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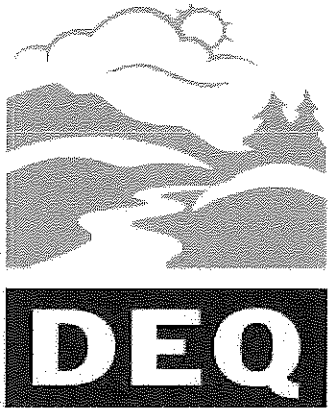
Part 2 of 2

OREGON

ENVIRONMENTAL QUALITY

COMMISSION MEETING

MATERIALS 06/29/1990



State of Oregon
Department of Environmental Quality

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NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: M
Division: O/D
Section: Hearings

SUBJECT:

Appeal of DEQ v Turnbull, Case #SW-SWR-89-03

PURPOSE:

Review of Hearings Officer's January 11, 1990 decision finding Phillip R. Turnbull liable for a $3,750 civil penalty.

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 ___

_X_ 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:

Phillip R. Turnbull has asked the Environmental Quality Commission to review the January 11, 1990 Hearings Officer's decision finding him liable for a $3,750 civil penalty. Included for the Commission's review are:

1. Hearings Officer's Findings of Fact and Conclusions of Law and Order. Attachment A

2. Turnbull's January 31, 1990 Notice of Appeal and February 21, 1990 letter explaining his legal and factual positions. Attachment B

3. DEQ's March 9, 1990 brief on review. Attachment C

Because Turnbull did not present evidence at hearing, a hearing transcript has not been provided.

AUTHORITY/NEED FOR ACTION:

__	Required by Statute: _____ Enactment Date: _____	Attachment ___
__	Statutory Authority: _____	Attachment ___
X	Pursuant to Rule: OAR 340-11-132	Attachment D
__	Pursuant to Federal Law/Rule: _____	Attachment ___
__	Other:	Attachment ___
__	Time Constraints: (explain)	

Report Prepared By: Linda K. Zucker

Phone: 229-5383

Date Prepared: June 8, 1990

LKZ:y
HY100596
June 11, 1990

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, v. PHILLIP R. TURNBULL, Respondent.	)	HEARING OFFICER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW NO. SW-SWR-89-03 DOUGLAS COUNTY

BACKGROUND

On February 22, 1989, DEQ assessed a $3,750 civil penalty against Phillip R. Turnbull for operating a solid waste disposal site without the required permit in violation of ORS 459.205 and OAR 340-61-020. Turnbull requested a hearing to challenge the penalty.

After settlement efforts failed, a hearing was conducted on November 30, 1989 in Roseburg, Oregon. DEQ was represented by Laurence Edelman, Assistant Attorney General. Turnbull made a brief appearance to advise that his sole purpose in attending was to assert his right to a jury trial.

DEQ presented its proof of the alleged violations.

FINDINGS OF FACT

Phillip R. Turnbull is the owner of real property located in Douglas County, Oregon. The property is described in DEQ's Notice of Assessment of Civil Penalty, dated February 22, 1989.

Turnbull operates a septage cleaning service.

From September 16, 1988 through November 29, 1988, Turnbull disposed of septage on his property. During this period, quantities of septage residue accumulated on the property.

Turnbull did not have a solid waste disposal permit from DEQ.

CONCLUSIONS OF LAW

1. The initial process for appeal of civil penalties assessed by DEQ is administrative. ORS 468.135(2). The Environmental Quality Commission has jurisdiction.

2. From September 16, 1988 through November 29, 1988, Turnbull established and maintained a solid waste disposal site without a DEQ permit for it in violation of ORS 459.205 and OAR 340-61-020(1).

3. OAR 340-12-065(2)(b) in effect at the time of the violation and assessment, authorized a minimum penalty of $50 per day for the proved violation. Respondent is liable for the $3,750 civil penalty assessed by DEQ.

DISCUSSION

ORS 468.135 provides that a person incurring a penalty is entitled to an administrative hearing conducted under the applicable provisions of the Administrative Procedures Act, ORS 183.310-183.550. State law does not provide for a jury trial, and the failure to provide a jury trial does not violate statutory or constitutional guarantees. See, e.g., Atlas Roofing Co. v Occupational Safety and Health Review Commission, 430 US 442 (1977).

Dated this 11th day of January, 1990.

ENVIRONMENTAL QUALITY COMMISSION

Linda K. Zucker
Hearings Officer

NOTICE: If you disagree with this Order you may request review by the Environmental Quality Commission. Your request must be in writing directed to the Environmental Quality Commission, 811 S.W. Sixth Avenue, Portland, Oregon 97204. The request must be <u>received</u> by the Environmental Quality Commission within 30 days of the date of mailing or personal service of Order. If you do not file a request for review within the time allowed, this order will become final and thereafter shall not be subject to review by any agency or court.

A full statement of what you must do to appeal a hearings officer's order is in Oregon Administrative Rule (OAR) 340-11-132. That rule is enclosed.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, Department,	)	ORDER AND JUDGMENT
v.	)	NO. SW-SWR-89-03
PHILLIP R. TURNBULL, Respondent.	)	DOUGLAS COUNTY

The Commission through its Hearings Officer orders that Phillip Turnbull is liable to the State of Oregon in the sum of $3,750 and that the State have judgment for and recover that amount pursuant to a civil penalty assessment on February 22, 1988.

Review of this order is by appeal to the Environmental Quality Commission pursuant to OAR 340-11-132. A request for review must be filed within 30 days of the date of this order.

Dated this 11th day of January, 1990.

ENVIRONMENTAL QUALITY COMMISSION

Linda K. Zucker
Hearings Officer

UMPQUA PUMPING
P.O. Box 757
OAKLAND, OREGON 97462

Phone 459-4144

DATE 1-31-90

TO Environmental Quality Commission
811 SW 6th Ave
Portland, Or 97204

SUBJECT DEQ v Philip Turnbull
No. SW-SWR-89-03
Douglas County

Dear Ms Zucker,

We disagree with your decision and want the D.E.Q commission to review it.
So this is my Notice of Appeal.

Sincerely,
Phil Turnbull

SIGNED

☐ PLEASE REPLY ☐ NO REPLY NECESSARY

B - 1

UMPQUA PUMPING
P.O. Box 757
OAKLAND, OREGON 97462

Phone 459-4144

DATE 2-21-90

TO
Environmental Quality Commission
811 SW 6th Ave
Portland, OR 97204

SUBJECT DEQ v Phillip Turnbull
NO. SW-SWR-89-03
Douglas County

Dear Mr Zucker,

I am requesting a review of your order because of the ambiguous dealings we had with the D.E.Q. namely Mr Baker over the past years.

We had been contemplating putting in a disposal dump and had talked to the D.E.Q. about it. They sent us the papers. One of the first things necessary was for them to come out & inspect the site which we used primarily to clean our truck.

This they never did. Mr Baker had been here many times and would say,

SIGNED

☐ PLEASE REPLY ☐ NO REPLY NECESSARY cont'd on 2

B - 2

UMPQUA PUMPING
P.O. Box 757
OAKLAND, OREGON 97462

Phone 459-4144

DATE 2-21-90

TO

SUBJECT Page 2

B-3

"We're going to have to see about getting this passed. Nothing
> was done.

Then in Sept of 88 we were told to quit until we got a permit and to clean it out.

This we did. while in the process of removing the sludge the 14" of rain we had in Nov. forced us to stop. We called in 2 contractors and they said until it dried up they coned do nothing.

It then snowed in Feb and we had no choice but to wait until the weather improved.

cont'd on 3

SIGNED

☐ PLEASE REPLY ☐ NO REPLY NECESSARY

UMPQUA PUMPING
P.O. Box 757
OAKLAND, OREGON 97462

Phone 459-4144

TO

DATE 2-21-90

SUBJECT page 3

As soon as it did, we removed the rest completely and it was taken to the dump site in Roseburg where we were told it should go.

Because weather conditions beyond our control prevented us from completing this in time I feel the $3,750.00 civil penalty for the 75 days from 9-16 to 11-29-88 which you said it was for, is not justified.

In closing, I am being denied due process of law according to the U.S. constitution Articles 5 & 14. And in Article 7 where value in controversy is over $20.00 the right of trial by jury shall be preserved.

SIGNED

☐ PLEASE REPLY ☐ NO REPLY NECESSARY

Cond on 4

B - 4

UMPQUA PUMPING
P.O. Box 757
OAKLAND, OREGON 97462

Phone 459-4144

DATE 2-21-90

SUBJECT page 4

And in the Oregon Constitution Section 17 -
In all civil cases the right of trial by jury shall remain inviolate.

Sincerely,
J. Phil Turnbull

SIGNED

☐ PLEASE REPLY ☐ NO REPLY NECESSARY

B - 5

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, v. PHILLIP R. TURNBULL, Respondent.	)	BRIEF OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY (APPELLEE)

ARGUMENT

The Department of Environmental Quality (DEQ) concurs with the hearings officer's Findings of Fact and Conclusions of Law in this matter dated January 11, 1990.

Appellant Turnbull failed to present any evidence at the hearing. Instead, he made a statement on the record that his constitutional rights were being denied. He then left the hearing room. He has not raised any relevant issues or exceptions in his appeal.

As the hearings officer found, a respondent is not entitled to a jury trial in this type of administrative proceeding.

CONCLUSION

The Order and Judgment should be affirmed.

Respectfully submitted,

LARRY EDELMAN
Assistant Attorney General

agency shall commence any proceeding instituted pursuant to 137-03-092(2) within 20 days after receiving the stay request.

(2) Unless otherwise agreed to by the agency, petitioner, and respondents, the agency shall grant or deny the stay request within 30 days after receiving it.

(ORS 183.482)

Alternative Procedure for Entry of a Final Order in Contested Cases Resulting from Appeal of Civil Penalty Assessments

340-11-132

In accordance with the procedures and limitations which follow, the Commission's designated Hearing Officer is authorized to enter a final order in contested cases resulting from imposition of civil penalty assessments:

(1) Hearing Officer's Final Order: In a contested case if a majority of the members of the Commission have not heard the case or considered the record, the Hearing Officer shall prepare a written Hearing Officer's Final Order including findings of fact and conclusions of law. The original of the Hearing Officer's Final Order shall be filed with the Commission and copies shall be served upon the parties in accordance with rule 340-11-097 (regarding service of written notice).

(2) Commencement of Appeal to the Commission:

(a) The Hearing Officer's Final Order shall be the final order of the Commission unless within 30 days from the date of mailing, or if not mailed then from the date of personal service, any of the parties, a member of the Commission, or the Department files with the Commission and serves upon each party and the Department a Notice of Appeal. A proof of service thereof shall also be filed, but failure to file a proof of service shall not be a ground for dismissal of the Notice of Appeal.

(b) The timely filing and service of a Notice of Appeal is a jurisdictional requirement for the commencement of an appeal to the Commission and cannot be waived; a Notice of Appeal which is filed or served date shall not be considered and shall not affect the validity of the Hearing Officer's Final Order which shall remain in full force and effect.

(c) The timely filing and service of a sufficient Notice of Appeal to the Commission shall automatically stay the effect of the Hearing Officer's Final Order.

(3) Contents of Notice of Appeal. A Notice of Appeal shall be in writing and need only state the party's or a Commissioner's intent that the Commission review the Hearing Officer's Final Order.

(4) Procedures on Appeal:

(a) Appellant's Exceptions and Brief -- Within 30 days from the date of service or filing of his Notice of Appeal, whichever is later, the Appellant shall file with the Commission and serve upon each other party written exceptions, brief and proof of service. Such exceptions shall specify those findings and conclusions objected to and reasoning, and shall include proposed alternative findings of fact, conclusions of law, and order with specific references to those portions to the record upon which the party relies. Matters not raised before the Hearing Officer shall not be considered except when necessary to prevent manifest injustice. In any case where opposing parties timely serve and file Notices of Appeal, the first to file shall be considered to be the appellant and the opposing party the cross appellant.

(b) Appellee's Brief -- Each party so served with exceptions and brief shall then have 30 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party an answering brief and proof of service.

(c) Reply Brief -- Except as provided in subsection (d) of this section, each party served with an answering brief shall have 20 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party a reply brief and proof of service.

(d) Cross Appeals -- Should any party entitled to file an answering brief so elect, he may also cross appeal to the Commission the Hearing Officer's Final Order by filing with the Commission and serving upon each other party in addition to an answering brief a Notice of Cross Appeal, exceptions (described in subsection (a) of this section), a brief on cross appeal and proof of service, all within the same time allowed for an

answering brief. The appellant-cross appellee shall then have 30 days in which to serve and file his reply brief, cross answering brief and proof of service. There shall be no cross reply brief without leave of the Chairman or the Hearing Officer.

(e) Briefing on Commission Invoked Review -- Where one or more members of the Commission commence an appeal to the Commission pursuant to subsection (2)(a) of this rule, and where no party to the case has timely served and filed a Notice of Appeal, the Chairman shall promptly notify the parties of the issue that the Commission desires the parties to brief and the schedule for filing and serving briefs. The parties shall limit their briefs to those issues. Where one or more members of the Commission have commenced an appeal to the Commission and a party has also timely commenced such a proceeding, briefing shall follow the schedule set forth in subsections (a), (b), (c), (d), and (f) of this section.

(f) Extensions -- The Chairman or a Hearing Officer, upon request, may extend any of the time limits contained in this section. Each extension shall be made in writing and be served upon each party. Any request for an extension may be granted or denied in whole or in part.

(g) Failure to Prosecute -- The Commission may dismiss any appeal or cross appeal if the appellant or cross appellant fails to timely file and serve any exceptions or brief required by these rules.

(h) Oral Argument -- Following the expiration of the time allowed the parties to present exceptions and briefs, the Chairman may at his discretion schedule the appeal for oral argument before the Commission.

(i) Scope of Review -- In an appeal to the Commission of a Hearing Officer's Final Order, the Commission may, substitute its judgment for that of the Hearing Officer in making any particular finding of fact, conclusion of law, or order. As to any finding of fact made by the Hearing Officer the Commission may make an identical finding without any further consideration of the record.

(j) Additional Evidence -- In an appeal to the Commission of a Hearing Officer's Final Order the Commission may take additional evidence. Requests to present additional evidence shall be submitted

by motion and shall be supported by a statement specifying the reason for the failure to present it at the hearing before the Hearing Officer. If the Commission grants the motion, or so decides of its own motion, it may hear the additional evidence itself or remand to a Hearing Officer upon such conditions as it deems just.

(5) In exercising the authority to enter a final order pursuant to this rule, the Hearing Officer:

(a) Shall not reduce the amount of civil penalty imposed by the Director unless:

(A) The department fails to establish some or any of the facts regarding the violation; or

(B) New information is introduced at the hearing regarding mitigating and aggravating circumstances not initially considered by the Director. Under no circumstances shall the Hearing Officer reduce or mitigate a civil penalty based on new information submitted at the hearing below the minimum established in the schedule of civil penalties contained in Commission rules.

(b) May elect to prepare proposed findings of fact and a proposed order and refer the matter to the Commission for entry of a final order pursuant to the general procedure for contested cases prescribed under OAR 340-11-098.

Power of the Director

340-11-136

(1) Except as provided by rule 340-12-075, the Director, on behalf of the Commission, may execute any written order which has been consented to in writing by the parties adversely affected thereby.

(2) The Director, on behalf of the Commission, may prepare and execute written orders implementing any action taken by the Commission on any matter.

(3) The Director, on behalf of the Commission, may prepare and execute orders upon default where:

(a) The adversely affected parties have been properly notified of the time and manner in which to request

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: N
Division: Air Quality
Section: Asbestos Control

SUBJECT:

Asbestos Control: Request for adoption of finding and order to require refresher training for small-scale asbestos abatement workers.

PURPOSE:

To ensure that individual small-scale asbestos abatement skills are not lost due to lack of application. Small-scale workers require training concerning changes within the industry, including work practices and recent administrative rule amendments. Small-scale workers have expressed a desire to receive refresher training as required for full-scale workers and supervisors.

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 Rule	Attachment __
Rulemaking Statements	Attachment __
Fiscal and Economic Impact Statement	Attachment __
Public Notice	Attachment __

___ Issue a Contested Case Order
___ Approve a Stipulated Order
_X_ Enter an Order

Proposed Order	Attachment _A_

___ Approve Department Recommendation

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

DESCRIPTION OF REQUESTED ACTION:

The asbestos certification requirements were first adopted May 17, 1988 and became effective January 1, 1989. During the public hearings for rule adoption there was considerable debate concerning the need for refresher courses for certified asbestos workers. At the April 29, 1988 meeting, the Commission unanimously agreed to require refresher training for supervisors and full-scale workers and to require small-scale worker refresher training when a need for it was demonstrated.

In the past 18 months since the initiation of these rules there have been numerous new or changed conditions, described in Attachment A, Final Order, Findings section, which demonstrate the need for small-scale worker refresher training. The Commission may require such training in OAR 340-33-050 (7): "Completion of an accredited asbestos abatement refresher class may be required if the Environmental Quality Commission determines that there is a need to update the workers training in order to meet new or changed conditions".

Under this proposal small-scale worker refresher classes would be required once during the two year certification period. The worker would be required to complete at least three class hours sometime in the six months before the expiration date on the worker's certification card.

Workers unable to attend refresher classes during the prescribed time may make written application to the Department of Environmental Quality for other training dates. The Department will respond in writing to such requests.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____

___ Statutory Authority: _____ Attachment ___

_X_ Pursuant to Rule: OAR 340-33-050 (7)(b), -070(6) Attachment B
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints: (explain)

The first small-scale worker certification cards expire the second week of October, 1990. Prompt action on the part of both the Commission and Department would allow for refresher training prior to that date.

DEVELOPMENTAL BACKGROUND:

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

___ Other Related Reports/Rules/Statutes: Attachment ___
___ Supplemental Background Information Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The scope of this action is quite limited as there are approximately 1000 certified small-scale workers. Small-scale workers are primarily employed as school custodians and maintenance workers; the rest are employed by facilities such as mills and warehouses. These people can be easily contacted through the DEQ certified worker mailing list or through the training providers' records. There are six training providers who are already accredited to teach small-scale training and are prepared to apply for small-scale refresher accreditation once the course has been authorized.

Compared to other hazardous material training courses these refreshers will be relatively inexpensive: approximately $50 for re-certification, and $60-75 for course fees.

PROGRAM CONSIDERATIONS:

Administrative procedures are already in place within the Asbestos Control Program to establish a refresher class for small-scale asbestos workers. Processing the training providers, auditing the small-scale refresher classes and

issuing certification stickers will create some additional work load. There are presently six training providers, within the state, all of whom are expected to apply for this course.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. The Department considered not requiring refresher training as a pre-condition for re-certification. However, new and changed conditions have created a need for refresher training. Inquiries from small-scale workers suggests there is a high demand, if not expectation for, small-scale refresher training.

2. The Department also contemplated requesting the Environmental Quality Commission to authorize public hearings in preparation to writing new rules clarifying the need for refresher training for all classes of asbestos abatement workers. As the program has just completed lengthy rule changes, initiation of rulemaking procedures for this narrow issue would not be economic use of Department resources. The Department received public testimony on the affected rule when it was initially adopted.

3. The third alternative the Department considered was to institute the small scale refresher requirement by a Commission finding and order. The small-scale refresher requirement should be implemented quickly to insure uniform administration of refresher training requirements. Authority to require small-scale refresher courses exists in the rules. It is most efficient to accomplish this action with a Commission finding and order.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the EQC find that refresher training for certified small-scale asbestos workers is necessary and enter an order requiring them to complete a refresher course of at least three class hours some time during the six months before their certification cards expire. The course would include topics such as removal of non-friable materials, negative pressure glove bags and the amended Administrative rules. Upon completion of this course, the small-scale worker will be re-certified for another two years. This recommendation is based upon

existing authority to require small-scale refresher classes, new and changed conditions, speed of implementation and economy of effort.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Because this proposal would keep small-scale workers current with required asbestos work practices it is consistent with the Department's goals of preventing the emission of asbestos fibers into the environment and protecting public health. The Department is unaware of conflicts between the proposed amendments and other agency rules or policies of the Oregon Legislature.

ISSUES FOR COMMISSION TO RESOLVE:

The Commission is asked to decide whether refresher training as described by the findings and order in attachment "A" should be required as a pre-condition for the re-certification of small-scale asbestos workers.

INTENDED FOLLOWUP ACTIONS:

The Department will initiate action that will result in approved small-scale refresher courses being available by October 1, 1990 or sooner.

Approved:

Section: Sarah V. Armitage

Division:

Director:

Report Prepared By: Bruce Arnold

Phone: 229-5506

Date Prepared: June 12, 1990

BEA:a
ASB\AH10009 (6/90)

ATTACHMENT A

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF REFRESHER TRAINING FOR SMALL-SCALE ASBESTOS WORKERS) **FINAL ORDER**

FINDINGS

Pursuant to ORS 468.887 through 468.893 and ORS 183.310 through 183.550 and OAR 340-33-050 (7)(b), the Environmental Quality Commission makes the following findings:

1. The asbestos certification requirements were first adopted by the EQC on May 17, 1988 and became effective January 1, 1989. At the April 29, 1988 Commission meeting the EQC unanimously agreed to authorize refresher training for small-scale workers but to withhold it until a need was demonstrated.

2. There have been new and changed conditions since the first small-scale workers were trained in October 1988. These changes demonstrate the need to require refresher training for small-scale workers at least once during the two year certification period. The following changes have occurred:

A. At the January and March 1990 EQC meetings, the Commission adopted extensive rule changes to administrative rules governing asbestos work practices and training requirements in Divisions 25 and 33. These amendments affect small-scale abatement workers.

B. There have been extensive changes in the area of non-friable asbestos abatement work practices, most notably affecting non-friable vinyl asbestos tile. These work practices are equally useful in residences, schools and other facilities. New work practices for vinyl asbestos tile have been approved by OR OSHA and the Department, and effectively control asbestos fiber contamination and reduce removal costs. Work practices for the removal of vinyl sheet goods are also being developed.

C. The Department has received regular inquiries from small-scale workers concerning refresher training as a requirement for re-certification. As many small scale workers use their abatement skills infrequently, they are concerned that they may not safely remove asbestos when called upon to do so. Some small-scale workers have even taken full-scale refresher training in lieu of small-scale refresher training.

ORDER

Based upon the above findings, IT IS HEREBY ORDERED:

1. The Asbestos Control Program shall take all necessary administrative action to establish a refresher course for small-scale workers by October 1, 1990.

2. The small-scale refresher course shall contain at least three hours of classroom instruction and shall be required as prerequisite to re-certification. The small-scale workers shall take the refresher course at some time during the six months

prior to expiration of certification. Workers unable to attend within the six month time period may request that the Department allow an earlier refresher date.

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

Date	William P. Hutchison, Jr., Chairman
Date	Emery N. Castle, Member
Date	Henry Lorenzen, Member
Date	Genevieve Pisarski Sage, Member
Date	William Wessinger, Member

BEA:a
ASB\AH9022
(6/90)

ASBESTOS CERTIFICATION REQUIREMENTS
CHAPTER 340 DIVISION 33

CERTIFICATION
340-33-050

(1) Workers on asbestos abatement projects shall be certified at one or more of the following levels:

(a) Certified Supervisor for Full-Scale Asbestos Abatement.

(b) Certified Worker for Full-Scale Asbestos Abatement.

(c) Certified Worker for Small-Scale Asbestos Abatement.

(2) Application for Certification-General Requirements.

(a) Applications shall be submitted to the provider of the accredited training course within thirty (30) days of completion of the course.

(b) Applications shall be submitted on forms prescribed by the Department and shall be accompanied by the certification fee.

(3) Application to be a Certified Supervisor for Full-Scale Asbestos Abatement shall include:

(a) Documentation that the applicant has successfully completed the Supervisor for Full-Scale Asbestos Abatement level training and examination as specified in OAR 340-33-070 and the Department guidance document, and

(b) Documentation that the applicant has been certified as a Worker for Full-Scale Asbestos Abatement and has at least three (3) months of full-scale asbestos abatement experience, including time on powered air purifying respirators and experience on at least five (5) separate asbestos abatement projects; or certified as worker for Full-Scale asbestos abatement and six (6) months of general construction, environmental or maintenance supervisory experience demonstrating skills to independently plan, organize and direct personnel in conducting an asbestos abatement project. The Department shall have the authority to determine if any applicant's experience satisfies those requirements.

(4) Application to be a Certified Worker for Asbestos Abatement shall include:

(a) Documentation that the applicant to be a Certified Worker for Full-Scale Asbestos Abatement has successfully completed the Worker for Full-Scale Asbestos Abatement level training and examination as specified in OAR 340-33-070 and the Department guidance document.

(b) Documentation that the applicant to be a Certified Worker for Small-Scale Asbestos Abatement has successfully completed the Worker for Small-Scale Asbestos Abatement level training and examination as specified in OAR 340-33-070 and the Department guidance document.

(5) Training course providers shall issue certification to an applicant who has fulfilled the requirements of certification.

(6) Certification at all levels is valid for a period of twenty-four (24) months after the date of issue.

(7) Renewals

(a) Certification renewals must be applied for in the same manner as application for original certification.

*** (b) To gain renewal of certification, a Worker for Full-Scale Asbestos Abatement and a Supervisor for Full-Scale Asbestos Abatement must complete the appropriate annual refresher course no sooner than nine (9) months and no later than twelve (12) months after the issuance date of the certificate, and again no sooner than three (3) months prior to the expiration date of the certificate. A worker may apply in writing to the Department for taking refresher training at some other time than as specified by this paragraph for reasons of work requirements or hardship. The Department shall accept or reject the application in writing.

(c) To gain renewal of certification, a Worker for Small-Scale Asbestos Abatement must comply with the regulations on refresher training which are in effect at the time of renewal. Completion of an accredited asbestos abatement review class may be required if the Environmental Quality Commission determines that there is a need to update the workers' training in order to meet new or changed conditions.

(8) The Department may suspend or revoke a worker's certificate for failure to comply with any state or federal asbestos abatement rule or regulation.

(9) If a certification is revoked, the worker may reapply for another initial certification only after 12 months from the revocation date.

(10) A current worker certification card shall be available for inspection at each asbestos abatement project site for each worker conducting asbestos abatement activities on the site.

(1) Courses of instruction required for certification shall be specific for each of the certificate categories and shall be in accordance with Department guidelines. The topics or subjects of instruction which a person must receive to meet the training requirements must be presented through a combination of lectures, demonstrations, and hands-on practice.

(2) Courses requiring hands-on training must be presented in an environment suitable to permit participants to have actual experience performing tasks associated with asbestos abatement. Demonstrations not involving individual participation shall not substitute for hands-on training.

(3) Persons seeking certification as a Supervisor for Full-Scale Asbestos Abatement shall successfully complete an accredited training course of at least four days as outlined in the DEQ Asbestos Training Guidance Document. The training course shall include lectures, demonstrations, at least six (6) hours of hands-on training, individual respirator fit testing, course review, and a written examination consisting of multiple choice questions. Successful completion of the training shall be demonstrated by achieving a passing score on the examination, course attendance, and full participation in the hands-on training.

(4) Any person seeking certification as a Worker for Full-Scale Asbestos Abatement shall successfully complete an accredited training course of at least three days duration as outlined in the DEQ Asbestos Training Guidance Document. The training course shall include lectures, demonstrations, at least six (6) hours of actual hands-on training, individual respirator fit testing, course review, and an examination of multiple choice questions. Successful completion of the course shall be demonstrated by achieving a passing score on the examination, course attendance, and full participation in the hands-on training. The course shall adequately address the following topics:

(5) Any person seeking certification as a Worker for Small-Scale Asbestos Abatement shall complete at least a two day approved training course as outlined in the DEQ Asbestos Training Guidance Document. The small-scale asbestos abatement worker course shall include lectures, demonstrations, at least six (6) hours of hands-on training, individual respirator fit testing, course review, and an examination of multiple choice questions. Successful completion of the course shall be demonstrated by achieving a passing score on the examination, course attendance, and full participation in the hands-on training.

*** (6) Refresher training shall be at least one day duration for Certified Supervisors and Workers for Full-Scale Asbestos Abatement and at least three (3) hours duration for Certified Workers for Small-Scale Asbestos Abatement. The refresher courses shall include a review of key areas of initial training, updates, and an examination of multiple choice questions as outlined in the DEQ Asbestos Training Guidance Document. Successful completion of the course shall be demonstrated by achieving a passing score on the examination, course attendance, and full participation in any hands-on training.

(7) One training day shall consist of at least seven (7) hours of actual classroom instruction and hands-on practice.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: O
Division: Management Services
Section: Administration

SUBJECT:

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

PURPOSE:

The Intergovernmental Agreements between the Department of Environmental Quality (DEQ) and the City of Gresham and between DEQ and the City of Portland (Agreement or Agreements) implement the Environmental Quality Commission (EQC) plan for the protection of drinking water in mid-Multnomah County. The Agreements call for DEQ to purchase special assessment improvement bonds (SAIBs) issued by Gresham and Portland for mid-Multnomah County sewer construction. These purchases will be made with the proceeds of simultaneously issued State of Oregon Pollution Control Bonds. Commission approval is necessary because the cities' bonds that the Department will purchase are not general obligation bonds.

Once they are approved by all parties, the Agreements will function as master agreements. From time to time, the Commission will be requested to approve specific, individual bond purchases that the Department will make under the terms of these master agreements with Portland and Gresham. The Department anticipates returning to the next EQC meeting to request approval of the first of these bond purchase agreements.

ACTION REQUESTED:

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

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

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

_X_ Approve Department Recommendation
___ Variance Request — Attachment ___
___ Exception to Rule — Attachment ___
___ Informational Report — Attachment ___
_X_ Other: (specify) — Attachment _A_
Approve Intergovernmental Agreements for Gresham (Attachment A1) and Portland (Attachment A2).

DESCRIPTION OF REQUESTED ACTION:

EQC approval of the individual Agreements entitled "Intergovernmental Agreement between the City of (Gresham) (Portland), Oregon and the Oregon Department of Environmental Quality" is requested. The approval includes the required finding that the project is self supporting and self liquidating from revenues, gifts, grants from the federal government, user charges, assessments, and other fees (reference Section IV.E. of the agreement). The Agreements define the financing structure of the Mid-Multnomah County Sewer Implementation Plan (Plan), which was accepted by the EQC in 1986.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____

X	Statutory Authority: ORS 468.195 - 468.220	Attachment B
X	Pursuant to Rule: OAR 340-81-005 to -100	Attachment C
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___

X Time Constraints: (explain)

The City of Gresham has indicated the need for the first bond sale related to the Mid-Multnomah County Sewers to occur no later than October of this year. Given the steps involved in issuing bonds, the October financing date translates into a very tight timeframe.

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 N, May 25, 1990. Pollution Control Bonds: Background on Agreement Provisions and Future Bond Sale for Mid-Multnomah County Sewers.

___ Other Related Reports/Rules/Statutes: Attachment ___

X Supplemental Background Information Attachment D

The first two sections of the Intergovernmental Agreement entitled "I. Purpose and Intent" and "II. Findings" provide additional background information. The Agreement is Attachment A to this report.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Agreement was specifically designed to balance the benefits and burdens of the Plan on the homeowners, cities, DEQ, and the public. It also represents an appropriate sharing of risk among all the parties, given the EQC order to require sewers in the affected area. The SAIB structure designed to accomplish these purposes is described in Section III of the Agreements.

The homeowners' burden of the sewer assessments and property liens is offset by the benefit of having lower interest rates and a flexible repayment plan.

The cities' burden of administering the construction of the facilities, collecting the assessment payments, and the risk exposure of being liable for the first "layer" of cash shortfalls (the Contingent Liability Amount) is offset by the limitation of the cities' liability and the protection of their general obligation credit quality and bond ratings.

The burden assumed by DEQ of absorbing the second layer of risk and a higher load of general obligation debt is offset by the achievement of compliance with the EQC's directives concerning the threat to drinking water and by the extremely low level of financial exposure required to obtain that result.

Repayment of the SAIBs is secured at three levels: (1) the property owners are obligated to pay their individual assessments, (2) the assessments are secured by a lien on the property, and (3) the cities are obligated under the Agreement to cover any cash shortfall up to the Contingent Liability Amount, which is equal to 8% of the total scheduled debt service on all bonds issued under the terms of the Agreement. See Attachment D for a fuller summary of the risk structure and security provisions of the Agreement.

Repayment provisions for the SAIBs are addressed in Section IV. of the agreements. The Contingent Liability Amount is specifically outlined in Section IV.F.

The Cities of Gresham and Portland will present the Agreements to their respective City Councils for approval prior to the EQC meeting on June 29, 1990. It is anticipated that the results of the City Council meetings will be presented at the EQC meeting.

PROGRAM CONSIDERATIONS:

The Department has not issued Pollution Control Bonds since 1982. The existing administrative rules (OAR Division 81) are undergoing review to identify any changes that will be needed to reflect state and/or federal statutory changes that materially affect the implementation of these agreements.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The East County Sanitary Sewer Consortium studied a broad range of financing alternatives for the Plan that

presented different risk profiles and transaction structures. Alternatives included: grants, general obligation bonds, bancroft bonds, assessment bonds, revenue bonds, revolving funds, bond banks, taxable municipal financings, conventional financing, net operating revenues, and cash. The recommended financing structure was shaped in part by the unique constraint of completing the project in an unincorporated area.

The Department considered several alternatives including: 1) not purchasing any bonds from the cities; 2) buying only General Obligation bonds from the cities; 3) purchasing only bonds that included a full pledge of any monies available for repayment; and 4) buying bonds without any "catastrophic insurance" (the contingent liability amount as defined in the agreements).

The cities are not limited to the financing arrangements with DEQ as defined in the agreements. They may choose, at any time, to pursue other means of financing sewer construction.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Approve the Intergovernmental Agreements between the Department and the Cities of Gresham and Portland. Approve the purchase of SAIBs from the respective cities under the terms of the Agreement, recognizing the sequential risk shared by the parties under the Contingent Liability Amount provisions. Make a finding that the (Gresham/Portland) sewer development project will be self-supporting and self-liquidating.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Approval of the Agreements by the EQC is 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, the State Treasurer's Office, bond counsel and city attorneys have all been intensively involved in the development of the Agreements.

ISSUES FOR COMMISSION TO RESOLVE:

Does this agreement represent an appropriate sharing of risk among all parties, given the nature of the EQC order to require sewers in the Affected Area?

INTENDED FOLLOWUP ACTIONS:

Return to the EQC at the August 10, 1990, meeting to request approval for 1) the first bond purchase agreements with Gresham and Portland under the terms of the intergovernmental agreements, and 2) authorization for a Pollution Control Bond sale with the proceeds to be applied as outlined in the bond purchase agreements.

Approved:

Section: _____

Division: Peter A. Dalke

Director: _____

Report Prepared By: Peter A. Dalke
Noam R. Stampfer

Phone: 229-6485

Date Prepared: June 9, 1990

(6/13/90)

INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF GRESHAM, OREGON AND OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

This agreement is entered into this _____ day of _____, 1990, pursuant to ORS 190.110 between the City of Gresham, Oregon, a municipal corporation, hereinafter called "Gresham", and the Department of Environmental Quality of the State of Oregon, hereinafter called "DEQ", under the authority of the laws applicable to each, for the purposes set forth below.

I. PURPOSE AND INTENT

This agreement is entered into in furtherance of the Mid-County Sewer Implementation Plan. It is the intent of Gresham and DEQ to use the special assessment improvement bond financing arrangement described below to provide Gresham with funds for financing property owner assessments, charges in lieu of assessment and connection charges resulting from the construction of the Mid-County sewer project. It is also the purpose of this agreement to recognize a joint commitment to risk sharing, given the existence of economic risks in the financing.

II. FINDINGS

A. In 1985, the East County Sanitary Sewer Consortium (Portland, Gresham and Multnomah County), in response to a request for additional information made by the State of Oregon Environmental Quality Commission (EQC), prepared a Sewer Implementation Plan (the Plan) detailing the costs, construction schedule, and financing plan for sewering a large portion of Mid-Multnomah County within which the EQC had preliminarily determined a threat to drinking water to exist. The Plan was approved by the governing bodies of each jurisdiction (Portland, Gresham and Multnomah County), and was submitted to the EQC in September 1985. Following extensive public review and testimony, and additional independent review of the proposed Plan, the EQC in April 1986 ruled that a threat to drinking water, as defined in ORS 454.275 et sec., did exist and ordered that the Plan be implemented. The Plan is hereby incorporated into this Agreement by reference, and Gresham shall not amend or modify the Plan without the prior written consent of DEQ.

B. A key component of the Plan involved the manner in which sewer construction would be financed. Development of the financial elements of the Plan required that the general obligation credit quality and bond ratings of Portland and Gresham not be negatively affected. Furthermore, the Plan recognized that a large portion of the Affected Area was outside

the corporate boundaries of Portland and Gresham and, therefore, it would not be financially prudent for the cities to extend general obligation-backed financing, such as Bancroft bonding, on an extra-territorial basis. For these reasons, and because the magnitude of the construction program had the potential for requiring large amounts of Bancroft Bond financing, a property assessment financing alternative was proposed and incorporated into the Plan.

C. In lieu of issuing Bancroft Bonds to finance property owner assessments, charges in lieu of assessment and connection charges, the Plan recommended that Portland and Gresham issue special assessment improvement bonds for purchase by the DEQ. The DEQ would finance these bond purchases through the issuance of general obligation pollution control bonds. Because interest rates bid by the private capital markets on DEQ bonds would likely be lower than rates bid on special assessment improvement bonds issued by Portland and Gresham, project affordability would be enhanced. The special assessment improvement bonds would be paid for through property owner installment payments, additionally secured by a lien against the property, and payment of the contingent liability amount.

D. The Environmental Quality Commission has found that the Gresham sewer development project, as defined in the Plan and administered in accordance with the Agreement, will be self-supporting and self-liquidating from revenues, gifts, grants from the federal government, user charges, assessments, or other fees.

III. SPECIAL ASSESSMENT IMPROVEMENT BOND STRUCTURE AND PURCHASE

Gresham will issue special assessment improvement bonds for financing property owner assessments, charges in lieu of assessment and connection charges for the Mid-County Sewer Implementation Plan. DEQ will purchase Gresham's special assessment improvement bonds, provided that the bonds are structured as provided for in sections III through V of this agreement, although Gresham may market special assessment improvement bonds to other buyers. Gresham's special assessment improvement bonds which are purchased by the DEQ under this agreement (the "program bonds") shall be structured as follows:

A. Unless the DEQ consents in writing to the use of a different structure, the program bonds will be structured comparably to the City's contemporaneously issued Bancroft Bonds. Gresham reserves the right to alter the structure of its Bancroft bond program as it sees fit.

B. Program bonds shall be secured by a sinking fund. Except for the administrative increment and as specifically provided in Section IV.D, Gresham shall deposit into the sinking fund all payments received by Gresham under assessment contracts funded with the proceeds of program bonds (including property owner installment payments, property owner prepayments, and amounts received from collection or foreclosure of delinquent property owner payments), all sinking fund interest earnings and any earnings on or transfers from a special assessment improvement bond reserve account. Except as provided in Section IV.C and until all program bonds have been paid, all money in the sinking fund shall be used solely to pay debt service on program bonds. A copy of the assessment contract form which is acceptable to DEQ is attached and incorporated into this Agreement as Exhibit B. All assessment contracts financed under this agreement shall be in substantially the form attached hereto as Exhibit B, and Gresham shall not alter or amend the form of the assessment contracts which are financed under this agreement without the prior written consent of DEQ.

C. Gresham may elect to establish reserve accounts for program bonds, and may fund such reserves with the proceeds of program bonds, so long as the creation and funding of the reserves will not cause program bonds to be "arbitrage bonds" under Section 148 of the Internal Revenue Code. Money in such a reserve shall be used only to pay debt service on program bonds. Earnings on the reserves shall be credited to the sinking fund.

D. Subject to DEQ's receipt of the consent and authorization of the Oregon Legislature and the Oregon State Treasurer as provided in Section VI and upon request of Gresham, DEQ shall offer to purchase each series of Gresham's special assessment improvement bonds at a price equal to the principal amount of the series of special assessment improvement bonds, less a discount which does not exceed the sum of: the discount at which the original purchaser buys the series of bonds issued by the DEQ to finance the purchase of that series of Gresham's bonds; plus, an additional amount reasonably estimated to reimburse DEQ for its expenses in issuing and administering that series of bonds. Such expenses may include the fees of DEQ's bond counsel for examining the proceedings of Gresham to issue the program bonds, and determining the validity and tax-exempt status of the program bonds in a manner satisfactory to the DEQ. The program bonds

shall bear interest at a rate equal to the rate on the bonds issued by the DEQ which are allocable to the purchase of Gresham's program bonds. However, instead of adjusting the purchase price for the expenses of the DEQ, the DEQ and Gresham may agree to increase the rate on Gresham's program bonds by an amount such that the present value of the increased interest payments (discounted at the true interest cost of the DEQ bonds which are allocable to the purchase of Gresham's program bonds) has a present value equal to the estimated present value of such expenses, discounted at the same rate. In calculating true interest cost under this paragraph, debt service on the DEQ bonds shall be discounted to the price paid to the DEQ for its bonds, less costs of issuance to be paid from the proceeds of such bonds. If DEQ issues a single series of bonds to both buy Gresham's special assessment improvement bonds and for other purposes, the DEQ shall allocate its discount, issuance and administrative costs between the special assessment improvement bonds and the other purposes; only the amount allocated to Gresham's special assessment improvement bonds shall be used in computing the discount at which such bonds are purchased and the true interest cost of the DEQ's bonds. Unless the parties agree otherwise in writing, DEQ and Gresham shall enter into a bond purchase agreement for each series of program bonds prior to the time the DEQ and the State of Oregon take substantial steps to issue DEQ bonds to acquire the program bonds. The bond purchase agreement shall specify with precision the manner in which the rates on the program bonds shall be established, and the purchase price for such bonds. The bond purchase agreement shall require the DEQ to purchase the series of special assessment bonds described in the bond purchase agreement, and shall require Gresham to sell such series to the DEQ, contingent only upon successful issuance and sale of the DEQ bonds.

E. Gresham's special assessment improvement bond financing program will be operated so that Gresham's program bonds will maintain their tax exempt status.

F. All of Gresham's program bonds shall be issued pursuant to a master ordinance, in substantially the form attached hereto as Exhibit A, which provides that all such bonds are equally secured by all payments received by Gresham from assessment contracts which are financed with program bonds. All program bonds shall be payable from a pooled sinking fund, and any reserve shall

secure all outstanding program bonds. Money in the sinking fund may be used to redeem bonds of any series selected by Gresham. Gresham reserves the right to redeem the highest interest rate program bonds first, regardless of when such bonds are issued.

G. The closing date, maturity dates, interest payment dates and redemptions dates of program bonds shall be coordinated with those of similar bonds of the City of Portland, in order to facilitate issuance, payment and redemption of DEQ bonds which are issued to purchase program bonds and similar bonds issued by Portland.

H. The maximum amount of program bonds which Gresham expects to issue and sell to the DEQ under this Agreement, and which the DEQ expects to purchase under this Agreement is $37,800,000. Gresham and the DEQ both expect that the amount which will be issued and sold each year will vary substantially, but will not exceed $37,800,000. In order to facilitate the DEQ's biennial budgeting for issuance of its bonds, not later than July 1 of each fiscal year which begins in an even numbered year, Gresham agrees to provide the DEQ with a preliminary estimate of the amount of program bonds which it expects to sell to the DEQ during each of the following two fiscal years, and to provide DEQ with a final estimate of such amounts not later than November 1 of each fiscal year which begins in an even numbered year. DEQ reserves the right to refuse to purchase special assessment improvement bonds of the City in amounts which exceed the City's estimates, if such purchase would interfere with the issuance of DEQ's bonds for other purposes.

I. On or before the closing of any purchase by the DEQ of a series of program bonds and unless waived by DEQ, Gresham shall provide DEQ with a transcript of the proceedings authorizing the issuance of the series of program bonds, and a certification that Gresham has taken all steps required to authorize and issue the bonds under the laws of the State of Oregon and in accordance with this Agreement and that no litigation is pending or threatened which would adversely affect the ability of Gresham to issue or pay the program bonds.

J. Gresham will cooperate with the DEQ to make the program bonds marketable by the DEQ in conventional capital markets, to the extent this can be done without significantly increased cost or burden to Gresham. All

expenses of reselling program bonds shall be paid by the DEQ. However, DEQ may not resell program bonds without Gresham's consent unless:

1. Gresham reviews and approves the following documents in advance and in writing, before such documents are distributed to rating agencies, insurance companies, banks, bond investors, underwriters or other bond market participants: all legal, disclosure and other documents relating to the program bonds which are distributed to such entities; and,

2. Gresham is provided advance notice and a reasonable opportunity to participate in any presentations which the DEQ makes to rating agencies, insurance companies, banks, bond investors, underwriters or other bond market participants; and,

3. DEQ sells program bonds no more frequently than once in each thirty day period, and either:

   a. obtains municipal bond insurance, an irrevocable letter of credit, or other third party guarantee for the all debt service on the program bonds which are resold, through the last date on which such program bonds will be outstanding, and the such program bonds receive a rating from Moody's Investors Services, Standard and Poor's Corporation, or a comparable rating agency, contemporaneously with the resale, which is at least as high as the then current general obligation bond rating of the State of Oregon; or,

   b. sells all program bonds which are sold at any one time only to a single, sophisticated investor under circumstances in which: (1) the sale would be a transaction which would be exempt from registration under state and federal securities laws (assuming, hypothetically, that the program bonds were securities which were not not exempt from registration under such laws) because of the sophistication of the investor; and (2) the purchaser and all subsequent purchasers are prohibited from reselling the program bonds except to investors in transactions which

meet the requirements of clause (1) of this subparagraph III.J.3.b..

K. Gresham's program bonds, and the purchase thereof by the DEQ, shall comply with DEQ's administrative rules. DEQ will work in good faith to make any revisions to its administrative rules which are required to permit this agreement to be carried out in accordance with the law and the parties intentions.

IV. BOND COVENANTS

Gresham's program bonds shall contain the following covenants:

A. Gresham will covenant to pursue property foreclosures to collect delinquent assessment payments as rapidly as the law reasonably permits. Gresham will follow the collection and foreclosure process described in Exhibit C, attached hereto and incorporated herein by reference. Gresham may elect not to foreclose, or to pursue foreclosure less rapidly than required by this section, if Gresham:

1. Notifies the DEQ that it has made such an election, and identifies the assessment contracts to which the election applies; and,

2. Deposits into the sinking fund any payments which are delinquent at the time the election is made, and continues to deposit into the sinking fund in a timely manner, the amounts which would have been deposited in the sinking fund if the assessment contracts were not delinquent. Any deposits made by Gresham under this subsection shall not reduce the contingent liability amount; however, when delinquent amounts are collected Gresham shall be entitled to retain an amount equal to the sum of such deposits for each such contract as provided in Section IV.D.1, but only if the foreclosure or settlement is made on commercially reasonable terms and in a manner consistent with Gresham's practice in foreclosing and settling assessment contracts which secure Gresham's outstanding Bancroft bonds.

B. Property owners will be allowed to prepay their outstanding assessment contract balances at any time without penalty.

C. Deposits in the sinking fund shall be applied solely for the following purposes and in the following order of priority:

1. To pay any debt service on program bonds which was not paid when due;

2. To pay scheduled debt service on program bonds;

3. To pay interest to the DEQ on delinquent debt service payments, as provided in section IV.G of this agreement;

4. To restore the balance in any reserve account for program bonds to its required level;

5. To redeem program bond principal prior to maturity, and pay any premium or interest due in connection with such a redemption.

Any amounts remaining in the sinking fund and any reserve accounts after all program bonds, and all reimbursements due to the DEQ under section IV.G, have been paid, shall be the property of the City of Gresham.

D. Collection of delinquent assessment contract payments will be applied in the following order:

1. To Gresham to reimburse it for any deposits it made to the sinking fund pursuant to Section IV.A.2 of this agreement.

2. To Gresham for administrative costs to the extent that such delinquent payments exceed the unpaid principal and accrued interest (reduced by the administrative increment described in Section V.B) on the unpaid assessment contract.

3. To the sinking fund for use as provided in Section IV.C.

E. Gresham may establish the interest rates charged to property owners under the assessment contracts, so long as the interest rates (reduced by the administrative increment described in Section V.B) on the assessment contracts produce scheduled cashflows which are sufficient to pay the program bonds. Unless the DEQ consents in writing, assessment contract rates and other terms shall be comparable to the terms used by

Gresham for contemporaneous assessment contracts which Gresham uses in its Bancroft bond program.

F. Subject to the limitations described in this paragraph, Gresham agrees to contribute up to the contingent liability amount to pay debt service on program bonds, but solely from its Available Sewer Revenues. The claim of program bondowners under this paragraph shall be a general, unsecured liability of Gresham's Sewer Fund, which shall be subordinate to all outstanding and future revenue bonds, notes and other obligations of the City which are secured by its sewer revenues. The contingent liability amount shall be computed and paid as follows:

1. The contingent liability amount shall be equal to the sum of eight percent (8%) of the total scheduled debt service on the aggregate of all series of Gresham program bonds which have been issued, calculated as of the date of purchase of each series, minus the sum of any deposits previously made by Gresham pursuant to subsection F.2 of this section. The Contingent Liability Amount shall not be reduced because of payment or redemption of program bond debt service. The contingent liability amount shall be reevaluated by the parties three years after this Agreement is signed.

2. If, on the business day prior to a payment date on program bonds, there is not sufficient money in the sinking fund to pay debt service due on the that payment date, Gresham shall deposit into the sinking fund an amount equal to the lesser of: the insufficiency; or, the contingent liability amount. Gresham shall notify DEQ immediately that it has made such a deposit. If the Available Sewer Revenues are not sufficient to make a deposit when required by this subsection, the deposit shall be made as soon thereafter as the City obtains sufficient Available Sewer Revenues, or the proceeds of revenue obligations described in subsection F.5 of this section.

3. The contingent liability amount shall be recomputed each time a series of program bonds is purchased by DEQ, and each time Gresham makes a deposit under subsection F.2 of this section. Gresham shall not be obligated to make any payment to the DEQ with regard to the contingent liability

amount at any time when the contingent liability amount is zero.

4. Gresham shall not be entitled to recover any payments made under subsection F.2 of this section from the DEQ, or to offset such amounts against any payments due to the DEQ. After payment in full of all debt service on program bonds, and reimbursement of any DEQ funds used to pay debt service on DEQ bonds under Section IV.G of this agreement, Gresham shall be entitled to retain any balance in the sinking fund for the program bonds, and any money subsequently received from the payment of assessment contracts, free from any lien or claim of the DEQ.

5. Gresham shall charge rates and fees in connection with its sewage treatment and collection facilities which are sufficient to enable it to pay all costs of operation, maintenance, debt service, other contractual obligations, and any and all reasonably predictable contingent liability amount payments which would be required under this agreement. If Gresham is required to make a payment of its contingent liability amount and does not have sufficient Available Sewer Revenues on hand to make the payment, Gresham shall, to the extent permitted by law, issue revenue obligations, payable solely from its net sewer revenues, as quickly as practicable in amounts sufficient to permit it to make any deposits into the sinking fund at the times required by subsection F.2 of this section.

G. If: Gresham deposits into the sinking fund all amounts it is required to so deposit under this Agreement and the master ordinance; those amounts are not sufficient to pay scheduled debt service on Gresham's program bonds when such debt service is due; and, the DEQ is therefore required to use its funds to pay debt service on DEQ bonds which were issued to purchase Gresham program bonds; then Gresham shall not be required to reimburse the DEQ for such payments, except as provided in this subsection G. Gresham shall pay to the DEQ, but solely from money required to be deposited in the sinking fund (including the contingent liability amount):

a. all overdue debt service payments on Gresham program bonds, as provided in section IV.C.1 of this agreement; and,

b. interest on the DEQ funds which were used to pay debt service on DEQ bonds from the date of use until the date of reimbursement at the rate paid to depositors in the Oregon short term fund during that period, as provided in section IV.C.3 of this agreement.

Interest payments made under subparagraph b of this section IV.G shall not be credited against the debt service due from Gresham on its outstanding program bonds.

V. PROPERTY OWNER REPAYMENT TERMS

A. Gresham shall determine the interest rate to be charged to property owners and shall establish the other terms of assessment repayment in a manner comparable to the manner in which Gresham determines the interest rate and terms on assessment contracts used in connection with its contemporaneous Bancroft bonds. The interest rates (after reduction for the administrative increment described in Section V.B) charged on assessment contracts associated with a single issue of program bonds shall at least be sufficient to produce cash flows which will permit timely payment of program bond debt service.

B. In order to defray its administrative costs, Gresham may increase the interest rate on assessment contracts by an amount which does not exceed the amount Gresham calculates to be necessary to reimburse Gresham for its administrative costs. This increase (the "administrative increment") may be retained by Gresham and not deposited in the sinking fund, and shall not be included when calculating amounts which will be available from assessment contracts to pay program bonds. The amount of the administrative increment shall not exceed the amount charged by Gresham for contemporaneous assessment contracts which Gresham finances with Bancroft Bonds. Gresham shall certify to the DEQ the amount of the administrative increment for each assessment contract which is to be financed with program bonds, prior to selling program bonds to the DEQ.

VI. STRUCTURE OF DEQ POLLUTION CONTROL BONDS

To the extent permitted by law, DEQ will authorize and cause to be issued general obligation Pollution Control Bonds for the purpose of purchasing special assessment improvement bonds issued by the City of Gresham as provided in this Agreement. The parties acknowledge that issuance of such bonds requires the consent and authorization of the Oregon Legislature and the Oregon State Treasurer. This agreement does not purport to bind either the Oregon Legislature or the Oregon State Treasurer. However, the DEQ agrees to use reasonable efforts to secure the approval and authorization of the Oregon Legislature and the Oregon State Treasurer for the general obligation Pollution Control Bonds described in this Section VI. To the extent that Pollution Control Bonds are issued for the express purpose of purchasing special assessment improvement bonds issued by Gresham, Gresham agrees to sell such bonds to the DEQ. To the extent permitted by law, Pollution Control Bonds issued to purchase Gresham special assessment improvement bonds will be structured as follows:

A. Pollution Control Bonds will be issued and maintained as tax exempt bonds.

B. DEQ will request the State Treasurer to issue bonds at least every 12 months to purchase program bonds issued by Gresham. Additionally, DEQ will request the State Treasurer to issue bonds within 90 days after receiving written notification from Gresham that at least $1 million of signed, unfinanced, assessment contracts have been received from property owners.

C. DEQ will request the State Treasurer to structure the Pollution Control Bonds to provide for principal maturities which do not materially exceed the maturities of Gresham's program bonds.

D. DEQ has the option of authorizing Pollution Control Bonds which are used to purchase program bonds as separate issues, or as separate series within a single issue.

E. Program bonds will be allocated to Pollution Control Bonds with comparable principal maturities.

VII. SCOPE OF AGREEMENT

A. DEQ agrees that this agreement shall apply to provide funding for financing of property owner assessments, charges in lieu of assessment and connection charges

resulting from construction of or connection to sewerage facilities that are identified in the Plan, or modifications thereto.

B. Except as limited by Section VI above, Gresham and DEQ agree that nothing in this agreement shall be construed to require that Gresham make use of the financing mechanism provided for in this agreement. It shall be Gresham's option to determine when the financing mechanism provided for herein shall be used.

C. In the event that Gresham has entered into other financing arrangements prior to the effective date of this agreement for the purpose of providing financing for property owner assessments, charges in lieu of assessment or connection charges relating to sewerage facilities identified in the Plan, DEQ agrees that the financing mechanism provided for in this agreement may, at Gresham's discretion, be used to refinance such obligations.

VIII. ADMINISTRATION AND REPORTING

A. Gresham will be responsible for providing interim construction financing for the Mid-County Sewer Implementation Plan. Gresham will work with Portland to coordinate program bond financing requirements, and will work with the DEQ to incorporate Gresham's financing requirements into the state's debt plans and debt issuance calendar.

B. Gresham shall prepare an annual report summarizing the status of outstanding program bonds, and shall file the report with the DEQ within 90 days after the end of each fiscal year. The report shall include any relevant information requested by DEQ and reasonably available to Gresham. In addition, prior to the beginning of each fiscal year, Gresham shall file with DEQ a written financing plan for the ensuing fiscal year, which estimates the amounts and timing of program bond issues which Gresham anticipates selling to the DEQ.

C. Gresham hereby warrants and guarantees, to the full extent authorized by law, that each respective issue of program bonds shall be duly authorized by regular and appropriate action taken by Gresham, and shall constitute binding obligations of Gresham, enforceable in accordance with their terms.

D. Gresham and DEQ will meet periodically with each other and the City of Portland to review the status of the overall special assessment improvement program, and to develop any modifications to this financing agreement which may be needed to accommodate future events that might affect the financing program.

E. This agreement was drafted as a joint effort of Gresham and the DEQ. It shall therefore not be construed against either party preparing it, but shall be construed as if both parties had prepared it.

IX. DEFAULT

A. The occurrence of any one or more of the following shall constitute an Event of Default under this Agreement:

(i) Failure by Gresham to pay debt service on program bonds when due, except as provided below in section IX.B of this agreement; or,

(ii) Failure by Gresham to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, the master ordinance or any program bonds for a period of 60 days after written notice to Gresham by DEQ specifying such failure and requesting that it be remedied; provided however, that if the failure stated in the notice cannot be corrected within the applicable period, DEQ will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Gresham within the applicable period and diligently pursued until the failure is corrected.

B. It is the intent of the parties that the risks associated with the financing described in this agreement be shared, and that Gresham not be considered to have defaulted under this agreement if Gresham fulfills all its contractual obligations under this agreement, but the amounts Gresham is required to use to pay debt service on program bonds are insufficient to pay program bond debt service when it is due. Therefore, it shall not constitute an event of default hereunder if Gresham fails to pay debt service on program bonds when due, if the failure occurs under circumstances in which Gresham fulfills all of its obligations under this agreement and the master ordinance (including payment of the contingent liability amount and any amounts required under section

IV.A of this agreement), and Gresham is nevertheless unable to pay scheduled debt service on program bonds from amounts Gresham is required to deposit into the sinking fund.

C. Upon the occurrence of an event of default, the DEQ may terminate its obligations under this agreement or exercise any remedy available at law or in equity.

D. No remedy herein conferred upon or reserved to DEQ is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every and any other remedy given under this Agreement or now or hereafter existing at law or in equity, in favor of DEQ. No delay or omission in the exercise of any right or power occurring upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle DEQ to exercise any remedy under this Agreement, it shall not be necessary to give any other notice than such notice as may be required in this Section or by law.

E. Nothing in the description of rights and remedies upon default in this Agreement shall preclude the parties from negotiating mutually acceptable means of remedying defaults, or of addressing problems and issues that arise in the course of performance of this Agreement, and effectuating those means by appropriate written amendment to this Agreement.

F. Any moneys collected by DEQ or on behalf of DEQ after an Event of Default has occurred shall be applied as follows:

First: to the payment of costs, expenses, fees, reasonable compensation of the DEQ or its agents in enforcing remedies.

Second: to the sinking fund.

X. TERM OF AGREEMENT

A. DEQ may terminate its obligations under this agreement prior to June 30, 2005, if an event of default occurs under this agreement or the master ordinance. No such termination shall relieve Gresham from any of its duties and liabilities under this agreement, and all such duties and liabilities shall survive such a termination.

B. Gresham and DEQ anticipate that the total costs of the sewer improvement project defined by the Plan will not exceed $37,800,000 and that no additional funding of construction or other costs of the project pursuant to this Agreement will be necessary after June 30, 2005. In the event that the total costs of the project exceed $37,800,000, or either party to this Agreement becomes aware of circumstances which indicate that the total costs of the project will exceed that amount, or if either party acquires knowledge indicating that the provision of funds for the project pursuant to this Agreement will be necessary at a date subsequent to June 30, 2005, that party immediately shall notify the other party in writing of those circumstances. Within thirty days of the mailing of that notice, the parties shall meet and review the funding structure of this Agreement, the extent of the funding authority granted the parties by their respective laws and governing bodies, and shall determine in good faith, and within the restriction of their respective scopes of authority, whether this Agreement should be terminated, extended or revised to provide funding by other means. Subject to the parties' respective scopes of authority, the parties will endeavor in good faith to secure and fund sufficient project elements to make the project comply with the Plan.

XI. DEFINITIONS

As used in this agreement, the following terms have the following meanings:

A. 'Administrative increment' means an increase in the interest rate on assessment contracts which is designed to defray Gresham's administrative costs, as provided in Section V.B.

B. 'Assessment' means the amount a property is required to pay for its proportionate share of the cost of a sewerage facility.

C. 'Assessment contract' means an agreement whereby a property owner agrees to pay Gresham an Assessment in installments over a period of time.

D. 'Available Sewer Revenues' means the revenues of the City's sewer system which remain after the payment of all operation, maintenance and debt service expenses of

the sewer system,including deposits to debt reserve accounts.

E. 'Charges in lieu of assessment' means charges imposed pursuant to Gresham City Code section 4.115.

F. 'Connection charges' means charges imposed pursuant to Gresham City Code section 4.025

G. 'Contingent liability amount' means the amount described in Section IV.F.1.

H. 'Debt service" means the principal, interest and premium (if any) which is payable on bonds.

I. 'Eligible projects' means sewerage projects constructed pursuant to the EQC's order entitled "In the Matter of the Proposal to Declare a Threat to Drinking Water in a Specifically Defined Area in Mid-Multnomah County Pursuant to ORS 454.275 et. seq.", and identified in the Implementation Plan as being financed through the issuance of special assessment improvement bonds or of a type that are eligible for Bancroft bond financing pursuant to ORS chapter 223.

J. 'Foreclosure' means action to secure payment of delinquent assessment payments by means of a judicial proceeding, or a nonjudicial foreclosure authorized by law, on a lien against property created pursuant to an assessment contract.

K. 'Master ordinance' means the master ordinance under which the program bonds are issued, which is required to be in substantially the form attached hereto as Exhibit A.

L. 'Program bonds' means special assessment improvement bonds which are issued under the master ordinance described in Section III.F of this Agreement, and which are initially purchased by the DEQ pursuant to this Agreement.

M. 'Sinking fund' means the sinking fund created under the master ordinance, into which Gresham is required to deposit money to pay the program bonds.

N. 'Special assessment improvement bonds' means bonds issued pursuant to ORS 223.785.

XII. MISCELLANEOUS

A. In the event any of the provisions of this agreement shall be determined to be impossible, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties hereby.

B. This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

IN WITNESS WHEREOF, the City of Gresham, acting by and through its Mayor and City Manager, pursuant to approval by the Gresham City Council, and the Department of Environmental Quality of the State of Oregon, acting by and through its Director, have caused this agreement to be executed.

Department of Environmental Quality of the State of Oregon	City of Gresham, Oregon
_____	_____
Fred Hansen, Director	Mayor
Date: _____	Date: _____
	_____
	Bonnie Kraft, City Manager Pro Tem
	Date: _____
APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____	_____
Assistant Attorney General	City Attorney

EXHIBIT A

ORDINANCE NO. ____

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF THE CITY OF GRESHAM, OREGON, SPECIAL ASSESSMENT IMPROVEMENT BONDS, SERIES 1990 AND SUBSEQUENT SERIES TO THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY.

The City of Gresham does ordain as follows:

Section 1. Findings. The Council finds:

(a) The City of Gresham, Oregon (the "City") has entered into an intergovernmental agreement dated _____, 1990 (the "Agreement") with the Oregon Department of Environmental Quality (the "Department") under which the Department has agreed, subject to any limitations that may be imposed by the Oregon Legislative Assembly and to the approval of the Oregon State Treasurer, to purchase special assessment improvement bonds issued by the City to finance certain sewer improvements in Mid-Multnomah County. The terms of the Agreement are incorporated herein by reference.

(b) The Agreement requires that all special assessment improvement bonds purchased by the Department be issued under a master ordinance, which conforms to the Agreement and provides the terms under which all such special assessment improvement bonds are to be issued.

(c) The City adopts this ordinance to provide the terms under which it will issue all special assessment improvement bonds which will be purchased by the Department pursuant to the Agreement.

Section 2. Definitions. As used in this Ordinance, the following words shall have the following meanings:

(a) "Administrative Increment" means an increase in the interest rate on Assessments which is designed to defray Gresham's administrative costs, as provided in Section V.B of the Agreement.

(b) "Agreement" means the intergovernmental agreement dated _____, 1990 with the Department under which the Department has agreed to purchase special assessment improvement bonds issued by the City to finance certain sewer improvements in Mid-Multnomah County.

(c) "Assessments" means all payments received by the City in connection with assessments, charges in lieu of

assessments and connection charges (including property owner installment payments, property owner prepayments, and amounts received from collection or foreclosure of delinquent property owner payments) which are levied or imposed for Projects, and for which Bonds are issued.

(d) "Available Sewer Revenues" means the revenues of the City's sewer system which remain after the payment of all operation, maintenance and debt service expenses of the sewer system.

(e) "Bonds" means the Series 1990 Bonds and any Parity Obligations issued pursuant to this Ordinance.

(f) "1990 Bonds" means the Series 1990 Bonds authorized by Section 15 of this ordinance.

(g) "Code" means the Internal Revenue Code of 1986, as amended.

(h) "Construction Fund" means the Mid-County Sewer Construction Fund established pursuant to Section 14 hereof by the City; net proceeds of the Bonds will be deposited in the Construction Fund.

(i) "City" means the City of Gresham, Oregon, a municipal corporation of the State of Oregon.

(j) "Contingent Liability Amount" means the amount described in Section 7(b) of this ordinance.

(k) "Council" means the governing body of the City.

(l) "Debt Service" means any principal, interest or premium payable on Bonds.

(m) "Default" means any event specified in Section 12(a) of this ordinance.

(n) "DEQ" means the Oregon Department of Environmental Quality.

(o) "Ordinance" means this ordinance.

(p) "Parity Obligations" means special assessment improvement bonds of the City issued to finance Assessments for Projects in accordance with Section 10 of this ordinance.

(q) "Projects" means sewerage projects constructed pursuant to the Oregon Environmental Quality Commission's order entitled "In the Matter of the Proposal to Declare a Threat to

Drinking Water in a Specifically Defined Area in Mid-Multnomah County Pursuant to ORS 454.275 et. seq.", and identified in the Implementation Plan as being financed through the issuance of special assessment improvement bonds or of a type that are eligible for Bancroft bond financing pursuant to ORS chapter 223.

(r) "Reserve Requirement" means an amount equal to the sum of the reserves which are required to be established for each series of outstanding Bonds by the proceedings authorizing the issuance of such series. There is no Reserve Requirement for the 1990 Bonds.

(s) "Reserve Account" means the Reserve Account established pursuant to Section 4 hereof.

(t) "Sinking Fund" means the Mid-County Special Assessment Improvement Bond Sinking Fund established pursuant to Section 3 hereof by the City to hold funds to be used to pay Bond principal and interest.

(u) "Subordinate Obligations" means any obligations of the City other than Bonds which are payable from Assessments.

Section 3. Sinking Fund; Deposit and Use of Assessments.

(a) After deduction of the Administrative Increment, and except as provided in Section 5(b), the City shall deposit all Assessments into the Mid-County Special Assessment Improvement Bond Sinking Fund (the "Sinking Fund"), which is hereby created. As long as any Bonds remain issued and outstanding, moneys in the Sinking Fund shall be used solely for the purposes listed below, in the following order of priority:

(i) To pay any debt service on Bonds which was not paid when due;

(ii) To pay scheduled debt service on Bonds;

(iii) To pay interest to the DEQ on delinquent Bond debt service payments, as provided in section IV.G of the agreement;

(iv) To restore the balance in the Reserve Account to an amount equal to the Reserve Requirement;

(v) To redeem Bond principal (and pay any associated interest and premiums) prior to maturity.

(b) Earnings on amounts in the Sinking Fund shall be credited to the Sinking Fund. Any amounts remaining in the

Sinking Fund and the Reserve Account after all Bonds, and all reimbursements due to the DEQ under Section IV.G of the Agreement, have been paid, shall be the property of the City.

Section 4. Reserve Account.

(a) The Reserve Account is created, which shall be a part of the Sinking Fund. If a Reserve Requirement is established for one or more series of program bonds, the City shall deposit into the Reserve Account an amount at least equal to the Reserve Requirement. The City shall maintain the balance in the Reserve Account from transfers under Section 3(a)(iv) of this ordinance.

(b) Moneys required to be maintained in the Reserve Account shall be used only to pay principal of and interest on the Bonds, and only in the event that money in the Sinking Fund and the amounts payable under Section 7 are insufficient.

(c) Earnings on the Reserve Account shall be credited to the Sinking Fund.

Section 5. Collection and Foreclosure of Assessment Liens.

(a) The City covenants with the DEQ, as owner of the Bonds to pursue property foreclosures to collect delinquent Assessments as rapidly as the law reasonably permits, and in accordance with the Agreement and this ordinance. Unless otherwise agreed to in writing by the DEQ , payments due under an assessment contract shall be considered delinquent if they are not received by the City within thirty calendar days after the payments are scheduled to be paid. However, the City may elect not to foreclose or to pursue foreclosures less rapidly than required by this Section, if the City:

(i) notifies the DEQ that it has so elected, and identifies the Assessments to which the election applies; and

(ii) deposits into the Sinking Fund any payments associated with the Assessments to which the election applies and which are delinquent at the time the election is made, and continues to deposit into the Sinking Fund in a timely manner the amounts which would have been deposited into the Sinking Fund if such Assessments were not delinquent.

Any deposits made by the City under this Section shall not reduce the Contingent Liability Amount.

(b) Amounts received by the City from the settlement or foreclosure of delinquent Assessments shall be applied in the following order of priority:

(i) If the City has made deposits under Section 5(a)(ii) in connection with a delinquent Assessment, amounts received by the City from the settlement or foreclosure of that Assessment shall be applied first to reimburse the City for such deposits, but only if the foreclosure or settlement is made on commercially reasonable terms and in a manner consistent with the City's practice of foreclosing and settling assessments which secure the City's outstanding bancroft bonds.

(ii) The City shall deposit into the Sinking Fund an amount equal to the unpaid principal and accrued interest on the delinquent Assessment, reduced by the Administrative Increment in proportion to the amount received on settlement or foreclosure and any reimbursement to the City under subsection (b)(i) of this Section; and

(iii) The balance shall be paid to the City to reimburse it for its administrative costs in carrying, settling and foreclosing the Assessments.

Section 6. Pledge and Disposition of Assessments.

(a) The City hereby pledges the Assessments to the payment of principal and interest on all Bonds. All Assessments shall be deposited in the Sinking Fund promptly, and shall be used only as provided by this ordinance.

Section 7. Contingent Liability Amount.

(a) Subject to the limitations described in this Section, the City agrees to pay into the Sinking Fund, but solely from its Available Sewer Revenues or the proceeds of revenue obligations described in subsection (e) of this Section, the amount described in subsection (c) of this Section. The obligation of the City to pay this amount shall be a general, unsecured liability of the City's sewer fund, which shall be subordinate to all outstanding and future revenue bonds, notes and other obligations of the City which are secured by its sewer revenues.

(b) As long as any Bonds remain outstanding the Contingent Liability Amount shall be equal to the sum of 8 percent of the total scheduled debt service on the aggregate of all series of Bonds which have been issued, calculated as of the date of issuance of such Bonds, minus the sum of any deposits previously made by the City into the Sinking Fund pursuant to

subsection (c) of this Section. The Contingent Liability Amount shall not be reduced because of payment or redemption of Bond principal or interest.

(c) If, on the business day prior to a bond principal or interest payment date, there is not sufficient money in the Sinking Fund to pay debt service due on that payment date, the City shall deposit into the Sinking Fund an amount equal to the lesser of (i) the insufficiency or (ii) the Contingent Liability Amount. The City shall notify the DEQ immediately that it has made such a deposit. If the Available Sewer Revenues are not sufficient to make a deposit when required by this subsection, the deposit shall be made as soon thereafter as the City obtains sufficient Available Sewer Revenues, or the proceeds of revenue obligations described in subsection (e) of this Section.

(d) The Contingent Liability Amount shall be recomputed each time a series of Bonds is issued, and each time the City makes a deposit into the Sinking Fund pursuant to subsection (c) of this Section.

(e) The City hereby covenants with the DEQ that it shall charge rates and fees in connection with its sewage treatment and collection facilities which are sufficient to enable it to pay, when due, all costs of operation, maintenance, debt service, other contractual obligations, and any and all reasonable predictable deposits which would be required under this subsection (c) of this Section. In addition, the City covenants that it will use its best efforts to issue revenue obligations, payable solely from its net sewer revenues, in amounts sufficient to permit it to make, when due (or as soon thereafter as possible), any deposits into the Sinking Fund which are required by subsection (c) of this Section, for which the Available Sewer Revenues are not then sufficient.

Section 8. General Covenants and Representations. The City hereby covenants, represents and agrees with the DEQ as follows:

(a) That it will, to the extent the Assessments and any other amounts required by this ordinance to be deposited into the Sinking Fund and the Reserve Account are sufficient, promptly cause the principal and interest on the Bonds to be paid as they become due.

(b) That it will maintain complete books and records relating to the Assessments, the Construction Fund, the Sinking Fund, and the Reserve Account, in accordance with generally accepted accounting principles, and will cause such books and records to be audited annually at the end of each fiscal year,

and an audit report prepared and made available for the inspection of the DEQ.

(c) That it will not issue Bonds or other obligations having a claim superior to or subordinate to the claim of the Bonds upon the Assessments or amounts deposited in the Sinking Fund or the Reserve Account under this ordinance. Parity obligations may be issued only in accordance with section 10 of this ordinance.

(d) The City will promptly deposit into the Sinking Fund all sums required to be so deposited by this ordinance and the Agreement.

(e) Scheduled payments on the Assessments financed with each series of Bonds shall be sufficient (after deduction of the Administrative Increment) to pay scheduled debt service on the series of Bonds when due.

(f) The City shall fulfill all of its obligations under the Agreement.

Section 9. Form, Execution, Registration, Transfer and Payment. Each series of Bonds shall be initially issued as nontransferable, typewritten, installment bonds registered in the name of the DEQ, and executed by the manual or facsimile signature of the Mayor and the manual signature of the City Manager. Bond principal and interest shall be payable by check, draft or warrant drawn on the City or a bank doing business in the State of Oregon or an electronic transfer of funds, which shall be received by the DEQ not later than the date on which principal or interest on Bonds is due, or the next business day if the due date is not a business day.

Section 10. Parity Obligations.

(a) The City may issue Parity Obligations to finance assessments, charges in lieu of assessments and connection charges which are levied or imposed for Projects, or to refund outstanding Bonds, if:

(i) the Parity Obligations are special assessment improvement bonds which are issued pursuant to the Agreement and are sold to the DEQ;

(ii) on or prior to the issuance of the Parity Obligations the City shall file with the DEQ a certificate of an authorized officer of the City, to the effect that:

(A) scheduled payments of the Assessments to be financed with the Parity Obligations (after

deduction of the Administrative Increment) are at least sufficient to pay scheduled debt service on the Parity Obligations when due;

(B) the Parity Obligations comply with the requirements of the Agreement; and,

(C) Gresham is not in default under any provisions of the Agreement or this ordinance.

(b) All Parity Obligations issued in accordance with this Section shall have a lien on the Assessments, and a right to be paid from any amounts required to be deposited in the Sinking Fund and the Reserve Account, which is equal to that of the 1990 Bonds and all other Parity Obligations issued in accordance with this Section.

(c) Nothing in this ordinance shall prohibit Gresham from issuing special assessment improvement bonds and selling such bonds to parties other than the DEQ; however, such special assessment bonds shall not be secured by any of the Assessments or amounts deposited in the Sinking Fund.

Section 11. Default.

(a) The occurrence of anyone or more of the following shall constitute an event of default under this ordinance:

(i) Failure by Gresham to pay debt service on Bonds when due, except as provided below in section 11(b) of this ordinance; or,

(ii) Failure by Gresham to observe and perform any covenant, condition or agreement on its part to be observed or performed under this ordinance or the Bonds for a period of 60 days after written notice to Gresham by DEQ specifying such failure and requesting that it be remedied, provided however, that if the failure stated in the notice cannot be corrected within the applicable period, DEQ will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Gresham within the applicable period and diligently pursued until the failure is corrected.

(b) It shall not constitute an event of default hereunder if Gresham fails to pay debt service on Bonds when due, if the failure occurs under circumstances in which Gresham fulfills all of its obligations under this ordinance (including payment of the contingent liability amount and any amounts required under section 5(b)(ii) of this ordinance), and Gresham is nevertheless unable to pay scheduled debt service on program

bonds from amounts Gresham is required to deposit into the sinking fund.

(c) Upon the occurrence of an event of default, the DEQ may exercise any remedy available at law or in equity.

(d) No remedy herein conferred upon or reserved to DEQ is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every and any other remedy available under this ordinance or now or hereafter existing at law or in equity, in favor of DEQ. No delay or omission in the exercise of any right or power occurring upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle DEQ to exercise any remedy under this ordinance, it shall not be necessary to give any other notice than such notice as may be required in this section or by law.

(e) Nothing in the description of rights and remedies upon default in this ordinance shall preclude the DEQ and the City from negotiating mutually acceptable means of remedying defaults, or of addressing problems and issues that arise in the course of performance of this ordinance, and effectuating those means by appropriate amendment to this ordinance.

(f) Any moneys collected by DEQ or on behalf of DEQ after an event of default has occurred shall be applied as follows:

First: to the payment of costs, expenses, fees, reasonable compensation of the DEQ or its agents in enforcing remedies.

Second: to the sinking fund.

Section 12. Maintenance of Tax-Exempt Status. The City covenants for the benefit of the DEQ as owner of the Bonds to comply with all provisions of the Code which are required for Bond interest to be excludible from gross income under the Code. The City makes the following specific covenants:

(a) The City will not take any action or omit any action if it would cause the Bonds to become "arbitrage bonds" under Section 148 of the Code, and shall pay all penalties and rebates to the United States which are required by Section 148(f) of the Code.

(b) The City shall operate the facilities financed with the Bonds, and use the proceeds of the Bonds, so that the Bonds are not "private activity bonds" within the meaning of Section 141 of the Code.

The covenants contained in this Section and any covenants in the closing documents for the Bonds shall constitute contracts with the DEQ, and shall be enforceable by them.

Section 13. Defeasance. The lien of the Bonds upon the Assessments and any amounts in the Reserve Account may be defeased, and the Bonds shall be deemed paid, if the City places in irrevocable escrow noncallable, direct obligations of, or obligations guaranteed by, the United States which are calculated to be sufficient, without reinvestment, to pay principal, interest and any premium on the Bonds as they become due, either at maturity or on prior redemption.

Section 14. The Series 1990 Bonds. [text to be provided at time the ordinance is adopted.

Section 15. Amendment of Ordinance. This ordinance may be amended only with the written consent of the DEQ.

ADOPTED by the unanimous vote of the Council, with a quorum in attendance, this _____ day of _____, 19__.

APPROVED by the Mayor this ____ day of _____, 19__.

CITY OF GRESHAM

_____
Mayor

Executed this _____ day of _____, 19__.

ATTEST: _____
Recorder

EXHIBIT B

CITY OF GRESHAM
AGREEMENT FOR
ASSESSMENT BOND FINANCING
(LOCAL IMPROVEMENT DISTRICT)

This Agreement is made on the _____ day of _____, 1990, by and between the City of Gresham, a municipal corporation (City) and _____ (Owner).

Recitals

A. Owner owns property described as _____ _____ (Property).

B. The Property is located at _____ _____.

C. Tax ID #_____; Book/Page _____.

D. On January 2, 1990, the City Council of the City of Gresham, through Ordinance No. 1155, assessed Owner's Property $_____ for its fair share of a sanitary sewer local improvement district known as Mid-County Interceptor Sewer. This amount became a lien on Owner's Property upon entry of the lien in the docket of City liens.

E. Owner desires to pay $_____ of the assessment in cash.

F. Owner desires to pay the remaining amount of the local improvement district assessment on Owner's Property in installments by financing through the City's Assessment Bonding Program, and City agrees to finance the remaining amount of Owner's assessment from its Assessment Bonding Fund. City will provide the financing through the sale of assessment bonds.

G. The parties desire to describe the terms of the Assessment Bond Financing.

THEREFORE, the parties agree as follows:

1. Assessment Bond Financing. Owner hereby makes application for Assessment Bond Financing through the City's Assessment Bond Program in the amount of $_____. This Assessment Bond Financing shall be used to pay a portion of Owner's local improvement district assessment for the project known as Mid-County Interceptor Sewer.

2. Assessment Bond Payment.

a. Owner agrees to pay to the order of the City of Gresham, in equal monthly installments over a period not to exceed twenty years, the sum of $_____ with simple interest on the deferred or unpaid balance. Since the interest rate on the assessment bonds will not be known until the City sells the assessment bonds, owner shall pay an interim interest rate of _____ percent until the assessment bond interest rate is known. Interest shall be payable with each installment payment, until paid. All payments shall be applied first to any accrued penalties, then to accrued interest, and the remainder to principal.

b. The first monthly installment payment shall be due and payable no earlier than 45 days from the date of the assessing ordinance. Subsequent payments shall be due and payable each month thereafter until paid.

c. After the bond sale is completed, the City will give to the Owner a written notice containing the interest rate and the date when the owner's first installment payment will be due and payable. The date of the first payment shall be no earlier than 30 days from the date of such notice. Subsequent payments shall be due and payable each month thereafter until paid.

d. Owner may prepay principal and interest without penalty. Prepayment will be applied first to accrued interest and the remainder to principal.

3. Assessment Bond Assumable. The assessment bond account must be current prior to sale of the Property. The purchaser of the Property must, at the time of closing, either pay the outstanding balance of the assessment bond account or sign a new assessment bond financing agreement. The terms of the new assessment bond financing agreement will be the same as the terms in the previous agreement.

4. Security for the Financing. Owner understands and agrees that the Assessment Bond Financing is secured by an assessment lien on Owner's Property in the amount of $_____.

5. Delinquent. If Owner neglects or refuses to pay any of the installments and interest on the Assessment Bond Financing within 30 days after the installment and interest are due and payable, then the whole amount of the unpaid installment shall immediately become delinquent.

6. Default. Any failure by Owner to pay in accordance with the provisions of this Agreement or any breach of any provision of this Agreement shall result in a default of this Agreement. Upon default, the unpaid principal amount of the Assessment Bond Financing, any accrued interest charges, and the assessment lien on the Property, shall become immediately due and payable.

7. Foreclosure. Upon any delinquency as described in Section 5 or any default as described in Section 6, the City may foreclose in any manner provided by Gresham City Code or state law on Owner's Property to collect the outstanding balance of the assessment lien on the Property.

8. Covenant of Owner. Owner waives all irregularities or defects, jurisdictional or otherwise, in the proceedings establishing the local improvement project known as Mid-County Interceptor Sewer, and in the apportionment and assessment of the costs thereof.

9. Option to Pay Charges. If the Owner fails to timely and properly pay any tax, lien, or assessment charge, when due, the City shall have the option to pay the same. No payment pursuant to the section shall be a waiver of any default.

10. Attorney's Fees. If it becomes necessary for the City to collect on this Agreement the Owner agrees to pay all costs of such collection, even though no suit or action is filed. If an action if filed to collect the balance due on this Agreement or to foreclose the assessment lien securing the Assessment Bond Financing, the losing party agrees to pay all costs plus whatever sum the court shall award to the prevailing party as reasonable attorney's fees. In the event of any appeal, the losing party agrees to pay all costs plus reasonable attorney's fees of the prevailing party.

In Witness Whereof, the Owner and the City have executed this Agreement on the date above written.

Dated: _____

CITY OF GRESHAM

_____
Bonnie R. Kraft
Management Services Director

Dated: _____

OWNER

_____

_____

_____

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

On this _____ day of _____, 1990, before me, a Notary Public in and for the State of Oregon, personally appeared _____, known to me to be the person who executed the within instrument, and acknowledged to me that they executed the same for the purposes therein stated.

_____
Notary Public for Oregon
My commission expires:

Forms 1.33
Rev. 1/30/90

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

On this ______ day of __________, 1990, before me, a Notary Public in and for the State of Oregon, personally appeared ______________________________, known to me to be the person who executed the within instrument, and acknowledged to me that they executed the same for the purposes therein stated.

____
Notary Public for Oregon
My commission expires:

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

On this ______ day of __________, 1990, before me, a Notary Public in and for the State of Oregon, personally appeared ______________________________, known to me to be the person who executed the within instrument, and acknowledged to me that they executed the same for the purposes therein stated.

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My commission expires:

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

On this ______ day of __________, 1990, before me, a Notary Public in and for the State of Oregon, personally appeared ______________________________, known to me to be the person who executed the within instrument, and acknowledged to me that they executed the same for the purposes therein stated.

____
Notary Public for Oregon
My commission expires:

INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF PORTLAND, OREGON AND OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

This agreement is entered into this _____ day of _____, 1990, pursuant to ORS 190.110 between the City of Portland, Oregon, a municipal corporation, hereinafter called "Portland", and the Department of Environmental Quality of the State of Oregon, hereinafter called "DEQ", under the authority of the laws applicable to each, for the purposes set forth below.

I. PURPOSE AND INTENT

This agreement is entered into in furtherance of the Mid-County Sewer Implementation Plan. It is the intent of Portland and DEQ to use the special assessment improvement bond financing arrangement described below to provide Portland with funds for financing property owner assessments, charges in lieu of assessment and connection charges resulting from the construction of the Mid-County sewer project. It is also the purpose of this agreement to recognize a joint commitment to risk sharing, given the existence of economic risks in the financing.

II. FINDINGS

A. In 1985, the East County Sanitary Sewer Consortium (Portland, Gresham and Multnomah County), in response to a request for additional information made by the State of Oregon Environmental Quality Commission (EQC), prepared a Sewer Implementation Plan (the Plan) detailing the costs, construction schedule, and financing plan for sewering a large portion of Mid-Multnomah County within which the EQC had preliminarily determined a threat to drinking water to exist. The Plan was approved by the governing bodies of each jurisdiction (Portland, Gresham and Multnomah County), and was submitted to the EQC in September 1985. Following extensive public review and testimony, and additional independent review of the proposed Plan, the EQC in April 1986 ruled that a threat to drinking water, as defined in ORS 454.275 et sec., did exist and ordered that the Plan be implemented. The Plan is hereby incorporated into this Agreement by reference, and Portland shall not amend or modify the Plan without the prior written consent of DEQ.

B. A key component of the Plan involved the manner in which sewer construction would be financed. Development of the financial elements of the Plan required that the general obligation credit quality and bond ratings of Portland and Gresham not be negatively affected. Furthermore, the Plan recognized that a large portion of the Affected Area was outside the corporate boundaries of Portland and Gresham and, therefore,

it would not be financially prudent for the cities to extend general obligation-backed financing, such as Bancroft bonding, on an extra-territorial basis. For these reasons, and because the magnitude of the construction program had the potential for requiring large amounts of Bancroft Bond financing, a property assessment financing alternative was proposed and incorporated into the Plan.

C. In lieu of issuing Bancroft Bonds to finance property owner assessments, charges in lieu of assessment and connection charges, the Plan recommended that Portland and Gresham issue special assessment improvement bonds for purchase by the DEQ. The DEQ would finance these bond purchases through the issuance of general obligation pollution control bonds. Because interest rates bid by the private capital markets on DEQ bonds would likely be lower than rates bid on special assessment improvement bonds issued by Portland and Gresham, project affordability would be enhanced. The special assessment improvement bonds would be paid for through property owner installment payments, additionally secured by a lien against the property, and payment of the contingent liability amount.

D. The Plan proposed that Portland limit its use of Bancroft Bonds to $30 million outstanding at any time to provide property owner financing in connection with projects required under the EQC order, and that all such bonds be used only to finance property owner assessments and charges within Portland's corporate boundaries. Portland's share of property owner financing in excess of this amount would be provided through the issuance of special assessment improvement bonds, regardless of whether the properties for which financing is provided are located inside or outside Portland's corporate boundaries.

E. The Environmental Quality Commission has found that the Portland sewer development project, as defined in the Plan and administered in accordance with the Agreement, will be self-supporting and self-liquidating from revenues, gifts, grants from the federal government, user charges, assessments, or other fees.

III. SPECIAL ASSESSMENT IMPROVEMENT BOND STRUCTURE AND PURCHASE

Portland will issue special assessment improvement bonds for financing property owner assessments, charges in lieu of assessment and connection charges for the Mid-County Sewer Implementation Plan. DEQ will purchase Portland's special assessment improvement bonds, provided that the bonds are structured as provided for in sections III through V of this agreement, although Portland may market special assessment improvement bonds to other buyers. Portland's special assessment improvement bonds which are purchased by the DEQ under this agreement (the "program bonds") shall be structured as follows:

A. Unless the DEQ consents in writing to the use of a different structure, the program bonds will be structured comparably to the City's contemporaneously issued Bancroft Bonds. Portland reserves the right to alter the structure of its Bancroft bond program as it sees fit.

B. Program bonds shall be secured by a sinking fund. Except for the administrative increment and as specifically provided in Section IV.D, Portland shall deposit into the sinking fund all payments received by Portland under assessment contracts funded with the proceeds of program bonds (including property owner installment payments, property owner prepayments, and amounts received from collection or foreclosure of delinquent property owner payments), all sinking fund interest earnings and any earnings on or transfers from a special assessment improvement bond reserve account. Except as provided in Section IV.C and until all program bonds have been paid, all money in the sinking fund shall be used solely to pay debt service on program bonds. A copy of the assessment contract form which is acceptable to DEQ is attached and incorporated into this Agreement as Exhibit B. All assessment contracts financed under this agreement shall be in substantially the form attached hereto as Exhibit B, and Portland shall not alter or amend the form of the assessment contracts which are financed under this agreement without the prior written consent of DEQ.

C. Portland may elect to establish reserve accounts for program bonds, and may fund such reserves with the proceeds of program bonds, so long as the creation and funding of the reserves will not cause program bonds to be "arbitrage bonds" under Section 148 of the Internal Revenue Code. Money in such a reserve shall be used only to pay debt service on program bonds. Earnings on the reserves shall be credited to the sinking fund.

D. Subject to DEQ's receipt of the consent and authorization of the Oregon Legislature and the Oregon State Treasurer as provided in Section VI and upon request of Portland, DEQ shall offer to purchase each series of Portland's special assessment improvement bonds at a price equal to the principal amount of the series of special assessment improvement bonds, less a discount which does not exceed the sum of: the discount at which the original purchaser buys the series of bonds issued by the DEQ to finance the purchase of that series of Portland's bonds; plus, an

additional amount reasonably estimated to reimburse DEQ for its expenses in issuing and administering that series of bonds. Such expenses may include the fees of DEQ's bond counsel for examining the proceedings of Portland to issue the program bonds, and determining the validity and tax-exempt status of the program bonds in a manner satisfactory to the DEQ. The program bonds shall bear interest at a rate equal to the rate on the bonds issued by the DEQ which are allocable to the purchase of Portland's program bonds. However, instead of adjusting the purchase price for the expenses of the DEQ, the DEQ and Portland may agree to increase the rate on Portland's program bonds by an amount such that the present value of the increased interest payments (discounted at the true interest cost of the DEQ bonds which are allocable to the purchase of Portland's program bonds) has a present value equal to the estimated present value of such expenses, discounted at the same rate. In calculating true interest cost under this paragraph, debt service on the DEQ bonds shall be discounted to the price paid to the DEQ for its bonds, less costs of issuance to be paid from the proceeds of such bonds. If DEQ issues a single series of bonds to both buy Portland's special assessment improvement bonds and for other purposes, the DEQ shall allocate its discount, issuance and administrative costs between the special assessment improvement bonds and the other purposes; only the amount allocated to Portland's special assessment improvement bonds shall be used in computing the discount at which such bonds are purchased and the true interest cost of the DEQ's bonds. Unless the parties agree otherwise in writing, DEQ and Portland shall enter into a bond purchase agreement for each series of program bonds prior to the time the DEQ and the State of Oregon take substantial steps to issue DEQ bonds to acquire the program bonds. The bond purchase agreement shall specify with precision the manner in which the rates on the program bonds shall be established, and the purchase price for such bonds. The bond purchase agreement shall require the DEQ to purchase the series of special assessment bonds described in the bond purchase agreement, and shall require Portland to sell such series to the DEQ, contingent only upon successful issuance and sale of the DEQ bonds.

E. Portland's special assessment improvement bond financing program will be operated so that Portland's program bonds will maintain their tax exempt status.

F. All of Portland's program bonds shall be issued pursuant to a master ordinance, in substantially the form attached hereto as Exhibit A, which provides that all such bonds are equally secured by all payments received by Portland from assessment contracts which are financed with program bonds. All program bonds shall be payable from a pooled sinking fund, and any reserve shall secure all outstanding program bonds. Money in the sinking fund may be used to redeem bonds of any series selected by Portland. Portland reserves the right to redeem the highest interest rate program bonds first, regardless of when such bonds are issued.

G. The closing date, maturity dates, interest payment dates and redemptions dates of program bonds shall be coordinated with those of similar bonds of the City of Gresham, in order to facilitate issuance, payment and redemption of DEQ bonds which are issued to purchase program bonds and similar bonds issued by Gresham.

H. The maximum amount of program bonds which Portland expects to issue and sell to the DEQ under this Agreement, and which the DEQ expects to purchase under this Agreement is $180,101,182. Portland and the DEQ both expect that the amount which will be issued and sold each year will vary substantially, but will not exceed $180,101,182. In order to facilitate the DEQ's biennial budgeting for issuance of its bonds, not later than July 1 of each fiscal year which begins in an even numbered year, Portland agrees to provide the DEQ with a preliminary estimate of the amount of program bonds which it expects to sell to the DEQ during each of the following two fiscal years, and to provide DEQ with a final estimate of such amounts not later than November 1 of each fiscal year which begins in an even numbered year. DEQ reserves the right to refuse to purchase special assessment improvement bonds of the City in amounts which exceed the City's estimates, if such purchase would interfere with the issuance of DEQ's bonds for other purposes.

I. On or before the closing of any purchase by the DEQ of a series of program bonds and unless waived by DEQ, Portland shall provide DEQ with a transcript of the proceedings authorizing the issuance of the series of program bonds, and a certification that Portland has taken all steps required to authorize and issue the bonds under the laws of the State of Oregon and in accordance with this Agreement and that no litigation is pending or threatened which would adversely affect

the ability of Portland to issue or pay the program bonds.

J. Portland will cooperate with the DEQ to make the program bonds marketable by the DEQ in conventional capital markets, to the extent this can be done without significantly increased cost or burden to Portland. All expenses of reselling program bonds shall be paid by the DEQ. However, DEQ may not resell program bonds without Portland's consent unless:

1. Portland reviews and approves the following documents in advance and in writing, before such documents are distributed to rating agencies, insurance companies, banks, bond investors, underwriters or other bond market participants: all legal, disclosure and other documents relating to the program bonds which are distributed to such entities; and,

2. Portland is provided advance notice and a reasonable opportunity to participate in any presentations which the DEQ makes to rating agencies, insurance companies, banks, bond investors, underwriters or other bond market participants; and,

3. DEQ sells program bonds no more frequently than once in each thirty day period, and either:

   a. obtains municipal bond insurance, an irrevocable letter of credit, or other third party guarantee for the all debt service on the program bonds which are resold, through the last date on which such program bonds will be outstanding, and the such program bonds receive a rating from Moody's Investors Services, Standard and Poor's Corporation, or a comparable rating agency, contemporaneously with the resale, which is at least as high as the then current general obligation bond rating of the State of Oregon; or,

   b. sells all program bonds which are sold at any one time only to a single, sophisticated investor under circumstances in which: (1) the sale would be a transaction which would be exempt from registration under state and federal securities laws (assuming, hypothetically, that the program bonds were securities which were not not exempt from

registration under such laws) because of the sophistication of the investor; and (2) the purchaser and all subsequent purchasers are prohibited from reselling the program bonds except to investors in transactions which meet the requirements of clause (1) of this subparagraph III.J.3.b..

K. Portland's program bonds, and the purchase thereof by the DEQ, shall comply with DEQ's administrative rules. DEQ will work in good faith to make any revisions to its administrative rules which are required to permit this agreement to be carried out in accordance with the law and the parties intentions.

IV. BOND COVENANTS

Portland's program bonds shall contain the following covenants:

A. Portland will covenant to pursue property foreclosures to collect delinquent assessment payments as rapidly as the law reasonably permits. Portland will follow the collection and foreclosure process described in Exhibit C, attached hereto and incorporated herein by reference. Portland may elect not to foreclose, or to pursue foreclosure less rapidly than required by this section, if Portland:

1. Notifies the DEQ that it has made such an election, and identifies the assessment contracts to which the election applies; and,

2. Deposits into the sinking fund any payments which are delinquent at the time the election is made, and continues to deposit into the sinking fund in a timely manner, the amounts which would have been deposited in the sinking fund if the assessment contracts were not delinquent. Any deposits made by Portland under this subsection shall not reduce the contingent liability amount; however, when delinquent amounts are collected Portland shall be entitled to retain an amount equal to the sum of such deposits for each such contract as provided in Section IV.D.1, but only if the foreclosure or settlement is made on commercially reasonable terms and in a manner consistent with Portland's practice in foreclosing and settling assessment contracts which secure Portland's outstanding Bancroft bonds.

B. Property owners will be allowed to prepay their outstanding assessment contract balances at any time without penalty.

C. Deposits in the sinking fund shall be applied solely for the following purposes and in the following order of priority:

1. To pay any debt service on program bonds which was not paid when due;

2. To pay scheduled debt service on program bonds;

3. To pay interest to the DEQ on delinquent debt service payments, as provided in section IV.G of this agreement;

4. To restore the balance in any reserve account for program bonds to its required level;

5. To redeem program bond principal prior to maturity, and pay any premium or interest due in connection with such a redemption.

Any amounts remaining in the sinking fund and any reserve accounts after all program bonds, and all reimbursements due to the DEQ under section IV.G, have been paid, shall be the property of the City of Portland.

D. Collection of delinquent assessment contract payments will be applied in the following order:

1. To Portland to reimburse it for any deposits it made to the sinking fund pursuant to Section IV.A.2 of this agreement.

2. To Portland for administrative costs to the extent that such delinquent payments exceed the unpaid principal and accrued interest (reduced by the administrative increment described in Section V.B) on the unpaid assessment contract.

3. To the sinking fund for use as provided in Section IV.C.

E. Portland may establish the interest rates charged to property owners under the assessment contracts, so long as the interest rates (reduced by the administrative increment described in Section V.B) on the assessment contracts produce scheduled cashflows which are

sufficient to pay the program bonds. Unless the DEQ consents in writing, assessment contract rates and other terms shall be comparable to the terms used by Portland for contemporaneous assessment contracts which Portland uses in its Bancroft bond program.

F. Subject to the limitations described in this paragraph, Portland agrees to contribute up to the contingent liability amount to pay debt service on program bonds, but solely from its Available Sewer Revenues. The claim of program bondowners under this paragraph shall be a general, unsecured liability of Portland's Sewer Fund, which shall be subordinate to all outstanding and future revenue bonds, notes and other obligations of the City which are secured by its sewer revenues. The contingent liability amount shall be computed and paid as follows:

1. The contingent liability amount shall be equal to the sum of eight percent (8%) of the total scheduled debt service on the aggregate of all series of Portland program bonds which have been issued, calculated as of the date of purchase of each series, minus the sum of any deposits previously made by Portland pursuant to subsection F.2 of this section. The Contingent Liability Amount shall not be reduced because of payment or redemption of program bond debt service. The contingent liability amount shall be reevaluated by the parties three years after this Agreement is signed.

2. If, on the business day prior to a payment date on program bonds, there is not sufficient money in the sinking fund to pay debt service due on the that payment date, Portland shall deposit into the sinking fund an amount equal to the lesser of: the insufficiency; or, the contingent liability amount. Portland shall notify DEQ immediately that it has made such a deposit. If the Available Sewer Revenues are not sufficient to make a deposit when required by this subsection, the deposit shall be made as soon thereafter as the City obtains sufficient Available Sewer Revenues, or the proceeds of revenue obligations described in subsection F.5 of this section.

3. The contingent liability amount shall be recomputed each time a series of program bonds is purchased by DEQ, and each time Portland makes a deposit under subsection F.2 of this section.

Portland shall not be obligated to make any payment to the DEQ with regard to the contingent liability amount at any time when the contingent liability amount is zero.

4. Portland shall not be entitled to recover any payments made under subsection F.2 of this section from the DEQ, or to offset such amounts against any payments due to the DEQ. After payment in full of all debt service on program bonds, and reimbursement of any DEQ funds used to pay debt service on DEQ bonds under Section IV.G of this agreement, Portland shall be entitled to retain any balance in the sinking fund for the program bonds, and any money subsequently received from the payment of assessment contracts, free from any lien or claim of the DEQ.

5. Portland shall charge rates and fees in connection with its sewage treatment and collection facilities which are sufficient to enable it to pay all costs of operation, maintenance, debt service, other contractual obligations, and any and all reasonably predictable contingent liability amount payments which would be required under this agreement. If Portland is required to make a payment of its contingent liability amount and does not have sufficient Available Sewer Revenues on hand to make the payment, Portland shall, to the extent permitted by law, issue revenue obligations, payable solely from its net sewer revenues, as quickly as practicable in amounts sufficient to permit it to make any deposits into the sinking fund at the times required by subsection F.2 of this section.

G. If: Portland deposits into the sinking fund all amounts it is required to so deposit under this Agreement and the master ordinance; those amounts are not sufficient to pay scheduled debt service on Portland's program bonds when such debt service is due; and, the DEQ is therefore required to use its funds to pay debt service on DEQ bonds which were issued to purchase Portland program bonds; then Portland shall not be required to reimburse the DEQ for such payments, except as provided in this subsection G. Portland shall pay to the DEQ, but solely from money required to be deposited in the sinking fund (including the contingent liability amount):

a. all overdue debt service payments on Portland program bonds, as provided in section IV.C.1 of this agreement; and,

b. interest on the DEQ funds which were used to pay debt service on DEQ bonds from the date of use until the date of reimbursement at the rate paid to depositors in the Oregon short term fund during that period, as provided in section IV.C.3 of this agreement.

Interest payments made under subparagraph b of this section IV.G shall not be credited against the debt service due from Portland on its outstanding program bonds.

V. PROPERTY OWNER REPAYMENT TERMS

A. Portland shall determine the interest rate to be charged to property owners and shall establish the other terms of assessment repayment in a manner comparable to the manner in which Portland determines the interest rate and terms on assessment contracts used in connection with its contemporaneous Bancroft bonds. The interest rates (after reduction for the administrative increment described in Section V.B) charged on assessment contracts associated with a single issue of program bonds shall at least be sufficient to produce cash flows which will permit timely payment of program bond debt service.

B. In order to defray its administrative costs, Portland may increase the interest rate on assessment contracts by an amount which does not exceed the amount Portland calculates to be necessary to reimburse Portland for its administrative costs. This increase (the "administrative increment") may be retained by Portland and not deposited in the sinking fund, and shall not be included when calculating amounts which will be available from assessment contracts to pay program bonds. The amount of the administrative increment shall not exceed the amount charged by Portland for contemporaneous assessment contracts which Portland finances with Bancroft Bonds. Portland shall certify to the DEQ the amount of the administrative increment for each assessment contract which is to be financed with program bonds, prior to selling program bonds to the DEQ.

VI. STRUCTURE OF DEQ POLLUTION CONTROL BONDS

To the extent permitted by law, DEQ will authorize and cause to be issued general obligation Pollution Control Bonds for the purpose of purchasing special assessment improvement bonds issued by the City of Portland as provided in this Agreement. The parties acknowledge that issuance of such bonds requires the consent and authorization of the Oregon Legislature and the Oregon State Treasurer. This agreement does not purport to bind either the Oregon Legislature or the Oregon State Treasurer. However, the DEQ agrees to use reasonable efforts to secure the approval and authorization of the Oregon Legislature and the Oregon State Treasurer for the general obligation Pollution Control Bonds described in this Section VI. To the extent that Pollution Control Bonds are issued for the express purpose of purchasing special assessment improvement bonds issued by Portland, Portland agrees to sell such bonds to the DEQ. To the extent permitted by law, Pollution Control Bonds issued to purchase Portland special assessment improvement bonds will be structured as follows:

A. Pollution Control Bonds will be issued and maintained as tax exempt bonds.

B. DEQ will request the State Treasurer to issue bonds at least every 12 months to purchase program bonds issued by Portland. Additionally, DEQ will request the State Treasurer to issue bonds within 90 days after receiving written notification from Portland that at least $1 million of signed, unfinanced, assessment contracts have been received from property owners.

C. DEQ will request the State Treasurer to structure the Pollution Control Bonds to provide for principal maturities which do not materially exceed the maturities of Portland's program bonds.

D. DEQ has the option of authorizing Pollution Control Bonds which are used to purchase program bonds as separate issues, or as separate series within a single issue.

E. Program bonds will be allocated to Pollution Control Bonds with comparable principal maturities.

VII. SCOPE OF AGREEMENT

A. DEQ agrees that this agreement shall apply to provide funding for financing of property owner assessments, charges in lieu of assessment and connection charges resulting from construction of or connection to

sewerage facilities that are identified in the Plan, or modifications thereto.

B. Portland agrees that it will provide Bancroft Bond financing up to a maximum of $30 million outstanding at any time for eligible projects identified in the Plan inside Portland's corporate boundaries. This $30 million commitment for properties within the City shall be utilized prior to drawing on DEQ's financing commitment, except to the extent that it may be necessary to draw on DEQ's financing commitment for the benefit of properties outside the City before the $30 million commitment is fully utilized for the benefit of properties within the City.

B. Except as limited by Section VI above, Portland and DEQ agree that nothing in this agreement shall be construed to require that Portland make use of the financing mechanism provided for in this agreement. It shall be Portland's option to determine when the financing mechanism provided for herein shall be used.

C. In the event that Portland has entered into other financing arrangements prior to the effective date of this agreement for the purpose of providing financing for property owner assessments, charges in lieu of assessment or connection charges relating to sewerage facilities identified in the Plan, DEQ agrees that the financing mechanism provided for in this agreement may, at Portland's discretion, be used to refinance such obligations.

VIII. ADMINISTRATION AND REPORTING

A. Portland will be responsible for providing interim construction financing for the Mid-County Sewer Implementation Plan. Portland will work with Gresham to coordinate program bond financing requirements, and will work with the DEQ to incorporate Portland's financing requirements into the state's debt plans and debt issuance calendar.

B. Portland shall prepare an annual report summarizing the status of outstanding program bonds, and shall file the report with the DEQ within 90 days after the end of each fiscal year. The report shall include any relevant information requested by DEQ and reasonably available to Portland. In addition, prior to the beginning of each fiscal year, Portland shall file with DEQ a written financing plan for the ensuing fiscal year, which estimates the amounts and timing of program

bond issues which Portland anticipates selling to the DEQ.

C. Portland hereby warrants and guarantees, to the full extent authorized by law, that each respective issue of program bonds shall be duly authorized by regular and appropriate action taken by Portland, and shall constitute binding obligations of Portland, enforceable in accordance with their terms.

D. Portland and DEQ will meet periodically with each other and the City of Gresham to review the status of the overall special assessment improvement program, and to develop any modifications to this financing agreement which may be needed to accommodate future events that might affect the financing program.

E. This agreement was drafted as a joint effort of Portland and the DEQ. It shall therefore not be construed against either party preparing it, but shall be construed as if both parties had prepared it.

IX. DEFAULT

A. The occurrence of any one or more of the following shall constitute an Event of Default under this Agreement:

(i) Failure by Portland to pay debt service on program bonds when due, except as provided below in section IX.B of this agreement; or,

(ii) Failure by Portland to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, the master ordinance or any program bonds for a period of 60 days after written notice to Portland by DEQ specifying such failure and requesting that it be remedied; provided however, that if the failure stated in the notice cannot be corrected within the applicable period, DEQ will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Portland within the applicable period and diligently pursued until the failure is corrected.

B. It is the intent of the parties that the risks associated with the financing described in this agreement be shared, and that Portland not be considered to have defaulted under this agreement if Portland fulfills all its contractual obligations under this agreement, but the amounts Portland is required to

use to pay debt service on program bonds are insufficient to pay program bond debt service when it is due. Therefore, it shall not constitute an event of default hereunder if Portland fails to pay debt service on program bonds when due, if the failure occurs under circumstances in which Portland fulfills all of its obligations under this agreement and the master ordinance (including payment of the contingent liability amount and any amounts required under section IV.A of this agreement), and Portland is nevertheless unable to pay scheduled debt service on program bonds from amounts Portland is required to deposit into the sinking fund.

C. Upon the occurrence of an event of default, the DEQ may terminate its obligations under this agreement or exercise any remedy available at law or in equity.

D. No remedy herein conferred upon or reserved to DEQ is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every and any other remedy given under this Agreement or now or hereafter existing at law or in equity, in favor of DEQ. No delay or omission in the exercise of any right or power occurring upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle DEQ to exercise any remedy under this Agreement, it shall not be necessary to give any other notice than such notice as may be required in this Section or by law.

E. Nothing in the description of rights and remedies upon default in this Agreement shall preclude the parties from negotiating mutually acceptable means of remedying defaults, or of addressing problems and issues that arise in the course of performance of this Agreement, and effectuating those means by appropriate written amendment to this Agreement.

F. Any moneys collected by DEQ or on behalf of DEQ after an Event of Default has occurred shall be applied as follows:

First: to the payment of costs, expenses, fees, reasonable compensation of the DEQ or its agents in enforcing remedies.

Second: to the sinking fund.

X. TERM OF AGREEMENT

A. DEQ may terminate its obligations under this agreement prior to June 30, 2005, if an event of default occurs under this agreement or the master ordinance. No such termination shall relieve Portland from any of its duties and liabilities under this agreement, and all such duties and liabilities shall survive such a termination.

B. Portland and DEQ anticipate that the total costs of the sewer improvement project defined by the Plan will not exceed $180,101,182 and that no additional funding of construction or other costs of the project pursuant to this Agreement will be necessary after June 30, 2005. In the event that the total costs of the project exceed $180,101,182, or either party to this Agreement becomes aware of circumstances which indicate that the total costs of the project will exceed that amount, or if either party acquires knowledge indicating that the provision of funds for the project pursuant to this Agreement will be necessary at a date subsequent to June 30, 2005, that party immediately shall notify the other party in writing of those circumstances. Within thirty days of the mailing of that notice, the parties shall meet and review the funding structure of this Agreement, the extent of the funding authority granted the parties by their respective laws and governing bodies, and shall determine in good faith, and within the restriction of their respective scopes of authority, whether this Agreement should be terminated, extended or revised to provide funding by other means. Subject to the parties' respective scopes of authority, the parties will endeavor in good faith to secure and fund sufficient project elements to make the project comply with the Plan.

XI. DEFINITIONS

As used in this agreement, the following terms have the following meanings:

A. 'Administrative increment' means an increase in the interest rate on assessment contracts which is designed to defray Portland's administrative costs, as provided in Section V.B.

B. 'Assessment' means the amount a property is required to pay for its proportionate share of the cost of a sewerage facility.

C. 'Assessment contract' means an agreement whereby a property owner agrees to pay Portland an Assessment in installments over a period of time.

D. 'Available Sewer Revenues' means the revenues of the City's sewer system which remain after the payment of all operation, maintenance and debt service expenses of the sewer system,including deposits to debt reserve accounts.

E. 'Charges in lieu of assessment' means charges imposed pursuant to Portland City Code section 17.36.020(C).

F. 'Connection charges' means charges imposed pursuant to Portland City Code sections 17.36.020(B) or 17.36.020(D).

G. 'Contingent liability amount' means the amount described in Section IV.F.1.

H. 'Debt service" means the principal, interest and premium (if any) which is payable on bonds.

I. 'Eligible projects' means sewerage projects constructed pursuant to the EQC's order entitled "In the Matter of the Proposal to Declare a Threat to Drinking Water in a Specifically Defined Area in Mid-Multnomah County Pursuant to ORS 454.275 et. seq.", and identified in the Implementation Plan as being financed through the issuance of special assessment improvement bonds or of a type that are eligible for Bancroft bond financing pursuant to ORS chapter 223.

J. 'Foreclosure' means action to secure payment of delinquent assessment payments by means of a judicial proceeding, or a nonjudicial foreclosure authorized by law, on a lien against property created pursuant to an assessment contract.

K. 'Master ordinance' means the master ordinance under which the program bonds are issued, which is required to be in substantially the form attached hereto as Exhibit A.

L. 'Program bonds' means special assessment improvement bonds which are issued under the master ordinance described in Section III.F of this Agreement, and which are initially purchased by the DEQ pursuant to this Agreement.

M. 'Sinking fund' means the sinking fund created under the master ordinance, into which Portland is required to deposit money to pay the program bonds.

N. 'Special assessment improvement bonds' means bonds issued pursuant to ORS 223.785.

XII. MISCELLANEOUS

A. In the event any of the provisions of this agreement shall be determined to be impossible, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties hereby.

B. This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

IN WITNESS WHEREOF, the City of Portland, acting by and through its _____, pursuant to approval by the Portland City Council, and the Department of Environmental Quality of the State of Oregon, acting by and through its Director, have caused this agreement to be executed.

Department of Environmental Quality of the State of Oregon	City of Portland, Oregon
_____	_____
Fred Hansen, Director	
Date: _____	Date: _____
APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____	_____
Assistant Attorney General	City Attorney

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF THE CITY OF PORTLAND, OREGON, SPECIAL ASSESSMENT IMPROVEMENT BONDS, SERIES 1990 AND SUBSEQUENT SERIES TO THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY.

The City of Portland does ordain as follows:

Section 1. Findings. The Council finds:

(a) The City of Portland, Oregon (the "City") has entered into an intergovernmental agreement dated _____, 1990 (the "Agreement") with the Oregon Department of Environmental Quality (the "Department") under which the Department has agreed, subject to any limitations that may be imposed by the Oregon Legislative Assembly and to the approval of the Oregon State Treasurer, to purchase special assessment improvement bonds issued by the City to finance certain sewer improvements in Mid-Multnomah County. The terms of the Agreement are incorporated herein by reference.

(b) The Agreement requires that all special assessment improvement bonds purchased by the Department be issued under a master ordinance, which conforms to the Agreement and provides the terms under which all such special assessment improvement bonds are to be issued.

(c) The City adopts this ordinance to provide the terms under which it will issue all special assessment improvement bonds which will be purchased by the Department pursuant to the Agreement.

Section 2. Definitions. As used in this Ordinance, the following words shall have the following meanings:

(a) "Administrative Increment" means an increase in the interest rate on Assessments which is designed to defray Portland's administrative costs, as provided in Section V.B of the Agreement.

(b) "Agreement" means the intergovernmental agreement dated _____, 1990 with the Department under which the Department has agreed to purchase special assessment improvement bonds issued by the City to finance certain sewer improvements in Mid-Multnomah County.

(c) "Assessments" means all payments received by the City in connection with assessments, charges in lieu of

assessments and connection charges (including property owner installment payments, property owner prepayments, and amounts received from collection or foreclosure of delinquent property owner payments) which are levied or imposed for Projects, and for which Bonds are issued.

(d) "Available Sewer Revenues" means the revenues of the City's sewer system which remain after the payment of all operation, maintenance and debt service expenses of the sewer system.

(e) "Bonds" means the Series 1990 Bonds and any Parity Obligations issued pursuant to this Ordinance.

(f) "1990 Bonds" means the Series 1990 Bonds authorized by Section 15 of this ordinance.

(g) "Code" means the Internal Revenue Code of 1986, as amended.

(h) "Construction Fund" means the Mid-County Sewer Construction Fund established pursuant to Section 14 hereof by the City; net proceeds of the Bonds will be deposited in the Construction Fund.

(i) "City" means the City of Portland, Oregon, a municipal corporation of the State of Oregon.

(j) "Contingent Liability Amount" means the amount described in Section 7(b) of this ordinance.

(k) "Council" means the governing body of the City.

(l) "Debt Service" means any principal, interest or premium payable on Bonds.

(m) "Default" means any event specified in Section 12(a) of this ordinance.

(n) "DEQ" means the Oregon Department of Environmental Quality.

(o) "Ordinance" means this ordinance.

(p) "Parity Obligations" means special assessment improvement bonds of the City issued to finance Assessments for Projects in accordance with Section 10 of this ordinance.

(q) "Projects" means sewerage projects constructed pursuant to the Oregon Environmental Quality Commission's order entitled "In the Matter of the Proposal to Declare a Threat to

Drinking Water in a Specifically Defined Area in Mid-Multnomah County Pursuant to ORS 454.275 et. seq.", and identified in the Implementation Plan as being financed through the issuance of special assessment improvement bonds or of a type that are eligible for Bancroft bond financing pursuant to ORS chapter 223.

(r) "Reserve Requirement" means an amount equal to the sum of the reserves which are required to be established for each series of outstanding Bonds by the proceedings authorizing the issuance of such series. There is no Reserve Requirement for the 1990 Bonds.

(s) "Reserve Account" means the Reserve Account established pursuant to Section 4 hereof.

(t) "Sinking Fund" means the Mid-County Special Assessment Improvement Bond Sinking Fund established pursuant to Section 3 hereof by the City to hold funds to be used to pay Bond principal and interest.

(u) "Subordinate Obligations" means any obligations of the City other than Bonds which are payable from Assessments.

Section 3. Sinking Fund; Deposit and Use of Assessments.

(a) After deduction of the Administrative Increment, and except as provided in Section 5(b), the City shall deposit all Assessments into the Mid-County Special Assessment Improvement Bond Sinking Fund (the "Sinking Fund"), which is hereby created. As long as any Bonds remain issued and outstanding, moneys in the Sinking Fund shall be used solely for the purposes listed below, in the following order of priority:

(i) To pay any debt service on Bonds which was not paid when due;

(ii) To pay scheduled debt service on Bonds;

(iii) To pay interest to the DEQ on delinquent Bond debt service payments, as provided in section IV.G of the agreement;

(iv) To restore the balance in the Reserve Account to an amount equal to the Reserve Requirement;

(v) To redeem Bond principal (and pay any associated interest and premiums) prior to maturity.

(b) Earnings on amounts in the Sinking Fund shall be credited to the Sinking Fund. Any amounts remaining in the

Sinking Fund and the Reserve Account after all Bonds, and all reimbursements due to the DEQ under Section IV.G of the Agreement, have been paid, shall be the property of the City.

Section 4. Reserve Account.

(a) The Reserve Account is created, which shall be a part of the Sinking Fund. If a Reserve Requirement is established for one or more series of program bonds, the City shall deposit into the Reserve Account an amount at least equal to the Reserve Requirement. The City shall maintain the balance in the Reserve Account from transfers under Section 3(a)(iv) of this ordinance.

(b) Moneys required to be maintained in the Reserve Account shall be used only to pay principal of and interest on the Bonds, and only in the event that money in the Sinking Fund and the amounts payable under Section 7 are insufficient.

(c) Earnings on the Reserve Account shall be credited to the Sinking Fund.

Section 5. Collection and Foreclosure of Assessment Liens.

(a) The City covenants with the DEQ, as owner of the Bonds to pursue property foreclosures to collect delinquent Assessments as rapidly as the law reasonably permits, and in accordance with the Agreement and this ordinance. Unless otherwise agreed to in writing by the DEQ , payments due under an assessment contract shall be considered delinquent if they are not received by the City within thirty calendar days after the payments are scheduled to be paid. However, the City may elect not to foreclose or to pursue foreclosures less rapidly than required by this Section, if the City:

(i) notifies the DEQ that it has so elected, and identifies the Assessments to which the election applies; and

(ii) deposits into the Sinking Fund any payments associated with the Assessments to which the election applies and which are delinquent at the time the election is made, and continues to deposit into the Sinking Fund in a timely manner the amounts which would have been deposited into the Sinking Fund if such Assessments were not delinquent.

Any deposits made by the City under this Section shall not reduce the Contingent Liability Amount.

(b) Amounts received by the City from the settlement or foreclosure of delinquent Assessments shall be applied in the following order of priority:

(i) If the City has made deposits under Section 5(a)(ii) in connection with a delinquent Assessment, amounts received by the City from the settlement or foreclosure of that Assessment shall be applied first to reimburse the City for such deposits, but only if the foreclosure or settlement is made on commercially reasonable terms and in a manner consistent with the City's practice of foreclosing and settling assessments which secure the City's outstanding bancroft bonds.

(ii) The City shall deposit into the Sinking Fund an amount equal to the unpaid principal and accrued interest on the delinquent Assessment, reduced by the Administrative Increment in proportion to the amount received on settlement or foreclosure and any reimbursement to the City under subsection (b)(i) of this Section; and

(iii) The balance shall be paid to the City to reimburse it for its administrative costs in carrying, settling and foreclosing the Assessments.

Section 6. Pledge and Disposition of Assessments.

(a) The City hereby pledges the Assessments to the payment of principal and interest on all Bonds. All Assessments shall be deposited in the Sinking Fund promptly, and shall be used only as provided by this ordinance.

Section 7. Contingent Liability Amount.

(a) Subject to the limitations described in this Section, the City agrees to pay into the Sinking Fund, but solely from its Available Sewer Revenues or the proceeds of revenue obligations described in subsection (e) of this Section, the amount described in subsection (c) of this Section. The obligation of the City to pay this amount shall be a general, unsecured liability of the City's sewer fund, which shall be subordinate to all outstanding and future revenue bonds, notes and other obligations of the City which are secured by its sewer revenues.

(b) As long as any Bonds remain outstanding the Contingent Liability Amount shall be equal to the sum of 8 percent of the total scheduled debt service on the aggregate of all series of Bonds which have been issued, calculated as of the date of issuance of such Bonds, minus the sum of any deposits previously made by the City into the Sinking Fund pursuant to

subsection (c) of this Section. The Contingent Liability Amount shall not be reduced because of payment or redemption of Bond principal or interest.

(c) If, on the business day prior to a bond principal or interest payment date, there is not sufficient money in the Sinking Fund to pay debt service due on that payment date, the City shall deposit into the Sinking Fund an amount equal to the lesser of (i) the insufficiency or (ii) the Contingent Liability Amount. The City shall notify the DEQ immediately that it has made such a deposit. If the Available Sewer Revenues are not sufficient to make a deposit when required by this subsection, the deposit shall be made as soon thereafter as the City obtains sufficient Available Sewer Revenues, or the proceeds of revenue obligations described in subsection (e) of this Section.

(d) The Contingent Liability Amount shall be recomputed each time a series of Bonds is issued, and each time the City makes a deposit into the Sinking Fund pursuant to subsection (c) of this Section.

(e) The City hereby covenants with the DEQ that it shall charge rates and fees in connection with its sewage treatment and collection facilities which are sufficient to enable it to pay, when due, all costs of operation, maintenance, debt service, other contractual obligations, and any and all reasonable predictable deposits which would be required under this subsection (c) of this Section. In addition, the City covenants that it will use its best efforts to issue revenue obligations, payable solely from its net sewer revenues, in amounts sufficient to permit it to make, when due (or as soon thereafter as possible), any deposits into the Sinking Fund which are required by subsection (c) of this Section, for which the Available Sewer Revenues are not then sufficient.

Section 8. General Covenants and Representations. The City hereby covenants, represents and agrees with the DEQ as follows:

(a) That it will, to the extent the Assessments and any other amounts required by this ordinance to be deposited into the Sinking Fund and the Reserve Account are sufficient, promptly cause the principal and interest on the Bonds to be paid as they become due.

(b) That it will maintain complete books and records relating to the Assessments, the Construction Fund, the Sinking Fund, and the Reserve Account, in accordance with generally accepted accounting principles, and will cause such books and records to be audited annually at the end of each fiscal year,

and an audit report prepared and made available for the inspection of the DEQ.

(c) That it will not issue Bonds or other obligations having a claim superior to or subordinate to the claim of the Bonds upon the Assessments or amounts deposited in the Sinking Fund or the Reserve Account under this ordinance. Parity obligations may be issued only in accordance with section 10 of this ordinance.

(d) The City will promptly deposit into the Sinking Fund all sums required to be so deposited by this ordinance and the Agreement.

(e) Scheduled payments on the Assessments financed with each series of Bonds shall be sufficient (after deduction of the Administrative Increment) to pay scheduled debt service on the series of Bonds when due.

(f) The City shall fulfill all of its obligations under the Agreement.

Section 9. Form, Execution, Registration, Transfer and Payment. Each series of Bonds shall be initially issued as nontransferable, typewritten, installment bonds registered in the name of the DEQ, and executed by the manual or facsimile signature of the Mayor and the manual signature of the City Manager. Bond principal and interest shall be payable by check, draft or warrant drawn on the City or a bank doing business in the State of Oregon or an electronic transfer of funds, which shall be received by the DEQ not later than the date on which principal or interest on Bonds is due, or the next business day if the due date is not a business day.

Section 10. Parity Obligations.

(a) The City may issue Parity Obligations to finance assessments, charges in lieu of assessments and connection charges which are levied or imposed for Projects, or to refund outstanding Bonds, if:

(i) the Parity Obligations are special assessment improvement bonds which are issued pursuant to the Agreement and are sold to the DEQ;

(ii) on or prior to the issuance of the Parity Obligations the City shall file with the DEQ a certificate of an authorized officer of the City, to the effect that:

(A) scheduled payments of the Assessments to be financed with the Parity Obligations (after

deduction of the Administrative Increment) are at least sufficient to pay scheduled debt service on the Parity Obligations when due;

(B) the Parity Obligations comply with the requirements of the Agreement; and,

(C) Portland is not in default under any provisions of the Agreement or this ordinance.

(b) All Parity Obligations issued in accordance with this Section shall have a lien on the Assessments, and a right to be paid from any amounts required to be deposited in the Sinking Fund and the Reserve Account, which is equal to that of the 1990 Bonds and all other Parity Obligations issued in accordance with this Section.

(c) Nothing in this ordinance shall prohibit Portland from issuing special assessment improvement bonds and selling such bonds to parties other than the DEQ; however, such special assessment bonds shall not be secured by any of the Assessments or amounts deposited in the Sinking Fund.

Section 11. Default.

(a) The occurrence of anyone or more of the following shall constitute an event of default under this ordinance:

(i) Failure by Portland to pay debt service on Bonds when due, except as provided below in section 11(b) of this ordinance; or,

(ii) Failure by Portland to observe and perform any covenant, condition or agreement on its part to be observed or performed under this ordinance or the Bonds for a period of 60 days after written notice to Portland by DEQ specifying such failure and requesting that it be remedied, provided however, that if the failure stated in the notice cannot be corrected within the applicable period, DEQ will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Portland within the applicable period and diligently pursued until the failure is corrected.

(b) It shall not constitute an event of default hereunder if Portland fails to pay debt service on Bonds when due, if the failure occurs under circumstances in which Portland fulfills all of its obligations under this ordinance (including payment of the contingent liability amount and any amounts required under section 5(b)(ii) of this ordinance), and Portland is nevertheless unable to pay scheduled debt service on program

bonds from amounts Portland is required to deposit into the sinking fund.

(c) Upon the occurrence of an event of default, the DEQ may exercise any remedy available at law or in equity.

(d) No remedy herein conferred upon or reserved to DEQ is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every and any other remedy available under this ordinance or now or hereafter existing at law or in equity, in favor of DEQ. No delay or omission in the exercise of any right or power occurring upon any default shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle DEQ to exercise any remedy under this ordinance, it shall not be necessary to give any other notice than such notice as may be required in this section or by law.

(e) Nothing in the description of rights and remedies upon default in this ordinance shall preclude the DEQ and the City from negotiating mutually acceptable means of remedying defaults, or of addressing problems and issues that arise in the course of performance of this ordinance, and effectuating those means by appropriate amendment to this ordinance.

(f) Any moneys collected by DEQ or on behalf of DEQ after an event of default has occurred shall be applied as follows:

First: to the payment of costs, expenses, fees, reasonable compensation of the DEQ or its agents in enforcing remedies.

Second: to the sinking fund.

Section 12. Maintenance of Tax-Exempt Status. The City covenants for the benefit of the DEQ as owner of the Bonds to comply with all provisions of the Code which are required for Bond interest to be excludible from gross income under the Code. The City makes the following specific covenants:

(a) The City will not take any action or omit any action if it would cause the Bonds to become "arbitrage bonds" under Section 148 of the Code, and shall pay all penalties and rebates to the United States which are required by Section 148(f) of the Code.

(b) The City shall operate the facilities financed with the Bonds, and use the proceeds of the Bonds, so that the Bonds are not "private activity bonds" within the meaning of Section 141 of the Code.

The covenants contained in this Section and any covenants in the closing documents for the Bonds shall constitute contracts with the DEQ, and shall be enforceable by them.

Section 13. Defeasance. The lien of the Bonds upon the Assessments and any amounts in the Reserve Account may be defeased, and the Bonds shall be deemed paid, if the City places in irrevocable escrow noncallable, direct obligations of, or obligations guaranteed by, the United States which are calculated to be sufficient, without reinvestment, to pay principal, interest and any premium on the Bonds as they become due, either at maturity or on prior redemption.

Section 14. The Series 1990 Bonds. [text to be provided at time the ordinance is adopted.

Section 15. Amendment of Ordinance. This ordinance may be amended only with the written consent of the DEQ.

ADOPTED by the unanimous vote of the Council, with a quorum in attendance, this _____ day of _____, 19__.

APPROVED by the Mayor this ____ day of _____, 19__.

CITY OF PORTLAND

_____
Mayor

Executed this _____ day of _____, 19__.

ATTEST: _____
Recorder

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 449.645; 1975 c.496 §7; 1977 c.795 §7; 1979 c.802 §7; 1987 c.596 §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 §18]

468.215 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.

STATE FINANCIAL ASSISTANCE

DIVISION 81

STATE FINANCIAL ASSISTANCE TO PUBLIC AGENCIES FOR WATER POLLUTION CONTROL FACILITIES

Purpose

340-81-005 The purpose of these rules is to prescribe procedures and requirements for obtaining state financial assistance for the construction of water pollution control facilities pursuant to Article XI-H of the Oregon Constitution and ORS 468.195 et.seq.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25, f. & ef. 2-11-71; DEQ 30-1981, f. & ef. 10-19-81; DEQ 2-1983, f. & ef. 3-11-83

Definitions

340-81-010 As used in these rules, unless otherwise required by context:

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

(2) "Department" means the Department of Environmental Quality. Department actions shall be taken by the Director as defined herein.

(3) "Director" means the Director of the Department of Environmental Quality as defined in ORS 468.040 and 468.045.

(4) "Loan" means any advance of funds from the Pollution Control Fund to a public agency pursuant to a signed agreement wherein the public agency obligates itself to repay the funds received in full together with accumulated interest in accordance with a schedule to be set forth in the agreement.

(5) "Public Agency" means a municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, applying or contracting for state financial assistance under these rules.

(6) "Sewerage Facilities" means facilities for the collection, conveyance, treatment, and ultimate disposal of sewage and includes collective sewers installed in public right-of-way, interceptor sewers, pumping stations and force mains, treatment works, outfall sewers, land treatment and disposal systems, sludge treatment, conditioning and disposal facilities, projects necessary to remove inflow and infiltration from sewer systems, and such other appurtenances as may be necessary to achieve an operable system for sewage treatment and disposal.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25, f. & ef. 2-11-71; DEQ 30-1981, f. & ef. 10-19-81; DEQ 2-1983, f. & ef. 3-11-83

Water Pollution Control Facilities

Eligible Projects

340-81-015 Projects eligible to receive financial assistance under these rules shall be:

(1) Sewerage facilities as defined in OAR 340-81-010 unless otherwise provided by law; and

(2) Self supporting and self liquidating from revenues, gifts, grants from the federal government, user charges, assessments, and other fees.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25, f. & ef. 2-11-71; DEQ 30-1981, f. & ef. 10-19-81; DEQ 2-1983, f. & ef. 3-11-83

Eligible Costs

340-81-020 Costs for planning, design, implementation, and construction, including essential land acquisition 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.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25, f. & ef. 2-11-71; DEQ 30-1981, f. & ef. 10-19-81; DEQ 19-1982(Temp), f. & ef. 9-2-82; DEQ 2-1983, f. & ef. 3-11-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Application Documents

340-81-025 [DEQ 25, f. & ef. 2-11-71; DEQ 30-1981, f. & ef. 10-19-81; Repealed by DEQ 2-1983, f. & ef. 3-11-83]

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 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.

(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) 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) 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) 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.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 2-1983, f. & ef. 3-11-83

Application Review

340-81-030 [DEQ 25, f. & ef. 2-11-71; DEQ 30-1981, f. & ef. 10-19-81; Repealed by DEQ 2-1983, f. & ef. 3-11-83]

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 becomes necessary to allocate anticipated available funds.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 2-1983, f. & ef. 3-11-83

Loan or Bond Purchase Agreement

340-81-035 [DEQ 25, f. & ef. 2-11-71; DEQ 30-1981, f. & ef. 10-19-81; DEQ 23-1982(Temp), f. & ef. 10-29-82; Repealed by DEQ 2-1983, f. & ef. 3-11-83]

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 340-81-141.

(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.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 2-1983, f. & ef. 3-11-83

Construction Bid Documents Required

340-81-040 [DEQ 25, f. & ef. 2-11-71; DEQ 30-1981, f. & ef. 10-19-81; Repealed by DEQ 2-1983, f. & ef. 3-11-83]

Priority Point Schedule

340-81-041 The priority points for each project shall be the total of the points assigned as follows:

(1) Water pollution control regulatory emphasis - priority points will be the point value for regulatory emphasis as set forth in OAR 340-53-015 (Table 1).

(2) Sewerage Facility Costs - priority points will be calculated by totaling the:

(a) Current years budgeted payment for debt service for sewerage facility bonds as reflected in the public agency's adopted budget;

(b) Current year budgeted expenditures for operation of sewerage facilities as reflected in the public agency's adopted budget;

(c) The equivalent annual cost for the project proposed to be constructed. The interest rate to be used by all projects deriving this cost will be determined by the Department;

And dividing the total by the population presently served by the public agency's sewerage facilities.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 2-1983, f. & ef. 3-11-83

Advancement of Loan Funds

340-81-045 [DEQ 25, f. & ef. 2-11-71; DEQ 30-1981, f. & ef. 10-19-81;

Repealed by DEQ 2-1983,
f. & ef. 3-11-83]

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.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 2-1983, f. & ef. 3-11-83

Advancement of State Grant Funds

340-81-050 [DEQ 25, f. & ef. 2-11-71;
DEQ 30-1981, f. & ef. 10-19-81;
Repealed by DEQ 2-1983,
f. & ef. 3-11-83]

Loan Closing

340-81-051 (1) Upon final signature of the loan agreement by both the public agency and the Department, funds will be advanced in accordance with the terms of the loan agreement.

(2) The Department may schedule final signature and advancement of funds as necessary to coordinate with the schedule for state bond sales.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 2-1983, f. & ef. 3-11-83

Rejection of Applications

340-81-100 (1) The Department may reject any loan application if:

(a) The security proposed is judged to be inadequate to protect the state's interest, or the project does not appear to be conservatively self-supporting and self-liquidating from revenues, gifts, grants from the federal government, user charges, assessments, and other fees.

(b) The project does not comply with the requirements of ORS Chapters 454 and 468 and rules adopted by the Environmental Quality Commission pursuant to these chapters.

(2) Any action by the Department to deny an application may be appealed to the Environmental Quality Commission.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 2-1983, f. & ef. 3-11-83

Assessment Deferral Loan Program Revolving Fund

340-81-110 Purpose. The Department will establish and administer an Assessment Deferral Loan Program Revolving Fund for the purpose of providing assistance to property owners who will experience extreme financial hardship from payment of sewer assessments. Assessment deferrals will be made available to qualifying property owners from approved assessment deferral loan program administered by public agencies:

(1) Loans from the Assessment Deferral Loan Program Revolving Fund may be made to provide funds for assessment deferral loan programs administered by public agencies that meet all of the following conditions:

(a) The public agency is required by federal grant agreement or by an order issued by the Commission or the Oregon Health Division to construct a sewage collection system, and sewer assessments or charges in lieu of assessments levied against some benefitted properties will subject property owners to extreme financial hardship;

(b) The public agency has adopted an assessment deferral loan program and the Commission has approved the program; and

(c) The sewage collection system meets the requirement of section 2 Article XI-H of the Oregon Constitution regarding eligibility of pollution control bond funds.

(2) Any public agency requesting funding for its assessment deferral loan program from the Assessment deferral Loan Program Revolving Fund shall submit a proposed program and application to the Department on a form provided by the Department. Applications for loans and the proposed program shall be submitted by the following dates:

(a) By no later then February 1, 1988 for loans to be issued in the 1987-89 biennium;

(b) The subsequent bienniums, by no later than February 1 of odd numbered years preceding the biennium.

(3) Any public agency administering funds from the Assessment Deferral Loan Program Revolving Fund shall have an assessment deferral loan program approved by the Department.

(a) The proposed program submitted to the Department shall contain the following:

(A) The number of sewer connections to be made as required by grant agreement or state order;

(B) An analysis of the income level and cost of sewer assessments for affected property owners;

(C) A description of how the public agency intends to allocate loan funds among potentially eligible property owners, including the following:

(i) Eligbility criteria;

(ii) Basis of choosing the eligibility criteria;

(iii) How funds will be distributed for assessment deferral among eligible property owners.

(D) A schedule for construction or collector sewers;

(E) A description of how the public agency intends to administer the assesment deferral program, including placing liens on property, repayment procedures, and accounting and record keeping procedures;

(F) Assurance that the public was afforded adequate opportunity for comment on the proposed program, and that public comments were considered prior to adoption of the proposed program by the public agency; and

(G) A resolution that the public agency has adopted the program.

(b) The Department shall review proposed programs submitted by public agencies within 30 days of receipt. The Department shall use the following criteria in reviewing submitted programs:

(A) The degree to which the public agency and it's proposed program will meet the intent of the Assessment Deferral Loan Program revolving Fund as specified in subsection (1)(a) of this rule; and

(B) Whether the required sewers will be constructed and made available to affected property owners within the biennium for which funds are being requested.

(c) The Department shall submit to the Commission recommendations for approval or disapproval of all submitted applications and proposed assessment deferral loan programs.

(4) All public agencies meeting the requirements of OAR 340-81-110(1) shall receive an allocation of up to the amount of funds available based on the following criteria:

(a) The number of sewer connections to be made, as described in the approved program;

(b) The percentage of households within the area described in the program that are at or below 200 percent of the federal poverty level as published by the U.S. Bureau of Census.

(c) The allocation of available funds for qualifying public agencies shall be determined as follows:

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

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

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

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

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

(5) Within 60 days of Commission approval of the application and allocation of loan funds, the Department shall offer the public agency funds from the Assessment Deferral Loan Program Revolving fund through a loan agreement that includes terms and conditions that:

(a) Require the public agency to secure the loan with assessment deferral loan program financing liens;

(b) Require the public agency to maintain adequate records and follow accepted accounting procedure;

(c) Contain a repayment program and schedule for the loan principal and simple annual interest. The interest rate shall be 5% for the 1987-89 biennium, and shall be set by the Commission, by rule-making procedures for each subsequent biennium prior to allocation of available funds;

(d) Require an annual status report from the public agency on the assessment deferral loan program; and

(e) Conform with the terms and conditions listed in OAR 340-81-046;

(f) Other conditions as deemed propriate by the Commssion.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 22-1987, f. & ef. 12-16-87

ATTACHMENT D

Supplemental Information on the Mid-Multnomah County Sewers

Summary of the Intergovernmental Agreement

In 1984, the EQC made a preliminary finding that a threat to drinking water existed in mid-Multnomah County. In 1985, the East County Sanitary Sewer Consortium prepared a Sewer Implementation Plan detailing the costs, construction schedule, and financing plan for sewering a large portion of that area. The plan was approved by the consortium members (the City of Gresham, the City of Portland, and Multnomah County) and was submitted to the EQC in September 1985. In April 1986, the EQC ruled that a threat to drinking water did exist and ordered that the plan be implemented.

The financing plan described in the Intergovernmental Agreement reflects three basic policy decisions that collectively constitute the groundwork of the plan's implementation. The first is that the affected landowners should retain a maximum level of flexibility in the payment of their special assessments. The second is that the project's financing should not negatively impact on the cities' credit ratings. The third is that the State of Oregon's credit rating and reputation should not suffer due to inappropriate financing vehicles or other unusual features.

The structure of the financing plan embodied in the Intergovernmental Agreement reflects these policies. Landowners are protected in that they may prepay their outstanding balance at any time without penalty. DEQ is protected from having to present inappropriate financing vehicles to the State Treasurer by the requirement that cities structure their special assessment improvement bonds (SAIBs) to look like their contemporaneously issued Bancroft Bonds. The cities' credit rating is protected by DEQ's commitment to purchase the cities' special assessment improvement bonds and to issue State of Oregon General Obligation Pollution Control Bonds.

The repayment of the SAIBs is secured in three different ways:

1. The property owners are obligated to repay the costs of special assessments pursuant to the terms of each city's

sewer assessment contracts (included as Attachment B to the Intergovernmental Agreement).

2. The special assessments are secured by a lien against the property. The cities have the authority to foreclose if payments are not made, or to opt to make payments to the Department if foreclosure actions are not pursued. DEQ has carefully reviewed the cities' foreclosure procedures and has determined that they will provide an appropriate level of security to the SAIBs.

3. In the event that payments are not received, and foreclosure actions do not result in the collection of monies sufficient to meet payments required to DEQ, then the cities' will contribute funds up to the Contingent Liability Amount (CLA) to pay debt service. The CLA is eight percent (8%) of the total scheduled debt service on all bonds issued under the terms of the agreement.

The net results of this structure include: 1) the financial risks are shared by the respective cities and DEQ; and 2) the benefits of the State's general creditworthiness are passed through DEQ and through the cities to the residents of Multnomah County. This is intended to lower SAIB interest rates, resulting in lower costs for the homeowners.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: P
Division: Air Quality
Section: Program Operations

SUBJECT:

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

PURPOSE:

To act on Timber Products Company's request for up to six months beyond the compliance dates in the rules to complete installation of veneer dryer and wood-fired boiler emission control equipment at the Tim-Ply Division Facility in Grants Pass, Air Contaminant Discharge Permit No. 17-0029, and prove compliance with newly adopted PM_{10} emission limits.

ACTION REQUESTED:

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

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

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

_X_ Approve Department Recommendation

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

DESCRIPTION OF REQUESTED ACTION:

New rules (OAR 340-30-005 through -110) for PM_{10} emission control and compliance demonstration were adopted on September 26, 1989 for industrial sources in the Medford-Ashland and Grants Pass areas (EQC Agenda Item E on September 8, 1989). The rules contain compliance schedules for meeting emission limits for wood-waste boilers and veneer dryers.

The compliance schedule contains five milestones involving three submittal dates displaying incremental progress towards control strategy, one construction completion date, and one compliance demonstration date. The milestone dates for each affected source are established by the Department of Environmental Quality's (DEQ, Department) approval of the initial submittal which is a description of the basis of the design for emission controls.

In a December 22, 1989, letter Timber Products Company formally notified the Department that, due to the age and condition of their wood-fired boiler and their three veneer dryers, they were studying their options for complying with the new rules at Tim-Ply. Options for the wood-fired boiler and the three veneer dryers include installing controls on the existing units or replacing them. If the veneer dryers are replaced with wood-fired dryers not requiring steam, then the wood-fired boiler may be replaced with a fuel cell and a small package boiler for the hot presses. All replacement boilers and veneer dryers would also need to include appropriate emission controls. Additional options include expanded production capabilities and, according to Timber Products, several other confidential options they are considering which involve substantial capital investment.

Since the time required to determine the optimum business and compliance strategy at Tim-Ply Division will not allow Timber Products to meet the compliance schedule in the new industrial rules, they have requested a six month variance of the construction completion date from February 2, 1991, to August 2, 1991, and a five and one-half month variance of the proof of compliance date from May 2, 1991, to October 15, 1991.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
_X_	Statutory Authority: ORS 468.345	Attachment B
_X_	Pursuant to Rule: OAR 340-30-046	Attachment C
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___
_X_	Time Constraints: (explain)	

Prompt consideration of the variance request is needed to both avoid initiation of enforcement action for noncompliance with the incremental progress requirements of the compliance schedule, as well as to allow Timber Products time to develop and implement control strategies to meet the compliance schedule dates for completion of construction and proof of compliance if the variance request is denied.

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Timber Products has three of the nineteen facilities that are affected by the new rules for PM_{10} emission control in the Medford-Ashland and Grants Pass area. These are their Medford facility, White City Plywood, and Tim-Ply. There may be some constraints on what production changes can be made at Tim-Ply Division due to the residual effect those changes will have on the other two facilities. There may also be some constraints due to the effects of the current or projected timber shortage.

A major community consideration is the five and one-half month period when the source would be out of compliance with the new rules. The intent of the compliance schedule in the new rules was to bring all the affected sources into compliance with the new emission limits by the first of May, 1991.

The public reaction to this variance would most likely be negative due to the expected adherence to the newly adopted industrial rules and accompanying compliance schedule. Industrial emissions make up 34 percent of the annual and 21 percent of the worst day PM_{10} emissions in the Grants Pass area.

PROGRAM CONSIDERATIONS:

The major consideration for the Department is ensuring compliance with PM_{10} emission limits in the Grants Pass area. The variance, if granted, should not jeopardize that goal.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Approve the variance to Timber Products Company with an amended compliance schedule. This alternative would likely result in negligible effect on the air quality in the Grants Pass area.

2. Deny the variance to Timber Products Company and require adherence to the compliance schedule in the rules. This alternative would likely result in either noncompliance and subsequent enforcement action or a shutdown of some or all of the Tim-Ply operation until compliant equipment is installed.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends approving the variance from the compliance dates for Tim-Ply as requested by Timber Products Company. The Department believes Timber Products Company has unique circumstances at their Tim-Ply Division with aging equipment, a multitude of expensive options involving equipment replacement or control, an interdependency between facilities, and an uncertainty over the timber supply and its effect on planned production capability expansion. The uncertainty in future timber supplies is an issue shared by all the sources affected by the new industrial rule and should be no excuse, in and of itself, for requesting a variance.

Based on Timber Products' stated intent to have a final plan to the Department by August 2, 1990, the Department recommends the following compliance schedule:

Oct 2, 1990: Submit Design Criteria for emission control systems for Department review and approval. Design Criteria defined in OAR 340-30-010 (7).

Dec 17, 1990: Submit a General Arrangement and copies of purchase orders for the emission control devices. General Arrangement defined in OAR 340-30-010 (17).

Jan 2, 1991: Submit vendor drawings as approved for construction of the emission control devices and specifications of other major equipment in the emission control system (such as fans, scrubber-medium recirculation and make-up systems) in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied.

Aug 2, 1991: Complete construction.

Oct 1, 1991: Demonstrate compliance.

Extending the proof-of-compliance date from May 2, 1991, to October 15, 1991, should have minimal effect on the air quality in the Grants Pass area. Tim-Ply's three veneer dryers and wood-fired boiler operating with current emission controls rather than meeting the new emission limits would result in approximately five tons of particulate a month being emitted. While industry is a significant contributor to the PM_{10} problem in the White City area, the PM_{10} problem in the Grants Pass area is a wintertime problem, and the last exceedance of the National Ambient Air Quality Standards for PM_{10}, except for September 1987 exceedances caused by forest fires, occurred in January 1987.

The above circumstances satisfy ORS 468.345 (b) and (c), two of the four conditions under which the Environmental Quality Commission (Commission) may grant a variance.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Provided that the variance period is limited as recommended, the proposed variance is considered to be consistent with the strategic plan, agency policy, and legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

None

INTENDED FOLLOWUP ACTIONS:

The Department will inform Timber Products Company of the Commission's action and prepare appropriate permit modifications.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: John J. Ruscigno

Phone: 229-6480

Date Prepared: 6/12/90

JJR:a
PO\AH9093
(6/90)

Timber Products Co.

Post Office Box 1669
Medford, Oregon 97501
Phone (503) 773-6681
Fax (503) 770-1509

May 7, 1990

Wendy Sims
Department of Environmental Quality
Air Quality Division
811 S.W. Sixth Avenue
Portland, OR 97204-1334

RE: Request for Air Quality Control Variance
Timber Products Co. - Tim-Ply Division
ACDP No. 17-0029

Dear Wendy:

We are hereby requesting a variance that would change the completion of installation of air emissions devices to July 2, 1991 and in compliance by October 2, 1991 for one wood waste boiler and three veneer dryers at the Timber Products Co. Tim-Ply Division located in Grants Pass. This request is based on the evidence that strict compliance is inappropriate due to the following conditions:

A) We have special circumstances that render strict compliance impractical due to special physical conditions.

Tim-Ply Division operates a 1947 Puget Sound Iron Works wood waste boiler. We had an independent study conducted by Wayne Wagner of ZURN who assessed the physical condition of the boiler. He concluded it was impractical to fit the boiler with emission control equipment to meet the strict emission compliance levels. Wagner estimates the boiler would require $124,000 worth of complete replacement of combustion controls before emission controls could be added. On the existing boiler, budget numbers were $950,000 for an ESP and $400,000 for either an Electrified Filter Bed system or Geoenergy 'E' tube. This would still leave us with a 43 year old boiler, therefore, Wagner concluded we must explore other options. The first option would be to install a completely new wood-fired facility of 40,000 PPH capacity at a budget price of $3,500,000. This does not include an air emission device for the boiler and does not address the veneer dryers. The second option would be to "walk away" from the existing power house, convert the veneer dryers to direct heating/firing and install a new 10,000 PPH gas fired packaged boiler to service the hot presses.

Since option two appears to be the most viable, the physical condition of the veneer dryers become a concern. All three veneer dryers are in relatively poor physical condition and must be rebuilt. The budget for rebuilding the dryers is estimated at $250,000. Therefore, we are exploring the option of replacing at least two of the old dryers rather than rebuilding. The estimated cost of a project to install a packaged boiler, two used/new dryers, a hot air furnace and emission control devices is as follows:

2 used/new 6 line 16 section dryers	- $ 900,000
2 right angle unloaders	- $ 250,000
Hot air furnace	- $1,100,000
Emission control device	- $ 400,000
Rebuilt one dryer	- $ 50,000
Install 3rd hot press	- $ 220,000
Dryer building - 40,000 feet	- $ 540,000
Gas fired packaged boiler	- $ 60,000
Ancillary equipment	- $ 100,000
Professional engineering services	- $ 100,000
Total	$3,720,000

A project to rebuild the three existing dryers and expand our drying capacity to five dryers is budgeted at $5 million. These options are only viable if we have a sufficient wood supply to justify the future of Tim-Ply Division. Given the spotted owl issue and uncertainty of a raw material supply, we are exploring other confidential options to make the best possible business decision. The six month variance request is an absolute necessity so we can ferret out our position and still meet a July 2, 1991 installation deadline.

B) Strict compliance would result in the closing of Tim-Ply Division. Strict compliance would mean we must have air emission devices installed by February 2, 1991 and in compliance by May 2, 1991. As previously discussed, the physical condition of the equipment does not warrant the installation of air emission devices. There is not sufficient time for us to develop one of our options to be in compliance by February 2, 1991. Therefore, if strict compliance is mandated, we would be forced to close the Tim-Ply Division. This would result in the loss of 125 jobs which generates $3,264,00 in annual gross payroll.

The merits of the request are as follows:

A) To demonstrate good-faith efforts to comply prior to applying for the variance, we have assessed the physical condition of the boiler and three veneer dryers. We have budget numbers for an ESP, Electrified Filter Bed System, and an Geoenergy 'E' tube as emission control devices. We have completed an in-depth feasibility study to replace the boiler and two veneer dryers with a packaged boiler, two used/new dryers, and install a hot air furnace system for the dryers. We have maintained in communications with the Department about our dilemma. Again, the request for a six month variance is an absolute necessity for us to get the last pieces of information to complete our plan.

B) Our situation is an unusual hardship in comparison with similar sources in the same general area. The new PM10 rules have a devastating impact on Timber Products Co. as compared to other wood products firms in Medford and Grants Pass including Boise Cascade, Medford Corporation, Stone Forest Industries, Medply, Kogap, and Fourply. Timber Products Co. is faced with installing air emission devices on one wood waste boiler and three veneer dryers in Medford, two veneer dryers in White City, and one wood waste boiler and three veneer dryers in Grants Pass. No other company comes close to facing this type of economic and engineering burden. This makes us unique to all other companies and places us in an unusual hardship situation to meet a February 2, 1991 deadline.

C) The rule requires installation of air emission devices by February 2, 1991 and in compliance by May 2, 1991. Should the variance be granted, we would be looking at the five month period from May 2, 1991 to October 2, 1991 whereby we would not be in compliance. There could be some alternatives that would be discussed with the Department once we have formulated a final plan.

D) Our concern is to protect air quality to the fullest extent. In the worst case scenario, we would be out of compliance from May 2, 1991 to October 2, 1991 given that it would take three months to get new equipment into compliance. The real issue is not the short range five month period, but the measurement in years of the future air quality of the Grants Pass airshed. EFB, Inc. guarantees that an Electrified Filter Bed System will meet and/or actually exceed the strict compliance levels. This guarantees that the future air quality in Grants Pass will be protected to the fullest extend.

E) The six month variance request is the absolute shortest time practical for us to develop a final plan and still meet a July 2, 1991 installation deadline. There is no shorter alternative for us. We propose to have final plan to the Department by August 2, 1990 complete with milestones extending to a July 2, 1991 installation and October 2, 1991 in compliance deadline.

The evidence as presented clearly shows that strict compliance is inappropriate to guarantee any future for Tim-Ply Division. We sincerely urge the Department to strongly consider the request and make a favorable recommendation to the Commission to grant the variance.

Sincerely,

TIMBER PRODUCTS CO.

Gary Korepta
Manager Environmental Affairs

GK/ts

(7) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 449.712; 1985 c.275 §1]

468.330 Duty to comply with laws, rules and standards. Any person who complies with the provisions of ORS 468.325 and receives notification that construction may proceed in accordance therewith is not thereby relieved from complying with any other applicable law, rule or standard. [Formerly 449.739]

468.335 Furnishing copies of rules and standards to building permit issuing agencies. Whenever under the provisions of ORS 468.320 to 468.340 rules or standards are adopted by either the commission or a regional authority, the commission or regional authority shall furnish to all building permit issuing agencies within its jurisdiction copies of such rules and standards. [Formerly 449.722]

468.340 Measurement and testing of contamination sources. (1) Pursuant to rules adopted by the commission, the department shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples for air or air contaminants are taken by the department of analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.

(2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source.

(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.

(4) All sampling and testing performed under this section shall be conducted in accordance with applicable safety rules and procedures established by law. [Formerly 449.702]

468.345 Variances from air contamination rules and standards; delegation to local governments; notices. (1) The commission may grant specific variances which may be limited in time from the particular requirements of any rule or standard to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may consider necessary to protect the public health and welfare. The commission shall grant such specific variance only if it finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the persons granted such variance; or

(b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

(d) No other alternative facility or method of handling is yet available.

(2) The commission may delegate the power to grant variances to legislative bodies of local units of government or regional air quality control authorities in any area of the state on such general conditions as it may find appropriate. However, if the commission delegates authority to grant variances to a regional authority, the commission shall not grant similar authority to any city or county within the territory of the regional authority.

(3) A copy of each variance granted, renewed or extended by a local governmental body or regional authority shall be filed with the commission within 15 days after it is granted. The commission shall review the variance and the reasons therefor within 60 days of receipt of the copy and may approve, deny or modify the variance terms. Failure of the commission to act on the variance within the 60-day period shall be considered a determination that the variance granted by the local governmental body or regional authority is approved by the commission.

(4) In determining whether or not a variance shall be granted, the commission or the local governmental body or regional authority shall consider the equities involved and the advantages and disadvantages to residents and to the person conducting the activity for which the variance is sought.

(5) A variance may be revoked or modified by the grantor thereof after a public hearing held

Emission-Limits Compliance Schedules

340-30-046 (1) Compliance with the emission limits for wood-waste boilers in the Grants Pass area and veneer dryers established in sections OAR 340-30-015(1) and (2) and OAR 340-30-021 shall be provided according to the following schedules:

(a) Within three months of the effective date of these rules, submit Design Criteria for emission control systems for Department review and approval;

(b) Within three months of receiving the Department's approval of the Design Criteria, submit a General Arrangement and copies of purchase orders for the emission-control devices;

(c) Within two months of placing purchase orders for emission-control devices, submit vendor drawings as approved for construction of the emission-control devices and specifications of other major equipment in the emission-control system (such as fans, scrubber-medium recirculation and make up systems) in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied;

(d) Within one year of receiving the Department's approval of Design Criteria, complete construction;

(e) Within fifteen months of receiving the Department's approval of Design Criteria, demonstrate compliance.

(2) Compliance with the emission limits for wood-waste boilers in section 340-30-015(3) shall be provided according to OAR 340-30-067 or the following schedule, whichever occurs first:

(a) By no later than September 1, 1993, submit Design Criteria for emission control systems for Department review and approval;

(b) Within three months of receiving the Department's approval of the Design Criteria, submit a General Arrangement and copies of purchase orders for the emission-control devices;

(c) Within two months of placing purchase orders for emission-control devices, submit vendor drawings as approved for construction of the emission-control devices and specifications of other major equipment in the emission-control system (such as fans, scrubber-medium recirculation and make up systems) in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied;

(d) Within one year of receiving the Department's approval of Design Criteria, complete construction;

(e) Within fifteen months of receiving the Department's approval of Design Criteria, demonstrate compliance.

OAR30046 (9/89)

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: Q
Division: Air Quality
Section: Program Operations

SUBJECT:

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

PURPOSE:

To act on Timber Products Company's request for up to six months beyond the compliance dates in the rules to complete installation of veneer dryer emission control equipment at the White City Plywood Division Facility in White City, Air Contaminant Discharge Permit No. 15-0040, and prove compliance with newly adopted PM_{10} emission limits.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
___ Adopt Rules
Proposed Rules — Attachment ___
Rulemaking Statements — Attachment ___
Fiscal and Economic Impact Statement — Attachment ___
Public Notice — Attachment ___
___ Issue a Contested Case Order
___ Approve a Stipulated Order
___ Enter an Order
Proposed Order — Attachment ___

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

DESCRIPTION OF REQUESTED ACTION:

New rules (OAR 340-30-005 through -110) for PM_{10} emission control and compliance demonstration were adopted on September 26, 1989, for industrial sources in the Medford-Ashland and Grants Pass areas (EQC Agenda Item E on September 8, 1989). The rules contain compliance schedules for meeting emission limits for wood-waste boilers and veneer dryers. White City is within the Medford-Ashland PM_{10} nonattainment area.

The compliance schedule in OAR 340-30-046 contains five milestones involving three submittal dates displaying incremental progress towards control strategy, one construction completion date, and one compliance demonstration date. The milestone dates for each affected source are established by the Department of Environmental Quality's (Department) approval of the initial submittal which is a description of the basis of the design for emission controls.

Timber Products Company notified the Department that special circumstances at White City Plywood made strict compliance impractical due to special physical conditions. Timber Products states the two veneer dryers require rebuilding prior to installation of emission controls. They estimate the cost of rebuilding these units and installing required emission controls at approximately $550,000.

Due to the interdependency of White City Plywood and Tim-Ply in Grants Pass, Timber Products feels the decision on how to best meet the new rules at each facility cannot be made independently. For instance, instead of installing veneer dryer controls at each facility to lower veneer dryer emissions, it may prove to be a better business decision to expand the veneer dryer capacity and install controls at one of the facilities and then eliminate veneer drying at the other facility making it only a plywood lay-up plant.

Timber Products is studying several options for meeting the two rules. Possible final compliance strategies at White City Plywood involve, 1.) installing controls on existing veneer dryers; 2.) operating in compliance by limiting veneer dryers to only white fir veneer which has lower emissions than Douglas fir veneer; 3,) adding a third veneer dryer along with controls on all dryers; 4.) elimination of veneer drying; or 5.) plant closure.

Based on the number, cost, and complexity of the options, Timber Products feels that the time required to determine the optimum compliance strategy will not allow them to meet the compliance schedule in the new industrial rules for White City Plywood. They have requested a six month variance of the construction completion date from February 2, 1991, to August 2, 1991, and a five one-half month variance of the proof of compliance date from May 2, 1991, to October 15, 1991.

Timber Products has cited ORS 468.345 (b) and (c) as cause to grant the variance. ORS 468.345 (b) describes special circumstances which render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause. They cite the physical condition of the veneer dryers, the cost of installing emission control devices, and the interdependency of their facilities and the constraints this puts on operational changes. ORS 468.345 (c) states that strict compliance would result in substantial curtailment or closing down of a business plant or operation. They state closure of the facility would occur if strict compliance were required due to the cost of installing emission control devices or the uncertainty in the availability of white fir.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 468.345 Attachment _B_
_X_ Pursuant to Rule: OAR 340-30-046 Attachment _C_
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints: (explain)

Prompt consideration of the variance request is needed to both avoid initiation of enforcement action for noncompliance with the incremental progress requirements of the compliance schedule, as well as to allow Timber Products time to develop and implement control strategies to meet the compliance schedule dates for completion of construction and proof of compliance if the variance request is denied.

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation Attachment ___
___ Hearing Officer's Report/Recommendations Attachment ___

___ Response to Testimony/Comments Attachment ___
___ Prior EQC Agenda Items: (list) Attachment ___
___ Other Related Reports/Rules/Statutes: Attachment ___
___ Supplemental Background Information Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Timber Products has three of the nineteen facilities that are affected by the new rules for PM_{10} emission control in the Medford-Ashland and Grants Pass area. These are their Medford facility, White City Plywood, and Tim-Ply in Grants Pass. There may be some constraints on production changes that can be made at White City Plywood due to the residual effect those changes will have on the other two facilities and there may also be some constraints due to the effects of the current or projected timber shortage.

A major community consideration is the five month period when the source may be out of compliance with the new rules. The intent of the compliance schedule in the new rules was to bring all the affected sources into compliance with the new emission limits by early May 1991.

The public reaction to this variance would most likely be strongly negative due to the expected adherence to the newly adopted industrial rules. Industrial emissions make up 21 percent of the annual and 13 percent of the worst day PM_{10} emissions in the Medford-Ashland area.

PROGRAM CONSIDERATIONS:

The major consideration for the Department is ensuring success of its PM_{10} control strategy for the Medford-Ashland area. Other affected sources in the area have already submitted and had approved design criteria, describing their chosen control strategy, and purchase orders where applicable. Allowing the proposed extended compliance schedule for one source is not expected to delay attainment of the PM_{10} standard.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Approve the variance to Timber Products Company with implementation of interim measures to minimize veneer dryer emissions along with an amended compliance schedule. This alternative would likely result in negligible effect on the air quality in the White City area.

2. Deny White City Plywood a five month variance from the compliance schedule in the rules. The Department believes that the conditions of ORS 468.345, under which the Environmental Quality Commission (Commission) is authorized to grant a variance, have been adequately demonstrated by the company.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends approval of a variance request from the compliance dates with conditions. Timber Products has agreed to implement the following measures to minimize veneer dryer emissions:

1. Prior to February 2, 1991, conduct and submit to the Department the results of a study of the heat in the dryers by zones to minimize emissions. This measure should lead to optimum heat distribution within the dryer and result in lower emissions during the variance period.

2. Prior to February 2, 1991, seal the dryers to control fugitive emissions. This measure should improve the efficiency of the dryers and result in lower emissions during the variance period.

3. Prior to February 2, 1991, explore the feasibility of conducting source testing on the veneer dryers to measure the efficiency of the existing Burley scrubbers in relation to the new PM_{10} rules. Source testing of the current dryer configuration would provide both Timber Products and the Department greater assurance, beyond current estimates, of the actual dryer emissions and may show instances of compliance with the new PM_{10} emission limits under certain conditions.

4. After February 2, 1991, lower the veneer dryer temperatures by 20 degrees Fahrenheit to minimize emissions. The lower dryer temperatures should lower emissions by driving off less volatiles during the drying process and result in lower emissions during the variance period. An alternate temperature reduction strategy may be approved by the Department if shown by the dryer heat zone study to further reduce emissions. A record of species and dimension of veneer dried, dryer temperature by zone, and drying times should be maintained for each dryer for the variance period and be available on site for inspection by the Department.

5. Commencing no later than February 2, 1991, set up a daily preventive maintenance schedule on the Burley scrubber to maximize efficiency. Maintenance records shall be kept on site for inspection by the Department.

6. Commencing no later than February 2, 1991, dry the maximum amount of white fir as is possible given their product mix and order file. This measure should lower emissions during the variance period by maximizing the drying of white fir which results in lower emissions than Douglas fir. Douglas fir should not be dried simultaneously in more than one dryer without prior written notification to the Department demonstrating the need for the Douglas fir utilization and stating the expected starting time and duration. Production records showing the Douglas fir and white fir utilization by shift shall be made available to the Department upon request for part of all the period from February 2, 1991, until compliance is demonstrated.

Also, based on Timber Products' stated intent to have a final plan to the Department by August 2, 1990, the Department recommends the following compliance schedule:

Oct 2, 1990: Submit Design Criteria for emission control systems, if applicable, for Department review and approval. Design Criteria defined in OAR 340-30-010 (7).

Dec 17, 1990: Submit a General Arrangement and copies of purchase orders for the emission control devices, if applicable. General Arrangement defined in OAR 340-30-010 (17).

Jan 2, 1991: Submit vendor drawings, if applicable, as approved for construction of the emission control devices and specifications of other major equipment in the emission control system (such as fans, scrubber-medium recirculation and make-up systems) in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied.

Aug 2, 1991: Complete construction, if applicable.

Oct 15, 1991: Demonstrate compliance.

Extending the proof-of-compliance date from May 2, 1991, to October 15, 1991, should have minimal effect on the air quality in the White City area with the interim controls.

White City Plywood's two veneer dryers are both gas-fired units which exhibit lower emissions, with similar veneer, than steam heated or wood-fired veneer dryers and White City Plywood's optimization of their veneer drying process with the interim controls may result in emissions below those allowed by the new PM_{10} rules for the area.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Based on the demonstrated need, approving the variance will not be inconsistent with the strategic plan provided the recommended conditions are imposed and the variance period is limited to the indicated summer months.

ISSUES FOR COMMISSION TO RESOLVE:

None

INTENDED FOLLOWUP ACTIONS:

The Department will inform Timber Products Company of the Commission's action and prepare appropriate permit modifications.

Approved:

Section:

Division:

Director:

Report Prepared By: John J. Ruscigno

Phone: 229-6480

Date Prepared: 6/12/90

JJR:a
PO\AH9094
(6/90)

Timber Products Co.

Post Office Box 1669
Medford, Oregon 97501
Phone (503) 773-6681
Fax (503) 770-1509

May 7, 1990

Wendy Sims
Department of Environmental Quality
Air Quality Division
811 SW Sixth Avenue
Portland, OR 97204-1334

RE: Request for Air Quality Control Variance
Timber Products Co. - White City Plywood Division
ACDP No. - 15-0040

Dear Wendy:

We are hereby requesting a variance that would change the completion of installation of air emission devices to July 2, 1991 and in compliance by October 2, 1991 for two veneer dryers at the Timber Products Co. White City Plywood Division located in White City. This request is based on the evidence that strict compliance is inappropriate due to the following conditions:

A) We have special circumstances that render strict compliance impractical due to special physical conditions. The COE veneer dryer is in relatively poor physical condition and the Moore veneer dryer to a lesser degree, however, both would have to be rebuilt before installing air emission devices. The preliminary cost to comply with the new PM10 rules would be as follows:

Install dryer emission controls	-	$350,000
Rebuild COE dryer	-	$150,000
Rebuild Moore dryer	-	$ 50,000
Continuous emission monitoring devices	-	$ 25,000
Total		$575,000

This option may not be viable given the capital expenditure versus the actual asset of White City Plywood Division. Since Timber Products Co. also operates a plywood plant in Grants Pass, the plan as developed for the Grants Pass plant will have a direct relationship to the options available to White City Plywood Division. Besides installing air emission devices on the existing veneer dryers at White City Plywood Division other options would include the following:

1. Dedicate the dyers to white fir only.
2. Add a third dryer and install an electrified filter bed air emission system for the three dryers.
3. Eliminate veneer drying completely and use White City Plywood Division as a lay up plant only.
4. Plant closure.

Because of the difference in physical location of the Grants Pass and White City plants, we must fully explore all our options as to what is the best business decision. White City Plywood Division is not an autonomous entity in terms of making a decision to meet the new PM10 rules. The six month variance request is an absolute necessity so we can develop a plan which entails both the Grants Pass and White City Plywood Divisions.

B) Strict compliance would result in the closing of White City Plywood Division. Strict compliance would mean we must have air emission devices installed by February 2, 1991 and in compliance by May 2, 1991 or dedicate the dryers to white fir. At the present, these are not our best two options due to the cost of air emission devices and the unknown future availability of white fir. Therefore, if strict compliance is mandated, we would be forced to close the White City Plywood Division. This would result in the loss of 80 jobs which generates $1,883,240 in gross annual payroll.

The merits of the request are as follows:

A) To demonstrate good-faith efforts to comply prior to applying for the variance, we have fully assessed the physical condition of the existing veneer dryers. We are fully assessing the options at Tim-Ply Division so a decision can be reached for White City Plywood Division. We are at the point where a six month variance is an absolute necessity to make a sound business decision. We have maintained in communications with the Department about our dilemma.

B) Our situation is an unusual hardship in comparison with similar sources in the same general area. The new PM10 rules have a devastating impact on Timber Products Co. as compared to other wood products firms in Medford and Grants Pass including Boise Cascade, Medford Corporation, Stone Forest Industries, Medply Kogap and Fourply. Timber Products Co. is faced with installing air emission devices on one wood waste boiler and three veneer dryers in Medford, two veneer dryers in White City, and one wood waste boiler and three veneer dryers in Grants Pass. No other company comes close to facing this type of economic and engineering burden. This makes us unique to all other companies and places us in an unusual hardship situation to meet a February 2, 1991 deadline.

C) The rule requires installation of air emission devices by February 2, 1991 and in compliance by May 2, 1991. Should the variance by granted, we would be looking at the five month period from May 2, 1991 to October 2, 1991 whereby we would not be in compliance. There could be some alternatives that would be discussed with the Department once we have formulated a final plan.

D) Our concern is to protect air quality to the fullest extent. In the worst case scenario, we would be out of compliance from May 2, 1991 to October 2, 1991 given that it would take three months to get new equipment into compliance. The real issue is not the short range five month period, but the measurement in years of the future air quality of the Medford/White City airshed. EFB, Inc. guarantees that an Electrified Filter Bed System will meet and/or actually exceed the strict compliance levels. This guarantees that the future air quality in Jackson County will be protected to the fullest extent.

E) The six month variance request is the absolute shortest time practical for us to develop a final plan and still meet a July 2, 1991 installation deadline. There is no shorter alternative for us. We propose to have a final plan to the Department by August 2, 1990 complete with milestones extending to a July 2, 1991 installation deadline.

The evidence as presented clearly shows that strict compliance is inappropriate to guarantee any future for White City Plywood Division. We sincerely urge the Department to strongly consider the request and make a favorable recommendation to the Commission to grant the variance.

Sincerely,

TIMBER PRODUCTS CO.

Gary Korepta

Gary Korepta
Manager Environmental Affairs

GK/ts

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(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.

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(a) Conditions exist that are beyond the control of the persons granted such variance; or

(b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

(d) No other alternative facility or method of handling is yet available.

(2) The commission may delegate the power to grant variances to legislative bodies of local units of government or regional air quality control authorities in any area of the state on such general conditions as it may find appropriate. However, if the commission delegates authority to grant variances to a regional authority, the commission shall not grant similar authority to any city or county within the territory of the regional authority.

(3) A copy of each variance granted, renewed or extended by a local governmental body or regional authority shall be filed with the commission within 15 days after it is granted. The commission shall review the variance and the reasons therefor within 60 days of receipt of the copy and may approve, deny or modify the variance terms. Failure of the commission to act on the variance within the 60-day period shall be considered a determination that the variance granted by the local governmental body or regional authority is approved by the commission.

(4) In determining whether or not a variance shall be granted, the commission or the local governmental body or regional authority shall consider the equities involved and the advantages and disadvantages to residents and to the person conducting the activity for which the variance is sought.

(5) A variance may be revoked or modified by the grantor thereof after a public hearing held

Emission-Limits Compliance Schedules

340-30-046 (1) Compliance with the emission limits for wood-waste boilers in the Grants Pass area and veneer dryers established in sections OAR 340-30-015(1) and (2) and OAR 340-30-021 shall be provided according to the following schedules:

(a) Within three months of the effective date of these rules, submit Design Criteria for emission control systems for Department review and approval;

(b) Within three months of receiving the Department's approval of the Design Criteria, submit a General Arrangement and copies of purchase orders for the emission-control devices;

(c) Within two months of placing purchase orders for emission-control devices, submit vendor drawings as approved for construction of the emission-control devices and specifications of other major equipment in the emission-control system (such as fans, scrubber-medium recirculation and make up systems) in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied;

(d) Within one year of receiving the Department's approval of Design Criteria, complete construction;

(e) Within fifteen months of receiving the Department's approval of Design Criteria, demonstrate compliance.

(2) Compliance with the emission limits for wood-waste boilers in section 340-30-015(3) shall be provided according to OAR 340-30-067 or the following schedule, whichever occurs first:

(a) By no later than September 1, 1993, submit Design Criteria for emission control systems for Department review and approval;

(b) Within three months of receiving the Department's approval of the Design Criteria, submit a General Arrangement and copies of purchase orders for the emission-control devices;

(c) Within two months of placing purchase orders for emission-control devices, submit vendor drawings as approved for construction of the emission-control devices and specifications of other major equipment in the emission-control system (such as fans, scrubber-medium recirculation and make up systems) in sufficient detail to demonstrate that the requirements of the Design Criteria will be satisfied;

(d) Within one year of receiving the Department's approval of Design Criteria, complete construction;

(e) Within fifteen months of receiving the Department's approval of Design Criteria, demonstrate compliance.

OAR30046 (9/89)

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

811 SW SIXTH 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 ___

_X_ Approve Department Recommendation
___ Variance Request — Attachment ___
___ Exception to Rule — Attachment ___
___ Informational Report — Attachment ___
_X_ Other: Staff recommendations in — Attachments A through G

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 ___
_X_ Pursuant to Rule: OAR 340-41-470(3)(i) Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints: (explain)

The rule cited above requires the Commission to approve or reject each of the Tualatin Basin NPS watershed management plans 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 ___
_X_ 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

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.

	AGENCY	STAFF PROPOSED ACTION	ATTACHMENT
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

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: _____

Division: _____

Director: _____

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.

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.

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

(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

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.

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).

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: 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.

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: 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).

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

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.

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) planthat 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 Responsibilty 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 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.

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).

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 Responsibilty 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 adsequately 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: 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)

DEPARTMENT OF ENVIRONMENTAL QUALITY

TUALATIN RIVER BASIN
NONPOINT SOURCE POLLUTION CONTROL PROGRAM PLANS

PUBLIC HEARING

June 12, 1990
Portland, Oregon

ORIGINAL

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 QUALTIY

By: Don Yon
Hearings Officer
Tualatin Basin Coordinator,
DEQ Water Quality Division;

By: Roger Wood
Nonpoint Source Program Manager
DEQ Water Quality Division.

MR. YON: Good morning. I think we'll begin the hearing now. Introduce myself. My name is Don Yon. I'm the Tualatin Basin Coordinator, DEQ, in the Water Quality Division. We also have here, just walked in, Roger Wood, our Nonpoint Source Program Manager in the Water Quality Division.

Today we are having the hearing on the Tualatin River Basin Nonpoint Source Pollution Control Program Plans. I'd like to say if you want to provide oral testimony today, please be sure to sign up on one of these blue sheets. They are on the table in the back. The hearing testimony today is being recorded by a court reporter due to the tight schedule for reporting to the EQC.

Purpose of the hearing today is to receive public comments on the Tualatin Basin Nonpoint Source Programs to control urban, agricultural and forestry nonpoint source pollution. The proposed program plans include both short- and long-term plans directed at compliance with the Total Maximum Daily Loads 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 in the Basin.

After the hearing record and comments have

been evaluated by DEQ, the program plans along with the Department evaluation report, including the hearing comments of today, will be presented for the Commission evaluation on June 29, 1990. The Commission may take any of the following actions: First, they may approve all or a portion of the plans; two, reject all or some of the plans; third, conditionally approve all or some of the plans.

My role as the Hearings Officer is to represent the Environmental Quality Commission and to insure that all issues raised are communicated to the EQC in the form of a report that the Commission will receive prior to their hearing. Each issue raised during the hearing process will be addressed in the report.

If you would like to receive a copy of the staff report to the EQC, please be sure you've signed your name and address on the sign-up sheet. And again, if you'd like to provide oral testimony today, please sign on this blue sheet here. Testimony can be either given orally or in writing today. The hearing record will remain open until 5:00 p.m. tomorrow, Wednesday, June 13.

Before we begin our oral testimony, I'd like to have Roger Wood give a five-minute overview on

the Tualatin Basin Nonpoint Source Program and the regulations.

MR. WOOD: With your permission I'm not going to do precisely what you just said because there are actually a number of different things that one might want to address if one launched into the whole set of rules and regulations and the whole history behind the Tualatin Basin Program that's brought us to where we are today. What I wanted to do is just highlight a couple of the Oregon Administrative Rules that are particularly germane to this process, to the preparation, evaluation, and eventually implementation of the watershed management plans or the nonpoint source component of the Tualatin Basin Program, those portions of the program that are designed to ultimately result in meeting of load allocations which are the nonpoint source component and plans.

Oregon Administrative Rule 34041470-3 and various subparts thereof, particularly subparts H and I and J, discuss memorandums of agreement between the EQC and certain designated management agencies who, as a result of those agreements, those MOAs, assumed responsibility for the preparation of watershed management plans or the subcontracting of that task to somebody else. The deadline for submittal of those

plans was set at March 9 of this year, and according to the rules, the EQC does have 120 days from March 9 to act on those initial submissions. And I believe that Don described the options a moment ago.

120 days from March 9 is July 7. There is an EQC meeting at the end of June, June 29, I believe is the date, on Friday, and that is the target date for presentation of staff reports to the EQC and the target date for their action on the staff reports, the recommendations contained therein, and the watershed management plans that have been presented.

The rules also required DEQ to produce a guidance document designed to provide a road map, an outline, set of clues, to the folks preparing the plans. It was not a rigid guidance; that is to say, not a written format within which the plans have to be drawn and set some sort of standard to which they have to adhere. But it was intended to identify what needed to be in a first level plan; that is, the degree of completeness that the EQC is looking for this time.

The guidance document attempted to better define what we meant by a first level plan in order to help those who were doing the preparation, and I myself would like to elaborate on that just a moment

because this elaboration may shed some light on the basis for the DEQ staff reviews of the plans and recommendations we are going to make.

The guidance document taken together, taken as a whole, clearly indicated that an acceptable first level plan has to include more than generalities about planning. It has to be more than just a promise to ultimately develop a plan. We do acknowledge, and the guidance document acknowledges, that at the first level planning stage there will be many uncertainties, many questions unanswered, particularly in the technical realm, particularly those questions that cannot be answered without somewhat more elaborate monitoring or technical analysis which we anticipated would take some extra time.

However, having said that, there are a lot of things that these first level plans should include and should be fairly certain about. We would expect them to contain well organized and thoroughly provide problems to the addressed strategy to be employed, the control measures to be applied. And by that I mean a menu of options; not necessarily the specific control measures to be applied to a specific site, but a thorough menu of legitimate options likely to be able to achieve the desired result.

Also necessary to these first level plans is a fairly thorough and detailed analysis of the funding sources to be tapped, the organizational structures and authorities necessary for program implementation. Also necessary is a complete listing of BMP, or Best Management Practices, or management measures. These are the technical tools that you would apply to implement the control options we discussed in the plans.

Again, we are not looking for site specific application of these things; that is not possible at this time. But we want to know that those who have prepared the plans have fully identified what all the options are, and we'd like enough technical information on those management measures or management practices for the department and the public to be able to assess whether they are likely to be successful; and specifically enough information to describe how they could be used to address specific identified problems, detailed explanation of the processes by which the measures will be selected and applied to the specific sites once you get to that point.

And finally, there are some program elements that do not require highly technical or site specific measures. For example, public information

and education, fund-raising creation of interagency agreements, survey level problem assessments, and we expect this aspect of the watershed management programs to be fairly well proposed in a first level plan or there to be some detailed description of what's left to be developed, why it couldn't be developed to date, and again the processes and time lines for completing that task.

To date we have received watershed management plans from Clackamas County, City of Lake Oswego, from the City of Portland, City of West Linn, Unified Sewerage Agency on behalf of a consortium of jurisdictions including Banks, Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, North Plains, Sherwood, Tigard, Tualatin, and Washington County, and I understand that as we speak there are negotiations going on between USA and City of Gaston to be included in that consortium. And if that's not correct, then I'd appreciate hearing the true story later on in the hearing.

In any case, I suppose it is worth noting the City of Gaston does fall within the area of concern and will ultimately have a management plan prepared I'm sure. Also, there is an agricultural component. Oregon Department of Forestry was a

designated management of agency, is the designated management agency, for development of the forestry plan. They have submitted that plan. The State Department of Agriculture is designated management agency for the agricultural component, and they have been working closely with the Washington County Sewer Conservation District in preparation of that plan. DEQ reviews of those plans and development recommendations for the EQC are still in progress; they have been, I would say, we are at the probably 85 to 90 percent completion point with that task overall.

We have not come today prepared to share those reviews or recommendations. They are not completed. Have not been drawn up in final form. And we are anxious to hear today the comments, if any, from those who drew up the plans, and the public. That's all I have to say.

MR. YON: Thank you, Roger, for that fine overview.

I only have one person signed up to testify. Anybody else who would like to testify at this point?

CHRIS BOWLES: I'll testify just to clarify what is happening with Gaston.

MR. YON: Okay, thank you, Chris. First

name I have here is Leonard Stark.

Could you state your name and then who you represent?

And I'd like to remind you, everybody, that we do have a court reporter, so I'd like to have you speak clearly and loud enough for everybody in the back of the audience also to hear.

I see that you've signed up for 15 minutes.

MR. STARK: I put down 15 minutes, but I don't know if I'll take that much time or not. Do you have a speaker over there? You have a secretary recording here. Seems sort of funny I was the only one that signed up. Anybody else that would like a copy of what I put in this issue now and in the past, I have extra copies here. Anybody can have them that wish them.

I'm Leonard Stark, 5050 Southwest Childs Road in Lake Oswego. We've been there 50 years, and we've lived on waters in the Tualatin all our life. And I've testified up at Hillsboro last week before the Board of Commissioners and testified up there, too, and Shirley Kendell and anybody that's been on DEQ are aware I've participated in this issue ever since the beginning of the Tualatin River was brought up. Most of what I got to say and most of what I

wrote in here is from a vast experience, vast memory of what they've been working on, and Shirley Kendell is here today and she knows. She is aware of that participation. And I had a few points to make.

This article covers all of the -- this is a rundown of this area here. And the task has been technical all my life and deal in a lot of technical issues, but wetlands, these are the points I brought up. Wetlands are something that has to be looked at and has to be preserved; and not only in the Tualatin Valley, but the whole northwest is destroying a lot of wetlands. And then going to have to preserve the wetlands and their forest, because wetlands, civilization has to have wetlands to exist. We know that. With wetlands you can filter a lot of your and help clean up the pollution that is impairing.

And Tualatin Valley, they should research more and bring more water into the Tualatin Valley watershed and Trask River. Trask River is one of the, as an example, because Trask River has been precisely water over the mountain there for years and years. It is like drinking water added to Tualatin, to Forest Grove, Hillsboro, and Cornelius and Beaverton for a long time. So that's just an example.

And then in the past testimony we've had,

been quite a bit said about piping water out from the sewerage plants, water out of the sewer plants, discharging it somewheres, in some other areas like Willamette and the Columbia. But my testimony has always been we don't want to take any water out of the Tualatin River, we want to preserve all the water we can. River irrigation, irrigation of treated water, that can be a good point to bring up because that would save water.

And then we have, it's been brought up, and then upgrading our sewerage plant. Mainly Rock Creek and Durham is going to be one of the best investments of our money that we can bring up. That would be a real investment.

And then came up now we have leaking sewer lines. That is going to be -- that is one source of polluting. It is an nonpoint source sort of trace down at the time of this sewer lines, and that consists of the sewer line. But it is going to be a real hard question to answer for cost items and also will be hard to trace down what has to be done. I mean, it is going to be a subject that isn't going to be easily answered.

And then we have phosphorus. Phosphorus completion, that should be done. I mean, the

phosphorus level, phosphorus is a condition that is creating pollution problems, and they are going to have to go right directly to the manufacturer or suppliers of things that have phosphorus in them to eliminate the phosphorus that is being used.

And then we have development is what is going to have to be regulated. You can't stop development, but there will have to be -- it is going to have to be regulated and taken in steps, taken to curb the pollution; and also, your shopping centers, development of shopping centers, highways, and what there is.

And then another point, people are going to have to educate people how to control and what to do and what not to do on it. Because you have your farming and that which they can't stop. The farmers have to fertilize and all that. That has nitrogen in it. And by putting settling bases and that, it can be controlled quite a bit.

And then I've always said, always testified, and I will testify all the time on this particular, this is on your cost and where their money is going to come from. This is a cost item, where the money is going to come from. Everybody. And what I mean, everybody in watershed or the Tualatin Valley,

they are, all of them, adding to the pollution of the Tualatin River. But they are, and I've always testified, that everybody, and I mean everybody, is going to help share the cost of promoting and carrying on this program of cleaning up the Tualatin River.

It isn't fair -- it might be a quick way to get the money, but it isn't fair to involve the certain -- discriminate, in other words, I would say, that different people have to -- certain people like -- sewer, for instance, just naming now, they want to tack on the sewer bill, cost on the sewer bill to bear the cost. But that is not, in my way of thinking, that is not the fair way to do it. We are all polluters; we all should pay for it.

I think the most easiest and most fair way to do that is through our taxation or through our taxes because we all, no matter who we are, what we are, we have to pay property taxes. And you have to work out a system to add to the property taxes. It is going to be a small amount to everybody, but it will be righted up in a ratio basis.

And then it has been mentioned, and I'll bring it up again, too, there has been talk about putting a dam up on the Tualatin in, the Gaston dam, up in the Gaston area, building a dam. But I have yet

to see what is going to completely satisfy for the cost of the dam and also displacing the people in Patton Valley and in Cottage Grove, town up there Cherry Grove, and displacing the people in Cherry Grove.

And farming issue in there in the Patton Valley, well, I don't see where you are going to find a place to put them people down in Cherry Grove. That is an old pioneer town. Houses are not real valuable in most cases, and if you displace them, they'll never get out of it to pay to be relocated.

I probably could add a lot more, go through and add in all my testimony. I have testimony on this issue in all different levels, and that should be on record on file, so if they want to check on that, well, they could find out what my testimony has been in the past on this issue.

So, I can't see spending all that money on the dam and all that and then we are not sure whether that is going to solve the problem because I've always testified that we can build smaller dams and smaller storage places and deep canyons where it isn't going to hurt near as many people.

And one little point, that if the dam was ever -- probably don't enter into your testimony or in

the information that you might like to have on this issue now -- but if a dam, talk about if all else fails, they might have to build a dam. But if that dam was ever built, well, I think it should be named Patton. It should have the name of Patton Lakes, named after our pioneers that settled that area. Sort of a personal issue because the Pattons and Olsons and Starks are all pioneers that settled that country.

Going through the course of the day if you want more, I can come up with some more if you'd like some more. After listening to other people I might come up and add more things, more questions. Thank you very much.

MR. YON: Thank you, sir.

MR. STARK: Anybody wants some of my testimony today I put in, perfectly welcome to it.

MR. YON: Thank you very much.

MR. STARK: Environmental Quality Board, I expected them to be here, so I brought a lot of testimony for them.

MR. YON: Thank you.

I have one other person that signed up to testify. That is Betty Atteberry. If anybody else would like to testify, please sign up on the blue sheet.

MS. ATTEBERRY: I'm Betty Atteberry with the Sunset Corridor Association. Since 1988 when EQC mandated the new TMDL standards for the purpose of improving the water quality in the Tualatin River, the Association has followed the issue closely. We hired, retained, an engineering firm to provide us some expertise and knowledge of the issues that we are dealing with on this particular issue.

We recognize the need to enhance the quality of the Tualatin River and the tributaries. Certainly the natural resources in the region compliments and serve as an enhancement to the area's business and residential environment. Our interest is in seeing a thorough review of the options and the solution or solutions be measured in cost to the public as well as effectiveness in meeting the standards mandated by EQC.

The Association appreciates the manner in which USA has approached the large task of developing a program plan for service water management and for the wastewater treatment facilities in order to comply with new standards. From our perspective, the agency has worked diligently to meet the various time lines within a schedule prescribed.

We are also pleased that they've been and

had a generous interest to work cooperatively with the various interest groups in studying the issues. One area where we have some real serious reservations, though, as to whether the schedule really allows time for a responsible reproach to further definition and then implementation of the various solutions. It seems that we are adopting solutions without a clear understanding of how effective each will be.

The technology needs to be tested in this region to be certain it will reach the assumptions that are expected in the program plan. Also, that ESA be given time to protest some of the recommended solutions. The Association wants to be sure there is a process that assures their recommended solutions meet the TMDL standards, and if found inadequate, there can be an opportunity to find alternative solutions without hamstringing development, which in the long term would be detrimental to the area's economy.

We would also stress the need for a basin-wide coordinated effort to effectively solve the Nonpoint Source Water Quality Management. To date there has been a somewhat fragmented approach, and although it appears to be better coordinated today than it has been in the past, we would stress that

there be a coordinated effort by all those parties involved in the basin.

The Sunset Corridor Association stands ready to participate in the development and look forward to a reasonable solution to this. Thank you.

MR. YON: Thank you.

I have Chris Bowles from Unified Sewage Agency.

MR. BOWLES: I'm Chris Bowles with Unified Sewage Agency, and I only wish to clarify our status relative to Gaston. I think the agency will be providing some written testimony tomorrow. Gaston is a member of the agency, but our storm and surface water program does not start until July 1, so we have no authority over their submittal of a watershed management plan.

I've attended their council meetings, and they stressed very strongly that they wished to provide their own plan and not be a part of the agency's group submittal. We are surprised that they have not submitted a plan.

I understand that their council took action last Wednesday to approve an agreement between the Agency and City that would take affect July 1, and that agreement follows the format that they wish which

is still remain apart from our storm and surface water program and run their own program. And the agreement will allow them to do that subject to the condition that they meet the required standards for water quality leaving their city.

We also feel that not submitting a watershed management plan is not in compliance with the overall program, so starting July 1 we'll, I'm sure along with DEQ, will be asking them to submit their plan. We will have the authority, if they do not comply with the overall program, to go in and manage the program for them as a part of the agency's overall surface water management program.

Any questions? That clarify it?

MR. YON: Yes. Thank you.

Anybody else that would like to testify?

PAUL HAYNES: I'm Paul Haynes, Public Works Director for Lake Oswego. I think it is important that I provide some supporting testimony for the plan that we submitted to DEQ. We prepared the plan to be in compliance with the guidelines put out by DEQ, and I believe we did that. I'd like to be sure that's recognized. We made that effort to comply with the guidance document. I'd like to again submit the cover letter we provided with that report to identify our

support and the need and help for DEQ to be successful in the management of the water quality in Tualatin Basin and Oswego Lake Basin.

One of the things that I don't think has received enough recognition is the coordinated effort that the local agencies have put together in sharing information and providing support to get through the process to be sure we have coordinated plans that link the river basins and tributaries from one end to the other. I think it is very commendable the way the agencies have come together in a very short period of time to put together reports that I think will be very consistent for the basin. We need to keep up that regional approach.

We need DEQ to be part of that regional approach. We currently have committees that we have assembled and ask DEQ to be a more active participant in that process. We'd like to have DEQ to take us up on that. We need your help to be better as planning -- not so much planning, but identifying the needs of the basin, where the problems are, and specifically what we need to correct in the basins.

We also need some help from DEQ to be more active in disbursing any analyses, any reports that DEQ performs on the process, any technical information

that you receive and information on specific plan reviews. We find those difficult to receive. We have been very proactive to get that information. It would be helpful for us in implementing our plans for DEQ to be more proactive in those areas.

One other thing I think is necessary for DEQ and EQC to keep in mind as we implement the plans, there is a great deal of work that has to occur, and it is all honed around several basic areas in identifying existing problems, designing the solution, developing of the funding source, and the construction or implementation of the solution. All of that has to be complete before July of '93. All of the agencies, Lake Oswego, is working very diligently toward that end. We plan to keep DEQ involved in the progress we are making towards those ends. We need EQC to understand, to hear our efforts that are going to be made by each agency in trying to meet the July '93 date for compliance with the discharge requirements.

With that, I'll answer any questions and ask for your future help.

MR. YON: Thank you.

One more. State your name and who you represent.

ROY WEBSTER: My name is Roy C. Webster.

I'm a resident of Washington County. I live approximately half way between Forest Grove and Banks, Oregon. I'm a member of the Washington County Farm Bureau. I'm here to register my interest in the procedure that is being undertaken to implement a cleanup of the Tualatin River.

June 7 Hillsboro Argas (ph) informed me of the meeting today. It talks about such things as reducing pollution carried by natural man-made drainage systems. The whole issue that seems to be paramount in cleaning up the Tualatin River is to reduce the phosphorus content of the river which then would reduce the algae buildup and the other "contaminants" that make the river less than the standards set by the Clean Water Act. I do not see in any of the three proposals submitted to DEQ on behalf of USA any specific rationale addressing the ability to reduce the phosphorus currently or in the near term going into the river.

There is a comment in the story that I referred to which will talk about USA and most cities in Washington County devised a joint plan which calls for USA to begin charging a monthly fee as of July 1st. This will pay for a low intensity effort based mainly on public education.

I have more than 35 years in public relations, journalism, public education. I formally am the Pacific Northwest Waterways Association Executive Vice President. I lobbied on behalf of water interests in Washington, Oregon, Idaho, Montana and Alaska for four years at the federal level. And if USA and the Washington County cities can implement an educational program to get the public behind the cleanup of the Tualatin River by reducing the amount of fertilizers, herbicides and pesticides they use at home and not to empty used motor oil or other hazardous materials into storm drains, I will applaud them until my dying day. But I don't see any kind of effective enforcement or any kind of specific involvement in the procedures or the rules or the regulations or the principles that are outlined in the USA proposal dealing with how to reduce effectively that phosphorus content currently going into the river.

In the natural soils in Washington County and in the soils that leach into the river, there is a certain amount of phosphorous. I have been talking with people associated with the agricultural area and arena in Washington County which is the state's largest farm bureau membership, and they are concerned

about the fact that there is no specific request in that proposal to ask for a reduction, percentage reduction or absolute ban on detergent using phosphorus which would then alleviate part of the problem that is coming out of USA's own inability to effectively treat the affluents and the sewage they are putting into the river.

That combined with today's hearing, which is nonpoint source pollution runoff, is uncontrollable in terms of the amount of phosphorus going into the river, and you are not going to be able to implement an effective program by what USA is proposing, to reduce the agricultural runoff carrying the natural phosphorus into the river. And after two years of hearings, proposals, studies, comment, who knows how much money, man hours put into this proposal, it seems to me that we are dealing with a situation that could be much more farther down the line than we are being led to believe this proposal is going to resolve the situation.

DEQ, if I read the words that are printed in the newspapers, is under mandate from the EPA to effectively implement some kind of a program through USA to clean up the Tualatin River. In my experience in the water community, I don't see it in that plan

that you are going to be able to accomplish that in the time frame they are talking about. USA is currently asking you to give them six months more forgiveness to implement the program. I don't think they could accomplish it in six more months let alone I think it will be who knows how many years on down the road before we effectively see the Tualatin River cleaned up.

In 1973, and the hearing is being held right here on the same floor today, effectively began the cleanup or implemented the cleanup for the Willamette River. Currently Portland and other water agencies in this state are looking at a billion and a half dollar program over the next 15 years to deal with, again, the cleanup and the treatment for cleaner water in the Willamette and Columbia Rivers. Our rivers are out of control in terms of making them meet those standards of the quick clean water act which is effectively mandated by Washington DC at a standard set across the nation.

And I dare say that the water situation in the Tualatin River is not the same as the Connecticut River or any other river in any particular part of the United States, but we are mandated by legislation at a standard which is universal across the United States

rather than on a selective basis. And it would seem reasonable to me that if the USA really wanted to deal with the local situation that they also would have in there and be making efforts to try to get the people that brought the lawsuit as well as the EPA to realize that Tualatin River is unique onto itself and there are certain issues that cannot be legislated or effectively man controlled.

And I dare say that's the runoff from agricultural lands in Washington County. We have never quantified nor qualified the aquifer in Oregon per the 1988-'89 Blue Book. How do they know where the runoff of this nonpoint source pollution will reach back into the river and how could they know what cleansing activity is going to take. This all needs to be quantified, studied and brought to the table.

I also would like to reserve the opportunity to file with the DEQ, if appropriate, any type of written documentation at near term or long term.

MR. YON: You can do that until tomorrow, 5:00 p.m., put in written testimony.

MR. WEBSTER: Thank you.

MR. YON: Anybody else that would like to testify today?

MR. STARK: Do we have a chance to make another comment or two?

MR. YON: Just a short comment that would be fine.

MR. STARK: I failed to bring this particular point up, that USA and DEQ and Washington County Board of Commissioners, and all the way down the line, that every organization that has been working on the Tualatin River to clean it up have done a fantastic job, in my way of thinking, they've done a fantastic job, brought up a lot of different points and a lot of different compliances and that, and I don't know that this has been looked into. Thanks for what they have done.

The Tualatin River has been in the process of being polluted for over a hundred years, and no organization and nobody is going to be able to clean that river up in a short period of time. Like I brought up earlier, we've lived on the present address on the Tualatin River and at that time we drank out of the river because we didn't have water available at the time. So we used the river a lot of times for drinking. But you know you can't -- you know the river well enough now that it would be a question of whether you want to swim in it besides drink any

water.

So in cleaning the river up, the more bureaucratic organizations they go through and the more they drag their feet, the longer it is going to take to get the river cleaned up. And I would say that what we need is action on it and action as fast as we can get the cleaning up.

And they should give all of the organizations and everybody, individuals, a lot of credit for what they have done on it, and I think there has been lots of goals and guidelines set that is what it takes is action. If they don't start doing, things will be the same down the line as they are now. It is going to take bureaucratic and a lot of technical and engineering action to get it done. And like he said, agriculture is another point. The agriculture is a necessity of the Washington County. That is what Washington County has lived on from the beginning of time.

My ancestors and my granddad homesteaded in 1857 over there, and he was a farmer and we followed along. And he's not the only one. And you go and look at Washington County where Washington Square is and west of that, I know that well because that's where we lived and we farmed. And now you can go out

in Washington County, again out there by around 185th Street off of Sunset Highway, and it is unbelievable the development of what is going in, apartments and houses and stuff. And one of them, all of them are going to be offenders of polluting the river.

And when Washington County was a farm county, mostly pollution that they did create was dissolved and taken care of by -- was filtered out in wetlands and forest and that. And now your development is all concentrated pollution. There should be action, more action taken to see that they clean up their part of it because the more ground you cover up with concrete and asphalt and buildings, the more pollution you are going to have. It is something you can't beat. We are going to beat it some day.

But I think that Tualatin River, this gentleman that was up here before, he said it shouldn't only be a local concern, it should be something that is sponsored by national. It is only here using the Tualatin River as a guideline to what other people can do, but it should be something where we have the teeth in it and there is some more political. And more you get in the national, the more things you are going to -- problems you are going to run into. But I think it should be something that is

sponsored by let's say national situation because we are only playing with a few hundred million dollars now, but in time it is going to run into where we need full United States participating in this pollution cleanup. It isn't only the river, it is the air and everything else.

MR. YON: Thank you, sir.

MR. STARK: Thank you very much.

MR. YON: Would anybody else like to testify? Thank you all for coming. That concludes our hearing.

(Hearing Concluded.)

C E R T I F I C A T E

STATE OF OREGON)
) ss.
MULTNOMAH COUNTY)

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
Notary Public for Oregon
Commission Expires: 9-13-92

Attachment I

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).

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

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state call 1-800-452-4011.

11/1/86

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.

MW\WC6629

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)

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.

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NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: S
Division: Office of Director
Section:

SUBJECT:

Strategic Plan: Request for Commission Approval

PURPOSE:

The Strategic Plan has been developed by the Commission and Department to provide short and medium range guidance for the Department and Commission.

ACTION REQUESTED:

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

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

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

_X_ Approve Department Recommendation
___ Variance Request — Attachment ___
___ Exception to Rule — Attachment ___
___ Informational Report — Attachment ___
_X_ Other: (specify) — Attachment _A_
"Strategic Plan"

DESCRIPTION OF REQUESTED ACTION:

The Commission is requested to formally adopt the Strategic Plan.

At the May 24, 1990, Work Session, the Commission reviewed public comments received and discussed recommendations of the Department for modification of the Draft Strategic Plan that was presented for public comment.

Attachment A incorporates the changes accepted by the Commission. New language is underlined, deleted language is ~~struck-through~~.

AUTHORITY/NEED FOR ACTION:

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

___ Other: Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The proposed Strategic Plan should aid the public and the regulated community to better understand the current direction and priorities of the Department and Commission.

PROGRAM CONSIDERATIONS:

Department programs will be adjusted over time based on the goals and priorities of the Strategic Plan.

The Strategic Plan will particularly aid in shaping the budget and program priorities for the 1991-93 biennium. (Priorities for the current biennium have been largely established by budget approval, new legislative directives, and the State/EPA Agreement.)

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

(Not Applicable)

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt the Strategic Plan a presented in Attachment A.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Strategic Plan is consistent with legislative policy and its adoption will establish agency policy.

ISSUES FOR COMMISSION TO RESOLVE:

None

INTENDED FOLLOWUP ACTIONS:

1. Develop Operating Plans -- (Scheduled for discussion at June 28, 1990 Work Session.)

2. Develop Performance Indicators -- (In process; initial indicators to be in place by July 1, 1991; status of operating plans will be reported to the Commission quarterly in the interim.)

3. Annually review and update the Strategic Plan -- (To be scheduled.)

Approved:

Section: Harold Sawyer

Division: _____

Director: Jeff Harman

Report Prepared By: Harold Sawyer

Phone: 229-5776

Date Prepared: June 11, 1990

HLS:h
\stratpln

Attachment A

5/31/90 Draft
Environmental Quality Commission
Department of Environmental Quality

Strategic Plan

INTRODUCTION

This document presents the proposed Strategic Plan for the Environmental Quality Commission and Department of Environmental Quality. As used in this document, the term "Agency" is an umbrella term used to represent both the Commission and the Department.

The strategic plan establishes a framework for making critical decisions wisely. The Strategic Plan is not concerned with "nuts and bolts" details of the agency's day-to-day operations. The plan focuses on significant issues where key results are essential. This strategic plan focuses on a short and medium range time span. It sets forth the Mission, Strategic Goals, and Priority Issues of the Agency. This strategic plan will be a primary yardstick for measuring and evaluating Legislative Concepts and Agency Budget Proposals for the 1991-93 Biennium.

ASSUMPTIONS

The following assumptions about the future of Oregon and the nature of future environmental issues, and the strategic planning process will have a bearing on the strategic goals and directions for the Agency:

- The quality of the environment in Oregon is the State's most valuable asset. It is cherished by current residents and attracts new residents. ~~existing residents, and a highly valued feature for attracting productive future citizens to the state.~~
- The Environment's assimilative capacity is finite.
- The population of Oregon will continue to increase, probably at a relatively rapid rate for the foreseeable future. ~~The population of Oregon will continue to grow at increasing rates (unless the state takes deliberate effort to discourage or prevent such growth).~~
- Industrial and economic development will continue to increase, and shall be encouraged to provide jobs for Oregon's citizens, within a framework of sound environmental policy. ~~Industrial and economic development will continue to occur at increasing rates (and be encouraged) to provide jobs for Oregon's citizens.~~
- A change in the nature and mix of industries in Oregon will occur to provide continued employment for existing residents in response to the predictable decline in timber harvest.
- A net migration of citizens to the state and particularly to the urban and suburban centers throughout the state will continue, placing a growing strain on infrastructure and quality of life in the urban and suburban centers.
- Fiscal constraints will continue to limit available funding for additional staff. New or expanded programs will need to rely upon improvement in methods, management, and/or changes in program priorities. ~~Fiscal constraints will continue to limit available funding for new or expanded environmental quality control efforts.~~
- Environmental regulatory programs will progressively focus more and more upon the **individual** (both as polluters and as consumers of products and services which unduly contribute to our pollution problems) rather than solely upon cities and industries.
- The demand by the public for more information and more involvement in the deliberations on environmental quality will continue to grow.
- Federal requirements will continue to have a heavy bearing on the activities of the Agency.
- Technology and information will continue to improve and enhance the capability to monitor and protect ~~control~~ the quality of the environment.

- The Environmental Quality Commission, as a citizen governing body, provides unique opportunities to help achieve goals the Department alone cannot achieve.
- The 1989 Legislatively Approved Budget for the Agency, new legislation to be implemented, and the agreements reflected in the State/EPA agreement (grant agreements) have already established major priorities for the Department for the period from July 1, 1989 through June 30, 1991. There is some ability to adjust priorities and reallocate resources, but significant shifts on an immediate basis will be difficult if not impossible.

MISSION

The Mission statement is a short, concise statement which indicates the purpose or reason for existence of the Agency in global terms.

The Mission of the Agency is to be an active force to restore, enhance, and maintain the quality of Oregon's air, water and land.

STRATEGIC GOALS

Strategic Goals identify the direction the Agency seeks to go or the general results the Agency desires to accomplish over the course of the next few years. The Strategic Goals are not specific as to how the desired results are to be accomplished. The Goal statements provide a "sense of direction" which guide the development of major projects or activities as well as the numerous decisions made by Department managers each day.

To aid in understanding the intent of the goal, descriptive statements are presented to provide additional detail on agency wide direction.

1. **Address environmental issues on the basis of a comprehensive cross-media (air, water, land) approach.**

   This goal will require the Agency to revise and update procedures for permit application evaluation, permit issuance, review of engineering plans, and review of technical proposals to assure that requirements in one environmental medium ~~media~~ (air, water, land) complement the efforts in other media and do not create new problems. It also calls for special efforts to assure that agency actions and standards protect health and the environment, are based on uniform acceptable risk factors, appropriately consider cumulative effects of pollutant exposure through various pathways, and provide an adequate margin of safety. To support this goal, it will be necessary to establish a data management system in which ambient environmental data, source emission data, and compliance information from each program are accessible and useful to other programs.

2. **Aggressively identify threats to public health or the environment and take steps to prevent problems which may be created.**

   This goal will require improved monitoring to provide essential data to describe current environmental quality, evaluate identified problems, model environmental effects ~~affects~~ of proposed actions, and evaluate trends in environmental quality. It will also be desirable to develop the capability to track regional/national/international technical/social/economic events and trends that may have significant relationship to Oregon environmental trends, programs, and opportunities for preventive action. It will be necessary to develop enhanced and new capability to perform environmental trends analysis and evaluate varied sources of information to anticipate problems and develop problem-preventive strategies. Ongoing involvement in the state's land use program is also a key step in protecting the state's environmental quality in the face of growth.

3. **Ensure that unallocated assimilative capacity exists by applying "highest and best" technology in conjunction with pollution prevention methods.**

   The environment has limited capacity to assimilate pollutants from human activities without interfering with public health and the quality of life our citizens enjoy. After extensive pollution control efforts, existing industries, cities, and citizen activities produce some residual pollution that utilizes portions of this assimilative capacity. This goal seeks to assure that we never allocate all of the assimilative capacity to existing sources and activities. As population and

industry grow, it is necessary to find new ways to reduce and remove pollutants to meet this goal. We also will need to develop new and improved capability to determine the environmental assimilative capacity in areas and environmental media of concern. Refinement of the processes for determining the appropriate uses of increments of currently unused assimilative capacity will be required. The term "highest and best" is included to reflect a desire to push for better and better technology to control pollution, even if that level of technology is not currently needed to meet standards and assure that assimilative capacity is not exceeded. As such, "highest and best" is used more as a term of "art" than a term of "science".

4. **Minimize the extent and duration of unpermitted releases to the environment through a technically sound compliance program which is timely, serves as a deterrent, and ensures that an economic advantage is not gained by non-compliance.**

   This goal anticipates review and restructuring of existing compliance assurance activities to assure that environmental quality objectives are achieved. Examples of actions that may be desirable to assist in achieving this goal include: review of existing permits and revision as necessary to assure that permits are achievable and clearly understood by permittees, and that conflicting, unenforceable, or unessential permit conditions are eliminated; expansion of the use of self monitoring and reporting by sources (which is objective and valid) as a means to make more effective use of existing DEQ field staff; improvement of technical training of agency staff to make compliance determinations; and enhancement of the capacity and range of laboratory analytical capability to support field compliance determinations.

5. **Promote public awareness of the environment and cultivate a personal sense of value and responsibility for a healthy environment.**

   Education is a primary way of accomplishing this goal. Past environmental quality control efforts have focused largely on treatment and control of industrial and municipal activities. Pollution control efforts are increasingly recognizing the larger number of small sources -- the activities of each of us as individuals. Thus, to achieve environmental quality goals, we need to secure assistance from experts in understanding options for changing attitudes of the public regarding their actions and environmental quality. We also need to develop a broad-based strategy for informing the public of the relationship between their actions and environmental quality, and integrate implementation of this strategy into all agency actions. Other options for action include exploring options for product labeling as a means of fostering awareness of environmental effects of marketplace products, and enhanced public involvement in agency program development.

6. **Employ the highest professional and ethical standards in dealing with the public, regulated community, and co-workers.**

   This goal will require the Department to develop a clear statement of values to guide agency actions and attitudes. In part, this statement should reflect respect and appreciation for the views of others, and continue to result in decisions that are unbiased, objective, equitable, and based upon sound facts. All staff should be trained to ensure that a consistent approach reflecting department values is followed in dealing with the public, regulated community, and co-workers.

7. **Foster a workplace atmosphere which emphasizes safety; encourages affirmative action; promotes creativity, pride, enthusiasm, productivity, active participation in the issues; and allows staff members to apply their fullest capabilities.**

   If environmental goals are to be achieved, attention must also be paid to the work environment for the staff of the agency. We need to provide adequate time and opportunity for staff to perform quality work, to systematically acknowledge quality work, to promptly address deficient performance, to provide an environment which fosters participation and creativity, to assure a safe work-place through training and effective implementation of safety programs, and to continuously strive to meet affirmative action goals.

8. **Streamline agency programs and activities by identifying and implementing more efficient ways to accomplish essential actions and by eliminating low priority tasks.**

   This goal will require the Agency to systematically evaluate rules, permits, procedures, policies, and activities to find ways to streamline and find more efficient ways to accomplish the desired results. It will also require identification of programs or activities that can more effectively and efficiently be accomplished by other government agencies and seek to transfer such activities to those agencies. Efforts are also appropriate to identify and eliminate work tasks which contribute little to environmental quality protection (accomplishing the goals of this plan) so as to free resource for higher priority tasks.

9. **Maximize the effectiveness of the Environmental Quality Commission by formulating and overseeing attainment of ~~in achieving~~ Oregon's environmental goals.**

   The Environmental Quality Commission consists of five citizens appointed by the Governor. By law, they are responsible for establishing the policies, objectives and priorities which guide the Department in carrying out state environmental laws. They adopt environmental standards, and procedural rules which govern actions by industries, cities, and citizens. They also review Department programs to assure that goals and objectives are achieved. The Commission has the opportunity to be a proactive force in the development of environmental policy. The Commission helps to bridge the gap between the citizen and the regulatory process. The effectiveness of the Commission can be enhanced through involvement in environmental policy issues at the earliest opportunity. However, to avoid diluting the effectiveness of the Commission, efforts must be made to increase the policy content of ~~reduce the number of~~ issues on the Commission agenda~~ by eliminating items where statute or rule do not require action~~.

PRIORITIES

The Agency has identified priorities for each major program. It is assumed that on-going work (development and update of standards, pollution control strategy development, permit issuance, pollution control facility plan review, compliance inspections, enforcement, complaint investigation, environmental quality monitoring, etc.) will continue at approximately present levels unless identified as a potential target for modification as part of the priorities on these lists.

The Agency has also identified priorities for reduction of staff effort through modification, deferral, or elimination of activities in order to be able to assign resources to pursue identified high priorities.

The priorities are expected to be reflected in Division Operating Plans as specific objectives and tasks.

PRIORITIES FOR ALL PROGRAMS

High Priorities

1. Restructure compliance inspection programs to base the inspection frequency and level of effort for each source on the environmental threat posed by the source. (Goal 4)
2. Develop a comprehensive data management system that supports management decision making and facilitates exchange of information between Department programs and other agencies. (Goals 1 & 2)
3. Streamline the permit issuance process and eliminate the backlog of pending permit applications. (Goals 1 & 8)
4. Develop and implement new initiatives for informing the public about actions they can take to reduce pollution. (Goal 5)
5. Provide training and development opportunities for agency staff to assure a highly qualified and knowledgeable staff. (Goals 6 & 7)
6. Implement a Health & Safety Plan to protect employees who may come in contact with hazardous substances. (Goal 7)
7. Develop options for stable long term funding to achieve environmental protection goals. (All Goals)

Resource Reduction Priorities

- Reduce staff effort related to preparation for Environmental Quality Commission meetings by reducing the number of items on the agenda and, at the same time, increasing the policy content of items presented.

- Reduce staff effort expended in monitoring sources by increasing the reliance on valid and objective self monitoring and reporting. This will require development and implementation of effective programs for lab certification and selective auditing of self monitoring efforts.
- Reduce staff efforts by transferring activities that logically should and can be provided at the local level to the appropriate local governments.
- Reduce staff effort devoted to responding to issues which are solely nuisance in nature. (ie those that do not constitute a hazard to public health or the environment.)
- Modify technical assistance efforts to emphasize group approaches rather than one-on-one technical consultation. Also, develop technical assistance efforts which utilize the expertise of individuals and groups outside the Department to accomplish the desired goal.

WATER QUALITY PROGRAM

High Priorities

1. Obtain adequate information to determine the status of water quality in general and to establish the assimilative capacity for specific priority waterbodies. (The entire state should assessed as rapidly as resources permit.) (Goals 2 & 5)
2. Utilize the State Clean Water Strategy (SCWS) to establish priorities for prevention and corrective actions which need to be taken by the Department. The SCWS is a problem prioritization method which ranks streams according to their problem severity and beneficial use value. (Goals 2 & 4)
3. Implement aggressive source control and problem prevention programs based on the priorities established that explore and encourage use of environmentally sound alternatives for disposal of treated wastewater which do not adversely affect air, land, stream, and groundwater quality. (Goals 1, 3, & 8)

Resource Reduction Priorities

- Defer development of a long-term lake protection/restoration program.
- Defer development of a statewide long term estuaries/ocean program.

AIR QUALITY PROGRAM

High Priorities

1. Achieve healthful air quality levels in all pre-1989 non-attainment areas and maintain healthful levels in all attainment areas while allowing for continued economic growth wherever possible. (Goals 2, 3, & 4)
2. Establish a systematic approach to complete and maintain a statewide assessment of Oregon's air quality. (Goal 2)
3. In order to significantly reduce harmful exposure of the public to airborne toxic pollutants, establish an air toxics program which, through the permit process, addresses both new and existing sources and provides a level of protection equal to that of other environmental media. (Goals 1 & 2)
4. Develop improved methods to achieve reductions in area source emissions such as: public education, consumer product labeling, emphasis on ~~pellet vs. cordwood~~ cleaner home heating systems, etc. (Goals 3 & 5)

Resource Reduction Priorities

- Woodstove certification program; defer to the national certification program.

HAZARDOUS AND SOLID WASTE PROGRAM

High Priorities

1. Develop consistent cleanup standards at waste management facilities under HSW jurisdiction and then identify and have a department approved strategy for cleanup of each problem site. (Goals 1 & 3)
2. Significantly reduce the disposal of domestic solid waste in the state through the adoption and implementation of solid waste reduction and recycling goals and standards, improved markets for recyclables, and expanded education programs aimed at changing consumer habits. ~~Significantly reduce the disposal of domestic solid waste in the state through an expanded bottle bill, adoption and implementation of recycling goals and standards and improved markets for recyclables.~~ (Goal 2)
3. Significantly decrease the percent of domestic solid waste being disposed in landfills without state-of-the art technologies such as double

liners and leachate collection through development and enforcement of new solid waste disposal standards. (Goal 3)

4. Significantly reduce the amount of toxic chemicals used and hazardous waste generated in the state through comprehensive implementation of the 1989 Toxic Use Reduction and Hazardous Waste Reduction law and enhanced technical assistance to hazardous waste generators. (Goals 3 & 4)

5. Significantly increase the amount of products purchased by government which utilize non-virgin materials in their manufacture.

6. Develop and implement comprehensive strategies to reduce the generation of special wastes and manage the special wastes that are generated. (Special wastes include household hazardous waste, waste from conditionally exempt hazardous waste generators, incinerator ash, infectious waste, oil contaminated wastes, etc.) (Goal 2)

7. Clarify the responsibility for solid waste management so that local governments are specifically responsible for solid waste planning and implementation of the laws that pertain to solid waste disposal and recycling.

8. Assist owners of underground storage tanks in complying with federal standards by comprehensive implementation of a 1989 law which provides grants for site and tank inspections and loan guarantees/interest rate subsidies for tank upgrades and cleanups.

Resource Reduction Priorities

- Substitute Department conducted monitoring of groundwater at solid waste disposal sites with valid and objective monitoring by site operators.
- Implement the new groundwater protection rules at high priority solid waste disposal sites only.
- Reduce the review of and eliminate the need to approve annual wasteshed recycling reports.
- Reduce the Department's workload by requiring RCRA facility operators, with Departmental oversight, to do the facility assessments necessary to obtain closure or post closure permits. Now, the Department does the assessments for the operator.
- Substitute EPA guidance documents for one-on-one technical assistance to operators of hazardous waste sites who are developing corrective action strategies.

ENVIRONMENTAL CLEANUP PROGRAM

High Priorities

1. Enhance the environmental cleanup program to include a non-complex cleanup process (with an appropriate regional component) that will promote voluntary cleanups by responsible parties with limited DEQ oversight. (Goal 8)

2. Aggressively pursue responsible parties to ensure the use of their resources wherever possible to achieve timely cleanups and attain a goal of recovering at least 75% of DEQ expenditures for oversight of these cleanups. (Goal 4)

3. Complete rulemaking on criteria and procedures for the Confirmed Release List, the Site Inventory, Preliminary Assessments and the Hazard Ranking System and implement on an agency-wide basis. (Goals 1 & 2)

4. Secure funding for orphan site cleanups by receiving E-Board approval to sell Pollution Control Bonds to clean up one or more specific sites. (Goals 1 & 2)

Resource Reduction Priorities

- Defer implementation of rulemaking/guideline development necessary to do natural resource damage assessments. The Department is authorized to recover damages from responsible parties for injury to or destruction of natural resources caused by a release of hazardous substances.
- Defer further development of financial assistance program for responsible parties who are unable to finance investigations and cleanup. The Department has statutory authority to provide financial assistance in the form of loans and loan guarantees to needy responsible parties, but resources are inadequate to implement except on a very limited basis.
- Until "High Priority Issue" 1 above is implemented, assistance or oversight for most responsible parties wishing to voluntarily investigate and cleanup their sites will not be available.
- Defer adoption of rules defining an "unwilling" responsible party under HB 3515 and defer use of the "non-binding review" provision of HB 3515. This means the Orphan Site Account in HSRAF (state superfund) will not be immediate-

ly available for cleanups at sites where the responsible parties are unwilling to conduct the cleanup using their resources.

WHAT COMES NEXT

Following are the anticipated next steps in the ongoing Strategic Planning Process:

~~1. Opportunity for Review and Input by the Public.~~

~~2. Revise this plan as appropriate based on further input.~~

1~~3~~. Develop individual Operating Plans for each Division. The Senior Managers of the Department will then review operating plan priorities, prepare preliminary proposals for any reallocation of resources, and report to the Commission.

Note: Operating Plans are internal management documents developed by individual Divisions within the Department to guide day to day actions and facilitate achievement of the expectations reflected in the Budget, Federal Grant Agreements, and the Goals of the Strategic Plan. Operating Plans are the subject of discussion and review by Department managers on a frequent basis.

2~~4~~. Develop Performance Indicators and a system for periodic reporting to the Commission.

Note: Performance Indicators are measures of accomplishment that are developed, tracked and routinely reported to the Commission and Department managers to provide a clear indication of progress toward meeting the Goals reflected in the Strategic Plan.

3~~5~~. Develop preliminary legislative concept proposals and budget decision packages for early presentation and discussion with the Commission.

4~~6~~. Annually review and update the Strategic Plan.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: T
Division: Environmental Cleanup
Section: Site Assessment

SUBJECT:

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

PURPOSE:

The proposed rules provide criteria and procedures for implementation and administration of a hazardous substances site discovery program, including a process for evaluation and preliminary assessment of releases of hazardous substances, and a process for developing and maintaining a statewide list of confirmed releases and an inventory of sites requiring investigation, removal, or remedial action; 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 citations in environmental cleanup rules to conform to recodification of ORS Chapter 466.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
_X_ Adopt Rules

Proposed Rules, including Preamble	Attachment A
Rulemaking Statements	Attachment B
Fiscal and Economic Impact Statement	Attachment B
Public Notice	Attachment B

___ 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:

Adopt proposed site discovery rules, including related changes in the environmental cleanup rules at OAR 340-122-010 et seq., proposed rules pertaining to the $20/ton hazardous waste management fee, and proposed amendments to statutory citations in the environmental cleanup rules.

The proposed rules provide the substantive detail and procedural structure necessary for the Department of Environmental Quality (Department) to implement the hazardous substances site discovery program mandated by ORS Chapter 465, as amended by the 1989 legislature under House Bill 3235. The proposed rules:

(a) Establish a process for the initial evaluation of reported releases of hazardous substances (new rule);

(b) Establish a process for the preliminary assessment of releases of hazardous substances (amends OAR 340-122-060);

(c) Define "confirmed release" to limit the types of releases which will be included on a list of confirmed releases and an inventory of sites requiring investigation, removal, or remedial action (new rule);

(d) Establish the criteria and procedures for developing and maintaining a list of facilities with confirmed releases and an inventory of facilities which require additional investigation, removal, or remedial action (new rule); and

(e) Revise the definition and conditional exemption for "permitted releases" in the environmental cleanup rules, OAR 340-122-020(6) and 340-122-030(2), and delete the preliminary assessment section of those rules, OAR 340-122-060, to conform to the proposed site discovery rules.

ORS 465.375, amended by HB3235, also extends the $20/ton fee imposed on wastes entering hazardous waste disposal facilities to all wastes, not only hazardous wastes and polychlorinated biphenyls. The proposed rules incorporate this change.

ORS Chapter 466 has been recodified. The proposed rules amend the citations to Chapter 466 in the environmental cleanup rules, OAR 340-122-001 to 340-122-110, to incorporate the new statutory citations.

AUTHORITY/NEED FOR ACTION:

_X_ Required by Statute: ORS 465.405 Attachment ___
Enactment Date: June 28, 1989
___ Statutory Authority: ORS 465.400(1); 465.405; & 468.020 Attachment ___
___ Pursuant to Rule: _____ Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___
_X_ Time Constraints: Attachment ___

ORS 465.405 required the Commission to adopt rules to implement the site discovery program by March 28, 1990

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation Attachment ___
_X_ Hearing Officer's Report/Recommendations Attachment C
_X_ Response to Testimony/Comments Attachment D
_X_ Prior EQC Agenda Items:
Delisting sites from the Inventory and modifying information in the Inventory, Agenda Item H, EQC Meeting 1/20/89

Request for authorization to conduct public hearing on proposed rules, Agenda Item 0, EQC Meeting 3/2/90.

_X_ Other:

Diagram: Evaluation, Preliminary Assessment, Listing Process Attachment E

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

1. The proposed site discovery rules do not impose any new requirements or liabilities on the regulated community. Nevertheless, the publication of the list of confirmed releases and the inventory of sites requiring further investigation, removal, or remedial action may affect the value or trigger the investigation or cleanup of listed or neighboring property. To the extent the listing process affects these actions, the proposed rules may have fiscal and economic impacts on owners and operators of property contaminated by hazardous substances, as well as neighboring property, and on persons liable for the investigation and cleanup of such property. These persons include public and private entities and small and large businesses. See Fiscal and Economic Impact Statement, Attachment B.

2. Except for minor editing, the rules proposed for public comment are proposed for adoption. Six persons commented on the proposed rules; no new issues were raised. The public comments and the Department's responses are summarized at Attachments C and D.

   Three commenters addressed the scope of the exclusion of "permitted and authorized releases" from listing on the confirmed release list and inventory. The proposed rules categorically exclude "permitted and authorized" releases from listing, but not the deposition, accumulation, or migration resulting from such releases.

   Two commenters believe the exclusion is broader than intended by statute. The Department's responses explain the statutory basis for this exclusion and the finding that this category of releases poses no significant threat to public health or the environment and will not require removal or remedial action, a prerequisite for listing. Attachment D, Comments 1, 3, and 4, pages D-1 through D-3.

   One commenter would expand the categorical exclusion of "permitted and authorize releases" to encompass the deposition, accumulation, or migration from such releases. The Department finds no statutory basis for this expansion. Unlike "permitted or authorized releases", the deposition, accumulation or migration from otherwise-authorized releases may pose a significant threat to public health or the environment and may require removal or remedial action. Therefore these releases are not categorically excluded from listing, but may be excluded case-by-case under other exclusions in the rules. Broadening the categorical exclusion as suggested would preclude listing sites such as

dioxin contaminated sediments or the Bunker Hill Superfund National Priorities List site in Idaho which have resulted from permitted releases. Attachment D, Comment 2, page D-2.

Two commenters also urged the Department to consider whether "guidance" developed to implement the site discovery program requires rulemaking. The Department will continue to evaluate the need for rulemaking as guidance is developed, and plans to review guidance with the Environmental Cleanup Advisory Committee as it is developed. Attachment D, page D-4.

3. The proposed extension of the hazardous waste disposal fee to all wastes entering a hazardous waste disposal facility is not expected to impact the regulated community. The only permitted disposal facility in Oregon to which this fee applies has been collecting the fee on all wastes for some time.

PROGRAM CONSIDERATIONS:

The Department discussed program considerations in its report requesting hearing authorization on the proposed rules. No new program considerations have been identified.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

Submit amendments and new rules for adoption as proposed.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends adoption of the rules as proposed. The public comments did not raise issues the Department had not considered before requesting authorization for hearing on the proposed rules.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed new rules and amendments to existing rules are required by statute, and are consistent with the Agency's strategic plan and policies to implement Chapter 465.

ISSUES FOR COMMISSION TO RESOLVE:

Develop internal guidance and procedures to consistently implement the rules throughout the Department.

Approved:

Section: Loretta Pickerell

Division: Michael Downs

Director: Fred Hansen

Report Prepared By: Loretta Pickerell

Phone: 503-229-6790

Date Prepared: May 23, 1990

LP:m
SA\SM3021
May 25, 1990

ATTACHMENT A
Agenda Item T
June 29, 1990
EQC Meeting

DIVISION 122
HAZARDOUS WASTE MANAGEMENT

Site Discovery Rules

June 13, 1990

Preamble

These rules implement certain provisions of ORS Chapter 465. The statute, as amended by the legislature in 1989, provides for a program to identify any release or threat of release of a hazardous substance from a facility that may require remedial action (ORS 465.220); a process for the evaluation and preliminary assessment of releases identified (ORS 465.245); and a process for publishing a statewide list of confirmed releases (ORS 465.215) and an inventory of sites requiring investigation, removal, or remedial action (ORS 465.225).

In general, these rules are designed to provide the substantive criteria and procedural structure necessary for actual implementation and administration of the site discovery program mandated by statute. With respect to the definition of "confirmed release" in OAR 340-122-427, the rules also specifically limit the types of releases which will be included on the list of confirmed releases in a manner consistent with the Commission's understanding of the legislative intent.

(1) Evaluations and preliminary assessments:

ORS 465.245 requires the Department to evaluate all reported releases of hazardous substances and document its conclusions. The rules establish the purpose and process for this evaluation (OAR 340-122-425).

The rules also establish a process for the conduct of a preliminary assessment, which, by statute, must be conducted on releases that the Department determines pose a significant threat to present or future public health, safety, welfare or the environment, and which may be conducted on other releases (ORS 465.245). The rules set out the purpose and content of a preliminary assessment and clarify when in the site discovery process a preliminary assessment may be conducted (OAR 340-122-426).

(2) Confirmed Release List and Inventory.

ORS 465.215 and 465.225 require the Department to develop and maintain two separate lists of facilities where hazardous substances have been released:

(a) a list of all facilities with a "confirmed release" as defined in the rules; and

(b) an inventory of facilities with a "confirmed release" which, based on a preliminary assessment, the Department determines require additional investigation, removal, remedial action, or related long-term environmental or institutional controls.

ORS 465.405 directs that the Commission adopt by rule a definition of a "confirmed release." This definition circumscribes the types of releases that will be listed as "confirmed releases" in accordance with the Commission's interpretation of legislative intent.

Several provisions of the statute delimit "confirmed release". ORS 465.405 requires that specified categories of releases be excluded from the confirmed

release list and inventory to the extent the Commission determines the release poses no significant threat to present or future public health, safety, welfare or the environment. In addition, ORS 465.230 requires the Director to remove, or exclude at the outset, releases which have been adequately cleaned up, and releases which do not require further action to assure protection of present and future public health, safety, welfare, and the environment. Finally, only sites which the Director determines require additional investigation, removal, remedial action, or related long-term environmental or institutional controls to assure protection are listed on the inventory or remain on the list of confirmed releases after the preliminary assessment. ORS 465.225.

OAR 340-122-427 sets out the categories of releases the Commission has found statutorily excludable under these provisions. This rule defines "confirmed release" as any release that is documented and does not meet one of these exclusions. The exclusions are specifically designed to limit listing as a "confirmed release" to those releases which may require removal or remedial action.

Most of the exclusions in OAR 340-122-427 are applied case-by-case, including the general exclusion in subsection (2)(f) for any release which "otherwise requires no additional investigation, removal, remedial action, or related long-term environmental controls or institutional controls". By this rule, the Commission also categorically excludes from these lists releases which are defined as "permitted or authorized releases", OAR 340-122-427(2)(c). (See related exclusion for pesticide applications, OAR 340-122-427(2)(d).)

With respect to "permitted releases", the rule is intended to exclude from the list all releases in a waste stream permitted by the Department of Environmental Quality, Environmental Protection Agency, or Lane Regional Air Pollution Control Authority (e.g., a permitted discharge of wastewater from a plant outfall or a permitted air emission). This exclusion encompasses all substances which are part of the permitted waste stream, including substances which are not specifically identified or limited in the permit. It also includes releases which do not strictly comply with the permit if they substantially comply. The Commission has determined that such authorized releases pose no significant threat in the sense contemplated in ORS 465.405 because they are subject to regulatory controls or abatement authorities, and would not require removal or remedial action to assure protection of public health, safety, welfare, and the environment. The rules make it clear, however, that releases that are the result of deposition, accumulation or migration of substances from an otherwise-authorized release are not categorically excluded from listing on the confirmed release list or inventory. Such releases may, in fact, pose significant threats and may not be remediable through regulatory authorities or controls without removal or remedial action.

Similarly excluded as "authorized releases" are other types of releases of hazardous substances, which, while not specifically permitted, are legally authorized and currently or potentially subject to regulatory limits or controls (e.g., the emission of a hazardous volatile air contaminant from a dry cleaning facility.) These types of releases are also categorically excluded from listing under these rules because they are not releases which will require removal or remedial action. They are currently or potentially subject to specific regulatory controls.

These "permitted or authorized releases" might also be excluded under the rules as "de minimis", "rapidly dissipating", or "otherwise requiring no further investigation, removal, or remedial action", but these determinations could require resource intensive case-by-case evaluations. The categorical exclusion allows the Department to conclude its evaluation upon finding that a release meets the definition of a permitted or authorized release.

By categorically excluding the permitted and authorized releases as discussed above, the rules eliminate the potential that hundreds of sites subject to existing permits or regulatory programs would be listed as confirmed releases. The Commission believes it is the intent of the legislation to develop lists of sites that may require removal or remedial action (see, for example, ORS 465.205, 465.210, 465.210, 465.215, and 465.220) and not to duplicate information regarding other releases available under such statutes as Title III of the Superfund Amendments and Reauthorization Act or the Oregon Community Information on Hazardous Substances Act, or through the Department's permit process.

(3) Listing and Delisting

These rules establish a procedure for listing facilities on the confirmed release list and the inventory, including provision for notice and opportunity to comment on the proposed listing to owners and operators, and information to be included on the lists. OAR 340-122-430 and 340-122-440.

A facility is added to the list of confirmed releases if the Director determines that a release has been confirmed at the facility. OAR 340-122-430. As discussed above, a release is confirmed if the Department documents the release and determines that none of the exclusions from the definition of "confirmed release" apply. OAR 340-122-427.

A facility is listed on the inventory if, based on a preliminary assessment, the Director determines that a release has been confirmed and that the facility requires further investigation, removal, remedial action, or related long-term environmental or institutional controls to assure protection of public health, safety, welfare, and the environment. OAR 340-122-440.

The Department will determine whether an exclusion from listing applies based on the information available at the time the final decisions to list a facility is made. Sites will normally be listed on the confirmed release list after either the initial evaluation or the preliminary assessment. Sites will be listed on the inventory after the preliminary assessment. Normally, the Department will not conduct a preliminary assessment to gather additional information to determine whether an exclusion applies before listing a site on the confirmed release list. Otherwise, the distinction between the confirmed release list and the inventory would, for the most part, be eliminated.

These rules also set forth a procedure for "delisting" sites from the confirmed release list and the inventory. OAR 340-122-460 through 340-122-470. In particular, the rules provide for delisting petitions by affected persons, public notification of a delisting proceeding, opportunity for public comment, development of an administrative record and public availability of information relating to the delisting process.

Purpose

340-122-410 These rules establish the criteria and procedures for implementation of a hazardous substances site discovery program pursuant to ORS 465.215 through 465.245 and 465.405, including a process for evaluation and preliminary assessment of releases of hazardous substances, and a process for developing and maintaining a statewide list of confirmed releases and an inventory of sites requiring investigation, removal, remedial action, or related long-term environmental or institutional controls.

Scope and Applicability

340-122-415 (1) These rules apply to releases of hazardous substances regardless of the applicability of other statutes and administrative rules.

(2) Nothing in these rules, including listing on the Confirmed Release List or the Inventory, shall be construed to be a prerequisite to or otherwise affect the liability of any person or the authority of the Director to undertake, order, or authorize a removal, remedial, or other action under ORS Chapter 465 or other applicable law.

Definitions

340-122-420 These definitions apply to OAR 340-122-410 through 340-122-470. Terms not defined in this section have the meanings set forth in ORS 465.200 and OAR 340-122-020.

(1) "Background level" means the concentration of hazardous substance, if any, existing in the environment at a facility before the occurrence of any past or present release or releases.

(2) "Confirmed release" means a release, as defined in ORS 465.200(14), of a hazardous substance into the environment that has been confirmed by the Department in accordance with OAR 340-122-427.

(3) "Confirmed Release List" means a list of facilities for which the Director has confirmed a release of a hazardous substance.

(4) "De minimis release" means a release of a hazardous substance which because of the quantity or characteristics of the hazardous substance released and the potential for migration and exposure of human, biological, or environmental receptors can reasonably be considered to pose no significant threat to public health, safety, welfare, or the environment.

(5) "Director" means the Director of the Department of Environmental Quality or the Director's authorized representative.

(6) "Environment" includes the waters of the state, any drinking water supply, any land surface or subsurface strata, sediments, saturated soils, subsurface gas, or ambient air or atmosphere.

(7) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has

been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(8) "Inventory" means a list of facilities for which the Director has confirmed a release of a hazardous substance and, based on a preliminary assessment, has determined that additional investigation, removal, remedial action, or long-term environmental or institutional controls related to removal or remedial action are required to assure protection of the present and future public health, safety, welfare, and the environment.

(9) "Permitted or authorized release" means a release that is from an active facility and that is subject to and in substantial compliance with a current and legally enforceable permit issued by the Department, the United States Environmental Protection Agency, or the Lane Regional Air Pollution Authority; is in conformance with Department rules or a control regulation in a State Implementation Plan; or is otherwise in conformance with the provisions of a State Implementation Plan.

(10) "Preliminary assessment" means an investigation conducted in accordance with OAR 340-122-426 for the purpose of determining whether additional investigation, removal, remedial action, or related long term environmental or institutional controls are needed to assure protection of public health, safety, welfare, and the environment.

(11) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers and other closed receptacles containing a hazardous substance, or threat thereof, but excludes:

(a) Any release which results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person's employer under ORS chapter 656;

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(c) Any release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to requirements with respect to final protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 465.260 or any other removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

(12) "Remedial action" and "removal" have the meanings set forth in ORS 465.200(15) and (17), respectively, and, for purposes of these rules, may include investigations, cleanups, and related actions under any federal or state statute or regulation.

(13) "Site" has the same meaning as set forth for "facility" in OAR 340-122-420(7).

Site Evaluation

340-122-425 (1) When the Department receives information about a release or potential release of a hazardous substance, the Department shall evaluate the information and document its conclusions. The purpose of the evaluation is to decide whether a release has or may have occurred and whether the release may pose a significant threat to public health, safety, welfare, or the environment.

(2) The Department may request or gather additional information to complete the site evaluation.

(3) After an evaluation is completed, the Department will determine whether a preliminary assessment, removal, remedial action, other action, or no further action is needed at the facility.

Preliminary Assessments

340-122-426(1) The Department shall conduct a preliminary assessment or approve a preliminary assessment conducted by another person in accordance with section (4) of this rule if the Department determines that a release of a hazardous substance poses a significant threat to public health, safety, welfare, or the environment. The Department may conduct or approve a preliminary assessment without such determination. The Department may determine that existing information constitutes the equivalent of all or part of a preliminary assessment.

(2) Prior to conducting a preliminary assessment, the Director shall notify the owner and operator of the facility, if known, of the Department's intent to conduct the assessment, and allow the owner or operator to submit relevant information to the Department or to request to conduct the preliminary assessment. The Department may accept or deny such request.

(3) The purpose of a preliminary assessment is to develop sufficient information to determine whether additional investigation, removal, remedial action, or long-term environmental or institutional controls related to removal or remedial action are needed at a facility to assure protection of present and future public health, safety, welfare, and the environment.

(4) A preliminary assessment shall include sufficient on-site observations, maps, facility data, sampling, and other information to accomplish the purposes of a preliminary assessment as described in section (3) of this rule including, as appropriate:

(a) Description of historical operations at the facility, including past and present generation, management, and use of hazardous substances; compliance with relevant environmental requirements; and investigations or cleanups of releases of hazardous substances;

(b) Identity and characteristics of hazardous substances that are being or might have been released and, if available, an estimate of the quantities released, the concentrations in the environment, and extent of migration;

(c) Documentation of releases of hazardous substances to the environment;

(d) Identification of present and past owners and operators of the facility;

(e) A description of the facility, including site name, and a site map identifying property boundaries, the location of known or suspected releases of hazardous substances, and significant topographic features;

(f) A description of potential pathways for migration of known or suspected releases of hazardous substances, including surface water, groundwater, air, soils, and direct contact;

(g) A description of receptors, including human, biological, and environmental receptors potentially affected by releases of hazardous substances;

(h) A description of any other physical factors that might be relevant to assessing short and long-term exposure to releases of hazardous substances; and

(i) An evaluation of present and future threats to public health, safety, welfare, and the environment.

(5) After completion of a preliminary assessment, the Director shall make one or more of the following determinations regarding a facility:

(a) Additional investigation, removal, remedial action, or long-term environmental or institutional controls related to removal or remedial action are needed to assure protection of present and future public health, safety, welfare, and the environment;

(b) Current regulatory action under another state or federal agency program is adequate to protect public health, safety, welfare, and the environment;

(c) Other actions are necessary to assure protection of present and future public health, safety, welfare, and the environment; or

(d) No further action is needed to assure protection of present and future public health, safety, welfare, and the environment.

(6) When the preliminary assessment is completed, the Director shall provide a copy to the owner and operator, if known, and shall notify them of any determination made pursuant to section (5) of this rule.

Confirmation of a Release

340-122-427 (1) The Director shall determine that a release of a hazardous substance has been confirmed for the purposes of listing a facility on the Confirmed Release List or the Inventory if the Director determines that the release meets the criteria in subsections (a) and (b) of this section:

(a) The release has been documented by:

(A) An observation made and documented by a qualified government inspector or agent;

(B) A written statement or report from an owner, operator, or representative authorized by an owner or operator stating that the release has occurred; or

(C) Laboratory data indicating the hazardous substance has been detected at levels greater than background levels; and

(b) The release is not excluded under section (2) of this rule.

(2) A release shall not be defined as a "confirmed release" pursuant to section (1) of this rule if, based on the information available at the time a final listing decision is made, the Director determines that the release meets any of the following criteria:

(a) The release is a de minimis release;

(b) The release by its nature rapidly dissipates to undetectable or insignificant levels and poses no significant threat;

(c) The release is a permitted or authorized release, but not including deposition, accumulation, or migration of substances resulting from an otherwise-permitted or authorized release;

(d) The release is a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136) and applied for its intended purpose in accordance with label directions, but not including deposition, accumulation, or migration of substances resulting from an otherwise-authorized release;

(e) The release has been cleaned up to a level that is consistent with rules adopted by the Commission under ORS 466.553 (1987) or ORS Chapter 466 or that poses no significant threat to present or future public health, safety, welfare, or the environment; or

(f) The release otherwise requires no additional investigation, removal, remedial action, or long-term environmental or institutional controls related to removal or remedial action to assure protection of present and future public health, safety, welfare, and the environment.

(3) A release shall not be excluded pursuant to section (2) of this rule if continuing environmental or institutional controls related to removal or remedial action are required to assure protection of present and future public health, safety, welfare, and the environment.

Development of Confirmed Release List

340-122-430(1) For the purpose of providing public information, the Director shall develop and maintain a Confirmed Release List of all facilities for which the Director has confirmed a release of a hazardous substance in accordance with OAR 340-122-427.

(2) The list shall include, at a minimum, the following items, if known:

(a) A general description of the facility;

(b) Address or location;

(c) Time period during which a release occurred;

(d) Name of the current owner and operator and names of any past owners and operators during the time period of a release of a hazardous substance;

(e) Type and quantity of a hazardous substance released at the facility;

(f) Manner of release of the hazardous substance;

(g) Concentration, distribution, and characteristics of a hazardous substance, if any, in groundwater, surface water, air, and soils at the facility; and

(h) Status of removal or remedial actions at the facility.

(3) (a) At least sixty (60) days before adding a facility to the Confirmed Release List, the Director shall notify the owner and operator, if known, of all or any part of the proposed facility by certified mail or personal service, and shall provide an opportunity to comment on the proposed listing within forty-five (45) days after receiving the notice. For good cause shown, the Department may grant an extension of up to forty-five (45) days for comment.

(b) The Director shall consider relevant and appropriate information submitted to the Department in determining whether to add a facility to the Confirmed Release List.

Development of Inventory

340-122-440(1) For the purpose of providing public information, the Director shall develop and maintain an Inventory of facilities for which the Director:

(a) Has confirmed a release of a hazardous substance in accordance with OAR 340-122-427; and

(b) Based on a preliminary assessment approved or conducted by the Department, has determined that additional investigation, removal, remedial action, or long-term environmental or institutional controls related to removal or remedial action are required to assure protection of present and future public health, safety, welfare, and the environment.

(2) The Inventory shall include, at a minimum, the items required for the Confirmed Release List, described in OAR 340-122-430(2), and the following items, if known:

(a) Hazard ranking and narrative information regarding threats to the environment and public health; and

(b) Information that indicates whether the remedial action at the facility will be funded primarily by:

(A) The Department through the use of moneys in the Hazardous Substance Remedial Action Fund;

(B) An owner or operator or other person under an agreement, order, or consent decree under ORS Chapter 465; or

(C) An owner or operator or other person under other state or federal authority.

(3)(a) At least sixty (60) days before a facility is added to the Inventory the Director shall notify the owner and operator, if known, of all or any part of the proposed facility of the proposed listing by certified mail or personal service. The notice shall include a copy of the preliminary assessment, and shall inform the owner and operator of their opportunity to comment on the information contained in the preliminary assessment within forty-five (45) days after receiving the notice. For good cause shown, the Department may grant an extension of up to forty-five (45) days for comment.

(b) The Director shall consider relevant and appropriate information submitted to the Department in determining whether to add a facility to the Inventory.

(4) At least quarterly, the Department shall publish notice of updates to the Inventory. The notice shall include a brief description of the facilities added or removed, and shall be published in the Secretary of State's Bulletin and submitted to local newspapers of general circulation in locations affected by the listings and to interested persons or community organizations.

Initiation of Process for Delisting Facilities from the Confirmed Release List and Inventory

340-122-460(1) An owner or operator of a facility listed on the Confirmed Release List or Inventory, or any other person adversely affected by the listing, may request the Director to remove a facility from the Confirmed Release List or Inventory. The Department may propose to remove a facility on its own initiative.

(2)(a) The owner, operator, or other person requesting that a facility be removed from the Confirmed Release List or the Inventory shall submit a written petition to the Director setting forth the basis for such request. The petition shall include sufficient information and documentation to support a determination that:

(A) The petitioner is an owner, operator, or person adversely affected by the listing; and

(B) The facility meets the respective criteria for delisting from the Confirmed Release List or from the Inventory set forth in OAR 340-122-470(1).

(b) A petition to remove from the Confirmed Release List or from the Inventory a facility for which a delisting petition has previously been denied shall demonstrate new information or changed circumstances to support the request.

Inventory Delisting - Public Notice and Participation

340-122-465 (1) Prior to the approval or denial of a petition to remove a facility from the Inventory submitted pursuant to OAR 340-122-460, the Department shall:

(a) Publish a notice and brief description of the proposed action in the Secretary of State's Bulletin, notify a local paper of general circulation, and make copies of the proposed action available to the public;

(b) Make a reasonable effort to identify and notify interested persons or community organizations;

(c) Provide at least thirty (30) days for submission of written comments regarding the proposed action;

(d) Upon written request received within fifteen (15) days after agency notice, postpone the date of its intended action no less than ten (10) nor more than ninety (90) days in order to allow the requesting person an opportunity to submit information or comments on the proposed action; and

(e) Upon written request by ten (10) or more persons or by a group having ten (10) or more members, conduct a public meeting at or near the facility for the purpose of receiving oral comment regarding the proposed action, except for a petition submitted by an owner pursuant to a cleanup action completed in accordance with OAR 340-122-245.

(2) Where possible, the Department shall combine public notification procedures for delisting from the Inventory with the public notification procedures for the proposed certification of completion of a removal or remedial action conducted pursuant to ORS Chapter 465.

(3) Agency records concerning the removal of a facility from the Inventory shall be made available to the public in accordance with ORS 192.410 to 192.505, subject to exemptions to public disclosure, if any, under ORS 192.501 and 192.502. The Department shall maintain and make available for public inspection and copying a record of pending and completed delisting actions. The records shall be located at the headquarters and regional offices of the Department.

Delisting - Determination by Director

340-122-470 (1) The Director shall consider requests or proposals to remove facilities from the Confirmed Release List or the Inventory submitted in accordance with OAR 340-122-460. The Director shall delist a facility from the Confirmed Release List if the Director determines that a facility does not meet the criteria for inclusion on the Confirmed Release List set forth in OAR 340-122-430(1). The Director shall remove a facility from the Inventory if the Director determines the facility does not meet the criteria for inclusion on the Inventory set forth in OAR 340-122-440(1).

(2) In determining whether to remove a facility from the Confirmed Release List or from the Inventory, the Director shall consider:

(a) Any relevant Confirmed Release List or Inventory delisting petitions submitted pursuant to OAR 340-122-460;

(b) Any public comments submitted on the proposed action pursuant to OAR 340-122-465; and

(c) Any other relevant information available.

(3) The Director shall not remove a facility from the Confirmed Release List or from the Inventory if continuing environmental controls or institutional controls related to removal or remedial action (e.g., alternative drinking water supply, caps, security measures) are needed to assure protection of present and future public health, safety, welfare, and the environment.

(4) (a) The Director shall document the basis for approving or denying a request or proposal to remove a facility from the Confirmed Release List or the Inventory.

(b) If the Director relies on information described in section (2)(a) of this rule to make such determination, the Director shall reference such information in the record.

(5) The removal of a facility from the Confirmed Release List or from the Inventory shall be effective immediately upon the Director's determination.

AMENDMENTS TO
ENVIRONMENTAL CLEANUP RULES
OAR 340-122-010 TO 340-122-110

(Note: Some of the following amendments renumber certain ORS citations. These number changes are necessary to be consistent with the recodification of the Environmental Cleanup Law in the Oregon Revised Statutes.)

340-122-010 PURPOSE

(1) These rules establish the standards and process to be used under ORS [466.540] 465.200 through [466.590] 465.380 for the determination of removal, remedial action, and degree of cleanup necessary to assure protection of the present and future public health, safety, and welfare and the environment in the event of a release or threat of a release of a hazardous substances.

340-122-020 DEFINITIONS

Terms not defined in this section have the meanings set forth in ORS [466.540] 465.200. Additional terms are defined as follows unless the context requires otherwise:

(1) "Alternative technology" means a system, process, or method that permanently alters the composition of a hazardous substance through chemical, biological, or physical means so as to significantly reduce the volume, toxicity, or mobility of the hazardous substance or contaminated materials treated. Such technology may include a system, process, or method during any of the following stages of development:

(a) Available technology that is fully developed and in routine or commercial or private use;

(b) Innovative technology where cost or performance information is incomplete and where full-scale field testing is required before the technology is considered proven and available for routine use; or

(c) Emerging technology that has not successfully passed laboratory or pilot-scale testing.

(2) "Background Level" means the concentration of hazardous substance, if any, existing in the environment at the site before the occurrence of any past or present release or releases.

(3) "Director" means the Director of the Department of Environmental Quality or the Director's authorized representative.

(4) "Environment" includes the waters of the state, any drinking water supply, any land surface and subsurface strata, sediments, saturated soils, subsurface gas, or ambient air or atmosphere.

(5) "Facility" or "site" has the meaning set forth in ORS [466.540(6)] 465.200(6).

[(6)]["Permitted release" means a release that is authorized by and in material compliance with a current and legally enforceable:

(a) Permit, of a specifically identified hazardous substance that is subject to a specified concentration level, standard, control, procedure, or other condition; or

(b) Sludge management plan approved pursuant to OAR 340-50-005 through 340-50-080.]

(6) "Permitted or authorized release" means a release that is from an active facility and that is subject to and in substantial compliance with a current and legally enforceable permit issued by: the Department, the United States Environmental Protection Agency, or the Lane Regional Air Pollution Authority; is in conformance with Department rules or a control regulation in a State Implementation Plan; or is otherwise in conformance with the provisions of a State Implementation Plan.

340-122-030 SCOPE AND APPLICABILITY

(1) Exempted Releases

These rules shall not apply to releases exempted pursuant to ORS [466.540] 465.200 (14)(a), (b), (c), and (d).

(2) Conditional Exemption of Permitted or Authorized Releases

These rules shall not apply to [a] permitted or authorized releases of hazardous substances, unless the Director determines that application of these rules might be necessary [to perform a preliminary assessment or] in order to protect public health, safety, or welfare or the environment. These rules may be applied to the deposition, accumulation, or migration resulting from otherwise permitted or authorized releases.

(3) Relationship to Other Cleanup Actions

(a) Except as provided under OAR 340-122-030(3)(b), these rules shall not apply to releases where one of the following actions has been completed:

(A) Spill response pursuant to ORS 466.605 to 466.680;

(B) Oil spill cleanup on surface waters pursuant to ORS 468.780 to 468.815;

(C) Corrective action of a release of a hazardous waste pursuant to ORS 466.005 to 466.350;

(D) Cleanup pursuant to ORS 468.700 to 468.778.

(b) Where hazardous substances remain after completion of one of the actions referred to in OAR 340-122-030(3)(a), these rules may apply if the Director determines that application of these rules might be necessary to perform a preliminary assessment or in order to protect public health, safety, or welfare or the environment.

(4) Corrective Action for Petroleum Releases from Underground Storage Tanks

OAR 340-122-205 to 340-122-360 shall apply to corrective action for releases of petroleum from underground storage tanks that are subject to ORS 466.705 to 466.835 and 466.895, except as provided under OAR 340-122-215(2) which authorizes the Director to order the cleanup under 340-122-010 to 340-122-110.

[340-122-060 PRELIMINARY ASSESSMENT

(1) (a) When the Department receives information about a release or threat of a release, the Department shall perform or require to be performed a Preliminary Assessment, including a site inspection, to confirm whether a release or a threat of release exists and whether a further investigation or removal or remedial action is needed. The Department shall ensure that the Preliminary Assessment is conducted as expeditiously as possible within the budgetary constraints of the Department.

(b) If the information received by the Department is not sufficiently reliable or definite to indicate whether a release or threat of release warrants a Preliminary Assessment, the Department shall request additional information from the person submitting the information or from the potential facility. If the Department determines that the information received does not warrant a Preliminary Assessment, the Department shall prepare a written explanation of such determination as a memorandum to the file and shall provide such memorandum to persons who request it.

(c) The Department may determine that existing information constitutes the equivalent of all or part of a Preliminary Assessment or site inspection provided the existing information was based upon a review of existing data, a good faith effort to discover additional data, and a site inspection. In such cases, the Department may elect not to perform or require to be performed

an additional Preliminary Assessment or site inspection or any part of a Preliminary Assessment or site inspection.

(2) At the discretion of the Department, a Preliminary Assessment may include but is not limited to:

(a) General facility information such as site name(s) and location, including a site map showing property boundaries;

(b) Information regarding hazardous substances present, including the name, types, and quantities of substances and storage, disposal, or handling methods;

(c) Preliminary identification of drainage pathways and potential pathways of exposure of human, biological, and environmental receptors from the release or threat of release;

(d) Review of the facility's history, including past and present uses; practices; hazardous substances used or generated; and environmental permits, approvals, violations, enforcement, or remedial actions;

(e) Preliminary identification of past and present owners and operators and persons potentially liable pursuant to ORS 466.567;

(f) Evaluation of any immediate and potential threat to public health, safety, and welfare and the environment; and

(g) Preliminary sampling to determine whether a release has occurred, including a map of the facility showing sampling locations.

(3) Based upon the preliminary assessment or other information, the Director shall, as appropriate, make one or more of the following determinations:

(a) A release or threat of release has been confirmed;

(b) No further action is needed;

(c) Past or current regulatory action under a Department or another state or federal agency program is adequate to protect human health, safety, or welfare or the environment; or

(d) Additional investigation is needed.

(4) When the Preliminary Assessment is completed, the Director shall determine the statutory authority under which any investigation, cleanup, or related activities shall be conducted. The Director may revise this determination as appropriate. The potentially responsible person shall, as appropriate, be notified of such determination or subsequent revision.]

(Note: This rule, OAR 340-122-060, is proposed to be replaced by new site discovery rule OAR 340-122-426.)

340-122-100 PUBLIC NOTICE AND PARTICIPATION

(1) The Department shall, prior to approval of a remedial action:

(a) Provide notice and opportunity for comment and a public meeting regarding the proposed remedial action, in accordance with ORS [466.575] 465.320; and

(b) Make a reasonable effort to identify and notify interested community organizations.

(2) Any notice under OAR 340-122-100(1)(b) shall include but not be limited to a brief description of the Department's proposed remedial action option, if known, and information regarding where a copy of the full proposal may be inspected and copied.

(3) The Director shall consider any comments received during the public comment period and any public meeting before approving the remedial action.

(4) In the Director's discretion, the Department may provide public notice and opportunity for comment and a public meeting regarding a proposed removal and shall consider any comments received during such public comment period or any public meeting.

(5) Agency records concerning removal or remedial actions and related investigations shall be made available to the public in accordance with ORS 192.410 to 192.505, subject to exemptions to public disclosure, if any, under ORS 192.501 and 192.502. The Department shall maintain and make available for public inspection and copying a record of pending and completed removals, remedial actions, and related investigations, to be located at the headquarters and regional offices of the Department.

340-122-110 ADMINISTRATIVE RECORD

(1) For purposes of the Director's selection of a removal or remedial action, and enforcement, cost recovery, or review, if any, related to the Director's action, the administrative record shall consist of the following types of documents generated for a facility up to the time of the Director's action:

(a) Factual information, data, and analyses that form a basis for the Director's action;

(b) The Preliminary Assessment and Remedial Investigation and Feasibility Study, as applicable;

(c) Orders, consent decrees, settlement agreements, work plans, and other decision documents;

(d) Guidance documents and technical literature that form a basis for the Director's action; and

(e) Public comments and other information received by the Department prior to the Director's action, and Department responses to significant comments.

(2) Unless expressly designated part of the administrative record by the Director, the administrative record shall not include:

(a) Draft documents and internal memoranda;

(b) Documents relating to the liability of persons potentially liable under ORS [466.567] 465.255;

(c) Documents relating to state remedial action costs; and

(d) Documents privileged under law or confidential under ORS 192.501 or 192.502.

Hazardous Waste Management Fee

340-105-120(1) Beginning July 1, 1987, every person who operates a facility for the purpose of disposing of hazardous waste or polychlorinated biphenyl (PCB) that is subject to interim status or a permit used under ORS Chapter 466 shall pay a monthly Hazardous Substances Remedial Action Fee by the 45th day after the last day of each month in the amount authorized by statute. [Chapter 735 Oregon Laws of 1987 authorizes] ORS 465.375 establishes a fee of $20 per ton [of hazardous] for all waste [or PCB] brought into the facility for treatment by incinerator or for disposal by landfill at the facility. For purposes of calculating the Hazardous Substances Remedial Action Fee required by this section, the facility operator does not need to include hazardous waste resulting from on-site treatment processes used to render a waste less hazardous or reduced in volume prior to land disposal.

(2) The term "hazardous waste" means any hazardous waste as defined by rules adopted by the Environmental Quality Commission and includes any hazardous waste as defined in OAR 340 - Division 100 or 101 or 40 CFR Part 261 handled under the authority of interim status or a management facility permit.

(3) The term PCB shall have the meaning given to it in OAR 340 - Division 110.

(4) The term "ton" means 2000 pounds and means the weight of [hazardous waste or PCBs] waste in tons as determined at the time of receipt at a hazardous waste or PCB management facility. The term "ton" shall include the weight of any containers treated or disposed of along with the [hazardous] wastes being held by the container.

(5) In the case of a fraction of a ton, the fee imposed by section (1) of this section shall be the same fraction multiplied by the amount of such fee imposed on a whole ton.

(6) Every person subject to the fee requirement of section (1) of this rule shall record actual weight [of any hazardous] for all waste [and PCB] received for treatment by incinerator or disposal by landfilling in tons at the time of receipt. Beginning January 1, 1986, the scale shall be licensed in accordance with ORS Chapter 618 by the Weights and Measures Division of the Department of Agriculture.

(7) Accompanying each monthly payment shall be a detailed record identifying the basis for calculating the fee that is keyed to the monthly waste receipt information report required by OAR 340-104-075(2)(c) and (2)(d).

(8) All fees shall be made payable to the Department of Environmental Quality. All fees received by the Department of Environmental Quality shall be paid into the State Treasury and credited to the Hazardous Substances Remedial Action Fund.

SA\SM2760

ATTACHMENT B
Agenda Item T
June 29, 1990
EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt a rule.

(1) Legal Authority

ORS 465.405, as amended by House Bill 3235 (Section 12, Chapter 485, Oregon Laws 1989) requires the Environmental Quality Commission to adopt rules to implement a site discovery program, including a process for evaluation and preliminary assessment of releases of hazardous substances, and a process for developing and maintaining a list of facilities with confirmed releases and an inventory of facilities requiring investigation, removal, or remedial action.

ORS 465.400(1) authorizes the Environmental Quality Commission to adopt rules, in accordance with the applicable provisions of ORS 183.310 to 183.550, necessary to carry out the provisions of ORS Chapter 465. In addition, ORS 468.020 authorizes the Commission to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission.

(2) Need for the Rule

ORS Chapter 465 requires the Department to implement a site discovery program. The 1989 amendments in HB 3235 require the Environmental Quality Commission to adopt rules to define confirmed releases of hazardous substances, define preliminary assessments, and establish procedures and criteria for delisting facilities from a list of confirmed releases and an inventory of sites requiring investigation, removal, or remedial action.

Amendments to ORS 466.587 necessitate conforming revision in the rules establishing the fees for wastes entering hazardous waste disposal facilities.

Recodification of ORS Chapter 466 necessitates conforming changes in the statutory citations in implementing rules.

(3) Principal Documents Relied Upon in this Rulemaking

ORS Chapter 465.

This document is available for review during normal business hours at the Department's office, 811 S. W. Sixth, 9th Floor, Portland, Oregon.

LAND USE CONSISTENCY

The proposed rules may affect land use; they are consistent with the Statewide Planning Goals.

The proposed rules are consistent with Goal 6. The rules provide current information regarding the environmental status of property on the Confirmed Release List and the Inventory. The publication of these lists may indirectly improve the quality of the air, water and land resources by providing notice to the owner and operator and the public of releases of hazardous substances and the need for further action to protect the present and future public health, safety, welfare, and the environment.

The rules do not appear to conflict with the other Goals.

Public comment on any land use issue involved is welcome and may be submitted in the same manner as indicated for testimony in this notice.

The Department of Environmental Quality 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 our attention by local, state or federal authorities.

FISCAL AND ECONOMIC IMPACT

Proposed Actions:

The 1989 amendment to ORS Chapter 465, HB 3235, and the proposed rules modify existing requirements for the Department to conduct preliminary assessments and develop an Inventory of facilities with confirmed releases. They eliminate the requirement for a preliminary assessment for all releases and require the Department to develop two separate lists, a Confirmed Release List and a new Inventory, instead of the old Inventory.

The Department currently conducts preliminary assessments of property where releases of hazardous substances have or are suspected to have occurred to determine whether further action is needed to assure protection of public health, safety, welfare, or the environment. The Department also reviews assessments conducted by other persons, both private and public. The proposed rules do not add new requirements for these activities. However, the Department has not previously developed and maintained the Confirmed Release List or the Inventory; any fiscal and economic impacts from these lists, described below, will be new.

HB3235 also extends the $20/ton fee imposed on wastes entering hazardous waste disposal facilities to all wastes, not only hazardous wastes and polychlorinated biphenyls. The proposed rules amend the Department's hazardous waste management fee to incorporate this change. No new fiscal impacts are expected since the one permitted disposal facility in Oregon where the fee is imposed has been assessing the fee on all wastes for some time.

Overall Economic Impacts:

The proposed Confirmed Release List (CRL) and Inventory rules may indirectly affect owners and operators of property contaminated by hazardous substances and persons liable for the investigation and cleanup of contaminated property, as described below. These persons may include public and private persons and entities, large and small businesses, and local, state, or federal agencies.

1. Sites are listed on the CRL and the Inventory primarily for public information purposes. Whether a site is included on or excluded from either the CRL or the Inventory does not affect either the authority of the Department to respond to a release or the liability of any person for investigation or cleanup of a release. Moreover, the existence of contamination at a site, not the listing, creates the need for investigation and cleanup -- or the "cloud" over the property that may affect property values and the ability to transfer or develop the property or use it as collateral. Nevertheless, given their public information purposes, the lists may inform otherwise-unaware persons of contamination, and may affect the value or trigger the investigation or cleanup of the listed or neighboring property.

2. Regardless of listing, persons may investigate and cleanup contaminated sites and may request Department oversight. The Department oversees these activities as resources and priorities permit, and will necessarily review reports of these activities prior to removing a site from either the CRL or the Inventory. As noted in the Department's request for hearing authorization on these proposed rules (Agenda Item 0, March 2, 1990 EQC Meeting, Program Consideration 6), the Department will seek to recover the costs associated with its oversight and review from responsible parties under certain circumstances.

   Some persons may undertake investigation or cleanup of a site or may seek Department oversight of those activities to avoid the listing of a site or to remove a site from the CRL or the Inventory. To the extent that the listing rules affect those actions, the rules will have a fiscal or economic impact on the persons involved.

June 12, 1990
SA\SM2658A

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Public Hearing on Site Discovery Rules and Hazardous Waste Disposal Fee Change

Hearing Dates: April 11, 1990
Comments Due: April 16, 1990

WHAT IS PROPOSED: The Department of Environmental Quality is proposing criteria and procedures to implement a site discovery program, including a process for evaluation and preliminary assessment of releases of hazardous substances, and a process for developing and maintaining a statewide list of confirmed releases and an inventory of sites requiring further investigation, removal, or remedial action. The Department also proposes to amend the schedule of fees for wastes entering hazardous waste disposal facilities.

WHO IS AFFECTED: Owners and operators of property contaminated by hazardous substances, and other persons, including public and private entities, responsible for investigation and cleanup of releases of hazardous substances; and persons living near sites contaminated by hazardous substances.

WHAT ARE THE HIGHLIGHTS:

(a) Establish a process for the initial evaluation and preliminary assessment of reported releases of hazardous substances (new rule);
(b) Define "confirmed release" to limit the types of releases which will be included on a list of confirmed releases and an inventory of sites requiring investigation, removal, or remedial action (new rule);
(c) Establish the criteria and procedures for developing and maintaining the confirmed release list and the inventory (new rule);
(d) Revise the environmental cleanup rules to conform to the proposed site discovery rules; and
(e) Extend the $20/ton fee on wastes entering hazardous waste disposal facilities to <u>all</u> wastes.

WHAT IS THE NEXT STEP: The Environmental Quality Commission may adopt the proposed rules, modify those rules in response to comment, or decline to adopt rules. The Commission will consider the proposed new rule and rule revisions at its meeting on June 29, 1990.

HOW TO COMMENT: Public Hearings are scheduled for:

9:00 AM - Noon, Wednesday, April 11, 1990
DEQ's Portland Office - Executive Building
Fourth Floor Conference Room
811 S. W. Sixth Avenue
Portland, Oregon 97204

Written comments should be sent to Loretta Pickerell, Environmental Cleanup Division, Executive Building, 811 S. W. 6th Avenue, 9th Floor, Portland, Oregon 97204. Written comments should be received by April 16, 1990.

For more information, or to receive a copy of the proposed rules, call Dan Crouse at (503) 229-6170, or toll-free in Oregon, 1-800-452-4011.

811 S.W. 6th Avenue
Portland, OR 97204

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

Attachment C
Agenda Item T
June 29, 1990
EQC Meeting

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

MEMORANDUM **DATE: May 25, 1990**

TO: Environmental Quality Commission

FROM: Loretta Pickerell, Hearings Officer

SUBJECT: Proposed Site Discovery Rules and Amendment to Hazardous Waste Management Fee: Report on Hearing and Summary of Written Comment

Report on Hearing:

The Department of Environmental Quality conducted a public hearing on April 11, 1990, from 9:00 A. M. to noon in Room 3A at the Department's headquarters in Portland. Twelve persons attended in addition to Department staff; four testified. All comments address the proposed site discovery rules. The following is a summary of the testimony:

1. Quincy Sugarman, Oregon Student Public Interest Research Group (OSPIRG), 027 SW Arthur, Portland, Oregon 97201:

   (a) OSPIRG appreciates the process used to develop the rules.

   (b) OSPIRG generally supports the rules as proposed. The confirmed release list and inventory will provide useful information for the public regarding releases of hazardous substances and, with the delisting process particularly, will allow for citizen involvement in the cleanup process.

   (c) The exclusion of "permitted or authorized releases" from listing on the confirmed release list and inventory is broader than intended by the statute.

2. Tom Donaca, Associated Oregon Industries (AOI), World Trade Center, Suite 340, 127 S. W. Salmon, Portland, Oregon 97204:

   (a) AOI appreciates the work of the Environmental Cleanup Advisory Committee and the Department in developing the rules and generally supports the rules.

(b) The proposed rules allow the Department to conduct preliminary assessments of "permitted or authorized releases" even if the releases are excluded from listing as "confirmed releases". The rules should be revised to ensure this category of releases is addressed by the permit programs within the Department.

(c) The Department should determine whether the guidance it is developing to implement the proposed rules requires rulemaking, and if so, should propose additional rules now.

(d) The citation in the Environmental Cleanup Rules at 340-122-030(1) to ORS 466.540(14) should be changed to ORS 465.200(14) to reflect the recodification of ORS Chapter 466.

3. David Couch, Bogle and Gates, 222 SW Columbia, Suite 1400, Portland, Oregon 97201:

(a) Bogle and Gates appreciates the work of the Environmental Cleanup Advisory Committee, especially Chairman Judge Jack Beatty, and the Department in developing the proposed rules. For the most part, the law firm Bogle and Gates and its clients are pleased with the proposed rules.

(b) The Department's site discovery database should include a notation that no further action is required for sites where that determination has been made.

(c) The proposed rules should categorically exclude the "deposition, accumulation, or migration of substances resulting from otherwise-permitted or authorized releases" from listing to effect the intent of HB3235.

(d) The definition of the "de minimis" exclusion from listing should be expanded and examples of the types of releases encompassed should be included in the rules.

(e) If guidelines implementing the proposed rules are applied generally as requirements, they should be adopted as rules with opportunity for public comment.

4. William (Mikey) Jones, 17751 Amity Vineyards, Amity, Oregon 97101:

(a) The rules lack sufficient scientific and technical background and formulas to support risk determinations. Mathematical formulas should be included.

(b) The rules provide too much authority for the Director of the Department to delist facilities from the confirmed release list and the inventory. Without more technical guidance, such as risk formulas, the Director's delisting decisions are likely to be political rather than risk-based.

(c) Environmental laws are not applied to areas which affect poor people. For example the Department will probably not list the St. Johns Landfill on the confirmed release list or inventory because it is located in a poor neighborhood.

Summary of Written Comment:

Two persons submitted written comment on the proposed rules. Their comments are summarized below:

1. Jean R. Cameron, Associate Director, Oregon Environmental Council, 2637 S. W. Water Avenue, Portland, Oregon 97201:

OEC commented on the preamble to the proposed rules. The preamble explains the rules but is not itself a rule.

(a) The explanation in the Preamble that all releases in a permitted waste stream are excluded "regardless of whether the hazardous substances are specifically identified or limited in the permit or in strict compliance with permit limitations" overstates the exclusion proposed in the rules. The quoted phrase should be deleted.

(b) The explanation in the Preamble that permitted releases do not pose a significant threat in the sense contemplated by ORS 465.405 because they are already subject to regulatory controls or abatement authorities is sufficient. The additional phrase "and would not require removal or remedial action to assure protection of public health, safety, welfare, and the environment" should be deleted for clarity.

2. Kirk Thomson, Manager, Environmental Affairs, Boeing Support Service, P.O. Box 3707, Seattle, Washington 98124:

(a) Boeing has closely tracked the development of the proposed rules and believes they strike a good balance between identifying contaminated sites for the public and limiting listing to sites that deserve public scrutiny. The company congratulates the Department and supports adoption of the rules as proposed.

(b) The provisions which require the Department to perform a preliminary assessment only if it determines a release poses a significant threat should be maintained. Since the proposed rules do not categorically exclude listing of "deposition, accumulation, or migration from otherwise-permitted releases", and all permitted releases migrate, the discretion to not conduct a preliminary assessment (as proposed) is important. Otherwise, the Department might be required to perform preliminary assessments for virtually all permitted releases.

Attachment D
Agenda Item T
June 29, 1990
EQC Meeting

RESPONSE TO PUBLIC COMMENT ON
PROPOSED SITE DISCOVERY RULES
RECEIVED MARCH - APRIL 1990

The public comments on the proposed Site Discovery Rules are summarized at Attachment C. Following is the Department's response to those comments.

Exclusion of "permitted or authorized" releases:

1. Comment: The exclusion of "permitted or authorized releases" from listing on the confirmed release list and inventory is broader than intended by the statute.

Response: The Department believes the proposed exclusion of "permitted or authorized releases" complies with the statute and is necessary to effectively implement the site discovery program.

ORS 465.405 requires the Commission by rule to define criteria for listing sites on and removing sites from the confirmed release list and inventory. In adopting rules, the Commission must exclude certain categories of releases from these lists, including:

(1) The following categories of releases to the extent they pose no significant threat:

(c) Releases specifically authorized by and in compliance with a current and legally enforceable permit issued by the department or the United States Environmental Protection Agency; or

(d) Other releases that the commission finds pose no significant threat to present and future public health, safety, welfare or the environment;

ORS 465.405(2)(c) and (d);

(2) Releases which do not require additional investigation, removal, remedial action, or related long-term environmental or institutional controls to assure protection of public health, safety, welfare, and the environment (ORS 465.225); and

(3) Releases which have been adequately cleaned up and do not require further action to assure protection (ORS 465.230).

The proposed rules exclude "permitted or authorized releases" from listing. This category of releases is defined to include releases subject to and in substantial compliance with a permit, releases in conformance with Department rules or a control regulation in a State Implementation Plan, and releases otherwise in conformance with a State Implementation Plan.

The exclusion is based on the finding that such authorized releases pose no significant threat in the sense contemplated in ORS 465.405 because they are currently or potentially subject to permit or other regulatory controls and will not require removal or remedial action. The exclusion is explained in the proposed Preamble, page 2-3, Attachment A of this report.

2. Comment: The proposed rules should categorically exclude the "deposition, accumulation, or migration of substances resulting from otherwise-permitted or authorized releases" from listing to effect the intent of HB3235.

Response: The Department finds no statutory basis for the proposed change. The response to Comment 1, above, describes the basis for categorically excluding "permitted or authorized releases" from listing. The proposed rules specifically limit this exclusion to the release itself, and do not categorically exclude the deposition, accumulation, or migration resulting from otherwise-permitted releases. Unlike "permitted or authorized releases", these releases may pose a significant threat to public health or the environment and may not be addressed through regulatory controls without removal or remedial action. Therefore they are not categorically excluded from listing, but may be excluded case-by-case under other exclusions in the rules.

3. Comment: The explanation in the Preamble that all releases in a permitted waste stream are excluded "regardless of whether the hazardous substances are specifically identified or limited in the permit or in strict compliance with permit limitations" overstates the exclusion proposed in the rules. The quoted phrase should be deleted.

Response: The Department believes the explanation in the Preamble is consistent with the definition of "permitted or authorized release" in the proposed rules, but has rephrases it to avoid misinterpretation. "Permitted or authorized releases" includes releases "subject to and in substantial compliance with" a permit. The Department intends this definition to encompass all substances which are part of a waste stream permitted for discharge or emission, including substances which are not

specifically identified in the permit. The definition also includes releases which are not strictly in compliance with the permit if they substantially comply. See Preamble, pages 3-4, Attachment A of this report.

The Department believes this definition of "permitted or authorized release" is supported by the statute. See Response to Comment 1 above.

4. **Comment:** The explanation in the Preamble that permitted releases do not pose a significant threat in the sense contemplated by ORS 465.405 because they are already subject to regulatory controls or abatement authorities is sufficient. The additional phrase "and would not require removal or remedial action to assure protection of public health, safety, welfare, and the environment" should be deleted for clarity.

Response: The Department believes the phrase the commenter would delete describes an important basis for categorically excluding permitted and authorized releases from listing and has retained the phrase. This category of releases does not pose a significant threat for listing purposes because the releases can be abated through permit or regulatory controls. In addition, these releases will not require removal or remedial action and only sites that may require such action are listed.

5. **Comment:** The proposed rules allow the Department to conduct preliminary assessments of "permitted or authorized releases" even if the releases are excluded from listing as "confirmed releases". The rules should be revised to ensure this category of releases is addressed by the permit programs within the Department.

Response: The Department intends to address permitted and authorized releases in the permit programs. However, the Department has not restricted application of the proposed site discovery rules to this category of releases.

The site discovery program and proposed rules describe the processes the Department will follow in the identification, evaluation, and preliminary assessment of releases of hazardous substances which may require removal or remedial action. The Department must evaluate all reported releases of hazardous substances to determine whether they may require removal or remedial action. The Department will refer releases which it determines are "permitted or authorized releases" to the permit programs if further evaluation or regulatory action is required. However, in some instances the Department may not determine that a release is permitted or authorized until the preliminary assessment phase of the site discovery process. Therefore the proposed rules do not exclude "permitted or authorized releases" from the preliminary assessment process.

Definition of de minimis:

1. Comment: The definition of the "de minimis" exclusion from listing should be expanded and examples of the types of releases encompassed should be included in the rules.

Response: The proposed rules describe site specific criteria to be considered in determining whether a release is a de minimis release. The Department will develop additional guidance for applying these criteria, but has not described examples of site specific de minimis determinations in the proposed rules.

Guidelines implementing the proposed rules:

1. Comment: The Department should determine whether the guidance it is developing to implement the proposed rules requires rulemaking, and if so, should propose additional rules now.

Response: The Department is evaluating guidance being developed for the proposed rules with its attorneys and will propose additional rules if appropriate. The Department will also review the guidance with the Environmental Cleanup Advisory Committee, which assisted in development of the proposed rules.

The Department believes that the proposed rules provide sufficient processes and criteria to address most releases that occur and that the site discovery program can proceed without additional rulemaking at this time.

Discretion on performing preliminary assessments:

1. Comment: The proposed rules should retain the provisions that require the Department to perform preliminary assessments only if a release poses a significant threat and allow discretion in other instances.

Response: The proposed rules retain these provisions.

Additional scientific and technical support:

1. Comment: The rules lack sufficient scientific and technical background and formulas to support risk determinations. Mathematical formulas should be included.

Response: The proposed rules describe the process and criteria the Department will use to determine whether sites pose a significant threat to public health or the environment. The risk

determinations are necessarily site specific based on the characteristics of the substances released, the potential pathways for migration, and the potential receptor populations. Whether a site poses a significant threat that warrants further investigation, removal, or remedial action cannot be determined based on mathematical formula. Nevertheless, the Department recognizes the usefulness of technical guidance for the evaluation and cleanup of hazardous substances sites and is developing such guidance.

2. Comment: The rules provide too much authority for the Director of the Department to delist facilities from the confirmed release list and the inventory. Without more technical guidance, such as risk formulas, the Director's delisting decisions are likely to be political rather than risk-based.

Response: The Department believes the proposed rules provide adequate criteria and processes for listing and delisting facilities.

3. Comment: Environmental laws are not applied to areas which affect poor people. For example the Department will probably not list the St. Johns Landfill on the confirmed release list or inventory because it is located in a poor neighborhood.

Response: The Department intends to apply the proposed rules consistently to all sites identified.

Statutory Citations:

1. Comment: The citation in the Environmental Cleanup Rules at 340-122-030(1) to ORS 466.540(14) should be changed to ORS 465.200(14) to reflect the recodification of ORS Chapter 466.

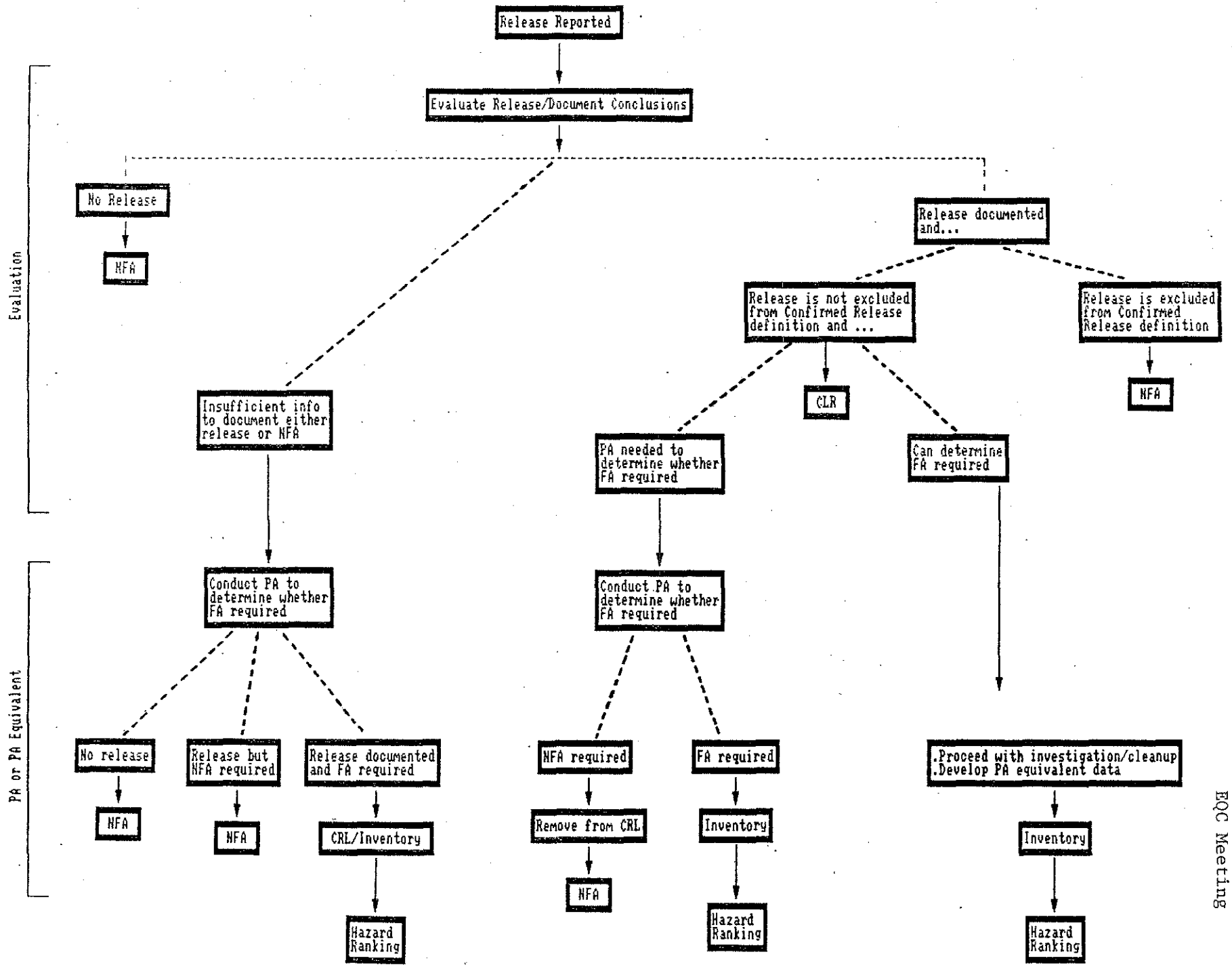
Response: The proposed rules change all of the citations in the existing Environmental Cleanup Rules to conform to the recodification of ORS Chapter 466.

Site Discovery Database:

1. Comment: The Department's site discovery database should include a notation that no further action is required for sites where that determination has been made.

Response: The database is not part of the proposed rules; nevertheless the Department plans to add the notation requested.

Process for Evaluating and Assessing and Listing Sites



ATTACHMENT E
Agenda Item T
June 29, 1990
EQC Meeting

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: U
Division: Hazardous & Solid Waste
Section: Underground Storage Tanks

SUBJECT:

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

PURPOSE:

Adopt financial responsibility rules for owners and operators of 100 or more underground storage tanks.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
_X_ Adopt Rules
Proposed Rules — Attachment A
Rulemaking Statements — Attachment B
Fiscal and Economic Impact Statement — Attachment B

___ 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:

DESCRIPTION OF REQUESTED ACTION:

To obtain state program approval by EPA to regulate Underground Storage Tanks (UST) in lieu of federal regulation it is necessary to first adopt UST financial responsibility requirements that are no less stringent than the federal UST regulations, 40 CFR 280. Secondly, the Department of Environmental Quality (Department) must apply to the U.S. Environmental Protection Agency (EPA) for state program approval. The Department proposes to make application prior to October 1, 1990.

The federal financial responsibility regulations require owners and operators of petroleum underground storage tanks to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and accidental releases arising from the operation of the tanks. The owners and operators must demonstrate minimum financial responsibility of $500,000 per occurrence and $1,000,000 annual aggregate. Owners and operators with greater than 100 USTs must demonstrate financial responsibility of $1,000,000 per occurrence and $2,000,000 annual aggregate.

ORS 466.815 (6) requires legislative review of the financial responsibility rules prior to adoption by the Environmental Quality Commission (Commission, EQC). On June 6, 1990 the Joint Interim Committee on Energy, Environment and Hazardous Materials of the Oregon Legislature reviewed the proposal to adopt rules on the financial responsibility requirements for petroleum marketing firms owning more than 1000 tanks and petroleum marketing firms owning 100 to 999 tanks. There were no questions or comments on the proposal.

Financial responsibility rules for small UST owners have been deleted from the rules which were authorized for public hearing at the January Commission meeting. In April, 1990 EPA recognized that the federal financial responsibility regulations were severely affecting two classes of small businesses, petroleum marketing firms that owned 13 to 99 USTs and all petroleum UST owners with 12 or fewer USTs. Many of these businesses were unable to comply with the financial responsibility regulations since insurance was generally unavailable and expensive. Reasonably priced insurance was available only for facilities that met both EPA standards for new USTs and the insurance company's standards for site environmental cleanliness. EPA delayed the compliance dates for the two classes of small businesses one year to April 26, 1991 and October 26, 1991, respectively. The compliance dates for the two classes of large businesses

were maintained at July 24, 1989 for petroleum marketing firms owning 1,000 or more USTs and October 26, 1989 for petroleum marketing firms owning 100 to 999 USTs.

Accordingly, the Department amended the proposed rules to include only financial responsibility requirements for petroleum marketers with 100 or more USTs. Because the Department is uncertain what action Congress and/or EPA may take relative to owners and operators with 1 to 99 tanks, the Department is recommending no action be taken at this time. Assuming that EPA does not again extend the compliance dates, we plan to present the Commission with financial responsibility rules for small UST owners in the spring of 1991.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
_X_	Statutory Authority: ORS 466.705 - .995	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
_X_	Pursuant to Federal Law/Rule: 40 CFR 280	Attachment ___
___	Other:	Attachment ___
_X_	Time Constraints:	

The Department has made a grant commitment to the EPA to make application for federal authorization prior to October 1, 1990. These rules together with the UST technical rules adopted at the May Commission meeting are the basis for completing an application for program authorization.

DEVELOPMENTAL BACKGROUND:

___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
_X_	Response to Testimony/Comment	Attachment C
_X_	Prior EQC Agenda Items: Agenda Item H, 5-25-90 EQC Meeting	Attachment ___
___	Other Related Reports/Rules/Statutes:	Attachment ___
___	Supplemental Background Information	Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Department has been working with an Underground Storage Tank Advisory Committee of 32 members to assist in the

development of these rules. The Committee recommended adoption of the rules shown in Attachment A, after reviewing the proposed rules and public testimony.

Four public hearings were held through the state. Only one person testified (See Attachment C) with concern about the financial impact of the financial responsibility requirements on small businesses. The rules were changed so that only large businesses must meet financial responsibility requirements at this time.

The proposed rules do not require owners and operators of less than 100 USTs to demonstrate financial responsibility thus they are not required to seek insurance coverage at this time. Affordable insurance is available for UST owners and operators who can meet the insurer's requirements. The insurer usually requires proof of an environmentally clean site, and tanks which must meet EPA standards. The larger businesses covered by these proposed rules are generally able to meet these requirements and the cost of insurance or other financial assurance mechanisms.

PROGRAM CONSIDERATIONS:

Before the state UST program can be authorized to regulate USTs in lieu of EPA, it will be necessary for the state to assure EPA that our rules are no less stringent and are as enforceable as the federal UST regulations. A Governor's submittal letter and an Attorney General's certification are required as part of the authorization application.

To assure that these proposed rules are no less stringent than the federal regulations, the Department has chosen to adopt the federal UST financial responsibility regulations (40 CFR 280, Subpart H) and modify the regulations by deleting Sections 280.91(c) and (d), the sections requiring compliance by UST owners and operators of less than 100 tanks. These proposed rules are equivalent to the federal rules.

Together with the UST technical rules adopted at the May 1990 EQC meeting, these proposed financial responsibility rules will provide an UST program as envisioned by the Oregon legislature.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt proposed financial responsibility rules for large USTs, based on public hearing testimony and recommendations from the Department's UST Advisory Committee; delay adoption of financial responsibility rules for small USTs pending EPA/Congressional action.

2. Delay adoption of the financial responsibility rules for large USTs until the EPA adopts financial responsibility regulations for small UST owners.

   EPA has not delayed the compliance dates for large USTs; they are July 24, 1989 and October 26, 1989. Federal financial responsibility requirements are now in effect for owners and operators of 100 or more USTs. State adoption of the proposed rules is consistent with federal requirements for these owners and operators. A delay in adoption of the proposed rules would jeopardize DEQ's application for state program authorization. The Department does not recommend a delay in rule adoption.

3. Do not adopt the proposed financial responsibility rules, thereby leaving regulations of UST financial responsibility to EPA.

   The Commission adopted the underground storage tank technical standards at the May 25, 1990 meeting, thus implicitly supporting the process of seeking state program authorization. The Department recommends adoption of the proposed financial responsibility rules as the next step in seeking state program authorization.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the Commission Adopt the underground storage tank rules shown in Attachment A.

The proposed rules are consistent with EPA regulations. Owners and operators of 100 or more tanks must meet financial responsibility requirements. These rules, together with the UST technical standards adopted at the May Commission meeting, allow the Department's UST program to qualify for state authorization.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The recommended action is consistent with legislative policy and with the agency's policy of seeking delegation of federal programs to the state.

ISSUES FOR COMMISSION TO RESOLVE:

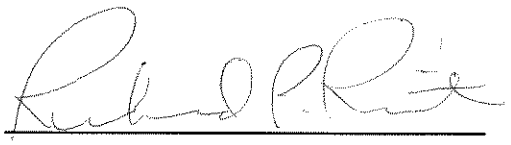
Assuming the Commission supports delegation of the UST program to the State by EPA, there are no issues for the Commission to resolve.

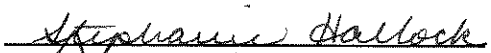
INTENDED FOLLOWUP ACTIONS:

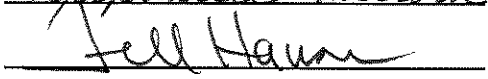
File the rules in Appendix A with the Secretary of State immediately upon EQC adoption.

Apply for federal authorization of Oregon's underground storage tank program by October 1, 1990.

Approved:

Section: 

Division: 

Director: 

Report Prepared By: Larry Frost
Phone: 229-5769
Date Prepared: June 11, 1990

LDF:lf
STAFF629.004
June 11, 1990

Attachment A
Agenda Item U
6-29-90 EQC Meeting

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 150 - DEPARTMENT OF ENVIRONMENTAL QUALITY

MODIFICATIONS TO UNDERGROUND STORAGE TANK RULES
ORS 466.705 through 466.835 and ORS 466.895 through 466.995

Purpose and Scope

340-150-001 (1) These rules are promulgated in accordance with and under the authority of ORS 466.705 through ORS 466.835 and ORS 466.895 through 466.995.

(2) The purpose of these rules is;

(a) to provide for the regulation of underground storage tanks to protect the public health, safety, welfare and the environment from the potential harmful effects of spills and releases from underground tanks used to store regulated substances, and

(b) to establish requirements for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks.

(3) A secondary purpose is to obtain state program approval to manage underground storage tanks in Oregon in lieu of the federal program.

(4) Scope.

(a) OAR 340-150-002 incorporates, by reference, underground storage tank technical and financial responsibility regulations of the federal program, included in 40 CFR 280, Subparts A, B, C, D, E, F, [and] G and H. Persons must consult these Subparts of 40 CFR 280 to determine applicable underground storage tank requirements. Additionally, persons must consult OAR Chapter 340, Division 122 for the applicable release reporting and corrective action requirements for underground storage tanks containing petroleum.

(b) OAR 340-150-003 incorporates amendments to the underground storage tank technical and financial responsibility regulations of the federal program, included in 40 CFR 280, Subparts A, B, C, E, F, [and] G and H.

(c) OAR 340-150-010 through -150 establishes requirements for underground storage tank permits, notification requirements for persons who sell underground storage tanks, and persons who deposit or cause to have deposited a regulated substance into an underground storage tank.

Adoption of United States Environmental Protection Agency Underground Storage Tank Regulations.

340-150-002 (1) Except as otherwise modified or specified by these rules, the rules and regulations governing the technical standards, [and] corrective action, and financial responsibility requirements for owners and

operators of underground storage tanks, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Part 280, amendments thereto promulgated prior to May 25, 1990, and Oregon amendments listed in OAR 340-150-003 and OAR 340-150-004 are adopted and prescribed by the Commission to be observed by all persons subject to ORS 466.705 through 466.835 and ORS 466.895 through 466.995.

Oregon Rules Amending the Federal [United States Environmental Protection Agency] Underground Storage Tank Technical Standards[Regulations].

340-150-003 In addition to the regulations and amendments promulgated prior to May 25, 1990, as described in 340-150-002 of these rules, the following rules amending Title 40 Code of Federal Regulations, Part 280, Subparts A,B,C,D,E,F and G are adopted and prescribed by the Commission to be observed by all persons subject to ORS 466.705 through 466.835 and ORS 466.985 through 466.995 with the following exceptions.

OAR 340-150-004 is added in its entirety.

Oregon Rules Amending the Federal Underground Storage Tank Financial Responsibility Regulations.

340-150-004 In addition to the regulations and amendments promulgated prior to May 25, 1990, as described in 340-150-002 of these rules, the following rules amending Title 40 Code of Federal Regulations, Part 280, Subpart H are adopted and prescribed by the Commission to be observed by all persons subject to ORS 466.705 through 466.835 and ORS 466.985 through 466.995 with the following exceptions.

(1) 40 CFR 280.91 shall read, as follows:

Owners of petroleum underground storage tanks are required to comply with the requirements of this subpart by the following dates:

(a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration: January 24, 1989, except that compliance with §280.94(b) is required by : July 24, 1989.

(b) All petroleum marketing firms owning 100-999 USTs: October 26, 1989.

6/11/90
USTFRFNL.001

Attachment B
Agenda Item U
6-29-90 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF MODIFYING OAR Chapter 340, Division 150	)))	STATEMENT OF NEED FOR RULES

Statutory Authority

ORS 466.705 through ORS 466.835 and ORS 466.895 through ORS 466.995 authorizes rule adoption for the purpose of regulating underground storage tanks. Specifically, Section 466.745 authorizes the Commission to adopt rules governing the standards for the installation of underground storage tanks, reporting of releases, permit requirements, requirements for maintaining records, procedures for distributors of regulated substances and sellers of underground storage tanks, decommissioning of underground storage tanks, procedures by which an owner or permittee may demonstrate financial responsibility, requirements for taking corrective action, civil penalties, and criminal penalties.

Section 466.720 authorizes the Commission and the Department to perform or cause to be performed any act necessary to obtain authorization of a state program for regulation of underground storage tanks under the provisions of Section 9004 of the Federal Resource Conservation and Recovery Act.

Need for the Rules

The proposed rule modifications are needed to carry out the authority given to the Commission to adopt rules for regulation of Underground storage tanks and to obtain federal authorization of the state underground storage tank program.

Principal Documents Relied Upon

Oregon Revised Statutes, ORS 466.705 through 466.835, 466.895 and 466.995.

40 CFR 280; 50 FR 28742, July 15, 1985; Amended by 50 FR 46612, November 8, 1985; Corrected by 51 FR 13497, April 21, 1986; Revised by 53 FR 37194, September 23, 1988, Effective December 22, 1988; Amended by 53 FR 43370, October 26, 1988; Corrected by 53 FR 51274, December 21, 1988; Amended by

54 FR 5452, February 3, 1989; Amended by 54 FR 47077, November 9, 1989; Amended by 55 FR 17753, April 27, 1990.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Superfund Amendments and Reauthorization Act of 1986.

Fiscal and Economic Impact

Fiscal Impact

There should not be any new or additional fiscal impact resulting from adoption of the federal underground storage tank financial responsibility regulations as state regulations. The federal financial responsibility regulations have been in effect since December 23, 1988.

Small Business Impact

The department has currently issued permits to 19,000 tanks at 7,000 facilities. The majority of businesses owning and operating these underground storage facilities are classified as small businesses. The proposed financial responsibility rules do not impact the small businesses since the proposed rules do not require owners and operators of less than 100 tanks to meet financial responsibility requirements. Only petroleum marketing firms with 100 or more USTs are required by the proposed rules to meet financial responsibility requirements. Insurance or other financial responsibility mechanisms are available at reasonable cost to the larger businesses. These proposed rules are identical to the federal UST financial responsibility regulations.

Since the owners and operators of underground storage tanks are required to comply with federal regulations, the Department believes that adoption of the financial responsibility rules will have minimal impact on Oregon businesses.

6/11/90
NEED0629.UST

NEIL GOLDSCHMIDT
GOVERNOR

Attachment C
Agenda Item U
6-29-90 EQC Meeting

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

DATE: May 30, 1990

TO: Environmental Quality Commission

FROM: Larry D. Frost

SUBJECT: Hearing Report Summary
and
Responsiveness Summary

On January 19, 1990, the Environmental Quality Commission authorized four Public Hearings on proposed rules for adoption of Federal underground storage tank technical standards and financial responsibility rules, and program delegation rules. Public hearings were held at 4:00 P.M. on:

- o April 2, 1990 in Bend, Oregon
- o April 3, 1980 in Pendleton, Oregon
- o April 5, 1990 in Portland, Oregon
- o April 6, 1990 in Eugene, Oregon

Mr. Don Russell, Boardman Oregon provided the following testimony on the proposed financial responsibility rules at the Pendleton, Oregon hearing. There was no other testimony on the proposed financial responsibility rules.

Financial Responsibility Rules

COMMENT (Russell): The financial responsibility rules are unfair to small business. It is necessary to upgrade an UST to obtain reasonable rates. Insurance for one of his upgraded stations costs $6,000 per year while the cost for a station without upgrading costs $15,000 per year.

DEPARTMENT RESPONSE: The Department is not adopting the financial responsibility rules for owners of less than 100 tanks at this time. The rules should have no financial impact on small businesses.

HRG0629.RPT
MAY 30, 1990

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: V
Division: HSW
Section: UST

SUBJECT:

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).

PURPOSE:

To improve and regulate the quality of remedial action and cleanup work performed on releases from underground storage and heating oil tanks. This rule applies to sites involving soil contamination that will be cleaned up utilizing the soil matrix rules, where Department of Environmental Quality (Department) oversight is minimal and does not apply to contaminated groundwater sites which receive extensive Department oversight of work performed.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
_X_ Adopt Rules
Proposed Rules Attachment A
Rulemaking Statements Attachment B
Fiscal and Economic Impact Statement Attachment C

___ 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:

Prior to the 1989 Legislative session, neither the federal nor state underground tank programs regulated heating oil tanks as part of the underground storage tank program. HB 3456 was introduced in the 1989 Legislature at the request of the Heating Oil Institute of Oregon. The heating oil industry proposed to tax itself to provide funds for corrective actions involving the release of heating oil. In addition, the industry requested that the Department regulate contractors providing cleanup services at sites having soil contaminated with heating oil. The Department is requesting that the Environmental Quality Commission (Commission) adopt the rules for licensing underground storage tank and heating oil tank soil matrix cleanup service providers and supervisors.

AUTHORITY/NEED FOR ACTION:

_X_ Required by Statute: ORS 466.705 - 466.995 Attachment ___
Enactment Date: As Amended by HB 3456 and enacted on July 4, 1989.

___ Statutory Authority: _____ Attachment ___
___ Pursuant to Rule: _____ Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Heating oil tank owners, underground storage tank owners, service providers and supervisors will be affected by the rules. The proposed program will affect contractors performing soil cleanup work at sites with underground storage tanks holding oil and at sites with above or below ground tanks holding heating oil. Regulating cleanup supervisors and service providers will improve the quality of service and will provide accountability to the public. In addition, licensed supervisors and service providers will be required to follow cleanup regulations necessary for remediating and protecting the environment. Without imposing certification and licensing procedures, it would be more difficult to insure adequate cleanup at sites currently considered low priority for extensive Department oversight on the work performed. The certification and licensing provisions apply only to soil matrix contamination caused by released oil and do not apply to groundwater remediation.

The Commission granted approval for a public hearing on the proposed rules in January 1990. The proposed rules were presented to the Commission as an amendment to the existing licensing and certification rules, OAR 340-160. Four public hearings were held but no public comments were received.

A DEQ appointed Soil Matrix Cleanup Advisory committee has recommended that the cleanup rules be separated from the rules for tank service providers and supervisors. The advisory committee has further recommended that separate cleanup rules be developed for cleanups from underground storage tanks and cleanups from heating oil tanks. As the existing certification program licenses supervisors who provide installation, decommissioning and testing services for underground storage tanks and the proposed cleanup rules would license supervisors who cleanup oil contaminated soil, the advisory committee felt there was a significant enough difference in the work to justify separate rules.

Furthermore, as the cleanup of soil contaminated with heating oil has a corrective action fund administered by the Oil Heat Commission, the advisory committee recommended that separate rules be developed for heating oil cleanup and for underground storage tank cleanup. Also, there is an expectation that certain heating oil distributors will attempt to become licensed and have their supervisors certified to do only heating oil cleanup. The Department supports the recommendation, as separate rules will be easier for the regulated community to understand and follow, and will be easier for the Department to administer.

The content of the original rules has not changed but is now presented as OAR 340-162 (proposed) REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SOIL MATRIX CLEANUP SERVICE PROVIDERS AND SUPERVISORS, and OAR 340-163 (proposed) REGISTRATION AND LICENSING REQUIREMENTS FOR HEATING OIL TANK SOIL MATRIX CLEANUP SERVICE PROVIDERS AND SUPERVISORS.

PROGRAM CONSIDERATIONS:

1. Fees: The legislative intent is for the program to be self supporting. The cleanup certification and licensing program will be administrated with the existing licensing program for underground storage tank installers, decommissioners, cathodic protection and tightness testers . The programs are supported by a $25 examination fee, a $25 licensing for supervisors and a $100 licensing fee for service providers.
Under OAR 340-160-150 (7) the Department will be allowed to charge $10 to replace an issued license. The $10 fee is the estimated cost to issue a replacement license to a supervisor or service provider.

2. Program Management: As this is a cleanup oriented program it would normally be the responsibility of the Leaking Underground Storage Tank (LUST) section within the Environmental Cleanup Division. Since the Underground Storage Tank section within the Hazardous and Solid Waste (HSW) Division already has an operating program to license tank service providers and supervisors doing installation, removal and testing work, the responsibility for implementing the certification and licensing of remedial action and cleanup supervisors was given to the Underground Storage Tank section within the HSW Division. Extensive coordination between the two sections occurred in developing these rules.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

There are no alternatives for dealing with the provisions of HB 3456 other than not to proceed with rules at this time.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the Commission approve the proposed rules for licensing companies and supervisors who perform work at sites containing soil contaminated by oil from underground storage tanks and heating oil tanks.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules implement the statutory provisions and the legislative intent of HB 3456 by improving and regulating the quality of cleanup services performed on releases involving only soil matrix contamination from underground storage tanks and heating oil tanks.

ISSUES FOR COMMISSION TO RESOLVE:

There are no policy issues for the Commission to resolve.

INTENDED FOLLOW UP ACTIONS:

Final rule adoption scheduled for June, 1990.

First exam for remedial action and cleanup supervisors to be held in September 1990.

Remedial action service providers and certified supervisors licensed by January 1991.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Dennis R. Thomason

Phone: 229-5153

Date Prepared: May 23, 1990

(Author: Dennis R. Thomason)
(File EQC/190)
(May 23, 1990)

Attachment A
Agenda Item V
June 29, 1990

PROPOSED OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 162 - DEPARTMENT OF ENVIRONMENTAL QUALITY

REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SOIL MATRIX CLEANUP SERVICE PROVIDERS AND SUPERVISORS

AUTHORITY, PURPOSE, AND SCOPE

340-162-005 (1) These rules are promulgated in accordance with and under the authority of ORS 466.750.

(2) The purpose of these rules is to provide for the regulation of firms and persons who cleanup soil contamination resulting from spills and releases of oil from underground storage tanks utilizing the soil matrix standards in OAR 340-122-305 to 340-122-360. These rules establish standards for:

(a) Licensing of firms performing underground storage tank soil matrix cleanup services for underground storage tanks.

(b) Examination, qualification and licensing of individuals who supervise soil matrix cleanup services for underground storage tanks.

(c) Administration and enforcement of these rules by the Department.

(3) Scope.

(a) OAR 340-162-005 through -150 applies to the cleanup by any person of soil contamination resulting from spills and releases of oil from underground storage tanks regulated by ORS 466.705 through ORS 466.835 and ORS 466.895 through ORS 466.995 and OAR Chapter 340 Division 150.

(b) OAR 340-162-005 through OAR 340-162-150 do not apply to services performed by the tank owner, property owner or permittee.

(4) Service Providers and Supervisors licensed under this Division are also licensed to perform work under OAR 340 - Division 163 - Registration and Licensing Requirements for Heating Oil Tank Soil Matrix Cleanup Service Providers and Supervisors.

DEFINITIONS

340-162-010, As used in these rules,

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

(2) "Closure" means to remove an underground storage tank from operation, either temporarily or permanently, by abandonment in place or by removal from the ground.

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

(4) "Director" means the Director of the Oregon Department of Environmental Quality.

(5) "Facility" means the location at which underground storage tanks are in place or will be placed. A facility encompasses the entire property contiguous to the underground storage tanks that is associated with the use of the tanks.

(6) "Fee" means a fixed charge or service charge.

(7) "Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in the performance of tank services.

(8) "Licensed" means that a firm or an individual with supervisory responsibility for the performance of tank services has met the Department's experience and qualification requirements to offer or perform services related to underground storage tanks and has been issued a license by the Department to perform those services.

(9) "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubrication oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(10) "Permittee", as used in this section, has the meaning set forth in ORS 466.705(9).

(11) "Soil matrix cleanup" means action taken to comply with OAR 340-122-305 through OAR 340-122-360.

(12) "Supervisor" means a licensed individual operating alone or employed by a contractor and charged with the responsibility to direct and oversee the performance of tank services at a facility.

(13) "Tank" means underground storage tank.

(14) "Tank Services" include but are not limited to soil cleanup.

(15) "Tank Services Provider" is an individual or firm registered and, if required, licensed to offer or perform tank services on regulated underground storage tanks.

(16) "Underground Storage Tank" or "UST" means an underground storage tank as defined in OAR Chapter 340, Division 150.

GENERAL PROVISIONS

340-162-020 (1) After January 1, 1991, no firm shall offer underground storage tank soil matrix cleanup services without first having obtained a license from the Department.

(2) Proof of licensing must be available at all times a service provider is performing soil matrix cleanup services.

(3) After January 1, 1991, Underground Storage Tank Soil Matrix Cleanup Service Providers licensed to perform cleanup services are prohibited from offering or performing cleanup services on regulated underground storage tanks unless an underground storage tank has been issued a permit by the Department.

(4) Any Underground Storage Tank Soil Matrix Cleanup Service Provider

licensed or certified by the Department under the provisions of these rules shall:

(a) comply with the appropriate provisions of OAR 340-162-005 through OAR 340-162-050;

(b) comply with the appropriate provisions of OAR 340-122-305 through OAR 340-122-360;

(c) maintain a current address on file with the Department; and

(d) perform underground storage tank soil matrix cleanup services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.

(5) A firm licensed to perform underground storage tank soil matrix cleanup services must submit a checklist to the Department following the completion of a soil matrix cleanup. The checklist form will be made available by the Department.

(6) After January 1, 1991, a licensed underground storage tank soil matrix cleanup services supervisor shall be present at a tank site when the following tasks are being performed:

(a) During all excavations made after a leak is suspected or has been confirmed;

(b) When any tanks or lines are removed or decommissioned as a result of a suspected or confirmed release;

(c) When all soil and /or water samples are collected, stored, and packed for shipping to the analytical testing laboratory;

(d) When any soil borings, back-hoe pits or other excavations are made for the purpose of investigating the extent of contamination;

(e) During removal from the open excavation or disposal of any free product or groundwater; and

(7) After January 1, 1991 Underground Storage Tank Soil Matrix Service Providers shall not backfill or close a soil matrix cleanup excavation site before a Department inspection unless authorized verbally or in writing by the Department. Verbal approvals will be confirmed in writing within 30 days by the Department.

TYPES OF LICENSES

340-162-025 (1) The Department may issue the following types of licenses:

(a) Underground Storage Tank Soil Matrix Cleanup Services Provider

(b) Underground Storage Tank Soil Matrix Cleanup Services Supervisor

(2) A license will be issued to firms and individuals who meet the qualification requirements, submit an application and pay the required fee.

LICENSING OF TANK SERVICES PROVIDERS

340-162-030 (1) After September 1, 1990, firms providing Underground Storage tank soil matrix cleanup services may apply for an Underground

Storage Tank soil matrix cleanup services provider license from the Department.

(2) Licensing shall be accomplished by:

(a) Completing a license application provided by the Department or

(b) Submitting the following information to the Department:

(i) The name, address and telephone number of the firm.

(ii) The nature of the services to be offered.

(iii) A summary of the recent project history of the firm (the two year period immediately preceding the application) including the number of projects completed by the firm.

(iv) Identifying the names of employees or principals responsible for on-site project supervision, and

(v) remitting the required license fee.

(3) The Department will review the application for completeness. If the application is incomplete, the Department shall notify the applicant in writing of the deficiencies within 30 days.

(4) The Department shall deny, in writing, a license to a Soil Matrix Cleanup Services Provider who has not satisfied the license application requirements.

(5) The Department shall issue a license to the applicant after the application is approved.

(6) The Department shall grant a license for a period of twenty-four (24) months.

(7) Renewals:

(a) License renewals, or re-examinations, must be applied for in the same manner as is required for an initial license.

(b) The complete renewal application shall be submitted no later than 30 days prior to the expiration date.

(8) Suspension or Revocation

(a) The Department may suspend or revoke a license if the tank services provider:

(A) Fraudulently obtains or attempts to obtain a license.

(B) Fails at any time to satisfy the requirements for a license or comply with the rules adopted by the Commission.

(C) Fails to meet any applicable state or federal standard relating to the service performed under the license.

(D) Fails to employ and designate a licensed supervisor for each project.

(b) An Underground Storage Tank Soil Matrix Cleanup Services Provider who has a license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

(9) In the event an Underground Storage Tank Soil Matrix Cleanup Services Provider no longer employs an underground storage tank soil matrix licensed supervisor, the cleanup services provider must stop work. Work shall not start until a licensed Underground Storage Tank Soil Matrix Cleanup Supervisor is again employed by the provider and written notice of

the hiring of a licensed Underground Storage Tank Soil Matrix Cleanup Supervisor is received by the Department.

SUPERVISOR EXAMINATION AND LICENSING

340-162-035 (1) To obtain a license from the Department to supervise underground storage tank soil matrix cleanup services an individual must take and pass a qualifying examination approved by the Department.

(2) Applications for Underground Storage Tank Soil Matrix Cleanup Supervisor Licenses - General Requirements

(a) Applications must be submitted to the Department within thirty (30) days of passing the qualifying examination.

(b) Application shall be submitted on forms provided by the Department and shall be accompanied by the appropriate fee.

(3) The application to be a Licensed Underground Storage Tank Soil Matrix Cleanup Supervisor shall include:

(a) Documentation that the applicant has successfully passed the Underground Storage Tank Soil Matrix Cleanup Supervisor examination.

(b) Any additional information that the Department may require.

(4) A license is valid for a period of twenty-four (24) months after the date of issue.

(5) License renewals must be applied for in the same manner as the application for the original license, including re-examination.

(6) Suspension and Revocation

(a) The Department may suspend or revoke an Underground Storage Tank Soil Matrix Cleanup Supervisor's license for failure to comply with any state or federal rule or regulation of underground storage tanks.

(b) If a Soil Matrix Cleanup Supervisor's license is revoked, an individual may not apply for another supervisor license prior to ninety (90) days after the revocation date.

(7) Upon issuance of an Underground Storage Tank Soil Matrix Cleanup Supervisor's license, the Department shall issue an identification card to all successful applicants which shows the license number and license expiration date.

(8) The supervisor's license identification card shall be available for inspection at each site.

EXAMINATION SCHEDULE

340-162-040 (1) At least once prior to November 1, 1990, and twice every year thereafter, the Department shall offer a qualifying examination for any person who wishes to become licensed to supervise underground storage tank soil matrix cleanup services.

(2) Not less than thirty (30) days prior to offering an examination the Department shall prepare and make available to interested persons, a study guide which may include sample examination questions.

(3) The Department shall develop and administer the qualifying examinations in a manner consistent with the objectives of this section.

FEES

340-162-150 (1) Fees shall be assessed to provide revenues to operate the underground storage tank soil matrix cleanup services licensing program. Fees are assessed for the following:

(a) Underground Storage Tank Soil Matrix Cleanup Service Provider

(b) Underground Storage Tank Soil Matrix Cleanup Supervisors Examination

(c) Underground Storage Tank Soil Matrix Cleanup Supervisors License

(d) Underground Storage Tank Soil Matrix Cleanup Examination Study Guides

(2) Underground Storage Tank Soil Matrix Cleanup service providers shall pay a non-refundable license application fee of $100 for a twenty-four (24) month license.

(3) Individuals taking the underground storage tank soil matrix cleanup supervisor licensing qualifying examination shall pay a non-refundable examination fee of $25.

(4) Individuals seeking to obtain an underground storage tank soil matrix cleanup supervisor's license shall pay a non-refundable license application fee of $25 for a two year license.

(5) Examination study guides shall be made available to the public for $10.

(6) Replacement licenses will be provided by the Department for a fee of $10.

Attachment A
Agenda Item V
June 29, 1990

PROPOSED OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 163 - DEPARTMENT OF ENVIRONMENTAL QUALITY

REGISTRATION AND LICENSING REQUIREMENTS FOR HEATING OIL TANK SOIL MATRIX CLEANUP SERVICE PROVIDERS AND SUPERVISORS

AUTHORITY, PURPOSE, AND SCOPE

340-163-005 (1) These rules are promulgated in accordance with and under the authority of ORS 466.750.

(2) The purpose of these rules is to provide for the regulation of companies and persons who cleanup soil contamination resulting from spills and releases of heating oil from heating oil tanks utilizing the soil matrix standards in OAR 340-122-305 to OAR 340-122-360. These rules establish standards for:

(a) Licensing of firms performing soil matrix cleanup services for heating oil tanks.

(b) Examination, qualification and licensing of individuals who supervise soil matrix cleanup services for heating oil tanks.

(c) Administration and enforcement of these rules by the Department.

(3) Scope.

(a) OAR 340-163-005 through -150 applies to cleanup by any person of soil contamination resulting from spills and releases of heating oil from heating oil tanks.

(b) OAR 340-163-005 through OAR 340-163-150 do not apply to services performed by the tank owner, property owner or permittee.

(4) Service Providers and Supervisors licensed under this Division are not licensed to perform work under OAR 340- Division 162 - Registration and licensing Requirements for Underground Storage Tank Soil Matrix Cleanup Service Providers and Supervisors.

DEFINITIONS

340-163-010, As used in these rules,

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

(2) "Closure" means to remove an underground storage tank from operation, either temporarily or permanently, by abandonment in place or by removal from the ground.

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

(4) "Director" means the Director of the Oregon Department of Environmental Quality.

(5) "Facility" means the location at which heating oil tanks are in place or will be placed. A facility encompasses the entire property

contiguous to the heating oil tanks that is associated with the use of the tanks.

(6) "Fee" means a fixed charge or service charge.

(7) "Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in the performance of tank services.

(8) "Heating Oil" means petroleum that is No. 1, No. 2, No 4 - heavy, No. 5 light, No. 5-heavy, and No. 6 technical grades of fuel oil: other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils..

(9) "Heating Oil Tank" means any one or combination of above ground or underground tanks and above ground or underground pipes connected to the tank, which is used to contain heating oil used for space heating a building with human habitation or, water heating not used for commercial processing.

(10) "Licensed" means that a firm or an individual with supervisory responsibility for the performance of tank services has met the Department's experience and qualification requirements to offer or perform services related to heating oil tanks and has been issued a license by the Department to perform those services.

(11) "Permittee", as used in this section, has the meaning set forth in ORS 466.705(9).

(12) "Soil matrix cleanup" means soil cleanup action taken to comply with OAR 340-122-305 through OAR 340-122-360.

(13) "Supervisor" means a licensed individual operating alone or employed by a contractor and charged with the responsibility to direct and oversee the performance of tank services at a facility.

(14) "Tank" means heating oil tank.

(15) "Tank Services" include but are not limited to soil cleanup of heating oil.

(16) "Tank Services Provider" is an individual or firm registered and, if required, licensed to offer or perform tank services on heating oil tanks in Oregon.

GENERAL PROVISIONS

340-163-020 (1) After January 1, 1991, no firm shall offer heating oil tank soil matrix cleanup services without first having obtained a Heating Oil Tank Soil Matrix Cleanup Service Provider license from the Department.

(2) Proof of licensing must be available at all times a service provider is performing soil matrix cleanup services.

(3) Any Heating Oil Tank Soil Matrix Cleanup Service Provider licensed or certified by the Department under the provisions of these rules shall:

(a) comply with the appropriate provisions of OAR 340-163-005 through OAR 340-163-050;

(b) comply with the appropriate provisions of OAR 340-122-305 through OAR 340-122-363;

(c) maintain a current address on file with the Department; and

(d) perform soil matrix cleanup services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.

(4) A firm licensed to perform heating oil tank soil matrix cleanup services must submit a checklist to the Department following the completion of a soil matrix cleanup. The checklist form will be made available by the Department.

(5) After January 1, 1991, a licensed Heating Oil Tank Soil Matrix Cleanup Services Supervisor shall be present at a tank site when the following tasks are being performed.

(a) During all excavations made after a leak is suspected or has been confirmed;

(b) When any tanks or lines are permanently closed by removal from the ground or filled in place as a result of a suspected or confirmed release;

(c) When all soil and /or water samples are collected and packed for shipping to the analytical testing laboratory;

(d) When any soil borings, back-hoe pits or other excavations are made for the purpose of investigating the extent of contamination;

(e) During removal from the open excavation or disposal of any free product or groundwater; and

(6) After January 1, 1991 Service Providers shall not backfill or close a soil cleanup excavation site before a Department inspection unless authorized verbally or in writing by the Department. Verbal approvals will be confirmed in writing within 30 days by the Department.

TYPES OF LICENSES

340-163-025 (1) The Department may issue the following types of licenses:

(a) Heating Oil Tank Soil Matrix Cleanup Services Provider

(b) Heating Oil Tank Soil Matrix Cleanup Supervisor

(2) A license will be issued to firms and individuals who meet the qualification requirements, submit an application and pay the required fee.

LICENSING OF HEATING OIL TANK SOIL MATRIX CLEANUP SERVICES PROVIDERS

340-163-030 (1) After September 1, 1990, firms providing Heating Oil Tank Soil Matrix Cleanup services may apply for Heating Oil Tank Soil Matrix Cleanup Services Provider license from the Department.

(2) Licensing shall be accomplished by:

(a) Completing a license application provided by the Department or

(b) Submitting the following information to the Department:

(i) The name, address and telephone number of the firm.

(ii) The nature of the services to be offered.

(iii)A summary of the recent project history of the firm (the two year period immediately preceding the application) including the number of projects completed by the firm.

(iv) Identifying the names of employees or principals responsible for on-site project supervision, and

(v) remitting the required license fee.

(3) The Department will review the application for completeness. If the application is incomplete, the Department shall notify the applicant in writing of the deficiencies.

(4) The Department shall deny, in writing, a license to a Heating Oil Tank Soil Matrix Cleanup Services Provider who has not satisfied the license application requirements.

(5) The Department shall issue a license to the applicant after the application is approved.

(6) The Department shall grant a license for a period of twenty-four (24) months.

(7) Renewals:

(a) License renewals must be applied for in the same manner as is required for an initial license.

(b) The complete renewal application shall be submitted no later than 30 days prior to the expiration date.

(8) The Department may suspend or revoke a license if the tank services provider:

(a) Fraudulently obtains or attempts to obtain a license.

(b) Fails at any time to satisfy the requirements for a license or comply with the rules adopted by the Commission.

(c) Fails to meet any applicable state or federal standard relating to the service performed under the license.

(d) Fails to employ and designate a licensed supervisor for each project.

(9) A Heating Oil Tank Soil Matrix Cleanup Services Provider who has a license suspended or revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

(10) In the event a Heating Oil Tank Soil Matrix Cleanup Services provider no longer employs a licensed supervisor the services provider must stop work on any heating oil soil matrix cleanup. Work shall not start until a licensed Heating Oil Tank Soil Matrix Cleanup Supervisor is again employed by the provider and written notice of the hiring of a licensed Heating Oil Tank Soil Matrix Supervisor is received by the Department.

HEATING OIL TANK SOIL MATRIX CLEANUP SUPERVISOR EXAMINATION AND LICENSING

340-163-035 (1) To obtain a license from the Department to supervise heating oil tank soil matrix cleanup services from a heating oil tank, an individual must take and pass a qualifying examination approved by the Department.

(2) Applications for Heating Oil Tank Soil Matrix Supervisor Licenses - General Requirements

(a) Applications must be submitted to the Department within thirty (30)days of passing the qualifying examination.

(b) Application shall be submitted on forms provided by the Department and shall be accompanied by the appropriate fee.

(c) The application to be a Licensed Heating Oil Tank Soil Matrix Supervisor shall include:

(A) Documentation that the applicant has successfully passed the heating oil tank soil matrix Supervisor examination.

(B) Any additional information that the Department may require.

(3) A license is valid for a period of twenty-four (24) months after the date of issue.

(4) License renewals must be applied for in the same manner as the application for the original license, including re-examination.

(5) Suspension or Revocation

(a) The Department may suspend or revoke a Heating Oil Tank Soil Matrix Supervisor's license for failure to comply with any state or federal rule or regulation pertaining to the cleanup of soil contamination from a heating oil tank.

(b) If a Heating Oil Tank Soil Matrix Cleanup Supervisor's license is revoked, an individual may not apply for another supervisor license prior to ninety (90) days after the revocation date.

(6) Upon issuance of a Heating Oil Tank Soil Matrix Cleanup Supervisor's license, the Department shall issue an identification card to all successful applicants which shows the license number and license expiration date.

(7) The Supervisor's license identification card shall be available for inspection at each site.

EXAMINATION SCHEDULE

340-163-040 (1) At least once prior to November 1, 1990, and twice every year thereafter, the Department shall offer a qualifying examination for any person who wishes to become licensed to supervise soil matrix cleanups from heating oil tanks.

(2) Not less than thirty (30) days prior to offering an examination the Department shall prepare and make available to interested persons, a study guide which may include sample examination questions.

(3) The Department shall develop and administer the qualifying examinations in a manner consistent with the objectives of this section.

FEES

340-163-150 (1) Fees shall be assessed to provide revenues to operate the heating oil tank soil matrix cleanup services licensing program. Fees are assessed for the following:

(a) Heating Oil Tank Soil Matrix Cleanup Service Provider
(b) Heating Oil Tank Soil Matrix Cleanup Supervisors Examination
(c) Heating Oil Tank Soil Matrix Cleanup Supervisors License
(d) Heating Oil Tank Soil Matrix Examination Study Guides

(2) Heating oil tank soil matrix cleanup service providers shall pay a non-refundable license application fee of $100 for a twenty-four (24) month license.

(3) Individuals taking the Heating Oil Tank Soil Matrix Cleanup Supervisor licensing examination shall pay a non-refundable examination fee of $25.

(4) Individuals seeking to obtain a Heating Oil Tank Soil Matrix Cleanup Supervisor's license shall pay a non-refundable license application fee of $25 for a two year license.

(5) Examination study guides shall be made available to the public for $10.

(6) Replacement licenses will be provided by the Department for a fee of $10.

Attachment B
Agenda Item V
June 29, 1990

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF PROPOSED RULES

OAR Chapter 340 Division 162)
OAR Chapter 340 Division 163) STATEMENT OF NEED FOR RULES

Statutory Authority

ORS 466.705 through ORS 466.995, as amended, authorizes the Environmental Quality Commission to adopt rules governing licensing procedures for service providers and supervisors providing remedial action and removal services at certain tank sites having soil contaminated with oil.

Need for the Rules

The proposed rules are needed to carry out the authority given to the Commission to adopt rules for regulation of service providers and supervisors providing remedial action and removal services.

Principal Documents Relied Upon

SB 115 passed by the 1987 Oregon Legislature (ORS 466.705 through ORS 466.995)

HB 3456 amendments to ORS 466.705 - ORS 466.995 passed by the 1989 Oregon Legislature.

Subtitle I of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act.

40CFR Part 280, November 1985.

40CFR Part 280, September 23, 1988.

40CFR Part 280, October 21, 1988.

40CFR Part 281, September 23, 1988.

OAR 340-160-005 through OAR 340-160-050

OAR 340-122-205 through OAR 340-122-360

Superfund Amendments and Reauthorization Act of 1986.

Attachment C
Agenda Item V
May 24, 1990

FISCAL AND ECONOMIC IMPACT

Fiscal Impact

Licensing of Service Providers and Supervisors: Program expenses will be incurred to develop information and tests, manage the testing, registration and licensing activities. The program expenses are expected to be $36,000 per biennium. This will be offset by program fees for licenses, tests and study guides.

Small Business Impact

Licensing of Service Providers and Supervisors: The Department estimates that approximately 160 businesses will become licensed as remedial action and removal service providers, 270 individuals will take the Supervisor licensing exam, and 190 will become licensed during the first year of the program. The fees and estimated program income is as follows:

The impact on the business community includes the additional fees, the time necessary to study for the exam and the exam time. If an individual fails the exam that person will be required to wait 6 months until the next scheduled supervisors exam which could impact their ability to continue or find similar employment.

In light of the potential environmental impact resulting from unqualified individuals performing remedial action or removal services, the Department feels these impacts to be reasonable.

FEES:

Service Provider License Fee (Two Years)	$100
Supervisor Examination Fee	$ 25
Supervisor License Fee (Two Years)	$ 25
Study Guide	$ 10

INCOME: (Estimated)

	First Year		Second Year	
Service Provider license	160	$16,000	20	$2,000
Supervisor Exam	270	$ 6,750	50	$1,250
Supervisor License	235	$ 5,875	37	$ 925
Study Guide	270	$ 2,700	50	$ 500
Subtotal		$31,325		$4,675
Two year Total		$36,000		

Attachment D
Agenda Item V
6-29-90 EQC

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May 30, 1990

VIA HAND-DELIVERY

Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390

Mr. Fred Hansen, Director
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390

Re: Remedial Action and Cleanup Licensing and Certification Advisory Committee Draft Rules

Dear Commission and Mr. Hansen:

Attached are copies of draft rules for registering and licensing service providers who undertake cleanups of motor fuel and heating oil from leaking heating oil and underground storage tanks. These rules are the result of nearly six months of committee meetings and much debate. The Committee is pleased to submit these drafts for your consideration.

We believe the rules are readable, understandable and tailored to the purposes of the legislation from which they were developed. Although each committee member may not agree that these rules perfectly reflect individual preferences, the Committee has reached near unanimity on the substance and form of the final drafts.

Our Committee is comprised of a good mix of interests from the public and private sectors. We have had very good attendance at our meetings, and we have been very outspoken in our deliberations. I believe the quality of the draft rules reflects the effort of our members.

On behalf of the Committee, I thank Department of Environmental Quality representatives Mr. Dennis Thomason, Mr. Larry Frost, Mr. Richard Reiter, and Mr. Michael Anderson for their cooperation and support. In particular, we would like express our appreciation for Mr. Thomason's excellent preparation for each of our meetings. It has been my pleasure to serve the Committee as its chairperson.

Should you have questions or comments about the drafts, I am available at your convenience to discuss them. Thank you for your attention to our submittal.

Very truly yours,

Claudia K. Powers,
Chair

cc: Committee Members

CKP\ckp283.ltr

D-2

Attachment E
Agenda Item V
6-29-90 EQC Meeting

Date: May 23, 1990

TO; Environmental Quality Commission

FROM: Dennis Thomason

SUBJECT: Pubic Hearing Report Summary

On January 19, 1990, the Environmental Quality Commission authorized four Public Hearings on proposed rules for implementing HB 3456 which would require licensing of Underground Storage Tank and Heating Oil Tank Soil Matrix Cleanup Service Providers and Supervisors. Public hearings were held at 3:00 pm on:

- April 2, 1990 in Bend, Oregon
- April 3, 1990 in Pendleton, Oregon
- April 5, 1990 in Portland, Oregon
- April 6, 1990 in Eugene, Oregon

There were no written comments or verbal testimony at any of the public hearings.

Attachment F
Agenda Item V
6-29-90 EQC Meeting

Date: May 23, 1990

TO: Environmental Quality Commission

FROM: Dennis Thomason

SUBJECT: Response to Testimony

Public Hearings: No testimony was received at the four public hearings.

Advisory Committee: The advisory committee has recommended that the cleanup rules be separated from the existing rules OAR 340 - Division 160, for tank service provider and supervisors dealing with installation, tank tightness testing , and tank removal. The advisory committee has further recommended that separate cleanup rules be developed for cleanups from underground storage tanks and cleanups from heating oil tanks.

The Department concurs with the recommendation and has prepared separate rules for underground storage tank cleanups and for heating oil tank cleanups.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: W
Division: HSW
Section: Waste Reduction

SUBJECT:

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

PURPOSE:

To establish in rule criteria for Department of Environmental Quality (Department, 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.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
_x_ Adopt Rules
- Proposed Rules — Attachment A+B
- Rulemaking Statements — Attachment C
- Fiscal and Economic Impact Statement — Attachment C
- Public Notice — Attachment C

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

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

DESCRIPTION OF REQUESTED ACTION:

The Environmental Quality Commission (Commission, EQC) is requested to adopt proposed rules setting standards for approval of waste reduction programs required under ORS 459.055 and 468.220 (6). Waste reduction programs are required under ORS 459.055 for local government jurisdictions within and outside Oregon which send more than 75,000 tons of waste per year to a landfill that is located in an exclusive farm use zone, and under 468.220 (6) for local government jurisdictions receiving loans and grants from the Pollution Control Bond Fund for solid waste management planning and assistance.

The proposed rules generally require that specific waste reduction elements be included in waste reduction plans in order to be approved by the Department. Some examples of requirements in proposed rule 340-60-092 include:

- o techniques for promotion, education, and public involvement;
- o techniques for salvage of building material and reusable items;
- o the use of containers and other techniques to enhance source-separation of recyclable material;
- o composting programs for source-separated yard debris;
- o fees and rate structures that promote source separation and recovery of material;
- o procurement requirements;
- o assistance and consultation with businesses on waste reduction; and
- o programs to keep prohibited material such as hazardous waste and lead-acid batteries out of the waste destined for disposal.

Waste reduction programs are also required under ORS 468.220 (6) for local government units receiving loans or grants for solid waste disposal facilities or planning for such facilities. Many jurisdictions that may request financial assistance are small or rural jurisdictions not expected to produce more than 75,000 tons of waste per year. The proposed rules recognize that certain waste reduction measures are not appropriate for small or rural jurisdictions.

AUTHORITY/NEED FOR ACTION:

x	Required by Statute: SB 855	Attachment ___
	Enactment Date: 1989 session	
x	Statutory Authority: ORS 459.055, 468.220	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

___	Advisory Committee Report/Recommendation	Attachment ___
x	Hearing Officer's Report/Recommendations	Attachment D
x	Response to Testimony/Comments	Attachment E
x	Prior EQC Agenda Items: April 6,1990 Item K	Attachment F
___	Other Related Reports/Rules/Statutes:	Attachment ___
___	Supplemental Background Information	Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

ORS 459.055 (as amended by SB 855) affects all landfills established since 1979 as a conditional use in an exclusive farm use zone that receive more than 75,000 tons per year from a single jurisdiction. The Columbia Ridge (Oregon Waste Systems) Landfill in Gilliam County and the proposed Finley Buttes landfill in Morrow County are the only landfills in Oregon that presently fall under these requirements. The Portland-area Metropolitan Service District (Metro) is presently the only Oregon jurisdiction sending more than 75,000 tons of waste per year to one of these landfills. Metro has an approved waste reduction program that meets the requirements of the proposed rules. Clark County, Washington has contracted to send wastes to Finley Butte starting in 1992, and Seattle, Washington is negotiating shipment of wastes to Columbia Ridge. Spokane, Washington is conducting a preliminary investigation for sending more than 75,000 tons of ash per year from a proposed burner to the Oregon landfills.

Jurisdictions receiving state funds for development or planning for solid waste disposal facilities also have been required since 1979 to adopt and implement waste reduction programs under ORS 468.220. The Department has not had requests for such funding assistance since 1985. However, some local jurisdictions may request financial assistance for closing landfills and developing transfer systems due to new landfill standards proposed by the Environmental Protection

Agency under the Resource Conservation and Recovery Act Subtitle D, and thus will be required to adopt and implement a waste reduction program. Since some waste reduction requirements for large jurisdictions under ORS 459.055 are not appropriate for smaller jurisdictions under ORS 468.220, the proposed rules specify less strict waste reduction requirements for jurisdictions that produce less than 75,000 tons of waste per year.

The Commission authorized a public hearing on the proposed rules at their April 6, 1990 EQC meeting. Notice of the public hearing was published in the May 1, 1990 edition of the Secretary of State Bulletin, mailed to 194 potentially affected persons, and announced to the media through a press release and fact sheet. The hearing was held May 16, 1990.

Comments and testimony on the proposed rules were received from the City of Seattle, Clark County, Metro, and the Oregon Sanitary Service Institute. Comments received were generally supportive of the proposed rules.

Officials from Seattle and Clark County testified that they believe their waste reduction programs will meet Department requirements as proposed in these rules, provided that the Department does not require programs and set criteria that are more stringent than those used in-state for Metro. The Department does not believe that more stringent standards can be set for out-of-state waste due to potential conflict with the Interstate Commerce Clause of the United States Constitution.

Minor clarifying changes were suggested that do not affect the substance of the originally proposed rules. The only substantive change was suggested by Metro, to including a requirement for weekly on-route collection programs for recyclable material. The Department agrees that weekly on-route collection programs are effective. However, there is a concern that this requirement may be taken as being more stringent for new (out-of-state) programs than for the existing Metro program. Although Metro has called for all Metro-area jurisdictions to move to weekly curbside collection within the next two years, many of these jurisdictions have not yet done so. The Department is developing a legislative concept for recycling goals and standards that is expected to include weekly collection requirements, and feels that it would be appropriate to require all waste reduction programs to adhere to those standards (including weekly collection) at the time that the goals and standards are adopted for in-state jurisdictions.

PROGRAM CONSIDERATIONS:

Reviewing waste reduction and recycling programs will have an impact on staff resources. Estimates for the number of out-of-state jurisdictions requiring approval of waste reduction programs are for two to three in the next three years. The 1989 Legislature did not provide additional resources to conduct the necessary reviews. The Legislature did provide for the Commission to adopt a special fee for regional landfills that would reimburse the Department for administrative costs of accepting out-of-state wastes, which can include the cost of review of waste reduction programs. The effective date of the fee can be no earlier than January 1, 1991. The Department intends to propose rules regarding this special fee later this year.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt rules and rule amendments proposed in appendices A and B, which add specific requirements and criteria to the existing waste reduction program rules as well as incorporate amendments required by SB 855. Place all regulations on recycling and waste reduction programs in OAR 340 Division 60.

2. Adopt just the minimum requirements, related to changed tonnage limits, to make the existing waste reduction program rules consistent with SB 855. SB 855 did not change most statutory criteria to be used for evaluating and approving waste reduction programs. Existing rules are geared mainly to the planning process in developing a waste reduction program, rather than to criteria as to what activities and requirements should be present in the waste reduction program.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt rules, amendments, and rule deletions as shown in Attachments A and B. The Department is concerned that existing waste reduction program rules (OAR 340-61-100 to 110) do not provide specific requirements or criteria for waste reduction programs. The Department believes that much more is known about what constitutes an effective waste reduction program than was known in 1980. Therefore, the proposed rules and amendments reflect that knowledge by stating specific requirements for effective waste reduction programs.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules and rule amendments fulfill the requirements of ORS 459.055 and ORS 459.305, as amended by SB 855 (1989 session), are consistent with the policy requirements of ORS 459.015, and with the Department's Strategic Plan.

ISSUES FOR COMMISSION TO RESOLVE:

How strong should the requirements for waste reduction programs be? Should they be strong requirements that drive waste reduction efforts in affected jurisdictions, or should they be less strong so as to minimize the potential of legal challenge?

INTENDED FOLLOWUP ACTIONS:

If adopted by the Commission, the Department will implement the proposed rules.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Peter Spendelow
Phone: 229-5253
Date Prepared: June 8, 1990

Spendelow
WORDP\WRRULE.D06

A bar in the left margin indicates changes in language from the rules and amendments originally proposed April 6, 1990.

New rules OAR 340-60-091, 340-60-092, and 340-60-093 are proposed to be adopted, rules OAR 340-60-090, 340-60-095, and 340-82-030 are proposed to be amended, and rules OAR 340-61-100 and 340-61-110 are proposed to be deleted, as follows:

Proposed amended rule 340-60-090:

Policy for Certification and Waste Reduction Programs
340-60-090

(1) The Commission's purpose in adopting rules OAR 340-60-090 through 340-60-110 for waste reduction programs pursuant to ORS 459.055 and ORS 468.220 and for certifying that a sufficient opportunity to recycle is provided pursuant to ORS 459.305 is to:

(a) conserve valuable landfill space by insuring that the persons who generate the garbage going to a disposal site have the opportunity to recycle, and that the amount of recyclable material being disposed is reduced as much as is practical;

(b) protect groundwater resources and the environment and preserve public health by reducing the waste going to landfills; and

(c) conserve energy and natural resources by promoting the reuse and recycling of materials as a preferred alternative to disposal.

(2) The purpose as stated in section 1 of this rule is to apply regardless of the state or jurisdiction in which the waste was generated.

(3) The Department shall not have enforcement authority regarding the requirements of ORS 459.165 to 459.200 and 459.250, or rules adopted under these statutory requirements, for out-of-state local government units other than the ability to certify and decertify the local government units under OAR 340-60-[210]100, and the ability to accept or reject waste reduction programs and determine whether or not waste reduction programs are being implemented, thus restricting the disposal of wastes in a regional landfill when an adequate opportunity to recycle has not been provided to the generators of the wastes, or where an approved waste reduction program is not being implemented in the area where the waste is generated.

(4) It is the intent of the Commission that where a local government requests funding, technical or landfill assistance under ORS 459.047 through 459.057 or 468.220, that the local government shall make a good faith effort toward development, implementation and evaluation of waste reduction programs.

Proposed new rule 340-60-091:

Applicability for Certification and Waste Reduction Programs
340-60-091

(1) A waste reduction plan approved by the Department under OAR 340-60-093 shall be required before:

(a) issuance of a permit for a landfill under ORS 459.047 through

459.055 for landfills expected to accept more than 75,000 tons of waste per year from a local government unit;

(b) issuance of Pollution Control Bond Fund monies to local government pursuant to ORS 468.220; or

(c) acceptance of more than 75,000 tons per year of wastes from a local government unit by a landfill established after October 3, 1979 as a conditional use in an area zoned for exclusive farm use.

(2) For a local government unit not required to implement a waste reduction program under ORS 459.055, or not otherwise exempt under OAR 340-60-095 (5), certification under OAR 340-60-095 shall be required before waste from the local government unit may be accepted for disposal by a regional disposal site.

Proposed new rule 340-60-092:

Standards for Waste Reduction Programs
OAR 340-60-092

(1) To be approved by the Department, a waste reduction program shall fulfill the following requirements:

(a) include the latest proven methods for reducing waste, as set forth in section (2) of this rule;

(b) be designed to meet all waste reduction standards and goals adopted by the Commission;

(c) include an opportunity to recycle that meets or exceeds the requirements of ORS 459.165 to 459.200 and 459.250;

(d) address waste reduction for each separate waste stream generated within the local government unit that is to be sent to affected Oregon disposal sites, including but not limited to:

(A) household waste,

(B) commercial waste,

(C) industrial waste,

(D) yard debris,

(E) demolition material, and

(F) hazardous material;

(e) meet all criteria set forth in ORS 459.055; and

(f) continue for as long as a waste reduction program is required under OAR 340-60-091.

(2) The Department shall maintain a list of proven methods for reducing waste. Waste reduction programs shall include those proven methods that are feasible to implement within a local government unit. The list shall include, but need not be limited to the following:

(a) techniques for promotion, education, and public involvement;

(b) promotion of reduction and reuse of materials and items;

(c) techniques for salvage of building materials and reusable items;

(d) the use of containers and other techniques to enhance source-separation of recyclable materials;

(e) collection and composting or other utilization programs for source-separated yard debris;

(f) segregation of high-grade loads of mixed waste for material recovery;

(g) segregation of recyclable material, wood, and inert material from demolition debris and drop box waste;

(h) technical assistance and consultation to businesses on methods of waste reduction and recycling;

(i) fees and rate structures that promote the source-separation, recycling, and recovery of material;

(j) adoption of a procurement policy that favors the use of paper products and other items made from recycled material as a way to further assist the markets for material;.

(k) promotion and assistance to local businesses and residents to encourage or require the use of items made from recycled material;

(l) programs to keep prohibited material such as hazardous waste and lead acid batteries out of the waste destined for disposal at the disposal site; and

(m) programs for measuring the results of the waste reduction efforts and determining further steps necessary to reduce waste.

(3) For local government units that produce less than 75,000 tons of waste per year that are requesting financial assistance for development or planning for solid waste facilities under ORS 468.220, the Department shall identify those proven methods listed in accordance with Section 2 of this rule that are appropriate to be considered and included in a waste reduction program for a smaller local government unit. In making this determination, the Department shall take into account:

(a) the type and volume of wastes produced;

(b) the density and other appropriate characteristics of the population and commercial activity within the local government unit; and

(c) the distance of the local government unit from recycling markets.

Proposed new rule 340-60-093:

Submittals, Approval, and Amendments for Waste Reduction Programs
340-60-093

(1) For local government units within the State of Oregon, information required for approval of waste reduction programs shall be submitted by the local government unit.

(2) For local government units outside the State of Oregon, information required for approval of waste reduction programs shall be submitted, or caused to be submitted, by the disposal site permittee proposed to accept waste from the local government unit.

(3) Where more than one local government unit has jurisdiction, information submitted for approval shall cover all affected local government units.

(4) At minimum, the following information must be submitted before the Department will approve a waste reduction program:

(a) an initial recycling report containing the information and meeting the criteria set forth in OAR 340-60-105 (1) for recycling certification;

(b) a copy of each ordinance or similar enforceable legal document that sets forth the elements of the waste reduction program, and that demonstrates the commitment by the local government unit to reduce the

volume of waste that would otherwise be disposed of in a landfill through techniques such as source reduction, recycling, reuse and resource recovery;

(c) a list and description of the programs, techniques, requirements, and activities that comprise the waste reduction program;

(d) a list and description of the resources committed to the waste reduction program, including funding level, source of funds, staff, and other governmental resources plus, if necessary to demonstrate that the program will be implemented, the private resources to be used to implement the program.

(e) a timetable indicating the starting date and duration for each activity or portion of the waste reduction program;

(f) if any proven methods identified by the Department pursuant to OAR 340-60-092 (2) are not used, information on why it is not feasible to implement the proven methods, or why other methods proposed are more feasible and will result in at least as much waste reduction, energy efficiency, reduced pollution, and use of waste materials for their highest and best use as the proven methods identified by the Department;

(g) information on the volume and composition of waste generated in the area, and the volume and composition of waste proposed to be landfilled in Oregon landfills;

(h) a copy of any contract or agreement to dispose of waste in an Oregon landfill;

(i) a list and description of information to be reported to the Department, in addition to the information required under OAR 340-60-105, that is sufficient to demonstrate continued implementation of the waste reduction program; and

(j) any other documents or information that may be necessary to fully describe the waste reduction program and to demonstrate the legal, technical, and economic feasibility of the program.

(5) The Department shall review the material submitted in accordance with this rule, and shall approve the waste reduction program within 60 days of completed submittal if sufficient evidence is provided that the criteria set forth in ORS 459.055, as further defined in OAR 340-60-092, are met.

(6) If the Department does not approve the waste reduction programs, the Department shall notify the disposal site that is to receive the waste and the persons who participated in preparing the submittal material, based on written findings. The procedure for review of this decision or correction of deficiencies shall be the same as the procedure for decertification and recertification set forth in OAR 340-60-100.

(7) In order to demonstrate continued implementation of the waste reduction program, by February 15th of each year, information required in OAR 340-60-105 (3) as well as information described in the submittal pursuant to in subparagraph (4)(i) of this rule must be submitted for the preceding calendar year.

(8) If a local government unit amends a waste reduction program, any changes in the information previously reported under this rule shall be reported to the Department. The Department shall approve the amended program provided that the criteria set forth in ORS 459.055 as further defined in OAR 340-60-092 are met.

Proposed amended rule 340-60-095:

Recycling Certification
340-60-095

(1) A local government unit shall be considered certified if it has not been decertified under OAR 340-60-100 and if:

(a) The permittee of the regional disposal site has submitted or caused to be submitted an initial recycling report covering the local government unit, and containing the information required in OAR 340-60-105 (1), and the Department has approved or conditionally approved the report; or

(b) The Department has approved or conditionally approved a recycling report submitted under OAR 340-60-045 for the wastesheds or parts of wastesheds that include the entire local government unit.

(2) The date of certification shall be considered to be the date that the recycling report was first approved, or conditionally approved, by the Department for the wastesheds or areas that include the entire local government unit.

(3) For each initial recycling report submitted to fulfill the requirements of section (1) of this rule, the Department must respond by 60 days after receipt of a completed initial recycling report or by July 1, 1989, whichever is later, by either certifying the local government unit or by indicating what deficiencies exist in providing the opportunity to recycle. If the Department does not respond within this time limit, the local government unit shall be considered to be certified under OAR 340-60-095.

(4) Except as otherwise provided in section (5) of this rule, after July 1, 1988, a regional disposal site may not accept any solid waste generated from any local government unit within or outside the State of Oregon unless the Department has certified that the recycling programs offered within the local government unit provide an opportunity to recycle that meets the requirements of ORS 459.165 to 459.200 and 459.250.

(5) A regional disposal site may accept wastes for disposal that are generated from a local government unit outside the State of Oregon without certification required under section (4) of this rule, if:

(a) the local government unit is implementing a waste reduction program under ORS 459.055 that is approved by the Department, and that provides an opportunity to recycle that meets the requirements of ORS 459.165 to 459.200 and 459.250; or

(b) the wastes were transported to the regional disposal site on or before July 1, 1990; or

[(b)](c) the regional disposal site accepts no more than 1,000 tons per year of wastes generated within any single local government unit. This 1,000 ton per year exemption shall apply separately to each incorporated city or town or similar local government unit, and to the unincorporated area of each county or similar local government unit, but not to other smaller geographic units referred to in section (6) of this rule.

(6) For the purposes of OAR 340-60-090 to 110, the term "local government unit" shall include smaller geographic units such as individual franchise or contract areas if a regional disposal site requests that the Department certify the recycling programs in the smaller geographic unit.

The Department will certify the recycling programs in the smaller geographic unit if it determines that the opportunity to recycle is provided to all residents and businesses within the unit, as provided in section (1) of this rule, and that the boundaries of the unit were not drawn for the purpose of excluding potential recycling opportunities or otherwise reducing recycling requirements.

Proposed amended rule 340-82-030 (relating to financial assistance for solid waste facilities under ORS 468.220, updating the statutory reference):

Application Documents
340-82-030

The representative of an agency wishing to apply for state financial assistance under these regulations shall submit to the Department three signed copies of each of the following completed documents:

(1) Department Solid Waste Management Projects Grant-Loan application form currently in use by the Department at the time of the application for state financial assistance. This form will be provided by the Department upon request.

(2) All applications for federal financial assistance to the solid waste projects for which state financial assistance is being requested.

(3) Resolution of the agency's governing body authorizing an official of the agency to apply for state and federal financial assistance and to act in behalf of the agency in all matters pertaining to any agreements which may be consummated with the Department or with EPA or other federal agencies.

(4) Five year projection of the agency's estimated revenues and expenses related to the project (on forms provided by the Department).

(5) An ordinance or resolution of the agency's governing body establishing solid waste disposal user rates, and other charges for the facilities to be constructed.

(6) A legal opinion of the agency's attorney establishing the legal authority of the agency to enter into a financial assistance agreement together with copies of applicable agency ordinance and charter sections.

(7) A waste reduction plan which is consistent with ORS [459.055(2)(a) through (e)] 459.055(3)(a) through (f).

An application is not deemed to be completed until any additional information requested by the Department is submitted by the agency.

Applications for financial assistance for planning under ORS 468.220(1)(e) shall be on special forms provided by the Department and shall be accompanied by a resolution of the agency's governing body.

Proposed deletion of existing rules OAR 340-61-100 and 340-61-110:

Copies of these two rules proposed to be deleted are included in this staff report as Attachment B.

CHAPTER 340, DIVISION 61 - DEPARTMENT OF ENVIRONMENTAL QUALITY

Purpose

340-61-100 (1) It is the intent of the Commission that where a local government requests funding, technical or landfill assistance under ORS 459.047 through 459.057 or 468.220, that the local government shall make a good faith effort toward development, implementation and evaluation of waste reduction programs.

(2) These rules define the criteria set out in ORS 459.055(2). The Commission intends that these same criteria and rules apply to solid waste reduction under ORS 468.220. A waste reduction plan acceptable to the Department will be required before issuance of a permit for a landfill under this act or before the issuance of Pollution Control Bond Fund monies to local government.

(3) These rules are meant to be used to:

(a) Assist local government and other persons in development, implementation and evaluation of waste reduction programs;

(b) Assist the Department and Commission in evaluation of local government waste reduction programs;

(c) Serve as a basis for the Department's report to the Legislature on:

(A) The level of compliance with waste reduction programs,

(B) The number of programs accepted and rejected and why, and

(C) The recommendations for further legislation.

(4) These rules are developed on the premise that the Department's shall base acceptance or nonacceptance of a waste reduction program on criteria (a) through (e) of ORS 459.055(2) as further defined by these rules.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 25-1980, f. & ef. 10-2-80; DEQ 30-1980, f. & ef. 11-10-80

Submittals

340-61-110 Each criteria shall be addressed with a written submittal to the Department with the following materials included in or attached thereto. The following rules represent minimum reasonable effort to comply with the criteria and are not meant to limit the scope of potential programs:

(1) Submittals regarding commitment to reduce waste volume:

(a) A record of the official local government approval, adoption and inclusion of the waste reduction program into the adopted solid waste management plan, including a statement of commitment to the short and long-term goals, policies and objectives for a waste reduction program, and including a statement of commitment to provide the resources to implement the waste reduction program;

(b) A statement of the following:

(A) The techniques for waste reduction considered and those chosen for use in the program,

(B) The resources committed to achieve the actions, including dollars, staff time and other staff and government resources,

(C) The required waste reduction activities that are part of a governmentally regulated or funded collection, recycling, reuse, resource recovery or disposal of solid waste and answers to the following questions: Which requirements were considered as part of the waste reduction program? What are the reasons for acceptance or rejection of the requirements? What is the duration of time of the imposed requirements?

(c) Where more than one local government unit has jurisdiction, the statement shall include all such jurisdictions.

(2) Submittals regarding an implementing timetable: A statement indicating:

(a) A starting date and duration of each portion of the program;

(b) How the program timetable is consistent with other activities and permits dealing with solid waste management in the affected area. The minimum acceptable duration for any activity shall be the length of time for any permit or funding requested;

(c) If a phased-in program is to be used, the statement should include a timetable and explanation of the need for the use of phase-in approach.

(3) Submittals regarding energy efficient, cost-effective approaches: An identification of the highest and best use of solid waste materials:

(a) Cost effectiveness analysis, including:

(A) The markets and market values of solid waste materials,

(B) The value of diverting solid waste from landfills,

(C) The value of potential energy savings through waste reduction alternatives considered,

(D) The dollar/cost/savings of different alternatives considered.

(b) Energy efficiency analysis including a net energy analysis of the different waste reduction alternatives considered;

(c) Materials savings and the effects on resource depletion;

(d) Reduction of pollution from disposal sites and industrial processing.

(4) Submittals regarding commensurate procedures:

(a) A statement indicating the following:

(A) The type and volume of waste generated in the area, including composition data,

(B) Any special geographic conditions which have an impact on waste reduction efforts,

(C) Efforts made to work joint programs with other localities or as part of a regional effort and answers to the following questions: At what level, regional or local, are the solid waste management efforts centered? At what level will the waste reduction plan be centered?

(b) A statement describing and tabulating results of public hearings and meetings and written testimony from the public on the local waste reduction program.

(5) Submittals regarding legal, technical and economical feasibility:

(a) A statement indicating the following:

(A) The legal, technical and economic efforts which are necessary and have been undertaken to make waste reduction alternatives feasible,

(B) A statement of what is considered "feasible" and why,

(C) A statement of the actions which will be taken to assure the flow of materials to make waste reduction alternatives feasible.

(b) A statement of examples which may include, but are not limited to, flow control of solid waste for one or more uses, prohibiting the theft or unauthorized taking of materials under flow control, market development, price supports and others.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 25-1980, f. & ef. 10-2-80; DEQ 30-1980, f. & ef. 11-10-80

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Solid Waste Recycling Program Rules and Amendments
OAR 340-60-090 to 095 and 340-82-030, and deleting OAR 340-61-100 to 110

Hearing Date: May 16, 1990
Comments Due: May 16, 1990

WHO IS AFFECTED:

Local and regional government units located within and outside of Oregon who are considering sending more than 75,000 tons of solid waste per year to a landfill established since 1979 as a conditional use in an exclusive farm use zone, regional disposal site owners and operators, owners and operators of local solid waste and recycling collection services within the local government units considering sending their waste to a regional disposal site, local governments requesting financial assistance for solid waste facilities, and citizens in these affected areas.

WHAT IS PROPOSED:

DEQ proposes to amend rules for solid waste reduction programs. ORS 459.055 requires that new landfill located in exclusive farm use zones, such as the new Oregon Waste Systems landfill in Gilliam County and the Finley Buttes landfill in Morrow County, may not accept more than 75,000 tons of waste from local government units located within or outside of Oregon unless the government units adopt and implement a waste reduction program approved by DEQ. The proposed rule amendments set requirements that waste reduction programs must meet to be approved by DEQ.

WHAT ARE THE HIGHLIGHTS:

The proposed rules require waste reduction programs to address reduction for each separate waste stream generated, including household waste, commercial waste, industrial waste, yard debris, and demolition material. DEQ will be required to maintain a list of proven methods for reducing waste, and local waste reduction programs will be required to include those methods in their adopted program, or else provide evidence that alternative waste reduction methods proposed or in place are as effective as the methods designated by DEQ, or else that special conditions precludes implementation of the methods designated by DEQ.

- OVER -

811 S.W. 6th Avenue
Portland, OR 97204

11/1/86

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

HOW TO COMMENT:

Copies of the proposed rule package may be obtained from the Hazardous and Solid Waste Division, 811 S.W. Sixth, Portland, Oregon 97204. Oral and written comments will be accepted at the public hearing:

3:00 p.m.
Wednesday, May 16, 1990
DEQ Conference Room 3A
811 S.W. Sixth
Portland, Oregon

Written comments should be sent to Peter Spendelow of the DEQ Waste Reduction Program, Hazardous and Solid Waste Division, 811 S.W. Sixth, Portland, OR 97204, and must be received by 5 pm, May 16th. For further information contact Peter Spendelow at (503) 229-5253, or toll-free within Oregon at 1-800-452-4011.

WHAT IS THE NEXT STEP:

After the public hearing, the Environmental Quality Commission may adopt rules identical to the proposed rules, adopt modified rules on the same subject matter, or decline to act. The Commission's deliberation should come during the regularly scheduled Commission meeting in June 1990.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

WRRULE-D.D04

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Adoption of Rules and Amendments for Waste Reduction Programs, OAR 340-60-090 to 095 and 340-82-030, and deleting OAR 340-61-100 to 110	))))	Statement of Need for Rules for Waste Reduction Programs

1. Statutory Authority

The proposed waste reduction program rules and amendments are proposed under authority of SB 855 (Chapter 541, Oregon Laws of 1989) codified under ORS 459.055 and 459.305.

2. Statement of Need

The proposed rules are needed to carry out the program mandated by the 1989 Legislature by passage of SB 855. That law prohibits a landfill disposal site located as a conditional use in an exclusive farm use zone and established after October 3, 1979 from accepting more than 75,000 tons of waste per year from a local government unit located within or outside of Oregon unless the local government unit is implementing a waste reduction program approved by the Department of Environmental Quality. The proposed rules prescribe the criteria to be used by the Department in approving waste reduction program.

3. Principal Documents Relied Upon

a. OAR 340-60-005 to 125, Rules for Recycling and Waste Reduction, and OAR 340-61-100 to 110, existing Waste Reduction Program Rules.
b. ORS Chapter 459, as amended by Chapter 541, Oregon Laws 1989 (SB 855)

4. Fiscal and Economic Impact

No new fees or changes in fee structure are proposed. Jurisdictions both within and outside the state of Oregon that send 75,000 tons or more of waste per year to an Oregon landfill disposal site established after 1979 as a conditional use in an exclusive farm use zone may incur significant expenses in implementing the required waste reduction program. Due to amendments of ORS 459.055 passed as part of SB 855, the requirements of ORS 459.055 for implementing a waste reduction program will no longer apply to jurisdictions generating less than 75,000 tons of waste per year, although providing a sufficient opportunity to recycle under ORS 459.305 may still be required.

5. Land Use Consistency Statement

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

With regard to Goal 6 (air, water, and land resources quality) the rules are designed to enhance and preserve land resources in the affected area and are considered consistent with the goal.

With regard to Goal 11 (public facilities and services), the rules are designed to extend the life of solid waste disposal facilities through requiring that comprehensive waste reduction programs be implemented. The rules do not appear to conflict with other goals.

Public comment on any land use issue involved is welcome and may be submitted in the same fashions as are indicated for testimony in this notice.

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

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

To: Environmental Quality Commission

From: Anne Cox, Hearings Officer
Peter Spendelow, Recorder

Subject: Report on Public Hearing Held May 16, 1990 Regarding Proposed Rules and Amendments for Waste Reduction Programs, OAR 340-60-090 to 340-60-095 and 340-82-030, and Deleting OAR 340-61-100 to 340-61-110.

Summary of Procedure

A public hearing was held May 16, 1990 at 3:00 pm in Portland to accept testimony on proposed new and amended rules for waste reduction programs required under ORS 459.055 and ORS 468.220 (6). Anne Cox of the Hazardous and Solid Waste (HSW) Division presided as hearings officer, and Peter Spendelow of HSW served as recorder. Two persons presented both oral and written testimony, and four other persons were in attendance. Testimony was completed and the hearing was closed at 3:14 pm.

The following persons presented formal oral and written testimony:

Brian Carlson, Clark County, Washington Department of Public Service
(written testimony signed by Jerry Morse, Clark County)
Ray Hoffman, Seattle, Washington Solid Waste Utility

For both Mr. Carlson and Mr. Hoffman, written testimony closely paralleled oral testimony. Diana Godwin, representing the Oregon Sanitary Service Institute, and Debbie Gorham, representing Metro, also submitted written comments prior to the public hearing.

The following additional persons were in attendance at the hearing, but did not present testimony:

John DiLorenzo, Tidewater Barge Lines
Delyn Kies, Northwest Strategies
Tom Anderson
Bruce Louis, PASSO

Copies of written testimony and comments are attached.

CLARK COUNTY
WASHINGTON

DEPARTMENT OF
PUBLIC SERVICES
Environmental Services Division

May 16, 1990

Mr. Peter Spendelow
DEQ Waste Reduction Program
Hazardous and Solid Waste Division
811 S.W. Sixth
Portland, OR 97204

RE: Proposed Solid Waste Recycling and Waste Reduction Rules and Amendments; OAR 340 Division 60

Dear Mr. Spendelow:

Clark County appreciates the opportunity to review and comment on the proposed new and amended rules.

As you may be aware, Clark County and the City of Vancouver recently entered into a long term contract with Tidewater Barge Lines, Inc. for the recycling and disposal of certain solid waste streams generated from within the county. It is planned that disposal of the nonrecycled solid waste will occur at Tidewater's Finley Buttes Landfill beginning in January 1992. To this end, the proposed new and amended rules are of interest to the County.

The County conceptually supports the waste reduction program policies set forth in the proposed new and amended rules. The County is embarking on implementing an aggressive waste reduction and recycling program that closely parallels the proposed waste reduction program requirements. As a result, the proposed requirements should not create an impact on the County's overall solid waste management system.

The County does have some comments related to certain specific provisions which are discussed as follows.

1. Proposed rule OAR 340-60-092 (1)(d) states that the waste reduction program is to address waste reduction for specific waste streams that are to be sent to the disposal site. Proposed rule OAR 340-60-092 (2) specifies methods for waste reduction programs. These rules should be clarified that for particular waste stream components that are not intended to be sent to the disposal site, that the local jurisdiction could

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1408 FRANKLIN STREET • P.O. BOX 5000 • VANCOUVER, WASHINGTON 98668
FAX (206) 699-2011 • (206) 699-2375

handle these waste stream components in a manner other than that specified in the subsection (2) methods.

For example, if Clark County were to choose to landfill demolition material and yard debris material at an in-County facility or in-State facility, thus preventing that component of the wastestream from entering into the exported wastestream in significant quantities, it should be able to do so without jeopardizing approval of its waste reduction program pertinent to the exported waste stream.

2. It is the County's understanding that no document, standards or guidelines have yet been published for the list of methods specified under proposed rule OAR 340-60-092 (2). The County requests that it be kept informed and involved in the development of the intended document.

3. It is requested that proposed rule OAR 340-60-092 (2) (e) be modified to read "composting or other processing programs ...". Compost is not the only product of a yard debris program. Markets are available and being developed for raw chips , etc.

4. In the accompanying staff report to the EQC dated April 6, 1990, it is stated that DEQ intends to propose rules later this year regarding an administrative fee that will go to offset DEQ staff costs for review and certification of the required waste reduction program reports. The County requests that it be kept informed and involved in the development of the intended fee.

The County appreciates the opportunity to provide these comments for your consideration. If you should have any questions or desire further information, do not hesitate to contact Brian Carlson of this office.

Very truly yours,

Jerry Morse, P.E.
Environmental Services Manager

JM:BC:bc

Seattle
Solid Waste Utility
Division of Seattle Engineering Department

Gary Zarker, Director of Engineering
Diana Gale, Director Solid Waste Utility

TESTIMONY OF RAY HOFFMAN, SENIOR RECYCLING PLANNER, SEATTLE SOLID WASTE UTILITY BEFORE THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY ON PROPOSED RULES FOR WASTE REDUCTION PLANS, MAY 16, 1990

Members of the commission, my name is Ray Hoffman. I am a senior recycling planner testifying on behalf of the City of Seattle's Solid Waste Utility. As we all know, waste reduction has historically been treated as the proverbial black box. For years we have had a name for it and placed it as our top solid waste management priority yet had little idea of what it actually entailed. Fortunately for all of us, that situation is rapidly changing, to the point where jurisdictions are now taking steps to actually incorporate waste reduction strategies into their overall waste management systems systems.

In Seattle, the most effective waste reduction strategy has been the variable can rate structure which gives customers a financial incentive to reduce the amount of garbage they throw away. Since 1981, the average subscription for residential ratepayers has dropped from 3.5 to 1.04 cans.

It is because of our own efforts in waste reduction that we are supportive of your efforts to incorporate standards for waste reduction programs for local and regional government units located within and outside of Oregon who are considering sending more than 75,000 tons of solid waste per year to a landfill established since 1979 as a conditional use in an exclusive farm use zone. As you well know, Seattle's current negotiations with Waste Management for use of the Arlington Landfill in Gilliam County could result in Seattle shipping by rail well over 75,000 tons per year to the Arlington Site. A final decision is due by the City Council no later than October of this year.

It is because of Seattle's potential use of the Arlington landfill that I am hear before you today. Seattle stands ready and willing to meet the same standards for waste reduction that you will be applying to Portland and perhaps other jurisdictions as well.

In the interest of clarity, however, we must emphasize our concern that these waste reduction program requirements be applied only to those waste streams **that will be sent to the disposal site.** To apply those requirements to waste streams not being sent to the landfills under consideration would be inequitable to any jurisdiction who plan on disposing of various waste streams at other disposal sites.

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We also recognize that due to the nature of solid waste disposal, it is reasonable to expect certain assurances be given to the state of Oregon that only the specified waste streams are actually being delivered to the disposal site. The City stands ready to provide those assurances. In closing, I would like to reiterate Seattle's support for the waste reduction standards and our concern that those standards only be applied to waste streams being sent to an Oregon disposal site. Thank you for the opportunity to testify.

METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

January 22, 1990

Dave Rozell, Manager
Waste Reduction Section
Hazardous and Solid Waste Division
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Dear Dave:

Thank you for seeking our opinion and comments on the proposed amendments to the waste reduction program rules.

It is evident that the proposed rules do indeed fill many of the existing gaps in the waste reduction rules by being more specific in the implementation methods. It is gratifying to see that Metro and DEQ are in synch on many of the items.

In our guidelines to local government (Model Annual Waste Reduction Work Program) we have proposed two program components you may want to consider. There should be some requirement regarding the frequency of service provided (like weekly) and a means to identify a contact person. It may be assumed that if a local government went through all these rules it would be with one person managing the process. But, I think it would be appropriate to point out the necessity up front. The obvious may not be so obvious to a reluctant jurisdiction.

Another area of concern that may be beyond the scope of your rule, but is important to the success of curbside and drop off programs is the quality and functionality of the equipment. It is then very easy to jump to a discussion that will focus on how to pay for new equipment which then becomes another element that needs to be addressed. Even though you list "funding level" in 4(d),

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perhaps some language needs to be included that requires documentation of the source of the funding rather than the amount. That way you avoid the congressional trick of authorizing a program but not appropriating any money for it.

Thank you for the opportunity to review the rules. If you have any questions please call me.

Sincerely,

Debbie Gorham
Waste Reduction Manager

DG:sg

cc: Bob Martin, Director of Solid Waste
Greg McMurdo, Governments Relations Manager

PROPOSED REVISION OF NEW OAR 340-60-091
SUBMITTED BY OSSI

Applicability for Certification and Waste Reduction Programs
340-60-091

(1) A waste reduction plan approved by the Department under OAR 340-60-093 shall be required before:

(a) issuance of a permit for a landfill under ORS 459.047 through 459.055;

(b) issuance of Pollution Control Bond Fund monies to local government pursuant to ORS 468.220;or

(c) A landfill established after October 3, 1979, as a conditional use in an area zoned for exclusive farm use accepts more than 75,000 tons per year of wastes from a local government unit.

(2) Certification by the Department under OAR 340-60-095 shall be required before a regional disposal site, which is not covered by subsection (1)(c) of this rule, accepts more than 75,000 tons per year of wastes from a local government which is not required to implement a waste reduction program under ORS 459.055.

To: Environmental Quality Commission

From: Peter Spendelow, Waste Reduction Section

Subject: Departmental Response to Public Comment on Proposed Rules and Amendments for Waste Reduction Programs

Oral and/or written comments were received from the following four persons:

Brian Carlson, Clark County Department of Public Service
Ray Hoffman, Seattle Solid Waste Utility
Debbie Gorham, Metro
Diana Godwin, Oregon Sanitary Service Institute

Brian Carlson, Clark County Department of Public Service

Mr. Carlson stated that Clark County and the City of Vancouver have contracted to dispose waste at the Finley Butte landfill starting in 1992. He supports the policy of the rules, and believes them to be fair yet aggressive, and will go far to lead this portion of the country in recycling.

Specific clarifications of the rule were suggested. First, jurisdictions should not be held to carry out waste reduction programs for specific waste streams if those waste streams are not being disposed in an Oregon regional landfill. For example, if Clark County handles specific waste streams such as demolition material and yard debris within the county, and does not send those waste streams to an Oregon regional landfill, then the County should not be held to the waste reduction programs specific to those waste streams that are mandated by the proposed rules.

Second, Mr. Carlson stated that the county would like to be kept informed as further specific requirements or guidelines are developed. Third, a rule change was suggested that would allow other uses of yard debris besides composting. Fourth, the County requested to be involved and informed regarding development of administrative fees regarding costs for out-of-state wastes.

Written testimony submitted (letter signed by Jerry Morse,

Environmental Services Manager) closely paralleled the oral testimony.

Departmental response

Regarding waste streams not destined for affected disposal sites, OAR 340-60-092 (1)(d) requires waste reduction programs only "for each separate waste stream... that is to be sent to the disposal site". The Department did not intend the waste reduction requirements to apply to waste streams not destined for disposal in an affected site. The wording has been changed to "sent to [the] affected Oregon disposal sites" to make this more clear.

Regarding other uses of yard debris, the Department agrees. The wording of OAR 340-60-092 (2)(e) has been changed to "composting or other utilization programs for source-separated yard debris. The word "utilization" was used rather than "processing" as proposed by Clark County to make clear that processing without subsequent use is not sufficient.

Ray Hoffman, Seattle Solid Waste Utility

Mr. Hoffman stated that they are supportive of our efforts to set standards for waste reduction programs, and that Seattle stands ready and willing to meet the same standards as are being applied to the Portland Metro area and to other jurisdictions. Ray also wished to clarify that the waste reduction program requirement apply only to those waste streams that will be sent to the disposal site, providing that assurance can be given that other waste streams are not being sent to the disposal site.

Departmental response

see response above to the testimony of Brian Carlson.

Debbie Gorham, Metro

Ms. Gorham submitted written comments on the proposed rules. These comments were prepared as part of a pre-hearing review process.

Ms. Gorham stated that the proposed rules do fill in many of the existing gaps in the waste reduction rules, and that "it is gratifying to see that Metro and DEQ are in sync on many of the items". Ms. Gorham suggested that weekly collection service be required, and that a contact person be identified for each jurisdiction. Ms. Gorham also suggested that in addition to require information on the funding level for waste reduction programs, the source of funds should also be identified.

Departmental response

The Department agrees with Ms. Gorham regarding funding, and made changes in the rules accordingly prior to public hearing. Regarding identification of a contact person, this will be provided as part of the recycling reports required under existing OAR 340-60-105 (1), referenced by OAR 340-60-093 (4)(a). Regarding collection service, the Department agrees, but is concerned that this might be viewed as a more stringent requirement on out-of-state waste than in-state since some monthly collection still occurs in the Metro area. The Department intends to include weekly collection in the goals and standards now being prepared as part of a legislative concept, and when adopted intends to include these goals and standards as part of the waste reduction program requirements.

Diana Godwin, Oregon Sanitary Service Institute

Prior to the public hearing, Ms. Godwin submitted a suggested revision of proposed rule OAR 340-60-091 concerning applicability of the waste reduction and certification rules (see Attachment D). Ms. Godwin believed that the language proposed by the Department was difficult to understand, and could be substantially simplified without changing the meaning.

Departmental response

The Department accepts the suggested wording for OAR 340-60-091 (1)(b). Regarding the suggestion for OAR 340-60-091 (1)(a), the Department believes this implies that jurisdiction siting landfills under ORS 459.047 would be required to implement a waste reduction program even if they produce less than 75,000 tons of waste per year. SB 855 (1989 session) dropped this requirement for jurisdictions landfilling less than 75,000 tons of waste per year.

Regarding the suggestion for OAR 340-61-091 (2), the Department believes the suggested wording strongly changes the effect of the rule. Current rules require certification of the opportunity to recycle for all out-of-state jurisdictions that ship more than 1,000 tons of waste per year to an Oregon regional landfill, or before an in-state jurisdiction ships any waste to an Oregon regional landfill. The OSSI suggested wording appears to not require certification unless jurisdictions send more than 75,000 tons of waste per year to an Oregon regional landfill. Also, the OSSI suggested wording appears to exclude jurisdictions from any certification requirements under OAR 340-60-095 if the jurisdiction sends waste to a landfill constructed since 1979 in an exclusive farm use zone. The Department believes that although the language we proposed for OAR 340-60-091 (2) is complicated, it accurately reflects the intent of the Department.

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: April 6, 1990
Agenda Item: K
Division: HSW
Section: Waste Reduction

SUBJECT:

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

PURPOSE:

Set criteria for approval of solid waste reduction programs. Waste reduction programs are required under ORS 459.055 for jurisdictions which send more than 75,000 tons of waste per year to a landfill that is located in an exclusive farm use zone, and under ORS 468.220 (6) for local government units receiving loans and grants from the Pollution Control Bond Fund for solid waste management planning and assistance.

ACTION REQUESTED:

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

_x_ Authorize Rulemaking Hearing
___ Adopt Rules

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

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

Proposed Order	Attachment ___

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

Attachment ___
Attachment ___
Attachment ___
Attachment ___

DESCRIPTION OF REQUESTED ACTION:

Authorization is requested to conduct a public hearing to amend rules for waste reduction programs required under ORS 459.055, as amended by SB 855 (Chapter 541, Oregon Laws 1989).

ORS 459.055, as originally adopted in 1979, required jurisdictions siting a landfill to adopt and carry out a waste reduction program if the landfill was sited as a conditional use in an exclusive farm use zone. This requirement fell upon only jurisdictions actually involved in siting the new landfill, and not on other jurisdictions subsequently using the landfill. Senate Bill (SB) 855, passed in 1989, changed this by requiring waste reduction programs for all jurisdictions sending more than 75,000 tons of waste per year to a farm-use-zone landfill (established after 1979), but exempting from waste reduction program requirements all jurisdictions sending less than 75,000 tons of waste per year to the landfill.

The original rules for waste reduction programs were designed mainly as a planning guide for developing a waste reduction program, and therefore lack specificity. The Department of Environmental Quality (Department) now feels that much more is known about successful waste reduction strategies than was known when the original waste reduction rules were adopted in 1980. Therefore, the Department is now proposing requirements for specific elements that must be included in a waste reduction program. Some examples of requirements in proposed rule 340-60-092 include:

- techniques for promotion, education, and public involvement;
- techniques for salvage of building material and reusable items;
- the use of containers and other techniques to enhance source-separation of recyclable material;
- composting programs for source-separated yard debris;
- fees and rate structures that promote source separation and recovery of material;
- procurement requirements;

- o assistance and consultation with businesses on waste reduction; and
- o programs to keep prohibited material such as hazardous waste and lead-acid batteries out of the waste destined for disposal.

Many of the specific requirements proposed here are derived from activities presently being successfully carried out by the Portland Metropolitan Service District (Metro) and other jurisdictions.

The existing waste reduction program rules are located in OAR 340 Division 61, along with other general solid waste rules. The existing recycling and certification rules are located in OAR 340 Division 60. For compatibility of subject matter, the Department is proposing to place all regulations on recycling and waste reduction programs in OAR 340 Division 60.

Waste reduction programs are also required under ORS 468.220 for local government units receiving loans or grants for solid waste disposal facilities or planning for such facilities. Many jurisdictions that may request financial assistance are small or rural jurisdictions not expected to produce more than 75,000 tons of waste per year. The proposed rules recognize that certain waste reduction measures are not appropriate for small or rural jurisdictions.

AUTHORITY/NEED FOR ACTION:

x	Required by Statute: SB 855	Attachment C
	Enactment Date: 1989 session	
x	Statutory Authority: ORS 459.055, 468.220	Attachment C
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
___	Prior EQC Agenda Items: (list)	Attachment ___
x	Other Related Reports/Rules/Statutes:	
	OAR 340-61-100 to 110 (existing rules)	Attachment B
___	Supplemental Background Information	Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

ORS 459.055 (as amended by SB 855) affects all landfills established since 1979 as a conditional use in an exclusive farm use zone that receive more than 75,000 tons per year from a single jurisdiction. The Arlington Landfill in Gilliam County and the proposed Finley Buttes landfill in Morrow County are the only landfills in Oregon that presently fall under these requirements. The Portland area Metropolitan Service District is presently the only Oregon jurisdiction sending more than 75,000 tons of waste per year to one of these landfills. Seattle, Snohomish County, and Clark County are three Washington jurisdictions that are seriously considering sending more than 75,000 tons of waste per year to the Arlington or Finley Buttes landfill.

Jurisdictions sending less than 75,000 tons of waste per year to the Arlington or Finley Buttes landfill are not required by SB 855 to adopt and carry out a full waste reduction program, but are required to be certified as providing an opportunity to recycle equivalent to the requirements of the Recycling Opportunity Act (SB 405, 1983 session) in Oregon. All Oregon jurisdictions are already required to provide this opportunity to recycle. Kennewick, Washington is the only jurisdiction outside Oregon presently sending solid waste to the Arlington or Finley Buttes landfill. Kennewick will be required to be certified as providing a sufficient opportunity to recycle by July 1, 1990, under both existing and proposed rules.

Some officials from out-of-state jurisdictions have indicated informally that the requirements of SB 855 will not influence their decision regarding sending waste to landfills in Oregon or other states, as they believe their present waste reduction program will meet any reasonable requirement set by the Environmental Quality Commission (Commission). Other jurisdictions considering sending wastes to Oregon do not have waste reduction programs strong enough to meet the criteria proposed here. If the rules and amendments proposed here are adopted, these jurisdictions would have to either strengthen their waste reduction programs or find other alternatives for disposal of their garbage. The law does give the Department clear authority to prohibit affected landfills from receiving wastes from a jurisdiction if the Department does not approve the jurisdiction's waste reduction program, or if the Department determines that the waste reduction program is not being implemented.

Waste crossing state boundaries has been held by the courts as being a commodity subject to the Interstate Commerce

Clause of the Constitution. The new rules and amendments proposed here have been designed to be no more strict on out-of-state waste than on Oregon-generated waste, so as to not restrict the flow of material across state boundaries.

Jurisdictions receiving state funds for development or planning for solid waste disposal facilities also have been required since 1979 to adopt and implement waste reduction programs under ORS 468.220. The Department has not had requests for such funding assistance since 1985. However, some local jurisdictions may request financial assistance for closing landfills and developing transfer systems due to new landfill standards proposed by the Environmental Protection Agency under the Resource Conservation and Recovery Act Subtitle D, and thus will be required to adopt and implement a waste reduction program. Since some waste reduction requirements for large jurisdictions under ORS 459.055 are not appropriate for smaller jurisdictions under ORS 468.220, the proposed rules specify less strict waste reduction requirements for jurisdictions that produce less than 75,000 tons of waste per year.

The proposed rules and amendments were reviewed by the Department's Solid Waste Reduction Advisory Committee on March 9, 1990. No amendments were proposed. However, the Oregon Sanitary Service Institute did recommend clarifying requirements with regard to ORS 468.220, which has been done in Section 340-60-092 (3) of the rule.

PROGRAM CONSIDERATIONS:

Reviewing waste reduction and recycling programs will have an impact on staff resources. Estimates for the number of out-of-state jurisdictions requiring either approval of waste reduction programs or recycling certification range from 6 to 15 in the next 2 to 3 years. The 1989 Legislature did not provide additional resources to conduct the necessary reviews. The Legislature did provide for the Commission to adopt a special fee for regional landfills that would reimburse the Department for administrative costs of accepting out-of-state wastes. The effective date of the fee can be no earlier than January 1, 1991. The costs of waste reduction program review and recycling certification are costs that could be covered by this special fee. The Department intends to propose rules regarding this special fee later this year.

No requests for financial assistance for developing solid waste facilities are expected this biennium, and thus the

Department does not expect to review any waste reduction programs under ORS 468.220 until after then next legislative session.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt rules and rule amendments proposed here, which add specific requirements and criteria to the existing waste reduction program rules as well as incorporate amendments required by SB 855. Place all regulations on recycling and waste reduction programs in OAR 340 Division 60.

2. Adopt just the minimum requirements, related to changed tonnage limits, to make the existing waste reduction program rules consistent with SB 855.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission authorize a public hearing on the proposed rules and rule amendments shown in Attachment A. The Department is concerned that existing waste reduction program rules (OAR 340-61-100 to 110) do not provide specific requirements or criteria for waste reduction programs. The Department believes that much more is known about what constitutes an effective waste reduction program than was known in 1980. Therefore, the proposed rules and amendments reflect that knowledge by stating specific requirements for effective waste reduction programs.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules and rule amendments fulfill the requirements of ORS 459.055 and ORS 459.305, as amended by SB 855 (1989 session), are consistent with the policy requirements of ORS 459.015, and with the Department's Strategic Plan.

ISSUES FOR COMMISSION TO RESOLVE:

How strong should the requirements for waste reduction programs be? Should they be strong requirements that drive waste reduction efforts in affected jurisdictions, or should they be less strong so as to minimize the potential of legal challenge?

INTENDED FOLLOWUP ACTIONS:

If authorized by the Commission, the Department intends to hold a public hearing May 16, 1990 on the proposed rules and rule amendments, and to propose adoption of final rules at the June 1990 EQC meeting.

Approved:

Section: David Ryall

Division: Stephanie Hallock

Director:

Report Prepared By: Peter Spendelow
Phone: 229-5253
Date Prepared: March 20, 1990

Spendelow
WORDP\WRRULE.D04

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: X
Division: Water Quality
Section: Standards and Assessments

SUBJECT:

Proposed Adoption of Rule Amendments to Establish Definitions for Limited Receiving Streams and Establish Requirements for the Consideration of Increasing Waste Loads in Water Quality Limited Receiving Streams.

PURPOSE:

The rules, if adopted, would add three definitions to OAR 340-41-006: one for effluent limited receiving streams, one for water quality limited receiving streams, and one for reserve capacity. The rules would also establish the criteria under which the Commission and Department could consider and potentially approve waste load increases for new or existing sources that discharge into water quality limited receiving streams. These rules could potentially 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.

The rules would:

- Establish specific water quality management program requirements for considering waste load increase requests to water quality limited receiving streams;
- Establish specific water quality limited receiving stream categories to address the different management approaches described in the federal Water Quality Act and 40 CFR 130; and
- Establish definitions for "water quality limited", "effluent limited", and reserve capacity".

There has been considerable discussion and much inference made as to why the Commission and Department are considering these rule amendments. The suggested reason for these proposed changes has been to provide a means whereby WTD could reapply for a waste water permit for the discharge of waste water into the Columbia River. (The Columbia River is designated water quality limited and the current rules would restrict such waste load increases.) **This is not the purpose of these proposed rules.** It is unfortunate that this particular permit request initiated the close examination of this rule and how it is to be implemented. The difficulties and limitations of this rule go well beyond the specifics of the WTD permit application or any one permit.

The proposed rules establish a framework in which to manage the state's water quality program and implement the new water quality based program.

This proposed rule describes how the Commission and Department are going to implement the water quality based program it embraced as a result of the lawsuit settlement on the Tualatin River. The purpose of a water quality based program is to examine the receiving stream to determine its ability to receive and assimilate waste water discharges and still meet established water quality standards and protect identified beneficial uses. It is to be an orderly and rational examination and determination, with the allocation of the available assimilative capacity to existing sources, a safety margin, and a reserve. The amount of the load allocated to existing sources, a safety margin, and reserve are very much associated with the level of knowledge about the stream and its problems. The expectation is that if a reserve exists, the Commission and Department would be allowed to allocate it to future growth and development.

One fundamental purpose of the water quality based program is to define what capacity is left in a stream and provide a rational and deliberate approach for distributing that capacity to future growth and development. The current rules, in being developed and adopted at the same time as the Department was still learning and trying to understand the fundamentals of the water quality based program, fail to reflect how the water quality based program was to work.

The rules, as currently written, prevent the Commission and Department from allocating available assimilative capacity. For example, if a stream is violating water quality standards for dissolved oxygen during the summer months and has been designated water quality limited, the Commission and Department could not consider and potentially approve a

waste load increase request for a winter time load increase on that same stream when the stream actually has considerable assimilative capacity available and no water quality standards violations during the winter limitations. In fact, if a facility, which discharges to that water quality limited stream during the summer, wanted to hold its waste water during the summer and discharge in the winter time during high flows when there is greater assimilative capacity, the current rule would prevent the consideration of this winter time load increase even though it could help solve the summer time water quality problem.

Another example is that if a water quality limited stream on which TMDLs, WLAs and LAs have been set achieves water quality standards and begins to accumulate reserve capacity, the current rules would restrict the allocation of any of this assimilative capacity until all the projected reserve capacity was present and all waste load allocations and load allocations had been achieved. This is not the intent of the water quality based program. The purpose of the program is to achieve water quality standards through a process where the loading capacity is identified, a portion of the loading capacity is allocated, and a portion is held in reserve. It is not a program to prevent waste water dischargers when standards are met and sufficient capacity exists.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
_X_ Adopt Rules

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

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

Proposed Order	Attachment ___

___ Approve Department Recommendation

___ Variance Request	Attachment ___
___ Exception to Rule	Attachment ___
___ Informational Report	Attachment ___

___ Other: (specify) Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The Department developed for the Commission three rule options which were taken to hearing. The Department's requested action, Option 2, would address all the points identified below. For the other two options, Option 1 would address those points identified in numbers 1, 2, 3, and 4, while Option 3 would address everything listed below and also allow the Commission and Department to grant very small increases to water quality limited streams even when reserve capacity does not currently exist.

1. The current rules do not define the terms "water quality limited", "effluent limited", and "reserve capacity".

   The proposed rule amendments in define these terms.

2. The current rules restrict the Commission and Department from considering waste load increases to all receiving streams designated as water quality limited receiving streams.

   The proposed rules establish the criteria upon which the Commission and Department may consider and potentially grant waste load increases to water quality limited receiving streams.

3. The current rules do not describe how a receiving stream is designated water quality limited.

   The proposed rules describe how a receiving stream is designated water quality limited.

4. The current rules restrict the Commission and Department from considering waste load increases to a receiving stream designated water quality limited even during seasons when the receiving stream is in full compliance with water quality standards.

   The proposed rules would allow the Commission and Department to consider and potentially grant waste load increases to water quality limited receiving streams during seasons when the receiving stream has adequate assimilative capacity and does not violate standards.

5. The current rule restricts the consideration of waste load increases to water quality limited receiving

streams even when sufficient reserve assimilative capacity exists, in excess of the established safety margin, and is available to allocate to the requested increase.

The proposed rule would allow the consideration and potential granting of waste load increases when sufficient reserve assimilative capacity exists, above the established safety margin, on water quality limited receiving streams.

6. The current rule restricts the consideration of waste load increases to water quality limited receiving streams until all waste load allocations have been met.

   The proposed rules establish criteria upon which the Commission and Department could consider granting waste load increases to water quality limited receiving streams if assimilative capacity, above the established safety margin, would be available in the stream when that discharge comes on line.

7. The current rules do not allow the Commission or Department to consider increasing waste loads to water quality limited receiving streams even to solve existing, immediate, and critical environmental problems.

   The proposed rules allow the consideration of waste load increases to solve critical environmental problems.

8. The current rules do not establish a process whereby the list of water quality limited receiving streams are placed on public notice for public review and comment.

   The proposed rule requires that the Biennial Water Quality Status Assessment Report and its Appendix A be placed on public notice for review and comment.

9. The current rules do not require the Department to establish a priority list for future water quality monitoring activities for certain designated water quality limited receiving streams.

   The proposed rule requires that the Department establish a priority list for monitoring activities on water quality limited stream designated under OAR 340-41-026(27)(c).

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 468.020, 710, 715 Attachment ___
___ Pursuant to Rule: _____ Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

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

1. Item K, January 19, 1990, EQC Meeting (not attached). Attachment ___

___ Other Related Reports/Rules/Statutes: Attachment ___

_X_ Supplemental Background Information Attachment B

Proposed rule options taken to Public Hearing.

Considerable information has been developed regarding this proposed rule and the various attachments provide detailed discussion.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Existing cities and industries that are growing and considering additional waste discharges under existing waste water discharge permits may be affected by the rules. New facilities which will be applying for waste water discharge permits may be effected. The rules describe whether requests for waste load increase from these facilities to a water quality limited receiving stream could be considered by the Commission or Department.

PROGRAM CONSIDERATIONS:

The current rule OAR 340-41-026(3)(a) restricts the Commission and Department from granting waste load increases for new and existing sources that discharge pollutants of concern into receiving streams designated "water quality limited". This restriction, as currently written, prevents the consideration of waste load increases regardless of

whether the stream has sufficient assimilative capacity to handle the proposed waste increase. It appears to be restrictive based solely on a stream being designated water quality limited, without any consideration being given to what type of water quality limited receiving stream it is or if there is a water quality problem associated with its designation, what time of year this problem occurs.

It was not the intent of the Commission to place a waste load increase restriction on all receiving streams designated water quality limited. The term "water quality limited" is used to identify a number of different types of streams and represents several different levels of knowledge regarding the water quality conditions in these streams. This term includes those streams being investigated to determine their water quality status as a result of the NEDC/EPA law suit, those streams identified through the 305(b) report as having water quality standards exceedences, those streams with confirmed toxic discharges, those streams with suspected toxic discharges, and those streams meeting water quality standards but which implement greater than standard treatment technology. In other words, the term water quality limited may have a different meaning depending on which specific stream is being discussed. It is related to such things as the level of water quality data available to define a problem, whether there is a suspected or confirmed toxic source, or the level of treatment technology required for that receiving stream. The absolute load increase restriction required by the current rule fails to recognize this fact and it places all streams designated as water quality limited in the same catergory.

In addition, the current rule does not distinguish between seasons of the year in which the water quality problems may or may not exist. The broad term of water quality limited given to a stream for the purposes of the current rule would apply through out the year, even if the problem was seasonal.

The proposed rules would define water quality limited and describe specifically the conditions under which the Commission and Department could consider waste load increase requests.

The Hearing Officers Report and the response to testimony provide considerable detail on the issues raised during the public hearings (Attachments C and D).

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

At the request of the Commission, the Department developed three distinct proposed rule options to address the various concerns and comments made to the Commission on the current rule. All three of these options were taken to hearing for public comment.

1. The first option considered, reflected the current rule restriction of not allowing any increase in waste load until all waste load and load allocations were met. It did, however, add definitions for the terms water quality and effluent limited, identify the process under which receiving streams would be designated water quality limited, and consider the issue of water quality limited waterbodies for interstate waters.

2. The second option established criteria for considering additional waste loads discharged to water quality limited receiving streams. This option would require that TMDLs\WLAs and LAs be established and are being implemented on schedule for an increase to be considered. Definitions for the terms water quality and effluent limited, identifys the process under which receiving streams would be designated water quality limited, and addresses the issue of interstate waters. Finally, it allows the Commission and Department to grant waste load increases to solve existing, immediate, and critical environmental problems.

3. The third option was identical to Option 2, but it also allows the Commission and Department to grant very small increases that would not prevent the stream from meeting the allocated loads and schedules or significantly affect beneficial uses.

4. The Department also considered maintaining the current rule. This option would, however, leave the Department with little direction on when a stream is designated water quality limited and consequently when the restrictions applied. Without added clarification, the Commission and Department would have to deny any waste load increase requests on all water quality limited receiving streams, regardless of whether assimilative capacity exists, until total maximum daily loads (TMDL), waste load allocations (WLAs), load allocations (LAs), and reserve capacities have been established and were fully met. This is contrary to the intent of the water quality based approach.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the adoption of Option 2. This option provides much need guidance to the Department as well as to the environmental and regulated communities.

If the current rule is to function as intended to restrict increased waste loads to water quality limited receiving streams that are violating standards, the Commission needs to provide greater clarification as to when these restrictions apply and how and when available assimilative capacity will be allocated. There are several issues regarding the current rules which the Commission must provide further clarification and direction. Option 2 provides that needed clarification and direction.

The proposed rule provides:

- Definitions for the terms water quality limited and effluent limited, and reserve capacity.
- A description of process whereby a stream is designated water quality limited, and
- Clarification of when and under what conditions the Commission and Department could consider and potentially grant requests for increased waste loads.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The Commission and Department have identified the assessment of the state's water quality and the development and implementation of TMDLs\WLAs and LAs as high priority items in the Strategic Plan.

ISSUES FOR COMMISSION TO RESOLVE:

1. Does the Commission want to consider increases in waste loads to water quality limited receiving streams with available assimilative capacity before all waste load allocations and load allocations have been achieved?

2. Does the Commission want to consider waste load increases to water quality limited receiving streams to solve existing, immediate, and critical environmental problems?

3. Does the Commission want to consider waste load increases to water quality limited receiving streams for very small additional loads?

4. Does the Commission want to define the term "water quality limited" and provide clarification on how receiving streams are designated water quality limited?

5. Does the Commission want to require, by rule, that the Biennial Water Quality Status Assessment Report (305(b) report) be placed on public notice for review and comment? This report would contain the list of receiving streams that are water quality limited.

6. Does the Commission want to modify the "threaten or impair any recognized beneficial uses" language in the recommended rule by adding the word "significantly" or can significantly be deplored by the word "unacceptably"?

7. Does the Commission want to define the term "temporary" as it appears in OAR 340-41-026(3)(a)(C)(iii)?

8. Does the Commission want to make the requirement for sufficent reserve capacity to handle the increased load as a permit condition or as a requirement for a permit.

INTENDED FOLLOWUP ACTIONS:

Implement the rules adopted by the Commission.

Approved:

Section: Neil Mullane

Division: Lydia Taylor

Director: Lydia Taylor

Report Prepared By: Neil Mullane

Phone: 229-5284

Date Prepared: 6/6/90

NM:hs
SA\WH4094
June 19, 1990

OREGON ADMINISTRATIVE RULES
340-41-006 & 340-41-026

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.

DEFINITIONS

340-41-006

Definitions applicable to all basins unless context requires otherwise:

(1) "BOD" means 5-day 20°C. Biochemical Oxygen Demand.

(2) "DEQ" or "Department" means the Oregon State Department of Environmental Quality.

(3) "DO" means dissolved oxygen.

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(5) "Estuarine waters" means all mixed fresh and oceanic waters in estuaries or bays from the point of oceanic water intrusion inland to a line connecting the outermost points of the headlands or protective jetties.

(6) "Industrial waste" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business, or from the development or recovery of any natural resources.

(7) "Marine waters" means all oceanic, offshore waters outside of estuaries or bays and within the territorial limits of the State of Oregon.

(8) "mg/l" means milligrams per liter.

(9) "Pollution" means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or such radioactive or other substance into any waters of the state which either by itself or in connection with any other substance present, will or can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health,

safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life, or the habitat thereof.

(10) "Public water" means the same as "waters of the state".

(11) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface water as may be present. The admixture with sewage as herein defined of industrial wastes or wastes, as defined in sections (6) and (13) of this rule, shall also be considered "sewage" within the meaning of this division.

(12) "SS" means suspended solids.

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

(14) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(15) "Low flow period" means the flows in a stream resulting from primarily groundwater discharge or baseflows augmented from lakes and storage projects during the driest period of the year. The dry weather period varies across the state according to climate and topography. Wherever the low flow period is indicated in the Water Quality Management Plans, this period has been approximated by the inclusive months. Where applicable in a waste discharge permit, the low flow period may be further defined.

(16) "Secondary treatment" as the following context may require for:

(a) "Sewage wastes" means the minimum level of treatment mandated by EPA regulations pursuant to Public Law 92-500.

(b) "Industrial and other waste sources" imply control equivalent to best practicable treatment (BPT).

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

(18) Loading Capacity (LC): The greatest amount of loading that a water can receive without violating water quality standards.

(19) Load Allocation (LA): The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting loading. Wherever possible, natural and nonpoint source loads should be distinguished.

(20) Wasteload Allocation (WLA): The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

(21) Total Maximum Daily Load (TMDL): The sum of the individual WLAs for point sources and LAs for nonpoint sources and background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.

(22) "Land Development" refers to any human induced change to improved or unimproved real estate, including but not limited to construction, installation or expansion of a building or other structure, land division, drilling, and site alteration such as that due to land surface mining, dredging, grading, construction of earthen berms, paving, improvements for use as parking or storage, excavation or clearing.

(23) "Jurisdiction" refers to any city or county agency in the Tualatin River and Oswego Lake subbasins that regulates land development activities within its boundaries by approving plats, site plans or issuing permits for land development.

(24) "Erosion Control Plan" shall be a plan containing a list of best management practices to be applied during construction to control and limit soil erosion.

(25) "Public Works Project" means any land development conducted or financed by a local, state, or federal governmental body.

(26) "Stormwater Quality Control Facility" refers to any structure or drainage way 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 water quality

improvement. 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.

(27) "Water Quality Swale" is a natural depression or wide shallow ditch used to temporarily store, route, or filter runoff for the purpose of improving water quality.

(28) "In lieu fee" means a fee collected by a jurisdiction in lieu of requiring construction of on-site stormwater quality control facilities.

(29) "Effluent Limited" can mean one of the following categories:

(a) A receiving stream which is meeting and/or is expected to meet water quality standards with the implementation of standard treatment technology which is secondary treatment for sewage wastes and best practicable treatment (BPT) for industrial and other waste sources.

(b) A receiving stream for which there is insufficient information to determine if water quality standards are being met with standard treatment technology.

(30) "Water Quality Limited" can mean one of the following categories:

(a) A receiving stream which does not meet instream water quality standards during the entire year or defined season even after the implementation of standard technology.

(b) A receiving stream which achieves and is expected to continue to achieve instream water quality standard but utilizes higher than standard technology to protect beneficial uses.

(c) A receiving stream for which there is insufficient information to determine if water quality standards are being met with higher than standard treatment technology or where through professional judgment the receiving stream would not be expected to meet water quality standards during the entire year or defined season without higher than standard technology.

(31) "Reserve Capacity" means that portion of a receiving stream's loading capacity which has not been allocated to point sources or nonpoint sources and natural background as waste load allocations or load allocations, respectively. The reserve capacity includes that loading capacity which has been set aside for a safety margin and is otherwise unallocated.

POLICIES AND GUIDELINES GENERALLY APPLICABLE TO ALL BASINS

340-41-026

(1) In order to maintain the quality of waters in the State of Oregon, it is the general policy of the EQC that:

(a) Existing high quality waters which exceed those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected unless the ~~[Environmental Quality]~~ Commission chooses, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, to lower water quality for necessary and justifiable economic or social development. The Director or his designee may allow lower water quality on a short-term basis in order to respond to emergencies or to otherwise protect public health and welfare. In no event, however, may degradation of water quality interfere with or become injurious to the beneficial uses of water within surface waters of the following areas:

(A) National Parks;
(B) National Wild and Scenic Rivers;
(C) National Wildlife Refuges;
(D) State Parks.

(b) Point source discharges shall follow policies and guidelines (2), (5) [~~(4)~~], and (6) [~~(5)~~], and nonpoint source activities shall follow guidelines (7), (8), (9), (10), and (11) [~~(6), (7), (8), (9), and (10)~~].

(2) In order to maintain the quality of waters in the State of Oregon, it is the general policy of the EQC to require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads except as provided in section (3) of this rule.

(3) The Commission or ~~[Director]~~ Department may grant exceptions to sections (2) and (6) [~~(5)~~] and approvals to section (5) [~~(4)~~] for major dischargers and other dischargers, respectively. Major dischargers include those industrial and domestic sources that are classified as major sources for permit fee purposes in OAR 340-45-075(2).

(a) In allowing new or increased discharged loads, the Commission or ~~[Director]~~ Department shall make the following findings:

(A) The new or increased discharged load would not cause water quality standards to be violated;

(B) The new or increased discharged load would not threaten or impair any recognized beneficial uses[;]. In making this determination, the Commission or Department may rely upon the presumption that if the numeric criteria established to protect specific uses are met the beneficial uses they were designed to protect are protected. In making this determination the Commission or Department may also evaluate other state and federal agency data that would provide information on potential impacts to beneficial uses for which the numeric criteria have not been set;

(C) [~~The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited unless the pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to be water quality limited; and~~] The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited under OAR 340-41-006(30)(a), unless:

(i) The pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to violate water quality standards and being designated water quality limited; or

(ii) Total maximum daily loads (TMDLs), waste load allocations (WLAs) load allocations (LAs), and the reserve capacity have been established for the water quality limited receiving stream; and compliance plans under which enforcement action can be taken have been established and are being implemented on schedule; and there is sufficient reserve capacity to assimilate the increased load under the established TMDL at the time of discharge; or

(iii) Under extraordinary circumstances to solve an existing, immediate, and critical environmental problem that the Commission or Department may consider a waste load increase for an existing source on a receiving stream designated water quality limited under OAR 340-41-006(30)(a) during the period between the establishment of TMDLs, WLAs and LAs and their achievement based on the following conditions:

(I) That TMDLs, WLAs and LAs have been set; and

(II) That a compliance plan under which enforcement actions can be taken has been established and is being implemented on schedule; and

(III) That an evaluation of the requested increased load shows that this increment of load will not have an unacceptable temporary or permanent adverse effect on beneficial uses; and

(IV) That any waste load increase granted under subsection (iii) of this rule is temporary and does not extend beyond the TMDL compliance deadline establishment for the waterbody. If this action will result in a permanent load increase, the action has to comply with subsections (i) and (ii) of this rule.

(D) The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.

(b) Oregon's water quality management policies and programs recognize that Oregon's water bodies have a finite capacity to assimilate waste. ~~[The strategy that has been followed in stream management has hastened the development and application of treatment technology that would not have otherwise occurred. As a result, some waters in Oregon have assimilative capacity above that which would exist if only the minimum level of waste treatment was achieved. This]~~ U~~[u]~~nused assimilative capacity is an exceedingly valuable resource that enhances in-stream values specifically, and environmental quality generally. Allocation of any unused assimilative capacity should be based on explicit criteria. In addition to the conditions in subsection (a) of this section, the Commission or ~~[Director]~~ Department shall consider the following:

(A) Environmental Effects Criteria.

(i) Adverse Out-of-Stream Effects. There may be instances where the non-discharge or limited discharge alternatives may cause greater adverse environmental effects than the increased discharge alternative. An example may be the potential degradation of groundwater from land application of wastes.

(ii) Instream Effects. Total stream loading may be reduced through elimination or reduction of other source discharges or through a reduction in seasonal discharge. A source that replaces other sources, accepts additional waste from less efficient treatment units or systems, or reduces discharge loadings during periods of low stream flow may be permitted an increased discharge load year-round or during seasons of high flow, as appropriate.

(iii) Beneficial Effects. Land application, upland wetlands application, or other non-discharge alternatives for appropriately treated wastewater may replenish groundwater levels and increase streamflow and assimilative capacity during otherwise low streamflow periods.

(B) Economic Effects Criteria. When assimilative capacity exists in a stream, and when it is judged that increased loadings will not have significantly greater adverse environmental effects than other alternatives to increased discharge, the economic effect of increased loading will be considered. Economic effects will be of two general types:

(i) Value of Assimilative Capacity. The assimilative capacity of Oregon's streams are finite, but the potential uses of this capacity are virtually unlimited. Thus it is important that priority be given to those beneficial uses that promise the greatest return (beneficial use) relative to the unused assimilative capacity that might be utilized. In-stream uses that will benefit from reserve assimilative capacity, as well as potential future beneficial use, will be weighed against the economic benefit associated with increased loading.

(ii) Cost of Treatment Technology. The cost of improved treatment technology, non-discharge and limited discharge alternatives shall be evaluated.

(4) (a) A receiving stream shall be designated as water quality limited through the biennial water quality status assessment report prepared to meet the requirements of Section 305(b) of the Water Quality Act. Appendix A of the Status Assessment report shall identify: what waterbodies are water quality limited, the time of year the water quality standards violations occur, the segment of stream or area of waterbody limited, the parameter(s) of concern, whether it is water quality limited under OAR 340-41-006(30)(a) or (b) or (c).

Appendix B and C of the status assessment report shall identify the specific evaluation process for designating waterbodies limited.

(b) The WQL list contained in Appendix A of the Status Assessment report shall be placed on public notice and reviewed through the public hearing process. At the conclusion of the hearing process and the evaluation of the testimony received and the evaluation of the testimony received, Appendix A will become the official water quality limited list. The Department may add a waterbody to the water quality limited list between status assessment reports after placing that action out on public notice and conducting a public hearing.

(c) For interstate waterbodies, the state shall be responsible for completing the requirements of Section (3) of this rule for that portion of the interstate waterbody within the boundary of the state.

(d) For waterbodies designated WQL under OAR 340-41-006(30)(c), the Department shall establish a priority list and schedule for future water quality monitoring activities to determine: if the waterbody should be designated WQL under OAR 340-41-006(30)(a) or (b), if estimated TMDLs need to be prepared, and if an implementation plan needs to be developed and implemented.

(e) For waterbodies designated WQL under OAR 340-41-006(30)(b), requests for load increases shall be considered following subsection (3)(b) of this rule.

[~~(4)~~] (5) For any new waste sources, alternatives which utilize reuse or disposal with no discharge to public waters shall be given highest priority for use wherever practicable. New source discharges may be approved subject to the criteria in Section 3 of this rule.

[~~(5)~~] (6) No discharges of wastes to lakes or reservoirs shall be allowed except as provided in Section 3 of this rule.

[~~(6)~~] (7) Log handling in public waters shall conform to current EQC policies and guidelines.

[~~(7)~~] (8) Sand and gravel removal operations shall be conducted pursuant to a permit from the Division of State Lands and separated from the active flowing stream by a water-tight berm wherever physically practicable. Recirculation and reuse of process water shall be required wherever practicable. Discharges, when allowed, or seepage or leakage losses to public waters shall not cause a violation of water quality standards or adversely affect legitimate beneficial uses.

[~~(8)~~] (9) Logging and forest management activities shall be conducted in accordance with the Oregon Forest Practices Act so as to minimize adverse effects on water quality.

[~~(9)~~] (10) Road building and maintenance activities shall be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces.

[~~(10)~~] (11) In order to improve controls over nonpoint sources of pollution, federal, state, and local resource management agencies will be encouraged and assisted to coordinate planning and implementation of programs to regulate or control runoff, erosion, turbidity, stream temperature, stream flow, and the withdrawal and use of irrigation water on a basin-wide approach so as to protect the quality and beneficial uses of water and related resources. Such programs may include, but not be limited to, the following:

(a) Development of projects for storage and release of suitable quality waters to augment low stream flow;

(b) Urban runoff control to reduce erosion;

(c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows;

(d) Stream bank erosion reduction projects.

Attachment B

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED AMENDMENTS TO POLICY STATEMENTS RELATED TO WASTEWATER DISCHARGES

Hearing Date: May 1, 1990
Comments Due: May 4, 1990

WHO IS AFFECTED: Permitted municipal and industrial sources that discharge treated effluent to surface waters. Large and small businesses and the public served by municipal treatment facilities.

WHAT IS PROPOSED: The Department proposes to amend two existing rules: First, OAR 340-41-026 which provides the Commission and Director with a set of environmental and economic criteria to determine whether major dischargers and smaller dischargers, respectively, should be allowed to discharge increases loads to water quality limited receiving streams. The amendments specifically describe the conditions which must be considered by the Commission and Director when evaluating load request on water quality limited receiving streams. Second, the Department of Environmental Quality proposes to add to OAR 340-41-006 definitions for "water quality limited" and "effluent limited" receiving streams.

WHAT ARE THE HIGHLIGHTS: Under proposed amendments to OAR 340-41-026, dischargers requesting increased discharge loading would know whether or under what conditions the Commission or Department will consider approving an increase in permitted discharge load to a water quality limited receiving stream.

The Commission will consider three separate options. The Commission may adopt or modify one of these options or make no changes to existing rules.

PUBLIC HEARINGS: Public Hearings will be held before a hearings officer at:

TIME: 1:00 - 5:00 p.m.* & 7:00 - 9:00 p.m.

DATE: Tuesday, May 1, 1990

PLACE: Portland Building
2nd Floor Hearing Room
1120 S.W. ~~First~~ FIFTH
Portland, Oregon

* The Department may allow group presentations to be scheduled in advance for the afternoon session.

811 S.W. 6th Avenue
Portland, OR 97204

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

HOW TO COMMENT:

Written or oral comments may be presented at the hearings. Written comments may also be sent to the Department of Environmental Quality, Water Quality Division, 811 S.W. Sixth Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., May 4, 1990.

Copies of the complete proposed rule package may be obtained from the DEQ, Water Quality Division. For further information, contact Neil Mullane at 229-5284 or toll-free (in Oregon) at 1-800-452-4011.

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt new rules identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed new rule and rule revisions at its meeting in June.

PM\WH3816 (PUBN.H 1/13/88)

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt a rule.

1. Legal Authority

Oregon Revised Statute (ORS) 468.020 grants the Environmental Quality Commission the authority to, "adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission." Further, ORS 468.705 provides the commission authority over water pollution.

2. Need for the Rule

Oregon Administrative Rule (OAR) 340-41-026(3) requires the Commission to consider approval of increase permitted discharge loadings. At the Commission's request, the Department has drafted rules to provide criteria to be used when considering a request by a permittee for an increase in discharge loading on a water quality limited receiving stream. These criteria will be used by the Commission and Department when considering requests from major and minor facilities respectively. The proposed rules also establish definitions for the terms "water quality limited" and "effluented limited".

3. Principal Documents Relied Upon it this Rulemaking

a. Oregon Administrative Rule 340-41.

b. Agenda Item K, June 2, 1989 EQC meeting, "To add environmental and economic decision-guiding criteria to existing water quality management policies in OAR 340-41-026, which require Environmental Quality Commission approval of increased discharges for existing sources, new discharges from significant sources and discharges to lakes."

c. The Clean Water Act.

d. Code of Federal Regulations, 40 CFR 130.

e. Agency Item O, March 13, 1987 EQC Meeting, Informational Report: Proposed Approach for Establishing Total Maximum Daily Loads as a Management Tool on Water Quality Limited Segments.

LAND USE COMPATIBILITY STATEMENT

Land Use Consistency

The Department has concluded that the proposal conforms with the Statewide Planning Goals and Guidelines.

Goal 6 (Air, Water and Land Resources Quality): The two proposed rule changes are procedural in nature and will not affect this goal. The Department believes that the change will better protect water quality resources and, therefore, concludes that this proposal is consistent with Goal 6.

Goal 11 (Public Facilities and Services): The two proposed rule changes are procedural in nature and will not affect this goal. The proposed rule change, in some cases, will require a higher level of treatment for new sewage treatment plants. Higher treatment levels will add to the cost of providing necessary sewage treatment and will probably add to the burdens of public agencies in charge of providing sewer service.

Public comment on any land use issue involved is welcome and may be submitted in the same manner as indicated for testimony in this notice.

FISCAL AND ECONOMIC IMPACT STATEMENT

Overall Impact

Existing Oregon Administrative Rule 340-41-026(3)(a)(C) restricts the Commission and Department from allowing waste load increases to water quality limited receiving streams until discharging sources are in full compliance with their established waste load allocations. The current rules therefore require higher levels of treatment at a cost to the source. The current rule also requires expansions and increased growth to be accommodated within current permitted loads. This would result in a higher level of treatment and a higher level of cost. Most likely, these added costs will be transferred to people by the owner of the sewerage facility through added user fees for sewer service. The costs to individuals and small businesses will depend upon the necessary equipment for achieving the higher treatment level, the amount of wastewater discharged into the new sewage treatment plant by the individual or small businesses, and the number of connections to the new sewage treatment plant that have to share the additional costs. An example of the potential added costs are demonstrated as follows. If the added treatment requirements would require the use of a sand filter to polish the effluent from a one millions gallon per day plant, the increased costs for a single family home could be an additional $2.00 to $3.00 per month. The increased costs for small businesses would depend on the amount of wastewater discharged into the sewerage facility and the particular rate structure used by the owner of the sewerage facility.

The proposed rules add definitions for "effluent limited" and "water quality limited" receiving streams and clarify the current rules to describe which water quality limited receiving streams are covered. These clarifications may allow the Commission and Department to grant load increases on some water quality limit receiving streams under certain conditions, and thus reduce potential costs.

The definitions in themselves do not impose additional costs. The sources which discharge to effluent limited or water quality limited receiving streams could however incur costs for treating wastes to the levels required by other rules and policies.

The proposed rule options for amending OAR 340-41-026(3)(a)(C) would have essentially the same costs that are associated with the existing rule. However, because there would be a better description of what receiving streams are affected and what conditions have to be met, there could be a potential reduction in costs. For example, this clarification could potentially save small businesses, municipalities, and industries resources by clarifying whether they can or can not increase waste loads. If they can not increase loads and they still want to grow, then there is the potential for increases in costs to increase the level of treatment provided. If, however, they could increase loads, they may not have to increase treatment.

The proposed options are described below:

Option 1 would restrict load increase actions for parameters causing receiving streams to violate and water quality standards be designated water quality limited until:

1. Total maximums daily loads (TMDLs), waste load allocations (WLAs), load allocations (LAs), and reserve capacity have been established;

2. Compliance plans under which enforcement actions can be taken are fully implemented; and

3. There is sufficient reserve capacity to handle the increased load.

Option 2 would restrict load increase actions for parameters causing receiving streams to violate and water quality standards be designated water quality limited until:

1. Total maximum daily loads (TMDLs), waste load allocation (WLAs), load allocations (LAs), and reserve capacity has been established;

2. Compliance plans under which enforcement actions can be taken have been established and are being implemented on schedule;

3. There is sufficient reserve capacity to handle the increased load at the time it will be discharged; and

4. Under extraordinary circumstances to solve an immediate and critical environmental problem that the Commission or Department may consider a waste load increase for an existing source on a waterbody designated water quality limited under proposed rule OAR 340-41-026(27)(a) based on the following conditions:

    a. That TMLDs, WLAs, LAs, and reserve capacity have been set;

    b. That compliance plans under which enforcement actions can be taken are being implemented on schedule;

    c. That an evaluation of the requested temporary increased load shows that this increment of load will not have a significant temporary or permanent adverse effect on beneficial uses; and

    d. That the temporary increase load will not prevent the receiving stream from meeting the compliance deadline for meeting that TMDL.

Option 3 was developed from the discussion held at the EQC meeting on January 19, 1990, and it is similar to Option 2 but it would allow the Commission to grant very small increases.

Between the options, Option 1 would potentially have higher costs than either Option 2 or 3. This is because it would restrict load increases until full compliance with waste load allocations. Thus, all actions on proposed development would be delayed until the waste load allocations were achieved. Options 2 and 3 would allow actions to be taken but sources could not discharge until there was available reserve capacity.

The current rules may also have greater costs because they could potentially require greater levels of treatment than required by existing basin treatment standards during the winter time when in fact there is assimilative capacity in the receiving stream. The basin treatment standards may allow allocation of wintertime reserve capacity while the existing rules would not. The proposed rule options could correct this situation.

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.

DEFINITIONS

340-41-006

Definitions applicable to all basins unless context requires otherwise:

(1) "BOD" means 5-day 20° C. Biochemical Oxygen Demand.

(2) "DEQ" or "Department" means the Oregon State Department of Environmental Quality.

(3) "DO" means dissolved oxygen.

(4) "EQC" means the Oregon State Environmental Quality Commission.

(5) "Estuarine waters" means all mixed fresh and oceanic waters in estuaries or bays from the point of oceanic water intrusion inland to a line connecting the outermost points of the headlands or protective jetties.

(6) "Industrial waste" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business, or from the development or recovery of any natural resources.

(7) "Marine waters" means all oceanic, offshore waters outside of estuaries or bays and within the territorial limits of the State of Oregon.

(8) "mg/l" means milligrams per liter.

(9) "Pollution" means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or such radioactive or other substance into any waters of the state which either by itself or in connection with any other substance present, will or can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses

or to livestock, wildlife, fish or other aquatic life, or the habitat thereof.

(10) "Public water" means the same as "waters of the state".

(11) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface water as may be present. The admixture with sewage as herein defined of industrial wastes or wastes, as defined in sections (6) and (13) of this rule, shall also be considered "sewage" within the meaning of this division.

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(14) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(15) "Low flow period" means the flows in a stream resulting from primarily groundwater discharge or baseflows augmented from lakes and storage projects during the driest period of the year. The dry weather period varies across the state according to climate and topography. Wherever the low flow period is indicated in the Water Quality Management Plans, this period has been approximated by the inclusive months. Where applicable in a waste discharge permit, the low flow period may be further defined.

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(a) "Sewage wastes" means the minimum level of treatment mandated by EPA regulations pursuant to Public Law 92-500.

(b) "Industrial and other waste sources" imply control equivalent to best practicable treatment (BPT).

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

(18) Loading Capacity (LC): The greatest amount of loading that a water can receive without violating water quality standards.

(19) Load Allocation (LA): The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting loading. Wherever possible, natural and nonpoint source loads should be distinguished.

(20) Wasteload Allocation (WLA): The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

(21) Total Maximum Daily Load (TMDL): The sum of the individual WLAs for point sources and LAs for nonpoint sources and background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.

(22) "Land Development" refers to any human induced change to improved or unimproved real estate, including but not limited to construction, installation or expansion of a building or other structure, land division, drilling, and site alteration such as that due to land surface mining, dredging, grading, construction of earthen berms, paving, improvements for use as parking or storage, excavation or clearing.

(23) "Jurisdiction" refers to any city or county agency in the Tualatin River and Oswego Lake subbasins that regulates land development activities within its boundaries by approving plats, site plans or issuing permits for land development.

(24) "Erosion Control Plan" shall be a plan containing a list of best management practices to be applied during construction to control and limit soil erosion.

(25) "Public Works Project" means any land development conducted or financed by a local, state, or federal governmental body.

(26) "Stormwater Quality Control Facility" refers to any structure or drainage way 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 water quality improvement. 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.

(27) "Water Quality Swale" is a natural depression or wide shallow ditch used to temporarily store, route, or filter runoff for the purpose of improving water quality.

(28) "In lieu fee" means a fee collected by a jurisdiction in lieu of requiring construction of on-site stormwater quality control facilities.

(29) "Effluent Limited" can mean one of the following categories:

(a) A receiving stream which is meeting and/or is expected to meet water quality standards with the implementation of standard treatment technology which is secondary treatment for sewage wastes and best practicable treatment (BPT) for industrial and other waste sources.

(b) A receiving stream for which there is insufficient information to determine if water quality standards are being met with standard treatment technology.

(30) "Water Quality Limited" can mean one of the following categories:

(a) A receiving stream which does not meet instream water quality standards during the entire year or defined season even after the implementation of standard technology.

(b) A receiving stream which achieves and is expected to continue to achieve instream water quality standard but utilizes higher than standard technology to protect beneficial uses.

(c) A receiving stream for which there is insufficient information to determine if water quality standards are being met with higher than standard treatment technology or where through professional judgment the receiving stream would not be expected to meet water quality standards during the entire year or defined season without higher than standard technology.

PROPOSED OPTION NO. 1

POLICIES AND GUIDELINES GENERALLY APPLICABLE TO ALL BASINS

340-41-026

(1) (a) Existing high quality waters which exceed those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected unless the Environmental Quality Commission chooses, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, to lower water quality for necessary and justifiable economic or social development. The Director or his designee may allow lower water quality on a short-term basis in order to respond to emergencies or to otherwise protect public health and welfare. In no event, however, may degradation of water quality interfere with or become injurious to the beneficial uses of water within surface waters of the following areas:

(A) National Parks;
(B) National Wild and Scenic Rivers;
(C) National Wildlife Refuges;
(D) State Parks.

(b) Point source discharges shall follow policies and guidelines (2), (5) [~~(4)~~], and (6) [~~(5)~~], and nonpoint source activities shall follow guidelines (7), (8), (9), (10), and (11) [~~(6), (7), (8), (9), and (10)~~].

(2) In order to maintain the quality of waters in the State of Oregon, it is the general policy of the EQC to require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads except as provided in section (3) of this rule.

(3) The Commission or Director may grant exceptions to sections (2) and (6) [~~(5)~~] and approvals to section (5) [~~(4)~~] for major dischargers and other dischargers, respectively. Major dischargers include those industrial and domestic sources that are classified as major sources for permit fee purposes in OAR 340-45-075(2).

(a) In allowing new or increased discharged loads, the Commission or Director shall make the following findings:

(A) The new or increased discharged load would not cause water quality standards to be violated;

(B) The new or increased discharged load would not significantly threaten or impair any recognized beneficial uses[;]. In making this determination the Commission or Department may rely upon the presumption that if water quality standards are met the beneficial uses they were designed to protect are protected. In making this determination the Commission or Department may also evaluate other state and federal agency data that would provide information on potential impacts to beneficial uses for which standards have not been set;

(C) [The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited unless the pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to be water quality limited; and] The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited under OAR 340-41-006(30)(a), unless:

(i) The pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to violate water quality standards and being designated water quality limited; or

(ii) Total maximum daily loads (TMDLs), waste load allocations (WLAs) load allocations (LAs), and the reserve capacity have been established for the water quality limited receiving stream, and compliance plans under which enforcement action can be taken are fully implemented; and there is sufficient reserve capacity at the time of allocation to handle the increased load under the established TMDL.

(D) The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.

(b) Oregon's water quality management policies and programs recognize that Oregon's water bodies have a finite capacity to assimilate waste. The strategy that has been followed in stream management has hastened the development and application of treatment technology that would not have otherwise occurred. As a result, some waters in Oregon have assimilative capacity above that which would exist if only the minimum level of waste treatment was achieved. This

unused assimilative capacity is an exceedingly valuable resource that enhances in-stream values specifically, and environmental quality generally. Allocation of any unused assimilative capacity should be based on explicit criteria. In addition to the conditions in subsection (a) of this section, the Commission or Director shall consider the following:

(A) Environmental Effects Criteria.

(i) Adverse Out-of-Stream Effects. There may be instances where the non-discharge or limited discharge alternatives may cause greater adverse environmental effects than the increased discharge alternative. An example may be the potential degradation of groundwater from land application of wastes.

(ii) Instream Effects. Total stream loading may be reduced through elimination or reduction of other source discharges or through a reduction in seasonal discharge. A source that replaces other sources, accepts additional waste from less efficient treatment units or systems, or reduces discharge loadings during periods of low stream flow may be permitted an increased discharge load year-round or during seasons of high flow, as appropriate.

(iii) Beneficial Effects. Land application, upland wetlands application, or other non-discharge alternatives for appropriately treated wastewater may replenish groundwater levels and increase streamflow and assimilative capacity during otherwise low streamflow periods.

(B) Economic Effects Criteria. When assimilative capacity exists in a stream, and when it is judged that increased loadings will not have <u>significantly</u> greater adverse environmental effects than other alternatives to increased discharge, the economic effect of increased loading will be considered. Economic effects will be of two general types:

(i) Value of Assimilative Capacity. The assimilative capacity of Oregon's streams are finite, but the potential uses of this capacity are virtually unlimited. Thus it is important that priority be given to those beneficial uses that promise the greatest return (beneficial use) relative to the unused assimilative capacity that might be utilized. In-stream uses that will benefit from reserve assimilative capacity, as well as

potential future beneficial use, will be weighed against the economic benefit associated with increased loading.

(ii) Cost of Treatment Technology. The cost of improved treatment technology, non-discharge and limited discharge alternatives shall be evaluated.

(4) (a) A receiving stream shall be designated as water quality limited through the biennial water quality status assessment report prepared to meet the requirements of Section 305(b) of the Water Quality Act. Appendix A of the Status Assessment report shall identify: what waterbodies are water quality limited, the time of year the standard violations occur, the segment of stream or area of waterbody limited, the parameter(s) of concern, whether it is water quality limited under OAR 340-41-006(30)(a) or (b) or (c). Appendix B and C of the status assessment report shall identify the specific evaluation process for designating waterbodies limited.

(b) The WQL list contained in Appendix A of the Status Assessment report shall be placed on public notice and reviewed through the public hearing process. At the conclusion of the hearing process and the evaluation of the testimony received, Appendix A will become the official water quality limited list. The Department may add a waterbody to the water quality limited list between status assessment reports after placing that action out on public notice and conducting a public hearing.

(c) For interstate waterbodies, the state shall be responsible for completing the requirements of section (3) of this rule for that portion of the interstate waterbody within the boundary of the state.

[~~(4)~~] (5) For any new waste sources, alternatives which utilize reuse or disposal with no discharge to public waters shall be given highest priority for use wherever practicable. New source discharges may be approved subject to the criteria in Section 3 of this rule.

[~~(5)~~] (6) No discharges of wastes to lakes or reservoirs shall be allowed except as provided in Section 3 of this rule.

[~~(6)~~] (7) Log handling in public waters shall conform to current EQC policies and guidelines.

[~~(7)~~] (8) Sand and gravel removal operations shall be conducted pursuant to a permit from the Division of State Lands and separated from the active flowing stream by a water-tight berm wherever physically practicable. Recirculation and reuse of process water shall be required wherever practicable. Discharges, when

allowed, or seepage or leakage losses to public waters shall not cause a violation of water quality standards or adversely affect legitimate beneficial uses.

[~~(8)~~] (9) Logging and forest management activities shall be conducted in accordance with the Oregon Forest Practices Act so as to minimize adverse effects on water quality.

[~~(9)~~] (10) Road building and maintenance activities shall be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces.

[~~(10)~~] (11) In order to improve controls over nonpoint sources of pollution, federal, state, and local resource management agencies will be encouraged and assisted to coordinate planning and implementation of programs to regulate or control runoff, erosion, turbidity, stream temperature, stream flow, and the withdrawal and use of irrigation water on a basin-wide approach so as to protect the quality and beneficial uses of water and related resources. Such programs may include, but not be limited to, the following:

(a) Development of projects for storage and release of suitable quality waters to augment low stream flow;

(b) Urban runoff control to reduce erosion;

(c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows;

(d) Stream bank erosion reduction projects.

PROPOSED OPTION NO. 2

POLICIES AND GUIDELINES GENERALLY APPLICABLE TO ALL BASINS

340-41-026

(1) (a) Existing high quality waters which exceed those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected unless the Environmental Quality Commission chooses, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, to lower water quality for necessary and justifiable economic or social development. The Director or his designee may allow lower water quality on a short-term basis in order to respond to emergencies or to otherwise protect public health and welfare. In no event, however, may degradation of water quality interfere with or become injurious to the beneficial uses of water within surface waters of the following areas:

(A) National Parks;
(B) National Wild and Scenic Rivers;
(C) National Wildlife Refuges;
(D) State Parks.

(b) Point source discharges shall follow policies and guidelines (2), (5) [~~(4)~~], and (6) [~~(5)~~], and nonpoint source activities shall follow guidelines (7), (8), (9), (10), and (11) [~~(6), (7), (8), (9), and (10)~~].

(2) In order to maintain the quality of waters in the State of Oregon, it is the general policy of the EQC to require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads except as provided in section (3) of this rule.

(3) The Commission or Director may grant exceptions to sections (2) and (6) [~~(5)~~] and approvals to section (5) [~~(4)~~] for major dischargers and other dischargers, respectively. Major dischargers include those industrial and domestic sources that are classified as major sources for permit fee purposes in OAR 340-45-075(2).

(a) In allowing new or increased discharged loads, the Commission or Director shall make the following findings:

(A) The new or increased discharged load would not cause water quality standards to be violated;

(B) The new or increased discharged load would not significantly threaten or impair any recognized beneficial uses[;]. In making this determination the Commission or Department may rely upon the presumption that if standards are met the beneficial uses they were designed to protect are protected. In making this determination the Commission or Department may also evaluate other state and federal agency data that would provide information on potential impacts to beneficial uses for which standards have not been set;

(C) ~~[The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited unless the pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to be water quality limited; and]~~

The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited under OAR 340-41-006(30)(a), unless;

(i) The pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to violate water quality standards and being designated water quality limited; or

(ii) Total maximum daily loads (TMDLs), waste load allocations (WLAs) load allocations (LAs), and the reserve capacity have been established for the water quality limited receiving stream; and compliance plans under which enforcement action can be taken have been established and are being implemented on schedule; and there is sufficient reserve capacity to handle the increased load under the established TMDL at the time of discharge; or

(iii) Under extraordinary circumstances to solve an existing, immediate, and critical environmental problem that the Commission or Department may consider a temporary waste load increase for an existing source on a receiving stream designated water quality limited under OAR 340-41-006(30)(a) based on the following conditions:

(I) That TMLDs, WLAs and LAs have been set; and

(II) That a compliance plan under which enforcement actions can be taken has been established and is being implemented on schedule; and

(III) That an evaluation of the requested temporary increased load shows that this increment of load will not have a significant temporary or permanent adverse effect on beneficial uses. If this action will result in a permanent load increase, the action has to comply with subsections (i) and (ii) of this rule.

(D) The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.

(b) Oregon's water quality management policies and programs recognize that Oregon's water bodies have a finite capacity to assimilate waste. The strategy that has been followed in stream management has hastened the development and application of treatment technology that would not have otherwise occurred. As a result, some waters in Oregon have assimilative capacity above that which would exist if only the minimum level of waste treatment was achieved. This unused assimilative capacity is an exceedingly valuable resource that enhances in-stream values specifically, and environmental quality generally. Allocation of any unused assimilative capacity should be based on explicit criteria. In addition to the conditions in subsection (a) of this section, the Commission or Director shall consider the following:

(A) Environmental Effects Criteria.

(i) Adverse Out-of-Stream Effects. There may be instances where the non-discharge or limited discharge alternatives may cause greater adverse environmental effects than the increased discharge alternative. An example may be the potential degradation of groundwater from land application of wastes.

(ii) Instream Effects. Total stream loading may be reduced through elimination or reduction of other source discharges or through a reduction in seasonal discharge. A source that replaces other sources, accepts additional waste from less efficient treatment units or systems, or reduces discharge loadings during periods of low stream

flow may be permitted an increased discharge load year-round or during seasons of high flow, as appropriate.

(iii) Beneficial Effects. Land application, upland wetlands application, or other non-discharge alternatives for appropriately treated wastewater may replenish groundwater levels and increase streamflow and assimilative capacity during otherwise low streamflow periods.

(B) Economic Effects Criteria. When assimilative capacity exists in a stream, and when it is judged that increased loadings will not have significantly greater adverse environmental effects than other alternatives to increased discharge, the economic effect of increased loading will be considered. Economic effects will be of two general types:

(i) Value of Assimilative Capacity. The assimilative capacity of Oregon's streams are finite, but the potential uses of this capacity are virtually unlimited. Thus it is important that priority be given to those beneficial uses that promise the greatest return (beneficial use) relative to the unused assimilative capacity that might be utilized. In-stream uses that will benefit from reserve assimilative capacity, as well as potential future beneficial use, will be weighed against the economic benefit associated with increased loading.

(ii) Cost of Treatment Technology. The cost of improved treatment technology, non-discharge and limited discharge alternatives shall be evaluated.

(4) (a) A receiving stream shall be designated as water quality limited through the biennial water quality status assessment report prepared to meet the requirements of Section 305(b) of the Water Quality Act. Appendix A of the Status Assessment report shall identify: what waterbodies are water quality limited, the time of year the water quality standards violations occur, the segment of stream or area of waterbody limited, the parameter(s) of concern, whether it is water quality limited under OAR 340-41-006(30)(a) or (b) or (c). Appendix B and C of the status assessment report shall identify the specific evaluation process for designating waterbodies limited.

(b) The WQL list contained in Appendix A of the Status Assessment report shall be placed on public notice and reviewed through the public hearing process. At the conclusion of the hearing

process and the evaluation of the testimony received and the evaluation of the testimony received. Appendix A will become the official water quality limited list. The Department may add a waterbody to the water quality limited list between status assessment reports after placing that action out on public notice and conducting a public hearing.

(c) For interstate waterbodies, the state shall be responsible for completing the requirements of Section (3) of this rule for that portion of the interstate waterbody within the boundary of the state.

(d) For waterbodies designated WQL under OAR 340-41-006(30)(c), the Department shall establish a priority list for future water quality monitoring activities to determine: if the waterbody should be designated WQL under OAR 340-41-006(30)(a) or (b), if estimated TMDLs need to be prepared, and if an implementation plan needs to be developed and implemented.

(e) For waterbodies designated WQL under OAR 340-41-006(30)(b), requests for load increases shall be considered following subsection (3)(b) of this rule.

[~~(4)~~] (5) For any new waste sources, alternatives which utilize reuse or disposal with no discharge to public waters shall be given highest priority for use wherever practicable. New source discharges may be approved subject to the criteria in Section 3 of this rule.

[~~(5)~~] (6) No discharges of wastes to lakes or reservoirs shall be allowed except as provided in Section 3 of this rule.

[~~(6)~~] (7) Log handling in public waters shall conform to current EQC policies and guidelines.

[~~(7)~~] (8) Sand and gravel removal operations shall be conducted pursuant to a permit from the Division of State Lands and separated from the active flowing stream by a water-tight berm wherever physically practicable. Recirculation and reuse of process water shall be required wherever practicable. Discharges, when allowed, or seepage or leakage losses to public waters shall not cause a violation of water quality standards or adversely affect legitimate beneficial uses.

[~~(8)~~] (9) Logging and forest management activities shall be conducted in accordance with the Oregon Forest Practices Act so as to minimize adverse effects on water quality.

[~~(9)~~] (10) Road building and maintenance activities shall be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces.

[~~(10)~~] (11) In order to improve controls over nonpoint sources of pollution, federal, state, and local resource management agencies will be encouraged and assisted to coordinate planning and implementation of programs to regulate or control runoff, erosion, turbidity, stream temperature, stream flow, and the withdrawal and use of irrigation water on a basin-wide approach so as to protect the quality and beneficial uses of water and related resources. Such programs may include, but not be limited to, the following:

(a) Development of projects for storage and release of suitable quality waters to augment low stream flow;

(b) Urban runoff control to reduce erosion;

(c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows;

(d) Stream bank erosion reduction projects.

PROPOSED OPTION NO. 3

POLICIES AND GUIDELINES GENERALLY APPLICABLE TO ALL BASINS

340-41-026

(1) (a) Existing high quality waters which exceed those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected unless the Environmental Quality Commission chooses, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, to lower water quality for necessary and justifiable economic or social development. The Director or his designee may allow lower water quality on a short-term basis in order to respond to emergencies or to otherwise protect public health and welfare. In no event, however, may degradation of water quality interfere with or become injurious to the beneficial uses of water within surface waters of the following areas:

(A) National Parks;
(B) National Wild and Scenic Rivers;
(C) National Wildlife Refuges;
(D) State Parks.

(b) Point source discharges shall follow policies and guidelines (2), (5) [~~(4)~~], and (6) [~~(5)~~], and nonpoint source activities shall follow guidelines (7), (8), (9), (10), and (11) [~~(6); (7), (8), (9), and (10)~~].

(2) In order to maintain the quality of waters in the State of Oregon, it is the general policy of the EQC to require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads except as provided in section (3) of this rule.

(3) The Commission or Director may grant exceptions to sections (2) and (6) [~~(5)~~] and approvals to section (5) [~~(4)~~] for major dischargers and other dischargers, respectively. Major dischargers include those industrial and domestic sources that are classified as major sources for permit fee purposes in OAR 340-45-075(2).

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* This option was developed based on the comments made by the Commission and public during the Environmental Quality Commission meeting on January 19, 1990.

(a) In allowing new or increased discharged loads, the Commission or Director shall make the following findings:

(A) The new or increased discharged load would not cause water quality standards to be violated;

(B) The new or increased discharged load would not significantly threaten or impair any recognized beneficial uses[;]. In making this determination the Commission or Department may rely upon the presumption that if standards are met the beneficial uses they were designed to protect are protected. In making this determination the Commission or Department may also evaluate other state and federal agency data that would provide information on potential impacts to beneficial uses for which standards have not been set;

(C) [The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited unless the pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to be water quality limited; and]

The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited under OAR 340-41-006(30)(a), unless:

(i) The pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to violate water quality standards and being designated water quality limited; or

(ii) Total maximum daily loads (TMDLs), waste load allocations (WLAs) load allocations (LAs), and the reserve capacity have been established for the water quality limited receiving stream; and compliance plans under which enforcement action can be taken have been established and are being implemented on schedule; and there is sufficient reserve capacity to handle the increased load under the established TMDL at the time of discharge; or

(iii) Under extraordinary circumstances to solve an existing, immediate, and critical environmental problem that the Commission or Department may consider a waste load increase for an existing source on a receiving stream designated water

quality limited under OAR 340-41-006(30)(a) based on the following conditions:

(I) That TMLDs, WLAs and LAs have been set; and

(II) That a compliance plan under which enforcement actions can be taken has been established and is being implemented on schedule; and

(III) That an evaluation of the requested temporary increased load shows that this increment of load will not have a significant temporary or permanent adverse effect on beneficial uses. If this action will result in a permanent load increase, the action has to comply with subsections (i) and (ii) of this rule; or

(iv) The proposed load increase is a very small discharge where the proposed source is implementing the highest and best practicable technology, where the discharge will not have a significant adverse effect on beneficial uses, and where there would be adequate assimilative capacity in the relevant segment or waterbody if the existing sources implemented the highest and best practicable technology:

(I) That TMDLs, WLAs and LAs have been set; and

(II) That a compliance plan under which enforcement actions can be taken has been established; and

(III) That an evaluation of this requested increased load shows that this increment of load when added to the waterbody will not have an adverse effect on beneficial uses. If more that one request is made under subsection (iv) for one waterbody, the Commission and Department shall consider the cumulative effects of these requests when determining whether or not to accept one or more of these requests.

(D) The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.

(b) Oregon's water quality management policies and programs recognize that Oregon's water bodies have a finite capacity to assimilate waste. The strategy that has been followed in stream management has hastened the development and application of treatment technology that would not have otherwise occurred. As a result, some waters in Oregon have assimilative capacity above that which would exist if only the minimum level of waste treatment was achieved. This unused assimilative capacity is an exceedingly valuable resource that enhances in-stream values specifically, and environmental quality generally. Allocation of any unused assimilative capacity should be based on explicit criteria. In addition to the conditions in subsection (a) of this section, the Commission or Director shall consider the following:

(A) Environmental Effects Criteria.

(i) Adverse Out-of-Stream Effects. There may be instances where the non-discharge or limited discharge alternatives may cause greater adverse environmental effects than the increased discharge alternative. An example may be the potential degradation of groundwater from land application of wastes.

(ii) Instream Effects. Total stream loading may be reduced through elimination or reduction of other source discharges or through a reduction in seasonal discharge. A source that replaces other sources, accepts additional waste from less efficient treatment units or systems, or reduces discharge loadings during periods of low stream flow may be permitted an increased discharge load year-round or during seasons of high flow, as appropriate.

(iii) Beneficial Effects. Land application, upland wetlands application, or other non-discharge alternatives for appropriately treated wastewater may replenish groundwater levels and increase streamflow and assimilative capacity during otherwise low streamflow periods.

(B) Economic Effects Criteria. When assimilative capacity exists in a stream, and when it is judged that increased loadings will not have significantly greater adverse environmental effects than other alternatives to increased discharge, the economic effect of increased loading will be considered. Economic effects will be of two general types:

(i) Value of Assimilative Capacity. The assimilative capacity of Oregon's streams are finite, but the potential uses of this capacity are virtually unlimited. Thus it is important that priority be given to those beneficial uses that promise the greatest return (beneficial use) relative to the unused assimilative capacity that might be utilized. In-stream uses that will benefit from reserve assimilative capacity, as well as potential future beneficial use, will be weighed against the economic benefit associated with increased loading.

(ii) Cost of Treatment Technology. The cost of improved treatment technology, non-discharge and limited discharge alternatives shall be evaluated.

(4) (a) A receiving stream shall be designated as water quality limited through the biennial water quality status assessment report prepared to meet the requirements of Section 305(b) of the Water Quality Act. Appendix A of the Status Assessment report shall identify: what waterbodies are water quality limited, the time of year the standards are violated, the segment of stream or area of waterbody limited, the parameter(s) of concern, whether it is water quality limited under OAR 340-41-006(30)(a) or (b) or (c). Appendix B and C of the status assessment report shall identify the specific evaluation process for designating waterbodies limited.

(b) The WQL list contained in Appendix A of the Status Assessment report shall be placed on public notice and reviewed through the public hearing process. At the conclusion of the hearing process and the evaluation of the testimony received, Appendix A will become the official water quality limited list. The Department may add a waterbody to the water quality limited list between status assessment reports after placing that action out on public notice and conducting a public hearing.

(c) For interstate waterbodies, the state shall be responsible for completing the requirements of Section (3) of this rule for that portion of the interstate waterbody within the boundary of the state.

(d) For waterbodies designated WQL under OAR 340-41-006(30)(c), the Department shall establish a priority list for future water quality monitoring activities to determine: if the waterbody should be designated WQL under OAR 340-41-006(30)(a) or (b), if estimated TMDLs need to be prepared, and if an implementation plan needs to be developed and implemented.

(e) For waterbodies designated WQL under OAR 340-41-006(30)(b), requests for load increases shall be considered following subsection (3)(b) of this rule.

[~~(4)~~] (5) For any new waste sources, alternatives which utilize reuse or disposal with no discharge to public waters shall be given highest priority for use wherever practicable. New source discharges may be approved subject to the criteria in Section 3 of this rule.

[~~(5)~~] (6) No discharges of wastes to lakes or reservoirs shall be allowed except as provided in Section 3 of this rule.

[~~(6)~~] (7) Log handling in public waters shall conform to current EQC policies and guidelines.

[~~(7)~~] (8) Sand and gravel removal operations shall be conducted pursuant to a permit from the Division of State Lands and separated from the active flowing stream by a water-tight berm wherever physically practicable. Recirculation and reuse of process water shall be required wherever practicable. Discharges, when allowed, or seepage or leakage losses to public waters shall not cause a violation of water quality standards or adversely affect legitimate beneficial uses.

[~~(8)~~] (9) Logging and forest management activities shall be conducted in accordance with the Oregon Forest Practices Act so as to minimize adverse effects on water quality.

[~~(9)~~] (10) Road building and maintenance activities shall be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces.

[~~(10)~~] (11) In order to improve controls over nonpoint sources of pollution, federal, state, and local resource management agencies will be encouraged and assisted to coordinate planning and implementation of programs to regulate or control runoff, erosion, turbidity, stream temperature, stream flow, and the withdrawal and use of irrigation water on a basin-wide approach so as to protect the quality and beneficial uses of water and related resources. Such programs may include, but not be limited to, the following:

(a) Development of projects for storage and release of suitable quality waters to augment low stream flow;

(b) Urban runoff control to reduce erosion;

(c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows;

(d) Stream bank erosion reduction projects.

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: Richard Nichols, Hearings Officer

Subject: Waste Load Increase Rule Hearings Officer Report

HEARING OFFICER'S REPORT

Proposed Rule Amendments to Clarify Requirements for Designation and Management of Water Quality Limited Receiving Streams

On May 1, 1990, at 1:00 - 5:00 p.m. and 7:00 - 9:00 p.m. in the second floor hearing room of the City of Portland, I conducted a public hearing to receive testimony on the above referenced rules.

Three individuals presented oral testimony including:

1. Mikey Jones
   17751 Amity Vineyards Road, S.E.
   Amity, Oregon

2. Tom Donaca
   Council for Associated Oregon Industries

3. Karl Anuta
   Northwest Environmental Defence Center

Fifteen individuals or organizations submitted written testimony including:

1. Donald E. Anderson
   Citizen

2. Karl Aunta,
   Northwest Environmental Defense Center

3. Nina Bell
   Northwest Environmental Advocates

4. Jim Carven
   American Electronics Association

5. Thomas C. Donaca
   Associated Oregon Industries

6. Bill Gaffi, Chair
   Associated Oregon Sewage Agencies

7. William C. Gaffi
   City of Portland

8. John Gould
   Spears, Lubersky, Bledsoe, Anderson, Young and Hilliard

9. Gary Krahmer
   Unified Sewerage Agency of Washington County

10. JoAnn McCauley
    Lane Council of Governments

11. Tom Murphy
    Citizen

12. Mary O'Brien
    Northwest Coalition for Alternatives to Pesticides

13. Patrick Parenteau and Craig Johnston
    Perkins Coie

14. Tom Robinson
    Oregon Salmon Commission

15. Carol Yarbrough
    Citizens for Quality Living

Several other people attended the hearing and the list of those who attended is attached in Exhibit 16.

Summary of Oral Testimony

The oral testimony was limited in extent and consequently it was transcribed and is attached in Exhibit 17 after the written testimony submitted. Below is a brief summary of the oral testimony:

1. Mikey Jones, 17751 Amity Vineyards Road, Amity, Oregon

Mr. Jones testified that he was disappointed when he received the rules because they were not what he expected. He felt the proposed rules change the definition of water quality limited and he is opposed to this. He was willing to pay the cost of solutions for water quality limited streams. Mr. Jones described his concerns with the Columbia Slough and the problems he has had in trying to get things cleaned up. He very much supports the Clean Water Act and feels that it is a very good piece of legislation.

Mr. Jones expressed his concerns about the power the rules would give the Director when he feels that this would bring more politics into the decisions being made. He did not like the proposed rules section on "extraordinary circumstances" or the use of the term "temporary".

2. Tom Donaca, Associated Oregon Industries

Mr. Donaca summarized his written testimony which he submitted to the Hearings Officer. In brief, he supports Option 3 and opposes the other two options. He felt that the Option 1 would bring all expansion of industry and population growth to a halt in water quality limited basins. Option 2 was viewed as being only slightly better. Mr. Donaca's written and oral comments are attached.

3. Mr. Karl Anuta, Northwest Environmental Defense Center

Mr. Anuta presented both oral and written comments on the proposed rules. These comments are attached. His written comments are summarized in the following section. In brief, he testified that he disagreed with the presumption that the meeting of numeric water quality criteria protects beneficial uses. He also did not like, throughout the rules, the reliance on best practicable or best available technology. Mr. Anuta also took exception to the uses of the term "significantly" in 340-41-026(3)(a)(B) and felt that "reserve capacity" needed to be defined. He felt that priorities needed to be set for all categories of water quality limited.

If an option is selected, he would want to see Option 1.

Summary of Written Testimony

All written testimony is attached, below is a brief summary of that testimony:

1. Donald Anderson, Citizen -- Mr. Anderson was not in favor of allowing any additional wastewater discharges. He wanted the Department to maintain strict rules to prevent the discharge of pollutants.

2. Karl Anuta, Northwest Environmental Defense Center (NEDC) and Nina Bell, Northwest Environmental Advocates -- They jointly submitted extensive written testimony for their organizations. In summary, they stated that they generally support the efforts to revise the rules. However, they feel that these particular proposed amendments were merely a knee-jerk reaction to the WTD NPDES permit denial. They had the following comments:

   a. The rule options have a conceptual problem in their reliance on best practicable/available technology.

   b. The term "reserve capacity" is used several times without a clear definition being provided.

   c. The Department needs to amend the rule to establish a priority test for future water quality monitoring for waterbodies designated under proposed OAR 340-41-006(30)(c).

   d. That no new loads be approved on an already limited waterbody until the TMDL process is completed.

   e. The use of the word "significantly" in OAR 340-41-026(a)(B) is unacceptable.

   f. The proposed rules include a presumption that uses are protected if water quality standards are met. This is not appropriate.

   g. The rule application is too limited and should apply to all streams designated as water quality limited under the proposed definition in 340-41-006(30).

   h. The proposed rule is too pollutant specific and should limit the addition of any pollutant parameter which will negatively affect the already threatened or impaired designated uses.

   i. Delete inappropriate historical commentary in OAR 340-41-026(3)(b).

   They concluded by stating that if there is an amendment they would support Option 1 and possibly add proposed OAR 340-41-026(3)(a)-(C)(iii). They strongly opposed Option 3.

3. Jim Craven, American Electronics Association -- Mr. Craven states that the American Electronics Association supports Option 3 and urges its adoption. They feel this provides the Commission with the flexibility to grant new or increased wasteloads. They are concerned that Option 2 would hold new or expanding existing hostage to recalcitrant existing sources until they comply with wasteload allocations.

4. Thomas Donaca, Associated Oregon Industries -- Mr. Donaca, on behalf of the Water Quality Committee of the Association, supports Option 3. In their opinion, Option 1 would bring all expansion of industry and population growth to a halt wherever the state declares a waterbody water quality limited. They felt Option 2 was only slightly better than Option 1.

5. Bill Gaffi, Chair, Association of Oregon Sewerage Agencies -- Mr. Gaffi's organization supports Option 3 because it offers needed flexibility to address future needs that are difficult to fully anticipate today.

6. William C. Gaffi, Chief Engineer, Bureau of Environmental Services, City of Portland -- Mr. Gaffi on behalf of the City of Portland, Bureau of Environmental Services, stated that the City supports adoption of Option 3 with some minor clarification. He suggests that the Commission give consideration to the cumulative impacts of previously granted load allocations with the new proposed increase.

   The City also proposed some additional wording to Option 3, OAR 340-41-026(3)(a)(C)(iv).

   Add language requiring a schedule in OAR 340-41-026(4)(d). The rules should offer some criteria for determining what is a "significant impact" and what is "temporary".

   Finally, he suggested that no waterbody be designated water quality limited when insufficient data exists to support that designation.

7. John Gould, Attorney, Spears, Lubersky, Bledsoe, Anderson, Young, and Hilliard -- Mr. Gould commented on behalf of the James River Corporation. He was concerned about the definition and use of several terms such as "Director" in the proposed rules.

8. Gary Krahmer, General Manager, Unified Sewerage Agency (USA) of Washington County -- Mr. Krahmer, on behalf of USA, stated that the proposed definitions could be further clarified and strengthened. He feels that Option 3 is preferable.

9. JoAnna McCauley, Lane Council of Governments -- Ms. McCauley wrote that the Lane Council of Governments had determined that no comment was needed.

10. Tom Murphy, Citizen -- Mr. Murphy commented that he hoped that the rules would not be changed to allow more toxics to dumped into the environment.

11. Mary O'Brien, Ph.D., Northwest Coalition for Alternatives to Pesticides (NCAP) -- Dr. O'Brien stated, on behalf of NCAP, that they deplore all three proposed Options. She felt that these changes were being proposed to protect polluters and to lessen public and environmental protection. Dr. O'Brien took considerable exception to the use in the proposed rules of the term "significant". She wanted better water

quality standards and objected to the presumption that beneficial uses are protected whenever numeric water quality standards for those beneficial uses are met.

12. Patrick Parenteau and Craig Johnston, Perkins Core -- Mr. Parenteau and Mr. Johnston commented that they are committed to the TMDL approach to water quality problems. However they do not believe that a water quality problem should trigger an absolute ban on even the construction of a new source until the waterbody is back in compliance. Consequently, they support Option 3. In their comments Mr. Parenteau and Mr. Craig discuss the problems they see with the different options. They conclude by suggesting that language be added to clarify the interstate responsibilities in water quality limited situations.

13. Tom Robinson, Manager, Oregon Salmon Commission -- Mr. Robinson stated that the Oregon Salmon Commission did not support any rule options for changes affecting standards applied to pulp mill effluents/dioxin contamination. They support the status quo of rules.

14. Carol Yarbrough, Citizens for Quality Living -- Ms. Yarbrough comments that her organization does not support the Options proposed.

RJN:hs
Attachment
June 18, 1990

EXHIBIT 1

EXHIBITS 2 and 3

Neil

Northwest Environmental Defense Center
10015 S.W. Terwilliger Blvd., Portland, Oregon 97219
(503) 244-1181 ext.707

May 4, 1990

Lydia Taylor
DEQ, Water Quality Division
811 SW 6th Ave.
Portland, OR 97204

Re: Comments on Proposed Amendments to OAR 340-41-006, and OAR 340-41-026

Dear Lydia:

The Northwest Environmental Defense Center (NEDC) and North West Environmental Advocates (NWEA) submit the following comments on DEQ's proposed amendments.

We generally support the Department's efforts to revise its rules to bring them up-to-date with Oregon's "new approach." However, these particular proposed amendments appear to be merely a knee-jerk reaction to the denial of the WTD NPDES permit. As DEQ is well aware, these rules will have a major effect on all of Oregon's waters, not on just WTD's profit margin. We see no need to "fix" a rule merely because it properly required the denial of a permit to a polluter. DEQ is supposed to be in the business of denying permits to polluters.

DEQ should not back away from the standards and rules required by the Clean Water Act. Oregon has been making progress toward improving the State's waters, but there is still a long way to go. Now is not the time to relax the standards regardless of the political or economic pressure put on the agency.

If the agency feels it must amend these rules, we submit the following suggestions:

I. General Comments, Applicable to All Options.

A. CONCEPTUAL PROBLEMS.

1. Reliance on best practicable/available technology.

We are extremely concerned that these rules propose a return, to a complete reliance on best practicable technology (BPT) or best available technology (BAT). It was specifically because BPT/BAT were not sufficient by themselves to achieve the cleanup and restoration that Congress intended that the Section 303 TMDL process was put in place. These proposed rules should be recrafted, so that the actual condition of the designated uses of the river are the touchstone, not the use of BPT/BAT. That is not to say that BPT/BAT are not important. They are a crucial component of the effort to clean up the environment. However, the agency has relied on BPT/BAT only, for too long. The "new approach" of focusing on the water body's condition, not just the technology, must be maintained.

2. "Reserve Capacity"

The term "reserve capacity" is used several times. This term should be carefully defined, to clarify that reserve capacity is different from, not a substitute for the margin of error allowed in a TMDL calculation. Margins of error allow for mistakes in calculations or scientific uncertainty. Reserve capacity, particularly as used in these rules, is a wholly distinct concept and should be so defined.

NEDC/NWEA propose the following definition be added:

Reserve Capacity:

The capacity, if any, that remains after taking the difference between the Loading Capacity and the sum of the Load Allocations, the Wasteload Allocations, and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

3. Priority scheduling for insufficient data streams.

We propose that OAR 340-41-026(4) be amended as follows:

(c) For waterbodies designated water quality limited under 340-41-006(30)(c), the Department shall establish a priority list for future water quality monitoring activities to determine: (1) if the water body should be designated as water quality limited under OAR 340-41-006(30)(a) or (30)(b); (2) if estimated TMDL's need to be prepared; and (3) if an implementation plan needs to be developed and put in place.

This amendment was part of DEQ's last draft of these rules. See, Agenda Item K, staff report, 1/19/90 EQC meeting. We

believe that all parties, including the EQC, felt that this should be included in all subsequent options. It is important to establish priority dates for determining the status of water bodies where insufficient data is present. This is much more acceptable than waiting until the proposed permit is before DEQ and then scrambling to try to put together the same data. This would provide a much needed degree of certainty for the Department, the polluter and the public.

4. Biocumulative toxins.

NEDC/NWEA remain concerned that no new loads should be approved on an already limited water body until the TMDL process is completed. This is particularly critical where biocumulative toxins are involved. The TMDL process was primarily designed to work with pollutants that are readily dispersed or break down by natural biological processes. TMDL calculations get far more complex when the subject is a biocumulative toxin, such as dioxin. An underestimation of the assimilative capacity would not simply cause problems for the river, it would cause problems throughout the food chain and many facets of human life for years, or centuries, to come.

The agency must prepare itself for, and come to grips with, the tough issues involved with biocumulative toxins. It will be necessary to decide what will happen where permits are granted allowing construction of new facilities and then DEQ suddenly discovers that (1) the TMDL calculations were too high and there are more toxins present than was thought, or (2) older sources have failed to meet their permit requirements, or (3) the river has gotten much dirtier for other reasons, for example, non-point sources. All three "discoveries" will leave the rivers clogged with more toxic filth and the agency open to litigation.

In such circumstances, will old sources be required to immediately shut down so the newer sources can come on line? Will new sources, who are expecting to come on line and are financially dependent upon that expectation, be told they simply have to wait until the standards are met? Will the agency be guilty of allowing a return to the use of Oregon's rivers and lakes as industrial sewers through an inability or unwillingness to enforce mandated planning and cleanup schemes? These questions must be addressed now, not two, three or five years down the road.

NEDC/NWEA urge the agency to adopt the position that new polluters must either (1) wait until there is sufficient reserve capacity before they go on line, regardless of the circumstances; or (2) use technology which will not discharge any pollutants that have any effect on designated uses of the water body. DEQ must decide to move forward with the process of cleaning up Oregon's lakes and rivers. Political pressure

should not be allowed to create a "one step forward, two steps back" exception to this ongoing cleanup.

B. PROPOSED AMENDMENTS TO OAR 340-41-026(3)(a)(B)

1. Use of "significantly."

The proposed addition of the word "significantly" is completely unacceptable. These rules should provide some level of certainty. Inclusion of a mushy term like "significantly" will open DEQ to litigation on every single increase, over whether that particular proposed increase is a "significant" one. NEDC/NWEA recognize that DEQ staff would always like more language allowing for "judgment calls." However, this is not the place to put such language.

The addition of such a term completely ignores the problem of cumulative impacts. Each "insignificant" increase in pollutant loadings has a cumulative effect. These rules provide no mechanism for judging that cumulative effect. Thus, 20 permits, each adding an "insignificant" amount of pollutant would be acceptable under this rule. Yet, the disastrous combined effects of these additions on the water quality could be the same as one large "significant" discharge. The agency cannot equivocate at such a critical juncture, unless it also provides a proven mechanisn for making findings each time there is an "insignificant" determination, that there will be no cumulative impact.

2. Incorrect presumptions.

The rule as proposed includes a "presumption" that uses are protected if water quality standards are met. There are several problems with this. Most importantly, the Clean Water Act § 303 does not include or allow for any such "presumption." In addition, the terminology chosen is incorrect.

Section 303(c)(2)(A) provides that water quality standards consist of "designated uses" (not beneficial uses) "and" water quality criteria based on such uses. Had Congress intended that designated uses be "presumed" to be protected, if water quality criteria were met, they would have used the term "or" not "and." The issue is whether designated uses are actually being protected. That is the touchstone of the Act and should be the basis of the rules.

NEDC/NWEA propose that the rule be rewritten as follows:

(B) The new or increased discharged load would not threaten or impair any recognized [beneficial]

designated uses [;] . In making this determination the Commission or Department may rely upon the presumption that if the designated uses are not currently being met, water quality standards are not being met. In making its decision, the Commission or Department may evaluate data from other state and federal agencies;

C. PROPOSED AMENDMENTS TO OAR 340-41-026(3)(a)(C)

1. Rule application too limited.

The rule as proposed applies only to streams designated as water quality limited under subpart (a) of 340-41-006(30). The Clean Water Act requires that TMDL's and the determinations specified in this proposed rule be made for all water quality limited water bodies, not just those described in subpart (a). The rule should read as follows:

(C) The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited under OAR 340-41-060(30), unless:

2. Too pollutant specific.

Subpart (i) of this rule should be broadened. The rule as currently proposed allows the addition of pollutants, if the addition is a different pollutant than one which caused the water body to be listed as water quality limited. This could potentially cause more damage to the already harmed use. For example, if a water body has shellfish as a designated use and that use is impaired by fecal coliform, under the proposed rule it would be acceptable to allow an additional discharge of another pollutant which might further harm the shellfish, if the additional pollutant is not the same pollutant that caused the water body to be listed.

NEDC/NWEA propose the following amendment to address this problem:

(C) (i) The pollutant paramenters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving water body to violate water quality standards and being designated water quality limited; and

(ii) The pollutant parameters associated with the

proposed discharge will not negatively affect the already threatened or impaired designated uses for which the water body is listed as water quality limited; or

(iii) Total maximum daily loads (TMDL's) . . .

D. PROPOSED AMENDMENT TO OAR 340-41-026(3)(b)

1. Inappropriate historical commentary.

OAR 340-41-026(3)(b) contains a series of statements which are not rules, but merely anecdotal historical commentary. This language is completely unnecessary and confusing. We propose that this language be stricken:

(3)(b) Oregon's water quality management policies and programs recognize that Oregon's water bodies have a finite capacity to assimilate waste. ~~The strategy that has been followed in stream management has hastened the development in application of treatment technology that would not have otherwise occurred. As a result, some waters in Oregon have assimilative capacity above that which would exist if only the minimum level of waste treatment was achieved. This~~ Unused assimilative capacity is an ...

II. The Options

As previously noted, we do not think any amendment is required. However, if DEQ persists in this amendment proposal, we generally support Option No. 1. It would perhaps be acceptable to add the "critical environmental problem" exception (proposed OAR 340-41-026(3)(a)(C)(iii) that is provided as part of Option No. 2 to Option No. 1.

We do not accept Option No. 2. Its general language is much less restrictive than Option No. 1. It would potentially allow more pollutant loadings to already limited water bodies. With regard to Option No. 3, NEDC/NWEA are frankly shocked and dismayed at the inclusion of the "de minimis" exception in Option 3. Remember cumulative impacts? Has DEQ learned nothing over the past few years?

Allowing a "de minimis exception" like the one proposed in Option 3 could, practically speaking, eviscerate any other limitations in the rules. Every single polluter will claim that it qualifies for this exception. Political pressure will be brought to bear to grant such an exception in each case, particularly where major polluters are involved and where a large amount of money is at stake.

The Department cannot afford this. The agency must not allow its regulatory process to become a political football field. The rules should be clear from the outset and should provide certainty to all involved. The rules should straightforwardly refuse to allow new load increases on water bodies where designated uses are not being met. NEDC/NWEA strongly oppose Option No. 3, or any similar effort to add a de minimis exception and allow pollution, particularly toxic pollution, in already degraded lakes and rivers.

As always, please do not hesitate to contact us if you have additional questions. NEDC/NWEA look forward to seeing a more acceptable draft of these rules and providing responsive testimony to the Commission/Department.

Sincerely,

Karl G. Anuta
President, NEDC

Nina Bell
Executive Director, NWEA

KGA:pl

cc: John Bonine/Mary O'Brian
Linda Williams

EXHIBIT 4

American Electronics Association AEA

707 13th Street, S.E., Suite 118, Salem, Oregon 97301. Telephone: (503) 363-3902

May 2, 1990

Neil Mullane
Water Quality Division
Department of Environmental Quality
811 SW Sixth
Portland, Oregon 97204

RE: Proposed Amendments to Policy Statements Related to Wastewater Discharge

Dear Neil:

The Oregon Council of the American Electronics Association welcomes the opportunity to comment on the proposed rule amendments noted above. We want to state our preference for Option #3 and urge adoption of this option by the Commission.

We applaud the DEQ and the Commission for its willingness to confront the difficult issue of how to allow for flexibility in granting new or increased wastewater discharge loads in areas where streams have been designated water-quality limited.

Overall, we believe that water-quality problems in limited basins should be solved by requiring all players to institute improved pollution-control equipment, not by simply banning new sources or expansion of existing sources.

It makes sense to us that bans on new additions or expansions should be mollified by an approach that allows for the permitting of some new sources or the expansion of existing sources before the water-quality limited stream comes into full compliance.

There need to be safeguards in this approach, and these are adequately spelled out in the proposed draft rules amendments. We prefer Option #3 because we believe that it contains important additional flexibility through the language proposed in 340-41-026 (3)(a)(C)(iv). Such flexibility is required to allow for permitting of small discharges that will not have a significant adverse impact on the waterbody.

Without such flexibility (as in Option #2), we are concerned that new or expanding existing sources could be held hostage to recalcitrant existing sources that may not comply with their wastewater load allocations even though existing technology is available to them.

We hope our comments are helpful and will be considered in the drafting of the final staff report to the EQC. Please feel free to contact me if you have any additional questions. I would like to be placed on your mailing list to receive the staff report and a copy of the rules forwarded to the EQC.

Sincerely,

Jim Craven
Government Affairs Manager
AEA/Oregon Council

EXHIBIT 5

ASSOCIATED OREGON INDUSTRIES

P.O. Box 12519
1149 Court St. N.E.
Salem, OR 97309-0519

Salem 503/588-0050
Portland 503/227-5636
FAX 503/588-0052

TESTIMONY OF ASSOCIATED OREGON INDUSTRIES

April 30, 1990

RE: Increases in permitted municipal and industrial sources that discharge treated effluent to surface water.

I am Thomas C. Donaca, General Counsel of Associated Oregon Industries and I appear here today on behalf of the Water Quality Committee of the association to support proposed Option No. 3.

In our opinion Option No. 1, would bring all expansion of industry and population growth to a halt wherever any waters of the state were declared water quality limited. With the new requirements for monitoring additional pollutants the potential for problems is increased. We therefore believe such an approach is impractical and probably unenforceable because the delay imposed is indeterminable and is based largely on the action of third parties.

Option No. 2, is slightly better, because it does not depend on full implementation of compliance plans and does make provision for emergencies and temporary increases, but, with restrictions on when those provisions can be utilized. Still, there is no provision for a permanent increase that would not add to the water quality limitation or affect beneficial uses.

Option No. 3, while still exceptionally restrictive, will permit some limited load increases when the proposed source is implementing the highest and best practical technology and where the discharge will not have a significant adverse effect on beneficial use.

Associated Oregon Industries has within its membership many holders of NPDES permits. These permit holders vary from the largest to the smallest of firms holding such permits. It is essential for many of these firms to grow and increase effluent loadings. However, when the permittees are using the appropriate technology to minimize such increases and the receiving waters and its beneficial uses would not be impaired, it is essential to both the environmental and economic health of the state to allow much load increases.

Associated Oregon Industries urges the adoption of Option No. 3.

ASSOCIATION of OREGON SEWERAGE AGENCIES

PO Box 68592, Portland, Oregon 97268-0592

May 3, 1990

Neil Mullane
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1334

Re: Proposed Amendments to OAR 340-41-026

Dear Neil:

The Association of Oregon Sewerage Agencies appreciates the opportunity to offer the following comments on the topic amendments:

Option #3 seems to offer needed flexibility to the Department to address future needs that are difficult to fully anticipate today. An example would be a case where a POTW is being asked to take an existing privately owned treatment facility off line or to extend sewer service to eliminate a health or environmental hazard, the POTW is at the limit of its load allocation within a TMDL basin, will need to expand to accommodate the increased demand for service and is already providing the level of treatment indicated under TMDL compliance strategy for the basin. This raises the question of whether the public served by a POTW already providing superior treatment to others in the basin should be penalized if it agrees to address an environmental or public health issue adjacent to its service area. Obviously situations similar to the above will arise which require flexibility by the Department.

Adoption of the more flexible strategy reflected in Option #3 should not preclude an open review of the need for granting additional load via the public notification and hearings process that will attend any such permit amendment.

We therefore support adoption of Option #3. We support the wording in Options 2 and 3 that allow new discharges, if TMDLs, WLAs and LAs have been developed and are being implemented on schedule and if the new discharge will pose no "significant" adverse effects.

If more than one increased load were granted in a water quality limited segment, DEQ would need to consider the additive effects of such loads in addition to the localized impacts.

Allocation of discharges on a seasonal basis is an important feature, in that it reflects the needs of the receiving water and allows resources to be focused on higher priority water quality needs than unnecessarily high levels of wet weather treatment during periods when more than adequate assimilation capacity is available.

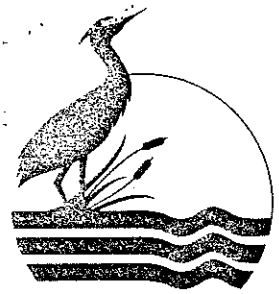
Highest Regards,

Bill Gaffi, Chair

newexpld

EXHIBIT 7

MULLANE



May 3, 1990

RECEIVED
MAY 08 1990
Water Quality Division
Dept. of Environmental Quality

1120 S.W. 5th Avenue
Room 400
Portland, Oregon
97204-1972
(503) 796-7740

Neil Mullane
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1334

Re: Proposed Amendments to OAR 340-41-026

Dear Neil:

The City of Portland, Bureau of Environmental Services offers the following comments on the proposed amendments to OAR 340-41-026 regarding new discharges to water quality limited streams.

We support adoption of Option 3 with some minor clarification. The City agrees that there are certain circumstances when a new discharge to a water quality limited stream should be allowed on an emergency, temporary or, in some cases, permanent basis. New discharges should not be allowed to cause significant adverse effects to beneficial uses. Load allocations to solve environmental/health problems, or to accomodate new development should not be denied if the impacts will not be significant and will be short lived. Appropriate discretion would have to be exercised in this regard however.

We support the wording in Options 2 and 3 that allow new discharges if TMDLs, WLAs and LAs have been developed and are being implemented on schedule and if the new discharge will pose no "significant" adverse effects. Option 1 would not allow consideration of potential new discharges until all compliance plans for TMDLs are fully implemented. This could have environmental,

health, economic or social consequences that could in some instances be more severe than the water quality impacts of a minor increase in load dependant upon the situation. Since it is impossible to anticipate all such circumstances it is appropriate that the EQC reserve the discretion to decide such cases on their merits via a public process. These sorts of judgements are necessarily and appropriately within the perview of the Commission and cannot be thoughtfully decided on a wholesale basis.

We caution, however, that consideration be given to the cumulative impacts of previously granted load additions plus that proposed.

We support the new rules' text that allows allocation of discharges on a seasonal basis, such that new discharges could be allowed during seasons when additional instream assimilation capacity is available.

The City proposes that the wording in Option 3, OAR 340-41-026 (3)(a)(C)(iv) be changed so that the phrase "...and where there would be adequate assimilative capacity in the relevant segment or waterbody if the existing sources implemented the highest and best practicable technology:" be deleted and replaced with <u>"based on the following conditions:"</u>. The phrase recommended for deletion appears to be unnecessary as the treatment levels of existing sources in the basin would be covered by the TMDLs, WLAs, LAs and the compliance plans.
The City also proposes to add to OAR 340-41-26 (3)(a)(C)(iv)(II) after the word "established" the following phrase: <u>"and is being implemented on schedule."</u>

In the Options 2 and 3, the City proposes to add to OAR 340-41-026 (4)(d) after the words, "...the Department shall establish a priority list..." the phrase, <u>"and schedule."</u> We would also like to see this amended subsection appear in Option 1.

In all options, the word, "significant" is used in a somewhat unclear manner, such as in Option 3, OAR 340-41-026 (3)(a)(B): "The new or increased discharge load would not <u>significantly</u> threaten or impair any recognized beneficial uses..." It may be helpful to the Department, applicants and other interested parties if DEQ could offer some criteria for determining what is a significant impact. This may be resolved by noting that significance can be determined by criteria such as those listed in OAR 340-41-026 (3)(a)(C).

Similarly, the word "temporary" as used in Options 2 and 3 in OAR 340-41-026 (3)(a)(C)(iii)(III) is unclear. DEQ may wish to offer criteria for determining the approximate length of a "temporary discharge."

Finally, a comment about proposed language for OAR 340-41-006, subsections 29(b) and 30(c). We are concerned that waterbodies not be labeled as water quality limited when insufficient data supports that designation as may have been the case at some periods in the past. At minimum, we would like to see a monitoring plan and schedule attached to such labeling of water bodies under subsections 29(b) and 30(c).

If you have any questions about the above comments, please call me at 796-7181 or Lori Faha at 796-7192. We appreciate the opportunity to comment on these new regulation proposals.

Sincerely,

W. C. Gaffi, P.E.
Chief Engineer

WCG:LF:em
c: Lori Faha
Dave Kliewer

DEQOAR.lf

EXHIBIT 8

SPEARS, LUBERSKY, BLEDSOE, ANDERSON, YOUNG & HILLIARD

ATTORNEYS AT LAW

520 S.W. YAMHILL STREET, SUITE 800
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CALIFORNIA OFFICE
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TELEPHONE (213) 451-9575
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WASHINGTON OFFICE
1220 MAIN STREET, SUITE 355
VANCOUVER, WASHINGTON 98660
TELEPHONE (206) 693-4100
FACSIMILE (206) 694-5350

April 27, 1990

Neil Mullane
Oregon Department of
Environmental Quality
Water Quality Division
211 S.W. Sixth Avenue
Portland, OR 97204

Re: Proposed Amendments to EQC Rules 340-41-006 and 340-41-026
Our File No. 4185-285

Dear Mr. Mullane:

On behalf of James River Corporation, we submit the following comments to Option 1. (They pertain to Option 2 and 3 as well.).

340-41-006

Rewrite the opening lead as a complete sentence; E.g., "The following definitions are applicable to all basins unless the context requires otherwise:"

After (2), define "Director".

In (4), rewrite to begin, "EQC" or "Commission" xxx

After (25), define "Standard Treatment Technology". See 29(a) where this was attempted. If BPT is intended for non-sewage wastes, define BPT.

Is (29) necessary? Where is the term "Effluent Limited" used in your rules?

In (30)(a), (b) & (c) insert "treatment" between "standard" and "technology", otherwise an ambiguity between "standard technology" and "standard treatment technology" will exist.

340-41-026

In general, it is the law of documents, whether statute, rule or contract that headings do not constitute a part of text which follows. See ORS 174.540, which expressly prohibits such construction in ORS. Therefore, this section should begin with a preface, of which the existing preface to subsection (2) is a good example and could be used here: "In order to maintain the quality of waters in the State of Oregon, it is the general policy of the EQC that:"

In (1)(a), "Environmental Quality" may be deleted since "Commission" was previously defined. In the same subsection, "continuing planning process" needs to be defined, referenced to a specific rule or statute where it is defined, or dropped altogether and replaced with a statement of general understanding such as, "after intergovernmental coordination and public participation."

In (2), drop the preface and begin the subsection "Growth and Development should be xxx"

In (3), delete "or Director". Section 340-41-026 is a Commission rule and should be adjusted, if at all, only by the Commission. Staff would remain an advisor to the Commission, but not an implementor of exceptions. In the same subsection, refer to subsections as "subsections of this section."

In (3)(a), delete "or Director."

In (3)(a)(B), delete "or Department" in the two places used; also delete "state and federal agency" as a modifier of data. Reliable data from any source, not just government, would promote this policy.

In (3)(a)(C), delete "(a)" from the reference to OAR 340-41-006 (30), otherwise the question arises whether this exception is available if the reason for being "water quality limited" is (b) or (c). There seems to be no reason to distinguish the three cases.

In (3)(b), delete "or Director".

In (4)(a), define Water Quality Act or cite its legal title, the "Federal Water Pollution Control Act". See P.L. 100-4, Title V, § 506, 101 Stats. 76.

In (4)(b), replace "Department" with "Commission". This is a Commission product, though the staff may do the initial work. Only the Commission should have authority to add a waterbody to the water quality limited list.

Very truly yours,

John Wiley Gould

EXHIBIT 9

UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY

May 3, 1990

Mr. Neil Mullane
Water Quality Division
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Dear Mr. Mullane:

SUBJECT: Comments on Proposed Amendments to OAR 340-41-006 and -026.

Please include this letter in the record of comments on these proposed rules.

Unified Sewerage Agency generally supports the concept behind the proposed rules in providing additional policy guidance to the Department for evaluating requests for new and additional waste loads, while also preventing degradation of water quality.

USA believes the proposed definitions could be further clarified and strengthened. In proposed 340-41-006 (29) and (30), the term "standard technology" should be clarified and separately defined. It should include "secondary treatment", defined in 340-41-006 (16), BPT for industrial sources, and best management practices (BMP) for nonpoint sources. As written, it is unclear that this term applies throughout DEQ's rules, and that DEQ means to include nonpoint source controls within its scope.

USA supports the proposed language of OAR 340-41-026 (4) which sets forth a process for designation of water quality limited segments.

The key policy choice under these rules is the decision among the options for new or increased loads for a water quality limited receiving water. USA believes the first option would be unduly restrictive. Where, as in the Tualatin River basin, all preconditions have been met, load increases should not be prohibited until all steps have been implemented.

Options 2 and 3 would provide additional flexibility to accommodate a new or expanded load while the process of achieving compliance with the TMDL is on track but not complete. A municipality discharging to a water quality limited stream which seeks to eliminate bypasses, eliminate combined sewage overflows (CSO's), or to connect properties to public sewer which had been

155 North First Avenue, Suite 270
Hillsboro, Oregon 97124

Phone: 503/648-8621
FAX: 503/640-3525

served by septic systems, may need a temporary or permanent increased load for one or more limited parameters. Without subsection (C)(iii), such load increases would not be permitted, and the elimination of other environmental problems through phased construction of treatment plant expansion could be delayed.

Option 3 is preferable, because of the added flexibility of subsection (C)(iv). USA can envision a case in which all dischargers to the USA system and the Tualatin River were utilizing highest and best practicable technology, and a new major industry or public facility was proposed for the area. If the facility discharge would prevent USA from meeting its WLA, the facility would not be allowed to connect to the USA system, and might be prevented from locating in the area. Proposed (C)(iv) would allow such a new or increased discharge to be accommodated through a modification in USA's NPDES permit, if appropriate findings are made and safeguards are met.

In summary, USA generally supports the proposed rules, with a revised definition and option 2 or 3 for proposed load increases. Thank you for the opportunity to comment on these proposed rules.

Sincerely,

Gary F. Krahmer
General Manager

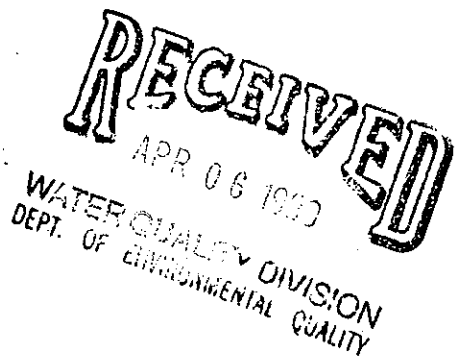
bjc

EXHIBIT 10

4 Mullane

LCOG Lane Council of Governments

April 3, 1990



Department of Environmental Quality
Water Quality Division
811 S. W. Sixth Avenue
Portland Oregon 97204

Dear Sir:

SUBJECT: AREAWIDE CLEARINGHOUSE REVIEW

TITLE: PROPOSED AMENDMENTS TO POLICY STATEMENTS RELATED TO WASTEWATER DISCHARGES

The Lane Council of Governments has received the above referenced proposal for review. It has been determined that no clearinghouse comment needs to be made. Nevertheless, thank you for the opportunity.

Sincerely,

JoAnn McCauley
Information Coordinator

JM:OA

Local Government Services
125 East Eighth Avenue
Eugene, Oregon 97401
Telephone (503) 687-4283

Senior and Disabled Services
1025 Willamette St. Suite 200
Eugene, Oregon 97401
Telephone (503) 687-4038

P.O. Box 2119
Gearhart, Or 97138

D.E.Q.
Water Quality Division
811 S.W. 6th Ave
Portland, Or 97204

Dear Sirs:

I am doing my very best in everyday life for a cleaner environment. I hope that you and the E.Q.C. are not going to change the rules to allow more toxics to be dumped into our environment. This would be very WRONG! For we do not need industry to survive but so far we do need the planet earth.

Sincerely,
Tom Murphy

EXHIBIT 12

NORTHWEST COALITION for
ALTERNATIVES to PESTICIDES
P.O. BOX 1393 EUGENE, OREGON 97440 (503) 344-5044

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390

May 3, 1990

COMMENTS ON
PROPOSED AMENDMENTS TO POLICY STATEMENTS
RELATED TO WASTEWATER DISCHARGES

The Northwest Coalition for Alternatives to Pesticides deplores all three proposed options to undermine the state narrative water quality standards for toxic wastewater discharges. These changes are being proposed to protect polluters and to lessen public and environmental protection. The Department of Environmental Quality should be fighting any such proposals, not proposing them. The Environmental Quality Commission should be refusing such proposals, not requesting them.

I. Proposal to allow polluters to threaten and/or impair aquatic organisms, wildlife, and humans with their toxic discharges.

At a time when humans worldwide are expressing concern over accumulating stresses on the environment and when polled Americans repeatedly indicate their overwhelming support for cleaning up the environment, the DEQ proposes to permit surface water discharges that threaten or impair aquatic organisms, wildlife, and humans and instead merely prohibit discharges that "significantly" threaten aquatic organisms, wildlife, and humans. While this proposal would supposedly only directly benefit new polluters, the DEQ will not apply more stringent environmental goals to existing polluters.

The goal of not "significantly" impairing aquatic organisms, wildlife, and humans is not a goal to which the state can be held publicly accountable on the basis of evidence; it is a license to pollute dependent on the whims of bureaucrats who decide what is "significant."

George Bush, for instance, proposes that causing one cancer in 100,000 people or even 10,000 people via pesticides in food

should be considered "negligible" (i.e., "not significant"). He doesn't name which children and adults will be sacrificed as "negligible," but grandly announces that their cancers will be considered negligible.

In Oregon, the weak goal of avoiding "significant" impairment of human well-being will be borne most heavily by those who consume fish most heavily: Native Americans, commercial fishers, sports fishers, and particular groups of people such as those in North Portland who catch fish and shellfish to eat.

For many people, the term "significant" is limited to impairment of humans and not impairment to other organisms. Most members on the current state technical advisory committee for groundwater contamination, for instance, feel that only those aquatic organisms obviously connected to human uses of the state's water should be protected; loss of the others would not be considered by them to constitute "significant" impairment.

Changing the current rules' words, "threaten or impair," to "significantly threaten or impair" would relieve the state of the responsibility to try to protect organisms that live in or use Oregon's surface waters. The proposed rule change will cause the state to roll around on a wide flat political football field of what is "significant" impairment.

Moreover, limiting impairment to "significant" impairment flies in the face of our increasing recognition that we repeatedly underestimate the significance of ecological impairment.

II. Proposal to presume that beneficial uses will be protected whenever numeric water quality standards for those beneficial uses are met.

There are at least four reasons this proposal would allow the state to be actively anti-scientific:

1. Numerical Water quality standards are prepared compound by compound, ignoring cumulative impacts. They utterly fail to account for the basic toxicological reality that organisms encounter multiple compounds and mixtures of compounds that may act cumulatively, additively, and/or synergistically. Meeting numerical water quality standards therefore does not insure that narrative water quality standards protecting beneficial uses will be satisfied.

The current water quality standard for 2,3,7,8-TCDD, for

instance, completely ignores the cumulative impacts of other dioxins, furans, and coplanar PCBs that are toxicologially equivalent in mechanism and effects to 2,3,7,8-TCDD. The water quality standard therefore fails to protect the beneficial use (fish consumption by humans) that it was "designed" to protect because it fails to account for what may be known in a particular state about contamination of particular surface waters by toxicologically equivalent or cumulatively toxic compounds. We know, for instance, that the Columbia River is polluted with PCBs, furans, and dioxins other than 2,3,7,8-TCDD.

2. Water quality standards are prepared based on contamination of the ambient water. They ignore the basic toxicological reality that organisms may be encountering the same compound via food chain contamination.

The current water quality standard for 2,3,7,8-TCDD, for instance, pretends that the only uptake by "edible" fish of 2,3,7,8-TCDD is via exposure to contaminated water and completely ignores the fact that the vast majority of 2,3,7,8-TCDD contamination of "edible" fish occurs via sediment contamination and subsequent uptake via the food chain beginning with benthic organisms. In conversation, DEQ staff and administration admit that the water quality standard does not address bioaccumulation of dioxin via the food chain.

The current water quality standard for 2,3,7,8-TCDD pretends that a fish will bioconcentrate 2,3,7,8-TCDD from water 5,000 times. Evidence was presented by Canadian federal environmental agencies at the recent pulp mill hearings in Alberta that certain large fish species bioaccumulate 2,3,7,8-TCDD 500,000 times (100 times more than assumed by the water quality standard).

3. Water quality standards supposedly protective of humans are in fact often prepared for average, 70 kg, white, adult males.

The current water quality standard for 2,3,7,8-TCDD pretends that an adult will eat 1.61 ounces of fish a week (5.2 lbs of fish a year); Native American adults often eat 46 ounces or more of fish a week (200 times more consumption than assumed by the water quality standard). Native Americans are not protected by the water quality standard; maybe Native Americans' fish consumption is not included in the term "beneficial uses"?

The EPA recently noted that "The 70 kg (154 lb) adult weight value used by Georgia and EPA in the criterion calculation is based on the average weight of an adult male and underestimates risks to children or to those who weigh less than 70 kg."[1] It also therefore underestimates risks to women who weigh less than

70 kg.

4. Water quality standards may be based on outdated information. Current incontrovertible evidence may exist that the data base for the water quality standard is inaccurate, rendering the standard unprotective.

EPA admits, for instance, that "the use of EPA's [bioconcentration factor] of 5,000 in calculating ambient water quality criteria does not include fish exposure factors other than through water.... The consumption value of 5.2 lbs/year used in EPA's 1980 risk assessment methods and used by Georgia...is based on older data... The latest data indicates [sic] that 24 lbs/year would represent sport fishermen [sic] and 113 lb/year subsistence fishermen... The 70 kg (154 lb) adult weight value...underestimates risks to children..."[2]

The DEQ's proposed rule would allow the state to hide behind a ten year old (or older) standard and ignore new evidence that would warrant different actions for protection of the beneficial use for which the standard was originally designed.

Under all three proposed rule changes, the state would be allowed to participate in the appalling fiction that if the 2,3,7,8-TCDD water quality standard for humans is met, humans will be protected from excessive dioxin contamination of fish they consume. The state could likewise participate in similar fictions in order to protect polluters and their toxic discharges.

Under the proposed rule change, public interest scientists such as myself would have no ability to require the state to consider scientific evidence that if the water quality standard is "met," beneficial uses are likely to be threatened or impaired. The state would be able to say, "Well, you're right on the scientific evidence, but we are going to ignore that evidence and presume (i.e., pretend) that if the water quality standard for 2,3,7,8-TCDD is met, the beneficial use it was designed to protect is protected."

Does the DEQ want to let the state make such a claim in the face of hard-earned scientific evidence? Why? To protect whom?

The only reason given for the proposed changes is to reduce potential economic costs to the polluters. The DEQ gives absolutely no environmental reasons for these proposed changes because there are none.

In options 2 and 3, the DEQ pretends they are making a

change for environmental reasons: They propose that toxic discharges into a water quality limited stream could be permitted "under extraordinary circumstances to solve an existing, immediate, and critical environmental problem..." Whom is the DEQ kidding? Concern for environmental problems was not the genesis of these rule changes.

The proposed rule changes offer nothing but less protection for the surface waters, their inhabitants, their dependents, and humans who use the waters. They offer protection only to polluters and polluting practices.

The proposed rule changes were first proposed when EQC had to deny a permit to WTD to build a new chlorine-based pulp mill on the Lower Columbia River where bald eagles are failing to reproduce because of organochlorine contamination; where mink and river otter carry reproduction-threatening loads of organochlorines in their bodies; and where edible fish are contaminated far above the supposedly "protective" level of 0.07 ppt 2,3,7,8-TCDD.

NCAP wishes to stress that the proposed rule changes are anti-scientific, anti-environment, anti-fish consumer, and anti-Native American. They should be rejected. The current rules have not prevented significant degradation of our surface waters; the last thing the state should do is weaken the current rules.

Mary H. O'Brien

Mary H. O'Brien, Ph.D.
Staff Scientist, NCAP

1. U.S. Environmental Protection Agency, Region IV. March 27, 1990. EPA's position on Georgia's adoption of a dioxin water quality standard.

2. Ibid.

EXHIBIT 13

WQ

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
U.S. BANCORP TOWER, SUITE 2500 • 111 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204
TELEPHONE: (503) 295-4400

May 4, 1990

Hand Delivered

Mr. Fred Hansen, Director
Oregon Department of Environmental Quality
Office of the Director
811 S.W. Sixth Avenue
Portland, OR 97204

Re: Comments on the Proposed New Source Water Quality Rules

Dear Mr. Hansen:

Perkins Coie welcomes the opportunity to comment on the proposed new source water quality rules. As you know, we have followed with interest the issues underlying the proposed rules and have witnessed first hand the problems caused by the rigidity of the existing regulatory structure. We applaud both the Department and the Commission for recognizing that serious consideration should be given to more flexible approaches.

First, we would like to state that we are committed to the TMDL approach to water pollution problems. We believe it to be based upon the logical premise that one must consider cumulative impacts in order to ensure that our waterbodies maintain appropriate levels of water quality. While the appropriateness of a given water quality standard may be debated, we believe it to be irrefutable that existing sources, point and non-point, industrial and non-industrial, should collectively be required to take whatever steps are necessary to achieve compliance with a properly-determined standard, with an additional margin of safety to account for any scientific uncertainties.

We do not believe, however, that the existence of a water quality compliance problem should trigger an absolute ban on even the construction of new sources until the waterbody is back in compliance with water-quality standards, as appears to be contemplated in Option 1. Instead, we believe that any ban on new sources, or expansions of existing sources, must be tempered by a rule of reason allowing for the permitting of new discharges in at least some circumstances before the relevant waterbody comes into compliance. For the reasons set forth below, we believe that Option 3 most closely reflects those circumstances in which the Department and the Commission should retain the

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ANCHORAGE • BELLEVUE • LOS ANGELES • SEATTLE • WASHINGTON, D.C.

discretion to permit new sources, notwithstanding temporary compliance problems.

Specifically, we believe that there are at least two circumstances in which new or increased discharges can be approved before a relevant waterbody achieves compliance without doing harm to either the regulatory scheme or, more importantly, the relevant waterbody. First, the Department and the Commission should retain the discretion to approve the construction of new sources and expansions of existing sources where there is a sufficient degree of certainty that the waterbody will not only achieve compliance before the new discharge occurs, but have sufficient assimilative capacity left over to absorb the new load. In these circumstances, the Department and the Commission should be able to decide, in advance, whether a portion of the to-be-created assimilated capacity should be devoted to the proposed new or increased discharge. Otherwise, environmentally-sound projects may be delayed for several years after the waterbody has sufficient assimilative capacity, due to the fact that permits cannot be obtained until the waterbody is already in compliance. In many cases, financing and construction is impossible before permits can be obtained.

Option 2 attempts to deal with this problem by shifting the necessary compliance timeframe from the time of allocation, as reflected in Option 1, to the time of discharge. Unfortunately, however, Option 2 requires a finding not only that a regulatory framework is in place to achieve compliance by the time of the discharge, but also that this framework is being implemented on schedule. The requirement that the regulatory framework be in place ensures that the problem is capable of being addressed within the appropriate timeframe so long as the existing sources comply with their wasteload allocations ("WLAs"). However, by requiring a finding that these sources actually be in compliance with their WLAs, Option 2 holds both new sources and proposed expansions hostage to existing sources that may not be complying with their WLAs despite the availability of the necessary technology. Thus, it sends the wrong signal by precluding "clean" facilities, while allowing "dirty" ones to keep operating. The proper response to the problem of non-complying sources is aggressive enforcement, not the preclusion of environmentally-sound projects.

We also believe that the Department and the Commission should retain the discretion to approve truly minor additions from new or existing sources, notwithstanding temporary noncompliance problems, so long as these discharges will neither delay the attainment of water quality standards for that waterbody nor significantly exacerbate the problem in the interim. This approach, which is reflected only in Option 3, assumes that the problem is "fixable;" that is, that the TMDL process will bring the waterbody into compliance and will create

sufficient additional assimilative capacity to accommodate the new source. It is not so concerned with timing, however; Option 3 does not, and should not, require that the relevant waterbody have sufficient assimilative capacity at the time of the new discharge. Instead, it is premised on the idea that the new discharge is so minor that it will not appreciably worsen the problem while the compliance schedule is working itself out. If this is true, and if the new discharge will not cause any delay in the attainment of compliance, there is no public policy reason to delay the economic benefits that would accrue from the new project.

Option 3 also assumes that the new source will be required to implement the highest and best practicable technology regarding the parameter at issue. In many cases, the proposed source may serve as a model of the steps that can be taken to improve performance and, therefore, may actually serve as a bridge to a new era of process changes and pollution-control. Additionally, Option 3 assumes that, for any proposed discharge, even a minor discharge, the Department and the Commission still would apply the balancing test set forth in Proposed Rule 340-41-026(3)(b) to determine whether that particular discharge merits an allocation of some portion of the to-be-created assimilative capacity.

In setting forth these comments, our basic premise is that, so long as the technology exists to solve a given water quality problem, it should be solved by requiring across-the-board process changes or improvements in pollution-control equipment, not by punishing either new sources or existing sources that seek to expand their operations by utilizing state-of-the-art approaches and technologies. We believe that Option 3 implements this principle while fully protecting the environmental standards that we all hope to either maintain or attain. We recognize that it may, in some cases, be difficult to determine whether a proposed new discharge should qualify as a "very small discharge" under Proposed Rule 340-41-026(3)(a)(C)(iv) (in Option 3). However, this difficulty does not mean that discharges clearly meeting the test should be precluded. The mere fact that a line may be hard to draw does not mean that there are not cases clearly falling on each side. Stated simply, discharges that will neither appreciably worsen a water quality problem nor delay its solution should not be precluded. While the Department and the Commission would be fully justified in requiring a proposed discharger to establish that it meets this test, it would be unwise to preclude even the prospect of such a showing.

As a final point, we also note that the rules should be clarified to make clear that, for interstate waterbodies, the Department and the Commission need only find that the TMDLs, wasteload allocations and compliance plans have been established for Oregon sources. These rules should not require findings with

regard to sources or regulatory activities in other states. This problem could be resolved by adding the following two sentences at the end of Proposed Rule 340-41-026(4)(c):

> Any requirements in OAR 340-41-026(3) pertaining to the establishment of TMDLs, WLAs, LAs and compliance plans shall be deemed to be satisfied if the Department has established such milestones for any Oregon sources. Nothing in OAR 340-41-026 shall be deemed to require any findings with regard to sources or regulatory activities in other states.

We appreciate both this opportunity to comment and the obvious effort put forth by your staff in drafting these proposed rules. If any further opportunity for input is made available to address these rules or comments on or revisions to the rules, we would appreciate being informed of that opportunity at the above address or by phone at (503) 295-4400.

Sincerely,

Patrick A. Parenteau Craig N. Johnston

cc: Neil Mullane
William Hutchison
Emory Castle
William Wessinger
Genevieve Sage
Henry Lorenzen

EXHIBIT 14

313 S.W. 2nd Street, Suite D
P.O. Box 1033
Newport, Oregon 97365

(503) 265-2437

OREGON TROLL SALMON
QUALITY IS KING

OREGON SALMON COMMISSION

Date: May 1, 1990

To: DEQ
Water Quality Division
811 SW 6th Ave.
Portland, OR 97204

From: Tom Robinson, Manager
Oregon Salmon Commission

RE: Proposed Rule Changes Affecting Pulp Mill/Dioxin Effluents Standards.

Please be advised that the Oregon Salmon Commission on behalf of Oregon's commercial salmon trollers and on behalf of the consuming public which we serve under OAR 576.305 does not support any of the options for rule changes affecting standards applied to pulp mill effluents/dioxin contamination. The Oregon Salmon Commission has provided formal oral and written testimony to DEQ and to the Environment Quality Commission on this subject. Our position remains unchanged. We adamantly support stringent standards which will fully protect both food quality and the smolt survivability of salmon which use the Columbia River corridor. While we are satisfied that no danger to consumers of salmon food fish is imminent, we see this as no reason to relax any of the standards. We continue to be greatly concerned about mortality of juvenile salmon and about biological effects on adult salmon's immune systems and reproductive capacities when exposed to these effluents. Those biological and mortality concerns have not yet been addressed nor answered satisfactorily.

Attached are copies of written testimony already supplied to you by this Commission. Please apply them to this record.

On behalf of the Commission I also express a great dissatisfaction with the notification processes being used as this issue continues to run a gauntlet of meetings and reviews. I have not been formally contacted on a regular basis by your department about the schedule of hearings and comment deadlines. I remind you that we are a state agency which is very much affected by the decisions you will make. I find it extremely remarkable that my best source of up-to-date information continues to be the "grapevine" rather than official communications from your department. Furthermore, I know that the Pacific Fisheries Management Council and the states of Oregon and Washington fisheries divisions are greatly concerned about this issue. Are they not being directly contacted? Please take prompt action to correct this oversight in notification.

cc: William P. Hutchinson EQC
Randy Fisher ODFW
Joe Blum WDF
Richard Schwarz PFMC
Frank Warrens PFMC
Bob Eaton Salmon for All

311 SW 2nd Street, Suite C
P.O. Box 1033
Newport, Oregon 97365

(503) 265-2437

OREGON TROLL SALMON QUALITY IS KING

OREGON SALMON COMMISSION

Date: December 15, 1989

To: Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth
Portland, OR 97204

From: Tom Robinson, Manager
Oregon Salmon Commission

Re: Proposed Rule Changes

We understand that Oregon's EQC is reviewing proposed rule changes on pulp mill pollution effluents January 1990. As you know we continue to provide comment on this matter as we find it to have significant impact on our industry through degradation of the environment. The details of our concern are outlined in previous communications and testimony submitted to you.

We also have some specific concerns and comments regarding proposed rule changes.

1. We ask for a return to full, open disclosure of all proceedings between the state and pulp mill industry representatives as this matter is resolved.
2. We support the status-quo of rules which require formal findings on pollution before EQC makes approvals. We recommend that food fish studies should be independently performed by other than industry contractors, to assure the objectivity of required findings.
3. We call your attention to the following items from the proposed rule changes:
   a) Proposed changes in paragraph 3, section (a) are alarming in that they appear to weaken existing permit processes, allowing too much subjective opinion, changing the phrase "would not", to read, "is not expected to", is clearly a move away from the level of control and protection which we must have through your commission, to assure safe, quality habitat for food fish in Oregon.
   b) Likewise, we support the status-quo for procedures which determine WQL status. There must not be a relaxing of processes which would remove the burden of positive proof of compliance with effluent standards, prior to removing a waterway, or a facility, from corrective activity. Speculative statements that compliance is expected may be encouraging news, but should not be substituted for actual achievement.

Thank you for your attention to our requests. We continue to rely on EQC, and DEQ to protect the habitat of Oregon's salmon resource as you execute your difficult tasks.

cc See attached sheet

313 S.W. 2nd Street, Suite C
P.O. Box 1033
Newport, Oregon 97365

OREGON TROLL SALMON
QUALITY IS KING

(503) 265-2437

December 15, 1989 OREGON SALMON COMMISSION

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

From: Tom Robinson, Manager
Oregon Salmon Commission

Re: Columbia River dioxin pollution

We understand that Oregon's DEQ is now drafting final individual control strategies (ICS) under section 304 (1) of the Federal Clean Water Act. Furthermore, we have been closely watching the progression of events surrounding permit processes for both new and existing pulp manufacturing facilities on Oregon's waterways.

We have notified the Department and the Commission and other state and federal agencies of our grave concerns about the negative effects which will impact our industry if our dioxin pollution problems are not brought under swift control. We are convinced, beyond doubt, that there should be no relaxing of the current standards for such pollution in our waterways. Any such changes could cause damage to Oregon's salmon fishing industry through actual biological effects or through market repercussions. We are not advocating elimination of pulp manufacturing, but rather we do advocate elimination of the use of chlorine bleaching processes. We understand that alternate methods are available that would be more compatible with food fish, wildlife, and human habitation.

Please be advised that this Commission under ORS 576.305 takes the following position:

1. As both new and existing chlorine bleach pulp manufacturing facilities are examined and regulated, the net result must be an overall reduction of total pollution levels to at least .01 parts per quadrillion within the next few years.
2. This level of pollution should be considered for <u>all</u> parts of the water system, eliminating the provision for mixing zones which exceed those limitations. Our concern is for concentration levels in the food chain.
3. We are concerned about pollution from all sources including but not limited to dioxin. We strongly suggest that a progressive, step-by-step program to diminish and eventually eliminate such pollution be undertaken immediately. On behalf of our industry we request the most immediate schedule possible. We suggest in addition to the dioxin requirement mentioned above, a schedule for elimination of absorbable, organic halides and chlorine by 1993, unless these chemicals be shown to have zero negative impacts on food fish, and consumers.

We continue our most adamant demand that there be no net loss of viable salmon spawning or migration habitat nor any loss of salmon fecundity or food quality as a result of present or future operations of such facilities. We ask that your commission take a firm stand to assure the safety of the Columbia system habitat, through action to achieve total elimination of dioxin from the system within ten years following the models of Canada, Sweden and other nations.

Thank you for your attention to these serious concerns.

313 S.W. 2nd Street, Suite C
P.O. Box 1033
Newport, Oregon 97365

OREGON TROLL SALMON QUALITY IS KING

(503) 265-2437

OREGON SALMON COMMISSION

Date: November 20, 1989

To: William P. Hutchinson, Chairman
Environmental Quality Commission
C/O Tooze, Marshall, Shenker, Holloway & Duden, Attorneys
333 SW Taylor St.
Portland, OR 97204-2496

From: Tom Robinson, Manager
Oregon Salmon Commission

Re: WTD Pulp Mill Permits and Columbia River Pollution Concerns

Dear Mr. Hutchinson:

I am the administrator for the Oregon Salmon Commission, a state commodity commission under the Department of Agriculture which serves our ocean salmon trolling industry. Ours is a significant industry in terms of its economic benefit to this state and an industry that has a long standing investment in conservation and protection of Oregon's valuable salmon resource. It is a first priority goal of our Commission to continue to provide the highest quality salmon food products available to the citizens of Oregon and to the world. For that and other reasons including our mandate of service under ORS 576.305 we now come directly to you with some very serious matters of concern.

We have monitored the permit process and related issues concerning the proposed construction and operation of the WTD pulp manufacturing and bleaching plant with which you are very familiar. One of the results of that concern was a letter in direct testimony on the subject which was mailed to the Department of Environmental Quality for inclusion with other testimony before you. We have recently learned that this letter along with several other important similar documents were not presented to you in their entirety prior to your deliberations. Rather, we understand, paraphrased extractions were delivered to you which may or may not have included all of our concerns and comments. I have included a copy of that letter in order that you may be fully appraised of our position.

We have read that permits for the construction and operation of the WTD plant were denied on the basis of environmental pollutant concerns, especially concerns about dioxin contamination. We have also learned through the media that the proponents of the mill's construction and operation have announced their intentions to seek changes in our laws to allow their operation outside of current environmental constraints. Please be advised that we would find this change to be a serious breach in our trust in agencies such as yours to protect this industry and the public. We wonder if you fully understand the snowballing effect and the tremendous consequences which could result from such a move. In short, it is entirely plausible that any dioxin contamination of the Columbia River system and the fish that swim within it could result in either a real or a perceived food scare which could adversely effect the entire salmon harvesting industry from northern California to Alaska. Damages could easily reach many hundreds of millions of dollars in a very short time. Expensive litigation based on those damages is not outside the realm of possibility.

I have recently been in contact with several state and federal fisheries agencies who share our concerns. For example at the recent Pacific Fisheries Management Council meetings held in Portland, that Council's habitat committee directly addressed the Columbia River dioxin situation which it viewed with significant alarm. Furthermore, I have been in contact with other agencies in the province of British Columbia and with a similar organization in Australia. It should not be surprising to you that the state of Oregon is still looked upon by the rest of the world as a strong leader in environmental management. People believe that Oregonians demand safe, pure water and that we export safe, pure products. They are watching us closely on this issue. I suggest that we should likewise watch them closely as we ask ourselves "Are we continuing to live up to our reputation?"

To be brief, as a result of these various communications I ask you to address the Commission to several specific items in this matter:

1) Canada's Federal Department of Fisheries and Oceans and Environment has determined that "the onus for demonstrating the environmental consequences of developments lies with the developers who must carry out the work necessary to fully demonstrate the impacts of their projects". Has your commission taken a similar stand or does it expect the public to bear the burden of the costs of these studies? We respectfully submit that we agree with the stand taken in Canada and ask that you put the burden of proof onto the developers to show no harm for safety or food quality of fish.

2) We know that the objective of Canadian federal fisheries management polices is to increase the productivity and capacity of fish habitat. We also know that the state of Oregon has similar plans for the Columbia River system and for the entire state. For example, this Commission plans to support projects which will greatly increase the production capacity of the lower Columbia system in terms of salmon smolts. The Canadians are expressing concerns for net loss of habitat and for possible losses of productivity of fish which are exposed to dioxin contamination. We respectfully request that any permit process or legal process which you undertake in this matter contains the mandate for no net loss of any fish habitat by pollution.

3) Another significant stand taken in Canada is that all cumulative impacts from dioxins and other chlorinated organic compounds should be examined before any new permits are authorized. It appears as though our state has taken a similar view. However, the Canadians stand ready to revoke permits and to call for a reduction of the overall contamination of their rivers in order to achieve the level of safety demanded by food fish migrations. We respectfully request that your commission take a similar stand for Oregon's waters.

4) In addition to these specific items, we understand that the Canadian Department also is addressing the following related issues; a) worst case pollution loading scenarios must be discussed, b) the developer must provide complete quantity and identity information on all chlorinated organic compounds, not a selected few, c) the developer must provide accurate predictions on their fate in sludge, water, biota, and sediments, including sediment transport and deposition zones. We respectfully request that Oregon take a similar approach to examine the effects of all such pollutants in question.

In conclusion, we note that the proposal of Environment Canada is that "ideally the discharge of chlorinated organic compounds should be eliminated". Moreover we understand that Sweden has recently announced its intention to achieve that even for existing mills within the next ten years and Austria has agreed to achieve within five years. We at the Oregon Salmon Commission, on behalf of our constituency and on behalf of the public who rely on the quality of our food fish will certainly expect that you will not adopt any policies or rules which fall short of these models. In fact we expect that Oregon will continue to live up to its reputation and will become a world leader in this regard as it has in several others. If this is not the case, we will certainly expect to be fully informed as to reasons why these issues are not to be addressed here in the same manner as they are being addressed in other parts of the world.

I also wish to point out again that we do not view this as a "spotted owl" issue. Rather this is a case of an established and traditional industry and heritage of Oregonians which confronts possible devastation. We are not opposed to pulp manufacturing, but rather we are opposed to any further deterioration of the Columbia River habitat as a result of the discharges from current and planned facilities.

Thank you for your kind attention.

CITIZENS FOR QUALITY LIVING
P.O. BOX 1888
KLAMATH FALLS, OREGON 97601

May 3, 1990

Water Quality Division
Department of Environmental Quality
811 S. W. Sixth Avenue
Portland, Oregon 97204

Dear Director of Department:

We support the existing Oregon Administrative Rule 340-41-026 (3)(a)(C) which restricts the commission and Department from allowing waste load increases to water quality limited receiving streams until discharging sources are in full compliance with their established waste load allocations.

Lowering the water quality is not justifiable for economic or social development when there is the long term threat to public health and the environment. Therefore we do not support the options proposed.

Thank you for this opportunity for written comment.

Sincerely,

Carol Yarbrough

SIGN-IN SHEET:

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DEPARTMENT OF ENVIRONMENTAL QUALITY

SIGN-IN SHEET

PLEASE **PRINT CLEARLY

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Tom Donaca	Assoc. Oregon Industries Suite 340 World Trade Bldg 121 SW Salmon - Portland 97204	Portland	97204	227-3730
David Walseth	WTD Industries P.O. Box 5805	Portland	97228	[illegible]
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Nan Artman	Lindsay, Hart, Neil, Weigler	222 SW Columbia Pdx	97201	[illegible]
[illegible]	[illegible]	[illegible]		

EXHIBIT 17

ORAL COMMENTS AT THE
INCREASING LOAD RULE HEARING
MAY 1, 1990 AFTERNOON

MR. JONES: My name is Mikey Jones, I now reside in Amity, Oregon, 17751 Amity Vineyards Road, S.E.

I was very disappointed when I received these rules because I had been told about them and I'd gone into DEQ and I said, "You're not going to change the definition of "water-quality-limited," are you," and I'd been told, "no," and then I got the Rules. I would hope that we'd just drop most of this discussion, but the way things work with the DEQ, it won't be dropped and it'll probably go through as it's been written.

One of the things that really particularly upset me when I got it, the letter, as it says here, "If added treatment requirements would require the use of a sand filter to polish effluent from one million gallons per day plant, the increased cost for a single-family home could be an additional $2-3." We'll have to tell you that to solve problems in water-quality-limited segments, if $2 is the price, boy, you've got it made, and go ahead and do it, because $10 would be a buy to solve that kind of problem. And I got to thinking about without the DEQ, they're real concerned about what a hero is, and I have to say that a hero bites the bullet and makes 'em pay the $2. It seems to me the DEQ has no backbone.

I live along the Columbia. I lived along the Columbia Slough for over 10 years, where there are 14 sewer outfalls. There is no NPDS permit. I asked in 1986 that they get an NPDS permit and they're still working on it. I would ask, rather than go through this misery and not being able to ask for the $2, they give up the 402 authority; give it back to the federal government. Maybe they will have some backbone.

I have to tell you, I don't know how many of the rest of you have read the Clean Water Act, but I have through several times, and I may be one of the few people in the world that it seems to me a thing of beauty. In 1972, Muskie and his people wrote the Clean Water Act, and what they did is, wrote an act that could get through in 1972 and would tighten, by itself, would tighten until there was clean water, because that's what we want, is clean water. It seems to me that all of these changes are nothing more than trying to escape the slow and inescapable tightening of the Clean Water Act. The Clean Water Act will prevail. I'm sure that there will be some discomfort, but I think in the end we'll all be better with clean water.

There are so many things I . . there's certain sections that really disturb me, and that are, there are, powers given to the director that I not only wouldn't like to see this director have, I wouldn't want to see any director have, because it makes clean water a political decision. I means that the director can decide.

He's going to put himself in a position I don't think any bureaucrat should be.

There are also things that you are deleting that were in the Clean Water Act, and you copied them in your 402 Authority, that were very important and it's a simple idea; that when a water body is heavily impacted, there'll be no more impacts, and that seems like a pretty simple idea. If you have a problem water body, you don't add to the problems, and how you can solve any overall problem. There are other water bodies. Maybe these plants, new plants or so on, should go on somewhere else. Maybe that's not the place they need to be; but until you can, if you have a water-quality-limited segment, there should be no growth, no new NPDS permits, unless somehow they can buy the water-quality-limited . . bring the quality standards down to the state standards. In 1972, part of the Clean Water Act, they asked the states; they said, "set your limits." There were no guidelines or anything. They said, "what do you think are good limits for each basin?" And in 1974 you submitted that to the federal government and then they turned around after a little bit later and gave you 402 Authority - on the basis of those water quality standards. Don't change those. You're only going to make problems. You're making loopholes now that will bring a tremendous litigation load.

I don't know if you're going to pass these and you probably will. Please strike Section III, or at least make it concrete. I cannot believe that when you read under "Extraordinary Circumstances," it is not spelled out in any form. Any circumstance can be extraordinary. To solve existing immediate and critical environmental problems, it seems to me, "existing, immediate and critical," those are past, present and future problems; that maybe those problems should be solved then. And then again, we've talked about "temporary." What is "temporary?" "Temporary" should mean no longer than five years.

I have to say, along the Columbia Slough, I'm not the first to say that it's polluted. In 1972, the DEQ formed a task force of the city, the federal, the state and all of the power bodies in Portland, and they decided that the sewer outfalls into the Columbia Slough should be corrected by 1985. 1985 came and went without a single penny being spent on separation, so when you say "temporary," that means that is an example of a compliance plan. Compliance plan formed for the city, where nothing happens. And nothing is going to happen and nothing will happen for the next five years. So I don't think you even need these loopholes. I am quite disappointed.

It seems to me it would be a good idea for the federal government to have this back. If you must pass these rules, please make a compliance plan - immutable and subject to litigation. It would be different if the DEQ had a wonderful track record on enforcement, but you have no track record and have shown no backbone in enforcement; so when you say, "compliance plan," make it part of the permit and immutable. Presently, the director can change any compliance plan with a

letter, and if he can direct "temporary," "extraordinary circumstances," and plus then drop them as soon as they get to hurt a little bit, it makes NPDS permits ridiculous.

Again I have to say, I believe in the Clean Water Act and I think it could do a lot of good, if you don't mess with these rules so much that we won't be able to make the City of Portland do something about the sewer outfalls into the Slough, and these rule changes might make it impossible to force the City to do anything about their sewer outfalls.

I want to explain to you why it will cost so much. It will cost so much because in 1972-85, the City decided to do nothing. They have deferred the maintenance, They have charged less than they had to. They have borrowed from the environment. And so, if it costs $20 a month, that's maybe too bad, but it is as much the DEQ's fault as the City's for allowing them to defer the maintenance. I want to thank you for this chance to testify.

MR. DONACA: For the record, Mr. Hearings Officer, I am Tom Donaka, Demo-council for Associated Oregon Industries, and I appear today on behalf of our Water Quality Committee to support proposed Option No. 3.

In our opinion, Option No. 1 would only bring all expansion of industry and population growth to a halt where waters were declared water-quality-limited. With the new requirements for monitoring additional pollutants, the potential for problems is increased. We, therefore, believe such an approach is impractical and probably unenforcable because the delay imposed is interminable and based largely on the action of third parties.

Option No. 2 is slightly better because it did not depend upon full implementation of compliance plans and does make provisions for emergencies and temporary increases, but with restrictions on when those provisions can be utilized. Still there's no provision for a permanent increase that would not add to water quality limitation, or affect beneficial usage.

Option No. 3, while still exceptionally restricted, will permit some limited load increases from the proposed sources, implementing the highest and best practical technology, and where the discharge will not have a significant adverse effect on the beneficial usage.

Associated Oregon Industries has within its membership many holders of NPDS permits. These permit-holders vary from the largest to the smallest firms now holding such permits. It is essential for many of these firms to grow and increase effluent loadings. However, when the permittees are using the appropriate technology to minimize such increases, then the receiving waters and its beneficial uses would not be impaired, it is essential to both the enviromental and economic health of the state to allow such load increases. Associated Oregon Industries urges the adoption of Option No. 3.

MR. KARL ANUTA: Mr. Hearings Officer and members of the gallery, my name is Karl Anuta. I'm here on behalf of the Northwest Environmental Defense Center. I have a series of comments that I'll make at this time on the record, and then in D.C. will be submitting, hopefully extensive, written comments in detail. I'm gonna stick right now mostly to conceptual items, because I think those are some of the things that need to be raised and dealt with.

One of the main difficulties that we have with these proposed rules in all of the Options is the presumption that's included; that if numerical water quality criteria are met, beneficial uses or designated uses are, in fact, being protected. This is most evident at . . in the definitional section 340-41-026, sub 3, sub a, sub B . . also, it's on page 17 of the report, I believe . . that is not . . with the presumption inherent in those standards is not the presumption inherent in the Clean Water Act. Section 303 C 2A provides that water quality standards consist of both the criteria and the beneficial uses.

Had Congress intended such a presumption to exist, that if numerical standards were met, automatically beneficial uses were protected, it would have said, "water quality criteria, or beneficial uses." They did not. They understood that you have to look at what is actually occurring on the river and look at the receiving water body.

You cannot just go by the numerical standards. That is not to say that numerical standards should be ignored. The combination is present for a reason. Both need to be used to assess the receiving water quality. Which brings me to the second conceptual problem.

Throughout the rules, in all the Options, "best practicable," or "best available" technology is relied upon. Congress has recognized repeatedly that "best practicable," or "best available" technology will not, in and of itself, solve water quality problems and return the rivers, which is the goal of the Clean Water Act - restoring the rivers, to a clean state. It is for this reason, in particular, that they implement the TMDL process. BPT and BAT is there often referred to by those people into acronyms, are useful and should not be backed away from, but they should be done in combination, with an examination of the water body, itself, and a look at the actual beneficial uses that are being impacted.

On to one of the other problems, again in the initial sections of each Option, that same paragraph that I previously cited, 340-41-026 sub 3, sub a, sub b; the word "significantly" is placed in an extremely difficult position. Not difficult in a semantics sense, but difficult in a sense that it would provide unlimited discretion to the Department in an area where we cannot afford to have discretions, because of cumulative impacts. NEDC is well aware that the Department would always like more discretion and always wants legal words or mushy language put in

that can be interpreted by professional judgment calls. This is not the place to put such a word. The language of the rules allows a newer increased discharge load that would not "significantly" threaten or impair. Each insignificant increase can lead to a cumulative effect problem, if there is not some specific analysis. Sixty-five insignificant increases from sixty-five pipes would be allowed under this standard; whereas, one pipe dumping the same amount of pollutants would clearly be a significant discharge. This is an inappropriate place to put the term. One other thing that should be clarified in these Rules; the concept of "reserved capacity" is discussed frequently. "Reserved capacity" is something different than the margin of air that is specified in the TMDL calculations set up by Section 303. That is not clear in the Rules, although I suspect it is the intent of the draftors. It needs to be clarified.

We'll submit a proposed definition. But in essence, you need to just spell out that "reserved capacity" means after you have taken into account the margin of error that allows the TMDL calculation to be off by a little bit, assuming scientific questions are raised about the calculation. You must allow additional reserve capacity before you go permitting things. That should not be a substitution between those two terms.

Another issue that we are concerned about is the idea of setting a priority schedule for gaining information on those water bodies where there is insignificant data, to determine if they are water-quality-limited. It does not make sense to just leave those water bodies hanging out there. The Department should set up some process whereby information is gathered, so that the next time the issue arises, there will be sufficient information to make a determination.

We notice that this proposal was contained in the prior draft rules that were proposed in each one of the options, but has now been eliminated. We hope that that was an elimination due to oversight, rather than a conscious choice. We were under the impression that DEQ and all other parties felt that that was a good way of bringing certainty into a process that otherwise might leave both the applicant, the public and the Department in an uncertain situation.

One of the other major concerns is the fact that these rules are apparently a specific reaction to "fixing" a problem that occurred when a permit was denied to WTD. Conceptually, simply because a polluter was denied a permit on Oregon waters, it does not mean that there is a problem with the rules. We recognize that there are some difficulties the way the current rules are written, but we are concerned that the Department not become reactive totally to political pressure, simply because a permit was denied. The Department should be in the business of denying permits, rather than in the business of issuing permits. Their role is designed to protect the waters of Oregon; not to assist in polluting them.

One of the other issues that we are concerned about is the critical environmental problems section that is raised. If one of these options is chosen by the Department, we think that Option 1 is the only acceptable one. It would perhaps be reasonable to put an addendum on it with the "Critical Environmental Problem" section listed in Option 2; although a concern that I raised earlier in the question period is still valid; i.e., how long is "temporary."

There seems to be, there might be a basis for this critical environmental exception, if the intent is to get at seasonal fluctuations. By that we mean, if your focus is to resolve situations where there is a problem during the summer, you want the polluter to hold the effluent until the winter, and then discharge and make a finding that there won't be a problem in the winter. That makes some sense. If your intent is to find a way around the other permit limits, as one of the other gentlemen suggested, then it doesn't make sense.

Finally, we would request that the language . . it's on page seven in the "Materials, " and again on page twelve . . it's the language . . get the site for you . . 340 41 026 sub 3, sub b . . in the end of that paragraph, there is language which reads, "the strategy that has been followed in stream management," etcetera, etcetera. We would urge the Department to strike that language from the rules, in that it is not in any way a rule that would guide the Department. It is merely a bit of the illustrative history about where the Department has, either corrently or incorrectly, depending on your perspective, been. That same language appears in each of the Options, and it is sub-part b. ("And the sentence, 'the strategy that has been followed . . '") "The strategy that has been followed in stream management . . , " and then the following sentence down through this. That whole paragraph; it may be an interesting part of history, but it is not, in our opinion, a necessary regulation. ("Starting here . . that's correct . . going down through . . right there.") We would urge the Department, if they're going through this rule process, to straighten out that part of the rules. ("They're in front of this . . you want to take out this sentence here, too . . ") Only to this . . You can start the next sentence . . ("Would you still like to use the word, 'this?'")

That is all the concerns that NEDC has at this time. We'll be submitting detailed written comments.

THE TESTIMONY - VERBAL TESTIMONY - RECEIVED IN THE AFTERNOON OF MAY 1 CONCLUDED AT 14:01 HOURS.

.....

THIS IS THE SECOND PART OF THE HEARING ON
340 41 026, INCREASING LOAD RULE
HEARING STARTED AT 7 O'CLOCK, MAY 1, 1990.

Let the record show that two people attended the public hearing and no one testified. Hearing was closed at 7:34 P.M.

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: Neil Mullane, Manager, Standards and Assessments

Subject: Issues Identified in Public Testimony on the Proposed Increase Load Rule

The following report describes the issues which were identified during the recent public comment period on the proposed increasing load rule and the Department's response to those issues.

ISSUE #1

Several people testified that the term "significantly" should either be deleted or that a clear definition be presented for the term.

Response:

The Commission asked that the term "significantly" be added to the rule (OAR 340-41-026(3)(a)(B)) to provide a qualifier for the extent of beneficial use impairment. It was primarily a criteria for modifying the terms threaten and impair which appear in the rule. Without the term "significantly" added to the rule, the Commission would be in the position of having to make judgements as to whether a requested load increases would threaten or impair any recognized beneficial use without some criteria. The Commission must consider what level of effect threatens or impairs a beneficial use. An argument could be made that any increase in discharge of any pollutant at any time in any waterbody may threaten or impair beneficial uses to some level and consequently no load increase should be granted.

The overall intent of the proposed rule was to provide guidance to the Commission when it considers waste load increases, not to prevent future discharges. The use of the term "significant" was meant to provide the Commission with the guidance that the threat or impairment was measurable and was statistically significant. The Commission would still have to decide whether to accept the identified level of threat or impairment. Some people have interpreted "significant" to mean substantial threat or

impairment. In other words, the beneficial use has been considerably affected.

This was not the intent of the Commission. Adding the term "significantly" to this rule was to assist the Commission in making judgments. However, if the term is unacceptable to those testifying, then it might be best to delete it from the rule and simply state that the Commission will make a judgement as to what level of threat or impairment is acceptable.

Recommendation:

Replace the term "significantly" in OAR 340-41-026(3)(a)(B) and "significant" in OAR 340-41-026(3)(a)(C)(iii)(III) with the terms "unacceptably" and "unacceptable" respectively. The judgement on what is acceptable will be determined by the Commission or Director, depending on whether the request is from a major or minor facility.

ISSUE #2

The proposed rule relies on the best practicable/available technology and this is unacceptable.

Response:

Proposed rule option 3 contained the language identified above. Option 3 has not been recommended by the Department for approval by the Commission.

Recommendation:

No action is needed.

ISSUE #3

The term "reserve capacity" should be defined.

Response:

The proposed rule contains the term "reserve capacity" and it should be defined.

Recommendation:

The Department recommends that the term "reserve capacity" be defined in OAR 340-41-006(31). The definition being:

> "Reserve Capacity" means that portion of a receiving stream's loading capacity which has not been allocated to point sources or nonpoint sources and natural background through waste load allocations and load allocation respectively. The reserve capacity includes that portion of the loading capacity which has been set aside for a safety margin and otherwise unallocated."

ISSUE #4

The Department needs to establish a priority test for future water quality monitoring of water bodies designated under 340-41-006(30)(c) and a schedule for the work needing to be completed.

Response:

The rules taken to hearing contained in OAR 340-41-026(4)(d) a priority test. This requirement has been maintained in the rule recommended by the Department for approval. The proposed rules did not contain a requirement that a schedule be established. The scheduling of monitoring efforts is very much contingent on the availability of resources. The Department could identify a proposed schedule for future monitoring but its implementation would be contingent on funding. It must be understood that the highest priority for available resources is for those receiving streams onwhich TMDLs are being developed. If additional resources remain, the Department would establish a schedule for monitoring the other water quality limited receivng streams.

Recommendation:

The Department recommends that the phrase "and schedule" be added to OAR 340-41-026(4)(d) after "...the Department shall establish a priority list..."

ISSUE #5

Some respondents opposed the presumption in the proposed rule that beneficial uses are protected if standards are met.

Response:

The concept of water quality protection is based on a standard that has both a beneficial use and numeric criteria. A beneficial use is designated and numeric water quality criteria are established to protect that use. For example, if a waterbody is designated as a fish spawning stream, the numeric criteria for dissolved oxygen is 95 percent saturation during the spawning season. If the stream achieves this level during the spawning period, the stream is considered to be in compliance with this numeric criteria and the beneficial use of spawning is protected for this parameter. If the stream needs to be protected for temperature or pH to also protect it for spawning, then the numeric criteria for these parameters would also need to be met if the spawning beneficial use is to be protected. The presumption identified in the rules under OAR 340-41-026(3)(b) states that in determining if beneficial uses are threatened or impaired the Commission or Department may presume that if standards are met that the beneficial uses that they were designed to protect are infact protected.

A considerable amount of the testimony on this issue was actually directed at those situations where numeric criteria do not currently exist. The point respondents made was that unless a determination could be made for all

parameters for all beneficial uses then the presumption of protection could not be made.

Recommendation:

Replace the word "standards" in the second sentence of the proposed rule 340-41-026(3)(c)(b) with the phrase "the numeric criteria established to protect specific uses"

Replace the word "standards" in the third sentence of the same rule with the term "the numeric criteria".

ISSUE #6

One person testifying stated that the rules are too limited and need to be expanded to apply to all waterbodies designated water quality limited under 340-41-006(30).

Response:

The primary reason for developing these rules was to provide clarification for what requirements need to be established for considering waste load increases to water quality limited streams. This was directed specifically at water quality limited receiving streams that were exceeding standards and fall into Section 303(d)(1) of the Clean Water Act and identified in OAR 340-41-006(30)(a).

There are however several other streams identified as water quality limited but for which information is very limited. This speaks directly to the issue that the water quality information for some streams is not adequate to determine the extent of a water quality problem affecting beneficial uses. The stream might be identified water quality limited but more information is needed to describe the extent of that problem.

The Clean Water Act recognizes this fact and encourges the use of the water quality limited process as a planning tool. The Act and subsequent federal regulations discuss the use of the process in this manner when they talk about estimated TMDLs. The intent was not to place all limited receiving streams in the same restrictive TMDL process.

Recommendation:

Maintain the proposed rule language and do not extend the coverage.

ISSUE #7

One person testified that the proposed rules were too specific in restricting parameters and should be expanded to include any parameter that could negatively affect threaten or impaired designated beneficial uses.

Response:

The Department in considering any increase load, regardless of whether it is a water quality limited receiving stream or not, examines the type of pollutants that are proposed for discharge and considers what their impact may be on the receiving stream. This consideration is made regardless of whether a stream has been identified as water quality limited or not. The proposed rules place specific restrictions on those parameters causing a water quality problem associated with a water quality based decision. The comment suggests that all parameters regardless of whether they are associated with the water quality based decision should be considered as such. The Department does not support this suggestion.

Recommendation:

No action needed.

ISSUE #8

Two people testifying requested that the historical commentary at the beginning of OAR 340-41-026(3) needed to be deleted.

Response:

The historical reference is not essential to the rule.

Recommendation:

Delete rule language.

ISSUE #9

One testifier commented that the rules needed to delete the reference to the Director.

Response:

Under this rule both the Commission and Director have the potential to make decisions based on whether the facility is a major or minor source.

Recommendation:

No action needed.

ISSUE #10

Testimony was received that asked for clarification of the term "temporary" in OAR 340-41-026(3)(a)(C)(iii).

Response:

The term temporary was used to describe the period of time between the establishment of TMDLs/WLAs and LAs and their full implementation. The intent of the rule was to allow the Commission and Department the ability to consider and potentially grant waste load increases on water quality limited receiving streams before full compliance with the TMDL implementation schedule in order to solve critical environmental problems. However that load increase would only be allowed during the interim period between establishment of TMLDs, WLAs and LAs and their achievement.

Recommendation:

Delete the word "temporary" in OAR 340-41-026(3)(a)(C)(iii) and place the language, during the period between the establishment of TMDLs, WLAs and LAs and their achievement after "OAR 340-41-006(30)(a)" and before " based on the following conditions:" .

Delete the word "temporary" which appears after the word request in OAR 340-410-026(3)(a)(C)(iii)(III).

Establish a new subsection for OAR 340-41-026(3)(c)(iii) that reads:

> "(IV) That any waste load increase granted under this subsection it temporary and does not extend beyond the TMDL achievement deadline established for the waterbody. If this action will result in a permanent load increase, the action has to comply with subsections (i) and (ii) of this rule."

ISSUE #11

Rule 340-41-026 should have a preface.

Response:

Yes, the section should have a preface.

Recommendation:

The Department recommends that the following be added at the beginning of OAR 340-41-026(1): In order to maintain the quality of waters in the State of Oregon, it is the general policy of the EQC that:

In addition to the above issues, the Department received testimony on other housekeeping changes that could be made to the rules and some of these have been made.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: Y
Division: Water Quality Division
Section: Wastewater Finance

SUBJECT:

Water Quality Rules: State Revolving Loan Fund Rule Amendments.

PURPOSE:

Obtain Environmental Quality Commission approval of permanent rule amendments needed to respond to problems in the existing rule that limit program effectiveness.

ACTION REQUESTED:

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

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

___ 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: — Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The State Revolving Loan Fund (SRF) program is a program for financing publicly owned water pollution control projects. It was adopted by Congress in 1987 to replace the Construction Grants program which has provided grants for water pollution control projects since 1972. Funding for the program is 83% federal monies and 17% state monies.

In March 1989, DEQ adopted the SRF rules (OAR Chapter 340, Division 54). A year's experience indicates the need for a number of rule changes to make the program more effective as an implementation tool for attaining water quality improvements. Major changes include the following:

- **Simplification of the SRF priority system (OAR 340-54-025(2) and (3)).** The process is changed from a two-tiered to a one-tiered system. Under the existing system, all known Oregon water quality problems are first ranked in the priority order. Then communities submit preliminary SRF applications which are ranked according to the water quality priority problem they address.

  The proposed rule amendments eliminate the step which ranks all Oregon water quality problems. Instead, it only includes a ranking of those projects for which preliminary applications are submitted.

- **Amend the priority ranking criteria (OAR 340-54-025(4)).** The proposed rule amendments change the criteria used to rank the preliminary applications and the points available in each category.

  The existing rules include three ranking criteria: water quality sensitivity points, water quality pollution problem points, and population. The proposed rule amendments change the method used for determining water quality sensitivity points which reflect the effect effluent could have on water. The proposed rule amendments also change the criteria name "water quality pollution problem points" to "enforcement/violation points". The changes are discussed in detail below:

  - First, the number of points assigned for Enforcement/ Violations is reduced from a maximum of 100 to a maximum of 50.

  - Second, the number of points available in the Water Quality Sensitivity category would increase from a maximum of 50 points to a maximum of 100 points.

- Third, the Clean Water Strategy is used to rank surface water bodies instead of the formula applied by the existing rule. The approach to groundwater sensitivity is also changed to be consistent with groundwater statutes in a manner recommended by the Groundwater Section of the Water Quality Division.

The result of these changes is that the new priority system focuses on the sensitivity of the affected waterbody more than on the degree of violation.

- **Amend the environmental review process (OAR 340-54-050).** Under the proposed rule amendments the responsibility for writing environmental assessments and environmental impact statements shifts from the Department to the applicant. The applicant may pay for preparation of the environmental assessment and environmental impact statement with SRF loan funds.

- **Incorporate legislative changes made by the 1989 Oregon Legislature (OAR 340-54-055 (2) and 340-54-060(15)).** These amendments eliminate the need for a bond counsel opinion on every SRF loan and allow the Department to waive its right to withhold revenue sharing funds otherwise due to the public agency in the case of agency default.

- **Add an "Alternative Loan" category to the three permissible methods of public agency borrowing from the SRF (OAR 340-54-065 (1) and (3)).** The original rule allowed public agencies to borrow from the SRF in one of three ways. They could sell the Department a "general obligation bond", a "rated revenue bond", or borrow under specific "revenue secured loan" requirements set out in rule. The proposed rule amendments allow the Department to make loans to public agencies which provide loan security that is different but substantially equivalent to the security required for revenue secured loans.

- **Limit small community reserve eligibility (OAR 340-54-070(2)).** The proposed rule amendments would limit eligibility for small community reserve funds (15% of the available SRF) to communities that have a minimum of 30 enforcement/violation points (30). The effect would be to eliminate construction (but not facility plan) financing from the small community reserve for communities with potential, but undocumented, water quality problems.

- **Change the maximum loan amount (OAR 340-54-075(1)).** The proposed rule amendments change the maximum amount that

any jurisdiction may receive from 25% to 15% of the available SRF each year.

- **Establish a minimum loan amount (OAR 340-54-075(2)).** The proposed rule amendments establish a minimum SRF loan amount of $20,000. This reflects the minimum amount the Department estimates would be needed for preparation of a facility plan, which is generally the least expensive project cost.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: SB 1097 Enactment Date: June 30, 1989	Attachment C
X	Statutory Authority: ORS 468.423 to .440	Attachment B
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___

X Time Constraints: In order for the Department to solicit applications in time to develop an SRF priority list for this federal fiscal year, temporary rules must be adopted in May. They could not have been submitted earlier because of the time required to complete the public involvement process used to develop the proposal.

DEVELOPMENTAL BACKGROUND:

X	Advisory Committee Minutes - Meetings of March 20, 1990, April 4, 1990, and April 16, 1990	Attachment G
X	Hearing Officer's Report/Recommendations	Attachment I
___	Response to Testimony/Comments	Attachment ___
X	Prior EQC Agenda Items: December 1,1989 - Temporary SRF Rule Amendment Adoption	Attachment D
___	Other Related Reports/Rules/Statutes:	Attachment ___
X	Supplemental Background Information Supplemental Department report on six statutory factors EQC must consider	Attachment H

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

An SRF task force of 11 representatives from affected communities from around the state was convened to discuss the issues addressed by the proposed rule amendments. The task force recommended approval of the proposed rule amendments.

The proposed rule amendment reducing the annual maximum loan amount will result in a greater number of small loans. This change will ensure that more communities are able to get SRF loans each year. It would also mean that large projects will have less SRF money available to cover project costs.

The proposed rule amendments allow the Department greater flexibility in the type of loan security a borrower may provide. This change would make the SRF accessible to a broader variety of borrowers, such as those who will repay loans with assessments, at no increase in repayment risk.

The proposed rule amendments add a minimal additional cost for SRF borrowers because the responsibility and cost of preparing environmental assessments and environmental impact statements (EIS) is shifted from the Department to the borrower. Borrowers will, however, be able to borrow low interest SRF money to cover the cost of preparing these documents. The draft rules that went to public hearing included task force recommended language which allowed repayments of EIS costs to be deferred until a feasible environmentally sound project could be implemented. EPA objected to this language because it did not provide assurance that the loan would be repaid if an environmentally sound project were not implemented. To address EPA's concerns, this language is removed in the proposed rules (Attachment A, p. A-30).

Requiring a minimum of at least 30 enforcement/violation points on the SRF priority list will eliminate small community reserve funding for design and construction projects for communities which have potential, rather than documented, water quality problems. This change likely will affect few communities.

Neither the Department nor the Task Force find that restrictions are needed at this time with respect to funding for collector sewers (See Attachment H, Number 5).

PROGRAM CONSIDERATIONS:

The Department will save administrative costs and staff time by shifting the responsibility for preparing environmental assessments and EISs to the borrower. Due to the federal limit on the amount of administrative funds which can be spent, it is critical to program operations that administrative costs be reduced so that the program can be effectively operated. Further, since the Department is responsible for reviewing these documents, it is more appropriate to have the communities prepare them so the Department does not perform both functions.

ORS 468.440 requires the Commission to consider several factors when adopting rules. These factors include capability of the project to enhance or protect water quality; ability of a public agency to repay a loan; current market rates of interest; size of community to be served by the project; current market rates of interest; size of the community to be served by the project; types of project; and the ability of the applicant to borrow elsewhere. These factors are discussed in detail in Attachment H.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt proposed rule amendments which incorporate needed program amendments. This will allow the Department to complete the annual Intended Use Plan required by EPA in time to comply with the 1990 deadline.

2. Postpone adoption of the rule amendments until Fall, 1990 when the Department will submit a report to the Commission evaluating the need to change SRF interest rates. The Department would have to wait until final rules were adopted to begin development of the SRF Priority List and Intended Use Plan. If this did not occur until next fall, it would be too late for Oregon to receive funding during the 1990 federal fiscal year. This would not result in the loss of $11 million of 1990 funds allotted to Oregon. It would, however, eliminate Oregon from being eligible to receive additional funds from reallotment of SRF funds not spent by other states. It is not known at this time how many SRF reallotment dollars would be available to Oregon. Under the Construction Grant program as much as $400,000 in reallocated funds has been available in past years.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Adopt Alternative 1 and the findings in Attachment H. This alternative allows the Department to address known problems with the proposed rule amendments while allowing the Department to maintain the option of receiving reallotment dollars in the future.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rule amendments are consistent with the original intent of the SRF statute to maintain a fair and equitable loan program; the legislative intent of SB 1097; and Goal 8 of the proposed DEQ/EQC Strategic Plan which encourages streamlining agency programs and activities.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

The Department will develop the 1990 SRF Priority List and Intended Use Plan which indicate which projects will receive funding. In September 1990, the SRF Task Force will be reconvened to evaluate whether there is a need to change the SRF interest rates. The Department will return to the EQC with a report on interest rates before September 1991.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Maggie Conley

Phone: 229-5257

Date Prepared: June 12, 1990

MG:hs
CG\WH4044
June 29, 1990

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.

The portions of the text which are underlined and [bracketed] in bold italics are additions and deletions to the draft rules made in response to public comment. These changes are fund on pages A-9, A-30, A-37, and A-40

DIVISION 54

STATE REVOLVING FUND PROGRAM

PURPOSE

340-54-005

These rules are intended to implement (ORS 468.423 - 468.440) under which financial assistance is made available to and utilized by Oregon municipalities to plan, design and construct water pollution control facilities.

DEFINITIONS

340-54-010

(1) "Alternative treatment technology" means any proven wastewater treatment process or technique which provides for the reclaiming and reuse of water, productive recycling of wastewater constituents, other elimination of the discharge of pollutants, or the recovery of energy.

(2) "Available SRF" means the SRF minus monies for SRF administration.

(3) [~~(2)~~] "Categorical exclusion" means an exemption from environmental review requirements for a category of actions which do not individually, cumulatively over time, or in conjunction with other actions, have a significant effect on the quality of the environment. Environmental impact statements, environmental assessments and environmental information documents are not required for categorical exclusions.

(4) [~~(3)~~] "Change order" means a written order and supporting information from the borrower to the contractor authorizing an addition, deletion, or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.

(5) [~~(4)~~] "Clean Water Act" means the Federal Water Pollution Control Act, as amended, 33 USC 1251 et. seq.

(6) [~~(5)~~] "Collector sewer" means the portion of the public sewerage system which is primarily installed to receive wastewater directly from individual residences and other individual public or private structures.

(7) [~~(6)~~] "Combined sewer" means a sewer that is designed as both a sanitary and a stormwater sewer.

(8) [~~(7)~~] "Construction" means the erection, installation, expansion or improvement of a water pollution control facility.

(9) [~~(8)~~] "Default" means nonpayment of SRF repayment when due, failure to comply with SRF loan covenants, a formal bankruptcy filing, or other written admission of inability to pay its SRF obligations.

(10) [~~(9)~~] "Department" means the Oregon Department of Environmental Quality.

(11) ~~[(10)]~~ "Director" means the Director of the Oregon Department of Environmental Quality.

(12) ~~[(11)]~~ "Documented health hazard" means areawide failure of on-site sewage disposal systems or other sewage disposal practices resulting in discharge of inadequately treated wastes to the environment demonstrated by sanitary surveys or other data collection methods and confirmed by the Department and Health Division as posing a risk to public health. This includes a mandatory health hazard annexation required pursuant to ORS 222.850 to 222.915 or ORS 431.705 to 431.760.

(13) ~~[(12)]~~ "Documented water quality problem" means water pollution resulting in violations of water quality statutes, rules or permit conditions demonstrated by data and confirmed by the Department as causing a water quality problem.

(14) ~~[(13)]~~ "Environmental assessment" means an evaluation prepared by the applicant ~~[Department]~~ to determine whether a proposed project may have a significant impact on the environment and, therefore, require the preparation of an environmental impact statement (EIS) or a Finding of No Significant Impact (FNSI). The assessment shall include a brief discussion of the need for a project ~~[proposal]~~, the alternatives, the environmental impacts of the proposed action and alternatives and a listing of persons or agencies consulted.

(15) ~~[(14)]~~ "Environmental impact statement (EIS)" means a report required ~~[prepared]~~ by the Department analyzing the impacts of the proposed project and discussing project alternatives. An EIS is prepared when the environmental assessment indicates that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project.

~~[(15) "Environmental information document" means a written analysis prepared by the applicant describing the environmental impacts of the proposed project. This document is of sufficient scope to enable the Department to prepare an environmental assessment.]~~

(16) "EPA" means the U.S. Environmental Protection Agency.

(17) "Estuary management" means development and implementation of a plan for the management of an estuary of national significance as described in §320 of the Clean Water Act.

(18) "Excessive infiltration/inflow" means the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost effective analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow from sanitary sewers.

(19) "Facility plan" means a systematic evaluation of environmental factors and engineering alternatives considering demographic, topographic, hydrologic, and institutional characteristics of a project area that demonstrates that the selected alternative is cost effective and environmentally acceptable.

(20) "Federal capitalization grant" means federal dollars allocated to the State of Oregon for a federal fiscal year from funds appropriated by Congress for the State Revolving Fund under Title VI of the Clean Water Act. This does not include state matching monies.

(21) "Groundwater management area" means an area in which contaminants in the groundwater have exceeded the levels established under ORS 468.694, and the affected area is subject to a declaration under ORS 468.698.

(22) [~~(21)~~] "Infiltration" means the intrusion of groundwater into a sewer system through defective pipes, pipe joints, connections, or manholes in the sanitary sewer system.

(23) [~~(22)~~] "Inflow" means a direct flow of water other than wastewater that enters a sewer system from sources such as, but not limited to, roof gutters, drains, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, or street wash waters.

(24) [~~(23)~~] "Initiation of operation" means the date on which the facility is substantially complete and ready for the purposes for which it was planned, designed, and built.

(25) [~~(24)~~] "Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state-of-the-art in terms of significant reduction in life cycle cost of the project or environmental benefits when compared to an appropriate conventional technology.

(26) [~~(25)~~] "Intended Use Plan" means a report which must be submitted annually by the Department to EPA identifying proposed uses of the SRF including, but not limited to a list of public agencies ready to enter into a loan agreement for SRF funding within one year and a schedule of grant payments.

(27) [~~(26)~~] "Interceptor sewer" means a sewer which is primarily intended to receive wastewater from a collector sewer, another interceptor sewer, an existing major discharge of raw or inadequately treated wastewater, or a water pollution control facility.

(28) "Interim loan" means funds borrowed for the construction/ project period or three years, whichever is less. At the discretion of the Department, a longer period loan may be considered an interim loan under extraordinary circumstances.

(29) [~~(27)~~] "Highly controversial" means public opposition based on a substantial dispute over the environmental impacts of the project. The disputed impacts must bear a close causal relationship to the proposed project.

(30) "Long-term loan" means any loan not considered an interim loan.

(31) [~~(28)~~] "Maintenance" means work performed to make repairs, make minor replacements or prevent or correct failure or malfunctioning of the water pollution control facility in order to preserve the functional integrity and efficiency of the facility, equipment and structures.

(32) [~~(29)~~] "Major sewer replacement and rehabilitation" means the repair and/or replacement of interceptor or collector sewers, including replacement of limited segments.

(33) [~~(30)~~] "Nonpoint source control" means implementation of a plan for managing nonpoint source pollution as described in §319 of the Clean Water Act.

(34) [~~(31)~~] "Operation" means control of the unit processes and equipment which make up the treatment system and process, including financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.

(35) [~~(32)~~] "Operation and maintenance manual" means a guide used by an operator for operation and maintenance of the water pollution control facility.

(36) [~~(33)~~] "Project" means facility planning, design and construction, or construction activities or tasks identified in the loan agreement for which the borrower may expend, obligate, or commit funds to address a water pollution problem or a documented health hazard.

(37) [~~(34)~~] "Public agency" means any state agency, incorporated city, county sanitary authority, county service district, sanitary sewer service district, metropolitan service district, or other district authorized or required to construct water pollution control facilities.

(38) [~~(35)~~] "Replacement" means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the design or useful life, whichever is longer, of the water pollution control facility to maintain the facility for the purpose for which it was designed and constructed.

(39) [~~(36)~~] "Reserve capacity" means that portion of the water pollution control facility that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings from existing or future development consistent with local comprehensive land use plans acknowledged by the Land Conservation and Development Commission.

(40) "Self-generated funds" means public agency monies which come from revenue. This does not include proceeds of bond sales.

(41) [~~(37)~~] "Sewage collection system" means pipelines or conduits, pumping stations, force mains, and any other related structures, devices, or applications used to convey wastewater to a sewage treatment facility.

(42) [~~(38)~~] "Sewage treatment facility" means any device, structure, or equipment used to treat, neutralize, stabilize, or dispose of wastewater and residuals.

(43) [~~(40)~~] "Significant industrial dischargers" means water pollution control facility users as defined in the Department's Pretreatment Guidance Handbook.

(44) [~~(41)~~] "Small community" means a public agency [~~city, sanitary authority or service district~~] with a population of [~~less than~~] 5,000 or less.

(45) [~~(39)~~] "SRF" means State Revolving Fund and includes funds from state match, federal capitalization grants, SRF loan repayments, interest earnings, or any additional funds provided by the state. [~~The State Revolving Fund is the same as the Water Pollution Control Revolving Fund referred to in ORS 468.423 -- 468.440.~~]

(46) "Surface water" means streams, lakes, reservoirs, and estuaries.

(47) [~~(42)~~] "Wastewater" means water carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

(48) [~~(43)~~] "Water pollution control facility" means a sewage disposal, treatment and/or collection system.

(49) "Wellhead protection area" means a state designated surface and subsurface area surrounding a well or wellfield that supplies a public water system through which contaminants are likely to pass and eventually reach the well or wellfield.

(50) [~~(44)~~] "Value engineering" means a specialized cost control technique which uses a systematic approach to identify cost savings which may be made without sacrificing the reliability or efficiency of the project.

PROJECT ELIGIBILITY

340-54-015

(1) A public agency may apply for a loan for up to 100% of the cost of the following types of projects and project related costs (including financing costs, capitalized interest, and ~~{,-to-the-extent-permitted by-the-Clean-Water-Act,}~~ loan reserves):

(a) Facility plans, including supplements, are limited to one complete facility plan financed by the SRF per project;

(b) Secondary treatment facilities;

(c) Advanced waste treatment facilities if required to comply with Department water quality statutes and rules;

(d) Reserve capacity for a sewage treatment or disposal facility receiving SRF funding which will serve a population not to exceed a twenty-year population projection and for a sewage collection system or any portion thereof not to exceed a fifty-year population projection;

(e) Sludge disposal and management;

(f) Interceptors and associated force mains and pumping stations;

(g) Infiltration/inflow correction;

(h) Major sewer replacement and rehabilitation if components are a part of an approved infiltration/inflow correction project;

(i) Combined sewer overflow correction if required to protect sensitive estuarine waters, if required to comply with Department water quality statutes and rules, or if required by Department permit, and if the project is the cost effective alternative for the next 20 years;

(j) Collector sewers if required to alleviate documented water quality problems~~{,}~~ or to serve an area with a documented health hazard~~{,-or-to-serve-an-area-where-a-mandatory-health-hazard annexation-is-required-pursuant-to-ORS-222.850-to-222.915-or ORS-431.705-to-431.760}~~;

(k) Stormwater control if project is a cost effective solution for infiltration/inflow correction to sanitary sewer lines;

(l) Estuary management if needed to protect sensitive estuarine waters and if the project is publicly owned; and

(m) Nonpoint source control if required to comply with Department water quality statutes and rules and if the project is publicly owned.

(2) Funding for projects listed under (1) above may be limited by Section 201(g)(1) of the Clean Water Act.

(3) Loans will not be made to cover the non-federal matching share of an EPA grant.

(4) Plans funded in whole or in part from the SRF must be consistent with plans developed under Sections 208, 303(e), 319, and 320 of the Clean Water Act.

(5) Loans shall be available only for projects on the SRF Priority List, described in OAR 340-54-025.

(6) A project may be phased if the total project cost is in excess of that established in OAR 340-54-075(1).

(7) SRF loans will not be available to refinance long-term loans. SRF loans will, however, be available to communities which have paid project costs with an interim loan or self-generated funds and want to provide long-term financing of these costs with an SRF loan and comply with the following conditions:

(a) Prior to project commencement, the public agency must provide notice of their intent to proceed with a project which is financed with interim loans or self-generated funds.

(b) The public agency must agree to proceed at its own risk without regard to whether SRF financing will ultimately be available to provide the long-term financing, and

(c) The public agency agrees to comply with project review and approval requirements established in OAR Chapter 340, Division 52, DEQ permit requirements as established in OAR Chapter 340, Division 45, and requirements of Title VI of the Clean Water Act.

USES OF THE FUND

340-54-020

The SRF may only be used for the following project purposes:

(1) To make loans, fund reserves *for SRF loans*, purchase bonds, or acquire other debt obligations;

(2) To pay SRF program administration costs (not to exceed 4% of the federal capitalization grant or as otherwise allowed by federal law);

(3) To earn interest on fund accounts.

SRF PRIORITY LIST AND INTENDED USE PLAN

340-54-025

(1) General. The Department will develop an annual ~~{statewide}~~ Intended Use Plan which includes a SRF ~~{p}~~Priority ~~{l}~~List ~~{which}~~ numerically rank~~{s}~~ing eligible preliminary SRF applications submitted by public agencies. ~~{water-quality-pollution-problems-which-could-be-financed through-the-State-Revolving-Fund.}~~ Only projects on the SRF Priority List will be eligible for SRF financing. This list will be part of the Intended Use Plan which the Department prepares and submits to EPA annually indicating how SRF funds will be spent.

(2) ~~{Eligibility.--Projects-necessary-to-correct-water-quality-problems listed-on-the-SRF-priority-list-must-be-eligible-under-OAR-340-54-015(1).}~~ SRF Priority List Development.

(a) The Department will notify interested parties of the opportunity to submit a preliminary SRF application. Interested parties include but are not limited to public agencies on the SRF mailing list.

(b) In order for a project to be considered for inclusion on the SRF Priority List, the Department must receive a completed preliminary SRF application for a project which corrects a documented water quality problem or a documented health hazard. The project must also be eligible under OAR 340-54-015(1).

(3) Draft SRF Priority List and Intended Use Plan Public Notice and Review.

(a) The Department will publish a public notice and distribute the proposed SRF Priority List and Intended Use Plan to all public agencies that submitted preliminary applications.

(b) The Department will allow at least thirty (30) days after issuing of the draft SRF Priority List for review and for public comments to be submitted.

(A) During the comment period, any pubic agency may request the Department to reevaluate a project's rank on the proposed SRF Priority List or to make other changes to the Intended Use Plan.

(B) The Department shall consider all requests submitted during the comment period before establishing the Final SRF Priority List and Intended Use Plan.

(C) The Department will distribute the Final SRF Priority List and Intended Use Plan to all public agencies with projects on the Final SRF Priority List.

(4) ~~[(3)]~~ SRF Priority List Ranking Criteria. The numerical ranking of water quality pollution problems will be based on points assigned from the following three (3) criteria:

(a) ~~[Water Quality Pollution Problem]~~ Enforcement/Water Quality Violation Points.

(A) 50 ~~[100]~~ points will be assigned for:

(i) Environmental Quality Commission orders pertaining to water quality problems;

(ii) Stipulated consent orders and agreements pertaining to water quality problems;

(iii) Court orders pertaining to water quality problems; ~~[or]~~

(iv) Department orders pertaining to water quality problems~~[,]~~;

(v) EQC rules requiring elimination of an existing water quality problem related to inadequate water pollution control facilities;

(vi) ~~[(B) 90 points will be assigned for d]~~Documented health hazards ~~[and mandatory health hazard annexation areas required pursuant to ORS 222.850 to 222.915 or ORS 431.705 to 431.760]~~ with associated ~~[demonstrated]~~ documented water quality problems [or beneficial use impairments.]; or

(vii) [(G) 80 points will be assigned for] [s]Streams or stream segments where the Environmental Quality Commission has established Total Maximum Daily Loads.

[(D) 70 points will be assigned for documented water quality problems or beneficial use impairments.]

(B) [(E)] 40 [60] points will be assigned for[:]

[(i) Notices issued by the Department for permit violations related to inadequate water pollution control facilities (Notice of Violation); or]

[(ii)] [N]non-compliance with the Department's statutes, rules or permit requirements resulting from inadequate water pollution control facilities.

(C) [(F)] 30 [40] points will be assigned for documented health hazards [or mandatory health hazard annexation areas required pursuant to ORS 222.850 to 222.915 or ORS 431.705 to 431.760] without documented water quality problems.

(D) [(G)] 10 [20] points will be assigned for existing potential, but undocumented, water quality problems noted by the Department.

(b) Population Points.

(A) Points shall be assigned based on the current population the project will serve as follows:

$$\text{Points} = (\text{population}[\text{served}])^{2 \log 10}$$

(c) Receiving Waterbody Sensitivity Points.

(A) Surface Water. [A maximum of 50 points shall be assigned for the sensitivity of the water body as follows:]

[(i) Stream sensitivity will be based on the following:

--(I) The following formula will be used to determine stream sensitivity where an existing water pollution control facility discharges into a stream:

Points = (Ge * Qe / Qe + Qs)$^{2.5}$ where:

- Ge = Concentration of effluent as represented by BOD_5 (Bio Chemical analysis)

- Qe = Quantity of permitted effluent flow from treatment facility (mgd) or current low flow average if higher than permit limits

- Qs = Quantity of minimum receiving stream flow (mgd) from statistical summaries of stream flow data in Oregon (7 day/10 year average low flow) or from Department measurements

(II) 50 points will be assigned to any water quality problem where the Department determines surface waters other than a lake is are being contaminated by areawide on-site system failures or documented nonpoint source pollution problems.

(III) 25 points will be assigned to any potential surface water quality problem, resulting from effluent from on-site systems or from non-point sources.

(ii) Groundwater sensitivity points will be assigned based on the following:

(I) 50 points will be assigned to any Department documented groundwater quality pollution problem.

(II) 25 points will be assigned to any potential groundwater quality pollution problem as noted by the Department.

(iii) Lake and Reservoir sensitivity points. 50 points will be assigned any discharge to a lake or reservoir.

(iv) Estuary sensitivity points. 50 points will be assigned any discharge to an estuary.

(v) Ocean sensitivity. 25 points will be assigned for a discharge to the ocean.]

(i) If a discharge is to surface water, water quality points will be assigned based on total water quality points from Oregon's Clean Water Strategy statewide ranking report.

(ii) If a discharge is to a stream segment not listed in the report, then the points assigned to the next downstream segment will be assigned to that discharge.

(iii) If discharge is to the ocean, 10 points will be assigned.

(iv) If discharge is to any other surface waterbody not referenced above one point will be assigned.

(B) Groundwater.

(i) 90 points will be assigned to discharges to an EPA designated sole source aquifer;

(ii) 70 points will be assigned to:

(I) Discharges to groundwater where the discharge has been documented to have increased the concentration of a contaminant above both the groundwater background level and an adopted state standard for groundwater quality; or

(II) A wellhead protection area.

(iii) 50 points will be assigned to:

(I) Discharges to groundwater where the discharge has been demonstrated to have increased the concentration of a contaminant above the groundwater background level but the contamination level is below an adopted state standard for groundwater quality; or

(II) The groundwater is within a designated groundwater management area; or

(iv) 30 points will be assigned to discharges to groundwater where the discharge is suspected of causing a groundwater contamination problem but there is not direct evidence to substantiate the problem.

(v) 10 points will be assigned to suspected discharges to groundwater where a discharge could cause a contamination problem.

(5) {(4)} SRF Point Tabulation Method. Point scores will be accumulated as follows:

(a) Points will be assigned based on the most significant documented water quality pollution problem within each point category.

(b) The score used in ranking a water quality problem will consist of the sum of the points received in each of the {three-(3)} point categories.

(6) Priority List Categories.

(a) The SRF Priority List will consist of three parts, the Fundable Category, the Planning Category, and the Supplementary Category. The Fundable Category will include projects which are ready to receive funding and for which there are available SRF funds. The Planning Category includes projects which are ready to receive funding but for which SRF funds are not currently available. The Supplementary Category consists of prior years' fundable category lists which include projects for which loan agreements are not completed.

(b) The Fundable Category will be prepared in the following manner:

(A) Loan increases: First, loan increases will be awarded to the extent necessary and permitted by this rule and the SRF loan agreement.

(B) Small Community Reserve:

(i) Next, small community projects are selected from the SRF Priority List in rank order not to exceed 15 percent of the available SRF funds.

(ii) Communities receiving small community reserve funding for facility planning will count toward filling both the small community reserve and the facility planning reserve.

(C) Facility Planning Reserve:

(i) After funds are awarded for loan increases, and after 15 percent of the available SRF funds are awarded to small communities or after all small community loan requests are funded (whichever occurs first) facility planning projects are selected from the SRF Priority List in rank order, not to exceed 10 percent of the available SRF funds.

(ii) Small communities will continue to be eligible for the facility planning reserve if their project is next in rank order.

(D) General Fund: The remaining projects, including facility planning and small community projects, will be awarded loans in rank order to the extent of available SRF funds.

(c) The Planning Category will be prepared in the following manner:

(A) After all available funds are allocated to projects in the Fundable Category, any remaining projects will be arranged in rank order of priority and comprise the Planning Category of the Priority List.

(B) This Planning Category will be maintained until the next year's priority list is prepared. It is the source from which to obtain additional projects for the current year's Fundable Category should projects be removed pursuant to OAR 340-54-025(7).

(d) The Supplementary Category will be prepared in the following manner:

(A) The Supplementary Category consists of projects from the Fundable Category of prior years' SRF Priority Lists.

(B) After the first year a project is listed in the Fundable Category, it will be moved to the Supplementary Category until a loan agreement for the project is completed.

(B) Projects in the Supplementary Category will not be ranked with projects in the current year's Fundable and Planning Categories discussed in subsection (5)(b) and (c) of this section, except to the extent necessary to provide loan increases to projects in the Supplementary Category.

(C) Funding for projects on the Supplementary list is limited to the loan amount in the SRF loan agreement plus DEQ approved loan increases.

(7) Priority List Modification.

(a) The Department may remove a project from the SRF Priority List if the Department determines that the project is not ready to proceed according to the schedule in the preliminary application or if the applicant requests removal.

(b) When the Department removes a project which is not ready to proceed, it will give written notice to the applicant whose project is proposed for removal and allow the applicant thirty (30) days after the notice to demonstrate to the Department its readiness and ability to immediately complete a SRF loan agreement or to withdraw the applicant's request to be removed from the priority list.

(c) When a project is removed from the Priority List, the Department will:

(A) First, allocate funds to loan amendments for projects with approved SRF loans; and

(B) Second, move projects from the Priority List Planning Category in rank order to the Fundable Category to the extent that there are adequate SRF funds available.

(d) The Department may add projects to the SRF Priority List only if there is an inadequate number of projects in the Fundable Category and Planning Category ready to receive funding. To add projects to the Priority List, the Department will follow the process outlined in 340-54-025(2).

~~(6) Public Notice and Review:~~

~~(a) The Department will publish a public notice and distribute the proposed SRF priority list to all interested parties for review. Interested parties include, but are not limited to, the following:~~

~~(A) Public agencies with water quality pollution problems on the list;~~

~~(B) Interested local, state and federal agencies;~~

~~(C) Any other persons or public agencies who have requested to be on the mailing list.~~

~~(b) The Department will allow 30 days after issuance of the public notice and proposed list for review and for public comments to be submitted.~~

~~(A) During the comment period, any public agency can request the Department to include a problem not identified on the proposed list or reevaluate a problem on the proposed priority list.~~

~~(B) The Department shall consider all requests submitted during the comment period before establishing the official statewide priority list.~~

(c) The Department shall distribute the official priority list to all interested parties.

(d) If an interested party does not agree with the Department's determination on a priority list the interested party may within 15 days of mailing of the official list file an appeal to present their case to the Director. The appeal will be informal and will not be subject to contested case hearing procedures.

(7) Priority List Modification.

(a) The Department may modify the official priority list by adding, removing or reranking projects if notice of the proposed action is provided to all lower priority projects.

(b) Any interested party may, within 15 days of mailing of the notice, request a review by the Department.

(c) The Department shall consider all requests submitted during the comment period before establishing the modified statewide priority list.

(d) The Department will distribute the modified priority list to all interested parties.

(e) If an interested party does not agree with the Department's determination on the modified priority list, the party may within 15 days of the mailing of the modified priority list, file an appeal to present their case to the Director. The appeal will be informal and will not be subject to contested case hearing procedures.

PRELIMINARY APPLICATION PROGESS AND PREPARATION OF THE INTENDED USE PROJECT LIST]

[340-54-030

(1) General.

(a) Each year the Department will prepare and submit an Intended Use Plan to EPA which includes a list of projects for which public agencies have demonstrated the ability to enter into a loan agreement within one year.

(b) No project may be included in the Intended Use Plan Project List unless it will address a problem listed in the SRF Priority List.

(c) The Intended Use Plan Project List will consist of two parts; the Fundable List and the Planning List. The Fundable List includes projects which are ready to receive funding and for which adequate SRF funds are anticipated to be available during the funding year. The Planning List includes projects which are ready to receive funding but for which inadequate funds are anticipated to be available during the funding year.

(2) Development of the Intended Use Plan Project List.

(a) In order to develop the Intended Use Plan Project List, the Department will contact, by certified mail, the public agencies with problems listed in the priority list and ask them to submit a preliminary application for SRF funding.

(b) In order for a project to be considered for inclusion in the Intended Use Plan Project List, the Department must receive a completed preliminary SRF application by certified mail within 30 days of the date the Department mails the preliminary application form.

(c) The preliminary SRF application will include, but not be limited to:

(A) A description of the proposed project;

(B) The proposed project costs and SRF loan amount;

(C) The type of SRF loan which will be requested;

(D) The date when the public agency anticipates filing a final SRF application; and

(E) The date when the public agency anticipates beginning the project.

(d) The Department will review and approve for inclusion in the Intended Use Plan Project List all preliminary applications which demonstrate the ability of the public agency to enter into a loan agreement within one year. Approved projects will be listed in rank order as established in the priority list.

(e) If a public agency does not submit a timely preliminary application, its project(s) shall not be considered for inclusion in the Intended Use Plan Project List and will lose its opportunity for SRF financing in that year, unless the Department determines otherwise.

(f) After completion of the proposed Intended Use Plan Project List, the Department will send a copy to all public agencies with projects listed on the priority list.

~~(g) Any interested party may within 15 days of mailing of the notice request a review by the Department.~~

~~(h) The Department shall consider all requests submitted during the comment period before establishing the Intended Use Plan Project List.~~

~~(i) If an interested party does not agree with the Department's determination on the Intended Use Plan Project List, the interested party may within 15 days of the distribution of the Intended Use Plan Project List file an appeal to present their case to the Director. The appeal will be informal and will not be subjected to contested case hearing procedures.~~

~~(3) Intended Use Plan Modification.~~

~~(a) The Department may remove a project from the Fundable List in the Intended Use Plan project list if the Department determines that a public agency which has a project listed in the Fundable List will not be ready to enter into a loan agreement as required under OAR 340-54-030(2)(d).~~

~~(b) When the Department removes a project, it will give written notice to the applicant whose project is proposed for deletion and allow the applicant 30 days after notice to demonstrate to the Department its readiness and ability to immediately complete a loan agreement.~~

~~(c) When a project is removed from the Fundable List in the Intended Use Plan, projects from the Planning List of the Intended Use Plan will be moved in rank order to the Fundable List to the extent that there are adequate SRF funds available.~~

FINAL APPLICATION PROCESS FOR SRF FINANCING FOR FACILITY PLANNING FOR WATER POLLUTION CONTROL FACILITIES, NONPOINT SOURCE CONTROL PROJECTS, ESTUARY MANAGEMENT PROJECTS AND STORMWATER CONTROL PROJECTS

340-54-035

Applicant(s) for SRF loans for nonpoint source control projects, estuary management projects, stormwater control projects, and facility planning for water pollution control facilities must submit:

(1) A final application on forms provided by the Department;

(2) Evidence that the public agency has authorized development of non-point source control project, estuary management project, stormwater control projects or water pollution control facility plan;

(3) A demonstration that applicant complies with the requirements of OAR 340-54-055(2) and 340-54-065(1); and

(4) Any other information requested by the Department.

FINAL APPLICATION PROCESS FOR SRF FINANCING FOR DESIGN AND CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES

340-54-040

Applicants for SRF loans for design and construction of water pollution control facilities must submit:

(1) A final SRF loan application on forms provided by the Department (See also Section 340-54-055(2), Loan Approval and Review Criteria).

(2) A facilities plan which includes the following:

(a) A demonstration that the project will apply best practicable waste treatment technology as defined in 40 CFR 35.2005(b)(7).

(b) A cost effective analysis of the alternatives available to comply with applicable Department water quality statutes and rules over the design life of the facility and a demonstration that the selected alternative is the most cost effective.

(c) A demonstration that excessive inflow and infiltration (I/I) in the sewer system does not exist or if it does exist, how it will be eliminated.

(d) An analysis of alternative and innovative technologies. This must include:

(A) An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(B) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to building new facilities;

(C) A consideration of systems with revenue generating applications; ~~[and]~~

(D) An evaluation of the opportunity to reduce the use of energy or to recover energy~~[.]~~; and

(E) An evaluation of the opportunities to reduce the amount of wastewater by water use conservation measures and programs.

(e) An analysis of the potential open space and recreational opportunities associated with the project.

(f) An evaluation of the environmental impacts of alternatives as discussed in OAR 340-54-050.

(g) Documentation of the existing water quality problems which the facility plan must correct.

(h) Documentation and analysis of public comments and of testimony received at a public hearing held before completion of the facility plan.

(3) Adopted sewer use ordinance(s).

(a) Sewer use ordinances adopted by all municipalities and service districts discharging effluent to the water pollution control facility must be included with the application.

(b) The sewer use ordinance(s) shall prohibit any new connections from inflow sources into the water pollution control facility, without the approval of the Department.

(c) The ordinance(s) shall require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety and adversely affecting the treatment works or precluding the selection of the most cost-effective alternative for wastewater treatment sludge disposal.

(4) Documentation of pretreatment surveys and commitments:

(a) A survey of nonresidential users must be conducted and submitted to the Department, as part of the final SRF application which identifies significant industrial discharges as defined in the Department's Pretreatment Guidance Handbook. If the Department determines that the need for a pretreatment program exists, the borrower must develop and adopt a program approved by the Department before initiation of operation of the facility.

(b) The borrower must document to the satisfaction of the Department that necessary pretreatment facilities have been constructed and that a legally binding commitment or permit exists with the borrower and any significant industrial discharger(s), being served by the borrower's proposed sewage treatment facilities. The legally binding commitment or permit must {~~insure~~} ensure that pretreatment discharge limits will be achieved on or before the date of completion of the proposed wastewater treatment facilities or that a Department approved compliance schedule is established.

(5) Adoption of a user charge system.

(a) General. The borrower must develop and obtain the Department's approval of its user charge system. If the borrower has a user charge system in effect, the borrower shall demonstrate that it meets the provisions of this section or amend it as required by these provisions.

(b) Scope of the user charge system.

(A) The user charge system must, at a minimum, be designed to produce adequate revenues to provide for operation and maintenance (including replacement expenses);

(B) Unless SRF debt retirement is reduced by other dedicated sources of revenue discussed in OAR 340-54-065, the user charge system must be designed to produce adequate revenues to provide for SRF debt retirement.

(c) Actual use. A user charge system shall be based on actual use, or estimated use, of sewage treatment and collection services. Each user or user class must pay its proportionate share of the costs incurred in the borrower's service area.

(d) Notification. Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill or other means acceptable to the Department, of the rate and that portion of the user charge that is attributable to wastewater treatment services.

(e) Financial management. Each borrower must demonstrate compliance with state and federal audit requirements. If the borrower is not subject to state or federal audit requirements, the borrower must provide a report reviewing the account system prepared by a municipal auditor. A systematic method must be provided to resolve material audit findings and recommendations.

(f) Adoption of system. The user charge system must be legislatively enacted before loan approval and implemented before initiation of operation of the facility. If the project will serve two or more municipalities, the borrower shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works.

(6) A financial capability assessment for the proposed project which demonstrates the applicant's ability to repay the loan and to provide for operation and maintenance costs (including replacement) for the wastewater treatment facility.

(7) Land use compatibility statement from the appropriate local government(s) demonstrating compliance with the LCDC acknowledged comprehensive land use plan(s) and statewide land use planning goals.

(8) Any other information requested by the Department.

FINAL APPLICATION PROCESS FOR SRF FINANCING FOR CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES

340-54-045

Applicants for SRF loans for construction of water pollution control facilities must:

(1) Comply with the application requirements in OAR 340-54-040 for design and construction of water pollution control projects;

(2) Submit Department approved plans and specifications for the project; and

(3) Submit a value engineering study, satisfactory to the Department, if the total project cost will exceed $10 million.

ENVIRONMENTAL REVIEW

340-54-050

(1) General. An environmental review is required prior to approval of a loan for design and construction or construction when:

(a) No environmental review has previously been prepared;

(b) A significant change has occurred in project scope and possible environmental impact since a prior environmental review; or

(c) A prior environmental review determination is more than five years old.

(2) Environmental Review Determinations. The Department will notify the applicant during facility planning of the type of environmental documentation which will be required. Based upon the Department's determination:

(a) The applicant may apply for a categorical exclusion; or

(b) The applicant will prepare an environmental <u>assessment</u> ~~[information document]~~ in a format specified by the Department. ~~[and the Department will]~~ After the Department has reviewed and approved the environmental assessment, it will:

(A) Prepare {~~an environmental assessment and~~} a Finding of No Significant Impact; or

(B) Issue a Notice of Intent to Prepare an Environmental Impact Statement; require the applicant to prepare an environmental impact statement; and prepare a record of decision.

(3) Categorical Exclusions. The categorical exclusions may be made by the Department for projects that have been demonstrated to not have significant impacts on the quality of the human environment.

(a) Eligibility.

(A) If an applicant requests a categorical exclusion, the Department shall review the request and based upon project documentation submitted by the applicant, the Department shall:

(i) Notify the applicant of categorical exclusion and publish notice of categorical exclusion in a newspaper of state-wide and community-wide circulation;

(ii) Notify the applicant to prepare an environmental assessment {~~information document~~}, or

(iii) Require the applicant to {~~I~~}issue a Notice of Intent to Prepare an Environmental Impact Statement.

(B) A project is eligible for a categorical exclusion if it meets the following criteria:

(i) The project is directed solely toward minor rehabilitation of existing facilities, toward replacement of equipment, or toward the construction of related facilities that do not affect the degree of treatment or the capacity of the facility. Examples include infiltration and inflow correction, replacement of existing equipment and structures, and the construction of small structures on existing sites; or

(ii) The project will serve less than 10,000 people and is for minor expansions or upgrading of existing water pollution control facilities.

(C) Categorical exclusions will not be granted for projects that entail any of the following activities:

(i) The construction of new collection lines;

(ii) A new discharge or relocation of an existing discharge;

(iii) A substantial increase in the volume or loading of pollutants;

(iv) Providing capacity for a population 30 percent or greater than the existing population;

(v) Known or expected impacts to cultural resources, historical and archaeological resources, threatened or endangered species, or environmentally sensitive areas; or

(vi) The construction of facilities that are known or expected to not be cost-effective or to be highly controversial.

(b) Documentation. Applicants seeking a categorical exclusion must provide the following documentation to the Department:

(A) A brief, complete description of the proposed project and its costs;

(B) A statement indicating the project is cost-effective and that the applicant is financially capable of constructing, operating, and maintaining the facilities; and

(C) Plan map(s) of the proposed project showing:

(i) Location of all construction areas;

(ii) Planning area boundaries; and

(iii) Any known environmentally sensitive areas.

(D) Evidence that all affected governmental agencies have been contacted and their concerns addressed.

(c) Proceeding with Financial Assistance. Once the issued categorical exclusion becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the categorical exclusion will be revoked.

(4) Environmental Assessment ~~[Information Document]~~.

(a) General. If a project is not eligible for a categorical exclusion, the applicant must prepare an environmental assessment ~~[information document]~~.

(b) An environmental assessment ~~[information document]~~ must include:

(A) A description of the proposed project and why it is needed;

(B) The potential environmental impacts of the project as proposed;

(C) The alternatives to the project and their potential environmental impacts;

(D) A description of public participation activities conducted and issues raised; and

(E) Documentation of coordination with affected federal and state government agencies and tribal agencies.

(c) The Department will review and approve or reject the environmental assessment. If the environmental assessment is rejected, the applicant must make any revisions required by the Department. If the environmental assessment is approved, the Department will: ~~{If an environmental information document is required, the Department shall prepare an environmental assessment based upon the applicant's environmental information document and:}~~

(A) Issue a Finding of No Significant Impact documenting any mitigative measures required of the applicant. The Finding of No Significant Impact will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the Finding of No Significant Impact may be submitted for consideration by the board; or

(B) Require the applicant to i~~{I}~~ssue a Notice of Intent to Prepare an Environmental Impact Statement.

(d) If the Department issues a Finding of No Significant Impact:

(A) The Department will distribute the Finding of No Significant Impact to those parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding the provision of financial assistance will be taken by the Department for at least 30 days after the issuance of the Finding of No Significant Impact;

(B) The Department will reassess the project to determine whether the environmental assessment will be supplemented or whether an environmental impact statement will be required if substantive comments are received during the public comment period that challenge the Finding of No Significant Impact; and

(C) The Finding of No Significant Impact will become effective if no new information is received during the public comment period which would require a reassessment or if after reviewing public comments and reassessing the project, an environmental impact statement was not found to be necessary.

(e) Proceeding with Financial Assistance. Once the issued Finding of No Significant Impact becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the Finding of No Significant Impact will be revoked.

(5) Environmental Impact Statement.

(a) General. An environmental impact statement will be required when the Department determines that any of the following conditions exist:

(A) The project will significantly affect the pattern and type of land use or growth and distribution of the population;

(B) The effects of the project's construction or operation will conflict with local or state laws or policies;

(C) The project may have significant adverse impacts upon:

(i) Wetlands,

(ii) Floodplains,

(iii) Threatened and endangered species or their habitats,

(iv) Sensitive environmental areas, including parklands, preserves, other public lands or areas of recognized scenic, recreational, agricultural, archeological or historic value;

(D) The project will displace population or significantly alter the characteristics of existing residential areas;

(E) The project may directly or indirectly, through induced development, have significant adverse effect upon local ambient air quality, local noise levels, surface or groundwater quality, fish, shellfish, wildlife or their natural habitats;

(F) The project is highly controversial; or

(G) The treated effluent will be discharged into a body of water where beneficial uses and associated special values of the receiving stream are not adequately protected by water quality standards or the effluent will not be of sufficient quality to meet these standards.

(b) Environmental Impact Statement Contents. At a minimum, the contents of an environmental impact statement will include:

(A) The purpose and need for the project;

(B) The environmental setting of the project and the future of the environment without the project;

(C) The alternatives to the project as proposed and their potential environmental impacts;

(D) A description of the proposed project;

(E) The potential environmental impact of the project as proposed including those which cannot be avoided;

(F) The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(G) Any irreversible and irretrievable commitments of resources to the proposed project;

(c) Procedures.

(A) If an environmental impact statement is required, the ~~{Department}~~ applicant shall publish a Notice of Intent to Prepare an Environmental Impact Statement in newspapers of state-wide and community-wide circulation.

(B) After the N~~{n}~~otice of I~~{i}~~ntent has been published, the ~~{Department}~~ applicant will contact all affected local, state and federal agencies, tribes or other interested parties to determine the scope required of the document. Comments shall be requested regarding:

(i) Significance and scope of issues to be analyzed, in depth, in the environmental impact statement;

(ii) Preliminary range of alternatives to be considered;

(iii) Potential cooperating agencies and the information or analyses that may be needed from them;

(iv) Method for environmental impact statement preparation and the public participation strategy;

(v) Consultation requirements of other environmental laws; and

(vi) Relationship between the environmental impact statement and the completion of the facility plan and any necessary arrangements for coordination of preparation of both documents.

(C) The applicant shall prepare and submit the draft environmental impact statement to the Department for Department approval. The Department may require any changes necessary to comply with the requirements of OAR 340-54-050.

(D) {(G)} The applicant shall {~~Prepare and~~} submit {a} the DEQ approved draft environmental impact statement to all affected agencies or parties for review and comment.

(E) {(D)} Following publication of a public notice in a newspaper of community-wide and state-wide circulation, the applicant shall allow a 30-day comment period, and conduct a public hearing on the draft environmental impact statement.

(F) {(E)} The applicant shall {~~P~~}prepare and submit a final environmental impact statement (FEIS) addressing all agency and public input to the Department for Department approval. The Department may require any change necessary to comply with the requirements of OAR 340-54-050.

(G) The applicant shall provide a 30-day comment period on the DEQ approved FEIS.

(H) {(F)} Upon completion of a FEIS, the Department will issue a Record of Decision (ROD) documenting the mitigative measures which will be required of the applicant. The loan agreement will be conditioned upon such mitigative measures. The Department will allow a 30-day comment period for the ROD {~~and FEIS~~}.

(I) {(G)} Material incorporated into an environmental impact statement by reference will be organized to the extent possible into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons.

(d) Proceeding with Financial Assistance. Once the issued Record of Decision becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the Record of Decision will be revoked.

(e) *Environmental Assessment and* Environmental Impact Statement Costs.

[(A)] The cost of preparing *[the] an environment assessment and an* environmental impact statement must be paid by the applicant *[and may, at the request of the public agency, be included as part of the SRF project cost]. At the request of the applicant, costs for preparation of an environmental assessment or an environmental impact statement may be included as eligible project costs for a SRF loan for facility planning, design and construction, or construction.*

[(B) If, after preparation of the environmental impact statement, it is determined that the project or a reasonable alternative is not feasible, SRF repayment may be deferred until a feasible, environmentally acceptable project can be implemented.]

(6) Previous Environmental Reviews. If a federal environmental review for the project has been conducted, the Department may, at its discretion, adopt all or part of the federal agency's documentation.

(7) Validity of Environmental Review. Environmental determinations under this section are valid for five years. If a financial assistance application is received for a project with an environmental determination which is more than five years old, or if conditions or project scope have changed significantly since the last determination, the Department will reevaluate the project, environmental conditions, and public comments and will either:

(a) Reaffirm the earlier decision;

(b) Require supplemental information to the earlier Environmental Impact Statement, Environmental Assessment [~~Information Document~~], or Request for Categorical Exclusion. Based upon a review of the updated document, the Department will issue and distribute a revised notice of categorical exclusion, Finding of No Significant Impact, or Record of Decision; or

(c) Require a revision to the earlier Environmental Impact Statement, Environmental Assessment [~~Information Document~~], or Request for Categorical Exclusion. If a revision is required, the applicant must repeat all requirements outlined in this section.

(8) Appeal. An affected party may appeal a notice of categorical exclusion, a Finding of No Significant Impact, or a Record of Decision pursuant to procedures pursuant to [~~in~~] the Oregon Administrative Procedures Act, ORS 183.484.

LOAN APPROVAL AND REVIEW CRITERIA

340-54-055

(1) Loan Approval. The final SRF loan application must be reviewed and approved by the Director.

(2) Loan Review Criteria. In order to get approval of a final SRF loan application, the [~~following~~] criteria listed below must be met [~~:~~]. In addition, the Department may establish other loan criteria as appropriate, including but not limited to an opinion of bond counsel.

(a) The applicant must submit a completed final loan application including all information required under OAR 340-54-035, 340-54-040, or 340-54-045 whichever is applicable;

(b) There [~~are~~] must be available [~~adequate funds in the~~] SRF funds to finance the loan;

(c) The project [~~is~~] must be eligible for funds under this chapter;

[~~(d) The State of Oregon's bond counsel finds that the applicant has the legal authority to incur the debt;~~]

(d) [~~(e)~~] The applicant must demonstrate to the Director's satisfaction its ability to repay a loan and, where applicable, its ability to ensure ongoing operation and maintenance (including replacement) of the proposed water pollution control facility. In addition, for revenue secured loans described under OAR 340-54-065(2), the Department may require [~~at a minimum, unless waived by the Director,~~] the following criteria to [~~must~~] be met:

(A) Where applicable, the existing water pollution control facilities are free from operational and maintenance problems which would materially impede the proposed system's function or the public agency's ability to repay the loan from user fees as demonstrated by the opinion of a registered engineer or other expert acceptable to the Department;

(B) Historical and projected system rates and charges, when considered with any consistently supplied external support, must be sufficient to fully fund operation, maintenance, and replacement costs, any existing indebtedness and the debt service expense of the proposed borrowing;

(C) To the extent that projected system income is materially greater than historical system income, the basis for the projected increase must be reasonable and documented as to source;

(D) The public agency's income and budget data must be computationally accurate and must include three ~~four~~ years' historical financial statements, the current budget and one years' projected financial statements of consolidated sewer system revenues, expenses, assets and liabilities.

(E) The budget of the project including proposed capital costs, site work costs, engineering costs, administrative costs and any other costs which will be supported by the proposed revenue secured loan must be reflected in the public agency's data;

(F) Audits during the last ~~four~~ three years are free from adverse opinions or disclosures which cast significant doubt on the borrower's ability to repay the Revenue Secured Loan in a timely manner;

(G) The proposed borrowing's integrity is not at risk from undue dependence upon a limited portion of the system's customer base and a pattern of delinquency on the part of that portion of the customer base;

(H) The public agency must have the ability to bring effective sanctions to bear on non-paying customers; and

(I) The opinion of the pubic agency's legal counsel or a certificate from the public agency which states that no litigation exists or has been threatened which would cast doubt on the enforceability of the borrower's obligations under the loan.

LOAN AGREEMENT AND CONDITIONS

340-54-060

The loan agreement shall contain conditions including, but not limited to, the following, where applicable to the type of project being financed:

(1) Accounting.

(a) Applicant shall use accounting, audit and fiscal procedures which conform to generally accepted government accounting standards.

(b) Project files and records must be retained by the borrower for at least three (3) years after performance certification. Financial files and records must be retained until the loan is fully amortized.

(c) Project accounts must be maintained as separate accounts.

(2) Wage Rates. Applicant shall ensure compliance with federal wage rates established under the Davis-Bacon Act.

(3) Operation and Maintenance Manual. If the SRF loan is for design and construction or construction only, the borrower shall submit a facility operation and maintenance manual which meets Department approval before the project is 75% complete.

(4) Value Engineering. A value engineering study satisfactory to the Department must be performed for design and construction projects prior to commencement of construction if the total project cost will exceed $10 million.

(5) Plans and Specifications. Applicant must submit and receive Departmental approval of project plans and specifications prior to commencement of construction, in conformance with OAR Chapter 340, Division 52.

(6) Inspections and Progress Reports. During the building of the project, the borrower shall provide inspections in sufficient number to ensure the project complies with approved plans and specifications. These inspections shall be conducted by qualified inspectors under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. The Department or its representatives may conduct interim {~~building~~} inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with the loan agreement {~~, as appropriate~~}.

(7) Loan Amendments.

(a) Changes in the project work that are consistent with the objectives of the project and that are within the scope and funding level of the loan do not require the execution of a formal loan amendment. However, if additional loan funds are needed, a loan amendment shall be required.

(b) If the total of all loan amendments will not exceed 10% of the total amount approved in the original loan agreement, loan amendments increasing the originally approved loan amount may be requested at any time during the project. The Department may approve these loan amendments if the borrower demonstrates the legal authority to borrow.

(c) If the total of all loan amendments will exceed 10% of the total amount approved in the original loan agreement, loan amendments increasing the originally approved loan amount must be requested prior to implementation of changes in project work. The Department may approve these loan amendments if the borrower demonstrates the legal authority to borrow and the financial capability to repay the increased loan amount.

(d) The borrower must amend the loan agreement after bids for the project are received if the bids indicate that the project costs will be less than projected. Other {~~b~~}loan amendments decreasing the loan amount must {~~may~~} be requested no later than the date of completion of a positive performance certification {~~at the end of a project~~} when the final cost of the project is less than the total amount approved in the original loan agreement.

(8) Change Orders. Upon execution, the borrower must submit change orders to the Department. The Department shall review the change orders to determine the eligibility of the project change.

(9) Project Performance Certification.

(a) Project performance standards must be submitted by the borrower and approved by the Department before the project is 50 percent complete.

(b) The borrower shall notify the Department within thirty (30) days of the actual date of initiation of operation.

(c) One year after initiation of operation, the borrower shall certify whether the facility meets Department approved project performance standards.

(d) If the project is completed, or is completed except for minor items, and the facility is operable, but the borrower has not sent its notice of initiation of operation, the Department may assign an initiation of operation date.

(e) The borrower shall, pursuant to a Department approved corrective action plan, correct any factor that does not meet the Department approved project performance standards.

(10) Eligible Construction Costs. Payments for construction costs shall be limited to {~~eligible~~} work that complies with plans and specifications {~~as~~} approved by the Department.

(11) Adjustments. The Department may at any time review and audit requests for payment and make adjustments for, but not limited to, math errors, items not built or bought, and unacceptable construction.

(12) Contract and Bid Documents. The borrower shall submit a copy of the awarded contract and bid documents to the Department.

(13) Audit. An audit consistent with generally accepted accounting procedures of project expenditures will be conducted by the borrower within one year after performance certification. This audit shall be paid for by the borrower and shall be conducted by a financial auditor approved by the Department.

(14) Operation and Maintenance. The borrower shall provide for adequate operation and maintenance (including replacement) of the facility and shall retain sufficient operating personnel to operate the facility.

(15) Default Remedies. Upon default by a borrower, the Department shall have the right to pursue any remedy available at law or in equity and may appoint a receiver at the expense of the public agency to operate the utility which produces pledged revenues and set and collect utility rates and charges. The Department may also withhold any amounts otherwise due to the public agency from the State of Oregon and direct that such funds be applied to the debt service due on the SRF loan [~~indebtedness~~] and deposited in the fund. If the Department finds that the loan to the public agency is otherwise adequately secured, the Department may waive this right to withhold state shared revenue in the loan agreement or other loan documentation.

(16) Release. The borrower shall release and discharge the Department, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the loan, subject only to exceptions previously contractually arrived at and specified in writing between the Department and the borrower.

(17) Effect of Approval or Certification of Documents. Review and approval of facilities plans, design drawings and specifications or other documents by or for the Department does not relieve the borrower of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works as required by law, regulations, permits and good management practices. The Department is not responsible for any project costs or any losses or damages resulting from defects in the plans, design drawings and specifications or other subagreement documents.

(18) Reservation of Rights.

(a) Nothing in this rule prohibits a borrower from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; and

(b) Nothing in the rule affects the Department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under this chapter.

(19) Other provisions. SRF loans shall contain such other provisions as the Director may reasonably require to meet the goals of the Clean Water Act and ORS 468.423 to 468.440.

LOAN TERMS AND INTEREST RATES

340-54-065

As required by ORS 468.440, the following loan terms and interest rates are established in order to provide loans to projects which enhance or protect water quality; to provide loans to public agencies capable of repaying the loan; to establish an interest rate below market rate so that the loans will be affordable; to provide loans to all sizes of communities which need to finance projects; to provide loans to the types of projects described in these rules which address water pollution control problems; and to provide loans to all public agencies, including those which can and cannot borrow elsewhere.

(1) Types of Loans. An SRF loan must be one of the following types of loans:

(a) The loan must be a general obligation bond, or other full faith and credit obligation of the borrower, which is supported by the public agency's unlimited ad valorem taxing power; or

(b) The loan must be a bond or other obligation of the public agency which is not subject to appropriation, and which has been rated investment grade by Moody's Investor Services, Standard and Poor's Corporation, or another national rating service acceptable to the Director; or

(c) The loan must be a Revenue Secured Loan which complies with section (2) of this rule; or

(d) The loan must be an Alternative Loan which complies with section (3) of this rule; or

(e) The loan must be a Discretionary Loan which complies with section (4) [~~(3)~~] of this rule.

(2) Revenue Secured Loans. These loans shall:

(a) Be bonds, loan agreements, or other unconditional obligations to pay from specified revenues which are pledged to pay to the borrower; the obligation to pay may not be subject to the appropriation of funds;

(b) Contain a rate covenant which requires the borrower to impose and collect each year [~~pledged~~] revenues which are sufficient to pay all expenses of operation and maintenance (including replacement) of the facilities which are financed with the loan [~~borrowing~~] and the facilities which produce the [~~pledged~~] revenues, all debt service and other financial obligations (such as contributions to reserve accounts) imposed in connection with prior lien obligations, plus an amount equal to the product of the coverage factor shown in subsection (d) of this section times the debt service due in that year on the SRF loan [~~and all obligations which have an equal or superior lien on the pledged~~

~~revenues~~. The coverage factor selected from subsection (d) of this section shall correspond to the reserve percentage selected for the SRF loan~~;~~. If the public agency may incur, or has outstanding, prior lien obligations which, in the judgment of the Department, have inadequate reserves or otherwise may adversely affect the ability of the public agency to pay the SRF loan, the Department may require that the public agency agree in its rate covenant to impose and collect additional revenues to provide coverage on such prior lien obligations, in amounts determined by the Department.

(c) (A) Require the public agency to maintain in each year the SRF loan is outstanding, a pledged reserve which is dedicated to the payment of the SRF loan.

(B) Maintain a ~~The amount of the~~ reserve amount ~~shall be~~ which is at least equal to the product of the reserve percentage shown in subsection (d) of this section times the average annual debt service. The average annual debt service shall be based on the debt service due between the project completion date as estimated in the loan agreement and the estimated date of the final SRF loan payment ~~due in the following year on the SRF loan and all obligations which have an equal or superior lien on the pledged revenues.~~ The reserve percentage selected from subsection (d) of this section shall correspond to the coverage factor selected for the SRF loan.

(C) Fund the reserves ~~shall be funded~~ with a letter of credit, repayment guaranty, other third party commitment to advance funds which is satisfactory to the Department, or cash of the public agency (other than SRF loan proceeds). If it is determined by the Department that funding of the reserve as described above imposes an undue hardship on the public agency, and an Alternative Loan as described in OAR 340-54-065(3) is not feasible, then the Department may allow reserves to be funded with SRF loan proceeds. ~~or a letter of credit or other third party commitment to advance funds which is satisfactory to the Director;~~ In cases where the Department allows reserves to be funded with SRF loan proceeds, such reserves shall be held by the Department on behalf of the public agency, and all interest earned on the reserves over and above the interest rate on the SRF loan will be kept by the Department *in the SRF*.

(d) Comply with the one of following coverage factors and reserve percentages:

Coverage Factor	Reserve Percentage
1.05:1	100%
1.15:1	75%
1.25:1	50%
1.35 ~~1.50~~:1	25%

(e) Contain a covenant to review rates periodically, and to adjust rates, if necessary, so that estimated revenues in subsequent years will be sufficient to comply with the rate covenant;

(f) Contain a covenant that, if {pledged} revenues fail to achieve the level required by the rate covenant, the public agency will promptly adjust rates and charges to assure future compliance with the rate covenant. However, failure to adjust rates shall not constitute a default if the public agency transfers unencumbered {unpledged} resources in an amount equal to the revenue deficiency to the utility system which produces the {pledged} revenues;

(g) Follow the payment schedule in the loan agreement which shall require monthly SRF loan payments to the Department. If the Department determines that monthly loan payments are not practicable for the borrower, the payment schedule shall require periodic loan payments as frequently as possible, with monthly deposits to a dedicated loan payment account whenever practicable;

(h) Contain a covenant that, if the reserve account is depleted for any reason, the public agency will take prompt action to restore the reserve to the required minimum amount;

(i) Contain a covenant restricting additional debt appropriate to the financial condition of the borrower {~~that the public agency will not, except as provided in the SRF loan documentation, incur obligations (except for operating expenses) which have a lien on the pledged revenues which is equal or superior to the lien of the SRF loan, without the prior written consent of the Director. The Director shall withhold consent only if the Director determines that incurring such obligations would materially impair the ability of the public agency to repay the SRF loan or the security for the SRF loan~~};

(j) Contain a covenant that the borrower will not sell, transfer or encumber any financial or fixed asset of the utility system which produces the pledged revenues, if the public agency is in violation of any SRF loan covenant, or if such sale, transfer or encumbrance would cause a violation of any SRF loan covenant.

(3) Alternative Loan. Alternative Loans are to be used if the public agency would incur unnecessary costs or excessive burdens by entering into a Revenue Secured Loan, or if the public agency offers an alternative method of financing which is reasonable. The Director may authorize an Alternative Loan to a public agency, if the public agency demonstrates to the satisfaction of the Director that:

(a) It would be unduly burdensome or costly to the public agency to borrow money from the SRF under subsections (a), (b), or (c) of Section 340-54-065; and,

(b) The Alternative Loan has a credit quality which is substantially equal to, or better than, the credit quality of a Revenue Secured Loan to that public agency.

In determining whether an Alternative Loan meets the requirements of subsection (3)(b) of this section, the Director may consult with the Department's financial advisor, and may charge the public agency applying for an Alternative Loan the reasonable costs of such consultation.

(4)~~{(3)}~~ Discretionary Loan. A Discretionary Loan shall be made only to a small community ~~{a public agency which has a population of less than 5,000 persons}~~ which, in the judgment of the Director, cannot practicably comply with the requirements of OAR 340-54-065(1)(a), (b), ~~{or}~~ (c), or (d). Discretionary Loans shall comply with OAR 340-54-065(5)~~{(4)}~~ of this section, and otherwise be on terms approved by the Director. The total principal amount of Discretionary Loans made in any fiscal year shall not exceed five percent of the money available to be loaned from the SRF in that fiscal year.

(5)~~{(4)}~~ Interest Rates.

(a) Zero percent interest rate. SRF loans which are fully amortized within five years after project completion, as estimated in the loan agreement, shall bear no interest; at least three percent of the original principal amount of the loan shall be repaid each year.

(b) Three percent interest rate.

(A) All SRF loans, other than Discretionary Loans, in which the final principal payment is due more than five years after project completion, as estimated in the loan agreement, ~~{the loan is made}~~ shall bear interest at a rate of three percent per annum, compounded annually; shall have approximately level annual debt service during the period which begins with the first principal repayment and ends with the final principal repayment; and, shall require all principal and interest to be repaid within twenty years after project completion, as estimated in the loan agreement.

(B) A Discretionary Loan shall bear the interest rate of three percent per annum, compounded annually; shall schedule principal and interest repayments as rapidly as is consistent with estimated revenues (but no more rapidly than would be required to produce level debt service during the period of principal repayment); and, shall require all principal and interest to be repaid within twenty years after project completion, as estimated in the loan agreement.

(c) Review of interest rate. The interest rates on SRF loans described in OAR 340-54-065(5)[~~(4)~~](a) and (b) shall be in effect for loans made by September 30, 1991. Thereafter, interest rates may be adjusted by the EQC, if necessary, to assure compliance with ORS 468.440.

(6)[~~(5)~~] Interest Accrual. Interest accrual begins at the time of each loan disbursement from the SRF to the borrower.

(7)[~~(6)~~] Commencement of Loan Repayment.

(a) Except as provided in OAR 340-54-065(5)[~~(4)~~](a), principal and interest repayments on loans shall begin within one year after the date of project completion as estimated in the loan agreement.

(b) In the event that the actual project completion date is prior to the estimated project completion date in the loan agreement, the loan repayment must begin within one year after the actual completion date.

(8)[~~(7)~~] Minor Variations in Loan Terms. The Department may permit insubstantial variations in the financial terms of loans described in this section, in order to facilitate administration and repayment of loans.

SPECIAL RESERVES

340-54-070

(1) Facility Planning Reserve. Each fiscal year, 10 percent of the total available SRF will be set aside for loans for facility planning. However, if preliminary applications for facility planning representing 10 percent of the available SRF are not approved, these funds may be allocated to other projects.

(2) Small Community[~~ies~~] Reserve.

(a) Each fiscal year, 15 percent of the total available SRF will be set aside for loans to small communities. However, if preliminary applications from small communities representing 15

percent of the available SRF are not received, these funds may be allocated to other public agencies.

(b) In order to be eligible for small communities reserve funds, the small community must receive a SRF Priority List Ranking with at least 30 Enforcement Water Quality Violation points (see OAR 340-54-025(4)(a).

LOAN LIMITATIONS ~~[MAXIMUM-LOAN-AMOUNT]~~

340-54-075

(1) Maximum Loan Amount. In any fiscal year, no public agency on the ~~[p]~~Priority ~~[L]~~List may receive more than 15 ~~[25]~~ percent of the total available SRF. However, if the SRF funds are not otherwise allocated, a public agency may apply for more than 15 ~~[25]~~ percent of the available SRF, not to exceed the funds available in the SRF.

(2) Minimum Loan Amount. No SRF loan shall be approved if the total amount of the SRF loan is less than $20,000.

for each such class. The fee for the issuance of certificates shall be established by the commission in an amount based upon the costs of administering this program established in the current biennial budget. The fee for a certificate shall not exceed $10.

(2) The department shall collect the fees established pursuant to paragraph (b) of subsection (1) of this section at the time of the issuance of certificates of compliance as required by ORS 468.390 (2)(c).

(3) On or before the 15th day of each month, the commission shall pay into the State Treasury all moneys received as fees pursuant to subsections (1) and (2) of this section during the preceding calendar month. The State Treasurer shall credit such money to the Department of Environmental Quality Motor Vehicle Pollution Account, which is hereby created. The moneys in the Department of Environmental Quality Motor Vehicle Pollution Account are continuously appropriated to the department to be used by the department solely or in conjunction with other state agencies and local units of government for:

(a) Any expenses incurred by the department and, if approved by the Governor, any expenses incurred by the Motor Vehicles Division of the Department of Transportation in the certification, examination, inspection or licensing of persons, equipment, apparatus or methods in accordance with the provisions of ORS 468.390 and 815.310.

(b) Such other expenses as are necessary to study traffic patterns and to inspect, regulate and control the emission of pollutants from motor vehicles in this state.

(4) The department may enter into an agreement with the Motor Vehicles Division of the Department of Transportation to collect the licensing and renewal fees described in paragraph (a) of subsection (1) of this section subject to the fees being paid and credited as provided in subsection (3) of this section. (Formerly 449.965; 1974 s.s. c.73 §5; 1975 c.535 §3; 1977 c.704 §10; 1981 c.294 §1; 1983 c.338 §926)

468.410 Authority to limit motor vehicle operation and traffic. The commission and regional air pollution control authorities organized pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter by rule may regulate, limit, control or prohibit motor vehicle operation and traffic as necessary for the control of air pollution which presents an imminent and substantial endangerment to the health of persons. (Formerly 449.747)

468.415 Administration and enforcement of rules adopted under ORS 468.410. Cities, counties, municipal corporations and other agencies, including the Department of State Police and the Highway Division, shall cooperate with the commission and regional air pollution control authorities in the administration and enforcement of the terms of any rule adopted pursuant to ORS 468.410. (Formerly 449.751)

468.420 Police enforcement. The Oregon State Police, the county sheriff and municipal police are authorized to use such reasonable force as is required in the enforcement of any rule adopted pursuant to ORS 468.410 and may take such reasonable steps as are required to assure compliance therewith, including but not limited to:

(1) Locating appropriate signs and signals for detouring, prohibiting and stopping motor vehicle traffic; and

(2) Issuing warnings or citations. (Formerly 449.753)

FINANCING TREATMENT WORKS

468.423 Definitions for ORS 468.423 to 468.440. As used in ORS 468.423 to 468.440:

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

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

(3) "Director" means the Director of the Department of Environmental Quality or the director's designee.

(4) "Fund" means the Water Pollution Control Revolving Fund established under ORS 468.427.

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

(6) "Treatment works" means:

(a) The devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works. "Treatment works" includes:

(A) Intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and any appurtenance, exten-

sion, improvement, remodeling, addition or alteration to the equipment;

(B) Elements essential to provide a reliable recycled water supply including standby treatment units and clear well facilities; and

(C) Any other acquisitions that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment, including but not limited to land used to store treated waste water in land treatment systems prior to land application.

(b) Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, storm water runoff, industrial waste or waste in combined storm water and sanitary sewer systems.

(c) Any other facility that the commission determines a public agency must construct or replace in order to abate or prevent surface or ground water pollution. [1987 c.648 §1]

Note: 468.423 to 468.440 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.

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

(1) To aid and encourage public agencies required to provide treatment works for the control of water pollution in the transition from reliance on federal grants to local self-sufficiency by the use of fees paid by users of the treatment works;

(2) To accept and use any federal grant funds available to capitalize a perpetual revolving loan fund; and

(3) To assist public agencies in meeting treatment works' construction obligations in order to prevent or eliminate pollution of surface and ground water by making loans from a revolving loan fund at interest rates that are less than or equal to market interest rates. [1987 c.648 §2]

Note: See note under 468.423.

468.427 Water Pollution Control Revolving Fund; sources. (1) The Water Pollution Control Revolving Fund is established separate and distinct from the General Fund in the State Treasury. The moneys in the Water Pollution Control Revolving Fund are appropriated continuously to the department to be used for the purposes described in ORS 468.429.

(2) The Water Pollution Control Revolving Fund shall consist of:

(a) All capitalization grants provided by the Federal Government under the federal Water Quality Act of 1986;

(b) All state matching funds appropriated or authorized by the legislature;

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

(d) All repayments of moneys borrowed from the fund;

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

(f) Any other fee or charge levied in conjunction with administration of the fund.

(3) The State Treasurer may invest and reinvest moneys in the Water Pollution Control Revolving Fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the Water Pollution Control Revolving Fund. [1987 c.648 §3]

Note: See note under 468.423.

468.429 Uses of revolving fund. (1) The Department of Environmental Quality shall use the moneys in the Water Pollution Control Revolving Fund to provide financial assistance:

(a) To public agencies for the construction or replacement of treatment works.

(b) For the implementation of a management program established under section 319 of the federal Water Quality Act of 1986 relating to the management of nonpoint sources of pollution.

(c) For development and implementation of a conservation and management plan under section 320 of the federal Water Quality Act of 1986 relating to the national estuary program.

(2) The department may also use the moneys in the Water Pollution Control Revolving Fund for the following purposes:

(a) To buy or refinance the treatment works' debt obligations of public agencies if such debt was incurred after March 7, 1985.

(b) To guarantee, or purchase insurance for, public agency obligations for treatment works' construction or replacement if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public agency for this purpose.

(c) To pay the expenses of the department in administering the Water Pollution Control Revolving Fund. [1987 c.648 §4]

Note: See note under 468.423.

468.430 [1983 c.218 §1; repealed by 1985 c.222 §6]

468.433 Duties of department. In administering the Water Pollution Control Revolving Fund, the department shall:

(1) Allocate funds for loans in accordance with a priority list adopted by rule by the commission.

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

(3) Prepare any reports required by the Federal Government as a condition to awarding federal capitalization grants. [1987 c.648 §5]

Note: See note under 468.423.

468.435 [1983 c.218 §2; repealed by 1985 c.222 §6]

468.437 Loan applications; eligibility; waiver; default; remedy. (1) Any public agency desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the department on the form provided by the department. Each applicant shall demonstrate to the satisfaction of the State of Oregon bond counsel that the applicant has the legal authority to incur the debt. To the extent that a public agency relies on the authority granted by law or charter to issue revenue bonds pursuant to the Uniform Revenue Bonding Act, the department may waive the requirements for the findings required for a private negotiated sale and for the preliminary official statement.

(2) Any public agency receiving a loan from the Water Pollution Control Revolving Fund shall establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan.

(3) If a public agency defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency and direct that such funds be applied to the indebtedness and deposited into the fund. [1987 c.648 §6]

Note: See note under 468.423.

468.440 Loan terms and interest rates; considerations. (1) The Environmental Quality Commission shall establish by rule policies for establishing loan terms and interest rates for loans made from the Water Pollution Control Revolving Fund that assure that the objectives of ORS 468.423 to 468.440 are met and that adequate funds are maintained in the Water Pollution Control Revolving Fund to meet future needs. In establishing the policy, the commission shall take into consideration at least the following factors:

(a) The capability of the project to enhance or protect water quality.

(b) The ability of a public agency to repay a loan.

c) Current market rates of interest.

d) The size of the community or district to be served by the treatment works.

e) The type of project financed.

(f) The ability of the applicant to borrow elsewhere.

(2) The commission may establish an interest rate ranging from zero to the market rate. The term of a loan may be for any period not to exceed 20 years.

(3) The commission shall adopt by rule any procedures or standards necessary to carry out the provisions of ORS 468.423 to 468.440. [1987 c.648 §7]

Note: See note under 468.423.

Note: Section 8, chapter 648, Oregon Laws 1987, provides:

Sec. 8. Before awarding the first loan from the Water Pollution Control Revolving Fund, the Department of Environmental Quality shall submit an informational report to the Joint Committee on Ways and Means or, if during a time interim between sessions of the Legislative Assembly, to the Emergency Board. The report shall describe the Water Pollution Control Revolving Fund program and set forth in detail the operating procedures of the program. [1987 c.648 §8]

FIELD BURNING REGULATION

468.450 Regulation of field burning on marginal days. (1) As used in this section:

(a) "Marginal conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

(b) "Marginal day" means a day on which marginal conditions exist.

(2) In exercising its functions under ORS 476.380 and 478.960, the commission shall classify different types or combinations of atmospheric conditions as marginal conditions and shall specify the extent and types of burning that may be allowed under different combinations of atmospheric conditions. A schedule describing the types and extent of burning to be permitted on each type of marginal day shall be prepared and circulated to all public agencies responsible for providing information and issuing permits under ORS 476.380 and 478.960. The schedule shall give first priority to the burning of perennial grass seed crops used for grass seed production, second priority to annual grass seed crops used for grass seed production, third priority to grain crop burning, and fourth priority to all other

65th OREGON LEGISLATIVE ASSEMBLY--1989 Regular Session

Senate Bill 1097

Sponsored by Senator OTTO (at the request of Association of Oregon Sewerage Agencies)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Allows public agency to borrow directly from Water Pollution Control Revolving Fund. Allows public agency to waive notice of sale, official statement and other procedures if borrowing directly from Department of Environmental Quality.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to pollution control; creating new provisions; amending ORS 468.437; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this Act is added to and made a part of ORS 468.423 to 468.440.

SECTION 2. Notwithstanding any limitation contained in any other provision of law or local charter, a public agency may:

(1) Borrow money from the Water Pollution Control Revolving Fund through the department;

(2) Enter into loan agreements and make related agreements with the department in which the public agency agrees to repay the borrowed money in accordance with the terms of the loan agreement;

(3) Covenant with the department regarding the operation of treatment works and the imposition and collection of rates, fees and charges for the treatment works; and

(4) Pledge all or part of the revenues of the treatment works to pay the amount due under the loan agreement and notes in accordance with ORS 288.594.

SECTION 3. ORS 468.437 is amended to read:

468.437. (1) Any public agency desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the department on the form provided by the department. [*Each applicant shall demonstrate to the satisfaction of*] **The department may require an opinion from** the State of Oregon bond counsel that the applicant has the legal authority to [*incur the debt*] **borrow from the Water Pollution Control Revolving Fund.** [*To the extent that a public agency relies on the authority granted by law or charter to issue revenue bonds pursuant to the Uniform Revenue Bonding Act, the department may waive the requirements for the findings required for a private negotiated sale and for the preliminary official statement.*] **If a public agency relies on borrowing authority granted by charter or law other than section 2 of this 1989 Act, then with the consent of the department and notwithstanding any limitation or requirement of the charter or law, the public agency may borrow directly from the Water Pollution Control Revolving Fund without publishing a notice of sale, providing an official statement or following any other procedures designed to provide notice or information to potential lenders. The requirements of ORS 288.845 shall not apply to revenue bonds that are sold to the department.**

(2) Any public agency receiving a loan from the Water Pollution Control Revolving Fund shall

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan.

(3) If a public agency defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency and direct that such funds be applied to [*the indebtedness*] **the payments** and deposited into the fund. **If the department finds that the loan to the public agency is otherwise adequately secured, the department may waive this right in the loan agreement or other loan documentation.**

SECTION 4. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: December 1, 1989
Agenda Item: G
Division: Water Quality
Section: Construction Grants

SUBJECT:

State Revolving Loan Fund (SRF): Proposed Adoption of Temporary Rules to Address 1989 Legislative Amendments and Problems Encountered in Initial Program Implementation

PURPOSE:

Obtain EQC approval of temporary rule needed to respond to emergency created by recent legislative changes and problems in the existing rule that limit program implementation.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
_x_ Adopt Rules
- Proposed Rules (Temporary) — Attachment _A_
- Rulemaking Statements — Attachment ___
- Fiscal and Economic Impact Statement — Attachment ___
- Public Notice — Attachment ___

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

___ Approve Department Recommendation
- ___ Variance Request — Attachment ___
- ___ Exception to Rule — Attachment ___

___ Informational Report — Attachment ___
___ Other: (specify) — Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The proposed temporary rule incorporates legislative changes made by the 1989 Oregon Legislature. These amendments allow direct loans to be made to public agencies from the SRF; eliminate the need for a bond counsel opinion for every SRF loan; and allow the Department to waive its right to withhold revenue sharing funds otherwise due to the public agency in the case of agency default.

In addition, the temporary rule allows the Department to make loans to public agencies which provide loan security that is different but substantially equivalent to the security required for other types of loans allowed by the rules. This change would give the Department the ability to make loans to communities which are unable to provide exactly the type of security which the rules currently require but which can provide other types of equivalent security.

AUTHORITY/NEED FOR ACTION:

x Required by Statute: SB 1097 — Attachment C
Enactment Date: June 30, 1989
x Statutory Authority: ORS 468.423 to .440 — Attachment B
___ Pursuant to Rule: ___ — Attachment ___
___ Pursuant to Federal Law/Rule: ___ — Attachment ___
___ Other: — Attachment ___
___ Time Constraints: Several public agencies have indicated that they need to begin receiving SRF loan funds by January, 1990. In order to complete loan agreements with these public agencies, the temporary rule amendments are necessary.

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation — Attachment ___
___ Hearing Officer's Report/Recommendations — Attachment ___
___ Response to Testimony/Comments — Attachment ___
x Prior EQC Agenda Items:
March 3, 1989 - SRF Rule Adoption
OAR 340-54-005 to -075 — Attachment A

___ Other Related Reports/Rules/Statutes:
ORS 183.335 (5) Attachment E
_x_ Supplemental Background Information Attachment D
Justification for Temporary Rule

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Without the temporary rule, some public agencies will not be able to fulfill existing loan requirements. When the existing rules were drafted, a section was included which requires a pledged reserve for revenue secured loans which could be much larger than is necessary or feasible. The pledged reserve is equal to a percentage of "the debt service due in the following year on the SRF loan and all obligations which have an equal or superior lien on the pledged revenues" (OAR 340-54-065(2)(c)). This could mean that a public agency getting a 20 year $4 million SRF loan which already has $16 million outstanding revenue bonds would have to pledge a reserve of between $250,000 and $1 million. The reserve would be required even if the public agency has already established a pledged reserve for the outstanding debt. This result was not intended by the rules and is addressed by the proposed temporary rule.

Also, under the existing rule, the Department would have the authority with all SRF loans to withhold revenue sharing monies in the case of default by an SRF borrower. For some jurisdictions, this authority could have the effect of reducing the bond local rating due to the potential effect on an important source of income for public facilities. The temporary rule reflects new statutory language in SB 1097 which clearly allows the Department to waive this authority.

Affected public agencies indicate support of the proposed temporary rule.

PROGRAM CONSIDERATIONS:

ORS 468.437, adopted in 1987, required an opinion from Oregon bond counsel regarding the applicants legal authority to borrow from the SRF. SB 1097 changed the SRF statute to make this opinion from Oregon bond counsel optional. The temporary rule makes the same change to the SRF rules. Oregon bond counsel has advised the Department that such an opinion is not always necessary, and that the average cost

would likely be $2,000-$4,000 per opinion. Under the current rules, this cost would be borne by the Department.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt a temporary rule which incorporates all changes made to the SRF statute by SB 1097. This approach was recommended by bond counsel.

2. Do not adopt a temporary rule to amend the existing rules. SB 1097 makes an opinion from Oregon bond counsel optional and allows the Department to waive the right to revenue sharing money. The Department could choose to exercise these options under SB 1097 which supercedes existing rules. The conflict between requirements in the rules and in SB 1097 could, however, lead to confusion for borrowers. Legal counsel recommends adoption of rules to avoid this conflict.

3. Adopt a temporary rule which allows the Department to accept other security than that specifically identified in the existing rules so long as it provides substantially the same amount of security as would be otherwise required. These amendments would provide a broad solution to the loan security problems created by the specificity of the existing SRF rules. This provides additional flexibility which could allow the Department to gear SRF loans to the needs of communities without compromising SRF loan security.

4. Adopt a temporary rule to change the language in the existing rule regarding loan reserves for revenue secured loans. Eliminate the requirement for the loan reserve to cover other debts with an equal or superior lien on the sewer revenues if the borrower has already pledged a reserve for these debts. Also require the reserve to be based on average annual debt service rather than on the next year's debt service since debt service can vary from year to year on some loans.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Adopt Alternatives 1, 3, and 4. These alternatives address known problems with the rules while providing the Department the greatest degree of flexibility in issuing loans without compromising the stability of the loan program. This

flexibility is particularly important during the initial stages of program implementation since there will inevitably be circumstances arising which have not been anticipated. With more flexibility in the rules, these circumstances can be addressed without having to frequently return to the Commission for more rule changes. Oregon bond counsel has also recommended this course of action.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The temporary rules are consistent with the legislative intent of SB 1097. They are also consistent with the original intent of the SRF rules to require an adequate amount of loan security to protect SRF monies without unduly burdening the SRF borrowers.

OTHER ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

A SRF Task Force is being developed to review these and other issues. The Department will return to the Commission for authorization to hold a public hearing on these rules in January or February of 1990.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Maggie Conley

Phone: 229-5257

Date Prepared: November 2, 1989

(MG:kjc)
(CG\WJ2371)
(November 9, 1989)

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to amend rules.

Local Authority:

ORS 468.423 to 468.440 gives authority for establishment of the State Revolving Fund. ORS 468.440 gives the Commission the authority to adopt rules to carry out ORS 468.423 to 468.440.

Need for the Rule:

The State Revolving Fund (SRF) rule amendments are needed to simplify the SRF priority system; amend the environmental review process; to change maximum loan amount; and to change the types of loans available.

Fiscal and Economic Impact:

The amendment will add additional costs for SRF borrowers because the responsibility and cost of environmental assessments environmental impact statements is shifted from the Department to the borrower. The borrower will, however, be able to borrow low interest SRF money to cover the cost of preparing these documents.

The proposed rules lower the annual maximum loan amount from 25% of the SRF to 15% of the SRF. This change will insure that more communities are able to borrow SRF money each year.

The proposed rules allow greater flexibility in the type of loan security a borrower may provide. This change should make the SRF accessible to a broader variety of borrowers.

The impact of the rule amendment will have no affect on small businesses.

Land Use Consistency:

The proposal described appears to be consistent with all statewide planning goals. Specifically, the rules comply with Goal 6 because they would provide loans for water pollution control facilities, thereby contributing to the protection of water quality. The rules comply with Goal 11 because they assist communities in financing needed sewage collection and treatment facilities.

Public comment on this proposal is invited and may be submitted in the manner described in the accompanying Public Notice of Rules Adoption.

It is requested that local, state and federal agencies review the proposal and comment on possible conflicts with their programs affecting land use and with statewide planning goals within their jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflicts thereby brought to its attention.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

STATE REVOLVING LOAN FUND RULE AMENDMENT PUBLIC HEARING

Notice Issued: 5/1/90
Comments Due: 6/1/90

WHO IS AFFECTED: Adoption of the rule amendments will affect communities financing water pollution control facilities.

WHAT IS PROPOSED: Amendments to the State Revolving Loan Fund (SRF) rules (OAR Chapter 340, Division 54). The SRF provides low interest loans to communities for water pollution control projects, such as sewage treatment facilities.

WHAT ARE THE HIGHLIGHTS: The proposed SRF rules amendments change the SRF priority system, the environmental review process, project eligibility, maximum loan amounts and types of loan available.

HOW TO COMMENT: Written comments should be presented to DEQ by June 1, 1990 at the following address:

Maggie Conley
Department of Environmental Quality
Water Quality Division
811 S.W. Sixth Avenue
Portland, OR 97204
Telephone: 229-5257

Verbal comments may be given during the public hearing scheduled as follows:

10 a.m.
June 1, 1990
Room 10A - 10th floor
811 S.W. Sixth Avenue
Portland, Oregon

WHAT IS THE STEP: After the public hearing, the Environmental Quality Commission NEXT may adopt rules identical to those proposed, modify the rules or decline to act. The Commission's deliberation should come on June 29, 1990, as part of the agenda of a regularly scheduled Commission meeting.

ATTACHMENTS: Statement of Need for Rules (including Fiscal Impact)
Statement of Land Use Consistency

CG\WH4046 (5/30/90)

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.

STATE REVOLVING FUND TASK FORCE
MEETING SUMMARY
MARCH 20, 1990
10:30 AM TO 3:30 PM
DEQ HEADQUARTERS - ROOM 10A

MEMBERS PRESENT:

Terry Smith
Deputy Director of Public Works
Eugene *

Greg DiLoreto
City Engineer
Gresham

Steve Anderson
Anderson & Perry Engineers
La Grande

Jon Jalali
Finance Director
Medford *

Kathy Schacht
Metropolitan Waste Management
Commission
Springfield

Dan Helmick
Director of Fiscal Services
Clackamas County *

B. J. Smith
League of Oregon Cities
Salem *

Kelly Fish
Public Representative
North Albany

Ann Culbertson
Grants Coordinator
Unified Sewerage Agency
Washington County

Dave Gooley
Administrative Services Direct
City of Portland *

MEMBERS ABSENT:
Joe Windell
City Administrator
Lebanon

OTHERS PRESENT
Maggie Conley - Meeting Facilitator (DEQ)
Dave Neitling - Recorder (DEQ)
Martin Loring - DEQ representative
Kathryn Danley - Minute taker

I. Introduction

The initial State Revolving Fund Task Force meeting was called to order by Maggie Conley.

Maggie Conley explained that this Task Force had been developed to assist the Department in developing SRF rule amendments. Draft rules amendments were distributed to the Task Force before the meeting. She explained that these were intended to provide a beginning for Task Force discussion and that the Department is open to the Task Force input on these amendments.

In order for the rule amendments to be adopted in time to affect this year's funding cycle, the Task Force must complete its work by April 16, 1990, in the three scheduled meetings. The Department, however, is willing to provide more meetings after April 16 if the Task Force feels that the rule amendments do not need to affect this year's funding cycle. She also explained that the Department plans to reconvene the Task Force or create a new Task Force to address interest rates and other financing issues in the fall of 1990.

II. Presentation of Issues

Martin Loring provided background on the State Revolving Fund program and the Task Force role. Martin Loring then set out the following issue areas which the Department has identified as needing discussion. They are as follows:

1. Collector Sewers, major sewer rehabilitation, CSO correction, storm water control.
2. Reserves for medium sized communities.
3. Financial need.
4. Pollution problem points. Does the present system punish communities that did well and reward communities with violations?
5. Receiving water body sensitivity points.
6. Rollover of interim/construction loans.
7. Cost increases should the 10% limit be reduced to 5%? Should increases have first call on the next year's funds?
8. Responsibility for Environmental review.
9. Alternative loans.
10. Mechanics of priority system.

Maggie Conley, then asked the Task Force to identify other issues they found missing from the DEQ list. The Task Force identified the following issues to add to the above list:

11. Security requirements and reserves (Dan Helmick)
12. Interest rate change (Steve Anderson)
13. Size of project - Funding of major projects. Consider changing the 25% cap on project size. (Kathy Schacht)
14. Limit DEQ construction oversight on projects. (Dan Helmick)

15. Application process - Provide an easier process for certain types of loans (Greg DiLoreto)
16. Philosophy of SRF (Dave Gooley)
17. Water Quality points for health hazard annexation (Kathy Schacht)
18. Public review of priority ranking system in rules and Clean Water Strategy (Dan Helmick, Terry Smith)
19. Funding growth (Kathy Schacht)

III Task Force Objective

Maggie Conley, presented the Department's recommendation for the Task Force objective as follows:

> "To refine the method of equitably distributing SRF loans to all sizes of communities and to all eligible project types, while providing the greatest water quality protection."

The Task Force changed the objective to read as follows:

1. Make loans which will provide the greatest water quality protection.
2. Establish security provisions linked to future SRF buying power.
3. Maintain reasonable expectations of equitable distribution of SRF monies.
4. Streamline process.

As part of the discussion of objectives the Task Force asked to discuss DEQ philosophy with respect to the SRF program. Dave Gooley and Greg DiLoreto stated that they felt the SRF program should focus on water quality and not be operated the same as a bank with excessive security requirements.

Martin Loring responded that the Department has two goals which work together. The first goal is protecting water quality; the second is protecting future SRF buying power by having adequate underwriting and security requirements. Without adequate security requirements, he said, there might be no guarantee of future SRF loan payback, therefore, less ability to protect water quality due to the limited SRF funds available.

Dan Helmick stated that he believed that communities would repay the loan without security requirements in order to protect their bond rating and future ability to get loans.

Jon Jalali stated that he believed the federal government will continue to fund the SRF beyond 1994, so there will be future funds to finance water quality problems.

IV Prioritizing Issues

The Task Force decided to try to address all of the issues listed in A. and B. below during the 3 scheduled meetings.

A. The following issues were addressed first because they are related:

1. Collectors, major sewer rehabilitation, CSO correction, storm water control.
2. Reserves for medium sized communities.
4. Water pollution problem points.
5. Receiving waterbody sensitivity points.
13. Should the 25% cap be changed?
18. Water pollution problem points for health hazard annexation.
19. Public review of priority ranking system and clean water strategy.

B. The Task Force decided to address the remaining issues in the following order (Except as noted in C. and D. below):

7. Review limits on loan increases.
11. Security requirements, reserves, and ability to repay.
8. Responsibility for environmental review.
15. Application process should be simpler different types of loans.
20. Funding growth.

C. The Task Force decided to accept changes recommended by the Department on the following issues:

6. Rollover of interim/construction loans.
9. Alternative loans.
10. Mechanics of priority system.

D. Consideration of the following issues was deferred until next fall when the task force will reconvene or a new task force will be created:

3. Financial need.
17. Interest rates on SRF loans.
19. DEQ oversight on projects.

V Discussion of Priority Ranking Related Issues

The Task Force brain stormed solutions to some of the issues which were grouped together under A. above. Opinions of each Task Force member are summarized below:

TERRY SMITH

#1 Rank projects by type. Rank STPs, interceptors, etc. high and rank collectors low. Rank collectors on a per capita basis.
#2 No medium size community reserve-retain existing small community reserve.
#4 Health hazards should be ranked highest.
#5 No comment.
#13 Reduce the 25% cap. Fund all treatment and water projects on a per capita basis.
#18 Rank health hazard above other water quality problems.

GREG DILORETO

#1 Water quality protection number one priority. No collector money limit.
#2 No medium size community reserve. Revisit existing 15% small community reserve.
#4 No comment.
#5 No comment.
#13 Consider reducing the 25% cap.
#18 No comment.

DAVE GOOLEY

#1 No limit on funding for collectors. Provide funding to projects with the greatest WQ need, regardless of project type. Intent of new federal legislation was to allow unlimited funding for collectors.
#2 No medium size community reserve. Retain present reserves.
#4 Leave as is.
#5 Leave as is.
#13 Retain 25% cap.
#18 Health hazards should have top points.

B.J. SMITH

#1 Consider ranking collectors lower. Concerned about private financial benefit of collectors.
#2 No medium sized community reserve. Leave as is.
#4 No comment.
#5 Concerned about sensitivity points.
#13 No comment.
#18 Stress health hazard funding.

B.J.Smith requested that the Department explain how it affects certain communities such as small cities on big rivers.

STEVE ANDERSON

#1 Don't fund collectors or keep it low.

#2 No medium size community reserve, consider reducing small community reserve.
#4 Leave as is.
#5 Go with recommended changes on sensitivity.
#13 Reduce 25% cap.
#18 Rank health hazards high.

JON JALALI

#1 Use funds where there is pollution-no limit on collectors.
#2 No medium size community reserve. Retain present small communities reserve.
#4 Accept DEQ rule on water quality problem.
#5 Leave as is.
#13 Feels 25% cap too high -- reduce to 20%.
#18 Health hazard should rank high.

KATHY SCHACHT
#1 Limit collectors-possibly 20% until other needs are met.
#2 No medium size community reserve. Retain small community reserve at 15%.
#4 Definition of water quality problems needs clarification.
#5 Same as #4
#13 Retain 25% CAP.
#18 No comment.

Kathy Schacht, also, asked for an explanation of how the clean water strategy ranks health hazards.

ANN CULBERTSON

#1 Fund all types of projects with no limit.
#2 Revise small community reserve for 12,500 population and increase crease size of small community reserve to 20%.
#4 Maximum points for water quality pollution.?
#5 Accept DEQ proposed sensitivity points.
#13 Retain 25% cap on loans.
#18 Provide the most points for health hazards.

KELLY FISH

#1 Would like restrictions on collectors. Give lower priority.
#2 Retain reserve for small communities. Increase it from 15% to 25%. Consider increasing the maximum population of communities which may be funded under the reserve.
#4 Accept DEQ draft rules.
#5 Leave as is.
#13 Reduce 25% cap to 15 or 20%.
#18 Maximum points for health hazard areas.

DAN HELMICK

#1 Collectors should have a project or loan cap of about 15%.
#2 No medium size reserve-retain 15% small community reserve.
#4 Reduce problem points. No points for enforcement actions.

#5 No water quality points for enforcement-require documented water quality problem to be eligible.
#13 Reduce 25% cap to 10%.
#18 No points for health hazards.

VI Discussion of Loan Increase Issue

Current SRF rules limit the amount of loan increases which do not have to get DEQ approval to 10% loan of the original loan amount. Staff explained that proposed rules would change this limit to 5%. There would continue be no limit on the overall amount of loan increases allowable. The 5% limit was chosen because it would mirror the 5% contingency the Department would like to add to all projects listed on the on the annual funding list. This 5% contingency would provide a simple means of funding SRF loan amendments. Otherwise, they would get funded from future years funding or loan repayments.

Decision: The Task Force concluded that for now it is more appropriate to keep the 10% limit on loan increases that do not need Department approval since no loans have yet been made and this is not yet a problem. This issue could be revised in the future if necessary.

VI Followup

The Department agreed to distribute the meeting summary within one week of the meeting. The Department also agreed to make a presentation at the next meeting regarding how the Clean Water Strategy is developed.

The SRF Task Force meeting was adjourned at 3:30 p.m..

wp\dog

STATE REVOLVING FUND TASK FORCE

MEETING SUMMARY
APRIL 4, 1990
9:00 AM TO 2:00 PM
DEQ HEADQUARTERS - ROOM 10A

MEMBERS PRESENT:

Terry Smith
Deputy Director of Public Works
Eugene

Greg DiLoreto
City Engineer
Gresham

Steve Anderson
Anderson & Perry Engineers
La Grande

Jon Jalali
Finance Director
Medford

Kathy Schacht
Metropolitan Waste Management
Commission
Springfield

Dan Helmick
Director of Fiscal Services
Clackamas County

B.J. Smith
League of Oregon Cities
Salem

Ann Culbertson
Grants Coordinator
Unified Sewerage Agency
Washington County

Dave Gooley
Administrative Services Director
City of Portland

Joseph Windell
City Administrator
Lebanon

MEMBERS ABSENT:

Kelly Fish
Public Representative
North Albany

OTHERS PRESENT:
Maggie Conley - Meeting Facilitator (DEQ)
Dave Neitling - Recorder (DEQ)
Martin Loring - DEQ representative
Donna Dluehosh - North Albany (for Kelly Fish)
Willie Olandria - EPA
Lucinda Bidleman - Speaker on Ground Water Sensitivity Points
Neil Mullane - Speaker on Surface Water Sensitivity Points
Susan Black - Minute taker

I. INTRODUCTION

The Oregon Department of Environmental Quality (DEQ) developed the State Revolving Loan Fund (SRF) in 1989 to provide financing to protect water quality as Congress is phasing out the grant program. The Task Force held its second meeting April 4, 1990 to assist the Department in developing SRF rule amendments.

The State Revolving Fund Task Force meeting was called to order by Maggie Conley. Maggie Conley reminded the task force that at its last meeting the Task Force agreed that its objectives included trying to reach a reasonable expectation of equitable distribution of SRF money and protection of water quality.

II. SECURITY REQUIREMENTS AND RESERVES

Issue: Should the rules be amended to reduce the SRF loan security requirements?

Martin Loring introduced the topic of security requirements and reserves by identifying two related issues: underwriting (how much credit risk will be taken on), and security provisions or collateral (what security is pledged as a secondary source of repayment). At the last meeting, Task Force members stated that there is concern about security requirements interfering with the ability to solve water quality problems of the state due to the financial burden they impose. Martin Loring stated that it was Congress's clear intent in the Clean Water Act to create a perpetual fund. EPA and other agencies will audit the fund for the riskiness of the loan portfolio and procedures. The fund's buying power needs to be maintained in order to provide future financing for water quality needs. The original SRF rules provided three ways for a community to receive funding, each with different security provisions. A community could sell to DEQ:

- general obligation bonds secured by sewer rate revenue and property taxes

- rated revenue bonds secured with sewer rate revenue and whatever coverage and reserve requirements that are needed to achieve a given rating, and

- revenue secured debt secured by sewer rate revenue plus coverage reserve requirements set out in rule.

Temporary rule amendments adopted in December,1989 created a fourth way to borrow, which is any other debt proposal with comparable security.

The topic of reserve requirements and the option for communities to fund reserves out of loan proceeds was discussed. There was a

concern expressed that this would reduce the SRF funds going to water quality improvement.

Task Force discussion included the following:

A. The DEQ's staff position was that the security provisions of the fund should not be weakened. The importance of stewardship responsibilities was stressed.

B. Various Task Force members pointed out that communities default very rarely. Due to this low risk, security requirements should be reduced.

C. Reserves are expensive and do not prevent default. A coverage factor of 5-20% in excess of operations maintenance and debt service provisions would be reasonable with no reserve required. Credit worthiness should be substitutable for reserve requirements. A credit rating system for communities predicting the riskiness of specific debt issues would be useful.
D. Requiring coverage is a tool to encourage service of debt and self support. The reserve requirement should be met though general fund balances because may not be desirable to create a reserve from SRF funds when sufficient funds are already being held.

E. Security requirements should be minimized since DEQ could always take over operation and rate setting if a borrower goes into default. A Task Force member suggested that DEQ is trying to avoid political heat by the use of coverage and reserves.

F. Reserves are more a small community issue, but it is too early to tell if they prevent affordability of loans.

G. The Task Force recommended that page 71 (b) of the draft rule amendments be redrafted to address flexibility in reserve and security requirements.

To summarize, the Task Force recommended that the security and reserve requirements need to provide flexibility for differences in community size, funding methods, and credit worthiness. Use of credit ratings to eliminate the reserve requirement or funding reserves though general fund balances might stretch water quality improvement dollars further. The Department agreed to consider these comments and respond at the next meeting.

III. RECEIVING WATERBODY SENSITIVITY POINTS

Issue: Should the method for prioritizing SRF projects based on Water Quality impacts be revised to reflect new ground water rules and the Clean Water Act?

A. GROUND WATER - Lucinda Bidleman

DEQ's Clean Water Strategy rating system is recommended for use in rating the sensitivity (to pollution) of surface water bodies, but, unfortunately, ground water issues are not dealt with in that document.

The proposed rules provide the following:

-90 points for sole source aquifers. This is a formal designation made by the EPA where fifty percent or more of the drinking water is supplied by the aquifer. There is only one designated sole source aquifer presently in Oregon, in North Florence.

-70 points for Wellhead Protection Areas. This is a delineated area which recharges one (or more) wells.

-50 points for discharges from an existing facility which are causing contamination above background, but less than the standard or within a Ground Water Management Area. Trigger levels (for designation as a Ground Water Management Area) are for Non-Nitrates with standards 50% of standard or more, and for Nitrates 7/89 to 7/90 100% or more of standard and after 7/90 70% of standard.

-30 points if DEQ suspects contamination but there is no direct evidence to support this suspicion. (e.g. a lagoon which is leaking but for which no monitoring has been done).

-10 points for an area were there is a potential for contamination that could exist or develop (e.g. an unlined lagoon)

The Task Force raised the following concerns:

1. There is a need for a level of specificity for how points are assigned to each site.

2. Sampling procedures and methods for monitoring sites are needed.

3. Site specific requirements do not exist.

4. Need for public input

B. SURFACE WATER - Neil Mullane

Congress, believing states should prioritize water quality problems, developed the Clean Water Strategy. Public hearings help identify important beneficial uses and put a value on them.

This allows resources to be targeted to high priority problems. In the Oregon Clean Water Strategy, health, recreation, and aquatic life are evaluated for problem severity and value to get a total water quality score used to prioritize surface water sources. The value of a stream was based on how it is presently being used. Aquatic habitat was used as a tie-breaking factor (but not included in the SRF sensitivity ranking). The ranking was based on in-state segments and therefore did not include the Columbia, and Snake Rivers, or the ocean. This is the first year of implementing the ranking method in the Clean Water Act and it is thought to work quite well.

The Task Force identified the following Concerns with the Clean Water Strategy:

1. Higher points would tend to go to well documented problems.

2. Those communities with financial resources to document problems will be the ones that get higher priority.

3. Health is reflected only in drinking and shellfish standards.

4. Non-Point source areas can be prioritized well because of documentation.

5. There should be a process for applicants to appeal their rankings.

In summary, the Task Force agreed to the draft rule proposal for prioritizing ground water and surface water problems. The Task Force recommended:

(1) A minimum number sensitivity points should be given even if a stream is not listed in the Clean Water Strategy.

(2) The Department needs to develop procedures for documenting water quality problems and updating the Clean Water Strategy.

IV. WATER POLLUTION PROBLEM POINTS; HEALTH HAZARD ANNEXATIONS

Issue: Should DEQ continue to assign priority points based on enforcement status and noncompliance?

The Task Force made the following suggestions for rule changes related to problem points:

A. The title "Water Quality Problem Points" needs to be changed to "Enforcement/Water Quality Violation".

B. Communities not doing a good job of complying should not be rewarded by getting more points for enforcement actions. Few communities, however, are purposely remiss in water quality compliance.

C. Health hazards which do not affect water quality should be ranked lower.

The Task Force agreed to:
1. Delete priority points for financial capability based on median household income. This should be discussed in the fall when the Task Force reconvenes to discuss interest rates and other financial issues.

2. Continue to provide more points for larger communities because they will likely have greater water quality impact.

3. The Department should require more than one Notice of Violation (NOV) in order to receive Water Quality Problem Points.

V. PUBLIC REVIEW OF PRIORITY LIST

Issue: Do the draft rules provide adequate opportunity for public review?

The idea of a two tiered public review of the priority list has been changed to a one tier review, giving one public review opportunity for projects.

The Task Force recommended that:

A. The fifteen day review period be raised to thirty days for public comment.

B. A new planning and fundable list should be completed each year. Projects on the planning list would have to reapply the next year. This would assure that the lists are current and perhaps limit schedule "slippage". A first in, first out process of using the oldest money first with frequently updated lists may help to avoid delays and reduce the likelihood that funds to Oregon would be lost.

VI. COLLECTORS, MAJOR SEWER REHABILITATION, CSO CORRECTION, STORM WATER CONTROL

Issue: Should a limit be placed on the amount of SRF monies made available for collectors, major sewer rehabilitation, CSO

correction, and storm water control (i.e. Governor's Discretionary Fund projects)?

Previously the Federal Clean Water Act limited SRF monies that can be spent on Governor's Discretionary Fund projects to one third of the fund (capitalization grant plus state match). This requirement was changed in the 1990 EPA appropriation bill. As such, it affects only FFY 1990 funds. It is the DEQ's recommendation that these types of projects be funded as necessary to address water quality problems. It is unknown which jurisdictions this would affect.

The Task Force discussed the following issues related to funding these types of projects:
A. The state should have the flexibility and authority to address water quality problems without limiting the amount of funding for these types of projects. Collectors, major sewer rehabilitation, CSO correction, and storm water control projects should be funded based on priority ranking like any other project. Water quality improvements ought to dictate whether these projects get more money than interceptors or other projects.

B. Terry Smith suggested that we could rank collectors lower than interceptors and STP's and allocate funds to collector projects with the same ranking on a per capita basis.

C. Another possibility would be to determine which communities should get collector funds by combining financial need with water quality needs to avoid inappropriate benefits to communities which can afford to pay for collectors.

Task Force Conclusion: Place no limits on funding for collectors, major sewer rehabilitation, CSO correction, and storm water control projects.

VII. RESERVES FOR MEDIUM SIZED COMMUNITIES

Issue: Should there be a reserve for medium sized communities or should the population limit on the small community reserve be increased or the amount of money reserved be changed?

The current rules reserve 15 percent of available SRF money for small communities with a population of 5,000 or less. Draft rule amendments increase the reserve to 25 percent and increase the population to 20,000 or less.

The Task Force discussed the following related issues:

A. Joe Windell stated that a community of 10,000 is much more financially capable of funding projects than a community of 5,000

people. Therefore, there needs to be a reserve for small communities but not for medium sized communities.

B. Most members felt that it is important to keep the small community reserve where it is now and adjust it later when there is more experience to show how equitable the results are.

C. The idea of reducing the 15 percent to 10 percent to avoid over-benefitting lower ranked small communities was discussed.
D. It was suggested that staff should develop an equation to limit the use of the small community reserve so that funds do not go to low ranked projects.

E. To avoid problem of low ranked small communities getting funds, raise the population for the reserve to fifteen thousand.

F. There is a danger in putting too much weight on priority ranking since small community problems could actually be worse than their ranking indicates due to their financial inability to do monitoring and collect data which could increase their ranking.

Note: This topic will be discussed more at the next task force meeting.

VIII. SUMMARY AND FUTURE MEETING TOPICS TO ADDRESS

The meeting adjourned at 2:30 pm having not covered two scheduled topics: the 25 percent cap, and environmental review/EIS responsibilities. Topics in addition to those not covered April 4 to address in the next meeting if time permits include:

A. Growth

B. Simplifying the application process

C. Alternative Loans

D. Alternative to the coverage and reserve requirements

The next meeting is scheduled for April 16, 1990 at 9:00 am in the EPA conference room.

wp\april4

STATE REVOLVING FUND Task Force

MEETING SUMMARY
APRIL 16, 1990
9:00 AM TO 2:00 PM

DEQ HEADQUARTERS - EPA CONFERENCE ROOM 3A

MEMBERS PRESENT:

Greg DiLoreto
City Engineer
Gresham

Dan Helmick
Director of Fiscal Services
Clackamas County

Ann Culbertson
Grants Coordinator
Unified Sewerage Agency
Washington County

Dave Gooley
Admin.Services Director
City of Portland

Steve Anderson
Anderson & Perry Engineers
La Grande

Kelly Fish
North Albany
Public Representative

B.J. Smith
League of Oregon Cities
Salem

Joseph Windell
City Administrator
Lebanon

MEMBERS ABSENT:

Terry Smith
Deputy Director of Public Works
Eugene

Kathy Schacht
MWMC
Springfield

Jon Jalali
Finance Director
Medford

OTHERS PRESENT:
Maggie Conley - Meeting Facilitator
Martin Loring - DEQ Representative
Willie Olandria - EPA
Karen D'Eagle - Minute Taker

CG\WC6518 (5/3/90)

I. INTRODUCTION

The Task Force held its third meeting April 16, 1990 to assist the Department in developing SRF rule amendments. The State Revolving Fund Task Force meeting was called to order by Maggie Conley.

II. MEDIUM SIZED COMMUNITY RESERVE

Issue: Should there be a reserve for medium-sized communities?

The Department recommendation was to increase the size of the reserve from 15% to 25% of the SRF and increase the maximum population eligible for the small community reserve to 20,000. The Task Force discussed problems which could result from increasing the small community reserve to include medium sized communities. These included:

-- potential unfairness to small communities which would have to compete with larger, more financially capable communities,for funding.

-- the large number of communities this reserve could fund (43 cities, plus an unknown number of service districts).

Other options considered included a separate medium sized community reserve for communities with a population of 5,000 to 20,000. The Task Force decided that this would not be necessary.

Recommendation: The Task Force decided not to expend reserves beyond the current 15% for communities of 5,000 or less. It was concluded that larger communities could compete and that if a problem develops later, it can be fixed then.

The Task Force also discussed a small community reserve concern that low-ranked small communities would get funding at the expense of larger communities with more severe water quality problems.

Recommendation: Allow small communities to get reserve funding only if they have at least 30 enforcement\water quality violation points.

III. 25 PERCENT CAP

Issue: Should the cap on the amount of loan funds that any one community may use in any one year be reduced from 25%?

The Task Force discussed the interrelationships among allowing unlimited funding of collectors, maintaining the small community reserve with a ceiling population of 5,000, and the size of the cap. In order to ensure that a reasonable number of projects receive funding, the Task Force decided that the cap should be lowered.

They discussed whether a 15% or 20% cap was more appropriate and decided that it needed to be as low as possible without prohibiting most projects from being completely funded by SRF.

Recommendation: Reduce the cap to 15%.

IV. ENVIRONMENTAL REVIEW and EIS RESPONSIBILITIES

Issue: Should the responsibility for environmental review be shifted from the Department to the borrower?

Martin Loring reminded the Task Force that the main reason for this shift would be to save the Department administrative costs. Due to the strict Federal limit on SRF administrative spending, the Department expects a shortage in funds for program administration and needs to save whenever possible. He also explained that the borrowers could borrow SRF monies to pay for the cost of preparing environmental assessments and EISs.

Ann Culbertson pointed out the burden that this could place on small communities even if they are allowed to borrow SRF monies to pay for the environmental review costs. She passed out flow charts showing how the responsibilities would shift. The Department responded that the costs should not be substantially greater for preparation of environmental assessments since most of information is already required in the facility plan. Also the chances of having to prepare an EIS are slim -- there have only been two EISs required on construction grant projects in the last 16 years.

The Department also indicated that some simplification of the EA process could take place since the state is the approving agency, rather than EPA.

Recommendations:

a) Shift responsibility for environmental review to the borrower with SRF loans to cover these costs.

b) Include a chapter in the SRF Procedures Manual explaining simply how to prepare an environmental assessment and an EIS.

c) Provide staff to assist small community in environmental review.

d) Get more administrative funds by:

-- Getting authority from the federal governmental to spend more SRF on program administration.
-- Seeking additional funding from the State.
-- Leveraging SRF administrative funds (to be discussed more at future SRF Task Force meetings).
-- Charging loan fees.

e) Require DEQ to pay for EIS preparation if no project follows.

f) Provide workshops to train consultants and borrowers in how to prepare environmental assessments and EISs.

V. SIMPLIFY APPLICATION PROCESS

Greg Diloreto suggested changing the application process so that borrowers for phased projects would not be required to submit new loan documentation each year to comply with facility planning and environmental review requirements.

The Department explained that it intended to be as reasonable as possible in this regard, but that it was limited by EPA in how much it could simplify the environmental review requirements.

Recommendation: Add rule language which allows a borrower, with the Department's approval, to submit a facility plan at the beginning of a project which could be used until the project is completed.

VI. GROWTH

The Task Force decided that funding of growth unrelated to a water quality problem was not consistent with the Task Force objectives of protecting water quality.

VII. OTHER ISSUES

Steve Anderson suggested that communities should be required to increase user fees immediately upon completion of a facility plan in order to begin raising project funds. The Task Force decided to address this issue later. Other financing issues proposed for consideration in the Fall of 1990 include:

- -- Financial need
- -- Interest rates
- -- DEQ project oversight
- -- Commencement of repayment before project is completed
- -- Loan fees
- -- Fund leveraging
- -- Repayment of small loans in less than 20 years
- -- Require user rates to be increased upon completion of the facility plan (consider a separate Task Force rates)
- -- Need for a state grant program.

VIII. ISSUES AND RECOMMENDATIONS SUMMARY

The attached chart summarizes the main issues addressed by the Task Force, the Task Force recommendations, and the Department's responses to these recommendations.

The Task Force meeting was adjourned at 2:15 p.m..

CG\WC6518 (5/3/90)

SUMMARY

SRF Task Force Recommendations

For

Proposed SRF Rule Amendments

	ISSUES	TASK FORCE RECOMMENDS	DEQ RESPONSE
1.	Collectors, etc.	No funding limit for Collectors and other governor's Discretionary Fund projects.	Agree
2.	Water pollution problem points.	Change title of section to "Enforcement/Violation Points".	Agree
3.	Receiving water body sensitivity.	Follow DEQ recommendations.	Agree
		Establish guidelines for how to document Water Quality problems.	In progress.
		Add one (1) point for unlisted stream segments.	
4.	Points for Health Hazard Annexation.	Follow DEQ recommendations.	Agree
5.	Public review of priority ranking system and Clean Water Strategy.	OK - but consider expanding.	Under review.
6.	Limits on loan increases.	Keep as is in original rules.	Agree
7.	Security requirements, reserves.	Follow DEQ recommendations. Individualize security/reserve requirements.	Agree

CG\WC6518 (5/3/90)

SUMMARY Cont'd

	ISSUES	TASK FORCE RECOMMENDS	DEQ RESPONSE
8.	Medium size community reserve.	None.	Agree
9.	25% Cap on loans.	15% Cap.	Agree
10.	Environmental review/environmental impact statement responsibility.	1. Prepare a Handbook. 2. DEQ pay for EIS if no project. 3. Consolidate EA into facility plan.	Agree
11.	Growth.	No (Reserve capacity OK).	Agree
12.	Simplify application process.	Accept old facility plan findings for phased project.	Agree
13.	Financial capability points.	Address later.	Agree

CG\WC6518 (5/3/90)

SUPPLEMENTAL DEPARTMENT REPORT

SIX STATUTORY FACTORS EQC MUST CONSIDER

Background

In 1987, the Clean Water Act was amended to phase out the Construction Grants Program and replace it with the State revolving fund (SRF). The Construction Grants Program has provided grants for sewage treatment facility planning design and operation since 1972. Under the SRF, the federal government will offer capitalization grants through 1994 in order to allow each state to establish a SRF.

In 1987, the Oregon legislature adopted legislation (ORS 468.423 - 468.440, Attachment B) authorizing development of a State Revolving Fund Program. The purpose of the program is to provide an ongoing source of financing for planning, design and construction of water pollution control facilities. In order to implement the State Revolving fund legislation and to comply with federal SRF legislation, the Department is proposing adoption of the attached rules (Attachment A).

Issues, Alternatives, and Evaluation

Under state statutory requirements, the Environmental Quality Commission is required to "establish by rule, policies for establishing loan terms and interest rates" (ORS 468.440). In establishing the policy, the Commission must consider the following factors:

1. The Capability of the Project to Enhance or Protect Water Quality. The proposed amendments to the SRF priority system will continue to protect and enhance water quality in the state. The priority system considers the capability and need for the project to enhance or protect water quality by providing a higher ranking for projects with greater water quality impacts as reflected by DEQ or EQC enforcement actions, regulatory standards, health hazards, population size and waterbody sensitivity to pollution (OAR 340-54-025).

2. The Ability of A Public Agency to Repay a Loan. In developing the proposed rule amendments, the Department weighed the value of requiring communities to provide a substantial amount of security to assure loan repayment against the value of requiring a minimal amount of security, such as dedicated user fees, to make SRF funds available to majority of communities. The Department believes the rules provide a middle ground where a reasonable amount of security is required which is within the means of most communities.

The temporary rules allows the Department to make loans to public agencies which provide loan security that is different but substantially equivalent to the security required for other types of loans allowed by the rules. This change would give the Department the ability to make loans to communities which are unable to provide exactly the type of security which the rules currently require but which can provide other types of equivalent security.

3. Current Market Rates of Interest. No change in interest rates is proposed at this time. The Department will re-evaluate interest rates and return to the Commission with recommendations by September 1991.

4. The Size of the Community or District to be Served by the Treatment Works. The proposed rule amendments address the size of the community or district to be served in several ways. First, the proposed rule amendments retain the small community reserve. The amendment, however, limit funding from the small community reserve to projects which receive at least 30 enforcement water quality violation points on the SRF priority list. The intent of this amendment is to ensure that small community reserve funds are loaned to small communities with existing documented water quality problems rather than to potential problems. This amendment will avoid the possibility of small community reserve funds going to potential or undocumented water quality problems, thereby preventing funding or a more serious documented water quality problem in a larger community. This amendment is consistent with Funding Number 1 above.

5. The Type of Projects Financed. The Department proposes to allow funding for all of the types of projects which the state is allowed to fund under the federal legislation (OAR 340-54-015(1)). This includes providing unlimited funds for collectors. When the current SRF rules were adopted in March 1989, the Federal Clean Water Act limited funding of collectors to 33% of the SRF each year. Since then, Congress eliminated this limit on collector spending in the 1990 appropriations bill. Though this bill only affect the 1990 capitalization grant, it is likely that the Clean Water Act will be amended to permanently eliminate this collector limitation. In response, the SRF Task Force discussed whether Oregon should limit funding for collector projects.

   The task force recommendation was to place no limit on collector funding since this type of project may be the only solution to serious water quality problems. Therefore, the proposed rule amendments include no proposed limits on spending for collectors.

6. The Ability for the Applicant to Borrow Elsewhere. No changes to the rules are proposed with regard to this factor.

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

TO: **Environmental Quality Commission** DATE: June 1, 1990

FROM: **Maggie Conley, Hearing Officer**

SUBJECT: **Report From the Hearing Held June 1, 1990**

PROPOSED STATE REVOLVING FUND RULES

Summary of Proceedings

Notice of the hearing was provided to over 600 cities, counties, service districts, consultants and private citizens.

No one attended the hearing which was held at 10:30 a.m. on June 1, 1990, in Portland, at 811 S.W. Sixth Avenue, in Room 10A. Maggie Conley, SRF Coordinator, presided.

EPA submitted written comments on the proposed rule amendment.

Summary of Testimony

EPA's testimony supported adoption of the proposed rule amendments, with the exception of the section related to repayment of SRF loans for development of environmental assessments and EISs. EPA recommended that the rules specifically identify when these loans must be repaid. (Testimony attached)

CG\WC6648

JUN 11 1990

Reply to
Attn. of: WD-085

Maggie Conley
Dept. of Environmental Quality
811 SW Sixth Avenue,
Portland, OR 97204

Dear Ms. Conley:

I have reviewed the May 11, 1990 draft of the State Revolving Fund Program rules. Our comments are briefly outlined below. Inserted language is underlined.

Page A-9, **Uses of the Fund**, 340-54-020 (1):
Not all of the uses allowed under Title VI of the Clean Water Act are covered here. You might want to consider adding "(buy or refinance)" after "acquire."

The SRF can only **fund reserves** for projects that are receiving SRF loan assistance.

Page A-30, **Environmental Impact Statement Costs** (B):
It is not clear whether SRF loan funds are to be used to pay the costs of EIS preparation. If a project receives SRF loan funds and is unable to complete the scope of work planned in the loan agreement, then it is imperative that a "project completion" date be assigned by the Department, so the repayment can be initiated within one year. Repayment can not be deferred more than one year past completion of a project financed by an SRF loan.

Page A-37, **Loan Terms and Interest Rates**, 340-54-065 (2)(c)(C):
At the end of the section, the phrase "in the SRF" should follow "Department."

Page A-40, (7) **Commencement of Loan Repayment:**
In the event that a project is completed prior to the date estimated in the loan agreement, the following modifications would be appropriate:
...shall begin within one year after the date of project completion, or as estimated in the loan agreement (whichever is earlier).

Thank you for the opportunity to review the rule modifications. Please feel free to call me on 206/442-2634 if you want to discuss our comments.

Sincerely,

James H. Werntz
Municipal Facilities Branch

cc: Willie Olandria, OOO

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: Y
Division: Water Quality Division
Section: Wastewater Finance

SUBJECT:

Water Quality Rules: State Revolving Loan Fund Rule Amendments.

PURPOSE:

Obtain Environmental Quality Commission approval of permanent rule amendments needed to respond to problems in the existing rule that limit program effectiveness.

ACTION REQUESTED:

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

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

___ 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: — Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The State Revolving Loan Fund (SRF) program is a program for financing publicly owned water pollution control projects. It was adopted by Congress in 1987 to replace the Construction Grants program which has provided grants for water pollution control projects since 1972. Funding for the program is 83% federal monies and 17% state monies.

In March 1989, DEQ adopted the SRF rules (OAR Chapter 340, Division 54). A year's experience indicates the need for a number of rule changes to make the program more effective as an implementation tool for attaining water quality improvements. Major changes include the following:

- **Simplification of the SRF priority system (OAR 340-54-025(2) and (3)).** The process is changed from a two-tiered to a one-tiered system. Under the existing system, all known Oregon water quality problems are first ranked in the priority order. Then communities submit preliminary SRF applications which are ranked according to the water quality priority problem they address.

  The proposed rule amendments eliminate the step which ranks all Oregon water quality problems. Instead, it only includes a ranking of those projects for which preliminary applications are submitted.

- **Amend the priority ranking criteria (OAR 340-54-025(4)).** The proposed rule amendments change the criteria used to rank the preliminary applications and the points available in each category.

  The existing rules include three ranking criteria: water quality sensitivity points, water quality pollution problem points, and population. The proposed rule amendments change the method used for determining water quality sensitivity points which reflect the effect effluent could have on water. The proposed rule amendments also change the criteria name "water quality pollution problem points" to "enforcement/violation points". The changes are discussed in detail below:

  - First, the number of points assigned for Enforcement/ Violations is reduced from a maximum of 100 to a maximum of 50.

  - Second, the number of points available in the Water Quality Sensitivity category would increase from a maximum of 50 points to a maximum of 100 points.

- Third, the Clean Water Strategy is used to rank surface water bodies instead of the formula applied by the existing rule. The approach to groundwater sensitivity is also changed to be consistent with groundwater statutes in a manner recommended by the Groundwater Section of the Water Quality Division.

The result of these changes is that the new priority system focuses on the sensitivity of the affected waterbody more than on the degree of violation.

- **Amend the environmental review process (OAR 340-54-050).** Under the proposed rule amendments the responsibility for writing environmental assessments and environmental impact statements shifts from the Department to the applicant. The applicant may pay for preparation of the environmental assessment and environmental impact statement with SRF loan funds.

- **Incorporate legislative changes made by the 1989 Oregon Legislature (OAR 340-54-055 (2) and 340-54-060(15)).** These amendments eliminate the need for a bond counsel opinion on every SRF loan and allow the Department to waive its right to withhold revenue sharing funds otherwise due to the public agency in the case of agency default.

- **Add an "Alternative Loan" category to the three permissible methods of public agency borrowing from the SRF (OAR 340-54-065 (1) and (3)).** The original rule allowed public agencies to borrow from the SRF in one of three ways. They could sell the Department a "general obligation bond", a "rated revenue bond", or borrow under specific "revenue secured loan" requirements set out in rule. The proposed rule amendments allow the Department to make loans to public agencies which provide loan security that is different but substantially equivalent to the security required for revenue secured loans.

- **Limit small community reserve eligibility (OAR 340-54-070(2)).** The proposed rule amendments would limit eligibility for small community reserve funds (15% of the available SRF) to communities that have a minimum of 30 enforcement/violation points (30). The effect would be to eliminate construction (but not facility plan) financing from the small community reserve for communities with potential, but undocumented, water quality problems.

- **Change the maximum loan amount (OAR 340-54-075(1)).** The proposed rule amendments change the maximum amount that

any jurisdiction may receive from 25% to 15% of the available SRF each year.

- **Establish a minimum loan amount (OAR 340-54-075(2)).** The proposed rule amendments establish a minimum SRF loan amount of $20,000. This reflects the minimum amount the Department estimates would be needed for preparation of a facility plan, which is generally the least expensive project cost.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: SB 1097 Enactment Date: June 30, 1989	Attachment C
X	Statutory Authority: ORS 468.423 to .440	Attachment B
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___

X Time Constraints: In order for the Department to solicit applications in time to develop an SRF priority list for this federal fiscal year, temporary rules must be adopted in May. They could not have been submitted earlier because of the time required to complete the public involvement process used to develop the proposal.

DEVELOPMENTAL BACKGROUND:

X	Advisory Committee Minutes - Meetings of March 20, 1990, April 4, 1990, and April 16, 1990	Attachment G
X	Hearing Officer's Report/Recommendations	Attachment I
___	Response to Testimony/Comments	Attachment ___
X	Prior EQC Agenda Items: December 1,1989 - Temporary SRF Rule Amendment Adoption	Attachment D
___	Other Related Reports/Rules/Statutes:	Attachment ___
X	Supplemental Background Information Supplemental Department report on six statutory factors EQC must consider	Attachment H

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

An SRF task force of 11 representatives from affected communities from around the state was convened to discuss the issues addressed by the proposed rule amendments. The task force recommended approval of the proposed rule amendments.

The proposed rule amendment reducing the annual maximum loan amount will result in a greater number of small loans. This change will ensure that more communities are able to get SRF loans each year. It would also mean that large projects will have less SRF money available to cover project costs.

The proposed rule amendments allow the Department greater flexibility in the type of loan security a borrower may provide. This change would make the SRF accessible to a broader variety of borrowers, such as those who will repay loans with assessments, at no increase in repayment risk.

The proposed rule amendments add a minimal additional cost for SRF borrowers because the responsibility and cost of preparing environmental assessments and environmental impact statements (EIS) is shifted from the Department to the borrower. Borrowers will, however, be able to borrow low interest SRF money to cover the cost of preparing these documents. The draft rules that went to public hearing included task force recommended language which allowed repayments of EIS costs to be deferred until a feasible environmentally sound project could be implemented. EPA objected to this language because it did not provide assurance that the loan would be repaid if an environmentally sound project were not implemented. To address EPA's concerns, this language is removed in the proposed rules (Attachment A, p. A-30).

Requiring a minimum of at least 30 enforcement/violation points on the SRF priority list will eliminate small community reserve funding for design and construction projects for communities which have potential, rather than documented, water quality problems. This change likely will affect few communities.

Neither the Department nor the Task Force find that restrictions are needed at this time with respect to funding for collector sewers (See Attachment H, Number 5).

PROGRAM CONSIDERATIONS:

The Department will save administrative costs and staff time by shifting the responsibility for preparing environmental assessments and EISs to the borrower. Due to the federal limit on the amount of administrative funds which can be spent, it is critical to program operations that administrative costs be reduced so that the program can be effectively operated. Further, since the Department is responsible for reviewing these documents, it is more appropriate to have the communities prepare them so the Department does not perform both functions.

ORS 468.440 requires the Commission to consider several factors when adopting rules. These factors include capability of the project to enhance or protect water quality; ability of a public agency to repay a loan; current market rates of interest; size of community to be served by the project; current market rates of interest; size of the community to be served by the project; types of project; and the ability of the applicant to borrow elsewhere. These factors are discussed in detail in Attachment H.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt proposed rule amendments which incorporate needed program amendments. This will allow the Department to complete the annual Intended Use Plan required by EPA in time to comply with the 1990 deadline.

2. Postpone adoption of the rule amendments until Fall, 1990 when the Department will submit a report to the Commission evaluating the need to change SRF interest rates. The Department would have to wait until final rules were adopted to begin development of the SRF Priority List and Intended Use Plan. If this did not occur until next fall, it would be too late for Oregon to receive funding during the 1990 federal fiscal year. This would not result in the loss of $11 million of 1990 funds allotted to Oregon. It would, however, eliminate Oregon from being eligible to receive additional funds from reallotment of SRF funds not spent by other states. It is not known at this time how many SRF reallotment dollars would be available to Oregon. Under the Construction Grant program as much as $400,000 in reallocated funds has been available in past years.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Adopt Alternative 1 and the findings in Attachment H. This alternative allows the Department to address known problems with the proposed rule amendments while allowing the Department to maintain the option of receiving reallotment dollars in the future.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rule amendments are consistent with the original intent of the SRF statute to maintain a fair and equitable loan program; the legislative intent of SB 1097; and Goal 8 of the proposed DEQ/EQC Strategic Plan which encourages streamlining agency programs and activities.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

The Department will develop the 1990 SRF Priority List and Intended Use Plan which indicate which projects will receive funding. In September 1990, the SRF Task Force will be reconvened to evaluate whether there is a need to change the SRF interest rates. The Department will return to the EQC with a report on interest rates before September 1991.

Approved:

Section:

Division:

Director:

Report Prepared By: Maggie Conley

Phone: 229-5257

Date Prepared: June 12, 1990

MG:hs
CG\WH4044
June 29, 1990

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.

The portions of the text which are underlined and [bracketed] in bold italics are additions and deletions to the draft rules made in response to public comment. These changes are fund on pages A-9, A-30, A-37, and A-40

DIVISION 54

STATE REVOLVING FUND PROGRAM

OAR 340-54-005	Purpose
OAR 340-54-010	Definitions
OAR 340-54-015	Project Eligibility
OAR 340-54-020	Uses of the Fund
OAR 340-54-025	SRF Priority List
[OAR 340-54-030	Preliminary Application Process and Preparation of the Intended Use Plan Project List]
OAR 340-54-035	Final Application Process for SRF Financing for Facility Planning for Water Pollution Control Facilities, Nonpoint Source Control Projects, Estuary Management Projects and Stormwater Control Projects
OAR 340-54-040	Final Application Process for SRF Financing for Design and Construction of Water Pollution Control Facilities
OAR 340-54-045	Final Application Process for SRF Financing for Construction of Water Pollution Control Facilities
OAR 340-54-050	Environmental Review
OAR 340-54-055	Loan Approval and Review Criteria
OAR 340-54-060	Loan Agreement and Conditions
OAR 340-54-065	Loan Terms and Interest Rates
OAR 340-54-070	Special Reserves
OAR 340-54-075	Maximum Loan Amount

PURPOSE

340-54-005

These rules are intended to implement (ORS 468.423 - 468.440) under which financial assistance is made available to and utilized by Oregon municipalities to plan, design and construct water pollution control facilities.

DEFINITIONS

340-54-010

(1) "Alternative treatment technology" means any proven wastewater treatment process or technique which provides for the reclaiming and reuse of water, productive recycling of wastewater constituents, other elimination of the discharge of pollutants, or the recovery of energy.

(2) "Available SRF" means the SRF minus monies for SRF administration.

(3) [~~(2)~~] "Categorical exclusion" means an exemption from environmental review requirements for a category of actions which do not individually, cumulatively over time, or in conjunction with other actions, have a significant effect on the quality of the environment. Environmental impact statements, environmental assessments and environmental information documents are not required for categorical exclusions.

(4) [~~(3)~~] "Change order" means a written order and supporting information from the borrower to the contractor authorizing an addition, deletion, or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.

(5) [~~(4)~~] "Clean Water Act" means the Federal Water Pollution Control Act, as amended, 33 USC 1251 et. seq.

(6) [~~(5)~~] "Collector sewer" means the portion of the public sewerage system which is primarily installed to receive wastewater directly from individual residences and other individual public or private structures.

(7) [~~(6)~~] "Combined sewer" means a sewer that is designed as both a sanitary and a stormwater sewer.

(8) [~~(7)~~] "Construction" means the erection, installation, expansion or improvement of a water pollution control facility.

(9) [~~(8)~~] "Default" means nonpayment of SRF repayment when due, failure to comply with SRF loan covenants, a formal bankruptcy filing, or other written admission of inability to pay its SRF obligations.

(10) [~~(9)~~] "Department" means the Oregon Department of Environmental Quality.

(11) ~~{(10)}~~ "Director" means the Director of the Oregon Department of Environmental Quality.

(12) ~~{(11)}~~ "Documented health hazard" means areawide failure of on-site sewage disposal systems or other sewage disposal practices resulting in discharge of inadequately treated wastes to the environment demonstrated by sanitary surveys or other data collection methods and confirmed by the Department and Health Division as posing a risk to public health. This includes a mandatory health hazard annexation required pursuant to ORS 222.850 to 222.915 or ORS 431.705 to 431.760.

(13) ~~{(12)}~~ "Documented water quality problem" means water pollution resulting in violations of water quality statutes, rules or permit conditions demonstrated by data and confirmed by the Department as causing a water quality problem.

(14) ~~{(13)}~~ "Environmental assessment" means an evaluation prepared by the applicant ~~{Department}~~ to determine whether a proposed project may have a significant impact on the environment and, therefore, require the preparation of an environmental impact statement (EIS) or a Finding of No Significant Impact (FNSI). The assessment shall include a brief discussion of the need for a project ~~{proposal}~~, the alternatives, the environmental impacts of the proposed action and alternatives and a listing of persons or agencies consulted.

(15) ~~{(14)}~~ "Environmental impact statement (EIS)" means a report required ~~{prepared}~~ by the Department analyzing the impacts of the proposed project and discussing project alternatives. An EIS is prepared when the environmental assessment indicates that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project.

~~{(15) "Environmental information document" means a written analysis prepared by the applicant describing the environmental impacts of the proposed project. This document is of sufficient scope to enable the Department to prepare an environmental assessment.}~~

(16) "EPA" means the U.S. Environmental Protection Agency.

(17) "Estuary management" means development and implementation of a plan for the management of an estuary of national significance as described in §320 of the Clean Water Act.

(18) "Excessive infiltration/inflow" means the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost effective analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow from sanitary sewers.

(19) "Facility plan" means a systematic evaluation of environmental factors and engineering alternatives considering demographic, topographic, hydrologic, and institutional characteristics of a project area that demonstrates that the selected alternative is cost effective and environmentally acceptable.

(20) "Federal capitalization grant" means federal dollars allocated to the State of Oregon for a federal fiscal year from funds appropriated by Congress for the State Revolving Fund under Title VI of the Clean Water Act. This does not include state matching monies.

(21) "Groundwater management area" means an area in which contaminants in the groundwater have exceeded the levels established under ORS 468.694, and the affected area is subject to a declaration under ORS 468.698.

(22) [~~(21)~~] "Infiltration" means the intrusion of groundwater into a sewer system through defective pipes, pipe joints, connections, or manholes in the sanitary sewer system.

(23) [~~(22)~~] "Inflow" means a direct flow of water other than wastewater that enters a sewer system from sources such as, but not limited to, roof gutters, drains, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, or street wash waters.

(24) [~~(23)~~] "Initiation of operation" means the date on which the facility is substantially complete and ready for the purposes for which it was planned, designed, and built.

(25) [~~(24)~~] "Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state-of-the-art in terms of significant reduction in life cycle cost of the project or environmental benefits when compared to an appropriate conventional technology.

(26) [~~(25)~~] "Intended Use Plan" means a report which must be submitted annually by the Department to EPA identifying proposed uses of the SRF including, but not limited to a list of public agencies ready to enter into a loan agreement for SRF funding within one year and a schedule of grant payments.

(27) [~~(26)~~] "Interceptor sewer" means a sewer which is primarily intended to receive wastewater from a collector sewer, another interceptor sewer, an existing major discharge of raw or inadequately treated wastewater, or a water pollution control facility.

(28) "Interim loan" means funds borrowed for the construction/ project period or three years, whichever is less. At the discretion of the Department, a longer period loan may be considered an interim loan under extraordinary circumstances.

(29) [~~(27)~~] "Highly controversial" means public opposition based on a substantial dispute over the environmental impacts of the project. The disputed impacts must bear a close causal relationship to the proposed project.

(30) "Long-term loan" means any loan not considered an interim loan.

(31) [~~(28)~~] "Maintenance" means work performed to make repairs, make minor replacements or prevent or correct failure or malfunctioning of the water pollution control facility in order to preserve the functional integrity and efficiency of the facility, equipment and structures.

(32) [~~(29)~~] "Major sewer replacement and rehabilitation" means the repair and/or replacement of interceptor or collector sewers, including replacement of limited segments.

(33) [~~(30)~~] "Nonpoint source control" means implementation of a plan for managing nonpoint source pollution as described in §319 of the Clean Water Act.

(34) [~~(31)~~] "Operation" means control of the unit processes and equipment which make up the treatment system and process, including financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.

(35) [~~(32)~~] "Operation and maintenance manual" means a guide used by an operator for operation and maintenance of the water pollution control facility.

(36) [~~(33)~~] "Project" means facility planning, design and construction, or construction activities or tasks identified in the loan agreement for which the borrower may expend, obligate, or commit funds to address a water pollution problem or a documented health hazard.

(37) [~~(34)~~] "Public agency" means any state agency, incorporated city, county sanitary authority, county service district, sanitary sewer service district, metropolitan service district, or other district authorized or required to construct water pollution control facilities.

(38) [~~(35)~~] "Replacement" means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the design or useful life, whichever is longer, of the water pollution control facility to maintain the facility for the purpose for which it was designed and constructed.

(39) [~~(36)~~] "Reserve capacity" means that portion of the water pollution control facility that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings from existing or future development consistent with local comprehensive land use plans acknowledged by the Land Conservation and Development Commission.

(40) "Self-generated funds" means public agency monies which come from revenue. This does not include proceeds of bond sales.

(41) [~~(37)~~] "Sewage collection system" means pipelines or conduits, pumping stations, force mains, and any other related structures, devices, or applications used to convey wastewater to a sewage treatment facility.

(42) [~~(38)~~] "Sewage treatment facility" means any device, structure, or equipment used to treat, neutralize, stabilize, or dispose of wastewater and residuals.

(43) [~~(40)~~] "Significant industrial dischargers" means water pollution control facility users as defined in the Department's Pretreatment Guidance Handbook.

(44) [~~(41)~~] "Small community" means a public agency [~~city, sanitary authority or service district~~] with a population of [~~less than~~] 5,000 or less.

(45) [~~(39)~~] "SRF" means State Revolving Fund and includes funds from state match, federal capitalization grants, SRF loan repayments, interest earnings, or any additional funds provided by the state. [~~The State Revolving Fund is the same as the Water Pollution Control Revolving Fund referred to in ORS 468.423 -- 468.440.~~]

(46) "Surface water" means streams, lakes, reservoirs, and estuaries.

(47) [~~(42)~~] "Wastewater" means water carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

(48) [~~(43)~~] "Water pollution control facility" means a sewage disposal, treatment and/or collection system.

(49) "Wellhead protection area" means a state designated surface and subsurface area surrounding a well or wellfield that supplies a public water system through which contaminants are likely to pass and eventually reach the well or wellfield.

(50) [~~(44)~~] "Value engineering" means a specialized cost control technique which uses a systematic approach to identify cost savings which may be made without sacrificing the reliability or efficiency of the project.

PROJECT ELIGIBILITY

340-54-015

(1) A public agency may apply for a loan for up to 100% of the cost of the following types of projects and project related costs (including financing costs, capitalized interest, and ~~[,-to-the-extent-permitted by-the-Clean-Water-Act,]~~ loan reserves):

(a) Facility plans, including supplements, are limited to one complete facility plan financed by the SRF per project;

(b) Secondary treatment facilities;

(c) Advanced waste treatment facilities if required to comply with Department water quality statutes and rules;

(d) Reserve capacity for a sewage treatment or disposal facility receiving SRF funding which will serve a population not to exceed a twenty-year population projection and for a sewage collection system or any portion thereof not to exceed a fifty-year population projection;

(e) Sludge disposal and management;

(f) Interceptors and associated force mains and pumping stations;

(g) Infiltration/inflow correction;

(h) Major sewer replacement and rehabilitation if components are a part of an approved infiltration/inflow correction project;

(i) Combined sewer overflow correction if required to protect sensitive estuarine waters, if required to comply with Department water quality statutes and rules, or if required by Department permit, and if the project is the cost effective alternative for the next 20 years;

(j) Collector sewers if required to alleviate documented water quality problems~~[,]~~ or to serve an area with a documented health hazard~~[,-or-to-serve-an-area-where-a-mandatory-health-hazard annexation-is-required-pursuant-to-ORS-222.850-to-222.915-or ORS-431.705-to-431.760]~~;

(k) Stormwater control if project is a cost effective solution for infiltration/inflow correction to sanitary sewer lines;

(l) Estuary management if needed to protect sensitive estuarine waters and if the project is publicly owned; and

(m) Nonpoint source control if required to comply with Department water quality statutes and rules and if the project is publicly owned.

(2) Funding for projects listed under (1) above may be limited by Section 201(g)(1) of the Clean Water Act.

(3) Loans will not be made to cover the non-federal matching share of an EPA grant.

(4) Plans funded in whole or in part from the SRF must be consistent with plans developed under Sections 208, 303(e), 319, and 320 of the Clean Water Act.

(5) Loans shall be available only for projects on the SRF Priority List, described in OAR 340-54-025.

(6) A project may be phased if the total project cost is in excess of that established in OAR 340-54-075(1).

(7) SRF loans will not be available to refinance long-term loans. SRF loans will, however, be available to communities which have paid project costs with an interim loan or self-generated funds and want to provide long-term financing of these costs with an SRF loan and comply with the following conditions:

(a) Prior to project commencement, the public agency must provide notice of their intent to proceed with a project which is financed with interim loans or self-generated funds.

(b) The public agency must agree to proceed at its own risk without regard to whether SRF financing will ultimately be available to provide the long-term financing, and

(c) The public agency agrees to comply with project review and approval requirements established in OAR Chapter 340, Division 52, DEQ permit requirements as established in OAR Chapter 340, Division 45, and requirements of Title VI of the Clean Water Act.

USES OF THE FUND

340-54-020

The SRF may only be used for the following project purposes:

(1) To make loans, fund reserves *for SRF loans*, purchase bonds, or acquire other debt obligations;

(2) To pay SRF program administration costs (not to exceed 4% of the federal capitalization grant or as otherwise allowed by federal law);

(3) To earn interest on fund accounts.

SRF PRIORITY LIST AND INTENDED USE PLAN

340-54-025

(1) General. The Department will develop an annual ~~{statewide}~~ Intended Use Plan which includes a SRF ~~{p}~~Priority ~~{l}~~List ~~{which}~~ numerically rank~~{s}~~ing eligible preliminary SRF applications submitted by public agencies. ~~{water quality pollution problems which could be financed through the State Revolving Fund.}~~ Only projects on the SRF Priority List will be eligible for SRF financing. This list will be part of the Intended Use Plan which the Department prepares and submits to EPA annually indicating how SRF funds will be spent.

(2) ~~{Eligibility.--Projects necessary to correct water quality problems listed on the SRF priority list must be eligible under OAR 340-54-015(1).}~~ SRF Priority List Development.

(a) The Department will notify interested parties of the opportunity to submit a preliminary SRF application. Interested parties include but are not limited to public agencies on the SRF mailing list.

(b) In order for a project to be considered for inclusion on the SRF Priority List, the Department must receive a completed preliminary SRF application for a project which corrects a documented water quality problem or a documented health hazard. The project must also be eligible under OAR 340-54-015(1).

(3) Draft SRF Priority List and Intended Use Plan Public Notice and Review.

(a) The Department will publish a public notice and distribute the proposed SRF Priority List and Intended Use Plan to all public agencies that submitted preliminary applications.

(b) The Department will allow at least thirty (30) days after issuing of the draft SRF Priority List for review and for public comments to be submitted.

(A) During the comment period, any pubic agency may request the Department to reevaluate a project's rank on the proposed SRF Priority List or to make other changes to the Intended Use Plan.

(B) The Department shall consider all requests submitted during the comment period before establishing the Final SRF Priority List and Intended Use Plan.

(C) The Department will distribute the Final SRF Priority List and Intended Use Plan to all public agencies with projects on the Final SRF Priority List.

(4) [~~(3)~~] SRF Priority List Ranking Criteria. The numerical ranking of water quality pollution problems will be based on points assigned from the following three (3) criteria:

(a) [~~Water Quality Pollution Problem~~] Enforcement/Water Quality Violation Points.

(A) 50 [~~100~~] points will be assigned for:

(i) Environmental Quality Commission orders pertaining to water quality problems;

(ii) Stipulated consent orders and agreements pertaining to water quality problems;

(iii) Court orders pertaining to water quality problems; [~~or~~]

(iv) Department orders pertaining to water quality problems[~~.~~]; :

(v) EQC rules requiring elimination of an existing water quality problem related to inadequate water pollution control facilities;

(vi) [~~(B) 90 points will be assigned for d~~]Documented health hazards [~~and mandatory health hazard annexation areas required pursuant to ORS 222.850 to 222.915 or ORS 431.705 to 431.760~~] with associated [~~demonstrated~~] documented water quality problems [or beneficial use impairments.]; or

(vii) [(G) 80 points will be assigned for] [s]Streams or stream segments where the Environmental Quality Commission has established Total Maximum Daily Loads.

[(D) 70 points will be assigned for documented water quality problems or beneficial use impairments.]

(B) [(E)] 40 [60] points will be assigned for[:]

[(i) Notices issued by the Department for permit violations related to inadequate water pollution control facilities (Notice of Violation); or]

[(ii)] [N]non-compliance with the Department's statutes, rules or permit requirements resulting from inadequate water pollution control facilities.

(C) [(F)] 30 [40] points will be assigned for documented health hazards [or mandatory health hazard annexation areas required pursuant to ORS 222.850 to 222.915 or ORS 431.705 to 431.760] without documented water quality problems.

(D) [(G)] 10 [20] points will be assigned for existing potential, but undocumented, water quality problems noted by the Department.

(b) Population Points.

(A) Points shall be assigned based on the current population the project will serve as follows:

Points = (population)[served]^{2} log 10

(c) Receiving Waterbody Sensitivity Points.

(A) Surface Water. [A maximum of 50 points shall be assigned for the sensitivity of the water body as follows:]

[(i) Stream sensitivity will be based on the following:

--(I) The following formula will be used to determine stream sensitivity where an existing water pollution control facility discharges into a stream:

Points = (Ge * Qe / Qe + Qs)$^{2.5}$ where:

- Ge = Concentration of effluent as represented by BOD^5 (Bio Chemical analysis)

- Qe = Quantity of permitted effluent flow from treatment facility (mgd) or current low flow average if higher than permit limits

- Qs = Quantity of minimum receiving stream flow (mgd) from statistical summaries of stream flow data in Oregon (7 day/10 year average low flow) or from Department measurements

(II) 50 points will be assigned to any water quality problem where the Department determines surface waters other than a lake is are being contaminated by areawide on site system failures or documented nonpoint source pollution problems.

(III) 25 points will be assigned to any potential surface water quality problem, resulting from effluent from on site systems or from non point sources.

(ii) Groundwater sensitivity points will be assigned based on the following:

--(I) 50 points will be assigned to any Department documented groundwater quality pollution problem.--

(II) 25 points will be assigned to any potential groundwater quality pollution problem as noted by the Department.

(iii) Lake and Reservoir sensitivity points.--50 points will be assigned any discharge to a lake or reservoir.

(iv) Estuary sensitivity points.--50 points will be assigned any discharge to an estuary.

--(v)- Ocean sensitivity.--25 points will be assigned for a discharge to the ocean.]

(i) If a discharge is to surface water, water quality points will be assigned based on total water quality points from Oregon's Clean Water Strategy statewide ranking report.

(ii) If a discharge is to a stream segment not listed in the report, then the points assigned to the next downstream segment will be assigned to that discharge.

(iii) If discharge is to the ocean, 10 points will be assigned.

(iv) If discharge is to any other surface waterbody not referenced above one point will be assigned.

(B) Groundwater.

(i) 90 points will be assigned to discharges to an EPA designated sole source aquifer;

(ii) 70 points will be assigned to:

(I) Discharges to groundwater where the discharge has been documented to have increased the concentration of a contaminant above both the groundwater background level and an adopted state standard for groundwater quality; or

(II) A wellhead protection area.

(iii) 50 points will be assigned to:

(I) Discharges to groundwater where the discharge has been demonstrated to have increased the concentration of a contaminant above the groundwater background level but the contamination level is below an adopted state standard for groundwater quality; or

(II) The groundwater is within a designated groundwater management area; or

(iv) 30 points will be assigned to discharges to groundwater where the discharge is suspected of causing a groundwater contamination problem but there is not direct evidence to substantiate the problem.

(v) 10 points will be assigned to suspected discharges to groundwater where a discharge could cause a contamination problem.

(5) ~~(4)~~ SRF Point Tabulation Method. Point scores will be accumulated as follows:

(a) Points will be assigned based on the most significant documented water quality pollution problem within each point category.

(b) The score used in ranking a water quality problem will consist of the sum of the points received in each of the ~~three-(3)~~ point categories.

(6) Priority List Categories.

(a) The SRF Priority List will consist of three parts, the Fundable Category, the Planning Category, and the Supplementary Category. The Fundable Category will include projects which are ready to receive funding and for which there are available SRF funds. The Planning Category includes projects which are ready to receive funding but for which SRF funds are not currently available. The Supplementary Category consists of prior years' fundable category lists which include projects for which loan agreements are not completed.

(b) The Fundable Category will be prepared in the following manner:

(A) Loan increases: First, loan increases will be awarded to the extent necessary and permitted by this rule and the SRF loan agreement.

(B) Small Community Reserve:

(i) Next, small community projects are selected from the SRF Priority List in rank order not to exceed 15 percent of the available SRF funds.

(ii) Communities receiving small community reserve funding for facility planning will count toward filling both the small community reserve and the facility planning reserve.

(C) Facility Planning Reserve:

(i) After funds are awarded for loan increases, and after 15 percent of the available SRF funds are awarded to small communities or after all small community loan requests are funded (whichever occurs first) facility planning projects are selected from the SRF Priority List in rank order, not to exceed 10 percent of the available SRF funds.

(ii) Small communities will continue to be eligible for the facility planning reserve if their project is next in rank order.

(D) General Fund: The remaining projects, including facility planning and small community projects, will be awarded loans in rank order to the extent of available SRF funds.

(c) The Planning Category will be prepared in the following manner:

(A) After all available funds are allocated to projects in the Fundable Category, any remaining projects will be arranged in rank order of priority and comprise the Planning Category of the Priority List.

(B) This Planning Category will be maintained until the next year's priority list is prepared. It is the source from which to obtain additional projects for the current year's Fundable Category should projects be removed pursuant to OAR 340-54-025(7).

(d) The Supplementary Category will be prepared in the following manner:

(A) The Supplementary Category consists of projects from the Fundable Category of prior years' SRF Priority Lists.

(B) After the first year a project is listed in the Fundable Category, it will be moved to the Supplementary Category until a loan agreement for the project is completed.

(B) Projects in the Supplementary Category will not be ranked with projects in the current year's Fundable and Planning Categories discussed in subsection (5)(b) and (c) of this section, except to the extent necessary to provide loan increases to projects in the Supplementary Category.

(C) Funding for projects on the Supplementary list is limited to the loan amount in the SRF loan agreement plus DEQ approved loan increases.

(7) Priority List Modification.

(a) The Department may remove a project from the SRF Priority List if the Department determines that the project is not ready to proceed according to the schedule in the preliminary application or if the applicant requests removal.

(b) When the Department removes a project which is not ready to proceed, it will give written notice to the applicant whose project is proposed for removal and allow the applicant thirty (30) days after the notice to demonstrate to the Department its readiness and ability to immediately complete a SRF loan agreement or to withdraw the applicant's request to be removed from the priority list.

(c) When a project is removed from the Priority List, the Department will:

(A) First, allocate funds to loan amendments for projects with approved SRF loans; and

(B) Second, move projects from the Priority List Planning Category in rank order to the Fundable Category to the extent that there are adequate SRF funds available.

(d) The Department may add projects to the SRF Priority List only if there is an inadequate number of projects in the Fundable Category and Planning Category ready to receive funding. To add projects to the Priority List, the Department will follow the process outlined in 340-54-025(2).

~~[(6) Public Notice and Review:~~

~~(a) The Department will publish a public notice and distribute the proposed SRF priority list to all interested parties for review. Interested parties include, but are not limited to, the following:~~

~~(A) Public agencies with water quality pollution problems on the list;~~

~~(B) Interested local, state and federal agencies;~~

~~(C) Any other persons or public agencies who have requested to be on the mailing list.~~

~~(b) The Department will allow 30 days after issuance of the public notice and proposed list for review and for public comments to be submitted.~~

~~(A) During the comment period, any public agency can request the Department to include a problem not identified on the proposed list or reevaluate a problem on the proposed priority list.~~

~~(B) The Department shall consider all requests submitted during the comment period before establishing the official statewide priority list.~~

(e) The Department shall distribute the official priority list to all interested parties.

(d) If an interested party does not agree with the Department's determination on a priority list the interested party may within 15 days of mailing of the official list file an appeal to present their case to the Director. The appeal will be informal and will not be subject to contested case hearing procedures.

(7) Priority List Modification.

(a) The Department may modify the official priority list by adding, removing or reranking projects if notice of the proposed action is provided to all lower priority projects.

(b) Any interested party may, within 15 days of mailing of the notice, request a review by the Department.

(c) The Department shall consider all requests submitted during the comment period before establishing the modified statewide priority list.

(d) The Department will distribute the modified priority list to all interested parties.

(e) If an interested party does not agree with the Department's determination on the modified priority list, the party may within 15 days of the mailing of the modified priority list, file an appeal to present their case to the Director. The appeal will be informal and will not be subject to contested case hearing procedures.

PRELIMINARY APPLICATION PROCESS AND PREPARATION OF THE INTENDED USE PROJECT LIST]

[340-54-030

(1) General.

(a) Each year the Department will prepare and submit an Intended Use Plan to EPA which includes a list of projects for which public agencies have demonstrated the ability to enter into a loan agreement within one year.

(b) No project may be included in the Intended Use Plan Project List unless it will address a problem listed in the SRF Priority List.

(c) The Intended Use Plan Project List will consist of two parts, the Fundable List and the Planning List. The Fundable List includes projects which are ready to receive funding and for which adequate SRF funds are anticipated to be available during the funding year. The Planning List includes projects which are ready to receive funding but for which inadequate funds are anticipated to be available during the funding year.

(2) Development of the Intended Use Plan Project List.

(a) In order to develop the Intended Use Plan Project List, the Department will contact, by certified mail, the public agencies with problems listed in the priority list and ask them to submit a preliminary application for SRF funding.

(b) In order for a project to be considered for inclusion in the Intended Use Plan Project List, the Department must receive a completed preliminary SRF application by certified mail within 30 days of the date the Department mails the preliminary application form.

(c) The preliminary SRF application will include, but not be limited to:

(A) A description of the proposed project;

(B) The proposed project costs and SRF loan amount;

(C) The type of SRF loan which will be requested;

(D) The date when the public agency anticipates filing a final SRF application; and

(E) The date when the public agency anticipates beginning the project.

(d) The Department will review and approve for inclusion in the Intended Use Plan Project List all preliminary applications which demonstrate the ability of the public agency to enter into a loan agreement within one year. Approved projects will be listed in rank order as established in the priority list.

(e) If a public agency does not submit a timely preliminary application, its project(s) shall not be considered for inclusion in the Intended Use Plan Project List and will lose its opportunity for SRF financing in that year, unless the Department determines otherwise.

(f) After completion of the proposed Intended Use Plan Project List, the Department will send a copy to all public agencies with projects listed on the priority list.

~~(g) Any interested party may within 15 days of mailing of the notice request a review by the Department.~~

~~(h) The Department shall consider all requests submitted during the comment period before establishing the Intended Use Plan Project List.~~

~~(i) If an interested party does not agree with the Department's determination on the Intended Use Plan Project List, the interested party may within 15 days of the distribution of the Intended Use Plan Project List file an appeal to present their case to the Director. The appeal will be informal and will not be subjected to contested case hearing procedures.~~

~~(3) Intended Use Plan Modification.~~

~~(a) The Department may remove a project from the Fundable List in the Intended Use Plan project list if the Department determines that a public agency which has a project listed in the Fundable List will not be ready to enter into a loan agreement as required under OAR 340-54-030(2)(d).~~

~~(b) When the Department removes a project, it will give written notice to the applicant whose project is proposed for deletion and allow the applicant 30 days after notice to demonstrate to the Department its readiness and ability to immediately complete a loan agreement.~~

~~(c) When a project is removed from the Fundable List in the Intended Use Plan, projects from the Planning List of the Intended Use Plan will be moved in rank order to the Fundable List to the extent that there are adequate SRF funds available.~~

FINAL APPLICATION PROCESS FOR SRF FINANCING FOR FACILITY PLANNING FOR WATER POLLUTION CONTROL FACILITIES, NONPOINT SOURCE CONTROL PROJECTS, ESTUARY MANAGEMENT PROJECTS AND STORMWATER CONTROL PROJECTS

340-54-035

Applicant(s) for SRF loans for nonpoint source control projects, estuary management projects, stormwater control projects, and facility planning for water pollution control facilities must submit:

(1) A final application on forms provided by the Department;

(2) Evidence that the public agency has authorized development of nonpoint source control project, estuary management project, stormwater control projects or water pollution control facility plan;

(3) A demonstration that applicant complies with the requirements of OAR 340-54-055(2) and 340-54-065(1); and

(4) Any other information requested by the Department.

FINAL APPLICATION PROCESS FOR SRF FINANCING FOR DESIGN AND CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES

340-54-040

Applicants for SRF loans for design and construction of water pollution control facilities must submit:

(1) A final SRF loan application on forms provided by the Department (See also Section 340-54-055(2), Loan Approval and Review Criteria).

(2) A facilities plan which includes the following:

(a) A demonstration that the project will apply best practicable waste treatment technology as defined in 40 CFR 35.2005(b)(7).

(b) A cost effective analysis of the alternatives available to comply with applicable Department water quality statutes and rules over the design life of the facility and a demonstration that the selected alternative is the most cost effective.

(c) A demonstration that excessive inflow and infiltration (I/I) in the sewer system does not exist or if it does exist, how it will be eliminated.

(d) An analysis of alternative and innovative technologies. This must include:

(A) An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(B) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to building new facilities;

(C) A consideration of systems with revenue generating applications; [and]

(D) An evaluation of the opportunity to reduce the use of energy or to recover energy[.]; and

(E) An evaluation of the opportunities to reduce the amount of wastewater by water use conservation measures and programs.

(e) An analysis of the potential open space and recreational opportunities associated with the project.

(f) An evaluation of the environmental impacts of alternatives as discussed in OAR 340-54-050.

(g) Documentation of the existing water quality problems which the facility plan must correct.

(h) Documentation and analysis of public comments and of testimony received at a public hearing held before completion of the facility plan.

(3) Adopted sewer use ordinance(s).

(a) Sewer use ordinances adopted by all municipalities and service districts discharging effluent to the water pollution control facility must be included with the application.

(b) The sewer use ordinance(s) shall prohibit any new connections from inflow sources into the water pollution control facility, without the approval of the Department.

(c) The ordinance(s) shall require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety and adversely affecting the treatment works or precluding the selection of the most cost-effective alternative for wastewater treatment sludge disposal.

(4) Documentation of pretreatment surveys and commitments:

(a) A survey of nonresidential users must be conducted and submitted to the Department, as part of the final SRF application which identifies significant industrial discharges as defined in the Department's Pretreatment Guidance Handbook. If the Department determines that the need for a pretreatment program exists, the borrower must develop and adopt a program approved by the Department before initiation of operation of the facility.

(b) The borrower must document to the satisfaction of the Department that necessary pretreatment facilities have been constructed and that a legally binding commitment or permit exists with the borrower and any significant industrial discharger(s), being served by the borrower's proposed sewage treatment facilities. The legally binding commitment or permit must ~~[insure]~~ ensure that pretreatment discharge limits will be achieved on or before the date of completion of the proposed wastewater treatment facilities or that a Department approved compliance schedule is established.

(5) Adoption of a user charge system.

(a) General. The borrower must develop and obtain the Department's approval of its user charge system. If the borrower has a user charge system in effect, the borrower shall demonstrate that it meets the provisions of this section or amend it as required by these provisions.

(b) Scope of the user charge system.

(A) The user charge system must, at a minimum, be designed to produce adequate revenues to provide for operation and maintenance (including replacement expenses);

(B) Unless SRF debt retirement is reduced by other dedicated sources of revenue discussed in OAR 340-54-065, the user charge system must be designed to produce adequate revenues to provide for SRF debt retirement.

(c) Actual use. A user charge system shall be based on actual use, or estimated use, of sewage treatment and collection services. Each user or user class must pay its proportionate share of the costs incurred in the borrower's service area.

(d) Notification. Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill or other means acceptable to the Department, of the rate and that portion of the user charge that is attributable to wastewater treatment services.

(e) Financial management. Each borrower must demonstrate compliance with state and federal audit requirements. If the borrower is not subject to state or federal audit requirements, the borrower must provide a report reviewing the account system prepared by a municipal auditor. A systematic method must be provided to resolve material audit findings and recommendations.

(f) Adoption of system. The user charge system must be legislatively enacted before loan approval and implemented before initiation of operation of the facility. If the project will serve two or more municipalities, the borrower shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works.

(6) A financial capability assessment for the proposed project which demonstrates the applicant's ability to repay the loan and to provide for operation and maintenance costs (including replacement) for the wastewater treatment facility.

(7) Land use compatibility statement from the appropriate local government(s) demonstrating compliance with the LCDC acknowledged comprehensive land use plan(s) and statewide land use planning goals.

(8) Any other information requested by the Department.

FINAL APPLICATION PROCESS FOR SRF FINANCING FOR CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES

340-54-045

Applicants for SRF loans for construction of water pollution control facilities must:

(1) Comply with the application requirements in OAR 340-54-040 for design and construction of water pollution control projects;

(2) Submit Department approved plans and specifications for the project; and

(3) Submit a value engineering study, satisfactory to the Department, if the total project cost will exceed $10 million.

ENVIRONMENTAL REVIEW

340-54-050

(1) General. An environmental review is required prior to approval of a loan for design and construction or construction when:

(a) No environmental review has previously been prepared;

(b) A significant change has occurred in project scope and possible environmental impact since a prior environmental review; or

(c) A prior environmental review determination is more than five years old.

(2) Environmental Review Determinations. The Department will notify the applicant during facility planning of the type of environmental documentation which will be required. Based upon the Department's determination:

(a) The applicant may apply for a categorical exclusion; or

(b) The applicant will prepare an environmental <u>assessment</u> ~~[information document]~~ in a format specified by the Department. ~~[and the Department will]~~ After the Department has reviewed and approved the environmental assessment, it will:

(A) Prepare [~~an environmental assessment and~~] a Finding of No Significant Impact; or

(B) Issue a Notice of Intent to Prepare an Environmental Impact Statement; require the applicant to prepare an environmental impact statement; and prepare a record of decision.

(3) Categorical Exclusions. The categorical exclusions may be made by the Department for projects that have been demonstrated to not have significant impacts on the quality of the human environment.

(a) Eligibility.

(A) If an applicant requests a categorical exclusion, the Department shall review the request and based upon project documentation submitted by the applicant, the Department shall:

(i) Notify the applicant of categorical exclusion and publish notice of categorical exclusion in a newspaper of state-wide and community-wide circulation;

(ii) Notify the applicant to prepare an environmental assessment [~~information document~~], or

(iii) Require the applicant to [~~I~~]issue a Notice of Intent to Prepare an Environmental Impact Statement.

(B) A project is eligible for a categorical exclusion if it meets the following criteria:

(i) The project is directed solely toward minor rehabilitation of existing facilities, toward replacement of equipment, or toward the construction of related facilities that do not affect the degree of treatment or the capacity of the facility. Examples include infiltration and inflow correction, replacement of existing equipment and structures, and the construction of small structures on existing sites; or

(ii) The project will serve less than 10,000 people and is for minor expansions or upgrading of existing water pollution control facilities.

(C) Categorical exclusions will not be granted for projects that entail any of the following activities:

(i) The construction of new collection lines;

(ii) A new discharge or relocation of an existing discharge;

(iii) A substantial increase in the volume or loading of pollutants;

(iv) Providing capacity for a population 30 percent or greater than the existing population;

(v) Known or expected impacts to cultural resources, historical and archaeological resources, threatened or endangered species, or environmentally sensitive areas; or

(vi) The construction of facilities that are known or expected to not be cost-effective or to be highly controversial.

(b) Documentation. Applicants seeking a categorical exclusion must provide the following documentation to the Department:

(A) A brief, complete description of the proposed project and its costs;

(B) A statement indicating the project is cost-effective and that the applicant is financially capable of constructing, operating, and maintaining the facilities; and

(C) Plan map(s) of the proposed project showing:

(i) Location of all construction areas;

(ii) Planning area boundaries; and

(iii) Any known environmentally sensitive areas.

(D) Evidence that all affected governmental agencies have been contacted and their concerns addressed.

(c) Proceeding with Financial Assistance. Once the issued categorical exclusion becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the categorical exclusion will be revoked.

(4) Environmental Assessment ~~[Information Document]~~.

(a) General. If a project is not eligible for a categorical exclusion, the applicant must prepare an environmental assessment ~~[information document]~~.

(b) An environmental assessment ~~[information document]~~ must include:

(A) A description of the proposed project and why it is needed;

(B) The potential environmental impacts of the project as proposed;

(C) The alternatives to the project and their potential environmental impacts;

(D) A description of public participation activities conducted and issues raised; and

(E) Documentation of coordination with affected federal and state government agencies and tribal agencies.

(c) The Department will review and approve or reject the environmental assessment. If the environmental assessment is rejected, the applicant must make any revisions required by the Department. If the environmental assessment is approved, the Department will: ~~{If an environmental information document is required, the Department shall prepare an environmental assessment based upon the applicant's environmental information document and:}~~

(A) Issue a Finding of No Significant Impact documenting any mitigative measures required of the applicant. The Finding of No Significant Impact will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the Finding of No Significant Impact may be submitted for consideration by the board; or

(B) Require the applicant to i~~{I}~~ssue a Notice of Intent to Prepare an Environmental Impact Statement.

(d) If the Department issues a Finding of No Significant Impact:

(A) The Department will distribute the Finding of No Significant Impact to those parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding the provision of financial assistance will be taken by the Department for at least 30 days after the issuance of the Finding of No Significant Impact;

(B) The Department will reassess the project to determine whether the environmental assessment will be supplemented or whether an environmental impact statement will be required if substantive comments are received during the public comment period that challenge the Finding of No Significant Impact; and

(C) The Finding of No Significant Impact will become effective if no new information is received during the public comment period which would require a reassessment or if after reviewing public comments and reassessing the project, an environmental impact statement was not found to be necessary.

(e) Proceeding with Financial Assistance. Once the issued Finding of No Significant Impact becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the Finding of No Significant Impact will be revoked.

(5) Environmental Impact Statement.

(a) General. An environmental impact statement will be required when the Department determines that any of the following conditions exist:

(A) The project will significantly affect the pattern and type of land use or growth and distribution of the population;

(B) The effects of the project's construction or operation will conflict with local or state laws or policies;

(C) The project may have significant adverse impacts upon:

(i) Wetlands,

(ii) Floodplains,

(iii) Threatened and endangered species or their habitats,

(iv) Sensitive environmental areas, including parklands, preserves, other public lands or areas of recognized scenic, recreational, agricultural, archeological or historic value;

(D) The project will displace population or significantly alter the characteristics of existing residential areas;

(E) The project may directly or indirectly, through induced development, have significant adverse effect upon local ambient air quality, local noise levels, surface or groundwater quality, fish, shellfish, wildlife or their natural habitats;

(F) The project is highly controversial; or

(G) The treated effluent will be discharged into a body of water where beneficial uses and associated special values of the receiving stream are not adequately protected by water quality standards or the effluent will not be of sufficient quality to meet these standards.

(b) Environmental Impact Statement Contents. At a minimum, the contents of an environmental impact statement will include:

(A) The purpose and need for the project;

(B) The environmental setting of the project and the future of the environment without the project;

(C) The alternatives to the project as proposed and their potential environmental impacts;

(D) A description of the proposed project;

(E) The potential environmental impact of the project as proposed including those which cannot be avoided;

(F) The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(G) Any irreversible and irretrievable commitments of resources to the proposed project;

(c) Procedures.

(A) If an environmental impact statement is required, the ~~{Department}~~ applicant shall publish a Notice of Intent to Prepare an Environmental Impact Statement in newspapers of state-wide and community-wide circulation.

(B) After the N~~{n}~~otice of I~~{i}~~ntent has been published, the ~~{Department}~~ applicant will contact all affected local, state and federal agencies, tribes or other interested parties to determine the scope required of the document. Comments shall be requested regarding:

(i) Significance and scope of issues to be analyzed, in depth, in the environmental impact statement;

(ii) Preliminary range of alternatives to be considered;

(iii) Potential cooperating agencies and the information or analyses that may be needed from them;

(iv) Method for environmental impact statement preparation and the public participation strategy;

(v) Consultation requirements of other environmental laws; and

(vi) Relationship between the environmental impact statement and the completion of the facility plan and any necessary arrangements for coordination of preparation of both documents.

(C) The applicant shall prepare and submit the draft environmental impact statement to the Department for Department approval. The Department may require any changes necessary to comply with the requirements of OAR 340-54-050.

(D) {{G}} The applicant shall {~~Prepare and~~} submit {a} the DEQ approved draft environmental impact statement to all affected agencies or parties for review and comment.

(E) {{D}} Following publication of a public notice in a newspaper of community-wide and state-wide circulation, the applicant shall allow a 30-day comment period, and conduct a public hearing on the draft environmental impact statement.

(F) {{E}} The applicant shall {P}prepare and submit a final environmental impact statement (FEIS) addressing all agency and public input to the Department for Department approval. The Department may require any change necessary to comply with the requirements of OAR 340-54-050.

(G) The applicant shall provide a 30-day comment period on the DEQ approved FEIS.

(H) {{F}} Upon completion of a FEIS, the Department will issue a Record of Decision (ROD) documenting the mitigative measures which will be required of the applicant. The loan agreement will be conditioned upon such mitigative measures. The Department will allow a 30-day comment period for the ROD {~~and FEIS~~}.

(I) {{G}} Material incorporated into an environmental impact statement by reference will be organized to the extent possible into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons.

(d) Proceeding with Financial Assistance. Once the issued Record of Decision becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the Record of Decision will be revoked.

(e) *Environmental Assessment and* Environmental Impact Statement Costs.

[(A)] The cost of preparing *[the] an environment assessment and an* environmental impact statement must be paid by the applicant *[and may, at the request of the public agency, be included as part of the SRF project cost]. At the request of the applicant, costs for preparation of an environmental assessment or an environmental impact statement may be included as eligible project costs for a SRF loan for facility planning, design and construction, or construction.*

[(B) If, after preparation of the environmental impact statement, it is determined that the project or a reasonable alternative is not feasible, SRF repayment may be deferred until a feasible, environmentally acceptable project can be implemented.]

(6) Previous Environmental Reviews. If a federal environmental review for the project has been conducted, the Department may, at its discretion, adopt all or part of the federal agency's documentation.

(7) Validity of Environmental Review. Environmental determinations under this section are valid for five years. If a financial assistance application is received for a project with an environmental determination which is more than five years old, or if conditions or project scope have changed significantly since the last determination, the Department will reevaluate the project, environmental conditions, and public comments and will either:

(a) Reaffirm the earlier decision;

(b) Require supplemental information to the earlier Environmental Impact Statement, Environmental Assessment [~~Information Document~~], or Request for Categorical Exclusion. Based upon a review of the updated document, the Department will issue and distribute a revised notice of categorical exclusion, Finding of No Significant Impact, or Record of Decision; or

(c) Require a revision to the earlier Environmental Impact Statement, Environmental Assessment [~~Information Document~~], or Request for Categorical Exclusion. If a revision is required, the applicant must repeat all requirements outlined in this section.

(8) Appeal. An affected party may appeal a notice of categorical exclusion, a Finding of No Significant Impact, or a Record of Decision pursuant to procedures pursuant to [~~in~~] the Oregon Administrative Procedures Act, ORS 183.484.

LOAN APPROVAL AND REVIEW CRITERIA

340-54-055

(1) Loan Approval. The final SRF loan application must be reviewed and approved by the Director.

(2) Loan Review Criteria. In order to get approval of a final SRF loan application, the [~~following~~] criteria listed below must be met [~~:~~]. In addition, the Department may establish other loan criteria as appropriate, including but not limited to an opinion of bond counsel.

(a) The applicant must submit a completed final loan application including all information required under OAR 340-54-035, 340-54-040, or 340-54-045 whichever is applicable;

(b) There [~~are~~] must be available [~~adequate funds in the~~] SRF funds to finance the loan;

(c) The project [~~is~~] must be eligible for funds under this chapter;

[~~(d) The State of Oregon's bond counsel finds that the applicant has the legal authority to incur the debt;~~]

(d) [~~(e)~~] The applicant must demonstrate to the Director's satisfaction its ability to repay a loan and, where applicable, its ability to ensure ongoing operation and maintenance (including replacement) of the proposed water pollution control facility. In addition, for revenue secured loans described under OAR 340-54-065(2), the Department may require [~~at a minimum, unless waived by the Director,~~] the following criteria to [~~must~~] be met:

(A) Where applicable, the existing water pollution control facilities are free from operational and maintenance problems which would materially impede the proposed system's function or the public agency's ability to repay the loan from user fees as demonstrated by the opinion of a registered engineer or other expert acceptable to the Department;

(B) Historical and projected system rates and charges, when considered with any consistently supplied external support, must be sufficient to fully fund operation, maintenance, and replacement costs, any existing indebtedness and the debt service expense of the proposed borrowing;

(C) To the extent that projected system income is materially greater than historical system income, the basis for the projected increase must be reasonable and documented as to source;

(D) The public agency's income and budget data must be computationally accurate and must include three ~~four~~ years' historical financial statements, the current budget and one years' projected financial statements of consolidated sewer system revenues, expenses, assets and liabilities.

(E) The budget of the project including proposed capital costs, site work costs, engineering costs, administrative costs and any other costs which will be supported by the proposed revenue secured loan must be reflected in the public agency's data;

(F) Audits during the last ~~four~~ three years are free from adverse opinions or disclosures which cast significant doubt on the borrower's ability to repay the Revenue Secured Loan in a timely manner;

(G) The proposed borrowing's integrity is not at risk from undue dependence upon a limited portion of the system's customer base and a pattern of delinquency on the part of that portion of the customer base;

(H) The public agency must have the ability to bring effective sanctions to bear on non-paying customers; and

(I) The opinion of the pubic agency's legal counsel or a certificate from the public agency which states that no litigation exists or has been threatened which would cast doubt on the enforceability of the borrower's obligations under the loan.

LOAN AGREEMENT AND CONDITIONS

340-54-060

The loan agreement shall contain conditions including, but not limited to, the following, where applicable to the type of project being financed:

(1) Accounting.

(a) Applicant shall use accounting, audit and fiscal procedures which conform to generally accepted government accounting standards.

(b) Project files and records must be retained by the borrower for at least three (3) years after performance certification. Financial files and records must be retained until the loan is fully amortized.

(c) Project accounts must be maintained as separate accounts.

(2) Wage Rates. Applicant shall ensure compliance with federal wage rates established under the Davis-Bacon Act.

(3) Operation and Maintenance Manual. If the SRF loan is for design and construction or construction only, the borrower shall submit a facility operation and maintenance manual which meets Department approval before the project is 75% complete.

(4) Value Engineering. A value engineering study satisfactory to the Department must be performed for design and construction projects prior to commencement of construction if the total project cost will exceed $10 million.

(5) Plans and Specifications. Applicant must submit and receive Departmental approval of project plans and specifications prior to commencement of construction, in conformance with OAR Chapter 340, Division 52.

(6) Inspections and Progress Reports. During the building of the project, the borrower shall provide inspections in sufficient number to ensure the project complies with approved plans and specifications. These inspections shall be conducted by qualified inspectors under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. The Department or its representatives may conduct interim {~~building~~} inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with the loan agreement {~~,-as appropriate~~}.

(7) Loan Amendments.

(a) Changes in the project work that are consistent with the objectives of the project and that are within the scope and funding level of the loan do not require the execution of a formal loan amendment. However, if additional loan funds are needed, a loan amendment shall be required.

(b) If the total of all loan amendments will not exceed 10% of the total amount approved in the original loan agreement, loan amendments increasing the originally approved loan amount may be requested at any time during the project. The Department may approve these loan amendments if the borrower demonstrates the legal authority to borrow.

(c) If the total of all loan amendments will exceed 10% of the total amount approved in the original loan agreement, loan amendments increasing the originally approved loan amount must be requested prior to implementation of changes in project work. The Department may approve these loan amendments if the borrower demonstrates the legal authority to borrow and the financial capability to repay the increased loan amount.

(d) The borrower must amend the loan agreement after bids for the project are received if the bids indicate that the project costs will be less than projected. Other {L}loan amendments decreasing the loan amount must {may} be requested no later than the date of completion of a positive performance certification {at the end of a project} when the final cost of the project is less than the total amount approved in the original loan agreement.

(8) Change Orders. Upon execution, the borrower must submit change orders to the Department. The Department shall review the change orders to determine the eligibility of the project change.

(9) Project Performance Certification.

(a) Project performance standards must be submitted by the borrower and approved by the Department before the project is 50 percent complete.

(b) The borrower shall notify the Department within thirty (30) days of the actual date of initiation of operation.

(c) One year after initiation of operation, the borrower shall certify whether the facility meets Department approved project performance standards.

(d) If the project is completed, or is completed except for minor items, and the facility is operable, but the borrower has not sent its notice of initiation of operation, the Department may assign an initiation of operation date.

(e) The borrower shall, pursuant to a Department approved corrective action plan, correct any factor that does not meet the Department approved project performance standards.

(10) Eligible Construction Costs. Payments for construction costs shall be limited to {eligible} work that complies with plans and specifications {as} approved by the Department.

(11) Adjustments. The Department may at any time review and audit requests for payment and make adjustments for, but not limited to, math errors, items not built or bought, and unacceptable construction.

(12) Contract and Bid Documents. The borrower shall submit a copy of the awarded contract and bid documents to the Department.

(13) Audit. An audit consistent with generally accepted accounting procedures of project expenditures will be conducted by the borrower within one year after performance certification. This audit shall be paid for by the borrower and shall be conducted by a financial auditor approved by the Department.

(14) Operation and Maintenance. The borrower shall provide for adequate operation and maintenance (including replacement) of the facility and shall retain sufficient operating personnel to operate the facility.

(15) Default Remedies. Upon default by a borrower, the Department shall have the right to pursue any remedy available at law or in equity and may appoint a receiver at the expense of the public agency to operate the utility which produces pledged revenues and set and collect utility rates and charges. The Department may also withhold any amounts otherwise due to the public agency from the State of Oregon and direct that such funds be applied to the debt service due on the SRF loan [~~indebtedness~~] and deposited in the fund. If the Department finds that the loan to the public agency is otherwise adequately secured, the Department may waive this right to withhold state shared revenue in the loan agreement or other loan documentation.

(16) Release. The borrower shall release and discharge the Department, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the loan, subject only to exceptions previously contractually arrived at and specified in writing between the Department and the borrower.

(17) Effect of Approval or Certification of Documents. Review and approval of facilities plans, design drawings and specifications or other documents by or for the Department does not relieve the borrower of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works as required by law, regulations, permits and good management practices. The Department is not responsible for any project costs or any losses or damages resulting from defects in the plans, design drawings and specifications or other subagreement documents.

(18) Reservation of Rights.

(a) Nothing in this rule prohibits a borrower from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; and

(b) Nothing in the rule affects the Department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under this chapter.

(19) Other provisions. SRF loans shall contain such other provisions as the Director may reasonably require to meet the goals of the Clean Water Act and ORS 468.423 to 468.440.

LOAN TERMS AND INTEREST RATES

340-54-065

As required by ORS 468.440, the following loan terms and interest rates are established in order to provide loans to projects which enhance or protect water quality; to provide loans to public agencies capable of repaying the loan; to establish an interest rate below market rate so that the loans will be affordable; to provide loans to all sizes of communities which need to finance projects; to provide loans to the types of projects described in these rules which address water pollution control problems; and to provide loans to all public agencies, including those which can and cannot borrow elsewhere.

(1) Types of Loans. An SRF loan must be one of the following types of loans:

(a) The loan must be a general obligation bond, or other full faith and credit obligation of the borrower, which is supported by the public agency's unlimited ad valorem taxing power; or

(b) The loan must be a bond or other obligation of the public agency which is not subject to appropriation, and which has been rated investment grade by Moody's Investor Services, Standard and Poor's Corporation, or another national rating service acceptable to the Director; or

(c) The loan must be a Revenue Secured Loan which complies with section (2) of this rule; or

(d) The loan must be an Alternative Loan which complies with section (3) of this rule; or

(e) The loan must be a Discretionary Loan which complies with section (4) ~~(3)~~ of this rule.

(2) Revenue Secured Loans. These loans shall:

(a) Be bonds, loan agreements, or other unconditional obligations to pay from specified revenues which are pledged to pay to the borrower; the obligation to pay may not be subject to the appropriation of funds;

(b) Contain a rate covenant which requires the borrower to impose and collect each year ~~pledged~~ revenues which are sufficient to pay all expenses of operation and maintenance (including replacement) of the facilities which are financed with the loan ~~borrowing~~ and the facilities which produce the ~~pledged~~ revenues, all debt service and other financial obligations (such as contributions to reserve accounts) imposed in connection with prior lien obligations, plus an amount equal to the product of the coverage factor shown in subsection (d) of this section times the debt service due in that year on the SRF loan ~~and all obligations which have an equal or superior lien on the pledged~~

~~revenues~~}. The coverage factor selected from subsection (d) of this section shall correspond to the reserve percentage selected for the SRF loan~~{;}~~. If the public agency may incur, or has outstanding, prior lien obligations which, in the judgment of the Department, have inadequate reserves or otherwise may adversely affect the ability of the public agency to pay the SRF loan, the Department may require that the public agency agree in its rate covenant to impose and collect additional revenues to provide coverage on such prior lien obligations, in amounts determined by the Department.

(c) (A) Require the public agency to maintain in each year the SRF loan is outstanding, a pledged reserve which is dedicated to the payment of the SRF loan.

(B) Maintain a ~~{The amount of the}~~ reserve amount ~~{shall be}~~ which is at least equal to the product of the reserve percentage shown in subsection (d) of this section times the average annual debt service. The average annual debt service shall be based on the debt service due between the project completion date as estimated in the loan agreement and the estimated date of the final SRF loan payment ~~{due in the following year on the SRF loan, and all obligations which have an equal or superior lien on the pledged revenues;}~~ The reserve percentage selected from subsection (d) of this section shall correspond to the coverage factor selected for the SRF loan.

(C) Fund the reserves ~~{shall be funded}~~ with a letter of credit, repayment guaranty, other third party commitment to advance funds which is satisfactory to the Department, or cash of the public agency (other than SRF loan proceeds). If it is determined by the Department that funding of the reserve as described above imposes an undue hardship on the public agency, and an Alternative Loan as described in OAR 340-54-065(3) is not feasible, then the Department may allow reserves to be funded with SRF loan proceeds. ~~{or a letter of credit or other third party commitment to advance funds which is satisfactory to the Director;}~~ In cases where the Department allows reserves to be funded with SRF loan proceeds, such reserves shall be held by the Department on behalf of the public agency, and all interest earned on the reserves over and above the interest rate on the SRF loan will be kept by the Department *in the SRF*.

(d) Comply with the one of following coverage factors and reserve percentages:

Coverage Factor	Reserve Percentage
1.05:1	100%
1.15:1	75%
1.25:1	50%
1.35 ~~{1.50}~~:1	25%

(e) Contain a covenant to review rates periodically, and to adjust rates, if necessary, so that estimated revenues in subsequent years will be sufficient to comply with the rate covenant;

(f) Contain a covenant that, if {pledged} revenues fail to achieve the level required by the rate covenant, the public agency will promptly adjust rates and charges to assure future compliance with the rate covenant. However, failure to adjust rates shall not constitute a default if the public agency transfers unencumbered {unpledged} resources in an amount equal to the revenue deficiency to the utility system which produces the {pledged} revenues;

(g) Follow the payment schedule in the loan agreement which shall require monthly SRF loan payments to the Department. If the Department determines that monthly loan payments are not practicable for the borrower, the payment schedule shall require periodic loan payments as frequently as possible, with monthly deposits to a dedicated loan payment account whenever practicable;

(h) Contain a covenant that, if the reserve account is depleted for any reason, the public agency will take prompt action to restore the reserve to the required minimum amount;

(i) Contain a covenant restricting additional debt appropriate to the financial condition of the borrower {that the public agency will not, except as provided in the SRF loan documentation, incur obligations (except for operating expenses) which have a lien on the pledged revenues which is equal or superior to the lien of the SRF loan, without the prior written consent of the Director. The Director shall withhold consent only if the Director determines that incurring such obligations would materially impair the ability of the public agency to repay the SRF loan or the security for the SRF loan};

(j) Contain a covenant that the borrower will not sell, transfer or encumber any financial or fixed asset of the utility system which produces the pledged revenues, if the public agency is in violation of any SRF loan covenant, or if such sale, transfer or encumbrance would cause a violation of any SRF loan covenant.

(3) Alternative Loan. Alternative Loans are to be used if the public agency would incur unnecessary costs or excessive burdens by entering into a Revenue Secured Loan, or if the public agency offers an alternative method of financing which is reasonable. The Director may authorize an Alternative Loan to a public agency, if the public agency demonstrates to the satisfaction of the Director that:

(a) It would be unduly burdensome or costly to the public agency to borrow money from the SRF under subsections (a), (b), or (c) of Section 340-54-065; and,

(b) The Alternative Loan has a credit quality which is substantially equal to, or better than, the credit quality of a Revenue Secured Loan to that public agency.

In determining whether an Alternative Loan meets the requirements of subsection (3)(b) of this section, the Director may consult with the Department's financial advisor, and may charge the public agency applying for an Alternative Loan the reasonable costs of such consultation.

(4)[~~(3)~~] Discretionary Loan. A Discretionary Loan shall be made only to a small community [~~a public agency which has a population of less than 5,000 persons~~] which, in the judgment of the Director, cannot practicably comply with the requirements of OAR 340-54-065(1)(a), (b), [~~or~~] (c), or (d). Discretionary Loans shall comply with OAR 340-54-065(5)[~~(4)~~] of this section, and otherwise be on terms approved by the Director. The total principal amount of Discretionary Loans made in any fiscal year shall not exceed five percent of the money available to be loaned from the SRF in that fiscal year.

(5)[~~(4)~~] Interest Rates.

(a) Zero percent interest rate. SRF loans which are fully amortized within five years after project completion, as estimated in the loan agreement, shall bear no interest; at least three percent of the original principal amount of the loan shall be repaid each year.

(b) Three percent interest rate.

(A) All SRF loans, other than Discretionary Loans, in which the final principal payment is due more than five years after project completion, as estimated in the loan agreement, [~~the loan is made~~] shall bear interest at a rate of three percent per annum, compounded annually; shall have approximately level annual debt service during the period which begins with the first principal repayment and ends with the final principal repayment; and, shall require all principal and interest to be repaid within twenty years after project completion, as estimated in the loan agreement.

(B) A Discretionary Loan shall bear the interest rate of three percent per annum, compounded annually; shall schedule principal and interest repayments as rapidly as is consistent with estimated revenues (but no more rapidly than would be required to produce level debt service during the period of principal repayment); and, shall require all principal and interest to be repaid within twenty years <u>after project completion, as estimated in the loan agreement</u>.

(c) Review of interest rate. The interest rates on SRF loans described in OAR 340-54-065<u>(5)</u>[~~(4)~~](a) and (b) shall be in effect for loans made by September 30, 1991. Thereafter, interest rates may be adjusted by the EQC, if necessary, to assure compliance with ORS 468.440.

<u>(6)</u>[~~(5)~~] Interest Accrual. Interest accrual begins at the time of each loan disbursement from the SRF to the borrower.

<u>(7)</u>[~~(6)~~] Commencement of Loan Repayment.

<u>*(a)*</u> Except as provided in OAR 340-54-065<u>(5)</u>[~~(4)~~](a), principal and interest repayments on loans shall begin within one year after the date of project completion as estimated in the loan agreement.

<u>*(b) In the event that the actual project completion date is prior to the estimated project completion date in the loan agreement, the loan repayment must begin within one year after the actual completion date.*</u>

<u>(8)</u>[~~(7)~~] Minor Variations in Loan Terms. The Department may permit insubstantial variations in the financial terms of loans described in this section, in order to facilitate administration and repayment of loans.

SPECIAL RESERVES

340-54-070

(1) Facility Planning Reserve. Each fiscal year, 10 percent of the total available SRF will be set aside for loans for facility planning. However, if preliminary applications for facility planning representing 10 percent of the available SRF are not approved, these funds may be allocated to other projects.

(2) Small Community[~~ies~~] Reserve.

<u>(a)</u> Each fiscal year, 15 percent of the total available SRF will be set aside for loans to small communities. However, if preliminary applications from small communities representing 15

percent of the available SRF are not received, these funds may be allocated to other public agencies.

(b) In order to be eligible for small communities reserve funds, the small community must receive a SRF Priority List Ranking with at least 30 Enforcement Water Quality Violation points (see OAR 340-54-025(4)(a).

LOAN LIMITATIONS ~~[MAXIMUM-LOAN-AMOUNT]~~

340-54-075

(1) Maximum Loan Amount. In any fiscal year, no public agency on the ~~[p]~~Priority ~~[L]~~List may receive more than 15 ~~[25]~~ percent of the total available SRF. However, if the SRF funds are not otherwise allocated, a public agency may apply for more than 15 ~~[25]~~ percent of the available SRF, not to exceed the funds available in the SRF.

(2) Minimum Loan Amount. No SRF loan shall be approved if the total amount of the SRF loan is less than $20,000.

for each such class. The fee for the issuance of certificates shall be established by the commission in an amount based upon the costs of administering this program established in the current biennial budget. The fee for a certificate shall not exceed $10.

(2) The department shall collect the fees established pursuant to paragraph (b) of subsection (1) of this section at the time of the issuance of certificates of compliance as required by ORS 468.390 (2)(c).

(3) On or before the 15th day of each month, the commission shall pay into the State Treasury all moneys received as fees pursuant to subsections (1) and (2) of this section during the preceding calendar month. The State Treasurer shall credit such money to the Department of Environmental Quality Motor Vehicle Pollution Account, which is hereby created. The moneys in the Department of Environmental Quality Motor Vehicle Pollution Account are continuously appropriated to the department to be used by the department solely or in conjunction with other state agencies and local units of government for:

(a) Any expenses incurred by the department and, if approved by the Governor, any expenses incurred by the Motor Vehicles Division of the Department of Transportation in the certification, examination, inspection or licensing of persons, equipment, apparatus or methods in accordance with the provisions of ORS 468.390 and 815.310.

(b) Such other expenses as are necessary to study traffic patterns and to inspect, regulate and control the emission of pollutants from motor vehicles in this state.

(4) The department may enter into an agreement with the Motor Vehicles Division of the Department of Transportation to collect the licensing and renewal fees described in paragraph (a) of subsection (1) of this section subject to the fees being paid and credited as provided in subsection (3) of this section. (Formerly 449.965; 1974 s.s. c.73 §5; 1975 c.535 §3; 1977 c.704 §10; 1981 c.294 §1; 1983 c.338 §926)

468.410 Authority to limit motor vehicle operation and traffic. The commission and regional air pollution control authorities organized pursuant to ORS 448.305, 45[illegible]010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter by rule may regulate, limit, control or prohibit motor vehicle operation and traffic as necessary for the control of air pollution which presents an imminent and substantial endangerment to the health of persons. (Formerly 449.747)

468.415 Administration and enforcement of rules adopted under ORS 468.4[illegible]. Cities, counties, municipal corporations and other agencies, including the Department of State Police and the Highway Division, shall cooperate with the commission and regional air pollution control authorities in the administration and enforcement of the terms of any rule adopted pursuant to ORS 468.410. (Formerly 449.751)

468.420 Police enforcement. The Oregon State Police, the county sheriff and municipal police are authorized to use such reasonable force as is required in the enforcement of any rule adopted pursuant to ORS 468.410 and may take such reasonable steps as are required to assure compliance therewith, including but not limited to:

(1) Locating appropriate signs and signals for detouring, prohibiting and stopping motor vehicle traffic; and

(2) Issuing warnings or citations. (Formerly 449.753)

FINANCING TREATMENT WORKS

468.423 Definitions for ORS 468.423 to 468.440. As used in ORS 468.423 to 468.440:

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

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

(3) "Director" means the Director of the Department of Environmental Quality or the director's designee.

(4) "Fund" means the Water Pollution Control Revolving Fund established under ORS 468.427.

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

(6) "Treatment works" means:

(a) The devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works. "Treatment works" includes:

(A) Intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and any appurtenance, exten-

sion, improvement, remodeling, addition or alteration to the equipment;

(B) Elements essential to provide a reliable recycled water supply including standby treatment units and clear well facilities; and

(C) Any other acquisitions that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment, including but not limited to land used to store treated waste water in land treatment systems prior to land application.

(b) Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, storm water runoff, industrial waste or waste in combined storm water and sanitary sewer systems.

(c) Any other facility that the commission determines a public agency must construct or replace in order to abate or prevent surface or ground water pollution. [1987 c.648 §1]

Note: 468.423 to 468.440 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.

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

(1) To aid and encourage public agencies required to provide treatment works for the control of water pollution in the transition from reliance on federal grants to local self-sufficiency by the use of fees paid by users of the treatment works;

(2) To accept and use any federal grant funds available to capitalize a perpetual revolving loan fund; and

(3) To assist public agencies in meeting treatment works' construction obligations in order to prevent or eliminate pollution of surface and ground water by making loans from a revolving loan fund at interest rates that are less than or equal to market interest rates. [1987 c.648 §2]

Note: See note under 468.423.

468.427 Water Pollution Control Revolving Fund; sources. (1) The Water Pollution Control Revolving Fund is established separate and distinct from the General Fund in the State Treasury. The moneys in the Water Pollution Control Revolving Fund are appropriated continuously to the department to be used for the purposes described in ORS 468.429.

(2) The Water Pollution Control Revolving Fund shall consist of:

(a) All capitalization grants provided by the Federal Government under the federal Water Quality Act of 1986;

(b) All state matching funds appropriated or authorized by the legislature;

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

(d) All repayments of moneys borrowed from the fund;

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

(f) Any other fee or charge levied in conjunction with administration of the fund.

(3) The State Treasurer may invest and reinvest moneys in the Water Pollution Control Revolving Fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the Water Pollution Control Revolving Fund. [1987 c.648 §3]

Note: See note under 468.423.

468.429 Uses of revolving fund. (1) The Department of Environmental Quality shall use the moneys in the Water Pollution Control Revolving Fund to provide financial assistance:

(a) To public agencies for the construction or replacement of treatment works.

(b) For the implementation of a management program established under section 319 of the federal Water Quality Act of 1986 relating to the management of nonpoint sources of pollution.

(c) For development and implementation of a conservation and management plan under section 320 of the federal Water Quality Act of 1986 relating to the national estuary program.

(2) The department may also use the moneys in the Water Pollution Control Revolving Fund for the following purposes:

(a) To buy or refinance the treatment works' debt obligations of public agencies if such debt was incurred after March 7, 1985.

(b) To guarantee, or purchase insurance for, public agency obligations for treatment works' construction or replacement if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public agency for this purpose.

(c) To pay the expenses of the department in administering the Water Pollution Control Revolving Fund. [1987 c.648 §4]

Note: See note under 468.423.

468.430 [1983 c.218 §1; repealed by 1985 c.222 §6]

468.433 Duties of department. In administering the Water Pollution Control Revolving Fund, the department shall:

(1) Allocate funds for loans in accordance with a priority list adopted by rule by the commission.

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

(3) Prepare any reports required by the Federal Government as a condition to awarding federal capitalization grants. [1987 c.648 §5]

Note: See note under 468.423.

468.435 [1983 c.218 §2; repealed by 1985 c.222 §6]

468.437 Loan applications; eligibility; waiver; default remedy. (1) Any public agency desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the department on the form provided by the department. Each applicant shall demonstrate to the satisfaction of the State of Oregon bond counsel that the applicant has the legal authority to incur the debt. To the extent that a public agency relies on the authority granted by law or charter to issue revenue bonds pursuant to the Uniform Revenue Bonding Act, the department may waive the requirements for the findings required for a private negotiated sale and for the preliminary official statement.

(2) Any public agency receiving a loan from the Water Pollution Control Revolving Fund shall establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan.

(3) If a public agency defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency and direct that such funds be applied to the indebtedness and deposited into the fund. [1987 c.648 §6]

Note: See note under 468.423.

468.440 Loan terms and interest rates; considerations. (1) The Environmental Quality Commission shall establish by rule policies for establishing loan terms and interest rates for loans made from the Water Pollution Control Revolving Fund that assure that the objectives of ORS 468.423 to 468.440 are met and that adequate funds are maintained in the Water Pollution Control Revolving Fund to meet future needs. In establishing the policy, the commission shall take into consideration at least the following factors:

(a) The capability of the project to enhance or protect water quality.

(b) The ability of a public agency to repay a loan.

[illegible] Current market rates of interest.

[illegible] The size of the community or district to be served by the treatment works.

(e) The type of project financed.

(f) The ability of the applicant to borrow elsewhere.

(2) The commission may establish an interest rate ranging from zero to the market rate. The term of a loan may be for any period not to exceed 20 years.

(3) The commission shall adopt by rule any procedures or standards necessary to carry out the provisions of ORS 468.423 to 468.440. [1987 c.648 §7]

Note: See note under 468.423.

Note: Section 8, chapter 648, Oregon Laws 1987, provides:

Sec. 8. Before awarding the first loan from the Water Pollution Control Revolving Fund, the Department of Environmental Quality shall submit an informational report to the Joint Committee on Ways and Means or, if during the interim between sessions of the Legislative Assembly, to the Emergency Board. The report shall describe the Water Pollution Control Revolving Fund program and set forth in detail the operating procedures of the program. [1987 c.648 §8]

FIELD BURNING REGULATION

468.450 Regulation of field burning on marginal days. (1) As used in this section:

(a) "Marginal conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

(b) "Marginal day" means a day on which marginal conditions exist.

(2) In exercising its functions under ORS 476.380 and 478.960, the commission shall classify different types or combinations of atmospheric conditions as marginal conditions and shall specify the extent and types of burning that may be allowed under different combinations of atmospheric conditions. A schedule describing the types and extent of burning to be permitted on each type of marginal day shall be prepared and circulated to all public agencies responsible for providing information and issuing permits under ORS 476.380 and 478.960. The schedule shall give first priority to the burning of perennial grass seed crops used for grass seed production, second priority to annual grass seed crops used for grass seed production, third priority to grain crop burning, and fourth priority to all other

65th OREGON LEGISLATIVE ASSEMBLY--1989 Regular Session

Senate Bill 1097

Sponsored by Senator OTTO (at the request of Association of Oregon Sewerage Agencies)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Allows public agency to borrow directly from Water Pollution Control Revolving Fund. Allows public agency to waive notice of sale, official statement and other procedures if borrowing directly from Department of Environmental Quality.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to pollution control; creating new provisions; amending ORS 468.437; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this Act is added to and made a part of ORS 468.423 to 468.440.

SECTION 2. Notwithstanding any limitation contained in any other provision of law or local charter, a public agency may:

(1) Borrow money from the Water Pollution Control Revolving Fund through the department;

(2) Enter into loan agreements and make related agreements with the department in which the public agency agrees to repay the borrowed money in accordance with the terms of the loan agreement;

(3) Covenant with the department regarding the operation of treatment works and the imposition and collection of rates, fees and charges for the treatment works; and

(4) Pledge all or part of the revenues of the treatment works to pay the amount due under the loan agreement and notes in accordance with ORS 288.594..

SECTION 3. ORS 468.437 is amended to read:

468.437. (1) Any public agency desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the department on the form provided by the department. [*Each applicant shall demonstrate to the satisfaction of*] **The department may require an opinion from** the State of Oregon bond counsel that the applicant has the legal authority to [*incur the debt*] **borrow from the Water Pollution Control Revolving Fund.** [*To the extent that a public agency relies on the authority granted by law or charter to issue revenue bonds pursuant to the Uniform Revenue Bonding Act, the department may waive the requirements for the findings required for a private negotiated sale and for the preliminary official statement.*] **If a public agency relies on borrowing authority granted by charter or law other than section 2 of this 1989 Act, then with the consent of the department and notwithstanding any limitation or requirement of the charter or law, the public agency may borrow directly from the Water Pollution Control Revolving Fund without publishing a notice of sale, providing an official statement or following any other procedures designed to provide notice or information to potential lenders. The requirements of ORS 288.845 shall not apply to revenue bonds that are sold to the department.**

(2) Any public agency receiving a loan from the Water Pollution Control Revolving Fund shall

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan.

(3) If a public agency defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency and direct that such funds be applied to [*the indebtedness*] **the payments** and deposited into the fund. **If the department finds that the loan to the public agency is otherwise adequately secured, the department may waive this right in the loan agreement or other loan documentation.**

SECTION 4. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: December 1, 1989
Agenda Item: G
Division: Water Quality
Section: Construction Grants

SUBJECT:

State Revolving Loan Fund (SRF): Proposed Adoption of Temporary Rules to Address 1989 Legislative Amendments and Problems Encountered in Initial Program Implementation

PURPOSE:

Obtain EQC approval of temporary rule needed to respond to emergency created by recent legislative changes and problems in the existing rule that limit program implementation.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
_x_ Adopt Rules
Proposed Rules (Temporary) Attachment A
Rulemaking Statements Attachment ___
Fiscal and Economic Impact Statement Attachment ___
Public Notice Attachment ___

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

___ Approve Department Recommendation
___ Variance Request Attachment ___
___ Exception to Rule Attachment ___

___ Informational Report — Attachment ___
___ Other: (specify) — Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The proposed temporary rule incorporates legislative changes made by the 1989 Oregon Legislature. These amendments allow direct loans to be made to public agencies from the SRF; eliminate the need for a bond counsel opinion for every SRF loan; and allow the Department to waive its right to withhold revenue sharing funds otherwise due to the public agency in the case of agency default.

In addition, the temporary rule allows the Department to make loans to public agencies which provide loan security that is different but substantially equivalent to the security required for other types of loans allowed by the rules. This change would give the Department the ability to make loans to communities which are unable to provide exactly the type of security which the rules currently require but which can provide other types of equivalent security.

AUTHORITY/NEED FOR ACTION:

x Required by Statute: SB 1097 — Attachment C
Enactment Date: June 30, 1989
x Statutory Authority: ORS 468.423 to .440 — Attachment B
___ Pursuant to Rule: ___ — Attachment ___
___ Pursuant to Federal Law/Rule: ___ — Attachment ___
___ Other: — Attachment ___
___ Time Constraints: Several public agencies have indicated that they need to begin receiving SRF loan funds by January, 1990. In order to complete loan agreements with these public agencies, the temporary rule amendments are necessary.

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation — Attachment ___
___ Hearing Officer's Report/Recommendations — Attachment ___
___ Response to Testimony/Comments — Attachment ___
x Prior EQC Agenda Items:
March 3, 1989 - SRF Rule Adoption
OAR 340-54-005 to -075 — Attachment A

___ Other Related Reports/Rules/Statutes:
ORS 183.335 (5) Attachment E
_x_ Supplemental Background Information Attachment D
Justification for Temporary Rule

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Without the temporary rule, some public agencies will not be able to fulfill existing loan requirements. When the existing rules were drafted, a section was included which requires a pledged reserve for revenue secured loans which could be much larger than is necessary or feasible. The pledged reserve is equal to a percentage of "the debt service due in the following year on the SRF loan and all obligations which have an equal or superior lien on the pledged revenues" (OAR 340-54-065(2)(c)). This could mean that a public agency getting a 20 year $4 million SRF loan which already has $16 million outstanding revenue bonds would have to pledge a reserve of between $250,000 and $1 million. The reserve would be required even if the public agency has already established a pledged reserve for the outstanding debt. This result was not intended by the rules and is addressed by the proposed temporary rule.

Also, under the existing rule, the Department would have the authority with all SRF loans to withhold revenue sharing monies in the case of default by an SRF borrower. For some jurisdictions, this authority could have the effect of reducing the bond local rating due to the potential effect on an important source of income for public facilities. The temporary rule reflects new statutory language in SB 1097 which clearly allows the Department to waive this authority.

Affected public agencies indicate support of the proposed temporary rule.

PROGRAM CONSIDERATIONS:

ORS 468.437, adopted in 1987, required an opinion from Oregon bond counsel regarding the applicants legal authority to borrow from the SRF. SB 1097 changed the SRF statute to make this opinion from Oregon bond counsel optional. The temporary rule makes the same change to the SRF rules. Oregon bond counsel has advised the Department that such an opinion is not always necessary, and that the average cost

would likely be $2,000-$4,000 per opinion. Under the current rules, this cost would be borne by the Department.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt a temporary rule which incorporates all changes made to the SRF statute by SB 1097. This approach was recommended by bond counsel.

2. Do not adopt a temporary rule to amend the existing rules. SB 1097 makes an opinion from Oregon bond counsel optional and allows the Department to waive the right to revenue sharing money. The Department could choose to exercise these options under SB 1097 which supercedes existing rules. The conflict between requirements in the rules and in SB 1097 could, however, lead to confusion for borrowers. Legal counsel recommends adoption of rules to avoid this conflict.

3. Adopt a temporary rule which allows the Department to accept other security than that specifically identified in the existing rules so long as it provides substantially the same amount of security as would be otherwise required. These amendments would provide a broad solution to the loan security problems created by the specificity of the existing SRF rules. This provides additional flexibility which could allow the Department to gear SRF loans to the needs of communities without compromising SRF loan security.

4. Adopt a temporary rule to change the language in the existing rule regarding loan reserves for revenue secured loans. Eliminate the requirement for the loan reserve to cover other debts with an equal or superior lien on the sewer revenues if the borrower has already pledged a reserve for these debts. Also require the reserve to be based on average annual debt service rather than on the next year's debt service since debt service can vary from year to year on some loans.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Adopt Alternatives 1, 3, and 4. These alternatives address known problems with the rules while providing the Department the greatest degree of flexibility in issuing loans without compromising the stability of the loan program. This

flexibility is particularly important during the initial stages of program implementation since there will inevitably be circumstances arising which have not been anticipated. With more flexibility in the rules, these circumstances can be addressed without having to frequently return to the Commission for more rule changes. Oregon bond counsel has also recommended this course of action.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The temporary rules are consistent with the legislative intent of SB 1097. They are also consistent with the original intent of the SRF rules to require an adequate amount of loan security to protect SRF monies without unduly burdening the SRF borrowers.

OTHER ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

A SRF Task Force is being developed to review these and other issues. The Department will return to the Commission for authorization to hold a public hearing on these rules in January or February of 1990.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Maggie Conley

Phone: 229-5257

Date Prepared: November 2, 1989

(MG:kjc)
(CG\WJ2371)
(November 9, 1989)

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to amend rules.

Local Authority:

ORS 468.423 to 468.440 gives authority for establishment of the State Revolving Fund. ORS 468.440 gives the Commission the authority to adopt rules to carry out ORS 468.423 to 468.440.

Need for the Rule:

The State Revolving Fund (SRF) rule amendments are needed to simplify the SRF priority system; amend the environmental review process; to change maximum loan amount; and to change the types of loans available.

Fiscal and Economic Impact:

The amendment will add additional costs for SRF borrowers because the responsibility and cost of environmental assessments environmental impact statements is shifted from the Department to the borrower. The borrower will, however, be able to borrow low interest SRF money to cover the cost of preparing these documents.

The proposed rules lower the annual maximum loan amount from 25% of the SRF to 15% of the SRF. This change will insure that more communities are able to borrow SRF money each year.

The proposed rules allow greater flexibility in the type of loan security a borrower may provide. This change should make the SRF accessible to a broader variety of borrowers.

The impact of the rule amendment will have no affect on small businesses.

Land Use Consistency:

The proposal described appears to be consistent with all statewide planning goals. Specifically, the rules comply with Goal 6 because they would provide loans for water pollution control facilities, thereby contributing to the protection of water quality. The rules comply with Goal 11 because they assist communities in financing needed sewage collection and treatment facilities.

Public comment on this proposal is invited and may be submitted in the manner described in the accompanying Public Notice of Rules Adoption.

It is requested that local, state and federal agencies review the proposal and comment on possible conflicts with their programs affecting land use and with statewide planning goals within their jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflicts thereby brought to its attention.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

STATE REVOLVING LOAN FUND RULE AMENDMENT PUBLIC HEARING

Notice Issued: 5/1/90
Comments Due: 6/1/90

WHO IS AFFECTED: Adoption of the rule amendments will affect communities financing water pollution control facilities.

WHAT IS PROPOSED: Amendments to the State Revolving Loan Fund (SRF) rules (OAR Chapter 340, Division 54). The SRF provides low interest loans to communities for water pollution control projects, such as sewage treatment facilities.

WHAT ARE THE HIGHLIGHTS: The proposed SRF rules amendments change the SRF priority system, the environmental review process, project eligibility, maximum loan amounts and types of loan available.

HOW TO COMMENT: Written comments should be presented to DEQ by June 1, 1990 at the following address:

Maggie Conley
Department of Environmental Quality
Water Quality Division
811 S.W. Sixth Avenue
Portland, OR 97204
Telephone: 229-5257

Verbal comments may be given during the public hearing scheduled as follows:

10 a.m.
June 1, 1990
Room 10A - 10th floor
811 S.W. Sixth Avenue
Portland, Oregon

WHAT IS THE NEXT STEP: After the public hearing, the Environmental Quality Commission may adopt rules identical to those proposed, modify the rules or decline to act. The Commission's deliberation should come on June 29, 1990, as part of the agenda of a regularly scheduled Commission meeting.

ATTACHMENTS: Statement of Need for Rules (including Fiscal Impact)
Statement of Land Use Consistency

CG\WH4046 (5/30/90)

811 S.W. 6th Avenue
Portland, OR 97204

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

STATE REVOLVING FUND TASK FORCE
MEETING SUMMARY
MARCH 20, 1990
10:30 AM TO 3:30 PM
DEQ HEADQUARTERS - ROOM 10A

MEMBERS PRESENT:

Terry Smith
Deputy Director of Public Works
Eugene *

Greg DiLoreto
City Engineer
Gresham

Steve Anderson
Anderson & Perry Engineers
La Grande

Jon Jalali
Finance Director
Medford *

Kathy Schacht
Metropolitan Waste Management
Commission
Springfield

Dan Helmick
Director of Fiscal Services
Clackamas County *

B. J. Smith
League of Oregon Cities
Salem *

Kelly Fish
Public Representative
North Albany

Ann Culbertson
Grants Coordinator
Unified Sewerage Agency
Washington County

Dave Gooley
Administrative Services Direct
City of Portland *

MEMBERS ABSENT:
Joe Windell
City Administrator
Lebanon

OTHERS PRESENT
Maggie Conley - Meeting Facilitator (DEQ)
Dave Neitling - Recorder (DEQ)
Martin Loring - DEQ representative
Kathryn Danley - Minute taker

I. Introduction

The initial State Revolving Fund Task Force meeting was called to order by Maggie Conley.

Maggie Conley explained that this Task Force had been developed to assist the Department in developing SRF rule amendments. Draft rules amendments were distributed to the Task Force before the meeting. She explained that these were intended to provide a beginning for Task Force discussion and that the Department is open to the Task Force input on these amendments.

In order for the rule amendments to be adopted in time to affect this year's funding cycle, the Task Force must complete its work by April 16, 1990, in the three scheduled meetings. The Department, however, is willing to provide more meetings after April 16 if the Task Force feels that the rule amendments do not need to affect this year's funding cycle. She also explained that the Department plans to reconvene the Task Force or create a new Task Force to address interest rates and other financing issues in the fall of 1990.

II. Presentation of Issues

Martin Loring provided background on the State Revolving Fund program and the Task Force role. Martin Loring then set out the following issue areas which the Department has identified as needing discussion. They are as follows:

1. Collector Sewers, major sewer rehabilitation, CSO correction, storm water control.
2. Reserves for medium sized communities.
3. Financial need.
4. Pollution problem points. Does the present system punish communities that did well and reward communities with violations?
5. Receiving water body sensitivity points.
6. Rollover of interim/construction loans.
7. Cost increases should the 10% limit be reduced to 5%? Should increases have first call on the next year's funds?
8. Responsibility for Environmental review.
9. Alternative loans.
10. Mechanics of priority system.

Maggie Conley, then asked the Task Force to identify other issues they found missing from the DEQ list. The Task Force identified the following issues to add to the above list:

11. Security requirements and reserves (Dan Helmick)
12. Interest rate change (Steve Anderson)
13. Size of project - Funding of major projects. Consider changing the 25% cap on project size. (Kathy Schacht)
14. Limit DEQ construction oversight on projects. (Dan Helmick)

15. Application process - Provide an easier process for certain types of loans (Greg DiLoreto)
16. Philosophy of SRF (Dave Gooley)
17. Water Quality points for health hazard annexation (Kathy Schacht)
18. Public review of priority ranking system in rules and Clean Water Strategy (Dan Helmick, Terry Smith)
19. Funding growth (Kathy Schacht)

III Task Force Objective

Maggie Conley, presented the Department's recommendation for the Task Force objective as follows:

> "To refine the method of equitably distributing SRF loans to all sizes of communities and to all eligible project types, while providing the greatest water quality protection."

The Task Force changed the objective to read as follows:

1. Make loans which will provide the greatest water quality protection.
2. Establish security provisions linked to future SRF buying power.
3. Maintain reasonable expectations of equitable distribution of SRF monies.
4. Streamline process.

As part of the discussion of objectives the Task Force asked to discuss DEQ philosophy with respect to the SRF program. Dave Gooley and Greg DiLoreto stated that they felt the SRF program should focus on water quality and not be operated the same as a bank with excessive security requirements.

Martin Loring responded that the Department has two goals which work together. The first goal is protecting water quality; the second is protecting future SRF buying power by having adequate underwriting and security requirements. Without adequate security requirements, he said, there might be no guarantee of future SRF loan payback, therefore, less ability to protect water quality due to the limited SRF funds available.

Dan Helmick stated that he believed that communities would repay the loan without security requirements in order to protect their bond rating and future ability to get loans.

Jon Jalali stated that he believed the federal government will continue to fund the SRF beyond 1994, so there will be future funds to finance water quality problems.

IV Prioritizing Issues

The Task Force decided to try to address all of the issues listed in A. and B. below during the 3 scheduled meetings.

A. The following issues were addressed first because they are related:

1. Collectors, major sewer rehabilitation, CSO correction, storm water control.
2. Reserves for medium sized communities.
4. Water pollution problem points.
5. Receiving waterbody sensitivity points.
13. Should the 25% cap be changed?
18. Water pollution problem points for health hazard annexation.
19. Public review of priority ranking system and clean water strategy.

B. The Task Force decided to address the remaining issues in the following order (Except as noted in C. and D. below):

7. Review limits on loan increases.
11. Security requirements, reserves, and ability to repay.
8. Responsibility for environmental review.
15. Application process should be simpler different types of loans.
20. Funding growth.

C. The Task Force decided to accept changes recommended by the Department on the following issues:

6. Rollover of interim/construction loans.
9. Alternative loans.
10. Mechanics of priority system.

D. Consideration of the following issues was deferred until next fall when the task force will reconvene or a new task force will be created:

3. Financial need.
17. Interest rates on SRF loans.
19. DEQ oversight on projects.

V Discussion of Priority Ranking Related Issues

The Task Force brain stormed solutions to some of the issues which were grouped together under A. above. Opinions of each Task Force member are summarized below:

TERRY SMITH

#1 Rank projects by type. Rank STPs, interceptors, etc. high and rank collectors low. Rank collectors on a per capita basis.
#2 No medium size community reserve-retain existing small community reserve.
#4 Health hazards should be ranked highest.
#5 No comment.
#13 Reduce the 25% cap. Fund all treatment and water projects on a per capita basis.
#18 Rank health hazard above other water quality problems.

GREG DILORETO

#1 Water quality protection number one priority. No collector money limit.
#2 No medium size community reserve. Revisit existing 15% small community reserve.
#4 No comment.
#5 No comment.
#13 Consider reducing the 25% cap.
#18 No comment.

DAVE GOOLEY

#1 No limit on funding for collectors. Provide funding to projects with the greatest WQ need, regardless of project type. Intent of new federal legislation was to allow unlimited funding for collectors.
#2 No medium size community reserve. Retain present reserves.
#4 Leave as is.
#5 Leave as is.
#13 Retain 25% cap.
#18 Health hazards should have top points.

B.J. SMITH

#1 Consider ranking collectors lower. Concerned about private financial benefit of collectors.
#2 No medium sized community reserve. Leave as is.
#4 No comment.
#5 Concerned about sensitivity points.
#13 No comment.
#18 Stress health hazard funding.

B.J.Smith requested that the Department explain how it affects certain communities such as small cities on big rivers.

STEVE ANDERSON

#1 Don't fund collectors or keep it low.

#2 No medium size community reserve, consider reducing small community reserve.
#4 Leave as is.
#5 Go with recommended changes on sensitivity.
#13 Reduce 25% cap.
#18 Rank health hazards high.

JON JALALI

#1 Use funds where there is pollution-no limit on collectors.
#2 No medium size community reserve. Retain present small communities reserve.
#4 Accept DEQ rule on water quality problem.
#5 Leave as is.
#13 Feels 25% cap too high -- reduce to 20%.
#18 Health hazard should rank high.

KATHY SCHACHT

#1 Limit collectors-possibly 20% until other needs are met.
#2 No medium size community reserve. Retain small community reserve at 15%.
#4 Definition of water quality problems needs clarification.
#5 Same as #4
#13 Retain 25% CAP.
#18 No comment.

Kathy Schacht, also, asked for an explanation of how the clean water strategy ranks health hazards.

ANN CULBERTSON

#1 Fund all types of projects with no limit.
#2 Revise small community reserve for 12,500 population and increase crease size of small community reserve to 20%.
#4 Maximum points for water quality pollution.?
#5 Accept DEQ proposed sensitivity points.
#13 Retain 25% cap on loans.
#18 Provide the most points for health hazards.

KELLY FISH

#1 Would like restrictions on collectors. Give lower priority.
#2 Retain reserve for small communities. Increase it from 15% to 25%. Consider increasing the maximum population of communities which may be funded under the reserve.
#4 Accept DEQ draft rules.
#5 Leave as is.
#13 Reduce 25% cap to 15 or 20%.
#18 Maximum points for health hazard areas.

DAN HELMICK

#1 Collectors should have a project or loan cap of about 15%.
#2 No medium size reserve-retain 15% small community reserve.
#4 Reduce problem points. No points for enforcement actions.

#5 No water quality points for enforcement-require documented water quality problem to be eligible.
#13 Reduce 25% cap to 10%.
#18 No points for health hazards.

VI Discussion of Loan Increase Issue

Current SRF rules limit the amount of loan increases which do not have to get DEQ approval to 10% loan of the original loan amount. Staff explained that proposed rules would change this limit to 5%. There would continue be no limit on the overall amount of loan increases allowable. The 5% limit was chosen because it would mirror the 5% contingency the Department would like to add to all projects listed on the on the annual funding list. This 5% contingency would provide a simple means of funding SRF loan amendments. Otherwise, they would get funded from future years funding or loan repayments.

Decision: The Task Force concluded that for now it is more appropriate to keep the 10% limit on loan increases that do not need Department approval since no loans have yet been made and this is not yet a problem. This issue could be revised in the future if necessary.

VI Followup

The Department agreed to distribute the meeting summary within one week of the meeting. The Department also agreed to make a presentation at the next meeting regarding how the Clean Water Strategy is developed.

The SRF Task Force meeting was adjourned at 3:30 p.m..

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STATE REVOLVING FUND TASK FORCE

MEETING SUMMARY
APRIL 4, 1990
9:00 AM TO 2:00 PM
DEQ HEADQUARTERS - ROOM 10A

MEMBERS PRESENT:

Terry Smith
Deputy Director of Public Works
Eugene

Greg DiLoreto
City Engineer
Gresham

Steve Anderson
Anderson & Perry Engineers
La Grande

Jon Jalali
Finance Director
Medford

Kathy Schacht
Metropolitan Waste Management
Commission
Springfield

Dan Helmick
Director of Fiscal Services
Clackamas County

B.J. Smith
League of Oregon Cities
Salem

Ann Culbertson
Grants Coordinator
Unified Sewerage Agency
Washington County

Dave Gooley
Administrative Services Director
City of Portland

Joseph Windell
City Administrator
Lebanon

MEMBERS ABSENT:

Kelly Fish
Public Representative
North Albany

OTHERS PRESENT:
Maggie Conley - Meeting Facilitator (DEQ)
Dave Neitling - Recorder (DEQ)
Martin Loring - DEQ representative
Donna Dluehosh - North Albany (for Kelly Fish)
Willie Olandria - EPA
Lucinda Bidleman - Speaker on Ground Water Sensitivity Points
Neil Mullane - Speaker on Surface Water Sensitivity Points
Susan Black - Minute taker

I. INTRODUCTION

The Oregon Department of Environmental Quality (DEQ) developed the State Revolving Loan Fund (SRF) in 1989 to provide financing to protect water quality as Congress is phasing out the grant program. The Task Force held its second meeting April 4, 1990 to assist the Department in developing SRF rule amendments.

The State Revolving Fund Task Force meeting was called to order by Maggie Conley. Maggie Conley reminded the task force that at its last meeting the Task Force agreed that its objectives included trying to reach a reasonable expectation of equitable distribution of SRF money and protection of water quality.

II. SECURITY REQUIREMENTS AND RESERVES

Issue: Should the rules be amended to reduce the SRF loan security requirements?

Martin Loring introduced the topic of security requirements and reserves by identifying two related issues: underwriting (how much credit risk will be taken on), and security provisions or collateral (what security is pledged as a secondary source of repayment). At the last meeting, Task Force members stated that there is concern about security requirements interfering with the ability to solve water quality problems of the state due to the financial burden they impose. Martin Loring stated that it was Congress's clear intent in the Clean Water Act to create a perpetual fund. EPA and other agencies will audit the fund for the riskiness of the loan portfolio and procedures. The fund's buying power needs to be maintained in order to provide future financing for water quality needs. The original SRF rules provided three ways for a community to receive funding, each with different security provisions. A community could sell to DEQ:

- general obligation bonds secured by sewer rate revenue and property taxes

- rated revenue bonds secured with sewer rate revenue and whatever coverage and reserve requirements that are needed to achieve a given rating, and

- revenue secured debt secured by sewer rate revenue plus coverage reserve requirements set out in rule.

Temporary rule amendments adopted in December,1989 created a fourth way to borrow, which is any other debt proposal with comparable security.

The topic of reserve requirements and the option for communities to fund reserves out of loan proceeds was discussed. There was a

concern expressed that this would reduce the SRF funds going to water quality improvement.

Task Force discussion included the following:

A. The DEQ's staff position was that the security provisions of the fund should not be weakened. The importance of stewardship responsibilities was stressed.

B. Various Task Force members pointed out that communities default very rarely. Due to this low risk, security requirements should be reduced.

C. Reserves are expensive and do not prevent default. A coverage factor of 5-20% in excess of operations maintenance and debt service provisions would be reasonable with no reserve required. Credit worthiness should be substitutable for reserve requirements. A credit rating system for communities predicting the riskiness of specific debt issues would be useful.
D. Requiring coverage is a tool to encourage service of debt and self support. The reserve requirement should be met though general fund balances because may not be desirable to create a reserve from SRF funds when sufficient funds are already being held.

E. Security requirements should be minimized since DEQ could always take over operation and rate setting if a borrower goes into default. A Task Force member suggested that DEQ is trying to avoid political heat by the use of coverage and reserves.

F. Reserves are more a small community issue, but it is too early to tell if they prevent affordability of loans.

G. The Task Force recommended that page 71 (b) of the draft rule amendments be redrafted to address flexibility in reserve and security requirements.

To summarize, the Task Force recommended that the security and reserve requirements need to provide flexibility for differences in community size, funding methods, and credit worthiness. Use of credit ratings to eliminate the reserve requirement or funding reserves though general fund balances might stretch water quality improvement dollars further. The Department agreed to consider these comments and respond at the next meeting.

III. RECEIVING WATERBODY SENSITIVITY POINTS

Issue: Should the method for prioritizing SRF projects based on Water Quality impacts be revised to reflect new ground water rules and the Clean Water Act?

A. GROUND WATER - Lucinda Bidleman

DEQ's Clean Water Strategy rating system is recommended for use in rating the sensitivity (to pollution) of surface water bodies, but, unfortunately, ground water issues are not dealt with in that document.

The proposed rules provide the following:

-90 points for sole source aquifers. This is a formal designation made by the EPA where fifty percent or more of the drinking water is supplied by the aquifer. There is only one designated sole source aquifer presently in Oregon, in North Florence.

-70 points for Wellhead Protection Areas. This is a delineated area which recharges one (or more) wells.

-50 points for discharges from an existing facility which are causing contamination above background, but less than the standard or within a Ground Water Management Area. Trigger levels (for designation as a Ground Water Management Area) are for Non-Nitrates with standards 50% of standard or more, and for Nitrates 7/89 to 7/90 100% or more of standard and after 7/90 70% of standard.

-30 points if DEQ suspects contamination but there is no direct evidence to support this suspicion. (e.g. a lagoon which is leaking but for which no monitoring has been done).

-10 points for an area were there is a potential for contamination that could exist or develop (e.g. an unlined lagoon)

The Task Force raised the following concerns:

1. There is a need for a level of specificity for how points are assigned to each site.

2. Sampling procedures and methods for monitoring sites are needed.

3. Site specific requirements do not exist.

4. Need for public input

B. SURFACE WATER - Neil Mullane

Congress, believing states should prioritize water quality problems, developed the Clean Water Strategy. Public hearings help identify important beneficial uses and put a value on them.

This allows resources to be targeted to high priority problems. In the Oregon Clean Water Strategy, health, recreation, and aquatic life are evaluated for problem severity and value to get a total water quality score used to prioritize surface water sources. The value of a stream was based on how it is presently being used. Aquatic habitat was used as a tie-breaking factor (but not included in the SRF sensitivity ranking). The ranking was based on in-state segments and therefore did not include the Columbia, and Snake Rivers, or the ocean. This is the first year of implementing the ranking method in the Clean Water Act and it is thought to work quite well.

The Task Force identified the following Concerns with the Clean Water Strategy:

1. Higher points would tend to go to well documented problems.

2. Those communities with financial resources to document problems will be the ones that get higher priority.

3. Health is reflected only in drinking and shellfish standards.

4. Non-Point source areas can be prioritized well because of documentation.

5. There should be a process for applicants to appeal their rankings.

In summary, the Task Force agreed to the draft rule proposal for prioritizing ground water and surface water problems. The Task Force recommended:

(1) A minimum number sensitivity points should be given even if a stream is not listed in the Clean Water Strategy.

(2) The Department needs to develop procedures for documenting water quality problems and updating the Clean Water Strategy.

IV. WATER POLLUTION PROBLEM POINTS; HEALTH HAZARD ANNEXATIONS

Issue: Should DEQ continue to assign priority points based on enforcement status and noncompliance?

The Task Force made the following suggestions for rule changes related to problem points:

A. The title "Water Quality Problem Points" needs to be changed to "Enforcement/Water Quality Violation".

B. Communities not doing a good job of complying should not be rewarded by getting more points for enforcement actions. Few communities, however, are purposely remiss in water quality compliance.

C. Health hazards which do not affect water quality should be ranked lower.

The Task Force agreed to:
1. Delete priority points for financial capability based on median household income. This should be discussed in the fall when the Task Force reconvenes to discuss interest rates and other financial issues.

2. Continue to provide more points for larger communities because they will likely have greater water quality impact.

3. The Department should require more than one Notice of Violation (NOV) in order to receive Water Quality Problem Points.

V. PUBLIC REVIEW OF PRIORITY LIST

Issue: Do the draft rules provide adequate opportunity for public review?

The idea of a two tiered public review of the priority list has been changed to a one tier review, giving one public review opportunity for projects.

The Task Force recommended that:

A. The fifteen day review period be raised to thirty days for public comment.

B. A new planning and fundable list should be completed each year. Projects on the planning list would have to reapply the next year. This would assure that the lists are current and perhaps limit schedule "slippage". A first in, first out process of using the oldest money first with frequently updated lists may help to avoid delays and reduce the likelihood that funds to Oregon would be lost.

VI. COLLECTORS, MAJOR SEWER REHABILITATION, CSO CORRECTION, STORM WATER CONTROL

Issue: Should a limit be placed on the amount of SRF monies made available for collectors, major sewer rehabilitation, CSO

correction, and storm water control (i.e. Governor's Discretionary Fund projects)?

Previously the Federal Clean Water Act limited SRF monies that can be spent on Governor's Discretionary Fund projects to one third of the fund (capitalization grant plus state match). This requirement was changed in the 1990 EPA appropriation bill. As such, it affects only FFY 1990 funds. It is the DEQ's recommendation that these types of projects be funded as necessary to address water quality problems. It is unknown which jurisdictions this would affect.

The Task Force discussed the following issues related to funding these types of projects:
A. The state should have the flexibility and authority to address water quality problems without limiting the amount of funding for these types of projects. Collectors, major sewer rehabilitation, CSO correction, and storm water control projects should be funded based on priority ranking like any other project. Water quality improvements ought to dictate whether these projects get more money than interceptors or other projects.

B. Terry Smith suggested that we could rank collectors lower than interceptors and STP's and allocate funds to collector projects with the same ranking on a per capita basis.

C. Another possibility would be to determine which communities should get collector funds by combining financial need with water quality needs to avoid inappropriate benefits to communities which can afford to pay for collectors.

Task Force Conclusion: Place no limits on funding for collectors, major sewer rehabilitation, CSO correction, and storm water control projects.

VII. RESERVES FOR MEDIUM SIZED COMMUNITIES

Issue: Should there be a reserve for medium sized communities or should the population limit on the small community reserve be increased or the amount of money reserved be changed?

The current rules reserve 15 percent of available SRF money for small communities with a population of 5,000 or less. Draft rule amendments increase the reserve to 25 percent and increase the population to 20,000 or less.

The Task Force discussed the following related issues:

A. Joe Windell stated that a community of 10,000 is much more financially capable of funding projects than a community of 5,000

people. Therefore, there needs to be a reserve for small communities but not for medium sized communities.

B. Most members felt that it is important to keep the small community reserve where it is now and adjust it later when there is more experience to show how equitable the results are.

C. The idea of reducing the 15 percent to 10 percent to avoid over-benefitting lower ranked small communities was discussed.
D. It was suggested that staff should develop an equation to limit the use of the small community reserve so that funds do not go to low ranked projects.

E. To avoid problem of low ranked small communities getting funds, raise the population for the reserve to fifteen thousand.

F. There is a danger in putting too much weight on priority ranking since small community problems could actually be worse than their ranking indicates due to their financial inability to do monitoring and collect data which could increase their ranking.

Note: This topic will be discussed more at the next task force meeting.

VIII. SUMMARY AND FUTURE MEETING TOPICS TO ADDRESS

The meeting adjourned at 2:30 pm having not covered two scheduled topics: the 25 percent cap, and environmental review/EIS responsibilities. Topics in addition to those not covered April 4 to address in the next meeting if time permits include:

A. Growth

B. Simplifying the application process

C. Alternative Loans

D. Alternative to the coverage and reserve requirements

The next meeting is scheduled for April 16, 1990 at 9:00 am in the EPA conference room.

wp\april4

STATE REVOLVING FUND Task Force

MEETING SUMMARY
APRIL 16, 1990
9:00 AM TO 2:00 PM

DEQ HEADQUARTERS - EPA CONFERENCE ROOM 3A

MEMBERS PRESENT:

Greg DiLoreto
City Engineer
Gresham

Ann Culbertson
Grants Coordinator
Unified Sewerage Agency
Washington County

Steve Anderson
Anderson & Perry Engineers
La Grande

B.J. Smith
League of Oregon Cities
Salem

Dan Helmick
Director of Fiscal Services
Clackamas County

Dave Gooley
Admin.Services Director
City of Portland

Kelly Fish
North Albany
Public Representative

Joseph Windell
City Administrator
Lebanon

MEMBERS ABSENT:

Terry Smith
Deputy Director of Public Works
Eugene

Kathy Schacht
MWMC
Springfield

Jon Jalali
Finance Director
Medford

OTHERS PRESENT:
Maggie Conley - Meeting Facilitator
Martin Loring - DEQ Representative
Willie Olandria - EPA
Karen D'Eagle - Minute Taker

CG\WC6518 (5/3/90)

I. INTRODUCTION

The Task Force held its third meeting April 16, 1990 to assist the Department in developing SRF rule amendments. The State Revolving Fund Task Force meeting was called to order by Maggie Conley.

II. MEDIUM SIZED COMMUNITY RESERVE

Issue: Should there be a reserve for medium-sized communities?

The Department recommendation was to increase the size of the reserve from 15% to 25% of the SRF and increase the maximum population eligible for the small community reserve to 20,000. The Task Force discussed problems which could result from increasing the small community reserve to include medium sized communities. These included:

-- potential unfairness to small communities which would have to compete with larger, more financially capable communities,for funding.

-- the large number of communities this reserve could fund (43 cities, plus an unknown number of service districts).

Other options considered included a separate medium sized community reserve for communities with a population of 5,000 to 20,000. The Task Force decided that this would not be necessary.

Recommendation: The Task Force decided not to expend reserves beyond the current 15% for communities of 5,000 or less. It was concluded that larger communities could compete and that if a problem develops later, it can be fixed then.

The Task Force also discussed a small community reserve concern that low-ranked small communities would get funding at the expense of larger communities with more severe water quality problems.

Recommendation: Allow small communities to get reserve funding only if they have at least 30 enforcement\water quality violation points.

CG\WC6518 (5/3/90)

III. 25 PERCENT CAP

Issue: Should the cap on the amount of loan funds that any one community may use in any one year be reduced from 25%?

The Task Force discussed the interrelationships among allowing unlimited funding of collectors, maintaining the small community reserve with a ceiling population of 5,000, and the size of the cap. In order to ensure that a reasonable number of projects receive funding, the Task Force decided that the cap should be lowered.

They discussed whether a 15% or 20% cap was more appropriate and decided that it needed to be as low as possible without prohibiting most projects from being completely funded by SRF.

Recommendation: Reduce the cap to 15%.

IV. ENVIRONMENTAL REVIEW and EIS RESPONSIBILITIES

Issue: Should the responsibility for environmental review be shifted from the Department to the borrower?

Martin Loring reminded the Task Force that the main reason for this shift would be to save the Department administrative costs. Due to the strict Federal limit on SRF administrative spending, the Department expects a shortage in funds for program administration and needs to save whenever possible. He also explained that the borrowers could borrow SRF monies to pay for the cost of preparing environmental assessments and EISs.

Ann Culbertson pointed out the burden that this could place on small communities even if they are allowed to borrow SRF monies to pay for the environmental review costs. She passed out flow charts showing how the responsibilities would shift. The Department responded that the costs should not be substantially greater for preparation of environmental assessments since most of information is already required in the facility plan. Also the chances of having to prepare an EIS are slim -- there have only been two EISs required on construction grant projects in the last 16 years.

The Department also indicated that some simplification of the EA process could take place since the state is the approving agency, rather than EPA.

Recommendations:

a) Shift responsibility for environmental review to the borrower with SRF loans to cover these costs.

b) Include a chapter in the SRF Procedures Manual explaining simply how to prepare an environmental assessment and an EIS.

c) Provide staff to assist small community in environmental review.

d) Get more administrative funds by:

   -- Getting authority from the federal governmental to spend more SRF on program administration.
   -- Seeking additional funding from the State.
   -- Leveraging SRF administrative funds (to be discussed more at future SRF Task Force meetings).
   -- Charging loan fees.

e) Require DEQ to pay for EIS preparation if no project follows.

f) Provide workshops to train consultants and borrowers in how to prepare environmental assessments and EISs.

V. SIMPLIFY APPLICATION PROCESS

Greg Diloreto suggested changing the application process so that borrowers for phased projects would not be required to submit new loan documentation each year to comply with facility planning and environmental review requirements.

The Department explained that it intended to be as reasonable as possible in this regard, but that it was limited by EPA in how much it could simplify the environmental review requirements.

Recommendation: Add rule language which allows a borrower, with the Department's approval, to submit a facility plan at the beginning of a project which could be used until the project is completed.

VI. GROWTH

The Task Force decided that funding of growth unrelated to a water quality problem was not consistent with the Task Force objectives of protecting water quality.

CG\WC6518 (5/3/90)

VII. OTHER ISSUES

Steve Anderson suggested that communities should be required to increase user fees immediately upon completion of a facility plan in order to begin raising project funds. The Task Force decided to address this issue later. Other financing issues proposed for consideration in the Fall of 1990 include:

- -- Financial need
- -- Interest rates
- -- DEQ project oversight
- -- Commencement of repayment before project is completed
- -- Loan fees
- -- Fund leveraging
- -- Repayment of small loans in less than 20 years
- -- Require user rates to be increased upon completion of the facility plan (consider a separate Task Force rates)
- -- Need for a state grant program.

VIII. ISSUES AND RECOMMENDATIONS SUMMARY

The attached chart summarizes the main issues addressed by the Task Force, the Task Force recommendations, and the Department's responses to these recommendations.

The Task Force meeting was adjourned at 2:15 p.m..

SUMMARY

SRF Task Force Recommendations

For

Proposed SRF Rule Amendments

	ISSUES	TASK FORCE RECOMMENDS	DEQ RESPONSE
1.	Collectors, etc.	No funding limit for Collectors and other governor's Discretionary Fund projects.	Agree
2.	Water pollution problem points.	Change title of section to "Enforcement/Violation Points".	Agree
3.	Receiving water body sensitivity.	Follow DEQ recommendations.	Agree
		Establish guidelines for how to document Water Quality problems.	In progress.
		Add one (1) point for unlisted stream segments.	
4.	Points for Health Hazard Annexation.	Follow DEQ recommendations.	Agree
5.	Public review of priority ranking system and Clean Water Strategy.	OK - but consider expanding.	Under review.
6.	Limits on loan increases.	Keep as is in original rules.	Agree
7.	Security requirements, reserves.	Follow DEQ recommendations. Individualize security/reserve requirements.	Agree

CG\WC6518 (5/3/90)

SUMMARY Cont'd

	ISSUES	TASK FORCE RECOMMENDS	DEQ RESPONSE
8.	Medium size community reserve.	None.	Agree
9.	25% Cap on loans.	15% Cap.	Agree
10.	Environmental review/environmental impact statement responsibility.	1. Prepare a Handbook. 2. DEQ pay for EIS if no project. 3. Consolidate EA into facility plan.	Agree
11.	Growth.	No (Reserve capacity OK).	Agree
12.	Simplify application process.	Accept old facility plan findings for phased project.	Agree
13.	Financial capability points.	Address later.	Agree

CG\WC6518 (5/3/90)

SUPPLEMENTAL DEPARTMENT REPORT

SIX STATUTORY FACTORS EQC MUST CONSIDER

Background

In 1987, the Clean Water Act was amended to phase out the Construction Grants Program and replace it with the State revolving fund (SRF). The Construction Grants Program has provided grants for sewage treatment facility planning design and operation since 1972. Under the SRF, the federal government will offer capitalization grants through 1994 in order to allow each state to establish a SRF.

In 1987, the Oregon legislature adopted legislation (ORS 468.423 - 468.440, Attachment B) authorizing development of a State Revolving Fund Program. The purpose of the program is to provide an ongoing source of financing for planning, design and construction of water pollution control facilities. In order to implement the State Revolving fund legislation and to comply with federal SRF legislation, the Department is proposing adoption of the attached rules (Attachment A).

Issues, Alternatives, and Evaluation

Under state statutory requirements, the Environmental Quality Commission is required to "establish by rule, policies for establishing loan terms and interest rates" (ORS 468.440). In establishing the policy, the Commission must consider the following factors:

1. The Capability of the Project to Enhance or Protect Water Quality. The proposed amendments to the SRF priority system will continue to protect and enhance water quality in the state. The priority system considers the capability and need for the project to enhance or protect water quality by providing a higher ranking for projects with greater water quality impacts as reflected by DEQ or EQC enforcement actions, regulatory standards, health hazards, population size and waterbody sensitivity to pollution (OAR 340-54-025).

2. The Ability of A Public Agency to Repay a Loan. In developing the proposed rule amendments, the Department weighed the value of requiring communities to provide a substantial amount of security to assure loan repayment against the value of requiring a minimal amount of security, such as dedicated user fees, to make SRF funds available to majority of communities. The Department believes the rules provide a middle ground where a reasonable amount of security is required which is within the means of most communities.

The temporary rules allows the Department to make loans to public agencies which provide loan security that is different but substantially equivalent to the security required for other types of loans allowed by the rules. This change would give the Department the ability to make loans to communities which are unable to provide exactly the type of security which the rules currently require but which can provide other types of equivalent security.

3. Current Market Rates of Interest. No change in interest rates is proposed at this time. The Department will re-evaluate interest rates and return to the Commission with recommendations by September 1991.

4. The Size of the Community or District to be Served by the Treatment Works. The proposed rule amendments address the size of the community or district to be served in several ways. First, the proposed rule amendments retain the small community reserve. The amendment, however, limit funding from the small community reserve to projects which receive at least 30 enforcement water quality violation points on the SRF priority list. The intent of this amendment is to ensure that small community reserve funds are loaned to small communities with existing documented water quality problems rather than to potential problems. This amendment will avoid the possibility of small community reserve funds going to potential or undocumented water quality problems, thereby preventing funding or a more serious documented water quality problem in a larger community. This amendment is consistent with Funding Number 1 above.

5. The Type of Projects Financed. The Department proposes to allow funding for all of the types of projects which the state is allowed to fund under the federal legislation (OAR 340-54-015(1)). This includes providing unlimited funds for collectors. When the current SRF rules were adopted in March 1989, the Federal Clean Water Act limited funding of collectors to 33% of the SRF each year. Since then, Congress eliminated this limit on collector spending in the 1990 appropriations bill. Though this bill only affect the 1990 capitalization grant, it is likely that the Clean Water Act will be amended to permanently eliminate this collector limitation. In response, the SRF Task Force discussed whether Oregon should limit funding for collector projects.

   The task force recommendation was to place no limit on collector funding since this type of project may be the only solution to serious water quality problems. Therefore, the proposed rule amendments include no proposed limits on spending for collectors.

6. The Ability for the Applicant to Borrow Elsewhere. No changes to the rules are proposed with regard to this factor.

Environmental Quality Commission

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

MEMORANDUM

TO: **Environmental Quality Commission** DATE: June 1, 1990

FROM: **Maggie Conley, Hearing Officer**

SUBJECT: **Report From the Hearing Held June 1, 1990**

PROPOSED STATE REVOLVING FUND RULES

Summary of Proceedings

Notice of the hearing was provided to over 600 cities, counties, service districts, consultants and private citizens.

No one attended the hearing which was held at 10:30 a.m. on June 1, 1990, in Portland, at 811 S.W. Sixth Avenue, in Room 10A. Maggie Conley, SRF Coordinator, presided.

EPA submitted written comments on the proposed rule amendment.

Summary of Testimony

EPA's testimony supported adoption of the proposed rule amendments, with the exception of the section related to repayment of SRF loans for development of environmental assessments and EISs. EPA recommended that the rules specifically identify when these loans must be repaid. (Testimony attached)

CG\WC6648

JUN 11 1990

Reply to
Attn. of: WD-085

Maggie Conley
Dept. of Environmental Quality
811 SW Sixth Avenue,
Portland, OR 97204

Dear Ms. Conley:

I have reviewed the May 11, 1990 draft of the State Revolving Fund Program rules. Our comments are briefly outlined below. Inserted language is underlined.

Page A-9, **Uses of the Fund**, 340-54-020 (1):
Not all of the uses allowed under Title VI of the Clean Water Act are covered here. You might want to consider adding "(buy or refinance)" after "acquire."

The SRF can only **fund reserves** for projects that are receiving SRF loan assistance.

Page A-30, **Environmental Impact Statement Costs** (B):
It is not clear whether SRF loan funds are to be used to pay the costs of EIS preparation. If a project receives SRF loan funds and is unable to complete the scope of work planned in the loan agreement, then it is imperative that a "project completion" date be assigned by the Department, so the repayment can be initiated within one year. Repayment can not be deferred more than one year past completion of a project financed by an SRF loan.

Page A-37, **Loan Terms and Interest Rates**, 340-54-065 (2)(c)(C):
At the end of the section, the phrase "in the SRF" should follow "Department."

Page A-40, (7) **Commencement of Loan Repayment:**
In the event that a project is completed prior to the date estimated in the loan agreement, the following modifications would be appropriate:
...shall begin within one year after the date of project completion, or as estimated in the loan agreement (whichever is earlier).

Thank you for the opportunity to review the rule modifications. Please feel free to call me on 206/442-2634 if you want to discuss our comments.

Sincerely,

James H. Werntz
Municipal Facilities Branch

cc: Willie Olandria, OOO

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: June 29, 1990
Agenda Item: Z
Division: Water Quality
Section: Industrial Waste

SUBJECT:

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

PURPOSE:

There are several proposed minor modifications to existing water quality rules. A brief description of each follows:

(1) Make OAR Chapter 340 Division 45 consistent with Division 14 by adding language to clarify that a National Pollutant Discharge Elimination System (NPDES) permit will not expire until final action is taken on the renewal application, if the renewal application has been submitted in a timely manner.

(2) Make permitting rules and confined animal feeding or holding rules consistent with HB 3445, adopted by the 1989 legislature.

(3) Identify the circumstances under which the Director can issue a Stipulated Consent Order in lieu of, or in addition to, a permit.

(4) Exempt small impoundments and oil/water separators from the requirement to have engineering plans approved by the Department of Environmental Quality (Department).

ACTION REQUESTED:

___ Work Session Discussion
___ General Program Background
___ Program Strategy
___ Proposed Policy
___ Potential Rules
___ Other: (specify)

__ Authorize Rulemaking Hearing
- Proposed Rules (Draft) — Attachment __
- Rulemaking Statements — Attachment __
- Fiscal and Economic Impact Statement — Attachment __
- Draft Public Notice — Attachment __

_X_ Adopt Rules
- Proposed Rules (Final Recommendation) — Attachment A
- Rulemaking Statements — Attachment B
- Fiscal and Economic Impact Statement — Attachment C
- Public Notice — Attachment D

___ Issue Contested Case Decision/Order
- Proposed Order — Attachment ___

___ Other: (specify)

DESCRIPTION OF REQUESTED ACTION:

The Department is requesting the Environmental Quality Commission (Commission) to adopt minor rule changes in the water quality rules. Since there are several rule changes which are independent of each other, the Commission may adopt all or only a portion of the entire rule package.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 468.020, 730, 740 Attachment ___
_X_ Amendment of Existing Rule: Div. 14,45,51,52 Attachment ___
___ Implement Delegated Federal Program:
_____ Attachment ___

___ Other: Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation Attachment ___
_X_ Hearing Officer's Report/Recommendations Attachment E
___ Response to Testimony/Comments Attachment ___
_X_ Prior EQC Agenda Items: **Hearings Authorization March 1, 1990, not attached.**

Attachment ___
_X_ Other Related Reports/Rules/Statutes:
AG's opinion on legality of continuing expired NPDES permits. Attachment _F_
___ Supplemental Background Information Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

For the most part, these rule changes are not controversial and should receive support from the regulated community and environmental advocates. At the public hearing held April 4, 1990, seven people were in attendance. There was an exchange of questions but no formal testimony was given. There was general support for the rule modifications. The only written testimony was from the Northwest Environmental Defense Center (NEDC). They didn't have any problems with the rules as proposed but suggested that the Department add additional rules to strengthen the confined animal feeding operations (CAFO) program.

PROGRAM CONSIDERATIONS:

Attached to this report as Attachment A is a discussion of each of the proposed rules. Attachment A explains the existing problem which caused the Department to propose rule changes, the various alternatives considered, and the proposed rules changes.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

It is recommended that the Commission adopt the rules as proposed. Most of the rule changes are necessary in order to provide consistency and clarity. There were other rule clarifications related to gold mining permits which have been pulled from this rule adoption package to be acted upon at a later date.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

All of these proposed rule changes are consistent with current policies.

ISSUES FOR COMMISSION TO RESOLVE:

1. Even though ORS 183.430 provides for expiring permits to remain in effect until the Department takes final action on the renewal application, should this issue be made more clear to the regulated community by including it in OAR Chapter 340 Division 45? (See Attorney Generals Opinion - Attachment F)

2. Periodically the Department uses stipulated consent orders in lieu of or in addition to water quality permits. Should this practice be defined by rule?

3. Should those facilities covered by general permits for their wastewater disposal be required to pay a small annual fee if they are in a category which the Department determines needs a periodic inspection by the Department?

4. Should the list of those facilities not requiring submittal of engineering plans prior to construction be expanded to include small impoundments for non-hazardous wastes and small oil/water separators?

INTENDED FOLLOWUP ACTIONS:

If the Commission adopts these proposed rule changes, they will be filed with the Secretary of State to become effective immediately.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Charles K. Ashbaker

Phone: 229-5325

Date Prepared: April 12, 1990

CKA:crw
IW\WC6547
May 8, 1990

Attachment A

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: June 1, 1990

TO: Environmental Quality Commission

FROM: Kent Ashbaker

SUBJECT: PROPOSED CHANGES IN WATER QUALITY RULES

These are incidental rule changes which are needed in the water quality rules. There are minor changes in Division 14, 45, 51, and 52. This discussion will list the problem to be solved or other reason to change the rules. It will list the alternatives considered, if any, and will then show the proposed rule changes in context with the existing rules. Additions are underlined. Deletions are in [~~brackets~~].

Problem:

Oregon Administrative Rules Chapter 340, Division 14, establish the Department's general procedures for issuance, denial, modification, and revocation of permits. Rule 340-14-030 states that, "If a completed application for renewal of a permit is filed with the Department in a timely manner prior to the expiration date of the permit, the permit shall not be deemed to expire until final action has been taken on the renewal application to issue or deny a permit". This policy has been followed by the Department since permits were first issued. When the Department adopted specific rules for regulating the issuance of NPDES permits, found in OAR Chapter 340 Division 45, the language found in Division 14 concerning renewal of permits was inadvertently omitted. OAR 340-45-040 should be changed to include the omitted language.

Alternatives Considered:

The only alternative considered was to not propose the rule change. The Oregon Administrative Procedures, ORS 183.430, provides that licenses (permits) remain in effect until the agency takes final action on a renewal application. Since this requirement is statutory, adoption of an equivalent rule is probably not necessary. However, this practice would be more clear to those who are regulated by water quality rules, if the rule is adopted.

Proposal Changes:

Make the following addition to OAR 340-45-040:

OAR 340-45-040 The procedures for issuance of an NPDES permit shall apply to renewal of an NPDES permit and to modification requested by the permittee. If a completed application for renewal of a permit is filed with the Department in a timely manner prior to the expiration date of the permit, the permit shall not be deemed to expire until final action has been taken on the renewal application to issue or deny the permit.

Problem:

House Bill 3445, which was adopted by the 65th Oregon Legislative Assembly in 1989, requires the Department to issue a permit for confined animal feeding operations which does not expire. Oregon Administrative Rules, Division 14, limits the term of DEQ permits to a maximum of 10 years. A change must be made in the rules to be compatible with the new law.

Alternatives Considered:

none

Proposed Changes:

Add to OAR 340-14-015(2).

340-14-015 (1) . . .
(2) The duration of permits will be variable, but shall not exceed ten (10) years[.], except for permits issued to "confined animal feeding operations" pursuant to ORS 468.740 as amended by House Bill 3445. Those permits shall not expire, but may be revoked or modified by the director or may be terminated upon request by the permit holder.

Problem:

Division 51 Contains a definition of "Confined Animal Feeding Operation" which has been used since the rules were adopted in 1972. The 1989 Oregon Legislature adopted a new definition of Confined Animal Feeding Operation in HB 3445. The definition in Division 51 should be changed to be consistent with HB 3445.

Alternatives Considered:

none

Proposed Changes:

Change the definition in OAR 340-51-010(2).

340-51-010

. . .

(2) "Confined animal feeding [~~or holding~~] operation" means the concentrated confined feeding or holding of animals or poultry, including, but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms, in buildings or in pens or lots where the surface has been prepared with concrete, rock or fi[~~g~~]brous material to support animals in wet weather or [where the concentration of animals has destroyed the vegetative cover and the natural infiltrative capacity of the soil] which have wastewater treatment works.

Other corrections of typographical errors:

340-51-030 . . .

(8) Western Oregon Livestock Association . . .

340-51-060 (1) . . .

(d) . . . washout in the event of failure . . .

Problem:

The regular permitting process does not lend itself to the coordinated approach desirable for environmental cleanups. A preferred process might be for the Director to issue a Stipulated Consent Order which addresses waste water disposal issues, contaminated soil disposal issues, and air quality issues all in the same document. Often the cleanup process, particularly motor vehicle fuel spills and leaks, needs to proceed faster than the permitting process allows.

There are also other instances where it would be desirable to issue a Stipulated Consent Order in addition to, or in lieu of, a permit. In the case of discharges from container nurseries, the nurserymen prefer to be regulated by order rather than by permit. There are many instances where the Department has issued an order in lieu of or in addition to a permit. However, it is not addressed in Water Quality rules.

Alternatives Considered:

The only alternative considered was to continue to issue Stipulated Consent Orders without the procedures being established by rule.

Proposed Changes:

In order to clarify a process for issuing stipulated consent orders in addition to a water permit or in lieu of a water permit, particularly for the disposal of wastewater associated with an environmental cleanup, the following addition to the Division 45 rules is suggested:

Stipulated Consent Orders

340-45-062 (1) The Director may issue a stipulated consent order in lieu of, or in addition to an NPDES permit or a WPCF permit where it is part of an enforcement action, wastewater disposal associated with the cleanup of a spill, or other activity which does not lend itself to the normal permitting process or permit term.
(2) The stipulated consent order may include, but not necessarily be limited to, compliance schedules, effluent limitations, monitoring and reporting requirements, and/or stipulated penalties.
(3) The term of a stipulated order, when used in lieu of a permit, shall not be longer than the term of the type of permit it is replacing.
(4) For the issuance of a stipulated consent order, the normal permitting procedures found in rules Chapter 340 Divisions 14 and 45 are not required but are optional. However, when the order is issued in lieu of an NPDES permit, a public notice announcement of that intended action will be distributed at least 30 days prior to finalizing the order, except for environmental cleanups or other instances where a delay in issuing the order may magnify the problem. In that instance, a public notice announcement may be issued at the same time the order is issued.
(5) When a stipulated order is used in lieu of a permit, the fee schedule for permits found in 340-45-075 shall apply.

Problem:

There has been some confusion about which permit fees are associated with the registration for coverage under a General Permit issued pursuant to OAR 340-45-055 and for a request for a Special Permit issued pursuant to OAR 340-14-050. Language needs to be added to the Permit Fee Schedule specifying that, unless the fees have been waived by rule, the Filing Fee is required for General Permit registration and for a request for a Special Permit. The rules also need to clarify that a Permit Processing Fee is not required for a General Permit. A small processing fee should be required for a Special Permit.

Alternatives Considered:

The Department did consider requiring those applying for a General Permit to pay a permit processing fee as well as a filing fee. However, since the general permit has already been issued, applying it to any particular source does not require the same staff effort that would be required if an individual permit was to be written and processed. Therefore, requiring payment of a permit processing fee cannot be justified.

To date, no fees have been charged for Special Permits. However, the number of requests for special permits have accelerated the past year. There has been considerable staff time involved in drafting these "letter permits" especially for short term gasoline cleanup projects.

Proposed Changes:

Change the requirements for filing fees and processing fees found in OAR 340-45-075.

340-45-075 (1) Filing Fee. Unless waived by this rule, a [~~A~~] filing fee of $50 shall accompany any application for issuance, renewal, modification, or transfer of an NPDES [~~Waste Discharge~~] permit or [~~Water Pollution Control Facilities~~] WPCF permit, including registration for a General Permit pursuant to OAR 340-45-033 and request for a Special Permit pursuant to OAR 340-14-050.

(2) Application Processing Fee. An application processing fee varying between $75 and $2000 shall be submitted with each application, except that an application processing fee is not required to register for coverage under a General Permit. The amount of the fee shall depend on the type of facility and the required action as follows:
(a) New Applications . . .
. . .
(e) Special Permits issued pursuant to OAR 340-14-050 . . . .$75

Problem:

Normally, permittees covered by General Permits have not been assessed an Annual Compliance Determination Fee because the sources have not been routinely inspected. It has been determined that some of the categories of General Permits should be inspected at least once during the term of the permit. For those categories, a fee will be added which is one fifth (1/5) the amount of annual fee for like facilities on individual permits. Under the current fee schedule this will be $25 to $60 per year. Under a revised fee schedule which is being proposed under a separate rule package, the fees would range from $30 to $80. For the purposes of this fee schedule modification, the new proposed fees will be used in making the calculation.

Alternatives Considered:

(1) The annual compliance determination fees for general permittees could be the same as is assessed individual permittees. However, the inspection frequency is much less because they are considered minimal sources.

(2) A small annual compliance determination fee could be charged which is the same for all general permittees. Although this would simplify the fee schedule, some categories of general permittees are likely to be inspected more frequently than others so a varied schedule would more accurately portray Department costs.

(3) Establish a fee schedule which is a certain fraction (1/5) of the schedule the permittee would pay if on an individual permit. This is the alternative recommended.

Proposed Changes:

Minor clarification made in (P). New categories (R), (S), and (T) are added to the permit fee schedule in OAR 340-45-075.

340-45-075(3)(b)

(A) . . .

. . .

(P) Dairies and other confined feeding operations <u>on individual permits</u> . . .

(Q) . . .

<u>(R) General Permits 100-J, 200-J, 400-J, 500-J, 1000 - - - - - $50</u>

(S) General Permit 300-J - $30
(T) General Permits 900-J, 1200-J, 1300-J, 1400, 1500-J - - - $80

Problem:

Oregon Revised Statutes 468.742 requires plan approval by the Department for the construction, installation, or modification of disposal systems prior to construction. By rule, the Commission may exempt from this requirement the class or classes of disposal systems for which the Commission finds plan submittal and approval unnecessary or impractical.

There are certain small impoundments used for the treatment or disposal of cooling water or for the treatment or disposal of muddy wastewaters associated with small gravel mining operations, placer mining operations, or stormwater treatment systems. These small ponds do not normally need to be engineered but can be constructed by the site operator without plans as the need arises. An additional exemption for these types of treatment ponds should be included in the list of exemptions in 340-52-045.

Another type of water treatment facility not requiring plan review is the small oil/water separator. These are usually pre-manufactured units. They are often used for removing petroleum products in stormwater runoff from parking lots and other contaminated areas. Most of them are now installed without Department review.

Alternatives Considered:

The only alternative considered was to not add these two exemptions to the plan review rules.

Proposed Changes:

Two additional exemptions will be added to OAR 340-52-045 as (3) and (4). The existing (3), (4), and (5) will be renumbered as (5), (6), and (7).

340-52-045

. . .

(3) Small ponds used for cooling purposes or for the treatment and disposal of turbid wastewaters associated with gravel mining operations, placer mining operations, or, stormwater control systems are exempt from plan submittal under the following conditions:

(a) The pond will not have a dam or dike more than five(5) feet in height or have a surface area of more than 20,000 square feet; and

(b) Groundwater will be adequately protected without the need for an artificial liner; and

(c) No toxic chemicals or industrial wastewater other than cooling water, turbid waters, or turbid waters mixed with non-toxic coagulants will be discharged to the facility; and

(d) Disposal will be by recirculation, evaporation, and seepage with no direct discharge to surface waters.

(4)Small oil/water gravity separators are exempt, if they are designed to meet an effluent limit of no more than 10 milligrams per liter oil and grease and are designed to treat no more than 50 gallons per minute.

Renumber:

[~~(3)~~](5) The Department may exempt other facilities. . .

[~~(4)~~](6) The Department may exempt from submittal . . .

[~~(5)~~](7) The Department may cancel in writing an . . .

Attachment B

RULE MAKING STATEMENTS

STATEMENT OF NEED FOR RULEMAKING

(1) Legal Authority:

Some of the rule modifications are made pursuant to the general rulemaking authority found in ORS 468.020.

Those rule changes related to confined animal feeding operations are made pursuant to the changes to ORS 468.020 as per HB 3445, passed by the 65th Oregon Legislative Assembly.

One of the rule modifications is made pursuant to Oregon Administrative Procedures found in ORS 183. 430.

(2) Need for the Rule:

There are several rule modifications proposed as follows:

(a) OAR Chapter 340 Division 45 needs to be modified to add the administrative procedure which allows an existing permit to remain in effect until the Department has acted upon the renewal application. This is needed to clarify existing procedures.

(b) Changes need to be made in OAR Chapter 340 Divisions 14 and 51 to make them consistent with changes made to ORS 468.740 by HB 3445.

(c) The current practice of issuing stipulated consent orders in lieu of, or in addition to, a permit needs to be described by rule.

(d) The fee schedule found in OAR 340-45-075 needs to be changed to clarify the fees required for General Permits and Special Permits. In addition, the fee schedule needs to clarify which mining operations would be considered "Major" and requiring the fees associated with major facilities.

(e) OAR Chapter 340 Division 52 needs to be changed by expanding the list of those small waste water treatment devises which do not require engineering plans to be prepared. This will bring the rules in line with current practice.

(3) Principal Documents Relied Upon in this Rulemaking:

HB 3445, passed by 1989 Oregon Legislature.

ORS 468.020, 730, 740

ORS 183.430

OAR Chapter 340 Divisions 14, 45, 51, and 52.

These documents are available for review during normal business hours at the Department's office, 811 SW sixth, Portland, Oregon, 5th floor.

LAND USE COMPATIBILITY STATEMENT

All of this proposed rulemaking involves only the modification of existing rules. The Department does not believe that any of the proposed rule modifications affect land use. All of the proposed rule modifications are consistent with Land Use Goals 6 and 11.

Public comment on any land use issue involved is welcome and may be submitted in the same fashion as indicated for testimony in this notice.

It is requested that local, state, and federal agencies review the proposed actions and comment on possible conflicts with their programs affecting land use and jurisdiction.

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

Prepared by: Charles K. Ashbaker
Phone Number: (503) 229-5325

Attachment C

FISCAL AND ECONOMIC IMPACT

Most of these proposed rule modifications will have no fiscal or economic impact. Those which will are described in detail, as follows:

Modifying the permit fee schedule in OAR 340-45-075 to establish an annual compliance determination fee for general permittees which is 1/5th the fee required of permittees with individual permits, will add a small fee ranging between $25 to $60 per year for most general permittees under the current fee schedule. This amount would change to range between $30 and $80 under a new proposed fee schedule. This is much less than the annual fee required of individual permittees. Small business impact will be minimal. One of the primary purposes of having general permits for certain categories of permittees is to lessen the impact on small business.

Modifying the permit fee schedule in OAR-45-075 to waive permit processing fees for those facilities registering to be covered by a general permit will be a savings of about $600 per permittee for the initial permit and about $300 per permittee for permit renewal. Many of the sources covered by the general permits which would benefit by this fee waiver are small business.

Prepared by: Charles K. Ashbaker
Phone Number: (503) 229-5325
Date Typed: February 15, 1990

SED 424
11/1/87

NOTICE OF PROPOSED RULEMAKING HEARING

AGENCY: OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

The above named agency gives notice of hearing.

HEARING(S) TO BE HELD:

Date:	Time:	Location:
April 4, 1990	10:00 a.m.	DEQ Offices, 811 S.W. Sixth, Portland Room 4A

Hearings Officer(s): Charles K. Ashbaker

Pursuant to the statutory authority of ORS 468.020, ORS 468.730, and ORS 468.740 (ORS 468.740 is amended by HB 3445)

the following action is proposed:

ADOPT:

AMEND: OAR Chapter 340 Divisions 14, 45 and 52

REPEAL:

SUMMARY: There are several minor amendments to the DEQ permitting and plan review rules. Some of these amendments relate to permit fees. Others relate to stipulated consent orders, permitting non-point sources, waiving certain water pollution control facilities from engineering plan review requirements, and changing rules to conform to state and federal law.

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by 5 p.m., April 12, 1990 will also be considered. Written comments should be sent to and copies of the proposed rulemaking may be obtained from:

AGENCY: Department of Environmental Quality
ADDRESS: 811 SW Sixth
Portland, OR 97204

ATTN: Charles K. Ashbaker
PHONE: (503) 229-5325

Signature Date

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED MODIFICATION OF DEQ WATER QUALITY RULES

Notice Issued: 4-4-90
Comments Due: 4-12-90

HO IS THE PPLICANT

Operators of Confined Animal Feeding Operations. Holders of general permits, small mining operations, and persons installing oil/water separators.

HAT IS ROPOSED:

The Department of Environmental Quality is proposing to amend OAR Chapter 340, Divisions 14, 45, 51, and 52. These are considered minor modifications to bring the rules in line with current laws and practices and to clarify issues with regards to fees for general permits and issuance of stipulated consent orders.

HAT ARE THE IGHLIGHTS:

1. Make OAR Chapter 340 division 45 consistent with Division 14 by adding language regarding the fate of expiring NPDES permits when renewal application has been submitted in a timely manner.

2. Make permitting rules and confined animal feeding or holding rules consistent with HB 3445, adopted by the 1989 legislature.

3. Provide the circumstances upon which the Director can issue a Stipulated Consent Order in lieu of, or in addition to, a permit.

4. Clarify certain fee requirements pertaining to general permits and clarify the category of major mining operation.

5. Exempt small impoundments and oil/water separators from the requirement to have engineering plans approved by the Department.

OW TO COMMENT:

Copies of the complete proposed rule package may be obtained from the Water Quality Division in Portland (811 S.W. Sixth Avenue) or the regional office nearest you. For further information contact Charles K. Ashbaker at (503) 229-5325.

811 S.W. 6th Avenue
Portland, OR 97204

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

A public hearing will be held before a hearing office at:

(Time) 10 a.m.

(Date) April 4, 1990

(Place) Room 4A - DEQ Headquarters

811 S.W. 6th, Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Water Quality Division, 811 S.W. Sixth Avenue, Portland, OR 97204, but must be received by no later than 5 p.m., April 12, 1990.

HAT IS THE EXT STEP:

After public hearing the Environmental Quality Commission may adopt rules amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation should come in April or May as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

WC6085

Attachment E

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: April 12, 1990

TO: Environmental Quality Commission

FROM: Kent Ashbaker, Water Quality

SUBJECT: Hearings Officer Report - Minor Rule Modifications in OAR Chapter 340 Divisions 14, 45, 51, and 52, Affecting Industrial and Agricultural Sources

The Commission authorized a public hearing on these proposed rule modifications at their regular meeting on March 2, 1990. A Hearing notice was mailed on March 5, 1990. The hearing notice was sent to the Department's rule mailing list as well as to each industrial and agricultural permittee. In addition, a news release was issued on April 2, 1990.

A public hearing on the proposed rule modification was held in the DEQ conference room at 10:00 am on April 4, 1990. There were six people in attendance, as follows:

Tom Donaca, Associated Oregon Industries
John Piccininni, Bonneville Power Administration.
David Wilkinson, 635 Capitol, Salem
Jerry Richartz, Oregon Steel Mills, Portland
Chuck Craig, Oregon Department of Agriculture
Tom Messecar, American Equipment, Portland

They entered into discussions about the proposed rules but none offered any formal testimony. They seemed to be satisfied with the rules as drafted.

The hearing record was left open until April 12, 1990. The only written testimony recieved was from the Northwest Environmental Defense Center (NEDC). They did not object to the rules as proposed. However, they suggested that the Department promulgate additional rules specific to confined animal feeding operations to assure that the facilities properly dispose of wastes at agronomic rates and in a manner which would prevent surface and groundwater pollution.

ATTACHMENT F

DAVE FROHNMAYER
ATTORNEY GENERAL

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

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

June 11, 1990

Lydia Taylor
Water Quality Division
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

Re: Proposed amendments to OAR 340-45-040 formalizing DEQ's practice of continuing expiring NPDES permits and the new ORS section 468.689(5) providing for non-expiring permits for Confined Animal Feeding Operations.
DOJ File No. 340-310-P0099-90

Dear Ms Taylor:

This letter addresses issues raised by Mr. John Bonine of the Western Natural Resources Law Clinic at the University of Oregon, and Mr. Karl Anuta of the Northwest Environmental Defense Council (NEDC) concerning the legalilty of DEQ's proposed amendments to OAR 340-45-040 and the new ORS 468.689(5). Both Mr. Bonine and Mr. Anuta are concerned that provisions of the Federal Water Pollution Control Act (FWPCA), 42 USCA. § 1251 et seq. (1983), preempt and invalidate the proposed DEQ amendments and ORS 468.689(5).

QUESTIONS

1. Does the five year limit on the duration of NPDES permits in § 402(b)(1)(B) of the FWPCA, 42 USCA § 1342(b)(1)(B) (1983), prevent the DEQ from allowing expiring NPDES permits to continue in effect pending agency action on a timely filed application for renewal?

2. Does the five year limit on the duration of NPDES permits in § 402(b)(1)(B) of the FWPCA, 42 USCA § 1342(b)(1)(B) (1983), preempt and invalidate the new ORS 468.689(5) which provides for indefinite permits for Controlled Animal Feeding Operations (CAFOs)?

ANSWERS

1. No. The U.S. Environmental Protection Agency (EPA) has adopted regulations interpreting § 558(c) of the Federal Administrative Procedure Act (APA), 5 USC § 558(c) (1988), as giving EPA the authority to allow NPDES permits to continue past their five year duration when the permitee has timely applied for a new permit and the agency has failed to act on the application before the old permit expires. (See 40 CFR § 122.6(a).) EPA also has provided, by regulation, that authorized states have similar powers when state statutes grant them the authority to continue permits in general. (See 40 CFR § 122.6(d).) Oregon is an authorized state and Oregon's APA contains such an authorization at ORS 183.430(1) (1989). Therefore Oregon, through the DEQ, can allow the continuation of NPDES permits pending agency action on a timely filed application for renewal.

2. No. The new ORS 468.689(5) was added pursuant to HB 3445, 65th Oregon Legislative Assembly, 1989 Regular Session, and requires that Water Pollution Control Facility (WPCF) permits for CAFOs "shall not expire." These are not NPDES permits, but are issued pursuant to state law and are intended to protect ground water supplies. A later section, also added by HB 3445, provides that NPDES permits for CAFOs and several other operations shall not exceed five years. (See ORS 468.740(1) (1989)).

DISCUSSION

The DEQ has recently proposed amendments to several rules in the OAR Chapter 340. Generally these amendments are intended to provice consistency among specific rules and to formalize current DEQ parctices. Of special concern here is the proposed amendment to OAR 340-45-040 which expressly allows the DEQ to continue in effect an expiring NPDES permit if the permitee has timely applied for a new permit and the DEQ has failed to act on that application prior to the expiration of the old permit. The automatic extension of NPDES permits under these circumstances is DEQ's current practice and this proposed amendment does not represent a new policy or procedure.

In a letter to Mr. Fred Hansen, dated May 24, 1990, Mr. John Bonine expressed his belief that this proposed amendment (and therefore DEQ's current practice) is in direct conflict with § 402(b)(1)(B) of FWPCA (42 USCA § 1342(b)(1)(B) (1983)). That section states, without implied or express exception, that NPDES permits shall be "for fixed terms not exceeding five years."

Mr. Bonine's letter contains a convincing analysis of the language of § 402 of FWPCA and its legislative history. This analysis leads directly to the conclusion that DEQ's proposed amendment to OAR 340-45-040 violates and is invalidated by the term limitation included in FWPCA. However, Mr. Bonine has apparently overlooked one important item in his research which disposes of this question in favor of the DEQ.

The EPA regulations for EPA-administered NPDES permit programs are located in 40 CFR Part 122. § 122.6 specifically allows the EPA to continue the conditions of an expired EPA-issued permit when the permitee has timely filed a complete application for a new permit and the EPA, "through no fault of the permitee does not issue a new permit . . . on or before the expiration date of the previous permit." 40 CFR § 122.6(a)(2). EPA cited § 558(c) of the Federal Adminsitrative Procedure Act (5 USC § 558(c) (1988), as its authority when it promulgated the original version of this regulation in 1978. (See 43 Fed. Reg. 37,081, (1978).) § 558(c) of the APA provides that:

> When a licensee has made timely and sufficient application for a renewal or a new license . . . a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

5 USC § 558(c) (1988).

In 1979, the EPA promulgated the original version of 40 CFR § 122.6(d), which extended the same power to continue NPDES permits to authorized States which have legislation similar to that contained in § 558(c) of the APA. (See 44 Fed. Reg. 32,861 (1979).)

These regulations have gone through some minor revisions since they were first promulgated, but have been in force in their current form since 1983. (See 48 Fed. Reg. 39,611 (1983).) I do not know if they have been challenged in court, but they have not been altered or invalidated by Congressional or court action.

The Oregon APA contains language similar to that found in § 558(c) of the federal APA. ORS 183.430(1) provides that:

> In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal . . . such license shall not be deemed to expire . . . until the agency concerned has issued a formal order of grant or denial of such renewal.

Accordingly, unless there were a ruling that EPA's regulations are unlawful, a court likely would find that DEQ, as the Oregon agency authorized to issue NPDES permits, has the authority by virtue of federal regulation (40 CFR § 22.6(d)) and state statute (ORS 183.430(1)) to continue expiring NPDES permits pending final agency action on a timely filed application for a permit renewal. The DEQ may continue its current policy of carrying out this practice and it may formalize this practice by rule if it so desires without violating FWPCA.

The second issue, raised by Mr. Karl Anuta of the NEDC, suggests that the new ORS 468.689 violates the same section of the FWPCA discussed above; § 402(b)(1)(B), which limits the duration of NPDES permits to no more than five years. 42 USCA § 1342(b)(1)(B) (1983).

ORS 468.689 was amended in 1989 by HB 3445 to provide, among other things, that "permits" for CAFOs "shall not expire." ORS 468.689(5) (1989). CAFO's are defined in the FWPCA as "point sources" (42 USCA § 1362(14) (1983)), and point sources require NPDES permits for "any discharge of a pollutant." "Discharge of a pollutant" is defined as "any addition of any pollutant to navigable waters from any point source." 42 USCA § 1362(12) (1983) (emphasis added). Thus the Oregon statute seems to be in direct conflict with the requirements of the FWPCA. However, the "permits" referred to in ORS 468.689(5) are not NPDES permits; they are Water Pollution Control Facility (WPCF)

permits issued pursuant to state law and do not concern the "discharge of pollutants" as defined in the FWPCA. WPCF permits are issued on the conditions that the disposal system has "no discharge to navigable waters." OAR 340-45-010(24).

Thus, WPCF permits pick up where NPDES permits leave off and are not controlled by the FWPCA. The statutorily prescribed indefinite term for WPCF permits does not conflict with the FWPCA five year limit on NPDES permits and so there is no preemption of the new ORS 468.689 by the FWPCA.

Please feel free to call me if you have any questions.

Sincerely,

Shelley K. McIntyre

for Michael B. Huston
Assistant Attorney General

MBH:cd/aa
#1283Y

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF REFRESHER TRAINING) FINAL ORDER
FOR SMALL-SCALE ASBESTOS WORKERS)

FINDINGS

Pursuant to ORS 468.887 through 468.893 and ORS 183.310 through 183.550 and OAR 340-33-050 (7)(b), the Environmental Quality Commission makes the following findings:

1. The asbestos certification requirements were first adopted by the EQC on May 17, 1988 and became effective January 1, 1989. At the April 29, 1988 Commission meeting the EQC unanimously agreed to authorize refresher training for small-scale workers but to withhold it until a need was demonstrated.

2. There have been new and changed conditions since the first small-scale workers were trained in October 1988. These changes demonstrate the need to require refresher training for small-scale workers at least once during the two year certification period. The following changes have occurred:

A. At the January and March 1990 EQC meetings, the Commission adopted extensive rule changes to administrative rules governing asbestos work practices and training requirements in Divisions 25 and 33. These amendments affect small-scale abatement workers.

B. There have been extensive changes in the area of non-friable asbestos abatement work practices, most notably affecting non-friable vinyl asbestos tile. These work practices are equally useful in residences, schools and other facilities. New work practices for vinyl asbestos tile have been approved by OR OSHA and the Department, and effectively control asbestos fiber contamination and reduce removal costs. Work practices for the removal of vinyl sheet goods are also being developed.

C. The Department has received regular inquiries from small-scale workers concerning refresher training as a requirement for re-certification. As many small scale workers use their abatement skills infrequently, they are concerned that they may not safely remove asbestos when called upon to do so. Some small-scale workers have even taken full-scale refresher training in lieu of small-scale refresher training.

ORDER

Based upon the above findings, IT IS HEREBY ORDERED:

1. The Asbestos Control Program shall take all necessary administrative action to establish a refresher course for small-scale workers by October 1, 1990.

2. The small-scale refresher course shall contain at least three hours of classroom instruction and shall be required as prerequisite to re-certification. The small-scale workers shall take the refresher course at some time during the six months

prior to expiration of certification. Workers unable to attend within the six month time period may request that the Department allow an earlier refresher date.

Pursuant to approval by the
Environmental Quality Commission
at its meeting on June 29, 1990,

IT IS SO ORDERED:

By: Fred Hansen 8/24/90

Fred Hansen, Director
Department of Environmental Quality

Date

BEA:a
ASB\AH9022
(6/90)

(399-7973)

PUBLIC FORUM STATEMENT OF HARRY DEMARAY
at EQC meeting 6/29/90, Portland, Oregon

(documents referenced are attached)

This is to bring you up to date on some events that have occurred since the Newport EQC meeting:

The DEQ has been evaluating the 16 violations that were in process when I was banished on March 30 this year. A law student, Dean Lanssdorf was hired to follow up on the violations, but he is temporary so Nancy Hogan is also working on 3 of the cases: Dr. Hutchinson, AQ and WQ Forest Grove; Lloyd Duyck, AQ and WQ Cornelius; and Sunnyside Park Apartments, AQ Portland.

When I met Dean recently, he had many questions, so I offered my help. While we were talking, Ed Woods, NW Region manager, interrupted and told Dean and me that all enforcement files are confidential and off-limits to me. After confirming that I heard correctly, I reminded Ed that I developed the files, but he insisted the files are closed to me.

This blatant attempt to rewrite the law of public documents is not surprising to me, but you may find such behavior odd, and, hopefully, it will help you understand the issues I have told you about at the last two EQC meetings.

I want it clearly understood that I have volunteered to help DEQ to complete the penalty assessment work that I initiated--at no cost to the State. So, if DEQ reports to you that they do not

have enough evidence to proceed, you will know they did not try very hard.

I want to thank Commissioner Wessinger for initiating the action to investigate my charges at Newport. Without his timely interjection, DEQ would not have acted on the 16 violations, as you can see by the attached verbatim minutes that I had transcribed.

Regarding the minutes, ORS 192.620-650 supports my statement at Newport that copies of measures proposed at public meeting should be attached to the minutes, intact. Certainly there is no authorization for DEQ to selectively edit written proposals submitted when the statute requires "... All minutes ... shall include ... all measures proposed and their disposition ...."

Tom Bispham's memo of May 31, 1990, to you refers to the list of violators that I submitted to you at Newport. The memo mentions only the open burning violations, although the two most serious and flagrant violations include water quality violations in the Tualatin Basin. I emphasize the water quality violations because my attempt to prosecute these violations according to law was strongly and strangely resisted by DEQ. These cases were a major element in the letter of dismissal DEQ issued me. Although I explained the source of criminal penalty authority to John Loewy and Donny Adair at my pre-dismissal hearing, they disregarded the facts and dismissed the issue (and me) without comment.

No one has yet explained or justified the claim made by DEQ via George Davis in his memo to me of January 5, 1990, that, "DEQ

is not a criminal enforcement agency, and it is not appropriate to cite criminal penalties in our enforcement letters ...." ORS 468.990 clearly states DEQ has such authority, and this was confirmed at the request of EPA at your Pendleton EQC meeting.

I am planning to bring a civil action against DEQ for injunctive relief and damages under the Whistleblower Law, ORS 659.510, and other statutes.

Thank you. Are there any questions?

HARRY DEMARAY: I have a written statement I submitted, which I will read. I also wanted to comment on the minutes from the last meeting. Uh, it's my understanding that these meetings are, in effect, public hearings, and at a public hearing you normally attach the written testimony submitted. However, the minutes tend to - tend to summarize the testimony in a matter of a couple of sentences. I think the minutes should include any written testimony submitted.

CHAIRMAN HUTCHISON (CHAIR): Does the Attorney General or staff have any recommendation about how we - how we treat that? Just that we maintain written statements in a - in any kind of record with the minutes? I know we receive a lot of such information, Harry, so I doubt that we actually physically attach them. Yes, Michael?

COUNSEL MICHAEL HUSTON: (Inaudible) does require a (inaudible). There is no - there is no legal requirement for (inaudible) public hearings as part of (inaudible) of records.

CHAIR: Okay.

COUNSEL HUSTON: (Inaudible).

CHAIR: I think --

COUNSEL HUSTON: We keep records of it all.

CHAIR: And we incorporate our staff reports, I think by reference, as I - if I've read the past minutes correctly. So, we think we captured what you said in the minutes, Harry.

MR. DEMARAY: Well, I don't think you did; that's why I (unintelligible) what I said.

CHAIR: Well, I want - I want to draw a distinction between the Environmental Quality Commission and the Employment Appeals Board, and we are the former, not the latter, and, uh, there - there's just a limit to --

MR. DEMARAY: I don't think I ever said (inaudible).

HUTCHISON: Yeah, okay. So --

_____: Mr. Chairman, can I (unintelligible). Apparently, the audience is having some trouble, uh, hearing. I'm not sure if that requires the microphones to be a little bit closer to you all or - or not.

CHAIR: Okay. Have you got? --

MR. DEMARAY: I'd like to point out --

CHAIR: This microphone, I don't think, seems to pick anybody up for sure.

MR. DEMARAY: The attachment for this meeting that has (unintelligible) in it includes all the written testimony that was submitted for comment on that client. Any other similar-type document includes all the written testimony. Any - any rules change includes all the written testimony, so I don't see why the minutes of this meeting shouldn't also include the written testimony. You do not transcribe minutes. The minutes are taped and are stored.

CHAIR: Okay; anything else?

MR. DEMARAY: Yes (inaudible). Another question on the status of the civil penalty rules change that's underway.

CHAIR: Pardon me?

MR. DEMARAY: There was a public hearing on the civil penalty rules at Pendleton. I want to know what the status of that change is. It doesn't appear on this agenda (inaudible) Newport.

CHAIR: Uh, I - I think it's in process; it's not on our agenda today.

MR. DEMARAY: And so it's not finalized yet?

CHAIR: That's my understanding.

MR. DEMARAY: I asked for your help at the last meeting because I was fired by Fred Hansen and minions for enforcing Oregon's pollution control laws by the book, but apparently contrary to Hansen's and your policy decisions. I told you then that I left 16 documented Class I open burning violations on my desk when I was forced out. All violations are subject to and should be assessed civil penalties. Two of the violations also include serious water pollution problems in the Tualatin Basin that carry penalties up to $25,000 per day and one year in the county jail. Because you have not responded to my first report, I am planning to file a citizen's suit with EPA under Section 304 of the Clean Air Act and Section 505 of the Clean Water Act. I am attaching the list of 16 violations that I left for my ex-supervisor, George Davis, and Regional Manager, Ed Woods, to follow up.

None have been forwarded to the Enforcement Section for action. When I learned of the inaction, I met with Battalion Chief Marvin Wright at the Forest Grove Fire Department this past Wednesday and found him upset and angry because he could not get anyone at DEQ or EQC to follow on the violations we had found on land owned by Dr. Alfred Hutchinson of Portland. I have attached copies of Chief Wright's letter with his notes on the back, showing names he has called without results. They include the Director, the Chairman, and several other people of lower rank. Chief Wright said that this case is a perfect example of why fire departments have absolutely no respect for DEQ. The other violation was farther downstream on the Tualatin in the zone of the Cornelius Fire Department managed by Chief Chris Asanovic. Here on property held by Mr. Lloyd Duyck and the Lloy-Dene Corporation, a berry growing and packing operation, a huge pile of industrial waste, including tires, plastics, and Lord-knows-what-else, was burned. Some of the oily waste has gotten into the Tualatin River. Chief Asanovic has also been ignored by DEQ since I was ousted. An interesting story in the Oregonian ran in Tuesday's business section describing how GSL Properties, Inc., a New Mexico developer who landed in Oregon recently, is making hay--as well as smoke--in the apartment construction market. Their 309-unit complex on the old Frank Estate on SW Oleson Road was constructed with the assistance of a DEQ subsidy allowing them to get away with

open burning the waste Styrofoam form-liner from their construction foundations. My civil penalty recommendation was sacrificed on the altar of economic development, apparently. The very latest word on economic development is expressed in Governor Goldschmidt's Executive Order 90-10 which convenes a kangaroo court to acquit economic development before it is charged--all according to law as tempered by policy, of course. Do you have any questions?

CHAIR: Questions of the Commission.

(Pause)

CHAIR: No.

MR. DEMARAY: Thank you.

CHAIR: Um-hum.

(Pause)

Yes, Commissioner Wessinger?

COMMISSIONER WESSINGER: I think (inaudible) have a report at some time on what this is all about.

CHAIR: Um-hum.

COMMISSIONER WESSINGER: It does not have to be today, but (inaudible).

CHAIR: End of June work session (unintelligible).

_____: Okay.

CHAIR: (Unintelligible) give us a staff status report for that (unintelligible).

* * * * * * *

body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographic boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action. This subsection does not apply to the Oregon State Bar until December 31, 1980.

(5)(a) It shall be considered discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to the disabled, or, upon request of a hearing impaired person, to fail to make a good faith effort to have an interpreter for hearing impaired persons provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Disabilities Commission or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1]

192.640 Public notice required; special notice for executive sessions, special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

192.650 Written minutes required; content; content of minutes for executive sessions. (1) The governing body of a public body shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

(2) To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses;

(3) To provide that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters;

(4) To provide for the prevention, abatement and control of new or existing water pollution; and

(5) To cooperate with other agencies of the state, agencies of other states and the Federal Government in carrying out these objectives. [Formerly 449.077]

468.715 Prevention of pollution. (1) Pollution of any of the waters of the state is declared to be not a reasonable or natural use of such waters and to be contrary to the public policy of the State of Oregon, as set forth in ORS 468.710.

(2) In order to carry out the public policy set forth in ORS 468.710, the department shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by:

(a) Fostering and encouraging the cooperation of the people, industry, cities and counties, in order to prevent, control and reduce pollution of the waters of the state; and

(b) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468.710 and to conform to the standards of water quality and purity established under ORS 468.735. [Formerly 449.095]

468.720 Prohibited activities. (1) Except as provided in ORS 468.740, no person shall:

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the commission.

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468.740.

(3) Violation of subsection (1) or (2) of this section is a public nuisance. [Formerly 449.079]

468.725 Effluent limitations. In relation to the waters of the state, the commission by rule may establish effluent limitations, as defined in Section 502 of the Federal Water

468.975 [1987 c.695 §§3, 11; renumbered 454.436 in 1989]

468.977 [1987 c.695 §§4, 5, 8; renumbered 454.439 in 1989]

468.980 [1987 c.695 §6; renumbered 454.442 in 1989]

468.983 [1987 c.695 §7; renumbered 454.445 in 1989]

PENALTIES

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

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

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

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

(5) Violation of ORS 468.770 is a Class A misdemeanor.

(6) Intentional or negligent violation of ORS 468.785 (1) is a Class A misdemeanor. [1973 c.835 §28; subsection (5) formerly part of 448.990, enacted as 1973 c.835 §177a; 1989 c.859 §6]

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

(2) Refusal to produce books, papers or information subpoenaed by the commission

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may continue coverage by paying the entire premium pursuant to ORS 743.530. [1989 c.1044 §5]

DISCLOSURES BY PUBLIC EMPLOYEES (Whistleblowing)

659.505 Definitions for ORS 659.505 to 659.545. As used in ORS 240.316, 659.035 and 659.505 to 659.545:

(1) "Disciplinary action" includes but is not limited to any discrimination, dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects or will affect employee compensation.

(2) "Employee" means a person employed by or under contract with:

(a) The state or any agency of or political subdivision in the state;

(b) Any person authorized to act on behalf of the state, or agency of the state or subdivision in the state, with respect to control, management or supervision of any employee;

(c) Employees of the public corporation created under ORS 656.751;

(d) Employees of a contractor who performs services for the state, agency or subdivision, other than employees of a contractor under contract to construct a public improvement; and

(e) Any person authorized by contract to act on behalf of the state, agency or subdivision.

(3) "Public employer" means:

(a) The state or any agency of or political subdivision in the state; and

(b) Any person authorized to act on behalf of the state, or any agency of or political subdivision in the state, with respect to control, management or supervision of any employee. [1989 c.890 §2]

659.510 Prohibited conduct by public employer. (1) Subject to ORS 659.515, except as provided in ORS 240.316, 659.035 and 659.505 to 659.545, no public employer shall:

(a) Prohibit any employee from discussing, in response to an official request, either specifically or generally with any member of the Legislative Assembly or legislative committee staff acting under the direction of a member of the Legislative Assembly the activities of:

(A) The state or any agency of or political subdivision in the state; or

(B) Any person authorized to act on behalf of the state or any agency of or political subdivision in the state.

(b) Prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee for the disclosure of any information that the employee reasonably believes is evidence of:

(A) A violation of any federal or state law, rule or regulation by the state, agency or political subdivision;

(B) Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or

(C) Subject to ORS 659.525 (2), the fact that a person receiving services, benefits or assistance from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the Federal Government, or any territory, commonwealth or governmental instrumentality of the United States.

(c) Require any employee to give notice prior to making any disclosure or engaging in discussion described in this section, except as allowed in ORS 659.515 (1).

(d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or discussions described in this section.

(2) No public employer shall invoke or impose any disciplinary action against an employee for employee activity described in subsection (1) of this section or ORS 659.525. [1989 c.890 §3]

659.515 Effect on public employer's authority over employees. ORS 240.316, 659.035 and 659.505 to 659.545 are not intended to:

(1) Prohibit a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to official legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the agency or subdivision;

(2) Permit an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and policies pertaining to leaves, unless the employee is requested by a member of the Legislative Assembly or a legislative committee to appear before a legislative committee;

(3) Authorize an employee to represent the employee's personal opinions as the opinions of the agency or subdivision;

(4) Except as specified in ORS 659.525 (2), authorize an employee to disclose information required to be kept confidential under state or federal law, rule or regulation;

CANCELLED & SUPERSEDED ORS 240.316(5)

Klamath County ~ Board of Commissioners

COURTHOUSE ANNEX — 305 MAIN ST. — 503-883-5100 — KLAMATH FALLS, OREGON 97601-6391

STATEMENT BEFORE THE OREGON ENVIRONMENTAL COMMISSION
FRIDAY, JUNE 29, 1990

CHAIRMAN, MEMBERS OF THE ENVIRONMENTAL QUALITY COMMISSION. I AM HARRY FREDRICKS, CHAIRMAN, KLAMATH BOARD OF COUNTY COMMISSIONERS, KLAMATH COUNTY, OREGON.

TODAY, YOU ARE CONSIDERING APPROVAL OF THE KLAMATH FALLS OUT-OF-ATTAINMENT AREA STATE IMPLEMENTATION PLAN. WE ARE ASKING THAT YOU DELAY THE INTENDED PUBLIC HEARING SET FOR AUGUST 1990 UNTIL SUCH TIME AS A MANDATORY CURTAILMENT ORDINANCE IS ADOPTED BY BOTH KLAMATH COUNTY AND THE CITY OF KLAMATH FALLS.

WHEN I TOOK OFFICE IN JANUARY 1989, I GAVE A SOLEMN PROMISE TO MY CONSTITUENCY THAT THEY WOULD HAVE A VOLUNTARY PROGRAM FOR THREE YEARS.....AND I WILL KEEP THAT PROMISE, I ALSO MADE A SOLEMN PROMISE TO A JOINT OREGON LEGISLATIVE COMMITTEE THAT I WOULD LOOK INTO MANDATORY.....WE CURRENTLY HAVE A COMMITTEE DEVELOPING AN ORDINANCE THAT WILL BE ALL INCLUSIVE FOR THE COUNTY IF OTHER AREAS ARE DESIGNATED AS OUT-OF-ATTAINMENT.

IN CASE YOU ARE NOT AWARE, KLAMATH COUNTY HAS IF NOT THE BEST, ONE OF THE BEST VOLUNTARY COMPLIANCE AND EDUCATION PLANS EVER PUT TOGETHER IN THE ENTIRE UNITED STATES. SO FAR, WE HAVE MET EVERY GOAL OF THAT PLAN WITH THE REMARKABLE SUCCESS OF A FIFTY-THREE PER CENT REDUCTION IN POLLUTION LEVELS THIS PAST WINTER. WE ARE NOT TRYING TO SUBSTITUTE VOLUNTARY FOR MANDATORY.....HOWEVER, HISTORICALLY EVERY TOWN OUT-OF-ATTAINMENT HAS TO GO THROUGH A PROCESS OF REEDUCATION....WE FELT OUR EFFORT HAD TO BE EXCEPTIONAL.

IN ADDITION TO THE NEED TO HAVE A MANDATORY IN PLACE PRIOR TO THE APPROVAL OF A STATE IMPLEMENTATION PLAN, I THINK WE NEED TO SEE WHAT THE REAUTHORIZATION OF THE CLEAN AIR ACT HOLDS IN REGARDS TO PM-10S. WE BELIEVE DEQ IS OVERREACTING TO THE SIERRA CLUB SUIT. NO FEDERAL SANCTIONS HAVE BEEN PLACED

AGAINST CLEVELAND, OHIO, FOR THEIR FAILURE TO PRODUCE A SIP ON THEIR CARBON MONOXIDE OVERAGES, AND BY THE WAY, MOST OF THE MATERIAL IN THE CLEAN AIR ACT APPLIES TO HIGHWAY POLLUTION SUCH AS CO.....ON PAGE 11 OF THE SIP, MENTION IS MADE OF THE NEED TO HAVE A SIP IN PLACE "THEORETICALLY" BY SEPTEMBER 1, 1991, MONTANA WILL NOT BE SUBMITTING STATE SIPS UNTIL THE END OF 1992, NO SANCTIONS HAVE BEEN PLACED AGAINST THEM.

THE RELATIONSHIPS ON RESIDENTIAL WOOD HEATING ON PAGE 28 OF THE SIP ARE TOO HIGH, CONSIDERATION MIGHT BE GIVEN TO RESEARCHING THESE IN THE EPA GUIDANCE DOCUMENT. MAMMOTH LAKE, CALIFORNIA, USES 15 GRAMS PER KILOGRAM FOR REGULAR STOVES, 8.1 FOR CERTIFIED STOVES AND 14 GRAMS PER KILOGRAM FOR FIREPLACES. REFERENCE TO "DURABLE" STOVES SHOULD BE CHANGED TO "CERTIFIED." NO CREDIT IS OBSERVED ANYWHERE IN THE SIP FOR ALTERNATE HEAT CHANGEOUTS IN THE COMMUNITY AND THE INFORMATION IS AVAILABLE TO DEQ, FROM THE VARIOUS HEATING RESOURCES IN OUR COMMUNITY.

AT THIS TIME, WE FEEL DEQ MISLED THE COMMUNITY BY DEMANDING A MANDATORY ORDINANCE WHEN THE KLAMATH FALLS URBAN GROWTH BOUNDARY WAS PLACED ON THE GROUP I LIST.....AT THAT TIME THEY MAINTAINED THAT VOLUNTARY DOESN'T WORK....AND YOU SEE THAT WASN'T THE POINT.....IT WAS THE REEDUCATION THAT THE COMMUNITY NEEDED. HAD DEQ BEEN MORE POSITIVE AND HELPFUL, WE COULD HAVE JUST COMPLETED OUR THIRD YEAR OF VOLUNTARY AND BEEN READY FOR MANDATORY. I THINK IT IS IMPORTANT THAT WE ALL LEARN FROM THE EXPERIENCE.

WE THINK LOCAL AREAS SHOULD HAVE A GREATER OPPORTUNITY TO PARTICIPATE IN THEIR SIP CONTENT DEVELOPMENT.....GETTING DEQ TO MAKE CHANGES HAS BEEN DIFFICULT.

I HAVE BEEN ASKED TO PROVIDE A LEGAL DESCRIPTION OF THE KLAMATH FALLS URBAN GROWTH BOUNDARY.....THERE IS NONE. WE WERE TOLD THAT THE UGB WAS SELECTED BECAUSE EPA ASKS FOR A LEGALLY RECOGNIZED AND DEFINED AREA. IN TRUTH, OUR KLAMATH BASIN IS JUST AS LEGALLY DEFINED AND RECOGNIZED AS THE URBAN GROWTH BOUNDARY AND MORE APTLY DEFINES THE SMOKEY ZONES. WHY IS IT THAT A LARGER AREA WAS DEFINED FOR JACKSON COUNTY THAN KLAMATH COUNTY WHEN OUR AIR QUALITY IS WORSE AND THE AFFECTED ZONE ABOUT AS BROAD? WE NEED MORE AND BROADER BASED TESTING.

AND SPEAKING OF TESTING, A CONTROVERSY HAS DEVELOPED IN SHERWOOD RELATIVE TO THE INCREASE IN BURNING OF BIOWASTE MATERIAL THERE AND A NEED FOR TESTING. WELL, WE HAVE A BIOWASTE INCINERATOR TOO, AND WE DESPERATELY NEED TESTING DONE. WE HAVE BEEN TOLD OVER AND OVER THAT WE HAVE A DELICATE AIRSHED THAT HAS BEEN OVEREXTENDED, YET A BIOWASTE INCINERATOR WAS LICENSED HERE.....ALL THE COUNTY COMMISSIONERS WERE ALLOWED TO DO WAS DETERMINE THE PLACEMENT SUITABILITY UPON LAND USE ISSUES. WE WERE TOLD BY A DEQ PERSON IN LICENSING THAT IF WE DIDN'T WANT THE THING, WE SHOULD HAVE CHANGED OUR LAND USE PLANS.....WHICH IS INTERESTING, SINCE ALL LAND USE CHANGES HAVE TO BE APPROVED BY THE STATE. WHAT IS THE TRUE AFFECT OF THESE DIOXINS AND FURONS ON OUR AGRICULTURAL COMMUNITY? HOW IS THIS IN TIME GOING TO AFFECT OUR INDUSTRIAL LICENSING.....THE

CONTINUED GOOD HEALTH OF OUR MILLS IS MORE IMPORTANT TO US THAN THE INCINERATOR THAT PAYS MINIMUM WAGE. BY-THE-WAY, THE BACKWASH SLURRY FROM THE INCINERATOR IS BEING DUMPED IN THE SEPTIC SEWAGE LAGOONS SOUTH OF TOWN, NO TESTING FOR HEAVY METALS, DIOXINS OR ANYTHING HAS BEEN DONE ON THIS MATERIAL. THE INTENT IS TO SELL IT AS FERTILIZER.

BUT BACK TO THE SIP.....THIS IS AN ELECTION YEAR FOR TWO CITY COUNCIL SEATS AND I CAN ASSURE YOU, AT PRESENT THE CITY IS NOT INTERESTED IN MANDATORY DISCUSSIONS. YOU SEE, OUR POLITICIANS ARE VERY SENSITIVE TO AN OUTBREAK OF THE ANGER THAT WE EXPERIENCED BEFORE....SO MANDATORY MUST BE DONE CAREFULLY WITH A FULL REGARD TO THE NEEDS OF THE COMMUNITY, AND WE WILL DO IT.....AFTER, THE THIRD YEAR OF VOLUNTARY....AND I DON'T THINK THAT'S TOO UNREASONABLE.

THANK YOU FOR THE OPPORTUNITY TO SPEAK,

HARRY FREDRICKS, CHAIRMAN
KLAMATH BOARD OF COUNTY COMMISSIONERS

State of Oregon

Department of Environmental Quality

Memorandum

Date: June 14, 1990

CLEARANCE		
TO	INITIAL	DATE
Sawyer		6/14
Taylor		6/14
Ashbaker		6/14
Olson		6/14

To: Environmental Quality Commission

From: Fred Hansen

Subject: Special Authorization of Rulemaking Hearing

Washington County is one of 23 counties that operate the on-site sewage disposal program in their county pursuant to contractual agreement with DEQ. Washington County has asked for permission to increase the fees charged for On-Site Sewage Disposal permits and approvals effective July 1, 1990, to more nearly cover their costs for operation of the program.

ORS 454.745(4) authorizes the Commission to increase fees above the levels specified in the statute upon request of the Department or a Contract County provided that the increased fees are based upon "... actual costs for efficiently conducted minimum services." Commission rules currently establish a statewide fee schedule for on-site sewage disposal permits and approvals, and in addition, establish special fee schedules for Multnomah, Jackson, and Linn Counties.

Our routine rulemaking process would involve preparation of a Hearing Authorization Staff Report, Commission approval of the Hearing Authorization at the August 10, 1990 meeting, filing of the hearing notice with the Secretary of State by August 15 for publication in the Bulletin on September 1, 1990, a hearing near the end of September, and a return to the Commission for rule adoption at the November 2, 1990, meeting.

We believe it is appropriate to accelerate this process. Failure to do so would cause Washington County additional problems of revenue shortage. The main issue will be whether the information provided by the County and through the hearing process justifies the level of fee increase requested. This can be best addressed at the time of proposed rule adoption.

Director's Action

I am authorizing the Water Quality Division to proceed immediately to rulemaking hearing on the Washington County request. This will mean filing of the hearing notice with the Secretary of State by June 15 for publication in the July 1, 1990 Bulletin, a hearing on or about July 20, 1990, and Rule Adoption consideration by the Commission at the August 10, 1990, meeting. This will be a tight schedule but it can be met.

The agenda for the June meeting is already established, however, I request that you discuss this action at the June meeting and confirm the Department's action.

FOR THE RECORD

HECETA WATER DISTRICT
87845 Highway 101 North
Florence, Oregon 97439

June 25, 1990

Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, OR 97204

Reference is made to the scheduled June 29 hearing on proposed rules for Clear Lake Watershed, Lane County.

We have the following comments we wish to offer regarding this request for EQC Action.

Page 6, Item 2.

We disagree with the philosophy of allowable water degradation expressed in this section. The phosphorous and nitrogen loadings proposed are based on untested computer modeling using very limited sampling data. Until more and better data can be collected, and until the accuracy of the computer model can be verified, we suggest that the Department should move more cautiously in determining allowable inputs. We believe the management philosophy should be directed toward "improving" the purity of the water. We urge that calculations directed toward planned additional degradation of water quality be rejected. There are too many unknown variables and unforseen non-point sources of pollution. These unknown variables include volume and rate of movement of phosphorous through the soil, how much phosphorous is recycled in the lake, how much is flushed out, how much influence the lake has on the aquifer as a whole and vice-versa. Non point sources of pollution are always a threat, and will become even more so, with increased human habitation and activity.

Page 7, item 6.

We urge that all reductions in phosphorous loadings created by sewering or modification of septic tanks be saved within the Department's reserve.

Attachment B, page B - 1, item 2.

Again, we disagree with the philosophy of allowable degradation of the lake inherent in allowing additional development to occur within the watershed.

Attachment B, page B - 2, item k.

We protest entry of any testimony from V. W. Kaczynski into the EQC document. We have seen some of his work. Mr. Kaczynski claims that a million outboard motor boats operating on Clear Lake could input 324 million gallons of oil and gasoline into Clear Lake

over a 72 day period, and the water would still meet drinking water standards. The Alaskan oil disaster put 11 million gallons of oil in the Bering Sea. Mr. Kaczynski would put over 30 times as much petroleum in a small 153 acre lake and still tell us it is acceptable.

Attachment B, page B - 3, Goal 6

We are concerned about the proposal to establish lake loading limits upon which land use decisions can be based. In principle, this is fine, and we suppose the Department may have no other recourse. Our concerns stem from the fact that, once a load limit has been established, it will again be in Lane County's province to plan and allocate. Past and current experience with Lane County gives us very little optimism that the allocation will be used fairly or wisely. We think Clear Lake is in great danger once DEQ turns it over to the tender mercies of Lane County. We suspect that Lane County would like to see Clear Lake degrade to a point that water treatment is required, so they can proceed with their desires for full development.

Attachment C, Page C-1, paragraph 4

We are concerned about the allowance of new on site systems within the watershed. This again, is an extension of the philosophy of "allowable degradation" of the water quality. Most of the proposed on site septic systems are in F-2 impacted lands and are not forest management related. We are also concerned that additional development in these F-2 parcels only strengthens a case for rezoning these lands from Forest to Marginal or Residential. Again, our concerns stem from a lack of confidence in Lane County government.

Attachment C, page C-2, paragraph 5

If sewers are required it can be expected that construction will destroy what is left of the county owned, privately maintained, road system. The cost of replacing the road should be included in the cost of any STEP sewer solution.

Attachment F,page F-3

Again we disagree with the philosophy of allowable water degradation in order to permit additional residential development.

Attachment G, page G-1

Heceta Water District has 1350 water meters but about 3500 users. It also supplies upward of half of the water to another 6000 users in Florence.

Attachment G, page G-2

We agree with the North Florence Dunal Aquifer Study recommendation that "a commitment be made to retain Clear Lake as a pristine domestic water supply and to protect and **improve** its water quality..." We also endorse the recommendation that no new developments be allowed in the Clear Lake Watershed using on site

septic systems.

It should be noted here that, since the County has repealed the moratorium on new development within the area, three new dwellings are on line using on-site septic systems previously installed, but not in previous use. The County has also freely granted construction permits for remodeling and addition of extra bedrooms. This translates into additional on site septic systems coming on line and doubling the loading of some existing systems. In one instance, a variance was granted for construction of a dwelling within 20 feet of the lake. All of this has transpired while the CRMP planning negotiations have been underway. If the County has any sincere intention or desire to maintain the water quality it is not yet in evidence. The granting of permits continues.

Attachment G, page G-3

It should be noted here that the "study criteria" given to Century West Engineering, did not include serious investigation into the purchase of developed and undeveloped properties as a means of protecting the water. The study was directed to investigate the feasibility of sewering.

Attachment G, page G-4

According to our maps, the Collard Lake sub-divisions are zoned RR-1, not R4. Most of the lots are extremely small (under 10,000 square feet).

Attachment G, page G-11

Again, we disagree with the philosophy of planned or "allowable" water degradation based on allocation of supposed phosphorous inputs. We believe the policy should be to <u>reduce</u> pollutant inputs, not just maintain them at presumed tolerable levels.

Attachment G, page G-14

Same comments as above for CASE I. CASE II should not be considered as an alternative, since Cooper as well as Century West Engineering studies have both predicted the eventual pollution of the lakes if the conditions described in CASE II prevail.

Attachment G, page G-17, item c.

We would like to comment on the statement contained in this item, as it only partially states the situation. In 1985, Lane County appointed a "Clear Lake Advisory Committee" to make recommendations to the county concerning solutions to the problems at Clear and Collard Lakes. Sewer costs, at that time, were estimated to be nearly a million dollars. The Committee recommended a buy out of the undeveloped properties as the best solution. No action was taken on the recommendation due to opposition by the County Commissioner. In 1988 Heceta Water District wrote to Lane County requesting county staff help in pursuing a purchase of properties to protect the watershed. The

County did not even acknowledge the letter. The same attitude still prevails. The commissioner shows no enthusiasm for any of the alternative solutions other than full sewering and full build out of the undeveloped lots. Heceta Water District Board of Directors has passed a resolution in support of CASE IV and is currently in search of funding to accomplish the purchase of the undeveloped residential lots. If funding could be found, Heceta Water District would buy all of the developed and undeveloped properties within the watershed.

Attachment G, page G-19, item g.

We disagree with some of the statements in the Justification. It has not been the threat of sewers that has brought the property owners to the bargaining table. They have been threatened with sewers before. It has been the act of getting all of the players together at the same table in the CRMP process that has enabled some progress to be made. As stated before, we tried in 1985 and again in 1988 to get a buy out plan underway. All of our efforts have failed because of lack of support from the current commissioner, as well as the previous commissioner, for any form of buy out. This lack of support continues.

Attachment G, page G-20

We urge the EQC to manage Clear Lake with no increases in phosphorous loadings as has been recommended for Waldo and Crater Lakes. Clear Lake also has great public value.

Sincerely,

Larry Stonelake,
Supervisor
Heceta Water District
87845 Highway 101 North
Florence, OR 97439
997-2446

WBF

Copies:
Dick Nichols, DEQ
EQC Commissioners

June 25, 1990
Florence,Oregon

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

Dear Mr. Hutchison:

I refer you to the scheduled June 29th hearing on the proposed EQC rules for Clear Lake Watershed.

I think Dick Nichols, DEQ, has done a fine job on this proposal. However, I disagree with the proposal to allocate phosphorous loading for additional development within the watershed. On the contrary, I believe the rules and watershed planning should be directed to reduce pollutants and improve the quality of the water to the maximum amount practicable. As now written, the proposed rules seem designed simply to maintain the lakes at a presumed level of acceptability. The plan asks the Collard Lake residents to sewer, or otherwise reduce pollutants, then proposes to allow part of the pollutant savings to be used for additional development (and pollution) to occur on the large parcels of F2 lands not zoned for such uses.

Instead of allowing for additional phosphorous and nitrogen inputs by more development, the state and local governments should be reducing the risks by reducing development.

I enclose a copy of a magazine article about the water problems now facing New York City. The situation described mirrors the situation at Clear Lake, but on a scale many times greater. It is interesting to note the proposed solutions in New York are the same ones being sponsored by Heceta Water District.

This is our best chance to lay the ground work for lasting protection of a "World Class" water resource.

Sincerely,

Bill Finley

Bill Finley
06011 Collard Lake Way
Florence, OR 97439
997-6255

Copies To:
Dick Nichols, DEQ
EQC Commissioners
Heceta Water District

City promises new regulations to protect raw-water supply

From the Associated Press

NEW YORK—New York City will attempt a drastic reversal of attitude to protect its endangered water supply so it will not have to build a multibillion dollar filtering system, a city official says.

"By the mid '90s, if we have not created a new watershed ethic, we'll be on an irreversible course," said Albert F. Appleton, commissioner of the city's Department of Environmental Protection. "It ain't going to be easy. We're all going to have to work hard," he said.

He said the city is drawing up new regulations to replace 36-year-old rules governing the city's three watersheds—the Croton, the Catskills, and the Delaware. The giant upstate water systems contain 550 bil gal (2.1×10^6 ML) of water and serve 10 million people.

At a New York Senate committee hearing, Appleton said the realization that the watersheds are in jeopardy of being polluted may have come just in time. Appleton promised to deliver the new rules by late June and to hold public discussions through the fall.

He said the regulations would greatly increase health monitoring, improve enforcement of standards for sewage treatment plant discharges, and upgrade the city's own wastewater treatment plants. He said the city would monitor all proposed new development, oppose damaging projects, and acquire new land.

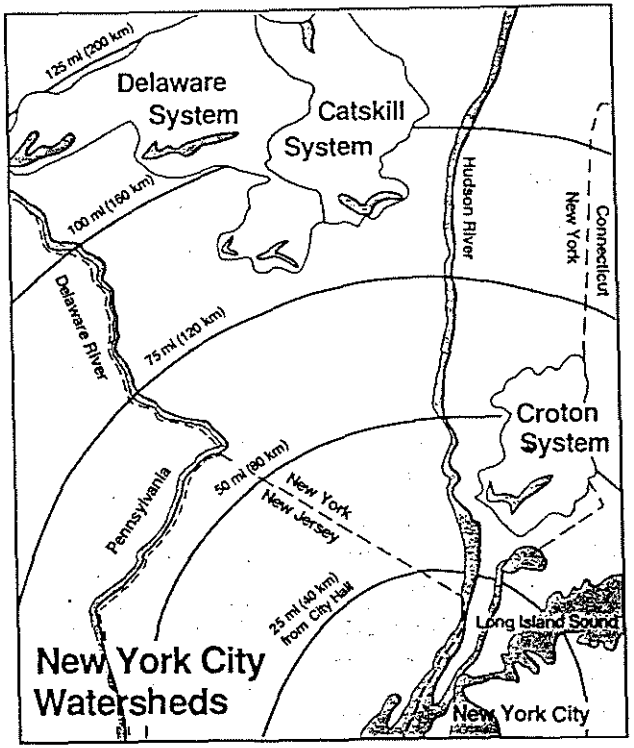
"A major question is how we avoid unresolvable conflicts over land use," he said. "A vital tool will be acquiring watershed land and conservation easements where development of any kind, however benign, is simply an unacceptable risk to future water quality."

State Sen. Roy Goodman said witnesses' testimony indicates that the nation's largest municipal water system is polluted in part by 85 sewage treatment plants that discharge into the city's unfiltered drinking water reservoirs and tributaries that feed them.

"The superb tap water with which our great metropolis has been blessed for more than a century, the champagne of all urban drinking water, is in dire jeopardy. One third of New York's reservoir water has now reached the edge of acceptability. Furthermore, the city's response to this problem has been an unconcerned yawn," he said.

But Appleton said all of the water "currently and comfortably meets all federal and state standards for surface drinking water." He opposed suggestions that the water be filtered, which would cost from $3 billion to $5 billion, saying a fraction of that cost could succeed in protecting the watershed.

William Stasiuk, director of the Center for Environmental Health in the New York State Department of Health, said Appleton was being unrealistic. "Some people will only be persuaded of a need by bodies in the street. The question of filtration is really when, not if," Stasiuk said.



Ninety percent of New York City's water comes from the Catskill and Delaware systems and 10 percent from the Croton water system. The entire water supply which was built more than 100 years ago is treated with chlorine for

does not have trouble meeting federal standards for contaminants such as synthetic organic chemicals, Scheader said. Pollution prevention and watershed protection are the most cost-effective ways to ensure safe drinking water.

The nine-point watershed-protection plan is less expensive than the estimated $3 billion to $5 billion it would take to construct filtration plants to meet the city's 1.5-bgd (5.7-GL/d) demand, Sheader said. Staffing costs for the watershed-protection plan ultimately would run $25 million a year; costs for land acquisition have not been determined but would be less than the capital costs of filtration.

Watershed-protection strategies planned

Key items in the program to improve watershed protection include land purchases, upgrading sewage treatment plants, monitoring development on the watershed, increasing the number of personnel involved in watershed testing and policing, and asking the state to upgrade the classifications of streams that feed the city's raw-water reservoirs.

The NYC Department of Environmental Protection, parent department for the Bureau of Water Supply, has undertaken several source-protection actions before the program's unveiling.

Taking advantage of new provisions under the Clean Water Act, the city notified nine wastewater treatment plants in the Catskill, Delaware, and Croton watersheds that they had 60 days to meet the effluent standards of the CWA before the city would sue. Eight of the nine plant operators—mostly small developments and trailer parks—have promised to modify their operations to meet the federal standards.

City to spend $44 million on sewage upgrade

In addition, the city is cleaning up its own act. Over the next five years, New York will spend $44 million to bring its nine wastewater plants into CWA compliance.

Of the almost 2,000 sq mi (500×10^3 ha) in the combined Delaware, Catskill, and Croton watersheds, the city owns less than 8 percent of the land. The final jurisdiction over development in the watersheds lies with the State Department of Environmental Conservation, which grants permits to wastewater treatment plants.

The proposal calls for purchasing additional land and conservation easements to increase the city's control over activities on the watersheds. City officials hope that a proposed state bond fund would provide money for such purchases of properties and easements. However, if the proposed New York State Environmental Bond Act is not passed by the electorate in November, the DEP will use its own revenues to buy land essential to protect the city's source waters.

Over a period of four years, Scheader said, the bureau would hire 600 people to beef up the bureau's source-protection activities. The additional staff would fill new positions for increased water quality testing, watershed inspection and security, and review of watershed activities. This last group of staff would review requests before the state and offer comments on permit applications for activities that might degrade water quality in the city's watershed.

Other activities short of filtration that the city is incorporating in its drive for an exemption include covering the city's main distribution reservoir, the elimination of dead-ends in the distribution system, and a water-main flushing program.

The city already has tight controls on recreation on its reservoirs and lands in the watershed. Only fishing from the banks and flat-bottom rowboats and ice-cutting are allowed on reservoirs; no sail or motor boats are permitted. In addition, the city does not allow the transfer of boats from one reservoir to another. Although this is a long-standing restriction, Scheader notes that it should limit the city's vulnerability to zebra-mussel infestations that are threatening the upper Midwest.

FOR THE RECORD

DAVE FROHNMAYER
ATTORNEY GENERAL

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JUN 26 1990

DEPARTMENT OF JUSTICE

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

June 25, 1990

Fred Hansen, Director
Department of Environmental
Quality
811 S.W. 6th Avenue
Portland, OR 97204

Re: NPDES Modifications Related to Pulp Mills

Dear Fred:

Enclosed are the original and six copies of the Department's Response to the Mills' and UA Local NO. 290's Opposition to a Stay.

Sincerely,

Larry Edelman
Assistant Attorney General

LE:aa
#2637H
Enclosures

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of NPDES Modifications Related to Pulp Mills, Permit Nos. 100313, 3754-5, and 3855-J	))))))	DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE TO THE MILLS' AND UA LOCAL 290s' OPPOSITION TO A STAY

Pope & Talbot, Inc., James River, Inc. (the Mills) and UA Local #290 (the Union), have opposed the Department's request for a stay of the pending contested case proceedings.

The Union argues that the contested permit conditions are immediately enforceable and cannot be stayed. The Department disagrees. See OAR 340-45-055 (1988).[1]

The Mills oppose the requested stay unless they are granted an extension of the permit compliance dates.

The Mills argue that any delay in resolution of their pending contested case appeals to the Commission will make it impossible for them to meet the July 4, 1992 compliance date for attainment of permit limitations under the respective NPDES permits.

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[1] OAR 340-45-055 reads in pertinent part:

> ". . . The modification shall become effective 20 days from the date of mailing . . . unless within that time the permittee requests a hearing . . . .
>
> . . . The existing NPDES permit shall remain in effect until the modified NPDES permit is issued."

As a matter of law, the Mills must litigate on their own time. See, e.g., Train v. NRDC, 421 US 60 (1975); Bethlehem Steel Corp. v. Train, 544 F2d 657 (3rd Cir) cert. denied 430 US 975 (1976); Union Electric Company v. EPA, 593 F2d 299 (8th Cir) cert. denied, 444 US 839 (1979); and United States Steel Corp. v. Train, 556 F2d 822 (7th Cir 1977). The Mills have chosen to exercise their legal rights under state law to contest modifications of their NPDES permits issued by the Department in February 1990. The contested case process however, does not create a legal right to an extension of the federal statutory deadline in § 304(l) of the federal Clean Water Act, nor does it create a legal right to resolution of the appeals to accommodate compliance schedules. The only effect of the contested case is a stay of the challenged permit conditions during the period of pending adjudicatory hearing. See e.g., Proffitt v. Rohm and Haas, 850 F2d 1007 at 1012 n. 8 (3rd Cir 1988). The Mills risk being in noncompliance if they do not prevail in their challenges to the permits and fail to install the necessary control technologies. Temporal feasibility of compliance, whether due to construction schedules, economic considerations, or appeals, is not a legal basis for an extension of the federal Clean Water Act compliance deadline. See e.g., Union Electric Co. v. EPA, 427 US 246 (1976); U.S. Steel v. Train, 556 F2d 822 (7th Cir 1977); U.S. v. Wheeling-Pittsburgh Steel Corp., 818 F2d 1077 (3rd Cir 1987).

The Department's position is that Individual Control Strategies were properly and timely developed for the Mills, and that the Clean Water Act therefore, requires compliance with the § 304(1) deadline.[2]

The Department has requested a stay of the pending contested case proceeding to assure that the Commission and parties do not become involved in a proceeding which will be vitiated by the impending permit renewals to the extent that the renewals may contain revised limitations.

The Department, therefore, respectfully requests issuance of the stay.

LARRY EDELMAN #8958
Assistant Attorney General
Counsel for the Department
of Environmental Quality

---

[2] An ICS, which is implemented through an NPDES permit, is a dynamic process which may change as new information is obtained and the permits are modified or reissued. The fact that an ICS may change does not invalidate the process.

CERTIFICATE OF SERVICE

I, Larry Edelman hereby certify that on the 22 day of June, 1990, the herein Department of Environmental Quality's Response to the Mills' and UA Local No. 290's Opposition to a Stay was served by placing said document in the U.S. mail, postage prepaid, at Portland, Oregon addressed to all parties of record (see attached list).

LARRY EDELMAN
Assistant Attorney General
Of Attorneys for Department
of Environmental Quality

CERTIFICATE OF SERVICE
#1396H/aa

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Michael Huston

File copy

Save Our Stratosphere
3911 NW Jameson Dr.
Corvallis OR 97330

June 13, 1990

Environmental Quality Commission
811 SW 6th Ave.
Portland OR 97204

The purpose of this letter is to comment on proposed rules to implement and enforce Senate Bill 1100 (now ORS 468.612-21). The following comments were written by members of Save Our Stratosphere, a local group based in Corvallis that represents about 70 people.

First, we cannot stress enough the need for immediate action on the issue of ozone depletion. The ramifications of this issue are frightening and we must all take important steps to halt the emission of ozone-depleting compounds. Because it takes about 10 years for these compounds to reach the stratosphere, the amount of depletion now being measured and the possible effects from this depletion are the result of compounds released in the late 1960s and 1970s. Emissions of ozone-depleting compounds increased in the 1980s so we have not even begun to see the results of these emissions. In addition, the long atmospheric lifetime of these chemicals insures that they will remain in the stratosphere to deplete the ozone layer for most of the next century, even if we stopped all emissions today. Therefore, action on this problem is urgently needed. We simply cannot wait until such action is convenient or has little effect on consumers or manufacturers; the price of inaction is too great.

That said, we would like to complement the Department of Environmental Quality (DEQ) for the fine job they did in bringing together the information contained in the background document (Attachment E of the Request for EQC Action packet dated April 6, 1990). The work in this entire packet is more impressive when you consider that this was accomplished without additional funding to begin implementation of the new bill.

We strongly urge the Environmental Quality Commission (EQC) to adopt the rules (OAR 340-22-405 through -415 and 340-12-050 (2s-2v) as presented in Attachment A (pages A-1 through A-3). We concur with DEQ's conclusion in Attachment C (page C-6) that equipment for the recovery and recycling of automobile air conditioner coolant is affordable and available. Our own survey of information agrees with that of DEQ (see attached information). We talked with an instructor at Linn-Benton Community College who has a machine and who is teaching students how to use it and we talked with several automobile service managers who had a machine or who had recently ordered one. In addition, some automobile manufacturers are requiring their service centers to use recovery and recycling equipment (e.g. GMC and Toyota). We feel it is important for EQC to make the determination that such equipment is available and affordable now because it will still be a year before use of this equipment would be required (two years for smaller repair shops). We do not have the luxury of time to address this problem.

We agree with the definition offered in OAR 340-22-410 (6) for "person". A broad definition is necessary in this case to achieve effective control of ozone-depleting chemicals and it was clearly the intent of the legislature that the bill be broad-based.

EQC should direct DEQ to petition the Department of Energy (DOE) to include automobile air conditioner coolant recycling machines on the DOE list of equipment that is eligible for tax credits (Attachment C, page C-5). In addition, DEQ should grant final approval of such equipment for eligibility under the DEQ tax credit program and EQC should direct DEQ to give such equipment a high priority when apportioning tax credits. Such actions would aid small repair shops and would ease costs to consumers.

EQC should direct DEQ to include money for implementing and enforcing ORS 468.612-621 in their next budget and EQC should work with DEQ to present this package to the legislature and to seek a high priority for this program. Funding should include money for staff, staff support, and necessary expenditures to implement and enforce the provisions of this bill. Enforcement cannot rely solely on spot checks and response to complaints. Without adequate funding, it is questionable anyone would even be available to respond to complaints. EQC and DEQ should consider requesting legislation that would establish a state excise tax on CFCs sold in the state to raise revenue for a program to implement the new bill and to find additional ways to reduce and recycle CFCs and halons. Short of a fully-funded program to carry out this bill, EQC should direct DEQ to shift priorities within other programs to insure that enough money and personnel are available to carry out a modest program to control ozone-depleting chemicals.

EQC should direct DEQ to revise their standards on CFC emissions to reflect the effect these chemicals have on ozone depletion and global warming. Currently CFC emissions are rated by their immediate toxicity effect and since CFCs are inherently low in toxicity, the standards are absurdly high when effect on stratospheric ozone is considered. We became aware of this issue during the review process for an air contaminant discharge permit (No. 12197) by Hewlett-Packard Co. at their Corvallis site. We were greatly disturbed and upset to find that DEQ significant emissions rates per source are 5,250 tons/year for CFC-113 and 1,310 tons/year for methyl chloroform (TCA). Given the present knowledge of the clear and immediate danger of these and other ozone-depleting chemicals to the ozone layer, standards set by DEQ should reflect the legislative policy of the State of Oregon in ORS 469.614 (2) to reduce, recycle, and substitute for CFCs and halons.

Thank you for the opportunity to comment on this issue.

Sincerely,

Kit Schroder

David V. Buchanan

Barry P. McPherson

Refrigerant Recovery/Recycling Equipment in the United States

Company	Applied Ecological Systems P.O. Box 697 Hazelhurst, GA 31539 1-800-282-7679 (912) 375-7713	Ener Craft, Inc. 5117 E. 1st St. Austin, TX 78702 (512) 385-3444	DAVCO Manufacturing, Co. 3601 Glover Road (Forks Township) Easton, PA 18042 (215) 559-1400
Patented	Yes, but patents pending on some features	Yes	Patents pending
Weight	55-65 lbs.	150 lbs.	95 lbs. (liquid pump) 130 lbs. (vapor pump)
Cost	$1200 - $1400	$8000 - $13000 (high pressure gas) $24000 (low pressure gas)	$5000
Availability	6 - 10 weeks lead	October '89	Fall '89 - vapor pump Now - liquid pump
Refrigerant	R-12, R-22, R-500 R-502, 134a, 13B1	R-12, R-22, R-500 R-502 *info available on R-11, R-113, R-114	R-12, R-22, R-500 R-502, R-11, R-114
Time of Processing	1-3 lbs./min. (may vary)	5-7 lbs./min.	3 lbs./min. (vapor) 30 lbs./min.(liquid)
Storage Capacity	N/A	30 lbs.	N/A
Method of Recycling	Filter	Distill	Distill

The information shown on this report was compiled by the **Air Conditioning Contractors of America,** 1513 16th Street, NW, Washington, D.C. 20036.

Company	Draf Industries 333 Adams St. Bedford Hills, NY 10507 (914) 241-2100	High Frequency Products P.O. Box 380016 Miami, FL 33238 (305) 899-8309	James Kamm Technologies 4730 W. Bancroft Toledo, OH 43615 (419) 531-3313 Katy Instruments "Recovery II"
Patented	Yes	Patents pending	Yes
Weight	145 lbs.	40 lbs.	100 lbs.
Cost	$3000	under $2000	$1425
Availability	Now	Late Fall '89	Now - on market for for 1.5 years.
Refrigerant	R-12 only	R-12, R-22, R-502	R-12, R-22, R-500, R-502, R-11
Time of Processing	1 lb./min. (recovery) 3lbs./min. (transfer)	1 to 2 lbs./min.	2 lbs./min.(vapor) (much longer for R-11) 5 lbs./min.(liquid)
Storage Capacity	9.5 internal	20 lbs.	5 lb. internal 50 lbs. external extra
Method of Recycling	Filters	Filters/distills	Filters

Company	Klinge Products 1380 Spahn Ave. York, PA 17403 (717) 845-1300 A'GRAMKOW - Denmark	Murray Corp. 260 Schilling Circle Cockeysville, MD 21030 (301) 771-0380	Refrigerant Recovery Systems P.O. Box 360298 Tampa, FL 33673 (813) 237-1266
Patented	Yes	Patents pending	Yes
Weight	140 - 600 lbs.	192 lbs.	76 lbs. 130 lbs.
Cost	RE1230 - $50000 RE1215 - $28500 RHS12 - $7600	ATC 1000 - $2395	$2500 - $5000
Availability	Now	Now	Now - on market for 7 years
Refrigerant	R-12, R-22, R-502 R-11	R-12 only	R-12, R-22, R-500, R-502
Time of Processing	.18 - 2 lbs./min. (R-12)	.04 - .06 lbs./min. (recovery/recycle)	2-3 lbs./min. (small unit) 3-5 lbs./min. (large unit)
Storage Capacity	10 - 100 lbs. internal (depending on model)	22 lbs.	70 lb. external
Method of Recycling	N/A	Filter/distill	Distill

THIS IS IN-
GENERAL MOTORS

Company	Robinair ~~Div. of~~ SPX Corp. 9 Robinair Way Montpelier, OH 43543 (419) 485-8300	ThermaFlo 3640 Main St. Springfield, MA 01107 (413) 733-4433	Thermal Engineering Co. 2022 Adams St. Toledo, OH 43624 (419) 244-7781
Patented	Yes, but patents pending on some features	Patents pending	Patents pending
Weight	150 lbs.	N/A	98 lbs.
Cost	Model 17500 - $3900	$3000	$1695
Availability	September '89	Dec. '89 or Jan. '90	4 weeks lead
Refrigerant	R-12, R-22, R-500 R-502	R-12, R-22, R-502 R-11	R-12, R-22, R-500 R-502
Time of Processing	2 lbs./min. (recover) 2.5 lbs./min. (recycle)	3-10 lbs./min.	2 lbs./min.
Storage Capacity	Furnished with two 50 lbs. containers	N/A	25 and 50 lbs. containers available
Method of Recycling	Filter	Filter	Filter

Company	Van Steenburgh 1900 So. Quince St. Denver, CO 80231 (303) 696-0113		
Patented	Patents pending		
Weight	200 - 375 lbs.		
Cost	$4400 - $5500		
Availability	Now - on market for 2 years		
Refrigerant	R-12, R-22, R-500 R-502		
Time of Processing	3-5 lbs./min.		
Storage Capacity	30, 45, 90, and 300lbs. internal		
Method of Recycling	Separator chamber		

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

June 18, 1990

Harry Fredricks
Chairman, Klamath County Board of Commissioners
Courthouse Annex
305 Main Street
Klamath Falls, OR 97601-6391

Dear Commissioner Fredricks:

I am pleased to enclose a copy of the Draft PM10 Control Strategy for the Klamath Falls Area that the Environmental Quality Commission will be considering for hearing authorization at their June 29 meeting. I will advise the Commission that you will attend and be available to answer any questions that may arise regarding this plan.

I am also very pleased to hear that you have directed Health Department staff to draft a woodsmoke control ordinance. You indicated that you were also considering an advisory ballot in November to get a feel for the communities pulse on a mandatory control ordinance. I would advise against this for the following reasons:

First, I believe it is misleading to ask citizens to vote on a ballot measure on the merits of mandatory curtailment which in essence seeks public views on complying with Federal law which was established to protect public health. An earlier advisory vote was conducted in Klamath County which indicated that the majority of the voters did not support mandatory curtailment. Even if this fall's vote were to indicate similar attitudes, I would remain firm in my belief that governments must act expeditiously and responsibly to protect public health and comply with Federal law.

Secondly, in order to address Clean Air Act requirements and pressures from the Sierra Club - EPA suit, the Department has negotiated with EPA to submit adopted control strategies for PM10 nonattainment areas in the state by November 1990. As you recall, the suit alleged that EPA had failed to enforce PM10 plan submittal requirements of the Clean Air Act.

If adequate local ordinances for the Klamath Falls area are not adopted by October of this year, the EQC will not be able to adopt the Klamath Falls PM10 control strategy within the EPA timeframe. The end result will potentially be delays in bringing about healthful air quality, and possible intervention by EPA to deal with the problem.

Let me offer some approaches to address your desire to deal with public viewpoints. It is certainly local government prerogative to solicit the views of the public on the technical details of a mandatory curtailment ordinance. Such information is normally obtained through public advisory committee and hearings on a draft ordinance. Such issues as the boundary for a program, enforcement policy, exemptions, and curtailment season length are all issues which need to be shaped to meet local needs. If you would like, I would seek EPA funding to conduct a statistically valid survey of Klamath County residents to help guide Health Department staff and advisory committee members in drafting an ordinance.

In addition, I would also offer the resources of the Department and the assistance of staff members to meet with your advisory committee on this important issue. I would expect that EPA would also accept such an invitation if this would be helpful. There have been many local communities in the West that have had long term experience with mandatory curtailment programs. If bringing someone from Juneau, Alaska or Yakima, Washington would be helpful in providing guidance regarding local mandatory curtailment programs, we will also try to obtain funding for this assistance as well.

As a final thought, your letter of June 6th did not mention the matter of providing the Department with a legal description of the Urban Growth Boundary. We would appreciate knowing if you will be able to provide this information to us prior to October of this year.

The Department is very interested in bringing about healthful air quality in Klamath Falls as soon as possible. We are willing to do whatever we can to assist you in these efforts. Please let me know if you would like to follow up on any of the suggestions I have made. I do very much appreciate your efforts to develop local solutions to this difficult problem.

Sincerely,

Original Signed By
Fred Hansen

JUN 19 1990

Fred Hansen
Director

FH:JEC:a
PLAN\AH10059
CC: Environmental Quality Commission

TESTIMONY
BEFORE THE
ENVIRONMENTAL QUALITY COMMISSION
JUNE 29, 1990

NONPOINT SOURCE SURFACE WATER MANAGEMENT PLAN
FOR URBAN AREA OF WASHINGTON COUNTY

Mr Chairman, members of the Commission, I am John Jackson, Planning Division Manager for the Unified Sewerage Agency, Hillsboro, Oregon. I come before you today to speak in support of the cities of urban Washington County. They have come together over the past two years to form an urban surface water district and develop an Urban Surface Water Management Plan to deal with water quantity and quality problems in the Tualatin River basin associated with urbanization. The public wants action. They have told us that. In response, we have already begun implementation of the plan.

The decision confronting you today, in our opinion, is whether to delay implementation of the plan for more planning requested by DEQ or to approve the plan and allow implementation to continue. We have met the DEQ's rule and nonpoint source guidance for the NPS program plan. We have finite resources therefore we cannot do both planning and implementation at the same time. This testimony is designed to give you additional facts that you can rely on as you address the DEQ requested actions in the staff report.

To begin, I would like to put in proper context what is happening in urban Washington County in response to your September

1988 orders so that you may better appreciate the concern and comments that I have regarding the conditions in the staff report.

First of all, the urban area of the Tualatin River basin, is committed to meeting your June 30, 1993 date for total maximum daily load compliance and load allocations for the urban streams.

I think it's important for you to understand that a lot of people, including elected officials on the Steering Committee, citizens on the Citizen Advisory Committee, federal and state regulatory officials, and citizens coming to open houses have come together over the last two years to form an urban surface water district in Washington County. They recognized there are water quality and quantity problems associated with urbanization and have decided to do something about it. The effort began before your September 1988 order to clean up the river.

The result of the joint effort, thus far, has been the formation of the surface water district under the auspices of the Unified Sewerage Agency. The District formally begins operation this Sunday, July 1, 1990.

As an indication of our combined commitments to implement this plan, meet other water quality protection needs and meet your TMDL requirements for phosphorus, the following have or are occurring:

1) USA's adopted FY91 budget reflects $4.2 million for implementation of the plan.

2) The member cities to the plan have committed approximately $2 million in their FY91 budgets to implementation of the plan.

3) Water quality monitoring of the urban streams began in May 1989 and continues today. We continue to provide the monitoring data to DEQ staff.

4) Adoption of the erosion control, on-site water quality facilities, and construction standard ordinances occurred earlier this month.

5) Adoption of service fees ($3/house/month) and system development charges ($375/house) to support the FY91 plan implementation occurred earlier this month.

6) USA continues its national award winning Tualatin River Ranger education program. In fact, plans are being formulated to expand the program this next school year.

7) Request for proposals (RFP) to conduct subbasin strategy development for many urban tributaries will be on the streets by July 15. The work to be completed within 18 months after contract signing.

8) USA is currently designing a series of five workshops for community leaders on how to conduct stream cleanups, stream inventories, neighborhood water quality education programs. The workshops to begin late this summer.

9) USA continues to make presentations to civic groups, neighborhood groups, special interest groups. We also have held many open houses and produced newsletters. All of these activities are designed to address the Plan goals, objectives and tasks to be completed by citizens and USA staff in implementation of the Plan.

Regarding the staff report, we are a bit dismayed at the conditions cited in light of the fact that DEQ staff communicated to our Steering Committee of City officials that all was well with the plan just prior to plan submittal. The apparent sudden change in direction by DEQ staff in the last few days is frustrating when we have tried to do it right by keeping DEQ informed as the plan evolved. In an attempt to keep DEQ informed they were invited to sit on one of the committees. DEQ staff occasionally attended those committee meetings and was recipient of three (3) drafts of the plan.

We did not know of the sudden change in attitude until June 19--after your June 12 hearing on the plan. If we had known of the changes sooner, we certainly would have worked with DEQ to correct the perceived problems before now. We also would have had a chance to prepare adequate, appropriate testimony for your June 12 hearing instead of having to do it now through this testimony.

My comments about the conditions cited in the staff report are attached here. We believe the DEQ staff have not presented factual or other basis for the proposed conditions. Yet, we are willing to work with staff in a non-adversarial climate to resolve

their concerns. All the conditions can be resolved--given enough time. However, there are such serious problems with conditions 1, 7, and 13 that I must speak to those now.

The problem is the amount of detail needed in the extremely short time frame (90 days as stated in Condition 13). It is physically impossible to do a technically defensible job in detailing out the Best Management Practices (Condition 1) in the time suggested. The Plan reflects the time frame in which to complete the work and still achieve the 1993 date.

In support of this position, a DEQ representative even stated in his opening remarks in your hearing on June 12, 1990 that, "... there will be many uncertainties, many questions unanswered, particularly in the technical realm, particularly those questions that cannot be answered without somewhat more elaborate monitoring or technical analysis which we anticipated would take some extra time." (Page H-7, begin line 11). He further states on page H-8 line 10 regarding the level of detail needed, "Again, we are not looking for site specific application of these things; that is not possible at this time." He continues, in that same paragraph to say, "...we'd like enough technical information on those management measures or management practices for the department and the public to be able to assess whether they are likely to be successful; and specifically enough information to describe how they could be used to address specific identified problems, detailed explanation of the processes by which the measures will

be selected and applied to the specific site once you get to that point." As you can see, this position is a reversal from the one now reflected in the staff report.

Mr Chairman, we don't have the technical information at this point in time. The plan before you for approval, if we are allowed to implement as designed, will provide all of us the information we all desperately want right now. The planning is done. Lets us continue implementation of the plan.

As for Condition 7, again the issue is the level of detail in a capital improvement program (CIP) that we are capable of providing now as opposed to when we can provide it after the subbasin strategies have been developed. Condition 7 presupposes that the subbasin strategies for all areas of Washington County are complete. They are not. Also, development of the CIP within the next 90 days presumes that one is required. We have no data to indicate that a CIP is needed, much less any data at this time to prepare a "site specific CIP". While a CIP could become a key element in the District's plan, a "site-specific CIP" based on accurate/meaningful basin planning data, cannot possibly be done within the 90 day time frame. We had planned a minimum of 18 months for each subbasin. Also note that the City of Portland recently put an RFP on the streets for Johnson Creek that also has an 18 month time frame.

In addition to our concern regarding the 90 day schedule, the issue is how the proposed timetable will impact the District's financial plan to support the effort. The plan is designed to restore the existing drainage system to operating condition. Once

the District truly understands the operating limitations (quality and quantity) of its properly maintained stormwater system, it could then integrate the basin planning data to accurately prepare its capital program. To do otherwise, is not good public policy and exposes the District to legal action for a technically indefensible and fiscally irresponsible CIP program.

In summary, Mr. Chairman, Commissioners, we request that you approve the plan as submitted and allow us to implement the plan that was designed by the cities, the citizens and the regulatory agencies. We believe the plan will provide the much needed information to the DEQ as we proceed along the implementation path. It will certainly provide much better information than we have now. We propose that you approve the Plan, as complying with the NPS Guidance Document. Then instruct DEQ staff to meet with the municipalities to clarify the status of the items called "Conditions" in the staff report and then have them report the status to you at your next meeting.

If you conditionally approve the plan and require us to complete all of the conditions as outlined in the staff report within 90 days, I can guarantee you we will be in violation on some of the conditions because of a lack of sufficient information. We will not only be in violation with the Environmental Quality Commission, we will also be in violation with the public trust and the public confidence that has been placed in the Unified Sewerage Agency in developing and implementing this particular plan.

Thank you for your consideration of our comments and request.

ATTACHMENT A

COMMENTS ON CONDITIONS
IN
ATTACHMENT C OF DEQ STAFF REPORT

Condition 1: Complete and insert the remaining management measure descriptions. Of over 90 measures identified, only the 17 "Maintenance and Operation" measures are thoroughly described.

There is confusion on our part as to the detail that is necessary for these documents. The DEQ staff testimony, June 12, 1990 suggests that the level of detail in the plan is adequate at this time. If the DEQ staff is requesting the detail that we currently have in the program plan for the 17 referenced documents, it will be impossible for us to meet that requirement in 90 days. We have set this plan up to provide more detail over the next two years as we develop the subbasin strategies. This provision is provided in the DEQ Guidance document page 6, Process for Selecting Options.

Condition 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.

It goes without saying that both parties must sign an agreement for it to be in effect.

Condition 3. A DEQ acceptable monitoring plan must be produced by USA that includes a list of the water quality parameters and sampling methods.

Discussion in Chapter 4 of the plan presents the requested information. Almost continuous interaction with DEQ staff, in the development of the annual sampling plan makes us ask what more information is necessary?

Condition 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.

AND

Condition 5: Include in the roadway maintenance measure the provision of no spraying of pesticides.

We do not have data that would suggest these actions would be effective in meeting the nutrient TMDL's. Apparently DEQ has such information. We request that DEQ supply the information that demonstrates the effectiveness of these actions in the Tualatin River basin. Also, if the 100 foot buffer proves to be effective

to control nutrients, implementation of the requirement is a land use action and will take far more than 90 days to implement.

Condition 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.

The requested information will be provided as part of the management measures discussion previously discussed in Condition 1.

Also, it must understood that this particular plan was put together under the guidance of a number of public bodies. The Steering Committee was made up of elected and management officials representing each of the cities in USA's service area. The Citizen Advisory Committee was made up of a number of recognized, active citizens in the area that fashioned the objectives. The Intergovernmental Coordinating Committee of state and federal regulatory agencies, including the DEQ who occasionally participated in the meetings, also reviewed the objectives. It is these three committees that put the objectives together. If we now start modifying these objectives, we violate the support, the understanding and the confidence that has been put in the Unified Sewerage Agency by these organizations.

In addition, we have also displayed these objectives numerous times in public meetings during the development of the urban surface water district. They have also been part of the presentations in the development of the facilities plan. To start changing these now, again, will violate the confidence of USA. We request that these plan objectives not be modified unknowingly by DEQ staff. We are prepared to provide DEQ guidance on where to find the requested information in the Plan.

Condition 8: An Annual Meeting with the DEQ should be Included.

We are prepared to do so. Figure 4.1 identifies the activity. However the label for the annual DEQ meeting blocks at the bottom of the figure was inadvertently omitted.

Condition 9: Include a DEQ-Approved Erosion and Storm Water Control Ordinance.

The District has adopted these ordinances at meetings of the USA Board of Directors earlier in June. DEQ staff was given an advance draft prior to our Board adopting and DEQ made no comment.

Condition 10: Clarify the Process for Review and Adjustments in the Plan, Reporting the Results, Monitoring, and evaluation, and reporting program implementation and accomplishments.

We believe this is covered adequately in the plan. Apparently DEQ needs clarification. However, this is not grounds for withholding approval.

Condition 11: Determine What Changes or Additions to the Local Comprehensive Code and Development Standards are Necessary.

This process is on going regardless of DEQ requirements. The information will come available for the plan as the subbasin strategies are developed for a particular basin. Again the length of time necessary to complete this work is the issue. Modification of the Code is considered an option and will be looked at in due time under the provisions of the DEQ Guidance document page 6, Process for Selecting Options.

Condition 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

We testified as to the status of the City of Gaston on June 12, 1990. We were notified on June 26, 1990 by the Mayor of Gaston that Gaston wants to be included in the Plan. Attachment B is a copy of the letter from the Mayor.

Condition 13: All of the above must be included in the Final Plan and provided to DEQ within 90 days.

This condition generates the most conflict with the plan as submitted. The subbasin strategies are the heart of this particular plan. These will be done, as you can see in Figure 4.1, over a series of months, not over 90 days. DEQ Guidance document page 6, Process for Selecting Options allows the plan to propose a realistic time frame to complete the work. The type of information requested for conditions 1 and 7 can not be physically generated in less than 18 months. DEQ again is presupposing what the specific problems and sources are in the basin and all it takes is to discuss what has to be done. This is not true. The baseline dry weather stream flow levels of total phosphorus have to be lowered. No where in the US has an area been presented with this situation. Most areas have had to lower stormwater levels, not dry weather levels of phosphorus.

Condition 14: Violation Statement.

We will be planning forever and will not be working towards meeting the 1993 compliance date. Further planning is also objectionable to NEDC in their written comments during the hearing on the plan.

Condition 15: Join with the DEQ in a process to refine and establish a TMDL compliance monitoring program for the applicable portions of the Tualatin Basin.

We currently provide DEQ with results of our monitoring. We have limited resources to accomplish additional monitoring beyond what USA needs. It is our belief that DEQ should do the compliance monitoring to guarantee publicly acceptable results.

Attachment B

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 Agencys Surface Water Management Plan.

Respectfully,

Ina M. Cullers

Mayor

EC/mb

CITY OF
PORTLAND, OREGON
BUREAU OF POLICE

J.E. BUD CLARK, MAYOR
Richard D. Walker, Chief of Police
1111 S.W. 2nd Avenue
Portland, OR 97204

June 28, 1990

Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

Attention: Michael J. Downs, Administrator
Environmental Cleanup Division

Dear Mr. Downs:

Upon reviewing the draft Oregon Administrative Rules pertaining to Chapter 340, Division 140 - Department of Environmental Quality, Illegal Drug Lab Clean-up Assistance, we find that the language in sections pertaining to ownership and storage responsibilities will place an undue burden and unequal cost share commitment on some agencies.

Further, these sections address imposition of obligations and commensurate costs which are not in line with current practice and were not, to our knowledge, discussed with any agencies who will be negatively impacted by these rules.

Very truly yours,

Richard D. Walker

RICHARD D. WALKER
Chief of Police

RDW/vah

CITY OF HILLSBORO

June 28, 1990

sent to all EQC members

Commissioner Genevieve Pisarski Sage
Environmental Quality Commission
75 Wimer Street
Ashland, Oregon 97520

Dear Commissioner Sage:

I regret that I cannot be present at the June 29 meeting of the Environmental Quality Commission to testify in person concerning the Washington County Urban Surface Water Management Plan, particularly since I served as Chairman of the Steering Committee that was established to guide the development of the plan. I request that this written testimony be made a part of the record.

The City of Hillsboro strenuously objects to conditions #1 and #7 of the staff recommendations in that it was made abundantly clear during the development of the plan that this particular information would require between 18 and 24 months to develop and be incorporated in a responsible plan. Although some would argue that this could be conducted in 90 days, we would suggest that it would not be defensible or fiscally responsible.

The Environmental Quality Commission has established water quality standards for the Tualatin River Basin. All entities within the Basin have worked together to develop a plan to meet those standards in the five (5) year time frame provided. We are disturbed that the Department of Environmental Quality would choose to interrupt our plans by recommending conditions and time lines that are virtually impossible to meet and appear contrary to EQC orders. We fear that these disruptions will only cause a loss of time in our quest to meet your requirements. Although the Department representatives speak frequently of the need for cooperation and partnership, Department actions clearly are contrary to such a philosophy.

You have given us a matter to resolve and we have developed a program of solution. It is only reasonable that you permit us to proceed with a plan which we know will achieve the objectives you have set forth. If you do otherwise you will have wasted a great deal of effort by some very dedicated and informed people; effort and planning most likely more thorough and comprehensive than the suggestions of your staff.

123 West Main Street, Hillsboro, Oregon 97123 · 503/681-6100 · FAX 503/681-6213

The City of Hillsboro urges the commission to adopt the plan as presented and allow satisfactory time to develop responsible and defensible plans to address urban surface water quality problems.

Very truly yours,

CITY OF HILLSBORO

By Shirley Huffman
Shirley Huffman
Mayor

SH/gw

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
U.S. BANCORP TOWER, SUITE 2500 • 111 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204
TELEPHONE: (503) 295-4400

May 4, 1990

Hand Delivered

Mr. Fred Hansen, Director
Oregon Department of Environmental Quality
Office of the Director
811 S.W. Sixth Avenue
Portland, OR 97204

Re: Comments on the Proposed New Source Water Quality Rules

Dear Mr. Hansen:

Perkins Coie welcomes the opportunity to comment on the proposed new source water quality rules. As you know, we have followed with interest the issues underlying the proposed rules and have witnessed first hand the problems caused by the rigidity of the existing regulatory structure. We applaud both the Department and the Commission for recognizing that serious consideration should be given to more flexible approaches.

First, we would like to state that we are committed to the TMDL approach to water pollution problems. We believe it to be based upon the logical premise that one must consider cumulative impacts in order to ensure that our waterbodies maintain appropriate levels of water quality. While the appropriateness of a given water quality standard may be debated, we believe it to be irrefutable that existing sources, point and non-point, industrial and non-industrial, should collectively be required to take whatever steps are necessary to achieve compliance with a properly-determined standard, with an additional margin of safety to account for any scientific uncertainties.

We do not believe, however, that the existence of a water quality compliance problem should trigger an absolute ban on even the construction of new sources until the waterbody is back in compliance with water-quality standards, as appears to be contemplated in Option 1. Instead, we believe that any ban on new sources, or expansions of existing sources, must be tempered by a rule of reason allowing for the permitting of new discharges in at least some circumstances before the relevant waterbody comes into compliance. For the reasons set forth below, we believe that Option 3 most closely reflects those circumstances in which the Department and the Commission should retain the

TELEX: 32-0319 PERKINS SEA • FACSIMILE (503) 295-6793
ANCHORAGE • BELLEVUE • LOS ANGELES • SEATTLE • WASHINGTON, D.C.

discretion to permit new sources, notwithstanding temporary compliance problems.

Specifically, we believe that there are at least two circumstances in which new or increased discharges can be approved before a relevant waterbody achieves compliance without doing harm to either the regulatory scheme or, more importantly, the relevant waterbody. First, the Department and the Commission should retain the discretion to approve the construction of new sources and expansions of existing sources where there is a sufficient degree of certainty that the waterbody will not only achieve compliance before the new discharge occurs, but have sufficient assimilative capacity left over to absorb the new load. In these circumstances, the Department and the Commission should be able to decide, in advance, whether a portion of the to-be-created assimilated capacity should be devoted to the proposed new or increased discharge. Otherwise, environmentally-sound projects may be delayed for several years after the waterbody has sufficient assimilative capacity, due to the fact that permits cannot be obtained until the waterbody is already in compliance. In many cases, financing and construction is impossible before permits can be obtained.

Option 2 attempts to deal with this problem by shifting the necessary compliance timeframe from the time of allocation, as reflected in Option 1, to the time of discharge. Unfortunately, however, Option 2 requires a finding not only that a regulatory framework is in place to achieve compliance by the time of the discharge, but also that this framework is being implemented on schedule. The requirement that the regulatory framework be in place ensures that the problem is capable of being addressed within the appropriate timeframe so long as the existing sources comply with their wasteload allocations ("WLAs"). However, by requiring a finding that these sources actually be in compliance with their WLAs, Option 2 holds both new sources and proposed expansions hostage to existing sources that may not be complying with their WLAs despite the availability of the necessary technology. Thus, it sends the wrong signal by precluding "clean" facilities, while allowing "dirty" ones to keep operating. The proper response to the problem of non-complying sources is aggressive enforcement, not the preclusion of environmentally-sound projects.

We also believe that the Department and the Commission should retain the discretion to approve truly minor additions from new or existing sources, notwithstanding temporary noncompliance problems, so long as these discharges will neither delay the attainment of water quality standards for that waterbody nor significantly exacerbate the problem in the interim. This approach, which is reflected only in Option 3, assumes that the problem is "fixable;" that is, that the TMDL process will bring the waterbody into compliance and will create

sufficient additional assimilative capacity to accommodate the new source. It is not so concerned with timing, however; Option 3 does not, and should not, require that the relevant waterbody have sufficient assimilative capacity at the time of the new discharge. Instead, it is premised on the idea that the new discharge is so minor that it will not appreciably worsen the problem while the compliance schedule is working itself out. If this is true, and if the new discharge will not cause any delay in the attainment of compliance, there is no public policy reason to delay the economic benefits that would accrue from the new project.

Option 3 also assumes that the new source will be required to implement the highest and best practicable technology regarding the parameter at issue. In many cases, the proposed source may serve as a model of the steps that can be taken to improve performance and, therefore, may actually serve as a bridge to a new era of process changes and pollution-control. Additionally, Option 3 assumes that, for any proposed discharge, even a minor discharge, the Department and the Commission still would apply the balancing test set forth in Proposed Rule 340-41-026(3)(b) to determine whether that particular discharge merits an allocation of some portion of the to-be-created assimilative capacity.

In setting forth these comments, our basic premise is that, so long as the technology exists to solve a given water quality problem, it should be solved by requiring across-the-board process changes or improvements in pollution-control equipment, not by punishing either new sources or existing sources that seek to expand their operations by utilizing state-of-the-art approaches and technologies. We believe that Option 3 implements this principle while fully protecting the environmental standards that we all hope to either maintain or attain. We recognize that it may, in some cases, be difficult to determine whether a proposed new discharge should qualify as a "very small discharge" under Proposed Rule 340-41-026(3)(a)(C)(iv) (in Option 3). However, this difficulty does not mean that discharges clearly meeting the test should be precluded. The mere fact that a line may be hard to draw does not mean that there are not cases clearly falling on each side. Stated simply, discharges that will neither appreciably worsen a water quality problem nor delay its solution should not be precluded. While the Department and the Commission would be fully justified in requiring a proposed discharger to establish that it meets this test, it would be unwise to preclude even the prospect of such a showing.

As a final point, we also note that the rules should be clarified to make clear that, for interstate waterbodies, the Department and the Commission need only find that the TMDLs, wasteload allocations and compliance plans have been established for Oregon sources. These rules should not require findings with

regard to sources or regulatory activities in other states. This problem could be resolved by adding the following two sentences at the end of Proposed Rule 340-41-026(4)(c):

> Any requirements in OAR 340-41-026(3) pertaining to the establishment of TMDLs, WLAs, LAs and compliance plans shall be deemed to be satisfied if the Department has established such milestones for any Oregon sources. Nothing in OAR 340-41-026 shall be deemed to require any findings with regard to sources or regulatory activities in other states.

We appreciate both this opportunity to comment and the obvious effort put forth by your staff in drafting these proposed rules. If any further opportunity for input is made available to address these rules or comments on or revisions to the rules, we would appreciate being informed of that opportunity at the above address or by phone at (503) 295-4400.

Sincerely,

Patrick A. Parenteau Craig N. Johnston

cc: Neil Mullane
William Hutchison
Emory Castle
William Wessinger
Genevieve Sage
Henry Lorenzen

FRIDAY JUNE 29, 1990 4 $\frac{00}{AM}$

LEONARD GEORGE STARK
5050 S.W. CHILDS ROAD LAKE OSWEGO
OREGON 97035 · 639-2807

OREGON STATE ENVIRONMENTAL QUALITY COMMISSION
EXECUTIVE BUILDING ROOM 3A.
811 S.W. 6TH AVENUE PORTLAND OREGON

DEAR BILL HUTCHISON - CHAIRMAN
FRED HANSEN - DIRECTOR
ANGALOW - SECRETARY.
RECORDER AND BOARD, DEQ

(Note. PAY THIS TAX THROUGH PROPERTY TAXES)

(TUALATIN BASIN MANAGEMENT PLAN)
REGULAR MEETING AT 8 $\frac{30}{AM}$ JUNE 29, 1990

I HAVE BEEN ENVOLVED IN THE TUALATIN RIVER CLEANUP SINCE THE BEGAINING. WON'T REPEAT ALL AGAIN. ON RECORD BEFORE MR MEL YOM (SEE PAGE H-11) AND ~~QUOTE~~ IN TUALITIN BASIN WATERSHED PLAN JUNE 29, 1990 GIVES A LITTLE CROSS SECTION OF MY INVOLVEMENT TO CLEAN UP TUALATIN RIVER

THERE IS "REAMS" OF INFORMATION (WHICH IS APPRECIATED TO GET) BUT TAKES TIME TO GO THRU. RULES AND COMPLIANCE. WHICH HAVE TO BE COMPLIED WITH. BIG ISSUE IS TO GET THE "BALL ROLLING"

DID HEAR ON LATE NEWS LAST NIGHT THAT METRO SERVICE VOTED TO BAN ALL PHOSPATE DETERGENTS IN THE AREA THAT IS FINE BIG STEP TO CLEAN UP TUALATIN

THANKS TO ALL YOU FOLKS YOU ARE DOING A GRAND JOB, GOD BLESS Leonard G Stark

CITY OF
PORTLAND, OREGON
OFFICE OF FINANCE AND ADMINISTRATION

J. E. Bud Clark, Mayor
Stephen C. Bauer, Director
1120 S.W. Fifth, Room 1250
Portland, Oregon 97204
(503) 796-5288
FAX (503) 796-3388

June 28, 1990

Noam Stampfer
Department of Environmental Quality
Finance Section
811 S.W. Sixth Avenue, 6th Floor
Portland, Oregon 97201

By Messenger

Dear Mr. Stampfer:

Per your request this morning enclosed are copies of the Ordinance and Agreement between the City and DEQ concerning Mid-County Sewer Financing.

The Ordinance received its first reading on June 27, 1990, and as a non-emergency Ordinance, was moved without comment for second reading and passage, scheduled for July 5, 1990. As a non-emergency Ordinance it will be effective 30 days after passage, or August 4, 1990.

If you have any questions please call me at 796-6955.

Sincerely,

Richard Hofland
Acting Debt Manager

Bureau of Administrative Services
Ron S. Bergman, Acting Director
1120 S.W. Fifth Avenue, Room 1250
Portland, Oregon 97204
(503) 796-5288

Bureau of Financial Planning
Tim Grewe, Director
1120 S.W. Fifth Avenue, Room 1250
Portland, Oregon 97204
(503) 796-5288

Urban Services Program
Susan J. McPherson Daluddung, Manager
1120 S.W. Fifth Avenue, Room 1250
Portland, Oregon 97204
(503) 796-5288

Affirmative Action Program
Karen Alvarado, Manager
1220 S.W. Fifth Avenue, Room 104
Portland, Oregon 97204
(503) 248-4164

Authorize an intergovernmental agreement with the Oregon Department of Environmental Quality for financing of sewers in Mid-Multnomah County. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The Mid-Multnomah County Sewer Implementation Plan, adopted by Council and ordered to be implemented by the Environmental Quality Commission described methods for providing property owner financing for sewers within the affected area in Mid-County.

2. To protect the City's general obligation credit rating, and in recognition that portions of the affected area were outside City boundaries, a special assessment bond financing program was included in the Plan.

3. Under terms of the special assessment bond financing program, the City will sell special assessment bonds to the Department of Environmental Quality, who will purchase them from proceeds of Pollution Control bonds sold by DEQ through the State Treasurer.

4. This financing program was designed to be used in-lieu of the City's traditional Bancroft Bonds, enabling residents and businesses in the affected area to receive low-cost financing for sewer assessment and connection charges, while also protecting the City's general obligation credit rating.

5. The City has recently concluded negotiations with DEQ on a special assessment bond financing agreement, attached to this Ordinance as Exhibit I.

6. The special assessment bond financing agreement is consistent with provisions of the Sewer Implementation Plan, has been reviewed and approved by the Bureau of Environmental Services, the Auditor's Office, the Office of Finance and Administration, City bond counsel, and the City's financial adviser.

7. It is appropriate for the City Council to enter into the agreement so that the City can offer financing to property owners receiving sewer services within the affected area, as provided for in the Sewer Implementation Plan.

8. The special assessment bond financing agreement includes as Exhibit A, a master bond ordinance which will be submitted separately to Council to authorize the first sale of special assessment bonds to the DEQ, currently scheduled for the fall of 1990.

NOW, THEREFORE, the Council directs:

a. The Mayor and Auditor are authorized to sign the intergovernmental agreement between the City of Portland and the Oregon Department of Environmental Quality, attached as Exhibit I.

Mayor Clark
SCB:RH
June 22, 1990

CITY OF PORTLAND INSTALLMENT PAYMENT CONTRACT

I hereby apply for and agree to pay in installments my portion of the improvement costs listed below. This assessment is recorded in the City Lien docket as a lien against the property described below.

Property Owners _____

Property Address _____

Improvement Description _____

Legal Description:

_____

_____

_____

Amount Financed

_____

_____

_____

Financing Fee _____

Total _____

PAYMENT SCHEDULE

(Find your assessment amount in A and mark your payment choice in B and C.)

A If the Amount Financed is...	B You May Spread Your Payments Over...	C And Pay
( ) Up to $500	( ) 5 years	( ) Monthly
( ) $501 to $1000	( ) 5 years ( ) 10 years	( ) Monthly ( ) Monthly
( ) Over $1001	( ) 5 years ( ) 10 years ( ) 20 years ( ) 20 years	( ) Monthly ( ) Monthly ( ) Monthly ( ) Semi-Annually

This application is submitted in accordance with the provisions of ORS 223.205-295, the Charter of the City of Portland, and Chapter 17.14 of the Code of the City of Portland. In consideration and pursuant to these legal provisions, I hereby expressly waive all irregularities and defects, jurisdictional or otherwise, in the proceedings to make this improvement and in apportionment and assessment of its costs on the property. I have read and agree to abide by the provisions printed on the reverse of this application.

Signed _____

Date _____

Soc Sec No _____

Billing Address _____

_____

_____

Signed _____

Date _____

Soc Sec No _____

Phone No.

Days _____

Evenings _____

Mail to Auditor's Office, 1220 SW 5th, Room 202, Portland, OR 97204

INSTALLMENT PAYMENT CONTRACT
TERMS AND PROVISIONS

PAYMENT SCHEDULE

Monthly: Your payment amount will be the same each month and will include interest on your unpaid balance. **Semi-annually:** Your payment will consist of one fortieth (1/40) of the original principal plus interest on the outstanding balance.

INTEREST RATES

To finance your property improvements, the City borrows money at a favorable rate and passes the financing to you at cost. Your interest rate will be _____ until the bonds are sold. Installments after the bond sale will include interest at a rate equal to the true interest cost of the bonds plus a financing rate set by City Council. Each bill will also include a billing charge which may be adjusted at any time without notice.

HOW TO PAY

Your billing statement or coupon shows the payment due date. Please mail payments far enough in advance so they arrive by the due date. Be sure to write your account number on your check, and include the statement with your payment.

NON-PAYMENT PENALTIES

If your payment does not arrive on time, the City may require payment of the entire unpaid balance of the assessment, plus interest, penalties, and costs. This bonding application is secured by a lien against the benefitted property as authorized by Oregon law. This means that if other collection efforts are unsuccessful, the City can collect by property sale.

NO PENALTY FOR PREPAYMENT

Property owners may shorten the payment period by paying more than the required amount. The entire unpaid balance may be paid off at any time, with interest to the date of final payment.

CHANGE OF ADDRESS

It is your responsibility to notify us of any change of address.

FINANCE CHARGE

A one-time finance charge of $50 may be added to the amount of your contract.

bond issues which Portland anticipates selling to the DEQ.

C. Portland hereby warrants and guarantees, to the full extent authorized by law, that each respective issue of program bonds shall be duly authorized by regular and appropriate action taken by Portland, and shall constitute binding obligations of Portland, enforceable in accordance with their terms.

D. Portland and DEQ will meet periodically with each other and the City of Gresham to review the status of the overall special assessment improvement program, and to develop any modifications to this financing agreement which may be needed to accommodate future events that might affect the financing program.

E. Portland and DEQ recognize that the issuance of general obligation bonds by the State of Oregon and the purchase by DEQ of Portland's special assessment improvement bonds with the proceeds of the State bonds as contemplated by this Agreement are key elements of the Plan; therefore, if this method of financing becomes unavailable, Portland and DEQ agree to work together to seek an alternative financing mechanism.

F. This agreement was drafted as a joint effort of Portland and the DEQ. It shall therefore not be construed against either party preparing it, but shall be construed as if both parties had prepared it.

IX. DEFAULT

A. The occurrence of any one or more of the following shall constitute an Event of Default under this Agreement:

(i) Failure by Portland to pay debt service on program bonds when due, except as provided below in section IX.B of this agreement; or,

(ii) Failure by Portland to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, the master ordinance or any program bonds for a period of 60 days after written notice to Portland by DEQ specifying such failure and requesting that it be remedied; provided however, that if the failure stated in the notice cannot be corrected within the applicable period, DEQ will not unreasonably withhold its consent to an extension of such time if corrective action is

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: June 28, 1990

TO: Lydia Taylor, Administrator

FROM: Don Yon, Tualatin Basin Coordinator DY

SUBJECT: Tualatin Basin NPS Plans -- EQC Staff Recommendations

As result of consultations with DEQ staff (Joe Edney, Bob Baumgartner, Roger Wood and Mary Halliburton); Jack Churchill, Jack Smith and Karl Anuta of NEDC; Oregon Department of Forestry (Dave Degenhardt); and most of the counties and cities who prepared program plans, I recommend the following presentation to the EQC this Friday, June 29, 1990 regarding the Staff Recommendation Report on the Tualatin Basin Nonpoint Source Program Plans. There are seven major issues which have been raised by USA, City of Portland and some other designated governmental entities regarding the DEQ Staff Recommendation Report to the EQC. Each issue is described and the consensus response by all consulted staff is provided as follows:

ISSUE #1.

Question: Are these plans to be "plans to plan" or program plans identifying the specific measures which will be taken to reduce pollutants, evaluating their effectiveness, and the time, budget and staffing requirements to meet the Total Maximum Daily Load (TMDL) compliance date?

Response: The DEQ NPS Plan Guidance Document requires that specific measures and their effectiveness in meeting the designated Load Allocation (LA) be identified (see page 6, item #3). This includes providing sufficient information, as was mostly provided in the City of Portland's Plan, for DEQ staff to analyze their adequacy in meeting the TMDL compliance deadline. Staff recommends that within 12 months all selected Best Management Practices (BMPs) and Capital Improvement Programs (CIPs) be identified and which watershed basins they will be applied.

ISSUE #2.

Question: Isn't it unreasonable to require, as a condition for approval of the Final Plans, the identification and inclusion of CIPs within 90 days?

Response: Most conditions for approval of the Final Plans can be provided to DEQ Staff within 90 days in a second draft of the plans. The two conditions requiring the inclusion of a CIP plan and interagency agreements should be provided in the Final Plan to DEQ staff within 12 months and not 90 days. DEQ staff note that most governmental agencies are doing as good a job as is practicable given both time and money constraints. Allowing additional time for the completion of these two critical conditions should not significantly affect meeting the TMDL compliance date.

Much work is needed to correct the deficiencies of these plans as addressed in the conditions. Staff feel that completion of the watershed basin plans and identification of specific BMPs and CIPs that would be effective in reducing pollutants within each specific watershed can be completed within 12 months. DEQ staff needs the information that is required to be provided in the next draft of the plan (within 90 days) in order to evaluate whether compliance can be achieved with the to-be-selected basin by basin BMPs and CIPs.

ISSUE #3.

Question: Can the EQC Conditionally Approve Plans? Can they either only Approve or Reject the Program Plans?

Response: The EQC can Conditionally Approve Program Plans and has done so in the past. If the EQC was asked to either Approve or Reject the plans, the DEQ Staff would have to recommend Rejection based on the inadequacies as addressed in the list of conditions for approval.

ISSUE #4.

Question: Would DEQ Staff support a recommendation by some or all the Designated Governmental Agencies for an extension of the June 30, 1993 TMDL compliance deadline to either an additional 6 months or a year?

Response: DEQ Staff feels that the TMDL compliance date can still be met even with the 12 month submittal date of the Final Plan. All governmental entities 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 EQC should be aware that an extension request may be proposed today or in the future by some or all the governmental entities.

ISSUE #5.

Question: If the EQC adopts the DEQ Staff recommendation for Deferral on approving the Oregon Department of Forestry's Tualatin Basin NPS Program Plan, can some of the condition's wording be changed before the EQC acts on the plan?

Response: Yes, the conditions can be modified to clarify the language and intent of the conditions.

ISSUE #6.

Question: How can DEQ require no spraying of pesticides for roadway maintenance and correction of coliform concentrations (City of Portland's Plan) since these are not part of the TMDL requirements?

Response: DEQ Staff recommends that these two conditions be removed as a condition of approval of plans since it is not required as part of the TMDL requirements. Specifically, for the Oregon Department of Agriculture, they do not have the statutory authority to prevent the spraying of pesticides in drainage ways.

ISSUE #7.

Question: Why is there a condition that requires a 100 foot buffer around all to-be-protected streams, wetlands, and ponds which is unrealistic and therefore should be removed as a condition?

Response: This condition should be revised by removing the statement: "(preferably 100 feet)". This will allow an adequate buffer to be determined based on site specific conditions.

STAFF REVIEW

TUALATIN RIVER BASIN
WATERSHED MANAGEMENT PLAN

OREGON DEPARTMENT OF AGRICULTURE AND
WASHINGTON COUNTY SOIL AND WATER CONSERVATION [SERVICE] 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: 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

(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.~~] 23. All of the above must be included in the Final Plan and provided to DEQ within 90 days.

[~~25.~~] 24. 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.] 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).

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. 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.

[~~7.~~] 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.

[~~8.~~] 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.

[~~9.~~] 8. An annual meeting with DEQ is included in the Plan.

[~~10.~~] 9. All the above must be included in [~~the Final~~] a Revised Draft Plan and provided to DEQ within 90 days.

[~~6.~~] 10. Within 12 months, the following conditions must be included in a Final Plan and provided to DEQ: 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.

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

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: 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.

[3.] 2. A DEQ acceptable monitoring plan must be produced by USA that includes a list of the water quality parameters and sampling methods.

~~[4.]~~ 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.

~~{5. Include in the roadway maintenance measure the provision of no spraying of pesticides.}~~

~~{6.}~~ 4. 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.

~~{8.}~~ 5. An annual meeting with DEQ shall be included.

~~{9.}~~ 6. Include a DEQ approved Erosion and Stormwater Control Ordinance.

~~{10.}~~ 7. Clarify the processes for review and adjustments of the Plan, reporting the results of monitoring and evaluation, and reporting program implementation and accomplishment.

~~{11.}~~ 8. Determine what changes or additions to the local Comprehensive Code and Development Standards are necessary.

~~{12.}~~ 9. 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.}~~ 10. All of the above must be included in the ~~{Final Plan}~~ Revised Draft Plan and provided to DEQ within 90 days.

11. Within 12 months, the following conditons msut be included in a Final Plan and provided to DEQ: ~~{2.}~~

a. 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~~{.}~~; and ~~{7.}~~

b. 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.

~~{14.}~~ 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.

~~{15.}~~ 13. 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.

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.

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.~~]

[~~12.~~] 10. Include in the Plan a provision for an annual meeting between the County, City and DEQ.

[~~14.~~] 11. Include a DEQ approved Erosion and Stormwater Control Ordinance.

[~~15.~~] 12. 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.~~] 13. All of the above must be included in [~~the Final~~] a Revised Draft Plan and provided to DEQ within 90 days.

14. Within 12 months, the following conditions must be included in a Final Plan and provided to DEQ: [~~11.~~]

a. 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[~~.~~]; and [~~13.~~]

b. Include specific interagency agreements, particularly with DEQ in the Plan.

[~~17.~~] 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 resulting therefrom.

[~~18.~~] 16. 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

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.

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.

[3.] 2. Provide for an annual meeting between DEQ and the City.

[5.] 3. 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.~~] 4. The inclusion of other applicable BMPs and control options and their implementation to meet the June 30, 1993 compliance date.

[~~9.~~] 5. 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.] 6. 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.~~] 7. A DEQ approved Erosion and Stormwater Control Ordinance shall be included.

[~~12.~~] 8. All the above must be completed and provided as the [~~Final~~] Revised Draft Plan to DEQ within 90 days.

9. Within 12 months, the following conditions must be included in a Final Plan and provided to DEQ: [~~2.~~]

   a. Include a DEQ approved Capital Improvement [~~Project's~~] Program (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[~~.~~]; and [~~4.~~]

   b. The inclusion of other needed interagency agreements.

[~~13.~~] 10. 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.~~] 11. 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 Responsibilty 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 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.

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.]~~ 4. 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.]~~ 5. An annual meeting between the City and DEQ must be included in the Plan.

~~[9.]~~ 6. Include a DEQ approved Erosion and Stormwater Control Ordinance.

~~[10.]~~ 7. 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.]~~ 8. 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.~~] 9. Improve the public involvement element by expanding the Plan's discussion of the importance of public involvement.

[~~13.~~] 10. Determine what changes or additions to the local Comprehensive Code and Development Standards are necessary. Also describe what should be done and how.

[~~14.~~] 11. All of the above must be included in the [~~Final~~] Revised Draft Plan and provided to DEQ within 90 days.

12. Within 12 months, the following conditions must be included in a Final Plan and provided to DEQ: [~~6.~~]

a. 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[~~.~~]; and [~~8.~~]

b. The inclusion of specific interagency agreements, particularly with DEQ shall be provided.

[~~15.~~] 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 therefrom.

[~~16.~~] 14. 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 Responsibilty 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 adsequately 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: 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.

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 noraml high water flow, on all sides.

~~[4. Include in the roadway maintenance measure the provision of no spraying of pesticides.]~~

~~[5.]~~ 4. 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.]~~ 5. An annual meeting between the City and DEQ is included in the Plan.

~~[9.]~~ 6. A DEQ approved Erosion and Stormwater Control Ordinance.

~~[10.]~~ 7. 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.~~] 8. 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.~~] 9. Improve the public involvement element by expanding the Plan's discussion of the importance of public involvement.

[~~13.~~] 10. Will changes or additions to the local Comprehensive Code and Development Standards be necessary? If so, what should be done and how?

[~~14.~~] 11. All of the above must be included in [~~the Final~~] a Revised Draft Plan and provided to DEQ within 90 days.

12. Within 12 months, the following conditions must be included in a Final Plan and provided to DEQ: [~~6.~~]

a. 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[.]; and [~~8.~~]

b. The inclusion of specific interagency agreements, particularly with DEQ are provided.

[~~15.~~] 13. Within 30 days after submission of 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.~~] 14. 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. (Process to commence within 120 days.)

Corrected Attachment G

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 Responsibilty 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 adsequately describes the desired results of the plan.

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3. Include provisions for the protection of all streams, wetlands and ponds with adequate (preferably 100 feet) undisturbed buffers, as measured from the noraml 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. 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.

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12. Improve the public involvement element by expanding the Plan's discussion of the importance of public involvement.

13. Will changes or additions to the local Comprehensive Code and Development Standards be necessary? If so, 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 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 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. (Process to commence within 120 days.)

the Governor's
Watershed Enhancement Board Conference

notes

Emery -

This draft is the product of contributions by Dave Degenhardt (ODF), Geo. Ice, Bob Baumgartner, and myself, but has not yet been finally approved by Dave. Feel free to comment. Thanks.

- Roger Wood

PROGRESS REPORT OF THE NONPOINT SOURCE TECHNICAL SPECIALISTS PANEL June 28, 1990

On March 7, 1990, the Board of Forestry submitted to the Environmental Quality Commission (EQC) its management plan for forest activities in the Tualatin River basin conditional upon:

1. the formation of a Technical Specialists Panel (TSP) to address technical issues relating to development and application of the EQC's total maximum daily load (TMDL) program; and

2. a preliminary assessment by the TSP that TMDL load allocation strategies can be refined to apply to forest stream conditions.

The TSP has held two meetings (on May 11 and June 20) to discuss the use of load allocations in the nonpoint source (NPS) context, with the discussions focusing initially on forest management.

The TSP has clearly identified the difficulties of monitoring compliance with water quality standards, including "total maximum daily loads" (TMDLs), in forested watersheds. Also recognized by TSP members, including representatives from DEQ and the forestry industry, are the uncertainties in data and modeling techniques which make the precise determination of pollutant load allocations (LAs) difficult at this time. Preliminary TSP discussions have verified that the principal sources of the uncertainties and difficulties are:

1. An extreme variability in natural conditions which can mask human-caused water quality effects; and

2. Hydrologic models which have not been fully calibrated for Tualatin basin conditions as a result of (a) a lack of historic water quality data in the forested portion of the basin, and (b) the relative newness of the current modeling and monitoring effort in the basin.

Both the May and June TSP meetings were well-attended and productive. Presentations by DEQ explained the current Critical Basins (TMDL) program, the assumptions and rationales behind the Tualatin TMDL and load allocations, and the triennial water quality standards review now in progress. Presentations by TSP members nominated by the U.S. Forest Service and Oregon Department of Forestry described technical concerns about the TMDL approach, strategies for monitoring implementation and effectiveness of best management practices (BMPs), and the intensive water quality

monitoring program employed in the Bull Run watershed. These presentations and the many other comments from TSP members resulted in wide-ranging and informative discussions which suggest that the TSP will be a productive and effective work group for addressing technical issues surrounding the TMDL program.

There is consensus among the TSP members that TMDL and load allocation programs (and their implementation, monitoring, and enforcement components) can be refined for NPS water quality management, provided that:

1. Initial load allocations are considered as the first steps in an iterative process which, if necessary, will result in the resetting of the load allocations as the supporting data base improves through continued monitoring;

2. Load allocations are set as a function of stream flow, geomorphology, or other factors representing the variability and complexity of the hydrologic system in question;

3. Load allocations are in a form allowing for variations in water quality conditions defined by season, frequency, duration, and magnitude; and

4. Monitoring strategies are designed to efficiently evaluate BMP implementation and assess the protection of recognized beneficial uses of water by measuring the degree of compliance with established water quality criteria (including TMDLs).

The TSP has not had time yet to develop specific recommendations on how the load allocation, monitoring, and other appropriate elements of the Critical Basins/TMDL program might be refined. It will continue to work on these issues at meetings held approximately monthly. A tour of the Tualatin basin, an examination of existing Tualatin data, and a review of the Board of Forestry's response to this report is planned for the next TSP meeting on August 22, 1990.

Date: 7-3-90 11:10am
From: brad price:HSW:DEQ
To: JLSchmitt:OD, HLSawyer:OD
cc: CAHarris:HSW, swwtp, JMHector:ER, RLKretzschmar:SWR:CB
Subj: Summary of June 29, 1990 EQC Agenda Items J & K.

The Environmental Quality Commission (EQC) conducted a regular meeting on June 29, 1990. Items J & K requested the EQC to approve the use of funds from the waste tire recycling account to assist Coos County and Klamath County, respectivley, in the immediate cleanup of their waste tires. Both sites are permitted waste tire storage sites. Coos County requested assistance for 80% of the $96,000 cost for the removal of their approx. 200,000 waste tires, and Klamath County requested assistance for 80% of the $596,800 cost for the removal of their approx. 750,000 waste tires. Klamath County also requested the Department pay the full amount of the cleanup cost and allow the county to repay its share of $119,360 to the Department in payments of $30,000 per year until full payument is received.

Agenda Item J was approved without comment as a Consent Agenda Item.

Agenda Item K was approved as a Consent Agenda Item; however, there was a question concerning rule modification and setting precedence by the Department paying the contractor the full amount of the cleanup cost. The question was answered with the following comments:

1. A precedenct was set when EQC approved complete payment to a contractor for Larry Waliser's waste tire cleanup, a permitted waste tire storage site, last fall; and

2. "Department full payment to contractors for permittee's waste tire cleanup costs with payback by the permittee to the Department" is in the proposed rules to be authorized for public hearing at the August EQC meeting.

The EQC accepted this answer and approved Item K.

SIC Code	Industry
	Museums, Botanical, Zoological Gardens
8412	Museums and art galleries
8422	Botanical and zoological gardens
	Membership Organizations
8611	Business associations
8621	Professional organizations
8631	Labor organizations
8641	Civic and social associations
8651	Political organizations
8661	Religious organizations
8699	Membership organizations, nec
	Engineering and Management Services
8711	Engineering services
8712	Architectural services
8713	Surveying services
8721	Accounting, auditing, and bookkeeping
8731	Commercial physical research
8732	Commercial nonphysical research
8733	Noncommercial research organizations
8734	Testing laboratories
8741	Management services
8742	Management consulting services
8743	Public relations services
8744	Facilities support services
8748	Business consulting, nec
	Private Households
8811	Private households
	Services, nec
8999	Services, nec

PUBLIC ADMINISTRATION

SIC Code	Industry
	Executive, Legislative, and General
9111	Executive offices
9121	Legislative bodies
9131	Executive and legislative combined
9199	General government, nec
	Justice, Public Order, and Safety
9211	Courts
9221	Police protection
9222	Legal counsel and prosecution
9223	Correctional institutions
9224	Fire protection
9229	Public order and safety, nec
	Finance, Taxation, and Monetary Policy
9311	Finance, taxation, and monetary policy
	Administration of Human Resources
9411	Administration of educational programs
9431	Administration of public health programs
9441	Administration of social and manpower programs
9451	Administration of veterans' affairs
	Environmental Quality, and Housing
9511	Air, water, and solid waste management
9512	Land, mineral, wildlife conservation
9531	Housing programs
9532	Urban and community development
	Administration of Economic Programs
9611	Admin. of general economic programs
9621	Regulation, admin. of transportation
9631	Regulation, administration of utilities
9641	Regulation of agricultural marketing
9651	Regulation of misc. commercial sectors
9661	Space research and technology
	National Security and International Affairs
9711	National security
9721	International affairs
	Nonclassifiable Establishments
9999	Nonclassifiable establishment