, every person who disposes of solid waste generated out-of-state in a disposal site or regional disposal site shall pay a surcharge as established by the Environmental Quality Commission.."
(ORS 459.297).

The moneys collected through the surcharge are to be "continuously appropriated to (DEQ) to meet the costs of the department in administering the solid waste program"
(ORS 459.297).

"The amount of the surcharge shall be based on the costs to the State of Oregon and its political subdivisions which are not otherwise paid for.." (ORS 459.298).

Oregon is not the first state to deal with the issue of waste being imported from other states. In recent years, many states have adopted or proposed regulations that impose special fees or other regulatory controls on out-of-state waste. A recent report from the National Solid Waste Management Association (NSWMA) identifies 11 states that have adopted such measures, ranging from an Indiana law that imposes the average cost for disposal in the state of origin, to a \$1 per ton fee in West Virginia. The highest fee appears to be in Kentucky, where counties may assess a fee 25% higher for out-of-state waste. The lowest appears to be Alabama, where one county has a \$.50 per ton differential on out-of-state waste. Many of these laws are currently under court challenge.

II. BASIC ASSUMPTIONS AND METHODOLOGY

In developing a surcharge that would be based upon "the costs to the State of Oregon and its political subdivisions" the Department has made a number of important assumptions.

1. The first assumption is that the surcharge cannot be based upon an actual accounting of costs. Rather, it must be based upon a reasonable estimate of potential costs that take into account a range of possible circumstances.

Why not actual costs? First, we acknowledge that the legislature did not intend for the Department to make an after-the-fact accounting of costs to the state resulting from past acceptance of out-of-state waste. The surcharge was clearly intended to be anticipatory, that is, to go into effect before large volumes of out-of-state waste arrive in Oregon, and therefore based upon estimates of future, uncertain events.

Secondly, in attempting to gauge the impact of future importation of out-of-state waste, there are far too many uncertainties to make precise estimates of the cost to Oregonians. How much waste can we expect to receive and what will the waste characteristics be? Will it be transported by truck, barge, or rail? Will it go to a privately-owned or publicly owned disposal site? What is the size of the disposal site, and what will the environmental controls be? Landfill or incinerator?

The answers to these questions are subject to a great deal of uncertainty at the present time, and will likely be different for each load of waste. Therefore, rather than attempt a precise accounting of these costs, the Department has chosen to estimate a range of costs, depending on the circumstances, and to choose a "reasonable" surcharge within that range.

2. The estimate of "costs to the State of Oregon and its political subdivisions" is a distinct policy question from the decision on how the funds generated from the surcharge should be spent.

The legislation specifically states that the funds shall go to meet the costs of "administering the solid waste program." However, the costs to be included in determining the amount of the surcharge should not be limited to those directly related to solid waste management.

This is not meant to imply that DEQ solid waste management programs do not directly or indirectly address many of the costs associated with accepting out-of-state waste. Indeed, the costs of accepting out-of-state waste should be one of the prime considerations in determining how the surcharge revenue should be spent.

3. The amount of the surcharge is to be determined by a reasonable assessment of the costs to Oregon of accepting out-of-state waste. The amount shall not be inflated to discourage importation of waste, nor deflated to encourage importation of waste.
4. Current laws and statutes are presumed to exist. Alternative ways to address potential costs through changes in rule or statute were not considered.
5. Estimates of the cost of tax credits and other subsidies are based upon eligibility. It is presumed that private companies will generally apply for and receive the maximum subsidy for which they are eligible.
6. Costs that are covered through other fees or taxes are not to be addressed by the surcharge. Other specific fees considered include permit fees, PUC per-mile taxes, and host community fees. There should be no double counting.
7. Future cost increases in solid waste management should be anticipated, but have not been calculated directly into the cost estimates. There have been significant increases in the cost of siting new disposal facilities, construction and operation of those facilities, and regulating those facilities. A recent study in Massachusetts has calculated that disposal costs in the late 1980's rose 10 times the rate of general inflation. In Oregon, the average cost of disposal has more than doubled in the last 3 years, and is still going up.

While the current rate of inflation in these costs may not continue into the future, some allowance for general inflation and cost increases in siting, construction, operation, and regulation of disposal sites should be considered when determining what is a "reasonable" surcharge on out-of-state waste.

Sources. The following sources of information were used in developing the calculations and methodology for establishing the surcharge:

1. Analysis of the Policy Implications of Regional MSW Disposal, Draft Report, June 4, 1990, U.S. Environmental Protection Agency.

Memo to: Solid Waste Advisory Committee
July 11, 1990
Page 5

2. Final Environmental Impact Statement: Seattle Waste Transport and Disposal Project, Seattle Solid Waste Utility, July 1990.
3. An Evaluation of the True Costs of Sanitary Landfills For the Disposal of Municipal Solid Waste in the Portland Metropolitan Area, Oregon Department of Environmental Quality, April 1986.
4. Taxing the Solid Waste Stream, Matthew Montavon and Paul L. Shinn, Government Finance Officers Association, April 1990.
5. Putting the Lid on Out-Of-State Garbage, J.S. Brown, State Government News, January 1990.
6. Pricing Solid Waste Disposal At Marginal Cost: The New York City Experience, Mark Berkman and Lisa Mancini, Fifth International Conference on Solid Waste Management and Secondary Materials, Philadelphia, Pennsylvania, December 7, 1989.
7. The Solid Waste Advisory committee meeting in May included a panel discussion on the out-of-state waste surcharge. Speaking at that meeting were:
 - . Bill Ross, Ross and Associates Consultants
 - . Ray Bartlett, ECO Northwest economics consultants
 - . Dennis Illingsworth, Wasco County
 - . Doris Bjorn, Oregon Waste Systems
 - . Joel Ario, OSPIRG

The Department has separated the overall costs used to establish the surcharge into two main categories:

- . Costs related to solid waste management
- . Other costs

Each of these categories will be discussed below, with estimates of the ranges of potential costs for each category and its subcategories.

III. COSTS RELATED TO SOLID WASTE MANAGEMENT

This category includes all costs to the state of Oregon that are related to solid waste management and not otherwise captured through other fees. These costs include all state activities conducted for the purpose of a) reducing environmental impacts or risk, or b) ensuring adequate disposal capacity and solid waste management.

Included in this category of costs are:

1. Statewide activities for reducing environmental risk and improving solid waste management, paid for through the per-ton fee on domestic solid waste.
2. Statewide activities for reducing environmental risk and improving solid waste management, paid for through general funds.
3. The value of tax credits or other state subsidies related to solid waste management.
4. Solid waste reduction activities related to reviewing and certifying out-of-state waste reduction and recycling plans.
5. Increased environmental liability.
6. Lost disposal capacity.

A.1 STATEWIDE ACTIVITIES FOR REDUCING ENVIRONMENTAL RISK AND IMPROVING SOLID WASTE MANAGEMENT, PAID FOR THROUGH THE PER-TON FEE ON DOMESTIC SOLID WASTE.

Oregon citizens finance some statewide solid waste management activities through a 50 cents per ton fee on domestic solid waste. These groups of activities are not currently supported by out-of-state users of Oregon disposal facilities.

These costs and activities include:

- * Statewide solid waste management planning
- * Programs to enhance statewide waste reduction and recycling, including data collection, performance

measurement, education and promotion, and demonstration projects.

- * Programs for management of Household Hazardous Waste and improving management of Hazardous Waste from very small generators who are conditionally exempt from hazardous waste disposal regulations.
- * Establishment of a statewide groundwater monitoring data management system.
- * Planning grants for local governments to use for regional and local solid waste management planning.

The level of these activities is generally related to the volume of waste which must be disposed of, i.e. the more waste received the greater the level of activity required. The receipt of out-of-state waste will require an increase in these activities by adding to the overall level of environmental risk. Out-of-state users should therefore share these costs proportionately with in-state users.

Some have argued that the funding for household hazardous waste programs should not be automatically included in the costs used to calculate the out-of-state waste surcharge because some sending jurisdictions may already be paying for, and implementing programs to separate household hazardous waste from the municipal waste stream. However, the household hazardous waste program in Oregon is designed to decrease environmental risks due to disposal. Waste received from an out-of-state jurisdiction with a similar program still adds an incremental environmental risk to the state of Oregon, and that incremental risk can be offset by increasing the effectiveness of Oregon's household hazardous waste programs.

Currently, the costs involved in these activities total \$.50 per ton.

A.2 STATEWIDE ACTIVITIES FOR REDUCING ENVIRONMENTAL RISK AND IMPROVING SOLID WASTE MANAGEMENT, PAID FOR THROUGH THE GENERAL FUND.

Oregon citizens also finance general statewide solid waste management activities through general funds, generated by income tax revenue. To the extent that out-of-state generators use Oregon's solid waste disposal system, they

are adding to the need for these costs without paying for them. These activities include:

- * Rulemaking and development of statewide policy
- * DEQ costs in administering the state solid waste regulatory program.
- * Statewide solid waste management planning

Currently, the general fund support for these activities totals approximately \$.25 per ton.

A.3 TAX CREDITS AND OTHER PUBLIC SUBSIDIES

Any Oregon tax expenditures in the form of tax credits or other subsidies to support transport or disposal of solid waste represents a "cost" to the state of Oregon to the extent that other states benefit from those expenditures.

In the case of Pollution Control Tax Credits, up to 50% of the cost of equipment or measures to prevent air pollution, prevent water pollution, or enhance waste reduction or recycling can be taken off Oregon income taxes for those private companies constructing landfills. Activities that qualify for tax credits include such things as liner construction, leak detection systems, leachate collection and treatment, and groundwater monitoring.

Some landfills, of course, are publicly owned and therefore not eligible for any tax credits. Other than the pollution control tax credits, Oregon has no other public subsidy at this time. To calculate a cost per ton, one should divide the amount of eligible tax credits (assuming that an operator will apply for and receive what is eligible) by the site capacity. The cost per ton of these tax credits will vary by the amount and cost of pollution control facilities required by DEQ and by the size of the disposal site. Generally, the larger the site, the more garbage per acre that can be disposed of and the lower the cost per ton of the tax credits.

Most of the costs of environmental protection at landfills is included in the construction of each "cell" or waste area. A landfill cost model developed for DEQ by ECO Northwest economic consultants estimates the cost of environmental protection facilities for a small, double-lined landfill cell

at approximately 83% of the cell development costs of \$3.71 per ton. This translates into an eligible tax credit of \$1.50 per ton. Assuming a larger cell, with an average depth of 120 feet, the eligible tax credit is \$.65 per ton. For an even larger landfill, with a fill depth of 250 feet, and on-site clay, the eligible tax credit would be \$.27 per ton.

These figures use the 1986 ECO Northwest cost model. Revising those figures to 1990 dollars, assuming 4% annual inflation, provides a range of \$1.75 per ton to a low of \$.31 per ton.

Potential costs: \$.00 - \$1.75 per ton.

(For larger sites in good locations, the potential costs are more likely to be in the range of \$.31 - \$.75 per ton.)

A.4 SOLID WASTE REDUCTION ACTIVITIES RELATED TO THE REVIEW AND CERTIFICATION OF WASTE REDUCTION AND RECYCLING PLANS

Any out-of-state jurisdiction wishing to send waste to a disposal site in Oregon must, under state law, be certified as providing the opportunity to recycle commensurate with that required of Oregon citizens. In addition, those communities sending more than 75,000 tons per year to a disposal site located on Exclusive Farm Use land must submit a comprehensive solid waste reduction plan, to be reviewed by the Department.

Waste reduction plan review and certification for the opportunity to recycle is a direct cost to the DEQ Solid Waste Reduction program. The work involves initial review of waste reduction and recycling plans, as well as annual review of performance. Assuming 3 major communities (over 75,000 population) export to Oregon, and an additional 5 smaller communities export to Oregon, we estimate an on-going 1.0 FTE for an Environmental Specialist 3, which will come to about \$50,000 annually. Dividing this figure by an expected 600,000 tons annually gives us a figure of roughly \$.08 per ton. If the total amount of waste received varies, or the number of communities requiring review is higher or lower, the cost per ton will be affected.

Estimated cost per ton: \$.05 - \$.15

A.5 UNFUNDED ENVIRONMENTAL LIABILITY

The recent EPA report lists "Environmental Risk, if systems fail" as one of the possible negative impacts of importing solid waste. There are currently mechanisms in place to reduce the risk of such a failure, and to pay for cleanup in case there is one. However, there is a "window" of potential liability that is not covered by present programs, and importing states add to the liability by adding to the volume of waste. In addition, importing states can potentially escape some of the costs of cleanup. Oregonians cannot.

Currently, regional disposal sites are required to have financial assurance to cover closure and limited environmental liability up to \$1 million. Sites that are not designated as "Regional Disposal Sites" under Oregon law do not have this requirement. (At least two sites currently accepting out-of-state waste are not "regional sites")

In addition to the required financial assurance, Oregon recently passed a law that requires (when needed) all disposal sites to pay \$.50 per ton on all solid waste toward a bond fund to finance groundwater cleanups at disposal sites that cannot afford cleanup. This fee also applies to out-of-state waste.

The window of unfunded liability occurs when a disposal site accepting out-of-state waste faces a major cleanup (over \$5 million) that it cannot afford. If the \$.50 per ton charge must be raised statewide to, say \$3.00 per ton to cover the cost of this cleanup, out-of-state users of the site may choose to take their garbage elsewhere, escaping their share of the cost of cleanup.

In addition, when a local government is responsible for cleanup, its citizens, under Oregon law, are subject to a charge of up to \$60 per person to cover the cost of a cleanup. This charge cannot be applied to out-of-state users under Oregon law.

Given the financial assurance mechanisms in place, and the environmental protection requirements for disposal sites in Oregon, the "expected" uncovered liability contributed by out-of-state waste is low. The problem is, of course, that if a \$100 million cleanup were to occur, the "expected" liability doesn't mean much.

The costs, for purposes of establishing a fee, can probably be established one of two ways:

Memo to: Solid Waste Advisory Committee
July 11, 1990
Page 11

- . Do an "expected value analysis" (similar to what insurance companies do) and charge out-of-state waste a fee to cover the "expected" unfunded liability. This would result in a "cost" to Oregon of less than \$.10 per ton.
- . Use a more "generalized" value, related to some percentage of the \$60 per person or the \$.50 per ton.

Estimated cost: \$.10 - \$.50 per ton.

A.6 LOST DISPOSAL CAPACITY

Every ton of solid waste accepted from out-of-state uses disposal capacity which cannot be used for Oregon waste, and which therefore must ultimately be replaced.

Some would argue that privately owned landfill or incinerator capacity is a private good, and is no more a state resource than the widgets produced by a privately-owned factory. However, there are some significant differences between widgets and disposal capacity:

- * First, as the draft EPA report points out, solid waste disposal is a necessary public service, similar to sewer and water.
- * Second, Oregon law (ORS 459.015) states clearly that "extending the useful life of existing solid waste disposal sites" is in the public interest of Oregon.
- * Third, Oregon law (ORS 459.015) states clearly that it is the policy of the State of Oregon (emphasis added) to "encourage utilization of the capabilities and expertise of private industry" to accomplish the public need of solid waste management. This suggests that the use of private facilities does not change the public need or interest in preserving disposal capacity.
- * Fourth, Oregon law (ORS 459.017) states, "The planning location, acquisition, development and operation of landfill disposal sites is a matter of

state-wide concern". This, of course, includes privately owned landfill sites.

- * Last, Oregon law (ORS 459.293) states that " The disposal in Oregon of domestic solid waste generated both outside (emphasis added) and within Oregon will reduce the total capacity available for disposal of domestic solid waste generated in this state;".

The real cost to Oregonians of losing the disposal capacity is actually in replacing that capacity. The replacement can be accomplished in one of two ways: either replacing the capacity through siting of a new facility, or conserving capacity through recycling or other waste reduction efforts.

Both the public and private costs (if private companies are involved) of siting new disposal facilities are eventually borne by the public. If the new capacity (replacement facilities) is utilized by out-of-state waste generators at the same rate as the existing disposal facilities, then direct siting costs will be shared by in-state and out-of-state users proportionately. However, if present out-of-state generators go elsewhere, then Oregonians will pay the total bill for replacement of used capacity.

The 1986 report by ECO Northwest on the true cost of sanitary landfills stated that siting costs could be highly variable. Their general estimate, used in their "base case" is that predevelopment costs for a new landfill total \$.36 per ton. For a much larger landfill, with a total capacity of 60 million tons, the predevelopment costs come to approximately \$.06 per ton. This is not counting the indirect costs of public involvement, nor does it include the rate of inflation since the ECO Northwest model was developed in 1986. Accounting for a 4% annual inflation rate, the costs would be \$.07 to \$.42 per ton in 1990 dollars.

Success in siting efforts is not guaranteed, the recent success in siting regional landfills in Gilliam and Morrow counties notwithstanding. In the case of the Portland metropolitan area, it took at least 4 attempts at siting new facilities (2 public and 2 private) at a direct cost of over \$5 million before facilities were developed. Therefore, direct siting costs may involve the costs of regional planning for replacing or developing multi-county solid waste disposal sites.

Potential costs per ton: \$.07 - \$.42

IV. OTHER COSTS

Other costs, not directly related to solid waste management, include a number of costs that are more difficult to quantify, but are considered "real" costs nevertheless. These include:

- * Image
- * Publicly Supported Infrastructure
- * Nuisance and Loss of "Quiet Enjoyment"

IMAGE

A recent EPA draft report on regional solid waste disposal lists "Public perception of state as a waste state, hurting business development and tourism" as one of the costs to states importing waste for disposal. The potential impact is a tangible loss of jobs and tourism income due to a reduction in the "clean" image that Oregon markets. Some economists in the state have argued that this clean image has significant economic value to Oregon as the state attempts to lure tourists and capital investment to the state.

According to economist Ray Bartlett on the May panel, the actual impact of accepting out-of-state waste could be either negative or positive, depending on how the public perceives it. The actual impact will be determined by two factors:

- . How well the state prevents or responds to major accidents related to the transport and disposal of waste.
- . Whether Oregon can "market" regionally and nationally that the state has solved the garbage problem in an environmentally sound, advanced way. (Countering the prevailing notion that garbage flows to less environmentally progressive states to escape regulation.) A major factor in determining our ability to market Oregon's environmental image is to improve Oregon's programs in solid waste and waste reduction.

Therefore, one way of measuring "image" costs of accepting out-of-state waste is to determine the cost of tipping the balance of these two factors to the positive side. That would include the cost of site regulation (already paid for through permit fees), accident response planning, improving solid waste management and recycling in Oregon, and/or a publicity campaign to market Oregon's environmental record on solid waste. Estimate of potential costs: \$.05 - \$.35/ton.

PUBLICLY SUPPORTED INFRASTRUCTURE

To the extent that importation of solid waste for disposal uses physical or administrative infrastructure in Oregon that is paid for only by Oregonians, there is an extra cost to Oregonians that should be shared by the exporting state(s).

The Solid Waste Section at DEQ has looked at publicly supported infrastructure in both transport of waste and disposal of waste.

Under transport, DEQ looked at the following categories of infrastructure:

- . Spill response capability
- . Maintenance of roadways not covered by P.U.C.
- . Extra rail crossings
- . State or local planning costs related to interstate transport (e.g. P.U.C. hearings, local planning activities)
- . Extra traffic patrolling and safety problems

No specific figures on these costs are currently available; however, most of these costs are likely to be relatively small, given that any transport using truck will pay P.U.C. mileage tax. In addition, cost of local road maintenance in the vicinity of the sites will, in many cases, be addressed through local "host fees".

Very little publicly supported infrastructure for disposal was identified that did not already fall into the category of "solid waste management" discussed above. This could change if Oregon experiences some of the safety and illegal hauling

Memo to: Solid Waste Advisory Committee
July 11, 1990
Page 15

problems the state of Pennsylvania has experienced because of interstate transport of solid waste.

The much larger potential for costs related to transport was brought up during the July 17, 1990 meeting of the Solid Waste Advisory Committee. The committee identified a need, brought on by the potential for large shipments of hazardous materials, for transportation planning in the Columbia Gorge corridor. Such planning is likely to be needed because of the concerns generated by transport of out-of-state solid waste into Oregon, and the need to address potential policy questions regarding safety, recreational compatibility and tourism. This type of planning is costly, perhaps in the hundreds of thousands of dollars, and reflects the type of indirect local and state planning costs that may be borne by Oregonians because of the importation of out-of-state waste.

Potential costs: \$.02 - \$.50 per ton

LOSS OF "QUIET ENJOYMENT"

The Draft EPA report identifies a potential for negative "nuisance" impacts to both the importing jurisdiction and the transit jurisdiction. These potential nuisance impacts include noise, litter, traffic, and visual impacts.

Virtually all nuisance impacts related to disposal are paid for through the host community fee of regional sites (though not at non-regional sites). Therefore any measure of loss of "quiet enjoyment" is likely to be felt as part of transit (truck, rail, or barge).

The loss of this "quiet enjoyment" is difficult to quantify, and is likely to be relatively small, given that the incremental increase in barge, rail, or truck traffic will be minimal. However, some minor loss of "quiet enjoyment" can be expected. The draft EPA report has stated that this loss can be quantified through "political valuation", underscoring the difficulty of quantifying these impacts. Some minimal charge may be appropriate.

Potential costs: \$.02 - \$.10 per ton.

V. SUMMARY AND RECOMMENDATIONS

Using the estimates developed in the preceding analysis, the Department has developed a range of figures for the out-of-state waste surcharge:

Costs Related to Solid Waste Management

\$.50	Statewide activities for reducing environmental risk and improving solid waste management, paid for through the per-ton fee on domestic solid waste.
\$.25	Statewide activities for reducing environmental risk and improving solid waste management, paid for through general funds.
\$.31 - .75	Tax credits and other public subsidies
\$.05 - .15	Solid waste reduction activities related to the review and certification of waste reduction and recycling plans
\$.10 - .50	Unfunded environmental liability
<u>\$.07 - .42</u>	<u>Lost disposal capacity</u>
\$1.28 - 2.57	Total Costs related to Solid Waste Management

Other costs

\$.05 - .35	Image
\$.10 - .50	Publicly Supported Infrastructure
<u>\$.02 - .10</u>	<u>Nuisance Impacts and loss of "quiet enjoyment"</u>
\$.17 - .95	Total Other costs

Memo to: Solid Waste Advisory Committee
July 11, 1990
Page 17

The range of potential total costs of accepting out-of-state waste in Oregon is therefore \$1.45 to \$3.52 per ton.

The Environmental Quality Commission will need to select "reasonable" surcharge, chosen from this range. The Solid Waste Advisory Committee at its July 17 meeting considered the following options:

- . Option 1. Out-of-state users would pay exactly the same as in-state users, currently a per-ton fee of \$.50. This will eventually be raised by \$.50 to cover the establishment of a statewide bond fund for groundwater cleanups at landfills.
- . Option 2. A surcharge on out-of-state solid waste would be \$1.50, including the \$.50 per ton currently paid by in-state users, but not including the establishment of a statewide bond fund.
- . Option 3. A surcharge on out-of-state solid waste would be \$2.00, including the \$.50 per ton currently paid by in-state users, but not including the establishment of a statewide bond fund.
- . Option 4. A surcharge on out-of-state solid waste would be \$2.50, including the \$.50 per ton currently paid by in-state users, but not including the establishment of a statewide bond fund.
- . Option 5. A surcharge on out-of-state solid waste would be \$3.50, including the \$.50 per ton currently paid by in-state users, but not including the establishment of a statewide bond fund.

The Solid Waste Advisory Committee voted on these options, with all but two members supporting the two highest options (options 4 and 5). When given a choice between a \$2.50 per ton surcharge and \$3.50 per ton surcharge, the committee voted 5 to 3 in favor of the higher figure (option 5).

The Department has informed the Environmental Quality Commission of the committee's recommendation, but has recommended that the Commission take a range of costs to public hearing. The range would be \$1.50 to \$3.50 per ton, reflecting the high and low portions of the range in the Department's analysis.

For the option chosen, the EQC should word the rule to divide the surcharge into two parts: one part that is variable, which

Memo to: Solid Waste Advisory Committee
July 11, 1990
Page 18

includes any per-ton fee on in-state users (such as the current \$.50 per ton fee), plus one part that is a specific dollar amount.

The surcharge may be reviewed at a later date and revised by the Commission to reflect inflation and new information based upon actually receiving out-of-state waste.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rules Relating to a Surcharge
on Out-of-State Solid Waste Disposed of in Oregon

Hearing Dates: September 24, 1990
September 25, 1990

Comments Due: October 1, 1990

**WHO IS
AFFECTED:**

Owners and operators of solid waste landfills now disposing of solid waste generated out-of-state or who may accept such solid waste for disposal in the future. Out-of-state generators of solid waste disposing of solid waste in Oregon. Local governments, garbage haulers.

**WHAT IS
PROPOSED:**

The Department proposes to adopt a new surcharge on solid waste generated out-of-state and disposed of in Oregon. The surcharge will be used to meet the costs of the Department in administering the solid waste program. The Department is requesting public comment on a range of surcharge options from \$1.50 per ton to \$3.50 per ton of out-of-state solid waste.

**WHAT ARE THE
HIGHLIGHTS:**

The proposed amendments would:

- o establish a surcharge on solid waste generated out-of-state and disposed of in Oregon;
- o require that the surcharge be submitted at least quarterly.

**HOW TO
COMMENT:**

A public hearing will be held before a hearings officer at:

7:00 p.m.
September 24, 1990
Hearing Room
Portland Building, Second Floor
1120 SW Fifth Avenue
Portland, OR

7:00 p.m.
September 25, 1990
Arlington High School
Arlington, OR

7:00 p.m.
September 25, 1990
Jackson County Courthouse Auditorium
Main and Oakdale
Medford, OR

(The Medford hearing will be preceded by a public information session from 5:00 p.m. to 6:00 p.m. in the same location.)

(over)



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

11/1/86

FOR FURTHER INFORMATION:

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

Written or oral comments may be presented at the hearings. Written comments may also be sent to the Department of Environmental Quality, Solid Waste Permits and Compliance Section, Hazardous and Solid Waste Division, 811 S.W. 6th Avenue, Portland OR 97204, and must be received no later than 12:00 noon, Monday, October 1, 1990.

Copies of the complete proposed rule package may be obtained from the DEQ Hazardous and Solid Waste Division. For further information, contact Steve Greenwood at 229-5782, or toll-free at 1-800-452-4011.

WHAT IS THE
NEXT STEP:

The Environmental Quality Commission may adopt new rules identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed rule revisions at its meeting on November 2, 1990.

WT\SK2907

(e) Grants to local government units for recycling and solid waste planning activities.

(f) To pay administrative costs incurred by the department in accomplishing the purposes set forth in this section, the amount allocated under this subsection shall not exceed 10 percent of the fees generated under ORS 459.294. [1989 c.833 §153]

Note: See note under 459.292.

459.297 Surcharge on solid waste generated out-of-state. (1) Beginning on January 1, 1991, every person who disposes of solid waste generated out-of-state in a disposal site or regional disposal site shall pay a surcharge as established by the Environmental Quality Commission under ORS 459.298. The surcharge shall be in addition to any other fee charged for disposal of solid waste at the site.

(2) The surcharge collected under this section shall be deposited in the State Treasury to the credit of an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the department to meet the costs of the department in administering the solid waste program under ORS 459.005 to 459.426. [1989 c.833 §155]

Note: 459.297 and 459.298 were added to and made a part of ORS 459.005 to 459.426 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

459.298 Amount of surcharge on solid waste generated out-of-state. Subject to approval by the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim between sessions, the Environmental Quality Commission shall establish by rule the amount of the surcharge to be collected under ORS 459.297. The amount of the surcharge shall be based on the costs to the State of Oregon and its political subdivisions of disposing of solid waste generated out-of-state which are not otherwise paid for under the provisions of ORS 459.235 and 459.292 to 459.298, 459.411 to 459.417 and sections 70 to 73, chapter 833, Oregon Laws 1989. These costs may include but need not be limited to costs incurred for:

- (1) Solid waste management;
- (2) Issuing new and renewal permits for solid waste disposal sites;
- (3) Environmental monitoring;
- (4) Ground water monitoring; and
- (5) Site closure and post-closure activities. [1989 c.833 §156]

Note: See note under 459.297.

459.300 Metropolitan service district site selection. (1) The metropolitan service district may provide for the disposal of solid

waste from Clackamas, Multnomah or Washington County at a disposal site or sites other than the site selected by the Environmental Quality Commission under section 5, chapter 679, Oregon Laws 1985.

(2) The Department of Environmental Quality shall not use the selection of a disposal site under chapter 679, Oregon Laws 1985, to find that there is not a clearly demonstrated need for a site or sites selected by the metropolitan service district for disposal of waste under subsection (1) of this section. [1987 c.876 §5]

459.305 Certification that government unit has implemented opportunity to recycle; rules; fee; special provisions for metropolitan service district. (1) Except as otherwise provided by rules adopted by the Environmental Quality Commission under subsection (3) of this section, after July 1, 1988, a regional disposal site may not accept solid waste generated from any local or regional government unit within or outside the State of Oregon unless the Department of Environmental Quality certifies that the government unit has implemented an opportunity to recycle that meets the requirements of ORS 459.165 to 459.200 and 459.250.

(2) The Environmental Quality Commission shall adopt rules to establish a program for certification of recycling programs established by local or regional governments in order to comply with the requirement of subsection (1) of this section. No contract or agreement between an owner or operator of a disposal site and a local government unit shall affect the authority of the commission to establish or modify the requirements of an acceptable opportunity to recycle under ORS 459.165 to 459.200 and 459.250.

(3) Not later than July 1, 1988, the commission shall establish by rule the amount of solid waste that may be accepted from an out-of-state local or regional government before the local or regional government must comply with the requirement set forth in subsection (1) of this section. Such rule shall not become effective until July 1, 1990.

(4) Subject to review of the Executive Department and the prior approval of the appropriate legislative review agency, the department may establish a certification fee in accordance with ORS 468.065.

(5) After July 1, 1988, if the metropolitan service district sends solid waste generated within the boundary of the metropolitan service district to a regional disposal site, the metropolitan service district shall:

(a) At least semiannually operate or cause to be operated a collection system or site for receiving household hazardous waste;



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: August 10, 1990
Agenda Item: F
Division: H & SW
Section: Waste Tire

SUBJECT:

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

PURPOSE:

To allow use of funds from the Waste Tire Recycling Account to expedite cleanup of approximately 500,000 waste tires at a permitted waste tire storage site.

ACTION REQUESTED:

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

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

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

Meeting Date: June 29, 1990
Agenda Item: F
Page 2

- | | |
|---|----------------|
| <input checked="" type="checkbox"/> Approve Department Recommendation | |
| ___ Variance Request | Attachment ___ |
| ___ Exception to Rule | Attachment ___ |
| ___ Informational Report | Attachment ___ |
| <input checked="" type="checkbox"/> Other: | Attachment ___ |

Allow Waste Tire Recycling Account cleanup funds to be made available to partially pay for removal and processing of approximately 500,000 waste tires from Steve Wilson Company's permitted waste tire storage site in White City, Oregon, pursuant to OAR 340-64-150(1)(a); 340-64-155(1), (2) and (4); 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)(b)) requires the Environmental Quality Commission (EQC) to make a finding that strict compliance with a tire removal date set by the Department of Environmental Quality (Department) would result in "substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee."

The Department developed rules and guidelines to ensure equitable evaluation of a permittee's ability to pay for cleanup without causing "substantial curtailment" of the permittee's business or operation.

The Steve Wilson Company and corporate officers' applications for financial assistance have been reviewed by staff (Attachment A). The Steve Wilson Company is a family-held corporation. Larry Wilson and Eva Wilson are both officers and stockholders and are the only parties who would incur financial responsibility for the cleanup. Based on the Department's analysis of financial information submitted by the permittee, the Steve Wilson Company (Larry Wilson and Eva Wilson) would be required to contribute a total of 20% of the waste tire cleanup cost. By rule the Department may not pay more than 80% of the cleanup costs for permittees who are corporations.

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(4) allows the Department to financially assist a waste tire storage

permittee which is a corporation and is financially unable to comply with the tire removal schedule and whose site ranks high in environmental risk.

The Waste Tire Program developed a point system to quantify the environmental risk created by each waste tire site. The Steve Wilson Company site has 57 out of a potential 94 points, and is the seventh among permittees who have indicated they will request financial help.

The 500,000 waste tires are in large piles with fire lanes and pose an environmental threat; a waste tire fire would be difficult to extinguish and could result in toxic air and ground emissions that could contaminate the atmosphere, groundwater, a river and neighboring lands. Presently, the site is no longer accepting waste tires and has not accepted waste tires since 1980. The site is adjacent to the White City Veterans Administration Domiciliary, a few miles north of the White City residential area and is approximately 8 miles north of Medford. This area is within the Medford-Ashland Air Quality Maintenance Area which is a nonattainment area for PM₁₀.

AUTHORITY/NEED FOR ACTION:

- | | | |
|-------------------------------------|---|------------------------|
| <input checked="" type="checkbox"/> | Required by Statute: <u>ORS 459.780(2)(b)</u> | Attachment <u> </u> |
| | Enactment Date: <u>1987</u> | |
| <input type="checkbox"/> | Statutory Authority: <u> </u> | Attachment <u> </u> |
| <input checked="" type="checkbox"/> | Pursuant to Rule: <u>OAR 340-64-150 to 160</u> | Attachment <u> </u> |
| <input type="checkbox"/> | Pursuant to Federal Law/Rule: <u> </u> | Attachment <u> </u> |
| <input type="checkbox"/> | Other: <u> </u> | Attachment <u> </u> |
| <input type="checkbox"/> | Time Constraints: <u> </u> | |

The permit allows the permittee until December 31, 1993, to process or remove the waste tires. It is desirable, however, to have the permittee process or remove the tires as quickly as possible because of the potential environmental threat. This site stores a large number of waste tires in a fire-threatening, unsafe condition.

DEVELOPMENTAL BACKGROUND:

- | | | |
|--------------------------|--|------------------------|
| <input type="checkbox"/> | Advisory Committee Report/Recommendation | Attachment <u> </u> |
| <input type="checkbox"/> | Hearing Officer's Report/Recommendations | Attachment <u> </u> |
| <input type="checkbox"/> | Response to Testimony/Comments | Attachment <u> </u> |
| <input type="checkbox"/> | Prior EQC Agenda Items: (list) | Attachment <u> </u> |

Other Related Reports/Rules/Statutes:

		Attachment	<u> </u>
<u>X</u>	Supplemental Background Information	Attachment	<u> </u>
	- Guidelines, Financial Assistance	Attachment	<u> </u>
	- Analysis: How permittee fits guidelines	Attachment	<u>A</u>
	- Request for financial assistance	Attachment	<u>B</u>
	- Statement from Larry Wilson certifying tire removal would cause substantial curtailment of business	Attachment	<u>B</u>
	- Accepted bid for waste tire removal	Attachment	<u>C</u>

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Steve Wilson Company acquired a waste tire storage site permit with the intention to dispose of the waste tires properly. The corporation and its officers cannot afford the cost of an immediate removal and requested financial assistance from the Waste Tire Program (Attachment B). Removal of the tires over a longer period of time would still cause financial hardship.

PROGRAM CONSIDERATIONS:

The program currently has about \$2 million available for reimbursement to users of waste tires, and for site cleanup. We anticipate having adequate funds to meet permittee requests for financial assistance to remove tires.

The permittee has submitted all financial documents requested by the Department.

As required by rule, the permittee has submitted to the Department a waste tire removal plan describing the proposed action, time schedule and cost estimate at this time of \$478,000 (Attachment C).

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Removal of the tires over a 3-year or longer period by the permittee without financial assistance from the Waste Tire Recycling Account.
2. Removal/processing of the tires within two years of EQC funding approval, or earlier with assistance from the Waste Tire Recycling Account, basing assistance on the existing rule and Department guidelines. Department to pay 80% of cleanup costs; permittee to pay 20%.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Alternative 2. We recommend proceeding immediately with financial assistance for the following reasons:

1. The site is located close to populated areas, White City residential area and Medford, and is adjacent to the White City Veterans Administration Domiciliary; a tire fire would negatively impact the air quality for these communities, and resulting pyrolytic oils could also enter surface and ground waters. A tire fire at this site would be difficult to control.
2. The permittee's financial situation meets the statutory requirement and Department rules, that strict compliance with the Department's cleanup schedule would cause substantial curtailment or closing of the permittee's operation or the bankruptcy of the permittee.
3. 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.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The permittee meets statutory and regulatory criteria for receiving financial assistance to clean up the waste tires. The action would follow agency policy and legislative intent in getting the site cleaned of tires as quickly as possible, thus eliminating the potential environmental problems associated with tire piles.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

If the request for financial assistance is approved, the Department will notify the permittee to proceed with the cleanup, using a contractor approved in writing by DEQ.

Meeting Date: June 29, 1990
Agenda Item:
Page 6

The permittee will arrange for cleanup; the Department will inspect and approve the cleanup operation, and then issue a dual-party check to the contractor and Steve Wilson Company for the Department's portion of the cleanup cost.

Approved:

Section:

Shirley Greenwood

Division:

Stephanie Hallock

Director:

Julie Harris

Report Prepared By: Bradford Price

Phone: 229-6292

Date Prepared: July 2, 1990

BP:b
WT\SB9728
July 2, 1990

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: March 23, 1990

TO: Financial Assistance File

FROM: Deanna Mueller-Crispin *DMC*

SUBJECT: Review: Steve Wilson Co. Request for Financial Assistance

The Steve Wilson Co. site is located in White City, OR, and contains about 250,000 tires. The cleanup cost could be up to \$400,000. The company is a corporation. They have applied for a waste tire storage permit, and would like to apply for financial assistance in removing the scrap tires.

Review of their application must follow DEQ guidelines for assistance to corporations.

Financial responsibility in corporate cleanups is restricted to those officers of the corporation who are also stockholders. Financial responsibility for the cleanup is to be in proportion to their share in the corporation.

Corporate Officers

The Steve Wilson Co. is a family-held corporation; shareholders are Steve and Eva Wilson, husband and wife, and their children. Corporate officers are:

		<u>Percentage of Stock</u>
Steve Wilson	President	0
Larry Wilson (son of Steve)	Vice President	31.75
Eva Wilson (wife of Steve)	Secretary	6

The other stockholders are Richard Wilson (son of Steve and Eva) and Alice Wilson Schneider (daughter of Steve and Eva). They hold approximately the same amount of stock as Larry.

Since only Larry Wilson and Eva Wilson are both officers and stockholders, they are the only parties who would incur financial responsibility for the cleanup based on their income, following DEQ guidelines. There is also a spend-down requirement for cleanup costs of any net corporate assets exceeding \$20,000.

The potential financial responsibility to Larry and Eva Wilson would be for 100% of the cleanup costs. DEQ guidelines require

Memo to: Financial Assistance File
March 23, 1990
Page 2

a financial contribution (income spend-down) from Larry Wilson (as holder of 84% of the stock held by officer-stockholders) of 84% of the cleanup costs, and 16% of the cleanup costs from Eva Wilson.

Income Analysis

DEQ guidelines consider the household income of the corporate officers who are also stockholders. Household income for three years is averaged, and the applicant is required to contribute any income in excess of the State median (\$32,700) to the cleanup. Each corporate officer-stockholder would not be required to contribute a higher percentage of the total cleanup costs than those noted in the preceding paragraph, regardless of his or her income (unless the maximum DEQ contribution of 80% is exceeded).

Income tax information submitted for 1986, 1987 and 1988 yielded the following average gross household incomes for the officers:

Larry Wilson	\$77,439
Eva Wilson	46,419

The "paydown" requirement (average income less State median) based on those incomes would be:

Larry Wilson	\$77,439 - 32,700 =	<u>\$44,736</u> (or 84% of cleanup cost, whichever is less)
Eva Wilson	46,419 - 32,700 =	<u>\$13,719</u> (or 16% of cleanup cost, whichever is less)

Asset Analysis

There is also a spend-down requirement based on corporate net assets over \$20,000. Certain assets are exempt (inventory, buildings, equipment).

The Steve Wilson Co. financial statement dated 12/31/89 shows the following:

Assets

Current:

Cash	\$ 4,644
Accts rec.	15,846
Notes rec.	<u>10,846</u>

Total, current assets \$31,313

Memo to: Financial Assistance File
March 23, 1990
Page 3

Fixed:		
Land		22,665
Other:		
Notes rec.	155,945	
Loan rec.	12,440	
(stockholder)		
Loan rec.	114,209	
(Dean Wilson)		
Note rec.	211,792	
(Rubber Tree)		
Organiz. costs	<u>1,084</u>	
Total, other		495,470
Total assets:		<u>\$549,448</u>

Liabilities

Current liabilities:		
Accts payable	\$ 1,640	
OR excise tax	<u>10</u>	
Total, current liab.		\$1,650
Loans ¹ from stockholders		926,496
Total liabilities:		<u>\$928,146</u>

Net Assets:

Assets	\$549,448	
Liabilities	<u><928,146></u>	
Net assets:		<u><\$378,698></u>

Based on the negative net asset calculation, there would be no spend-down requirement based on corporate assets.

Amount of DEQ Assistance

The maximum amount of assistance which DEQ can offer to a

¹Obligations to Mr. Steve Wilson, accrued on books in course of timber cutting. Mr. Wilson bought timber sales and sold the corporation the timber. The corporation couldn't pay the value, so it accrued. Probably demand obligations.

Memo to: Financial Assistance File
March 23, 1990
Page 4

corporation, based on rule, is 80%. The cost of the cleanup is not yet known.

Up to a cleanup cost of \$292,275, the Steve Wilson Co. (Larry Wilson and Eva Wilson) would be required to contribute a total of \$58,455, based on the above income analysis (Larry contributing \$44,736 and Eva \$13,719).

If the cleanup costs more than \$292,275, the DEQ maximum contribution of 80% will require additional funds from the Steve Wilson Co. (For example, if the cost were \$400,000, DEQ's 80% maximum contribution would be \$320,000; and the corporation would be responsible for the other \$80,000, notwithstanding the above income calculations.)

wilson.rev

RECEIVED

Hazardous & Solid Waste Division
Department of Environmental Quality

April 18, 1990

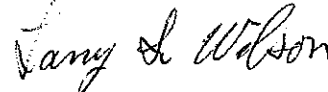
DEPARTMENT OF ENVIRONMENTAL QUALITY
Hazardous & Solid Waste Division
Solid Waste Section
811 S. W. Sixth Avenue
Portland, OR 97204

ATTENTION: Brad Price:

We petition the director to grant a variance pursuant to OAR 340-64-035 (#9), to the technical and operational standards of an outdoor waste tire pile size. We also request a waive of the ricking requirement as we have them in piles already, and if we are going to dispose of them it seems needless to spend the money to rick them.

The removal of these waste tires are going to cause a financial hardship for Steve Wilson Co. and its corporate officers.

Sincerely yours,



Larry S. Wilson
Steve Wilson Co.
165 Dutton Road
Eagle Point, OR 97524

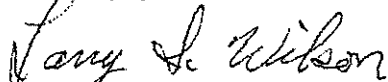
July 23, 1990

Bradford Price
Department of Environmental Quality
Hazardous & Solid Waste Division
811 S. W. 6th
Portland, OR 97204-1390

Dear Mr. Price,

Steve Wilson Co. Corp. and its corporate officers are unable to come up with the money it will take to clean up our tire site. We do need government assistance or it will force Steve Wilson Co. Corp. into bankruptcy.

Sincerely yours,


Larry S. Wilson, Vice-President
Steve Wilson Co. Corp.
165 Dutton Road
Eagle Point, OR 97524

REMOVAL

Cemenergy/Michael H. Bungay

1711-9th Avenue
Sacramento, CA 95818
(916) 443-8416

July 20, 1990

Medford Oregon Scrap Tire Cleanup - Wilson Tire Site

Bid Price: (Four Hundred Seventy Eight Thousand) \$478,000.00

The bid price herein includes the complete scrap tire cleanup of approximately 500,000 passenger tire equivalents on the Wilson site. Legal and Oregon State approved methods will be used for entire cleanup.

All passenger and truck tires will be shipped in whole or processed form to Calaveras Cement for use as fuel. Tires too large for fuel will be processed into smaller components and used in the cement plant.

Michael H. Bungay
Michael H. Bungay



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: August 10, 1990
Agenda Item: G
Division: H & SW
Section: Waste Tire

SUBJECT:

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

PURPOSE:

To allow 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.

ACTION REQUESTED:

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

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

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

Meeting Date: August 10, 1990
Agenda Item: G
Page 2

- Approve Department Recommendation
- Variance Request Attachment
- Exception to Rule Attachment
- Informational Report Attachment
- Other: Attachment

Allow Waste Tire Recycling Account cleanup funds to be made available to partially pay for removal and processing of approximately 200,000 waste tires from Charles Haas's permitted waste tire storage site in White City, Oregon, pursuant to OAR 340-64-150(1)(a); 340-64-155(1), (2) and (4); 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)(b)) requires the Environmental Quality Commission (EQC) to make a finding that strict compliance with a tire removal date set by the Department of Environmental Quality (Department) would result in "substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee."

The Department developed rules and guidelines to ensure equitable evaluation of a permittee's ability to pay for cleanup without causing "substantial curtailment" of the permittee's business or operation.

Mr. Haas' application for financial assistance has been reviewed by staff (Attachment A). His adjusted income for 1988 was \$12,977, and his average income for three years was \$9,562, which is below the state median income of \$32,700 as established by Housing and Urban Development (HUD). His adjusted assets require no spend down, therefore, the Department will pay 90% of the total cost of the cleanup and Mr. Haas will be responsible for 10% of the cost and for paying the contractor directly.

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(4) allows the Department to financially assist a waste tire storage permittee who is an individual and is financially unable to comply with the tire removal schedule and whose site ranks high in environmental risk.

Meeting Date: August 10, 1990
 Agenda Item: G
 Page 3

The Waste Tire Program developed a point system to quantify the environmental risk created by each waste tire site. The Haas' site has 43 out of a potential 94 points, and is the eighth among permittees who have indicated they will request financial help.

The 200,000 waste tires are in large piles with no fire lanes and pose an environmental threat; a waste tire fire would be difficult to extinguish and could result in toxic air and ground emissions that could contaminate the atmosphere, groundwater, a river and neighboring lands. The site is 4 miles northwest of the White City Veterans Administration Domiciliary and the White City residential area, and is approximately 10 miles north of Medford and is within the Medford-Ashland Air Quality Maintenance Area, which is a nonattainment area for PM₁₀.

AUTHORITY/NEED FOR ACTION:

- Required by Statute: ORS 459.780(2)(b) Attachment
 Enactment Date: 1987
- Statutory Authority: Attachment
- Pursuant to Rule: OAR 340-64-150 to 160 Attachment
- Pursuant to Federal Law/Rule: Attachment
- Other: Attachment
- Time Constraints:

The permit allows the permittee until October 31, 1993, to process or remove the waste tires. It is desirable, however, to have the permittee process or remove the tires as quickly as possible because of the potential environmental threat. This site stores a large number of waste tires in a fire-threatening, unsafe condition.

DEVELOPMENTAL BACKGROUND:

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

Meeting Date: August 10, 1990
Agenda Item: G
Page 4

___ Other Related Reports/Rules/Statutes:

___	Supplemental Background Information	Attachment	___
<u>X</u>	- Guidelines, Financial Assistance	Attachment	___
	- Analysis: How permittee fits guidelines	Attachment	<u>A</u>
	- Letter Request for financial assistance	Attachment	<u>B</u>
	- Accepted bid for waste tire removal	Attachment	<u>C</u>

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Mr. Haas acquired a waste tire storage site permit with the intention to dispose of the waste tires properly. He cannot afford the cost of an immediate removal. Removal of the tires over a longer period of time would still cause financial hardship. Mr. Haas has requested financial assistance from the Waste Tire Program (Attachment B).

PROGRAM CONSIDERATIONS:

The program currently has about \$2 million available for reimbursement to users of waste tires, and for site cleanup. We anticipate having adequate funds to meet permittee requests for financial assistance to remove tires.

The permittee has submitted all financial documents requested by the Department.

As required by rule, the permittee has submitted to the Department a waste tire removal plan describing the proposed action, time schedule and cost estimate at this time of \$380,000 (Attachment C).

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Removal of the tires over a 5-year or longer period by the permittee without financial assistance from the Waste Tire Recycling Account.
2. Removal/processing of the tires within one year of EQC approval of funding, or earlier with assistance from the Waste Tire Recycling Account, basing assistance on the existing rule and Department guidelines. Department to pay 90 percent of cleanup costs; permittee to pay 10 percent.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Alternative 2. We recommend proceeding immediately with financial assistance for the following reasons:

1. The site is located close to populated areas (White City and Medford); a tire fire would negatively impact the air quality for this community, and resulting pyrolytic oils could also enter surface and ground waters. A tire fire at this site would be extremely difficult to control.
2. The permittee's financial situation meets the statutory requirement and Department rules, that strict compliance with the Department's cleanup schedule would cause substantial curtailment or closing of the permittee's operation or the bankruptcy of the permittee.
3. 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.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The permittee meets statutory and regulatory criteria for receiving financial assistance to clean up the waste tires. The action would follow agency policy and legislative intent in getting the site cleaned of tires as quickly as possible, thus eliminating the potential environmental problems associated with tire piles.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

If the request for financial assistance is approved, the Department will notify the permittee to proceed with the cleanup, using a contractor approved in writing by DEQ.

Meeting Date: August 10, 1990
Agenda Item: G
Page 6

The permittee will arrange for cleanup; the Department will inspect and approve the cleanup operation, and then issue a dual-party check to the contractor and Mr. Haas for the Department's portion of the cleanup cost.

Approved:

Section: Jim Greenwood

Division: Stephanie Hallock

Director: Jul Haas

Report Prepared By: Bradford Price

Phone: 229-6792

Date Prepared: July 2, 1990

BP:k
WT\SB9727
July 2, 1990

ATTACHMENT A

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

TO: Financial Assistance File

DATE: May 14, 1990

FROM: Bradford D. Price, Waste Tire Specialist

SUBJECT: Review of Charles Walker Haas's Application for Financial Assistance to Remove Tires

Situation

Charles Walker Haas is an individual and a waste tire storage site permittee who has requested financial assistance from the Department to remove about 200,000 waste tires from a site in White City, Oregon. The site ranks very high in "environmental risk" criteria under the Department's point system, making it potentially eligible to receive financial assistance. Mr. Haas has submitted an application for financial assistance and a compliance/closure plan for removal of the tires, and tax returns for three years.

The site is a residential/commercial property owned by Mr. Haas. Mr. Haas collected tires for recapping in the early 1980's. Other individuals delivered tires to Mr. Haas's property where they received fees for recappable tires. The leftover tires were sorted and stored. During the period from 1980-1987, Mr. Haas collected nearly 200,000 automobile and truck tires. Mr. Haas has obtained a waste tire storage site permit so that he can apply for financial assistance to close out the waste tire storage site.

Guidelines

Following the guidelines of the Waste Tire Advisory Committee, the Department drafted rules for determining financial hardship and for determining the amount of financial aid to be given. These rules became effective on 1/24/90. The wording is:

340-62-155 (4) (a) In the case of a permittee who is not a corporation or a local government, the cost of cleaning up the tires:

(A) would cause the permittee's annual gross household income to fall below the state median income as determined by the U.S. Department of Housing and Urban Development; and/or

Memo to: Financial Assistance File
May 14, 1990
Page 2

(B) would reduce the permittee's net assets (excluding one automobile and homestead) to below \$20,000.

(5) The Department may assist a permittee with the cost of tire removal to the following extent:

(a) For a permittee whose income and/or assets are above the thresholds in section (4) of this rule: the permittee is required to contribute its own funds to the cost of tire removal up to the point where "financial hardship," as specified in section (4), would ensue. The Department may pay the remaining cost of the cleanup.

(b) For a permittee whose income and assets fall below the thresholds in section (4) of this rule, the Department may pay up to the following percentage of the cost of cleanup:

(a) For an individual or a partnership: up to 90 percent of the cost (plus any cost of waste tire storage permit fees paid by the permittee);

(b) For a corporation: up to 80 percent of the cost.

Discussion

DEQ guidelines state that the Department is to consider the personal income of the applicant from the previous 12 months. The Department asks for three years of tax returns to determine if the most recent return is comparable to other recent tax returns. Mr. Haas submitted income tax returns from 1986 through 1988. He has filed with the IRS for an extension for 1989. He has stated that his 1989 income is similar to his 1988 income.

Mr. Haas's average yearly income for 1986 through 1988 is \$9,562, and his most recent (1988) income was \$12,977.

Mr. Haas has tentatively selected the bid of Northwest Tire Recyclers, who propose to remove all of the tires by August 30, 1991, for \$330,000. Mr. Haas will be responsible for his 10 percent share of removal costs.

Memo to: Financial Assistance File
 May 14, 1990
 Page 3

Analysis

Haas - Sole Proprietorship - Financial Analysis

	<u>1988</u>	<u>1987</u>	<u>1986</u>
Business net profit	\$ 4,007	\$<2,339>	\$<5,351>
Depreciation	<u>0</u>	<u>0</u>	<u>0</u>
Adj. Business income	4,007	<2,339>	<5,351>
Wages	6,339	6,163	17,358
Interest	92	79	--
Capital gain	--	--	--
Unemployment	--	--	--
Social Security	--	--	--
Dividends	--	--	--
Tax refunds	--	--	--
Pensions	2,539	4,770	--
Unemployment	--	5,538	--
Other gains <losses>	--	--	<4,972> (sale of equipment)
Subtotal:	<u>8,970</u>	<u>11,012</u>	<u>12,386</u>
Total gross income:	12,977	8,673	7,035
Adjustments:			
Medical	<u>--</u>	<u>--</u>	<u>--</u>
Adjusted Total Income:	\$12,977	\$ 8,673	\$ 7,035
Average Income:	\$ 9,562		

Assets:

Cash, checking	\$ 120	
Real Estate	45,220	(land and blds. at 12935 Modoc Road)
Other	<u>2,000</u>	(2 vehicles)
Total assets	\$47,340	

Memo to: Financial Assistance File
May 14, 1990
Page 4

Liabilities

Loans (short term)		
Sears	\$	30
Penney's		30
Correspondence School		50
Carlyle Stort		50
 Total liabilities		 \$?

(Note: The above sums represent monthly payments, not outstanding loan amounts. Mr. Haas did not supply additional information.)

Adjusted:

Asset value + liabilities for one of the vehicles is exempt, since an exemption is allowed for one family vehicle. The value of the real estate is exempted, as it counts as a homestead.

Assets:		Liabilities:
Cash	\$ 120	Loans:
Vehicle	1,500	Real Estate (exempt)
		Short-term?
 Total	 \$1,620	 Total?
 Net Assets:		

Conclusions

The state median income as determined by HUD is \$32,700. Mr. Haas's average household income for the 1986-88 period was \$9,562. His 1988 income was \$12,977. Mr. Haas's net assets are <\$1,620, which is below the \$20,000 threshold. DEQ rules require Mr. Haas to contribute 10% of the cost of the cleanup. The Department would pick up the balance of the removal costs, not to exceed 90% of the total removal cost. Since the estimated cost of cleanup is \$330,000, the Department will pay 90% or \$297,000. Mr. Haas is responsible for the remaining \$33,000.

Under the Department's rule, Mr. Haas is eligible for financial assistance for tire removal based on financial hardship. My recommendation is to proceed with a request for EQC approval of the amount of financial assistance determined below.

Memo to: Financial Assistance File
May 14, 1990
Page 5

Amount of Financial Assistance Recommended

The financial assistance guidelines apply to this case in the following manner:

Applicant: Individual

State median income as
determined by HUD: \$32,700

1988 Annual gross household income: \$9,562

Estimated cost of tire cleanup: \$330,000

Required applicant contribution to reach "financial hardship":

Income: \$9,562 - \$32,700 (state median) = 0
Assets: <\$1,600 - \$20,000 = 0

Applicant contribution: 10% of \$330,000

DEQ contribution: remainder of cleanup costs, not to exceed a maximum of 90% of total cost of cleanup

Summary

Total est. cleanup cost:	\$330,000
DEQ contribution:	297,000
Applicant contribution:	33,000

BP:k
WT\SK2912

Dear Sir,

As of May 1, 1990, I completely closed all tire operations on the premises. A sign has been posted to notify anyone that tires are no longer accepted at this site. A locked gate is also in effect so no one can bring tires onto this property.

I am working with Brad Price to establish an acceptable clean up plan.

Letters are also being written at this time to local government agencies.

I am at present reviewing bids to clean up this site.

Jim Dickson is living on the said property with orders to not allow anyone to dispose of any tires at this site. His address is 12935 Medoc Rd. White City Ore. 97503, phone 503-826-4223

Charles Hays 5/2/90

I am requesting financial assistance pursuant OAR: 340-64-020 (3)

The tires were stored prior to Jan. 1, 1988. I am no longer receiving as of May 1, 1990 any more tires with the exception of removal of any salvagable tires.

I am requesting financial assistance for the closure and clean up of my site.

I petition the director to grant a variance to the technical and operational standards pursuant to OAR: 340-64-035 (9) I wish a waiver to the pile size, ricking requirements, and storage standards.

I request financial assistance, pursuant OAR: 340-64-150(1) I will submit in June 1990 a closure compliance plan to remove and process all waste tires within 1 year after my approval of financial assistance.

I will maintain a locked gate to the site with the proper sign posted.

I will send a letter to the government agencies.

Charles Hays

5-15-90

NTR

Northwest Tire Recyclers
P.O. Box 103
Philomath, OR 97370

ATTACHMENT C

ACCEPTED BID FOR WASTE
TIRE REMOVAL

(503) 929-2948
WTC 003

July 17, 1990

CHARLES HAAS TIRE PILE REMOVAL PLAN

Location 12935 Modoc Rd., White City, Or 97503

Contact Person: Chuck Haas

Tires to be removed over a period of 3 to 6 months--would prefer to have progressive payments made.

Total bid for the site would be \$380,000.00--20% of which to be worked out with Chuck Haas thru either work equity or use of machinery and equipment.

Tires will be removed and delivered to a proper disposal site (see attached list).

Our reference history is also included (see attached list).

ARNOLD G. BEGGS

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

MEMORANDUM

DATE: July 5, 1990

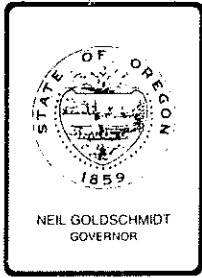
TO: Environmental Quality Commission

FROM: John Hector, Central Region Manager

SUBJECT: Region Manager's Report, August 10, 1990

Following is the outline of a brief oral report that will be presented at the August 10, 1990 EQC Meeting.

- * Overview of DEQ's Central Region
 - Geographical Coverage
 - Staffing
- * Air Quality Issues and Activities
 - Bend's AQ Concerns
 - Klamath Falls PM-10 Non-Attainment
- * Water Quality Issues and Activities
 - Sewage Treatment Plants - Permit Renewals
 - Disposal Well Usage in Central Oregon
 - Gold Mining
- * Hazardous and Solid Waste Issues and Activities
 - Underground Storage Tanks
 - Landfills
- * Environmental Cleanup Issues and Activities
 - Tank Cleanups
- * Questions and Answers



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: August 10, 1990
Agenda Item: J
Division: Water Quality
Section: Municipal Waste

SUBJECT:

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

PURPOSE:

To consider a request from USA for an extension of the compliance date to meet total maximum daily loads (TMDLs) for nutrients at USA's Durham wastewater treatment facility. The Environmental Quality Commission (EQC) is also provided the opportunity to review the approach to meeting TMDLs contained in USA's comprehensive facilities plan to insure that concerns raised during the April 1989 review of USA's Program Plan have been satisfactorily addressed.

ACTION REQUESTED:

- | | |
|---|----------------|
| <input checked="" type="checkbox"/> Approve Department Recommendation | |
| ___ Variance Request | Attachment ___ |
| ___ Exception to Rule | Attachment ___ |
| ___ Informational Report | Attachment ___ |
| ___ Other: | Attachment ___ |

DESCRIPTION OF REQUESTED ACTION:

The Commission is asked to accept or reject USA's request for an extension of the compliance date for the phosphorus TMDL at the Durham facility.

AUTHORITY/NEED FOR ACTION:

- | | |
|---|---------------------|
| ___ Required by Statute: _____ | Attachment ___ |
| Enactment Date: _____ | |
| ___ Statutory Authority: _____ | Attachment ___ |
| <input checked="" type="checkbox"/> Pursuant to Rule: <u>OAR 340-41-470 (3)</u> | Attachment <u>A</u> |
| ___ Pursuant to Federal Law/Rule: _____ | Attachment ___ |

Meeting Date: August 10, 1990
Agenda Item: J
Page 2

X Time Constraints: The rule cited above requires that wastewater control facilities be completed in sufficient time to allow compliance with TMDLs no later than June 30, 1993. The EQC has the authority to extend the TMDL compliance date. In addition, a consent decree, resulting from litigation brought by Northwest Environmental Defense Center (NEDC) et.al. against USA, requires compliance with most National Pollutant Discharge Elimination System (NPDES) permit requirements by June 30, 1993 and full compliance by the end of 1997. The EQC can not extend the consent decree dates. USA needs prompt Department approval of their Facilities Plan so that final design review and construction can proceed.

DEVELOPMENTAL BACKGROUND:

<u>X</u> Prior EQC Agenda Items:	
Staff Report on USA Program Plan	Attachment <u>B</u>
<u>X</u> Other Related Reports/Rules/Statutes:	
DEQ Summary of Recommended Plan	Attachment <u>C</u>
USA Compliance Extension Request	Attachment <u>D</u>
DEQ Discussion of Issues Raised	Attachment <u>E</u>
USA Responsiveness Summary	Attachment <u>F</u>

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The rule establishing TMDLs for nutrients discharged to the Tualatin River (Attachment A) required USA to develop, and EQC to accept or reject, a program plan describing how USA would comply with the rule. In April of 1989 the EQC considered USA's Program Plan and expressed the desire that nonstructural solutions be explored to the maximum extent possible, that short term solutions not preclude preferred long term strategies, and that TMDL compliance occur within specified time frames. The EQC approved the Department's recommendation that USA's approach to facilities planning be accepted, that a time extension for meeting the phosphorus TMDL at Rock Creek be rejected, and that a time extension to meet the phosphorus TMDL at the Durham facility be reconsidered after further study (Attachment B). In a separate settlement of litigation (NEDC et.al. vs. USA) USA agreed to bring all of its wastewater treatment plants into full compliance with NPDES permits by 1997 (compliance with most conditions are required at earlier dates).

In response to the above issues, USA has prepared a comprehensive Facilities Plan which attempts to address compliance with TMDLs for phosphorus and ammonia-nitrogen at the Durham and Rock Creek wastewater treatment plants (USA's

other treatment plants do not discharge to the Tualatin during the low flow months when the TMDLs apply), compliance with NPDES permit limitations at all five USA wastewater treatment plants, and correction of overflow and bypass problems resulting primarily from inflow and infiltration (I/I) in the collection system which conveys wastewater to USA's treatment plants.

The recommended plan contained in USA's Facilities Plan (summarized in Attachment C) includes public education, source controls, wastewater flow management, river flow management, and maximizes treatment and reuse of effluent during summer months. The plan anticipates continued discharge of current effluent volumes to the Tualatin River in order to maintain adequate summer river flow. As growth occurs, wastewater flows coming into USA facilities will increase. The future increase over existing flows will be diverted to reuse (primarily irrigation and wetlands). The goal of the recommended plan is to be reusing 46 percent of summertime effluent (24.2 million gallons per day) by the year 2010. Ultimately over 70 percent of all summertime effluent will be reused (75.1 million gallons per day). Because implementation of a large scale reuse program will take several years, and because current river discharge volumes are to be continued, the Durham and Rock Creek facilities must be designed and constructed to allow phosphorus removal in order to meet the TMDLs in the short term. Fortunately, phosphorus removal capability results in a treatment system layout that is nearly identical to the system required to produce the treated water for reuse.

USA does not believe that modification of the Durham facility can be completed in time to meet the June 30, 1993 TMDL compliance deadline. One reason is the magnitude of work to be accomplished. The final design, which has been submitted to DEQ, identifies the substantial amount of construction that must be accomplished. Another reason is that the Durham plant is currently near capacity. As a result, some process units can not be taken off line to be modified until redundant units are constructed and on line. This creates complex construction management problems and scheduling conflicts. For these reasons, USA has requested, both in the Facilities Plan and in a separate letter (Attachment D), that the EQC extend the compliance deadline by five months to allow them to make full use of the 1993 construction season at the Durham Plant. The other plant to which the TMDLs apply (Rock Creek) has redundant capacity and so will meet the June 30, 1993 compliance date more easily.

Meeting Date: August 10, 1990
Agenda Item: J
Page 4

In addition to the Durham compliance date extension, several other implementation issues are identified in the Facilities Plan. Some of these will require future DEQ and/or EQC action. None are expected to significantly change the physical facilities to be constructed. The issues are summarized, along with Department discussion, in Attachment E. Other issues were also raised during USA's extensive public involvement process. In addition to citizen advisory and intergovernmental coordinating committee meetings, there were open houses, public meetings and other outreach efforts which occurred prior to a hearing before the USA Board of Directors on June 5, 1990. USA has provided a responsiveness summary which groups comments received into general categories (Attachment F).

USA needs timely DEQ acceptance of the Facilities Plan so that they can proceed with final design and construction activities.

PROGRAM CONSIDERATIONS:

The TMDL rule requires compliance by June 30, 1993. Because USA's facilities plan, as submitted, would not result in compliance with the nutrient TMDLs at the Durham facility by the required date, the Department can not accept the plan as written unless the EQC grants an extension or USA agrees to meet the June 1993 date.

The TMDL rule applies only during the low river flow period between May 1 and October 31. If granted, USA's requested five month extension from June 30, 1993 would end on November 30, 1993. This is after the end of the 1993 low flow season. As a result, granting a five month extension would mean that compliance with the nutrient TMDLs for the Durham facility would not be required until May 1, 1994 (nearly a year after the original compliance date). The schedule for compliance with other requirements at Durham and all requirements at the other treatment plants would not be changed.

Additional Department staff work will be needed to complete evaluation and resolution of remaining implementation issues identified in Attachment E. None of these issues will preclude USA from meeting all permit requirements nor are they likely to change the facilities modifications that are needed. Therefore, complete resolution of all issues is not necessary prior to Department acceptance of the Facilities Plan. Acceptance of the plan would not imply any particular position by the Department or the EQC related to those remaining issues.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Approve USA's request for a five month extension of the TMDL compliance date for the Durham facility.

Approval of USA's request would provide an additional construction season to complete modification of the Durham plant. Because five months from June 30, 1993 extends beyond the dry weather permit season (May 1 - October 31), TMDL compliance at the Durham facility would not be required until May 1, 1994 (10 months after the original compliance date). However, significant improvements in USA's wastewater treatment facilities, coincident improvements in water quality, and reductions in permit violations would still occur by June 30, 1993. Compliance with nutrient TMDLs at the Rock Creek facility and compliance with all other requirements at all five USA facilities would occur on the original schedule.

2. Reject USA's request for a five month extension of the TMDL compliance date for the Durham facility and require compliance on the original schedule.

Rejection of USA's request would require USA to attempt to further accelerate the construction schedule for completion of the Durham wastewater treatment facility modifications. Acceleration of the construction would result in a number of logistical and possible safety problems as a result of requiring a large number of contractors to work simultaneously in a limited physical space. If construction could not be completed in time to allow the Durham facility to meet its waste load allocation (WLA) by June 30, 1993, then USA would be in noncompliance with the TMDL and would be subject to civil penalties.

3. Reject USA's request for an extension of the TMDL compliance date for the Durham facility and grant an alternate extension of less than five months.

A TMDL compliance date extension of one, two, or three months would provide USA with some additional time to complete construction while still requiring compliance during the 1993 summer permit season. USA's current construction schedule for Durham does not anticipate start-up of full phosphorus removal capabilities until the end of 1993. Completion of the chemical feed building, a critical element, is not anticipated until July or later. Therefore, an extension of one, two, or three months would require construction schedule acceleration and associated problems as in Alternative 2, i.e. construction management and risk control difficulties.

Meeting Date: August 10, 1990
Agenda Item: J
Page 6

An extension of four or more months takes the compliance date beyond the dry weather permit season and results in compliance not being required until May 1, 1994 as in Alternative 1.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

USA has requested a compliance date extension for the Durham facility which would result in TMDL compliance being required on May 1, 1994 rather than June 30, 1993. The Department recommends approval of USA's request for the following reasons:

1. The necessary construction can not be completed in the available time without overloading existing process units. Overloading these units would risk process failures, deterioration in treatment, and effluent violations. USA is making progress toward compliance with the nutrient TMDLs at both the Rock Creek and Durham plants. Predesign and design began in advance of Department acceptance of the Facilities Plan in order to put USA in a position to complete construction as quickly as possible. Department personnel have been kept informed and involved in the design process. The design for Durham has been completed and was submitted to the Department for review and approval on July 12, 1990. Department engineering staff believe the design to be technically excellent.
2. The Durham facility is currently operating near its maximum capacity. Consequently the plant does not have redundant process units (aeration basins, clarifiers, filters) that can be taken off line while they are modified for phosphorus removal. Therefore, construction of new units must occur prior to modification of existing facilities. In addition, a new chemical feed building must be constructed before full phosphorus removal capability is realized. USA believes it would be difficult to complete both projects by June of 1993. The Department agrees. The difficulty is primarily the result of construction management and risk control problems that arise when multiple contractors are required to work simultaneously at a single site.
3. The Department is also concerned about the high risk of a treatment process failure under an accelerated construction schedule. The plant is located adjacent to an elementary school and is surrounded by a residential

development. The Department would prefer not to force USA into a construction schedule that would further aggravate noise and traffic congestion near the plant site.

4. If the requested extension is granted, the Durham facility will still be able to provide some improved phosphorus removal by June 30, 1993. Other measures (e.g. public education, METRO's phosphorus containing detergent ban, recycling & composting awareness programs, etc.) will help to reduce the amount of phosphorus reaching and passing through the Durham plant to the river by the summer of 1993. In a letter dated July 10, 1990, USA estimates that by June 30, 1993 the facility could achieve effluent phosphorus concentrations of 1.0 - 1.5 mg/l. While this is substantially higher than the approximately 0.1 mg/l the TMDL would require, it is also a significant improvement over the 2.0 - 2.5 mg/l currently being produced. This would result in a daily phosphorus load of 141 - 212 pounds per day as opposed to the approximately 200 - 292 pounds per day currently being discharged from the Durham facility. Full compliance with the TMDL would occur the following spring.
5. Extending the TMDL compliance date for Durham will not effect the compliance dates for permit requirements and other requirements contained in the compliance schedule in the NEDC/USA consent decree. All five of USA's facilities (including Durham) will still be required to come into compliance with monthly and weekly mass limits for organics and total suspended solids, and dechlorination requirements by June 30, 1993. The Rock Creek plant will be in compliance with the TMDLs by June 30, 1993 resulting in substantial reduction in USA's contribution to phosphorus in the river.
6. Approval of USA's extension request will allow the Department to immediately accept the Facilities Plan and take action on plans and specifications that have been submitted for the Durham facility. This, in turn, will allow USA to quickly proceed with construction and ultimate compliance with all requirements.

Meeting Date: August 10, 1990
Agenda Item: J
Page 8

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE
POLICY:

The Department recommendation is consistent with the nutrient TMDL requirement of OAR 340-41-470 (3) and with Agency policies relevant to sewerage works planning and construction, and maintaining water quality in the State.

ISSUES FOR COMMISSION TO RESOLVE:

1. Are construction management and risk control concerns sufficient justification for extension of TMDL compliance deadlines?
2. Does the Recommended Plan adequately address issues raised during the Commission's April 1989 review of USA's Program Plan?

INTENDED FOLLOWUP ACTIONS:

The Department will work with USA to resolve the remaining implementation issues which require DEQ involvement.

The Department will review USA reports and progress milestones on the schedule contained in the NEDC et.al. vs. USA consent decree. These include:

Effluent Toxicity Evaluation Report
Groundwater/Pond Leakage Irrigation Report
Sewer System Evaluation Study Report
Various facility plan updates and progress reports

Approved:

Section: Mary M. Haldenstone

Division: Neil Mullane

Director: Fuller

Report Prepared By: Mitch Wolgamott

Phone: 229-5622

Date Prepared: July 20, 1990

DMW:crw
(MW\WC6876)
(7/24/90)

SPECIAL POLICIES AND GUIDELINES

340-41-470

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

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

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

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

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

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

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

- (i) Alternative control systems capable of complying with sections (a) and (b) of this rule;
 - (ii) Maintenance and operation of the control systems;
 - (iii) Assurance of erosion control during as well as after construction.
- (D) In cooperation with the Department of Agriculture, within 180 days of the adoption of this rule develop a control strategy for addressing the runoff from container nurseries.



Department of Environmental Quality

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

REQUEST FOR EQC ACTION

Meeting Date: April 14, 1989
Agenda Item: 0
Division: Water Quality
Section: Sewage Disposal

SUBJECT:

Unified Sewerage Agency (USA) Program Plan to meet total maximum daily loads (TMDL) for nutrients discharged to the Tualatin River.

PURPOSE:

Rules which establish total maximum daily loads (TMDLs) for nutrients in the Tualatin River require USA to submit a Program Plan. The Program Plan is to present preliminary alternatives for achieving waste load allocations (WLAs) by June 30, 1993. The Program Plan is also to contain provisions and a time schedule for developing and implementing an agreement with Lake Oswego Corporation for algae control.

The Commission must approve, modify or reject USA's Program Plan for addressing the TMDLs. The Commission also may reexamine the compliance date of June 30, 1993 in light of USA's Program Plan submittal. The purpose of having an "approved" Program Plan is to provide USA with direction and guidance as to acceptable courses of action in carrying out subsequent steps for achieving TMDLs.

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

Meeting Date: April 14, 1989
Agenda Item: 0
Page 2

- | | | |
|--|------------|-----|
| Public Notice | Attachment | ___ |
| ___ Issue a Contested Case Order | | |
| ___ Approve a Stipulated Order | | |
| ___ Enter an Order | | |
| Proposed Order | Attachment | ___ |
| <u>X</u> Approve Department Recommendation | | |
| ___ Variance Request | Attachment | ___ |
| ___ Exception to Rule | Attachment | ___ |
| ___ Informational Report | Attachment | ___ |
| ___ Other: (specify) | Attachment | ___ |

DESCRIPTION OF REQUESTED ACTION:

The Department is requesting that the Commission approve staff recommendations. Our recommendation is for approval of the Plan but that specific items or issues addressed within the Plan be 1) denied or 2) given future reconsideration.

AUTHORITY/NEED FOR ACTION:

- | | | |
|--|------------|----------|
| ___ Required by Statute: _____ | Attachment | ___ |
| Enactment Date: _____ | | |
| ___ Statutory Authority: _____ | Attachment | ___ |
| <u>X</u> Pursuant to Rule: <u>OAR 340-41-470</u> | Attachment | <u>E</u> |
| ___ Pursuant to Federal Law/Rule: _____ | Attachment | ___ |
| ___ Other: | Attachment | ___ |
| <u>X</u> Time Constraints: | | |
| USA submitted a Program Plan within 90 days of adoption of TMDL rules. Within 120 days of the Program Plan submittal and within 60 days of the public hearing, the EQC is to approve, reject, revise, or reconsider the plan and/or TMDLs. | | |

DEVELOPMENTAL BACKGROUND:

- | | | |
|---|------------|----------|
| ___ Advisory Committee Report/Recommendation | Attachment | ___ |
| <u>X</u> Hearing Officer's Report/Recommendations | Attachment | <u>C</u> |
| ___ Response to Testimony/Comments | Attachment | ___ |
| <u>X</u> Prior EQC Agenda Items: | | |
| EQC Staff Report on TMDLs, Sept. 1988 | Attachment | <u>F</u> |
| <u>X</u> Other Related Reports/Rules/Statutes: | | |
| DEQ Summary of the Program Plan | Attachment | <u>A</u> |
| DEQ Evaluation Report | Attachment | <u>B</u> |
| Written Testimony | Attachment | <u>D</u> |
| ___ Supplemental Background Information | Attachment | ___ |

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

USA reported that meeting the mid-1993 TMDL compliance date at all six waste treatment facilities is not reasonable.

They indicated the compliance date for achieving TMDLs at Rock Creek or Durham facilities may need to be extended to early 1996, depending on the alternative selected. USA indicated that if the use of costly advanced tertiary treatment is to be avoided at the Rock Creek facility then modifications to existing TMDLs and WLAs will be needed. USA reported that costs for complying with the new TMDL standards create a tremendous financial challenge.

The public commented that since the TMDLs and their associated target dates for implementation are already established for the Tualatin River, any changes in the existing rule is in violation of existing laws. The public is concerned that any change in the established TMDL criteria or time schedule is unwarranted. The public concerns include alternatives being considered by USA. Additional alternatives or more exhaustive study of existing options (such as wetlands) are recommended. Concern was expressed that transfer of treated effluent to the Willamette River may not solve pollution problems or be good use of public funds.

PROGRAM CONSIDERATIONS:

Department review of progress reports and facility plans is anticipated. If future USA studies (progress reports or facility plans) yield new information that could affect TMDL compliance, then it will be necessary for the Department to evaluate findings and make recommendations to the EQC.

The Department will need to evaluate remaining technical issues that may influence alternatives to achieve TMDLs. Both total dissolved solids (TDS) impacts on the Tualatin River and irrigation standards require further investigation and may require rule changes or approvals from the Commission. This may affect the ability of the Department to do other scheduled activities.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Approval of the entire Program Plan.

The Department's evaluation does not support approval of the entire Program Plan. Our support for approval of the entire plan is not given because several requests by USA are unnecessary, unjustified, or are premature. Examples of unnecessary or unjustified requests by USA are:

- a. A time extension for compliance with TMDLs at the Rock Creek facility;

- b. The transfer of phosphorus waste load allocation (WLA) to the Rock Creek facility from loads presently assigned to the Durham facility and held by the DEQ in reserve for future growth; and
- c. The issue raised by USA that increased sewer user cost for removing phosphorus is a basis for time extensions or granting other requests.

2. Rejection of the entire Program Plan.

The Department's evaluation does not support denying or rejecting the entire Program Plan. This is because several portions of the plan meet the objectives of the TMDL rule, and certain requests by USA may have merit but are premature and need additional investigation before a final decision can be made.

3. Approval of the Program Plan with denial or reconsideration of select items.

The Department's evaluation of the Program Plan and public comment support this alternative. The Program Plan is acceptable with the exception of certain requests or proposals by USA. The unacceptable items will be denied or rejected. Other requests in the Program Plan are premature and could be reconsidered by the Commission at a later date after additional information is available.

With this action, USA is provided with clear direction on alternatives that are either approved or rejected. After further investigation, issues that have not been fully developed and would otherwise be rejected based on limited information, can, if necessary, be resubmitted for reconsideration by the Commission after further investigation.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Program Plan be accepted but that those items that are unacceptable be rejected. Future investigation by USA may warrant reconsideration of certain items by the EQC. In addition, the Department recommends authorization and direction to both DEQ and USA for items that require modification, submittal, or further study.

1. The following are recommended for approval:
 - a. USA's Approach: USA's two-part approach for conducting planning on both an interim and long-term basis will allow USA to focus on meeting the EQC June 30, 1993 deadline for achieving TMDLs and concurrently developing reuse and reclamation strategies that will serve their ultimate needs.
 - b. USA's Alternatives for Facility Planning: A number of alternatives have been proposed for further investigation and more detailed study by DEQ. Interim alternatives are those approaches that can be implemented by, or near, the June 30, 1993 compliance date. Interim alternatives to comply with TMDLs vary depending upon the facility but consist of: conventional tertiary treatment; reuse, export of effluent out-of-basin, advanced tertiary treatment, and membrane processes. Long-term alternatives will take longer to develop and include: effluent irrigation/ reuse, export of effluent out-of-basin, advanced wastewater treatment, wetland effluent polishing, flow management/ augmentation, influent nutrient load reduction, or various combinations of these alternatives.
 - c. Time to Achieve Compliance with TMDLs: At the Hillsboro-Westside, Banks, Gaston, and Forest Grove facilities compliance will be achieved by June 30, 1993.
 - d. Development of Agreement with Lake Oswego Corporation: Found in the plan are provisions to develop an agreement with the Lake Oswego Corporation including steps for improving water quality in Lake Oswego. The Program Plan includes a statement that this agreement shall be accomplished prior to 1991. This compliance date is consistent with the TMDL rule.
2. The following items requested by USA are recommended for rejection:
 - a. Time Extension for TMDL Compliance at the Rock Creek Facility: USA requests a time extension for compliance with TMDLs at Rock Creek from 1994 through 1996 depending upon the alternative finally selected. The Department's evaluation indicates existing technology and acceptable alternatives are available for meeting the already established June 30, 1993 deadline. The Department has located over twenty wastewater treatment facilities that remove phosphorus to concentrations required to be achieved by the Rock Creek plant. All twenty of these facilities utilize

conventional tertiary treatment technology that is already partially in place at USA's Rock Creek plant.

- b. Transfer of Phosphorus WLAs from both the Durham Facility and the Department Reserves: USA requests a transfer of phosphorus waste load allocation from the Durham facility (assuming its discharge is exported to the Willamette River) and loads held as future reserve by the Department.

The Department's evaluation indicates this transfer will have little impact on whether conventional tertiary or advanced tertiary treatment technology is needed to achieve the TMDLs. Shifting of phosphorus loads may also result in undesirable localized stresses on water quality. The requested transfers will also result in TMDL values being exceeded on a small section of the Tualatin River. More importantly, USA's effective management of river flow augmentation or increasing its reclamation capabilities could have a much greater effect on being able to achieve compliance with TMDLs than waste load transfers.

- c. Cost Considerations: USA contends that the high cost of removing phosphorus could result in an unreasonably high future total sewer user rate of \$30/equivalent dwelling unit (EDU). This and additional cost information is presented in their plan as justification for granting their requests.

The Department's evaluation indicates modifying the present TMDL ruling or associated time schedules because of cost considerations is not warranted. First, the Department finds that if USA implements their preferred alternatives to achieve compliance with the TMDLs, their estimated rate (\$30/EDU) would drop by \$4/EDU. Second, \$9/EDU of their estimated sewer user rate is associated with expansion to accommodate growth and development. Third, \$12/EDU of their estimated rate is existing debt. Fourth, approximately \$5 to \$9/EDU of USA's estimated total sewer use rate is associated with achieving TMDLs. Finally, a number of communities in Oregon and in the nation have similar or higher sewer use rates.

3. The following are recommended for reconsideration after further investigation and documentation in USA's Progress Reports to the Department:
- a. Time Extension for Compliance at the Durham Facility: USA requests that a time extension be given at the

Durham facility for complying with the TMDL rule. USA requests dates of late 1995 or early 1996, depending on the final alternative selected.

The Department's evaluation supports that issues affecting compliance at the Durham facility are more complex than those of the Rock Creek plant and may take longer to resolve. However, there is no firm evidence that the mid-1993 deadline cannot be met. This request should be deferred until further efforts are made to achieve the June 30, 1993 compliance date and a progress report for the Durham plant is submitted.

- b. Modification to TMDL Flow Regime: USA requests they not be required to meet TMDLs during low river flows (below 150 cubic feet per second (cfs)) if they are making good faith efforts to maintain or augment Tualatin River flows above 150 cfs. They would prefer to design the Rock Creek facility improvements to achieve a higher effluent phosphorus concentration than would be necessary if the plant was designed to meet TMDLs for lower river flows.

The Department concurs that this approach may have merit, especially if Tualatin River flows at or above 150 cfs can be maintained. However, further details are needed, including:

- (1) The mechanisms USA proposes to establish for maintaining flows at or above 150 cfs, and
- (2) The frequency and duration that stream flows below 150 cfs would likely occur.

Additionally, USA needs to complete facility planning which includes a comparison of the effluent quality resulting from both conventional tertiary and advanced tertiary treatment, and the associated cost for implementing each technology.

4. The following are recommended for authorization/direction:

- a. USA Submittals: For USA to achieve compliance with the TMDLs by June 30, 1993, the following need to be submitted by USA:

- (1) By December 31, 1990 -- An agreement with Lake Oswego Corporation for controlling algae in Lake Oswego.

Meeting Date: April 14, 1989
Agenda Item: 0
Page 8

- (2) By February 28, 1990 -- A progress report on facility planning efforts and a basis for reconsideration of any TMDL issue for the EQC.
 - (3) By June 30, 1990 -- Completed facility plans for Rock Creek and Durham facilities.
- b. DEQ Study and Report: Issues regarding total dissolved solids (TDS) limitations on the Tualatin and irrigation guidance by the Department have been raised as possible unresolved issues that may interfere with compliance by USA. The Department has already started a study of these issues and, if necessary, plans to submit an evaluation report and request action to the Commission by June 30, 1990. Failure to carry out the needed studies, recommendations and possible rule changes may result in eliminating or postponing implementation of certain alternatives USA has presented.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The recommendations by the Department are fully consistent with the requirements and intent of OAR 340-41-470, adopted by the Commission at their September 9, 1988 meeting.

ISSUES FOR COMMISSION TO RESOLVE:

1. Is USA's proposed two-part approach (interim and long-term) to planning appropriate?
2. Does USA's program plan identify and consider all reasonable alternatives for achieving the Tualatin River TMDLs?
3. Is USA's proposed June 30, 1993 compliance date to achieve TMDLs at Hillsboro-Westside, Banks, Gaston, and Forest Grove acceptable?
4. Has USA clearly identified plans to develop an agreement with the Lake Oswego Corporation?
5. Should USA receive a time extension at the Rock Creek facility for complying with TMDLs?
6. Should USA be granted the transfer of phosphorus WLAs to the Rock Creek facility from the Durham facility and the DEQ reserves?
7. Are increased costs in sewer rates for phosphorus removal justification for delaying compliance with TMDLs or for granting other requests by USA?

Meeting Date: April 14, 1989
Agenda Item: 0
Page 9

8. Should USA receive a time extension at the Durham facility for complying with TMDLs?
9. Should modifications be made to USA's TMDL flow regimes and USA not be required to comply with TMDLs during low river flows?
10. Are the dates and items listed for submittal by USA acceptable?
11. Can the DEQ begin the studies and evaluations necessary to address unresolved issues associated with USA's plans to achieve TMDLs?

INTENDED FOLLOWUP ACTIONS:

The following followup action is required by the Department:

1. Review, evaluate, determine findings, and make recommendations on USA's progress reports and facility plans. If requested by USA, prepare an EQC staff report on unresolved issues for: a) achieving TMDLs at Durham and b) modifying the implementation procedures for TMDLs.
2. Review and approve of USA's agreement with the Lake Oswego Corporation for helping to control algae in the lake.
3. Evaluate and report to the Commission on TDS and irrigation issues by June 30, 1990.

Approved:

Section: Mass M. Halliburton
Division: Ad-AdH for Richard J. Nichols
Director: Ryana Taylor
for Fred Hansen

Report Prepared By: John R. Harrison

Phone: 229-5371

Date Prepared: March 21, 1989

(JRH:kjc)
(SD\WJ1658)
April 7, 1989

B-9

Department of Environmental Quality

Summary of

RECOMMENDED PLAN

Contained in

Unified Sewerage Agency of Washington County
Wastewater Facility Plan

BACKGROUND:

On September 9, 1988 the Environmental Quality Commission (EQC) adopted a rule establishing total maximum daily loads (TMDLs) for nutrients discharged to the Tualatin River and setting a compliance date of June 30, 1993. The rule required Unified Sewerage Agency of Washington County (USA) to submit, and EQC approve or reject, a program plan describing how and when USA would comply with the TMDL rule. On April 14, 1989 the EQC considered USA's program plan. During discussions, the EQC expressed a desire that nonstructural solutions, such as wetland treatment systems, effluent reuse, and irrigation, be explored to the maximum extent possible. The EQC also expressed a desire that alternatives other than exporting treated effluent to another river be given high consideration.

In response to the program plan, the Department recommended approval of USA's two-part approach for conducting planning to meet the June 30, 1993 compliance date and developing a long term strategy. The Department recommended rejection of USA's request for a time extension for compliance with the phosphorus TMDL at the Rock Creek facility, and rejection of USA's position that phosphorus removal would result in unreasonably high sewer user rates. Finally, the Department recommended reconsideration after further study of USA's request for a time extension for compliance with the phosphorus TMDL at the Durham facility and modification of TMDL flow regimes to include a river flow greater than 150 cfs. The EQC unanimously approved the Department's recommendations.

The TMDL rules apply only during the dry weather (low river flow) period between May 1 and October 31. A separate law suit filed by the Northwest Environmental Defense Center et. al. (NEDC) against USA addressed past violations of existing permit limits which occur primarily during wet weather periods. Past permit compliance problems include numerous violations of mass load limits, effluent concentration limits and 85% removal requirements at the Durham, Rock Creek, Hillsboro-West, Forest Grove and Gaston Facilities. (It should be noted that the Gaston facility has now been decommissioned and Gaston flows have been transferred to the

Forest Grove facility.) As part of the settlement of the litigation USA agreed to bring all facilities into full compliance with National Pollution Discharge Elimination System (NPDES) permits by the end of 1997 (compliance with some portions of the permits are required at earlier dates).

In addition to the TMDL and permit compliance issues, USA has also experienced continuing problems with overflows and bypasses of raw sewage resulting primarily from overloads of the system because of inflow and infiltration (I/I) of excess water into the system during periods of wet weather.

FACILITIES PLAN ALTERNATIVES:

USA has prepared a comprehensive facilities plan which attempts to address both the dry season TMDL issues and the wet season NPDES and I/I issues. The planning effort included technical evaluation of available options, compilation of viable options into possible alternative plans, an extensive public involvement process, selection of a recommended alternative, identification of implementation issues which will effect the long-term success of the plan, estimation of the costs and recommendations for financing.

The planning effort evaluated five alternative approaches which could be pursued. The alternatives were virtually identical in their approach to meeting the TMDLs and complying with most of the existing permit limits by 1993. All five alternatives depended on expansion and upgrading of the USA's two largest facilities (Durham and Rock Creek) to meet winter mass limits and allow for chemical addition to remove phosphorus to meet the summer TMDL by 1993. The smaller facilities (Forest Grove, Hillsboro-West and Banks) would also be upgraded to meet winter mass limits and allow for continued irrigation of effluent during the dry season.

After 1993 the alternatives differ in how they would deal with increasing wastewater flows resulting from the anticipated growth in Washington County. The five alternatives are listed below:

Alternative 1 - Continued Surface Discharge.

This alternative would expand and enhance USA's current strategy of year round treatment and discharge at the two largest plants (Durham & Rock Creek) and winter treatment and discharge combined with summer effluent irrigation at the smaller plants.

Alternative 2 - Maximize Reuse.

This alternative builds on alternative 1 by maximizing reuse (irrigation) of effluent at all plants.

Alternative 3 - Maximize Reuse and Natural Systems.

This alternative builds on alternative 2 by adding the option of using wetland systems for effluent polishing and storage.

Alternative 4 - Export Treated Wastewater out of Tualatin Basin.

This alternative would eventually pipe all effluent out of the basin (either to the Columbia or Willamette).

Alternative 5 - Maximize Tualatin River Flow Management.

This alternative emphasizes river flow augmentation by constructing an additional reservoir similar to Hagg Lake.

THE RECOMMENDED PLAN:

USA's Recommended Plan is not identical with any of the original five alternative systems. It most closely resembles Alternative 3 - Maximize Reuse and Natural Systems but includes additional elements. The elements contained in the Recommended Plan are briefly summarized below.

Public Education

An extensive education effort will raise public awareness of the problems facing the Tualatin River and its tributaries.

Source Controls

Source controls should reduce the amount of pollution entering the wastewater. Source control elements include:

Phosphate Detergent Ban

Industrial Pretreatment/User Fees

Encourage recycling of grease, oil and antifreeze

Encourage composting instead of use of garbage disposals

Wastewater Flow Management

This element is intended to reduce excessive wastewater flows which will ease compliance with mass limits and reduce or eliminate overflows and bypasses. This is accomplished primarily through sewer rehabilitation to repair failing joints, cracks and other defects where infiltration and inflow (I/I) occur. The plan also includes a recommendation that USA assume increased authority for inspection of all house services in the USA service area.

River Flow Management

This element is intended to help maintain "adequate" summertime river flow to aid in compliance with permit requirements at Durham and Rock Creek. It relies primarily on management of water releases from Hagg Lake and additional water supplied by the expansion of Barney Reservoir (on the Trask river). Because Barney Reservoir is a municipal water supply, the expansion will provide additional water for river flow management for about 10 years after which the availability of the water will gradually decline as municipal and industrial demands increase.

Water Conservation

USA has no authority over potable water use. USA will advocate conservation measures that will help reduce some pollutant loads, reduce wastewater volume, and reduce the amount of water removed from the river for municipal use.

Planned Growth

USA plans to work with local planning agencies to alert decision makers to what USA's treatment capacity is and advocate for placement of adequate wastewater services prior to development. The recommended plan depends on availability of land for reuse of large volumes of effluent. USA will participate in the land use planning process to advocate for continued availability of agricultural lands outside the urban growth boundary (UGB). USA has no authority in the area of land use planning.

Treatment and Reuse

The recommended plan strives to maximize reuse of highly treated effluent while also maintaining river flow. This balance is achieved by maintaining the current quantity of treated effluent discharged to the river (about 43 CFS and at times approaching 50 percent of the total river flow). As growth occurs and the amount of wastewater entering USA's plants increases, the resulting effluent flow increase will be diverted to reuse. As a result, the amount of effluent discharged to the river (and the mass loads and nutrient loads) should not increase over time.

Banks, Forest Grove and Hillsboro West

All summertime effluent will be reused. USA would like DEQ to make the summer permit season flow based as well as calendar based. This would allow discharge to the river during the summer permit season if river flows remain high after May 1. Winter wastewater flows will be treated and discharged to the river. USA is considering decommissioning the Banks facility and conveying its flows to Hillsboro West or Forest Grove.

Durham and Rock Creek

Initially, major facility expansions will be undertaken to achieve compliance with summer TMDLs and winter mass discharge limits. Phosphorus removal will be achieved in summer by two-stage alum addition coupled with biological nutrient removal and effluent filtration. Winter mass limits will be met using secondary treatment and filtration. Long-term ability to comply with standards and permit conditions is dependent on implementation, over the next 5 - 10 years, of major reuse programs at these two facilities. A recommended implementation strategy will be developed at a later date. Implementation will require large facilities for conveyance and storage of treated effluent.

Wetlands

USA will test the feasibility of wetland treatment systems over the next several years. Based on the results of this testing, USA will decide, by 1997, whether to implement wetland treatment systems on a large scale.

Sludge

All sludge produced will be reused. The current practice of incineration at Durham will be eliminated. A variety of products for reuse will be produced (liquid sludge, dewatered cake, compost).

EXPECTED PERFORMANCE, IMPLEMENTATION SCHEDULE:

Reuse/wetlands - All facilities will be capable of producing effluent of a quality which complies with provisions in the proposed reuse rules during the low river flow season (May 1 - October 31) by 1993. At the Banks, Forest Grove and Hillsboro West facilities 100 percent of effluent is currently being irrigated. These capabilities will be expanded to continue 100 percent reuse or wetland treatment as flows increase in the future. The Durham facility currently reuses 4 percent of effluent produced. This will be expanded to 32 percent by 1995. By 2010, 54 percent of Durham effluent will go to either reuse or wetlands. At ultimate buildout 70 percent of effluent will go to either reuse or wetlands. At Rock Creek 2 percent of effluent produced is currently reused. By 1995 this will increase to 6 percent. By 2010, 23 percent of effluent will go to either reuse or wetlands. At ultimate buildout 70 percent of Rock Creek effluent will go to either reuse or wetlands.

Phosphorus - The Durham and Rock Creek facilities will be designed to produce effluent phosphorus concentrations that are low enough to meet the TMDL under the worst case low river flow conditions even if all effluent must be released to the river (0.07 and 0.09 mg/L respectively). These facilities will be in place and operational at Rock Creek by June 30, 1993 and (if the requested extension is granted) at Durham by May 1, 1994.

Ammonia-Nitrogen - The Durham and Rock Creek facilities will be designed to meet the ammonia-nitrogen TMDL under the worst case low river flow conditions. This capability will be in place at Rock Creek by June 30, 1993 and at Durham by May 1, 1994 (if the requested extension is granted). USA recommends that an ultimate oxygen demand (UOD) limit be established instead of separate ammonia-nitrogen and CBOD limits.

Dilution Requirement - Assuming that compliance is determined on a monthly basis the facilities will meet the requirement by June 30, 1993.

Summertime Mass Limits - The Durham and Rock Creek plants will reliably meet all summer total suspended solids (TSS) and CBOD limits by June 30, 1993.

Wintertime Mass Limits - USA facilities will reliably comply with monthly and weekly mass limits for TSS and CBOD by June 30, 1993. According to USA, compliance with the daily limits will be "very difficult" at Durham and Rock Creek. USA supports establishment of limits that are water quality based rather than policy based. Necessary data is being collected by USA to request and justify a change to these limits. Compliance with the daily limit is not required until 1997.

Total Dissolved Solids (TDS) - The current TDS guide concentration of 100 mg/l for the Willamette and its tributaries will be exceeded at times during periods of low river flow. The chemical treatment proposed for use to meet the phosphorus TMDL will greatly increase the TDS concentration of effluent from Durham and Rock Creek. An increase in the TDS standard is advocated by USA.

Toxicity Standards - Dechlorination will be implemented at all of USA's facilities. This is expected to achieve compliance with toxicity requirements by June 30, 1993.

FINANCIAL ANALYSIS:

The total capital cost for the facilities over the several years of implementation is estimated to be \$465.8 million. Operating costs will increase dramatically over the planning period. Because federal and state revenue sources are limited, facilities plan funding sources will have to come largely from within the USA service area. The goal of the facilities plan is to clean up the Tualatin River and the benefits of the plan will primarily be confined to the Tualatin Basin. It is, therefore, reasonable that the costs will be borne by residents and businesses within the basin. The plan will be funded primarily through user charges and system development charges (connection fees). Financing will be primarily through revenue bonds secured by the revenue stream of the user charges, system development charges and interest & other revenues.

Rate Impacts

A comparison of sewer charges from other local jurisdictions around the Pacific Northwest indicates that currently USA's service rates are relatively low. The current trend of shifting capital investment burden from federal and state governments to local jurisdictions is likely to affect other communities the same way it is affecting USA over the next 20 years. System development charges of USA are expected to increase from the current level of \$1,250 to \$2,500 by 1993. Residential sewer rates will increase from the current rate of \$13.50 per month to \$37.50 per month by the year 2010.

Affordability Analysis

Residential rates in the USA service area are currently less than 0.05 percent of median household income. USA's analysis shows that if one assumes zero growth in household income, sewer rates will raise to about 1.3 percent of median household income by 2010. If, however, one assumes an annual income growth rate of 5 percent (the same inflation factor used to estimate project costs) then residential rates in 2010 would be approximately equal to the current rates as a percent of median household income (0.05 percent).

7/18/90



UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY

July 6, 1990

Mary Halliburton
Water Quality Division
Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR

Dear Ms. Halliburton:

As you know the Unified Sewerage Agency has met every deadline thus far towards achieving the June 30, 1993 compliance dates for meeting the wasteload allocations set for its treatment plants. It is our intent to continue to pursue compliance with the water quality requirements set for the river. However, the compliance date comes right in the middle of a construction season that would be valuable to have to help us meet the requirements.

Therefore, with this letter the Unified Sewerage Agency is requesting the Environmental Quality Commission consider a five (5) month extension of the compliance deadline for meeting the nutrient Total Maximum Daily Loads. The justification for the extension follows.

We have reviewed the schedule to complete the required activities at the Durham facility. The proposed construction is identical to that outlined in the final draft of the Facilities Plan. The schedule is our best estimate of the time required to implement the Recommended Plan for Durham.

As we developed the schedule, every effort was made to expedite the completion of the project within the current deadlines. These measures included:

- 1) Beginning predesign and design of the biological and chemical improvements well in advance of completing the Facilities Plan. USA accepted the risk associated with this approach once it became clear that all of the major alternatives available to the Agency resulted in the same treatment "footprint" at the Durham Plant. This action has saved 9 months.
- 2) Accelerating construction of some "biological improvement" facilities by incorporating them by change order into the Phase I contract. These facilities are being constructed this summer in advance of the "biological improvement" construction period.

D-1

Piping changes were made as part of Phase I work to make it easier for the contractor to begin "biological improvements" in the next phase of construction. This action also reduced potential problems with contractor overlap and interface on the construction site.

3) Accelerating construction of the "biological improvement" by breaking off and fast-tracking the preliminary excavation work. Without this action, USA's contractors could not have taken advantage of the 1990- summer construction season. This measure also significantly reduces potential erosion problems since all erosion control facilities will be in place and operational when work begins on the main project. This action has saved 6 months.

4) Fast tracking the design work. The design periods for the "biological improvements" and the "chemical improvements" are 7 months each. These are extremely short time frames for complex projects with estimated construction costs of \$26 and \$32 million, respectively. For example, there are over 7 person-years of drafting in the "chemical improvement".

5) Involving DEQ personnel during the design process. We have kept David Mann informed of this project by sending him copies of predesign reports and interim drawing submittals. We also actively involved him in our 70 percent design review meeting held in May. Through these actions, we have increased his familiarity with both the broad issues and the details associated with the project. This should expedite DEQ's review of the submittal being sent to you soon.

Despite these measures, we do not project the Agency can meet the deadline for compliance with the nutrient TMDL's. There are several reasons for this:

- o Volume of Work
- o Lack of treatment process redundancy
- o Desire to minimize contractor interface

o Volume of Work. To meet the June 1993 deadline, the estimated average volume of construction activity on the Durham site would be \$1.8 million/month. To put this in perspective, USA's agency-wide construction cost has never topped \$1.8 million in a single month. The construction volume translates into more than 200 workers on the Durham site at a time.

Coupled with the volume issue is the fact that much of the work is complex and takes a considerable amount of time to complete. This is particularly true for the "chemical improvement" which involves a great deal of rehabilitation and modification of existing facilities. Trying to meet the June 1993 compounds this problem.

O Lack of treatment redundancy. This problem is a scheduling nightmare. The Durham plant is currently operating near capacity and does not have redundant process units in critical treatment areas (aeration basins, secondary clarifiers, and effluent filters) to allow a unit to be taken off line while modifications are made. Modification of the existing facilities for nitrogen removal, (biological improvements) and rehabilitation of the chemical units (chemical improvements) for phosphorus removal must follow the construction and successful operation of new redundant process units. Construction of the new units and rehabilitation of the existing facilities is now scheduled for completion and startup in late 1993, several months after the current compliance date.

O Desire to minimize contractor interfaces. There will be multiple contractors working on the Durham site. From a construction management and risk control standpoint, it is highly desirable to separate the work of the contractors (by both space and time) to the maximum degree practical in the face of short deadlines. We have identified a schedule that completes all of the work in an expeditious manner, yet prevents contractors from working "on top of one another". Extending the deadline to allow the full construction season of 1993 reduces the potential for problems.

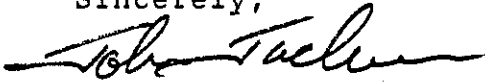
You may ask what levels of treatment can be provided in the interim. With the completion of the "biological improvements", the Durham Plant should be in compliance with the monthly and weekly mass limits for CBOD and TSS by the winter of 1992/1993. Effluent dechlorination will also be provided. By June of 1993, the Durham Plant may be able to provide partial nitrification and improved phosphorus removal, but full treatment capability will require completion of the Chemical Feed Building since the process will be alkalinity limited. This is where the time limitations may cause serious problems for meeting the current requirements.

Also, a question we are asked is, "Are these improvements needed because they are really an expansion of capacity?" The Durham Plant currently is designed for 20 MGD. These improvements will provide for a design flow of 22.5 MGD, (i.e. 10% expansion).

Halliburton/DEQ
Page 4
July 6, 1990

Thank you for your consideration of our request. Please let me know if you need further information. We are prepared to talk with you in more detail about the scheduling constraints if you wish.

Sincerely,



John E. Jackson
Planning Division Manager

kds

Oregon Department of Environmental Quality

Discussion of

IMPLEMENTATION ISSUES

raised in

Unified Sewerage Agency of Washington County
Final Draft Wastewater Facilities Plan

The Unified Sewerage Agency (USA) of Washington County has submitted a Final Draft Facilities Plan which is intended to bring USA into compliance with total maximum daily loads (TMDLs) for nutrients, address National Pollution Discharge Elimination System (NPDES) permit compliance problems, and correct inflow and infiltration problems. The recommended plan identifies a number of implementation issues which USA believes must be resolved in order for the plan to be successfully executed. Resolution of these issues will not change the facilities to be built or modified but could have an effect on the overall success of the plan. The Department's position relative to these issues is provided below.

1. Reuse Rules: USA believes that the Department's rules must strike a balance providing safeguards that make reuse acceptable while avoiding unnecessary restrictions that may discourage potential users from utilizing reclaimed water.

Department Discussion: The reuse rules were developed with the assistance of an advisory committee made up of treatment plant officials, consultants, agricultural experts, and health, environmental, and consumer advocates. Much of the proposed rules have been taken from existing regulations now in effect in California where reclaimed water has been used for decades. A major goal of the reuse rules is to assure protection of public health. "Striking a balance" implies that requirements for public health protection should be reduced if they interfere with, or discourage, reuse. The Department believes that unnecessary restrictions should be eliminated from the reuse rules. The Department also believes, however, that those components of the proposed rules that are necessary for public health protection must be maintained even if they dampen enthusiasm for potential uses of reclaimed water.

2. Acceptance of Reuse by the Community: The agricultural community and citizens at large need to be educated about the benefits of reuse and the success of reuse programs in other areas. USA will need to tailor a reuse program to the needs of Washington County's agricultural community.

Department Discussion: The Department concurs.

3. Water Rights and Releases: USA cites three water rights issues which need resolution. 1) Rule changes are needed to protect instream water rights of reclaimed water users. 2) New rights to Tualatin River water should not be issued unless the need can not be met with reclaimed water. 3) Rules should be changed to allow for release of stored water in exchange for reclaimed water used for irrigation.

Department Discussion: The rules to which USA refers are all rules of the Oregon Water Resources Department. DEQ is on record as supporting the changes USA suggests.

4. Urban Reuse: USA needs to work with urban water users to implement a cost effective urban reuse program and conserve potable water.

Department Discussion: The Department concurs.

5. Coordinated Flow Management: Activities of all agencies that use or regulate Tualatin river water should be coordinated to optimize control of river flow during the low flow season.

Department Discussion: The Department agrees that coordination of activities of all agencies/authorities involved is needed. Other areas have similar needs. Water management activities in adjacent counties and, in some cases, other subbasins can also be important. Coordination might best be accomplished by an entity with statewide or region wide authority. The Department will contact the Oregon Water Resources Department to discuss the appropriate role of state agencies in this coordination.

6. Lake Oswego Dam: USA feels that DEQ and other agencies should consider replacement of the Lake Oswego Dam.

Department Discussion: The Department of Environmental Quality does not have the authority to require the removal of the Lake Oswego Dam. The Department will discuss the issue with the Oregon Department of Water Resources and, as staff time allows, the Department is willing to evaluate the effect of dam removal on water quality. Preliminary indications are that removal of the dam would increase the velocity of the lower river. This would shift the location of peak algal growth some distance down stream, but would not eliminate the peak.

7. Instream Water Right: USA believes that DEQ should submit a request to the Water Resources Department for an instream water right for the Tualatin River and its tributaries.

Department Discussion: The Department intends to request an instream water right for the Tualatin. Both WRD and USA have been informed of that intention. The Department is currently developing rules laying out the criteria for making instream water right requests. The actual request for an instream right for the Tualatin can not occur until the rules are developed and adopted.

8. Total Dissolved Solids (TDS): USA suggests that DEQ should revise the instream TDS standard for the Tualatin so that the standard does not restrict the use of two-stage alum addition for phosphorus removal at the treatment plants.

Department Discussion: The TDS standard is being examined as part of the triennial standards review process that is currently underway. If the review process indicates that the guide concentration should be modified then a change will be proposed to the EQC. It should be understood that a change will not be proposed merely to accommodate any particular source or treatment process.

USA has correctly pointed out that the instream guide concentration of 100 mg/L in the Tualatin is at times exceeded up stream of USA's facilities. USA has also calculated that, during low stream flow conditions, the two-stage alum addition proposed for removal of phosphorus will result in instream TDS concentrations in excess of 250 mg/L under 1995 to 2010 loading conditions. It is important to note that these calculations assume that all effluent from the Rock Creek and Durham facilities is treated for phosphorus removal and discharged to the river. USA's Facilities Plan anticipates an aggressive reuse program with no increase over current volumes discharged to the river and as much as 46 percent of effluent being reused by 2010 (70 percent reuse by ultimate buildout). Actual instream TDS concentrations will be considerably lower than calculated if the facilities plan is fully implemented. It is also important to note that regardless of where the TDS guide concentration is set, the Department has the authority to allow the guide concentration to be exceeded if it can be demonstrated to be necessary to carry out the general intent of the water quality management plan and protect beneficial uses of the river. See OAR 340-41-445 (1) (o). Instream TDS concentrations greater than the guide concentration can be allowed under extreme conditions if the alternative would be unacceptable nutrient concentrations.

9. Winter Mass Limits: USA suggests that carbonaceous biochemical oxygen demand (CBOD) and total suspended solids (TSS) mass limits should be established on a "water quality" basis. USA intends to gather data to justify an increase in the winter mass limits within two to three years.

Department Discussion: Mass limits were originally set based on available technology. This method of setting mass limits has been consistently applied to all sewerage treatment plants statewide. USA's problems meeting mass limits are the result of a combination of increasing wastewater flows that have accompanied growth and inflow and infiltration into the sewerage system.

It is the policy of the EQC (OAR 340-41-026) that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control so that discharged loads from existing facilities do not increase beyond present limits unless specifically approved by the EQC. If USA wishes to pursue an increase in its permit limits, it is USA's responsibility to demonstrate the need and to demonstrate that all beneficial uses and water quality standards are protected. DEQ has indicated that in order to make such a request USA will need more information on wet weather flows to determine what increase in loads are reasonable and justifiable. Identification of quantity of flows currently bypassing treatment and identification/quantification of sources of I/I and determination of what portion of flows could be cost effectively eliminated will be needed. This is apparently the information USA expects to collect in the next two to three years. In USA's draft Facilities Plan the proposed sewer system evaluation survey (SSES) included initiation of wet-weather receiving water monitoring to define impacts of mass loads released to the river. This monitoring has been dropped from the final plan. The Department is concerned about USA's ability to justify a mass increase without these data. At this time no action is requested and none is recommended.

10. Water Quality Monitoring: USA believes that long-term, year round water quality monitoring must occur to assess impacts of effluent discharge on the river.

Department Discussion: The Department concurs.

11. TMDL Compliance Date: USA is requesting that the June 30, 1993 compliance date be extended for five months for the Durham facility to allow full use the 1993 construction season. They further suggest that a similar extension would be helpful at Rock Creek.

Department Discussion: A five month extension of the compliance date from June 30, 1993 would stretch beyond the

end of the summer permit season (May 1 - October 31). Since the TMDLs are only in effect during the summer permit season, the request, if granted, would result in compliance not being required until May 1, 1994 (effectively a 10 month extension).

USA has submitted construction schedule documentation that indicates construction can not be completed in sufficient time to meet the June 30, 1993 compliance date. The schedule does not anticipate start-up of the chemical expansion at Durham until the end of 1993. USA gives three reasons for the delay: 1) There is a large volume of complex work to be accomplished. 2) Because Durham is already operating very near its capacity, there is a lack of treatment process redundancy. This means that critical treatment process units can not be taken off line for modification to remove phosphorus until new redundant units are constructed and operational. 3) There is a desire to minimize construction management and risk control problems which can arise when multiple contractors are required to work on the same site.

USA has also documented that substantial improvements in effluent quality will occur by June of 1993 even though the TMDLs will not be met. The plant will be in compliance with monthly and weekly mass limits for CBOD and TSS, and dechlorination will be provided. Phosphorus loads will be reduced from the current level of 200 - 292 lbs/day to 141 - 212 lbs/day. Ammonia loads will be reduced from the current 1200 - 1751 lbs/day to 992 - 1276 lbs/day.

Because of the construction scheduling difficulties combined with the improvements that will occur by June 1993, the Department believes USA's compliance deadline extension for the Durham facility is justifiable. The Department will recommend that the EQC grant the request. No formal request and no documentation of need for an extension for the Rock Creek facility has been received. The Department will not recommend an extension for Rock Creek.

12. Facility Siting: The recommended plan requires siting and permitting of sludge and reclaimed water storage facilities. USA points out that if problems arise in the siting and permitting process then portions of the implementation schedule may slip despite USA's best efforts.

Department Discussion: The Department recognizes the difficulties in siting and permitting potentially controversial facilities. USA should recognize that if delays result in violation of compliance dates or standards/permit limits the Department may have little discretion in assessing penalties.

13. Collection System Jurisdiction: To improve ability to implement I/I, USA needs authority for inspection of all house services in those areas where USA maintains the collection systems.

Department Discussion: The Department agrees that there is a need to improve the ability to implement effective I/I. This includes insuring that adequate inspections of house services are made. Agreements with local governments and other agencies/jurisdictions involved should be developed. These agreements should identify who will do the inspections and when and how they will occur. The Department should receive copies of these agreements.

14. Phosphorus Detergent Ban: USA believes successful implementation of a phosphorus containing detergent ban is an important element of their source control program.

Department Discussion: The Department concurs. METRO has adopted a region wide phosphorus containing detergent ban that will go into effect in February 1991. As mandated by the 1989 Legislature, the Department has formed a task force to study the potential need for a statewide ban.

15. Planned Growth: It is stated that USA should have an active role in planning decisions that affect both urban and rural Washington County. Other agencies need to recognize the importance of USA's role.

Department Discussion: The Department recognizes the importance of USA in the planning process. The Department has, and will continue to, encourage USA to be proactive in the process. The ability to plan for growth without once again outstripping the ability of USA to effectively treat the wastewater flows being conveyed to its plants is vital to preventing future water quality problems in the Tualatin. It is recognized, however, that USA has no authority in the area of growth and landuse planning, and none is being pursued at this time. This will make it difficult for USA to insure that treatment capacity keep up with growing wastewater loads in the event that growth occurs more rapidly than anticipated. Local governments and USA should be aware that if wastewater flows increase beyond USA's ability to provide adequate treatment there is a real potential for the imposition of a new connection limitation or moratorium. Such action will not qualify the local government or USA for any special consideration because the presence of the action will be considered a matter of choice.

7/20/90

RESPONSIVENESS SUMMARY

INTRODUCTION

The Wastewater Facilities Plan for the Unified Sewerage Agency (USA) was the culmination of a planning effort that actively solicited input from the community throughout the duration of the project.

The public involvement program (summarized in the Facilities Plan, Chapter XI) began with a comprehensive public values assessment. Based on this, project objectives were established to guide ongoing development and evaluation of the alternatives. As the study progressed, the public involvement program included three open houses, two open house/public meetings, an ongoing citizens advisory committee that encouraged participation by the public, an intergovernmental coordinating committee, three newsletters (a fourth is due out June 25, 1990), a district-wide mailer, and a number of other outreach efforts.

The recommended plan was first introduced to the public in the third newsletter, published May 11, 1990. This was followed by extensive news coverage, public and committee meetings, and the public hearing held by the USA Board of Directors on June 5, 1990. This document summarizes and addresses the broad range of issues and concerns raised during this period--May 11 through June 5, 1990. An evaluation of how well the recommended plan meets the original public values (the project objectives) is included in the Facilities Plan, Chapter XII.

The responsiveness summary is based on:

- Verbal testimony presented at the June 5, 1990, public hearing held by USA. (See Attachment A, Verbal Testimony.)
- Formal written comments submitted between May 11 and June 5, 1990. (See Attachment B, Written Comments.)
- General comments raised at the May 23, 1990, open house/public meeting. (See Attachment C, Public Meeting Summary.)
- General comments raised by committee members at the IGCC and CAC meetings on May 30, 1990. (See Attachment D, Intergovernmental Coordinating Committee and Citizens Advisory Committee Comments.)
- Informal comments made through telephone or other contacts with USA staff during the stated period.

INDIVIDUALS AND ORGANIZATIONS PROVIDING FORMAL COMMENT

The following parties submitted formal comment, either written comment or verbal testimony at the public hearing, on the recommended plan.

WRITTEN COMMENT

Susan Orlaske
Friends of Jackson Bottom
Hillsboro, OR

Carleton Lindgren
Citizens Advisory Committee and
USA Advisory Committee
Hillsboro, OR

John Burdett
Public Works, City of Forest Grove
Forest Grove, OR

Jeffry Gottfried, Ph.D.
Fans of Fanno Creek
Portland, OR

Leonard George Stark
Lake Oswego, OR

Mike Houck
Audubon Society of Portland
Portland, OR

Richard P. Buono
Sunset Corridor Association
Beaverton, OR

Edward J. Gallaher
Tigard, OR

John Harland
Intel Corporation
Hillsboro, OR

VERBAL TESTIMONY

David Hunter
Cherry Grove, OR

Sally Thomas (dairy farmer)
Tigard, OR

Larry DuPré (blueberry farmer and
Citizens Advisory Committee member)
Forest Grove, OR

Jack Broome
Wetlands Conservancy and spokesperson
for the Citizens Advisory Committee
Tualatin, OR

Betty Atteberry
Sunset Corridor Association
Beaverton, OR

Larry Sprecher
Metropolitan Service District
Portland, OR

Art Johnson
Hillsboro, OR

Arden Sheets
Washington County OSU Extension Office
Hillsboro, OR

Bill Gilham
Durham, OR

Leonard Stark
Lake Oswego, OR

SUMMARY COMMENTS AND RESPONSE

For the purpose of this responsiveness summary, comments are grouped into general issues. More detailed comments are included in Attachments A, B and C.

1. Phase 2 Dam on the Tualatin River

Many citizens from the Cherry Grove/Patton Valley area, as well as several other individuals and environmental organizations (including the Audubon Society and Friends of Jackson Bottom) have expressed strong opposition to the Phase 2 dam. Reasons cited for this have included: displacement of those who live in the area; loss of a wild salmon run and other significant negative impacts on natural and historic resources; loss of farm and timber land; large cost; and disputed need. The potential of providing additional recreational benefit has been challenged on the basis that the new reservoir would be very close to the existing Hagg Lake, which already provides recreation opportunities.

A few individuals and organizations have stated that the need for a dam is inevitable because of other future water demands. A few others, who did not support a dam, did support maintaining the option of a dam in case other methods prove to be incapable of maintaining water quality or maintaining river flows. Several smaller reservoirs have been suggested as an alternative to one large reservoir.

Response: Because of the recognized impacts and potential costs of a new dam on the Tualatin River, the Facilities Plan does not include a new reservoir. There is, however, a continued need to augment summer flows in the Tualatin to meet dilution requirements. In the short term, the plan relies on continued releases from Hagg Lake and the expanded Barney Reservoir on the Trask River. For the long term, the reuse program will reduce the need for releases from Barney Reservoir (which will be needed for drinking water); the use of effluent for irrigation will reduce the use of river water for irrigation.

If the reuse program does not meet its goals, another source for flow augmentation will be needed. For this reason, the plan does include participation with other agencies in the feasibility study of a Phase 2 reservoir. This study will explore various alternatives including a single reservoir and combinations of several smaller reservoirs.

2. Effluent Reuse

Several members of the agricultural community have expressed concern that the potential use of reclaimed water may be limited: farmers of fresh market crops are concerned about public perception of effluent-irrigated foods, or the farmers

are limited by when they can pick the crop; and food processors are concerned about the marketability of products made with goods irrigated with effluent.

A few citizens have questioned whether long-term reuse is safe.

Response: USA understands that the proposed reuse component of the plan requires acceptance by the farm community and better understanding by the general public. The reuse program as outlined in the Facilities Plan will be implemented over a long period of time in order to build understanding and acceptance. Reuse will be one of the key subjects of the public education program discussed in the Facilities Plan (see Chapter XII). USA is currently working to develop close coordination and to inform the agricultural community and will explore incentives for farmers to convert to reclaimed water for irrigation.

USA is working in partnership with the regulatory agencies and the environmental community to ensure that the rules for reuse both encourage reuse and guarantee long-term safety of the product, the farm workers, and the environment. USA will continue to work to identify and increase its removal of potentially harmful elements such as metals and toxics from its effluent.

3. Wetlands Treatment

The Wetlands Conservancy has stressed that wetlands have been proven effective and should be a larger part of this plan.

Response: Wetlands are an important part of the plan. USA recognizes that wetlands have done a good job elsewhere; however, there are two unknowns for the Tualatin basin: (1) the ability of wetlands to remove phosphorus to the stringent levels necessary in this basin; and (2) the impacts on groundwater. USA is currently testing these aspects and intends to resolve the issue by 1997.

Please note that USA will *create* wetlands for this component--it will not use *existing* wetlands. This means USA may acquire as much as 1,021 acres for new wetlands. To increase the amount of effluent used to create wetlands, USA would need to reduce the amount of effluent for irrigation or else reduce the amount of effluent discharged to the river. The plan currently includes discharges to the river at a level that will maintain reasonable summer flows in the river. Increasing wetlands would also increase project costs.

4. Protection of Existing Wetlands and Riparian Zones

Environmental organizations have expressed concern that the plan does not do enough to protect existing wetlands and riparian areas, a natural way to enhance water quality.

Response: The Facilities Plan and the Surface Water Management (SWM) Plan are the two complementary parts of USA's overall Tualatin River improvement effort. Within the urban area, protection of wetlands and riparian areas is an important part of the SWM Plan. USA does not have jurisdiction outside the urban area; however, USA will act as an advocate, working with other jurisdictions and agencies to protect these resources. USA will also work to restore buffer wetlands along tributaries in areas where agricultural reuse is practiced. The recommended plan calls for restoration of 20 miles of riparian habitat along the tributaries.

5. **Financing**

Various concerns have been expressed regarding sources of funding. The Sunset Corridor Association, among others, has stated that there is too much reliance on user fees; USA should explore general obligation bonds and other state and federal funding, since people and governments outside the basin benefit from the solution. Others, including the Metropolitan Service District, have emphasized that standards today place responsibility for cleanup on the contributor, and thus user fees are an appropriate source of funding.

A number of citizens have urged that growth pay its fair share. The members of the development community also have expressed concern that growth pay its share, emphasizing the need to identify the amount of Facilities Plan costs related to growth and those related to the water quality standards.

Response: The financing plan recently completed for the Facilities Plan (see Chapter XIV) identifies an equitable plan for paying for this program. USA has explored various funding sources for capital improvements; for the amounts required, revenue bonds are the alternative that is reliable, predictable, and available to USA now. They are also an extension of USA's existing financing program. Revenue bonds are repaid through user fees and connection fees.

Through a balance of user fees and connection fees, the plan outlines a strategy that provides for growth to pay its fair share.

6. **Rate Structure Equity and Affordability**

Many telephone and public meeting comments, as well as several formal comments, have focused on the user charge. The primary concerns have been that: (1) the increases will cause hardship to many homeowners, a number of whom make significantly less than the county average; (2) metered or measured service (perhaps tied to water usage, which would also encourage water conservation) would be more equitable--single-person households pay the same as large households; (3) there need to be assurances that, in the future, DEQ/EQC will not require still more costly improvements that add to these high costs.

Response: USA shares these concerns. USA has budgeted for a rate structure study for fiscal year 1991 to explore the first two issues. There is no guarantee that further improvements will not be required to protect our environment.

7. TMDLs Standards

The Sunset Corridor Association has questioned whether or not the Total Maximum Daily Loads (TMDLs) for phosphorus and ammonia will achieve the desired results in water quality, and if those loads are achievable with current technology.

Response: The treatment strategy proposed in the plan is technically proven; it has been used elsewhere in the country to achieve similar levels of nutrient control. USA has also tested the strategy in both pilot and full-scale studies with good results. The plan can meet the load requirements for the treatment plants; there are still some uncertainties as to whether or not this will achieve the in-stream standard and whether or not the in-stream standard will achieve the desired reduction in algae. However, USA and its Board are committed to meeting their load allocations.

8. Water Rights

Enforcing existing water rights on the Tualatin has been suggested as a cost-effective way of augmenting river flows without causing severe environmental impacts.

Response: In recent years, the Watermaster that has been responsible for the Tualatin basin has also been responsible for four other counties and many other river basins. A Watermaster has now been designated exclusively for the Tualatin basin; also, several additional deputies will be hired to help enforce water rights. Although this may increase summer flows, the amount is unknown.

9. Implementation Schedule

Concerns have been expressed that the implementation schedule is too accelerated and should be extended for several reasons, including: some recommended methodologies are unproven and need time for testing; some implementation elements, such as siting a sludge storage facility, could become delayed by the public process; and the significant early implementation costs will cause significant rate increases. The Sunset Corridor Association suggested a 3-year extension of the 1993 compliance deadline.

Others have expressed support for a short (5-month) extension, but have not supported a request for a longer extension at this time. They have encouraged continued commitment to meeting the deadlines as promptly as possible. Some have urged that USA make property acquisitions as soon as possible.

Response: Because of construction complexities and scheduling difficulties at the Durham and Rock Creek treatment plants, USA has asked for a 5-month extension of the June 1993 deadline; this would provide an additional summer construction season. Even with this, USA recognizes the schedule outlined in the plan is very tight, and not all elements are within the control of USA. However, as discussed under Comment 9, the technologies required to meet the 1993 date are proven. USA is committed to the schedule and believes the deadline is achievable if all goes according to the plan. Rather than assume there will be complications, USA will do all it can to meet the deadline; if unavoidable complications arise during implementation, USA will attempt to negotiate a resolution of the problem with DEQ.

10. **Planned Growth**

Fans of Fanno Creek and others have expressed concern that for USA to carry out its responsibility for cleaning up the Tualatin, it must have the authority to control growth that would tax the system. Several parties have expressed concern that existing planning processes should have prevented current problems but did not, and that there may be a conflict of interest for USA's Board of Directors, which also serve as the County Board of Commissioners--seen as advocates of growth. There were also cautions against providing services that would place pressures on the urban growth boundary (UGB).

The development community has stated they will oppose any policy that grants a single agency the authority to effect a building moratorium.

Response: Oregon Revised Statute 451 authorized formation of USA as a service district. USA therefore provides service to the urban area of Washington County within USA's boundary. USA does not have authority to plan or stop growth. That authority rests with other governmental agencies (Metro, Oregon Department of Land Conservation and Development, the county, and the cities). The Facilities Plan, Chapter XII, has been revised to clarify how USA will work with these agencies and actively participate in land use planning to ensure:

- Growth does not outpace capacity of the wastewater treatment systems
- Development of USA wastewater systems does not induce growth outside the UGB (within the urban area, USA will coordinate their services with other service providers)
- Agricultural lands that are necessary for reuse now and in the future remain available

As part of the SWM program, USA will participate in land use planning discussions to ensure that, within USA's boundary, wetlands and riparian areas necessary for protecting water quality are protected.

11. Public Education

A number of individuals and organizations have emphasized that several plan elements--including reuse, source controls and river management--will not succeed without a strong public education program.

Response: USA places a high priority on public education and has an active public education program. USA recognizes that this is vital to the success of this plan. The public education component of the recommended plan described in Chapter XII will be done in concert with the education effort for the SWM program. In implementing the plan, USA will continue to explore and create opportunities to raise public awareness of water quality related issues.

12. Inflow/Infiltration, System Repairs

The City of Forest Grove, among other parties, has expressed concern over the time, costs and unknowns involved in rehabilitating the sewer system.

Response: In certain cases inflow/infiltration control can be cost effective. USA is prepared, through the Sewer System Evaluation Study, to identify and institute a sewer rehabilitation program in those areas. The agency will work closely with the local jurisdictions and conduct rehabilitation work in a manner compatible with the intergovernmental agreement between USA and the city in which the work takes place.

13. River Management--Recreational Opportunities, Protection of "Natural Debris"

Some individuals have advocated additional access and recreational opportunities to increase awareness and appreciation of the river. The Audubon Society urged that USA make it clear that logs and other "natural" debris, although disliked by boaters, provide important habitat and must be maintained.

Response: The plan calls for USA to work with the appropriate agencies to advocate and facilitate improvements and development of recreational opportunities.

The plan has been clarified to distinguish between "man-made" and "natural" debris and to specify that "man-made" debris will be removed. However, USA recognizes that wildlife habitat protection, the structural stability of stream channels, and recreational needs must be balanced. Each situation will be judged individually.

14. Export of Effluent Out of the Basin

Many parties throughout the study have expressed strong opposition to exporting USA's effluent out of the basin, because of the severe impact on beneficial uses of the river due to low river flows, and/or because they do not support "passing this basin's problems to another basin."

Response: This option is not recommended in the plan; it is the least favored option. It is discussed as an option only if all other methods are infeasible. For instance, if regulations become more stringent, making it impossible to discharge any effluent to the Tualatin and/or if reuse water quality standards or lack of farmer acceptance make reuse infeasible, then partial or full export may be the only viable solution.

15. Phosphorus-Containing Detergent Ban

A phosphorus detergent ban has received strong--nearly unanimous--support throughout the study. Representatives of several local industries have supported the ban but urged that in special cases it allow industrial detergents that contain phosphorus. For some uses, there are no feasible alternatives or the alternatives are environmentally more harmful. Fees can be associated with the discharge.

Response: This concern has been incorporated into the regional phosphorus detergent ban that has been recommended to, and is being considered by, Metro.

16. TDS Standards

Concerns have been expressed that the standards for total dissolved solids must be modified in order to implement the treatment strategy proposed in the plan.

Response: USA recognizes this and will work as quickly as possible to resolve the issue with DEQ. This will include providing data on water quality benefits and protection of beneficial uses.

17. Flow Augmentation

It has been suggested that USA import water directly from another river (such as the Columbia or Willamette) to augment river flows.

Response: If further flow augmentation is necessary, USA will explore all viable opportunities; however, state law discourages developing new agreements for transferring water between basins.

18. Garbage Disposals

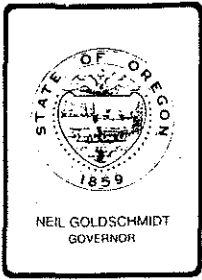
Although receiving some support, a garbage disposal fee or ban was opposed by several parties, based on the difficulty of enforcement and on the impact this would have on landfills.

Response: After further consideration, USA agreed that this element should be removed from the plan. If food scraps are put into the sewer system, they will be reused beneficially as sludge applied to farmland; if they are put into the garbage, they will be added to a landfill. The plan includes education on home composting as an alternative to garbage disposals.

19. Environmental Studies

USA has been encouraged to conduct more thorough environmental studies than those completed for this plan.

Response: USA agrees that more complete environmental studies are needed for various elements of this plan, such as for siting of a sludge storage facility. Site-specific environmental studies will be conducted when the type and location of a specific facility (storage reservoir, pump station, pipeline, etc.) are better known.



Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: August 10, 1990
Agenda Item: K
Division: Water Quality
Section: Surface Water

SUBJECT:

Tualatin River Basin Nonpoint Source Pollution Watershed Management Plans review and action.

PURPOSE:

To approve or reject each plan, and, if necessary, specify a process for revision and re-submission of a rejected plan.

ACTION REQUESTED:

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

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

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

- Approve Department Recommendation
 - Variance Request Attachment
 - Exception to Rule Attachment
 - Informational Report Attachment
 - Other: Staff recommendations in Attachments A through G

DESCRIPTION OF REQUESTED ACTION:

The Commission is requested to approve, reject or defer action on program plans as recommended by staff in the attachments and to adopt compliance schedules for controlling nonpoint source pollution in the Tualatin River Basin. Program plans are required of the designated management agencies (DMA) by Commission Rule (OAR 340-41-470(3)(i)). These nonpoint source pollution control plans must show how each agency will meet load allocations for the Tualatin River Basin TMDL program.

At the June 29, 1990 Commission meeting the previous staff recommendations for conditional approval of most of the plans were considered. The Commission, by a temporary rule, extended by 45 days the time for Commission action on the plans. The Commission directed staff to work with all agencies to reduce the number of conditions or tasks for completion of the plans (as identified in the June 29, 1990 EQC Staff Report, Attachment H). This work was to result in a Department recommendation of either approval, rejection or deferral of each program plan, rather than conditional approval.

Numerous meetings and discussions with all agencies have occurred. Several of the conditions have been met by the urban agencies or eliminated by DEQ. The Oregon Department of Agriculture (ODA) and the Oregon Department of Forestry (ODF) have requested additional time to prepare a revised or new plan. Staff is confident that all agencies can meet the TMDL requirements and compliance date. Staff has now revised the previous recommendations for action with a recommendation for approval of all the urban agency plans and to defer action on the agricultural and forestry plans to allow additional time for their plans to be revised.

AUTHORITY/NEED FOR ACTION:

- | | |
|---|------------------|
| <input type="checkbox"/> Required by Statute: _____ | Attachment _____ |
| Enactment Date: _____ | |
| <input type="checkbox"/> Statutory Authority: _____ | Attachment _____ |
| <input checked="" type="checkbox"/> Pursuant to Rule: <u>OAR 340-41-470(3)(i)</u> | Attachment _____ |
| <input type="checkbox"/> Pursuant to Federal Law/Rule: _____ | Attachment _____ |
| <input type="checkbox"/> Other: _____ | Attachment _____ |
| <input checked="" type="checkbox"/> Time Constraints: (explain) | |

Meeting Date: August 10, 1990
Agenda Item: K
Page 3

The rule cited above requires the Commission to approve or reject each of the Tualatin River Basin Nonpoint Source (NPS) Watershed Management Plans within 120 days of submission (i.e., by July 7, 1990). The Commission at the June 29, 1990 meeting approved a temporary rule extending by 45 days (i.e., by August 22, 1990) the time for Commission action on the plans.

DEVELOPMENTAL BACKGROUND:

<input type="checkbox"/> Advisory Committee Report/Recommendation	Attachment <input type="checkbox"/>
<input type="checkbox"/> Hearing Officer's Report/Recommendations	Attachment <input type="checkbox"/>
<input type="checkbox"/> Response to Testimony/Comments	Attachment <input type="checkbox"/>
<input type="checkbox"/> Prior EQC Agenda Items: (list)	Attachment <input type="checkbox"/>
<input checked="" type="checkbox"/> Other Related Reports/Rules/Statutes:	

The watershed management plans subject to review are required by OAR 340-41-470(3)(g, h).

<input type="checkbox"/> Supplemental Background Information	Attachment <input type="checkbox"/>
--	-------------------------------------

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

As a result of consultations with all agencies and the Northwest Environmental Defense Center (NEDC) and progress made by the urban agencies, the Department has revised its recommendation for action on the program plans. The following concerns have been raised by the agencies or NEDC with the revised staff recommendation:

1. Some of the agencies feel that one or more of the tasks required as part of staff's recommendation for approval of their plan is unreasonable in the context of a "first level" plan as defined by them. They may agree that the tasks required are necessary, and in most cases, the agency plans to complete the tasks at a later date. They, however, contend that the work could better be done in the course of implementing the plans.
2. Preparation of these plans represents a major commitment of effort and resources by the designated management agencies. The agencies feel that they have devoted sufficient resources for development of the "first level" plan. They want future expenditures to be targeted at implementation of the plans and they feel that additional detailed planning efforts at this time would not be productive. Many of the agencies also contend that not completing tasks in their proper order will delay or impair implementation.

3. If the Commission rejects a plan, the affected agency would contend that it would result in unnecessary delays in program implementation. They feel that a rejection would only hurt their abilities, particularly in public opinion, in making the necessary changes to the plan and in implementing the control measures.
4. The deadlines for meeting one or more of the tasks in completing and implementing the plans may be criticized by the agencies and/or the public.
5. The NEDC has recommended the rejection of all but one of the plans. They feel that only one agency has met the requirements for completion of an adequate plan for effective control of pollutants to meet TMDL requirements. Although they also do not want a lot of time and money spent on completing the plans, which according to them should have already been done, they contend that additional work is necessary to develop a plan that will result in the implementation of effective control measures. They want implementation to occur simultaneously with revision of the plans.
6. The Oregon Department of Fish and Wildlife has stated their support for the protection of streams, wetlands and ponds with the establishment of a 75 foot minimum buffer (see attached letter -- Attachment I). Most of the agencies feel that this is but one of many Best Management Practice (BMP) that are needed to control pollution. They feel that requiring a specific buffer width, particularly 100 feet is not warranted.

PROGRAM CONSIDERATIONS:

DEQ staff are confident that the urban agencies' plans will be revised to provide a plan for the implementation of effective pollution control measures to meet TMDL requirements and to meet the compliance date. Their plans have all the essential elements necessary for the implementation of phosphorus pollution controls to achieve TMDL requirements but lack some details. As noted in the attached letters (Attachments J through O) from most of the urban agencies, several of the tasks identified at the previous June 29, 1990 Commission meeting have either been completed by them or eliminated by DEQ.

For the remaining tasks, the timeline for completion has been identified in a Tualatin River Basin Watershed Management Plan Schedule (Attachments A-1-1 through G-1-1). A schedule for plan completion and implementation of pollution controls

Meeting Date: August 10, 1990
Agenda Item: K
Page 5

has been developed for each agency to ensure that all necessary tasks for plan completion and implementation are met.

The Oregon Department of Agriculture (ODA) and Oregon Department of Forestry (ODF) Plans require more revision. Additional time is needed by ODA and ODF to revise their plans for Commission action. The Oregon Board of Forestry has requested additional time to receive a report from the Technical Specialist Panel (TSP). The ODF is willing to make the non-technical clarifications and additions to its program plan requested by DEQ by November 1, 1990.

The ODA has requested additional time in order to hire a new staff person (who began work on July 26, 1990) to rewrite their plan. ODA recognizes that a substantial revision of their plan is required and would prefer that the Commission and DEQ staff evaluate their revised plan for approval which will be submitted on November 1, 1990.

DEQ staff will monitor the progress of all agencies by requiring a monthly progress report to DEQ and monthly progress meetings with DEQ. DEQ staff will also monitor the progress of each agency in meeting specific dates for the completion and implementation of their plan with a Commission approved compliance schedule, which are attached to this report. Work products required with approvals will be submitted to the Department, which will then certify their completion.

If an agency is not completing tasks in a timely manner or not showing a willingness to meet TMDL requirements, DEQ staff will prepare a compliance order. The stipulated order will include a compliance schedule for completion of the plan and implementation of control measures and could also possibly include enforcement actions such as requiring restrictions on those activities which are contributing to pollution of the Tualatin River Basin.

The rejection (with a compliance schedule) of one or more of the plans will result in the Department devoting additional staff time to the review of the plan revisions and (in the case of the resubmission of a rejected plan) the preparation of recommendations to the Commission. Action by the Commission will be necessary to approve the plan.

The City of Gaston and Multnomah County have not submitted a watershed management plan. Each agency was required by OAR 340-41-470(3)(g) to submit a plan to DEQ on March 1, 1990. Each have now agreed to have water quality management

planning for their portions of the Tualatin River Basin to be included into another plan. The City of Gaston has agreed to be incorporated in USA's Plan and Multnomah County has reached a tentative agreement with the City of Portland to be included in their Plan (see attached letters -- Attachments P and Q).

There is nothing at this date which would lead us to conclude that the TMDL compliance date cannot be met by all agencies. Each should be encouraged and provided policy and program development guidance to meet the TMDL compliance deadline. A periodic evaluation of the likelihood and the need for extension of the compliance date should occur. The Commission should be aware that an extension request may be proposed, now or in the future, by some or all the agencies.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The Department considered the following alternatives for each of the Tualatin River Basin Nonpoint Source Watershed Management Plans:

1. **Approval:** The plan is fully adequate as a basis for initial implementation of certain program elements and for final detailed development of other, more site-specific, program elements.
2. **Rejection:** The plan may contain many valid elements, but is not well organized and/or leaves too many important issues inadequately addressed to provide a basis for a timely and successful program; significant restructuring or further development is necessary.
3. **Deferral:** The plan requires substantial revision, but the agency needs additional time to either consult with their Board or to hire staff in order to prepare a plan for the Commission to consider for approval.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department's recommendations for each plan are located at the end of the attached reviews.

<u>Agency</u>	<u>Staff Proposed Action</u>	<u>Attachment</u>
1. Oregon Department of Agriculture (ODA)	Defer Action	A
The ODA has requested additional time to hire a new staff person and to resubmit a new plan on November 1, 1990.		

<u>Agency</u>	<u>Staff Proposed Action</u>	<u>Attachment</u>
2. Oregon Department of Forestry (ODF)	Defer Action	B
The Oregon Board of Forestry has requested additional time to receive the report from the Technical Specialist Panel (TSP). A revised draft plan will be submitted on November 1, 1990.		
3. Unified Sewerage Agency of Washington County (USA)	Approval	C
4. Clackamas County and Rivergrove	Approval	D
5. City of Portland	Approval	E
6. City of Lake Oswego	Approval	F
7. City of West Linn	Approval	G

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

As noted above, the plan review process is mandated by EQC rule. Also, action on these plans and the resulting continued progress in pollution control efforts in the Tualatin Basin are consistent with the "Critical River Basins" component of the State\EPA Agreement for fiscal year 1990.

ISSUES FOR COMMISSION TO RESOLVE:

1. Whether to accept, reject, or modify the Department's recommendations for action on the watershed management plans.
2. If a plan is deferred, can the Commission do so by its own action or by rule.

INTENDED FOLLOW-UP ACTIONS:

The Department will communicate the Commission's actions to the agencies responsible for the plans and their implementation. The Department will be involved as necessary in the modification of plans, will certify their completion, and will review and make recommendations to the Commission on those plans deferred or rejected and, if necessary, request

Meeting Date: August 10, 1990
Agenda Item: K
Page 8

enforcement action for those governmental agency plans which have been approved but adequate progress is not occurring.

Approved:

Section:

D. L. ...

Division:

Adm. ... for Sylvia Taylor

Director:

Jul Hansen

Report Prepared By: Don Yon & Roger Wood

Phone: 229-5371

Date Prepared: July 23, 1990

Don Yon:hs
MW\WH4089.1
July 24, 1990

STAFF REVIEW

TUALATIN RIVER BASIN
WATERSHED MANAGEMENT PLAN

OREGON DEPARTMENT OF AGRICULTURE AND
WASHINGTON COUNTY SOIL AND WATER CONSERVATION DISTRICT

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: A "road map" would be helpful to show where the key issues identified in the DEQ guidance document are addressed in the plan.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: The physical setting and water quality problems descriptions are described. The institutional infrastructure description describes the agencies involved and their responsibilities.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is concise and describes the desired results of the Plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The statements in the section titled "Objective" are actually sub-goals, and do not communicate the measurable results as described above. The seven items in the "SWCD Strategy..." section are really control options in the sense that they define categories of action (i.e., groups of action items or management measures). However, objectives in the form of action items or management measures are not found in the plan.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the agriculture NPS strategy are reviewed below.

Available Control Options: Control options are identified as noted above (in III. B).

Process for Selecting Options: The process of plan development to date is discussed if the references in several sections of the plan are taken together. The processes by which BMPs will be selected and applied is not explicitly stated, but the plan notes that the installation of conservation measures will be done by individual land owners and managers on a voluntary basis. The plan gives a "first approximation" of conservation needs in Tualatin agricultural lands, but does not describe how the approximation was arrived.

Description of BMPs to be Used: BMPs are listed by name and grouped into functional categories. The plan references the Soil Conservation Service (SCS) "Field Office Technical Guide" as the source of additional BMP details, including technical standards and specifications. The listed BMPs are not identified in terms of the applicable SCS codes. Also, the plan does not include any examples from the SCS Guide to show how BMPs are described and what technical information is available in that document. The plan's "first approximation" of conservation needs in Tualatin agricultural lands applies thirteen BMPs (or systems of BMPs) to nine land use situations, and uses a quantity of need (in terms of acres or other units) and an estimated unit price to estimate the costs of applying these measures basin-wide.

Responsibilities for Implementing: Responsibilities are not explicitly addressed. The plan implies that the Washington Soil and Water Conservation District (SWCD) will have some responsibility, and the Washington County Water Management Committee (WAMCO) is also mentioned.

Monitoring and Evaluation: The plan notes that funding has not yet been secured which should be done so that the TMDL goals can be met.

Public Information and Education: The list of public information and education measures could serve as a model for how to develop other elements. Still lacking, however, is an discussion of important details such as when and by whom the measures will be implemented, their estimated cost, and quantified products.

Periodic Plan Review and Adjustment: A "master plan" and an "annual action plan" are mentioned but not described. The review process does not list who will be involved.

Implementation Schedule: Does not include interim targets or "mileposts" for BMP implementation.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: Public involvement in plan development is described. Public involvement in plan review and adjustment is not mentioned.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: The plan indicates that the Washington SWCD has a contract to produce the plan from the Oregon Department of Agriculture. Authority to implement is not clear.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The "first approximation" of needed management measures provides a rough estimate of BMP implementation funds necessary. The three-tiered program administration budget provides cost estimates for three progressively higher levels of program implementation. The level of detail in the administrative budget suggests that action items, work tasks, and other program objectives also have been developed to a high level of detail, but this program detail does not appear in the plan. Several sources of funding are listed, most prominently the cost share funds from the U.S. Department of Agriculture, but none are discussed in depth.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in

achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: This is not addressed in the plan.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: The plan includes several references to possible interagency cooperation, but does not summarize necessary agreements or important opportunities.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: DEFER ACTION.

The recommendation for deferred action is based on the Oregon Department of Agriculture's request for resubmission of their plan by November 1, 1990. Additional time is requested so that ODA can hire a new staff person (who will begin work on July 26, 1990). ODA recognizes that a substantial revision of their plan is required and would prefer that the Commission and DEQ staff evaluate their revised plan for approval which will be submitted within three months of the August 10, 1990 Commission meeting.

The Agricultural Nonpoint Source Program Plan requires significant revision in order to achieve TMDL goals. DEQ believes the Plan, as written, does not meet the criteria for approval of a Plan as stipulated in OAR 340-41-470(3)(i): "The Commission shall reject the plan if it determines that the plan will not meet the requirements of this rule within a reasonable amount of time."

The plan's inadequacies, as stated in the corrective measures prescribed below and in the attached Oregon Department of Agriculture Tualatin River Basin Watershed Management Plan Schedule (Attachment A-1), leave too much doubt that the plan can lead to timely compliance with the agricultural TMDL targets in the Tualatin River Basin. Therefore, action on the Plan by the Commission should be deferred at this time so that ODA can revise and submit a new plan by November 1, 1990 in order to be reconsidered by the EQC for approval. In order to ensure that the necessary tasks for completion of the plan are accomplished by ODA, an update to the Action Plan portion of

the existing Memorandum of Understanding (MOU) between DEQ and ODA will be prepared as part of the Department's recommendation for deferred action.

Tasks:

The time period for completion of the Final Plan for submission to DEQ for approval starts when the Environmental Quality Commission (EQC) adopts the following recommended conditions for approval:

1. The Oregon Department of Agriculture, the designated management agency for the agricultural watershed management plan for the Tualatin basin, shall assume full responsibility for modifying the plan according to the following instructions:
2. Describe problems in terms of the agricultural land use practices which cause them (for example: streambank erosion resulting from riparian zone vegetation removal). These descriptions will eventually have to include detail on both location and severity before management measures can be prescribed, funded, and applied.
3. Collect all program elements together in one complete list. The seven elements listed in the "SWCD Strategy..." section come close to being such a list, but do not include information and education, review and adjustment, fundraising, interagency agreements and relationships, and other program elements which are developed elsewhere in the plan. Where applicable, explain which of the program elements address which of the identified problems.
4. Specify the action items, work tasks, and other true objectives of the plan. The absence of such objectives, or their dispersal in a way that makes them hard to identify, is the principal weakness of the plan and manifests itself throughout. For example: The options identified in the "Information and Education" section should be expanded to indicate tasks, time lines, products, estimated costs, and responsible parties. If the implementation details of a task or objective are uncertain at this time, explain why and describe a process and time line for development of further detail.
5. Group objectives according to the control option or program element they serve. For example: The seven items listed in the "SWCD Strategy..." section are sub-goals or major program elements of the plan, and each could serve as a heading under which a number of specific tasks or objectives may be grouped.

6. Describe how the variety of available BMPs, management measures, and tasks will be selected and applied to address particular site-specific problems. If land owners and managers will make these selections, explain what considerations will guide them. Also explain the considerations used by cost-share funding sources in setting priorities for allocation of available funds in the basin.
7. Discuss optional courses of action in the event that voluntary participation is inadequate and enforcement is necessary. Identify the means of enforcement of the required BMPs, the responsible entity(s), the necessary authority, and the staffing and funding sources.
8. Explain how the "first approximation" of conservation needs (page 32) was arrived at, and why those particular BMPs were selected to use in the needs estimate.
9. Describe more fully the BMP descriptions and other guidance documents and directives available in the SCS Field Office Technical Guide. Include in the plan a few excerpts or examples from the SCS Guide to illustrate the information available on a particular BMP or management system approach.
10. In the plan's list of BMPs, identify each one also by the SCS code or designations, if applicable.
11. Identify the agency (or agencies) responsible for implementation of the program, and describe specific roles and responsibilities.
12. Describe the "master plan" and "annual action plan" mentioned in the plan in terms of: (a) purpose and use, (b) content, and (c) process for development and review.
13. Using a more fully developed set of program objectives and tasks, expand the implementation schedule to show interim targets or "mileposts."
14. Describe public involvement in plan review and adjustment.
15. Describe the program objectives or other assumptions underlying the detailed program administration budget. It is understood that the three funding scenarios identified in the plan imply different levels of effort and achievement. This should be described in terms of the specific objectives and tasks which can be accomplished at each funding level.
16. Expand the discussion of potential funding sources to address: (a) the particular characteristics, program

preferences, or funding criteria of each, (b) amounts of funds potentially available, (c) conditions typically placed on the funds, and (d) tasks for further investigating or applying to these sources for funds.

17. If adequate funding sources are not available for the types of funding assistance programs outlined, explain what steps will be taken to require individual agricultural operators to implement the required BMPs to ensure compliance with TMDL goals.
18. Describe a process for regular periodic reporting of program implementation and results.
19. Discuss interagency agreements necessary for program implementation. Reiterate in one location the opportunities for interagency cooperation mentioned throughout the plan.
20. Complete the container nursery water quality protection program now under development, and incorporate into the plan.
21. A monthly progress report to DEQ (utilizing a one- or two-page form) and a monthly progress meeting with DEQ shall be included in the Plan.
22. Include provisions for the protection of all streams, wetlands, and ponds with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow, on all sides.
23. All of the above must be included in a Final Plan and provided to DEQ by November 1, 1990.
24. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the rules or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
25. Identify the appropriate responsible agency to join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin basin (Process to commence within 120 days).

TUALATIN RIVER BASIN
 OREGON DEPARTMENT OF AGRICULTURE (ODA) WATERSHED MANAGEMENT PLAN
 COMPLETION AND IMPLEMENTATION SCHEDULE

TASKS	DATES									
	07/90 - 12/90	01/91 - 04/91	05/91 - 08/91	09/91 - 12/91	01/92 - 04/92	05/92 - 08/92	09/92 - 12/92	01/93 - 04/93	05/93 - 06/93	
1. DEQ/ODA Evaluates/ Refines Water Quality Monitoring Program.	11/90			11/91			11/92			06/93
2. Instream Water Quality Monitoring Reports By Agreed Upon Method.	11/90		07/91	11/91		07/92	11/92			06/93
3. Completion of Plans:										
a. Watershed Management Plan.	11/90									
b. List of Possible BMPs.	11/90									
c. Identify the Selected Watershed BMPs.	11/90									
d. Provide Selected BMPs & CIPs Design Specifica- tions.	11/90									
e. Any Additional Inter- local Agreements.	11/90									
f. Container Nursery Water Quality Protec- tion Program.	11/90									
g. Provision for Protec- tion of all Streams, Wetlands and Ponds with Adequate (Preferably 100 ft.) Undisturbed Buffers.	11/90									
h. Identify the Funding Sources & Staffing for BMP Implementation & Enforcement.	11/90									
i. TMDL Compliance Monitoring Program.	12/90									
j. DEQ/ODA Evaluates and, if Needed, DEQ Refines Load Allocation.						05/92				
k. Others, As Identified/ Agreed to in Monthly Meetings.	11/90									
4. Implementation Measures:										
a. Maintenance & Operations.	11/90	_____→								
b. BMPs.	11/90	_____→								
c. Capital Improvement Programs (CIPs).	11/90	_____→								
5. Progress Reports/Monitor:										
a. Monthly Progress Report Forms to DEQ.	08/90	_____→								
b. Monthly Progress Meetings with DEQ.	08/90	_____→								
6. TMDL Compliance Date.										(06/30/ 93)

STAFF REVIEW

TUALATIN RIVER BASIN
WATERSHED MANAGEMENT PLAN

OREGON DEPARTMENT OF FORESTRY

The plan reviewed here proposes the continued implementation of the Oregon Forest Practices Act (FPA) as the main component in a forestry watershed management plan for the Tualatin basin. The FPA program is composed of administrative rules, guidance documents, directives, and other resources designed to guide forest practices. The DEQ staff comments and recommendations below result from a review of both the Tualatin Forestry Plan and, where applicable, the FPA.

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: The Plan's purpose and expected results are described.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: The plan notes that "harvesting will increase by two to four times during the next two decades" as the basin's timber stands reach harvest age, and further notes that the present phosphorus load allocation may be inadequate in light of this increase in activity.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The Plan's goal statement is described.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen; (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The two objectives stated are (1) to continue implementation of the FPA, and (2) to monitor the effectiveness of the FPA at protecting water quality. These are actually "sub-goals" rather than objectives as defined in DEQ's plan preparation guidance document.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the NPS strategy for forest lands are reviewed below.

Available Control Options: Options other than continued implementation of the FPA were not discussed.

Process for Selecting Options: The plan did not discuss the process by which the FPA was identified as the preferred control option.

Description of BMPs to be Used: The FPA rules are clearly referenced as the "best management practices" or management measures to be used. No attempt is made to describe those BMPs within the Tualatin plan. The rules and other FPA documents are not attached to the plan, and the rules (including those particularly relating to water quality) are not cited by OAR number. Also, the plan does not discuss (or reference a discussion of) the process and considerations used in selecting BMPs on a site-by-site basis.

Responsibilities for Implementing: The plan clearly identifies the Oregon Department of Forestry (ODF) as the agency with authority to implement and enforce the FPA.

Monitoring and Evaluation: The plan clearly commits ODF to monitor FPA program implementation and BMP effectiveness statewide, and also commits ODF to a basic level of TMDL compliance monitoring program in the Tualatin basin. The plan does not contain (nor reference) adequate detail on BMP effectiveness monitoring.

Public Information and Education: The FPA incorporates some information and education components, delivered principally through on-site inspections by Forest Practices Foresters.

Periodic Plan Review and Adjustment: The plan relies on the existing mechanisms for FPA review and modification.

Implementation Schedule: The FPA is already in effect in the basin. Schedules for reporting should be added.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: Relies on existing processes for the FPA statewide.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement

the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: The authority to implement is described in the Plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The plan identifies several program elements specific to the Tualatin basin (or to the TMDL program) and not a part of the regular FPA program, but does not show cost estimates for these elements. Federal funds (through DEQ) are identified as a funding source, but specific fund types (i.e., federal assistance grants) are not identified. Also, other sources (state and local funds, user fees or taxes) are not discussed.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The plan relies on existing processes for reporting of FPA implementation and effectiveness.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: The plan is not clear on whether or not implementation agreements with other agencies will be necessary. The plan references the interagency agreements stemming from DEQ's statewide Nonpoint Source Management Plan. ODF was actively involved in development of the current NPS plan during 1988-89, but DEQ and ODF have not yet updated their old (1978) NPS agreement.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: DEFER ACTION.

The recommendation for deferred action is based on the Oregon Board of Forestry's request for additional time to receive the report from the Technical Specialist Panel (TSP). The plan's reliance on the Forest Practices Act program is logical and appropriate. However, the Tualatin Basin Forestry Plan itself would better link the FPA to the needs of the TMDL program if several improvements are made. Additional tasks are necessary for the completion and implementation of the plan as prescribed below and in the attached Oregon Department of Forestry Tualatin River Basin Watershed Management Plan Schedule (Attachment B-1). Action on the Plan by the Commission should be deferred at this time so that ODF can revise and submit a new plan by November 1, 1990 for consideration by the Commission for approval.

Tasks:

The time period for completion of the Final Plan for submission to DEQ starts when the Commission adopts the following recommended tasks for approval:

1. Explain how the FPA was selected as the control option, and discuss options, if any, which were considered and rejected.
2. Fully cite and describe the FPA rules, rule guidance documents, directives, and other sources which provide the details for implementation of water quality protection BMPs and other program elements in the Tualatin basin.
3. Describe the process (presumably included within the existing FPA program) by which BMPs and other management measures to protect water quality are selected for different sites and operations. Explain the latitude, if any, which forestry operators have in selecting and applying these BMPs and the Oregon Department of Forestry has in requiring the application of these BMPs by the forestry operators.
4. Explain how the FPA's effectiveness at protecting water quality will be monitored in the Tualatin basin. The FPA water quality monitoring program should identify the timeline for development and the goals and objectives of the program.

5. Estimate costs (yearly and over the life of the plan) for program elements specific to the Tualatin and not otherwise funded as part of the FPA program.
6. ODF should identify the staffing requirements in order to develop the watershed forest management plan, to monitor water quality and to adequately enforce BMPs to ensure compliance.
7. Discuss other potential funding sources (besides the federal government), including but not limited to (a) state funds, and (b) special assessments or taxes on forest operators.
8. A monthly progress report to DEQ (utilizing a one- or two-page form) and a monthly progress meeting with DEQ is included in the Plan.
9. All the above must be included in the Revised Draft Plan and provided to DEQ by November 1, 1990.
10. Within 12 months, the following tasks must be included in a Final Plan and provided to DEQ:
11. ODF should complete a nutrient load control strategy for the forested areas of the Tualatin Basin. The strategy plan should estimate the sources and levels of phosphorus pollution associated with anticipated harvest levels and the Best Management Practices (BMPs) required to control phosphorus pollution to meet the TMDL requirements. Any needed BMPs not already part of the Forest Practices Program should be identified, adopted, and implemented.
12. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
13. ODF shall join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin basin (Process to commence within 120 days).

TUALATIN RIVER BASIN
 OREGON DEPARTMENT OF FORESTRY (ODF) WATERSHED MANAGEMENT PLAN
 COMPLETION AND IMPLEMENTATION SCHEDULE

TASKS	DATES									
	07/90 - 12/90	01/91 - 04/91	05/91 - 08/91	09/91 - 12/91	01/92 - 04/92	05/92 - 08/92	09/92 - 12/92	01/93 - 04/93	05/93 - 06/93	
1. DEQ/ODF Evaluates/Refines Water Quality Monitoring Program.	11/90			11/91			11/92			06/93
2. Instream Water Quality Monitoring Reports By Agreed Upon Method.	11/90		07/91	11/91		07/92	11/92			06/93
3. Completion of Plans:										
a. Nutrient Load Control Strategy.			08/91							
b. List of Possible BMPs.	11/90									
c. Identify the Selected Watershed BMPs.			08/91							
d. TMDL Compliance Monitoring Program.	12/90									
e. DEQ/ODF Evaluates and, if Needed, DEQ Refines Load Allocation.					05/92					
f. Others, As Identified/Agreed to in Monthly Meetings.	08/90	—————→								
4. Implementation Measures:										
a. Maintenance & Operations.	11/90	—————→								
b. BMPs.	11/90	—————→								
c. Capital Improvement Programs (CIPs), if any.			08/91	—————→						
5. Progress Reports/Monitoring:										
a. Monthly Progress Report Forms to DEQ.	08/90	—————→								
b. Monthly Progress Meetings with DEQ.	08/90	—————→								
6. TMDL Compliance Date.										(06/30/93)

STAFF REVIEW

TUALATIN RIVER BASIN
URBAN AREA SURFACE WATER MANAGEMENT PLAN

UNIFIED SEWERAGE AGENCY (USA) OF WASHINGTON COUNTY

The watershed management plan reviewed herein was prepared by the Unified Sewerage Agency in conjunction with the jurisdictions which lie within USA's service district (the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, North Plains, Sherwood, Tigard, Tualatin, and Washington County).

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: A table is provided which shows the section titles and page numbers where information asked for in the DEQ "Guidance" may be found.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: Thoroughly and accurately described.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is easy to find in the plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The statements listed as "Program Objectives" in the plan only describe what needs to happen. As "sub-goals" they do a very good job of more fully describing the overall program goal, but they lack the remaining elements of true objectives. The plan's true objectives are its "management measures" (see "BMPs" below). USA refers to these measures in one part of their discussion of objectives, but should do so more overtly.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of USA's NPS strategy are reviewed below.

Available Control Options: The plan discusses specific pollution sources and control concepts, exploring underlying issues, jurisdictional responsibilities, fundamental management principles, and individual control measures. These various elements are displayed in several tables and matrices which

clearly show interrelationships and linkages to the plan's "Program Objectives."

Process for Selecting Options: The Plan does not describe in detail the process by which the control strategy preferred in the Plan was developed. The process for Plan implementation is covered, but the process for reviewing, revising, and updating the Plan needs additional description. All Capital Improvement Projects (CIPs) will be identified and selected after completion of the subbasin plans which are scheduled for completion the end of 1991. This may not allow sufficient time to construct the CIPs in order to reduce nonpoint pollution to meet the June 30, 1993 TMDL's compliance deadline.

Description of BMPs to be Used: The description of BMPs is significantly incomplete, and the principal inadequacy in the plan. The selection and general description of numerous "management measures" is provided. The linking of these BMPs with various program elements and objectives is also provided. A detailed description of the BMP/management measure descriptions is provided in the plan's "workbook" section. Unfortunately, the full collection of such detailed BMP descriptions has not yet been incorporated in the plan. Because these descriptions constitute the plan's true objectives, these descriptions should be completed and incorporated as soon as possible. USA's timeline and action plan for program implementation includes both the development of additional BMP descriptions and the application of BMPs to specific sites. USA should speed up the process for selection and implementation of BMPs and CIPs.

Responsibilities for Implementing: Addressed in several sections of the plan. Of particular importance in terms of detailing responsibilities are: (1) the proposed implementation agreements (offered in the plan but not yet signed), and (2) the detailed descriptions of BMP/management measures. Those management measure descriptions included in the plan to date do not specify responsible parties, but note that responsibilities will "be determined upon adoption of interlocal [interagency] agreements."

Monitoring and Evaluation: The importance of monitoring and data evaluation are established in the plan. The management measures "workbook" section lists four critical monitoring objectives and describes strategies to meet these objectives. The BMP/measure descriptions for this section have not yet been completed, so details cannot be appraised.

Public Information and Education: The plan proposes nearly a score of management measures addressing this need. A general discussion of these measures in Chapter 7 is provided. The BMP/measure descriptions for this section of the "workbook" have not yet been completed, so details cannot be appraised.

Periodic Plan Review and Adjustment: The plan proposes an annual review and re-writing of USA's action plan for program implementation. Also, the plan identifies a management measure for "Management Plan Update" that calls for a comprehensive plan review every five years to complement the yearly reviews. The detailed description of this measure has not yet been added to the "workbook." An annual meeting with DEQ Staff is also required.

Implementation Schedule: General information on scheduling is incorporated into several sections of the plan. Approximate time lines specific to individual management measures are shown graphically in the "workbook" section. The most detailed scheduling information is included in the detailed management measure descriptions, most of which have not yet been added to the plan. The selection, funding and implementation of the CIPs is not adequately outlined in the Plan.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: Public involvement in plan development, including the involvement of representatives of public agencies and interest groups, was outlined. Several concerns most frequently raised are addressed in a brief "responsiveness summary" in an appendix. As noted under "Public Information and Education" above, additional plans are being made for public outreach of various kinds, but detailed objectives in the form of management measures have not yet been added to the plan.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: Necessary authorities are addressed, except for the reason for the exclusion of the City of Gaston from the Plan and the implementation of the CIPs.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: Alternative funding approaches are described. A general discussion of the program budget is also provided. The management measure "workbook" presents approximate costs for each measure, and the detailed measure descriptions will, when added to the plan, estimate costs with a greater level of detail and certainty. The plan shows that USA has a clear picture of the approximate revenues and expenditures necessary to implement the plan.

One notable detail of the plan, located in the proposed Memorandum Of Agreement in Chapter 6, is USA's request that DEQ "petition the legislature to establish a grant, loan, or trust fund" to be used by designated management agencies for NPS "management, programming, and implementation." If adopted, this policy would require preparation of a legislative initiative by the Department.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The plan calls for at least one annual report, and additional reports may be required by specific management measures or by interagency agreements. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: The plan describes some interagency agreements but other agreements may be developed as necessary.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: APPROVAL.

The Unified Sewerage Agency (USA) Tualatin River Watershed Management Plan has all elements necessary for the implementation of phosphorus pollution controls to achieve TMDL requirements. Additional tasks are necessary, as already identified in the plan and in the attached plan completion update letter from USA (Attachment J), for the completion and implementation of the plan. Water quality monitoring and reporting, plan completion, implementation of control measures, monthly progress reports to DEQ (utilizing a one- or two-page progress report form), monthly progress meetings with DEQ, compliance monitoring tasks and DEQ approvals are required to be accomplished.

The following USA Tualatin River Basin Watershed Management Plan Schedule (Attachment C-1) for plan completion and implementation of pollution controls outlines the work required in order to meet the TMDL compliance date.

TUALATIN RIVER BASIN
 UNIFIED SEWERAGE AGENCY (USA) WATERSHED MANAGEMENT PLAN
 COMPLETION AND IMPLEMENTATION SCHEDULE

TASKS	DATES										
	07/90 - 12/90	01/91 - 04/91	05/91 - 08/91	09/91 - 12/91	01/92 - 04/92	05/92 - 08/92	09/92 - 12/92	01/93 - 04/93	05/93 - 06/93		
1. DEQ/USA Evaluates/Refines WQ Monitoring Program.	11/90			11/91			11/92			06/93	
2. Instream Water Quality Monitoring Reports By Agreed Upon Method.	11/90	03/91	07/91	11/91	03/92	07/92	11/92	03/93		06/93	
3. Completion of Plans:											
a. Subbasin Plans & Special Studies.			08/91								
b. List of Possible BMPs.	11/90										
c. Identify the Selected Subbasin BMPs.			08/91								
d. Provide Selected BMPs & CIPs Design Specifications.			08/91								
e. Any Additional Inter-local Agreements.			08/91								
f. Provision for City of Gaston Incl. into Plan.	07/90										
g. Provision for Protection of all Streams, Wetlands and Ponds with Adequate (Preferably 100 ft.) Undisturbed Buffers.	07/90										
h. Additions to Local Comprehensive Code & Development Standards.			08/91								
i. TMDL Compliance Monitoring Program.	12/90										
j. DEQ/USA Evaluates and, if Needed, DEQ Refines Load Allocation.						05/92					
k. Others, As Identified/Agreed to in Monthly Meetings.	08/90 —————→										
4. DEQ Approves Erosion Control and Stormwater Control Ordinances:	12/90										
5. Implementation Measures:											
a. Maintenance & Operations.	08/90 —————→										
b. BMPs.	08/90 —————→										
c. Capital Improvement Programs (CIPs).			08/91 —————→								
6. Progress Reports/Monitor:											
a. Monthly Progress Report Forms to DEQ.	08/90 —————→										
b. Monthly Progress Meetings with DEQ.	08/90 —————→										
7. TMDL Compliance Date.										(06/30/93)	

STAFF REVIEW

TUALATIN RIVER BASIN
WATERSHED MANAGEMENT PLAN

CLACKAMAS COUNTY and RIVERGROVE

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: The Introduction describes the purpose and expected results of the Plan.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: The physical setting and water quality problems and other elements of this section of the Plan are described. The institutional infrastructure description describes the agencies involved but does not clearly identify their respective responsibilities. Specifically, Figure 2.5 "Responsibility Matrix" should be completed. There is no description of the time period in which the specific goals will be achieved.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.)

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal is concise and describes the desired results of the Plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The "objectives" listed in the plan really are "sub-goals," and do not include the detail requested in the guidance. However, the plan does describe the Plan's objectives in its discussion of management measures and a plan of work in Chapter 4.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the Clackamas County and Rivergrove NPS strategy are reviewed below.

Available Control Options: The Plan describes the specific sources of nonpoint pollution and solutions.

Process for Selecting Options: The plan does not describe in detail the process by which the control strategy preferred in the plan was developed. The process for plan implementation is covered adequately, but the process for reviewing, revising, and updating the plan needs additional description.

Description of BMPs to be Used: The Plan's format, content, and detail meet the Guidance Document's requirements. Descriptions of two management measures apparently need to be completed: DB.4 (Existing System Inventory), and R.8 (Livestock Management). And, the CIPs are not fully described and are not identified on a site specific basis. As a result, the pollution load reductions estimated in the Plan are based on the application of some of the maintenance BMPs and not the CIPs or other listed BMPs. Clackamas County and the City of Rivergrove should speed up the process in order to meet the compliance deadline.

Responsibilities for Implementing: The responsibilities for implementation are identified in Chapter 4 management measure descriptions except for CIPs, which DEQ assumes Clackamas County has identified as their responsibility.

Monitoring and Evaluation: Discussion of monitoring and evaluation is provided. Inclusion of the "Monitoring Methods" paper in the Appendix is included. Specific monitoring measures described in Chapter 4 are also provided. Clackamas County and Rivergrove will have to participate with DEQ and other Tualatin Basin actors in the development of a final TMDL compliance monitoring program.

Public Information and Education: The selected public involvement and education activities are described in detail.

Periodic Plan Review and Adjustment: The plan is not clear on the process for regular review and adjustment. A yearly "action plan" is mentioned but not adequately explained. An annual meeting with DEQ Staff is recommended.

Implementation Schedule: The overall time line and the measure-specific schedules in Chapter 4 are provided. The 3-phase approach described in Chapter 1 is also provided. The selection, funding and implementation of the CIPs is not adequately outlined in the Plan.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: This element needs improvement. The advisory group created by management measure PE.10 is a good vehicle for public involvement, but the date for implementation of this measure should be moved up into 1990. The technical advisory group formed by measure IC.1 also should be formed sooner than the target date of mid-1991. In addition, the plan should elaborate

more fully (perhaps in Chapter 4) on the importance of public involvement in plan development and review.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan. The authority to implement the CIPs is not described.

Review: The discussion of funding options in Chapter 6 also touches on matters of authority but leaves several questions unanswered. The plan should explain whether or not the existing special district authorities allow for both adequate fundraising and program implementation, and, if not, how the local agencies plan to proceed. Also, the "observations" in section 2.3 on the local Comprehensive Code and Development Standards raise questions which should be further addressed in the plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: Budget estimates are provided.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The process for reporting program implementation and results is not clear from the plan. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: Specific agreements are not included in the Plan but will be prepared and implemented. Management measures IC.2 and IC.3 address this element.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: APPROVAL.

The Clackamas County and Rivergrove Tualatin River Basin Watershed Management Plan Has all elements necessary for the implementation of phosphorus pollution controls to achieve TMDL requirements. Additional tasks are necessary, as already identified in the plan and in the attached plan completion update letter from Clackamas County (Attachment N), for the completion and implementation of the plan. Water quality monitoring and reporting, plan completion, implementation of control measures, monthly progress reports to DEQ (utilizing a one- or two-page progress report form), monthly progress meetings with DEQ, compliance monitoring tasks and DEQ approvals are required to be accomplished.

The following Clackamas County and Rivergrove Tualatin River Basin Watershed Management Plan Schedule (Attachment D-1) for plan completion and implementation of pollution controls outlines the work required in order to meet the TMDL compliance date.

TUALATIN RIVER BASIN
 CLACKAMAS COUNTY AND RIVERGROVE WATERSHED MANAGEMENT PLAN
 COMPLETION AND IMPLEMENTATION SCHEDULE

TASKS	DATES									
	07/90 - 12/90	01/91 - 04/91	05/91 - 08/91	09/91 - 12/91	01/92 - 04/92	05/92 - 08/92	09/92 - 12/92	01/93 - 04/93	05/93 - 06/93	
1. DEQ/Clackamas Co. & Rivergrove Evaluates/Refines WQ Monitoring Program.	11/90			11/91			11/92		06/93	
2. Instream WQ Monitoring Reports By Agreed Upon Meth'd.	11/90	03/91	07/91	11/91	03/92	07/92	11/92	03/93	06/93	
3. Completion of Plans:										
a. DEQ Establishes Load Allocation for Clackamas County Rural Area.						05/92				
b. Subbasin Plans & Special Studies.			08/91							
c. List of Possible BMPs.	11/90									
d. Identify the Selected Subbasin BMPs.			08/91							
e. Provide Selected BMPs & CIPs Design Specs.			08/91							
f. Any Additional Inter-local Agreements.			08/91							
g. Establish a Surface Water Management Service District.	08/90									
h. Provision for Protection of all Streams, Wetlands and Ponds with Adequate (Pref. 100 ft.) Undistrubed Buffers.	08/90									
i. Additions to Local Comprehensive Code & Development Standards.			08/91							
j. TMDL Compliance Monitoring Program.	12/90									
k. DEQ/Clack. Co. & Riverg. Evaluates &, if Needed, DEQ Refines Load Alloca.						05/92				
l. Others, As Id./Agreed to in Monthly Meetings.	08/90 →									
4. DEQ Approves Erosion Control and Stormwater Control Ordinances.	12/90									
5. Implementation Measures:										
a. Maintenance & Operat's.	08/90 →									
b. BMPs.	08/90 →									
c. Capital Improvement Programs (CIPs).			08/91 →							
6. Progress Reports/Monitor:										
a. Monthly Progress Report Forms to DEQ.	08/90 →									
b. Monthly Progress Meetings with DEQ.	08/90 →									
7. TMDL Compliance Date.									(06/30/93)	

STAFF REVIEW

TUALATIN BASIN WATERSHED MANAGEMENT PLAN

CITY OF PORTLAND

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: The Introduction to the Plan and the descriptions of why the plan was produced and what the expected results were concise. The "road map" was not provided however.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: A description of the problem statement, physical setting and institutional infrastructure was provided. A detailed and thorough water quality sampling and description of likely sources is also provided. Description of the time period and goals of compliance were missing.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement(s) describing the desired results and the expected effectiveness of the plan strategy were missing in this section of the Plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The Plan objectives, including the plan's measurable results, are described in the Control Options description in Chapter 4, Option Evaluation.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the City of Portland's NPS strategy are reviewed below.

Available Control Options: A limited list of control options were outlined. Other control options are available and were mentioned in other sections or as an appendix to the Plan. Some of the other available options may not be applicable to the more developed and steeper slope areas of the City of Portland's portion of the Tualatin Basin. However, the City should add other applicable control options to their list of BMPs, management and maintenance measures in order to meet the designated Load Allocations for phosphorus. The control options that could be added include the construction of control facilities outside the City of Portland, reduction of pollu-

tants from streets, parking lots and other source controls, soil infiltration/absorption is utilized, etc.

Process for Selecting Options: The process for selecting control options includes an evaluation system which is based on very complete and thorough existing conditions monitoring data. The computer modelling completed for the basin in evaluating the effectiveness of the selected control options is excellent. However, the modelling should be expanded to include other applicable control options to identify those options needed to meet the phosphorus load allocation.

Description of BMPs to be Used: The selected BMPs are described. As mentioned above, additional BMPs should be described and added to the list of applicable control options.

Responsibilities for Implementing: Most responsibilities are described except for implementation of CIPs which is assumed to be the City's.

Monitoring and Evaluation: The monitoring and evaluation system is described in detail, except for the limited list of applicable control options.

Public Information and Education: The description on how the final plan and selected BMPs and CIPs will be made with the general public involvement are not included.

Periodic Plan Review and Adjustment: The periodic plan review and adjustment process is provided, but the time schedule is not adequate in order to meet the June 30, 1993 TMDL compliance date.

Implementation Schedule: The implementation schedule is not adequate in order to meet the compliance date. The request for a ten year implementation period is not acceptable. The City should revise their implementation schedule to select and construct control options sooner in order to meet the compliance date. Identify when the needed Project Manager will be hired.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: Need to provide general public involvement on the selection of BMPs and CIPs and completion of the Final Plan. The list of public involvement and education activities should be expanded to include the development of a watershed BMP Manual, retail

managers' workshops, voluntary dump removal "round-up" day, contractor and public workers workshops, watershed or creek signage, and others.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: The City's authority to implement the plan is described throughout the plan. The construction of control facilities outside the City of Portland is an option which may require interagency agreement(s) and a description in the Plan of responsible agency(s) for implementation.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The known and estimated costs and funding sources are described and appear to be sufficient to accomplish the goals of the Plan.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The identified annual reporting to DEQ is provided, but annual meetings with DEQ Staff are not included in the Plan.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: An interagency agreement between DEQ and the City is provided but other needed ones are not included.

IX. OTHER ISSUES

Purpose: The City of Portland has requested the DEQ to do the following:

1. A reevaluation of the draft Load Allocations, taking into account instream assimilative capacity of phosphorus and more study of background phosphorus concentrations.
2. A clarification of the intended means of applying the designated Load Allocations for the various subbasins within the City.
3. A 100 percent increase in Portland's Fanno Creek Basin Load Allocation, if necessary.
4. A comparison of the relative costs and benefits of capital and operating programs proposed by each Tualatin jurisdiction (local, state and federal) to determine the equity and feasibility of attaining the Load Allocations.
5. Development of a Tualatin basin-wide, multi-jurisdictions schedule.
6. Provide coordination with all state and federal resource agencies involved in permit reviews for the construction of wetland and similar facilities.
7. A ten-year implementation period (from the EQC) which includes an interagency monitoring and research program for the first three years.
8. The City and DEQ, in coordination with USA, enter into a cooperative evaluation of how to establish and achieve Load Allocations in a developing forest-to-urban watershed during the transitional period.

Review: The City of Portland must justify with more studies and information on why the Load Allocations cannot be met. There are other applicable control options available which can be constructed and/or implemented both inside and outside the City of Portland within the compliance deadline. If, after the City has completed a more thorough and complete control options evaluation and effectiveness analysis, the

Load Allocations are shown not to be achievable, then DEQ Staff can meet with the City to discuss the need for reallocation. Most of the other issues the City has requested of DEQ can be addressed in meetings with DEQ Staff or are not issues which limit the City's ability to meet the compliance deadline.

X. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: APPROVAL.

The City of Portland's Tualatin Basin Water Quality Management Plan has all elements necessary for the implementation of phosphorus pollution controls to achieve TMDL requirements. Additional tasks are necessary, as already identified in the plan and in the attached plan completion update letter from the City of Portland (Attachment K), for the completion and implementation of the plan. Water quality monitoring and reporting, plan completion, implementation of control measures, monthly progress reports to DEQ (utilizing a one- or two-page progress report form), monthly progress meetings with DEQ, compliance monitoring tasks and DEQ approvals are required to be completed.

The following City of Portland Tualatin River Basin Watershed Management Plan Schedule (Attachment E-1) for plan completion and implementation of pollution controls outlines the work required to meet the TMDL compliance date.

TUALATIN RIVER BASIN
CITY OF PORTLAND WATERSHED MANAGEMENT PLAN
COMPLETION AND IMPLEMENTATION SCHEDULE

Attachment E-1

TASKS	DATES								
	07/90 - 12/90	01/91 - 04/91	05/91 - 08/91	09/91 - 12/91	01/92 - 04/92	05/92 - 08/92	09/92 - 12/92	01/93 - 04/93	05/93 - 06/93
1. DEQ/City of Portland Evaluates/Refines Water Quality Monitoring Program.	11/90			11/91			11/92		06/93
2. Instream WQ Monitoring Reports By Agreed Upon Method.	11/90	03/91	07/91	11/91	03/92	07/92	11/92	03/92	06/93
3. Completion of Plans:									
a. Subbasin Plans & Special Studies.			08/91						
b. List of Possible BMPs.	11/90								
c. Identify the Selected Subbasin BMPs.			08/91						
d. Provide Selected BMPs & CIPs Design Specs.			08/91						
e. Any Additional Inter-Local Agreements.			08/91						
f. DEQ Est. Load Allocation for Multnomah Co. & Portland's Skyline Area.						05/92			
g. Prov. for Multnomah Co. Included into Plan.	07/90								
h. Prov. for Protec. of all Streams, Wetlands & Ponds with Adeq. (Pref. 100 ft.) Undist. Buff'rs.	07/90								
i. Addi. to Local Comp. Code & Develop. Stands.			08/91						
j. Identification & Description of Control Facilities Outside City.			08/91						
k. TMDL Compliance Monitoring Program.	12/90								
l. DEQ/City of Port. Evals. &, if Needed, DEQ Refines Load Allocation.						05/92			
m. Others, As Id./Agreed to in Monthly Meetings.	08/90	—————→							
4. DEQ Approves Erosion Control and Stormwater Control Ordinances.	12/90								
5. Implementation Measures:									
a. Maintenance & Operat's.	08/90	—————→							
b. BMPs.	08/90	—————→							
c. Capital Improvement Programs (CIPs).			08/91	—————→					
6. Progress Reports/Monitor:									
a. Monthly Progress Report Forms to DEQ.	08/90	—————→							
b. Monthly Progress Meetings with DEQ.	08/90	—————→							
7. TMDL Compliance Date.									(06/30/93)

STAFF REVIEW

LOWER TUALATIN RIVER OSWEGO LAKE SUBBASINS
WATERSHED MANAGEMENT PLAN

CITY OF LAKE OSWEGO

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: A table is provided which shows the section titles and page numbers where information asked for in the DEQ "Guidance Document" may be found.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: The physical setting and water quality problems descriptions are described. The institutional infrastructure description describes the agencies involved but does not clearly identify their respective responsibilities. Specifically, Figure 2.8 "Responsibility Matrix" should be completed. There is no description of the time period in which the specific goals will be achieved.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is concise and describes the desired results of the plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The objectives listed are "sub-goals" rather than specific statements of what is to be accomplished. They do not completely describe the measurable end result, the time line for implementation, who is responsible and the funding and staffing resources needed. However, the Plan does contain adequate objectives in its discussion of management measures and a plan of work in Chapter 4.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of Lake Oswego's NPS strategy are reviewed below.

Available Control Options: The plan describes the specific sources of nonpoint pollution and solutions. The control options are outlined in an organized format that show interrelationships to the plan's "Program Objectives."

Process for Selecting Options: Described in several sections of the plan. The timing for the selection of options is based on further monitoring and subbasin plan development. All Capital Improvement Projects (CIP) will be identified and selected after completion of the subbasin plans which are scheduled for completion in December 1991. It appears that there is not sufficient time to construct the CIPs in order to reduce nonpoint pollution to meet the June 30, 1993 TMDL's compliance deadline. In addition, the process for reviewing, revising, and updating the plan needs additional description.

Description of BMPs to be Used: The maintenance and operations BMPs are identified and described in terms of their effectiveness in reducing specific nonpoint pollutants. The CIPs are not fully described and are not identified on a site specific basis. As a result, the pollution load reductions estimated in the plan are based on the application of some of the maintenance BMPs and not the CIP or other listed BMPs. The estimates do account for site specific variables. The City of Lake Oswego should speed up this process in order to meet the compliance deadline. The beneficial uses of water the BMP is expected to protect or enhanced is adequately identified in the more detailed descriptions of the management measures. Their expected or real effectiveness are not completely identified.

Responsibilities for Implementing: Addressed in several sections of the plan except for CIPs, which DEQ assumes Lake Oswego has identified as their responsibility.

Monitoring and Evaluation: The importance of monitoring and data evaluation are established in the plan. Lake Oswego in cooperation with USA have already initiated an expanded monitoring program in advance of the deadlines mandated by EQC rules. The plan also includes an evaluation monitoring program which will evaluate the effectiveness of implemented BMPs to adjust or modify the plan to increase the program's success of meeting the water quality goals. The City of Lake Oswego will have to participate with DEQ and other Tualatin Basin entities in the development of a final TMDL compliance monitoring program.

Public Information and Education: The selected public involvement and education activities are described and are necessary to reduce nonpoint pollution to the Tualatin and Lake Oswego Basins.

Periodic Plan Review and Adjustment: The Plan is not clear on the process for regular review and adjustments. A yearly "action plan" is mentioned but not adequately explained. An annual meeting with DEQ Staff is recommended.

Implementation Schedule: General information on scheduling is incorporated into several sections of the plan. The selection, funding and implementation of the CIPs is not adequately outlined in the plan.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: The selected public involvement opportunities should provide long-term benefits in the continual implementation of the plan objectives. The Plan should elaborate more fully (perhaps in Chapter 4) on the importance of public involvement in plan development and review.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: Necessary authorities are identified, except for the implementation of the CIPs. The "observations" in section 2.3 on the local Comprehensive Code and Development Standards raise questions which should be further addressed in the Plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The budget outlined in the plan generally identifies the annual costs for the administration, maintenance, public education, basin planning and engineering but not for the CIPs. The budget revenues appear to adequately cover these costs except for CIPs. The plan should identify how and when the CIP costs will be specifically determined and funded.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: An annual report and additional technical reports will be provided to DEQ by the City of Lake Oswego. The actual process for reporting program implementation and results is not clear in the Plan. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: Specific agreements are not included in the plan but will be prepared and implemented. Management measures IC.1 through IC.6 address this element.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: APPROVAL.

The City of Lake Oswego Tualatin River Watershed Management Plan has all elements necessary for the implementation of phosphorus pollution controls to achieve TMDL requirements. Additional tasks are necessary, as already identified in the plan and in the attached plan completion update letter from the City of Lake Oswego (Attachment L), for the completion and implementation of the plan. Water quality monitoring and reporting, plan completion, implementation of control measures, monthly progress reports to DEQ (utilizing a one- or two-page progress report form), monthly progress meetings with DEQ, compliance monitoring tasks and DEQ approvals are required to be accomplished.

The following City of Lake Oswego Tualatin River Basin Watershed Management Plan Schedule (Attachment F-1) for plan completion and implementation of pollution controls outlines the work required in order to meet the TMDL compliance date.

TUALATIN RIVER BASIN
CITY OF LAKE OSWEGO WATERSHED MANAGEMENT PLAN
COMPLETION AND IMPLEMENTATION SCHEDULE

TASKS	DATES									
	07/90 - 12/90	01/91 - 04/91	05/91 - 08/91	09/91 - 12/91	01/92 - 04/92	05/92 - 08/92	09/92 - 12/92	01/93 - 04/93	05/93 - 06/93	
1. DEQ/City of Lake Oswego Evaluates/Refines Water Quality Monitoring Program.	11/90			11/91			11/92		06/93	
2. Instream Water Quality Monitoring Reports By Agreed Upon Method.	11/90	03/91	07/91	11/91	03/92	07/92	11/92	03/93	06/93	
3. Completion of Plans:										
a. Subbasin Plans & Special Studies.			08/91							
b. List of Possible BMPs.	11/90									
c. Identify the Selected Subbasin BMPs.			08/91							
d. Provide Selected BMPs & CIPS Design Specifications.			08/91							
e. Any Additional Inter-local Agreements.			08/91							
f. Provision for Protection of all Streams, Wetlands and Ponds with Adequate (Preferably 100 ft.) Undisturbed Buffers.	12/90									
g. Additions to Local Comprehensive Code & Development Standards.			08/91							
h. TMDL Compliance Monitoring Program.	12/90									
i. DEQ/City of Lake Oswego Evaluates &, if Needed, DEQ Refines Load Allocation.						05/92				
j. Others, As Identified/Agreed to in Monthly Meetings.	08/90 →									
4. DEQ Approves Erosion Control and Stormwater Control Ordinances.	12/90									
5. Implementation Measures:										
a. Maintenance & Operations.	08/90 →									
b. BMPs.	08/90 →									
c. Capital Improvement Programs (CIPs).			08/91 →							
6. Progress Reports/Monitor:										
a. Monthly Progress Report Forms to DEQ.	08/90 →									
b. Monthly Progress Meetings with DEQ.	08/90 →									
7. TMDL Compliance Date.									(06/30/93)	

STAFF REVIEW

LOWER TUALATIN RIVER OSWEGO LAKE SUBBASINS
WATERSHED MANAGEMENT PLAN

CITY OF WEST LINN

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: Well done, particularly the table showing the section titles and page numbers where information asked for in the DEQ "Guidance Document" may be found.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: The physical setting and water quality problems descriptions are good. The institutional infrastructure description adequately describes the agencies involved but does not clearly identify their respective responsibilities. Specifically, Figure 2.6 "Responsibility Matrix" should be completed. There is no description of the time period in which the specific goals will be achieved.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below.

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is concise and adequately describes the desired results of the plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The objectives listed are "sub-goals" rather than specific statements of what is to be accomplished. They do not completely describe the measurable end result, the time line for implementation, who is responsible and the funding and staffing resources needed. However, the Plan does contain adequate objectives in its discussion of management measures and a plan of work in Chapter 4.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of West Linn's NPS strategy are reviewed below.

Available Control Options: The plan does a very good job describing the specific sources of nonpoint pollution and solutions. The control options are outlined in a well organized and extremely well described format that show interrelationships to the plan's "Program Objectives."

However, the provision of detention basins and their cleaning and maintenance, survey of watershed creeks and their adequate protection, and land use controls should be added as control options to the Plan.

Process for Selecting Options: Adequately described in several sections of the plan. The timing for the selection of options is based on further monitoring and subbasin plan development. All Capital Improvement Projects (CIP) will be identified and selected after completion of the subbasin plans which are scheduled for completion in December 1991. Does this allow sufficient time to construct the CIPs in order to reduce nonpoint pollution to meet the June 30, 1993 TMDL's compliance deadline? In addition, the process for reviewing, revising, and updating the plan needs additional description.

Description of BMPs to be Used: The maintenance and operations BMPs are very well identified and described in terms of their effectiveness in reducing specific nonpoint pollutants. The CIPs are not fully described and are not identified on a site specific basis. As a result, the pollution load reductions estimated in the plan are based on the application of some of the maintenance BMPs and not the CIP or other listed BMPs. The estimates do account for site specific variables. The City of West Linn should speed up this process in order to meet the compliance deadline. The beneficial uses of water the BMP is expected to protect or enhanced is adequately identified in the more detailed descriptions of the management measures. Their expected or real effectiveness are not completely identified.

Responsibilities for Implementing: Adequately addressed in several sections of the plan except for CIPs, which DEQ assumes West Linn has identified as their responsibility.

Monitoring and Evaluation: The importance of monitoring and data evaluation are well established in the plan. West Linn in cooperation with USA have already initiated an expanded monitoring program in advance of the deadlines mandated by EQC rules. The plan also includes an evaluation monitoring program which will evaluate the effectiveness of implemented BMPs to adjust or modify the plan to increase the program's success of meeting the water quality goals. The City of West Linn will have to participate with DEQ and other Tualatin Basin entities in the development of a final TMDL compliance monitoring program.

Public Information and Education: The selected public involvement and education activities are excellent choices, well described and are adequate and necessary to reduce nonpoint pollution to the Tualatin and Lake Oswego Basins.

Periodic Plan Review and Adjustment: The Plan is not clear on the process for regular review and adjustments. A yearly

"action plan" is mentioned but not adequately explained. An annual meeting with DEQ Staff is recommended.

Implementation Schedule: General information on scheduling is adequate and is incorporated into several sections of the plan. The selection, funding and implementation of the CIPs is not adequately outlined in the plan.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: The selected public involvement opportunities are generally good and should provide longterm benefits in the continual implementation of the plan objectives. The Plan should elaborate more fully (perhaps in Chapter 4) on the importance of public involvement in plan development and review.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: Necessary authorities are adequately identified, except for the implementation of the CIPs. The "observations" in section 2.3 on the local Comprehensive Code and Development Standards raise questions which should be further addressed in the Plan. The City of West Linn should implement a stormwater utility with adoption of an enabling ordinance as soon as possible in order to have adequate funding for implementation of the Plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The budget outlined in the plan generally identifies the annual costs for the administration, maintenance,

public education, basin planning and engineering but not for the CIPs and maintenance of detention facilities. The budget revenues appear to adequately cover these costs except for CIPs. The plan should identify how and when the CIP costs will be specifically determined and funded.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: An annual report and additional technical reports will be provided to DEQ by the City of West Linn. The actual process for reporting program implementation and results is not clear in the Plan. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: Specific agreements are not included in the plan but will be prepared and implemented. Management measures IC.2 and IC.3 address this element.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: APPROVAL.

The City of West Linn Tualatin River Basin Watershed Management Plan has all elements necessary for the implementation of phosphorus pollution controls to achieve TMDL requirements. Additional tasks are necessary, as already identified in the plan and in the attached plan completion update letter from the City of West Linn (Attachment M), for the completion and implementation of the plan. Water quality monitoring and reporting, plan completion, implementation of control measures, monthly progress reports to DEQ (utilizing a one- or two-page report form), monthly progress meetings with DEQ, compliance

monitoring tasks and DEQ approvals are required to be accomplished.

The following City of West Linn Tualatin River Basin Watershed Management Plan Schedule (Attachment G-1) for plan completion and implementation of pollution controls for work required in order to meet the TMDL compliance date.

TUALATIN RIVER BASIN
CITY OF WEST LINN WATERSHED MANAGEMENT PLAN
COMPLETION AND IMPLEMENTATION SCHEDULE

TASKS	DATES										
	07/90 - 12/90	01/91 - 04/91	05/91 - 08/91	09/91 - 12/91	01/92 - 04/92	05/92 - 08/92	09/92 - 12/92	01/93 - 04/93	05/93 - 06/93		
1. DEQ/City of West Linn Evaluates/Refines Water Quality Monitoring Prog.	11/90			11/91			11/92			06/93	
2. Instream WQ Monitoring Rpts By Agreed Upon Meth'd.	11/90	03/91	07/91	11/91	03/92	07/92	11/92	03/93		06/93	
3. Completion of Plans:											
a. Subbasin Plans & Special Studies.			08/91								
b. List of Possible BMPs.	11/90										
c. Identify the Selected Subbasin BMPs.			08/91								
d. Provide Selected BMPs & CIPs Design Specifications.			08/91								
e. Any Additional Inter-local Agreements.			08/91								
f. Establish a Surface Water Management Service District.	12/90										
g. Prov. for Protec. of all Streams, Wetlands & Ponds with Adeq. (Pref. 100 ft.) Undist. Buf'rs.	08/90										
h. Additions to Local Comprehensive Code & Development Standards.			08/91								
i. DEQ/City of West Linn Evaluates &, if Needed, DEQ Refines Load Allocation.						05/92					
j. TMDL Compliance Monitoring Program.	12/90										
k. Others, As Identified/Agreed to in Monthly Meetings.	08/90 →										
4. DEQ Approves Erosion Control and Stormwater Control Ordinances.	12/90										
5. Implementation Measures:											
a. Maintenance & Operat'ns.	08/90 →										
b. BMPs.	08/90 →										
c. Capital Improvement Programs (CIPs).			08/91 →								
6. Progress Reports/Monitor:											
a. Monthly Progress Report Forms to DEQ.	08/90 →										
b. Monthly Progress Meetings with DEQ.	08/90 →										
7. TMDL Compliance Date.										(06/30/93)	

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: July 30, 1990

TO: Environmental Quality Commission

FROM: Don Yon, Water Quality Division

SUBJECT: Addendums to Agenda Item K

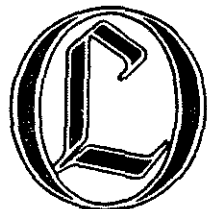
These attachments are addendums to Agenda Item K, "Tualatin Basin Watershed Management Plans: Review and Commission Action."

Attachments: (3)

- L - Lake Oswego
- M - West Linn
- N - Clackamas County

RECEIVED
JUL 27 1990

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY



380 "A" Avenue
P.O. Box 369
Lake Oswego
Oregon 97034

Planning
503-635-0290

Engineering
503-635-0270

Building
503-635-0390

FAX
503-635-0269

July 26, 1990

Department of Environmental Quality
Attn: Don Yon
811 SW Sixth Avenue
Portland, Oregon 97204

RE: Lower Tualatin River, Oswego Lake Subbasins Nonpoint Source
Watershed Management Plans

Dear Don,

The purpose of this letter is to provide a response to the Department of Environmental Quality's (DEQ) conditions of acceptance listed in your report of June 18, 1990. The following numbered items correspond to the numbers of each of DEQ's conditions. An addendum to the subject report is also attached by way of response to several of the conditions.

Response to Conditions

1. *A DEQ acceptable monitoring plan must be produced by the City of Lake Oswego that includes a list of the water quality parameters and sampling methods employed.*

Response: Monitoring efforts are described in management measures M.1 through M.5. In particular, as noted in the "Action Plan" of management measure M.3, the City is meeting with USA to coordinate monitoring efforts and promote consistency in analysis throughout the watershed. The City has identified specific sampling points and is proceeding with testing of water quality in both the Oswego Lake and Tualatin River Basins. The City is also working with the Oswego Lake Corporation on proposals they have for studying and monitoring of lake water quality. This monitoring program will be coordinated with DEQ to insure compliance with DEQ requirements.

2. *Complete Figure 2.8 responsibility matrix.*

Response: The roles of the different agencies shown in Figure 2.8 are described in Section 2.3 of the Plan. The purpose of Figure 2.8 is to provide a tool for different City staff to identify interrelationships of agencies. As such, the tool will be used in different ways by each staff member. Filling in the figure would therefore limit its usefulness.

CITY OF LAKE OSWEGO
PUBLIC WORKS AND DEVELOPMENT SERVICES

3. *Include provisions for the protection of all streams, wetlands and ponds with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow, on all sides.*

Response: Buffer zones will be established as a part of each subbasin plan based on actual field conditions. By using actual field conditions to establish setbacks, the City will have a much stronger basis to apply more (or less) stringent standards. In addition, management measure R.3 provides for sensitive area protection (see Addendum, management measure R.3. The sentence "Include setbacks for surface water features" has been added to the description). In addition, the City currently has code provisions that requires a 25 foot minimum setback form the top of bank or ravine of a stream corridor for the protection of the habitat. Our Development Review process provides the opportunity for the City's Development Review Board to extend this setback as well as apply it to ponds and wetlands.

The City's wetland standard is currently being rewritten to include a specific minimum setback and will go to public hearing hopefully this calendar year.

4. *Include in the roadway maintenance measure the provision of no spraying of pesticides.*

Response: There are many valid concerns associated with the application of pesticides and their ultimate fate relative to surface waters, groundwaters and the atmosphere. However, the management of roadside areas also includes considerations for safety and infestations by noxious vegetation. Realistically, the available budget for roadside management must also be balanced against benefits achieved. A number of Northwest jurisdictions are grappling with development of "integrated vegetation management" programs. This approach is also recommended for the City and has been noted in management measure MO.8 (see Addendum) the first sentence of the "description" is now, "Develop an integrated vegetation management program for roadside maintenance".

5. *The Plan's objectives should be described adequately so that the measurable and results, the time line for implementation, who is responsible and the funding and staffing resources are well defined.*

Response: At the time of plan preparation, water quality data was not yet available at a level which would support highly specific objectives. In addition, the goals and objectives provided in the report were adopted by the City Council, supported by the public, and serve as the basis for development of the remainder of the report (see each management measure "goals and objectives"). As the nonpoint plan is implemented, objectives will be modified and specificity increased based on increasing understanding of the watershed characteristics affecting water quality (see Addendum, first insert to page 4-8).

6. *Include a Capital Improvement Projects (CIPs) plan that described on a site specific basis the reasons for their selection, the costs, funding mechanisms(s), the responsible party(s), the means and timing of implementation.*

Response: See Addendum, second insert to page 4-8. The full development of a CIP can only be and is planned to be accomplished after many of the other program steps are first accomplished. Key elements of the plan that will develop data for the City's CIP are Water Quality Monitoring, B.M.P. Development and public education awareness and participation.

Our plan is to have the CIP complete during calendar year 1991.

7. *An annual meeting between the City and DEQ must be included in the Plan.*

Response: See Addendum, first insert to page 4-8(a), last paragraph of insert.

8. *The inclusion of specific interagency agreements, particularly with DEQ shall be provided.*

Response: The City acknowledges the need for interagency agreements to define specific responsibilities of each agency including DEQ. As each is developed and executed it will be included in the plan. The City expects to have an executed agreement with DEQ before our first annual plan update.

9. *Include a DEQ approved Erosion and Stormwater Control Ordinance.*

Response: Attached to this letter are copies of sections of our current Ordinance Standards relating to Erosion and Stormwater Control (ESC). The City is currently working on updating these standards and target their completion and adoption in the Spring of 1991. The City is also working with other basin agencies to develop handbooks on Erosion Control Standards and Water Quality Control Facilities Standards. These handbooks will be adopted by the City and utilized in development review. These adopted handbooks will be available in the Winter of 1990/91.

10. *Clarify the processes for:*

a) Review and adjustment of the plan, (b) reporting the results of monitoring and evaluation, and (c) reporting program implementation and accomplishment.

Response: (a) The plan will be reviewed and adjusted annually as a part of the Annual Action Plan (see Addendum, first insert to page 4-8). (b) Monitoring and evaluation results will be reported as part of the annual action plan as will: (c) Reporting on program implementation and accomplishment.

11. *Describe the "annual action plan" in terms of:*
(a) How it will be developed; (b) What it will contain; (c) How it will be used; and (d) How it will be revised and renewed.

Response: See Addendum, insert to page 4–8.

12. *Improve the public involvement element by expanding the Plan's discussion of the importance of public involvement.*

Response: See Addendum, insert to page ES–3. In addition, the plan lays great emphasis on public education. More management measures (21) are devoted to public education than any other program element.

13. *Determine what changes or additions to the local Comprehensive Code and Development Standards are necessary. Also describe what should be done and how.*

Response: The DEQ guidelines for plan preparation did not request specific code and development standards revisions. However, management measures R.1 through R.8 identify steps the City will take toward addressing regulatory issues. In addition, the City is working with other Tualatin River jurisdictions to develop a design criteria manual consistent throughout the watershed (see management measure DC.1).

14. *All of the above must be included in the Final Plan and provided to DEQ within 90 days.*

Response: Revisions to the plan to meet conditions 1–13 are presented in the previous paragraphs.

15. *Within 30 days after submission of the Final Plan. DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340–41–470 and/or the interagency agreements therefrom.*

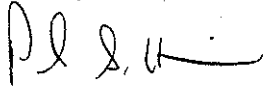
Response: No response necessary

16. *The City of Lake Oswego should participate with DEQ and other Tualatin Basin entities in a process to refine and establish a completed TMDL compliance monitoring program for applicable portions of the Tualatin Basin (process to commence within 120 days).*

Response: The City agrees with this condition. Work has already begun with other Tualatin Basin entities to coordinate our TMDL monitoring work.

The City is anxious to work closely with DEQ to achieve the desired and mandatory water quality in the Oswego Lake and Tualatin River Basins. Please call me if you have any questions or need additional information about the City's Surface Water Program Plan. My telephone number is 635-0270.

Sincerely,



Paul S. Haines
Director of Public Works

PSH/ss

cc: Bruce Ericksen, Clackamas County
Dennis Koellermeier, West Linn
Annette McFarlane, Rivergrove
John Jackson, USA
Lori Faha, Portland
Joan Lee, KCM Consultants
Shaun Pigott, URS Consultants

[1990/ss]<haines>d.yon-ltr-7-26-90

Maintenance of Road Right-of-Ways

MO.8

SOURCES CONTROLLED	Transportation		
RESPONSIBLE AGENCY/ CONTACT/PHONE	•		
DESCRIPTION	Develop an integrated vegetation management program for roadside maintenance. Standards should be developed for herbicide application in ditches and on roadsides, ditch cleaning, mowing, and litter control. The standards should be based on maximizing water quality benefits from such practices. For example, grassed areas should be mowed and materials should be removed to prevent release of nutrients to surface water.		
GOALS/OBJECTIVES	Enhance and maintain water quality for the Tualatin River, Oswego Lake and their tributaries to support beneficial uses of the water.		
IMPACT ON ATTAINMENT OF GOALS/OBJECTIVES	Reduces pollutant loading of surface waters.		
ESTIMATED COST	\$10,000/year staff time		
ACTION PLAN	ACTION	WHO	FINISH DATE <u>Est.</u> <u>Actual</u>
IMPLEMENTATION	<input type="checkbox"/> Compile available standards	•	7/91
	<input type="checkbox"/> Examine existing practices	•	8/91
	<input type="checkbox"/> Change current practices according to review	•	9/91
	<input type="checkbox"/> Implement maintenance program.		12/91 and on going
MONITORING/ EVALUATION			

* To be determined

RECEIVED
1990

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY
Last Revision: 7/90

Regulations Review: Development Issues

R.3

SOURCES CONTROLLED	Land use washoff and long-term impacts of urbanization.		
RESPONSIBLE AGENCY/ CONTACT/PHONE	•		
DESCRIPTION	Review existing regulations pertaining to sensitive areas, surface water facilities for new development, natural system preservation, and other nonpoint source management issues associated with development. Include setbacks for surface water features. Adopt ordinances to complement the interim regulations such as a clearing, filling and grading ordinance.		
GOALS/OBJECTIVES	<p>Protect water quality through the preservation of natural systems.</p> <p>Enhance water quality in the Tualatin River/Oswego Lake basin for beneficial uses.</p> <p>Meet state regulations for surface water quality management within the Tualatin River/Oswego Lake basins.</p>		
IMPACT ON ATTAINMENT OF GOALS/OBJECTIVES	Provide guidelines for new development and requirements for implementation of SWM plan.		
ESTIMATED COST	\$8,000/year staff time.		
ACTION PLAN	ACTION	WHO	FINISH DATE <u>Est.</u> <u>Actual</u>
IMPLEMENTATION	<input type="checkbox"/> Review existing regulations.	•	6/91
	<input type="checkbox"/> Identify deficiencies and develop new ordinances.	•	7/91
	<input type="checkbox"/> Adopt new ordinances	•	8/91
MONITORING/ EVALUATION	<input type="checkbox"/> Meet with Inspectors and Code Enforcement personnel to review effectiveness of regulations and possible improvements.	•	12/91 and on going

* To be determined

RECEIVED
JUL 27 1990

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

Carter Creek Plan

SS.2

SOURCES CONTROLLED Land Use Washoff; effects of urbanization.

**RESPONSIBLE AGENCY/
CONTACT/PHONE** *

DESCRIPTION Conduct the hydrologic/hydraulic analysis necessary to determine on-site and regional storage requirements in the Carter Creek basin. Identify facility sites to be preserved as development occurs. Include preservation of the riparian zone along Carter Creek. Identify opportunities for creation of aquatic treatment systems and other biofilters. Also identify opportunities for retrofitting existing developed areas with water quality treatment facilities.

GOALS/OBJECTIVES Enhance the water quality of Carter Creek, a tributary to Fanno Creek which drains into the Tualatin River.

**IMPACT ON ATTAINMENT
OF GOALS/OBJECTIVES** This measure is the first step in implementing subbasin plans (SS.3).

ESTIMATED COST \$15,000

ACTION PLAN	ACTION	WHO	FINISH DATE	
			Est.	Actual
IMPLEMENTATION	<input type="checkbox"/> Perform detailed analysis.	Con- sult- ant	12/90	
	<input type="checkbox"/> Enter Capital Improvement Program into SWM program plan.	*	12/90	

**MONITORING/
EVALUATION**

** To be determined*

RECEIVED
JUL 27 1990

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

ADDENDUM

LOWER TUALATIN RIVER OSWEGO LAKE SUBBASINS

NONPOINT SOURCE WATERSHED MANAGEMENT

CITY OF LAKE OSWEGO

1. Insert to Page ES-3.

Add the following at the end of the bulleted items:

- Strive to accomplish goals through public education strategies prior to implementation of regulations."

2. First insert to page 4-8:

Add a third paragraph under the section "Annual Action Plan:"

"The annual action plan will be prepared by March 9 of each year by the City's Public Works Department. The Plan will consist of:

- Review - a listing of management measures undertaken during the previous year along with cost, time to complete actions, additional work needed, relative effectiveness, a discussion of positive and negative aspects of implementation, and suggestions for future efforts.
- Monitoring/Evaluation - A discussion of monitoring results for water quality improvement and for specific management measures.
- Goals/Objectives - Review the goals and objectives. Based on monitoring/evaluation results, delete objectives (if attained) or modify to provide additional specificity.
- Comments - Explanation of special considerations or modifications to the nonpoint source plan based on monitoring or other field results, or funding limitations.
- Schedule - A listing of management measures to be completed or initiated in the following year along with estimated costs and funding sources.
- Appendix - Copies of the management measures to be completed during the subsequent year showing specific responsibilities and deadlines. A summary schedule for the year's efforts.

The Plan will be submitted to DEQ for comment, circulated for public review, and submitted for City Council review and adoption by resolution at a meeting coincident with a public hearing on the annual plan. Following DEQ review, a meeting will be held between the City and DEQ. The adopted plan will guide nonpoint source management activities for the following year."

RECEIVED
JUL 7 1990

L-9

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

3. Second insert to page 4-8:

Following the "Monitoring" subsection, insert the following new section:

"Capital Improvement Program (CIP)

Upon completion of each subbasin plan, capital improvements will be identified and integrated into previously planned CIP projects. The CIP will describe on a site-specific basis the reason for project selection, costs, funding mechanism(s) and the means and timing of implementation."

11.005 Title.

The title of this standard is "Drainage Standard for Major Development."

11.010 Applicability.

This standard applies to all major developments.

11.015 Definitions.

1. By-Pass: A drainage system to carry storm water runoff around or through a specific area.

2. Detention: The act of detaining or storing storm water runoff for a short period of time during and after a storm.

3. Drainage: A general term applied to the removal of surface or subsurface water from a given area either by gravity or by pumping; commonly applied herein to surface water.

4. Drainage Pattern: The surface and subsurface system for the removal of water from the land, including both the natural elements of streams, marshes, swales, and ponds, whether of an intermittent or continuous nature, and the man-made element which includes culverts, ditches, channels, retention or detention facilities, and the storm sewer system.
drain

5. Floodplain: In addition to the definition in the floodplain development standard this term shall include the land areas adjoining all streams, lakes, ponds, or wetlands that are subject to inundation by a 100-year frequency storm.

6. Hydraulic Characteristics: The features of a watercourse which determine its water conveyance capacity. They include the watercourse cross-section, alignment, width from bank to bank, profile, and the location and types of vegetation within the watercourse.

7. Obstruction: Any dam, wall, wharf, embankment, levee, dike, pile abutment, excavation, bridge, conduit, pole, culvert, building, wire, fence, fill, or projection into a floodplain, watercourse, or drainage system.

8. Retention: The act of retaining or storing storm water, runoff permanently or for a considerable length of time for some use, or until it percolates into the ground or evaporates.

RECEIVED
JUN 7 1990

9. Sedimentation: Deposition of soils, debris, or other materials suspended and transported by storm water runoff.

10. Storm Water Runoff: Water that results from precipitation which is not absorbed by the soil or plant material.

11. Storm Water Storage Area: A facility used for detention and/or retention of storm water runoff.

12. Stream: A natural body of running water flowing continuously or intermittently in a channel on or below the surface of the ground.

13. Vegetation: All plant growth, especially trees, shrubs, mosses and grasses.

14. Water Conveyance Capacity: The capacity of a watercourse to convey a particular volume of water per unit of time at a particular water surface elevation at any particular point on the watercourse.

15. Watercourse: A natural or artificial channel which conveys storm water runoff.

11.020 Standards for Approval

1. All drainage management measures, whether located on private or public property, shall be accessible at all times for City inspection. When these measures have been accepted by the City for maintenance, access easements shall be provided at such a width to allow access by maintenance and inspection equipment.

2. Storm Water Runoff Quality. All drainage systems shall include engineering design features to minimize pollutants such as oil, suspended solids, and other objectionable material in storm water runoff.

3. Drainage Pattern Alteration. Development shall be conducted in such a manner that alterations of drainage patterns (streams, ditches, swales, and surface runoff) do not adversely affect other properties.

4. Storm Water Detention. Sufficient storm water detention shall be provided to maintain runoff rates at their natural undeveloped levels for all anticipated intensities and durations of rainfall and provide necessary detention to accomplish this requirement.

RECEIVED
JUL 27 1990

12.005 Title.

The title of this standard is "Drainage Standard for Minor Developments."

12.010 Applicability.

These standards shall be applicable to all minor developments within the City.

12.015 Definitions.

Same as 11.015.

12.020 Standards for Approval.

1. Drainage Pattern Alteration. Development shall be conducted in such a manner that alterations of drainage patterns (streams, ditches, swales, and surface runoff) do not adversely affect other property.

12.025 Standards for Construction

1. Same as for section 11.025.

12.030 Standards for Maintenance.

1. Same as for Section 11.030.

2. Site Discharge. Where conditions permit, individual lots shall be developed to maximize the amount of storm water runoff which is percolated into the soil and to minimize direct overland runoff into streets, drainage systems, and/or adjoining property. Storm water runoff from roofs and other impervious surfaces should be diverted into swales, terraces, and/or water percolation devices on the lot when possible.

12.035 Procedures.

The applicant shall submit the following information:

1. General Information. Information concerning clearing, grading, vegetation preservation and drainage improvements.

2. Hydraulic Characteristics. When a watercourse is present on the site, information regarding its hydraulic characteristics shall be submitted.

12.040 Miscellaneous Information.

None.

RECEIVED
JUN 7 1990

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

16.005 Title.

The title of this standard is "Hillside Protection and Erosion Control."

16.010 Applicability.

This standard applies to all development which includes hillsides or areas with erosion potential.

16.015 Definitions.

1. Cut or Excavation: Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

2. Erosion: Detachment and movement of soil or rock fragments by water, wind, gravity, frost and ice or by mechanical action caused by development activities.

3. Fill: Placement of any soil, sand, gravel, clay, mud, debris and refuse or any other material, organic or inorganic.

4. Mulch: Application of plant residue, netting, plastic sheeting or other suitable materials to the land surface to conserve moisture, hold soil in place and aid in establishing plant cover. Plastic mulch may be used only temporarily, during construction activities.

5. Potential Severe Erosion Hazard Area: Surface areas where erosion can be easily caused by removal of vegetation cover, stripping topsoil or by placement of fill, whether by natural causes such as streams or surface runoff or by development activities. The placement of any new fill in such an area shall be considered as creating a potentially severe erosion hazard. (Known Potential Severe Erosion Hazard Areas are described and mapped in the Engineering Geology chapter of the Lake Oswego Physical Resources Inventory, March, 1976, on file at City Hall; specifically in Table II, "Characteristics and Limitations of Earth Materials" and "Engineering Geology" map.)

6. Potential Severe Landslide Hazard Area: Areas where earth movement or failure, such as slumps, mud flows, debris slides, rock falls or soil falls, are likely to occur as a result of development activities. These activities include excavation which removes support of soils by changes in runoff or groundwater flow or vibration loading such as pile driving or blasting.

RECEIVED
MAY 27 1990

7. Sediment: Any organic or mineral material that is in suspension, is being transported or has been moved from its site of origin by water, wind, or gravity as a product of erosion.

8. Stripping: Any activity which disturbs vegetated or otherwise stable soil surface, including clearing and grubbing operations.

16.020 Standards for Approval.

✓ 1. All developments shall be designed to minimize the disturbance of natural topography, vegetation and soils.

2. Designs shall minimize cuts and fills.

3. Cuts and fills shall conform to the minimum requirements of LOC Chapter 45.

4. Development Prohibited.

a. Where landslides have actually occurred, or where field investigation confirms the existence of a severe landslide hazard, development shall be prohibited except as provided in subsection b.

b. Exceptions.

A registered Soils Engineer or Engineering Geologist may certify that methods of rendering a known hazard site safe for construction are feasible for a given site. The granting authority shall determine whether the proposed methods are adequate to prevent landslides or damage to property and safety. The granting authority may allow development in a known or confirmed landslide hazard area if specific findings are made that the specific provisions in the design of the proposed development will prevent landslides or damage. The granting authority may apply any conditions, including limits on type or intensity of land use, which it determines are necessary to assure that landslides or property damage will not occur.

5. Cuts and Fills

On land with slopes in excess of 12 percent, cuts and fills shall be regulated in accordance with LOC Chapter 45, and as follows:

RECEIVED
JUL 27 1990

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

52.

50.

L-15

a. Toes of cuts and fills shall be set back from boundaries of separate private ownerships at least three feet, plus one-fifth of the vertical height of the cut or fill. Where a variance is required from that requirement, slope easements shall be provided.

b. Cuts shall not remove the toe of any slope where a severe potential landslide or erosion hazard exists (as defined in this standard).

c. Any structural fill shall be designed by a registered engineer, in accordance with standards engineering practice; the engineer shall certify that the fill has been constructed as designed and in accordance with the provisions of LOC Chapter 45.

d. Retaining walls shall be constructed in accordance with Section 2308(b) of the Oregon State Structural Specialty Code.

6. Roads shall be the minimum width necessary to provide safe vehicle access, minimize cut and fill, and provide positive drainage control, all in accordance with LOC Chapter 44.

7. Land over 50 percent slope shall be developed only where density transfer is not feasible. The development will provide that:

a. At least 70 percent of the site will remain free of structures or impervious surfaces.

b. Emergency access can be provided.

c. Design and construction of the project will not cause erosion or land slippage.

d. Grading, stripping of vegetation, and changes in terrain are the minimum necessary to construct the development.

16.025 Standards for Construction.

1. All development activity shall minimize stripping or other soil disturbance and shall provide positive erosion prevention measures.

2. Slope stabilization and revegetation measures:

a. No grading, clearing or excavation of any land shall be initiated prior to approval of the grading

RECEIVED
JUL 27 1990

shall be approved by the City Manager as part of the Development Permit.

b. The developer shall be responsible for the proper execution of the approved grading plan.

c. No more than 65 percent of area in slopes of 20-50 percent shall be graded or stripped of vegetation.

16.030 Standards for Maintenance.

1. Necessary soil erosion control measures shall be maintained during construction and for one year after development is completed, or until soils are stabilized by revegetation or other measures to the satisfaction of the City Manager. Maintenance shall be the responsibility of the owner of the development.

2. Maintenance of all erosion control measures during development shall be the responsibility of the builder of the development. The City Manager may order work to be stopped on a development where erosion control measures are not being properly maintained or are not functioning properly due to faulty installation or neglect.

3. Continuing maintenance after development, including revegetation, of all graded areas, shall be the responsibility of the owner.

16.035 Procedures.

1. Use of Survey Information

A survey is required for Major Development Permit Applications and is to be used to provide accurate topographic information for site and building designs which will minimize disturbance or removal of soils during construction. A survey may be required for a Minor Development Permit if the City Manager determines that the information is needed to know whether the standard is being met.

2. Removal of Vegetation

All development applications shall show areas where grubbing, clearing or removal of vegetation is to occur, and shall describe provisions to protect soils during construction.

3. Potential Severe Erosion of Landslide Hazard Areas

Where development is to occur on a Potential Landslide Hazard Area on

RECEIVED
JUL 7 1990

or Landslide Hazard Area, a report evaluating soil conditions and potential hazards shall be submitted to the City Manager.

The report shall be prepared by a registered soils engineer or engineering geologist and shall contain the following:

a. Evidence that a field investigation was made to determine the actual hazard.

b. Statements regarding the exact nature and extent of the hazard.

c. Recommendations on site preparation and construction methods to minimize the effects of the hazard.

d. If erosion hazard exists, a specific erosion control plan to be approved by the City Manager.

e. A description of any hazard area which should not be disturbed by construction.

f. If landslide hazard exists, a statement as to whether or not a proposed development constructed in accordance with the recommended methods is reasonably likely to be safe and to prevent landslide or damage to other property.

4. a. Erosion Control Plan

Where site examination confirms highly erodable soils, an Erosion Control Plan shall be required for development permit approval.

b. Plan Content

The Erosion Control Plan shall contain:

i. Site Description: A description of existing topography and soil characteristics.

ii. Proposed Changes: Specific descriptions or drawings of the proposed development and changes to the site which may affect soils and create erosion potential.

iii. Control Measures: Specific methods of soil erosion and sediment control to be used during construction. These methods shall include, but not be limited to, the following:

RECEIVED
JUL 27 1990

55.

L -18

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

- (1) The land area to be grubbed, stripped, used for temporary placement of soil, or to otherwise expose soil shall be confined to the immediate construction site only.
- (2) The duration of exposure of soils to erosion shall be kept to the minimum practical.
- (3) Exposed soils shall be covered by mulch, plastic sheeting, temporary seeding or other suitable material during construction, and until stabilized following construction.
- (4) During construction, water runoff from the site shall be controlled, and increased runoff and sediment resulting from soil removal or disturbance shall be retained on site. Temporary diversions, sediment basins, barriers, check dams, or other methods shall be provided as necessary to hold sediment and runoff.
- (5) Topsoil removal for development shall be retained and re-used on site to the degree necessary to restore disturbed areas to their original condition or to assure a minimum of 6 inches of stable topsoil for revegetation. Additional soil shall be provided if necessary.
- (6) The removal of all sediments which are carried into the streets, or onto adjacent property, are the responsibility of the builder or general contractor of the development.

iv. Schedule of Installation: A schedule of the sequence of installation of planned control measures shall be provided which is related to the progress of construction activities, including starting and completion.

v. Responsibility for Construction: A specific person shall be designated to be responsible for carrying out the erosion control measures.

5. Plan Filing

The Erosion Control Plan shall be filed with the Development Permit.

RECEIVED
7 1990



The City of
West Linn

4100 Norfolk Street
West Linn, Oregon 97068

Public Works (503) 656-6081
FAX #657-3237

RECEIVED
JUL 30 1990

**WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY**

July 27, 1990

Department of Environmental Quality
Attn: Don R. Yon
Tualatin River Basin Coordinator
811 S.W. 6th Avenue
Portland, Oregon 97204

Re: West Linn's Nonpoint Source Watershed Management Plan

Dear Don:

Per our phone conversation of July 27, 1990 and additional discussions with Bruce Erickson of Clackamas County, I am writing this letter to provide information and clarification regarding elements of our Nonpoint Source Watershed Management Plan. The clarification items addressed below are those presented in the DEQ Staff Report dated June 18, 1990, as prepared for the June 29, 1990 EQC hearing. I hope this information will provide for a new DEQ staff report to the EQC, recommending full approval of our Nonpoint Source Watershed Management Plan.

Before presenting you with individual responses to each condition listed in the June 18, 1990 staff report, I would like to relay to you the following general information about our Nonpoint Source Watershed Management Plan: To begin with, our plan and those plans submitted by the City of Lake Oswego and Clackamas County were prepared jointly under intergovernmental cooperative agreements by the same engineering consultants that prepared the Unified Sewerage Agency's plan. It was hoped that this approach would lead to a somewhat uniform strategy to proposing, implementing, coordinating, and evaluating nonpoint source water quality management measures within the subbasins, as well as recognizing the efficiencies and cost effectiveness of such an approach. Each plan was prepared with consideration for resources available to each jurisdiction and their current stormwater management programs.

We believe the plans present a comprehensive approach to nonpoint source management and are designed to provide an orderly progression from analyzing nonpoint source problems and implementation of nonstructural solutions to the development of master plans and capital improvements programs. The progression includes the development of adequate finances to provide long term program funding, which in West Linn's case requires the formation of a storm water utility as discussed and recommended in Chapter 6 of our plan.

The preparation of these plans to address the phosphorus and other pollution problems within the lower Tualatin River and Oswego Lake subbasins has required interagency communication and cooperation. It has generated considerable goodwill among the jurisdictions involved and represents good faith on the part of each jurisdiction towards attainment of the June 30, 1993 date for TMDL compliance within the subbasins. Considerable work has already begun to prepare the framework for implementing a basin-wide comprehensive nonpoint source watershed management program. This work has included the preparation of interagency agreements to undertake additional detailed subbasin studies and the development of EMP handbooks.

Response to Conditions:

1. **A DEQ acceptable monitoring plan must be produced by the City of West Linn that includes a list of the water quality parameters and sampling methods employed (120 days).**

Response: Monitoring efforts are described in management measures M.1 through M.5. In particular, as noted in the "Action Plan" or management measure M.3, the City is meeting with USA to coordinate monitoring efforts and promote consistency in analysis throughout the watershed. At this time the City hopes to contract with USA for monitoring services in compliance with DEQ requirements, and to provide a solid baseline of data on which to base future decisions and actions.

2. **The City of West Linn should participate with DEQ and other Tualatin Basin entities in a process to refine and establish a completed TMDL compliance monitoring program for applicable portions of the Tualatin River (120 days).**

Response: Refer to the response to Question 1.

3. **Complete Figure 2.8 responsibility matrix (90 days).**

Response: The roles of the different agencies shown on Figure 2.5 are described in Section 2.3 of the Plan. The purpose of Figure 2.5 is to provide a tool for different City staff to identify interrelationships of agencies. As such, the tool will be used in different ways by each staff member. Filling in the figure would therefore limit its usefulness.

4. **Include provisions for the protection of all streams, wetlands and ponds with adequate undisturbed buffers on all sides (90 days).**

Response: Buffer zones will be established as a part of each subbasin plan based on actual field conditions. By using actual field conditions to establish subtasks, the City will have a much stronger basis to apply more (or less) stringent standards. In addition, management measure R.3 provides for sensitive areas protection (see Addendum, management measure R.3. The sentence "Include setbacks for surface water features" has been added to the description).

5. Include in the roadway maintenance measure the provision of no spraying of pesticides (90 days).

Response: There are many valid concerns associated with the application of pesticides and their ultimate fate relative to surface waters, groundwaters and the atmosphere. However, the management of roadside areas also includes considerations for safety and infestations by noxious vegetation. Realistically, the available budget for roadside management must also be balanced against benefits achieved. A number of Northwest jurisdictions are grappling with development of "integrated vegetation management" programs. This approach is also recommended for the City and has been noted in management measure MO.8 (see Addendum) the first sentence of the "description" is now, "Develop an integrated vegetation management program for roadside maintenance".

6. The Plan's objectives should be described adequately so that the measurable and results, the time line for implementation, who is responsible and the funding and staffing resources are well defined (120 days).

Response: At the time of plan preparation, water quality data was not yet available at a level which would support highly specific objectives. In addition, the goals and objectives provided in the report were adopted by the City council, supported by the public, and serve as the basis for development of the remainder of the report (see each management measure "goals and objectives"). As the nonpoint plan is implemented, objectives will be modified and specificity increased based on increasing understanding of the watershed characteristics affecting water quality (see Addendum, first insert to page 4-8).

7. A Capital Improvement Projects (CIPs) plan that describes on a site-specific basis the reasons for their selection, the costs, funding mechanism(s), the responsible party(s), the means and timing of implementation (120 days).

Response: See Addendum, second insert to page 4-8.

8. An annual meeting between the City and DEQ is included in the Plan (90 days).

Response: See Addendum, first insert to page 4-8(a), last paragraph of insert.

9. The inclusion of specific interagency agreements, particularly with DEQ are provided (90 days).

Response: See Addendum

10. A DEQ approved Erosion and Stormwater Control Ordinance (90 days).

Response: The City is anticipating using the Clackamas County Ordinance, to be completed this fall. The Council will be presented with this County model as it is completed.

11. Clarify the process for:

(a) Review and adjustment of the plan, (b) reporting the results of monitoring and evaluation, and (c) reporting program implementation and accomplishment.

Response: (a) The plan will be reviewed and adjusted annually as a part of the Annual Action Plan (see Addendum, first insert to page 4-8), (b) Monitoring and evaluation results will be reported as part of the annual action plan as will: (c) Reporting on program implementation and accomplishment.

12. Describe the "annual action plan" in terms of:

(a) How it will be developed; (b) What it will contain; (c) How it will be used; and (d) How it will be revised and renewed.

Response: See Addendum, first insert to page 4-8.

13. Improve the public improvement element by expanding the Plan's discussion of the importance of public involvement (90 days):

Response: See Addendum, insert to page ES-3. In addition, the plan lays great emphasis on public education. More management measures (20) are devoted to public education than any other program element.

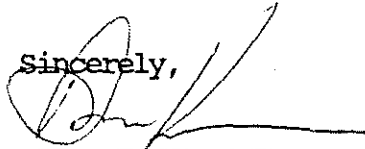
14. Will changes or additions to the local Comprehensive Code and Development Standards be necessary? If so, what should be done and how? (90 days)

Response: The DEQ guidelines for plan preparation did not request specific code and development standards revisions. However, management measures R.1 through R.8 identify steps the City will take toward addressing regulatory issues. In addition, the City is working with other Tualatin River jurisdictions to develop a design criteria manual consistent throughout the watershed (see management measure DC.1).

15. All of the above must be included in the Final Plan and provided to DEQ (120 days).

Response: Revisions to the plan to meet conditions 1-15 are presented in previous paragraphs.

Sincerely,



CITY OF WEST LINN

Public Works Department

Dennis Koellermeier, Acting Public Works Director

tualatin2mr

ADDENDUM
LOWER TUALATIN RIVER OSWEGO LAKE SUBBASINS
NONPOINT SOURCE WATERSHED MANAGEMENT
CITY OF WEST LINN

1. Insert to Page ES-3.

Add the following at the end of the bulleted items:

- Strive to accomplish goals through public education strategies prior to implementation of regulations."

2. First insert to page 4-8:

Add a third paragraph under the section "Annual Action Plan:"

"The annual action plan will be prepared by March 9 of each year by the City Engineer. The Plan will consist of:

- Review - a listing of management measures undertaken during the previous year along with cost, time to complete actions, additional work needed, relative effectiveness, a discussion of positive and negative aspects of implementation, and suggestions for future efforts.
- Monitoring/Evaluation - A discussion of monitoring results for water quality improvement and for specific management measures.
- Goals/Objectives - Review the goals and objectives. Based on monitoring/evaluation results, delete objectives (if attained) or modify to provide additional specificity.
- Comments - Explanation of special considerations or modifications to the nonpoint source plan based on monitoring or other field results, or funding limitations.
- Schedule - A listing of management measures to be completed or initiated in the following year along with estimated costs and funding sources.
- Appendix - Copies of the management measures to be completed during the subsequent year showing specific responsibilities and deadlines. A summary schedule for the year's efforts.

The Plan will be submitted to DEQ for comment, circulated for public review, and submitted for City Council review and adoption by resolution at a meeting coincident with a public hearing on the annual plan. Following DEQ review, a meeting will be held between the City and DEQ. The adopted plan will guide nonpoint source management activities for the following year."

3. **Second insert to page 4-8:**

Following the "Monitoring" subsection, insert the following new section:

"Capital Improvement Program (CIP)

Upon completion of each subbasin plan, capital improvements will be identified and integrated into previously planned CIP projects. The CIP will describe on a site-specific basis the reason for project selection, costs, funding mechanism(s) and the means and timing of implementation."

Maintenance of Road Right-of-Ways

MO.8

SOURCES CONTROLLED Transportation

RESPONSIBLE AGENCY/
CONTACT/PHONE *

DESCRIPTION Develop an integrated vegetation management program for roadside maintenance. Standards should be developed for herbicide application in ditches and on roadsides, ditch cleaning, mowing, and litter control. The standards should be based on maximizing water quality benefits from such practices. For example, grassed areas should be mowed and materials should be removed to prevent release of nutrients to surface water.

GOALS/OBJECTIVES Enhance and maintain water quality for the Tualatin River, Oswego Lake and their tributaries to support beneficial uses of the water.

IMPACT ON ATTAINMENT
OF GOALS/OBJECTIVES Reduces pollutant loading of surface waters.

ESTIMATED COST \$10,000/year staff time

ACTION PLAN	ACTION	WHO	FINISH DATE	
			Est.	Actual
IMPLEMENTATION	<input type="checkbox"/> Compile available standards	*	7/91	
	<input type="checkbox"/> Examine existing practices	*	8/91	
	<input type="checkbox"/> Change current practices according to review	*	9/91	
	<input type="checkbox"/> Implement maintenance program.		12/91 and on going	

MONITORING/
EVALUATION

* To be determined

Regulations Review: Development Issues

R.3

SOURCES CONTROLLED	Land use washoff and long-term impacts of urbanization.		
RESPONSIBLE AGENCY/ CONTACT/PHONE	*		
DESCRIPTION	Review existing regulations pertaining to sensitive areas, surface water facilities for new development, natural system preservation, and other nonpoint source management issues associated with development. Include setbacks for surface water features. Adopt ordinances to complement the interim regulations such as a clearing, filling and grading ordinance.		
GOALS/OBJECTIVES	<p>Protect water quality through the preservation of natural systems.</p> <p>Enhance water quality in the Tualatin River/Oswego Lake basin for beneficial uses.</p> <p>Meet state regulations for surface water quality management within the Tualatin River/Oswego Lake basins.</p>		
IMPACT ON ATTAINMENT OF GOALS/OBJECTIVES	Provide guidelines for new development and requirements for implementation of SWM plan.		
ESTIMATED COST	\$8,000/year staff time.		
ACTION PLAN	ACTION	WHO	FINISH DATE <u>Est.</u> <u>Actual</u>
IMPLEMENTATION	<input type="checkbox"/> Review existing regulations.	*	6/91
	<input type="checkbox"/> Identify deficiencies and develop new ordinances.	*	7/91
	<input type="checkbox"/> Adopt new ordinances	*	8/91
MONITORING/ EVALUATION	<input type="checkbox"/> Meet with Inspectors and Code Enforcement personnel to review effectiveness of regulations and possible improvements.	*	12/91 and on going

* To be determined



CLACKAMAS COUNTY

Department of Utilities

DAVID J. ABRAHAM
DIRECTOR

July 24, 1990

Department of Environmental Quality
Attn: Don R. Yon
Tualatin River Basin Coordinator
811 SW 6th Ave.
Portland, OR 97204

RE: Clackamas County and Rivergrove's
Nonpoint Source Watershed Management Plan
Lower Tualatin River and Oswego Lake Subbasins

Dear Don:

Per the meeting on July 13, 1990, and subsequent telephone conversations with you, I am writing this letter to provide information and clarification regarding elements of our Nonpoint Source Watershed Management Plan. The clarification items addressed below are those presented in the DEQ Staff Report dated June 18, 1990, as prepared for the June 29, 1990, EQC hearing. I hope this information will provide for a new DEQ staff report to the EQC, recommending full approval of our Nonpoint Source Watershed Management Plan.

Before presenting you with individual responses to each condition listed in the June 18, 1990, staff report, I would like to relay to you the following general information about our Nonpoint Source Watershed Management Plan: To begin with, our plan and those plans submitted by the cities of Lake Oswego and West Linn were prepared jointly under intergovernmental cooperative agreements by the same engineering consultants that prepared the Unified Sewerage Agency's plan. It was hoped that this approach would lead to a somewhat uniform strategy to proposing, implementing, coordinating, and evaluating nonpoint source water quality management measures within the subbasins, as well as recognizing the efficiencies and cost effectiveness of such an approach. Each plan was prepared with consideration for resources available to each jurisdiction and their current stormwater management programs.

We believe the plans present a comprehensive approach to nonpoint source management and are designed to provide an orderly progression from analyzing nonpoint source problems and implementation of nonstructural solutions to the development of master plans and capital improvements programs. The progression includes the development of adequate finances to provide long term program funding, which in Clackamas County and Rivergrove's case requires the formation of an ORS 451 county service district, as discussed and recommended in Chapter 6 of our plan.

N-1

The preparation of these plans to address the phosphorus and other pollution problems within the lower Tualatin River and Oswego Lake subbasins has required interagency communication and cooperation. It has generated considerable goodwill among the jurisdictions involved and represents good faith on the part of each jurisdiction towards attainment of the June 30, 1993, date for TMDL compliance within the subbasins. Considerable work has already begun to prepare the framework for implementing a basin-wide comprehensive nonpoint source watershed management program. This work has included the preparation of interagency agreements to undertake additional detailed subbasin studies and the development of BMP handbooks.

Response to Conditions

1. *Add descriptions of management measures DB.4 and R.8.*

Response: See Addendum, Management Measures DB.4 and R.8.

2. *Clarify the processes for (a) review and adjustment of the plan, (b) reporting the results of monitoring and evaluation, and (c) reporting program implementation and accomplishment.*

Response: (a) The plan will be reviewed and adjusted annually as a part of the Annual Action Plan (see Addendum, insert to page 4-8). (b) Monitoring and evaluation results will be reported as part of the annual action plan as will: (c) Reporting on program implementation and accomplishment.

3. *Describe the "annual action plan" in terms of: (a) How it will be developed; (b) What it will contain; (c) How it will be used; and (d) How it will be revised and renewed.*

Response: See Addendum, insert to page 4-8.

4. *Improve the public involvement element by: (a) Changing the dates in measures PE.10 and IC.1 to 1990; and (b) Expanding the plan's discussion of the importance of public involvement.*

Response: (a) See Addendum, management measures PE.10 and IC.1. (b) See Addendum, insert to page ES-3. In addition, the plan lays great emphasis on public education. More management measures (21) are devoted to public education than any other program element. The County has adopted a two-year schedule (1991-1992) to implement the full public education program and is poised to appoint an advisory committee once the plan is approved.

5. *Clarify funding and program implementation authorities. Discuss adequacy of existing authorities. If not adequate, describe what must be done.*

Response: Sections 6.2 and 6.3 explain funding options and authorities. Section 6.4 describes the specific options which are realistic for application in Clackamas County. Section 6.6 describes the actions of Clackamas County toward augmenting their existing general fund budget for nonpoint source management. In summary, the County is prepared to initiate formation of an ORS 451 service district for the lower Tualatin River planning area and support the elements of this plan through a nonpoint source (stormwater) service charge. In addition, secondary

funding sources including system development charges and fee-in-lieu of on-site construction are being proposed as part of the funding mix.

6. *Determine what changes or additions to the local Comprehensive Code and Development Standards are necessary. Also describe what should be done and how:*

Response: The DEQ guidelines for plan preparation did not request specific code and development standards revisions. However, management measures R.1 through R.8 identify steps the County will take toward addressing regulatory issues. In addition, the County is working with other Tualatin River jurisdictions to develop a design criteria manual consistent throughout the watershed (see management measure DC.1).

7. *A DEQ acceptable monitoring plan must be provided by Clackamas County and the City of Rivergrove that includes a list of the water quality parameters and sampling methods employed.*

Response: Monitoring efforts are described in management measures M.1 through M.5. In particular, as noted in the "Action Plan" of management measure M.3, the County is meeting with USA and other jurisdictions within the basin to coordinate monitoring efforts and promote consistency in analysis throughout the watershed. The County is planning to begin its monitoring program shortly to provide a solid baseline of data on which to base future decisions and actions. This monitoring program will be coordinated with DEQ to insure compliance with DEQ requirements.

8. *Complete Figure 2.5, Responsibility Matrix.*

Response: The roles of the different agencies shown in Figure 2.5 are described in Section 2.3 of the Plan. The purpose of Figure 2.5 is to provide a tool for different County staff to identify interrelationships of agencies. As such, the tool will be used in different ways by each staff member. Filling in the figure would therefore limit its usefulness.

9. *Include provisions for the protection of all streams, wetlands, and ponds with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow, on all sides.*

Response: Buffer zones will be established as a part of each subbasin plan based on actual field conditions. The Carter Creek subbasin plan (management measure SS.2) will provide a prototype for subsequent planning efforts. By using actual field conditions to establish subtasks, the County will have a much stronger basis to apply more (or less) stringent standards. In addition, management measure R.3 provides for sensitive areas protection (see Addendum, management measure R.3. The sentence "Include setbacks for surface water features" has been added to the description).

10. *Include in the roadway maintenance measure the provision of no spraying of pesticides.*

Response: There are many valid concerns associated with the application of pesticides and their ultimate fate relative to surface waters,

groundwaters, and the atmosphere. However, the management of roadside areas also includes considerations for safety and infestations by noxious vegetation. Realistically, the available budget for roadside management must also be balanced against benefits achieved. A number of Northwest jurisdictions are grappling with development of "integrated vegetation management" programs. This approach is also recommended for Clackamas County/Rivergrove and has been noted in management measure MO.8 (see Addendum. The first sentence of the "description" is now, "Develop an integrated vegetation management program for roadside maintenance").

11. *Include a Capital Improvement Projects (CIPs) plan that describes on a site-specific basis the reasons for their selection, the costs, funding mechanism(s), the responsible party(s), the means and timing of implementation.*

Response: See Addendum, insert to page 4-8. Since the vast majority of the land area within the lower Tualatin River subbasin covered by our plan is rural and not urban, it may be more appropriate to focus on nonstructural pollutant control measures, rather than capital intensive structural measures.

12. *Include in the Plan a provision for an annual meeting between the County, City and DEQ.*

Response: See Addendum, first insert to page 4-8(1), last paragraph of insert.

13. *Include specific interagency agreements, particularly with DEQ in the Plan.*

Response: See Addendum.

14. *Include a DEQ approved Erosion and Stormwater Control (ESC) Ordinance.*

Response: The County is preparing an ESC ordinance for County Commissioner consideration this fall. The ordinance would pertain to Rivergrove, as well.

15. *The Plan's objectives shall be described adequately so that the measurable end results, the time line for implementation, who is responsible and the funding and staff resources are well defined.*

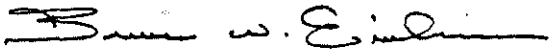
Response: At the time of plan preparation, water quality data was not yet available at a level which would support highly specific objectives. In addition, the goals and objectives provided in the report serve as the basis for development of the remainder of the report (see each management measure "goals and objectives"). As the nonpoint plan is implemented, objectives will be modified and specificity increased based on increasing understanding of the watershed characteristics affecting water quality (see Addendum, first insert to page 4-8).

16. *All of the above must be included in the Final Plan and provided to DEQ within 90 days.*

Response: Revisions to the Plan to meet conditions 1-15 are presented in previous paragraphs.

We look forward to working with you and the agency toward the goal of nonpoint source pollution reduction in the Tualatin River and its tributaries. If you have any questions on the above or need additional information, please let me know. My direct telephone number is 650-3344.

Sincerely,



BRUCE W. ERICKSON, P.E., Manager
Engineering & Technical Services

/bk

Attachments

cc: Paul Haines, Lake Oswego
Dennis Koellermeier, West Linn
Annette McFarlane, Rivergrove
John Jackson, USA
Lori Faha, Portland
Joan Lee, KCM Consultants
Shaun Pigott, URS Consultants

ADDENDUM
LOWER TUALATIN RIVER OSWEGO LAKE SUBBASINS
NONPOINT SOURCE WATERSHED MANAGEMENT
CLACKAMAS COUNTY AND RIVERGROVE

1. Insert to Page ES-3.

At the bottom of the page insert the following:

- Strive to accomplish goals through public education strategies prior to implementation of regulations."

2. First insert to page 4-8 as the third paragraph under the section "Annual Action Plan:"

"The annual action plan will be prepared prior to March 9 of each year, by the County's Engineering and Technical Services Section. The Plan will consist of:

- Review - List of management measures undertaken during the previous year along with cost, time to complete actions, additional work needed, relative effectiveness, a discussion of positive and negative aspects of implementation, and suggestions for future efforts.
- Monitoring/Evaluation - A discussion of monitoring results for water quality improvement and for specific management measures.
- Goals/Objectives - Review of the plan goals and objectives. Based on monitoring/evaluation results, delete objectives (if attained) or modify to provide additional specificity.
- Comments - Explanation of special considerations or modifications to the nonpoint source plan based on monitoring or other field results, or funding limitations.
- Schedule - A listing of management measures to be completed or initiated in the following year along with estimated costs and funding sources.
- Appendix - Copies of the management measures to be completed during the subsequent year showing specific responsibilities and deadlines. A summary schedule for the year's efforts.

The Plan will be submitted to DEQ for comments. Following DEQ review, a meeting will be held between the County, the City and DEQ. The Plan will then be circulated for public review, and submitted for County Board of Commissioners for review and adoption by resolution at a meeting coincident with a public hearing on the annual plan. The adopted plan will guide nonpoint source management activities for the following year."

3. Second insert to page 4-8:

"Capital Improvement Program (CIP)

Upon completion of each subbasin plan, capital improvements will be identified and integrated into previously planned CIP projects. The CIP will describe on a site-specific basis the reason for project selection, costs, funding mechanism(s) and the means and timing of implementation."

4. Insert the following management measures into Chapter 4:

"Measures DB.2 through DB.4 replace the existing measures DB.2 and DB.3."

Potential Manufacturing/ Industrial Sources	DB.2
--	-------------

SOURCES CONTROLLED	All		
RESPONSIBLE AGENCY/ CONTACT/PHONE	•		
DESCRIPTION	Maintain a list, in conjunction with inspection efforts, of manufacturing and industrial facilities that store, handle, or dispose of materials that have potential for phosphorus loading to surface water. Preliminary efforts should occur in those areas which contain the greatest concentration of industrial, light manufacturing and commercial uses. Large commercial farming and agricultural operations that exist in the County should be included. This effort can be tied into the existing data base for sanitary pretreatment.		
GOALS/OBJECTIVES	Prevent, reduce, or remove pollutant loadings due to industrial and manufacturing activities.		
IMPACT ON ATTAINMENT OF GOALS/OBJECTIVES	A current and complete inventory of all manufacturing and industrial businesses within the plan area will provide a list of both potential sources and types of pollutants.		
ESTIMATED COST	\$500/year		
ACTION PLAN	ACTION	WHO	FINISH DATE <u>Est.</u> <u>Actual</u>
IMPLEMENTATION	<input type="checkbox"/> Semi-annually contact market vendors for update list of businesses	•	3/92 and on going
	<input type="checkbox"/> Sort businesses according to water quality criteria including proximity to water courses and potential system impacts.	•	6/92
MONITORING/ EVALUATION	<input type="checkbox"/> Use listing to target water quality activities associated with businesses	•	6/92
	• To be determined		

Water Quality Inventory Updates	DB.3
--	-------------

SOURCES CONTROLLED

All

**RESPONSIBLE AGENCY/
CONTACT/PHONE**

*

DESCRIPTION

Tracking and identifying problem areas is the first step in controlling phosphorus loading. The PIMS inventory, discussed in previous sections of this report, can be used to identify sites and can be included in inspection reports. Inspection reports comprise much of the data base for maintenance. The trouble spots can be programmed into the aforementioned maintenance management system for tracking purposes. As part of inventory efforts, regularly update monitoring data, records of spills, location of small dump sites, disposal efforts and results of management measures monitoring.

GOALS/OBJECTIVES

Reduce external loadings.

**IMPACT ON ATTAINMENT
OF GOALS/OBJECTIVES**

Will help identify problem areas, indicate effectiveness of BMP's and will aid in record keeping.

ESTIMATED COST

\$500/year

ACTION PLAN

ACTION

WHO

FINISH DATE

Est.

Actual

IMPLEMENTATION

Identify database consistent with present and projected needs

*

6/92

Install an existing system, train all operators

*

9/92

Compile data on existing problems

*

12/92
and on
going

**MONITORING/
EVALUATION**

Develop data entry forms to be used by all departments consistent with database

*

12/92

** To be determined*

Existing System Inventory

DB.4

SOURCES CONTROLLED All

RESPONSIBLE AGENCY/
CONTACT/PHONE

DESCRIPTION

Conduct a complete inventory of existing storm systems. Include the length, slope, type and condition of conduits, ditches, swales and other conveyance systems. Also include manhole inverts, drop structures, catch basins and other structures. Identify catch basins which are "self-cleaning" in order to provide data for catch basin conversion (MO.2). Drainage structures in flood prone areas, or areas experiencing high sedimentation rates should be identified in order to provide an appropriate maintenance program (MO.1). All data that is compiled as a result of this effort will be entered into a computerized data base that is compatible with existing and proposed data management systems (MO.5) in the plan area.

GOALS/OBJECTIVES

Reduce external loadings.

IMPACT ON ATTAINMENT
OF GOALS/OBJECTIVES

Will provide the data base for future computer hydraulic analysis of the subbasins. In addition, the inventory can be integrated into a maintenance management system for watershed improvements as well as equipment and staff scheduling.

ESTIMATED COST

\$5,000/year (staff time to update records based on subbasin plan data)

ACTION PLAN

ACTION

WHO

FINISH DATE

Est. Actual

IMPLEMENTATION

Complete the inventory for one subbasin per year. Combine efforts with a subbasin plan (SS.3)

• 9/91
(and on-going)

Update records and notify appropriate staff

• 1/92
(and on-going)

MONITORING/
EVALUATION

* To be determined

Maintenance of Road Right-of-Ways

MO.8

SOURCES CONTROLLED

Transportation

**RESPONSIBLE AGENCY/
CONTACT/PHONE**

*

DESCRIPTION

Develop an integrated vegetation management program for roadside maintenance. Standards should be developed for herbicide application in ditches and on roadsides, ditch cleaning, mowing, and litter control. The standards should be based on maximizing water quality benefits from such practices. For example, grassed areas should be mowed and materials should be removed to prevent release of nutrients to surface water.

GOALS/OBJECTIVES

Enhance and maintain water quality for the Tualatin River, Oswego Lake and their tributaries to support beneficial uses of the water..

**IMPACT ON ATTAINMENT
OF GOALS/OBJECTIVES**

Reduces pollutant loading of surface waters.

ESTIMATED COST

\$10,000/year staff time

ACTION PLAN

ACTION

WHO

FINISH DATE

Est.

Actual

IMPLEMENTATION

- Compile available standards
- Examine existing practices
- Change current practices according to review
- Implement maintenance program.

*

7/91

*

8/91

*

9/91

*

12/91
and on
going

**MONITORING/
EVALUATION**

** To be determined*

Carter Creek Plan

SS.2

SOURCES CONTROLLED .. Land Use Washoff; effects of urbanization.

**RESPONSIBLE AGENCY/
CONTACT/PHONE** *

DESCRIPTION Conduct the hydrologic/hydraulic analysis necessary to determine on-site and regional storage requirements in the Carter Creek basin. Identify facility sites to be preserved as development occurs. Include preservation of the riparian zone along Carter Creek. Identify opportunities for creation of aquatic treatment systems and other biofilters. Also identify opportunities for retrofitting existing developed areas with water quality treatment facilities.

GOALS/OBJECTIVES Enhance the water quality of Carter Creek, a tributary to Fanno Creek which drains into the Tualatin River.

**IMPACT ON ATTAINMENT
OF GOALS/OBJECTIVES** This measure is the first step in implementing subbasin plans (SS.3).

ESTIMATED COST \$15,000

ACTION PLAN

ACTION	WHO	FINISH DATE	
		Est.	Actual
IMPLEMENTATION			
<input type="checkbox"/> Perform detailed analysis.	Consultant	12/90	
<input type="checkbox"/> Enter Capital Improvement Program into SWM program plan.	*	12/90	

**MONITORING/
EVALUATION**

* To be determined

Subbasin Plans

SS.3

SOURCES CONTROLLED All

**RESPONSIBLE AGENCY/
CONTACT/PHONE** *

DESCRIPTION

Conduct detailed studies of existing and predicted surface water characteristics for each subbasin to establish:

- Detailed system inventory
- Hydrologic/hydraulic characteristics
- Special on-site facility requirements
- Opportunities for regional treatment systems
- Flood control improvements
- Buffer zones for creeks and wetlands protection
- Capital Improvement Program projects

Selection of an appropriate computer model for water quantity and quality analysis will be critical to the planning process. The model(s) should be capable of performing computations relevant to the design of regional detention and water quality improvement facilities.

GOALS/OBJECTIVES

Identify improvements which are in compliance with regulations relating to the natural surface water system.

Enhance water quality within the Tualatin River/Oswego Lake basin.

**IMPACT ON ATTAINMENT
OF GOALS/OBJECTIVES**

Will identify problem areas, quantity volumes and help guide policy and design to be specific to each subbasin.

ESTIMATED COST

Will depend on number of subbasins identified in preliminary analysis. (Estimated \$50,000/year).

ACTION PLAN

ACTION

WHO

FINISH DATE

Est. Actual

IMPLEMENTATION

Prioritize subbasins for analysis.

* 9/90

Perform detailed study

* 6/92

Identify and implement CIP resulting from study.

* 6/92

**MONITORING/
EVALUATION**

** To be determined*

Regulations Review: Development Issues

R.3

SOURCES CONTROLLED

Land use washoff and long-term impacts of urbanization.

**RESPONSIBLE AGENCY/
CONTACT/PHONE**

*

DESCRIPTION

Review existing regulations pertaining to sensitive areas, surface water facilities for new development, natural system preservation, and other nonpoint source management issues associated with development. Include setbacks for surface water features. Adopt ordinances to complement the interim regulations such as a clearing, filling and grading ordinance.

GOALS/OBJECTIVES

Protect water quality through the preservation of natural systems.

Enhance water quality in the Tualatin River/Oswego Lake basin for beneficial uses.

Meet state regulations for surface water quality management within the Tualatin River/Oswego Lake basins.

**IMPACT ON ATTAINMENT
OF GOALS/OBJECTIVES**

Provide guidelines for new development and requirements for implementation of SWM plan.

ESTIMATED COST

\$8,000/year staff time.

ACTION PLAN

ACTION

WHO

FINISH DATE
Est. Actual

IMPLEMENTATION

Review existing regulations.

* 6/91

Identify deficiencies and develop new ordinances.

* 7/91

Adopt new ordinances

* 8/91

**MONITORING/
EVALUATION**

Meet with Inspectors and Code Enforcement personnel to review effectiveness of regulations and possible improvements.

* 12/91
and on
going

* To be determined

Regulations Review: Waterfowl Management

R.8

SOURCES CONTROLLED	Waterfowl Impacts.		
RESPONSIBLE AGENCY/ CONTACT/PHONE	•		
DESCRIPTION	Develop a regulatory structure to discourage feeding of waterfowl in public areas. Regulations will prevent this issue from becoming a problem in the future.		
GOALS/OBJECTIVES	<p>Enhance and maintain water quality for the Tualatin River, Oswego Lake and their tributaries to support beneficial uses of the water.</p> <p>Emphasize use of natural systems and nonstructural methods that focus on preventing and controlling runoff and pollution at the source.</p> <p>Build public understanding of nonpoint source pollution and other surface water management problems as well as responsibilities and opportunities for individuals to improve water quality and drainage.</p>		
IMPACT ON ATTAINMENT OF GOALS/OBJECTIVES	Will reduce waterfowl loading problems.		
ESTIMATED COST	\$1,000/year staff time.		
ACTION PLAN	ACTION	WHO	FINISH DATE <u>Est.</u> <u>Actual</u>
IMPLEMENTATION	<input type="checkbox"/> Collect model waterfowl ordinances	•	12/91
	<input type="checkbox"/> Prepare draft ordinance	•	2/92
	<input type="checkbox"/> Obtain necessary reviews	•	3/92- 12/92
	<input type="checkbox"/> Adopt ordinance	•	1/93
	<input type="checkbox"/> Place "No Feeding" signs at parks	•	2/93
	<input type="checkbox"/> Prepare brochures explaining ordinance	•	2/93
	<input type="checkbox"/> Periodically visit parks to observe effectiveness of signs	•	3/93- 3/94
MONITORING/ EVALUATION	<input type="checkbox"/> If feeding continues, implement enforcement provisions of ordinance	•	3/94

* To be determined

*Last
Part of
Agenda
K*

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: R
Division: Water Quality
Section: Surface Water

SUBJECT:

Tualatin Basin watershed management plan review and action.

PURPOSE:

To approve or reject each plan, and, if necessary, specify conditions of approval or a process for revision and re-submission of a rejected plan.

ACTION REQUESTED:

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

Meeting Date: June 29, 1990
Agenda Item: R
Page 2

DESCRIPTION OF REQUESTED ACTION:

The Commission is requested to fully approve, conditionally approve, or reject plans, and to adopt conditions or compliance schedules, as recommended by staff in the attachments.

AUTHORITY/NEED FOR ACTION:

- Required by Statute: _____ Attachment _____
 Enactment Date: _____
 Statutory Authority: _____ Attachment _____
 Pursuant to Rule: OAR 340-41-470(3)(i) Attachment _____
 Pursuant to Federal Law/Rule: _____ Attachment _____

 Other: _____ Attachment _____

 Time Constraints: (explain)

The rule cited above requires the Commission to approve or reject each of the Tualatin Basin NPS watershed management plans within 120 days of submission (i.e., by July 7, 1990).

DEVELOPMENTAL BACKGROUND:

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

 Other Related Reports/Rules/Statutes:

The watershed management plans subject to review are required by OAR 340-41-470(3)(g, h).

- Supplemental Background Information Attachment _____

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

1. The definition of a "first level" plan (sometimes referred to as a "plan to plan") is imprecise and subject to different interpretations. A jurisdiction responsible may feel that one or more of the conditions placed on approval of their plan is unreasonable in the context of a "first level" plan as defined by them. They may agree that the tasks required to meet the conditions are necessary, but that the work could better be done in the course of completing the development and implementation of fully approved plans.

DESCRIPTION OF REQUESTED ACTION:

The Commission is requested to fully approve, conditionally approve, or reject plans, and to adopt conditions or compliance schedules, as recommended by staff in the attachments.

AUTHORITY/NEED FOR ACTION:

- Required by Statute: _____ Attachment _____
 Enactment Date: _____
- Statutory Authority: _____ Attachment _____
- Pursuant to Rule: OAR 340-41-470(3)(i) Attachment _____
- Pursuant to Federal Law/Rule: _____ Attachment _____
- Other: _____ Attachment _____

Time Constraints: (explain)

The rule cited above requires the Commission to approve or reject each of the Tualatin Basin NPS watershed management plans within 120 days of submission (i.e., by July 7, 1990).

DEVELOPMENTAL BACKGROUND:

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

The watershed management plans subject to review are required by OAR 340-41-470(3)(g, h).

- Supplemental Background Information Attachment _____

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

1. The definition of a "first level" plan (sometimes referred to as a "plan to plan") is imprecise and subject to different interpretations. A jurisdiction responsible may feel that one or more of the conditions placed on approval of their plan is unreasonable in the context of a "first level" plan as defined by them. They may agree that the tasks required to meet the conditions are necessary, but that the work could better be done in the course of completing the development and implementation of fully approved plans.

2. Full and timely implementation of effective plans will be critical to successful achievement of Total Maximum Daily Load targets in the Tualatin Basin. A jurisdiction may feel that a conditional approval and the subsequent delay in full approval will not accord their plan with the finality or authority it must have to be immediately implemented, resulting in delays in program implementation.
3. Preparation of these plans represents a major commitment of effort and resources by the designated management agencies. A jurisdiction may feel that it has fully expended its resources for development of the "first level" plan and is thus unable to complete the tasks necessary to meet the stipulated conditions.
4. The deadlines for meeting one or more of the conditions may be criticized.
5. The specific omissions or weaknesses identified by staff in the attached reviews may be challenged.
6. Additional omissions or weaknesses not identified by staff may be asserted by other parties. These assertions may argue for rejection of a plan that staff has recommended for approval or conditional approval.

PROGRAM CONSIDERATIONS:

The conditional approval or rejection (with a compliance schedule) of one or more of the plans will result in the Department devoting additional staff time to the review of the plan revisions and (in the case of the resubmission of a rejected plan) the preparation of recommendations to the Commission.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. The topical framework for plan reviews was established by the Guidance for Nonpoint Source Watershed Management Plans, published by DEQ in December, 1988, and distributed to designated management agencies in the Tualatin Basin to help guide their development of NPS plans. Plan preparers were not required to follow the format suggested in the Guidance, and review comments on the organization and presentation of information in the plans are general rather than based on the specific format in the Guidance.
2. The DEQ Guidance document clearly indicated that an acceptable "first level" plan must contain more than just the description of a process for developing a watershed

management plan. While acknowledging that many of the technical details necessary for site-specific application of BMPs and management measures may be lacking at this time, the Department feels that the "first level" plans should contain well organized and thoroughly detailed descriptions of the problems to be addressed, the strategy to be employed, the control measures to be applied, the funding sources to be tapped, and the staffing, budget and organizational structures and authorities necessary for program implementation. Also necessary in these plans is a complete listing of appropriate BMPs and management measures, enough technical information on these measures to describe how they could be used to address identified problems, and detailed explanations of the processes by which the measures will be selected and applied to specific sites and an evaluation and reporting of the selected BMP's effectiveness in meeting TMDLs requirements and compliance dates. Finally, those program elements not requiring highly technical or site-specific measures (e.g. public information and education, fund raising, creation of interagency agreements, survey-level problem assessments, etc.) should be developed in the plans to the point where implementation can begin immediately.

3. The criteria for recommending options for Commission action on the plans are defined as follows:
 - a. **Full Approval:** The plan is fully adequate as a basis for initial implementation of certain program elements and for final detailed development of other, more site-specific, program elements.
 - b. **Conditional Approval:** The plan is essentially sound, but leaves important issues inadequately addressed or explained; the plan will be stronger and more likely to result in timely achievement of TMDL targets if certain specified improvements are made.
 - c. **Rejected:** The plan may contain many valid elements, but is not well organized and/or leaves too many important issues inadequately addressed to provide a basis for a timely and successful program; significant restructuring or further development is necessary.
4. Many of the conditions suggested by the Department can be met within 30 to 60 days of Commission action. A few might take longer, and the revision and re-submission of a rejected plan most likely will take longer still. A variety of deadlines were considered, but the total of 120 days for the submission and DEQ approval of the Plan would allow sufficient time for

management plan. While acknowledging that many of the technical details necessary for site-specific application of BMPs and management measures may be lacking at this time, the Department feels that the "first level" plans should contain well organized and thoroughly detailed descriptions of the problems to be addressed, the strategy to be employed, the control measures to be applied, the funding sources to be tapped, and the staffing, budget and organizational structures and authorities necessary for program implementation. Also necessary in these plans is a complete listing of appropriate BMPs and management measures, enough technical information on these measures to describe how they could be used to address identified problems, and detailed explanations of the processes by which the measures will be selected and applied to specific sites and an evaluation and reporting of the selected BMP's effectiveness in meeting TMDLs requirements and compliance dates. Finally, those program elements not requiring highly technical or site-specific measures (e.g. public information and education, fund raising, creation of interagency agreements, survey-level problem assessments, etc.) should be developed in the plans to the point where implementation can begin immediately.

3. The criteria for recommending options for Commission action on the plans are defined as follows:
 - a. **Full Approval:** The plan is fully adequate as a basis for initial implementation of certain program elements and for final detailed development of other, more site-specific, program elements.
 - b. **Conditional Approval:** The plan is essentially sound, but leaves important issues inadequately addressed or explained; the plan will be stronger and more likely to result in timely achievement of TMDL targets if certain specified improvements are made.
 - c. **Rejected:** The plan may contain many valid elements, but is not well organized and/or leaves too many important issues inadequately addressed to provide a basis for a timely and successful program; significant restructuring or further development is necessary.
4. Many of the conditions suggested by the Department can be met within 30 to 60 days of Commission action. A few might take longer, and the revision and re-submission of a rejected plan most likely will take longer still. A variety of deadlines were considered, but the total of 120 days for the submission and DEQ approval of the Plan would allow sufficient time for

both the responsible entities and DEQ staff to complete the necessary tasks. In any case, time is of the essence as program implementation must shift into high gear over the next twelve months if TMDLs are to be met on schedule.

5. Work products required by conditional approvals will be submitted to the Department, which will then certify to the Commission that stipulated conditions have been met. Upon such certification by the Department, the conditionally approved plans will become fully approved without the necessity of Commission action.
6. After a rejected plan has been revised and re-submitted by the responsible parties, the Department will review the plan and prepare a staff report and recommendations for the Commission. Action by the Commission will be necessary to approve the plan.

PUBLIC HEARING:

A public hearing was held by the Department on Tuesday, June 12, 1990 from 9:00 a.m. till Noon to receive public comment on the proposed Tualatin Basin Nonpoint Source Pollution Control Plans. Approximately 20 persons attended with only five testifying. The hearing was recorded by a court reporter. Attachment H is the minutes of the hearing. Also attached is the Hearings Officer Summary Report as Attachment I. Any additional comments or concerns expressed to staff after the comment deadline will be presented to the Commission at the June 29, 1990 meeting.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department's recommendations on each plan are located at the end of the attached reviews.

	<u>AGENCY</u>	<u>STAFF PROPOSED ACTION</u>	<u>ATTACHMENT</u>
1.	Oregon Department of Agriculture	Conditional Approval	A
2.	Oregon Department of Forestry	Defer Action	B
3.	Unified Sewerage Agency of Washington County (USA)	Conditional Approval	C
4.	Clackamas County and Rivergrove	Conditional Approval	D
5.	City of Portland	Conditional Approval	E
6.	City of Lake Oswego	Conditional Approval	F
7.	City of West Linn	Conditional Approval	G

Meeting Date: June 29, 1990
Agenda Item: R
Page 6

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

As noted above, the plan review process is mandated by EQC rule. Also, action on these plans and the resulting continued progress in pollution control efforts in the Tualatin Basin are consistent with the "Critical River Basins" component of the State\EPA Agreement for fiscal year 1990.

ISSUES FOR COMMISSION TO RESOLVE:

1. Whether to accept, reject, or modify the Department's recommendations for action on the watershed management plans.

INTENDED FOLLOW-UP ACTIONS:

The Department will communicate the Commission's actions to the agencies responsible for the plans and their implementation. The Department will be involved as necessary in the modification of plans not fully approved or rejected by the Commission, will certify the satisfaction of conditions, and will review and make recommendations to the Commission on re-submitted plans.

Approved:

Section: Joseph M. Edney

Division: Rydia Taylor

Director: William

Report Prepared By: Roger Wood & Don Yon

Phone: 229-6893

Date Prepared: June 14, 1990

Don Yon:hs
MW\WH4089
June 15, 1990

Meeting Date: June 29, 1990
Agenda Item: R
Page 6

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

As noted above, the plan review process is mandated by EQC rule. Also, action on these plans and the resulting continued progress in pollution control efforts in the Tualatin Basin are consistent with the "Critical River Basins" component of the State\EPA Agreement for fiscal year 1990.

ISSUES FOR COMMISSION TO RESOLVE:

1. Whether to accept, reject, or modify the Department's recommendations for action on the watershed management plans.

INTENDED FOLLOW-UP ACTIONS:

The Department will communicate the Commission's actions to the agencies responsible for the plans and their implementation. The Department will be involved as necessary in the modification of plans not fully approved or rejected by the Commission, will certify the satisfaction of conditions, and will review and make recommendations to the Commission on re-submitted plans.

Approved:

Section: Joseph M. Edney

Division: Ry Ann Taylor

Director: Bill Lamm

Report Prepared By: Roger Wood & Don Yon

Phone: 229-6893

Date Prepared: June 14, 1990

Don Yon:hs
MW\WH4089
June 15, 1990

STAFF REVIEW

**TUALATIN RIVER BASIN
WATERSHED MANAGEMENT PLAN**

**OREGON DEPARTMENT OF AGRICULTURE AND
WASHINGTON COUNTY SOIL AND WATER CONSERVATION SERVICE**

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: A "road map" would be helpful to show where the key issues identified in the DEQ guidance document are addressed in the plan.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: The physical setting and water quality problems descriptions are described. The institutional infrastructure description describes the agencies involved and their responsibilities.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is concise and describes the desired results of the Plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The statements in the section titled "Objective" are actually sub-goals, and do not communicate the measurable results as described above. The seven items in the "SWCD Strategy..." section are really control options in the sense that they define categories of action (i.e., groups of action items or management measures). However, objectives in the form of action items or management measures are not found in the plan.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the agriculture NPS strategy are reviewed below.

Available Control Options: Control options are identified as noted above (in III. B).

Process for Selecting Options: The process of plan development to date is discussed if the references in several sections of the plan are taken together. The processes by which BMPs will be selected and applied is not explicitly stated, but the plan notes that the installation of conservation measures will be done by individual land owners and managers on a voluntary basis. The plan gives a "first approximation" of conservation needs in Tualatin agricultural lands, but does not describe how the approximation was arrived.

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is concise and describes the desired results of the Plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The statements in the section titled "Objective" are actually sub-goals, and do not communicate the measurable results as described above. The seven items in the "SWCD Strategy..." section are really control options in the sense that they define categories of action (i.e., groups of action items or management measures). However, objectives in the form of action items or management measures are not found in the plan.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the agriculture NPS strategy are reviewed below.

Available Control Options: Control options are identified as noted above (in III. B).

Process for Selecting Options: The process of plan development to date is discussed if the references in several sections of the plan are taken together. The processes by which BMPs will be selected and applied is not explicitly stated, but the plan notes that the installation of conservation measures will be done by individual land owners and managers on a voluntary basis. The plan gives a "first approximation" of conservation needs in Tualatin agricultural lands, but does not describe how the approximation was arrived.

Description of BMPs to be Used: BMPs are listed by name and grouped into functional categories. The plan references the Soil Conservation Service (SCS) "Field Office Technical Guide" as the source of additional BMP details, including technical standards and specifications. The listed BMPs are not identified in terms of the applicable SCS codes. Also, the plan does not include any examples from the SCS Guide to show how BMPs are described and what technical information is available in that document. The plan's "first approximation" of conservation needs in Tualatin agricultural lands applies thirteen BMPs (or systems of BMPs) to nine land use situations, and uses a quantity of need (in terms of acres or other units) and an estimated unit price to estimate the costs of applying these measures basin-wide.

Responsibilities for Implementing: Responsibilities are not explicitly addressed. The plan implies that the Washington Soil and Water Conservation District (SWCD) will have some responsibility, and the Washington County Water Management Committee (WAMCO) is also mentioned.

Monitoring and Evaluation: The plan notes that funding has not yet been secured which should be done so that the TMDL goals can be met.

Public Information and Education: The list of public information and education measures could serve as a model for how to develop other elements. Still lacking, however, is an discussion of important details such as when and by whom the measures will be implemented, their estimated cost, and quantified products.

Periodic Plan Review and Adjustment: A "master plan" and an "annual action plan" are mentioned but not described. The review process does not list who will be involved.

Implementation Schedule: Does not include interim targets or "mileposts" for BMP implementation.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: Public involvement in plan development is described. Public involvement in plan review and adjustment is not mentioned.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: The plan indicates that the Washington SWCD has a contract to produce the plan from the Oregon Department of Agriculture. Authority to implement is not clear.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The "first approximation" of needed management measures provides a rough estimate of BMP implementation funds necessary. The three-tiered program administration budget provides cost estimates for three progressively higher levels of program implementation. The level of detail in the administrative budget suggests that action items, work tasks, and other program objectives also have been developed to a high level of detail, but this program detail does not appear in the plan. Several sources of funding are listed, most prominently the cost share funds from the U.S. Department of Agriculture, but none are discussed in depth.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: This is not addressed in the plan.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: The plan includes several references to possible interagency cooperation, but does not summarize necessary agreements or important opportunities.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: CONDITIONAL APPROVAL.

Review: The plan indicates that the Washington SWCD has a contract to produce the plan from the Oregon Department of Agriculture. Authority to implement is not clear.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The "first approximation" of needed management measures provides a rough estimate of BMP implementation funds necessary. The three-tiered program administration budget provides cost estimates for three progressively higher levels of program implementation. The level of detail in the administrative budget suggests that action items, work tasks, and other program objectives also have been developed to a high level of detail, but this program detail does not appear in the plan. Several sources of funding are listed, most prominently the cost share funds from the U.S. Department of Agriculture, but none are discussed in depth.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: This is not addressed in the plan.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: The plan includes several references to possible interagency cooperation, but does not summarize necessary agreements or important opportunities.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: CONDITIONAL APPROVAL.

The Agricultural Nonpoint Source Program Plan requires significant revision in order to more likely result in achievement of TMDL goals. DEQ believes the authors of this plan made a good-faith effort under difficult circumstances, and that the resulting plan contains much useful and important information. However, the plan's inadequacies, as implied in the corrective measures prescribed below, leave too much doubt that the plan can lead to timely compliance with the agricultural TMDL targets in the Tualatin basin. The Plan will be fully approved when the following conditions are met.

Conditions:

The time period for completion of the conditions and the Final Plan for submission to DEQ for approval starts when the Environmental Quality Commission (EQC) adopts the following recommended conditions for approval:

1. The Oregon Department of Agriculture, the designated management agency for the agricultural watershed management plan for the Tualatin basin, is responsible for modifying the plan according to the following instructions:
2. Describe problems in terms of the agricultural land use practices which cause them (for example: streambank erosion resulting from riparian zone vegetation removal). These descriptions will eventually have to include detail on both location and severity before management measures can be prescribed, funded, and applied.
3. Collect all program elements together in one complete list. The seven elements listed in the "SWCD Strategy..." section come close to being such a list, but do not include information and education, review and adjustment, fundraising, interagency agreements and relationships, and other program elements which are developed elsewhere in the plan. Where applicable, explain which of the program elements address which of the identified problems.
4. Specify the action items, work tasks, and other true objectives of the plan. The absence of such objectives, or their dispersal in a way that makes them hard to identify, is the principal weakness of the plan and manifests itself throughout. For example: The options identified in the "Information and Education" section should be expanded to indicate tasks, time lines, products, estimated costs, and responsible parties. If the implementation details of a task or objective are uncertain at this time, explain why and describe a process and time line for development of further detail.
5. Group objectives according to the control option or program element they serve. For example: The seven items listed in the "SWCD Strategy..." section are sub-goals or major program elements of the plan, and each could serve as a heading under which a number of specific tasks or objectives may be grouped.

6. Describe how the variety of available BMPs, management measures, and tasks will be selected and applied to address particular site-specific problems. If land owners and managers will make these selections, explain what considerations will guide them. Also explain the considerations used by cost-share funding sources in setting priorities for allocation of available funds in the basin.
7. Discuss optional courses of action in the event that voluntary participation is inadequate and enforcement is necessary. Identify the means of enforcement of the required BMPs, the responsible entity(s), the necessary authority, and the staffing and funding sources.
8. Explain how the "first approximation" of conservation needs (page 32) was arrived at, and why those particular BMPs were selected to use in the needs estimate.
9. Describe more fully the BMP descriptions and other guidance documents and directives available in the SCS Field Office Technical Guide. Include in the plan a few excerpts or examples from the SCS Guide to illustrate the information available on a particular BMP or management system approach.
10. In the plan's list of BMPs, identify each one also by the SCS code or designations, if applicable.
11. Identify the agency (or agencies) responsible for implementation of the program, and describe specific roles and responsibilities.
12. Describe the "master plan" and "annual action plan" mentioned in the plan in terms of (a) purpose and use, (b) content, and (c) process for development and review.
13. Using a more fully developed set of program objectives and tasks, expand the implementation schedule to show interim targets or "mileposts."
14. Describe public involvement in plan review and adjustment.
15. Describe the program objectives or other assumptions underlying the detailed program administration budget. It is understood that the three funding scenarios identified in the plan imply different levels of effort and achievement. This should be described in terms of the specific objectives and tasks which can be accomplished at each funding level.
16. Expand the discussion of potential funding sources to address:
 - (a) The particular characteristics, program preferences, or funding criteria of each;
 - (b) Amounts of funds potentially available;
 - (c) Conditions typically placed on the funds; and

6. Describe how the variety of available BMPs, management measures, and tasks will be selected and applied to address particular site-specific problems. If land owners and managers will make these selections, explain what considerations will guide them. Also explain the considerations used by cost-share funding sources in setting priorities for allocation of available funds in the basin.
7. Discuss optional courses of action in the event that voluntary participation is inadequate and enforcement is necessary. Identify the means of enforcement of the required BMPs, the responsible entity(s), the necessary authority, and the staffing and funding sources.
8. Explain how the "first approximation" of conservation needs (page 32) was arrived at, and why those particular BMPs were selected to use in the needs estimate.
9. Describe more fully the BMP descriptions and other guidance documents and directives available in the SCS Field Office Technical Guide. Include in the plan a few excerpts or examples from the SCS Guide to illustrate the information available on a particular BMP or management system approach.
10. In the plan's list of BMPs, identify each one also by the SCS code or designations, if applicable.
11. Identify the agency (or agencies) responsible for implementation of the program, and describe specific roles and responsibilities.
12. Describe the "master plan" and "annual action plan" mentioned in the plan in terms of (a) purpose and use, (b) content, and (c) process for development and review.
13. Using a more fully developed set of program objectives and tasks, expand the implementation schedule to show interim targets or "mileposts."
14. Describe public involvement in plan review and adjustment.
15. Describe the program objectives or other assumptions underlying the detailed program administration budget. It is understood that the three funding scenarios identified in the plan imply different levels of effort and achievement. This should be described in terms of the specific objectives and tasks which can be accomplished at each funding level.
16. Expand the discussion of potential funding sources to address:
 - (a) The particular characteristics, program preferences, or funding criteria of each;
 - (b) Amounts of funds potentially available;
 - (c) Conditions typically placed on the funds; and

- (d) Tasks for further investigating or applying to these sources for funds.
17. If adequate funding sources are not available for the types of funding assistance programs outlined, explain what steps will be taken to require individual agricultural operators to implement the required BMPs to ensure compliance with TMDL goals.
 18. Describe a process for regular periodic reporting of program implementation and results.
 19. Discuss interagency agreements necessary for program implementation. Reiterate in one location the opportunities for interagency cooperation mentioned throughout the plan.
 20. Complete the container nursery water quality protection program now under development, and incorporate into the plan.
 21. An annual meeting with DEQ shall be included in the Plan.
 22. Include provisions for the protection of all streams, wetlands, and ponds with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow, on all sides.
 23. Include in the roadway maintenance measure the provision of no spraying of pesticides.
 24. All of the above must be included in the Final Plan and provided to DEQ within 90 days.
 25. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
 26. Identify the appropriate responsible agency to join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin basin (Process to commence within 120 days).

STAFF REVIEW

**TUALATIN RIVER BASIN
WATERSHED MANAGEMENT PLAN**

OREGON DEPARTMENT OF FORESTRY

The plan reviewed here proposes the continued implementation of the Oregon Forest Practices Act (FPA) as the main component in a forestry watershed management plan for the Tualatin basin. The FPA program is composed of administrative rules, guidance documents, directives, and other resources designed to guide forest practices. The DEQ staff comments and recommendations below result from a review of both the Tualatin Forestry Plan and, where applicable, the FPA.

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: The Plan's purpose and expected results are described.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: The plan notes that "harvesting will increase by two to four times during the next two decades" as the basin's timber stands reach harvest age, and further notes that the present phosphorus load allocation may be inadequate in light of this increase in activity.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for

achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The Plan's goal statement is described.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen; (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The two objectives stated are (1) to continue implementation of the FPA, and (2) to monitor the effectiveness of the FPA at protecting water quality. These are actually "sub-goals" rather than objectives as defined in DEQ's plan preparation guidance document.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the NPS strategy for forest lands are reviewed below.

Available Control Options: Options other than continued implementation of the FPA were not discussed.

Process for Selecting Options: The plan did not discuss the process by which the FPA was identified as the preferred control option.

Description of BMPs to be Used: The FPA rules are clearly referenced as the "best management practices" or management measures to be used. No attempt is made to describe those BMPs within the Tualatin plan. The rules and

achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The Plan's goal statement is described.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen; (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The two objectives stated are (1) to continue implementation of the FPA, and (2) to monitor the effectiveness of the FPA at protecting water quality. These are actually "sub-goals" rather than objectives as defined in DEQ's plan preparation guidance document.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the NPS strategy for forest lands are reviewed below.

Available Control Options: Options other than continued implementation of the FPA were not discussed.

Process for Selecting Options: The plan did not discuss the process by which the FPA was identified as the preferred control option.

Description of BMPs to be Used: The FPA rules are clearly referenced as the "best management practices" or management measures to be used. No attempt is made to describe those BMPs within the Tualatin plan. The rules and

other FPA documents are not attached to the plan, and the rules (including those particularly relating to water quality) are not cited by OAR number. Also, the plan does not discuss (or reference a discussion of) the process and considerations used in selecting BMPs on a site-by-site basis.

Responsibilities for Implementing: The plan clearly identifies the Oregon Department of Forestry (ODF) as the agency with authority to implement and enforce the FPA.

Monitoring and Evaluation: The plan clearly commits ODF to monitor FPA program implementation and BMP effectiveness statewide, and also commits ODF to a basic level of TMDL compliance monitoring program in the Tualatin basin. The plan does not contain (nor reference) adequate detail on BMP effectiveness monitoring.

Public Information and Education: The FPA incorporates some information and education components, delivered principally through on-site inspections by Forest Practices Foresters.

Periodic Plan Review and Adjustment: The plan relies on the existing mechanisms for FPA review and modification.

Implementation Schedule: The FPA is already in effect in the basin. Schedules for reporting should be added.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: Relies on existing processes for the FPA statewide.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: The authority to implement is described in the Plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The plan identifies several program elements specific to the Tualatin basin (or to the TMDL program) and not a part of the regular FPA program, but does not show cost estimates for these elements. Federal funds (through DEQ) are identified as a funding source, but specific fund types (i.e. federal assistance grants) are not identified. Also, other sources (state and local funds, user fees or taxes) are not discussed.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The plan relies on existing processes for reporting of FPA implementation and effectiveness.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: The plan is not clear on whether or not implementation agreements with other agencies will be necessary. The plan references the interagency agreements stemming from DEQ's statewide Nonpoint Source Management Plan. ODF was actively involved in development of the current NPS plan during 1988-89, but DEQ and ODF have not yet updated their old (1978) NPS agreement.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: DEFER ACTION.

The recommendation for deferred action is based on the Oregon Board of Forestry's request for additional time to receive the report from the Technical Specialist Panel (TSP). The plan's reliance on the Forest Practices Act program is logical and appropriate. However, the Tualatin Basin Forestry Plan itself would better link the FPA to the needs of the TMDL program if several improvements are made. The plan will be fully approved when the following conditions are met.

Review: The plan identifies several program elements specific to the Tualatin basin (or to the TMDL program) and not a part of the regular FPA program, but does not show cost estimates for these elements. Federal funds (through DEQ) are identified as a funding source, but specific fund types (i.e. federal assistance grants) are not identified. Also, other sources (state and local funds, user fees or taxes) are not discussed.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The plan relies on existing processes for reporting of FPA implementation and effectiveness.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: The plan is not clear on whether or not implementation agreements with other agencies will be necessary. The plan references the interagency agreements stemming from DEQ's statewide Nonpoint Source Management Plan. ODF was actively involved in development of the current NPS plan during 1988-89, but DEQ and ODF have not yet updated their old (1978) NPS agreement.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: DEFER ACTION.

The recommendation for deferred action is based on the Oregon Board of Forestry's request for additional time to receive the report from the Technical Specialist Panel (TSP). The plan's reliance on the Forest Practices Act program is logical and appropriate. However, the Tualatin Basin Forestry Plan itself would better link the FPA to the needs of the TMDL program if several improvements are made. The plan will be fully approved when the following conditions are met.

Conditions:

The time period for completion of the conditions and the Final Plan for submission to DEQ for approval starts when the Environmental Quality Commission adopts the following recommended conditions for approval:

1. Explain how the FPA was selected as the control option, and discuss options, if any, which were considered and rejected.
2. Fully cite and describe the FPA rules, rule guidance documents, directives, and other sources which provide the details for implementation of water quality protection BMPs and other program elements in the Tualatin basin.
3. Describe the process (presumably included within the existing FPA program) by which BMPs and other management measures to protect water quality are selected for different sites and operations. Explain the latitude, if any, which forestry operators have in selecting and applying these BMPs and the Oregon Department of Forestry has in requiring the application of these BMPs by the forestry operators.
4. Explain how the FPA's effectiveness at protecting water quality will be monitored in the Tualatin basin. The FPA water quality monitoring program should identify the timeline for development and the goals and objectives of the program.
5. Estimate costs (yearly and over the life of the plan) for program elements specific to the Tualatin and not otherwise funded as part of the FPA program.
6. ODF should complete a watershed forest management plan for the forested areas of the Tualatin Basin in anticipation of future harvest levels increasing. The watershed forest management plan should identify the forest types, ages, sizes and estimated year(s) of harvest. The steep slopes and erosive soils should be mapped. And a recommended forest harvest plan should be completed identifying the rate, size and locations of harvest that avoid steep slopes and erosive soils in order to reduce erosion and to meet TMDL requirements.
7. ODF should identify the staffing requirements in order to develop the watershed forest management plan, to monitor water quality and to adequately enforce BMPs to ensure compliance.
8. Discuss other potential funding sources (besides the federal government), including but not limited to (a) state funds, and (b) special assessments or taxes on forest operators.
9. An annual meeting with DEQ is included in the Plan.
10. All the above must be included in the Final Plan and provided to DEQ within 90 days.

11. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
12. ODF shall join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin basin (Process to commence within 120 days).

11. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
12. ODF shall join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin basin (Process to commence within 120 days).

STAFF REVIEW

**TUALATIN RIVER BASIN
URBAN AREA SURFACE WATER MANAGEMENT PLAN**

UNIFIED SEWERAGE AGENCY (USA) OF WASHINGTON COUNTY

The watershed management plan reviewed herein was prepared by the Unified Sewerage Agency in conjunction with the jurisdictions which lie within USA's service district (the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, North Plains, Sherwood, Tigard, Tualatin, and Washington County).

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: A table is provided which shows the section titles and page numbers where information asked for in the DEQ "Guidance" may be found.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: Thoroughly and accurately described.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is easy to find in the plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The statements listed as "Program Objectives" in the plan only describe what needs to happen. As "sub-goals" they do a very good job of more fully describing the overall program goal, but they lack the remaining elements of true objectives. The plan's true objectives are its "management measures" (see "BMPs" below). USA refers to these measures in one part of their discussion of objectives, but should do so more overtly.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of USA's NPS strategy are reviewed below.

Available Control Options: The plan discusses specific pollution sources and control concepts, exploring underlying issues, jurisdictional responsibilities, fundamental management principles, and individual control measures. These various elements are displayed in several tables and matrices which clearly show interrelationships and linkages to the plan's "Program Objectives."

Process for Selecting Options: The Plan does not describe in detail the process by which the control strategy preferred in the Plan was developed. The process for Plan implementation is covered, but the process for reviewing, revising, and updating the Plan needs additional description. All Capital Improvement Projects (CIPs) will be identified and selected after completion of the subbasin plans which are scheduled for completion the end of 1991. This may not allow sufficient time to construct the CIPs

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is easy to find in the plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The statements listed as "Program Objectives" in the plan only describe what needs to happen. As "sub-goals" they do a very good job of more fully describing the overall program goal, but they lack the remaining elements of true objectives. The plan's true objectives are its "management measures" (see "BMPs" below). USA refers to these measures in one part of their discussion of objectives, but should do so more overtly.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of USA's NPS strategy are reviewed below.

Available Control Options: The plan discusses specific pollution sources and control concepts, exploring underlying issues, jurisdictional responsibilities, fundamental management principles, and individual control measures. These various elements are displayed in several tables and matrices which clearly show interrelationships and linkages to the plan's "Program Objectives."

Process for Selecting Options: The Plan does not describe in detail the process by which the control strategy preferred in the Plan was developed. The process for Plan implementation is covered, but the process for reviewing, revising, and updating the Plan needs additional description. All Capital Improvement Projects (CIPs) will be identified and selected after completion of the subbasin plans which are scheduled for completion the end of 1991. This may not allow sufficient time to construct the CIPs

in order to reduce nonpoint pollution to meet the June 30, 1993 TMDL's compliance deadline.

Description of BMPs to be Used: The description of BMPs is significantly incomplete, and the principal inadequacy in the plan. The selection and general description of numerous "management measures" is provided. The linking of these BMPs with various program elements and objectives is also provided. A detailed description of the BMP/management measure descriptions is provided in the plan's "workbook" section. Unfortunately, the full collection of such detailed BMP descriptions has not yet been incorporated in the plan. Because these descriptions constitute the plan's true objectives, these descriptions should be completed and incorporated as soon as possible. USA's timeline and action plan for program implementation includes both the development of additional BMP descriptions and the application of BMPs to specific sites. USA should speed up the process for selection and implementation of BMPs and CIPs.

Responsibilities for Implementing: Addressed in several sections of the plan. Of particular importance in terms of detailing responsibilities are: (1) the proposed implementation agreements (offered in the plan but not yet signed), and (2) the detailed descriptions of BMP/management measures. Those management measure descriptions included in the plan to date do not specify responsible parties, but note that responsibilities will "be determined upon adoption of interlocal [interagency] agreements."

Monitoring and Evaluation: The importance of monitoring and data evaluation are established in the plan. The management measures "workbook" section lists four critical monitoring objectives and describes strategies to meet these objectives. The BMP/measure descriptions for this section have not yet been completed, so details cannot be appraised.

Public Information and Education: The plan proposes nearly a score of management measures addressing this need. A general discussion of these measures in Chapter 7 is provided. The BMP/measure descriptions for this section of the "workbook" have not yet been completed, so details cannot be appraised.

Periodic Plan Review and Adjustment: The plan proposes an annual review and re-writing of USA's action plan for program implementation. Also, the plan identifies a management measure for "Management Plan Update" that calls for a comprehensive plan review every five years to complement the yearly reviews. The detailed description of this measure has not yet been added to the "workbook." An annual meeting with DEQ Staff is also required.

Implementation Schedule: General information on scheduling is incorporated into several sections of the plan. Approximate time lines specific to individual management measures are shown graphically in the "workbook" section. The most detailed scheduling information is included in the detailed management measure descriptions, most of which have not yet been added to the plan. The selection, funding and implementation of the CIPs is not adequately outlined in the Plan.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: Public involvement in plan development, including the involvement of representatives of public agencies and interest groups, was outlined. Several concerns most frequently raised are addressed in a brief "responsiveness summary" in an appendix. As noted under "Public Information and Education" above, additional plans are being made for public outreach of various kinds, but detailed objectives in the form of management measures have not yet been added to the plan.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: Necessary authorities are addressed, except for the reason for the exclusion of the city of Gaston from the Plan and the implementation of the CIPs.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: Alternative funding approaches are described. A general discussion of the program budget is also provided. The management measure "workbook" presents approximate costs for each measure, and the detailed measure descriptions will, when added to the plan, estimate costs with a greater level of detail and certainty. The plan shows that USA has a clear picture of the approximate revenues and expenditures necessary to implement the plan.

One notable detail of the plan, located in the proposed Memorandum Of Agreement in Chapter 6, is USA's request that DEQ "petition the legislature to establish a grant, loan, or trust fund" to be used by designated management agencies for NPS "management, programming, and implementation." If adopted, this policy would require preparation of a legislative initiative by the Department.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: Public involvement in plan development, including the involvement of representatives of public agencies and interest groups, was outlined. Several concerns most frequently raised are addressed in a brief "responsiveness summary" in an appendix. As noted under "Public Information and Education" above, additional plans are being made for public outreach of various kinds, but detailed objectives in the form of management measures have not yet been added to the plan.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: Necessary authorities are addressed, except for the reason for the exclusion of the city of Gaston from the Plan and the implementation of the CIPs.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: Alternative funding approaches are described. A general discussion of the program budget is also provided. The management measure "workbook" presents approximate costs for each measure, and the detailed measure descriptions will, when added to the plan, estimate costs with a greater level of detail and certainty. The plan shows that USA has a clear picture of the approximate revenues and expenditures necessary to implement the plan.

One notable detail of the plan, located in the proposed Memorandum Of Agreement in Chapter 6, is USA's request that DEQ "petition the legislature to establish a grant, loan, or trust fund" to be used by designated management agencies for NPS "management, programming, and implementation." If adopted, this policy would require preparation of a legislative initiative by the Department.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The plan calls for at least one annual report, and additional reports may be required by specific management measures or by interagency agreements. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: The plan describes some interagency agreements but other agreements may be developed as necessary.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: CONDITIONAL APPROVAL.

The plan will be a more complete guide for achievement of TMDL targets if several improvements are made. The plan will be fully approved when the following conditions are met.

Conditions:

The time period for completion of the conditions and the Final Plan for submission to DEQ for approval starts when the Environmental Quality Commission adopts the following recommended conditions for approval.

1. Complete and insert the remaining management measure descriptions. Of over 90 measures identified, only the 17 "Maintenance and Operation" measures are thoroughly described.
2. Approval of the USA plan does not imply DEQ or EQC agreement to the various provisions in the interagency agreement (MOA) proposed in Chapter 6. Certain of these provisions offer policy choices requiring further review by DEQ staff and the Commission.
3. A DEQ acceptable monitoring plan must be produced by USA that includes a list of the water quality parameters and sampling methods.

4. Include provisions for the protection of all streams, wetlands, and ponds with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow on all sides.
5. Include in the roadway maintenance measure the provision of no spraying of pesticides.
6. The Plan's objectives should be described adequately so that the measurable end results, the time line for implementation, who is responsible and the funding and staffing resources are well defined.
7. A CIP plan that describes on a site specific basis the reasons for their selection, the costs, funding mechanism(s), the responsible party(s), the means and timing of implementation.
8. An annual meeting with DEQ shall be included.
9. Include a DEQ approved Erosion and Stormwater Control Ordinance.
10. Clarify the processes for review and adjustments of the Plan, reporting the results of monitoring and evaluation, and reporting program implementation and accomplishment.
11. Determine what changes or additions to the local Comprehensive Code and Development Standards are necessary.
12. The City of Gaston should be included within the Plan and all applicable sections of the Plan should be modified to include the necessary actions required specifically for the City of Gaston.
13. All of the above must be included in the Final Plan and provided to DEQ within 90 days.
14. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
15. Join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin basin.

4. Include provisions for the protection of all streams, wetlands, and ponds with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow on all sides.
5. Include in the roadway maintenance measure the provision of no spraying of pesticides.
6. The Plan's objectives should be described adequately so that the measurable end results, the time line for implementation, who is responsible and the funding and staffing resources are well defined.
7. A CIP plan that describes on a site specific basis the reasons for their selection, the costs, funding mechanism(s), the responsible party(s), the means and timing of implementation.
8. An annual meeting with DEQ shall be included.
9. Include a DEQ approved Erosion and Stormwater Control Ordinance.
10. Clarify the processes for review and adjustments of the Plan, reporting the results of monitoring and evaluation, and reporting program implementation and accomplishment.
11. Determine what changes or additions to the local Comprehensive Code and Development Standards are necessary.
12. The City of Gaston should be included within the Plan and all applicable sections of the Plan should be modified to include the necessary actions required specifically for the City of Gaston.
13. All of the above must be included in the Final Plan and provided to DEQ within 90 days.
14. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
15. Join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin basin.

STAFF REVIEW

**TUALATIN RIVER BASIN
WATERSHED MANAGEMENT PLAN**

CLACKAMAS COUNTY and RIVERGROVE

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: The Introduction describes the purpose and expected results of the Plan.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: The physical setting and water quality problems and other elements of this section of the Plan are described. The institutional infrastructure description describes the agencies involved but does not clearly identify their respective responsibilities. Specifically, Figure 2.5 Responsibility Matrix should be completed. There is no description of the time period in which the specific goals will be achieved.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.)

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal is concise and describes the desired results of the Plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The "objectives" listed in the plan really are "sub-goals," and do not include the detail requested in the guidance. However, the plan does describe the Plan's objectives in its discussion of management measures and a plan of work in Chapter 4.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the Clackamas County and Rivergrove NPS strategy are reviewed below.

Available Control Options: The Plan describes the specific sources of nonpoint pollution and solutions.

Process for Selecting Options: The plan does not describe in detail the process by which the control strategy preferred in the plan was developed. The process for plan implementation is covered adequately, but the process for reviewing, revising, and updating the plan needs additional description.

Description of BMPs to be Used: The Plan's format, content, and detail meet the Guidance Document's requirements. Descriptions of two management measures apparently need to be completed: DB.4 (Existing System Inventory), and R.8 (Livestock Management). And, the CIPs are not fully described and are not identified on a site specific basis. As a result, the pollution load reductions estimated in the Plan are based on the application of some of the maintenance BMPs and not the CIPs or other listed BMPs. Clackamas County and the City of Rivergrove should speed up the process in order to meet the compliance deadline.

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal is concise and describes the desired results of the Plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The "objectives" listed in the plan really are "sub-goals," and do not include the detail requested in the guidance. However, the plan does describe the Plan's objectives in its discussion of management measures and a plan of work in Chapter 4.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the Clackamas County and Rivergrove NPS strategy are reviewed below.

Available Control Options: The Plan describes the specific sources of nonpoint pollution and solutions.

Process for Selecting Options: The plan does not describe in detail the process by which the control strategy preferred in the plan was developed. The process for plan implementation is covered adequately, but the process for reviewing, revising, and updating the plan needs additional description.

Description of BMPs to be Used: The Plan's format, content, and detail meet the Guidance Document's requirements. Descriptions of two management measures apparently need to be completed: DB.4 (Existing System Inventory), and R.8 (Livestock Management). And, the CIPs are not fully described and are not identified on a site specific basis. As a result, the pollution load reductions estimated in the Plan are based on the application of some of the maintenance BMPs and not the CIPs or other listed BMPs. Clackamas County and the City of Rivergrove should speed up the process in order to meet the compliance deadline.

Responsibilities for Implementing: The responsibilities for implementation are identified in Chapter 4 management measure descriptions except for CIPs, which DEQ assumes Clackamas County has identified as their responsibility.

Monitoring and Evaluation: Discussion of monitoring and evaluation is provided. Inclusion of the "Monitoring Methods" paper in the Appendix is included. Specific monitoring measures described in Chapter 4 are also provided. Clackamas County and Rivergrove will have to participate with DEQ and other Tualatin Basin actors in the development of a final TMDL compliance monitoring program.

Public Information and Education: The selected public involvement and education activities are described in detail.

Periodic Plan Review and Adjustment: The plan is not clear on the process for regular review and adjustment. A yearly "action plan" is mentioned but not adequately explained. An annual meeting with DEQ Staff is recommended.

Implementation Schedule: The overall time line and the measure-specific schedules in Chapter 4 are provided. The 3-phase approach described in Chapter 1 is also provided. The selection, funding and implementation of the CIPs is not adequately outlined in the Plan.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: This element needs improvement. The advisory group created by management measure PE.10 is a good vehicle for public involvement, but the date for implementation of this measure should be moved up into 1990. The technical advisory group formed by measure IC.1 also should be formed sooner than the target date of mid-1991. In addition, the plan should elaborate more fully (perhaps in Chapter 4) on the importance of public involvement in plan development and review.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan. The authority to implement the CIPs is not described.

Review: The discussion of funding options in Chapter 6 also touches on matters of authority but leaves several questions unanswered. The plan should explain whether or not the existing special district authorities allow for both adequate fundraising and program implementation, and, if not, how the local agencies plan to

proceed. Also, the "observations" in section 2.3 on the local Comprehensive Code and Development Standards raise questions which should be further addressed in the plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: Budget estimates are provided.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The process for reporting program implementation and results is not clear from the plan. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: Specific agreements are not included in the Plan but will be prepared and implemented. Management measures IC.2 and IC.3 address this element.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: CONDITIONAL APPROVAL.

The plan will be stronger and more likely to result in achievement of TMDL targets if several improvements are made. The plan will be fully approved when the following conditions are met.

proceed. Also, the "observations" in section 2.3 on the local Comprehensive Code and Development Standards raise questions which should be further addressed in the plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: Budget estimates are provided.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The process for reporting program implementation and results is not clear from the plan. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: Specific agreements are not included in the Plan but will be prepared and implemented. Management measures IC.2 and IC.3 address this element.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: CONDITIONAL APPROVAL.

The plan will be stronger and more likely to result in achievement of TMDL targets if several improvements are made. The plan will be fully approved when the following conditions are met.

Conditions:

The time period for completion of the conditions and the Final Plan for submission to DEQ for approval starts when the Environmental Quality Commission adopts the following recommended conditions for approval.

1. Add descriptions of management measures DB.4 and R.8.
2. Clarify the processes for (a) review and adjustment of the plan, (b) reporting the results of monitoring and evaluation, and (c) reporting program implementation and accomplishment.
3. Describe the "annual action plan" in terms of:
 - (a) How it will be developed;
 - (b) What it will contain;
 - (c) How it will be used; and
 - (d) How it will be revised and renewed.
4. Improve the public involvement element by:
 - (a) Changing the dates in measures PE.10 and IC.1 to 1990; and
 - (b) Expanding the plan's discussion of the importance of public involvement.
5. Clarify funding and program implementation authorities. Discuss adequacy of existing authorities. If not adequate, describe what must be done.
6. Determine what changes or additions to the local Comprehensive Code and Development Standards are necessary. Also describe what should be done and how.
7. A DEQ acceptable monitoring plan must be provided by Clackamas County and the City of Rivergrove that includes a list of the water quality parameters and sampling methods employed.
8. Complete Figure 2.5 Responsibility Matrix.
9. Include provisions for the protection of all streams, wetlands, and ponds with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow, on all sides.
10. Include in the roadway maintenance measure the provision of no spraying of pesticides.
11. Include a Capital Improvement Projects (CIPs) plan that describes on a site specific basis the reasons for their selection, the costs,

funding mechanism(s), the responsible party(s), the means and timing of implementation.

12. Include in the Plan a provision for an annual meeting between the County, City and DEQ.
13. Include specific interagency agreements, particularly with DEQ in the Plan.
14. Include a DEQ approved Erosion and Stormwater Control Ordinance.
15. The Plan's objectives shall be described adequately so that the measurable end results, the time line for implementation, who is responsible and the funding and staff resources are well defined.
16. All of the above must be included in the Final Plan and provided to DEQ within 90 days.
17. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
18. Clackamas County and Rivergrove shall join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin basin (Process to commence within 120 days).

funding mechanism(s), the responsible party(s), the means and timing of implementation.

12. Include in the Plan a provision for an annual meeting between the County, City and DEQ.
13. Include specific interagency agreements, particularly with DEQ in the Plan.
14. Include a DEQ approved Erosion and Stormwater Control Ordinance.
15. The Plan's objectives shall be described adequately so that the measurable end results, the time line for implementation, who is responsible and the funding and staff resources are well defined.
16. All of the above must be included in the Final Plan and provided to DEQ within 90 days.
17. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
18. Clackamas County and Rivergrove shall join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin basin (Process to commence within 120 days).

STAFF REVIEW

TUALATIN BASIN WATERSHED MANAGEMENT PLAN

CITY OF PORTLAND

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: The Introduction to the Plan and the descriptions of why the plan was produced and what the expected results were concise. The "road map" was not provided however.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: A description of the problem statement, physical setting and institutional infrastructure was provided. A detailed and thorough water quality sampling and description of likely sources is also provided. Description of the time period and goals of compliance were missing.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement(s) describing the desired results and the expected effectiveness of the plan strategy were missing in this section of the Plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The Plan objectives, including the plan's measurable results, are described in the Control Options description in Chapter 4, Option Evaluation.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the City of Portland's NPS strategy are reviewed below.

Available Control Options: A limited list of control options were outlined. Other control options are available and were mentioned in other sections or as an appendix to the Plan. Some of the other available options may not be applicable to the more developed and steeper slope areas of the City of Portland's portion of the Tualatin Basin. However, the City should add other applicable control options to their list of BMPs, management and maintenance measures in order to meet the designated Load Allocations for phosphorus. The control options that could be added include the construction of control facilities outside the City of Portland, reduction of pollutants from streets, parking lots and other source controls, soil infiltration/absorption is utilized, etc.

Process for Selecting Options: The process for selecting control options includes an evaluation system which is based on very complete and thorough existing conditions monitoring data. The computer modelling completed for the basin in evaluating the effectiveness of the selected control options

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement(s) describing the desired results and the expected effectiveness of the plan strategy were missing in this section of the Plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The Plan objectives, including the plan's measurable results, are described in the Control Options description in Chapter 4, Option Evaluation.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of the City of Portland's NPS strategy are reviewed below.

Available Control Options: A limited list of control options were outlined. Other control options are available and were mentioned in other sections or as an appendix to the Plan. Some of the other available options may not be applicable to the more developed and steeper slope areas of the City of Portland's portion of the Tualatin Basin. However, the City should add other applicable control options to their list of BMPs, management and maintenance measures in order to meet the designated Load Allocations for phosphorus. The control options that could be added include the construction of control facilities outside the City of Portland, reduction of pollutants from streets, parking lots and other source controls, soil infiltration/absorption is utilized, etc.

Process for Selecting Options: The process for selecting control options includes an evaluation system which is based on very complete and thorough existing conditions monitoring data. The computer modelling completed for the basin in evaluating the effectiveness of the selected control options

is excellent. However, the modelling should be expanded to include other applicable control options to identify those options needed to meet the phosphorus load allocation.

Description of BMPs to be Used: The selected BMPs are described. As mentioned above, additional BMPs should be described and added to the list of applicable control options.

Responsibilities for Implementing: Most responsibilities are described except for implementation of CIPs which is assumed to be the City's.

Monitoring and Evaluation: The monitoring and evaluation system is described in detail, except for the limited list of applicable control options.

Public Information and Education: The description on how the final plan and selected BMPs and CIPs will be made with the general public involvement are not included.

Periodic Plan Review and Adjustment: The periodic plan review and adjustment process is provided, but the time schedule is not adequate in order to meet the June 30, 1990 TMDL compliance date.

Implementation Schedule: The implementation schedule is not adequate in order to meet the compliance date. The request for a ten year implementation period is not acceptable. The City should revise their implementation schedule to select and construct control options sooner in order to meet the compliance date. Identify when the needed Project Manager will be hired.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: Need to provide general public involvement on the selection of BMPs and CIPs and completion of the Final Plan. The list of public involvement and education activities should be expanded to include the development of a watershed BMP Manual, retail managers' workshops, voluntary dump removal "round-up" day, contractor and public workers workshops, watershed or creek signage, and others.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: The City's authority to implement the plan is described throughout the plan. The construction of control facilities outside the City of Portland is an option which may require interagency agreement(s) and a description in the Plan of responsible agency(s) for implementation.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The known and estimated costs and funding sources are described and appear to be sufficient to accomplish the goals of the Plan.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The identified annual reporting to DEQ is provided, but annual meetings with DEQ Staff are not included in the Plan.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: An interagency agreement between DEQ and the City is provided but other needed ones are not included.

IX. OTHER ISSUES

Purpose: The City of Portland has requested the DEQ to do the following:

1. A reevaluation of the draft Load Allocations, taking into account instream assimilative capacity of phosphorus and more study of background phosphorus concentrations.
2. A clarification of the intended means of applying the designated Load Allocations for the various subbasins within the City.
3. A 100 percent increase in Portland's Fanno Creek Basin Load Allocation, if necessary.

Review: The City's authority to implement the plan is described throughout the plan. The construction of control facilities outside the City of Portland is an option which may require interagency agreement(s) and a description in the Plan of responsible agency(s) for implementation.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The known and estimated costs and funding sources are described and appear to be sufficient to accomplish the goals of the Plan.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: The identified annual reporting to DEQ is provided, but annual meetings with DEQ Staff are not included in the Plan.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: An interagency agreement between DEQ and the City is provided but other needed ones are not included.

IX. OTHER ISSUES

Purpose: The City of Portland has requested the DEQ to do the following:

1. A reevaluation of the draft Load Allocations, taking into account instream assimilative capacity of phosphorus and more study of background phosphorus concentrations.
2. A clarification of the intended means of applying the designated Load Allocations for the various subbasins within the City.
3. A 100 percent increase in Portland's Fanno Creek Basin Load Allocation, if necessary.

4. A comparison of the relative costs and benefits of capital and operating programs proposed by each Tualatin jurisdiction (local, state and federal) to determine the equity and feasibility of attaining the Load Allocations.
5. Development of a Tualatin basin-wide, multi-jurisdictions schedule.
6. Provide coordination with all state and federal resource agencies involved in permit reviews for the construction of wetland and similar facilities.
7. A ten-year implementation period (from the EQC) which includes an interagency monitoring and research program for the first three years.
8. The City and DEQ, in coordination with USA, enter into a cooperative evaluation of how to establish and achieve Load Allocations in a developing forest-to-urban watershed during the transitional period.

Review: The City of Portland must justify with more studies and information on why the Load Allocations cannot be met. There are other applicable control options available which can be constructed and/or implemented both inside and outside the City of Portland within the compliance deadline. If, after the City has completed a more thorough and complete control options evaluation and effectiveness analysis, the Load Allocations are shown not to be achievable, then DEQ Staff can meet with the City to discuss the need for reallocation. Most of the other issues the City has requested of DEQ can be addressed in meetings with DEQ Staff or are not issues which limit the City's ability to meet the compliance deadline.

X. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: CONDITIONAL APPROVAL.

The City of Portland's Tualatin Basin Water Quality Management Plan will more likely result in achievement of TMDL goals if several improvements are made. The Plan will be fully approved when the following conditions are met:

Conditions:

The time period for completion of the conditions and the Final Plan for submission to DEQ for approval starts when the Environmental Quality Commission (EQC) adopts the following recommended conditions for approval:

1. A DEQ approved BMP, maintenance and management measures modeling of runoff water quality and anticipated reduction of pollutants shall be included.
2. Include a DEQ approved Capital Improvement Project's (CIPs) plan that describes on a site specific basis the reasons for their selection, the costs, funding mechanism(s), the responsible party(s), the means and timing of implementation.
3. Provide for an annual meeting between DEQ and the City.
4. The inclusion of other needed interagency agreements.
5. Provisions for the protection of all streams, ponds and wetlands with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow, on all sides.
6. Include in the Plan the provision of no spraying of pesticides along roadways for maintenance.
7. All existing coliform concentrations need to be identified and corrected.
8. The inclusion of other applicable BMPs and control options and their implementation to meet the June 30, 1993 compliance date.
9. The expansion of the public involvement activities to include provision of general public involvement on the selection of BMPs and CIPs and completion of the Final Plan, and the development of a watershed BMP Manual, retail managers' workshops, voluntary dump removal "round-up" day, contractor and public workers workshops, watershed or creek signage, and others.
10. Include an identification and description of the responsible agency(s) involved in the construction of control facilities outside the City of Portland and an interagency agreement.
11. A DEQ approved Erosion and Stormwater Control Ordinance shall be included.
12. All the above must be completed and provided as the Final Plan to DEQ within 90 days.
13. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
14. The City of Portland shall join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin Basin (Process to commence within 120 days).

1. A DEQ approved BMP, maintenance and management measures modeling of runoff water quality and anticipated reduction of pollutants shall be included.
2. Include a DEQ approved Capital Improvement Project's (CIPs) plan that describes on a site specific basis the reasons for their selection, the costs, funding mechanism(s), the responsible party(s), the means and timing of implementation.
3. Provide for an annual meeting between DEQ and the City.
4. The inclusion of other needed interagency agreements.
5. Provisions for the protection of all streams, ponds and wetlands with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow, on all sides.
6. Include in the Plan the provision of no spraying of pesticides along roadways for maintenance.
7. All existing coliform concentrations need to be identified and corrected.
8. The inclusion of other applicable BMPs and control options and their implementation to meet the June 30, 1993 compliance date.
9. The expansion of the public involvement activities to include provision of general public involvement on the selection of BMPs and CIPs and completion of the Final Plan, and the development of a watershed BMP Manual, retail managers' workshops, voluntary dump removal "round-up" day, contractor and public workers workshops, watershed or creek signage, and others.
10. Include an identification and description of the responsible agency(s) involved in the construction of control facilities outside the City of Portland and an interagency agreement.
11. A DEQ approved Erosion and Stormwater Control Ordinance shall be included.
12. All the above must be completed and provided as the Final Plan to DEQ within 90 days.
13. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.
14. The City of Portland shall join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin Basin (Process to commence within 120 days).

STAFF REVIEW

LOWER TUALATIN RIVER OSWEGO LAKE SUBBASINS
WATERSHED MANAGEMENT PLAN

CITY OF LAKE OSWEGO

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: A table is provided which shows the section titles and page numbers where information asked for in the DEQ "Guidance Document" may be found.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: The physical setting and water quality problems descriptions are described. The institutional infrastructure description describes the agencies involved but does not clearly identify their respective responsibilities. Specifically, Figure 2.8 Responsibility Matrix should be completed. There is no description of the time period in which the specific goals will be achieved.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below (III. A. through C.).

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is concise and describes the desired results of the plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The objectives listed are "sub-goals" rather than specific statements of what is to be accomplished. They do not completely describe the measurable end result, the time line for implementation, who is responsible and the funding and staffing resources needed. However, the Plan does contain adequate objectives in its discussion of management measures and a plan of work in Chapter 4.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of Lake Oswego's NPS strategy are reviewed below.

Available Control Options: The plan describes the specific sources of nonpoint pollution and solutions. The control options are outlined in an organized format that show interrelationships to the plan's "Program Objectives."

Process for Selecting Options: Described in several sections of the plan. The timing for the selection of options is based on further monitoring and subbasin plan development. All Capital Improvement Projects (CIP) will be identified and selected after completion of the subbasin plans which are scheduled for completion in December 1991. It appears that there is not sufficient time to construct the CIPs in order to reduce nonpoint pollution to meet the June 30, 1993 TMDL's compliance deadline. In addition, the

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is concise and describes the desired results of the plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The objectives listed are "sub-goals" rather than specific statements of what is to be accomplished. They do not completely describe the measurable end result, the time line for implementation, who is responsible and the funding and staffing resources needed. However, the Plan does contain adequate objectives in its discussion of management measures and a plan of work in Chapter 4.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of Lake Oswego's NPS strategy are reviewed below.

Available Control Options: The plan describes the specific sources of nonpoint pollution and solutions. The control options are outlined in an organized format that show interrelationships to the plan's "Program Objectives."

Process for Selecting Options: Described in several sections of the plan. The timing for the selection of options is based on further monitoring and subbasin plan development. All Capital Improvement Projects (CIP) will be identified and selected after completion of the subbasin plans which are scheduled for completion in December 1991. It appears that there is not sufficient time to construct the CIPs in order to reduce nonpoint pollution to meet the June 30, 1993 TMDL's compliance deadline. In addition, the

process for reviewing, revising, and updating the plan needs additional description.

Description of BMPs to be Used: The maintenance and operations BMPs are identified and described in terms of their effectiveness in reducing specific nonpoint pollutants. The CIPs are not fully described and are not identified on a site specific basis. As a result, the pollution load reductions estimated in the plan are based on the application of some of the maintenance BMPs and not the CIP or other listed BMPs. The estimates do account for site specific variables. The City of Lake Oswego should speed up this process in order to meet the compliance deadline. The beneficial uses of water the BMP is expected to protect or enhanced is adequately identified in the more detailed descriptions of the management measures. Their expected or real effectiveness are not completely identified.

Responsibilities for Implementing: Addressed in several sections of the plan except for CIPs, which DEQ assumes Lake Oswego has identified as their responsibility.

Monitoring and Evaluation: The importance of monitoring and data evaluation are established in the plan. Lake Oswego in cooperation with USA have already initiated an expanded monitoring program in advance of the deadlines mandated by EQC rules. The plan also includes an evaluation monitoring program which will evaluate the effectiveness of implemented BMPs to adjust or modify the plan to increase the program's success of meeting the water quality goals. The City of Lake Oswego will have to participate with DEQ and other Tualatin Basin entities in the development of a final TMDL compliance monitoring program.

Public Information and Education: The selected public involvement and education activities are described and are necessary to reduce nonpoint pollution to the Tualatin and Lake Oswego Basins.

Periodic Plan Review and Adjustment: The Plan is not clear on the process for regular review and adjustments. A yearly "action plan" is mentioned but not adequately explained. An annual meeting with DEQ Staff is recommended.

Implementation Schedule: General information on scheduling is incorporated into several sections of the plan. The selection, funding and implementation of the CIPs is not adequately outlined in the plan.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: The selected public involvement opportunities should provide longterm benefits in the continual implementation of the plan objectives. The Plan should elaborate more fully (perhaps in Chapter 4) on the importance of public involvement in plan development and review.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: Necessary authorities are identified, except for the implementation of the CIPs. The "observations" in section 2.3 on the local Comprehensive Code and Development Standards raise questions which should be further addressed in the Plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The budget outlined in the plan generally identifies the annual costs for the administration, maintenance, public education, basin planning and engineering but not for the CIPs. The budget revenues appear to adequately cover these costs except for CIPs. The plan should identify how and when the CIP costs will be specifically determined and funded.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: An annual report and additional technical reports will be provided to DEQ by the City of Lake Oswego. The actual process for reporting program implementation and results is not clear in the Plan. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: Specific agreements are not included in the plan but will be prepared and implemented. Management measures IC.1 through IC.6 address this element.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: Necessary authorities are identified, except for the implementation of the CIPs. The "observations" in section 2.3 on the local Comprehensive Code and Development Standards raise questions which should be further addressed in the Plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The budget outlined in the plan generally identifies the annual costs for the administration, maintenance, public education, basin planning and engineering but not for the CIPs. The budget revenues appear to adequately cover these costs except for CIPs. The plan should identify how and when the CIP costs will be specifically determined and funded.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: An annual report and additional technical reports will be provided to DEQ by the City of Lake Oswego. The actual process for reporting program implementation and results is not clear in the Plan. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: Specific agreements are not included in the plan but will be prepared and implemented. Management measures IC.1 through IC.6 address this element.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: CONDITIONAL APPROVAL.

The City of Lake Oswego's Watershed Management Plan will more likely result in achievement of TMDL goals if several improvements are made. The Plan will be fully approved when the following conditions are met.

Conditions:

The time period for completion of the conditions and the Final Plan for submission to DEQ for approval starts when the Environmental Quality Commission (EQC) adopts the following recommended conditions for approval.

1. A DEQ acceptable monitoring plan must be produced by the City of Lake Oswego that includes a list of the water quality parameters and sampling methods employed.
2. Complete Figure 2.8 responsibility matrix.
3. Include provisions for the protection of all streams, wetlands and ponds with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow, on all sides.
4. Include in the roadway maintenance measure the provision of no spraying of pesticides.
5. The Plan's objectives should be described adequately so that the measurable end results, the time line for implementation, who is responsible and the funding and staffing resources are well defined.
6. Include a Capital Improvement Projects (CIPs) plan that describes on a site specific basis the reasons for their selection, the costs, funding mechanism(s), the responsible party(s), the means and timing of implementation.
7. An annual meeting between the City and DEQ must be included in the Plan.
8. The inclusion of specific interagency agreements, particularly with DEQ shall be provided.
9. Include a DEQ approved Erosion and Stormwater Control Ordinance.
10. Clarify the processes for:
 - (a) Review and adjustments of the Plan;
 - (b) Reporting the results of monitoring and evaluation; and

- (c) Reporting program implementation and accomplishment.
11. Describe the "annual action plan" in terms of:
 - (a) How it will be developed;
 - (b) What it will contain;
 - (c) How it will be used; and
 - (d) How it will be revised and renewed.
 12. Improve the public involvement element by expanding the Plan's discussion of the importance of public involvement.
 13. Determine what changes or additions to the local Comprehensive Code and Development Standards are necessary. Also describe what should be done and how.
 14. All of the above must be included in the Final Plan and provided to DEQ within 90 days.
 15. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements therefrom.
 16. The City of Lake Oswego should participate with DEQ and other Tualatin Basin entities in a process to refine and establish a completed TMDL compliance monitoring program for applicable portions of the Tualatin Basin (process to commence within 120 days).

- (c) Reporting program implementation and accomplishment.
11. Describe the "annual action plan" in terms of:
 - (a) How it will be developed;
 - (b) What it will contain;
 - (c) How it will be used; and
 - (d) How it will be revised and renewed.
 12. Improve the public involvement element by expanding the Plan's discussion of the importance of public involvement.
 13. Determine what changes or additions to the local Comprehensive Code and Development Standards are necessary. Also describe what should be done and how.
 14. All of the above must be included in the Final Plan and provided to DEQ within 90 days.
 15. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements therefrom.
 16. The City of Lake Oswego should participate with DEQ and other Tualatin Basin entities in a process to refine and establish a completed TMDL compliance monitoring program for applicable portions of the Tualatin Basin (process to commence within 120 days).

STAFF REVIEW

LOWER TUALATIN RIVER OSWEGO LAKE SUBBASINS
WATERSHED MANAGEMENT PLAN

CITY OF WEST LINN

I. INTRODUCTION

Purpose: This section should answer two questions:

1. Why is this plan being produced?
2. What is the plan expected to accomplish?

It should also provide a brief "road map to the format and organization of the document and where to find important discussion items.

Review: Well done, particularly the table showing the section titles and page numbers where information asked for in the DEQ "Guidance Document" may be found.

II. PROBLEM STATEMENT

Purpose: The purpose of this section is to provide the reader a clear understanding of the water quality problem(s), its source(s) and how it impacts the environment. It should describe the physical setting of the watershed, the water quality problem(s), the institutional infrastructure of the basin, and the time period in which to achieve the goal of compliance.

Review: The physical setting and water quality problems descriptions are good. The institutional infrastructure description adequately describes the agencies involved but does not clearly identify their respective responsibilities. Specifically, Figure 2.6 Responsibility Matrix should be completed. There is no description of the time period in which the specific goals will be achieved.

III. CONTROL STATEMENT

Purpose: This section is the "heart" of the management plan. It needs to clearly describe the goals, objectives, and program strategy for achieving the correction of the current water quality problem and prevention of future problems.

Review: The main components of the control statement are described and reviewed below.

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is concise and adequately describes the desired results of the plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The objectives listed are "sub-goals" rather than specific statements of what is to be accomplished. They do not completely describe the measurable end result, the time line for implementation, who is responsible and the funding and staffing resources needed. However, the Plan does contain adequate objectives in its discussion of management measures and a plan of work in Chapter 4.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of West Linn's NPS strategy are reviewed below.

Available Control Options: The plan does a very good job describing the specific sources of nonpoint pollution and solutions. The control options are outlined in a well organized and extremely well described format that show interrelationships to the plan's "Program Objectives." However, the provision of detention basins and their cleaning and maintenance, survey of watershed creeks and their adequate protection, and land use controls should be added as control options to the Plan.

Process for Selecting Options: Adequately described in several sections of the plan. The timing for the selection of options is based on further monitoring and subbasin plan development. All Capital Improvement Projects (CIP) will be identified and selected after completion of the subbasin plans which are scheduled for completion in December 1991. Does this allow

A. Goal Statement

Purpose: The goal statement is a general statement that should describe the desired result when plan implementation is complete. The effectiveness of the plan strategy will be judged against this goal.

Review: The goal statement is concise and adequately describes the desired results of the plan.

B. Objectives

Purpose: Objectives are specific statements of what is to be accomplished. They include a measurable end result. They should communicate the plan's measurable results by: (1) describing what needs to happen, (2) the time line for implementation, (3) what the measurable result will be, (4) who is responsible for the effort, and (5) if appropriate, the funding and staffing resources necessary.

Review: The objectives listed are "sub-goals" rather than specific statements of what is to be accomplished. They do not completely describe the measurable end result, the time line for implementation, who is responsible and the funding and staffing resources needed. However, the Plan does contain adequate objectives in its discussion of management measures and a plan of work in Chapter 4.

C. Strategy

Purpose: The strategy is the specific program of action that defines use of the available resources to attain the stated objectives and in turn, the plan goal(s). The program of action should describe what "tools" are available, which tools will be used, who will use them, in what time frame and at what costs. This part of the plan brings together the implementation process, the use of BMP's and/or permits, the schedule and the costs.

Review: Individual elements of West Linn's NPS strategy are reviewed below.

Available Control Options: The plan does a very good job describing the specific sources of nonpoint pollution and solutions. The control options are outlined in a well organized and extremely well described format that show interrelationships to the plan's "Program Objectives." However, the provision of detention basins and their cleaning and maintenance, survey of watershed creeks and their adequate protection, and land use controls should be added as control options to the Plan.

Process for Selecting Options: Adequately described in several sections of the plan. The timing for the selection of options is based on further monitoring and subbasin plan development. All Capital Improvement Projects (CIP) will be identified and selected after completion of the subbasin plans which are scheduled for completion in December 1991. Does this allow

sufficient time to construct the CIPs in order to reduce nonpoint pollution to meet the June 30, 1993 TMDL's compliance deadline? In addition, the process for reviewing, revising, and updating the plan needs additional description.

Description of BMPs to be Used: The maintenance and operations BMPs are very well identified and described in terms of their effectiveness in reducing specific nonpoint pollutants. The CIPs are not fully described and are not identified on a site specific basis. As a result, the pollution load reductions estimated in the plan are based on the application of some of the maintenance BMPs and not the CIP or other listed BMPs. The estimates do account for site specific variables. The City of West Linn should speed up this process in order to meet the compliance deadline. The beneficial uses of water the BMP is expected to protect or enhanced is adequately identified in the more detailed descriptions of the management measures. Their expected or real effectiveness are not completely identified.

Responsibilities for Implementing: Adequately addressed in several sections of the plan except for CIPs, which DEQ assumes West Linn has identified as their responsibility.

Monitoring and Evaluation: The importance of monitoring and data evaluation are well established in the plan. West Linn in cooperation with USA have already initiated an expanded monitoring program in advance of the deadlines mandated by EQC rules. The plan also includes an evaluation monitoring program which will evaluate the effectiveness of implemented BMPs to adjust or modify the plan to increase the program's success of meeting the water quality goals. The City of West Linn will have to participate with DEQ and other Tualatin Basin entities in the development of a final TMDL compliance monitoring program.

Public Information and Education: The selected public involvement and education activities are excellent choices, well described and are adequate and necessary to reduce nonpoint pollution to the Tualatin and Lake Oswego Basins.

Periodic Plan Review and Adjustment: The Plan is not clear on the process for regular review and adjustments. A yearly "action plan" is mentioned but not adequately explained. An annual meeting with DEQ Staff is recommended.

Implementation Schedule: General information on scheduling is adequate and is incorporated into several sections of the plan. The selection, funding and implementation of the CIPs is not adequately outlined in the plan.

IV. PUBLIC INVOLVEMENT

Purpose: To describe opportunities for public involvement in development, implementation, review, and refinement of the plan.

Review: The selected public involvement opportunities are generally good and should provide longterm benefits in the continual implementation of the plan objectives. The Plan should elaborate

more fully (perhaps in Chapter 4) on the importance of public involvement in plan development and review.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: Necessary authorities are adequately identified, except for the implementation of the CIPs. The "observations" in section 2.3 on the local Comprehensive Code and Development Standards raise questions which should be further addressed in the Plan. The City of West Linn should implement a stormwater utility with adoption of an enabling ordinance as soon as possible in order to have adequate funding for implementation of the Plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The budget outlined in the plan generally identifies the annual costs for the administration, maintenance, public education, basin planning and engineering but not for the CIPs and maintenance of detention facilities. The budget revenues appear to adequately cover these costs except for CIPs. The plan should identify how and when the CIP costs will be specifically determined and funded.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: An annual report and additional technical reports will be provided to DEQ by the City of West Linn. The actual process for reporting program implementation and results is not clear in the Plan. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

more fully (perhaps in Chapter 4) on the importance of public involvement in plan development and review.

V. AUTHORITY TO IMPLEMENT

Purpose: A description of the federal, state or local laws providing the agencies responsible for the watershed management plan with adequate authority to implement the plan is needed, or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement the plan.

Review: Necessary authorities are adequately identified, except for the implementation of the CIPs. The "observations" in section 2.3 on the local Comprehensive Code and Development Standards raise questions which should be further addressed in the Plan. The City of West Linn should implement a stormwater utility with adoption of an enabling ordinance as soon as possible in order to have adequate funding for implementation of the Plan.

VI. BUDGET

Purpose: The known or estimated costs of implementing the program must be identified. The budget discussion should address the sources of funding that might be available and what the process will be to obtain the necessary funding.

Review: The budget outlined in the plan generally identifies the annual costs for the administration, maintenance, public education, basin planning and engineering but not for the CIPs and maintenance of detention facilities. The budget revenues appear to adequately cover these costs except for CIPs. The plan should identify how and when the CIP costs will be specifically determined and funded.

VII. REPORTING IMPLEMENTATION AND RESULTS

Purpose: Responsible agencies must periodically report on implementation of the specific objectives of the plan, the results of monitoring, progress in achieving relevant TMDLs, and any adjustments that have been or should be made to the plan.

Review: An annual report and additional technical reports will be provided to DEQ by the City of West Linn. The actual process for reporting program implementation and results is not clear in the Plan. An annual meeting with DEQ is also required.

VIII. IMPLEMENTATION AGREEMENTS

Purpose: To facilitate interagency cooperation and the overall implementation of the plan.

Review: Specific agreements are not included in the plan but will be prepared and implemented. Management measures IC.2 and IC.3 address this element.

IX. STAFF RECOMMENDATIONS TO EQC

Purpose: To recommend approval or rejection of the plan, and, if necessary, to suggest conditions of approval or a process for re-submission of a revised plan.

Recommendations: CONDITIONAL APPROVAL.

The City of West Linn's Watershed Management Plan is essentially very good, but will more likely result in achievement of TMDL goals if several improvements are made. The Plan will be fully approved when the following conditions are met.

Conditions:

The time periods appended to each condition indicate the deadlines for completion of the task and submission to DEQ for approval. The time periods start when the Environmental Quality Commission (EQC) adopts the recommended conditions for approval.

1. A DEQ acceptable monitoring plan must be produced by the City of West Linn that includes a list of the water quality parameters and sampling methods employed. (120 days)
2. The City of West Linn should participate with DEQ and other Tualatin Basin entities in a process to refine and establish a completed TMDL compliance monitoring program for applicable portions of the Tualatin Basin. (120 days)
3. Complete Figure 2.8 responsibility matrix. (90 days)
4. Include provisions for the protection of all streams, wetlands and ponds with adequate undisturbed buffers on all sides. (90 days)
5. Include in the roadway maintenance measure the provision of no spraying of pesticides. (90 days)
6. The Plan's objectives should be described adequately so that the measurable end results, the time line for implementation, who is responsible and the funding and staffing resources are well defined. (120 days)
7. A Capital Improvement Projects (CIPs) plan that describes on a site specific basis the reasons for their selection, the costs, funding mechanism(s), the responsible party(s), the means and timing of implementation. (120 days)

8. An annual meeting between the City and DEQ is included in the Plan. (90 days)
9. The inclusion of specific interagency agreements, particularly with DEQ are provided. (90 days)
10. A DEQ approved Erosion and Stormwater Control Ordinance. (90 days)
11. Clarify the processes for:
 - (a) Review and adjustments of the Plan;
 - (b) Reporting the results of monitoring and evaluation; and
 - (c) Reporting program implementation and accomplishment. (90 days)
12. Describe the "annual action plan" in terms of:
 - (a) How it will be developed;
 - (b) What it will contain;
 - (c) How it will be used; and
 - (d) How it will be revised and renewed. (90 days)
13. Improve the public involvement element by expanding the Plan's discussion of the importance of public involvement. (90 days)
14. Will changes or additions to the local Comprehensive Code and Development Standards be necessary? If so, what should be done and how? (90 days)
15. All of the above must be included in the Final Plan and provided to DEQ. (120 days)

8. An annual meeting between the City and DEQ is included in the Plan. (90 days)
9. The inclusion of specific interagency agreements, particularly with DEQ are provided. (90 days)
10. A DEQ approved Erosion and Stormwater Control Ordinance. (90 days)
11. Clarify the processes for:
 - (a) Review and adjustments of the Plan;
 - (b) Reporting the results of monitoring and evaluation; and
 - (c) Reporting program implementation and accomplishment. (90 days)
12. Describe the "annual action plan" in terms of:
 - (a) How it will be developed;
 - (b) What it will contain;
 - (c) How it will be used; and
 - (d) How it will be revised and renewed. (90 days)
13. Improve the public involvement element by expanding the Plan's discussion of the importance of public involvement. (90 days)
14. Will changes or additions to the local Comprehensive Code and Development Standards be necessary? If so, what should be done and how? (90 days)
15. All of the above must be included in the Final Plan and provided to DEQ. (120 days)

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

DEPARTMENT OF ENVIRONMENTAL QUALITY
TUALATIN RIVER BASIN
NONPOINT SOURCE POLLUTION CONTROL PROGRAM PLANS
PUBLIC HEARING

June 12, 1990
Portland, Oregon

ORIGINAL

1 A hearing in the above matter was taken
2 before Amy Franz, Court Reporter and Notary Public for
3 Oregon, commencing at the hour of 9:00 a.m., on the
4 12th day of June 1990, at the DEQ Headquarters, 811
5 S.W. 6th Avenue, Conference Room 3A, Portland, Oregon.
6
7

8 APPEARANCES

9 DEPARTMENT OF ENVIRONMENTAL QUALITY

10 By: Don Yon
11 Hearings Officer
12 Tualatin Basin Coordinator,
13 DEQ Water Quality Division;

14 By: Roger Wood
15 Nonpoint Source Program Manager
16 DEQ Water Quality Division.
17
18
19
20
21
22
23
24
25

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

A hearing in the above matter was taken before Amy Franz, Court Reporter and Notary Public for Oregon, commencing at the hour of 9:00 a.m., on the 12th day of June 1990, at the DEQ Headquarters, 811 S.W. 6th Avenue, Conference Room 3A, Portland, Oregon.

APPEARANCES

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Don Yon
Hearings Officer
Tualatin Basin Coordinator,
DEQ Water Quality Division;

By: Roger Wood
Nonpoint Source Program Manager
DEQ Water Quality Division.

1 MR. YON: Good morning. I think we'll
2 begin the hearing now. Introduce myself. My name is
3 Don Yon. I'm the Tualatin Basin Coordinator, DEQ, in
4 the Water Quality Division. We also have here, just
5 walked in, Roger Wood, our Nonpoint Source Program
6 Manager in the Water Quality Division.

7 Today we are having the hearing on the
8 Tualatin River Basin Nonpoint Source Pollution Control
9 Program Plans. I'd like to say if you want to provide
10 oral testimony today, please be sure to sign up on one
11 of these blue sheets. They are on the table in the
12 back. The hearing testimony today is being recorded
13 by a court reporter due to the tight schedule for
14 reporting to the EQC.

15 Purpose of the hearing today is to receive
16 public comments on the Tualatin Basin Nonpoint Source
17 Programs to control urban, agricultural and forestry
18 nonpoint source pollution. The proposed program plans
19 include both short- and long-term plans directed at
20 compliance with the Total Maximum Daily Loads for
21 phosphorus in the Tualatin River Basin. The TMDLs and
22 Load Allocations have been established by the
23 Environmental Quality Commission for all affected
24 governmental entities in the Basin.

25 After the hearing record and comments have

1 been evaluated by DEQ, the program plans along with
2 the Department evaluation report, including the
3 hearing comments of today, will be presented for the
4 Commission evaluation on June 29, 1990. The
5 Commission may take any of the following actions:
6 First, they may approve all or a portion of the plans;
7 two, reject all or some of the plans; third,
8 conditionally approve all or some of the plans.

9 My role as the Hearings Officer is to
10 represent the Environmental Quality Commission and to
11 insure that all issues raised are communicated to the
12 EQC in the form of a report that the Commission will
13 receive prior to their hearing. Each issue raised
14 during the hearing process will be addressed in the
15 report.

16 If you would like to receive a copy of the
17 staff report to the EQC, please be sure you've signed
18 your name and address on the sign-up sheet. And
19 again, if you'd like to provide oral testimony today,
20 please sign on this blue sheet here. Testimony can be
21 either given orally or in writing today. The hearing
22 record will remain open until 5:00 p.m. tomorrow,
23 Wednesday, June 13.

24 Before we begin our oral testimony, I'd
25 like to have Roger Wood give a five-minute overview on

1 been evaluated by DEQ, the program plans along with
 2 the Department evaluation report, including the
 3 hearing comments of today, will be presented for the
 4 Commission evaluation on June 29, 1990. The
 5 Commission may take any of the following actions:
 6 First, they may approve all or a portion of the plans;
 7 two, reject all or some of the plans; third,
 8 conditionally approve all or some of the plans.

9 My role as the Hearings Officer is to
 10 represent the Environmental Quality Commission and to
 11 insure that all issues raised are communicated to the
 12 EQC in the form of a report that the Commission will
 13 receive prior to their hearing. Each issue raised
 14 during the hearing process will be addressed in the
 15 report.

16 If you would like to receive a copy of the
 17 staff report to the EQC, please be sure you've signed
 18 your name and address on the sign-up sheet. And
 19 again, if you'd like to provide oral testimony today,
 20 please sign on this blue sheet here. Testimony can be
 21 either given orally or in writing today. The hearing
 22 record will remain open until 5:00 p.m. tomorrow,
 23 Wednesday, June 13.

24 Before we begin our oral testimony, I'd
 25 like to have Roger Wood give a five-minute overview on

1 the Tualatin Basin Nonpoint Source Program and the
2 regulations.

3 MR. WOOD: With your permission I'm not
4 going to do precisely what you just said because there
5 are actually a number of different things that one
6 might want to address if one launched into the whole
7 set of rules and regulations and the whole history
8 behind the Tualatin Basin Program that's brought us to
9 where we are today. What I wanted to do is just
10 highlight a couple of the Oregon Administrative Rules
11 that are particularly germane to this process, to the
12 preparation, evaluation, and eventually implementation
13 of the watershed management plans or the nonpoint
14 source component of the Tualatin Basin Program, those
15 portions of the program that are designed to
16 ultimately result in meeting of load allocations which
17 are the nonpoint source component and plans.

18 Oregon Administrative Rule 34041470-3 and
19 various subparts thereof, particularly subparts H and
20 I and J, discuss memorandums of agreement between the
21 EQC and certain designated management agencies who, as
22 a result of those agreements, those MOAs, assumed
23 responsibility for the preparation of watershed
24 management plans or the subcontracting of that task to
25 somebody else. The deadline for submittal of those

1 plans was set at March 9 of this year, and according
2 to the rules, the EQC does have 120 days from March 9
3 to act on those initial submissions. And I believe
4 that Don described the options a moment ago.

5 120 days from March 9 is July 7. There is
6 an EQC meeting at the end of June, June 29, I believe
7 is the date, on Friday, and that is the target date
8 for presentation of staff reports to the EQC and the
9 target date for their action on the staff reports, the
10 recommendations contained therein, and the watershed
11 management plans that have been presented.

12 The rules also required DEQ to produce a
13 guidance document designed to provide a road map, an
14 outline, set of clues, to the folks preparing the
15 plans. It was not a rigid guidance; that is to say,
16 not a written format within which the plans have to be
17 drawn and set some sort of standard to which they have
18 to adhere. But it was intended to identify what
19 needed to be in a first level plan; that is, the
20 degree of completeness that the EQC is looking for
21 this time.

22 The guidance document attempted to better
23 define what we meant by a first level plan in order to
24 help those who were doing the preparation, and I
25 myself would like to elaborate on that just a moment

1 plans was set at March 9 of this year, and according
2 to the rules, the EQC does have 120 days from March 9
3 to act on those initial submissions. And I believe
4 that Don described the options a moment ago.

5 120 days from March 9 is July 7. There is
6 an EQC meeting at the end of June, June 29, I believe
7 is the date, on Friday, and that is the target date
8 for presentation of staff reports to the EQC and the
9 target date for their action on the staff reports, the
10 recommendations contained therein, and the watershed
11 management plans that have been presented.

12 The rules also required DEQ to produce a
13 guidance document designed to provide a road map, an
14 outline, set of clues, to the folks preparing the
15 plans. It was not a rigid guidance; that is to say,
16 not a written format within which the plans have to be
17 drawn and set some sort of standard to which they have
18 to adhere. But it was intended to identify what
19 needed to be in a first level plan; that is, the
20 degree of completeness that the EQC is looking for
21 this time.

22 The guidance document attempted to better
23 define what we meant by a first level plan in order to
24 help those who were doing the preparation, and I
25 myself would like to elaborate on that just a moment

1 because this elaboration may shed some light on the
2 basis for the DEQ staff reviews of the plans and
3 recommendations we are going to make.

4 The guidance document taken together, taken
5 as a whole, clearly indicated that an acceptable first
6 level plan has to include more than generalities about
7 planning. It has to be more than just a promise to
8 ultimately develop a plan. We do acknowledge, and the
9 guidance document acknowledges, that at the first
10 level planning stage there will be many uncertainties,
11 many questions unanswered, particularly in the
12 technical realm, particularly those questions that
13 cannot be answered without somewhat more elaborate
14 monitoring or technical analysis which we anticipated
15 would take some extra time.

16 However, having said that, there are a lot
17 of things that these first level plans should include
18 and should be fairly certain about. We would expect
19 them to contain well organized and thoroughly provide
20 problems to the addressed strategy to be employed, the
21 control measures to be applied. And by that I mean a
22 menu of options; not necessarily the specific control
23 measures to be applied to a specific site, but a
24 thorough menu of legitimate options likely to be able
25 to achieve the desired result.

1 Also necessary to these first level plans
2 is a fairly thorough and detailed analysis of the
3 funding sources to be tapped, the organizational
4 structures and authorities necessary for program
5 implementation. Also necessary is a complete listing
6 of BMP, or Best Management Practices, or management
7 measures. These are the technical tools that you
8 would apply to implement the control options we
9 discussed in the plans.

10 Again, we are not looking for site specific
11 application of these things; that is not possible at
12 this time. But we want to know that those who have
13 prepared the plans have fully identified what all the
14 options are, and we'd like enough technical
15 information on those management measures or management
16 practices for the department and the public to be able
17 to assess whether they are likely to be successful;
18 and specifically enough information to describe how
19 they could be used to address specific identified
20 problems, detailed explanation of the processes by
21 which the measures will be selected and applied to the
22 specific sites once you get to that point.

23 And finally, there are some program
24 elements that do not require highly technical or site
25 specific measures. For example, public information

1 Also necessary to these first level plans
2 is a fairly thorough and detailed analysis of the
3 funding sources to be tapped, the organizational
4 structures and authorities necessary for program
5 implementation. Also necessary is a complete listing
6 of BMP, or Best Management Practices, or management
7 measures. These are the technical tools that you
8 would apply to implement the control options we
9 discussed in the plans.

10 Again, we are not looking for site specific
11 application of these things; that is not possible at
12 this time. But we want to know that those who have
13 prepared the plans have fully identified what all the
14 options are, and we'd like enough technical
15 information on those management measures or management
16 practices for the department and the public to be able
17 to assess whether they are likely to be successful;
18 and specifically enough information to describe how
19 they could be used to address specific identified
20 problems, detailed explanation of the processes by
21 which the measures will be selected and applied to the
22 specific sites once you get to that point.

23 And finally, there are some program
24 elements that do not require highly technical or site
25 specific measures. For example, public information

1 and education, fund-raising creation of interagency
2 agreements, survey level problem assessments, and we
3 expect this aspect of the watershed management
4 programs to be fairly well proposed in a first level
5 plan or there to be some detailed description of
6 what's left to be developed, why it couldn't be
7 developed to date, and again the processes and time
8 lines for completing that task.

9 To date we have received watershed
10 management plans from Clackamas County, City of Lake
11 Oswego, from the City of Portland, City of West Linn,
12 Unified Sewerage Agency on behalf of a consortium of
13 jurisdictions including Banks, Beaverton, Cornelius,
14 Durham, Forest Grove, Hillsboro, King City, North
15 Plains, Sherwood, Tigard, Tualatin, and Washington
16 County, and I understand that as we speak there are
17 negotiations going on between USA and City of Gaston
18 to be included in that consortium. And if that's not
19 correct, then I'd appreciate hearing the true story
20 later on in the hearing.

21 In any case, I suppose it is worth noting
22 the City of Gaston does fall within the area of
23 concern and will ultimately have a management plan
24 prepared I'm sure. Also, there is an agricultural
25 component. Oregon Department of Forestry was a

1 designated management of agency, is the designated
2 management agency, for development of the forestry
3 plan. They have submitted that plan. The State
4 Department of Agriculture is designated management
5 agency for the agricultural component, and they have
6 been working closely with the Washington County Sewer
7 Conservation District in preparation of that plan.
8 DEQ reviews of those plans and development
9 recommendations for the EQC are still in progress;
10 they have been, I would say, we are at the probably 85
11 to 90 percent completion point with that task overall.

12 We have not come today prepared to share
13 those reviews or recommendations. They are not
14 completed. Have not been drawn up in final form. And
15 we are anxious to hear today the comments, if any,
16 from those who drew up the plans, and the public.
17 That's all I have to say.

18 MR. YON: Thank you, Roger, for that fine
19 overview.

20 I only have one person signed up to
21 testify. Anybody else who would like to testify at
22 this point?

23 CHRIS BOWLES: I'll testify just to clarify
24 what is happening with Gaston.

25 MR. YON: Okay, thank you, Chris. First

1 designated management of agency, is the designated
2 management agency, for development of the forestry
3 plan. They have submitted that plan. The State
4 Department of Agriculture is designated management
5 agency for the agricultural component, and they have
6 been working closely with the Washington County Sewer
7 Conservation District in preparation of that plan.
8 DEQ reviews of those plans and development
9 recommendations for the EQC are still in progress;
10 they have been, I would say, we are at the probably 85
11 to 90 percent completion point with that task overall.

12 We have not come today prepared to share
13 those reviews or recommendations. They are not
14 completed. Have not been drawn up in final form. And
15 we are anxious to hear today the comments, if any,
16 from those who drew up the plans, and the public.
17 That's all I have to say.

18 MR. YON: Thank you, Roger, for that fine
19 overview.

20 I only have one person signed up to
21 testify. Anybody else who would like to testify at
22 this point?

23 CHRIS BOWLES: I'll testify just to clarify
24 what is happening with Gaston.

25 MR. YON: Okay, thank you, Chris. First

1 name I have here is Leonard Stark.

2 Could you state your name and then who you
3 represent?

4 And I'd like to remind you, everybody, that
5 we do have a court reporter, so I'd like to have you
6 speak clearly and loud enough for everybody in the
7 back of the audience also to hear.

8 I see that you've signed up for 15 minutes.

9 MR. STARK: I put down 15 minutes, but I
10 don't know if I'll take that much time or not. Do you
11 have a speaker over there? You have a secretary
12 recording here. Seems sort of funny I was the only
13 one that signed up. Anybody else that would like a
14 copy of what I put in this issue now and in the past,
15 I have extra copies here. Anybody can have them that
16 wish them.

17 I'm Leonard Stark, 5050 Southwest Childs
18 Road in Lake Oswego. We've been there 50 years, and
19 we've lived on waters in the Tualatin all our life.
20 And I've testified up at Hillsboro last week before
21 the Board of Commissioners and testified up there,
22 too, and Shirley Kendell and anybody that's been on
23 DEQ are aware I've participated in this issue ever
24 since the beginning of the Tualatin River was brought
25 up. Most of what I got to say and most of what I

1 wrote in here is from a vast experience, vast memory
2 of what they've been working on, and Shirley Kendell
3 is here today and she knows. She is aware of that
4 participation. And I had a few points to make.

5 This article covers all of the -- this is a
6 rundown of this area here. And the task has been
7 technical all my life and deal in a lot of technical
8 issues, but wetlands, these are the points I brought
9 up. Wetlands are something that has to be looked at
10 and has to be preserved; and not only in the Tualatin
11 Valley, but the whole northwest is destroying a lot of
12 wetlands. And then going to have to preserve the
13 wetlands and their forest, because wetlands,
14 civilization has to have wetlands to exist. We know
15 that. With wetlands you can filter a lot of your and
16 help clean up the pollution that is impairing.

17 And Tualatin Valley, they should research
18 more and bring more water into the Tualatin Valley
19 watershed and Trask River. Trask River is one of the,
20 as an example, because Trask River has been precisely
21 water over the mountain there for years and years. It
22 is like drinking water added to Tualatin, to Forest
23 Grove, Hillsboro, and Cornelius and Beaverton for a
24 long time. So that's just an example.

25 And then in the past testimony we've had,

1 wrote in here is from a vast experience, vast memory
2 of what they've been working on, and Shirley Kendell
3 is here today and she knows. She is aware of that
4 participation. And I had a few points to make.

5 This article covers all of the -- this is a
6 rundown of this area here. And the task has been
7 technical all my life and deal in a lot of technical
8 issues, but wetlands, these are the points I brought
9 up. Wetlands are something that has to be looked at
10 and has to be preserved; and not only in the Tualatin
11 Valley, but the whole northwest is destroying a lot of
12 wetlands. And then going to have to preserve the
13 wetlands and their forest, because wetlands,
14 civilization has to have wetlands to exist. We know
15 that. With wetlands you can filter a lot of your and
16 help clean up the pollution that is impairing.

17 And Tualatin Valley, they should research
18 more and bring more water into the Tualatin Valley
19 watershed and Trask River. Trask River is one of the,
20 as an example, because Trask River has been precisely
21 water over the mountain there for years and years. It
22 is like drinking water added to Tualatin, to Forest
23 Grove, Hillsboro, and Cornelius and Beaverton for a
24 long time. So that's just an example.

25 And then in the past testimony we've had,

1 been quite a bit said about piping water out from the
2 sewerage plants, water out of the sewer plants,
3 discharging it somewhere, in some other areas like
4 Willamette and the Columbia. But my testimony has
5 always been we don't want to take any water out of the
6 Tualatin River, we want to preserve all the water we
7 can. River irrigation, irrigation of treated water,
8 that can be a good point to bring up because that
9 would save water.

10 And then we have, it's been brought up, and
11 then upgrading our sewerage plant. Mainly Rock Creek
12 and Durham is going to be one of the best investments
13 of our money that we can bring up. That would be a
14 real investment.

15 And then came up now we have leaking sewer
16 lines. That is going to be -- that is one source of
17 polluting. It is a nonpoint source sort of trace
18 down at the time of this sewer lines, and that
19 consists of the sewer line. But it is going to be a
20 real hard question to answer for cost items and also
21 will be hard to trace down what has to be done. I
22 mean, it is going to be a subject that isn't going to
23 be easily answered.

24 And then we have phosphorus. Phosphorus
25 completion, that should be done. I mean, the

1 phosphorus level, phosphorus is a condition that is
2 creating pollution problems, and they are going to
3 have to go right directly to the manufacturer or
4 suppliers of things that have phosphorus in them to
5 eliminate the phosphorus that is being used.

6 And then we have development is what is
7 going to have to be regulated. You can't stop
8 development, but there will have to be -- it is going
9 to have to be regulated and taken in steps, taken to
10 curb the pollution; and also, your shopping centers,
11 development of shopping centers, highways, and what
12 there is.

13 And then another point, people are going to
14 have to educate people how to control and what to do
15 and what not to do on it. Because you have your
16 farming and that which they can't stop. The farmers
17 have to fertilize and all that. That has nitrogen in
18 it. And by putting settling bases and that, it can be
19 controlled quite a bit.

20 And then I've always said, always
21 testified, and I will testify all the time on this
22 particular, this is on your cost and where their money
23 is going to come from. This is a cost item, where the
24 money is going to come from. Everybody. And what I
25 mean, everybody in watershed or the Tualatin Valley,

1 phosphorus level, phosphorus is a condition that is
2 creating pollution problems, and they are going to
3 have to go right directly to the manufacturer or
4 suppliers of things that have phosphorus in them to
5 eliminate the phosphorus that is being used.

6 And then we have development is what is
7 going to have to be regulated. You can't stop
8 development, but there will have to be -- it is going
9 to have to be regulated and taken in steps, taken to
10 curb the pollution; and also, your shopping centers,
11 development of shopping centers, highways, and what
12 there is.

13 And then another point, people are going to
14 have to educate people how to control and what to do
15 and what not to do on it. Because you have your
16 farming and that which they can't stop. The farmers
17 have to fertilize and all that. That has nitrogen in
18 it. And by putting settling bases and that, it can be
19 controlled quite a bit.

20 And then I've always said, always
21 testified, and I will testify all the time on this
22 particular, this is on your cost and where their money
23 is going to come from. This is a cost item, where the
24 money is going to come from. Everybody. And what I
25 mean, everybody in watershed or the Tualatin Valley,

1 they are, all of them, adding to the pollution of the
2 Tualatin River. But they are, and I've always
3 testified, that everybody, and I mean everybody, is
4 going to help share the cost of promoting and carrying
5 on this program of cleaning up the Tualatin River.

6 It isn't fair -- it might be a quick way to
7 get the money, but it isn't fair to involve the
8 certain -- discriminate, in other words, I would say,
9 that different people have to -- certain people like --
10 sewer, for instance, just naming now, they want to
11 tack on the sewer bill, cost on the sewer bill to bear
12 the cost. But that is not, in my way of thinking,
13 that is not the fair way to do it. We are all
14 polluters; we all should pay for it.

15 I think the most easiest and most fair way
16 to do that is through our taxation or through our
17 taxes because we all, no matter who we are, what we
18 are, we have to pay property taxes. And you have to
19 work out a system to add to the property taxes. It is
20 going to be a small amount to everybody, but it will
21 be righted up in a ratio basis.

22 And then it has been mentioned, and I'll
23 bring it up again, too, there has been talk about
24 putting a dam up on the Tualatin in, the Gaston dam,
25 up in the Gaston area, building a dam. But I have yet

1 to see what is going to completely satisfy for the
2 cost of the dam and also displacing the people in
3 Patton Valley and in Cottage Grove, town up there
4 Cherry Grove, and displacing the people in Cherry
5 Grove.

6 And farming issue in there in the Patton
7 Valley, well, I don't see where you are going to find
8 a place to put them people down in Cherry Grove. That
9 is an old pioneer town. Houses are not real valuable
10 in most cases, and if you displace them, they'll never
11 get out of it to pay to be relocated.

12 I probably could add a lot more, go through
13 and add in all my testimony. I have testimony on this
14 issue in all different levels, and that should be on
15 record on file, so if they want to check on that,
16 well, they could find out what my testimony has been
17 in the past on this issue.

18 So, I can't see spending all that money on
19 the dam and all that and then we are not sure whether
20 that is going to solve the problem because I've always
21 testified that we can build smaller dams and smaller
22 storage places and deep canyons where it isn't going
23 to hurt near as many people.

24 And one little point, that if the dam was
25 ever -- probably don't enter into your testimony or in

1 to see what is going to completely satisfy for the
2 cost of the dam and also displacing the people in
3 Patton Valley and in Cottage Grove, town up there
4 Cherry Grove, and displacing the people in Cherry
5 Grove.

6 And farming issue in there in the Patton
7 Valley, well, I don't see where you are going to find
8 a place to put them people down in Cherry Grove. That
9 is an old pioneer town. Houses are not real valuable
10 in most cases, and if you displace them, they'll never
11 get out of it to pay to be relocated.

12 I probably could add a lot more, go through
13 and add in all my testimony. I have testimony on this
14 issue in all different levels, and that should be on
15 record on file, so if they want to check on that,
16 well, they could find out what my testimony has been
17 in the past on this issue.

18 So, I can't see spending all that money on
19 the dam and all that and then we are not sure whether
20 that is going to solve the problem because I've always
21 testified that we can build smaller dams and smaller
22 storage places and deep canyons where it isn't going
23 to hurt near as many people.

24 And one little point, that if the dam was
25 ever -- probably don't enter into your testimony or in

1 the information that you might like to have on this
2 issue now -- but if a dam, talk about if all else
3 fails, they might have to build a dam. But if that
4 dam was ever built, well, I think it should be named
5 Patton. It should have the name of Patton Lakes,
6 named after our pioneers that settled that area. Sort
7 of a personal issue because the Pattons and Olsons and
8 Starks are all pioneers that settled that country.

9 Going through the course of the day if you
10 want more, I can come up with some more if you'd like
11 some more. After listening to other people I might
12 come up and add more things, more questions. Thank
13 you very much.

14 MR. YON: Thank you, sir.

15 MR. STARK: Anybody wants some of my
16 testimony today I put in, perfectly welcome to it.

17 MR. YON: Thank you very much.

18 MR. STARK: Environmental Quality Board, I
19 expected them to be here, so I brought a lot of
20 testimony for them.

21 MR. YON: Thank you.

22 I have one other person that signed up to
23 testify. That is Betty Atteberry. If anybody else
24 would like to testify, please sign up on the blue
25 sheet.

1 MS. ATTEBERRY: I'm Betty Atteberry with
2 the Sunset Corridor Association. Since 1988 when EQC
3 mandated the new TMDL standards for the purpose of
4 improving the water quality in the Tualatin River, the
5 Association has followed the issue closely. We hired,
6 retained, an engineering firm to provide us some
7 expertise and knowledge of the issues that we are
8 dealing with on this particular issue.

9 We recognize the need to enhance the
10 quality of the Tualatin River and the tributaries.
11 Certainly the natural resources in the region
12 compliments and serve as an enhancement to the area's
13 business and residential environment. Our interest is
14 in seeing a thorough review of the options and the
15 solution or solutions be measured in cost to the
16 public as well as effectiveness in meeting the
17 standards mandated by EQC.

18 The Association appreciates the manner in
19 which USA has approached the large task of developing
20 a program plan for service water management and for
21 the wastewater treatment facilities in order to comply
22 with new standards. From our perspective, the agency
23 has worked diligently to meet the various time lines
24 within a schedule prescribed.

25 We are also pleased that they've been and

1 MS. ATTEBERRY: I'm Betty Atteberry with
2 the Sunset Corridor Association. Since 1988 when EQC
3 mandated the new TMDL standards for the purpose of
4 improving the water quality in the Tualatin River, the
5 Association has followed the issue closely. We hired,
6 retained, an engineering firm to provide us some
7 expertise and knowledge of the issues that we are
8 dealing with on this particular issue.

9 We recognize the need to enhance the
10 quality of the Tualatin River and the tributaries.
11 Certainly the natural resources in the region
12 compliments and serve as an enhancement to the area's
13 business and residential environment. Our interest is
14 in seeing a thorough review of the options and the
15 solution or solutions be measured in cost to the
16 public as well as effectiveness in meeting the
17 standards mandated by EQC.

18 The Association appreciates the manner in
19 which USA has approached the large task of developing
20 a program plan for service water management and for
21 the wastewater treatment facilities in order to comply
22 with new standards. From our perspective, the agency
23 has worked diligently to meet the various time lines
24 within a schedule prescribed.

25 We are also pleased that they've been and

1 had a generous interest to work cooperatively with the
2 various interest groups in studying the issues. One
3 area where we have some real serious reservations,
4 though, as to whether the schedule really allows time
5 for a responsible reproach to further definition and
6 then implementation of the various solutions. It
7 seems that we are adopting solutions without a clear
8 understanding of how effective each will be.

9 The technology needs to be tested in this
10 region to be certain it will reach the assumptions
11 that are expected in the program plan. Also, that ESA
12 be given time to protest some of the recommended
13 solutions. The Association wants to be sure there is
14 a process that assures their recommended solutions
15 meet the TMDL standards, and if found inadequate,
16 there can be an opportunity to find alternative
17 solutions without hamstringing development, which in
18 the long term would be detrimental to the area's
19 economy.

20 We would also stress the need for a basin-
21 wide coordinated effort to effectively solve the
22 Nonpoint Source Water Quality Management. To date
23 there has been a somewhat fragmented approach, and
24 although it appears to be better coordinated today
25 than it has been in the past, we would stress that

1 there be a coordinated effort by all those parties
2 involved in the basin.

3 The Sunset Corridor Association stands
4 ready to participate in the development and look
5 forward to a reasonable solution to this. Thank you.

6 MR. YON: Thank you.

7 I have Chris Bowles from Unified Sewage
8 Agency.

9 MR. BOWLES: I'm Chris Bowles with Unified
10 Sewage Agency, and I only wish to clarify our status
11 relative to Gaston. I think the agency will be
12 providing some written testimony tomorrow. Gaston is
13 a member of the agency, but our storm and surface
14 water program does not start until July 1, so we have
15 no authority over their submittal of a watershed
16 management plan.

17 I've attended their council meetings, and
18 they stressed very strongly that they wished to
19 provide their own plan and not be a part of the
20 agency's group submittal. We are surprised that they
21 have not submitted a plan.

22 I understand that their council took action
23 last Wednesday to approve an agreement between the
24 Agency and City that would take affect July 1, and
25 that agreement follows the format that they wish which

1 there be a coordinated effort by all those parties
2 involved in the basin.

3 The Sunset Corridor Association stands
4 ready to participate in the development and look
5 forward to a reasonable solution to this. Thank you.

6 MR. YON: Thank you.

7 I have Chris Bowles from Unified Sewage
8 Agency.

9 MR. BOWLES: I'm Chris Bowles with Unified
10 Sewage Agency, and I only wish to clarify our status
11 relative to Gaston. I think the agency will be
12 providing some written testimony tomorrow. Gaston is
13 a member of the agency, but our storm and surface
14 water program does not start until July 1, so we have
15 no authority over their submittal of a watershed
16 management plan.

17 I've attended their council meetings, and
18 they stressed very strongly that they wished to
19 provide their own plan and not be a part of the
20 agency's group submittal. We are surprised that they
21 have not submitted a plan.

22 I understand that their council took action
23 last Wednesday to approve an agreement between the
24 Agency and City that would take affect July 1, and
25 that agreement follows the format that they wish which

1 is still remain apart from our storm and surface water
2 program and run their own program. And the agreement
3 will allow them to do that subject to the condition
4 that they meet the required standards for water
5 quality leaving their city.

6 We also feel that not submitting a
7 watershed management plan is not in compliance with
8 the overall program, so starting July 1 we'll, I'm
9 sure along with DEQ, will be asking them to submit
10 their plan. We will have the authority, if they do
11 not comply with the overall program, to go in and
12 manage the program for them as a part of the agency's
13 overall surface water management program.

14 Any questions? That clarify it?

15 MR. YON: Yes. Thank you.

16 Anybody else that would like to testify?

17 PAUL HAYNES: I'm Paul Haynes, Public Works
18 Director for Lake Oswego. I think it is important
19 that I provide some supporting testimony for the plan
20 that we submitted to DEQ. We prepared the plan to be
21 in compliance with the guidelines put out by DEQ, and
22 I believe we did that. I'd like to be sure that's
23 recognized. We made that effort to comply with the
24 guidance document. I'd like to again submit the cover
25 letter we provided with that report to identify our

1 support and the need and help for DEQ to be successful
2 in the management of the water quality in Tualatin
3 Basin and Oswego Lake Basin.

4 One of the things that I don't think has
5 received enough recognition is the coordinated effort
6 that the local agencies have put together in sharing
7 information and providing support to get through the
8 process to be sure we have coordinated plans that link
9 the river basins and tributaries from one end to the
10 other. I think it is very commendable the way the
11 agencies have come together in a very short period of
12 time to put together reports that I think will be very
13 consistent for the basin. We need to keep up that
14 regional approach.

15 We need DEQ to be part of that regional
16 approach. We currently have committees that we have
17 assembled and ask DEQ to be a more active participant
18 in that process. We'd like to have DEQ to take us up
19 on that. We need your help to be better as
20 planning -- not so much planning, but identifying the
21 needs of the basin, where the problems are, and
22 specifically what we need to correct in the basins.

23 We also need some help from DEQ to be more
24 active in disbursing any analyses, any reports that
25 DEQ performs on the process, any technical information

1 support and the need and help for DEQ to be successful
2 in the management of the water quality in Tualatin
3 Basin and Oswego Lake Basin.

4 One of the things that I don't think has
5 received enough recognition is the coordinated effort
6 that the local agencies have put together in sharing
7 information and providing support to get through the
8 process to be sure we have coordinated plans that link
9 the river basins and tributaries from one end to the
10 other. I think it is very commendable the way the
11 agencies have come together in a very short period of
12 time to put together reports that I think will be very
13 consistent for the basin. We need to keep up that
14 regional approach.

15 We need DEQ to be part of that regional
16 approach. We currently have committees that we have
17 assembled and ask DEQ to be a more active participant
18 in that process. We'd like to have DEQ to take us up
19 on that. We need your help to be better as
20 planning -- not so much planning, but identifying the
21 needs of the basin, where the problems are, and
22 specifically what we need to correct in the basins.

23 We also need some help from DEQ to be more
24 active in disbursing any analyses, any reports that
25 DEQ performs on the process, any technical information

1 that you receive and information on specific plan
2 reviews. We find those difficult to receive. We have
3 been very proactive to get that information. It would
4 be helpful for us in implementing our plans for DEQ to
5 be more proactive in those areas.

6 One other thing I think is necessary for
7 DEQ and EQC to keep in mind as we implement the plans,
8 there is a great deal of work that has to occur, and
9 it is all honed around several basic areas in
10 identifying existing problems, designing the solution,
11 developing of the funding source, and the construction
12 or implementation of the solution. All of that has to
13 be complete before July of '93. All of the agencies,
14 Lake Oswego, is working very diligently toward that
15 end. We plan to keep DEQ involved in the progress we
16 are making towards those ends. We need EQC to
17 understand, to hear our efforts that are going to be
18 made by each agency in trying to meet the July '93
19 date for compliance with the discharge requirements.

20 With that, I'll answer any questions and
21 ask for your future help.

22 MR. YON: Thank you.

23 One more. State your name and who you
24 represent.

25 ROY WEBSTER: My name is Roy C. Webster.

1 I'm a resident of Washington County. I live
2 approximately half way between Forest Grove and Banks,
3 Oregon. I'm a member of the Washington County Farm
4 Bureau. I'm here to register my interest in the
5 procedure that is being undertaken to implement a
6 cleanup of the Tualatin River.

7 June 7 Hillsboro Argas (ph) informed me of
8 the meeting today. It talks about such things as
9 reducing pollution carried by natural man-made
10 drainage systems. The whole issue that seems to be
11 paramount in cleaning up the Tualatin River is to
12 reduce the phosphorus content of the river which then
13 would reduce the algae buildup and the other
14 "contaminants" that make the river less than the
15 standards set by the Clean Water Act. I do not see in
16 any of the three proposals submitted to DEQ on behalf
17 of USA any specific rationale addressing the ability
18 to reduce the phosphorus currently or in the near term
19 going into the river.

20 There is a comment in the story that I
21 referred to which will talk about USA and most cities
22 in Washington County devised a joint plan which calls
23 for USA to begin charging a monthly fee as of July
24 1st. This will pay for a low intensity effort based
25 mainly on public education.

1 I'm a resident of Washington County. I live
2 approximately half way between Forest Grove and Banks,
3 Oregon. I'm a member of the Washington County Farm
4 Bureau. I'm here to register my interest in the
5 procedure that is being undertaken to implement a
6 cleanup of the Tualatin River.

7 June 7 Hillsboro Argas (ph) informed me of
8 the meeting today. It talks about such things as
9 reducing pollution carried by natural man-made
10 drainage systems. The whole issue that seems to be
11 paramount in cleaning up the Tualatin River is to
12 reduce the phosphorus content of the river which then
13 would reduce the algae buildup and the other
14 "contaminants" that make the river less than the
15 standards set by the Clean Water Act. I do not see in
16 any of the three proposals submitted to DEQ on behalf
17 of USA any specific rationale addressing the ability
18 to reduce the phosphorus currently or in the near term
19 going into the river.

20 There is a comment in the story that I
21 referred to which will talk about USA and most cities
22 in Washington County devised a joint plan which calls
23 for USA to begin charging a monthly fee as of July
24 1st. This will pay for a low intensity effort based
25 mainly on public education.

1 I have more than 35 years in public
2 relations, journalism, public education. I formally
3 am the Pacific Northwest Waterways Association
4 Executive Vice President. I lobbied on behalf of
5 water interests in Washington, Oregon, Idaho, Montana
6 and Alaska for four years at the federal level. And
7 if USA and the Washington County cities can implement
8 an educational program to get the public behind the
9 cleanup of the Tualatin River by reducing the amount
10 of fertilizers, herbicides and pesticides they use at
11 home and not to empty used motor oil or other
12 hazardous materials into storm drains, I will applaud
13 them until my dying day. But I don't see any kind of
14 effective enforcement or any kind of specific
15 involvement in the procedures or the rules or the
16 regulations or the principles that are outlined in the
17 USA proposal dealing with how to reduce effectively
18 that phosphorus content currently going into the
19 river.

20 In the natural soils in Washington County
21 and in the soils that leach into the river, there is a
22 certain amount of phosphorous. I have been talking
23 with people associated with the agricultural area and
24 arena in Washington County which is the state's
25 largest farm bureau membership, and they are concerned

1 about the fact that there is no specific request in
2 that proposal to ask for a reduction, percentage
3 reduction or absolute ban on detergent using
4 phosphorus which would then alleviate part of the
5 problem that is coming out of USA's own inability to
6 effectively treat the affluents and the sewage they
7 are putting into the river.

8 That combined with today's hearing, which
9 is nonpoint source pollution runoff, is uncontrollable
10 in terms of the amount of phosphorus going into the
11 river, and you are not going to be able to implement
12 an effective program by what USA is proposing, to
13 reduce the agricultural runoff carrying the natural
14 phosphorus into the river. And after two years of
15 hearings, proposals, studies, comment, who knows how
16 much money, man hours put into this proposal, it seems
17 to me that we are dealing with a situation that could
18 be much more farther down the line than we are being
19 led to believe this proposal is going to resolve the
20 situation.

21 DEQ, if I read the words that are printed
22 in the newspapers, is under mandate from the EPA to
23 effectively implement some kind of a program through
24 USA to clean up the Tualatin River. In my experience
25 in the water community, I don't see it in that plan

1 about the fact that there is no specific request in
2 that proposal to ask for a reduction, percentage
3 reduction or absolute ban on detergent using
4 phosphorus which would then alleviate part of the
5 problem that is coming out of USA's own inability to
6 effectively treat the affluents and the sewage they
7 are putting into the river.

8 That combined with today's hearing, which
9 is nonpoint source pollution runoff, is uncontrollable
10 in terms of the amount of phosphorus going into the
11 river, and you are not going to be able to implement
12 an effective program by what USA is proposing, to
13 reduce the agricultural runoff carrying the natural
14 phosphorus into the river. And after two years of
15 hearings, proposals, studies, comment, who knows how
16 much money, man hours put into this proposal, it seems
17 to me that we are dealing with a situation that could
18 be much more farther down the line than we are being
19 led to believe this proposal is going to resolve the
20 situation.

21 DEQ, if I read the words that are printed
22 in the newspapers, is under mandate from the EPA to
23 effectively implement some kind of a program through
24 USA to clean up the Tualatin River. In my experience
25 in the water community, I don't see it in that plan

1 that you are going to be able to accomplish that in
2 the time frame they are talking about. USA is
3 currently asking you to give them six months more
4 forgiveness to implement the program. I don't think
5 they could accomplish it in six more months let alone
6 I think it will be who knows how many years on down
7 the road before we effectively see the Tualatin River
8 cleaned up.

9 In 1973, and the hearing is being held
10 right here on the same floor today, effectively began
11 the cleanup or implemented the cleanup for the
12 Willamette River. Currently Portland and other water
13 agencies in this state are looking at a billion and a
14 half dollar program over the next 15 years to deal
15 with, again, the cleanup and the treatment for cleaner
16 water in the Willamette and Columbia Rivers. Our
17 rivers are out of control in terms of making them meet
18 those standards of the quick clean water act which is
19 effectively mandated by Washington DC at a standard
20 set across the nation.

21 And I dare say that the water situation in
22 the Tualatin River is not the same as the Connecticut
23 River or any other river in any particular part of the
24 United States, but we are mandated by legislation at a
25 standard which is universal across the United States

1 rather than on a selective basis. And it would seem
2 reasonable to me that if the USA really wanted to deal
3 with the local situation that they also would have in
4 there and be making efforts to try to get the people
5 that brought the lawsuit as well as the EPA to realize
6 that Tualatin River is unique onto itself and there
7 are certain issues that cannot be legislated or
8 effectively man controlled.

9 And I dare say that's the runoff from
10 agricultural lands in Washington County. We have
11 never quantified nor qualified the aquifer in Oregon
12 per the 1988-'89 Blue Book. How do they know where
13 the runoff of this nonpoint source pollution will
14 reach back into the river and how could they know what
15 cleansing activity is going to take. This all needs
16 to be quantified, studied and brought to the table.

17 I also would like to reserve the
18 opportunity to file with the DEQ, if appropriate, any
19 type of written documentation at near term or long
20 term.

21 MR. YON: You can do that until tomorrow,
22 5:00 p.m., put in written testimony.

23 MR. WEBSTER: Thank you.

24 MR. YON: Anybody else that would like to
25 testify today?

1 rather than on a selective basis. And it would seem
2 reasonable to me that if the USA really wanted to deal
3 with the local situation that they also would have in
4 there and be making efforts to try to get the people
5 that brought the lawsuit as well as the EPA to realize
6 that Tualatin River is unique onto itself and there
7 are certain issues that cannot be legislated or
8 effectively man controlled.

9 And I dare say that's the runoff from
10 agricultural lands in Washington County. We have
11 never quantified nor qualified the aquifer in Oregon
12 per the 1988-'89 Blue Book. How do they know where
13 the runoff of this nonpoint source pollution will
14 reach back into the river and how could they know what
15 cleansing activity is going to take. This all needs
16 to be quantified, studied and brought to the table.

17 I also would like to reserve the
18 opportunity to file with the DEQ, if appropriate, any
19 type of written documentation at near term or long
20 term.

21 MR. YON: You can do that until tomorrow,
22 5:00 p.m., put in written testimony.

23 MR. WEBSTER: Thank you.

24 MR. YON: Anybody else that would like to
25 testify today?

1 MR. STARK: Do we have a chance to make
2 another comment or two?

3 MR. YON: Just a short comment that would
4 be fine.

5 MR. STARK: I failed to bring this
6 particular point up, that USA and DEQ and Washington
7 County Board of Commissioners, and all the way down
8 the line, that every organization that has been
9 working on the Tualatin River to clean it up have done
10 a fantastic job, in my way of thinking, they've done a
11 fantastic job, brought up a lot of different points
12 and a lot of different compliances and that, and I
13 don't know that this has been looked into. Thanks for
14 what they have done.

15 The Tualatin River has been in the process
16 of being polluted for over a hundred years, and no
17 organization and nobody is going to be able to clean
18 that river up in a short period of time. Like I
19 brought up earlier, we've lived on the present address
20 on the Tualatin River and at that time we drank out of
21 the river because we didn't have water available at
22 the time. So we used the river a lot of times for
23 drinking. But you know you can't -- you know the
24 river well enough now that it would be a question of
25 whether you want to swim in it besides drink any

1 water.

2 So in cleaning the river up, the more
3 bureaucratic organizations they go through and the
4 more they drag their feet, the longer it is going to
5 take to get the river cleaned up. And I would say
6 that what we need is action on it and action as fast
7 as we can get the cleaning up.

8 And they should give all of the
9 organizations and everybody, individuals, a lot of
10 credit for what they have done on it, and I think
11 there has been lots of goals and guidelines set that
12 is what it takes is action. If they don't start
13 doing, things will be the same down the line as they
14 are now. It is going to take bureaucratic and a lot
15 of technical and engineering action to get it done.
16 And like he said, agriculture is another point. The
17 agriculture is a necessity of the Washington County.
18 That is what Washington County has lived on from the
19 beginning of time.

20 My ancestors and my granddad homesteaded in
21 1857 over there, and he was a farmer and we followed
22 along. And he's not the only one. And you go and
23 look at Washington County where Washington Square is
24 and west of that, I know that well because that's
25 where we lived and we farmed. And now you can go out

1 water.

2 So in cleaning the river up, the more
3 bureaucratic organizations they go through and the
4 more they drag their feet, the longer it is going to
5 take to get the river cleaned up. And I would say
6 that what we need is action on it and action as fast
7 as we can get the cleaning up.

8 And they should give all of the
9 organizations and everybody, individuals, a lot of
10 credit for what they have done on it, and I think
11 there has been lots of goals and guidelines set that
12 is what it takes is action. If they don't start
13 doing, things will be the same down the line as they
14 are now. It is going to take bureaucratic and a lot
15 of technical and engineering action to get it done.
16 And like he said, agriculture is another point. The
17 agriculture is a necessity of the Washington County.
18 That is what Washington County has lived on from the
19 beginning of time.

20 My ancestors and my granddad homesteaded in
21 1857 over there, and he was a farmer and we followed
22 along. And he's not the only one. And you go and
23 look at Washington County where Washington Square is
24 and west of that, I know that well because that's
25 where we lived and we farmed. And now you can go out

1 in Washington County, again out there by around 185th
2 Street off of Sunset Highway, and it is unbelievable
3 the development of what is going in, apartments and
4 houses and stuff. And one of them, all of them are
5 going to be offenders of polluting the river.

6 And when Washington County was a farm
7 county, mostly pollution that they did create was
8 dissolved and taken care of by -- was filtered out in
9 wetlands and forest and that. And now your
10 development is all concentrated pollution. There
11 should be action, more action taken to see that they
12 clean up their part of it because the more ground you
13 cover up with concrete and asphalt and buildings, the
14 more pollution you are going to have. It is something
15 you can't beat. We are going to beat it some day.

16 But I think that Tualatin River, this
17 gentleman that was up here before, he said it
18 shouldn't only be a local concern, it should be
19 something that is sponsored by national. It is only
20 here using the Tualatin River as a guideline to what
21 other people can do, but it should be something where
22 we have the teeth in it and there is some more
23 political. And more you get in the national, the more
24 things you are going to -- problems you are going to
25 run into. But I think it should be something that is

1 sponsored by let's say national situation because we
2 are only playing with a few hundred million dollars
3 now, but in time it is going to run into where we need
4 full United States participating in this pollution
5 cleanup. It isn't only the river, it is the air and
6 everything else.

7 MR. YON: Thank you, sir.

8 MR. STARK: Thank you very much.

9 MR. YON: Would anybody else like to
10 testify? Thank you all for coming. That concludes
11 our hearing.

12 (Hearing Concluded.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1 sponsored by let's say national situation because we
2 are only playing with a few hundred million dollars
3 now, but in time it is going to run into where we need
4 full United States participating in this pollution
5 cleanup. It isn't only the river, it is the air and
6 everything else.

7 MR. YON: Thank you, sir.

8 MR. STARK: Thank you very much.

9 MR. YON: Would anybody else like to
10 testify? Thank you all for coming. That concludes
11 our hearing.

12 (Hearing Concluded.)
13
14
15
16
17
18
19
20
21
22
23
24
25

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

C E R T I F I C A T E

STATE OF OREGON)
MULTNOMAH COUNTY) ss.

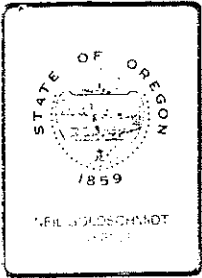
I, Amy Franz, a Court Reporter and Notary Public within and for the State of Oregon, duly commissioned and qualified, do hereby certify that the hearing was by me reduced to stenotype, afterwards transcribed upon a computer, pages 3 through 32, and that the foregoing is a true and correct transcription of testimony so given by the public as aforesaid.

I do further certify that this hearing was taken at the time and place in the foregoing caption specified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at 4610 N.E. Brazee, Portland, Oregon, on the 13th day of June 1990.

Amy Franz

Amy Franz
Notary Public for Oregon
Commission Expires: 9-13-92



Department of Environmental Quality

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

MEMORANDUM

To: Environmental Quality Commission Date: June 29, 1990

From: Don Yon, Hearings Officer *DY*

Subject: Tualatin Basin Nonpoint Source Program Plans Hearings officer
Summary Report

The Tualatin Basin Nonpoint Source Pollution Control Program Plans Public Hearing was held on Tuesday, June 12, 1990 from 9:00 a.m. till Noon in the DEQ Headquarters Building. A public notice was mailed to approximately 381 individuals and organizations and a press release (see Attachments J and K) was issued on June 5, 1990.

The public hearing lasted two hours with approximately 20 persons attended and only five testified. The hearing was recorded by a court reporter (Attachment H). Three letters were received at the hearing from the Sunset Corridor Association, City of Lake Oswego and Mr. Leonard G. Stark. Two additional letters were received before the end of the comment period, which was Wednesday, June 13, 1990, from the Oregon Department of Agriculture and Northwest Environmental Defense Center (NEDC).

The following issues were expressed at the hearing or through the letters:

1. Issue:

DEQ should require all governmental entities to resubmit revised Nonpoint Source Pollution Control Plans within 30 days. If this is not accomplished, then DEQ should impose severe sanctions, such as not allowing any activities within the basin that cause nonpoint pollution until acceptable plans are approved by DEQ.

Response:

The staff recommendation is for Conditional Approval of all Plans and that all Plans be revised following stipulated conditions. These revised Plans must be received by DEQ within 90 days for a 30 day review and certification by DEQ staff of their compliance with conditions. If any of the resubmitted Plans fail to meet the conditions required, then enforcement action by DEQ will be taken to ensure compliance with the TMDL requirements. Staff is recommending 90 days instead of 30 days for resubmittal of the

revised Plans because a few of the conditions for all the Plans will require substantial effort in order to complete in an acceptable manner. DEQ staff will need 30 days to review and certify the adequacy of the resubmitted Plans and, if not adequate, to draft an appropriate recommended enforcement action.

2. Issue:

All governmental entities, particularly USA and the Oregon Department of Agriculture need additional time to test and implement the BMPs without having any detrimental impacts on the area's economy.

Response:

The staff recommendation for Conditional Approval of all Plans allows for additional time to further analyze and report the most effective BMPs in reducing phosphates from entering the surface waters of the basin. Staff's recommended time frame allows a reasonable amount of time to complete the required revisions to the Plans. There is adequate existing technical information on the application and the expected results of various BMPs as applied to other applicable areas of the country to move forward in their implementation on the Tualatin Basin. Allowing additional time would only further delay the implementation of the BMPs and would greatly reduce the likelihood of meeting TMDL compliance dates.

3. Issue:

DEQ should be providing a more coordinated basin-wide effort in the completion of the Plans and their implementation.

Response:

The Tualatin Basin Coordinator has begun work at DEQ in providing a coordinated basin-wide process. A few of the conditions for revisions of the Plans require all entities to participate with DEQ on the development of basin-wide coordinated efforts. These include the following:

- a. An annual meeting with DEQ (which could include all other entities).
- b. Inclusion of interagency agreements with DEQ and other necessary entities.
- c. Participation with DEQ and other Tualatin Basin entities in a process to refine and establish a completed TMDL compliance monitoring program for applicable portions of the Tualatin Basin (Process to commence within 120 days).

revised Plans because a few of the conditions for all the Plans will require substantial effort in order to complete in an acceptable manner. DEQ staff will need 30 days to review and certify the adequacy of the resubmitted Plans and, if not adequate, to draft an appropriate recommended enforcement action.

2. Issue:

All governmental entities, particularly USA and the Oregon Department of Agriculture need additional time to test and implement the BMPs without having any detrimental impacts on the area's economy.

Response:

The staff recommendation for Conditional Approval of all Plans allows for additional time to further analyze and report the most effective BMPs in reducing phosphates from entering the surface waters of the basin. Staff's recommended time frame allows a reasonable amount of time to complete the required revisions to the Plans. There is adequate existing technical information on the application and the expected results of various BMPs as applied to other applicable areas of the country to move forward in their implementation on the Tualatin Basin. Allowing additional time would only further delay the implementation of the BMPs and would greatly reduce the likelihood of meeting TMDL compliance dates.

3. Issue:

DEQ should be providing a more coordinated basin-wide effort in the completion of the Plans and their implementation.

Response:

The Tualatin Basin Coordinator has begun work at DEQ in providing a coordinated basin-wide process. A few of the conditions for revisions of the Plans require all entities to participate with DEQ on the development of basin-wide coordinated efforts. These include the following:

- a. An annual meeting with DEQ (which could include all other entities).
- b. Inclusion of interagency agreements with DEQ and other necessary entities.
- c. Participation with DEQ and other Tualatin Basin entities in a process to refine and establish a completed TMDL compliance monitoring program for applicable portions of the Tualatin Basin (Process to commence within 120 days).

4. **Issue:**

Both state and federal funds should be provided for the development and implementation of the NPS Plans.

Response:

Some planning and implementation monies may be available through the States Revolving Loan Fund Program for nonpoint source pollution control activities. Federal demonstration funds may be available for the agricultural nonpoint program. All other necessary funding will have to be provided by the local governmental entity or the operators in order to comply with the TMDL requirements.

DY:hs
MW\WH4090
June 14, 1990

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROGRAM PLANS BY RESPONSIBLE GOVERNMENTAL ENTITIES TO COMPLY WITH NEW WATER QUALITY STANDARDS IN THE TUALATIN RIVER

Public Hearing Scheduled: 06/12/90
Comments Due: 06/13/90

**WHO IS
AFFECTED:**

All businesses, residents, industries, and local governments within the Tualatin River Subbasin, including Lake Oswego.

**WHAT IS
PROPOSED:**

The Unified Sewerage Agency (USA) and participating cities within USA's boundaries, the State Departments of Agriculture and Forestry, Clackamas County, and the Cities of Lake Oswego, Portland, River Grove, and West Linn have prepared program plans and time schedules describing how and when they plan to implement Non-Point Pollution Source (NPS) control management measures. These measures are needed to achieve load (nonpoint pollution discharge) allocations that will significantly reduce phosphorus levels in the Tualatin River.

**WHAT ARE THE
HIGHLIGHTS:**

The proposed program plans include both short- and long-term plans directed at compliance with Total Maximum Daily Loads (TMDLs) for phosphorus in the Tualatin River Basin. The TMDLs and Load Allocations have been established by the Environmental Quality Commission for all affected governmental entities to control non-point pollution. Urban, agricultural, and forestry land activities located throughout the entire Tualatin River Basin trigger the release of pollutants into nearby streams that eventually drain into the Tualatin River.

These program plans are first level plans for the development of implementation programs. These documents that identify possible management measures which would allow nonpoint source polluters to meet the Load Allocations and to upgrade water quality to meet water quality standards in the subbasin. Reducing phosphorus will decrease the growth of algae. Excessive algal growth creates undesirable aesthetic conditions including odors and also creates dissolved oxygen and pH conditions that are detrimental to aquatic life.



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

11/1/86

FOR FURTHER INFORMATION:

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

USA has already submitted their program plan which identifies how and when sewerage facilities will be modified to achieve waste load (discharge) allocations. DEQ held public hearings on USA's Plan in March 1989. USA is considered a point source of pollution because their wastewater treatment facilities directly discharge ammonia and phosphorus to the Tualatin River.

HOW TO OBTAIN
ADDITIONAL
INFORMATION:

Executive summaries for each of the proposed program plans are available from the responsible governmental entities and at the Portland office of the Department of Environmental Quality.

HOW TO
COMMENT:

Public Hearing:

Time: 9:00 a.m.

Date: June 12, 1990

Place: Oregon Department of Environmental Quality
3rd Floor Conference Room
811 S.W. Sixth Avenue
Portland, Oregon 97204

Written comments should be sent to Don Yon by June 13, 1990 at DEQ's office in Portland.

WHAT IS THE
NEXT STEP:

After the hearing record and comments have been evaluated by the Department, the program plans along with a Department evaluation report (including hearing comments) will be presented for Commission evaluation on June 29, 1990. The Commission may take any of the following actions:

1. Approval of all or some of the plans.
2. Rejection of all or some of the plans.
3. Conditional Approval of all or some of the plans.

If the Commission determines that all or some of the program plans will not meet the new water quality limitations within a reasonable amount of time, they shall reject those applicable plans, state the reasons for rejecting, and specify a compliance schedule for resubmittal. Should those governmental entities whose plans have been rejected not make a good faith effort to provide an approvable program plan within a reasonable time, then enforcement action may be taken.

USA has already submitted their program plan which identifies how and when sewerage facilities will be modified to achieve waste load (discharge) allocations. DEQ held public hearings on USA's Plan in March 1989. USA is considered a point source of pollution because their wastewater treatment facilities directly discharge ammonia and phosphorus to the Tualatin River.

HOW TO OBTAIN
ADDITIONAL
INFORMATION:

Executive summaries for each of the proposed program plans are available from the responsible governmental entities and at the Portland office of the Department of Environmental Quality.

HOW TO
COMMENT:

Public Hearing:

Time: 9:00 a.m.

Date: June 12, 1990

Place: Oregon Department of Environmental Quality
3rd Floor Conference Room
811 S.W. Sixth Avenue
Portland, Oregon 97204

Written comments should be sent to Don Yon by June 13, 1990 at DEQ's office in Portland.

WHAT IS THE
NEXT STEP:

After the hearing record and comments have been evaluated by the Department, the program plans along with a Department evaluation report (including hearing comments) will be presented for Commission evaluation on June 29, 1990. The Commission may take any of the following actions:

1. Approval of all or some of the plans.
2. Rejection of all or some of the plans.
3. Conditional Approval of all or some of the plans.

If the Commission determines that all or some of the program plans will not meet the new water quality limitations within a reasonable amount of time, they shall reject those applicable plans, state the reasons for rejecting, and specify a compliance schedule for resubmittal. Should those governmental entities whose plans have been rejected not make a good faith effort to provide an approvable program plan within a reasonable time, then enforcement action may be taken.

NEWS RELEASE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

811 S.W. Sixth Avenue ■ Portland, OR 97204 ■ Toll-free in Oregon 1-800-452-4011

June 5, 1990

Contact: Shirley Kengla, 229-5766



PLANS TO REDUCE TUALATIN POLLUTION CONSIDERED

A public hearing on plans to control stormwater, erosion and other nonpoint sources of pollution carried in rain runoff throughout the Tualatin River Basin will be held in Portland on June 12.

Those responsible for nonpoint sources of pollution from activities in urban, agricultural and forested areas have, in plans submitted to the Department of Environmental Quality (DEQ), proposed how they will reduce pollutants in stream runoff to the Tualatin River.

The proposed plans describe what efforts the different groups will make towards meeting the goal of cleaning up the river by 1993. The plans identify problems within the geographic area, ordinances that need to be adopted, funding, and the schedule for implementing pollution control measures.

In 1988, the Environmental Quality Commission adopted the goal to significantly improve water quality in the Tualatin River. Although the river meanders through one of Oregon's fastest growing communities, pollutants and limited access prevent most area residents from using the river for recreation and fishing.

The river's water quality problems are low oxygen levels and heavy algae growth caused by excessive nutrients entering the river from point and nonpoint sources of pollution. The oxygen levels have made the Tualatin a poor habitat for aquatic life and algae has reduced recreational opportunities, while also destroying the beauty of the watershed.

(more)

RECEIVED
JUN 7 1990

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

DEQ has already set limits, "total maximum daily loads," on nutrients, based on two years of intensive studies. The Unified Sewerage Agency (USA) of Washington County has already developed sewage treatment plans to meet its allowed load as a point source of pollution. While USA's efforts will make a significant difference, nonpoint sources of pollution alone are large enough to cause water quality problems in the Tualatin River.

The Commission designated groups to take responsibility for preventing nonpoint source pollution problems and requested that they submit initial plans by March, 1990. USA has developed nonpoint surface water management plans for participating cities in Washington County. Other nonpoint sources who have submitted plans are:

- State Department of Agriculture
- State Department of Forestry
- Clackamas County
- City of Lake Oswego
- City of Portland
- City of River Grove
- City of West Linn

DEQ's public hearing will be held in Room 3A, DEQ Headquarters, 811 SW Sixth Portland at 9 a.m. on Tuesday, June 12. You may mail written comments, postmarked by 5 p.m., June 13 to Don Yon, DEQ, Water Quality, 811 SW Sixth, Portland OR 97204.

After considering public comments, DEQ will present the nonpoint source plans to the Commission, who may approve, reject or modify the plans.

#####

DEQ has already set limits, "total maximum daily loads," on nutrients, based on two years of intensive studies. The Unified Sewerage Agency (USA) of Washington County has already developed sewage treatment plans to meet its allowed load, as a point source of pollution. While USA's efforts will make a significant difference, nonpoint sources of pollution alone are large enough to cause water quality problems in the Tualatin River.

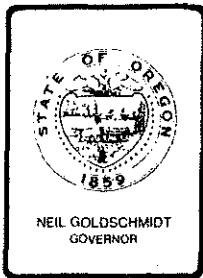
The Commission designated groups to take responsibility for preventing nonpoint source pollution problems and requested that they submit initial plans by March, 1990. USA has developed nonpoint surface water management plans for participating cities in Washington County. Other nonpoint sources who have submitted plans are:

- State Department of Agriculture
- State Department of Forestry
- Clackamas County
- City of Lake Oswego
- City of Portland
- City of River Grove
- City of West Linn

DEQ's public hearing will be held in Room 3A, DEQ Headquarters, 811 SW Sixth Portland at 9 a.m. on Tuesday, June 12. You may mail written comments, postmarked by 5 p.m., June 13 to Don Yon, DEQ, Water Quality, 811 SW Sixth, Portland OR 97204.

After considering public comments, DEQ will present the nonpoint source plans to the Commission, who may approve, reject or modify the plans.

#####



Department of Fish and Wildlife

2501 SW FIRST AVENUE, PO BOX 59, PORTLAND, OREGON 97207 PHONE (503) 229-5400

July 28, 1990

Don Yon
 Department of Environmental Quality
 Water Quality Division
 811 SW Sixth Avenue
 Portland, Oregon

Dear Don:

Re: Tualatin Basin Non-Point (NPS) Pollution Control Plans

This letter responds to your invitation to comment on the Department of Environmental Quality (DEQ) NPS Control Plans.

The Oregon Department of Fish and Wildlife (ODFW) has completed its review of these plans and offers the following recommendations.

Riparian Habitat

Under section IX. Staff Recommendations to Environmental Quality Commission. Conditions; Paragraph 4. should be revised to read:

"Include provisions for the protection of all streams, wetlands and ponds providing an undisturbed riparian buffer of preferably 100 feet and at least 75 feet as measured from the normal high water flow on all sides."

The Tualatin River contains steelhead, resident and anadromous cutthroat trout and coho salmon. The Tualatin Basin also supports warm water fish such as largemouth bass, bluegill, crappie and channel catfish. Salmonid fishes (salmon and trout) require highly oxygenated, water. Phosphorus and Nitrogen loading in the Tualatin have been responsible for algal blooms the die-offs from which have depressed oxygen levels to less than five parts per million in some parts of the Tualatin River. These low levels of oxygen could cause acute and chronic salmonid mortality and adversely effect fish productivity.

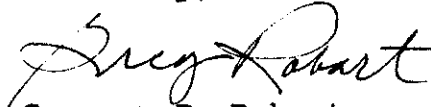
Good water quality for agricultural watersheds like the Tualatin Valley depends largely on nutrient uptake and removal in the riparian ecosystem. Maintenance and proper management of riparian ecosystems are essential to avoid degradation of water quality due to increased nutrient loss from agricultural areas. For example, a study of riparian

peatlands on a forested Minnesota watershed revealed that 36-60 percent of all annual nutrient inputs were retained in the streamside zone. Another study Nutrient Dynamics in an Agricultural Watershed: Observations on the Role of Riparian Forest, Peterjohn, et al 1984 calculated 80 percent phosphorous retention by the riparian forest. Numerous other studies support riparian buffer protection as a valuable, natural ecological control for pollution control. Some of these reports are enclosed for your consideration and are listed in the attached bibliography.

Much of the Tualatin Basin has been intensively developed especially in urban areas like Lake Oswego and Tualatin. Historical and recent areal photos (enclosed) show encroachment and depletions of riparian vegetation along the river. The interests ODFW and other important ecological resources are best protected by providing the above recommended condition. Until specific models can be developed describing nutrient transport into the Tualatin River, responsible, quantified guidance is necessary from to assist land use planners.

Thank you for the opportunity to comment.

Sincerely,



Gregory P. Robart
Staff Biologist
Aquatic Habitats Program
Habitat Conservation Division

Enclosure

Bibliography of References
Value of Riparian Habitat in Protecting
Non-Point Source Pollution

Nutrient Loading in an Agricultural Watershed: I. Phreatic Movement. R. Richard Lawrence, et al, J. Environmental Quality , Vol 13. No. 1, 1984.

Riparian Forests as Nutrient Filters in Agricultural Watersheds. Richard Lawrence, et al, Bioscience Vol. 34. No 6. 1985.

Nutrient Dynamics in an Agricultural Watershed: Observations on the Role of a Riparian Forest. W. Peterjohn, et al, Ecology, 65(5), 1984 pp. 1466-1475.

Nutrient Cycling in an Agricultural Watershed: II. Streamflow and Artificial Drainage. R. Richard Lawrence, et al. Journal of Environmental Quality, Vol.. 13. No. 1 Jan-Mar 1984.

Waterborne Nutrient Budgets For the Riparian Zone of an Agricultural Watershed. R. Lawrence, et al, Ag Ecosystems and the Environment, 10 (1983) 371-384.

Long-term Sediment Deposition in the Riparian Zone of a Coastal Watershed. R. Lawrence, et al, Journal of Soil and Water Conservation, Vol 41 Number 4 1986.

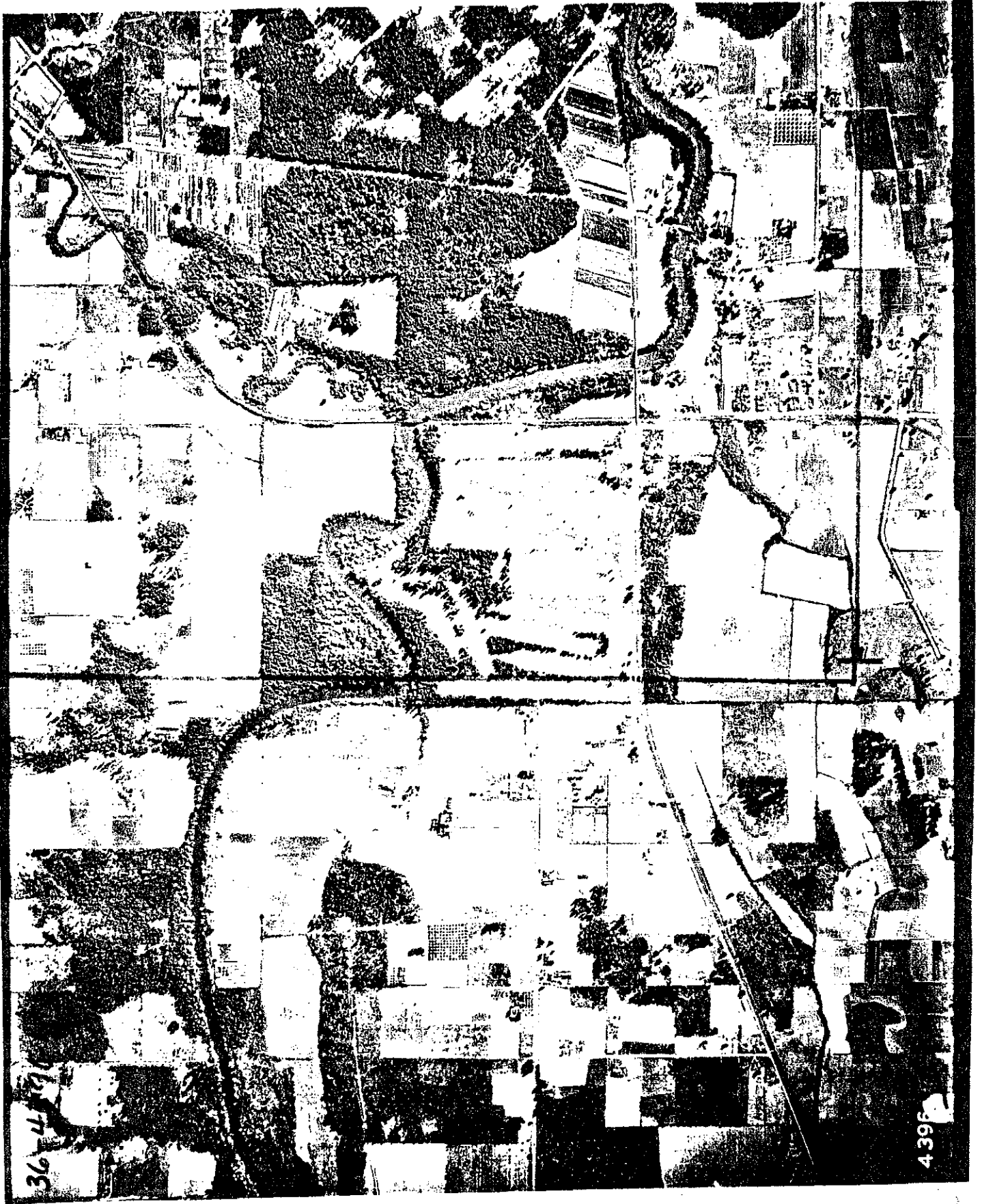
Erosion and Deposition in a Field/Forest System Estimated Using Cesium-137 activity. R. Lawrence, et al, Journal of Soil and Water Conservation, Mar-Apr 1988.

Input Management of Production Systems. Eugene Odum. Science, Vol 243, 3 Jan 89.

Nitrogen Cycling in Conventional and No-Tillage Agro-Ecosystems: Analysis of Pathways and Processes. G. House, et al, Journal of Applied Ecology (1984) 21, 991-1012.

A Regional Analysis of Total Nitrogen in an Agricultural Landscape. Byron Desner, et al, Landscape Ecology vol. 2 151-163 (1989)

Enclosure
(ODFW Comments to DEQ NPS Plan; Tualatin Basin, July 1990)



UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY

July 18, 1990

Don Yon
Water Quality Division
Department of Environmental Quality
811 SW Sixth Ave
Portland, Or 97204

Dear Mr. Yon:

This letter is being sent to summarize what Agency staff discussed with you in a meeting on July 13, 1990, and is intended to resolve the "Conditions" in your Staff Report to the Environmental Quality Commission at their June 29, 1990 meeting. I would first like to review what has been done thus far in implementing the Urban Surface Water Management Plan, and then review our commitments to the DEQ regarding additional information needed by DEQ to clarify the "Conditions."

STATUS OF PLAN IMPLEMENTATION AS OF 7/17/90

- 1) The Surface Water Management District has been formed and is now officially operating. The budget has been approved with expenditures of \$4.2 million for the Agency's storm and surface water program, plus additional budgets totaling \$3 million in our member cities.
- 2) The monitoring plan has been implemented. We are currently sampling approximately 65 sites via grab sample, once per week. The effort started May 7, 1990, and will continue to November 1, 1990. Data are provided to DEQ monthly in hard copy. We are planning to do this type of effort each year, for many years to come. The monitoring plan will be modified annually to meet the program information needs.
- 3) Request for Proposals (RFP) for subbasin strategies were prepared and sent out on July 11, 1990. The projected end date for the work is January 1, 1992.
- 4) RFP for Pollution Imaging Analysis was prepared and sent out, with a projected end date for the work of January 1, 1992.
- 5) The Agency has implemented a program for winter storm water sampling and analysis for storm water outfalls as per currently proposed EPA NPDES permit applications requirements.

- 6) The erosion control and permanent on-site water quality facility requirements are in effect and being enforced. The Agency is hiring two new field inspectors to enforce the erosion control rules, plus two inspectors for the general storm and surface water program inspection. In addition, the Agency is hiring five additional engineering personnel to implement the storm and surface water program.
- 7) The Agency has adopted a complete set of Ordinances to implement the storm and surface water program. These ordinances include basic operation and authority, standards and specification, rates and charges, and billing and collection authority.
- 8) The maintenance BMP's are being implemented by the Agency and City field maintenance departments. The Agency is in the process of hiring 18 full time personnel for the storm and surface water maintenance program, and is purchasing \$800,000 of new equipment. The largest equipment items are two new street sweepers, and one combination vacuum truck.
- 9) The Agency is continuing its program of public involvement, and has hired one additional staff person specifically for the storm and surface water program. The Agency is continuing its award winning River Ranger program.

COMMITMENTS MADE REGARDING "CONDITIONS"

The following are our comments and suggested resolution of the "conditions" found in your June 29, 1990, staff report to the EQC. These are as discussed in the July 13, 1990, meeting between you and Agency staff.

Condition #1) Depending on level of detail needed for the options (management measures), we can give you available information within 90 days. All details for the Best Management Practices will be available as the subbasin strategies are completed prior to January 1, 1992, which is the completion date in the RFP.

Condition #2) This is not a condition. No agreement is in effect until negotiated and signed. The proposed agreement in the plan has had neither. It is presented as a starting point for discussion. This condition has been dropped.

Condition #3) The monitoring program is described in the plan. The current monitoring program is being implemented, and has been discussed numerous times with Bob Baumgartner. Nothing more is needed, and we suggest this condition be dropped.

Condition #4) The Agency has adopted a minimum 25 foot buffer requirement. This is found in Section 6.07.2 of Resolution and Order 90-38 (Construction Standards and Specifications), and a copy of which

is enclosed. The current ordinance will be monitored for effectiveness. If found inadequate, the ordinance will be modified as part of the annual program review. If DEQ requires a larger buffer, then we suggest DEQ go through rule making as it did for the erosion control rules. We feel we have already met the intent of the condition, and therefore this condition should be dropped.

Condition #5) The condition on spraying has been deleted by DEQ.

Condition #6) The condition has been satisfied with discussion of BMP's (management measures MO.1 through MO.17). The BMP's cover program objectives 1 through 7, 8, 9, 10, and 12. (found in Table 1.1, page 1.4). Dates and responsibilities are described. The remaining objectives will be satisfied for #6 (CIP), #8 (satisfactory cost/benefit), and #11 (city participation) as we supply you the city agreements and complete the subbasin strategies to identify the CIP and BMP's. We can provide any additional information needed by DEQ to clarify our schedule, but we feel we have already met the condition, and therefore this condition should be dropped.

Condition #7) DEQ committed to rewrite your "Condition" to display the actual information you want. We said we would review your draft and respond accordingly prior to the August 10, 1990, EQC meeting. Our general opinion is that the term "CIP" be replace with "subbasin plans," and that the schedule set by DEQ accommodate the Agency's RFP calling for the work to be completed by January 1, 1992. Many subbasins will be completed prior to this date, but it is our opinion that it is not possible to complete all plans earlier than our estimated completion date, and still maintain the quality of plan required.

Condition #8) We omitted labeling the boxes at the bottom of Figure 4.1. These are the annual meetings. We did agree on July 13, 1990, to hold monthly meetings with you and provide a one page summary of the status of implementation of the plan. We also agreed that both the meeting and status report must be productive for both DEQ and USA for the effort to continue. A disruptive audience to our discussions like we had July 13, 1990, is not productive nor satisfactory for these monthly meetings to take place. As to the condition, we feel we have already satisfied it, and therefore the condition should be dropped.

Condition #9) The Agency has adopted Resolution and Order 90-30 for Erosion Control and Permanent On-Site Water Quality Facilities for new construction. A copy is enclosed. This satisfies the condition, and therefore the condition should be dropped.

Condition #10) At our scheduled meetings with DEQ we will have an opportunity to review the previous year's effort (e.g. effectiveness of current ordinances, the need for new ordinances, the water monitoring data, BMP effectiveness, etc.) Depending on the findings of that review, we will be prepared to modify any portion of the current Plan.

Don Yon, DEQ
July 18, 1990
Page Four

The USA and participating Cities know that a plan is only as good as the review process is to insure the effectiveness of the Plan to achieve the Goal and Objectives.

Condition #11) This requested activity is part of the subbasin strategy activity in the plan. If code changes are identified as part of the strategy, then the code will be changed to reflect the need. This review will be completed by January 1, 1992. The plan already addresses this condition, and therefore the condition should be dropped.

Condition #12) Gaston has approved and signed their operating agreement with USA, and the Agency Board has also approved the agreement. The USA Board approved the request of Gaston to be included in the Agency's Watershed Management Plan at their meeting of July 17, 1990. This condition has been satisfied, and should be dropped.

Condition #13) This condition is deleted.


Condition #14) This does not pertain to meeting the DEQ Guidance Document requirements. It is already in OAR 340-41-470 (1) (i) and therefore is a statement of fact, not a condition for approval. You stated that you would consider putting this information in the front portion of the staff report.

Condition #15) The USA has limited resources to conduct water monitoring beyond its own program needs. As best as possible, we will consider DEQ needs and try to accommodate them within our budget and personnel limitations. We believe DEQ should participate in the effort to lend credibility to the results of the monitoring effort. We do not believe this should be a condition of approval, and should be dropped.

PLAN APPROVAL

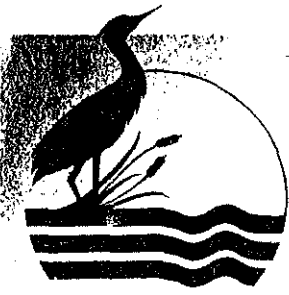
I hope this letter has clarified the points discussed on July 13, 1990. It is intended for your use in supplying information to the EQC. Beyond the details of what appears in the "conditions," we feel that our plan has met the requirements of the guidance document, and in fact is far more than was originally envisioned. We must emphasize that we need our plan to be approved. Anything less will be detrimental towards our goal of meeting the 1993 standards. Please call if we can be of further assistance.

Sincerely,


Gary F. Krahmer
General Manager

/eb

Enclosures



July 19, 1990

RECEIVED
JUL 20 1990

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

1120 S.W. 5th Avenue
Room 400
Portland, Oregon
97204-1972
(503) 796-7740

Mr. Don Yon
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

Re: Portland's Tualatin Basin
Water Quality Management Plan

Dear Don:

Per our meeting on July 13 and subsequent phone conversations, I am writing this letter to provide information and clarification regarding several elements of our Tualatin Basin Program plan. The items addressed below are those presented in the DEQ Staff Report dated June 14, 1990 as prepared for the June 29 EQC hearing. I hope this information will help provide for a new DEQ staff report to EQC, recommending full approval of our Program Plan.

Before presenting you with individual responses to each condition listed in the June 14 staff report, I will summarize our program accomplishments to date and imminent projects.

- o The City of Portland spent over \$200,000 over the past year to monitor streams and prepare its detailed program plan.
- o The City has implemented both construction site erosion control and on-site stormwater treatment regulations as required by EQC.
- o We are preparing intergovernmental agreements with Lake Oswego and Clackamas County to begin work on the joint development of best management practices and water quality control facilities design handbooks. These should be complete in approximately 6 months.

CITY OF PORTLAND
ENVIRONMENTAL SERVICES



Don Yon
July 19, 1990
Page 2

- o We have begun a program of test maintenance practices for ditches, roads and other public drainage facilities to improve water quality.
- o The City has committed over \$600,000 in the July 1, 1990 to June 30, 1991 Fiscal Year to capital projects for water quality improvement in the Tualatin Basin.
- o We have completed the design and are attempting to receive a 404 (cut and fill) certification from state and federal resource agencies for a prototype regional wetland treatment system. We have also identified a potential second site at which to construct such a facility in the immediate future.
- o The City has been monitoring the main stem of Fanno Creek on a weekly basis and other tributary sites once monthly since May 1.

CITY RESPONSES REGARDING DEQ STAFF REPORT "CONDITIONS":

Staff Report Condition 1: A DEQ-approved BMP, maintenance and management measures modeling of runoff water quality and anticipated reduction of pollutants shall be included.

Portland Response: Our understanding is that DEQ staff will revise this statement to indicate more clearly that the City is not being asked to do more modeling. Rather DEQ staff needs more time to review the results of the water quality modeling we've already completed.

Staff Report Condition 2: Include a DEQ-approved Capital Improvement Project's (CIP) plan that describes on a site specific basis the reasons for their selection, the costs, funding mechanism(s), the responsible party(s), the means and timing of implementation.

Portland Response: We believe a planning level CIP is already adequately laid out in our Program Plan Report as follows:

- o Costs and major CIP elements in Table 5-1;
- o Regional treatment facilities locations and priorities in Chapter 6 (page 6-4);
- o Further projects listings and timing in Figure 7-1;
- o Funding mechanisms are described in Chapter 7.

Specific design criteria for water quality treatment facilities are being developed by our engineering consultant. This work will be paid for jointly by the City of Portland, City of Lake Oswego and Clackamas County.

Staff Report Condition 3: Provide for an annual meeting between DEQ and the City.

Portland Response: This is already provided for in Chapter 7 of our program plan. We are certainly willing and desire to meet and report more often to DEQ staff.

Staff Report Condition 4: The inclusion of other needed interagency agreements.

Portland Response: We will probably develop an agreement with Multnomah County to help them with their Tualatin Basin water quality management needs. This agreement will be forwarded to DEQ as soon as it is developed and executed. If any agreements are needed with USA or other entities to provide for development of treatment systems outside of the Portland City limits, we will forward them to DEQ as they are developed and executed as well.

Staff Report Condition 5: Provisions for the protection of all streams, ponds and wetlands with adequate (preferably 100 feet) undisturbed buffers, as measured from the normal high water flow, on all sides.

Don Yon
July 19, 1990
Page 4

Portland Response: The City is in the process of applying its Environmental Overlay Zone to Fanno Creek and its tributaries. This will provide for protection of riparian areas along the streams. This process should be complete by January of 1991.

Staff Report Conditions 6 and 7:

6. Include in the Plan the provision of no spraying of pesticides along roadways for maintenance.
7. "All existing coliform concentrations need to be identified and corrected."

Portland Response: Our understanding is that you are dropping these two conditions.

Staff Report Condition 8: The inclusion of other applicable BMPs and control options and their implementation to meet the June 30, 1993 compliance date.

Portland Response: If, during the process of plan implementation, the City discovers more applicable BMPs or control options for its portion of the Tualatin Basin, the City will incorporate them into its basin plan and notify DEQ. Regarding the specific control option of utilizing treatment systems downstream of the City limits (noted by DEQ in the staff report): The City requests a letter from DEQ indicating the Portland may have the option of transferring some of its load allocation to downstream sites. The City will then work with the Unified Sewerage Agency (USA) in its Fanno Creek Basin planning process to determine the potential for such downstream treatment. Such City planning efforts outside the City limits are as noted in our Program Plan Schedule in Chapter 7 of the report.

Staff Report Condition 9: The expansion of the public involvement activities to include provision of general public involvement on the selection of BMPs and CIPs and completion of the Final Plan, and the development of a watershed BMP Manual, retail managers' workshops, voluntary dump removal "round-up" day, contractor and public workers workshops, watershed or creek signage, and others.

Don Yon
July 19, 1990
Page 5

Portland Response: We believe our public involvement plan presented in Chapter 7 of our Program Plan Report adequately covers these and other involvement/education activities.

Staff Report Condition 10: Include an identification and description of the responsible agency(s) involved in the construction of control facilities outside the City of Portland and an interagency agreement.

Portland Response: See our response to Condition No. 4.

Staff Report Condition 11: A DEQ approved Erosion and Stormwater Control Ordinance shall be included.

Portland Response: These Ordinances are attached.

Staff Report Conditions 12 and 13:

12. All the above must be completed and provided as the Final Plan to DEQ and within 90 days.
13. Within 30 days after submission of the Final Plan, DEQ will review the Plan and either certify its compliance with the above conditions or prepare other comments as necessary. Failure of the Plan to meet these conditions will result in action to enforce the provisions of OAR 340-41-470 and/or the interagency agreements resulting therefrom.

Portland Response: Our understanding is that these two conditions are to be dropped.

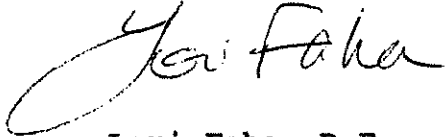
Staff Report Condition 14: The City of Portland shall join with DEQ in a process to refine and establish a complete TMDL compliance monitoring program for applicable portions of the Tualatin Basin (Process to commence within 120 days).

Portland Response: The City agrees to do this.

Don Yon
July 19, 1990
Page 6

We look forward to working with you toward the goal of pollution reduction in the Tualatin River and its tributaries. If you have any questions or further information needs, please contact me at 796-7192.

Sincerely,



Lori Faha, P.E.
Project Manager

LF:em

c: Bill Gaffi
Dave Kliewer
Eugene Lampi
John Jackson
Paul Haines
Bruce Erickson

tuayondq.lf

ORDINANCE NO.

* Exempt water quality control facilities from the requirements of Title 24, and require erosion control within designated areas. (Ordinance; amend Code Sections 24.10.030 and 24.70.110) as Administrator. No permit for work on properties within the designated areas. The City of Portland ordains: Erosion control plan is required.

Section 1. The Council finds:

1. On December 1, 1989, the Environmental Quality Commission (EQC) adopted rules requiring new development in the Tualatin Basin to provide erosion control measures for private construction work. The adopted rules require that erosion control measures be required by local jurisdictions within the basin for any new plats, site plans, or permits approved or issued by the jurisdiction beginning January 1, 1990.
2. That the requirement for erosion control measures are necessary for the control of pollution sources within the Tualatin Basin and other designated water quality sensitive areas within the City's jurisdiction.
3. The amended sections of Title 24 are necessary for the City to implement the EQC rules.

NOW, THEREFORE, the Council directs:

- a. Section 24.10.030, Building Regulations, is amended as follows:

24.10.030 Scope. The provisions of this Code shall apply to the construction, alteration, moving, grading, demolition, repair, and use of any building or structure within the City, except public utility towers and poles, mechanical equipment not specifically regulated in this Code, [and] hydraulic flood control structures, and water quality control facilities as defined by Title 17 of the Code of the City of Portland.

- b. City Code Section 24.70.110, Erosion Control, amended by adding a new subsection 24.70.110(c) as follows:

24.70.110(c) All building permit applications in the Tualatin River sub-basins, areas where Environmental

ORDINANCE No.

Zone (E-Zone) mapping has been completed and adopted by Ordinance, and areas designated by statute, rule, or intergovernmental agreement, involving exterior work, grading, drainage, and/or private roadway improvements shall comply with all appropriate site/design standards as developed by the Sewerage System Administrator. No permit for work on properties within the designated area shall be issued until a control plan is approved.

- (1) The Director and the Sewerage System Administrator shall review erosion control plans during the building permit plan check process.
- (2) In the event the Director has reason to believe that a building site within the designated area is not in compliance, the Director shall have the authority to summarily abate those conditions giving rise to the erosion.

In the event the Director summarily abates the conditions giving rise to the erosion, a hearing before the Code Hearings Officer shall be held within 10 days. In the event that the measures taken are deemed by the Code Hearings Officer to be appropriate, the cost for the same may be made as assessment lien upon the property.

Section 2.

The Council declares that an emergency exists because failure to implement the requirements of OAR 340-41-455 could result in fines or lawsuits against the City and the Ordinance is necessary to provide the appropriate City enforcement mechanisms; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council,

Commissioner Bogle
Frederick C. Deis:sw
06/28/90

BARBARA CLARK
Auditor of the City of Portland

By

Deputy

"EXHIBIT A"**17.38 DRAINAGE AND WATER QUALITY**

17.38.010 AUTHORITY. The requirements of this Chapter shall be carried out by the Sewerage System Administrator of the Bureau of Environmental Services.

17.38.020 PURPOSE. The purpose of this Chapter is to manage storm drainage; and to maintain or improve water quality in the Watercourses and Water Bodies within the City of Portland.

17.38.030 DEFINITIONS

A. Land Development. Land Development refers to any human induced change to improved or unimproved real estate for which a permit is required, including but not limited to construction, installation or expansion of a building or other structure, land division, street construction, drilling, and site alteration such as that due to land surface mining, dredging, grading, paving, parking or storage improvements, excavation, filling or clearing.

B. Non-point Source. Non-point Source refers to diffuse or unconfined sources of pollution where wastes (pollutants) can either enter into or be conveyed by the movement of water to watercourses, water bodies, or storm drain systems.

C. Public Works Project. Public Works Project means any land development conducted or financed by a local, state, or federal governmental body and includes Local Improvements and Public Improvements as defined in Title 17, PUBLIC IMPROVEMENTS.

D. Water Body. Permanently or temporarily flooded lands which may lie below the deepwater boundary of wetlands. Water depth is such that water, and not the air, is the principal medium in which prevalent organisms live, whether or not they are attached to the bottom. The bottom may sometimes be considered nonsoil or the water may be too deep or otherwise unable to support emergent vegetation. Water bodies include wetlands, streams, creeks, sloughs, drainageways, lakes, and ponds.

E. Watercourse. Watercourse means a channel in which a flow of water occurs, either continuously or intermittently, and if the latter with some degree of regularity. Watercourses may be either natural or artificial.

F. Water Quality Control Facility. Refers to any structure or drainageway or drainage device that is designed, constructed, and maintained to collect and filter, retain, or detain surface water runoff during and after a storm event for the purpose of maintaining or improving surface and ground water quality. It may also include, but not be limited to, existing features such as wetlands, water quality swales, and ponds which are maintained as stormwater quality control facilities.

G. Water Quality Swale. A natural or manmade depression or wide shallow ditch used to temporarily hold, route, or filter runoff for the purpose of improving water quality.

H. Wetland. An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas. Specific wetland designations shall be made by the Corps of Engineers and the Division of State Lands.

17.38.040 STORMWATER QUALITY CONTROL FACILITIES REQUIRED. For new development, no plat, site plan, building permit or public works project shall be approved in designated areas unless the conditions of the plat, permit or plan approval requires installation of permanent stormwater quality control facilities designed according to standards or guidelines as specified by the Sewerage System Administrator or his designee.

A. DESIGNATED AREAS. Designated areas as referred to in this Chapter are: the Tualatin River Sub-basins located within the City of Portland; areas designated by intergovernmental agreements and lying within the Tualatin River Basin.

B. EXEMPTIONS. The requirements of this Chapter do not apply to:

1. Land development for which an application for development approval is accepted by the permitting agency prior to July 1, 1990.

2. Single Family and Duplex residential structures including their appurtenances (sheds, driveways, etc.) occupying less than 5000 square feet of impervious lot area.

3. Sewer lines, water lines, utilities, or other land development when such developments will not directly increase phosphorous loads once construction has been completed.

4. Transportation facilities when such improvements will not directly increase phosphorous loads once construction has been

completed (i.e., pavement overlays).

5. Development determined by the Sewerage System Administrator to have no significant impact on water quality.

C. MAINTENANCE OF WATER QUALITY CONTROL FACILITIES.

1. All new development, plats, site plans, building permits or public works projects, as a condition of approval, shall be required to submit an operation and maintenance plan for the required stormwater quality control facilities for review and approval by the Sewerage System Administrator. The operation and maintenance plan requirement is waived for control facilities designed as and accepted by the Bureau of Environmental Services as city maintained public facilities. The information required in the operation and maintenance plan shall include but not be limited to:

(a) Design plans of the facility and related parts.

(b) A detailed description of how the facility is intended to operate.

(c) A description of the maintenance practices necessary for the continued functioning of the facility.

(d) A maintenance schedule for the entire facility and its various parts

(e) The intended method of providing financing to cover future operations and maintenance.

(f) The party or parties responsible for the maintenance of the facility including the means of effecting contact. The party may be an individual or an organization.

2. Failure to properly operate or maintain the water quality control facility according to the operation and maintenance plan may result in a civil penalty as specified in 17.38.040 D., Enforcement.

3. A copy of the operation and maintenance plan shall be filed with the Bureau of Environmental Services and recorded with the appropriate county Department of Assessment and Taxation.

D. ENFORCEMENT.

1. Site Inspection. Authorized City representatives may inspect the Water Quality Control Facilities to determine compliance with this Ordinance. The Control Facility owner shall allow and provide for free access for representatives of the Bureau of Environmental

Services to enter upon the premises where the facility is located for the purpose of inspection.

2. Conditions for entry.

a. The authorized City representative shall present appropriate credentials at the time of entry;

b. The purpose of the entry shall be for the purpose of inspection of the Water Quality Control Facility.

c. The entry shall be made at reasonable times during normal operating or business hours unless an emergency situation exists as determined by the Administrator.

E. Penalties. Violations of this Chapter may result in assessment of a civil penalty in an amount up to \$500 per day per violation.

F. Violations.

1. A violation of this Chapter shall have occurred when any requirement of this Chapter has not been met; when a written request of the Administrator, made under authority of this Ordinance, is not met within the specified time; when a condition of a permit or contract issued under the authority of this Ordinance is not met within the specified time, or when the facility through maintenance neglect or facility failure no longer operates as designed.

G. Notice of Violation. Upon determination by the Administrator that a violation has occurred or is occurring, the Administrator may issue a written notice of violation to the owner/operator which outlines the violation and the potential penalty. The notice may further request correction of the violation within a specified time and/or require written confirmation of the correction efforts being made to correct the violation by a specified date. The notice shall be personally delivered to the owner/operator's premises or be sent certified or registered mail, return receipt requested.

H. Remedies. In enforcing any of the requirements of this Chapter, the Administrator, or a duly authorized representative, may gain compliance by:

1. Instituting an action before the Code Hearings Officer as set forth in Title 22 of this Code; or

2. Cause appropriate action to be instituted in a court of competent jurisdiction; or

3. Taking such other action as the Administrator, in the discretion of the Administrator, deems appropriate.

I. Nuisance. A violation of this Chapter shall constitute a nuisance. Summary abatement of such nuisances is authorized. Nuisance abatement procedures as provided for in Chapter 18.03 shall be used, except that, the responsibilities assigned to the Bureau of Buildings and officials affiliated with the Bureau of Buildings shall be performed by the Bureau of Environmental Services and officials affiliated with the Bureau of Environmental Services.

J. Cost recovery. The Administrator may recover all reasonable costs of nuisance abatement by the city or other actions necessary to bring about compliance with this Chapter. In the event that the City is required to enforce this Chapter through summary abatement, an accurate record of all expenses incurred, including an overhead charge of 26 percent, and an administration fee of \$250 for each occurrence shall be kept, and be made a lien on the property or properties in accordance with the provisions of Chapter 22.06.

L. Conflict. All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Ordinance are hereby superceded to the extent of such inconsistency or conflict.

M. Severability. If any provision, paragraph, word, Section or Chapter of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, Sections and Chapters shall not be affected and shall continue in full force and effect.



Oregon Department of Agriculture

635 CAPITOL STREET NE, SALEM, OREGON 97310-0110

DATE: July 23, 1990

TO: Don Yon, Tualatin Water Quality Basin Coordinator

FROM: John Mellott, Administrator *John Mellott*

SUBJECT: Agricultural Water Quality Plan, Tualatin Basin

We have reviewed those conditions set by your department prior to approval and compared these conditions to the plan submitted by our department. We estimate that by working closely with the Washington County Soil and Water Conservation District, the following actions can be taken to address all the conditions. Our actions are predicated upon the fact that Mike Wolf, our newly hired water quality coordinator, will not be on the job until July 26, 1990.

Conditions 2, 3, 4, 5, 6, 7, 11, 13, 15, 17, 20 and 22 --

These conditions will be addressed as the various problem areas and strategies are revisited and reanalyzed.

Condition 8 --

This condition will be addressed as a rewrite of page 32 is made possible through the reassessment of problems and strategies.

Conditions 9 and 10 --

Washington County SWCD, together with the help of SCS, can address this condition with information they have on hand.

Condition 16 --

This condition will be worked out following a reassessment of problems and strategies and a reworking of the budget process.

Conditions 18, 19, and 21 --

These conditions will be addressed at the same time the reassessment of problems and strategies are completed.

We estimate that all conditions will be adequately addressed by November 1, 1990.

CITY OF GASTON

P.O.Box 129

985-7521

Gaston, Oregon 97119

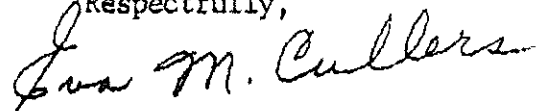
June 26, 1990

Christopher Bowles, P.E.
Unified Sewerage Agency
155 N. First Ave. Suite 270
Hillsboro, OR. 97124

Dear Mr. Bowles:

The City of Gaston requests to be included in Unified Sewerage Agency's
Surface Water Management Plan.

Respectfully,



Mayor

EC/mb



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
 TRANSPORTATION DIVISION
 1620 S.E. 190TH AVENUE
 PORTLAND, OREGON 97233
 (503) 248-5050

BOARD OF COUNTY COMMISSIONERS
 GLADYS McCOY • CHAIR OF THE BOARD
 PAULINE ANDERSON • DISTRICT 1 COMMISSIONER
 GRETCHEN KAFOURY • DISTRICT 2 COMMISSIONER
 RICK BAUMAN • DISTRICT 3 COMMISSIONER
 SHARRON KELLEY • DISTRICT 4 COMMISSIONER

July 17, 1990

Don Yon
 Tualatin Basin Coordinator
 Dept. of Environmental Quality - Water Quality
 811 SW Sixth Ave.
 Portland, OR 97204

RE: Tualatin River Basin Storm Quality Control Facilities Response

Dear Mr. Yon:

On July 16, 1990, Multnomah County Department of Environmental Services, Transportation Division, contacted Lori Faha, City of Portland, project manager for their portion of the Tualatin Basin compliance requirements.

There appears to be an understanding between the two agencies that the City of Portland could perform the necessary study for Multnomah County's DEQ compliance submittal.

An agreement would be formalized after negotiations to define the level of services to be provided by Portland.

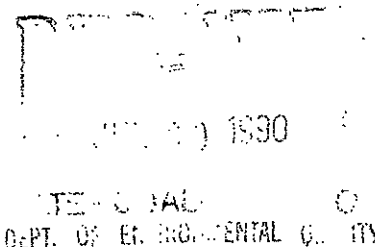
Very truly yours,

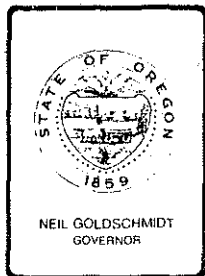
LARRY F. NICHOLAS, P. E.
 County Engineer/Director

LFN:vh

cc: Lori Faha, City of Portland

7872V





Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: August 10, 1990

Agenda Item: L

Division: HSW

Section: HWRTA

SUBJECT:

Proposed temporary rule adopting the federal Toxicity Characteristic rule requirements for hazardous waste treatment and disposal facilities (T&D) managing hazardous wastes received from off site, and adopting new testing procedures for generators to use in determining if solid waste containing certain heavy metals or pesticides are hazardous waste.

PURPOSE:

This temporary rule does two things: (1) It requires generators to use the Toxicity Characteristic Leaching Procedure (TCLP) in lieu of the Extraction Procedure (EP) toxicity test as the testing method to determine if solid wastes containing certain heavy metals or pesticides are hazardous wastes; and (2) it requires T&D facilities managing federal or state Toxicity Characteristic (TC) hazardous waste received from off site to comply with the Department of Environmental Quality's (DEQ) hazardous waste facility permitting and siting requirements.

ACTION REQUESTED:

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

- Authorize Rulemaking Hearing

Meeting Date: August 10, 1990
Agenda Item: L
Page 2

- X Adopt Rules
- | | |
|--------------------------------------|------------------------|
| Proposed Temporary Rule | Attachment <u>A</u> |
| Rulemaking Statements | Attachment <u>B</u> |
| Fiscal and Economic Impact Statement | Attachment <u> </u> |
| Public Notice | Attachment <u> </u> |
- Issue a Contested Case Order
- Approve a Stipulated Order
- Enter an Order
- | | |
|----------------|------------------------|
| Proposed Order | Attachment <u> </u> |
|----------------|------------------------|
- Approve Department Recommendation
- | | |
|---|------------------------|
| <input type="checkbox"/> Variance Request | Attachment <u> </u> |
| <input type="checkbox"/> Exception to Rule | Attachment <u> </u> |
| <input type="checkbox"/> Informational Report | Attachment <u> </u> |
| <input type="checkbox"/> Other: | Attachment <u> </u> |

DESCRIPTION OF REQUESTED ACTION:

Temporarily adopt Oregon Administrative Rule (OAR) 340-101-024 to require the TCLP in lieu of the EP toxicity test to determine if solid wastes containing certain heavy metals or pesticides that are currently listed in 40 Code of Federal Regulations (CFR) 261.24 are hazardous waste; and require T&D facilities managing state or federal hazardous wastes resulting from off site generation to comply with Oregon's hazardous waste permitting and facility siting requirements, and to obtain a final status permit before managing those wastes.

AUTHORITY/NEED FOR ACTION:

- | | |
|---|------------------------|
| <input type="checkbox"/> Required by Statute: _____ | Attachment <u> </u> |
| Enactment Date: _____ | |
| <input checked="" type="checkbox"/> <u>X</u> Statutory Authority: <u>ORS 183.335, ORS 466.020</u> | Attachment <u> </u> |
| <input type="checkbox"/> Pursuant to Rule: _____ | Attachment <u> </u> |
| <input type="checkbox"/> Pursuant to Federal Law/Rule: _____ | Attachment <u> </u> |
| <input type="checkbox"/> Other: | Attachment <u> </u> |
| <input checked="" type="checkbox"/> <u>X</u> Time Constraints: (explain) | |

On March 29, 1990, the Environmental Protection Agency (EPA) replaced the EP toxicity characteristic rule with the new TC rule,

Meeting Date: August 10, 1990
Agenda Item: L
Page 3

and a new leaching procedure, the TCLP. The TCLP was designed to test the leachability and mobility of organic and inorganic contaminants in liquids or solids. The new TC rule adds 26 organics to the already existing 14 EP toxicity contaminants of concern to make a total of 40 hazardous constituents. The selection of the 26 organic constituents was based on existing health data and physical and chemical data. These data were used in a fate and transport model developed by EPA to mimic the migration of organic chemicals through soils to a groundwater well 500 feet from the point of release of a hazardous TC constituent.

The EPA rule becomes effective on September 25, 1990. Since the TC rule is a Hazardous and Solid Waste Amendments (HSWA) rule, it becomes effective in all states on that date regardless of a state's authorization status or whether a state has adopted the rule.

Under federal law a hazardous waste T&D facility can operate in a state during the permitting process prior to having a permit. This is called "interim status." Oregon does not have an "interim" status provision similar to EPA. If no changes are made to Oregon's hazardous waste rules, on September 25, T&D facilities managing a TC hazardous waste received from off site would gain federal interim status and be allowed to manage TC hazardous wastes under federal authority without complying with Oregon's hazardous waste permitting and siting requirements (OAR Chapter 340, Divisions 100-120). DEQ must adopt rules enacting the TC rule for T&D facilities so that these new facilities are required to comply with Oregon's hazardous waste permitting and siting regulations. This temporary rule will become effective at the same time as the federal rule, thus ensuring that all new T&D facilities (those without final status permits), wishing to manage waste generated from off site, are required to comply with the established permitting and siting requirements of Oregon.

Finally, adoption of this temporary rule will eliminate requiring Oregon hazardous waste generators to characterize their hazardous waste using two different test methods (EPA would require the TCLP and DEQ would require the EP toxicity test). Since the TCLP provides more accurate analytical results, there is no practical reason for requiring an EP toxicity test too. Therefore, this temporary rule would replace the EP toxicity test with the TCLP for testing solid wastes containing certain heavy metals and pesticides to determine if the wastes are hazardous. Adoption of the rule will eliminate confusion and reduce the testing burden on the regulated community while requiring a more accurate and reliable testing procedure.

At this time, the DEQ is not proposing to adopt the 26 new organic contaminants promulgated under the TC rule (potentially,

Meeting Date: August 10, 1990
Agenda Item: L
Page 4

26 new hazardous waste streams). Oregon generators, however, will still need to comply with the entire TC rule, including testing for the 26 organic contaminants since EPA will retain enforcement and implementation authority in the state. DEQ anticipates adopting the 26 new organic hazardous waste streams in February 1991. During this interim period, EPA will be making decisions about the applicability of the TC rule to several previously unregulated industry groups (e.g., pulp and paper and food processing). Waiting until February to adopt the new constituents gives the DEQ time to fully determine how the additional 26 new hazardous waste streams will affect Oregon industry and DEQ's resources. It is anticipated that the additional 26 waste streams will significantly impact Oregon industry and DEQ resources (see Attachment C for potentially impacted industrial types).

DEVELOPMENTAL BACKGROUND:

<input type="checkbox"/> Advisory Committee Report/Recommendation	Attachment	<input type="checkbox"/>
<input type="checkbox"/> Hearing Officer's Report/Recommendations	Attachment	<input type="checkbox"/>
<input type="checkbox"/> Response to Testimony/Comments	Attachment	<input type="checkbox"/>
<input type="checkbox"/> Prior EQC Agenda Items: (list)		
<input type="checkbox"/> Other Related Rules:	Attachment	<input type="checkbox"/>
<input checked="" type="checkbox"/> Supplemental Background Information:	Attachment	<input checked="" type="checkbox"/> C

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Hazardous Waste Management Facilities

New facilities wishing to manage TC wastes (or any other hazardous waste) must first obtain a final status permit from DEQ. In order to obtain a permit, the requirements found in OAR Chapter 340, Division 100-120 related to permitting and siting must be met.

Oregon must eventually adopt the entire TC rule in order to retain authorization. Therefore, it is reasonable for Oregon to adopt the new rule at the same time as EPA so that new facilities can begin complying with siting and permitting requirements now rather than later. If DEQ waits until after September 25 to adopt the TC rule for T&Ds managing waste from off site, they would be allowed to operate under federal law without first complying with state siting requirements.

Treatment, storage, and disposal facilities will be impacted by state permitting and siting requirements once the TC rule is fully adopted in February. In the interim, such facilities will be regulated by EPA.

Meeting Date: August 10, 1990
Agenda Item: L
Page 5

Hazardous Waste Generators

Hazardous waste generators are required to determine if solid wastes are, by definition, hazardous wastes. Exceeding specific concentrations of certain heavy metals or pesticides in a solid waste leachate causes a solid waste to be designated a hazardous waste. Currently, determining whether a solid waste is a hazardous waste is accomplished either subjectively, i.e., by knowledge of what the solid waste contains, or analytically, i.e., using EP toxicity testing procedures. Replacing the EP toxicity test with the TCLP test will provide more accurate and consistent analytical results and will more realistically indicate the leaching potential of certain heavy metals or pesticides from solid wastes. If DEQ does not adopt the TCLP test in lieu of the EP toxicity test for those contaminants, on September 25, 1990, generators would technically be required to perform dual testing using both EP toxicity test and the TCLP.

EPA will require testing for the 26 additional organic TC contaminants contained in the new TC rule under the federal program. DEQ plans to regulate those additional organic contaminants by February 1991.

PROGRAM CONSIDERATIONS:

This temporary rule incorporates the entire TC rule as promulgated by EPA but does so discriminately. For generators, the temporary rule substitutes the TCLP for the EP toxicity test for certain heavy metals and pesticides that are currently being regulated by the EP toxicity rule. The temporary rule does not adopt the 26 new, organic contaminants also listed in the rule.

The DEQ proposes to defer to EPA the oversight and enforcement of the generator requirements for the additional 26 organic hazardous waste streams. DEQ will be responsible for the registration and assignment of identification numbers to all new generators. The generator registration process will allow us to better determine the impact on the regulated community and DEQ's resources. Enforcement and inspection of the TC universe of generators will be EPA's responsibility until DEQ has adopted the rule and has been authorized by EPA. An internal DEQ working group was established on April 17 to review the rule's implications and to develop an implementation strategy. This group and its recommendations for phased implementation of the rule have provided a reasonable method for proceeding.

Additional resources will be necessary to support the permitting of new facilities and processing permit modifications. However,

the biggest resource impact will materialize once the entire rule is adopted in February 1991. These resource implications are currently being evaluated.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Authorize DEQ to adopt a temporary rule requiring generators electing to test their solid wastes to determine if they are a toxicity characteristic hazardous waste to use the TCLP in lieu of the EP toxicity test to make that determination. Additionally, the rule would require new T&D facilities managing federal or state TC hazardous wastes to meet DEQ's permitting and siting requirements and to obtain a final status hazardous waste permit before they may manage those wastes.

This action would provide the regulated community with a single toxicity characteristic test to determine if solid wastes containing certain heavy metals or pesticides are hazardous waste. It would also provide the DEQ laboratory with a single test to analyze wastes to determine if they are hazardous wastes. Additionally, new T&D facilities managing TC wastes received from off site would be required to meet DEQ permitting and siting requirements before being allowed to manage federal or state TC hazardous waste. Requiring T&D facilities to meet Oregon permitting and siting standards is in the best interest of the public, the DEQ and the facilities. New facilities would know up front what is expected before investing time and resources in managing TC hazardous wastes received from off site.

2. Delay adopting a temporary rule enacting the TCLP for generators for certain wastes and the T&D facility permitting and siting requirements until the Department completes an impact analysis on implementing the new rule or until absolutely required by EPA.

If the Commission elects to wait until after September 25, the regulated community will be required to analyze waste streams for heavy metals and pesticides using both EP toxicity testing and the TCLP, until a final TC rule is adopted. In addition facilities would be able to operate in Oregon without first having met DEQ permitting and siting requirements.

Meeting Date: August 10, 1990
Agenda Item: L
Page 7

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends adoption of a temporary rule that requires generators electing to test their solid wastes to use the TCLP test in lieu of the EP toxicity test. The Department is not recommending the adoption of the 26 new TC hazardous contaminants until February 1991. The Department recommends that DEQ permitting and siting requirements be applied at new T&D facilities managing federal or state TC hazardous wastes received from off site.

This recommendation is made to eliminate overburdensome testing requirements on generators and to ensure that new T&D facilities managing TC wastes from off site comply with Oregon's permitting and facility siting requirements.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The adoption of a temporary rule requiring generators to use the TCLP for toxicity characteristic testing in lieu of the EP toxicity test, and regulating new T&D facilities that want to locate in Oregon, is consistent with agency policy. The temporary rule maintains equivalency with federal requirements to replace the EP toxicity test and to meets the intent of the Oregon legislature and the Commission to require the DEQ to oversee the development and operation of hazardous waste management facilities in Oregon.

ISSUES FOR COMMISSION TO RESOLVE:

Should the DEQ wait until it has completed its analysis of the TC rule's impact on Oregon industry and the Department before adopting any part of the TC rule? Or, should the DEQ enact a temporary rule adopting the TCLP for generators as the primary toxic characteristic test, and require T&D facilities managing federal or state TC hazardous wastes received from off site to comply with DEQ's permitting and siting requirements?

Meeting Date: August 10, 1990
Agenda Item: L
Page 8

INTENDED FOLLOWUP ACTIONS:

In November 1990, request Commission authorization to hold a Public Hearing to permanently adopt the TC rule.

Approved:

Section:

Ray W. Finner

Division:

Stephanie Hallock

Director:

Bill Hauer

Report Prepared By: Gary Calaba

Phone: 229-6534

Date Prepared: July 24, 1990

Attachments

GC/GJC:b

ZB9746 (AGENDAM)

Attachment A - Adoption of Temporary Toxicity Characteristic Rule
Meeting Date: 8/10/90
Agenda Item: L

Purpose and scope.

340-101-001 (1) The purpose of this Division is to identify those residues which are subject to regulation as hazardous wastes under Divisions 100 to 108 of this Chapter.

(2) Persons must also consult 40 CFR Parts 260-266, 270 and 124, which are incorporated by reference in rule 340-100-002, to determine all applicable hazardous waste management requirements.

Exclusions.

340-101-004 (1) The provision of 40 CFR 261.4(b)(7) is deleted and replaced with section (2) of this rule.

(2) Residues from the extraction and beneficiation of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore, are not hazardous waste.

(Comment: The State program is more stringent than the federal program in that the latter also excludes residues from processing.)

Toxicity Characteristic.

340-101-024 (1) Effective September 25, 1990, generators who test their residues to determine whether the residues are a hazardous waste exhibiting the characteristic of toxicity for contaminants with the hazardous waste codes D004, D005, D006, D007, D008, D009, D010, D011, D012, D013, D014, D015, D016 and D017 shall comply with 40 Code of Federal Regulations (CFR) 261.24 as found in 55 FR, No. 61, pg. 11862, March 29, 1990, and the corrections in FR 55, Vol. 126, pg. 26966-26998, June 29, 1990.

(2) Effective September 25, 1990, any treatment or disposal facility managing a state or federal toxicity characteristic (TC) hazardous waste as designated in 40 CFR 261.24, 55 FR, No. 61 pg. 11862, March 29, 1990, and the corrections in FR 55, Vol. 126, pg. 26966-26998, June 29, 1990, resulting from off site generation must comply with OAR Chapter 340, Divisions 100-120, and shall

Attachment A - Adoption of Temporary Toxicity Characteristic Rule
Meeting Date: 8/10/90
Agenda Item: L

obtain a final status permit prior to accepting or managing these wastes.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING) STATEMENT OF NEED
A TEMPORARY RULE, OAR CHAPTER) FOR TEMPORARY RULEMAKING
340, DIVISION 101, SECTION 024)

1. Statutory Authority

ORS 466.020 provides the Environmental Quality Commission (EQC) with the authority to establish rules governing the management of hazardous wastes; and ORS 183.335(5) provides the EQC with the authority to adopt a temporary rule if failure to act will result in "serious prejudice to the public interest or the interest of the parties concerned."

2. Statement of Need

On March 29, 1990, the Environmental Protection Agency (EPA) enacted the Toxicity Characteristic (TC) rule. The new rule replaces the Extraction Procedure (EP) toxicity test with the Toxicity Characteristic Leaching Procedure (TCLP); and it adds 26 organic chemicals to the 14 heavy metals and pesticides already regulated under EP toxicity. Overall, it is anticipated that the additional 26 organic chemicals will significantly impact Oregon industry by increasing the amounts and types of hazardous wastes generated by existing hazardous waste generators and by bringing into regulation previously unregulated business.

Effective September 25, under federal regulations, the TCLP will become the testing method to be used by generators to determine if solid wastes are hazardous. EQC adoption of a temporary TC rule will eliminate the requirement that generators conduct dual testing of their solid wastes to determine if certain heavy metals or pesticides in those wastes render them hazardous. Currently, if generators elect to test solid waste, the DEQ requires them to use the EP toxicity test. If the EQC does not replace the EP test with the TCLP, on September 25 generators will have to continue conducting the EP toxicity test under DEQ regulation and test the identical wastes under EPA TCLP regulation.

When EPA enacts rules which regulate new hazardous waste, facilities managing the waste may continue to manage them under "interim status" by simply notifying EPA of their existence. Until a final status hazardous waste permit is issued, these facilities comply with specific interim status regulations. Therefore, such facilities may manage hazardous wastes under the federal jurisdiction in Oregon or until DEQ adopts the new regulations.

Adoption of a temporary TC rule will enable the DEQ to require treatment and disposal facilities seeking interim status and managing TC hazardous waste received from off site to comply early on in the process with Oregon's permitting and siting standards, and to receive a final status permit before they may manage hazardous wastes. If DEQ waits until after September 25 to adopt the TC rule for existing T&D facilities managing TC wastes from off site, these facilities will be "grandfathered" into Oregon's regulatory program. This would seem to legitimize their existence without having first required them to meet Oregon's hazardous waste permitting and siting requirements.

3. Principal Documents Relied Upon

- a. Oregon Revised Statutes, Chapter 466 and 183
- b. Oregon Administrative Rules, Chapter 340, Division 101
- c. Toxicity Characteristic Rule and Preamble, 55 FR 11798-11877, March 29, 1990.

4. Fiscal and Economic Impact

Currently, through an internal Workgroup, the DEQ is evaluating the regulatory and fiscal impact of the TC rule on both the regulated community and the DEQ. The rule is expected to have a substantial effect on the regulated community. In November 1990, the DEQ expects to go before the Commission for final rulemaking (expected in February 1991). At that time, the DEQ will present its findings to the Commission.



Environmental News

TUESDAY, MARCH 6, 1990

EPA REGULATES ADDITIONAL HAZARDOUS WASTES

Robin Woods (202) 382-4377

The U.S. Environmental Protection Agency announced today that, in order to help protect the nation's groundwater, wastes containing 25 toxic organic chemicals are now subject to the safeguards of federal hazardous waste regulations. These chemicals are known to have contaminated groundwater at hazardous waste sites. Many of the pollutants and wastes subject to today's regulation are managed in land-based treatment systems to remove toxic contaminants prior to discharge into surface waters. Thus, this regulation will help assure safe management and groundwater protection.

The new rule will increase the quantity of hazardous waste controlled under the Resource Conservation and Recovery Act (RCRA). Some 1.8 million metric tons per year of nonwastewaters, which account for most of the anticipated compliance cost, may be subject to the rule. Additionally, 700 million metric tons of wastewater also may be affected. Much of that volume, however, is already managed in wastewater treatment tanks approved under the Clean Water Act. EPA expects additional use of such tanks to comply with this rule.

Don R. Clay, EPA's Assistant Administrator for Solid Waste and Emergency Response, said, "Today's action is a significant step towards preventing future groundwater pollution. This rule is expected to avoid billions of dollars in future costs to clean up contaminated groundwater."

R-36

(more)

With this rule, EPA expects 17,000 additional generators to will be affected. The 12 major industries affected include: pulp and paper, petroleum refining, miscellaneous petroleum and coal products, wholesale petroleum marketing, organic chemicals, pharmaceuticals, plastics production and products, rubber and miscellaneous plastics products, synthetic rubber, synthetic fibers, textile mills, lumber and wood products, and pipelines, except those for natural gas.

As a result of today's rule, approximately 200 surface impoundments currently used to dispose of the wastes also will be regulated under RCRA for the first time. Such facilities are known to contaminate groundwater. Facility operators may apply for RCRA permits for the impoundments, providing they meet certain standards, such as installing double liners, and cleaning up any contamination. Because of the stringent requirements, however, the agency expects most of the impoundments to close, unless the operators undertake process changes to eliminate their hazardous wastes. RCRA requires the owner to follow certain closing procedures and to clean up contamination, as necessary.

Estimated total costs of compliance range from \$250 to \$400 million a year, with the largest compliance costs predicted for the petroleum refining, pulp and paper, synthetic fibers, wholesale petroleum marketing and organic chemicals industries.

Wastes produced by large generators will be subject to the new test within six months. Wastes produced by small generators will be affected within a year. The test, referred to as the "Toxicity Characteristic Leaching Procedure (TCLP)," replaces the current test (the "EP Toxicity" test) because the new one can determine levels of 25 organic substances in addition to the 14 metals and organics that the EP test covers. Under the federal rules, generators are not necessarily required to test if they know their waste meets the hazardous waste criteria. However, if they are not sure, only the testing procedure can determine their need to comply.

Some small-quantity generators, such as vehicle service stations and leather processors, also may be affected. Small-quantity generators are those that produce between 220 and 2,200 pounds of hazardous waste in a calendar month. Generators of these amounts have generally been subject to most of the federal hazardous waste requirements since September 1988. EPA and the states can provide information to these businesses to help them determine if they are additionally affected.

The rule and testing procedure will be published in the Federal Register within the next two weeks. The public can get additional information through EPA's waste hotline at 800-424-9346 or 382-3000 in Washington, D.C. The hotline is open from 8:30 a.m. to 7:30 p.m., EST, Monday through Friday.

R-36

###

FACTS AND FIGURES ON THE TOXICITY CHARACTERISTIC (TC) RULE

What the Rule Does: Adds 25 chemicals to the eight metals and six pesticides on the existing list of constituents regulated under RCRA. The rule also establishes regulatory levels for the new organic chemicals listed, and replaces the Extraction Procedures leach test with the Toxicity Characteristic Leaching Procedure.

When It Takes Effect: Generators must comply with this regulation within six months of the date of notice in the *Federal Register*; small quantity generators must comply within one year.

Who It Affects: The rule will bring waste above regulatory levels into the system primarily from the following industries:

Major Industrial Sectors Analyzed For the Regulatory Impact Analysis

Organic Chemicals
Petroleum Refining
Pharmaceuticals
Pipelines, except Natural Gas
Plastics Materials and Resins
Pulp and Paper
Rubber and Miscellaneous Plastics Products
Synthetic Fibers
Synthetic Rubber
Textile Mills
Wholesale Petroleum Marketing

Potentially Affected Industries:

Generators: 15,000-17,000

New Treatment, Storage, and Disposal Facilities (TSDFs): 200-400, in addition to the existing 5,000 TSDFs.

Estimated Economic Savings: Approximately \$3.8 billion in damage to ground water resources avoided.

Estimated Quantity of Waste Affected: Some 1.8 million metric tons per year of nonwastewaters, which account for most of the cost, may be subject to the rule. Additionally, 700 million metric tons of wastewater may also be affected.

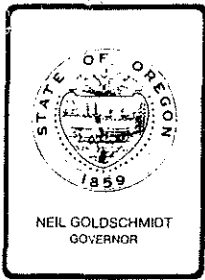
TABLE 1: TC CONSTITUENTS AND THEIR REGULATORY LEVELS

NEWLY ADDED CONSTITUENTS

<u>Constituent</u>	<u>Regulatory Level (mg/l)</u>	<u>Constituent</u>	<u>Regulatory Level (mg/l)</u>
benzene	0.5	hexachlorobenzene	0.13
carbon tetrachloride	0.5	hexachloro-1,3-butadiene	0.5
chlordane	0.03	hexachloroethane	3.0
chlorobenzene	100.0	methyl ethyl ketone	200.0
chloroform	6.0	nitrobenzene	2.0
o-cresol	200.0	pentachlorophenol	100.0
m-cresol	200.0	pyridine	5.0
p-cresol	200.0	tetrachloroethylene	0.7
1,4-dichlorobenzene	7.5	trichloroethylene	0.5
1,2-dichloroethane	0.5	2,4,5-trichlorophenol	400.0
1,1-dichloroethylene	0.7	2,4,6-trichlorophenol	2.0
2,4-dinitrotoluene	0.13	vinyl chloride	0.2
heptachlor	0.008		

EP CONSTITUENTS (BEING RETAINED AT CURRENT LEVELS)

arsenic	5.0	silver	5.0
barium	100.0	endrin	0.02
cadmium	1.0	lindane	0.4
chromium	5.0	methoxychlor	10.0
lead	5.0	toxaphene	0.5
mercury	0.2	2,4-D	10.0
selenium	1.0	2,4,5-TP (silvex)	1.0



Department of Environmental Quality

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

SPECIAL REQUEST FOR EQC ACTION

Meeting Date: August 10, 1990

Agenda Item: M1

Division: MSD

Section: Finance

SUBJECT:

Pollution Control Bonds: Adopt emergency rule amendments to OAR 340-81-005 to -100 and authorize public hearing for permanent rule changes.

PURPOSE:

Emergency rule amendments are being requested to enable the Department of Environmental Quality (DEQ or Department) to purchase special assessment improvement bonds (SAIBs) from the Cities of Gresham and Portland. The potential need for emergency rule amendments was identified in the staff report to the Environmental Quality Commission (EQC) dated June 29, 1990.

Current rules were adopted to meet certain programmatic concerns associated with the financing of pollution control work. The features of that initial program, however, do not match the unique financing structure now being used by the Department and the cities for the purposes of sewerage the unincorporated areas of mid-Multnomah County.

The changes that must be made will make the rules more flexible and responsive to specific needs of potential public borrowers by allowing transactions of greater size and complexity. The current rules do not contemplate a long term relationship such as the one being used to finance the sewerage of mid-Multnomah County. The rules also do not anticipate the level of costs associated with a transaction of this complexity.

Meeting Date: August 10, 1990
Agenda Item: M1
Page 2

In addition to the request for emergency rule amendments, the Department also requests authorization to proceed with public notice and hearing on adoption of permanent rules addressing State financial assistance to public agencies for water pollution control facilities

ACTION REQUESTED:

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

- Authorize Rulemaking Hearing (for Permanent Rules)
- Adopt Rules
 - Proposed Temporary Rules Attachment A
 - Emergency Justification Statement Attachment B
 - Rulemaking Statements for Permanent Rules Attachment C
 - Fiscal and Economic Impact Statement Attachment C
 - Public Notice Attachment

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

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

DESCRIPTION OF REQUESTED ACTION:

EQC approval of emergency administrative rule amendments to OAR Chapter 340, Division 81 that will allow the Department to recover its bond purchase and issuance costs in a manner that is both flexible and financially prudent.

AUTHORITY/NEED FOR ACTION:

- Required by Statute: _____ Attachment
Enactment Date: _____
- Statutory Authority: ORS 468.195 - .220 Attachment D
- Pursuant to Rule: _____ Attachment
- Pursuant to Federal Law/Rule: _____ Attachment

Meeting Date: August 10, 1990
Agenda Item: M1
Page 3

___ Other: Attachment ___

X Time Constraints:

EQC approval of these emergency rule amendments is needed prior to EQC authorization of bond purchase agreements with Portland and Gresham and prior to the Pollution Control Bond "notice of sale," scheduled for publication on August 27, 1990. The actual bond sale is scheduled for September 11, 1990. The Department is requesting EQC approval of the related bond purchase agreements at this meeting (Agenda Item N2).

DEVELOPMENTAL BACKGROUND:

- ___ Advisory Committee Report/Recommendation Attachment ___
___ Hearing Officer's Report/Recommendations Attachment ___
___ Response to Testimony/Comments Attachment ___
X Prior EQC Agenda Items: (list)
Agenda Item O, June 29, 1990. Pollution Control Bonds:
Review of Agreement Provisions and Authorization of Bond
Sales for Mid-Multnomah County Sewers. Attachment ___
___ Other Related Reports/Rules/Statutes: Attachment ___
___ Supplemental Background Information Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Master Agreement entered into by the EQC and the Cities of Gresham and Portland provides that DEQ's costs of issuing General Obligation Pollution Control Bonds and its costs of purchasing the Cities' SAIBs shall be included in each transaction. The cities have thus anticipated and agreed to these costs. Issuance costs are typically capitalized in the loan principal or are recovered through an interest rate surcharge.

As the first transaction in this particular series of bond purchases, the cost of this current bond issue are not known ahead of time with scientific precision. The Department has begun a process of collecting data that will provide increasingly accurate cost estimates for future bond issues.

PROGRAM CONSIDERATIONS:

The Master Agreements between DEQ and the Cities of Gresham and Portland set up a unique structure for financing the sewerage of mid-Multnomah County. As unusual structures tend to do, this one strains the various systems that were previously put in place for more specific and ordinary uses of pollution control funds. The administrative rule amendments proposed increase the Department's flexibility in dealing with this unique financing structure.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adoption of emergency rules to enable the Department to prudently and efficiently recover its costs.
2. Use cost recovery provisions of existing administrative rule which will not be sufficient to cover actual costs and which may not fit into proposed financing structure.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission:

1. Adopt the Findings for adoption of emergency rule amendments as presented in Attachment B.
2. Adopt the emergency rule amendments, as presented in Attachment A.
3. Authorize hearings for the permanent rule amendments.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

These rule amendments are consistent with prior Commission actions concerning the protection of drinking water in the mid-Multnomah County area and with goal 9 of the strategic plan.

This request is consistent with agency policy and state statutes for issuing Pollution Control Bonds. The Attorney General's office, bond counsel, the

Meeting Date: August 10, 1990
Agenda Item: M1
Page 5

State Treasurer's office, and city attorneys have all reviewed the proposed amendments.

ISSUES FOR COMMISSION TO RESOLVE:

Whether the proposed rule amendments adequately address the issue of cost recovery within the framework of the Master Agreement.

INTENDED FOLLOWUP ACTIONS:

Upon EQC adoption, file the emergency rule amendments with the Secretary of State and Legislative Counsel, and provide post-adoption notice of the emergency rule amendments in conjunction with notice of proposed permanent rule amendments.

Provide public notice and hold hearings on the proposed rule amendments.

Summarize public comments, respond to issues, revise proposed permanent rule amendments as appropriate, and recommend adoption of revised proposed amendments by the Commission at its December 14, 1990 meeting.

Approved:

Section: Noam Stampfer

Division: Pete D. Jella

Director: Bill Hamm

Report Prepared By: Noam R. Stampfer

Phone: 229-5355

Date Prepared: July 10, 1990

(NRS:nrs)
()
(July 10, 1990)

OREGON ADMINISTRATIVE RULES
340-81-020, -026, -031,
-036, and -046

NOTE:

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

The {bracketed} portions of text represent proposed deletions made to the rules.

ELIGIBLE COSTS

340-81-020

Costs for planning, design, implementation, ~~{and}~~ construction, ~~{including}~~ essential land acquisition, financing and loan issuance costs, and related fiscal and legal costs may be included as eligible costs for projects receiving financial assistance unless otherwise provided by law. Costs shall be limited to those reasonable and necessary to complete an operable facility that will serve the projected population during the design life of the facility, consistent with the applicable Land Use Plan.

NATURE AND LIMITATIONS OF FINANCIAL ASSISTANCE

340-81-026

- (1) Unless otherwise approved by the Legislature, Legislative Ways and Means Committee or Legislative Emergency Board, financial assistance shall be limited to loans.
- (2) Loans secured by means other than sale of General Obligation Bonds by the public agency shall be subject to approval by the Environmental Quality Commission.
- (3) Loans shall not exceed 100 percent of the eligible project cost. In the event the project receives grant or loan assistance from any other sources, the total of such assistance and any loan provided from the Pollution Control Fund shall not exceed 100 percent of the eligible costs.
- (4) The loan interest rate paid by the public agency shall be equal to the interest rate on the state bonds from which the loan is made, except as provided in sections (5) and (6) of this rule.
- (5) ~~{The Department shall add to the rate of interest otherwise to be charged on loans a surcharge not to exceed an annual rate of one-tenth of one percent to be applied to the outstanding principal balances in order to offset the Department's expenses of administering the loan and the Pollution Control Fund.}~~ The Department shall charge fees, purchase loans at a discount, or add to the rate of interest otherwise to be charged on loans a surcharge, in an amount reasonably calculated to permit the Department to recover its costs in issuing General Obligation Bonds to fund the loans, and its costs in acquiring the loans and administering the loans and the Pollution Control Fund.
- ~~{(6) The Department may assess a special loan processing fee of up to \$10,000 to recover extraordinary costs for legal and financial specialists that may be needed to enable the Department to satisfy itself that the loan is legally and financially sound.}~~
- ~~{(7)}~~ (6) The public agency must retire its debt obligation to the state at least as rapidly as the state bonds from which the loan funds are derived are to be retired; except that special debt service

requirements on the public agency's loan may be established by the Department when:

- (a) A debt requirement schedule longer than the state's bond repayment schedule is legally required; or
- (b) Other special circumstances are present.

~~[(8)]~~(7) Interest and principal payments shall be due at least thirty days prior to the interest and principal payment dates established for the state bonds from which the loan is advanced.

~~[(9)]~~(8) Any excess loan funds held by the public agency following completion of the project for which funds are advanced shall be used for prepayment of loan principal and interest.

PRELIMINARY REQUEST FOR FINANCIAL ASSISTANCE

340-81-031

- (1) Public agencies desiring to receive financial assistance from the Department shall file a preliminary application ~~{on-forms-supplied-by-the Department}~~. This application will set forth:
 - (a) A description of the project for which funding assistance is desired;
 - (b) A description of the pollution control problem that the project will assist in resolving;
 - (c) The estimated cost of the project;
 - (d) The schedule for the project including the schedule for a bond election if one is necessary;
 - (e) The funding sources for the project;
 - (f) The method for securing the loan being requested from the Department;
 - (g) Such other information as the Department deems necessary.
- (2) Preliminary applications may be filed with the Department at any time.
- (3) The Department may give notice of intent to receive preliminary applications by a date certain in order to prepare a priority list if such lists become necessary to allocate anticipated available funds.
- (4) This section shall not apply to financial assistance which the Department provides pursuant to a long-term, written agreement with a public agency.

PRIORITIZATION OF PRELIMINARY APPLICATIONS

340-81-036

- (1) If it appears that the potential requests for financial assistance may exceed the funds available, the Department shall notify potential applicants of the deadline for submitting preliminary applications to receive consideration in the prioritization process. Such prioritization will generally occur no more frequently than once per year. To the extent possible, the prioritization process will be completed in February in order to mesh with local budget processes and facilitate project initiation during favorable construction weather.
- (2) The process for prioritization shall be as follows:
 - (a) Each project shall be assigned points based on the schedule contained in OAR 340-81-~~f1~~041.
 - (b) Projects shall be ranked by point total from highest to lowest with the project receiving the highest points being the highest priority for funding assistance. A fundable list shall then be established based on available funds.
 - (c) The Department shall notify each public agency within the fundable range on the list and forward a draft loan agreement for review, completion, and execution.
 - (d) If the loan agreement is not completed, executed, and returned to the Department within 60 days of notification, the public agency's priority position for funding assistance during that year shall be forfeited, and the funds made available in order of priority to projects below the fundable line on the list. The 60-day time limit may be extended by the Department upon request of the applicant with a demonstration of need to complete required legal and administrative processes.
- (3) If funds remain after all qualifying applications on the list are funded, the Department may fund new requests from qualifying applicants on a first-come, first-serve basis.

(4) This section shall not apply to financial assistance which the Department provides pursuant to a long-term, written agreement with a public agency.

EXECUTION OF LOAN AGREEMENT

340-81-046

- (1) The loan agreement shall at a minimum specify:
- (a) The specific purpose for which funds are advanced;
 - (b) The security to be provided;
 - (c) The schedule for payment of interest and principal;
 - (d) The source of funds to be pledged for repayment of the loan;
 - (e) The additional approvals that must be obtained from the Department prior to advance of funds or start of construction.

~~(2) The loan agreement shall have as attachments the following:~~

- ~~(a) A list of general assurances and covenants as approved by the Attorney General;~~
- ~~(b) An official resolution or record of the public agency's governing body authorizing the loan agreement and authorizing an official of the public agency to execute all documents relating to the loan;~~
- ~~(c) A legal opinion of the public agency's attorney establishing the legal authority of the public agency to incur the indebtedness and enter into the loan agreement;~~
- ~~(d) Copies of ordinances pertinent to the construction, operation, and loan repayment for the project and the public agency's total sewerage facility including relevant user charges, connection charges, and system development charges;~~
- ~~(e) A 5-year projection of revenues and expenditures related to the construction, operation and debt service for the project and the public agency's total sewerage facility which assures that the project is self-supporting and self-liquidating.~~

STATE OF OREGON
ENVIRONMENTAL QUALITY COMMISSION

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

STATEMENT OF NEED
TEMPORARY RULE AMENDING
POLLUTION CONTROL BOND PROGRAM RULES

In accordance with ORS 183.335(5), the Environmental Quality Commission makes the following findings and declarations in support of temporary rules amending the Commission's rules that govern its program of issuing Pollution Control Bonds and providing funding for eligible local government projects.

(a) Statement of Authority and Pertinent Laws.

ORS 468.195 to 468.260 implement and govern the Pollution Control Bond Program established by Article XI-H of the Oregon Constitution. These statutes, and ORS 468.020, which authorizes the Commission to adopt such standards as it considers necessary and proper in performing the functions vested by law in the Commission, constitute the legal authority relied on and bearing upon the amendment of the rules.

(b) Failure to act promptly to amend the rules will result in serious prejudice to the public interest, particularly the interests of the cities of Portland and Gresham and residents of unincorporated areas of Multnomah County that are subject to a Commission order finding that a threat to drinking water quality exists due to inadequate or nonexistent sewage disposal facilities, and groundwater pollution arising from the consequent proliferation of septic tanks and drainfields.

(c) To remedy the threat to drinking water, the Department of Environmental Quality (DEQ) and the cities of Portland and Gresham established an agreement under which DEQ will issue Pollution Control Bonds, using the proceeds to purchase bonds of the two cities to finance sewer facilities

necessary to abate the threat to drinking water. The cities, in pursuing these needed sewer projects have established construction schedules, undertaken related financial commitments, and have established schedules for their first issues of bonds under the agreement with DEQ.

(d) One of the purposes of the administrative rules controlling state financial assistance to public agencies for water pollution control facilities is the reimbursement of the Department's costs of issuing Pollution Control Bonds and of purchasing local government debt. Current rules provide for maximum amounts of costs that the Department may recover from borrowers, both with respect to extraordinary lump sum processing fees and with respect to interest rate surcharges, that may not enable the Department to recover its actual costs of facilitating the financing of mid-Multnomah County sewer construction. Failure to act promptly in this instance may seriously compromise the public interest, in that the Department might be forced to absorb the cost of this activity in its existing budget, depriving other programs of needed resources.

(e) The rule amendments are also necessary to permit the cities to receive Pollution Control Funds without the extended application and review process under the current rules. If amendments necessary to implement this program are not made immediately, neither DEQ nor the cities may issue their bonds and fund the project in a timely manner. This will result in serious prejudice to the City of Gresham, which is relying on the bond proceeds to meet related financial commitments on October 15, 1990. If the rules are not amended immediately, the time necessary for DEQ and the City to issue bonds will prevent the City from meeting these obligations by using the bond proceeds.

(f) The cities and DEQ have made their bond issuance schedules, known to the financial community. If the parties cannot, through the immediate adoption of the amendments, proceed with the issuance of their respective bonds, all parties will suffer serious prejudice because the cancellation of the bonds will impair their abilities to market future bonds and increase their financing costs. Further, the government bond market is now very favorable, but anticipated economic changes will adversely affect interest rates and drive up the costs of government debt in the near future. Therefore, failure to amend the rules, and the consequent delay in issuing

bonds, will seriously prejudice the interests of all three government entities by resulting in higher financing costs.

(g) Finally, the construction industry currently is experiencing significant inflation. If the rule amendments are not implemented immediately, it will delay the commencement of construction of the sewer facilities, seriously prejudicing the interests of all parties by increasing the costs to the public of the sewer improvement projects.

STATE OF OREGON
ENVIRONMENTAL QUALITY COMMISSION

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

RULEMAKING STATEMENTS
FOR PERMANENT RULES
AMENDING POLLUTION CONTROL BOND PROGRAM RULES

Statutory Authority

ORS 468.195 through 468.220 authorizes rule adoption for the purpose of administering the Pollution Control Fund, OAR Chapter 340, Division 81.

Need for the Rules

The proposed rules are necessary in order to establish an administrative process that would be compatible with long term financing agreements that involve a series of bond issues. The proposed rules are also necessary to correctly set appropriate levels of cost recovery.

The Department of Environmental Quality (the Department or DEQ) and the Cities of Gresham and Portland have entered into an Intergovernmental Agreement that defines a structure for the financing of sewerage work in mid-Multnomah County. The agreement calls for the Department to simultaneously issue State of Oregon Pollution Control Bonds and use the proceeds of that issue to purchase Special Assessment Improvement Bonds issued by the Cities of Gresham and Portland.

Principal Documents relied Upon

- a. Oregon Revised Statutes 468.195 - 220.
- b. Oregon Administrative Rules, Chapter 340, Division 81.
- c. Letter from bond counsel dated July 10, 1990.
- d. Letter from Assistant Attorney General dated July 9, 1990.
- e. Letter from bond counsel dated July 6, 1990.

Fiscal and Economic Impact

a. General Public:

The impact on the general public is limited to those residents of the mid-Multnomah County area whose sewer assessments will be financed with the proceeds of Pollution Control Bonds. The primary effect of the proposed rule changes is that the Department will be able to provide low-cost financing, through the cities, to the affected residents. Those residents will enjoy interest rates significantly below that which they would be able to obtain from conventional, commercial lenders. Without the rule changes, the financing could not be done and the interest rate savings would not be available.

The secondary effect is that the additional cost recovery allowed by the rule amendments will add the cost of issuing the bonds to the total amount financed. Those who directly benefit from the financing program would pay for its transaction costs. The issuance costs absorbed by the public would be small compared to the interest rate savings provided by this financing arrangement.

b. Small Business:

There are no direct impacts on small businesses. The sewerage project in mid-Multnomah County is driven by the threat to drinking water in the area. The financing mechanism makes the project financially feasible to area residents. The only small businesses that will be affected will be those that are involved in the sewerage process.

c. Large Business

There are no direct impacts on large businesses. The sewerage project in mid-Multnomah County is driven by the threat to drinking water in the area. The financing mechanism makes the project financially feasible to area residents. The only large businesses that will be affected will be those that are involved in the sewerage process.

d. Local Governments

The immediately affected local governments are the Cities of Gresham and Portland. The rule changes will

enable the Department to provide the cities with a low-cost financing mechanism for sewerage unincorporated areas that would not impact the cities' credit rating. Other local governments could, in the future, similarly benefit from the increased flexibility that the rule changes will provide.

e. State Agencies

If the rules remained unchanged, the Department would be adversely impacted in two ways. First, the Department would be forced to absorb certain costs of issuing bonds, which could make the mechanism of Pollution Control Fund financing unavailable to local governments for complex transactions. Second, the Department would not be able to efficiently enter into long term financing agreements by adopting umbrella agreements that would govern a series of transactions.

Adoption of the proposed rule changes would eliminate adverse impacts to the Department. There would be no beneficial economic impacts to the Department because the cost recovery would only include actual, identifiable costs that would not otherwise be incurred.

No other state agencies would be impacted.

POLLUTION CONTROL

168.215

468.185 Procedure to revoke certification; reinstatement. (1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the commission may order the revocation of the certification issued under ORS 468.170 of any pollution control or solid waste, hazardous wastes or used oil facility, if it finds that:

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

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

(2) As soon as the order of revocation under this section has become final, the commission shall notify the Department of Revenue and the county assessor of the county in which the facility is located of such order.

(3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405, 316.097 and 317.116.

(4) Except as provided in subsection (5) of this section, if the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief provided under ORS 307.405, 316.097 or 317.116 in connection with such facility, as the case may be, from and after the date that the order of revocation becomes final.

(5) The commission may reinstate a tax credit certification revoked under paragraph (b) of subsection (1) of this section if the commission finds the facility has been brought into compliance. If the commission reinstates certification under this subsection, the commission shall notify the Department of Revenue or the county assessor of the county in which the facility is located that the tax credit certification is reinstated for the remaining period of the tax credit, less the period of revocation as determined by the commission. [Formerly 449.646; 1975 c.496 §7; 1977 c.795 §7; 1979 c.302 §7; 1987 c.599 §6]

468.187 [1981 c.710 §2; repealed by 1984 s.s. c.1 §18]

468.190 Allocation of costs to pollution control. (1) In establishing the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil for facilities qualifying for certification under ORS 468.170, the commission shall consider the following factors:

(a) If applicable, the extent to which the facility is used to recover and convert waste products into a salable or usable commodity.

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

(c) If applicable, the alternative methods, equipment and costs for achieving the same pollution control objective.

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

(e) 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.

(2) The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent. If zero percent the commission shall issue an order denying certification.

(3) The commission may adopt rules establishing methods to be used to determine the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil. [Formerly 449.655; 1974 s.s. c.37 §4; 1977 c.795 §8; 1983 c.637 §4]

STATE POLLUTION CONTROL BONDS

468.195 Issuance of bonds authorized; principal amount. In order to provide funds for the purposes specified in Article XI-H of the Oregon Constitution bonds may be issued in accordance with the provisions of ORS 286.031 to 286.061. The principal amount of the bonds outstanding at any one time, issued under authority of this section, shall not exceed \$260 million par value. [Formerly 449.672; 1981 c.312 §1; 1981 c.660 §42]

468.200 [Formerly 449.675; repealed by 1981 c.660 §18]

468.205 [Formerly 449.677; repealed by 1981 c.660 §18]

468.210 [Formerly 449.680; 1975 c.462 §14; repealed by 1981 c.660 §15]

168.215 Pollution Control Fund. The money realized from the sale of each issue of bonds shall be credited to a special fund in the State Treasury, separate and distinct

from the General Fund, to be designated the Pollution Control Fund; which fund is hereby appropriated for the purpose of carrying out the provisions of ORS 468.195 to 468.260. It shall not be used for any other purpose, except that this money, with the approval of the State Treasurer, may be invested as provided by ORS 293.701 to 293.776, 293.810 and 293.820, and the earnings from such investments inure to the Pollution Control Sinking Fund. [Formerly 449.682]

468.220 Department to administer fund; uses; legislative approval of grants; administrative assessment. (1) The department shall be the agency for the State of Oregon for the administration of the Pollution Control Fund. The department is hereby authorized to use the Pollution Control Fund for one or more of the following purposes:

(a) To grant funds not to exceed 30 percent of total project costs for eligible projects as defined in ORS 454.505 or sewerage systems as defined in ORS 468.700.

(b) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (a) of this subsection in an amount not to exceed 100 percent of the total project costs for eligible projects.

(c) To acquire, by purchase, or otherwise, other obligations of any city that are authorized by its charter in an amount not to exceed 100 percent of the total project costs for eligible projects.

(d) To grant funds not to exceed 30 percent of the total project costs for facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities.

(e) To make loans or grants to any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, for planning of eligible projects as defined in ORS 454.505, sewerage systems as defined by ORS 468.700 or facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities. Grants made under this paragraph shall be considered a part of any grant authorized by paragraph (a) or (d) of this subsection if the project is approved.

(f) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(g) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for the purpose of paragraphs (a) and (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(h) To pay compensation required by law to be paid by the state for the acquisition of real property for the disposal by storage of environmentally hazardous wastes.

(i) To dispose of environmentally hazardous wastes by the Department of Environmental Quality whenever the department finds that an emergency exists requiring such disposal.

(j) To acquire for the state real property and facilities for the disposal by landfill, storage or otherwise of solid waste, including but not limited to, transfer and resource recovery facilities.

(k) To acquire for the state real property and facilities for the disposal by incineration or otherwise of hazardous waste or PCB.

(L) To provide funding for the Assessment Deferral Loan Program Revolving Fund established in ORS 454.436.

(m) To provide funding for the Orphan Site Account established in ORS 466.590 but only to the extent that the department reasonably estimates that debt service from bonds issued to finance such facilities or activities shall be fully paid from fees collected pursuant to ORS 453.402 (2)(c), under ORS 459.236 and under ORS 465.101 to 465.131 for the purpose of providing funds for the Orphan Site Account and other available funds, but not from repayments of financial assistance under ORS 465.265 to 465.310 or from moneys recovered from responsible parties.

(n) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of this state, or combination thereof, for facilities or activities related to removal or remedial action of hazardous substances.

(2) The facilities referred to in paragraphs (a) to (c) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(3) The facilities referred to in paragraphs (d), (f) and (g) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal

Government, user charges, assessments and other fees.

(4) The real property and facilities referred to in paragraphs (j) and (k) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(5) The department may sell or pledge any bonds, notes or other obligations acquired under paragraph (b) of subsection (1) of this section.

(6) Before making a loan or grant to or acquiring general obligation bonds or other obligations of a municipal corporation, city, county or agency for facilities for the disposal of solid waste or planning for such facilities, the department shall require the applicant to demonstrate that it has adopted a solid waste management plan that has been approved by the department. The plan must include a waste reduction program.

(7) Any grant authorized by this section shall be made only with the prior approval of the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

(8) The department may assess those entities to whom grants and loans are made under this section to recover expenses incurred in administering this section. [Formerly 449.685; 1977 c.95 §8; 1977 c.704 §9; 1979 c.773 §9; 1981 c.312 §2; 1985 c.670 §42; 1987 c.695 §10; 1989 c.833 §114]

Note: Section 170, chapter 833, Oregon Laws 1989, provides:

Sec. 170. If the Supreme Court declares that sections 139 to 148 of this Act impose a tax or excise levied on, with respect to or measured by the extractions, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 468.220, as amended by section 114 of this Act, is further amended to read:

468.220. (1) The department shall be the agency for the State of Oregon for the administration of the Pollution Control Fund. The department is hereby authorized to use the Pollution Control Fund for one or more of the following purposes:

(a) To grant funds not to exceed 30 percent of total project costs for eligible projects as defined in ORS 454.505 or sewerage systems as defined in ORS 468.700.

(b) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (a) of this subsection in an amount not to exceed 100 percent of the total project costs for eligible projects.

(c) To acquire, by purchase, or otherwise, other obligations of any city that are authorized by its charter in an amount not to exceed 100 percent of the total project costs for eligible projects.

(d) To grant funds not to exceed 30 percent of the total project costs for facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities.

(e) To make loans or grants to any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, for planning of eligible projects as defined in ORS 454.505, sewerage systems as defined by ORS 468.700 or facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities. Grants made under this paragraph shall be considered a part of any grant authorized by paragraph (a) or (d) of this subsection if the project is approved.

(f) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(g) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for the purpose of paragraphs (a) and (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(h) To pay compensation required by law to be paid by the state for the acquisition of real property for the disposal by storage of environmentally hazardous wastes.

(i) To dispose of environmentally hazardous wastes by the Department of Environmental Quality whenever the department finds that an emergency exists requiring such disposal.

(j) To acquire for the state real property and facilities for the disposal by landfill, storage or otherwise of solid waste, including but not limited to, transfer and resource recovery facilities.

(k) To acquire for the state real property and facilities for the disposal by incineration or otherwise of hazardous waste or PCB.

(l) To provide funding for the Assessment Deferral Loan Program Revolving Fund established in ORS 468.975.

(m) To provide funding for the Orphan Site Account established in ORS 466.590 but only to the extent that the department reasonably estimates that debt service from bonds issued to finance such facilities or activities shall be fully paid from fees collected pursuant to ORS 453.402 (2)(c), under ORS 459.236, under sections 162 to 168, chapter 833, Oregon Laws 1989, for the purpose of providing funds for the Orphan Site Account and other available funds, but not from repayments of financial assistance under ORS 465.265 to 465.310 or from moneys recovered from responsible parties.

(n) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of this state, or combination thereof, for facilities or activities related to removal or remedial action of hazardous substances.

(2) The facilities referred to in paragraphs (a) to (c) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(3) The facilities referred to in paragraphs (d), (f) and (g) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(4) The real property and facilities referred to in paragraphs (j) and (k) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(5) The department may sell or pledge any bonds, notes or other obligations acquired under paragraph (b) of subsection (1) of this section.

(6) Before making a loan or grant to or acquiring general obligation bonds or other obligations of a municipal corporation, city, county or agency for facilities for the disposal of solid waste or planning for such facilities, the department shall require the applicant to demonstrate that it has adopted a solid waste management plan that has been approved by the department. The plan must include a waste reduction program.

(7) Any grant authorized by this section shall be made only with the prior approval of the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

(8) The department may assess those entities to whom grants and loans are made under this section to recover expenses incurred in administering this section.

468.225 Investment yield on undistributed bond funds and revenues. All undistributed bond funds and revenues received as payment upon agency bonds or other obligations, if invested, shall be invested to produce an adjusted yield not exceeding the limitations imposed by section 103, subsection (d) of the Internal Revenue Code of 1954, and amendments thereto in effect on March 1, 1971. [Formerly 449.687]

468.230 Pollution Control Sinking Fund; use; limitation. (1) The commission shall maintain, with the State Treasurer, a Pollution Control Sinking Fund, separate and distinct from the General Fund. The Pollution Control Sinking Fund shall provide for the payment of the principal and interest upon bonds issued under authority of Article XI-H of the Constitution of Oregon and ORS 468.195 to 468.260 and administrative expenses incurred in issuing the bonds. Moneys of the sinking fund are hereby appropriated for such purpose. With the approval of the commission, the moneys in the Pollution Control Sinking Fund may be invested as provided by ORS 293.701 to 293.776, 293.810 and 293.820, and earnings from such investment shall be credited to the Pollution Control Sinking Fund.

(2) The Pollution Control Sinking Fund shall consist of all moneys received from ad valorem taxes levied pursuant to ORS 468.195 to 468.260 and assessments collected under ORS 468.220 (8), moneys transferred from the Orphan Site Account under ORS 466.590 (6), all moneys that the Legislative Assembly may provide in lieu of such taxes, all earnings on the Pollution Control Fund, Pollution Control Sinking Fund, and all other revenues derived from contracts,

bonds, notes or other obligations, acquired, by the commission by purchase, loan or otherwise, as provided by Article XI-H of the Constitution of Oregon and by ORS 468.195 to 468.260.

(3) The Pollution Control Sinking Fund shall not be used for any purpose other than that for which the fund was created. Should a balance remain therein after the purposes for which the fund was created have been fulfilled or after a reserve sufficient to meet all existing obligations and liabilities of the fund has been set aside, the surplus remaining may be transferred to the Pollution Control Fund at the direction of the commission. [Formerly 449.690; 1981 c.312 §3; 1989 c.833 §1(5)]

468.235 Levy of taxes to meet bond obligation authorized. Each year the Department of Revenue shall determine the amount of revenues and other funds that are available and the amount of taxes, if any, that should be levied in addition thereto to meet the requirements of ORS 468.195 to 468.260 for the ensuing fiscal year. Such additional amount of tax is hereby levied and shall be apportioned, certified to, and collected by the several counties of the state in the manner required by law for the apportionment, certification and collection of other ad valorem property taxes for state purposes. This tax shall be collected by the several county treasurers and remitted in full to the State Treasurer in the manner and the times prescribed by law, and shall be credited by the State Treasurer to the Pollution Control Sinking Fund. [Formerly 449.692]

468.240 Remedy where default occurs on payment to state. If any municipal corporation, city or county defaults on payments due to the state under ORS 468.195 to 468.260, the state may withhold any amounts otherwise due to the corporation, city or county to apply to the indebtedness. [Formerly 449.694]

468.245 Acceptance of federal funds. The commission may accept assistance, grants and gifts, in the form of money, land, services or any other thing of value from the United States or any of its agencies, or from other persons subject to the terms and conditions thereof, regardless of any laws of this state in conflict with regulations of the Federal Government or restrictions and conditions of such other persons with respect thereto, for any of the purposes contemplated by Article XI-H of the Constitution of Oregon and by ORS 468.195 to 468.260. Unless enjoined by the terms and conditions of any such gift or grant, the commission may convert the same or any of them into money through sale or other disposal thereof. [Formerly 449.695]

468.250 Participation in matching fund programs with Federal Government. (1) The commission may participate on behalf of the State of Oregon in any grant program funded in part by an agency of the Federal Government if the implementation of the program requires matching funds of the state or its participation in administering the program. However, any grant advanced by the commission to an otherwise eligible applicant shall not exceed 30 percent of the total eligible costs of the project applied for, and further provided that the project shall not be less than 70 percent self-supporting and self-liquidating from those sources prescribed by Article XI-H of the Constitution of Oregon.

(2) Subject to conditions imposed on federally granted funds, a municipal corporation, city, county or agency of the State of Oregon, or combination thereof, who is eligible for federal funds for a project during its construction or becomes eligible for reimbursement for funds expended, if the project has been constructed and placed into operation, shall apply for and pay to the commission such funds so received, or otherwise made available to it, in such amounts as determined by the commission as just and necessary, from an agency of the Federal Government. These funds shall first be used to reimburse the State of Oregon for the portion of any grant that was advanced to the municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for construction of the project that exceeded the federal requirements for state matching funds and any remainder thereof shall be used to apply upon the retirement of any principal and interest indebtedness due and owing to the State of Oregon arising out of funds loaned for the project prior to federal funds becoming available.

(3) The refusal of a municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, to apply for federal funds in such amounts as determined by the commission as just and necessary for which it would otherwise be eligible, shall be sufficient grounds to terminate any further participation in construction of a facility by the commission.

(4) The municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, shall consent to and request that funds made available to it by an agency of the Federal Government shall be paid directly to the commission if required to do so under subsection (2) of this section. [Formerly 449.697]

468.253 Authority of director to act to benefit fund.(1) Notwithstanding any other

provision of law, if the director finds that it will benefit the financial condition of the Pollution Control Sinking Fund, with the approval of the State Treasurer the director may:

(a) Sell bonds, notes, contracts or other obligations acquired by the commission by purchase, loan or otherwise from the proceeds of bonds issued under ORS 468.195 to 468.260, and pay costs associated with the sale from the proceeds of the sale.

(b) Pay to an obligor under such bonds, notes, contracts or other obligations such sums from the proceeds of a sale authorized by paragraph (a) of this subsection as the director determines, or hold or deposit such sums in trust for the benefit of such obligor under terms established by the director.

(2) Any proceeds of a sale authorized by subsection (1) of this section which remain after payments authorized by subsection (1) of this section shall be deposited in the Pollution Control Sinking Fund.

(3) An obligor under any bonds, notes, contracts or other obligations which are proposed to be sold by the director pursuant to subsection (1) of this section may waive its right to redeem such obligations prior to maturity, or otherwise renegotiate the terms of such obligations, if the obligor determines that so altering the terms of its obligation, together with payments to be received by the obligor under paragraph (b) of subsection (1) of this section, will benefit the obligor. [1989 c.731 §4]

468.255 Limit on grants and loans. Any funds advanced by the commission by grant shall not exceed 30 percent of the total project costs for eligible projects or for facilities related to disposal of solid wastes, and any obligation acquired by the commission by purchase, contract, loan, or otherwise, shall not exceed 100 percent of the total project costs for eligible projects or for facilities related to disposal of solid wastes. Combinations of funds granted and loaned by whatever means shall not total more than 100 percent of the eligible project costs. [Formerly 449.699; 1981 c.312 §4]

468.260 Return of unexpended funds to state required; use of returned funds. Any proceeds unexpended after a project is constructed and inspected, and after records relating thereto are audited by the commission, shall be returned to the commission on behalf of the State of Oregon to apply upon the retirement of principal and interest indebtedness on obligations acquired by it from a municipal corporation, city, county or agency of the State of Oregon, or any combinations thereof. [Formerly 449.701]

COUNTY POLLUTION CONTROL FACILITIES

468.263 Definitions for ORS 468.263 to 468.272. As used in ORS 468.263 to 468.272, unless the context requires otherwise:

(1) "Bonds" means revenue bonds or other types of obligations authorized by ORS 468.263 to 468.272.

(2) "Pollution control facilities" or "facilities" means any land, building or other improvement, appurtenance, fixture, item of machinery or equipment, and all other real and personal property, whether or not in existence or under construction at the time the bonds are issued, which are to be used in furtherance of the purpose of abating, controlling or preventing, altering, disposing or storing of solid waste, thermal, noise, atmospheric or water pollutants, contaminants, or products therefrom.

(3) "Governing body" means the county court or board of county commissioners. [1974 s.s. c.34 §2]

Note: 468.263 to 468.272 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.264 Policy. The Legislative Assembly finds:

(1) That control of environmental damage and general health and welfare of the citizens of the State of Oregon is promoted by encouraging the installation of antipollution devices, equipment and facilities.

(2) That the methods of financing provided in ORS 468.263 to 468.272 will encourage such installation. [1974 s.s. c.34 §1]

Note: See note under 468.263.

468.265 Powers of county over pollution control facilities. (1) In addition to any other powers which it may now have, each county shall have the following powers, together with all powers incidental thereto or necessary for the performance of the following:

(a) To acquire, whether by purchase, exchange, devise, gift or otherwise, establish, construct, improve, maintain, equip and furnish one or more pollution control facilities or any interest therein to be located, in whole or in part, within such municipality.

(b) To enter into a lease, sublease, lease-purchase, instalment sale, sale, or agreement for any facility upon such terms and conditions as the governing body may deem advisable, provided the same shall at least fully cover all debt service requirements with respect to the facility and shall not conflict

with the provisions of ORS 468.263 to 468.272.

(c) To sell, exchange, donate and convey to others any or all facilities upon such terms as the governing body may deem advisable, including the power to receive for any such sale the note or notes of the purchaser of the facilities or property whenever the governing body finds any such action to be in furtherance of the purposes of ORS 468.263 to 468.272.

(d) To issue revenue bonds for the purpose of carrying out any of its powers under ORS 468.263 to 468.272.

(e) Whenever the governing body finds such loans to be in the furtherance of the purposes of ORS 468.263 to 468.272 and subject always to the limitations contained in ORS 468.266, to make secured or unsecured loans for the purpose of financing or refinancing the acquisition, construction, improvement or equipping of a facility and to charge and collect interest on such loans and pledge the proceeds thereof as security for the payment of the principal and interest of any bonds issued hereunder and any agreements made in connection therewith.

(f) To mortgage and pledge any or all facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues, proceeds and receipts or any portion thereof from a facility as security for the payment of the principal of and interest on any bonds so issued.

(g) To refund outstanding obligations incurred by an enterprise to finance the cost of a facility when the governing body finds that such refinancing is in the public interest.

(h) To pay compensation for professional services and other services as the governing body shall deem necessary to carry out the purposes of ORS 468.263 to 468.272.

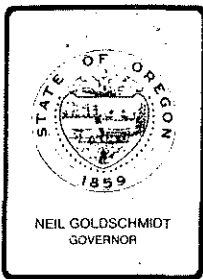
(i) To acquire and hold obligations of any kind to carry out the purposes of ORS 468.263 to 468.272.

(j) To invest and reinvest funds under its control as the governing body shall direct.

(k) To enter into contracts and execute any agreements or instruments and to do any and all things necessary or appropriate to carry out the purposes of ORS 468.263 to 468.272.

(2) The county shall not have the power to operate any facility as a business other than as lessor or seller, nor shall it permit any funds derived from the sale of bonds to be used by any lessee or purchaser of a facility as working capital. [1974 s.s. c.34 §3]

Note: See note under 468.263.



Department of Environmental Quality

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

REQUEST FOR EQC ACTION

Meeting Date: August 10, 1990
Agenda Item: M2
Division: MSD
Section: Finance

SUBJECT:

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.

PURPOSE:

At its June 29, 1990 meeting, the Environmental Quality Commission (EQC) approved Intergovernmental Agreements (agreements or Master Agreements) between the Department of Environmental Quality (DEQ or Department) and the City of Gresham and between the DEQ and the City of Portland. These agreements are part of the implementation plan for the protection of drinking water in mid-Multnomah County. The agreements establish a mechanism for financing sewer construction. The basic structure calls for DEQ to purchase special assessment improvement bonds (SAIBs) issued by the cities with the proceeds of simultaneously issued State of Oregon Pollution Control Bonds.

The agreements approved at the last EQC meeting are Master Agreements that will control a series of specific, subsequent bond purchases that are expected to span a period of about fourteen years. This bond purchase is the first of that series. It is anticipated that each individual Bond Purchase Agreement (BPA), like the ones that are attached, will be submitted for EQC approval. Each BPA submitted for approval will authorize the purchase of SAIBs and will be paired with a matching request for authorization to sell a corresponding series of Pollution Control Bonds.

ACTION REQUESTED:

Meeting Date: August 10, 1990
Agenda Item: M2
Page 2

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

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

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

- Approve Department Recommendation
 - Variance Request Attachment
 - Exception to Rule Attachment
 - Informational Report Attachment
 - Other: (specify) Attachment A
 - Authorize the sale of State of Oregon Pollution Control Bonds (Attachment A1).
 - Approve Bond Purchase Agreements for Gresham (Attachment A2) and Portland (Attachment A3).

DESCRIPTION OF REQUESTED ACTION:

Two simultaneous actions are requested. EQC authorization of the sale of State of Oregon Pollution Control Bonds and EQC approval of the Bond Purchase Agreements with the cities of Gresham and Portland. The BPAs specify the purchase, by DEQ, and the sale, by the cities, of SAIBs issued for the purpose of sewerage portions of mid-Multnomah County.

AUTHORITY/NEED FOR ACTION:

- Required by Statute: _____ Attachment
 - Enactment Date: _____
- Statutory Authority: ORS468.195 - .220 Attachment
- Pursuant to Rule: OAR 340-81-005 to -100 Attachment
- Pursuant to Federal Law/Rule: _____ Attachment

- Other: _____ Attachment

Meeting Date: August 10, 1990
Agenda Item: M2
Page 3

X Time Constraints: (explain)

The City of Gresham has requested a bond sale no later than October of this year. Though the bond sale process is on schedule, the timeframe for issuance is extremely tight.

DEVELOPMENTAL BACKGROUND:

- | | |
|--|------------------------|
| <u> </u> Advisory Committee Report/Recommendation | Attachment <u> </u> |
| <u> </u> Hearing Officer's Report/Recommendations | Attachment <u> </u> |
| <u> </u> Response to Testimony/Comments | Attachment <u> </u> |
| <u> X</u> Prior EQC Agenda Items: (list) | |
| Agenda Item N, May 25, 1990. Pollution Control Bonds:
Background on Agreement Provisions and Future Bond Sale
for Mid-Multnomah County Sewers. | |
| Agenda Item O, June 29, 1990. Pollution Control Bonds:
Review of Agreement Provisions and Authorization of Bond
Sales for Mid-Multnomah County Sewers. | |
| <u> </u> Other Related Reports/Rules/Statutes: | Attachment <u> </u> |
| <u> </u> Supplemental Background Information | Attachment <u> </u> |

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Bond Purchase Agreements reflect the balance of benefits and burdens and the sharing of risks that is embodied in the Master Agreements approved by the EQC and by the cities. The BPAs establish a number of terms not contained in the agreements, including:

- (1) the size and timing of the issue,
- (2) the Department's cost recovery,
- (3) the necessary representations, documents, and warranties that are needed for the transaction,
- (4) the parties' cancellation rights,
- (5) the sharing of costs that might be incurred, under different cancellation scenarios, and
- (6) provisions for cross-indemnification.

Once a decision is made to pursue financing through the mechanism outlined in the Master Agreement, significant expenses (such as bond counsel fees, financial advisor fees, printing costs, and staff time) begin to be rapidly incurred. It is therefore essential that all parties are ready and able to complete a bond purchase transaction before one is initiated.

PROGRAM CONSIDERATIONS:

The Department has not issued Pollution Control Bonds since 1982. The financing structure we are now using for the sewerage of mid-Multnomah County was not contemplated when the current rules were drafted. The existing administrative rules (OAR Division 81) were therefore reviewed to identify changes needed to consummate the mid-Multnomah County sewer financing. The previous, companion agenda item (N1) addressed those necessary changes. The BPAs attached to this agenda item and submitted for EQC approval were drafted with the assumption that those administrative rule amendments would be made.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The East County Sanitary Sewer Consortium studied a broad range of financing alternatives. Within the constraints posed by attempting a project of this magnitude in an unincorporated area, the Department and the cities considered several courses of action. The financing structure embodied in the agreements approved by the EQC on June 29, 1990 is the product of those efforts.

The Department did not consider alternatives; the sale of State of Oregon Pollution Control Bonds and the Bond Purchase Agreements implement the Master Agreements that the EQC has already approved. The BPAs simply provide the details of each bond issue's structure and identify the protection accorded to each party's interests.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Authorize 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 Agreements.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Approval of the BPAs by the EQC is consistent with prior Commission actions concerning the protection of drinking

Meeting Date: August 10, 1990
Agenda Item: M2
Page 5

water in the mid-Multnomah County area and with goal 9 of the strategic plan.

This request is consistent with agency policy and state statutes for issuing Pollution Control Bonds. The Attorney General's office, the State Treasurer's office, bond counsel, and city attorneys have all been involved in developing and reviewing the BPAs.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

Proceed with the sale of Pollution Control Bonds to be used for the purchase of Gresham and Portland SAIBs.

Approved:

Section: Noam Stampfer

Division: Pet. F. Dept.

Director: Lee Haun

Report Prepared By: Noam R. Stampfer

Phone: 229-5355

Date Prepared: July 10, 1990

(NRS:nrs)
(BPA.810)
(7/18/90)

RESOLUTION AUTHORIZING
AND REQUESTING ISSUANCE OF BONDS

The Environmental Quality Commission of the State of Oregon finds:

A. The Department of Environmental Quality (the Department) has entered into Intergovernmental Agreements with the cities of Gresham and Portland (the Cities). The agreements contemplate that the State of Oregon will issue General Obligation Pollution Control Bonds to finance the purchase of special assessment improvement bonds of the Cities (the Assessment Bonds). The Cities will issue the Assessment Bonds to finance sewer system improvements in mid-Multnomah County pursuant to the Mid-County Sewer Implementation Plan.

B. It is now desirable to issue State of Oregon General Obligation Pollution Control Bonds to finance the purchase of the Assessment Bonds which the Cities propose to issue this calendar year in accordance with the Intergovernmental Agreements.

C. Oregon Revised Statutes, Section 286.031, provides that all bonds of the State of Oregon shall be issued by the State Treasurer.

The Environmental Quality Commission of the State of Oregon hereby resolves:

Section 1. Issue. The State Treasurer of the State of Oregon is hereby authorized and requested to issue State of Oregon General Obligation Pollution Control Bonds (Pollution Control Bonds) in amounts which the State Treasurer determines, after consultation with the Director of the Department or the Director's designee, will be sufficient to purchase the Assessment Bonds to be issued by the Cities this calendar year, and to pay costs associated with issuing the Pollution Control Bonds. The Pollution Control Bonds shall mature, bear interest, be subject to redemption, be in such series, and otherwise be issued and sold upon the terms established by the State Treasurer after consultation with the Director of the Department or the Director's designee.

Section 2. Tax Exempt Status. The Department shall comply with all provisions of the Internal Revenue Code of 1986, as amended (the Code) which are required for interest on the Pollution Control Bonds to be excludable from gross income under the Code. The Department shall take all steps required so that the Pollution Control Bonds will not be "private activity bonds" under Section 141 of the Code, and will not be "arbitrage bonds" under Section 148 of the Code. The Department shall pay any rebates or penalties which may be due to the United States in

connection with the Pollution Control Bonds under Section 148 of the Code. The Director of the Department or the Director's designee may enter into covenants, on behalf of the Department, regarding the maintenance of the tax-exempt status of the Pollution Control Bonds.

Section 3. Other Action. The Director of the Department or the Director's designee may, on behalf of the Department, execute any agreements or certificates, and take any other action the Director or Director's designee reasonably deems necessary or desirable to issue and sell the Pollution Control Bonds and to purchase the Assessment Bonds in accordance with this resolution.

BOND PURCHASE AGREEMENT

This Bond Purchase Agreement is entered into by the parties to establish the terms and conditions under which the City of Gresham, Oregon shall sell a series of special assessment improvement bonds to the Department of Environmental Quality of the State of Oregon, and that Department shall purchase those bonds.

1. DEFINITIONS

Capitalized terms which are used in this agreement and are defined below shall have the following meanings:

"Bonds" means the City's Special Assessment Improvement Bonds, Series 1990, which are described in Section 2 of this Agreement.

"Bond Documents" means this Purchase Agreement, the Financing Agreement, the Master Ordinance, the Bonds and those documents described in Section 7 of this Purchase Agreement.

"City" means the City of Gresham, Oregon.

"Closing" means the date on which the Bonds are delivered to the DEQ in exchange for payment.

"DEQ" means the Department of Environmental Quality of the State of Oregon.

"Financing Agreement" means the Intergovernmental Agreement Between the City of Gresham and the Oregon Department of Environmental Quality which relates to the purchase of special assessment improvement bonds issued by the City in connection with the Mid-County Sewer Implementation Plan.

"Master Ordinance" means the ordinance adopted by the City pursuant to the Financing Agreement, which provides the basic terms under which the City will issue all special assessment improvement bonds to be purchased by the DEQ under the Financing Agreement, and which authorizes issuance of the Bonds.

"Purchase Agreement" means this Bond Purchase Agreement.

"State" means the State of Oregon, acting through its State Treasurer.

"State Bonds" means general obligation pollution control bonds issued by the State of Oregon to finance the acquisition of the Bonds.

2. AGREEMENT TO PURCHASE AND SELL; TERMS.

(a) Subject to the terms and conditions of this agreement, the DEQ agrees to purchase the Bonds from the City, and the City agrees to sell the Bonds to the DEQ. The Bonds shall be in the aggregate principal amount, be dated, pay interest, mature on the dates and in the amounts, be subject to redemption and otherwise be issued on the terms provided in Appendix A, which by this reference is made part of this Purchase Agreement.

(b) Each maturity of Bonds shall bear interest at a rate equal to the interest rate borne by the comparable maturity of State Bonds, plus fifteen basis points (0.0015%).

(c) DEQ shall purchase the Bonds for a price equal to: the product of the percentage price at which the State sells the State Bonds times the principal amount of the Bonds; less an amount of the City's allocable share of not more than \$75,000 (to be established by the DEQ prior to Closing and allocated between the City and other local governments receiving the proceeds of the State Bonds) representing reimbursement of the DEQ's issuance and administrative costs for the State Bonds and the purchase of the Bonds; plus accrued interest.

(d) Unless the DEQ consents in writing to a later date or time, the Closing shall occur on the date and at the time the State Bonds are delivered to their purchasers in exchange for payment.

3. REPRESENTATIONS AND WARRANTIES OF THE CITY.

The City represents, warrants and covenants to the DEQ that:

(a) The City has enacted the Master Ordinance and the Master Ordinance conform to the requirements of the Financing Agreement, is in full force and effect, and has not been changed from the form which has been reviewed and approved by the DEQ;

(b) The City has at the time of executing this Agreement and will have at the time of the Closing the power and authority to enter into and perform its obligations under the Bond Documents and to authorize, issue, sell and deliver the Bonds to the DEQ;

(c) To the best of the City's knowledge, the Bond Documents do not and will not conflict with, constitute or create a breach or default under any applicable existing law, charter provision, regulation, ordinance, order or agreement to which City is subject;

(d) To the best of City's knowledge, no governmental approvals or authorizations are necessary in connection with the authorization, execution and delivery of this Agreement, or the execution, sale and delivery of the Bonds to the DEQ which have not been obtained, or will not be obtained prior to the time of Closing;

(e) The Bonds will be issued under and in accordance with the Master Ordinance, will comply with all provisions of the Financing Agreement (which by this reference is made part of this Purchase Agreement), will be valid and legally binding obligations of the City in accordance with their terms, and will pay interest which is excludable from gross income under federal income tax laws.

4. DEQ'S RIGHT TO CANCEL.

(a) The DEQ, acting in good faith, shall have the right to cancel its commitment to purchase the Bonds by notifying the City of its election to do so if, after the execution of this Agreement and prior to the Closing:

(i) The State fails or is unable to sell, issue or deliver the State Bonds in amounts sufficient to permit the DEQ to purchase the Bonds for any reason, including the State Treasurer, acting pursuant to ORS 286.031 through 286.036 or other lawful authority declining to approve or withdrawing approval of the issuance of the State Bonds; or

(ii) The United States becoming engaged in hostilities which have resulted in a declaration of war or national emergency, or other national or international calamity or other event shall have occurred or accelerated to such an extent as, in the reasonable opinion of the DEQ, to have a materially adverse effect on the marketability of the State Bonds; or

(iii) There shall have occurred a general suspension of trading on the New York Stock Exchange; or

(iv) A general banking moratorium shall have been declared by United States, New York State or Oregon State authorities; or

(v) Legislation shall hereafter be enacted, or actively considered for enactment, with an effective date prior to the date of the delivery of the State Bonds, or a decision by a court of the United States shall hereafter be rendered, or a ruling or regulation by the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall hereafter be made, the effect of which is that the State Bonds are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and then in effect, or

(vi) A stop order, ruling or regulation by the Securities and Exchange Commission shall hereafter be issued or made, the effect of which is that the issuance, offering or sale of the State Bonds is in violation of any provision of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect and which, in the States's reasonable judgment, adversely affects the marketability of the State Bonds or the market price thereof.

(vii) Litigation or other proceedings are pending or threatened against the State, its agencies, officers or employees, in any way adversely affecting the authorization, validity, execution or delivery of the State Bonds or the levy and collection of any taxes or other amounts which may or are to be used to pay the State Bonds;

(viii) Litigation or other proceedings are pending or threatened against the City in any way adversely affecting the authorization, validity, execution or delivery of the Bond Documents or the levy and collection of the assessments or sewer revenues which are to be used to pay the Bonds;

(ix) Bond Counsel to the DEQ determines in good faith that the Bonds are not valid and legally binding obligations of the City in accordance with their terms, or that interest on the Bonds is not excludable from gross income under federal income tax laws;

(x) The City fails to provide the DEQ with any of the documents described in section 7, below, by the date and time specified in that section;

(xi) The DEQ determines in good faith that one or more of the City's representations or warranties in the Bond Documents are untrue or incorrect;

(xii) The DEQ reasonably determines that the estimated or final cash flows described in Sections 6 or 7 hereof do not conform to the requirements of the Financing Agreement; or

(b) If the DEQ cancels this Purchase Agreement for a reason listed in Section 4(a)(i) through 4(a)(vii): (i) the DEQ shall be obligated only to pay those costs described in Section 8(a)(ii) of this Purchase Agreement, and shall not be liable to the City or its agents for any of the City's costs, expenses or damages (which shall be paid by the City); and, (ii) the City shall not be liable to pay any costs or expenses of the DEQ or the State in connection with the issuance of the State Bonds or the purchase of the Bonds.

(c) If the DEQ cancels this Purchase Agreement for a reason listed in Section 4(a)(viii) through 4(a)(xii): (i) the City shall be liable for all its costs and expenses and all costs and expenses of the DEQ and the State which have been incurred in connection with the proposed purchase by the DEQ of the Bonds and the proposed issuance of the State Bonds, including the reasonable charges of the DEQ and the State for the time of their officers, employees, agents and consultants who have performed services in connection with the State Bonds and the purchase of the Bonds. Neither DEQ nor the State shall be obligated to pay any such costs.

5. CITY'S RIGHT TO CANCEL.

(a) The City may cancel this Purchase Agreement and terminate its obligation to sell the Bonds to the DEQ if the City delivers a written notice of cancellation to the DEQ and the State Treasurer of the State of Oregon in sufficient time to reasonably permit the DEQ and the State: (i) (for a competitive sale of the State Bonds) to prevent publication of the notice of sale for the State Bonds; or, (ii) (for a negotiated sale of the State Bonds) to prevent the State and its underwriter from pricing the State Bonds. The City may not otherwise cancel this Purchase Agreement without the written consent of the DEQ.

(b) If the City cancels this Purchase Agreement in accordance with this section, the City shall be liable for all its costs and expenses and all costs and expenses of the DEQ and the State which have been incurred in connection with the proposed purchase by the DEQ of the Bonds and the proposed issuance of the State Bonds, including the reasonable charges of the DEQ and the State for the time of their officers, employees, agents and consultants who have performed services in connection with the State Bonds and the purchase of the Bonds.

6. ATTACHED DOCUMENTS.

Attached hereto are:

(a) Certified copies of the Master Ordinance and the minutes of the meetings at which the Master Ordinance was considered and adopted (or an excerpt of the minutes);

(b) A preliminary cash flow statement certified by the City's financial advisor demonstrating that the estimated cashflows from the assessment contracts which are financed with the Bonds will be sufficient to pay the estimated debt service on the Bonds.

The City represents and warrants that the Master Ordinance and the preliminary cash flow comply with the requirements of the Financing Agreement.

7. DOCUMENTS REQUIRED BEFORE CLOSING OF STATE BONDS.

At least two business days before Closing, the City shall deliver to the DEQ the following executed documents, which shall be in form and substance satisfactory to the DEQ, and which shall be held in escrow by the DEQ pending Closing:

(a) The Bonds, with the terms set forth in Appendix A hereof, in typewritten, installment form, duly executed by the City.

(b) A certificate dated the Closing date from an authorized officer of City, stating that, to the knowledge and belief of such officer, after due review: the Bonds comply with all provisions of the Financing Agreement and the Master Ordinance; the Master Ordinance has been duly adopted by the City in the form which has been reviewed by the DEQ, and has not been amended, revoked or rescinded; the representations of the City contained in the Bond Documents were true and correct when made and are true and correct as of the Closing; and, the Bond Documents do not contain a material misstatement of a fact, or omit to state a material fact which the City should have disclosed to the DEQ in connection with the purchase by the DEQ of the City's Bonds.

(c) A cash flow statement certified by the City's financial advisor demonstrating that the scheduled cashflows from the assessment contracts which are financed with the Bonds will be sufficient to pay the scheduled debt service on the Bonds, as required by the Financing Agreement.

(d) An opinion of the City Attorney dated the Closing date establishing the legal authority of the City to

enter into this Purchase Agreement to the effect that no litigation or other proceedings are pending or threatened in any way adversely affecting the authorization, validity, execution or delivery of the Bond Documents or the levy and collection of the assessments or sewer revenues which are to be used to pay the Bonds, and that the Master Ordinance was duly enacted and are in full force and effect;

(e) A certificate, prepared by the DEQ's Bond Counsel and signed by the City, setting forth the facts, estimates and circumstances in existence on the date of Closing which establish that it is not expected that the proceeds of the Bonds will be used in a manner that could cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and any applicable regulations thereunder;

(f) Such additional documents, certificates, opinions or other evidence as the DEQ may deem reasonably necessary or desirable to evidence the due authorization, execution, authentication and delivery of the Bonds, the truth and accuracy as of the time of the Closing of the representations and warranties contained in this Purchase Agreement and such other matters as DEQ or its Bond Counsel may reasonably request.

8. PAYMENT OF COSTS; BREACH.

(a) If the State Bonds are issued and the DEQ purchases the Bonds in accordance with this Purchase Agreement:

(i) The City will pay the cost of preparing and executing the Bonds, the fees and disbursements of its financial advisor, any registration and paying agent fees, and any and all expenses of City employees and other representatives in connection with the Bonds.

(ii) DEQ will pay the fees and disbursements of DEQ's counsel, if any, Bond Counsel, and the costs of issuing, selling and delivering the State Bonds, but nevertheless shall be entitled to reimbursement of those expenses as provided in Section 2(c) of this Purchase Agreement.

(b) If this Purchase Agreement is cancelled by the DEQ pursuant to Section 4 hereof, the parties shall pay costs and expenses as provided in Section 4.

(c) If this Purchase Agreement is cancelled by the City pursuant to Section 5 hereof, the parties shall pay costs and expenses as provided in Section 5.

(d) If either the DEQ or the City fails to comply with their obligations hereunder, the aggrieved party shall be entitled to exercise any remedy available at law or in equity.

9. INDEMNITY.

(a) To the fullest extent permitted by law, the City agrees to indemnify and hold harmless the State, the DEQ and its officers, agents and employees against any and all losses, claims, damages liabilities and expenses (i) arising out of any material misrepresentation in the Bond Documents, (ii) to the extent of the aggregate amount paid in settlement of any such litigation if such settlement is effected with the written consent of the City. In case any claim shall be made or action brought against the State, the DEQ or its officers, agents or employees for which indemnity may be sought against the City as provided above, the State or the DEQ shall promptly notify the City in writing setting forth the particulars of such claim or action and the City shall assume the defense thereof, and the payment of all expenses. The State, the DEQ or its officers agents or employee shall have the right to retain separate counsel in any such action but shall bear the fees and expenses of such counsel, at its own expense and liability. The indemnification which may be claimed against the City shall not exceed the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300), and shall be subject to the restrictions set forth in the Act, unless the provisions and limitations of that Act are, with respect to the indemnification agreed to in this subsection, preempted by federal law, including, but not limited to, the federal securities laws.

(b) To the fullest extent permitted by law, the DEQ agrees to indemnify and hold harmless the City and its officers, agents and employees against any and all losses, claims, damages liabilities and expenses (i) arising out of any material misrepresentation or omission in the State's official statements or other disclosure documents which are prepared and distributed in connection with the offer and sale of the State of Oregon bonds which are to be issued to finance the purchase of the Bonds, (ii) to the extent of the aggregate amount paid in settlement of any such litigation if such settlement is effected with the written consent of the DEQ. In case any claim shall be made or action brought against the City or its officers, agents or employees for which indemnity may be sought against the DEQ as provided above, the City shall promptly notify the DEQ in writing setting forth the particulars of such claim or action and the DEQ shall assume the defense thereof, and the payment of all expenses. The City or its officers agents or employee shall have the right to retain separate counsel in any such action but shall bear the fees and expenses of such counsel, at its own expense

and liability. The indemnification which may be claimed against the DEQ shall not exceed the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300), and shall be subject to the restrictions set forth in the Act, unless the provisions and limitations of that Act are, with respect to the indemnification agreed to in this subsection, preempted by federal law, including, but not limited to, the federal securities laws.

10. MISCELLANEOUS.

(a) Any notice required to be given under this Agreement to an entity listed below shall be given to the entity at the address shown below, unless the entity has provided a different address:

If to the DEQ:

[Insert appropriate address and officer to whose attention notice should be given]

If to the City:

[Insert appropriate address and officer to whose attention notice should be given]

If to the State Treasurer:

[Insert appropriate address and officer to whose attention notice should be given]

(b) This Agreement is made solely for the benefit of the City, the DEQ and the State, and no other party or person shall acquire or have any right hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect and shall survive the delivery of the Bonds.

(c) This Agreement may be executed in any number of counterparts, all of which, taken together, shall be one and the same instrument, and any parties hereto may execute this Agreement by signing any such counterpart.

DATED this ___ day of _____, 1990.

DEPARTMENT OF ENVIRONMENTAL
QUALITY OF THE STATE OF OREGON

CITY OF GRESHAM, OREGON

Fred Hansen, Director
Date: _____

Mayor
Date: _____

The Office of the State Treasurer has reviewed and approved this Purchase Agreement as being consistent with the applicable provisions of ORS Chapter 286.

Authorized Officer
Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Assistant Attorney General

City Attorney

APPENDIX A

DESCRIPTION OF THE BONDS

The Bonds shall be in the aggregate principal amount of \$_____, shall be dated _____, 1990, and shall bear interest payable semiannually on _____ and _____, commencing _____.

Maturity Schedule for Serial Bonds

<u>Maturity Years</u> <u>()</u>	<u>Principal</u> <u>Amount</u>
1991	\$
1992	
1993	
1994	
1995	
1996	
1997	
1998	

Maturity Schedule for Term Bonds

2003

Extraordinary Redemption

[insert extraordinary redemption language]

Mandatory Redemption Schedule

Term Bonds Due _____ 1, 2003 are subject to mandatory redemption on _____, _____ at a price of par, plus accrued interest [insert mandatory redemption provisions]

Optional Redemption Provisions

[Insert optional redemption language]

Required Notice of Redemption

The City must give the DEQ and the State written notice of proposed redemption of Bonds which must be received by the DEQ and the State at the addresses indicated in this Purchase Agreement not more than _____ days or less than _____ days prior to the proposed redemption date. The notice shall identify the amounts and maturity dates of the Bonds to be redeemed, and shall

state the redemption price and redemption date.

APPENDIX A

DESCRIPTION OF THE BONDS

The Bonds shall be in the aggregate principal amount of \$_____, shall be dated _____, 1990, and shall bear interest payable semiannually on _____ and _____, commencing _____.

Maturity Schedule for Serial Bonds

<u>Maturity Years</u> <u>(1)</u>	<u>Principal</u> <u>Amount</u>
1991	\$
1992	
1993	
1994	
1995	
1996	
1997	
1998	

Maturity Schedule for Term Bonds

2003

Extraordinary Redemption

[insert extraordinary redemption language]

Mandatory Redemption Schedule

Term Bonds Due _____ 1, 2003 are subject to mandatory redemption on _____, _____ at a price of par, plus accrued interest [insert mandatory redemption provisions]

Optional Redemption Provisions

[Insert optional redemption language]

Required Notice of Redemption

The City must give the DEQ and the State written notice of proposed redemption of Bonds which must be received by the DEQ and the State at the addresses indicated in this Purchase Agreement not more than _____ days or less than _____ days prior to the proposed redemption date. The notice shall identify the amounts and maturity dates of the Bonds to be redeemed, and shall state the redemption price and redemption date.

BOND PURCHASE AGREEMENT

This Bond Purchase Agreement is entered into by the parties to establish the terms and conditions under which the City of Portland, Oregon shall sell a series of special assessment improvement bonds to the Department of Environmental Quality of the State of Oregon, and that Department shall purchase those bonds.

1. DEFINITIONS

Capitalized terms which are used in this agreement and are defined below shall have the following meanings:

"Bonds" means the City's Special Assessment Improvement Bonds, Series 1990, which are described in Section 2 of this Agreement.

"Bond Documents" means this Purchase Agreement, the Financing Agreement, the Master Ordinance, the Bonds and those documents described in Section 7 of this Purchase Agreement.

"City" means the City of Portland, Oregon.

"Closing" means the date on which the Bonds are delivered to the DEQ in exchange for payment.

"DEQ" means the Department of Environmental Quality of the State of Oregon.

"Financing Agreement" means the Intergovernmental Agreement Between the City of Portland and the Oregon Department of Environmental Quality which relates to the purchase of special assessment improvement bonds issued by the City in connection with the Mid-County Sewer Implementation Plan.

"Master Ordinance" means the ordinance adopted by the City pursuant to the Financing Agreement, which provides the basic terms under which the City will issue all special assessment improvement bonds to be purchased by the DEQ under the Financing Agreement, and which authorizes issuance of the Bonds.

"Purchase Agreement" means this Bond Purchase Agreement.

"State" means the State of Oregon, acting through its State Treasurer.

"State Bonds" means general obligation pollution control bonds issued by the State of Oregon to finance the acquisition of the Bonds.

2. AGREEMENT TO PURCHASE AND SELL; TERMS.

(a) Subject to the terms and conditions of this agreement, the DEQ agrees to purchase the Bonds from the City, and the City agrees to sell the Bonds to the DEQ. The Bonds shall be in the aggregate principal amount, be dated, pay interest, mature on the dates and in the amounts, be subject to redemption and otherwise be issued on the terms provided in Appendix A, which by this reference is made part of this Purchase Agreement.

(b) Each maturity of Bonds shall bear interest at a rate equal to the interest rate borne by the comparable maturity of State Bonds, plus fifteen basis points (0.0015%).

(c) DEQ shall purchase the Bonds for a price equal to: the product of the percentage price at which the State sells the State Bonds times the principal amount of the Bonds; less an amount of the City's allocable share of not more than \$75,000 (to be established by the DEQ prior to Closing and allocated between the City and other local governments receiving the proceeds of the State Bonds) representing reimbursement of the DEQ's issuance and administrative costs for the State Bonds and the purchase of the Bonds; plus accrued interest.

(d) Unless the DEQ consents in writing to a later date or time, the Closing shall occur on the date and at the time the State Bonds are delivered to their purchasers in exchange for payment.

3. REPRESENTATIONS AND WARRANTIES OF THE CITY.

The City represents, warrants and covenants to the DEQ that:

(a) The City has enacted the Master Ordinance and the Master Ordinance conform to the requirements of the Financing Agreement, is in full force and effect, and has not been changed from the form which has been reviewed and approved by the DEQ;

(b) The City has at the time of executing this Agreement and will have at the time of the Closing the power and authority to enter into and perform its obligations under the Bond Documents and to authorize, issue, sell and deliver the Bonds to the DEQ;

(c) To the best of the City's knowledge, the Bond Documents do not and will not conflict with, constitute or create a breach or default under any applicable existing law, charter provision, regulation, ordinance, order or agreement to which City is subject;

(d) To the best of City's knowledge, no governmental approvals or authorizations are necessary in connection with the authorization, execution and delivery of this Agreement, or the execution, sale and delivery of the Bonds to the DEQ which have not been obtained, or will not be obtained prior to the time of Closing;

(e) The Bonds will be issued under and in accordance with the Master Ordinance, will comply with all provisions of the Financing Agreement (which by this reference is made part of this Purchase Agreement), will be valid and legally binding obligations of the City in accordance with their terms, and will pay interest which is excludable from gross income under federal income tax laws.

4. DEQ'S RIGHT TO CANCEL.

(a) The DEQ, acting in good faith, shall have the right to cancel its commitment to purchase the Bonds by notifying the City of its election to do so if, after the execution of this Agreement and prior to the Closing:

(i) The State fails or is unable to sell, issue or deliver the State Bonds in amounts sufficient to permit the DEQ to purchase the Bonds for any reason, including the State Treasurer, acting pursuant to ORS 286.031 through 286.036 or other lawful authority declining to approve or withdrawing approval of the issuance of the State Bonds; or

(ii) The United States becoming engaged in hostilities which have resulted in a declaration of war or national emergency, or other national or international calamity or other event shall have occurred or accelerated to such an extent as, in the reasonable opinion of the DEQ, to have a materially adverse effect on the marketability of the State Bonds; or

(iii) There shall have occurred a general suspension of trading on the New York Stock Exchange; or

(iv) A general banking moratorium shall have been declared by United States, New York State or Oregon State authorities; or

(v) Legislation shall hereafter be enacted, or actively considered for enactment, with an effective date prior to the date of the delivery of the State Bonds, or a decision by a court of the United States shall hereafter be rendered, or a ruling or regulation by the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall hereafter be made, the effect of which is that the State Bonds are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and then in effect, or

(vi) A stop order, ruling or regulation by the Securities and Exchange Commission shall hereafter be issued or made, the effect of which is that the issuance, offering or sale of the State Bonds is in violation of any provision of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect and which, in the States's reasonable judgment, adversely affects the marketability of the State Bonds or the market price thereof.

(vii) Litigation or other proceedings are pending or threatened against the State, its agencies, officers or employees, in any way adversely affecting the authorization, validity, execution or delivery of the State Bonds or the levy and collection of any taxes or other amounts which may or are to be used to pay the State Bonds;

(viii) Litigation or other proceedings are pending or threatened against the City in any way adversely affecting the authorization, validity, execution or delivery of the Bond Documents or the levy and collection of the assessments or sewer revenues which are to be used to pay the Bonds;

(ix) Bond Counsel to the DEQ determines in good faith that the Bonds are not valid and legally binding obligations of the City in accordance with their terms, or that interest on the Bonds is not excludable from gross income under federal income tax laws;

(x) The City fails to provide the DEQ with any of the documents described in section 7, below, by the date and time specified in that section;

(xi) The DEQ determines in good faith that one or more of the City's representations or warranties in the Bond Documents are untrue or incorrect;

(xii) The DEQ reasonably determines that the estimated or final cash flows described in Sections 6 or 7 hereof do not conform to the requirements of the Financing Agreement; or

(b) If the DEQ cancels this Purchase Agreement for a reason listed in Section 4(a)(i) through 4(a)(vii): (i) the DEQ shall be obligated only to pay those costs described in Section 8(a)(ii) of this Purchase Agreement, and shall not be liable to the City or its agents for any of the City's costs, expenses or damages (which shall be paid by the City); and, (ii) the City shall not be liable to pay any costs or expenses of the DEQ or the State in connection with the issuance of the State Bonds or the purchase of the Bonds.

(c) If the DEQ cancels this Purchase Agreement for a reason listed in Section 4(a)(viii) through 4(a)(xii): (i) the City shall be liable for all its costs and expenses and all costs and expenses of the DEQ and the State which have been incurred in connection with the proposed purchase by the DEQ of the Bonds and the proposed issuance of the State Bonds, including the reasonable charges of the DEQ and the State for the time of their officers, employees, agents and consultants who have performed services in connection with the State Bonds and the purchase of the Bonds. Neither DEQ nor the State shall be obligated to pay any such costs.

5. CITY'S RIGHT TO CANCEL.

(a) The City may cancel this Purchase Agreement and terminate its obligation to sell the Bonds to the DEQ if the City delivers a written notice of cancellation to the DEQ and the State Treasurer of the State of Oregon in sufficient time to reasonably permit the DEQ and the State: (i) (for a competitive sale of the State Bonds) to prevent publication of the notice of sale for the State Bonds; or, (ii) (for a negotiated sale of the State Bonds) to prevent the State and its underwriter from pricing the State Bonds. The City may not otherwise cancel this Purchase Agreement without the written consent of the DEQ.

(b) If the City cancels this Purchase Agreement in accordance with this section, the City shall be liable for all its costs and expenses and all costs and expenses of the DEQ and the State which have been incurred in connection with the proposed purchase by the DEQ of the Bonds and the proposed issuance of the State Bonds, including the reasonable charges of the DEQ and the State for the time of their officers, employees, agents and consultants who have performed services in connection with the State Bonds and the purchase of the Bonds.

6. ATTACHED DOCUMENTS.

Attached hereto are:

(a) Certified copies of the Master Ordinance and the minutes of the meetings at which the Master Ordinance was considered and adopted (or an excerpt of the minutes);

(b) A preliminary cash flow statement certified by the City's financial advisor demonstrating that the estimated cashflows from the assessment contracts which are financed with the Bonds will be sufficient to pay the estimated debt service on the Bonds.

The City represents and warrants that the Master Ordinance and the preliminary cash flow comply with the requirements of the Financing Agreement.

7. DOCUMENTS REQUIRED BEFORE CLOSING OF STATE BONDS.

At least two business days before Closing, the City shall deliver to the DEQ the following executed documents, which shall be in form and substance satisfactory to the DEQ, and which shall be held in escrow by the DEQ pending Closing:

(a) The Bonds, with the terms set forth in Appendix A hereof, in typewritten, installment form, duly executed by the City.

(b) A certificate dated the Closing date from an authorized officer of City, stating that, to the knowledge and belief of such officer, after due review: the Bonds comply with all provisions of the Financing Agreement and the Master Ordinance; the Master Ordinance has been duly adopted by the City in the form which has been reviewed by the DEQ, and has not been amended, revoked or rescinded; the representations of the City contained in the Bond Documents were true and correct when made and are true and correct as of the Closing; and, the Bond Documents do not contain a material misstatement of a fact, or omit to state a material fact which the City should have disclosed to the DEQ in connection with the purchase by the DEQ of the City's Bonds.

(c) A cash flow statement certified by the City's financial advisor demonstrating that the scheduled cashflows from the assessment contracts which are financed with the Bonds will be sufficient to pay the scheduled debt service on the Bonds, as required by the Financing Agreement.

(d) An opinion of the City Attorney dated the Closing date establishing the legal authority of the City to

enter into this Purchase Agreement to the effect that no litigation or other proceedings are pending or threatened in any way adversely affecting the authorization, validity, execution or delivery of the Bond Documents or the levy and collection of the assessments or sewer revenues which are to be used to pay the Bonds, and that the Master Ordinance was duly enacted and are in full force and effect;

(e) A certificate, prepared by the DEQ's Bond Counsel and signed by the City, setting forth the facts, estimates and circumstances in existence on the date of Closing which establish that it is not expected that the proceeds of the Bonds will be used in a manner that could cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and any applicable regulations thereunder;

(f) Such additional documents, certificates, opinions or other evidence as the DEQ may deem reasonably necessary or desirable to evidence the due authorization, execution, authentication and delivery of the Bonds, the truth and accuracy as of the time of the Closing of the representations and warranties contained in this Purchase Agreement and such other matters as DEQ or its Bond Counsel may reasonably request.

8. PAYMENT OF COSTS; BREACH.

(a) If the State Bonds are issued and the DEQ purchases the Bonds in accordance with this Purchase Agreement:

(i) The City will pay the cost of preparing and executing the Bonds, the fees and disbursements of its financial advisor, any registration and paying agent fees, and any and all expenses of City employees and other representatives in connection with the Bonds.

(ii) DEQ will pay the fees and disbursements of DEQ's counsel, if any, Bond Counsel, and the costs of issuing, selling and delivering the State Bonds, but nevertheless shall be entitled to reimbursement of those expenses as provided in Section 2(c) of this Purchase Agreement.

(b) If this Purchase Agreement is cancelled by the DEQ pursuant to Section 4 hereof, the parties shall pay costs and expenses as provided in Section 4.

(c) If this Purchase Agreement is cancelled by the City pursuant to Section 5 hereof, the parties shall pay costs and expenses as provided in Section 5.

(d) If either the DEQ or the City fails to comply with their obligations hereunder, the aggrieved party shall be entitled to exercise any remedy available at law or in equity.

9. INDEMNITY.

(a) To the fullest extent permitted by law, the City agrees to indemnify and hold harmless the State, the DEQ and its officers, agents and employees against any and all losses, claims, damages liabilities and expenses (i) arising out of any material misrepresentation in the Bond Documents, (ii) to the extent of the aggregate amount paid in settlement of any such litigation if such settlement is effected with the written consent of the City. In case any claim shall be made or action brought against the State, the DEQ or its officers, agents or employees for which indemnity may be sought against the City as provided above, the State or the DEQ shall promptly notify the City in writing setting forth the particulars of such claim or action and the City shall assume the defense thereof, and the payment of all expenses. The State, the DEQ or its officers agents or employee shall have the right to retain separate counsel in any such action but shall bear the fees and expenses of such counsel, at its own expense and liability. The indemnification which may be claimed against the City shall not exceed the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300), and shall be subject to the restrictions set forth in the Act, unless the provisions and limitations of that Act are, with respect to the indemnification agreed to in this subsection, preempted by federal law, including, but not limited to, the federal securities laws.

(b) To the fullest extent permitted by law, the DEQ agrees to indemnify and hold harmless the City and its officers, agents and employees against any and all losses, claims, damages liabilities and expenses (i) arising out of any material misrepresentation or omission in the State's official statements or other disclosure documents which are prepared and distributed in connection with the offer and sale of the State of Oregon bonds which are to be issued to finance the purchase of the Bonds, (ii) to the extent of the aggregate amount paid in settlement of any such litigation if such settlement is effected with the written consent of the DEQ. In case any claim shall be made or action brought against the City or its officers, agents or employees for which indemnity may be sought against the DEQ as provided above, the City shall promptly notify the DEQ in writing setting forth the particulars of such claim or action and the DEQ shall assume the defense thereof, and the payment of all expenses. The City or its officers agents or employee shall have the right to retain separate counsel in any such action but shall bear the fees and expenses of such counsel, at its own expense

and liability. The indemnification which may be claimed against the DEQ shall not exceed the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300), and shall be subject to the restrictions set forth in the Act, unless the provisions and limitations of that Act are, with respect to the indemnification agreed to in this subsection, preempted by federal law, including, but not limited to, the federal securities laws.

10. MISCELLANEOUS.

(a) Any notice required to be given under this Agreement to an entity listed below shall be given to the entity at the address shown below, unless the entity has provided a different address:

If to the DEQ:

[Insert appropriate address and officer to whose attention notice should be given]

If to the City:

[Insert appropriate address and officer to whose attention notice should be given]

If to the State Treasurer:

[Insert appropriate address and officer to whose attention notice should be given]

(b) This Agreement is made solely for the benefit of the City, the DEQ and the State, and no other party or person shall acquire or have any right hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect and shall survive the delivery of the Bonds.

(c) This Agreement may be executed in any number of counterparts, all of which, taken together, shall be one and the same instrument, and any parties hereto may execute this Agreement by signing any such counterpart.

DATED this __ day of _____, 1990.

DEPARTMENT OF ENVIRONMENTAL
QUALITY OF THE STATE OF OREGON

CITY OF PORTLAND, OREGON

Fred Hansen, Director

Date: _____

Mayor

Date: _____

The Office of the State Treasurer has reviewed and approved this Purchase Agreement as being consistent with the applicable provisions of ORS Chapter 286.

Authorized Officer

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Assistant Attorney General

City Attorney

APPENDIX A

DESCRIPTION OF THE BONDS

The Bonds shall be in the aggregate principal amount of \$ _____, shall be dated _____, 1990, and shall bear interest payable semiannually on _____ and _____, commencing _____.

Maturity Schedule for Serial Bonds

<u>Maturity Years</u> <u>()</u>	<u>Principal</u> <u>Amount</u>
1991	\$
1992	
1993	
1994	
1995	
1996	
1997	
1998	

Maturity Schedule for Term Bonds

2003

Extraordinary Redemption

[insert extraordinary redemption language]

Mandatory Redemption Schedule

Term Bonds Due _____ 1, 2003 are subject to mandatory redemption on _____, _____ at a price of par, plus accrued interest [insert mandatory redemption provisions]

Optional Redemption Provisions

[Insert optional redemption language]

Required Notice of Redemption

The City must give the DEQ and the State written notice of proposed redemption of Bonds which must be received by the DEQ and the State at the addresses indicated in this Purchase Agreement not more than _____ days or less than _____ days prior to the proposed redemption date. The notice shall identify the amounts and maturity dates of the Bonds to be redeemed, and shall state the redemption price and redemption date.