EQCMeeting2of2DOC1990

Part 2 of 2

OREGON

ENVIRONMENTAL QUALITY

COMMISSION MEETING

MATERIALS 12/04/1990

DEQ

State of Oregon
Department of Environmental Quality

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

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

REQUEST FOR EQC ACTION

Meeting Date: December 14, 1990
Agenda Item: K
Division: Water Quality
Section: Surface Water

SUBJECT:

Clear Lake (near Florence): Adoption of Proposed Rules Modifying OAR 340-41-270 Special Policies and Guidelines for the Mid Coast Basin.

PURPOSE:

The rules, if adopted, would establish new loading limitations and other requirements for protecting water quality in Clear and Collard Lakes near Florence, 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
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Public Notice	Attachment ___
Other:	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 Commission is requested to adopt new rules for protecting water quality in Clear and Collard Lakes. The proposed new rules would establish a revised annual loading limitation for Clear Lake and establish a limitation for Collard Lake (which flows into Clear Lake). They would also prohibit new on-site sewage disposal systems and connections to other sewerage facilities in the Clear Lake watershed until Lane County develops a lake watershed management plan consistent with the lake loading limitations in the proposed rule.

AUTHORITY/NEED FOR ACTION:

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

_X_ Statutory Authority: ORS 468.020,468.710,715 Attachment ___

___ Pursuant to Rule: _____ Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

___ Time Constraints: Owners of undeveloped property owners within the watershed are anxious to have the rules modified because the current on-site sewage disposal system moratorium is limiting their ability to utilize their property.

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation — Attachment ___
_X_ Hearing Officer's Report/Recommendations — Attachment _B_
(Attached only to each Commission member's copy of this report are a transcript of the verbal testimony and copies of written testimony received by the Department.)

___ Response to Testimony/Comments — Attachment ___
___ Prior EQC Agenda Items: (list) — Attachment ___

_X_ Other Related Reports/Rules/Statutes: (Rationale for Recommended Changes in Proposed Rules) — Attachment _C_

___ Supplemental Background Information Attachment ___
_X_ Map of Affected Area Attachment _D_

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Rules were adopted by the Commission in 1983 for the purpose of protecting Clear Lake as an unfiltered drinking water supply. At the time it was adopted, there was a concern about the impact on lake water quality caused by additional development within the existing subdivisions around Collard Lake and the potential for more subdivisions being created elsewhere in the Clear Lake watershed.

Although federal requirements will probably require water supply filtration regardless of water quality, the Department believes it is prudent to prevent the discharges of nutrient into the lake in order to control algal growths that would cause turbidity and taste and odor problems. Even a small increase in lake algae levels will require the water district to provide and operate more expensive filtration facilities.

When the existing rule for Clear Lake was adopted, it was anticipated that the local planning jurisdiction (Lane County) would develop a management plan for the lake's watershed, consistent with the adopted lake loading limits in the rule. A subsequent limnological study was done on the lake by the county which showed that the lake loading limits should have been based on phosphorus instead of nitrate nitrogen. In addition, a planning study was done to determine the cost of installing conventional sewers for the Collard Lake subdivisions. The construction cost was estimated to be about $970,000 which was believed to be too expensive, and further efforts to sewer the subdivision were dropped. Because of these reasons and because Lane County may not have had the necessary expertise, the lake loading limit has never been translated into a lake watershed management plan.

The existing rules have prevented people from developing their properties within the watershed. Although some of the development problems could have been relieved by the construction of a sewerage facility, one has not been built. At least some of the existing homeowners in the watershed are content with no sewers and are not very interested in helping to pay for a sewer that will only increase development within the watershed. People who own larger properties in the watershed would probably have difficulty accessing a sewer if one were constructed, however.

PROGRAM CONSIDERATIONS:

Oregon Revised Statute (ORS 468.715) declares it to be the public policy of the state to protect, maintain and improve the quality of the waters of the state for public water supplies. This statute also declares it to be public policy to provide for the prevention, abatement and control of new or existing water pollution. Oregon Administrative Rule (OAR) 340-41-026 states that 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 to lower water quality for necessary and justifiable economic or social development.

(Note: Oligotrophic lakes have low algal productivity and are highly suitable for all uses. Mesotrophic lakes have moderate algal growth, but are generally compatible with recreational uses. Eutrophic lakes have high algal production and the suitability for most recreation uses is impaired).

Clear Lake currently is considered in an oligotrophic lake which means that its waters are very clear and contain very little nutrients to support biological growth. As their septic tank systems age, existing houses in the watershed will probably cause some increased phosphorus loadings into Clear Lake. The Department predicts that Clear Lake will remain oligotrophic, however. Increased development would increase phosphorus loads into Clear Lake and, without controls, could cause Clear Lake to become mesotrophic or even eutrophic depending on the quantity of phosphorus that results.

Collard Lake contains higher concentrations of phosphorus and is mesotrophic. The Department believes Collard Lake is mesotrophic because of the phophorus loadings from the on-site sewage systems in the subdivisions surrounding Collard Lake. If the existing houses in these subdivisions were to remain on on-site systems, the Department believes phosphorus levels in Collard Lake will increase. The Department believes that the effectiveness of on-site sewage disposal systems serving present development will decrease as they age. The increased phosphorus levels should not cause Collard Lake to move from mesotrophy to eutrophy, however. Increased development around Collard Lake, without controls, could cause the lake to become eutrophic.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Do not adopt modify existing rules which now prohibit new on-site sewage disposal systems and that specify an annual nitrate-nitrogen lake loading limitation.

2. Modify the existing rules to specify an annual lake loading limitations for Clear and Collard Lakes based on phosphorus. The limitations would be set at levels projected to eventually occur as a result of existing development only.

3. Modify the existing rules to allow a very limited increase in phosphorus levels in Clear Lake and a limited number of new on-site sewage disposal systems. This alternative would allow some limited, new development.

4. Modify the existing rules to require that sewage from the Collard Lake subdivisions within the Clear Lake be collected, treated and disposed of outside the watershed. Phosphorus reductions would be placed in the Department's reserve and not allocated to new development.

5. Modify the rules so that they:

   a. Have a loading limitation for total phosphorus for Clear Lake based on phosphorus levels projected to occur as a result of existing development;
   b. Include a phosphorus loading limitation for Collard Lake based on phosphorus levels projected to occur as a result of existing development;
   c. Require a plan for managing the lake watershed before any connections are made to sewers and before any new on-site sewage disposal systems are installed. The plan would assure that allowed land uses in the watershed are consistent with proposed lake loading limitations. The plan also must address lake loading limitations that would be necessary to improve Collard Lake to an oligotrophic state. The Department could not approve a plan with lake loading limits less than that necessary to bring Collard Lake to oligotrophic state unless it found the plan to be unreasonable and overly burdensome.
   d. No increases in phosphorus loadings would be allowed unless approved by the Commission pursuant to OAR 340-41-026 which requires social and economic justification. The proposed rule also establishes upper limits for phosphorus loadings for Clear and Collard Lakes above which the Commission could not allow.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends alternative five for the following reasons:

1. Clear Lake has been determined to be phosphorus limited not nitrogen limited. The Department believes phosphorus is a much better parameter for controlling algal growth because limiting nitrogen, in itself, may not limit algal growth. Most nitrogen contamination caused by human development, however, also has associated total phosphorus. Consequently, the restrictions on development that is caused by the nitrate-nitrogen limitation would probably also effectively limit phosphorus contamination. The current nitrate-nitrogen limitation is very much more restrictive than the proposed phosphorus limit at least as it relates to the use of on-site sewage disposal systems.

2. A phosphorus loading limit should be established so that Collard Lake is assured of remaining in a mesotrophic state.

3. The Department recognizes that the proposed lake loading limitations for Clear and Collard Lake and the on-site sewage disposal moratorium will continue to severely restrict the ability of property owners to develop their properties. In order to protect the high quality water in these lakes, however, the limitations should not be increased and the moratorium should not be lifted until a watershed management plan has been developed and approved that adequately controls phosphorus loadings into the lakes. The Department also believes that the plan should, at least, consider what controls would be necessary to bring Collard Lake back to an oligotrophic state. If such controls are found unreasonable, however, the Department would be able to approve a watershed plan with higher loadings that still maintains Collard Lake in a mesotrophic state.

4. The Department does believe that some very limited increases in phosphorus levels in Clear Lake could be acceptable and still maintain the lake's high quality water. The Commission's rule (OAR 340-41-026), however, require that lowering of existing high quality water shall only be allowed if economically and socially justified. At this point, the Department has no

information from the local land use agency (Lane County) that would provide such justification. The Department believes it is appropriate to establish maximum lake loading limits above which the Commission would not consider. The proposed lake loading limits proposed as upper limits would provide a 10% safety factor and would assure that Clear Lake remains oligotrophic and Collard Lake remains mesotrophic.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rule is consistent with the agency and legislative policy of preventing pollution. The proposed rule establishes lake loading limits for the protection of water quality, but the burden of developing the lake management plan (i.e. land use) to be consistent with the loading limitations, remains with local government.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should the proposed rule establish loading limitations for Clear and Collard Lake based upon projected future loadings from existing development?

2. Should the on-site sewage disposal system construction moratorium be maintained until a watershed management plan is developed and approved by the Commission?

3. Should the watershed plan need to consider alternatives to reduce loadings to Collard Lake that could allow the lake to return to an oligotrophic state?

4. Should the proposed rule establish upper loading limitations using a 10% safety factor that assure Clear Lake of remaining oligotrophic and Collard Lake of remaining mesotrophic?

INTENDED FOLLOWUP ACTIONS:

The Department plans to provide technical assistance as resources allow to help Lane county prepare and submit an approvable watershed management plan. If the watershed management plan submitted by the County requests a lake loading increase, the Department will return to the Commission with a request to modify the rules. If the Department does not believe a load increase is justified, it will recommend that the Commission not authorize rule-making to allow such an increase.

Approved:

Section: _____

Division: Lydia Taylor

Director: Fred Hansen

Report Prepared By: Dick Nichols

Phone: 229-5323

Date Prepared: November 28, 1990

(Nichols:crw)
(MW\WC7463)
(11/26/90)

OREGON ADMINISTRATIVE RULES
340-41-270

NOTE:

The <u>underlined</u> 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 <u>**underlined**</u> and **[bracketed]** in **bold italics** are <u>additions and deletions</u> to the draft rules made in response to public comment.

SPECIAL POLICIES AND GUIDELINES

340-41-270

In order to preserve the existing high quality water in Clear Lake north of Florence for use as a[n unfiltered] public water supply source <u>requiring only minimal filtration</u>, it is the policy of the Environmental Quality Commission to protect the Clear Lake watershed including both surface and groundwaters, from existing and potential contamination sources [by] <u>with the following requirements:</u>

[(1) Prohibiting new waste discharges into the lakes, streams, or groundwater within the watershed;

(2) Establishing a management goal of limiting the cumulative total quantity of NO_3-N discharged to the watershed of a maximum of 170 pounds NO_3-N per year from man-controlled sources, including but not limited to On-Site Sewage Disposal systems, managed forest areas, residential areas and public facilities;

(3) Requiring that land and animal management activities be conducted utilizing state of the art best management practices to minimize nutrient, suspended solids or other pollutants from contaminating the ground and surface waters.]

<u>(1) The total phosphorus maximum annual loading discharged into Clear Lake shall not exceed *[265] 241* pounds per year from all sources.</u>

<u>(2) The total phosphorus maximum annual loading for the Clear Lake watershed shall be deemed exceeded if:</u>

<u>(a) The median concentration of total phosphorus from samples collected in the epilimnion between May 1 and September 30 exceed *[9.5] 9* micrograms per liter during two consecutive years, and</u>

~~[(b) The median concentration of chlorophyll a from samples collected in the epilimnion between May 1 and September 30 exceed 2.75 micograms per liter during two consecutive years. Chlorophyll a shall be determined by the Fluorometric method as specified on pages 10-34 of the 17th Edition of Standard Methods for the Examination of Water and Wastewater, 1989. Collection of samples for chlorophyll a shall be according to the methods described in A Manual of Sea Water Analyses, Bulletin 125, 2nd Edition, Fisher's Research Board of Canada, pp. 187-203.]~~

(3) Of the total phosphorus loading of *[265] 241* pounds per year specified in section (1) of this rule, ~~*[if sewers are installed in the Collard Lake subdivisions, 234]*~~ *192* pounds per year shall be considered current background and Department reserve and shall not be available to other sources. *[If sewers are not installed, the Department's reserve shall be 224 pounds per year.]*

(4) *[After implementation of the plans and requirements of sections (5), (6), and (7) or (8) of this rule,] [t]* The total phosphorus maximum annual loading discharged into Collard Lake shall not exceed *[67] 123* pounds per year.

(5) ~~*[Lane County or any other jurisdiction shall not issue permits allowing connection of new development in the Clear Lake watershed to a sewerage facility until a plan is submitted to and approved by the Department showing how total phosphorus loadings limitations required by this rule will be achieved and maintained. The plan shall address total phosphorus associated with erosion due to construction as well as that due to existing and new development. The plan shall include ordinances as necessary to effectively implement the plan.]*~~ *Lane County or any other jurisdiction shall not issue permits allowing connection of development in the Clear Lake watershed to a sewerage facility and the Department or its contract agent shall not issue on-site sewage system construction-installation permits or favorable site evaluation reports for on-site sewage systems within the Clear Lake watershed until a plan is submitted to and approved by the Department showing how total phosphorus loadings limitations required by OAR 340-41-270 will be achieved and maintained. The plan shall include, but not be limited to, the following:*

(a) Projected phophorus loadings for existing development and future planned development within the Clear Lake watershed. Technical bases for the projections shall be cited. The plan shall include phosphorus loadings from storm runoff during and after construction, on-site sewage disposal systems and other management activities in the watershed including, but not limited to, forest harvesting.

(b) Adopted ordinances as necessary to carry out the provisions of the plan.

(c) Agreements, contracts and other information as needed to show how and what entity will effectively implement each provision of the plan.

(6) [The Department or its contract agent shall not issue on-site sewage system construction installation permits or favorable site evaluation reports for on-site sewage systems to serve property within the Clear Lake watershed until a plan is submitted to and approved by the Department showing how total phosphorus loadings limitations required by this rule will be achieved and maintained. The plan shall address total phosphorus associated with erosion due to construction as well as that due to existing and new development. It shall also address forest harvesting activities. The plan shall include ordinances, easements, and/or contracts as appropriate and necessary to effectively implement the plan.] The plan required by section 5 of this rule shall address necessary controls to reduce phosphorus loadings into Collard Lake to levels less than 60 pounds per year. The Department may approve a plan with annual loadings greater than 60 pounds per year, but only if the plan demonstrates that controls necessary to achieve less than 60 pounds per year are unreasonable and overly burdensome.

(7) If the plan required by section 5 of this rule proposes that Clear Lake and/or Collard Lake loading limits be increased from levels established in section 1 and/or section 4 of this rule, the plan shall include the social and economic justification for such increases as required by Oregon Administrative Rule (OAR) 340-41-026. The justification shall show the costs of achieving the loading limits established in this rule as well as the economic and social benefits of increasing the loads. The Commission shall not approve any plan that will not achieve a lake loading limit for Collard Lake of 140 pounds or less of phosphorus per year. The Commission shall not approve any plan that will not achieve a lake loading limit for Clear Lake of 251 pounds or less of phosphorus per year.

[(7)] (8) [By October 1, 1993, all sewage generated within the Collard Lake subdivisions shall be collected, treated and disposed according to a sewerage facilities plan report submitted to the Department by October 1, 1991.] No construction of [the] a sewerage facility to serve the Clear Lake watershed or a portion thereof shall begin until or unless:

(a) The facilities plan report and engineering plans and specifications have been approved in writing by the Department.

(b) It is constructed and operated by a municipality with authority for the operation and maintenance of sewerage facilities.

(c) Before construction starts, the responsible municipality shall demonstrate that it has a reliable source of funding to assure proper construction, operation, maintenance, and replacement of the required sewerage facilities.

[(8) The Department may grant exception to section (7) of this rule, if, by October 1, 1991, an alternative plan is submitted to and approved by the Department which, when implemented, will achieve the annual phosphorus loading limit for Collard Lake required by section (4) of this rule.]

(9) No on-site sewage system construction-installation permits, favorable site evaluation reports, or sanitary sewer connection permits shall be issued until a plan for monitoring the water quality of Clear Lake is submitted to and approved by the Department. The plan shall include contracts or memorandums of agreement that assure that the monitoring will be conducted.

(10) Unless it is demonstrated that stormwater runoff treatment and control systems are not necessary to meet the total maximum annual loading for total phosphorus, any off-site or on-site control facilities for stormwater quality control necessary to comply with this rule shall be under the control of a municipality.

[(11) Unless otherwise approved in writing by the Department, a municipality shall be responsible for all sewerage facilities including on-site sewage disposal systems constructed in the Clear Lake watershed after December 1, 1989.]

Stat. Auth.: ORS Ch. 454 & 468
Hist.: DEQ 3-1983, f. & ef. 4-18-83

Attachment B

HEARING SUMMARY

Clear Lake (near Florence): Proposed Rules Modifying OAR 340-41-270 Special Policies and Guidelines for the Mid Coast Basin and OAR 340-71-460(7) Moratorium Areas for On-Site Sewage Disposal Systems.

On August 22, 1990, the Department held a hearing concerning rules for protection of Clear Lake. The hearing was held in Florence, Oregon at the Siuslaw High School Auditorium, Lecture Room A. Approximately, 50 people attended the hearing; 15 people provided oral testimony; the Department received over 50 separate written comments.

Due to the controversial nature of the Clear Lake issue, the Department has transcribed the oral testimony received at the August 22, 1990 hearing. It will be provided to the Environmental Quality Commission as part of the Department's report. In addition, the Commission will also be provided copies of all written testimony that has been received. Individuals who wish to obtain copies of either the transcription of the oral testimony or the written testimony may contact Mr. Dick Nichols in the Department's Portland office. Due to the volume of paper contained in the oral and written record, the Department recommends that you only request copies of the record if you seriously need them.

The Clear Lake issue is a mixture of water quality protection and land use. The statutory authority of the Environmental Quality Commission and the Department is limited to water quality protection. Land use requirements are under the authority of local government. Land use, of course, can affect water quality and it is, therefore, difficult to completely separate the two issues when considering the protection of Clear Lake water quality.

Ideally, the Commission, through its administrative rules, will establish water quality requirements. Land use will then be managed through the comprehensive land use plans to assure that water quality requirements of the Commission are met.

In April, 1983, a construction moratorium for on-site sewage disposal systems was established within the Clear Lake watershed. In addition, a nitrate nitrogen loading limit was established for the watershed. Contrary to the Department's expectations, a local watershed or land use plan was never developed to conform to the moratorium or lake loading limit. Not surprisingly, owners of undeveloped property within the watershed have been frustrated because of the lack of land use plan that would allow them to use their property as they originally anticipated.

In April 1989, the Siuslaw Soil and Water Conservation District, at the request of Lane County, established a Coordinated Resource Management Process (CRMP) in order to develop an acceptable watershed management plan. The group of affected parties that were enlisted to serve in the process not only have advised the Department in the development of its proposed rules, but is also serving to advise local government on possible changes to local land use requirements relative to the lake. As a result, the Department's proposed rules for hearing, in part, contained requirements that anticipated the CRMP's direction relative to land use. Since then, the CRMP has fallen behind the Department's process and may not follow through with its recommendation on land use as originally anticipated.

A considerable amount of the testimony received concerning the proposed rules on Clear Lake centered upon allowable land use. In summarizing the hearing, the Department has not incorporated comments relative to land use that are not relevant to the water quality issues within the proposed rules. The Department believes this is proper and appropriate, but has provided the Commission with the actual testimony for its information if the Commission members desire to review it.

The following is the Department's summary and response to the hearing testimony. Each issue is stated briefly followed by the Department's response to the issue.

ISSUE: The on-site sewage disposal system moratorium was originally supported because it was thought to be a short term problem that would be fixed. It has dragged on way longer than it was represented in 1983, when it was adopted. This delay has placed a great financial burden upon many people who have not been able to develop their property or sell it.

> **Department's Response:** The Department originally expected that the development issues would be resolved through a watershed management plan developed and implemented by Lane County, the jurisdiction that is responsible for land use matters in the watershed. For various reasons, this has not occurred. The delay is regrettable, but had no moratorium been put in place, it is likely that further, extensive development would have occurred in the watershed. Such development would probably have significantly and irreversibly degraded Clear Lake water quality.
>
> There is nothing that can be done about past delays. The Department believes that these proposed rules will provide direction for Lane County to more quickly resolve the land use issues in the watershed.

ISSUE: The Department should postpone EQC action until CRMP committee completes its work.

Department Response: The Department believes that there is only one advantage to postponing action. Postponement would allow the Commission to consider a proposed increase in lake loadings over current levels should Lane County conclude that one is needed. At this point, it is not obvious that an increase is needed. If an increase in loading is ultimately requested, the Commission would have to revisit the matter, through the hearing process, at a later date. This would potentially cause further delay for people owning undeveloped property. By proceeding to rule adoption at this time, however, the Environmental Quality Commission can provide direction about how the watershed management plan should be developed and implemented. The Department believes that Commission action at this time will provide useful direction and, therefore, recommends that the proposed rules, as amended pursuant to the hearing, be adopted.

ISSUE: Lane County was concerned about being required by the proposed rules to do various things in Clear Lake watershed when it does not have authority or money to do them.

Department's Response: The Department believes that most of the issues within the rule that impact Lane County are within its authority and should be within its financial capabilities. The Department agrees that the county probably does not have the authority to mandate or the resources to construct a sewer system in any part of the Clear Lake watershed nor does the county have the authority to unilaterally form a sanitary district to build and operate a sewerage facility. This may preclude the county from considering sanitary sewers as a component of its Clear Lake watershed plan unless or until it can obtain statutory authority through legislative action.

Lake water quality monitoring is another issue which may not be within Lane County's resources. The Department is hopeful that Heceta Water District or a sanitary district, if formed, can finance and implement lake water quality monitoring. The Department believes monitoring is vital to properly managing water quality in the watershed.

ISSUE: Development should be precluded from the Clear Lake watershed. Property should be bought out to eliminate further water quality degradation. DEQ should support a buyout.

Department's Response: The Department agrees that a buyout of all property within the watershed would provide the ultimate protection of Clear Lake water quality. The rule as proposed would allow a buyout to occur. The extent and type of development in the watershed is a local land use

matter provided that controls are implemented to limit phosphorus discharges into Clear and Collard Lakes to those prescribed by the rules of the Environmental Quality Commission.

ISSUE: Sewers are only being proposed for Collard Lake subdivision in order to allow some new septic tanks around Clear Lake. This won't protect the lake. No increased density of development should be allowed.

Department's Response: The proposed rules have been changed and do not require a sewer for the Collard Lake subdivisions. This was done because the Department believes that the decision for sewers is a land use decision and should only be required if proposed new development would require such. The Department believes that, if the existing septic tanks remain, Collard Lake will eventually degrade further, but will not impair existing beneficial uses of the lake or violate water quality standards.

The Department does not condone further degradation of Collard or Clear Lake and will recommend that the existing on-site sewage disposal moratorium be maintained until an acceptable lake watershed management plan has been developed and approved. In addition, the Department is recommending that the proposed rules also require the plan to address reducing phosphorus levels in Collard Lake so that it improves to an oligotrophic state.

The Department recognizes that sewers, in themselves, will not provide sufficient water quality protection if development densities are high. With high density development, the watershed management plan proposed by these rules would have to address nonpoint source loadings into the lakes.

ISSUE: Some people suggested that they would like an alternative to the requirement in the rules that requires sewers to Collard Lake subdivision. Some people were concerned that sewers do not address nonpoint source pollution; and that there is the potential for upsets with a sewer system causing spills into the lakes.

Department's Response: As stated above, the proposed rules have been changed and do not require sewers for the Collard Lake subdivisions. In addition, also as stated above, the Department recognizes that sewers do not address nonpoint source pollution. The Department recognizes that a sewer system would increase the risk of breakdowns and spills.

The Department believes that a sewer system, if part of the watershed plan proposed by Lane County, can be designed, constructed, and operated with sufficient redundant features (pumps and auxiliary power, for example) and alarms to reduce this risk to an acceptable level.

ISSUE: No increase in pollutants into Clear Lake should be allowed. The Environmental Quality Commission cannot allow further degradation of Clear Lake because of ORS 468.715 which requires the Department to prevent new pollution. OAR 340-41-026 is inconsistent with statute because it allows the Commission to lower water quality.

Department's Response: The Department believes that one definition of pollution of water is that designated beneficial uses of the water are being impaired. The Department does not believe that ORS 468.715 precludes the Commission from allowing limited water quality degradation provided that highest and best control technology is used and the degradation that is allowed will not impair recognized beneficial uses. OAR 340-41-026 is consistent with this view because it specifically states that the Environmental Quality Commission may lower water quality provided beneficial uses are not impaired.

OAR 340-41-026 does require that the Commission not lower existing high quality water unless it shows social and economic benefit. At this time, the Department has not been provided with information that would provide social and economic justification for allowing water quality to be lowered. Consequently, the proposed rules have been changed from those that went to hearing. The rules as currently proposed would not allow increased phosphorus loadings over that projected to exist with current development.

ISSUE: Sewers are necessary for Collard Lake subdivisions to reduce existing discharges via septic tanks into the lakes.

Department's Response: The Department believes that eventually the existing septic tank systems around Collard Lake will measurably degrade the water quality in Collard Lake. The phosphorus levels in Clear Lake would also increase slightly. Sewers are one means for controlling phosphorus from these on-site sewage disposal systems; there are other alternatives that may also be viable.

ISSUE: One person supported the DEQ approach because it eliminates pollutants from Collard Lake subdivisions and allows use of undevelopable property which cannot now occur.

Department's Response: Because the Department is proposing to not allow any increased phosphorus loadings in Clear Lake, the ability for people to further develop their property will be much more restricted than under the rules that went to hearing. The extent and nature of future development will depend upon the watershed management plan proposed by Lane County.

ISSUES: One person stated that they supported changing lake limits to phosphorus from nitrate.

Department's Response: The Department believes that controlling phosphorus is the best mechanism to control nuisance growths in Clear and Collard Lake. The Department wishes to point out that limiting phosphorus to existing loadings may not preclude some increases in other pollutant parameters that may be included with sewage and stormwater. The Department believes, however, that these other pollutants will be adequately controlled so as to not significantly affect water quality.

ISSUE: Phosphorus loadings reduced by sewering or otherwise should be placed in a reserve and not given to others to allow development.

Department's Response: The proposed rules have been revised such that sewers are not required. Consequently, the issue of placing phosphorus loadings reductions in the reserve does not need to be addressed in the rule. The proposed watershed management plan prepared by Lane County may call for phosphorus reductions that are based upon calculated, theoretical projections that will take a period of time to be realized. The Department believes that until such time as the reductions can be measured and verified through lake monitoring, they should be placed in the Department's reserve. This decision will be considered by the Department as part of the review and approval of the watershed management plan.

ISSUE: Many people who have undeveloped property in the watershed would like either to be able to develop their property or be bought out.

Department's Response: This is really a land use issue, but the Department wishes to point out that the proposed rules will allow either of these options to occur. Which option will depend upon the action of the local land use jurisdiction which is Lane County.

ISSUE: Some people felt that existing development in the watershed is not the problem, and they shouldn't have to pay to solve it.

> **Department's Response:** The Department believes that existing development contributes pollutants into Collard and Clear Lake. At this time, the contribution has not significantly degraded either lake, but, over time, degradation will increase. The Department believes that it is the policy of the State of Oregon that the people who contribute pollutants to public waters are those that are responsible for paying to control it within the requirements of the rules of the Commission. These proposed rules do not delineate who should pay for whatever control measures are undertaken within the watershed. Such delineation is outside the scope of the proposed rules.

ISSUE: One person is concerned that Mr. Dick Nichols should not have served as the hearings officer because he has also served as the Department's representative on the CRMP committee. As a result, he has a bias.

> **Department's Response:** The Commission has been given a direct transcript of the tape recording of the hearing and has been given copies of the written testimony received by the Department. This should allow the Commission to review testimony without bias. In addition, the EQC report and associated addenda, although drafted by Mr. Nichols, have been reviewed by several staff members within the Department to eliminate the basis of this concern.

ISSUE: One person felt that developed lot owners and undeveloped lot owners should be treated equally.

> **Department's Response:** Equity will be dependent upon the perspective of the affected party. Consequently, the Commission cannot expect everyone involved with Clear Lake to be satisfied that they have been treated equitably in the proposed rules. The Department has tried to address the issues as equitably as possible, but believes that some affected people will not see it as such.

ISSUE: Some people felt that there should be no new septic tanks in the watershed. One testifier indicated a willingness to use legal means to overturn a EQC decision to allow septic tanks.

> **Department's Response:** The Department has recommended that the construction moratorium on on-site sewage disposal systems be left in place until a watershed management plan has been developed and approved. If the plan shows that additional on-site systems can be accommodated with the lake loading limits, the moratorium can be revised.

Although the Department believes its proposed rules are technically appropriate and have been legally processed, anyone may petition the courts to review whatever action the Commission takes on them.

ISSUE: Rule amendments are only for the purpose of appeasing large property owners around Clear Lake.

Department's Response: The proposed rules as revised should provide direction to Lane County to develop a lake watershed management plan. The Department believes this is a first step toward resolving the development issues in the watershed. Whether or not the large property owners around Clear Lake are or will be appeased will depend upon the plan provided by Lane County.

ISSUE: One person stated that the proposed lake loadings are too low and could be higher and still protect the lake. This person recommended that the Clear Lake loading be set at 330 #/year, with half of the additional allowed load (330-218) be given to new development.

Department's Response: A higher loading for Clear Lake may still maintain the lake in an oligitrophic state (little nourished). Oligitrophic lakes are very clear. The amount of aquatic growth in a lake is proportional to the amount of phosphorus in the lake water. An increase in phosphorus will increase aquatic growth. At this time, the Department has no social or economic justification pursuant to OAR 340-41-026 to justify any increase in pollutant levels in the lake and a corresponding, even if insignificant, reduction in water quality.

ISSUE: Phosphorus cannot travel through the ground for distances greater than 500 feet.

Department's Response: The 500 feet hypothesis has not been verified in any scientific journal provided to the Department. The Department recognizes that soil can effectively attenuate phosphorus levels. However, relatively small amounts of phosphorus will cause significant growth of algae in Clear Lake. Such growths could significantly increase the cost to Heceta Water District for providing water to its customers. Therefore, the Department does not believe it is appropriate to assume that a 500 foot set-back will totally eliminate the discharge of phosphorus into the lake from a drainfield.

As part of the watershed management plan required by the proposed rule, Lane County could include scientific information about phosphorus attenuation in the soil. This information would be used to support the controls proposed to limiting phosphorus loading into the lakes.

ISSUE: One person suggested that a definition for the Collard Lake subdivisions should be included in the proposed rules.

Department's Response: The proposed rules, as derived, make no reference to the Collard Lake subdivisions and, as a result, no specific definition is needed.

ISSUE: Storm water controls should only be a consideration for Collard Lake lots.

Department's Response: The Department believes that stormwater quality controls will probably be necessary for any new development in the watershed if existing loading limits for Clear Lake are to be maintained. The need, however, will be addressed and defined, if necessary in the watershed management plan.

ISSUE: The proposed rules should allow septic tanks where it is infeasible to locate them outside the watershed.

Department's Response: The need for additional septic tank systems should be demonstrated in the watershed management plan. The watershed plan provides the only means for considering the additional phosphorus discharges caused by the additional septic tank systems in relation to overall lake loadings.

ISSUE: Some people had concerns about alum septic tank systems working effectively.

Department's Response: As background, the Department has found a technical paper that describes a system for adding alum to septic tank systems. The alum combines with the phosphorus and produces a sludge which settles to the bottom of the septic tank. In an experimental septic tank system, phosphorus concentrations were found to be reduced by over 95% through the septic tank. The Department was unable to verify whether any of these systems were ever put into regular use.

The Department shares the concern of this comment, but believes that it is an option that should not be discarded. The Department believes such a system could be pilot tested in the Clear Lake Watershed under the control of a sanitary district or other municipality. A district (or municipality) is needed to assure that the systems are operated and maintained. If the pilot studies are shown not to work effectively, a sewer or other alternative would have to be implemented to reduce phosphorus loads from the Collard Lake subdivisions.

ISSUE: Undeveloped lot owners either want a sewer or to be bought out.

Department's Response: This comment comes from people who own undeveloped property in the Collard Lake subdivisions and who are frustrated by the inability to use their property. The Department recognizes this frustration and has been sensitive to this concern when drafting these proposed rules for protecting lake water quality which is the Department's primary responsibility.

ISSUE: Legislation may be needed to give necessary authority to achieve what is needed at Clear Lake.

Department's Response: Statutory changes could assist Lane County and other entities in implementing a watershed management plan. One example is a change that would allow Heceta Water District to have authority over facilities other than those that just provide domestic water supply. In the case of Clear Lake, it might be desirable to have any sewer or storm water system also under the authority of the water district. This would provide more efficient service and would also provide greater assurance that water pollution control facilities were properly operated and maintained.

It may also be desirable for Lane County (or any other planning jurisdiction) to have authority to unilaterally establish a sanitary district or other special district if necessary to manage public facilities designated in a land use plan.

ISSUE: One testifier stated that the requirements of a watershed management plan were unclear as to what would be required for the Collard Lake subdivisions and what would be required of others.

Department's Response: The Department has modified this language to clarify this confusion.

RATIONALE FOR CHANGES TO PROPOSED RULES

The following text displays the recommended changes to the proposed rules.

In the proposed rules that went to hearing, the Department proposed to modify OAR 340-71-460 which establishes an on-site sewage disposal system construction moratorium in the Clear Lake watershed. Since the hearing, the Department has determined that changes to the moratorium rule should not be made until a lake watershed management plan is developed to justify its relaxation or lifting.

For OAR 340-41-470, the Department has recommended several changes to the proposal that was presented for hearing. To describe the changes, each section of the proposed rules is stated followed by a short discussion of the rationale for the recommended change.

OAR 340-41-470 SPECIAL POLICIES AND GUIDELINES

In order to preserve the existing high quality water in Clear Lake north of Florence for use as a~~[n unfiltered]~~ public water supply source <u>requiring only minimal filtration</u>, it is the policy of the Environmental Quality Commission to protect the Clear Lake watershed including both surface and groundwaters, from existing and potential contamination sources ~~[by]~~ <u>with the following requirements:</u>

~~[(1) Prohibiting new waste discharges into the lakes, streams, or groundwater within the watershed.~~

~~(2) Establishing a management goal of limiting the cumulative total quantity of NO_3-N discharged to the watershed of a maximum of 170 pounds NO_3-N per year from man-controlled sources, including but not limited to On-Site Sewage Disposal systems, managed forest areas, residential areas and public facilities.~~

~~(3) Requiring that land and animal management activities be conducted utilizing state of the art best management practices to minimize nutrient, suspended solids or other pollutants from contaminating the ground and surface waters.]~~

(1) The total phosphorus maximum annual loading discharged into Clear Lake shall not exceed *[265] 241* pounds per year from all sources.

RATIONALE: Currently, the Department believes that about 218 pounds per year of phosphorus is entering Clear Lake. The lake loading limitation for Clear Lake of 265 pounds per year was originally proposed because the Department anticipated that the watershed management plan being developed by Lane County would request an increase to 265. During the hearing process, however, the Department determined that an increase could only be allowed by the Environmental Quality Commission pursuant to OAR 340-41-026 which requires social and economic justification. At this time, the Department has no information to provide the economic and social justification. Therefore, a loading limitation of 265 pounds per year is inappropriate at this time.

The loading limitation of 241 pounds per year is the loading that the Department believes will ultimately be discharged into Clear Lake as the existing on-site sewage disposal systems in the watershed age causing reduced effectiveness.

(2) The total phosphorus maximum annual loading for the Clear Lake watershed shall be deemed exceeded if:

(a) The median concentration of total phosphorus from samples collected in the epilimnion between May 1 and September 30 exceed *[9.5] 9* micrograms per liter during two consecutive years, and

RATIONALE: The figure of 9.5 ug/l was a concentration derived from a loading limitation of 265 pounds per year on Clear Lake. A lake loading limit of 241 pounds per year should result in a concentration of 8.6 ug/l. Because the precision of the phosphorus test is limited at these very low levels, the Department believes it appropriate to round 8.6 to the closest single digit or 9 ug/l.

[(b) The median concentration of chlorophyll a from samples collected in the epilimnion between May 1 and September 30 exceed 2.75 micrograms per liter during two consecutive years. Chlorophyll a shall be determined by the Fluorometric method as specified on pages 10-34 of the 17th Edition of Standard Methods for the Examination of Water and Wastewater, 1989. Collection of samples for chlorophyll a shall be according to the methods described in A Manual of Sea Water Analyses, Bulletin 125, 2nd Edition, Fisher's Research Board of Canada, pp. 187-203.]

RATIONALE: The figure of 2.75 ug/l for chlorophyll a was taken from the literature as the upper limit for an oligotrophic lake. Since the proposed rule would limit phosphorus loadings to levels significantly less than the upper boundary of oligotrophy, the Department believes that 2.75 is not an appropriate figure. Unfortunately, the Department was unable to determine a reliable mathematical relationship between chlorophyll a levels and phosphorus concentrations. The Department, therefore, recommends that chlorophyl a should not be used as an indicator that lake loading limits are being exceeded and phosphorus concentrations should be the sole criteria.

(3) Of the total phosphorus loading of *[265] 241* pounds per year specified in section (1) of this rule, ~~[if sewers are installed in the Collard Lake subdivisions, 234]~~ *192* pounds per year shall be considered current background and Department reserve and shall not be available to other sources. *[If sewers are not installed, the Department's reserve shall be 224 pounds per year.]*

RATIONALE: The Department recommends that the proposed rules should not anticipate the results of the watershed management plan. The numbers in the proposed rule that went to hearing anticipated that existing on-site sewage disposal systems in the Collard Lake subdivisions would be eliminated by sewers or otherwise modified to reduce their phosphorus loads. Further, the reductions anticipated by these controls were proposed to be added to the Department's reserve. Since the hearing, the proposed rules have been modified so that no specific controls are required for the existing on-site sewage disposal systems. The Department's reserve for Clear Lake, therefore, should be set at the existing phosphorus load minus the calculated loads from existing development in the watershed.

(4) *[After implementation of the plans and requirements of sections (5), (6), and (7) or (8) of this rule,] [t]* The total phosphorus maximum annual loading discharged into Collard Lake shall not exceed *[67] 123* pounds per year.

RATIONALE: The Department believes that the phosphorus loading into Collard Lake will increase over time because the effectiveness of the on-site sewage disposal systems serving existing development will be reduced with the age of the systems. The Department believes this will ultimately exert a load of 123 pounds per year of phosphorus into Collard Lake. Water quality in Collard Lake will be reduced, but the lake should remain mesotrophic. This reduction of water quality is not desirable and should be addressed by a watershed management plan required by the proposed rules. Until the plan is submitted, the reduction of water quality is minimized by the continuation of the on-site sewage disposal system construction moratorium.

(5) *[Lane County or any other jurisdiction shall not issue permits allowing connection of new development in the Clear Lake watershed to a sewerage facility until a plan is submitted to and approved by the Department showing how total phosphorus loadings limitations required by this rule will be achieved and maintained. The plan shall address total phosphorus associated with erosion due to construction as well as that due to existing and new development. The plan shall include ordinances as necessary to effectively implement the plan.]* *Lane County or any other jurisdiction shall not issue permits allowing connection of development in the Clear Lake watershed to a sewerage facility and the Department or its contract agent shall not issue on-site sewage system construction-installation permits or favorable site evaluation reports for on-site sewage systems within the Clear Lake watershed until a plan is submitted to and approved by the Department showing how total phosphorus loadings limitations required by OAR 340-41-270 will be achieved and maintained. The plan shall include, but not be limited to, the following:*

(a) Projected phosphorus loadings for existing development and future planned development within the Clear Lake watershed. Technical bases for the projections shall be cited. The plan shall include phosphorus loadings from storm runoff during and after construction, on-site sewage disposal systems and other management activities in the watershed including, but not limited to, forest harvesting.

(b) Adopted ordinances as necessary to carry out the provisions of the plan.

(c) Agreements, contracts and other information as needed to show how and what entity will effectively implement each provision of the plan.

RATIONALE: Essentially section 5 and 6 of the original proposed rule have been merged into a new section 5. The new section 5 has been expanded to include further definition of the information necessary in the proposed watershed management plan.

(6) [The Department or its contract agent shall not issue on-site sewage system construction installation permits or favorable site evaluation reports for on-site sewage systems to serve property within the Clear Lake watershed until a plan is submitted to and approved by the Department showing how total phosphorus loadings limitations required by this rule will be achieved and maintained. The plan shall address total phosphorus associated with erosion due to construction as well as that due to existing and new development. It shall also address forest harvesting activities. The plan shall include ordinances, easements, and/or contracts as appropriate and necessary to effectively implement the plan.] The plan required by section 5 of this rule shall address necessary controls to reduce phosphorus loadings into Collard Lake to levels less than 60 pounds per year. The Department may approve a plan with annual loadings greater than 60 pounds per year, but only if the plan demonstrates that controls necessary to achieve less than 60 pounds per year are unreasonable and overly burdensome.

RATIONALE: This new section would require that the proposed watershed management plan address necessary controls to reduce loadings on Collard Lake to levels that would allow it to become oligotrophic. The Department calculates that Collard Lake could be oligotrophic at phosphorus loading levels of 60 pounds per year. The Department believes that Collard Lake was probably oligotrophic before existing development and believes it is appropriate to determine what controls would be necessary to return it to its original state. If such controls are unreasonable and overly burdensome the Department could approve a watershed management plan with proposed lake loadings up to those specified in section 4 of the proposed rules.

(7) If the plan required by section 5 of this rule proposes that Clear Lake and/or Collard Lake loading limits be increased from levels established in section 1 and/or section 4 of this rule, the plan shall include the social and economic justification for such increases as required by Oregon Administrative Rule (OAR) 340-41-026. The justification shall show the costs of achieving the loading limits established in this rule as well as the economic and social benefits of increasing the loads. The Commission shall not approve any plan that will not achieve a lake loading limit for Collard Lake of 140 pounds or less of phosphorus per year. The Commission shall not approve any plan that will not achieve a lake loading limit for Clear Lake of 251 pounds or less of phosphorus per year.

RATIONALE: It is possible that Lane County could develop a watershed management plan that proposes increased loadings of phosphorus to Clear Lake and/or Collard Lake. OAR 340-41-026 requires the Commission to find social and economic justificiation before existing high quality water could be degraded by a load increase. The Department believes that increased loadings to Clear Lake should not cause it to no longer

be oligotrophic. By definition, it could become mesotrophic if phosphorus concentrations routinely exceed 10 ug/l. The Department believes a safety factor should be provided to assure that this concentration will not be exceeded and has recommended that loadings never exceed 251 pounds per year. A loading of 251 pounds per year would translate to a phosphorus concentration of 9 ug/l which essentially provides a 10% safety factor.

Similarly, the Department believes that Collard Lake should not be allowed to become eutrophic. By applying a similar 10 % safety factory, the maximum loading for Collard Lake should not exceed 140 pounds per year.

[(7)] (8) [By October 1, 1993, all sewage generated within the Collard Lake subdivisions shall be collected, treated and disposed according to a sewerage facilities plan report submitted to the Department by October 1, 1991.] No construction of *[the] a* sewerage facility *to serve the Clear Lake watershed or a portion thereof* shall begin until or unless:

(a) The facilities plan report and engineering plans and specifications have been approved in writing by the Department.

(b) It is constructed and operated by a municipality with authority for the operation and maintenance of sewerage facilities.

(c) Before construction starts, the responsible municipality shall demonstrate that it has a reliable source of funding to assure proper construction, operation, maintenance, and replacement of the required sewerage facilities.

RATIONALE: The Department recommends that the lake watershed management plan determine if a sewer system should be installed to serve the Collard Lake subdivisions. Consequently, the compliance schedule for requiring a sewer to be installed has been deleted from the proposed rules. The Department believes that there are certain conditions that should be met before a sewer system is built in the watershed, however. These conditions have been retained in the proposed rules.

[(8) The Department may grant exception to section (7) of this rule, if, by October 1, 1991, an alternative plan is submitted to and approved by the Department which, when implemented, will achieve the annual phosphorus loading limit for Collard Lake required by section (4) of this rule.]

RATIONALE: This section of the proposed rules has been deleted because the sewer system originally required in section 7 is no longer required in the proposed rules.

(9) No on-site sewage system construction-installation permits, favorable site evaluation reports, or sanitary sewer connection permits shall be issued until a plan for monitoring the water quality of Clear Lake is submitted to and approved by the Department. The plan shall include contracts or memorandums of agreement that assure that the monitoring will be conducted.

RATIONALE: This was in the original proposed rule. The Department believes, that a requirement for water quality monitoring of the lakes is necessary and appropriate to properly gauge the effectiveness of the rule and the watershed management plan, if and when one is developed and implemented.

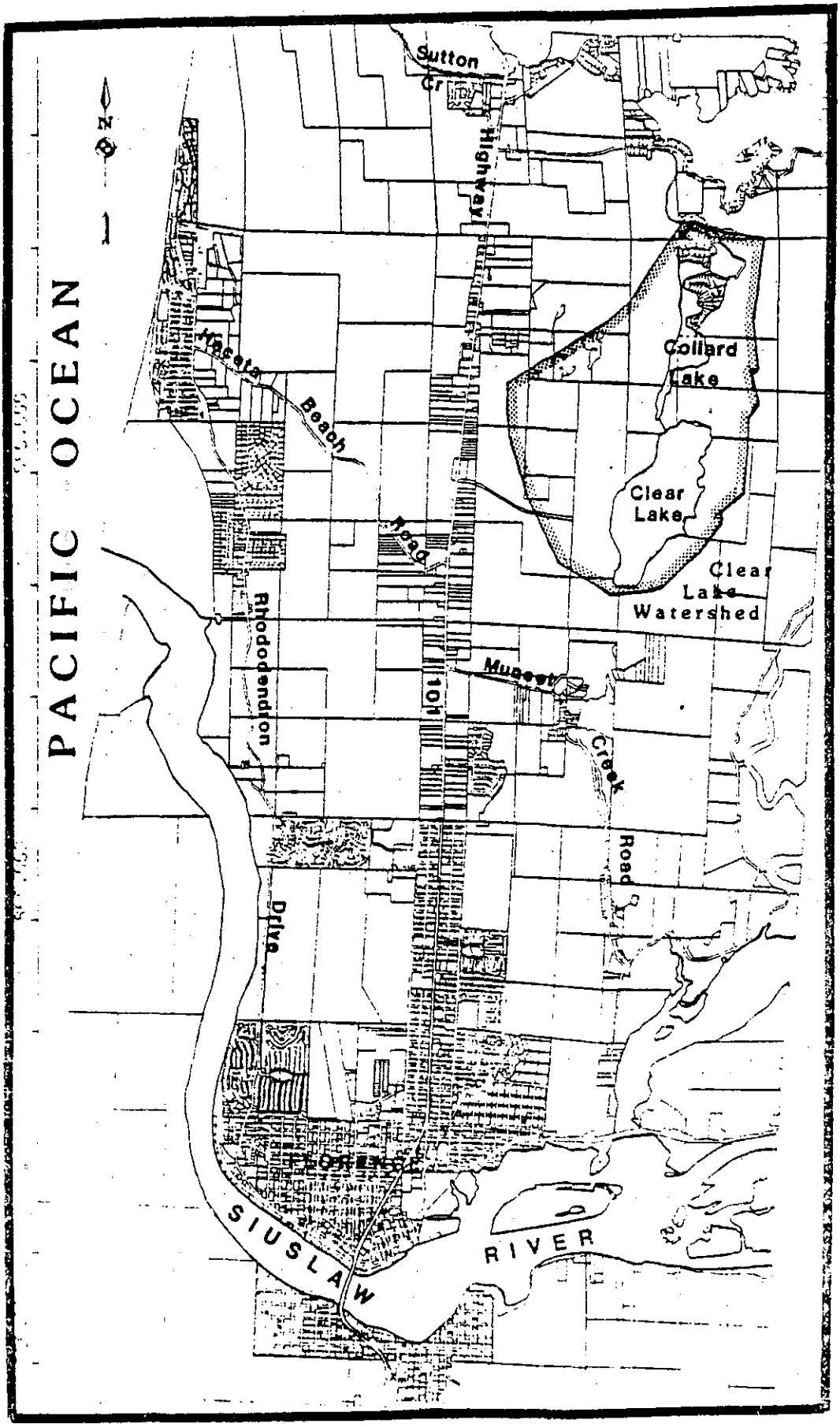
(10) Unless it is demonstrated that stormwater runoff treatment and control systems are not necessary to meet the total maximum annual loading for total phosphorus, any off-site or on-site control facilities for stormwater quality control necessary to comply with this rule shall be under the control of a municipality.

RATIONALE: This was in the original proposed rule and, the Department believes, is still necessary and appropriate. Storm water control systems may be an important element of managing phosphorus loads in the watershed. Such systems are usually passive and can be made to blend into the landscaping. In addition, they may be on private property. Without the systems being under the control of a municipality, the Department believes they could be inadvertently modified by property owners without recognition of their purpose.

[(11) Unless otherwise approved in writing by the Department, a municipality shall be responsible for all sewerage facilities including on-site sewage disposal systems constructed in the Clear Lake watershed after December 1, 1989.]

RATIONALE: The Department chose to delete this condition at this time because the watershed management plan should define the need for public ownership of individual on-site sewage disposal systems. As opposed to storm water systems, it is unlikely that property owners will inadvertently modify a septic tank and drainfield system without knowing or at least without quickly recognizing their error. In some cases, particularly to assure long-term operation and maintenance of on-site systems, public ownership might be desirable to provide periodic inspection and repair if necessary. A very few failing on-site systems could exert a substantial phosphorus load on the lake not to mention the creation of other water quality problems.

FIGURE 11. Study Area Map Showing Maximum Boundry of the Clear Lake Watershed and Parcel Distribution.



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

MEMORANDUM

DATE: December 11, 1990

TO: Environmental Quality Commission

FROM: Michael B. Huston MBH (aa)
Assistant Attorney General

SUBJECT: Authority of Third Parties to Request Hearings on Pulp and Paper Mill NPDES Permits

Requested Action

Clarify commission's position on whether third parties may request a contested case hearing on the pulp and paper mill NPDES permits recently issued by DEQ.

Background

In early 1990, DEQ issued NPDES permit modifications affecting three pulp and paper mills (Pope & Talbot, No. 100313; James River II, No. 3754-J; and City of St. Helens/ Boise Cascade, No. 3855-J). These permit modifications imposed additional limitations on the discharge of dioxin and related toxic pollutants. By order issued on February 12, 1990, the Environmental Quality Commission authorized third parties to request a contested case hearing before the commission on these permits (see attached order). Several third parties, as well as the permittees, requested a contested case hearing, and that proceeding has been pending before Hearings Officer Arno Denecke.

In November 1990, DEQ took additional action on the three permits. (In the case of James River II and City of St. Helens/ Boise Cascade, DEQ issued permit renewals; in the case of Pope & Talbot, DEQ issued a further permit modification.)

Discussion

James River and the City of St. Helens/Boise Cascade have again requested contested case hearings on their permits. Pope & Talbot has not challenged the new permit modification.

The issue has arisen as to whether the commission intended its prior order on third parties to extend to the more recent DEQ permits. The hearings officer and I believe that this matter can most appropriately and efficiently be resolved by commission clarification at this time. If the commission wishes to extend the authority of third parties to the more recent permits, a revised order to this effect will be issued.

This issue has significance mainly for Pope & Talbot because this is the one case in which the permittee did not itself request review. Written legal arguments from the affected parties are attached for the commission's information. Also, at the request of the parties, a transcript of the commission's earlier deliberations on this issue will be provided to the commission at or just prior to the commission's meeting.

#5028H/aa
cc: Arno Denecke
Pulp and paper mill service list

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
STATE OF OREGON

In the matter of NPDES Permit Modifications related to Pulp Mills	)))	ORDER AND NOTICE OF OPPORTUNITY FOR CONTESTED CASE HEARING

The Department of Environmental Quality (DEQ) has issued modifications of the waste discharge permits for three facilities: the Pope & Talbot pulp mill at Halsey, Oregon (Permit No. 100413); the James River II pulp mill at Wauna, Oregon (Permit No. 3754-J); and the City of St. Helens facility which treats waste from the Boise Cascade pulp mill at St. Helens (Permit No. 3855-J). Among other changes, the modifications include a time schedule for reducing the discharge of detectable concentrations of dioxin and also include waste discharge limitations for dioxin and other chlorinated organic compounds.

At a meeting on January 19, 1990, the Environmental Quality Commission (EQC) directed that, in addition to the affected permittees, other persons be allowed to request a contested case hearing in this matter, consistent with the Attorney General's Model Rules for contested case proceedings. If you desire a hearing, you must notify the Director of DEQ in writing that you request a hearing within 21 days of the date of the mailing of this notice to you. If a request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived unless excused for

mistake, inadvertence, surprise or excusable neglect. Your request must meet the requirements of OAR 137-03-005 through -007, which are attached, except that only three copies of the request must be submitted at this time. Your request for a hearing must also state which of the three permits you wish to address.

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, rights of representation and other rights of parties relating to the conduct of the hearing as required under ORS 183.413(2) before commencement of the hearing. It is also anticipated that a pre-hearing conference will be scheduled to resolve questions of party status and other procedural matters.

The permit modifications were issued by DEQ on Monday, February 5, 1990, and are available upon request directed to:

Department of Environmental
Quality
Water Quality Division
811 S.W. Sixth Avenue
Portland, OR 97204
Telephone: 229-5325

This notice also serves to extend the deadline for the permittees to request a contested case hearing to 21 days from the date of mailing of this notice. The permits are governed

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by the provisions of the federal Clean Water Act and related state water quality statutes and rules.

IT IS SO ORDERED.

On behalf of the Environmental Quality Commission:

DATED and mailed this 12th day of February, 1990.

Fred Hansen
Director, DEQ

Contested Case Proceedings Generally

340-11-098

Except as specifically provided in OAR 340-11-132, contested cases shall be governed by the Attorney General's Model Rules of Procedure, OAR 137-03-001 through 137-03-093. In general, a contested case proceeding is initiated when a decision of the Director or Department is appealed to the Commission. Therefore, as used in the Model Rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be Department where context requires.

Attorney General's Model Rules

Contested Case Notice

137-03-001

(1) In addition to the requirements of ORS 183.415(2), a contested case notice may include a statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case, automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

(2) Except as otherwise required by law, the contested case notice shall include a statement that if a request for hearing is not received by the agency within 21 days of the date of mailing or other service of the notice, the person shall waive the right to a hearing under ORS chapter 183, except as provided in OAR 137-03-075(6) and (7).

(ORS 183.415; 183.450)

Rights of Parties in Contested Cases

137-03-002

(1) In addition to the information required to be given under ORS 183.413(2) and ORS 183.415(7), before commencement of a contested case hearing, the agency shall inform a party, if the party is an agency, corporation, or an unincorporated association, that such party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise.

(2) Except as otherwise required by ORS 183.415(7), the information referred to in 137-03-002(1) may be given in writing or orally before the commencement of the hearing.

(3) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. Informal settlement may be made in license revocation proceedings by

written agreement of the parties and the agency consenting to a suspension, fine, or other form of intermediate sanction.

(4) Unless precluded by law, informal disposition includes, upon agreement between the agency and the parties, but is not limited to, a modified contested case proceeding, nonrecord abbreviated hearing, nonbinding arbitration, and mediation, but does not include binding arbitration.

(ORS 183.413, 183.415)

Request by Person to Participate as Party or Limited Party

137-03-005

(1) When an agency gives notice that it intends to hold a contested case hearing, persons who have an interest in the outcome of the agency's proceeding or who represent a public interest in such result may request to participate as parties or limited parties.

(2) A person requesting to participate as a party or a limited party shall file a petition, with sufficient copies for service on all parties, with the agency at least 21 days before the date set for hearing. Petitions untimely filed shall not be considered unless the agency determines that good cause has been shown for failure to file timely.

(3). The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization which the petitioner represents.

(b) Name and address of the petitioner's attorney, if any.

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought.

(d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding.

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest.

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interests identified in 137-03-005(3)(d) or (e).

(4) The agency shall serve a copy of the petition on each party personally or

by mail. Each party shall have seven days from the date of personal service or agency mailing to file a response to the petition.

(5) If the agency determines that good cause has been shown for failure to file a timely petition, the agency at its discretion may:

(a) Shorten the time within which answers to the petition shall be filed, or

(b) Postpone the hearing until disposition is made of the petition.

(6) If a person is granted participation as a party or a limited party, the agency may postpone or continue the hearing to a later date when it appears that commencing or continuing the hearing would jeopardize or unduly burden one or more of the parties in the case.

(7) In ruling on petitions to participate as a party or a limited party, the agency shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding.

(b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing.

(c) When a public interest is alleged, the qualifications of the petitioner to represent that interest.

(d) The extent to which the petitioner's interest will be represented by existing parties.

(8) A petition to participate as a party may be treated as a petition to participate as a limited party.

(9) The agency has discretion to grant petitions for persons to participate as a party or a limited party. The agency shall specify areas of participation and procedural limitations as it deems appropriate.

(10) An agency ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner and all parties. If the petition is allowed, the agency shall also serve petitioner with the notice of rights required by ORS 183.413(2).

(ORS 183.310; 183.415)

Request by Agency to Participate as a Party or an Interested Agency

137-03-007

(1) When an agency gives notice that it intends to hold a contested case hearing, it may name any other agency that has an interest in the outcome

of that proceeding as a party or as an interested agency, either on its own initiative or upon request by that other agency.

(2) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices, including notice of rights, as any party in the proceeding.

(3) An agency may not be named as a party under this rule without written authorization of the Attorney General.

(ORS 180.060; 183.310; 183.413)

Non-Attorney Representation

340-11-102

Pursuant to the provisions of Section 3 of Chapter 833, Oregon Laws 1987, and the Attorney General's Model Rule OAR 137-03-008, a person may be represented by an attorney or by an authorized representative in a contested case proceeding before the Commission or Department.

Attorney General's Model Rule

Persons Represented by Authorized Representative in Statutorily Designated Agencies

137-03-008

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Agency" means: State Landscape Contractors Board; Department of Energy and the Energy Facility Siting Council; Environmental Quality Commission and the Department of Environmental Quality; Insurance Division of the Department of Insurance and Finance for proceedings in which an insured appears pursuant to ORS 737.505; Fire Marshall Division of the Executive Department; Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 641.605 to 541.685; Public Utility Commission; Water Resources Commission and the Water Resources Department.

(b) "Authorized representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, or an authorized officer of employee of a governmental authority other than a state agency.

(c) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case.

Western Environmental Law Clinic

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Eugene, Oregon 97403
503-346-3823
FAX: 503-346-3985

November 27, 1990

Mr. Fred Hansen
Director
Oregon Department of Environmental Quality
811 S.W. Sixth
Portland, OR 97204

Dear Mr. Hansen:

I enclose a copy of a notice of appeal of the three pulp mill permits issued by the Department on November 7 and 14, 1990.

Sincerely,

John E. Bonine
Attorney for NCAP and CRU

Enclosure
cc: Judge Arno Denecke
All Counsel

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of NPDES Permit Modifications Related to Pulp Mills, Permits Nos. 100413, 3754-J, and 3855-J	)	NORTHWEST COALITION FOR ALTERNATIVES TO PESTICIDES (NCAP) AND COLUMBIA RIVER UNITED (CRU): APPEAL, REQUEST FOR CONTESTED CASE HEARING, AND REQUEST TO PARTICIPATE AS PARTIES

INTRODUCTION

1.

Northwest Coalition for Alternatives to Pesticides (NCAP) is a five-state nonprofit citizens' organization that advocates a reduction of toxic substances in the environment. Its members live throughout Oregon and the Northwest and depend upon clean river environments. Its address is P. O. Box 1393, Eugene, Oregon 97440.

Columbia River United (CRU) is a nonprofit citizens' organization with members in both Oregon and Washington who depend upon clean river environments. Its address is: P. O. Box 667, Bingen, Washington 98605.

Each seeks to protect the personal interests of its members who use the environment of the Willamette and Columbia River systems and the public interest in these environments and in adherence to law.

2.

Pursuant to a January 19, 1990, order of the Environmental Quality Commission that persons such as NCAP and CRU be allowed to request a contested case hearing in the above-captioned

matters, NCAP appealed certain NPDES permit modifications for dioxin and AOX and has participated as parties to all subsequent proceedings.

SUBSEQUENT AGENCY ACTION

3.

(a) On November 7, 1990, the Department of Environmental Quality issued an NPDES "permit renewal" to the bleached kraft pulp and paper mill operated by Pope & Talbot in Halsey, Oregon.

(b) On November 14, 1990, the Department of Environmental Quality issued an NPDES "permit renewal" to the bleached kraft pulp mill operated by James River Corporation in Wauna, Oregon.

(c) On November 14, 1990, the Department of Environmental Quality issued an NPDES "permit renewal" to the City of St. Helens, Oregon, for bleached kraft pulp mill operated by Boise Cascade Corporation in St. Helens.

NATURE OF RELIEF SOUGHT

4.

Pursuant to the January 19, 1990, order of the Environmental Quality Commission and pursuant to the order of the Hearings Officer on October 26, 1990, NCAP refiles its March 5, 1990, Notice of Appeal and Request for Contested Case Hearing for each of the permits in ¶ 3.

5.

Pursuant to a January 19, 1990, order of the Environmental Quality Commission and pursuant to the order of the Hearings Officer on October 26, 1990, NCAP and CRU file this Notice of Appeal and Request for Contested Case Hearing for each of the permits in ¶ 3.

6.

Pursuant to a January 19, 1990, order of the Environmental Quality Commission and pursuant to the order of the Hearings Officer on October 26, 1990, and any other rule of the Department, NCAP and CRU request intervention as parties in any and all proceedings related to the above-referenced permits instituted by others.

7.

Nothing in this Notice of Appeal waives any right otherwise existing to appeal, intervene, request a contested case, institute or continue court litigation, or otherwise participate in any of the above-captioned proceedings or related proceedings.

Dated: November 27, 1990 Respectfully submitted,

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For NCAP and CRU

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the matter of the NPDES Waste Discharge Permit No. 3754-J, James River II, Inc., Wauna Mill, and the NPDES Waste Discharge Permit No. 100715, Boise Cascade.	PREHEARING CONFERENCE STATEMENT OF POPE & TALBOT

INTRODUCTION

The prehearing conference to be held on December 7 was originally a part of appeal proceedings which followed the Department of Environmental Quality's (DEQ) issuance of modified NPDES permits on February 5, 1990 for the mills of Pope & Talbot, Boise Cascade and James River. In November 1990, the DEQ issued new permits to those mills. These new permits supersede and replace the permits which originally served as the basis for the proceedings in which this prehearing conference was scheduled. The proceedings which began as a result of the permits issued on February 5 are moot.

The only hearing which can now occur is in the context of an appeal, if any, filed by the mills from the permits recently issued. Under the DEQ's regulations, OAR 340-45-035(9), only the permittee has a right to request a hearing. James River and Boise Cascade have filed requests for hearing. Pope & Talbot has not and will not appeal the current permit. There is no proceeding concerning the Pope & Talbot permit.

(59449)

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FACTS

In July of 1990, the DEQ began the administrative process which has resulted in the issuance of new permits for the three mills. DEQ initiated this latest process by notice to the public and invitation to comment and introduce testimony at a hearing concerning the proposed replacement permits. These newly proposed permits would replace the modified permits issued to the mills on February 5, 1990. The public comment period lasted from mid-July until mid-August 1990. In mid-August, hearings were held concerning the replacement permits for each mill. After that public comment and testimony process was completed, the DEQ completed its work and issued new permits to the mills. Pope & Talbot received its permit on November 7 and Boise Cascade and James River received theirs on November 14. These new permits supersede the modified permits issued on February 5, 1990.

The provision of the February 5 permits are not in dispute because those permits have no authority. The proceedings which followed from the issuance of the February 5, 1990 permits are moot. The controlling permits for the mills are those issued in November.

The permits issued in November of 1990 were the result of an administrative process which is virtually identical to the process which led to the February 5, 1990 permits. In both cases, the permits were issued after an extensive period of public comment and hearings at which testimony was presented by the mills, members of the public and NCAP.

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The following chart illustrates the process which led to the issuance of the February 5 permits and later the issuance of the current permits in November of 1990.

Proceeding No. 1

12/13/89	Public notice regarding January 12, 1990 hearing concerning modified permits for the Pope & Talbot to reflect changes in limits for TCDD (dioxin) and AOX (adsorbable organic halogens).[1]
1/12/90	Public hearing.
2/5/90	Permit modification issued.
3/90	The three mills filed appeals from the permits.
5/24/90	DEQ filed a motion for stay of this proceeding because new permits would be issued which would supersede the February 5 permits.
9/90	Status conference on issuance of new permits.
10/90	Status conference on issuance of new permits.

Proceeding No. 2

7/13/90	Notice for public comment and notice of public hearing concerning new permits.
8/8/90	Public hearing on Pope & Talbot permit.
8/13/90	Public comment period closed.

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[1]Except where noted the dates and events concern Pope & Talbot. The events and dates for the other mills are the same or similar.

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11/7/90	New permit issued to Pope & Talbot which supersedes the February 5, 1990 permit.
11/14/90	New permit issued to Boise Cascade and James River which supersede the February 5, permits.
11/27/90	Expiration of period for permittee to request hearing; Pope & Talbot did not file any request for hearing.
12/3/90	Request for hearing filed by James River.
12/4/90	Request for hearing filed by Boise Cascade.

DISCUSSION

The administrative rules of the DEQ concerning appeals from the issuance, renewal or modification of an NPDES permit is governed by the following provision:

> "If the applicant is dissatisfied with the conditions or limitations of any NPDES permit issued by the Director, he may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 20 days of the date of mailing of the notification of issuance of the NPDES permit. Any hearing held shall be conducted pursuant to the regulations of the Department." OAR 340-45-035(9); see also OAR 340-45-040.

The administrative proceeding in which the prior prehearing conferences were held and under which the current prehearing conference was scheduled is moot. The permits which were at issue in that proceeding are superseded. The permits which now control and which are the only ones that can now be at issue are those that were issued on November 7 and November 14,

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1990. The only proceedings which have been initiated in compliance with the Department's rules and procedures is the request for hearing filed by James River and Boise Cascade. The Oregon statutes or administrative regulations which concern NPDES permits do not provide any authority for an appeal of a permit when the permittee has not requested such relief. Pope & Talbot have not appealed their permit. Therefore, the appeal and request for contested case hearing on the Pope and Talbot permit filed by NCAP and CRU cannot be allowed.

CONCLUSION

Pope & Talbot submits this statement and will attend the prehearing conference scheduled for December 7 to protect its interests related to the appeals filed by Boise Cascade and James River. Also, to the extent it is necessary to object to the "appeals" filed by NCAP and CRU, Pope & Talbot wishes to participate to protect its rights.

Respectfully submitted

SCHWABE, WILLIAMSON & WYATT

By: _____
Jay T. Waldron
David F. Bartz, Jr.
Of Attorneys for Pope & Talbot

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1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I served the foregoing PREHEARING
3 CONFERENCE STATEMENT OF POPE & TALBOT upon the following:

4 Richard D. Rodeman
Central Park Municipal Building
5 760 S.W. Morrison
P.O. Box 1083
6 Corvallis, OR 97339

7 Brian J. King
Associate General Counsel
8 Boise Cascade Corporation
One Jefferson Square
9 P.O. Box 50
Boise, ID 83728
10

11 on the 6th day of December, 1990 by mailing to each of them
12 designated above a true and correct copy thereof, certified by me
13 as such, placed in a sealed envelope addressed to each of them at
14 the addresses set forth above and deposited in the U.S. Post
15 Office at Portland, Oregon with postage paid.

16 I further certify that I served PREHEARING CONFERENCE
17 STATEMENT OF POPE & TALBOT on the following by:

18 FAX

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School of Law
20 University of Oregon
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21 Fax: 346-3985

22 Linda K. Williams
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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of NPDES Permit Modifications Related to Pulp Mills, Permits Nos. 100413, 3754-J, and 3855-J and DEQ No. WQ-WVR-90-246 and NPDES Permit No. 100715	NORTHWEST COALITION FOR ALTERNATIVES TO PESTICIDES (NCAP) AND COLUMBIA RIVER UNITED (CRU): RESPONSE TO "PREHEARING CONFERENCE STATEMENT OF POPE & TALBOT"

INTRODUCTION

Northwest Coalition for Alternatives to Pesticides (NCAP), a five-state nonprofit citizens' organization that advocates a reduction of toxic substances in the environment, and Columbia River United (CRU), a nonprofit citizens' organization with members in both Oregon and Washington timely filed appeals of the above-captioned permits and modifications, both in February 1990 and on November 27, 1990.

In a "Prehearing Conference Statement" filed earlier today by a company that claims to be no longer a party to an appeal before this Commission, Pope & Talbot has argued that "there is no proceeding concerning the Pope & Talbot permit" and that the permits appealed last February "are superseded" and the administrative proceeding "is moot." Since Pope & Talbot has not appealed its permit, in its view the appeal by NCAP and CRU "cannot be allowed," according to the Statement. NCAP and CRU disagree, and file this response.

1.

Pursuant to a January 19, 1990, order of the Environmental Quality Commission that persons such as NCAP and CRU be allowed to request a contested case hearing in the above-captioned matters, NCAP appealed certain NPDES permit modifications for dioxin and AOX and has participated as parties to all subsequent proceedings. Because of the specific possibility that the Department and one or more of the pollution permit holders might attempt to prevent administrative review of the pollution limits to be given to the polluters, as a result of the closed-door negotiations between the Department and the polluters, both NCAP and Local #290 Pipefitters Union asked for clarification of their status in case of any modification of the permits.

The Honorable Arno Denecke ruled orally at the last prehearing conference that, considering the representations by the Department of Justice that the negotiations involved a contested case already filed, present appellants NCAP and Local #290 could continue their appeals. (A written order was subsequently drawn up and issued by Michael Huston.)

Pope & Talbot had sufficient opportunity to argue against this impending ruling at the last prehearing conference, but chose only "not to stipulate" to the preservation of the appeals of NCAP and Local #290. It is untimely, inappropriate, and wasteful of administrative resources for Pope & Talbot now to be allowed to ask that the issue be reopened.

2.

Furthermore, it is clear that the Environmental Quality Commission intended in its action of January 19, 1990, to allow citizen groups to file appeals of the important limits on dioxin and organochlorines planned for the companies' permits by the Department of Environmental Quality.

Furthermore, the order signed by DEQ Director Fred Hansen after the EQC vote stated that the permit "modifications include a time schedule for reducing the discharge of detectable concentrations of dioxin and also include waste discharge limitations for dioxin and other chlorinated organic compounds" and that the EQC "directed that, in addition to the affected permittees, other persons be allowed to request a contested case hearing <u>in this matter</u> . . . ." Order and Notice of Opportunity for Contested Case Hearing, February 12, 1990.

The "matter" for which the EQC granted citizen groups the right of review, and for which Director Hansen signed an order, is the "waste discharge limitations for dioxin and other chlorinated organic compounds," as well as associated provisions of the permits -- matters that continue in dispute after the November 7 and November 14 permits and modifications issued by DEQ.

3.

In refiling its notice of appeal, NCAP made it clear that it did so pursuant to the above actions and pursuant to the orders of the Hearings Officer:

> Pursuant to the January 19, 1990, order of the Environmental Quality Commission and pursuant to the order of the Hearings Officer on October 26, 1990, NCAP refiles its March 5, 1990, Notice of Appeal and Request for Contested Case Hearing for each of the permits in ¶ 3. NCAP and CRU Appeal, November 27, 1990, page 2.

In addition, NCAP and CRU jointly filed a new notice of appeal, in case such should be deemed necessary, pursuant to the same authorities. Id. at 3.

NCAP and CRU's appeal and refiled appeal of the matter were timely, and should continue.

3

Appellants NCAP and CRU respectfully point out that the Hearing Officer cannot allow the filing of purported motions by persons who claim not to be parties before the Commission, namely Pope & Talbot.

If the Department of Environmental Quality should agree with the position of Pope & Talbot, then it is up to the Department to file a motion to dismiss the appeal of NCAP and CRU. Such a motion should be argued and decided in due course after appropriate briefing. Any ruling adverse to NCAP and CRU's appeal will then be subject to further briefing and argument before the full Commission.

If the Department does not agree with the position of Pope & Talbot, then of course the appeal should proceed.

Dated: November 27, 1990

Respectfully submitted,

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For NCAP and CRU

CERTIFICATE OF SERVICE

I certify that I served a true copy of NCAP and CRU's Response to "Prehearing Conference Statement of Pope & Talbot" on December 6, 1990, by telefax to the following persons on the attached service list:

Judge Arno Denecke c/o DEQ
Jay Waldron
Michael Campbell
John Gould
Richard Baxendale
Peter Linden
Thane Tiensen
Michael Huston
Larry Edelman

Duplicate copies have not been sent to co-counsels.

In addition, copies will be deposited in the U.S. mail, postage prepaid, addressed to Linda Williams and Richard Rodeman on the attached service list on December 7, 1990.

John E. Bonine

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the matter of the NPDES Waste Discharge Permit No. 3754-J, James River II, Inc., Wauna Mill, and the NPDES Waste Discharge Permit No. 100715, Boise Cascade.)	POPE & TALBOT'S REPLY TO THE RESPONSE OF NCAP AND CRU

INTRODUCTION

On November 7, 1990 the DEQ issued a permit to Pope & Talbot which supersedes the permit issued on February 5, 1990. The November permit was the result of a process which began in July, 1990 and which included a hearing and significant public comment, including the participation of NCAP. The permit sets standards which significantly minimize the discharge of dioxin and other chlorinated organics. The permit will expire in 1992. To ensure that the protection afforded the environment in the new permit does not lapse, the DEQ entered an Order on Consent with Pope & Talbot. The Order on Consent ensures that the process of a new permit will not interrupt operation under the standards now imposed. In return for operations under known standards beyond the two year period remaining on the November permit, Pope & Talbot has relinquished any appeal rights. Even now the November permit is in effect and the standards it imposes are benefitting the public.

DISCUSSION

In reply to the arguments of NCAP and CRU (hereinafter "NCAP"), Pope & Talbot offers the following:

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1 1. There is no dispute that the permit issued to
2 Pope & Talbot by the DEQ on November 7, 1990 supercedes and
3 replaces the earlier, modified permit issued on February 5, 1990.
4 2. Neither NCAP nor CRU objected to DEQ's initiation
5 of the second proceeding in July of 1990 which led to the issuance
6 of the permit to Pope & Talbot. In the public notice the DEQ
7 indicated that the permit would supercede and replace the February
8 5, 1990 permit. NCAP submitted comments and never objected to the
9 process of the superceding permit.
10 3. NCAP first tried to bootstrap itself in as a party
11 to the permit which would issue as a result of the second
12 proceeding at the prehearing conference on October 26. During
13 discussions on procedure, NCAP raised its concern about its status
14 in any proceedings which might follow from permits which all
15 parties expected to be issued soon after that prehearing
16 conference. NCAP did not ask for a right to appeal a permit when
17 the permittee chose not to appeal. There ensued a discussion led
18 by the attorney for DEQ indicating that the current parties should
19 be parties to any "proceeding" which would follow from the newly
20 issued permits. Pope & Talbot objected to such a process
21 indicating that any process and any decision on that process
22 should await the issuance of the new permits.
23 4. NCAP did not request nor did anyone ever consider
24 the ability of NCAP to appeal a permit when the permittee itself
25 did not appeal. Such a procedure is clearly contrary to the
26 applicable administrative rules. See OAR 340-45-035(9). The

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1 extraordinary deviation from the norm which NCAP seeks was not
2 even addressed at the October 26 conference. There cannot be a
3 "proceeding" on a permit until the permittee objects to the
4 permit. This rule has a sound statutory and policy basis. The
5 citizens of the state are able to enjoy immediately the
6 environmental benefits of this permit as more fully described in
7 discussion paragraph 7 below.

8 5. The February 12, 1990 order did not give NCAP a
9 right to appeal the Pope & Talbot permit issued November 7, 1990.
10 The plain words of the order reflect the limited scope of the
11 order. The construction NCAP gives the order proves too much.
12 NCAP's conclusion that the order applies to all discharges of
13 dioxin and other chlorinated organics would give NCAP the right to
14 appeal from a wide variety of permits. The November 7 permit to
15 Pope & Talbot superseded the permit which was the subject of the
16 February 12, 1990 order. Such a new permit was not within the
17 contemplation of the EQC at their January 19, 1990 meeting. The
18 EQC did not intend to permanently change the rules on third party
19 appeals. Pope & Talbot has not initiated any proceedings on the
20 November 7, 1990 permit and therefore, NCAP cannot proceed with
21 its "appeal".

22 6. Contrary to NCAP's argument, Pope & Talbot's
23 concerns about NCAP's "appeal" were raised timely and are not
24 wasteful. Pope & Talbot's prehearing statement timely raised the
25 objection to NCAP "appeal" which was filed the previous week.
26 Certainly, when a person objects to a provision of the Pope &

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1 Talbot permit before the administrative agency which monitors the
2 permit, Pope & Talbot has the right to oppose such effort. Pope &
3 Talbot refers to the November 29, 1990 Order issued by a Hearings
4 Officer which scheduled the December 7 prehearing conference. The
5 scope of that prehearing conference is discussed in paragraphs 2
6 and 3. Importantly, that Order was issued well after the issuance
7 of the Pope & Talbot permit and the permits to the other mills.
8 There was nothing in that Order about requiring the filing of
9 dispositive motions, petitions for intervention or other such
10 substantive matters. The objection to NCAP's appeal could have
11 been filed even later. Pope & Talbot filed a prehearing statement
12 in order to facilitate the discussions at that prehearing
13 conference on the issues which were proposed in the November 29,
14 1990 Order and to communicate to the parties Pope & Talbot's
15 intentions on its participation in light of the fact that Pope &
16 Talbot would not appeal its permit. Pope & Talbot intends to
17 intervene to protect its rights as they may be affected by appeals
18 of Boise Cascade and James River; and, furthermore, Pope & Talbot
19 will continue to object to any effort by NCAP to administratively
20 appeal Pope & Talbot's permit.
21 7. Importantly, Pope & Talbot is now operating under
22 the permit issued on November 7, 1990. Together with the Order on
23 Consent entered into between the Department and Pope & Talbot, the
24 permit offers the public a significant contribution to the health
25 of the state's waters. An appeal of the Pope & Talbot permit and
26 the resultant stay, which as a matter of law follow from any

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disputed permit, would rob the public of the benefit of the new permit. NCAP retains its right to seek judicial review of the permit.

CONCLUSION

The NCAP effort to appeal Pope & Talbot's permit is without a basis in law and would have the effect of thwarting the positive effects which would flow from Pope & Talbot's continued compliance with its permit and the Order on Consent. NCAP's purported "appeal" cannot be supported. NCAP has statutory appeal rights. A substantial change in the administrative rules is not necessary.

Respectfully submitted,

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By _____
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1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I served the foregoing POPE & TALBOT'S

3 REPLY TO THE RESPONSE OF NCAP AND CRU upon the following:

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on the 10th day of December, 1990 by mailing to each of them designated above a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to each of them at the addresses set forth above and deposited in the U.S. Post Office at Portland, Oregon with postage paid.

I further certify that I served POPE & TALBOT'S REPLY TO THE RESPONSE OF NCAP AND CRU on the following by:

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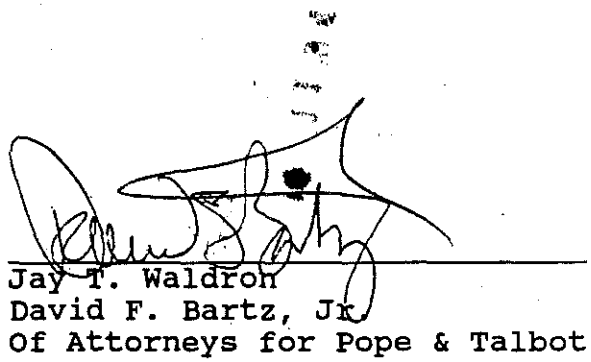

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Hutchison: We are planning to take a lunch break at 1:00 o'clock. We are going to try to get as much of our business done as fast as we can in the intervening period. Thank you for indulging us, and I really apologize for kind of jumbling this up a little bit on you.

Lorenzen: Commissioner... Chairman Hutchison.

Hutchison: Yes.

Lorenzen: One last matter relating to the ICS's. I would propose, and Michael Huston can help me on the proper form of this motion. But I would propose that because of the controversy surrounding this matter and because of the obvious importance of this matter relating to overall Commission policy, that the Commission in this instance allow non-permittees, third parties, to appeal if they so desire, any permits issued by the Department--or the terms of any permits issued by the Department to the Commission.

Hutchison: Is there a second? ... for purposes of discussion?

Huston: I think that is fine, Mr. Chairman. I would like the opportunity to suggest by your next meeting whether we would do that by order or by rule. It can be done, there is no question about that, your ability to order that.

Lorenzen: The only question I have, Michael, is whether or not it would be timely to do that by the next meeting or whether we, because of time constraints, essentially would be forced to do that now.

Hutchison: In other words, the problem is--what happens with these ICS's issued February 4--is it a 30-day period we have?

Hansen: 20 days. Normally a 20-day period for appeal.

Hutchison: So we really need to resolve that today.

Huston: Perhaps, Mr. Chairman, I can suggest that the motion take the form of authorizing an order to that effect, and if for any reason we

determine that is not sufficient we will call you together for a special meeting on a rule.

Hutchison: All right.

Huston: I think an order is legally sufficient for that purpose.

Hutchison: Because it just applies to this case.

Lorenzen: I so move.

Hutchison: Is there a second?

Castle: I second.

Hutchison: Okay. The purpose of this here really, I guess, is that we keep the timeline in place and get the ICS's out. But it permits both sides a chance to participate at the administrative level rather than sending one to the courthouse and one to us...potentially.

Lorenzen: That is fine.

Hutchison: Are there questions? Discussion? Would you call the roll?

Hansen: Commissioners Wessinger.

Wessinger: Aye.

Hansen: Castle.

Castle: Yes.

Hansen: Sage.

Sage: Yes.

Hansen: Lorenzen.

Lorenzen: Yes.

Hansen: Chairman Hutchison.

Hutchison: Yes.

Hutchison: Mike, we will leave it to you to tell us if we acted lawfully or not, and...

Huston: Right.

Hansen: And if not, we would probably schedule some kind of a telephone conference call that would be able to effect the same...

Hutchison: Joe Bernard, Jr. I don't know whether he is here or not. I think he had to leave. Dale Sherbin (?)

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of NPDES Permit Renewals Related to Pulp Mills	)))	ORDER AND NOTICE OF OPPORTUNITY FOR CONTESTED CASE HEARING

In November 1990, the Department of Environmental Quality (DEQ) issued renewals of the waste discharge permits for two facilities: the James River II pulp mill at Wauna, Oregon (Permit No. 100413), and the City of St. Helens facility which treats waste from the Boise Cascade pulp mill at St. Helens (Permit No. 3855-J). Among other changes, the permit renewals include a revised time schedule and limitations to reduce the discharge of dioxin and also include waste discharge limitations and a revised schedule for reduction of chlorinated organic compounds.

The Environmental Quality Commission (EQC) will allow other persons in addition to the affected permittees to request a contested case hearing on these two permit renewals, consistent with the Attorney General's Model Rules for contested case proceedings. Any persons desiring a hearing, must notify the Director of DEQ in writing requesting a hearing within twenty-one (21) days of the date of this notice. If a request for hearing is not received within this twenty-one (21) day period, the right to a hearing granted by this order shall be considered waived unless excused for mistake, inadvertence, surprise or excusable neglect. A request for hearing must meet the requirements of

OAR 137-03-005 through 137-03-007, which are attached, except that only three copies of the request must be submitted at this time. The request for a hearing must also state which of the two permit renewals the requestor wishes to address.

Persons who have filed a request for hearing on the permit renewals for these two mills as of December 4, 1990, do not need to make any further request for a hearing.

Anyone requesting a hearing pursuant to this order will be notified of the hearing schedule and given information on the procedures, rights of representation and other rights of parties relating to the conduct of the hearing as required under ORS 183.413(2). It should be noted that a tentative schedule has already been established for the hearing on these two permits, so parties wishing to join the proceeding may need to take prompt action.

The permit renewals are available by request to:

Department of Environmental
Quality
Water Quality Division
811 S.W. 6th Avenue
Portland, OR 97204
Telephone: (503) 229-5325

The permits are governed by the provisions of the federal Clean Water Act and related state water quality statutes and rules.

/ / /

/ / /

Also in November 1990, DEQ issued a permit modification and consent order for the Pope & Talbot mill at Halsey, Oregon (Permit No. 100413) which has been accepted without contest by Pope & Talbot. At its meeting on December 14, 1990, the EQC decided that there would be no contested case hearing opportunity granted on this permit modification.

IT IS SO ORDERED:

On behalf of the Environmental Quality Commission:

DATED and mailed this 21 day of December, 1990.

FRED HANSEN
Director, DEQ

DIVISION 3

MODEL RULES OF PROCEDURE APPLICABLE TO CONTESTED CASES

Contested Case Defined

137-03-000 [1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-79; 1AG 1-1981, f. & ef. 11-17-81; Repealed by JD 2-1986, f. & ef. 1-27-86]

Notice

137-03-001 (1) In addition to the requirement of ORS 183.415(2), a contested case notice may include a statement that the record of the proceeding to date, including, information in the agency file or files on the subject of the contested case, automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

(2) Except as otherwise required by law, the contested case notice shall include a statement that if a request for hearing is not received by the agency within 21 days of the date of mailing or other service of the notice, the person shall have waived the right to a hearing under ORS chapter 183, except as provided in OAR 137-03-075(6) and (7).

Stat. Auth.: ORS Ch. 183
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-79; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88

Rights of Parties in Contested Cases

137-03-002 (1) In addition to the information required to be given under ORS 183.413(2) and 183.415(7), before commencement of a contested case hearing, the agency shall inform a party, if the party is an agency, corporation, or an unincorporated association, that such party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise.

(2) Except as otherwise required by ORS 183.415(7), the information referred to in section (1) of this rule may be given in writing or orally before the commencement of the hearing.

(3) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine, or other form of intermediate sanction.

(4) Unless precluded by law, informal disposition includes, upon agreement between the agency and the parties, but is not limited to, a modified contested case proceeding, nonrecord abbreviated hearing, nonbinding arbitration, and mediation, but does not include binding arbitration.

Stat. Auth.: ORS Ch. 183
Hist.: 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86

Late Filing

137-03-003 (1) Unless otherwise provided by law, when a person fails to request a hearing or file a petition or any other document within the time specified by agency rules or these model rules of procedure, the late request or filing may be accepted if the agency or presiding officer determines that there is good cause for the late filing.

(2) The late request or filing must be accompanied by a statement explaining the reasons for the late filing.

(3) "Good cause" means a cause beyond the reasonable control of the person.

Stat. Auth.: ORS Ch. 183
Hist.: JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

Request by Person to Participate as Party or Limited Party

137-03-005 (1) When an agency gives notice that it intends to hold a contested case hearing, persons who have an interest in the outcome of the agency's proceeding or who represent a public interest in such result may request to participate as parties or limited parties.

(2) A person requesting to participate as a party or limited party, shall file a petition with sufficient copies for service on all parties, with the agency at least 21 days before the date set for the hearing. Petitions untimely filed shall not be considered unless the agency determines that good cause has been shown for failure to file timely.

(3) The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought.

(d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding.

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest.

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsections (3)(d) or (e) of this rule.

(4) The agency shall serve a copy of the petition on each party personally or by mail. Each party shall have seven days from the date of personal service or agency mailing to file a response to the petition.

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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: December 14, 1990
Agenda Item: L
Division: Air Quality
Section: Planning & Development

SUBJECT:

Medford-Ashland Particulate Matter (PM_{10}) Control Strategy

PURPOSE:

To address shortfall in control strategy caused by repeal of an important local woodburning curtailment ordinance.

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 ___
_X_ Informational Report	Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The Department of Environmental Quality (DEQ, Department) had intended to request at this meeting that the Environmental Quality Commission (EQC, Commission) adopt the proposed PM_{10} control strategy for the Medford-Ashland area. However, one of the local ordinances that restrict woodburning emissions during air pollution episodes was repealed by voters on November 6, 1990; this ordinance is critical to the success of the strategy.

The cities of Medford and Central Point, as well as Jackson County, adopted woodburning curtailment ordinances within the past 12 months. Initiative petitions to repeal the Central Point and Jackson County woodburning curtailment ordinances were on the November 6, 1990, ballot; the Jackson County ordinance was retained by a solid margin but the Central Point ordinance was repealed by a narrow margin.

Substantial reductions are needed in both residential and industrial emissions in order to meet the PM_{10} health standards in the Medford-Ashland area. One of the critical residential emission reduction measures is woodburning curtailment during stagnant air periods. The Department must rely on local governments to operate and enforce mandatory woodburning curtailment programs since the Department does not have the statutory authority to implement such programs.

The repeal of the Central Point curtailment program causes a shortfall in the PM_{10} control strategy. As a result, violations of PM_{10} standards are expected to continue in Central Point and possibly in Medford.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____	Attachment ___
	Enactment Date: _____	
X	Statutory Authority: ORS 468.305	Attachment A
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___
X	Time Constraints:	

Under the 1977 Clean Air Act, adopted PM_{10} control strategies were due to the U.S. Environmental Protection Agency (EPA) as SIP revisions by May 1988, but none of the

States were able to meet this deadline; PM_{10} air quality standards were to be met by September 1, 1991.
The Sierra Club has sued EPA for failure to require States nationally to submit PM_{10} plans according to the 1977 Clean Air Act schedule. The Department and EPA Region 10 agreed to a November 1990 PM_{10} SIP submittal date which was offered in the suit settlement negotiations. This date has been incorporated into the FY91 State/EPA Agreement as well.

The Clean Air Act of 1990 requires that PM_{10} plans be submitted and PM_{10} standards be met as expeditiously as practicable, but provides for extensions of the deadlines for PM_{10} SIP submittals (to November 1991) and attainment of PM_{10} standards (to December 1994) if necessary.

DEVELOPMENTAL BACKGROUND:

___	Advisory Committee Report/Recommendation	Attachment ___
___	Hearing Officer's Report/Recommendations	Attachment ___
___	Response to Testimony/Comments	Attachment ___
X	Prior EQC Agenda Items: Six items.	Attachment B
___	Other Related Reports/Rules/Statutes:	Attachment ___
X	Supplemental Background Information	Attachment C

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The major alternatives regarding the overall PM_{10} control strategy are:

1. Proceed with adoption of the Medford-Ashland PM_{10} control strategy as a revision to the State Implementation Plan and, in parallel, explore potential for developing additional control measures that are necessary to fully meet air quality standards at all locations.

2. Delay submittal of State Implementation Plan and request EPA to extend the plan submittal schedule and attainment date until additional control measures are identified and adopted.

3. Not submit a State Implementation Plan and allow EPA to impose sanctions or develop and implement a Federal Implementation Plan for the Medford-Ashland area.

Potential measures to address the PM_{10} strategy shortfall include at least the following:

A. Development of a local woodsmoke control program that is similarly effective to the repealed woodburning

curtailment program. This may require resubmittal to the voters of Central Point.

B. Evaluation of expected initiatives during the 66th Legislative Session to consider giving backup authority to the Department for woodburning curtailment programs if such programs are clearly needed and local governments are unwilling or unable to implement them.

C. Clarification of EPA responsibilities and authority under the 1990 Clean Air Act and probable EPA action and schedule if an adequate PM_{10} control strategy is not adopted soon.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends Alternative 1 (adoption of partial strategy as soon as possible) and all three potential measures, with the major emphasis on Potential Measure A (development of a replacement local woodsmoke control program).

Regarding the overall PM_{10} strategy alternatives, the Department believes it is in the best interest of the public to proceed with the PM_{10} plan adoption process as a revision to the State Implementation Plan as this will provide federal backup enforcement authority to insure that the industrial rules and residential ordinances are implemented as adopted and guard against potential backsliding. Most importantly, it will make major strides to bring about healthful air quality as soon as possible. At the same time, the Department will be working with local governments, other state agencies, and federal agencies to identify other potential control measures to make up the PM_{10} strategy shortfall.

EPA has the ability under the 1990 Clean Air Act to approve a partial plan. This does not relieve the state or local area from its responsibility to fully meet air quality standards and the other requirements of the Act, but EPA approval of a partial plan would help insure implementation of important state and local control programs through federal backup enforcement authority. If the state does not adopt an adequate plan by the required date, EPA is required under the 1990 Clean Air Act to take federal action within two years.

Regarding potential measures to address the PM_{10} strategy shortfall, the PM_{10} analysis indicates that substantial reductions of woodburning emissions are critical to the success of the PM_{10} control strategy and needed to complement

the industrial and other adopted control measures. The Department believes that woodburning curtailment programs are best done at the local level. The local mandatory woodburning curtailment programs resulted in significant air quality gains this past winter (Attachment C).

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed direction for adoption of the PM_{10} control strategy for the Medford-Ashland area is consistent with Goals 2, 3, 4, and 5 of the Strategic Plan. The Department is not aware of any conflicts with agency or legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

Should the Department proceed under Alternative 1 with the proposed adoption of a partial PM_{10} control strategy for the Medford-Ashland area and, in parallel, pursue what options are available at the local, state and federal level to bring the area into full attainment? Or should the Department delay adoption of the partial strategy until the shortfall can be adequately addressed (Alternative 2)?

Should the Department support initiatives during the 1991 Legislative Session to give the Department backup authority for woodburning curtailment programs if no other alternatives appear feasible to insure attainment?

INTENDED FOLLOWUP ACTIONS:

1. Update the technical analysis in the proposed Medford-Ashland PM_{10} plan based on the repeal of the Central Point ordinance.

2. Make other revisions in the proposed plan based on August and September public hearing testimony, including expanded or additional sections on enforcement, monitoring and progress tracking, and contingency provisions.

3. Propose adoption of the revised Medford-Ashland PM_{10} control plan as a SIP revision at the February 1, 1991, EQC meeting.

4. Work with local governments, other state agencies, and federal agencies to identify other potential control measures to make up the PM_{10} strategy shortfall.

5. Propose adoption at a future EQC meeting of additional control measures, if and when they materialize, in order to make up the strategy shortfall.

Approved:

Section: Merlyn Hough for John Kowalczyk

Division: Lee Brasphan

Director: Fred Hansen

Report Prepared By: Merlyn Hough

Phone: 229-6446

Date Prepared: November 27, 1990

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(2) In determining air purity standards, the commission shall consider the following factors:

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

(i) Effect on normal human health of particular air contaminants;

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;

(L) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants;

(m) The volume of air contaminants emitted from a particular class of air contamination source;

(n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources; and

(o) Other factors which the commission may find applicable.

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof. [Formerly 449.785]

468.300 When liability for violation not applicable. The several liabilities which may be imposed pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter upon persons violating the provisions of any rule, standard or order of the commission pertaining to air pollution shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence or wilful misconduct on the part of such person was not the proximate cause. [Formerly 449.825]

468.305 General comprehensive plan. Subject to policy direction by the commission, the department shall prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of new air pollution in any area of the state in which air pollution is found already existing or in danger of existing. The plan shall recognize varying requirements for different areas of the state. [Formerly 449.782]

468.310 Permits. By rule the commission may require permits for air contamination sources classified by type of air contaminants, by type of air contamination source or by area of the state. The permits shall be issued as provided in ORS 468.065. [Formerly 449.727]

468.315 Activities prohibited without permit; limit on activities with permit. (1) Without first obtaining a permit pursuant to ORS 468.065, no person shall:

(a) Discharge, emit or allow to be discharged or emitted any air contaminant for which a permit is required under ORS 468.310 into the outdoor atmosphere from any air contamination source.

(b) Construct, install, establish, develop, modify, enlarge or operate any air contamination source for which a permit is required under ORS 468.310.

(2) No person shall increase in volume or strength discharges or emissions from any air contamination source for which a permit is required under ORS 468.310 in excess of the permissive discharges or emission specified under an existing permit. [Formerly 449.731]

468.320 Classification of air contamination sources; registration and reporting of sources. (1) By rule the commission may classify air contamination sources according to levels and types of emissions and other characteristics which cause or tend to cause or contribute to air pollution and may require registration or reporting or both for any such class or classes.

(2) Any person in control of an air contamination source of any class for which registration and reporting is required under subsection (1) of this section shall register

PRIOR EQC AGENDA ITEMS

Agenda Item D, January 22, 1988, EQC Meeting, Informational Report: New Federal Ambient Air Quality Standard for Particulate Matter (PM_{10}) and Its Effects on Oregon's Air Quality Program.

Agenda Item M, June 10, 1988, EQC Meeting, Informational Report: Implementation Status of the Total Suspended Particulate Air Pollution Control Strategy in the Medford-Ashland Air Quality Maintenance Area.

Agenda Item H, November 4, 1988, EQC Meeting, Request for Authorization to Conduct Public Hearings on New Industrial Rules for PM_{10} Emission Control in the Medford-Ashland AQMA and Grants Pass and Klamath Falls Urban Growth Areas (Amendments to OAR 340, Divisions 20 and 30).

December 8, 1988, EQC Work Session, Status Report on Medford PM_{10} Issues.

Agenda Item E, September 8, 1989, EQC Meeting, Industrial PM_{10} Rules for Medford-Ashland and Grants Pass: Adoption of New Industrial Rules That Were Taken to Public Hearings in January 1989.

Agenda Item G, June 29, 1990, EQC Meeting, Proposed Particulate Matter (PM_{10}) Control Strategy for the Medford-Ashland AQMA: Request for Authorization to Conduct Public Hearings.

January 11, 1990

Medford, Oregon Price / 35 cents

Mail Tribune

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DEQ: Burn bans work

Limits on burning during inversions get results

By ROBERT STERLING
Mail Tribune Staff Writer

New air quality and weather data offer the first scientific evidence that mandatory wood burning bans in Medford and Central Point are significantly reducing smoke pollution, a top state environmental official said Wednesday.

Despite nearly identical weather conditions during extended periods of air stagnation in December 1989 and December 1985, Medford smoke pollution levels last month were far below levels measured four years earlier, said Nick Nikkila, air quality administrator for the state Department of Environmental Quality.

"We have evidence of a very significant improvement in air quality in almost laboratory conditions," Nikkila said.

The big difference in December 1989 was implementation of a highly publicized Medford ban on residential wood burning, and a Central Point wood burning ban later in the month, he said.

"It just says to me that clearly, this is the right direction to be going," Nikkila said.

"The people in Medford and Central Point ought to be commended for a sacrifice on their part," he said. "But look at the reward."

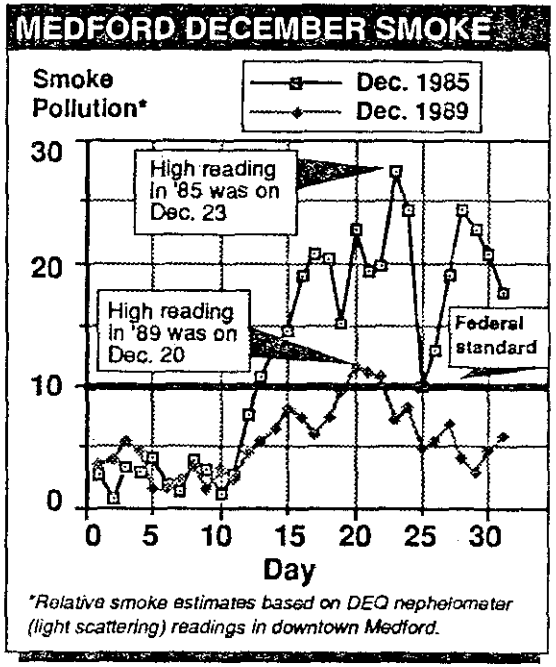
Medford Councilman Bill Mansfield, a strong proponent of the city wood burning ban, said today that the new findings "seem to confirm the wisdom of the city's action."

Another strong proponent, Medford Councilwoman Bobbi Helman, said she was "very, very, very pleased and delighted, and optimistic that we're making a difference."

City councils in Medford and Central Point adopted nearly identical ordinances that prohibit residential wood burning on days of high pollution, when a "red" day is declared. Exemptions are granted to low-income households, people who have no other heat source and people who use clean-burning pellet stoves.

Nikkila said that an analysis of temperature data showed that the average temperature in December 1985 was 30.2 degrees, and the average in December 1989 was 29.6 degrees.

see AIR, Page 5A



Mail Tribune/Steve Dieffenbacher

Attachment C

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

TO: Environmental Quality Commission

DATE: November 28, 1990

FROM: Director

SUBJECT: Agenda Item No. M, December 14, 1990 EQC Meeting

Informational Report on the Requirement that Soil Contaminated with Hazardous Substances be Disposed of Only in Landfills Employing Best Management Practices

Background

On March 2, 1990, the Environmental Quality Commission (Commission) adopted general rules pertaining to specified wastes, including rules for disposing of cleanup materials contaminated with hazardous substances. The great majority of these cleanup materials are petroleum-contaminated soils from leaking underground storage tank (LUST) cleanup projects. The rules are attached to this report. (Attachment A.)

The rules include new requirements for solid waste landfills that accept cleanup materials for disposal after January 1, 1991. After that date, the landfill must use "best management practices" (BMPs) to protect groundwater and be authorized to receive cleanup materials via Department of Environmental Quality (Department) approval of a waste management plan prepared by the operator. BMPs include having the equivalent of a composite soil and flexible membrane bottom liner and a leachate collection and treatment system. Exemption from BMPs is allowed for landfills which accept less than 1,000 tons per year (or 5% of the total volume of waste received) of contaminated cleanup materials.

A major purpose of the BMPs provision is to encourage the development of disposal and treatment options by eliminating the option of "cheap," less environmentally protective disposal. Exemptions to the design requirements when treatment facilities are available will not be allowed. The rules for disposal of cleanup materials are also intended to encourage qualified landfill operators to accept the wastes by enabling them to charge additional disposal fees to compensate for special design requirements and added risk.

At the time the BMPs rule was adopted, there was a limited availability of disposal options. Many landfills were no longer accepting these materials because of liability concerns. This resulted in cleanup contractors hauling material long distances for disposal, which in turn increased cleanup costs. Contractors involved in underground storage tank cleanup activity commented that the proposed rules would add to their costs by further restricting disposal options, since only two landfills in the state met the proposed design criteria.

The Commission requested a progress report from the Department regarding the rule prior to the January 1, 1991 compliance date.

Since adoption of the rule in March 1990, only one additional landfill (Finley Buttes in Morrow County) has come into strict compliance with best management practices as outlined in the rule.

The current status of landfills with regard to BMPs is as follows:

(1)	Columbia Ridge Landfill (Arlington)	- Design complies. Plan approved. Receiving cleanup wastes.
(2)	Finley Buttes Landfill (Boardman)	- Design complies. May receive on case-by-case basis.
(3)	Hillsboro Landfill	- Composite liner by August 1991. Applying for authorization to continue receiving cleanup materials until lined facility constructed. Receiving 20-25,000 cubic yards per year.
(4)	Riverbend Landfill (McMinnville)	- Composite liner by mid-1992.
(5)	Coffin Butte Landfill (Benton County)	- Has lined cell, design complies. Not intended to be used until mid-1992. May not accept cleanup wastes.

As hoped, some alternative disposal options for petroleum-contaminated soils have begun to evolve as follows:

(1) PEMCO (Portland)	-	Mobile combustion facility. Permitted by Air Quality in October. Operational. Successful source test completed. Capacity 25 tons/hr, 32 hrs/wk, 52 wks/yr. (Theoretically, 41,600 tons/yr.)
(2) RMAC (Troutdale)	-	Heat extraction process similar to pyrolysis. Capacity 5-10 tons/hr. Fixed facility which requires solid waste permit. Expect permit application within 10 days.. Air Quality permit not necessary.
(3) Copeland Paving (Grants Pass)	-	Has treated limited quantities of soil. Applying for SW permit. Could handle up to 25,000 tons/yr. Also needs Air Quality permit modification after demonstration. May be a disposal problem with oil-contaminated water from air emission scrubber.
(4) Valley Landfills/CES (Albany)	-	Biological treatment proposal. Project development is moving slowly. Might come to reality in Spring 1991.

In addition to the above, there has been some streamlining of the Department's approval process for treatment of petroleum-contaminated soils on-site and for one-time treatment/disposal on other property, so that these options are more readily available.

At the present time, the landfill option for disposal of contaminated cleanup materials is about as tight as it was in March. Most private landfills refuse to accept them. If on-site treatment or one-time off-site treatment options are not available, cleanup material is being hauled long distances to the few landfills still accepting. In some cases the petroleum-contaminated cleanup materials are remaining in piles on-site for long periods of time. In the Department's Southwest Region area, only the Roseburg Landfill is accepting cleanup materials, and then only in the summer months.

Nine large landfills, which do not meet BMPs have been handling quantities which exceed the 1,000 ton limit. They include:

Landfill	County	Operator
Hillsboro	Washington	Private
Short Mountain	Lane	Lane County
Roseburg	Douglas	Douglas County
Northern Wasco	Wasco	Private
Knott Pit	Deschutes	Deschutes County
Klamath Falls	Klamath	Klamath County
Desert Winds (Hermiston)	Umatilla	Private
Pendleton	Umatilla	Private
Baker	Baker	Private

Under Section (2)(a)(D) of the rule, the Department may authorize a landfill which does not meet BMPs to dispose cleanup materials after January 1, 1990, in quantities exceeding the 1,000 ton/5% total volume limit, if certain circumstances exist. The Department must consider the factors outlined in Subsection (D)(iii) and determine that receipt of the cleanup materials will not present a threat to public health or the environment. The Department has evaluated the nine sites listed above and is prepared to authorize all but the Roseburg site to continue to receive excess quantities of only petroleum-contaminated soil until fully complying landfills or treatment alternatives are reasonably available. Roseburg Landfill is under a Department compliance order for leachate contamination of groundwater. It is possible that the Roseburg site could be allowed to receive some soils on a seasonal basis for treatment prior to disposal.

All sites which intend to receive contaminated cleanup materials after January 1 must submit to the Department and receive approval of a management plan. Authorization to receive petroleum-contaminated soil in excess of the exemption will be given in conjunction with approval of the management plans.

The Department proposes that the regional offices, with technical assistance from headquarters staff, grant authorization for landfills which do not meet BMPs. Also, a fact sheet will be available to landfill operators to explain how to get authorization to receive cleanup materials.

Summary

- One new landfill and two new treatment options for disposal of contaminated cleanup materials have been developed since March 1990. Currently, only two landfills accepting contaminated materials in Oregon meet design requirements for BMPs. Both of these are in eastern Oregon.

- On-site treatment and one-time aeration of petroleum-contaminated soils on private property are more readily available options than in March 1990.

- Nine landfills currently accepting contaminated cleanup materials will be affected by the new rules requiring BMPs which go into effect January 1, 1991.

- The Department may authorize landfills which do not meet BMPs to dispose cleanup materials after January 1, 1991, in quantities exceeding the 1,000 ton/5% total volume limit if it is determined that public health or the environment will not be threatened.

- The Department is prepared to authorize at least eight of the nine landfills affected by the rule, to continue to receive petroleum-contaminated soil until fully complying landfills or treatment options are reasonably available. These soils constitute the great majority of cleanup materials to be disposed.

- The Department does not recommend revision of the administrative rule.

Director's Recommendation

It is recommended that the administrative rule for disposal of cleanup materials contaminated with hazardous substances, adopted in March 1990, take effect January 1, 1991, without amendment. Although treatment and disposal options for cleanup materials continue to be limited, the landfill authorization process allowed under the rule offers relief for situations which would otherwise be made more difficult.

Report Prepared By: Ernie Schmidt (229-5157)

Approved:

Section: Sue Greenwood

Division: Stephanie Hallock

SW\SK3120

Filed Secretary of State 3/22/90
Effective 3/22/90
EQC Meeting 3/2/90

Before the Environmental Quality Commission of the State of Oregon

In the Matter of Amending OAR 340, Division 61	)))	Proposed Amendments

Unless otherwise indicated, material enclosed in brackets [ ] is proposed to be deleted and material that is underlined is proposed to be added.

1. Rule OAR 340-61-060 is proposed to be amended as follows:

General Rules Pertaining to Specified Wastes

340-61-060 (1) Wastes prohibited from disposal at solid waste landfills.

(a) Hazardous Wastes. Wastes defined as hazardous wastes must be managed in accordance with ORS 466.005 et seq. and applicable regulations.

[(6)](b) Hazardous Wastes from Other States. Wastes which are hazardous under the law of the state of origin shall not be managed at a solid waste disposal site when transported to Oregon. Such wastes may be managed at a hazardous waste facility in Oregon if the facility is authorized to accept the wastes pursuant to ORS 466.005 et seq. and applicable regulations.

(c) Lead-acid batteries. No lead-acid batteries may be mixed in municipal solid waste or disposed of at a solid waste landfill.

[(4)] (d) Waste Oils. Large quantities of waste oils, greases, or oil sludges, [or oil soaked wastes] shall not be placed in any disposal site unless special provisions for handling and other special precautions are included in the approved plans and specifications and operational plan to prevent fires and pollution of surface or groundwaters.

[(2) Hazardous Solid Wastes. No hazardous solid waste shall be deposited at any disposal site without prior written approval of the Department or state or local health department having jurisdiction.]

(2) Wastes allowed to be disposed only in landfills using "best management practices" to protect groundwater. For the purpose of this rule, best management practices shall be defined as including, at a minimum: a bottom lining system which performs equivalent to a composite liner consisting of a 60 mil thickness geomembrane component and two feet of soil achieving a maximum saturated hydraulic conductivity of 1×10^{-6} centimeters per second; and a leachate collection and treatment system designed to maintain a leachate head of one foot or less.

(a) Cleanup materials contaminated by hazardous substances.

(A) After January 1, 1991, cleanup materials contaminated by hazardous substances may be landfilled only in solid waste landfills authorized by the Department to receive this type of material.

(B) The land and facilities used for disposal, treatment, transfer, or resource recovery of cleanup material contaminated by hazardous substances, unless that activity is otherwise regulated by the Department, shall be defined as a disposal site under ORS 459.005 and shall be subject to the requirements of these rules, including permit requirements.

(C) The Department may authorize an owner or operator of a landfill to receive cleanup materials contaminated by hazardous substances, that are not hazardous wastes as defined by ORS 466.005, after January 1, 1991, if the following criteria are met:

(i) The landfill uses "best management practices" as defined in this section.

(ii) A waste management plan for the facility is approved by the Department which specifically addresses the management of the cleanup materials and requires, at a minimum, the following practices:

(I) The owner or operator of the landfill maintains for the facility a copy of the analytical results of one or more representative composite samples from the contaminated materials received for disposal;

(II) The owner or operator maintains for the facility a record of the source, types, and volumes of the contaminated materials received for disposal, and reports the sources, types, and volumes received to the Department in a quarterly waste report;

(III) Petroleum-contaminated soils, whenever possible, are incorporated into the daily cover material unless such practice would increase risks to public health or the environment; and

(IV) Any other requirements which the Department determines are necessary to protect public health and the environment.

(D) The Department may authorize an owner or operator of a landfill to receive cleanup materials contaminated by hazardous substances for disposal after January 1, 1991, at a facility which does not meet the performance criteria in subparagraph (C)(i) of this subsection if:

(i) the landfill accepts less than 1000 tons or 5% of the total volume of waste received, whichever is less, per year of cleanup material contaminated by hazardous substances;or

(ii) the cleanup materials contain concentrations of hazardous substances which do not exceed the cleanup levels approved by the Department for the site from which the materials were removed; or

(iii) the Department determines that the total concentrations and the hazardous characteristics of the hazardous substances in the cleanup materials will not present a threat to public health or the environment at the disposal facility, after considering the following factors:

(I) the compatibility of the contaminated materials with the volumes and characteristics of other wastes in the landfill;

(II) the adequacy of barriers to prevent release of hazardous constituents to the environment, including air, ground and surface water, soils, and direct contact;

(III) the populations or sensitive areas, such as aquifers, wetlands, or endangered species, potentially threatened by release of the hazardous substances;

(IV) the demonstrated ability of the owner or operator of the facility to properly manage the wastes;

(V) relevant state and federal policies, guidelines and standards; and

(VI) the availability of treatment and disposal alternatives.

(3) Wastes which require special handling or management practices.

[(3)](a) Waste Vehicle Tires:

[(a) Open Dumping. Disposal of loose waste tires by open dumping into ravines, canyons, gullies, and trenches, is prohibited;

(b) Tire Landfill. Bulk quantities of tires which are disposed by landfilling and which are not incorporated with other wastes in a general landfill, must be baled, chipped, split, stacked by hand ricking or otherwise handled in a manner provided for by an operational plan submitted to and approved by the Department;

(c) General Landfill. Bulk quantities of tires if incorporated in a general landfill with other wastes, shall be placed on the ground surface on the bottom of the fill and covered with earth before other wastes are placed over them.]

(A) Waste tires shall be managed in accordance with ORS 459.705 through 459.790, and applicable regulations.

Comment: Provision updated to be consistent with new Waste Tires statute.

[(1)](B) Agricultural Wastes. Residues from agricultural practices shall be recycled, utilized for productive purposes or disposed of in a manner not to cause vector creation or sustenance, air or water pollution, public health hazards, odors, or nuisance conditions.

[(5)] (C) Demolition Materials. Due to the unusually combustible nature of demolition materials, demolition landfills or landfills incorporating large quantities of combustible materials shall be cross-sectioned into cells by earth dikes sufficient to prevent the spread of fire between cells, in accordance with engineering plans required by these rules. Equipment shall be provided of sufficient size and design to densely compact the material to be included in the landfill.

2. Rule OAR 340-61-010 is proposed to be amended as follows:

Definitions

340-61-010 As used in these rules unless otherwise specified:

(1) "Access road" means any road owned or controlled by the disposal site owner which terminates at the disposal site and which provides access for users between the disposal site entrance and a public road.

(2) "Airport" means any area recognized by the Oregon Department of Transportation, Aeronautics Division, for the landing and taking-off of aircraft which is normally open to the public for such use without prior permission.

(3) "Aquifer" means a geologic formation, group of formations or portion of a formation capable of yielding usable quantities of ground water to wells or springs.

(4) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.

(5) "Baling" means a volume reduction technique whereby solid waste is compressed into bales for final disposal.

(6) "Base flood" means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average of a significantly long period.

(7) "Closure permit" means a document issued by the Department bearing the signature of the Director or his authorized representative which by its conditions authorizes the permittee to complete active operations and requires the permittee to properly close a land disposal site and maintain the site after closure for a period of time specified by the Department.

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

(9) "Cover material" means soil or other suitable material approved by the Department that is placed over the top and side slopes of solid wastes in a landfill.

(10) "Composting" means the process of controlled biological decomposition of organic solid waste.

(11) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(12) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(13) "Department" means the Department of Environmental Quality.

(14) "Digested sewage sludge" means the concentrated sewage sludge that has decomposed under controlled conditions of pH, temperature and mixing in a digester tank.

(15) "Director" means the Director of the Department of Environmental Quality.

(16) "Disposal site" means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468.740; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site licensed pursuant to ORS 481.345.

(17) "Endangered or threatened species" means any species listed as such pursuant to Section 4 of the Federal Endangered Species Act and any other species so listed by the Oregon Department of Fish and Wildlife.

(18) "Financial assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close and to maintain and monitor a land disposal site after the site is closed according to the requirements of a permit issued by the Department.

(19) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters which are inundated by the base flood.

(20) "Groundwater" means water that occurs beneath the land surface in the zone(s) of saturation.

(21) ["Hazardous Waste" means discarded, useless or unwanted materials or residues in solid, liquid or gaseous state and their empty containers which are classified as hazardous pursuant to ORS 459.410.] <u>"Hazardous waste" means discarded, useless or unwanted materials or residues and other wastes which are defined as hazardous waste pursuant to ORS 466.005.</u>

(22) "Heat-treated" means a process of drying or treating sewage sludge where there is an exposure of all portions of the sludge to high temperatures for a sufficient time to kill all pathogenic organisms.

(23) "Incinerator" means any device used for the reduction of combustible solid wastes by burning under conditions of controlled air flow and temperature.

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

(25) "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(26) "Leachate" means liquid that has come into direct contact with solid waste and contains dissolved and/or suspended contaminants as a result of such contact.

(27) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(28) "Local government unit" means a city, county, metropolitan service district formed under ORS Chapter 268, sanitary district or sanitary authority formed under ORS Chapter 450, county service district formed under ORS Chapter 451, regional air quality control authority formed under ORS 468.500 to 468.530 and 468.540 to 468.575 or any other local government unit responsible for solid waste management.

(29) "Net working capital" means current assets minus current liabilities.

(30) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(31) "Open dump" means a facility for the disposal of solid waste which does not comply with these rules.

(32) "Permit" means a document issued by the Department, bearing the signature of the Director or his authorized representative which by its conditions may authorize the permittee to construct, install, modify or operate a disposal site in accordance with specified limitations.

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

(34) "Public waters" or "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.

(35) "Processing of wastes" means any technology designed to change the physical form or chemical content of solid waste including, but not limited to, baling, composting, classifying, hydropulping, incinerating and shredding.

(36) "Putrescible waste" means solid waste containing organic material that can be rapidly decomposed by microorganisms, which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

(37) "Regional disposal site" means:

(a) A disposal site selected pursuant to chapter 679, Oregon Laws 1985; or

(b) A disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from commercial haulers from outside the immediate service area in which the disposal site is located. As used in this paragraph, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the metropolitan service district. For a county within the metropolitan service district, "immediate service area" means the metropolitan service district boundary.

(38) "Resource recovery" means the process of obtaining useful material or energy from solid waste and includes:

(a) "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material.

(b) "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose.

(c) "Recycling," which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(d) "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(39) "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

(40) "Sanitary landfill" means a facility for the disposal of solid waste which complies with these rules.

(41) "Sludge" means any solid or semisolid waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

(42) "Solid waste" means all putrescible and non-putrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure; vegetable or animal solid and semi-solid wastes, dead animals and other wastes; but the term does not include:

(a) Hazardous wastes as defined in ORS 459.410.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

(43) "Solid waste boundary" means the outermost perimeter (on the horizontal plane) of the solid waste at a landfill as it would exist at completion of the disposal activity.

(44) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(45) "Transfer station" means a fixed or mobile facility, normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a disposal site, including but not limited to a large hopper, railroad gondola or barge.

(46) "Underground drinking water source" means an aquifer supplying or likely to supply drinking water for human consumption.

(47) "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases from one person or animal to another.

(48) "Waste" means useless or discarded materials.

(49) "Zone of saturation" means a three (3) dimensional section of the soil or rock in which all open spaces are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge, discharge or withdrawal.

Comment: Definition updated to be consistent with current Hazardous Waste statute:

<u>(49) "Cleanup materials contaminated by hazardous substances" means contaminated materials from the cleanup of releases of hazardous substances into the environment.</u>

(50) "Hazardous substance" means any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 466.540; and any substance designated by the Commission under ORS 466.553.

(51) "Release" has the meaning given in ORS 466.540(14).

4. Revise OAR 340-61-120 to add new subparagraph (2)(i).

Permit Fee Schedule

340-61-120

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

(2) Application Processing Fee. An application processing fee varying between $50 and $2,000 shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

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

(A) Major facility[1].....$2,000
(B) Intermediate facility[2].....$1,000
(C) Minor facility[3].....$ 300

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[1]**Major Facility Qualifying Factors:**

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

[2]**Intermediate Facility Qualifying Factors:**

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

[3]Minor Facility Qualifying Factors:

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

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

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

(A) Major facility $1,200
(B) Intermediate facility .....$ 600
(C) Minor facility .....$ 200

(c) Permit renewal (including new operational plan, closure plan or improvements):

(A) Major facility .....$ 500
(B) Intermediate facility .....$ 250
(C) Minor facility .....$ 125

(d) Permit renewal (without significant changes):

(A) Major facility .....$ 250
(B) Intermediate facility .....$ 150
(C) Minor facility .....$ 100

(e) Permit modification (including new operational plan, closure plan or improvements:

(A) Major facility .....$ 500
(B) Intermediate facility .....$ 250
(C) Minor facility .....$ 100

(f) Permit modification (without significant change in facility design or operation): All categories .....$ 50

(g) Permit modification (Department initiated) All categories .... No fee

(h) Letter authorizations, new or renewal .....$ 100

(i) Hazardous substance authorization (Any permit or plan review application which seeks new, renewed, or significant modification in authorization to landfill cleanup materials contaminated by hazardous substances):

(A) Authorization to receive 100,000 tons or more of designated cleanup up waste per year: $ 50,000;

(B) Authorization to receive at least 50,000 but less than 100,000 tons of designated cleanup material per year: $ 25,000;

(C) Authorization to receive at least 25,000 but less than 50,000 tons of designated cleanup material per year: $ 12,500;

(D) Authorization to receive at least 10,000 but less than 25,000 tons of designated cleanup material per year: $ 5,000;

(E) Authorization to receive at least 5,000 but less than 10,000 tons of designated cleanup material per year: $ 1000;

(F) Authorization to receive at least 1,000 but less than 5,000 tons of designated cleanup material per year: $ 250.

(3) Annual Compliance Determination Fee (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):

(a) Domestic Waste Facility:

(A) A landfill which received 500,000 tons or more of solid waste per year: $60,000

(B) A landfill which received at least 400,000 but less than 500,000 tons of solid waste per year: $48,000

(C) A landfill which received at least 300,000 but less than 400,000 tons of solid waste per year: $36,000

(D) A landfill which received at least 200,000 but less than 300,000 tons of solid waste per year: $24,000

(E) A landfill which received at least 100,000 but less than 200,000 tons of solid waste per year: $12,000

(F) A landfill which received at least 50,000 but less than 100,000 tons of solid waste per year: .....$ 6,000

(G) A landfill which received at least 25,000 but less than 50,000 tons of solid waste per year: .....$ 3,000

(H) A landfill which received at least 10,000 but less than 25,000 tons of solid waste per year: .....$.1,500

(I) A landfill which received at least 5,000 but not more than 10,000 tons of solid waste per year: .....$ 750

(J) A landfill which received at least 1,000 but not more than 5,000 tons of solid waste per year: .....$ 200

(K) A landfill which received less than 1,000 tons of solid waste per year: .....$ 100

(L) A transfer station or processing facility which received more than 10,000 tons of solid waste per year: .....$ 500

(M) A transfer station or processing facility which received less than 10,000 tons of solid waste per year: .....$ 50

(N) An incinerator, resource recovery facility other than processing facility, composting facility and each other facility not specifically classified above which receives 100,000 tons or more of solid waste per year:..... .$ 8,000

(O) An incinerator, resource recovery facility other than processing facility, composting facility and each other facility not specifically classified above which receives at least 50,000 tons but less than 100,000 tons of solid waste per year:.....$ 4,000

(P) An incinerator, resource recovery facility other than processing facility, composting facility and each other facility not specifically classified above which receives less than 50,000 tons of solid waste per year:.....$ 2,000

(Q) A landfill which has permit provisions to store over 100 waste tires--the above fee or $250 whichever is highest.

(b) Industrial Waste Facility:

(A) A facility which received 10,000 tons or more of solid waste per year: .....$ 1,500

(B) A facility which received at least 5,000 tons but less than 10,000 tons of solid waste per year: .....$ 750

(C) A facility which received less than 5,000 tons of solid waste per year: .....$ 150

(c) Sludge Disposal Facility:

(A) A facility which received 25,000 gallons or more of sludge per month: .....$ 150

(B) A facility which received less than 25,000 gallons of sludge per month: .....$ 100

(d) Closed Disposal Site: Each landfill which closes after July 1, 1984:.....10% of fee which would be required, in accordance with subsections (3)(a), (3)(b), and (3)(c) above, if the facility was still in operation or $50 whichever is greater.

(e) Facility with Monitoring Wells:

In addition to the fees described above, each facility with one or more wells for monitoring groundwater or methane, surface water sampling points, or any other structures or locations requiring the collection and analysis of samples by the Department, shall be assessed a fee. The amount of the fee shall depend on the number of wells (each well in a multiple completion well is considered to be a separate well) or sampling points as follows: For each well or sampling point.....$ 250

(4) Annual Recycling Program Implementation Fee. An annual recycling program implementation fee shall be submitted by each domestic waste disposal site, except transfer stations and closed landfills. This fee is in addition to any other permit fee which may be assessed by the Department. The amount of the fee shall depend on the amount of solid waste received as follows:

(a) A disposal site which received 500,000 tons or more of solid waste per year $20,000

(b) A disposal site which received at least 400,000 but less than 500,000 tons of solid waste per year:.....$18,000

(c) A disposal site which received at least 300,000 but less than 400,000 tons of solid waste per year:.....$14,000

(d) A disposal site which received at least 200,000 but less than 300,000 tons of solid waste per year:.....$ 9,000

(e) A disposal site which received at least 100,000 but less than 200,000 tons of solid waste per year:.....$ 4,600

(f) A disposal site which received at least 50,000 but less than 100,000 tons of solid waste per year:.....$ 2,300

(g) A disposal site which received at least 25,000 but less than 50,000 tons of solid waste per year:.....$ 1,200

(h) A disposal site which received at least 10,000 but less than 25,000 tons of solid waste per year:.....$ 450

(i) A disposal site which received at least 5,000 but less than 10,000 tons of solid waste per year:.....$ 225

(j) A disposal site which received at least 1,000 but less than 5,000 tons of solid waste per year:.....$ 75

(k) A disposal site which received less than 1,000 tons of solid waste per year:.....$ 50

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: November 27, 1990

TO: Environmental Quality Commission

FROM: Fred Hansen

SUBJECT: Agenda Item "N" - Columbia River Water Quality Study Work Plan: Update

INTRODUCTION

The Bi-State Lower Columbia River Water Quality Program (Program) was created at the direction of the Oregon and Washington legislatures. The two states entered into an Interstate Agreement that directs a four-year water quality program, ending in March 1994, to characterize water quality in the lower Columbia River, identify water quality problems, determine whether beneficial uses are impaired and develop solutions to problems found in the lower river[1].

The total projected funding for the four-year Program is $2.4 million. This is based on annual contributions of $200,000 from each state, $100,000 from the public ports and $100,000 from the pulp and paper industry. In addition, each state provides a full-time staff coordinator to support the activities of and provide information to the Steering Committee.

BI-STATE STEERING COMMITTEE

The Department of Environmental Quality (DEQ), in concert with Washington's Department of Ecology (WDOE), formed the 15-member Bi-State Steering Committee. The Committee is advisory to the agencies and represents diverse interests, including one representative from each state in the following categories:

- Environmental interests
- Local governments
- Native American Tribes
- Public at large
- Public ports
- Pulp and paper industry.

One representative each from the commercial fisheries,

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[1] The lower Columbia River, for the purposes of this program, is the 146-mile section from Bonneville Dam to the mouth of the river.

recreational fisheries, and the U.S. Environmental Protection Agency also serves on the Steering Committee.

The Committee is co-chaired by a member from each state. It has formed two internal working groups: the Technical Work Group and the Public Involvement Work Group. It also recently formed the Scientific Resource Panel (SRP), with specialists in ten disciplines: aquatic invertebrates, fisheries, water quality, sediment quality, environmental toxicology, wetlands, radiation health monitoring, public health (waterborne diseases), hydrology, and wildlife toxicology. The SRP will review work plans, requests for proposals, and technical reports.

The Steering Committee has met every three weeks since April, 1990.

PROGRAM TASKS

The Bi-State Program was directed to complete a draft four-year "Program Plan" (Program Plan) by September 30, 1990. A draft plan was prepared and is currently undergoing revisions (Attachment B). The Steering Committee is scheduled to approve the final plan at its December 4, 1990 meeting. The Program Plan provides overall direction to the program until March, 1994. It will be supplemented by detailed Annual Work Plans, which will identify the projects to be completed in the upcoming year, the objectives for the project and who is to complete the work.

The first project, an inventory of existing chemical, physical and biological information on the lower Columbia River, has been completed. The information identified will assist in identifying the types of studies that need to be conducted. It is anticipated that reconnaissance surveys will commence in 1991.

DEQ and WDOE, in consultation with the Steering Committee, are required to make recommendations to the state legislatures on a long-term bi-state framework. The framework is to address institutional needs for managing the river to protect water quality, public health and habitat concerns. The agencies currently are scheduled to make their recommendations to the legislatures in January, 1991.

PUBLIC INVOLVEMENT

The Program actively seeks public input and involvement. All Steering Committee meetings are open to the public and the Steering Committee has held eleven public forums at locations

along the lower Columbia River. Six were held in August and September to discuss concepts and concerns to be addressed in the Program Plan and five were held in mid-October to take public comment on the draft plan. Additional public forums, or other appropriate public involvement activities, will be held during 1991 to discuss legislative recommendations and the progress of program studies.

In addition, quarterly reports (see Attachment A), meeting announcements, news releases and reports are distributed to individuals and organizations on the Program mailing list.

SUMMARY

The Bi-State Program has made notable progress since April. The diverse interests on the Steering Committee have worked together, operating by consensus, to develop the Program Plan. They have involved the public and have begun formulating recommendations to the agencies on the Bi-State Framework. The Program faces significant challenges in the upcoming years to address the high expectations of the public and conduct the studies needed to characterize the river's water quality under the existing budget. All members of the Program, however, are committed to conducting a credible and worthwhile project.

Attached are copies of the quarterly report, biosketches, and draft Program Plan for your information.

ISSUES

Issues DEQ is currently considering include:

- what are appropriate recommendations for a long-term Bi-State Framework,
- how to ensure reasonable funding to conduct the studies needed, and
- how best to coordinate with broader issues related to the river, including the Salmon Summit and the Willamette River program.

Report Prepared By: Cordelia Shea
(229-5664)

Approved:

Section: _____

Division: Lydia Taylor

WASHINGTON STATE DEPARTMENT OF ECOLOGY

LOWER COLUMBIA RIVER WATER QUALITY STUDY

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

QUARTERLY REPORT

First Quarter: April 1 -- June 30, 1990

Steering Committee for the Lower Columbia River Bi-state Water Quality Study

WHAT IS THE WATER QUALITY STUDY?

The states of Oregon and Washington, in cooperation with public ports and the pulp and paper industry, are conducting a study of the Lower Columbia River. The purpose of the study is to identify water quality problems in the Columbia River below Bonneville Dam. The two states are concerned about the lack of water quality information.

WHO IS THE STEERING COMMITTEE?

The Steering committee was appointed by the directors of the Washington Department of Ecology and the Oregon Department of Environmental Quality (DEQ) at the direction of the states' Legislatures. It includes 15 people from different interest groups who will advise Ecology and DEQ on the study. The interest groups represented are:

- One person from each state representing public ports, environmental organizations, pulp and paper industry, Native American Tribes, and local governments (12 members).
- One person representing commercial fishing interests and one person representing recreational fishing interests. One position is from each state (2 members).
- One person representing the U.S. Environmental Protection Agency (1 member).

WHAT IS THE STEERING COMMITTEE DOING?

The Steering Committee is charged with developing a work plan to guide the water quality study. The first phase involves collecting existing data about the river and identifying data gaps. Based on results of the first phase, additional studies will be conducted to assess water quality in the lower Columbia River.

A second task is to develop recommendations for the two state Legislatures on creating an interstate body which would develop and implement a plan to address water quality, public health, and habitat concerns in the lower Columbia River.

WHAT HAS BEEN DONE SO FAR?

COMMITTEE RULES. The committee developed and adopted rules governing how it will operate. In addition, two co-chairs were selected, one from each state.

COMMITTEE EDUCATION. The committee has been getting background information on water quality issues. To date, they have had presentations on Oregon's and Washington's water quality standards, monitoring water quality, and water quality

based regulations versus technology based regulations.

WORK PLAN. A draft work plan is being developed. The work plan will identify the types of studies needed to characterize Columbia River water quality, and include a proposed timeline and budget. The draft work plan will be available at the end of September 1990.

TECHNICAL WORKING GROUP. A working group consisting of several steering committee members has been meeting to discuss technical issues and develop a draft framework for the water quality study. The draft framework has been presented to the steering committee and is being refined.

INVENTORY OF EXISTING INFORMATION. A consultant has been hired to prepare an inventory of existing water quality information from Bonneville Dam to the mouth. This information is needed to identify the gaps in existing water quality data. Bob McConnell, who recently retired from the National Marine Fisheries Service, will complete the inventory by September 30, 1990.

PUBLIC PARTICIPATION. A second working group of several committee members has been working to develop a public participation plan. This will include public forums, mailings to interested people, and other activities.

WHAT WILL THE STEERING COMMITTEE BE DOING IN THE NEAR FUTURE?

PUBLIC FORUMS. Two different sets of public forums will be held by the steering committee. The first round is scheduled for late August and early September. The forums are intended to update Lower Columbia River communities on the committee's work, and to seek public comment about and identify questions to be answered in the work plan. The second set of forums will be held in October/November. The draft work plan will be presented and formal public comments sought.

ADOPTION OF DRAFT WORK PLAN. A draft work plan is scheduled for adoption by September 30, 1990 for presentation to the state legislatures. Changes may still be made after that date, and the work plan will be finalized by December 1990.

RECOMMENDATIONS ON INTERSTATE POLICY BODY. The task is to consult with Ecology and the Department of Environmental Quality on recommendations for a bi-state framework to address water quality, public health and habitat concerns in the Lower Columbia River. The steering committee will be focusing on this question during this fall, following completion of the work plan.

TIMELINE

- August/September 1990: Public Forums
- September 1990: Inventory of existing water quality information completed. Draft work plan completed.
- October/November 1990: Public Forums to review draft workplan.
- Mid-December: Presentation of final workplan and recommendation to both Legislatures.

Steering Committee Members

Members of the study steering committee represent a range of interests from each state. Following is a brief profile of the committee members.

Local Government Representatives

Oregon: **Earl Blumenauer, Portland City Commissioner.** Blumenauer's responsibilities as City Commissioner include the Department of Transportation, Planning Bureau and Bureau of Environmental Services. He will rotate committee representation with City Commissioner Mike Lindberg.

Washington: **Nelson Graham, Assistant Manager, City of Longview.** Graham, a civil engineer, is responsible for public works, including water supply and wastewater collection and treatment, solid waste, and parks and recreation. He worked as Public Works Director for Cowlitz County before joining the City of Longview seven years ago.

Pulp and Paper Industry Representatives

Oregon: **Herman Amberg, retired Corporate Environmental Manager for Crown Zellerbach.** Amberg has published over 50 papers on pollution control in technical magazines. He has received awards from professional peers and directed three cooperative research projects with the Environmental Protection Agency.

Washington: **Llewellyn Matthews, Executive Director, Northwest Pulp and Paper Association.** Matthews holds degrees in biology and law and formerly worked as an environmental analyst for the engineering consulting firm of Wilsey and Ham, Inc. She was the recipient of several National Science Foundation awards. She has served on advisory committees on solid waste, hazardous waste, air pollution control, and water quality, among others.

Native American Tribes Representatives

Oregon: **Michael Farrow, Secretary of Tribal Farming Enterprises, Confederated Tribes of the Umatilla Indian Reservation.** Farrow is also Director of the Department of Natural Resources, which reports on fisheries, the environment, land use planning, and water resources to the Confederated Tribes. He has served as the Tribes' General Council Chair and Vice-Chair and as a delegate to the Oregon State Commission of Indian Services.

Washington: **Harry Smiskin, member of the Yakima Confederated Tribal Council and its Fish and Wildlife Law and Order Committee.** Smiskin was formerly Chief of Police for the Confederated Tribes of the Colville Reservation and was an elected Code of Ethics officer for the Yakima Tribe.

Public Port Representatives

Oregon: **Roland Montagne, Environmental Services Manager, Port of Portland.** Montagne has worked as a fisheries biologist and in waterway management. He has written on waterway development, land use planning, and the state/federal regulatory system.

Washington: Committee Co-Chair. **Jerold Heller, general counsel, Port of Kalama .** As counsel for ports, Heller has worked on projects involving the development of comprehensive mitigation agreements among federal, state, and local agencies. He has actively worked with engineering and environmental consultants.

Citizen-at-Large Representatives

Oregon: **June Spence, Hammond City Council.** Spence was Administrator for the Public Works Offices in Vancouver, Washington for 26 years. She is also past president of the American Public Works Association. Spence is now retired and living in Hammond.

Washington: **Dan Chandler, attorney, Vancouver, Washington.** Chandler is an attorney in private practice emphasizing environmental and natural resource issues. He obtained his law degree from Harvard University and emphasized water resource law.

Commercial Fishing Representative

Bob Eaton, Executive Director, Salmon For All, Inc., a non-profit corporation supported by the Columbia River non-treaty commercial fishermen and fish processors. Eaton has served as director of the Astoria and Woodburn Chambers of Commerce and as director of Parks and Recreation in Woodburn. He represents commercial fishing interests for both states.

Recreational Fishing Representative

Steve Wille, President, Southwest Washington Anglers. Wille, a former Fulbright Scholar who holds degrees in biology with an emphasis in water resources, also serves on a Columbia River advisory committee for the Washington Department of Fisheries. He has worked for the U.S. Geological Survey and as a private consultant. Wille represents recreational fishing interests for both states.

Environmental Protection Agency Representative

Jack Gakstatter, Chief, EPA Office of Puget Sound. Gakstatter directs the EPA portion of the Puget Sound Estuary Program. He has worked as a scientific liaison for EPA research and development and managed freshwater programs at EPA's Corvallis Environmental Research Laboratory.

Environmental Organizations Representatives

Oregon: Committee Co-chair. **Nina Bell, Executive Director, Northwest Environmental Advocates.** Bell has represented the Advocates organization before the U.S. Nuclear Regulatory Commission and other agencies. She spearheaded the drive to nominate the Columbia River to the Environmental Protection Agency's National Estuary Program and previously served as Assistant Director of the Nuclear Information and Resource Service in Washington, D.C.

Washington: **Cyndy deBruler, President, Columbia River United.** CRU is a grassroots citizen group formed to protect the Columbia River. DeBruler holds a degree in pharmacy from the University of Washington. She has served in leadership positions with several organizations including the Bingen Downtown Association, the Pharmaceutical Association in Seattle, and the Columbia Gorge Bed and Breakfast Association.

ATTACHMENT B

BI-STATE LOWER COLUMBIA RIVER WATER QUALITY PROGRAM

FOUR YEAR PROGRAM PLAN
(1990 to 1994)

REVISED DRAFT
(11/15/90)

PREPARED BY:

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

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BI-STATE STEERING COMMITTEE MEMBERS

WASHINGTON:

Public Ports	Jerry Heller, Co-Chair	Port of Kalama
Citizen-at-Large	Dan Chandler	Vancouver
Environmental Organization	Cyndy deBruler	Columbia River United
Local Government	Nelson Graham	City of Longview
Native American Tribes	Harry Smiskin	Yakima Confederated Tribal Council
Pulp and Paper Industry	Llewellyn Matthews	NW Pulp & Paper

OREGON:

Environmental Organization	Nina Bell, Co-Chair	NW Environmental Advocates
Citizen-at-Large	June Spence	Hammond, OR
Local Government	Earl Blumenauer	Portland City Commissioner
Native American Tribes	Michael Farrow	Confederated Tribes of Umatilla
Public Ports	Rollie Montagne	Port of Portland
Pulp and Paper Industry	Herman Amberg	Crown Zellerbach (retired)
U.S. EPA:	Jack Gakstatter	Region X
COMMERCIAL FISHERIES:	Bob Eaton	Salmon-For-All
RECREATIONAL FISHERIES:	Steve Wille	SW Washington Anglers

BI-STATE LOWER COLUMBIA RIVER WATER QUALITY PROGRAM

PREFACE

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BI-STATE LOWER COLUMBIA RIVER WATER QUALITY PROGRAM

PREFACE

The Bi-State Lower Columbia River Water Quality Program was formed at the direction of the legislatures from the states of Washington and Oregon. The states entered into an Interstate Agreement that directs a four-year water quality program to characterize water quality in the lower Columbia River, identify water quality problems, determine whether beneficial uses are impaired and develop solutions to problems found in the river below Bonneville Dam. The Interstate Agreement and the legislatures from both states also directed the Washington Department of Ecology and the Oregon Department of Environmental Quality to form a Steering Committee representing diverse interests. The Bi-State Program consists of this Steering Committee and the two states. The current annual budget for the program is $600,000.

The Program recognizes that the lower Columbia River, the 146 miles below Bonneville Dam, is a small part of a drainage basin that includes parts of seven states and Canada. Therefore, the effects occurring in this portion of the river will be the result of sources both in the study area and upstream, which may be the subject of future study. The Program, however, will focus its efforts to identify problems within the study area.

It is important to define a realistic expectation of what the Program can accomplish within its resource and geographic constraints. Priority-setting will be a critical process for the Program, and priorities will be defined and reviewed at each major step in the technical studies. Not every issue will be able to be studied, but those studied will be based on good science. An underlying principle for the Program is to ensure careful and objective study.

The Program is hopeful that it will be able to obtain additional funding from the federal and state governments, interest groups, river users, foundations, and others interested and committed to the Program's study effort. Acquisition of knowledge about the Columbia River is in the best interest of all concerned.

The deliberations of the Program's Steering Committee are open to the public and a public comment time is provided at each meeting. All studies supported by the Program will be available to the public upon request.

1.0 Introduction and Background

Historically, government agencies, universities and industry have collected information on water quality of the Lower Columbia River. However, the data often were gathered for specific purposes other than assessing the overall water quality of the river. Even so, Oregon and Washington have found that, at least for some pollutants, water quality is impaired. This information, and the high level of public concern, underscores the need for additional studies. The four-year Bi-State Lower Columbia River Water Quality Program (Bi-State Program) was established to collect and compile this information through cooperation of the two states and a wide-range of interest groups. The Bi-State Program is also charged with making recommendations based on its findings.

1.1 Legislative Direction and Funding Sources

With the support of the governors from each state, the Oregon and Washington Legislatures each appropriated $200,000 for the first year's study. The legislatures directed the Washington Department of Ecology (Ecology) and Oregon Department of Environmental Quality (DEQ) to enter into a bi-state agreement (Interstate Agreement) to establish the Bi-State Lower Columbia River Water Quality Program and create the Bi-State Lower Columbia River Steering Committee (Steering Committee). The

Oregon Legislature also required the governor to request federal funding.

The Oregon and Washington Public Ports and the Pulp & Paper Industry agreed to contribute. The total funding for the four year Bi-State Program is $2.4 million. Annual contributions are: Washington - $200,000; Oregon - $200,000; Ports - $100,000; and Pulp and Paper Industry - $100,000. In addition, each state provides to the steering Committee a full-time staff coordinator.

1.2 Interstate Agreement

The Interstate Agreement became effective on May 25, 1990 and runs through March 16, 1994. It establishes the purposes and activities of the Bi-State Program and consolidates the direction from both state legislatures. The Interstate Agreement identifies the interest groups that serve on the Steering Committee, suggests general concepts for water quality studies, establishes the types of recommendations that need to be made, and requires public involvement in the Steering Committee's deliberations. The Bi-State Program must submit a final plan of study and recommendations regarding a long-term bi-state framework to the legislatures by December 15, 1990.

1.3 Organization of the Bi-State Program

The Bi-State Program is comprised of the Washington Department of Ecology, the Oregon Department of Environmental Quality and the Steering Committee, which is appointed by the two agencies.

The fifteen-member Steering Committee includes one representative from each state in the following categories:

- Pulp and paper industry
- Public ports
- Native American Tribes
- Local governments
- Environmental interests
- Public at large

One representative each from the commercial fisheries, recreational fisheries, and the U.S. Environmental Protection Agency also serves on the Steering Committee.

The Steering Committee is co-chaired by a member from each state. It has formed two internal work groups: the Technical Work Group and the Public Participation Work Group. In addition, a Scientific Resource Panel

(SRP) has been formed, with two members in each of the following disciplines: fisheries, aquatic invertebrates, water quality, sediment quality, wetlands, radiation health monitoring, public health (waterborne diseases), hydrology, environmental toxicology (human health risk assessment), and wildlife toxicology.

Steering Committee meetings began in April, 1990 and are held tri-weekly. The co-chairs and agency staff meet and work together regularly between committee meetings.

1.4 Program Goals

The Interstate Agreement established the goals for the Bi-State Program for managing the Lower Columbia River. They are:

- To identify water quality problems;
- To determine if beneficial/characteristic uses are impaired[1];
- To develop solutions to problems; and

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1 Under the federal Clean Water Act, states adopt water quality standards that are designed to protect specified uses of the water. Washington's protected uses are called "characteristic uses" while Oregon uses the term "beneficial uses".

- To make recommendations on a long-term bi-state framework.

These goals will be met by carrying out the following tasks, which are outlined in this Program Plan:

- Involve the public through education and inviting public participation;
- Develop work plans that identify the studies needed to characterize the river's water quality;
- Evaluate existing data and conduct reconnaissance surveys;
- Carry out baseline studies;
- Conduct advance studies and recommend long-term monitoring; and
- Make recommendations to regulatory agencies.

1.5 Description of the Study Area

The study area encompasses the 146 miles of the Lower Columbia River from Bonneville Dam, the head of tidal influence, to the mouth of the river (see Figure 1. **map to be added**). This is defined by the Interstate Agreement, which directs the Bi-State Program to "develop solutions to problems found in the river below Bonneville Dam."

The Program recognizes that this is a small part of a drainage basin that includes parts of seven states and Canada and that some problems in the lower river have their source above Bonneville Dam. At this time, however, the Program will focus on identifying and understanding problems in the river below Bonneville Dam. Developing solutions to problems may require the Program to address sources above the dam.

2.0 Program Plan Elements and Tasks

This program plan addresses the requirements of the Interstate Agreement and describes the activities planned for the four year program. Plan activities are organized into four elements: Public Involvement; Technical Studies; Recommendations for Protecting and Improving Water Quality; and Long-Term Bi-State Framework. Major tasks of each element are described, including task background and objective, scope and the approach to be followed to accomplish the task.

This program plan will be supplemented by annual work plans, which will provide greater detail at a project or study level and will identify who will conduct the work, the schedule for project completion, and the funding available for each project. Annual work plans will reflect program progress and

results from previous and ongoing studies. Sampling plans for the actual data collection will also be written.

This plan is based on questions and concerns of the Steering Committee, public comments received during the 1989 and 1990 Public Forums, water quality information available from the last twenty years, identified data needs, and reports from Steering Committee working groups and Staff.

2.1 Element I: PUBLIC INVOLVEMENT

Public involvement in the Bi-State Program is critical. All Steering Committee meetings are open to the public and all reports and minutes of meetings are available for public review.

2.1.1 Current Activities - The Program currently provides the following, which are considered to be the extent of public participation efforts possible given the available resources:

2.1.1.1 Mailings - Quarterly Reports, meeting announcements, news releases, and advertisements about meetings are distributed to individuals, groups, and news media

on the Bi-State Program mailing list. Educational materials have been prepared to encourage public understanding of the problems the Program is intended to address.

2.1.1.2 Public Forums - The Steering Committee has held public forums throughout the study area; six were held in August/September 1990 to discuss concepts and concerns to be addressed in the Program Plan and five were held in mid-October 1990 to take public comment on the Draft Program Plan. Appendix A lists potential sources of pollution that are of public concern, as identified during these forums. The Committee intends to hold additional public forums, or conduct other types of public involvement activities, to discuss legislative recommendations about the long-term bi-state framework and to discuss on the progress of Program studies.

2.1.2 Additional Activities - The Program has identified the following activities that would help to inform the public about Lower Columbia River water quality issues and to encourage extensive citizen participation. Additional resources will be required to implement these activities:

2.1.2.1. Educational Materials - Displays and bulletins that describe the studies conducted and progress of the Bi-State Program.

2.1.2.2. Activities - Tours; special presentations to interested organizations, government agencies, and constituency groups (e.g., Steering Committee representatives would make special presentations to their constituent groups), and support to citizen groups.

2.1.2.3. Columbia River Symposium - Sponsoring a conference in conjunction with state and federal agencies and other interested groups

to highlight the technical information collected and discuss topics of concern.

2.1.2.4. Citizen Volunteer Work - Determine study activities which may be fulfilled by citizen volunteers.

2.2 Element II: Technical Information and Evaluation

A variety of technical studies are needed to assess the current water quality of the river and to develop recommendations for improving and protecting the river's water quality. Generally, the Bi-State Program will undertake the following steps in conducting the technical studies and analysis:

- Inventory existing information (See Section 2.2.1);
- Establish sampling requirements (both sampling and analysis techniques and consistent methodologies for assessing the resulting data) (See Section 2.2.2);
- Conduct reconnaissance surveys (See Section 2.2.3);
- Set priorities for baseline sampling studies (See Section 2.2.6);
- Conduct baseline studies (See Section 2.2.4);

- Evaluate results of the baseline studies and make recommendations (See Section 2.2.4.1);
- Set priorities for advanced studies (See Section 2.2.6);
- Conduct advanced studies (See Section 2.2.5);
- Plan long-term monitoring.

Quality Assurance/Quality Control (QA/QC) plans will be developed throughout the Program.

Although these steps are listed in chronological sequence, they may not occur sequentially for each identified water quality problem. If adequate baseline data are available in some areas, advanced studies could begin while baseline data are collected in other areas. The scope of all of the studies, i.e., the number of pollutants or issues of concern and geographic areas that can be addressed, will be affected by funding levels.

2.2.1 Inventory of Existing Information

The Bi-State Program began its task of data collection by making an inventory of existing information relevant to water quality of the Columbia River. Robert McConnell was hired to prepare a report of all completed and ongoing

studies, published and unpublished, on chemical, physical and biological data from 1970 to 1990. The resulting "McConnell Report" lists more than sixty-five studies, identifying for each:

- author or agency
- report date
- parameters included
- location by river mile
- major emphases of the study
- number of sampling sites
- sampling frequency and duration
- additional brief comments about the data.

The report also identifies whether studies are ongoing and if the data are computerized.

The report reveals that the information collected in the study area has limitations for use by the Program to evaluate water quality. The limitations of the data tend to fall into two categories. First, much of the information is site-specific so that it cannot be used to meaningfully evaluate water quality for the Lower Columbia River as a whole or even longitudinal segments. A second problem is that much of the information was

collected over a short time period. For the biological studies, which constitute the bulk of the existing information, short study durations undermine the usefulness of the data for evaluating trends or cause and effects of water quality impairment. Only a small number of the studies provide a good source of historical as well as current information.

The report shows that historically more information was collected for the section of the river between Astoria, OR and Cathlamet, WA (river miles 0 to 46) with somewhat less for the section between Longview, WA and Prescott, OR (river miles 60 to 75). Relatively little information is available for the area between Portland and Bonneville Dam (river miles 101.5 to 146.1).

The McConnell Report identifies thirteen studies which are on-going, four of which are of long-term duration. See Appendix B for a list of on-going studies. The Program will evaluate whether the data being collected in these studies will be useful for assessing water quality of the Columbia in order to prevent duplication of effort.

The Program will review in greater depth the data and methodology of the studies listed in the McConnell Report in an attempt to identify trends in pollution, regulatory activities, and living resources. The McConnell Report will also be used to help to set the stage for future studies. For example, information on sources and "symptoms" (e.g. biological effects) of water pollution will be used to guide the locations and types of sampling. The Program will look at these studies to identify specific sampling sites that were used in order to create a more historically consistent data base for the river. Information in these studies will be used in the Program's priority-setting process (see Section 2.2.6).

2.2.2. Methodology for Sampling, Analysis and Data Evaluation

There are two significant factors to consider when establishing a water quality testing program: 1) how and where samples are collected and analyzed (i.e., sampling and analysis study plan); and 2) how data are to

be evaluated to determine if water quality standards are being met (i.e., data assessment methodology).

2.2.2.1 Sampling and Analysis Plan

Before collecting and analyzing samples, a sampling and analysis plan must be developed. The plan:

- o describes the objectives and purposes of the sampling effort;
- o identifies information such as the sampling station locations, number of samples collected at each site, and the parameters to be analyzed at each site; and
- o includes a Quality Assurance (QA) program that defines objectives for data quality and sets out the approved methods for collecting, handling, storing, analyzing and disposing of the samples to achieve those objectives.

The QA program ensures that the samples collected and analyzed result in data of acceptable and known quality.

The study plan will be completed prior to beginning any sampling program.

2.2.2.2 Data Assessment Methodology

After samples are collected and analyzed, the resulting data are assessed. The methods that are used to assess both historical and new data to determine if water quality standards are being met often varies between the states. These methods also vary depending on the intended use of the data. One use of the data will be to compare it to water quality standards in order to identify priorities for study and to better understand the water quality conditions. In order for the Program to conduct such an assessment, clear and consistent assessment methods are needed.

Important factors for assessing data include:

- how the historical data were collected and analyzed (i.e., the quality of the data; see preceding section, 2.2.2.1.)

- the number of data points needed during a given time period and/or season to provide an adequate statistical data base;

- the beneficial/characteristic uses and related water quality standards being evaluated; and

- if water quality standards are exceeded, how often, over what area, and by how much they are exceeded.

For example, to determine if a river segment is safe for water contact

recreation the water is tested for bacteria. A minimum number of data points are needed during the summer months. The data are then evaluated to determine if the median value, or if a certain percentage of the data, exceed the limits established in the water quality standard.

As a key step in the program, the states of Oregon and Washington will compare their respective assessment methodologies regarding these and other factors. Common elements will be identified that can be used to review existing data and determine general water quality conditions, trends, and compliance with standards.

The proposed methodology will be presented to the Steering Committee and its advisory groups for review and discussion. An agreed-upon methodology will then be used to assess existing data in order to determine further study needs.

2.2.3 Reconnaissance Surveys

The Program will conduct reconnaissance surveys prior to undertaking a full baseline monitoring program. Reconnaissance surveys are preliminary, in-field screening surveys conducted to:

- Verify areas of concern that are highlighted by existing information (McConnell Report);
- Develop an improved base of information for setting priorities (see section 2.2.6 for discussion of priority-setting); and
- Identify where and how often to take the water, sediment, and biological tissue samples that are needed to establish baseline conditions of the river.

To prepare for the in-field surveys, the existing information referenced in the McConnell Report will be reviewed to:

- Determine the quality and completeness of the data;
- Identify potential sampling sites;

- Highlight potential sources of pollution, types of uses and areas in which they are concentrated, and symptoms of potential problems; and
- Evaluate trends in the sources, uses, symptoms, fate and transport, and pollutant concentrations for which data are available.

Following this review, samples will be taken in the field, using appropriate sampling techniques. The schedule for reconnaissance surveys will be determined according to daily and seasonal conditions.

The program will use the results of the reconnaissance survey, in conjunction with existing information, to establish the baseline studies discussed in Section 2.2.4 below.

2.2.4 Evaluating the Current Status of Water Quality (Baseline Studies)

Following the reconnaissance surveys, the Program will begin its baseline studies. Data that are gathered in the course of these

studies must be analyzed to evaluate whether the water quality is impaired. This is done in the following manner. Under the regulatory system established by the federal Clean Water Act, the States of Oregon and Washington have designated beneficial/characteristic uses (See Appendix C) of the Lower Columbia River that are to be protected. Each state, in turn, has established water quality standards for specific pollutants in order to protect some of these beneficial/characteristic uses. For this reason, water quality standards will be used by the Program as one measure of water quality. In the case of a numeric standard, the states establish an actual concentration limit for a pollutant in water. In a narrative standard, the limit is set by calling for "no toxics in toxic amounts". There are currently no numeric standards for sediment quality and biological tissue.

Water quality standards regulate each pollutant individually. Public concerns, however, have been voiced to the Steering Committee about the additive or synergistic effects of multiple pollutants on the most sensitive beneficial/characteristic uses, such

as fish, shellfish and wildlife. To assess whether these uses are impaired in the Lower Columbia River, the Program would need to do more than assess whether water quality standards have been met. Examples of studies which could be conducted for this purpose include collecting biological data on population trends, fish health (e.g. incidence of tumors, enzyme induction), and concentrations of pollutants in fish and wildlife tissue. Many of these will be outside the existing budget.

2.2.4.1 Baseline Studies

Following the reconnaissance survey (described in 2.2.3 above), the Program will determine the scope and extent of its baseline studies. Baseline studies are intended to evaluate existing water quality in the Lower Columbia, to -- in effect -- take a snapshot of current conditions. The baseline studies will provide the starting point from which the Program will describe the status and trends in water quality

over time as additional data are collected. The Program will also be able to use the baseline studies to identify areas where additional data should be collected (e.g. toxic hot spots, advanced studies) and what long-term monitoring should be conducted.

In order to allocate its limited funds, the Program will decide what data should be collected on the basis of the issues outlined in the priority-setting process (described in 2.2.6 below). How the data will be used, which pollutants appear to be of greatest concern, and what other studies are currently being conducted by other agencies will also be factors in determining what the scope and extent of baseline studies.

Following the prioritizing, the Program will collect physical, chemical and biological data to determine if water quality standards

are being met and whether the beneficial/characteristic uses are being impaired. Some data will be collected for the purpose of establishing the water quality along entire segments of the river; other data will be used to evaluate the status of depositional areas (e.g. sloughs, back waters) in the lower estuary where toxic hot spots are more likely to occur. A partial list of the physical, chemical and biological issues appear in Appendix D.

2.2.5 Advanced Studies

The Program will evaluate the results of the baseline studies to determine what advanced studies and long-term monitoring should be conducted. Advanced studies could include, for example, collection of data in order to understand bioaccumulation processes, to develop sediment quality criteria, to understand the effects of water pollution on the Columbia's living resources, and to develop solutions to water quality problems.

Data gathered during both baseline and advanced studies will be used by regulatory agencies to calculate the assimilative capacity of the river. The Program will also be able to recommend long-term monitoring that will be needed following conclusion of the Program. Advanced studies will be limited in number, scope and duration due to Program limitations.

2.2.6 Setting Priorities

The Bi-State Program must evaluate water quality over a large area for which there is little existing data and therefore must carefully prioritize, plan and execute its sampling and analysis activities. Priorities which the Program will set first on the basis of scientific, regulatory and public need will then be even further narrowed to fall within budget limitations. Decisions involved in setting priorities for study include:

- what questions need to be answered;
- how the data collected will be used;
- what pollutants are of greatest concern;

- what media (e.g., water, sediment, biological tissue) need to be sampled; and
- what geographic areas are of greatest interest or concern.

The priority-setting process is iterative, occurring at different steps in the technical studies. At each step, the process of setting priorities begins with reviewing the available data, which are analyzed to identify the status and trends (past and projected) of:

- potential sources of pollution (point and non-point);
- symptoms of problems in the river (i.e. "effects");
- geographic concerns such as uses (e.g., areas of concentrated recreation, fish rearing, drinking water intake) and fate and transport (e.g., areas of deposition);
- regulatory activities; and
- conditions and activities that can affect water quality (including demographics, economic development, channel deepening).

The Program will first set priorities for the purpose of planning reconnaissance surveys (see section 2.2.3).

Priorities are reviewed again after information is collected in the reconnaissance surveys. Critical data gaps and key sensitive areas needing additional study will be identified and pollutants will be ranked for additional study. Studies that are being or could be conducted by other agencies and groups are flagged. The costs of data collection and analysis for areas of greatest interest will be evaluated and the data collection plan developed.

As baseline data become available, the Program will establish priorities for advanced studies.

2.2.7 Managing Data

Studies carried out under the Bi-State Program will produce data on various topics. Issues related to managing data include:

- Making data easily available to the public;
- Making data available to agencies that manage the Lower Columbia River and its resources; and
- Deciding how to store, organize, analyze and display both existing and newly collected data.

The Program will begin to address these issues during 1991. Details to consider include establishing locations for repositories of information; having key materials available for public viewing at selected locations along the river; considering the use of computerized databases, Geographic Information Systems (GIS), and statistical analysis packages; and evaluating existing databases from DEQ, Ecology, and other state/federal agencies.

2.3 Element III: RECOMMENDATIONS FOR PROTECTING AND IMPROVING WATER QUALITY

The Interstate Agreement requires the Steering Committee"... to evaluate options and provide recommendations based on monitoring information obtained for improving and protecting water quality and

beneficial uses in the Columbia River." As information from water quality studies becomes available, the Steering Committee will evaluate it and make recommendations as appropriate.

DEQ, Ecology, and other agencies will be reviewing data and making their own determinations in addition to responding to recommendations made by the Steering Committee.

2.4 ELEMENT IV: LONG-TERM BI-STATE FRAMEWORK

The Interstate Agreement requires the states, in consultation with the Steering Committee, to develop recommendations on a long-term bi-state framework to address water quality, public health, and habitat concerns in the Lower Columbia River. In order to develop informed recommendations, it is necessary to assess the existing institutional framework and understand the problems and related activities along the river. The Interstate Agreement charges the Steering Committee with the responsibility to address the existing institutional framework. The Program, therefore, will make a proposal to the states for developing recommendations for a long-term framework and interim improvements in the Program.

Types of information the Program needs to develop recommendations on a long-term framework include:

- the authority and responsibility of local, state, and federal agencies on the Columbia River;
- the institutional gaps, overlaps and conflicting authorities; and
- existing and needed interagency coordination.

Examples from other areas of the country in developing bi-state or multi-state organizations is also appropriate. Finally, results from the technical studies may influence what type of long-term framework would be appropriate.

APPENDICES

APPENDIX A

Potential Sources of Water Pollution

I. Point Source Discharges

- A. Industrial
- B. Municipal
  - 1. Combined Sewer/Stormwater Overflows
  - 2. Pre-treatment
- C. Compliance History
- D. Discharges from Vessels
  - 1. Garbage and sewerage
  - 2. Bilge and ballast

II. Non-Point Source Discharges

- A. Agriculture and Rangeland
  - 1. Contaminated runoff
  - 2. Irrigation return waters
- B. Forestry
  - 1. Harvest
  - 2. Roadbuilding
- C. Urban Runoff
  - 1. Household chemicals
  - 2. Septic systems
  - 3. Cigarette butts
- D. Landfills
- E. Superfund Sites
- F. Dredged Material Disposal Sites
- G. Atmospheric Deposition

H. Hazardous Material and Oil Spills

I. Supersaturation from hydroelectric dams

J. Gravel Mining

K. Placer Mining

L. Hanford Nuclear Reservation

APPENDIX B

Ongoing Studies

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12. Young, S.R. unpublished (1987, 1988, 1989). Columbia River Survey. James River Corporation. Vancouver, WA.

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APPENDIX C

Oregon and Washington Beneficial/Characteristic Uses

Oregon sets water quality standards to protect the following range of beneficial uses:

Public Domestic Water Supply

Private Domestic Water Supply

Industrial Water Supply

Irrigation

Livestock Watering

Anadromous Fish Passage

Salmonid Fish Rearing (trout)

Salmonid Fish Spawning (trout)

Resident Fish and Aquatic Life

Wildlife and Hunting

Fishing

Boating

Water Contact Recreation

Aesthetic Quality

Hydropower

Commercial Navigation and Transportation

Washington classifies waterbodies into classes. The lower Columbia River is a Class A (Excellent) waterbody and includes the following characteristic uses:

Water Supply (Domestic, Industrial, Agricultural)

Stock Watering

Fish and Shellfish

- Salmonid
- Other Fish
- Clam, Oyster and Mussel
- Crustaceans and Other Shellfish

Wildlife Habitat

Recreation (Primary Contact, Sport Fishing, Boating and Aesthetic Enjoyment)

Commerce and Navigation

APPENDIX D

Physical, Chemical and Biological Issues for Study

The following lists were identified by the Steering Committee and the public as potential areas for study.

I. Physical

A. Hydrology, flows, currents

B. Salinity Gradients

C. Depositional areas

D. Types of sediments (clays, silts, sands)

II. Chemical Characteristics of water, sediments and biological tissue

A. Conventional Pollutants

Bacteria, nutrients, dissolved oxygen, pH, dissolved gases, temperature, turbidity, total solids, ions (sodium, calcium, magnesium, chlorine), etc.

B. Toxic Pollutants

Arsenic, mercury, DDT/DDE/DDD, dioxins and furans, lead, PAHs, PCBs, pesticides, TBT, zinc, etc.

C. Radionuclides

III. Biological

A. Types and distribution of habitat (riparian, wetlands, intertidal, and submerged) including critical habitat areas and water quality functions

B. Types, distribution, community composition and diversity of aquatic life (fish, macroinvertebrates, benthic organisms, algae and macrophytes)

C. Types, distribution, community composition of wildlife and marine mammals

D. Levels and types of pollutants found in fish, macroinvertebrate, and wildlife tissues; incidence of tumors or abnormalities; other biological monitoring techniques

E. List of threatened, endangered, and sensitive species

APPENDIX E

Glossary

(To be completed)

State of Oregon
Department of Environmental Quality

Memorandum

Date: December 3, 1990

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: **Agenda Item P.** December 14, 1990 EQC Meeting

Discussion of Draft Rules Establishing a Third Party Appeal Process

Attached is a Discussion Draft of rules that would establish procedures for Commission action to initiate a contested case review of major permit action decisions of the Department. Included is a process for third parties to request that the Commission initiate a review.

Under present statutes and Commission rules, the permit applicant or permittee has the right to request a contested case hearing before the Commission on the Department's decision. A third party may challenge a Department permit decision in Circuit Court or may approach the Commission and ask for consideration of their concerns.

The attached draft was prepared by **Michael Huston** in consultation with Harold Sawyer, and is the followup result of a discussion at the September 20, 1990, Commission work session. At that time, the Commission asked that a draft be prepared and brought back for further discussion based upon the following guides:

- The procedures for third parties to follow in asking the Commission to review a Department permit decision should be clarified so that people will know how to proceed. Threshold requirements for standing should be established.

- The Commission should have complete discretion to either initiate a contested case review of a permit decision or reject the request for review.

- The Commission expects to initiate reviews in limited circumstances such that the increased workload for the Department would not be significant. The Commission wants the process to result in an opportunity to review issues before they reach the courts because the Commission is more knowledgeable on environmental issues than the courts.

- The time periods for the process should be "tight" so that the applicant for a permit is not kept in limbo. (A granted permit does not go into effect if a contested case review is initiated.)

- Review of a permit decision by the Commission should not be a substitute for rulemaking.

Department Recommendation

The Department recommends that the Commission fully discuss the attached draft and consider the effects upon all interests: the permittee, interested public, the Department, etc.

Additional Thoughts

As part of this discussion, the Department offers the following thoughts.

The purposes to be achieved by formally establishing a new option for third parties to request review of Department permit decisions should be clearly understood. Potential purposes include (1) enhanced opportunity for public input in the permit process, (2) a justifiable preference for creating a record before the Commission as opposed to the Circuit Court when matters may be appealed to the Court of Appeals, (3) the opportunity to minimize or reduce Department workload and costs in appeal processes, (4) the opportunity to review decisions to determine if statutes and Commission rules and policies are being reasonably interpreted and applied in situations that are not "clear-cut", etc.

The Department strongly believes the opportunity for public input in the permit process is important. Existing rules provide a process for public input. The question may be whether additional public participation opportunities should be provided, and if so, how those opportunities are structured and implemented. The opportunity for third party appeal may not be the most effective way to enhance public input on significant permit decisions. For example, a technique such as Alternative Dispute Resolution may have merit with respect to significant or controversial permit applications.

Regarding the creation of a record at the first stage of appeal, based on current experience, the Department would predict that there would be no significant difference between a contested case before the Commission and a proceeding before the Circuit Court. In either case, the Department must present documentation of the rationale for its decision. Typically, the Department's record (file) is assembled and filed with the presiding officer and parties, witnesses may be deposed, briefs are exchanged, oral arguments are made before the presiding officer, and a decision is rendered. The contested case proceeding may move faster than the Circuit Court proceeding, depending on the backlog of cases.

The Department continues to be concerned about the issue of workload that may be

associated with an expanded or additional appeal process. Adoption of a rule to establish a new process for requesting review of Department permit decisions **will result in additional workload** for the Department as follows:

- New procedures for notification of Department permit decisions will have to be developed and implemented.

  (The draft rule leaves such procedures to be developed and implemented outside the rulemaking process.)

- Requests for permit decision review will have to be received and tracked.

- Requests and supporting documents will have to be immediately distributed to Commission members for consideration and action to stay within the tight timelines.

- Requests will have to be formally responded to -- even is the response is that the Commission "... declines to initiate a contested case review as requested."

- If the number of contested cases initiated in response to third party requests is greater than the number of permit decisions that otherwise would have reached Circuit Court, the workload increase will be significant to unbearable.

In the past, very few Department permit decisions have been challenged in Circuit Court. This may be due in part to the costs and commitment involved in a court challenge, and in part due to the relatively cooperative atmosphere in Oregon for environmental decisions.

Recently, there seems to be more of a tendency for individuals and groups to challenge environmental decisions. Trade associations and other groups are questioning permit decisions out of concern that new requirements imposed upon one source may become a precedent for other sources. Citizens rapidly organize to oppose proposals for new development, and use every potential avenue of appeal to make their case. In short, the Department does not believe that past experience in contested case requests and court appeals would be a good predictor of requests and workload associated with a change that adds an apparent new option for administrative challenge.

The Department also would expect a significant number of requests for Commission initiated contested case reviews because a person does not have to be represented by an attorney in a contested case proceeding, and therefore can ask for and participate in one without significant costs.

The permit decisions most likely to generate appeals involving significant issues are those where the decision is based on interpretation of rules and policies in light of new information or a different factual situation than was contemplated when the rules and policies were established. Reviews in such cases can be valuable in longer term program implementation. Any contested case proceeding or Circuit Court proceeding which reviews a Department permit decision will render a judgment on the reasonableness of the Department's decision. The Department believes that the significant issues of this nature will usually reach either the Contested Case process or the Circuit Court under current procedures.

Finally, it should be noted that the procedure contemplated in the draft rule, even though very tight on timelines, will establish a minimum period of added uncertainty for applicants and permittees of 20 days, and could add several months or more if the Commission chooses to initiate a contested case. At present, if the permit applicant accepts the Department permit decision and chooses not to appeal, the permit decision can be relied upon as final and effective. A court challenge by a third party would not stay the permit unless the court specifically acted to enjoin the permit pending resolution of the challenge. Under the proposed rule, the permittee cannot rely on the permit being final for at least 20 days following notification. If the Commission initiates a contested case review within that 20 days, the permit decision does not become effective until the contested case proceeding is resolved, and the period of uncertainty for the applicant is significantly extended.

If the discussions on this matter result in a process that will impose additional workload and costs upon the Department, major decisions will have to be made on priorities and tradeoffs because additional resources are not expected to be available. With the uncertainties and resource strain being caused by Ballot Measure 5, we believe that the Commission should seriously consider tabling this matter at this time if costs are a factor.

HS:l

Attachment

DRAFT

ADMINISTRATIVE RULES
FOR
THIRD PARTY REVIEW

DRAFT
November 29, 1990

EQC Review of Permits: Upon the Request of Commissioners or Third Parties

340-14-060(1)* The Commission may, in its discretion, review any permit decision of the Department. Such review may be requested by Commissioners on their own initiative or at the request of a third party, as provided in OAR 340-14-065 and -070. The concurrence of at least three Commissioners shall be required to initiate a review.

(2) If the Commission initiates review of a permit decision, the permit decision shall generally not become effective until the Commission review is completed by issuance of a final order. Subject to Commission review, however, the Department may determine that undisputed and severable portions of the permit shall become effective.

(3) Nothing in OAR 340-14-060 to -075 affects the rights of permit applicants or permittees to request Commission review. These rights are determined and governed by other provisions of OAR Division 14 and other applicable rules.

* All language is new unless otherwise noted.

DRAFT

COMMENTARY

This section allows the Commission to review permit decisions, either by independent initiative or at the request of third parties. As drafted, the section requires the concurrence of at least three Commissioners to trigger a review. Legally, it is possible for this number to be higher or lower.

The section also addresses the question of when affected permit provisions become effective.

Finally, this section makes it clear that the existing review rights of permit applicants or permittees are not altered by this new set of rules.

DRAFT

EQC Review of Permits: Procedures

(1) Any Commissioner may request review of a Department permit decision by notifying the Director verbally or in writing within twenty (20) days of the date on which the Department mailed notice of the Department's permit decision.

(2)(a) A third party may request Commission review if the third party participated in the Department's permit proceeding by submitting timely written or verbal comments and if the party is adversely affected or aggrieved by the Department's decision.

(b) A third party request for Commission review shall be filed in writing with the Director within fourteen (14) days of the date on which the Department mailed notice of the Department's permit decision. The request shall address both the standing requirements of subsection (2)(a) of this section and the considerations set forth in rule 340-14-065. The request shall also prominently show the date on which the permit decision shall become effective, unless Commission review is initiated. The request shall be filed with the Director with service by first-class mail on each of the Commissioners, unless an alternative procedure is specifically approved by the Commission or Department.

(c) If Commissioners want to grant a third party request, they shall notify the Director as provided in subsection (1) of this section.

(3) Absent the concurrence of three Commissioners, any request for Commission review shall be considered denied, and the permit decision shall become final effective as indicated in the Department's decision.

(4) Unless otherwise specified by statute or rule, Commission review shall be conducted as a contested case in accordance with OAR 340, Division 11. The Commission may conduct the review itself or refer the matter to a hearings officer. The hearings officer and all parties to the review shall use all reasonable means to expedite the proceeding.

(5) Failure to comply with the requirements stated or referenced in this rule shall result in automatic denial of a request for review, unless the requirements are specifically waived by the Commission or Department.

DRAFT

COMMENTARY

This section establishes the procedures for requesting or initiating Commission review. It preserves the existing timelines for permits but, in doing so, it imposes some strict time constraints on the Commission, the Department and other parties. For example, in most instances, Commissioners would have less than six days to consider and act upon third party requests for review.

The section is also notable for two issues that it does not address. First, it does not alter the existing system for notifying people of Department permit decisions. It is assumed that the existing system can be adjusted to see that people who participate in Department permit proceedings can request and be provided reasonable notice of the Department's decision.

Second, the section does not impose any particular system for informing the Commission of permit decisions or requests for review. It is assumed that the system can best be devised outside the context of a formal rule. As noted above, however, the practicalities of informing the Commission and securing Commission action under very strict timelines does need to be considered.

DRAFT

EQC Review of Permits: Considerations

340-14-070(1) In determining whether to grant or initiate review of a Department permit decision, the Commission shall take into account and balance the following considerations:

(a) Whether Commission review would help identify and resolve significant issues relating to the environment or human health:

(b) Whether the issues in question involve interpretation of adopted policies rather than proposals to change those policies (when a change in policy is proposed, the preferred administrative procedure is rulemaking);

(c) Whether Commission review would address issues of first impression or questions about consistency in decisions by the Department;

(d) Whether the agency's permit decision would be strengthened by examining that decision through a contested case proceeding; and

(e) Whether Commission review can be conducted without unduly delaying the permitting process.

(2) The Commission is not required to issue any formal findings with respect to these considerations. When Commission review is not granted or initiated, it shall be presumed that the Commission concluded that the considerations weighed against review in the particular case.

COMMENTARY

This section establishes the factors to be considered by the Commission in determining whether to grant or initiate review. They are expressed as general considerations to be balanced rather than absolute criteria. The essence of the considerations is the question of whether the agency's legal or policy responsibilities would be enhanced by further deliberations on a particular permit.

Obviously, the considerations are fairly general, and they may make it difficult for parties to predict whether the Commission will conduct a review. An alternative approach would be to draft criteria that are far more specific and objective.

DRAFT

EQC Review of Permits: Scope and Applicability

340-14-075(1) For purposes of rules 340-14-060 through -075, "permit" means:

(a) an air contaminant discharge permit;

(b) an indirect source construction permit:

(c) a solid waste disposal permit;

(d) a solid waste facility closure permit;

(e) a hazardous waste or PCB storage or treatment permit;

(f) a state wastewater discharge permit (WPCF); or

(g) a federal wastewater discharge permit (NPDES).

(2) For purposes of rules 340-14-060 through -075, permit "decision" means any final action by the Department granting, denying or modifying a permit. It does not include any action by the Department to enforce existing permits.

(3) Rules 340-14-060 through -075 apply to permit decisions made by the Department on or after July 1, 1991.

DRAFT

COMMENTARY

This section includes a specific and generally exclusive listing of the Department decisions that would be subject to Commission review. The list includes all of the basic pollution control permits, but it does not include the many other permit, plan review, certification or grant decisions made by the Department. The following are examples of decisions not subject to these rules:

1. Waste tire storage permits;

2. On-site sewage disposal permits:

3. Approval of noise impact boundaries for motor racing facilities;

4. Approval of airport noise abatement program/noise impact boundaries;

5. Approval of air quality notices of construction;

6. Approval of parking and traffic circulation plans;

7. Issuance of environmental hazard notices;

8. Approval of pollution control bond fund applications;

9. Approval of construction grant program applications;

10. Approval of state revolving fund applications; and

11. Certification of water quality standards for federal permits or license (Section 401).

In most instances, the excluded decisions are already governed by specific statutes or rules which set forth a review procedure. In many instances, no formal Commission review is currently available. In at least one instance (certification of water quality standards under Section 401), only the applicant has a right to Commission review.

DRAFT

Repeal of Special Salt Caves Rule

OAR 340-11-142 is repealed.

COMMENTARY

This section relates to a special rule adopted by the Commission in reference to the Salt Caves hydroelectric project. The rule provides that the Attorney General's Model Rules are to apply in any contested case proceeding on the Section 401 certification of the proposed project.

This special rule is obsolete, because more recently the EQC has adopted procedural rules that generally embrace the Attorney General's Model Rules. The wording of the special rule on Salt Caves has created some confusion on this issue.

DRAFT

Updating Adoption of Attorney General's Model Rules

OAR 340-11-005 is amended to read as follows:

The words and phrases used in this Division have the same meaning given them in ORS 183.310. Additional terms are defined as follows unless context requires otherwise:

(1) "Adoption" means the carrying of a motion by the Commission with regard to the subject matter or issues of an intended agency action.

(2) "Agency Notice" means publication in OAR and mailing to those on the list as required by ORS 183.335(6).

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

(4) "Department" means the Director of the Department or the Director's authorized delegates.

(5) "Filing" means receipt in the office of the Director. Such filing is adequate where filing is required of any document with regard to any matter before the Commission, Department or Director, except a claim of personal liability.

(6) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR 137-01-005 through 137-04-010 as amended and in effect on March 1, 1990 [April 29, 1988].

(8) "Presiding Officer" or "Hearing Officer" means the Commission, its Chairman, the Director, or any individual designated by the Commission or the Director to preside in any contested case, public, or other hearing. Any employee of the Department who actually presided in any such hearing is presumptively designated by the Commission or Director, such presumptive designation to be overcome only by a written statement to the contrary bearing the signature of the Commission Chairman or the Director.

COMMENTARY

This amendment simply updates the adoption of the Attorney General's Model Rules by reference. This picks up changes made by the Attorney General in 1990. These changes specify the circumstances under which late filings will be accepted in contested case proceedings, provide for reconsideration of final orders in other than a contested case and clarify when intervention in a declaratory ruling proceeding may be allowed. None of these changes are considered to be controversial.

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November 21, 1990

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Dear Commissioners:

As you know, this office represents Tidewater Barge Lines, Inc., which, through one of its affiliate companies, owns and operates the Finley Buttes Landfill.

The Legislative Emergency Board has recently rejected the proposed $2.73 surcharge on out-of-state waste which was adopted by the EQC on November 16, 1990. I understand that the Emergency Board has forwarded, along with its rejection, a recommendation that the surcharge should be in the amount of $2.25. The Emergency Board has eliminated $0.47 of the surcharge which was originally

slated for impacts to tourism and has furthermore eliminated $0.10 from solid waste activities financed by the general fund.

I have been informed that you will be considering, at your December 13 meeting, an Emergency Rule which will arguably satisfy the recommendations made by the Emergency Board.

Since you now have an opportunity to revisit the issue, I am requesting that you also revisit the component of the surcharge which consists of $0.05 per ton for solid waste reduction activities related to the review and certification of waste reduction and recycling plans.

The decision packet which was utilized by you during your proceedings outlines the methodology for computation of that $0.05 beginning at page D-11 of the materials. For the purposes of this request, I am not taking issue with the assumptions made by your staff in steps 1-5 of the analysis.

However, I believe there is a major flaw in step 6 which significantly overstates the estimated cost-per-ton to compensate the state for these activities. In step 6, the 1990 cost for an environmental specialist 3 is $2,465.00 per month. Your staff proceeds to utilize a 3% real discount rate, a 23.1% indirect cost, a 35% cost for OPE and a 28% cost for services and supplies. The staff then calculates the total present value of the cost stream to be $107,933.00. Your staff then proceeds to divide that figure by the total expected out-of-state tonnage during the <u>first four years</u>, discounted at a 3% annual rate, in order to arrive at a cost-per-ton of $0.048394 which it then proceeds to round off to $0.05 per ton.

This methodology would allow the state of Oregon to totally recover its costs within four years. Unfortunately, this component of the surcharge will continue to be charged to out-of-state waste over the life of export contracts. In Tidewater's case, this $0.05 per ton charge would continue to be charged over the life of the twenty year contract thereby resulting in a

significant windfall to the state of Oregon amounting to five (5) times the actual cost.

I am requesting that you re-examine this category at your December meeting and determine whether the estimated cost-per-ton should be changed to $0.01 per ton as opposed to $0.05 in order to reflect its applicability to Tidewater's twenty-year contract.

Thank you for your time and courtesies concerning this matter.

Very truly yours,

John DiLorenzo, Jr.

JDL:dmg

tbl\letters\commeboard.eqc

cc: Wes Hickey
Fred Hanson
Steve Greenwood
Tom Gallagher

EQC WORK SESSION OF DECEMBER 13, 1990
CYANIDE MINING REGULATION

A. The Process

1. Open-pit mining
2. Heap leaching
3. Milling and In-circuit Leaching

B. The Environmental Risks

1. Surface Disturbance
2. Contamination of Water
   a. Cyanide
   b. Toxic Metals (Cu, Zn, Pb, Hg ...)
   c. Acid Drainage

D. Management of the Risks--Technology

1. Toxicity Containment
2. Detoxification
3. Toxicity Removal
4. Long-term Monitoring
5. Reclamation/Restoration

C. Regulating Authority

1. Water Quality Authority
2. Solid Waste Authority
3. Harzardous Waste authority

D. Regulating Means

1. Rules
2. Guidelines
3. Permit-specific professional judgement

E. EQC Direction and Recommendation

jet 12/12/90
file: \mining\outl

EQC WORK SESSION OF DECEMBER 13, 1990
CYANIDE MINING REGULATION

RULES, GUIDELINES AND PROFESSIONAL JUDGEMENT

A. Type of Permit: Oregon Water Pollution Control Facility (WPCF)--non discharging

B. Applicable criteria

1. Groundwater Criteria (OAR 340-40)
2. "Highest and Best Practicable Treatment and Control"

C. Regulatory Means

1. Oregon Administrative Rules

a. Established and interpreted by legal process
b. Specification type (liner of material X, Y thick)
c. Performance type (liner shall not leak)
d. Purposely specific
e. Infrequently changed
f. Relatively inflexible in application

2. Guidelines

a. Established by professional judgement
b. Interpreted in the permit
c. Purposely general
d. Made available to industry for information
e. Frequently changed
e. Relatively flexible in application

3. Permit-Specific Professional Judgement

a. Established by negotiation of both parties
b. Based on past practices, precedent
c. Changes from permit to permit
d. Ultimate flexibility

jet 12/11/90
file:\mining\rules

THE WILDERNESS SOCIETY

OREGON REGION

December 13, 1990

Mr. Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Dear Mr. Hansen,

The Environmental Quality Commission work session today illustrated the complexity of the cyanide heap-leach mining issue. Perhaps you could distribute the enclosed material to the Commission members. The paper was prepared by my office to assist the Governor's Mining Working Group identify the breadth of issues The Wilderness Society believes should be addressed by state agencies and, where gaps exist, the Legislative Assembly.

Please pass on a special thank you to Bill Wessinger for his willingness to monitor the Working Group meetings.

Best regards,

Larry Tuttle
Oregon Regional Director

610 SOUTHWEST ALDER, SUITE 915, PORTLAND, OREGON 97205
(503) 248-0452

THE WILDERNESS SOCIETY

OREGON REGION

POSITION OF THE OREGON OFFICE
OF THE WILDERNESS SOCIETY
ON CYANIDE HEAP LEACH MINING
IN OREGON

prepared by

Valerie Kitchen
Oregon Regional Office

December 6, 1990

610 SOUTHWEST ALDER, SUITE 915, PORTLAND, OREGON 97205
(503) 248-0452

printed on 100% recycled paper

The Wilderness Society is a private, non-profit membership organization representing nearly 420,000 members nationwide, including 8,400 Oregon members, on issues related to the sound and sustainable management of public lands. In keeping with this mission, the Oregon office of The Wilderness Society offers the following position on cyanide heap leach mining in Oregon.

More than 40,000 mineral claims have been filed in the Oregon counties of Malheur, Harney and Lake, and additional claims are expected in eastern Oregon and throughout the state. The owners of many of these claims propose to use cyanide heap leach mining, a process which has significant actual and potential adverse impacts on human health and the environment. To date, analysis of such impacts by Oregon state agencies has been insufficient. It is the position of the Oregon office of The Wilderness Society that before cyanide heap leach mining is allowed to proceed, the direct, indirect and cumulative effects of such mining must be thoroughly examined.

Of particular concern is the need for a state regulatory program which adequately evaluates cumulative impacts. (Cumulative impacts as defined by the Council on Environmental Quality (CEQ), the National Environmental Policy Act (NEPA) and supporting regulations.) At issue is not one potential mining operation, but many. Certainly, the impacts of each operation should be analyzed individually. However, because of the number of claims already filed in Oregon, ecosystem-wide, multiple-operation planning is essential. Analyzing individual operations in isolation will not be adequate to insure public and environmental health and safety.

In order for the State of Oregon to exercise a high level of responsibility for management and protection of all lands in the state, a regulatory framework regarding cyanide heap leach mining is urgently needed. It should be a framework built on interagency coordination, whereby duplication of effort and conflicting requirements are avoided. There should be no issuance of partial permits by individual state offices. Rather, a single permit, including conditions, should be issued only after rigorous analysis and thorough inter-agency review determines that a permit is appropriate. Furthermore, applicants should be required to use the best available control technologies in each plan of operations.

The Oregon office of The Wilderness Society would welcome the opportunity to work with the Governor's office and affected state agencies on development of a regulatory framework regarding cyanide heap leach mining in Oregon. The following are among the key issues that we believe must be considered by the state.

Human Health and Safety

The potential for lethal and sublethal exposure of humans to cyanide, cyanide complexes, toxicants and toxic metals such as arsenic, mercury, cadmium, lead, copper, silver, zinc, nickel and molybdenum should be addressed in detail. Also of concern are the dangers associated with large, deep, steep-sided open pits. Loss of increasingly sought after resources such as solitude, recreation and scenic values should be examined, as well.

Fish, Wildlife and Plants

The potential for lethal and sublethal impacts on fish, wildlife and plants due to exposure to cyanide, cyanide complexes, toxicants and toxic metals such as arsenic, cadmium, lead, copper, silver, zinc, nickel and molybdenum should be reviewed in detail. The record of bird deaths associated with toxic exposure at cyanide heap leach mining operations in other states is evidence of the need for a thorough review of potential impacts in Oregon. We note that such impacts to birds are a violation of the Migratory Bird Treaty Act. Perils to wildlife associated with large, deep, steep-sided open pits should also be addressed.

A critical issue is habitat loss and/or displacement of wildlife from traditional habitat due to human and industrial pressures, especially in presently isolated areas. The obstruction or prevention of wildlife access to clean water sources due to mineral development and associated construction should be analyzed. Perils to wildlife associated with powerline construction, road construction and traffic related to mineral development should be examined, and the potential for raptor mortality due to new power line construction should be investigated. Impacts to fish as a result of damage to water quality and quantity should be included in the environmental analysis.

Consideration should be given to impacts to fish, wildlife and plants if long-term revegetation/reclamation is not achieved. With each of these concerns, special attention should be given to state and federal listed or candidate rare, threatened, endangered, and sensitive species and to the lands which might potentially be needed as recovery areas for those species.

Water

The potential for regular, irregular and/or catastrophic releases of toxins and contaminants into surface and subsurface water by leakage and/or spillage should be examined. The chemistry and disposal of post-mining operation water should be

addressed in detail. Not to be overlooked is the potential for natural leaching of rain and snowmelt into and through low grade ore storage and overburden disposal areas.

The impacts to water quantity are of critical importance in arid eastern Oregon. Detailed analyses should be done to determine sufficiency of current or anticipated water supply to serve the number of mines expected, in addition to the already existing and foreseeable needs of fish, wildlife, agricultural, other industrial and residential areas (including new residential development in response to mineral development).

Air

The potential for regular, irregular and/or catastrophic releases of toxins and contaminants into the air should be addressed in detail, as should dust and particulate problems associated with mining operations. The likelihood of cyanide and other toxin evaporation and corresponding degradation of air quality should be examined, along with possible impacts on present or future Class I visibility standards.

Energy

Multiple mining operations would put significant demands on electric power for milling and pumping processes at a time when new energy generating capacity may be scarce. Energy supply should be scrutinized, as should location of any new power lines needed to support cyanide heap leach mining operations. The likely impacts to biological resources caused by increased development of new regional power facilities associated with mining should be addressed. In addition, an evaluation should be made of the energy costs to the region of using geothermal resources as an agent in the heap leach process and as an electricity generating source serving mining sites. Ultimately, if new power generating facilities are needed for mining, a complete analysis of the economic and environmental impacts will be necessary. Financial responsibility for new power development to support mining must be clearly determined.

Transportation Systems

The potential for regular, irregular and/or catastrophic releases of toxins and contaminants into transportation routes should be addressed in detail. Of paramount concern is the transportation of liquid cyanide over state highways. Also of significance is the likelihood of new road construction associated with mining operations. Cost analyses should be done regarding road construction and improvement related to mineral

development, including a determination of financial responsibility. Vehicle size, weight and anticipated frequency of mining related traffic should be studied. Restoration of roads in conformance with each area's original condition following mine closures should be addressed.

Monitoring of Operations

As stated above, leakage of toxins and contaminants into the surface and subsurface water is a significant concern and should be reviewed in detail. Methods for monitoring water resources both during and after closure of operations should be developed, as should procedures for monitoring and reporting fish and wildlife mortality during and after mining operations. In addition, monitoring to evaluate the success of revegetation done during reclamation should be addressed.

Solid Waste Disposal and Detoxification of Tailings

The use, recycling and final disposition of cyanide should be attended to in detail, as should the control or elimination of toxicity of cyanide during use and thereafter. The environmental fate of cyanide must be examined, as current research indicates that it does not necessarily break down naturally and may remain active in soils and groundwater, where it is not exposed to air or sunlight. See, e.g., Report of the Mining Waste Study Team, University of California at Berkeley, prepared for the California State Legislature (July 1988).

Large amounts of solid waste would result from mining operations, much of it containing varying amounts of cyanide and/or naturally occurring heavy metals. The long term impacts of such solid waste should be analyzed with regard to water quality, human health, fish, wildlife, plants and other resources.

Spill/Leakage Response

Spill and/or leakage containment plans and rules for reporting spills and/or leakages should be developed. Accident response and contingency plans should be required in advance of operations. Liability should be determined for damages resulting from spills and/or leakages.

Reclamation

Specifics of proposed reclamation measures and alternatives and their effectiveness should be investigated and comprehensive

post-mining objectives developed. Timeliness of reclamation should be considered a critical post-mining issue. The historic, long-term success (and/or failure) of revegetation in the Great Basin ecosystems should be evaluated, as should the potential for growing toxic vegetation on reclaimed sites. The Wilderness Society maintains that if mining is to go forward, assurances must be made in advance that mining sites and their vicinities will be returned to their original contour and usability. Pits should be filled and reclaimed to the point that the land can once again sustain multiple use. The costs of reclamation should be analyzed in advance of operations, as should applicant reclamation records in Oregon and elsewhere. Methods for enforcement of reclamation should be developed.

Financial Assurance / Liability

Bonding requirements should be adequate to cover the actual costs of reclamation, pollution remediation and liability, natural resources damages, and so on. Liability should be established in the event of human injury and/or environmental impacts occurring following closure of mining operations. A significant concern is the potential long-term effects of cyanide heap leach mining i.e. the unforeseen development of health and/or environmental problems many years after mine closure, particularly related to toxic mining waste.

Cultural

The location and significance of prehistoric or historic archeological sites should be determined, and the protection of such cultural resources should be addressed.

Socio-Economic

Special attention should be given to the "boom and bust" syndrome associated with limited duration projects. Impacts of mining activity and subsequent closure should be analyzed with regard to at least the following: local employment; local economics; local housing; transportation; public utility services; social services; local, state and federal public government; and government services.

League of Oregon Cities

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League of Oregon Cities

[illegible] 181 [illegible] Salem, Oregon 97301-[illegible] 378-3959

FAXed TO Addressee

December 11, 1990

Mr. Bill Blosser
Chairman
Environmental Quality Commission
811 SW Sixth
Portland, Oregon 97204

Re: Adoption of Rules for Illegal Drug Lab Cleanup

Dear Mr. Blosser:

I request that I be invited to attend the hearing on the proposed rules this morning and request that these comments be made available to the Commission for consideration.

The rules require that a local law enforcement agency must [illegible] an advance from DEQ [illegible] cleanup of illegal drug lab [illegible] the responsible agency for DEQ or the costs of cleanup. A hardship exemption is provided if the local agency cannot pay without out-[illegible] the enforcement process. This rule is premature [illegible] process from the point of view of the cities.

First, the requirement was established well after most cities had completed their budget process for this fiscal year. Many law enforcement expenses were largely unanticipated and, consequently, were not budgeted. Nor do most law enforcement agencies have available discretionary funds from which such payments could be made without cutting into other budgeted programs and thus reducing other law enforcement services. I believe this has contributed to the low payment rate by cities to date.

Another difficulty is that the expenses do not seem to be within the control of the local agency that is expected to pay for the cleanup activities. The presence of illegal drug labs does not

necessarily reflect the policies or enforcement activities of the local agency, but may simply be a matter of happenstance or trend. Nor does the effects of the drug lab activity confined to the area where manufacture occurs. That the activity has an effect far beyond the site where it is manufactured is indicated by the number of mobile and transient labs. We assume that the products are distributed throughout the state, as well as out of state. The potential impact of the resulting toxins may be very broad, depending on the nature of the materials and their ability to migrate through the environment. The expense of clean-up, the non site-specific nature of the process, and the potentially broad environmental impact lead us to the conclusion that the mechanism for funding the drug lab problem should be more crime-based and should avoid imposing a disproportionate burden on a specific locality.

Finally, I would like to point out that the local agency has no ability to control costs of the clean-up once assistance has been requested from DEQ. While we are grateful for DEQ's help, DEQ makes the actual arrangements for and decisions about the clean-up requirements. The local agency, in effect, writes DEQ a blank check each time it requests aid.

The proposed rules do provide for a hardship exemption process, and the availability gives much needed relief to some agencies. I have understand however, that if exemption is claimed by all of those agencies entitled to it, there will be a perception that local law enforcement is failing to cooperate in resolving this very difficult problem.

We solicit from the Commission a commitment to join the cities, the counties, law enforcement agencies and others in seeking appropriate funding and use to address the clean-up problem without placing an undue burden on those localities where drug lab activity may be particularly heavy. We anticipate that, with a bit of effort, we may be able to identify certain program funds, both state and federal, that may help alleviate this financial burden.

Thank you very much for your consideration.

Very truly yours,

Valerie Salisbury

Valerie Salisbury
Sr. Staff Associate

December 12, 1990
Eugene, Oregon

William P. Hutchison, Chairman
Environmental Quality Commission
811 SW Sixth Avenue
Portland, Oregon 97204

Re: Clear Lake Watershed, OAR 340-41-270

Dear Mr. Hutchison:

I am here to speak on behalf of myself and some of the residents at Collard Lake who are affected by this proposed rule change. Some of us are part time residents, some are full time residents, but we all have a vested interest in what happens to the watershed.

I have a real and personal interest in seeing the lakes preserved and improved, even if it means I may have to move out. I have been witness to the gradual deterioration of other lakes in the area and do not want to be a party to the degradation of Clear Lake. Accordingly, I welcome the proposed new Rule as a step in the right direction toward insuring protection of the water.

I have been an interested observer in the Clear Lake problem for the past several years. In 1985, the County appointed a "Clear Lake Advisory Committee" to study the problem and make recommendations for a solution. The Committee recommended a buy out of properties as the best way to protect the water. The recommendation was ignored by the County.

The Committee was never formally dissolved but no more meetings were called. The present CRMP group seems to be heading toward the same conclusion reached by the 1985 committee, i.e., that a buy out is the surest way to protect the water.

The County has always seemed to favor sewers and development. In 1985 the County was prepared to impose a sewer district without even bothering to consult with the property owners. It now seems they are still trying to sewer and, since they cannot legally force it themselves, they would like to have EQC do it for them.

They would have you "mandate" sewers for us under the pretext such a mandate is needed as an "incentive for a solution". Presumably, if no solution is agreed upon by a given date, the sewering mandate would kick in automatically and DEQ would require us to do what the County cannot.

Since the County has never pushed any alternative other than sewers, such a "mandate" could easily become a vehicle to obtain their objective. All the County has to do is drag its feet on the preparation of the watershed management plan, special legislation for Heceta Water District, endorsement for loans or grants, or a host of other actions. Obviously, County opposition or foot dragging on any one or more of these actions could deny a solution indefinitely.

In fact, that seems to be what is happening now. Heceta Water

District has submitted a proposal that has the support of the majority of the affected parties except Lane County and the F2 land owners who want to build recreational residences in the watershed.

If the County really wants an early solution at Clear Lake they should support the Heceta Water District proposal and proceed with the needed legislation and management plan required to put the solution in action. Neither Heceta Water District nor the Collard Lake residents have authority to develop land use plans. Only the County has such authority.

Accordingly, I disagree with the County's proposal that a sewering requirement should be imposed on the Collard Lake residents as a performance bond to insure a management plan is implemented. I have no quarrel if EQC imposes time limits to encourage timely action. On the contrary, I think such limits are desireable. However,if mandates and time limits are to be imposed to insure performance, such mandates and limits should include the County as well.

Heceta Water District and the Collard Lake residents are ready to proceed with a solution for Clear Lake but we cannot advance much further without planning support and action by the County. We should not be held accountable for failing to take actions over which we have no authority or control.

Some of the County Commissioners and the F2 landowners wanting to develop inside the watershed have portrayed us as self-serving residents trying to avoid the cost of sewering and interested only in keeping everyone else out. This accusation is both unfair and untrue. It is true we are opposed to sewering if it leads to a full build out because of the non-point pollution it would incur.

Otherwise,I would remind these people that the CRMP Draft Plan contains three sewering alternatives. Two of these sewering alternatives were drafted and proposed by the Collard Lake group. Both alternatives called for sewers coupled with rezoning to require one acre minimum lot sizes on all new construction. We lost interest in these options when the County announced they could not down-zone to require larger minimum lot sizes. If the County cannot rezone, who can?

Apparently the opposition wants full sewering and full build out and if they cannot block a buy out option, I expect them to try to make it prohibitively expensive.

In summation, I support the rule as now proposed. However,if incentives are to be imposed by EQC to insure performance they should also mandate timely performance by the County. Otherwise, any County predictions of non-performance or tardy performance on our part can easily be made self-fulfilling by the County itself.

All they need do is "stonewall". Just as they seem to be doing now.

Glenn E. Pickell

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
DEC 13 1990
OFFICE OF THE DIRECTOR

DATE: 12/12/90
TIME: 7:00 pm

TO: Environmental Quality Commission & DEQ Staff

FROM: [illegible]

NUMBER OF PAGES: 2

Please give to EQC for 12/13/90 meeting Session w/ B.E.S.

Thanks
Mike Houck

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
DEC 13 1990
OFFICE OF THE DIRECTOR

December 12, 1990

To: Environmental Quality Commission
From: Mike Houck
RE: Comments for the Columbia Slough

I was discussing the schedule work session between the City of Portland Bureau of Environmental Services and EPA with Linda Hampshire. During that discussion she indicated that a concern has arisen over what impact the proposed TMDLs for the Columbia Slough might have on the Bureau's "flexibility" in dealing with meeting these standards. It seems that the Bureau feels it may have to resort to more "hard engineering" solutions to cleaning up the Slough than it had contemplated through the citizen participatory process over the past three or four years.

I would like to raise this issue with the Commission and state Portland Audubon Society's concern that the Commission and the City of Portland continue to strive, to the maximum extent possible, toward natural alternatives which will result in not only enhanced water quality but restored, protected and enhanced wildlife habitat, a key programs, important recreational opportunities and scenic resources. VE transects need to be considered between the City specific TMDL standards and a more holistic biology-oriented approach for the Columbia Slough. I would like to see some discussion among interested parties including the League of Conservation Voters, Northwest Environmental Defense Center, Northwest Environmental Advocates, Portland Audubon Society, the Wildlife Conservancy, Friends of Trees, a number of urban Native American and neighborhood representatives.

This suggestion should not be construed to support the city of Portland in avoiding its responsibility to meet water quality standards for the Columbia Slough or any other water body within its jurisdiction. I do feel, however that their Johnson Creek program has the potential for providing beneficial uses of our urban waterways that go beyond water quality to a multiobjective range of benefits including flood control, fish and wildlife habitat, recreation, aesthetics, enhanced economic values and education. The Columbia Slough, Tryon Creek, Balch Creek, Fanno Creek and the Willamette River are incredibly valuable natural resources and greenspaces. Any TMDL standards which DEQ develops for the City of Portland must be take into account not only the aquatic systems and what management scheme best addresses their beneficial uses as well as water quality.

Sincerely,

Mike Houck

METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

November 20, 1990

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Dear Mr. Hansen:

Thank you for your letter of September 12, 1990 commending Metro for its progress in implementing the Metro Waste Reduction Program. We are proud of our efforts which are now beginning to yield visible and tangible results.

Attached to your letter was a copy of a memo from Dave Rozell containing a number of comments from your staff on various aspects of our program. In response to these comments I have attached a memo containing my staff's responses. We will be glad to meet with you or DEQ staff if necessary to achieve full understanding of these issues.

Sincerely,

Rena Cusma

Rena Cusma, Executive Officer

cc: Bob Martin, Director of Solid Waste
Rich Carson, Director of Planning
Debbie Gorham, Waste Reduction Manager
Environmental Quality Commission

METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: November 20, 1990

TO: Bob Martin, Director of Solid Waste

FROM: Debbie Gorham, Waste Reduction Manager

SUBJECT: Response to the DEQ letter of 09/12/90 regarding the Metro Waste Reduction Program

The above captioned letter from the DEQ discusses the reports we submitted on June 29, 1990 and January 2, 1990 regarding the implementation of the Waste Reduction Program. Though the review was positive, an attached memo by DEQ staff made a number of critical comments regarding details of our program.

One comment concerned our analysis regarding the feasibility of accepting source separated building materials, including lumber, from the residential waste stream at Metro area disposal sites. We concluded that it was not feasible, at present, to modify existing facilities to receive source separated residential building materials. It should be noted that the materials typically included in this category include new and used doors, lumber, door and window hardware, toilets and bathtubs. Our conclusions were based on the following:

(1) the amount of material within this specific waste substream is very small, typically less than 2% of the total or approximately 2,000 - 4,000 tons annually,

(2) these materials are very susceptible to water damage and require covered receiving and storage areas, and

(3) the resale market for these materials is generally poor.

In September and October 1989, Keith Thomsen (Waste Reduction staff) and Robert Newman (Planning Department staff) met with Peter Spendelow of the DEQ staff to establish the specific guidelines for our analyses. Keith and Robert noted that the majority of salvageable and/or reusable residential construction and remodeling materials are generated, collected and disposed of by the commercial contractors who performed the work. They specifically stated that materials generated by these sources would be included in our analysis for Special Wastes, as required by Paragraph 4.I.(a) of the Order.

The DEQ noted that there are successful programs, such as Urban Ore in Berkeley, California and a similar program at the

Glenwood Receiving Station in Eugene, Oregon, that accept these types of materials. The DEQ failed to point out that the majority of the materials received by both operations are derived from commercial contractors, not residential homeowners. The material included under Paragraph 4.A.(a) of the Order includes only "... lumber and reusable or recyclable building material from the residential waste stream." They indicate that we should have included Metro East in our analysis and that we should re-evaluate OPRC and East County Recycling for at least lumber recovery. They also note that, although the Hillsboro Landfill is outside the Metro boundary, we should consider ways to implement materials recovery at this location as well.

In our original analysis, we included a discussion of both the Hillsboro Landfill and OPRC. We noted that these facilities are privately owned and operated, although METRO has agreements with the owners to accept various types of waste from within the METRO boundary. The Hillsboro Landfill accepts both commercial and residential self-haul construction and demolition debris. We noted that since this facility is not within the METRO boundary, it did not fall within the scope of our analysis. We did note that we recognized that the facility is an integral part of the region's solid waste system and as such would be included in the Special Waste work plan being developed by staff. We observed that OPRC does not accept self-hauled residential wastes of any type and that it would not be practical for this facility to accept even lumber from self-haulers. OPRC is not designed for this type of activity, and retrofit would be prohibitively expensive.

Our original analysis did not include either Metro East or East County Recycling. Metro East was still in the final design phase and we were unsure of exactly what type of resource recovery would be included. The final design includes a substantial resource recovery component, including wood and demolition materials. East County Recycling was not included since it is not a disposal site, but is rather, a recycling center. These centers were clearly outside the scope of the Order, since it specifically limited Metro to disposal sites. It should be noted that East County Recycling currently grinds almost all wood received. Also, East County Recycling primarily accepts materials from commercial haulers, not the public.

Recent discussions between our staff and the staff at DEQ (Peter Spendelow, specifically) indicate that the processing capabilities at these two facilities meet the additional concerns they expressed in their letter. We have also assured them that the Hillsboro Landfill will be included in our analysis of options to deal effectively with Special Wastes.

The DEQ memo stated that Metro should request in writing a modification of the Unilateral Order in order to proceed with new timelines for procurement of special waste facilities. The Planning Department will soon be initiating that change.

The DEQ also noted that, since we have designated KB Recycling as our alternative resource recovery facility for loads containing at least 75% recoverable materials (so-called high grade loads) in lieu of Metro South, that their augmented resource recovery capability be on-line by July 1, 1992. We are proceeding with franchising K.B. to allow us to redirect these types of loads to them. We have estimated that these loads account for no more than 40 - 100 tons per month, and K.B. already possesses the capability to process these types of load without modifications.

In response to the DEQ's concerns regarding Local Government Programs it should be noted that we have deliberately pursued a strategy that relies on cooperative compliance with no threat of coercive action. Though a more coercive approach might have been simpler, we view our role as one of providing leadership to local governments. To this end, Metro has developed a great deal of expertise in working cooperatively with local governments to achieve the region's waste reduction goals. This approach has served the region well in the past and is proving itself again as the region progresses through the process of putting Annual Waste Reduction Programs into place.

Our leadership has taken the form of extensive personal contact with local government representatives and assistance with the funding of their programs. The basic philosophy underlying this approach is that local governments, their citizens and their officials are supportive of waste reduction and will cooperate in implementing programs if Metro provides leadership, technical assistance, and help in overcoming the budget constraints within which all local governments must operate.

The strongest argument in favor of cooperative compliance is that it works. Currently, we have received drafts of Annual Waste Reduction Programs from all but one of the region's local governments and that one has assured us that their program will be submitted next month. We believe that coercion would likely have resulted in less than the hundred percent participation rate we are achieving through cooperative compliance. Moreover, the fact that local governments have been brought along as active participants with a sense of ownership in the process, makes successful implementation of the programs more likely.

The final item of note is the status of the Rate Incentives Study. We anticipate completing a draft of the study and resolution, complete with recommendations, by October 1, 1990 and will forward a copy to the DEQ at that time. We anticipate having the study appear on the agenda of the Council Solid Waste Committee for discussion November 20, 1990.

METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

December 13, 1990

Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, OR 97204

Dear Commission Members:

I am the Solid Waste Director for the Metropolitan Service District. Metro is responsible for the proper closure of St. Johns Landfill, which is surrounded by parts of the Columbia Slough system. My comments below relate to Commission discussion of the TMDL setting process as well as to load allocations for Enteric Bacteria, Phosphorus, and Toxins.

While we take no position as to whether utilization of the existing permits or a rule making procedure is the preferred process, we are concerned that numerical standards are being presented prematurely. As is acknowledged in the staff reports, there is little or no basis for nearly all of the numerical standards set forth in the TMDL documents. For example, there is no basis at all for a toxin TMDL or for load allocations. A preliminary waste load allocation of 1% of total load for St. Johns Landfill seems arbitrarily low, and not supported by any information. We are concerned that the result could be an excessive emphasis on a rather minor source (the landfill) while the well defined point sources receive less attention.

Numerical standards are set forth in an attempt to demonstrate compliance with legal mandates and to stimulate research necessary to set rational standards. Both Metro and the City of Portland are conducting extensive research and model development with DEQ review. Metro has submitted a time schedule for this research. Given the cooperative efforts by Metro, numerical standards to drive research are unnecessary.

Even if considered preliminary, numerical standards begin to limit regulatory, design and cost flexibility. This premature limitation on flexibility can be avoided by deliberately omitting numerical standards now and focusing

on a process and time schedule to provide the information necessary to set rational numerical standards. If the EPA gives Oregon no other choice but to set numerical standards now, such standards should be limited to a TMDL for parameters with established waster quality criteria. However, Oregon should set no waste load allocations at this time.

We are also concerned that St. Johns Landfill is being regulated as a point source in these TMDL documents. St. Johns Landfill is a field of over 200 acres with over 10,000 lineal feet of frontage on Columbia and North Slough. There is some defuse seepage into the groundwater and from there into the Slough. This process is more analogous to seepage from the groundwater under a farmer's field than from a point source. We are concerned about this seepage and are performing the research necessary to estimate how much seepage is taking place. We are also concerned that Metro will be forced to comply with mixing zone requirements, zero summer discharge requirements, and other point source requirements not conforming to reality for the sake of regulatory convenience. Rather, St. Johns Landfill should not be regulated as a point source but rather be considered along with other non-point sources as far as regulating seepage from groundwater is concerned.

Sincerely,

Dennis DeLiffor

Bob Martin
Solid Waste Director

BM:DO:jc
cc: Rena Cusma, Executive Officer

I:\DENNIS\LETTERS\ENVICOM.LTR

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DAVID K. McADAMS
OF COUNSEL

December 12, 1990

VIA HAND DELIVERY

Department of Environmental Quality
Solid Waste Permits and Compliance Section
Attention: Steve Greenwood
Hazardous and Solid Waste Division
811 S.W. Sixth Avenue
Portland, Oregon 97204

Re: **Oregon Waste Systems, Inc.**
Comments on Out-of-State Surcharge

Dear Mr. Greenwood:

On behalf of Oregon Waste Systems, Inc., I would like to submit these comments on the proposed surcharge on out-of-state waste disposed in the state of Oregon. These comments address two issues, (1) that the costs for in-state solid waste reduction activities continue to be included improperly as a component of the surcharge even though the Environmental Quality Commission ("EQC") sought to eliminate such costs; and (2) the Department of Justice statements that the out-of-state surcharge is legally defensible under the U. S. Constitution Commerce Clause. Although the Department of Environmental Quality ("DEQ") notice of opportunity to comment seeks to limit comments to the deletion of costs related to lost tourism, the EQC must consider comments on these two issues because they address information that was made public for the first time at the Legislative Emergency Board hearing in mid-November, well after the close of the public comment period.

Background.

At its November 2, 1990 meeting, the EQC adopted a rule establishing a $2.75 per ton fee on the disposal of solid waste generated out-of-state and disposed in the state of Oregon. On November 16, 1990 the Legislative Emergency Board ("E-Board") reduced the fee to $2.25 per ton by eliminating from the surcharge a component relating to lost tourism purportedly due to the stigma

of accepting out-of-state waste[1]. The EQC will now consider further the appropriate amount of the per ton surcharge on out-of-state waste.

The DEQ published notice of opportunity to comment on out-of-state waste and suggested that comments would be taken only on the proposal to remove the cost of lost tourism from the costs comprising the surcharge. OWS believes it is inappropriate to so limit the comments considering the new information that came to light during the E-Board hearings and other information that was not available at the time of opportunity for public comment on this matter.

Costs of In-State Solid Waste Reduction Programs Should be Excluded.

The out-of-state surcharge is comprised of nine component cost categories identified by the DEQ. The first two cost categories relate to costs identified by the Department as statewide activities for reducing environmental risk and improving solid waste management paid for through (1) the per ton fee on domestic waste and (2) general funds. As recommended to the EQC for approval at the November 2, 1990 meeting, the first cost category was recommended at $.50 per ton and the second cost category at $.42 per ton. At the EQC meeting the EQC eliminated $.33 per ton from the first, $.50 per ton, because such costs were related to the cost of solid waste reduction programs and household hazardous waste programs to be conducted totally within the state of Oregon and amounted to double counting. The EQC recognized that if the DEQ prepared two projected budgets, one assuming only in-state waste and another with both in-state and out-of-state waste, these costs would not be additional costs in the in-state plus out-of-state waste budget.

At the hearing before the General Government Subcommittee of the Legislative E-Board, DEQ staff explained each of the components of proposed surcharge. Subcommittee Chairman, Senator Thorne, questioned DEQ staff regarding the $.42 per ton, identified as statewide activities for reducing environmental risk and improving solid waste management paid through the general fund. Senator Thorne asked specifically how much of the $.42 was to be spent on in-state solid waste reduction programs and their

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[1]The E-Board also eliminated $.01 from the cost category identified as "statewide activities for reducing environmental risk and improving solid waste management paid for through general funds."

management. Steve Greenwood responded that 25%, or approximately $.10 per ton will go for that purpose. Mr. Greenwood also acknowledged that most of the out-of-state waste that will be subject to the surcharge will come from the state of Washington and that the state of Washington has similar programs in place for which Washington is currently paying. See Exhibit "A" attached, Excerpt of Transcript, Legislative Emergency Board, General Government Subcommittee Hearing, November 15, 1990.

The costs of solid waste reduction programs in the state of Oregon and their management are not costs of disposal of out-of-state waste for several reasons. Solid waste reduction programs solely within the state of Oregon do not provide a benefit to out-of-state generators. Such costs can not be characterized in any way as a cost of disposal to the state of Oregon because these costs are also being incurred in the state of origin of the out-of-state waste for waste reduction programs of their own.[2] In addition, these costs would be incurred regardless of whether out-of-state waste is disposed in Oregon. For example, the City of Seattle has it own solid waste reduction programs and incurs costs to implement and administer these solid waste programs. To include such costs in the surcharge, not only does not provide a benefit to the City of Seattle out-of-state waste, but in addition it amounts to double counting. The EQC recognized this and reduced the originally proposed $.50 per ton component of the surcharge to exclude costs of this type.

As indicated previously, the DEQ staff acknowledged at the E-Board subcommittee hearing that apparently $.10 of the $.42 per ton costs is for state solid waste reduction programs and their management. This $.10 whether used directly for in-state solid waste program costs or for the administration of these programs, duplicates the costs already incurred by the sending jurisdictions and provides no benefit to the out-of-state waste generator or to the sending jurisdictions. These costs for in-state activities would be incurred regardless of whether waste from out-of-state is disposed in the state of Oregon and accordingly are not a cost of disposal of out-of-state waste. The EQC must delete from the proposed surcharge the $.09 remaining of the $.10 in order to be consistent with the position taken previously by the EQC and to avoid duplication of costs.

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[2]Because of the risk of multiple taxation of the same activity, this cost component provides an additional basis upon which the surcharge violates the Commerce Clause. Tyler Pipe Industries, Inc. v. Washington State Department of Revenue, 107 S.Ct. 2810 (1987).

The Surcharge Violates the Commerce Clause if the Department of Justice Analysis is Applied.

Not until the E-Board subcommittee hearing, well after the close of opportunity for public comment did the Department of Justice ("DOJ") indicate that it had provided to DEQ a written memorandum supporting its conclusion that the surcharge is defensible under the Commerce Clause of the U.S. Constitution. The DOJ's memorandum of November 13, 1990 is the first written justification for the Department's position on a differential surcharge. Because this is the first opportunity to provide comment on the DEQ's and DOJ's position on this critical issue, the EQC should not foreclose comments.

OWS has a number of comments on the DOJ memorandum. In the discussion section of the memorandum the DOJ acknowledges that the statute providing for the out-of-state surcharge establishes a "differential fee scheme." This is precisely what the U.S. Constitution will not allow. All of the legal arguments relating to the Supreme Court's analysis of a tax under the Commerce Clause will not be repeated here. It is sufficient to state that under the prevailing test of Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 97 S.Ct. 1076 (1977), the Supreme Court will find invalid a fee which discriminates against interstate commerce.[3] A differential fee is the essence of discrimination -- unequal charges for identical activities. In this instance the disposal activities and services provided within the state of Oregon are identical; only the fee charged for out-of-state disposal is higher. The Supreme Court has consistently invalidated discriminatory state taxes.[4] See, Comments of Oregon Waste Systems, Inc., Legal Memorandum, pages 12-15, October 2, 1990.

OWS also disagrees strongly with the legal analysis in the memorandum and its conclusions. Although the Justice Department cites many of the controlling cases in this area of law,

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[3]The DOJ memorandum does not mention or even attempt to distinguish Complete Auto Transit. The Supreme Court does not apply the balancing test of Pike v. Bruce Church, Inc., 397 U.S. 137 (1970) to a tax or fee. See, American Trucking Assoc. Inc. v. Scheiner, 107 S.Ct. 2829 (1987); Armco v. Hardesty, 467 U.S. 638, 104 S.Ct. 2620 (1984).

[4]"[A] State may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the state." Armco v. Hardesty, 467 U.S. 638, 642 104 S.Ct. 2620, 2623 (1984).

the analysis of the cases and application of the holdings of the cases to the present surcharge is either absent or incomplete. For example, the Department of Justice suggests that a per se violation of the Commerce Clause occurs only where a statute on its face violates the Commerce Clause. However, per se violation of the Commerce Clause can also occur when a state or local regulation patently discriminate against out-of-state commerce. Philadelphia v. New Jersey, 437 U.S. 617, 626-27 (1978). That is exactly the effect of the surcharge regulation in this instance. It imposes a fee on the disposal of out-of-state waste that is higher than the fee imposed on the disposal of in-state waste although, the character of the waste and the disposal activity are identical.

The memorandum states correctly that in certain instances the test for validity under the Commerce Clause requires a court to apply the balancing test of Pike v. Bruce Church, Inc., 397 U.S. 137, (1970). However, the Supreme Court does not apply the balancing test to a tax or fee. Even if the Supreme Court was to do so, a key element of the Pike v. Bruce Church test that must exist before the test will be applied was not discussed in the DOJ memorandum. That element is that the statute, or regulation must regulate even-handedly.

> "Where the statute regulates even-handedly to effectuate a legitimate public interest and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. (Citations omitted). If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved and on whether it could be promoted as well with a lesser impact on interstate activities." Pike v. Bruce Church, Inc., 397 U.S. at 142. (Emphasis added.)

The surcharge on out-of-state waste is not evenhanded because the fee on out-of-state waste is higher than the fee on in-state waste.

It is noteworthy that although the Pike v. Bruce Church test was mentioned in the DOJ memorandum it was not applied to the facts in this case. Instead the DOJ justifies the differential fee if it is "reasonable" citing Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc., 405 U.S. 707, 92 S.Ct.

1349, (1972)[5] and two U.S. Circuit Court cases.[6] Although we would not disagree that a fee should not be unreasonable or excessive, if a fee is neither it is not sufficient to confirm the validity of a fee under the cases cited. In each case cited the fee in question applied uniformly to interstate commerce and intrastate commerce. Evansville, supra 405 U.S. at 717, 92 S.Ct. at 1355, ($1.00 flat fee for passengers boarding flights at Indiana airports upheld where passengers who traveled on both interstate and intrastate flights were subject to the same charge.); New Hampshire Motor Transport Association v. Flynn, 751 F2d 43 (1st Cir. 1984) (Flat license fee imposed on all transporters of hazardous materials); Metropolitan D.C. Refuse Haulers v. Washington, 479 F2d 1191 (D.C. Cir. 1973) ($5.00 per ton fee imposed on all hauler disposing waste at District of Columbia landfill).

The DOJ memorandum also attempts to support the sufficiency of the reasonableness test for the surcharge by citing Toomer v. Witsell, 334 U.S. 385 (1948), a case decided under the Privileges and Immunities Clause of the Constitution, not the Commerce Clause. Whether a case satisfies the Privileges and Immunities Clause has no relevance to whether a case satisfies the independent requirements of the Commerce Clause. The Justice Department's reliance on Toomer v. Witsell is like saying the surcharge does not violated the Due Process provisions of the Fourteenth Amendment or is not an unlawful taking under the Fifth Amendment. No matter how much the Department seeks on to rely on other provisions of the Constitution, the proposed surcharge must satisfy independently each requirement of the Constitution, in this case the Commerce Clause test.

Even if the test of Pike v. Bruce Church is applied the surcharge must fail. To apply Pike v. Bruce Church first a legitimate local purpose must be found. Here no legitimate local interest has been identified. However, it is clear that the local interest being served is revenue collection. Despite DEQ statements regarding preservation of landfill space, solid waste reduction and environmental liability, those interests are not

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[5]The test of Evansville was replaced with the more specific test articulated in Complete Auto Transit v. Brady decided in 1977.

[6]One of the cases, Metropolitan D.C. Refuse Hauler's Association v. Washington, 479 F2d 1191, (D.C. Cir. 1973), does not even address the Commerce Clause. The decision adopts by reference findings and opinion on constitutional issues of the lower court. However, those issue address only equal protection and due process.

being served.[7] If those are the interests sought to be served by the law and proposed surcharge, the surcharge should apply equally to in-state and out-of-state waste because each could affect those interests. Further, the revenues collected from the surcharge will not in most instances be expended for those interests. It will instead simply be "continuously appropriated to the department to meet the costs of administering the solid waste programs." ORS 459.297(2). The surcharge is quite clearly and simply a means to generate revenue. An economic interest is not a legitimate local interest. New Energy Company of Indiana v. Limbach, 108 S.Ct. 1803, 1807 (1988).

If a legitimate local purpose could be found then the burden on interstate commerce is to be weighed against the legitimate local interest to be served by the law or regulation in question, taking into consideration whether alternative means exist for promoting as well the local interest with a lesser impact on interstate commerce.

Even if revenue collection could be considered somehow to serve a legitimate interest, there clearly are alternatives of accomplishing the objectives identified by DEQ that have less impact on interstate commerce. For example, on the issue of environmental liability the DEQ proposed surcharge applies to all of the out-of-state waste flows even though the DEQ's own analysis recognizes that the environmental risk is substantially greater at small landfills as compared to large regional state-of-the-art landfills in which most out-of-state solid waste will be disposed. A less burdensome impact would be to require financial assurance mechanisms for both the large and small landfills, old and new landfills, so that the costs of environmental liability protection is more directly related to the risks involved. Alternatively, the DEQ could require landfill operators to provide evidence of sufficient liability insurance or other forms of financial

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[7]Even if those interests were being served, the regulation is invalid because it is discriminatory on its face.

> "But whatever New Jersey's ultimate purpose, it may not be accomplished by discriminating against articles of commerce from outside the State unless there is some reason, apart from their origin, to treat them differently." Philadelphia v. New Jersey, 437 U.S. 617, 626-27 (1978).

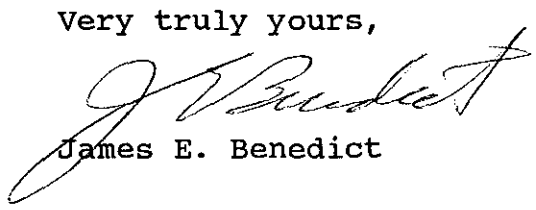
See also, National Solid Waste Management v. Alabama Department of Environmental Management, 910 F2d 713, 720 (11th Cir. 1990).

assurance. If each landfill provided sufficient financial assurance to protect against the risk of environmental liability for all waste disposed, there would be no discriminatory effect on interstate commerce. The level of financial assurance could be tailored to the risk, if any, posed by each facility.

Similarly for the issue of tax credits, the Department has indicated that it will recover for tax credits in the surcharge irrespective of whether a specific facility has applied for, or received a tax credit. Also, the surcharge applies irrespective of whether the waste is disposed at a publicly owned or privately owned facility, in which case the publicly owned facility would not have received a tax credit. A less burdensome approach would recover the tax credit from those that received the credit.[8]

For these reasons OWS does not believe that the surcharge proposed is valid under the Commerce Clause of the U.S. Constitution, particularly where the surcharge on out-of-state waste is higher than the per ton fee imposed on waste disposed in-state. However, if the EQC adopts the proposed surcharge, in order to be consistent with its prior analysis the EQC should eliminate, as a component of the surcharge a minimum of $.09 from the solid waste administration fees supported by the general funds.

Very truly yours,



James E. Benedict

JEB/kms
Enclosure
cc: Environmental Quality Commissioners
Fred Hansen
Robert Danko
William Jeffry
Arthur Dudzinski
Terry Milia
Doris Bjorn

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[8]This ignores, of course, the issue of whether the EQC can revoke (as it has done by including this cost component in the surcharge) the tax credit that is otherwise provided by law.

LEGISLATIVE EMERGENCY BOARD
GENERAL GOVERNMENT SUBCOMMITTEE HEARING
EXCERPT OF TRANSCRIPT
November 15, 1990

Sen. Thorne: Let's go back to the first one again. I've been pondering some of the questions that I couldn't get formulated. There may be a way for me to try to make better sense of this is, can you tell me, for an example, of the general fund to $.42 how much of that is spent in this state for the management of our state for the reduction program? Can you get close to that at all?

Greenwood: Uhh.

Sen. Thorne: Is it possible to reduce it to a, to a fee comparison?

Greenwood: Mr. Chairman, about 25% of that cost is related to waste reduction activities.

Sen. Thorne: Now, I am thinking of the $.42.

Greenwood: Yes, 25% of that.

Sen. Thorne: About $.10 or a little more is, $.10 of the general fund portion goes to a sort of a reduction strategy or management.

Greenwood: That's correct.

Sen. Thorne: Can you tell me or walk through the rest of that $.42. Do you have some breakdown on what the rest of it does then?

Greenwood: Mr. Chairman, the rest of the $.42 per ton I don't have specific figures related to these activities. Uh, but...

Sen. Thorne: Just ballpark. I'm just trying to arrive at some principle or basis here to make a decision.

Greenwood: I would, I would spread probably evenly across the activities of rulemaking and development of statewide policy, the administrative costs for the state's solid waste regulatory program and statewide solid waste management planning. And I think you could, if you wanted to, spread equally across those three. And the waste, that's excluding the 25% for waste reduction, so you

probably do 25% for each of those four activities.

Sen. Thorne: Okay. The major source, well, the source of this waste that we are talking about right now is the state of Washington.

Greenwood: That's correct, currently.

Sen. Thorne: And do you know if they have programs that deal with the items you've talked about, the reduction aspect of 25% solid waste management, the policy, the administrative cost, do they have like type programs?

Greenwood: Mr. Chairman, I don't know specifically what their line item budget looks like, but I think we can assume they have very similar programs.

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November 21, 1990

William P. Hutchison, Jr.
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Carol A. Whipple
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William A. Wessinger
1133 W. Burnside Street
Portland, Oregon 97209

Dear Commissioners:

As you know, this office represents Tidewater Barge Lines, Inc., which, through one of its affiliate companies, owns and operates the Finley Buttes Landfill.

The Legislative Emergency Board has recently rejected the proposed $2.73 surcharge on out-of-state waste which was adopted by the EQC on November 16, 1990. I understand that the Emergency Board has forwarded, along with its rejection, a recommendation that the surcharge should be in the amount of $2.25. The Emergency Board has eliminated $0.47 of the surcharge which was originally

slated for impacts to tourism and has furthermore eliminated $0.10 from solid waste activities financed by the general fund.

I have been informed that you will be considering, at your December 13 meeting, an Emergency Rule which will arguably satisfy the recommendations made by the Emergency Board.

Since you now have an opportunity to revisit the issue, I am requesting that you also revisit the component of the surcharge which consists of $0.05 per ton for solid waste reduction activities related to the review and certification of waste reduction and recycling plans.

The decision packet which was utilized by you during your proceedings outlines the methodology for computation of that $0.05 beginning at page D-11 of the materials. For the purposes of this request, I am not taking issue with the assumptions made by your staff in steps 1-5 of the analysis.

However, I believe there is a major flaw in step 6 which significantly overstates the estimated cost-per-ton to compensate the state for these activities. In step 6, the 1990 cost for an environmental specialist 3 is $2,465.00 per month. Your staff proceeds to utilize a 3% real discount rate, a 23.1% indirect cost, a 35% cost for OPE and a 28% cost for services and supplies. The staff then calculates the total present value of the cost stream to be $107,933.00. Your staff then proceeds to divide that figure by the total expected out-of-state tonnage during the <u>first four years</u>, discounted at a 3% annual rate, in order to arrive at a cost-per-ton of $0.048394 which it then proceeds to round off to $0.05 per ton.

This methodology would allow the state of Oregon to totally recover its costs within four years. Unfortunately, this component of the surcharge will continue to be charged to out-of-state waste over the life of export contracts. In Tidewater's case, this $0.05 per ton charge would continue to be charged over the life of the twenty year contract thereby resulting in a

significant windfall to the state of Oregon amounting to five (5) times the actual cost.

I am requesting that you re-examine this category at your December meeting and determine whether the estimated cost-per-ton should be changed to $0.01 per ton as opposed to $0.05 in order to reflect its applicability to Tidewater's twenty-year contract.

Thank you for your time and courtesies concerning this matter.

Very truly yours,

John DiLorenzo, Jr.

JDL:dmg

tbl\letters\commeboard.eqc

cc: Wes Hickey
Fred Hanson
Steve Greenwood
Tom Gallagher

December 12, 1990

Lane County

WILLIAM P. HUTCHINSON, Chair
Environmental Quality Commission
811 SW 6th Avenue
Portland, Oregon

Re: Clear Lake Administrative Rule

Dear Mr. Hutchinson:

The Board of County Commissioners received an explanation of the proposed rule from Dick Nichols and Lydia Taylor on December 5, 1990. In response to that information, the Board of County Commissioners of Lane County adopted this position on December 11, 1990.

As an opening comment, we believe Clear and Collard Lakes to be unique environmental resources. That is one of the reasons Clear Lake has been designated a sole source acquifer. We, therefore, look to the EQC for preservation and improvement of this resource, and must speak out strongly when we see the potential for further degradation of the water quality of these two lakes. Lane County Government opposes the Administrative Rule as currently drafted and we urge the Commission to defer action at this time. We take this position for the following reasons:

1. Action now is premature. As we stated in our testimony in August, we believe the Coordinated Resource Management Planning (CRMP) process should be given time to finish its work and develop a preferred alternative. As you know, the Department of Environmental Quality has been a participant in the process, by and through Dick Nichols. This participation is based on the fact that the Department of Environmental Quality is a signatory to the "Memorandum of Understanding for Coordinated Resource Management and Planning in Oregon", June, 1988. Copy attached. In that document DEQ agreed:

> "Resource problems are seldom confined to single ownerships, resources or resource uses. To resolve or prevent such problems, it is beneficial to use an approach which involves the various disciplines, agencies and users working together, from beginning to end, to develop the rationale upon which decisions are based." [Emphasis added].

In the past, Mr. Nichols has advised the CRMP group that each of the alternatives under consideration would meet the requirements

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of the Department of Environmental Quality. In our view, only after a preferred alternative is selected should the Administrative Rule be drafted to implement that alternative. We believe action by the EQC at this time to be premature and risks derailing what so far has been a successful local planning effort.

2. The proposed rule is incomplete and allows the degradation of the water quality of Clear and Collard Lakes. The rule merely sets a loading limit and places a duty on Lane County to deny all future development. It does nothing to affirmatively bring forth a solution, nor even maintain the current water quality. Your representatives, Dick Nichols and Lydia Taylor, indicated on December 5, 1990 to the Lane County Board of Commissioners that the Department of Environmental Quality accepted the degradation of the water quality of the lakes. We transcripted the meeting and the following colloquy between Commissioner Cornacchia and Lydia Taylor occurred:

> Comm. Cornacchia: And do I understand what I've heard today is that DEQ does support further degradation of Collard Lake from the existing runoff and the existing residences that currently exist there?
>
> Ms. Taylor: DEQ anticipates further degradation from existing land use build-out.
>
> Comm. Cornacchia: And accepts that?
>
> Ms. Taylor: We accept that it is satisfactory that it will not destroy beneficial uses and the fact that those land use applications were made historically and were permitted, if you will, those permits were permits that allowed that to occur, we are not at the stage where we would say that the water in Clear Lake or in Collard Lake is water quality limited which would call for us to ask for measures that would bring that water back into compliance. If we were in that mode, it would be a different answer to a different question.

This position is totally unacceptable to Lane County!

3. Provisions assuring improved water quality are not included. In section 8 of the rule proposal last August, there was a requirement that the local plan must meet the loading limits within a certain time period or a sewerage facility would be required. We believe this requirement essential for two reasons: First, this requirement forces all parties to the table and creates an incentive for a solution. Second, if a solution via a local plan is not developed for whatever reason, the backup sewer requirement assures no further degradation of the lakes, from septic tank discharge.

4. The Department is needed as a party in the solution. We need your Department's technical assistance. The proposal merely sets loading limits with no future role for DEQ. We believe your rule should specify how the preferred alternative can be implemented and who is responsible for fulfilling its requirements. We believe the DEQ is an essential party in these determinations. Thereafter, the EQC, the DEQ, the County, Heceta Water District and affected citizens will know exactly how the loading limits are to be achieved by the local plan, and what are the obligations of all the parties.

In our opinion, the Oregon Legislature has provided the following policy for the EQC to follow in this situation:

ORS 468.710

> "Whereas pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of the state:
>
> "(1) To conserve the waters of the state;
>
> "(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." [Emphasis added].

The proposed rule falls far short of fulfiling the duties imposed by this policy. We, therefore, urge you to:

1. Defer adoption at this time and await completion of the CRMP process. Sixty days should be sufficient.

2. Direct staff upon the completion of the CRMP process or at a time certain to redraft the rule to implement either the CRMP preferred alternative or the best available local plan. Department assistance in legislation may also be necessary if a

law change is an element of the local plan.

3. Direct staff to assist the local governments and affected residents in the implementation of this plan.

4. Direct staff to draft language amending the DEQ sewer construction loan rules to allow funding of facilities that protect sole-source watersheds through construction of sewerage, collecting and treatment facilities, storm water control facilities or other measures that provide compliance with EQC water quality standards.

In essence, we are asking the EQC to fulfill the commitment made by the Department in June of 1988 and be a full partner in helping preserve, and then improve, the water quality of Collard and Clear Lakes.

Sincerely yours,

Bill Rogers

Bill Rogers, Chair
Board of County Commissioners for
Lane County

WAVV:bj/4470
Encl.
cc. State Representative Larry Campbell
State Senator John Brenneman
State Representative Hedy Rijken
Lane County Board of Commissioners

June, 1988

MEMORANDUM OF UNDERSTANDING
FOR
COORDINATED RESOURCE MANAGEMENT AND PLANNING IN OREGON

I. Purpose. The purpose of this memorandum of understanding is to define and explain the functions, procedures and organizational structure for implementing coordinated resource management and planning (CRMP) in Oregon.

II. Definition. Coordinated resource management and planning is a process by which resource owners, managers and users, working as a planning team, concurrently develop and implement plans for the management and use of all the major natural resources and ownerships on a specific area. The CRMP often implements broader land use decisions made in higher level plans such as county comprehensive plans, National Forest land and resource plans, Bureau of Land Management resource management plans, and Soil Water Conservation District long range program plans.

Resource problems are seldom confined to single ownerships, resources or resource uses. To resolve or prevent such problems, it is beneficial to use an approach which involves the various disciplines, agencies and users working together, from beginning to end, to develop the rationale upon which decisions are based. Resource owners and managers do not abrogate their authority and responsibility to make decisions, but they make these decisions after listening to the viewpoints, experiences and options of others. This is the coordinated resource management planning process.

The CRM plan considers all major resources and uses of the planned area and integrates them into a single, unified action program of use and management which minimizes conflicts and is consistent with land capabilities.

Management units selected for CRM planning may consist of a forestry or range unit allotment, stream corridor, subwatershed, wildlife management area, ranch or farm operating unit, or other types of management units where coordination between the uses of the area and between intermingled or interdependent federal, private, state or other land ownership is desirable for sound resource management and development on all the lands in the planned area.

III. Authority. Authority for signatory agencies to participate in this effort is covered by existing Federal or State statutes or delegations of authority. Authority for the Federal agencies is also contained in a national Memorandum of Understanding between the Forest Service, Bureau of Land Management, Soil Conservation Service and Extension Service dated July, 1987.

IV. Policy. The signatory parties will cooperate to the fullest degree possible to (1) identify opportunities for using the CRMP process and (2) help develop and implement coordinated resource management plans in Oregon. Other agencies, organizations and individuals will be asked to participate as appropriate.

V. Long Range Goals. Long range goals for the Task Group and Executive group cannot be separated. Therefore, the following goals are for Coordinated Resource Planning and Management in Oregon. Long range goals do not include numbers or specific time frames.

These goals are based on the premise that, in working together, the Executive Group and their Agencies have the common direction of obtaining an optimum sustained flow of food, fiber and other goods, services and benefits from lands in Oregon while protecting and enhancing environmental qualities. To accomplish this, resource conditions will be improved so that various resource and use outputs are near the capability of the land involved.

1. Improve inter-personal and inter-group communication and cooperation between various State and Federal agencies concerned with natural resource management and with private landowners and operators who are responsible on adjacent or intermingled lands within an operating unit, grazing allotment, watershed or other unit of land.

2. Obtain implementation of Coordinated Resource Management plans which will achieve the most compatible combination of resource uses based on sound economic principles. These plans should cover operations on all ownerships and resources within the unit covered.

3. Work toward ensuring that existing plans are active and continue to operate effectively.

4. Promote coordinated resource planning into other areas of the state into situations and units where grazing, in particular, is not the central interest and concern. Examples may be large recreational complexes, coastal estuaries and other areas with intense conflicting uses and ownerships.

5. Participate in developing a standard statewide vegetation classification system and assist in the statewide implementation.

6. Participate in developing a standard statewide resource data inventory & monitoring system for existing on-the-ground information and encourage statewide use of it.

7. Participate in federal efforts to standardize classification and inventory to assure mutual compatibility with those being developed in Oregon.

VI. Objectives. 1. To improve management of land and natural resources; promote cooperation between agencies, groups and individuals responsible for these lands; and achieve optimum sustained flow of food, fiber, and other goods, services and benefits from such lands while at the same time protecting and enhancing environmental qualities in Oregon.

2. To achieve a uniform concept of the coordinated resource management planning process and mutual understanding of the joint goals and policies regarding CRMP among participating agencies, involved individuals, organizations and groups.

3. To encourage local advisory groups, conservation districts and/or local governing bodies to take the initiative in identifying needs for using CRMP process to resolve or prevent local resource problems.

VII. Organization at the State level. 1. The Executive Group is comprised of:

State Forester	Oregon Department of Forestry
State Conservationist	USDA Soil Conservation Service
Director	Oregon State University Extension Service
State Director	USDI Bureau of Land Management
Director	Oregon Department of Fish and Wildlife
Regional Director	USDI Fish and Wildlife Service
President	Oregon Association of Conservation Districts
State Director	USDA Agricultural Stabilization & Conservation Service
Regional Forester	USDA Forest Service
Director	Oregon Department of Water Resources
Director	Oregon Department of Environmental Quality
Director	Oregon Department of Agriculture

The Executive Group will direct interagency coordinated resource management and planning activities in Oregon, where coordination and multi-agency commitments are the key to success. The Executive Group will: (1) Review progress and needs to facilitate this program; (2) Establish priorities; (3) Provide support and commitment to major plan development and implementation; (4) Address major resource issues and policies.

The Group will meet at least annually, to conduct these functions. The chair of this Group will rotate annually, normally in the order listed above. Additional members may be added at the discretion of the Group. Representatives of other appropriate State or Federal agencies or organizations will be invited to participate in meetings of this Group.

2. Task Group. The Task Group will consist of a technical representative of each signatory agency/organization as designated by the head of that agency/organization. The Group will promote coordinated resource management and planning, provide guidance and ensure training in operating procedures for field personnel, review selected plans, monitor effectiveness of the CRMP process as it relates to various geographical areas and the operational concepts involved, follow up on plans to identify and resolve field problems, and accomplish specific assignments received from the Executive Group. Members should be high level staff officers of each agency/organization with major responsibility for coordinated resource management and planning within their agency/organization.

The Task Group will provide liaison between the Executive Group and Local Planning Teams, will facilitate CRMP activities within and among member agencies, and will provide local assistance and support.

The Task Group will conduct the above functions and prepare and submit progress reports to the Executive Group. The Task Group chair will be the representative of the Executive Group chair.

VIII. Organization at the Local Level 1. The Executive Group will arrange for distribution and discussion of this memorandum in field locations to assure mutual understanding and interpretation and to develop a uniform concept of the CRMP process and its applicability. Each signatory agency will designate an agency representative for each county as the appropriate contact regarding CRMP activities.

2. Soil and Water Conservation Districts (SWCD) in each county will receive all requests for CRMP and resolve planning priorities and conflicts. The SWCD will use the guidelines of the Executive Group, recommendations of the County CRMP Group and long-range SWCD goals in establishing these priorities. SWCD will assist when necessary in developing the planning team and will approve the leadership of that team, monitor the progress of CRMP's during the planning phase and implementation phases and schedule annual CRMP reviews.

Unresolved issues will be elevated through the task group to the Executive Group for resolution.

3. The County CRMP Group is made up of the designated CRMP representatives of each agency and SWCD in the county. This group identifies needs and opportunities for CRMP requests and develops planning priorities. The recommendations of this group are based on the availability of agency resources, agency priorities and the Executive Groups guidelines.

The group will establish the membership of the local planning team, work with SWCD to insure that annual plan reviews are conducted, report on CRMP's to the SWCD and Task Groups, and keep SWCD and Task Groups apprised of progress.

4. The Local Planning Team is a group that develops the coordinated resource management plan. As a minimum, this Team should include representatives from landowners, resource administering agencies, user groups and other appropriate organizations that are significantly involved with the area to be planned. The makeup of this Team changes somewhat from plan to plan because of changes in resources, ownerships and users. To the degree feasible, these representatives will have authority to make decisions for the agency or organization they represent. The Local Planning Team should encourage full participation of organizations which have land use planning responsibilities on the area to be planned.

The leader of the planning process will be approved by the SWCD for each CRMP. Land ownership patterns, location of the area, time and manpower needs, resources involved, ability to act as moderator and similar items will be considered in selecting the moderator. Where

fulltime participation of a particular agency or organization is not warranted in the planning process, suitable local arrangements should be made so interagency CRMP can proceed with reasonable assurance the results will be acceptable to all. Active participation by all key participants, from inception to completion of the planning process, is essential. Plans will provide for annual review for the first two or three years and be scheduled periodically thereafter as needed or as requested by a key participant. Plans should identify the agency with lead responsibility for review an follow-through.

5. Each agency and organization has its own program of activities for which priorities are established. The development of each coordinated resource management plan, implementation activities and follow-through procedures should be dovetailed into each agency's activity schedule. This requires cooperation among agencies, organizations and individual land managers in the selection and assignment of priority to requests for coordinated resource management plans.

6. Upon request, representatives of agencies and organizations engaged in coordinated resource management and planning will present information about ongoing and proposed resource activities of local concern. Task Group members will be available, when appropriate, to assist.

IX. General Considerations. 1. Resource management agencies whose land or resource responsibilities are included in a particular planned area will retain responsibility and authority for meeting all requirements of the laws and regulations pertaining to the use and management of the land or resources under their respective jurisdictions. Individual land or resource owners will retain authority to make final decisions in respect to land or resources they own or manage within the planned area.

2. Contacts and follow-up assistance with those cooperating in a CRMP will normally be made by the agency or organization having primary planning responsibility as mutually agreed.

3. When any practices, structures or projects are to be applied to or installed upon public land under the jurisdiction of a public agency, authorization must be obtained from the appropriate agency prior to initiation of the action. When installation involves private lands, prior authorization must be obtained from the landowner or manager of these lands.

4. The priorities and management objectives for Federal or State administered lands will be determined by the responsible agency. However, special consideration will be given to resource areas presenting opportunities for CRMP.

X. Review. This agreement shall be reviewed and officially reconfirmed at the annual Executive Group meeting.

James E. Brown, State Forester
Oregon Department of Forestry

Joe Brumbach, President
Oregon Assn. of Conservation Districts

Jack P. Kanalz, State Conservationist
USDA Soil Conservation Service

Glen Stonebrink, State Director
USDA Agricultural Stabilization & Conservation Service

Ernie Smith, Director
Oregon State University
Extension Service

James F. Torrence, Regional Forester
USDA Forest Service

Charles W. Luscher, State Director
USDI Bureau of Land Management

William H. Young, Director
Oregon Department of Water Resources

Randy Fisher, Director
Oregon Department of Fish and Wildlife

Fred Hansen, Director
Oregon Department of Environmental Quality

for Rolf L. Wallenstrom, Regional Director
USDI Fish and Wildlife Service

Robert Buchanan, Director
Oregon Department of Agriculture

JM:cb
4096F/0009V

HECETA WATER DISTRICT
87845 Highway 101 North
Florence, Oregon 97439

Lydia Taylor, Administrator
Water Quality Division
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97439

December 5, 1990

Dear Ms. Taylor:

Reference is made to your testimony at the Lane County Commissioners Meeting, December 5, 1990 in Eugene.

We do not agree that a postponement of an EQC Ruling on the Clear Lake Watershed will bring the CRMP any closer to consensus on an alternative management plan. We believe that the CRMP is gridlocked unless Heceta Water agrees to support residential development on F2 lands or the F2 landowners give up their demands and the County stops trying to support them.

Heceta Water District has reached the conclusion that we cannot in good faith endorse more development, or any other activity within the watershed that may tend to degrade the water. If the County, in their infinite wisdom, wants to permit such activities, there is little we can do about it other than challenge the action in court.

In any case, Heceta Water District should not be asked to endorse it unless DEQ and the State and County Health Departments are willing to absolve Heceta Water District of responsibility for maintaining the purity of the water. We all know this cannot and should not happen.

Heceta Water District has made an offer (see copy enclosed) that has the support of an overwhelming majority of the District water users. We would like to go beyond this offer and try to restore and maintain Collard Lake in an oligotrophic state. This is our ultimate goal.

Commissioner Dumdi has proposed a total buy out of all properties within the watershed. Heceta Water District would welcome such a solution if we could obtain the financial and political support. The County grandly proposes total buy out but offers no funding or other assistance to make it happen. In the absence of such support, the District is understandably reluctant to propose any alternative plan that we cannot pay for within the District.

For the present, the enclosed Alternative V is about as far as we feel we can safely go on our own. We think Dick Nichols has done a fine job with the Clear Lake issue. We commend his even handed treatment in trying to reach an equitable solution while still protecting the water.

Heceta Water District has carefully reviewed the proposed EQC Rules dated November 28, 1990. Although they are more restrictive than the June 29th proposal, we would like to see them narrowed even more.

Accordingly, unless DEQ is willing to limit the allowable phosphorous loadings even more, we see only needless delay in postponing action on these rules. The County Commissioners are blaming Heceta Water District for failing to act to protect the water resource. We are doing everything we can do to get things moving, but our hands are tied without County support.

We had hoped to get an application through Congressman Peter DeFazio for EPA funding through the Critical Aquifer Protection Act (CAPA). The Congressman wants our proposal before the end of this month but we can do nothing because we have no Watershed Protection Plan or endorsement from the County to accompany the request.

Heceta Water District is a willing sponsor, ready to assume the work and responsibility for protecting Clear Lake but unable to do so because we will not endorse the County's wishes for sewers and full development. It is even more galling to be accused of "foot dragging" by the County when it is, in fact, the County that is causing the delays.

Unless DEQ is willing to re-write the Clear Lake rules to allow even less phosphorous loading, we hope the Department will not ask for a postponement in the EQC Hearing. We see nothing good coming out of such delay and we ask that the Hearing be held on December 14th as scheduled.

The Water District commends both you and Dick Nichols for your efforts and even-handedness in this matter.

Sincerely,

Steve Olienyk, Chairman
Heceta Water District

ALTERNATIVE V

Under this alternative, existing developed lots in the Collard Lake subdivisions (Collard Lake, Collard Loop, and portions of Mercer Lake Heights subdivisions) would modify their septic tank systems to add alum.

The addition of alum to the septic system precipitates about 95% of the Phosphorous from the effluent into the sludge in the bottom of the tank. This modification has the effect of reducing the total phosphorous discharge to about 0.45 pounds per year per house.

The alum is in liquid form and is injected into the sewer system by a metering device each time a toilet is flushed. The metering device costs about $80 and the liquid alum costs about $2.50/person per year.

Undeveloped residential lots in the Mercer Heights and Collard Lake sub-divisions would remain undeveloped and would be bought out by Heceta Water District or other special water management authority.

Undeveloped F2 and Marginal lands within the watershed would remain undeveloped and would be purchased by Heceta Water District at fair market value. Lots to be purchased include lots 801, 403, 900, 400 and 2200. Lots 401 and 601 will not be purchased as they already have dwellings on them

F2 lots overlapping the watershed needing residences to manage their properties can build their residences outside of the watershed.

Heceta Water District is trying to maintain the water at it's present level of purity, and prevent the installation and operation of expensive water treatment facilities. A buy out of undeveloped properties to protect the quality of the water is the preferred solution and is regarded as a distinct bargain over time. Since protection of the water is advantageous to all of our customers, the District currently is considering a water surcharge to finance the buy out.

Advantages:

1. Provides the greatest protection of any of the alternatives except total buy out. Collard Lake improves considerably. The protection is long term and lasting and the buy out cost is a one time cost only. This feature, over time, will prove to be the best and least costly of any of the alternatives.

2. No sewers need be constructed.

3. No special storm water controls necessary.

4. No soil disturbance or destruction of vegetative cover.

5. Financial and traffic impacts on the non-county

maintained road system would remain at present levels.

6. Road damage from sewer line construction and cross trenching would be eliminated. (a cost estimated at $140,000)

7. Dwellings in the Collard Lake drainage would remain at 46 instead of a potential 112 if sewered and fully developed.

8. Heceta Water District can better maintain the present purity of the water supply.

9. F2 timberland owners retain the use of their lands for timber production, as zoned, but are relieved of the burden of taxation.

10. Owners of lots overlapping the watershed needing residences can still build their residences outside of the watershed.

11. Purchase of these five lots in combination with the Lane County properties will enable Heceta Water District to better control ATV use on the West shore of Clear Lake.

Disadvantages:

1. Owners of undeveloped lots will not be able to build on their properties. These owners will be compensated at fair market value for their properties.

2. Depending on interest rates residential water rates could increase by as little as $2.40 per month or as much as $4.62 per month.

3. Existing dwellings will need to be equipped with alum dosage meters. The device is expected to cost about $200 to install, and $5.00 per person per year to operate.

4. Since the alum system was developed in Canada, a pilot test program would be necessary in this watershed

5. The Oregon Department of Environmental Quality believes that alum treated septic systems will need to be monitored and maintained by a public entity such as a sanitary district or other such public entity that can be held legally accountable to maintain and operate the system. A sanitary district, financially accountable to the state will need to be formed.

6. Lake water quality monitoring will still be required. ($14 per year per lot)

7. Septic system inspections will still be required. ($30 per year per lot)

8. The owners of the five F2 and Marginal zoned properties situated entirely within the watershed wanting to build residences will need to build elsewhere.

9. More expensive for Heceta Water District in the short term.

COSTS:

Loans for municipal projects appear to be available at interest rates ranging from 3% to 7 percent. Since the CRMP group was intitiated three new houses on septic systems have been permitted by the county. Therefore, these claculations have changed somewhat from a 67 lot buy out to a 64 lot buy out.

Costs for a buy out of the five isolated lots at Clear Lake are based on professional appraisals. Appraised value of the land is $119,500. Timber is valued at an additional $80,000. the combined total value is $200,000.

Buy out 64 undeveloped residential lots at Collard Lake:	$1,768,000
Buy out 5 isolated lots at Clear Lake:	$200,000
Total	$1,968,000

HECETA WATER DISTRICT
87845 Highway 101 North
Florence Oregon 97439

December 12, 1990

William P. Hutchison, Chairman
Environmental Quality Commission
811 SW Sixth Avenue
Portland, Oregon 97204

Subject: Clear Lake, OAR 340-41-270

Dear Mr. Hutchison:

Heceta Water District endorses the proposed new Administrative Rule 340-41-270 placing phosphorous loading limits on Clear and Collard Lakes. The Rule, as currently written, is a major improvement over the original rule 340-41-270 presented for public review on August 22, 1990. If anything, we would like to see the rules even more restrictive.

Heceta Water District opposes the Lane County request to defer action on the rules. We urge that the rules be adopted now as written. However, if the rule is to be delayed or revised we would like to see the allowable phosphorous loadings narrowed even further.

Our reasons are as follows:

1. We think the ultimate goal of the Clear Lake Watershed Plan should be the eventual removal of all residential development within the watershed and the restoration of Collard Lake to an oligotrophic state.

2. As an initial step in this direction, Heceta Water District has submitted a CRMP Alternative that proposes to purchase all of the remaining undeveloped residential lots around Collard Lake and all of the isolated undeveloped lots within the watershed at Clear Lake. Our proposal would compensate the property owners at fair market value for their properties and, at the same time, preclude further residential development within the watershed. This Alternative could be interpreted as a first phase action leading ultimately to a total buy out of the entire watershed, by stages, as funding may become available.

3. The Alternative described above has majority support of all of the affected parties and agencies except Lane County and the owners of the large F2 timberland tracts who want to develop.

4. Postponement in the Rules can be expected to lead to more

suspension in land management planning by Lane County. This in turn leads to further delays to Heceta Water District in our pursuit of funding. Procrastination in implementing a plan also places the owners of undeveloped lots at Collard Lake in the position of having to continue to pay taxes on property they cannot use or sell.

5. We do not share Lane County's optimism that the CRMP will reach a unified consensus on a preferred alternative. We have offered an alternative that has the support of a majority of the affected parties but it is being rejected by the handful of F2 land owners wanting to build recreational residences on their lands and by Lane County. As we see it, Lane County wants you to "mandate" sewering of Collard Lake and proceed with their original objective of a full residential build out. We think sewering and full build out would merely eliminate one source of pollution and replace it with another. It certainly will not restore Collard Lake to an oligotrophic state.

In summation, we endorse Rule 340-41-270 as now written and recommend that it be adopted without further delay. In the event it is determined adoption will be postponed and the Rule re-drafted, we ask that the allowable phosphorous loadings be reduced even further.

We also oppose Lane County Commissioners request that sewers be "mandated" at Collard Lake. We would remind you, the Lane County Commission that would have you mandate sewers for the 43 residents at Collard Lake, is the same Commission that initially felt the 8000 residents on septic tanks at Santa Clara and River Road in Eugene should not be required to sewer.

No such mandate is necessary to enforce a timely solution. Heceta Water District is working in concert with the Collard Lake residents toward ultimately improving the quality of the water. If Lane County seeks a "timely" solution at Clear Lake, they need only support our proposal.

Sincerely,

Steve Olienyk, Chairman
Board of Directors

ADMINISTRATIVE RULES
FOR
THIRD PARTY REVIEW

SECOND DRAFT
December 12, 1990

EQC Review of Permits: Upon the Request of Commissioners or Third Parties

340-14-060(1)* The Commission may, in its discretion, review any permit decision of the Department. Such review may be requested by Commissioners on their own initiative or at the request of a third party, as provided in OAR 340-14-065 and -070. [The concurrence of at least three Commissioners shall be required to initiate a review.]

(2) If the Commission initiates review of a permit decision, the permit decision shall generally not become effective until the Commission review is completed by issuance of a final order. Subject to Commission review, however, the Department may determine that undisputed and severable portions of the permit shall become effective.

(3) Nothing in OAR 340-14-060 to -075 affects the rights of permit applicants or permittees to request Commission review. These rights are determined and governed by other provisions of OAR Division 14 and other applicable rules.

* All language is new unless otherwise noted.

EQC Review of Permits: Procedures

(1) Any Commissioner may request review of a Department permit decision by notifying the Director verbally or in writing within twenty-one (21) [twenty (20)] days of the date on which the Department mailed notice of the Department's permit decision. The concurrence of at least three Commissioners shall be required to initiate a review.

(2)(a) A third party may request Commission review if the third party participated in the Department's permit proceeding by submitting timely written or verbal comments and if the party is adversely affected or aggrieved by the Department's decision.

(b) A third party request for Commission review shall be filed in writing with the Director within twenty-one (21) [fourteen (14)] days of the date on which the Department mailed notice of the Department's permit decision. The request shall address both the standing requirements of subsection (2)(a) of this section and the considerations set forth in rule 340-14-065. The request shall also prominently show the date on which the permit decision shall become effective, unless Commission review is initiated. The request shall be filed with the Director with service by first-class mail on each of the Commissioners, unless an alternative procedure is specifically approved by the Commission or Department.

(c) Either the Chair or any three Commissioners may grant a third party request for review by notifying the Director verbally or in writing within twenty-eight (28) days of the date on which the Department mailed notice of the Department's permit decision. [If Commissioners want to grant a third party request, they shall notify the Director as provided in subsection (1) of this section.]

(d) The Department shall be required to notify third parties of the Department's permit decision only when the party so requests. Notice by first-class mail shall be sufficient.

(3) Absent the required concurrence of three Commissioners or the Chair, any request for Commission review shall be considered denied, and the permit decision shall become final effective as indicated in the Department's decision.

(4)(a) Unless otherwise specified by statute or rule, Commission review shall be conducted as a contested case in accordance with OAR 340, Division 11. The Commission may conduct the review itself or refer the matter to a hearings officer. [The hearings officer and all parties to the review shall use all reasonable means to expedite the proceeding.]

(b) The hearings officer and parties to the review shall use all reasonable means to expedite the proceeding. The Commission's and hearings officer's authority includes, but is not limited to:

(i) imposing reasonable limitations on discovery and other hearing procedures;

(ii) requiring that direct and rebuttal testimony be submitted in writing;

(iii) conducting all or part of the proceedings by telephone; and

(iv) encouraging the parties to use alternative dispute resolution techniques.

(5) Failure to comply with the requirements stated or referenced in this rule shall result in automatic denial of a request for review, unless the requirements are specifically waived by the Commission or Department.

(NOTE: Several other existing rules would have to be amended to provide permittees with a twenty-one (21) day period to request review. Currently, these rules usually provide a twenty (20) day period.)

Oil Heat Commission

December 14, 1990

Environmental Quality Commission
811 SW 6th Avenue
Portland, Oregon 97204-1390

Regarding: Agenda Item No. M, December 14, 1990 Meeting

The Oregon Oil Heat Commission urges your adoption of the staff recommendation to:

> Authorize at least eight landfills to continue to receive petroleum-contaminated soil until fully complying landfills or treatment options are reasonably available.

Oregon needs to provide practical disposal options for soils removed in the environmental cleanup of heating oil tank releases. This language at least offers the opportunity for landfills to seek exemptions enabling continued disposal of those soils. Practical disposal or treatment options are critical, given the severe economic hardship imposed by the environmental cleanup.

BACKGROUND

The Oil Heat Commission was established by the 1989 Oregon Legislature at the initiative of Oregon's heating oil dealers. Under that legislation, the heating oil dealers are contributing nearly $1 million each year to an Environmental Protection Program. That program pays the environmental cleanup costs for any release from a heating oil tank in use.

During 1990, nearly $200,000 has been committed to pay the costs of 34 claims for residential heating oil tanks. The costs have ranged from $1,800 to over $20,000. The soils from those cleanups has been taken to St. John's Landfill, which will no longer be available after January 1, 1991.

For the environmental cleanup to continue after January 1, 1991, a practical soil disposal option must be available. The proposed language would at least create the opportunity for landfills to request authority to accept the soils. Alone the language does not solve the problem, but it does make a solution possible. Both the EQC and the Oil Heat Commission are dependent on others to take the initiative to propose specific solutions.

If that does not happen, a practical solution may not be within reach. The alternative of hauling small amounts of soils to Arlington will add to the already substantial costs, displacing limited funding that could have been used to cleanup other sites. While there may in time be practical treatment options, those options do not yet appear to be feasible for the backyard, heating oil tank releases.

In years past, residential heating oil tank releases were cleaned up at a cost of about $1,000. With the new standards adopted by the department, those costs have increased to average about $6,000. Those costs are simply beyond the means of most homeowners. A disposal or treatment option which substantially adds to those costs would only add to the economic hardship.

We urge you to adopt the language proposed by the staff and to encourage them to offer leadership in achieving practical solutions to the problem.

Sincerely,

Lynn Frank

Lynn Frank
Staff Services

LF:cj

REPORT ON THE DEPARTMENT'S TMDL PROGRAM

1. STATUS OF TMDL PROGRAM

- Description of process
- Efforts to date
- Future workload
- Proposed strategy
- Proposed funding

2. TMDL ACTIONS FOR THE COLUMBIA SLOUGH

- Policy guidance
  - preliminary TMDLs and time frames
  - application of bacteria standard
  - TMDL for toxins

3. TMDL ACTIONS FOR THE PUDDING RIVER

- Policy guidance
  - use streamlined TMDL process
  - delay for proposed DO standard

1. STATUS OF TMDL PROGRAM

- Description of process (Attachment A)

- Year 1	Intensive monitoring Determine standards violations Parameters to control Pollution sources
- Year 2	Determine assimilative capacity Model river system Establish preliminary TMDLs Allocate WLAs and LAs Initiate/Complete rulemaking Establish TMDLs/compliance schedule
- Year 3-4	Program plan development Plan review Public hearing Commission approval Refine TMDL/WLA/LA Initiate program plan implementation
- Year 5	Modify NPDES permits Implement NPS plans Refine TMDL/WLA/LA
- Year 6-8	Monitor compliance

- Efforts to date
  - Attachment A table
- Future workload (Calender 1991)
  - Year 1 — Grande Ronde River
South Umpqua River
(only if DP#103 approved)
  - Year 2 — Columbia Slough
Pudding River
Coquille River
Klamath River
  - Year 3 - 4 — Tualatin River
Yamhill River
Bear Creek
Pudding River
  - Year 5 — none
  - Year 6-8 — none

2. TMDL ACTIONS FOR THE COLUMBIA SLOUGH

- Policy guidance
  - preliminary TMDLs and time frames

    limited data
    different model
  - application of bacteria standard

    beneficial uses
    management plan
  - TMDL for toxins

3. TMDL ACTIONS FOR THE PUDDING RIVER

- Policy guidance
  - use streamlined TMDL process
  - delay for proposed DO standard

GENERAL FUND BUDGET BOX
(In Millions of Dollars)

Beginning Balance, July 1, 1991	$ 281.5
Estimated Revenues, 1991-93 Biennium	5,008.5
Total Available	5,290.0
Analyst Recommended, 1991-93 Biennium	5,096.1
Ending Balance, June 30, 1993	$ 193.9

Note: Analyst Recommended does not include amounts for the Emergency Fund, Salary Adjustment, Capital Construction, Ending Balance, or funds for Measure 5 replacement. If these are included the ending balance drops to:

Ending Balance Shown Above		$ 193.9
Deduct:	Emergency Fund	(50.0)
	Salary Adjustment	(91.0)
	Capital Construction	(36.0)
	Ending Balance	(160.0)
	Measure 5 Replacement	(633.0)
Deficit		($ 776.1)
If two percent kicker is repealed deficit is reduced by:		129.1
Adjusted Deficit		($ 647.0)

CLEAR LAKE HEARING
August 22, 1990

This is the testimony, taken at the Clear Lake Hearing, held August 22, 1990. The Hearings Officer is Dick Nichols. The time is 7 o'clock.

The proposed rule package that we put together--let me back up here a little bit--there's a sign-up sheet being passed around. There it is, right there. Folks who sign up on that will be assured of getting a copy of the hearing summary and the Commission Report when completed.

Some of you have already indicated on one of these blue sheets that you would like to receive the information and that will also be incorporated onto the mailing list when you get done. So, if you've done the blue sheet and you haven't done that, don't worry about it.

Hopefully, most of you are fairly familiar with what the history of the Clear Lake issue is. In '83, the Environmental Quality Commission adopted special guidelines for the protection of Clear Lake. It adopted a loading limit for the lake based on nitrate nitrogen. And, they also imposed a septic tank construction moratorium in the basin. We've been getting together between county interested citizens for a little over a year now to take another look at our rule as well as help develop a lake watershed management plan. And, these rules are an outgrowth of that activity. We're proposing to change the nitrate loading limit to a phosphorous limit because we believe that that's a more appropriate parameter. We would allow some additional septic tanks portion of it and the rule talks about--there's one change that would be made in the proposed rule--in the on-site rule it describes, one, two, three, four five, six, seven, eight lots where --------- an on-site system could be installed. Actually, there could only be five and that's lots 400 in section 12; lots 900 and 801 in section one; lot 403 in section two; and lot 2200 in section eleven. Those are lots that are totally enclosed within the watershed. There are other lots that are partially in and at least this rule would be included that those could have on-site systems located outside the watershed and still provide an on-site system ---------- -------. That one change--

The Environmental Quality Commission has authority over water quality within the state. The purpose behind the water quality program in state is to protect recognized beneficial uses. Recognized beneficial uses being drinking water, fisheries, recreation, etc. And, to do that we've adopted water quality standards that serve as measurement of whether or not beneficial use are being protected.

In the Clear Lake issue, I've essentially worn two different hats. I've acted as a representative of DEQ in helping draft the rules and I've also acted as a participated CRNP group. The way we anticipate this will come out is in the Department of Environmental Quality and the Environmental Quality Commission will adopt lake loading standards and rules relevant to those standards. The land use issues which are under the purview of local government, Lane County in this case, will then adopt the watershed management plans in that department to show how that management plan must show how it's going to meet the standards that we've adopted in our rules.

So, the purpose of the hearing, you've noticed in the staff reports there's some discussion about different management scenarios. The reason I put that in the staff report was to provide some information to people about some of the possible scenarios that could be implemented and it could be within the lake loading limits that were proposed in our rules. In tonight's hearing, I would prefer not to hear a whole lot of testimony about the different types of scenarios because that's essentially not under the authority of our Environmental Quality Commission. I'd prefer to limit the testimony to issues talked about in the rules. Now, lake loading limits are appropriate; should we be changing from nitrate to phosphorous; issues relative to septic tanks; and septic tank load limits are certainly appropriate. The issue of whether the rules should require a sewer or not for the Collard Lake base subdivision is relevant. But, issues relative to whether or not there should be two houses on a lot in the Clear Lake Watershed or whether it should be forestry or whether it should be some other zoning or whatever. It's something essentially the commission's not doing anything about, so it's irrelevant to the hearing.

Are there any questions? Bob.

BOB: Is there some policy with the DEQ that you do not advertise in the local newspapers on a hearing like this?

NICHOLS: No, we sent a--there's no policy about it and there's no policy against it. We sent a Public Notice out, I think late last week and whether it got in the paper or not, I don't know. I know it's in the--

We had a wonderful front page article, Bob.

BOB: Oh, that was today.

NICHOLS: We did mail a copy of the report to all the property owners within the watershed that we knew of and we have filed Public Notice with the Secretary of State's Bulletin as required by statute.

It's in the state calendar, all of us read that.

NICHOLS: Yea, I get it, I look forward to getting it every month.

Only 70 dollars a year to subscribe to one.

NICHOLS: Well, with that, we'll get going. Tom Nicholson. You must have put it on top.

NICHOLSON: I'm hear tonight--

NICHOLS: Would you come down here, I need to make sure I get you on tape, please.

NICHOLSON: Do I need to sit too?

NICHOLS: You don't need to sit as long as you get your voice towards that.

NICHOLSON: I'm Tom Nicholson. I'm here tonight on behalf of Bob Merz, who could not be here, he's out of town. Mr. Merz has owned property in Clear Lake watershed for 30-some years. He purchased the property many years ago, hoping to retire on the property. And, as I think we all know, he has been unable to use the property ever since the imposition of this moratorium in 1983. I did attend the DEQ hearing in 1983. I appeared on Mr. Merz's behalf and at that time Mr. Merz was in favor of imposing the moratorium on septic installation. The representation at that time was that it was a two-year moratorium. And, at that hearing, I did stand up and mention to the EQC that it was intended to be a two-year moratorium and my understanding was it was acknowledged that it was to be a two-year moratorium. With a two-year moratorium, Mr. Merz was in favor of the moratorium for purposes of studying the lake. It's my understanding the study was concluded in 1985 and that, really nothing much further has happened with respect since 1985. This matter has dragged on and on and Mr. Merz, at this point, is going on the record as basically being in favor of whatever resolution will get this matter off of dead center so that he can use his property. For the record, Mr. Merz supports the department staff's recommendation to modify the proposal as submitted by staff. And without going any further-- I think I'll stop it at that point. We simply wanted to get on record that Mr. Merz is in favor of the current recommendation by DEQ staff proposal.

Thank you.

NICHOLS: Thank you, Tom. Ellie Dumdi.

DUMDI: First, and foremost, Lane County wishes to thank the Environmental Quality Commission and the Department of Environmental Quality for your continued interest in preserving the water quality of Clear Lake. Lane County believes the lake is a truly unique environmental resource and we greatly appreciate your work over the years. Recently, Dick Nichols--and this is addressed to William P. Hutchinson, Jr., by the way, chair of the Environmental Quality Commission--Recently, Dick Nichols of your department has participated, along with Lane County, in the Comprehensive Resource Management Planning or CRMP process. Dick's work has been extremely helpful and I wish to publicly recognize his hard work. It is both necessary and appreciated and we urge you to authorized his continued participation.

For a variety of reasons the CRMP process is not complete. While tonight's hearing is beneficial for information gathering Lane County believes action at this time would be premature. Lane County's long-term policy has been to facilitate a local solution. The Board of Commissioners has not yet agreed to any role beyond that of facilitator. We genuinely desire that the local residents and local governments ------- of water and the city of Florence develop their own solution. To that end, we believe the CRMP process should be complete before you take final action. We also wish to advise you of two major limitations which severely constrain Lane County's ability to be a major participant in any solution. Number one, fiscal: the proposed administrative rules appear to specify that an entity called a municipality (Lane County?) must adopt land-use regulations, adopt non-point source pollution regulations and perform water quality monitoring. Lane County does not have the long-term financial resources available to perform all those duties. If the municipality referred to in your rule is Lane County, we must object to its adoption. Assuming you defer action until completion of the CRMP process, I would ask you to then bring a draft of your administrative rules to the board of commissioners where we can develop mutually agreeable provisions. Number two, statutory: In our opinion, the real solution under any alternative is the establishment of a legal entity with the full power to implement watershed management strategies. These strategies need to include sewer construction and operation or a management entity to provide regular service to individual sewage systems; and authority to regulate land use, regulate non-point source pollution, work with the existing water district, and finally, authority to enforce compliance with required regulations. To our knowledge the Legislature has not granted to the Environmental Quality Commission, the Department of Environmental Quality or Lane County, the authority to create such an entity. Without this basic entity, the unique capacity to assure compliance, resolution of this problem in the foreseeable future is not likely. If you agree legislation is needed, Lane County stands ready to work with the Environmental Quality

Commission and Department of Environmental Quality before the 1991 Legislature to pursue appropriate legislative authority to achieve a solution. In conclusion Lane County strongly urges the commission to defer action at this time pending completion of the CRMP process. Thereafter we would request that the department bring any proposed rules which affect Lane County to the Board of County Commissioners prior to their presentation to the commission. Finally, Lane County is willing to work with the Environmental Quality Commission or other interested parties for any necessary law changes during the 1991 Legislative Session.

That completes my testimony. Thank you.

NICHOLS: Thanks Ellie.

QUESTION: Was that approved by the Board of Commissioners?

DUMDI: Yes, it was.

NICHOLS: John W. Swanson, Jr. I guess this isn't most convenient to have people come down here, but I do want to have the testimony on the tape so I apologize for the inconvenience. Hi, John.

SWANSON: In case you don't know who I am, I'm John Swanson and I'm a user of Aceta Water District. And, I've written this, which I'll give you a copy. And, I'll address this: To somehow, to believe, to hope that percolation of development pollution is somehow filtered out before it reaches Clear Lake, is naive and not true. The water-soluble salt poured on the ground in the water shed will eventually find its way to the lake. To illustrate a point, the city of Hemet, California, now has to buy water to blend with its deep-well water so that nitrates and nitrite would meet the state requirements. Where did these impurities come from? Housing and farming development put them on the surface and, in less than a lifetime, the drinking of the water from this deep-well aquifer became a health hazard. I believe, as soon as possible, human activity should be removed from Clear Lake watershed. This is the only way to truly protect water. To set limits of pollution is not only unacceptable, but repugnant.

NICHOLS: Thanks John. John D. Loblin.

LOBLIN: Well, there are several questions that have come up to us at the last meeting that we had here we had an expert on lakes point out to us that Collard Lake and Clear Lake are also a dying lake. Under the situation that they're now in. As there are alluvial fans in the sand moving into the water at all times and eventually, unless the dunes can be stabilized, by lack of people using them and dune grass put in, they are going to fill in with

sand. And, since they are a drinking supply, as a resident there, I feel the only solution to that is not to allow any further degradation to the water. But, to, through a series of buy outs, eliminate any further degradation of the water.

And, that's it.

NICHOLS: OK, thank you John. Patrick and Georgia Clark.

VOICE: That was for--

NICHOLS: Oh, OK, right. Susan Kenyon.

KENYON: These are not plans to protect the water. There are plans to increase development and put five septic tanks on Clear Lake. This has been pushed through by two owners of forest land who want to up-zone to residential. We are being sewered at the far end of Collard Lake so these two can put septic tanks in your drinking water. On a dozen or so of summer camp sites along Collard Lake which could never have had approved septic tanks, people will obliged to cut down trees and build shoulder to shoulder, degrading lake quality, in order to pay for the sewer liens on their lots. This is not protecting drinking water. You are doing more to protect wetlands for ducks than you are doing to protect our drinking water.

NICHOLS: Susan, may I have your written statement for the record? Thank you very much. Scott Kenyon.

SCOTT KENYON: I pass.

NICHOLS: OK, thank you. Mr. Walter Drew.

DREW: I have only a written statement.

NICHOLS: The one that you gave me already, or another one?

DREW: No, this is a new one. Twenty-two pages.

NICHOLS: Twenty-two?!! I need to catch up on my paper work here. OK. Edith Roberts.

ROBERTS: I don't think I'm going to read mine. I'm just going to refer to it.

NICHOLS: OK, whatever you like.

ROBERTS: I'll give you a copy of it, though. First of all, I've attended all the CRMP meetings and I, too, would like to say that Dick Nichols has been a calm voice and a very good participant in that. When he came on board I had great hopes that science would

prevail and this time we would achieve real protection for the water. And, so I want to take issue with a couple of things. And, I feel that his rules are as fair as he can make them and I think we all have to understand that the DEQ cannot do anything about land-use. They can only set quality controls or loading controls so how the loading controls are met leaves us in the hands of Lane County. I take exception to new development. I feel that we are being asked to be sewered in the Collard Lake subdivisions to reduce the pollutants of phosphates and, as Susan said, to open up lands that are not zoned residential for development and in all the literature that's sent out it's very carefully worded so you don't recognize that the rights of property owners who say they are being denied their rights are on F-2 and marginal lands, not zoned residential, and that has nothing to do with our fighting the water. That is the way their lands are zoned and they should be fighting their battles somewhere else besides this process.

The next issue that I want to talk about is that I believe that in this CRMP process we've been led down a path to make a watershed plan that deals with allowing five houses on F-2 lands. I submit that this is illegal. The CRMP is an advisory watershed group working out a watershed map plan. They have no legal authority to grant a new house and the DEQ is very careful, and as Dick told me, they're not a land-use body. So, they mentioned that their one septic system on these five lots. So, I take issue with that in the CRMP plan and I also take issue with its being in the EQC rules--the on-site septic in the Clear Lake F-2 lands--that's what I'm taking issue.

Very briefly, I believe the proposal that Dick has in there, that we shall be sewered by October 1, 1993, unless an alternative plan can be developed that will meet the same phosphate loading. I'm hoping that we will look carefully at alternative plans. And I want to tell you why. I oppose sewers because sewers would bring a full buildup. And, from the beginning, when I first started talking about this, I said that the aggrieved parties were the people who were sold residential lots by Lane County planning, and, as Ellie herself has admitted, this plan, a hundred-and-thirty-two potential lots; a hundred-and-eleven or twelve of them that are in the watershed and on tiny lots--average size, 9,000 square feet--is a disaster for our water supply. And, those lots are polluting the lake and if we open it up to put more develop in there with non-point source pollutants we will be polluting the lake. I believe sewering is wrong for these reasons: it fails to address the pollution from non-point sources, we have two communications from Walter Mullins of the EPA, who we've been in contact with--that's the Federal EPA--the agency that designated Clear Lake as a sole source aquifer, and he says that in the present CRMP plans he does not need the adequately addressed the issue of non-point source pollutants and it's hard for people to recognize that sewering can't eliminate all problems. The other

thing that Dick has in his EQC are the things that will be necessary for storm water control. At full build-out we will have to have storm water control to prevent the runoff. On these tiny lots when they are given OK to build, some of these lots are so small that all vegetation is going to have to be removed because they will have to get on there a septic tank. Now, the step-sewer system still requires a septic tank. It's a pressurized tank that hold the material and only the affluent is transported to wherever it's going to be transported. So, they are still going to have to have space for a septic tank on their property, they're going to have to have a pump to pump that material--it's a pressurized tank, they're also going to have this water quality control drainage and if you'll look on page C-3, Dick described it in this brown-paper document: for a house with a roof area of 2,000 feet, it's going to require a concrete box 7 feet by 10 feet by 7 feet deep that your roof runoff will have to go in. There's an alternative, three concentric rings he describes in there that are potentials that could run anywhere from $1,400 a piece to $2,400 each and it would require three. Now, this is to prevent the runoff from human habitation and off of roofs and non-pervious surfaces from getting into our water supply. Now, how can we get all of this on some of these lots?

When the lots are scarfed off--some of us who look at Mercer Lake noticed after the last downpour we had, where there was clear cut, the whole water was brown over there like tea and, I think you've all seen it--well, when you strip the vegetation to allow a full build-out you're going to have very little vegetation left to hold back all of the top soil from being washed right into your lake. Also, this is from the EPA documents that I received--the watershed topography and hydro geologic features of the watershed make it especially susceptible to contamination. As John said, anything that's going to get on that watershed is ultimately going to percolate down to the water table and into the lake. The houses surrounding this are all on higher elevations than the lake so anything that goes on--people change their oil, their careless, they don't--they dispose of it--they think, I live out in the country, it's all going to get down into the water table and into the lake. Potential groundwater contamination is not limited to septic tanks and drain fields. We are being told that the way to protect that water--that those people who live out there are polluters, and all you have to do is sewer and that will take care of it--this is not so. Sewering is not a panacea. With sewering, the is always a possibility of leaking sewer lines. How many times have you picked up the paper when there's been a sewer spill in a river. In our lake that would be a disaster. According to the Cooper study, our lake does not flush properly--not properly, that's not the term for it--but, it doesn't. The residence time of water in the lake is a year-and-a-half before it flushes out. And, so, therefore, the lake is going to--will not flush fast enough to remove nutrients and fertilizers and all of these things

that run into it feed the lake algae. It blooms, the algae die, go to the bottom, are brought up and recycled. And that builds up in a lake and that's what ultimately causes eutrophication of a lake. The other point about sewers is that the low point of the collection line is obviously the sewer and so any power outage or any problem with the sewer line is going to back flow toward the low point. Right? And, that I see as a great danger. So, the potential for a disastrous spill, I think, occurs in the kind of area that we're talking about sewering.

For the above reasons, then, I support the Haceta Water District proposal which you will be receiving in the mail. And, we're not talking options now, so I won't go into that option. But, I feel it is more protective of the water body and that it is mentioned in your document from the EQC if you haven't read it.

So, in conclusion, I want to take exception to the issue--if you'll look at page G-20, those of you who brought your document--at the bottom of G-20, he has------

(TAPE HAD TO BE TURNED--LOST SOME OF THE TESTIMONY)

-------Department believes the approach recommended for Clear Lake is a good approach that could, perhaps, and should be taken with other eligotrophic lakes. Lakes classified eligotrophic, mesotrophic, and then eutrophic: they're polluted. And, currently, our lake is still classified eligotrophic--whose shores and watershed are subject to residential development. The approach with Clear Lake is protective of all uses including drinking water and aesthetics. This is the part that I take issue with--coming up. The department, however, would not approve of a similar approach for lakes such as Waldo Lake and Crater Lake because of their incredible clarity and public value. Such lakes should be managed with no increase in phosphorous loading. This plan allows for increase in phosphorous loadings. And, I believe that Clear Lake, designated as the main water resource by the Federal EPA study for the entire central Florence area. It's growing at the rate of 15 percent a year, this was a recent publication in the paper. That water body that we're trying to protect provides the drinking water for 9,000 people in the Haceta water district and we're counting people by the number of hookups and water supplied to the city of Florence. They're now getting almost 50 percent of their water from Haceta Water. And so, I believe that this lake that we're so blessed with deserves the same protection as Waldo and Crater Lake. And, surely, I think the protection of the source of our pure water for ourselves and for our future should take precedence over any other consideration.

NICHOLS: Were you going to give me that written statement?

ROBERTS: You have it. Remember when I came in and gave you--

NICHOLS: OK, gotcha, thanks. Burton Beam.

BEAM: It's permissible to read this, I presume?

NICHOLS: You bet.

BEAM: I'm not a property owner in the Clear Lake watershed so I'm not concerned with property use or development there and except a good citizen's desire that it all be done as allowed by all applicable laws and guidelines developed under those laws. I am a user of drinking water obtained from Clear Lake and I am concerned about maintaining the quality of that water for my use. Regardless of what happens as a result of the present controversy over the Clear Lake watershed, I don't believe the water will be degradated enough during my lifetime to effect me personally. I'm also a citizen with enough of a social conscience to deplore anything that happens to Clear Lake that would reduce or impair its water quality for those coming after me. I also believe that all law existing today that pertains to protecting the water quality of Clear Lake does not permit--and I would like to emphasize this--any lowering of its quality. I also believe that there is such a disparity between the desires and goals of those who wish to protect the Clear Lake water quality and those who would see its watershed further developed, that the two items should not even be on the same agenda. In short, the water protection should be first and foremost. And, then property use and development be considered. With that said, I would like to make these observations about the four alternatives considered by the DEQ.

Alternative one, I consider to be unacceptable as written. It does not address what to do with the existing systems on Collard Way.

Article two, I also consider unacceptable as written. It does not specify what modifications to the existing rules is contemplated. For example: to specify lake loadings in terms of phosphorous would be wise; to allow even limited additional development would be unwise, no matter whether the pollutants were measured in terms of phosphorous or in terms of nitrate nitrogen.

Article three, I also consider to be not acceptable. Sewering addresses only the lake loading caused by septic systems and will not protect the lakes against a steady deterioration caused by non-point source loading.

Alternative four, I consider not acceptable as written for the same reason stated above.

Having rejected all of the alternatives considered in the proposed rule change document, I believe the document does recognize other possible alternatives. Foremost of which is a buy out of property in the watershed. I believe this to be entirely feasible and the best solution available. Therefore, I would suggest consideration of one of the following alternatives:

Alternative one, a buy out by Haceta Water District of all property in the Clear Lake watershed.

Alternative two, a buy out of all undeveloped property in the watershed and strict rules to control pollution from the existing development around Collard Lake. Sewers, if required, to be paid for by all users of Clear Lake water and no new development to be allowed in the watershed.

Thank you.

NICHOLS: OK, thank you. May I have your--oh, thank you. Gordon Howard.

HOWARD: This is from my father, my sister and myself.

NICHOLS: OK, one from each--this is your father?

HOWARD: My name is Gordon Howard, I'm representing the owners of the north end of Clear Lake: Marsha Smith, who is my sister and V. M. Howard, who is my father. I would like to encourage the DEQ to proceed with one of the three alternatives set forth as a result of the CRMP process which calls for sewering the Collard Lake subdivision. Numerous water studies performed on the Clear Lake watershed by both individuals and Lane County all clearly indicate that the current degradation of water quality is directly attributable to the existing Collard Lake subdivision septic systems. In view of this, alternative number four, which would allow developed lots to remain but would not allow owners of undeveloped lots to do anything but pay taxes on them is unacceptable. Stopping additional development does not cure the acknowledged degradation that is occurring. Sewering the high density Collard Lake subdivision will provide long-term water quality protection for the entire watershed. And, since the CRMP recommendation to only allow large lot owners surrounding Clear Lake, one septic system per lot as described in their meetings--we will end up with the best of all worlds.

Number one: water quality is protected. Number two: owners of some undeveloped lots in the Collard Lake subdivision can utilize their land and number three: large land owners surrounding Clear Lake can also utilize their land, again with no detrimental effects to water quality.

The Howard family have been long-term custodians of Clear Lake. Back in the 1930s, my great-grandfather, George Howard purchased the property on Clear Lake. It's important to note that this was long before Haceta water district built the water system, before the overlay zones, or the creation of the Collard Lake subdivision. The land then passed to my grandfather, Vincent Howard, Sr. The general usage on the lake has been consistent through the years. Those uses consisting of fishing, boating, skiing and camping. Grampy Howard allowed the boy scouts to operate a camp on the western edge of the property for a number of years. My grandfather lived on the property in a small cabin with a trailer attached to it until he passed away. The land then passed to my father, V. M. Howard and his sister, Margery (PHONETIC) Bancroft. The fourth generation of Howards came into ownership as Margery Bancroft, since deceased, left her ownership to her three daughters and my father passed his ownership to my sister and myself. As you can see by this chronology, the Howard family are not short-term big buck developers, but rather have been long-term guardians of a resource that we have been taught to respect and care for since birth. The Howard family recognizes the need to maintain Clear Lake as a water source. In fact, in 1982, when Lane County's moratorium was initiated, we are on record as being supportive of that action. We felt that a two-year moratorium would be ample time to assess the water source and implement a management program. To date, Clear Lake has been studied, the problem area has been identified as Collard Lake subdivision and it now needs to be cured. It would appear that sewering the subdivision is the only long-term answer to this problem which will, in turn, provide customers of Heceta Water District a long-term source of water, the city of Florence, an alternative back-up source of water. It will allow the owners of developed properties within the watershed, uninterrupted use of their property and it will allow owners of undeveloped property to use their land all without further water degradation. In closing, I would again urge the DEQ to implement one of the sewering alternatives because it's not perfect but it best meets the needs of all the affected parties. And, again the research has been done. The results have been analyzed and we would ask now that you take action.

Thank you.

NICHOLS: Thanks Gordon. William Bromley.

BROMLEY: My name's Bill Bromley and I'm speaking tonight on behalf of Haceta Water District. Haceta Water District has the responsibility to protect the water in Clear Lake and provide pure, safe drinking water to approximately 9,000 citizens in the Florence area. The district is a public agency, owned by the property owners within the district's boundaries. Clear Lake has been declared a "sole source" aquifer by U.S. Environmental Protection Agency. This means that it "is the sole, or principle

drinking water source for the area and, which, if contaminated, would create a significant hazard to public health." The water currently available from Clear Lake is unique in its state of purity and does not presently require any filtration before use as drinking water. The district believes that any amendment to the present rule, for reference purposes: OAR 430-41-270 must start with adherence to the statutory policy contained in ORS 468.710, "it is hereby declared to be the public policy of the state to protect, maintain and improve the quality of the waters of the state for public water supplies, to provide for the prevention, abatement and control of new or existing water pollution and to cooperate with other agencies of the state in carrying out these objectives." The district further believes that any amendment to the rule must also adhere to the statutory mandate contained in ORS 468.715, "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 requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468.710. To the extent that Oregon Administrative Rule 340-41-026 which is referenced in the EQC materials would permit lowering of the water quality in this situation, the district takes the position that that rule is in violation of the preceding statutes. Insofar as the proposed amendment to the rule contemplates, or would allow, ann new or further development in the Clear Lake Watershed, the district would like to go on record as opposing the amendment in that regard. The amendment allows for degradation of the water quality by permitting additional phosphate loading in Clear Lake by virtue of the proposed development of the eight Clear Lake parcels. The district feels this is in direct violation of the statutory policy and mandate quoted above. The district would like to emphasize that the amendment, as proposed by the EQC would cost the city of Florence nothing, would cost Lane County little or nothing and would cost the Clear Lake property owners, some of whom are seeking to develop their properties nothing. The entire financial burden for protecting the water falls on the district and on the Collard Lake property owners. As noted in a Lane County staff memorandum dated August 6, 1990, on the proposed amendment, "what this all boils down to is that the proposal appears to be directed at securing on-site sewage approvals for the owners of the eight parcels in Clear Lake Watershed." The rule amendment as proposed amounts to an expensive subsidy by the district and the Collard Lake property owners so that eight, or five, as the case may be, Clear Lake property owners can have on-site sewage systems and thus develop their properties. The district agrees that the loading limitations should be changed from nitrogen to phosphorous, that limits need to be placed on additional phosphate loading within the watershed, that further there should be reduction where possible of existing phosphate loading, but contends also that the rule amendment should not

permit any new development within the watershed. The district would also like to go on record as being willing to cooperate with Lane County and with the DEQ to formulate a plan to implement this water protection for Clear Lake.

Thank you.

NICHOLS: Murial Hilliard.

HILLIARD: I think Mr. Bromley has taken care of most of the concerns that I have. I have a couple of notes here and it's been brought out before that most of the Clear Lake properties are zoned F-2 and no residences allowed unless its deemed necessary for forest management. So, granting permits for septic tanks is superfluous in that sense. And, as far as the phosphorous loadings, if a community, or individuals in a community spend money to lower the phosphorous loading levels, the phosphorous loading should not be credited or transferred to other areas of the watershed. They should be placed in reserve. My contention is there should be no increase in phosphorous loading and no lowering of the quality of the water. The least objectionable of all the alternatives would be for a, as will be presented by the Haceta Water District.

Thank you.

NICHOLS: Thank you. Arthur Sappington. OK.

HILLIARD: Dick, just for the record, I was representing West Lane Planning Commission.

SAPPINGTON: I'm here as a representative of a pioneering family in Oregon. I am also a agra-forester and a hydrologist, by schooling. And, my reason for being here is I'm looking at, one, the water quality and the watershed and the other one is the rights of the land owners, both for agra-forestry, agricultural livestock and timber in watersheds and for potential recreational usages of maritime or water zones. And, primarily, what I'm doing here is getting a feel of the conflict that's being developed between developers and present users of the watershed. And, possible ways of dealing with property rights or the possibility of the purchase of developmental rights which is being done in other states and other parts of the country for taking care of hydraulic and wildlife aspects in rural areas, particularly outside of urban growth boundaries. And, this is one of the areas that we're in, this particular watershed is outside an urban growth boundary but it has a direct result upon the financial stability and growth within an urban growth boundary that's associated close to it. In other water districts, particularly in Coos County, the water district of Coos Bay, as you know, the water shed there, they own the whole water shed. And, that is one

of the possibilities for the water district here. For some way if they can financially see for buying out the existing property owners that would eliminate the problems with the septic systems and the development of that property that's there. And, I will be submitting, in writing, a more detailed statement for this.

Thank you.

NICHOLS: OK, Arthur. Thank you.

VOICE: Is that the Pony Dam your talking about?

SAPPINGTON: Yea, they had to buy out several of the property owners there. They do have other sources and they also have some problems with the sand--the same aquifer system that you have here, they have a similar problem with the North Spit aquifer which deals with the sand sewage movement through the sand systems underneath.

NICHOLS: OK, great, thank you. Bill Riddle.

RIDDLE: I'll waive (UNINTELLIGIBLE)----------

NICHOLS: OK. Thanks. Jan Goldberg.

GOLDBERG: I also am going to waive oral testimony.

NICHOLS: OK. Gene Burrick.

BURRICK: I'll cancel that out. It's a duplication of other ----- -------- ----------

NICHOLS: OK. Chris Attneave.

NEAVE: That me. My husband and I have owned property on Collard Lake since about 1976. And, I've been following this for all this time. I would say that maybe we have a special reason to be interested because we bought a piece of property that had, perhaps, one of the oldest houses on Collard Lake, but, which was totally unsuitable for a septic tank. In response to the need to protect the lake and--not to say the requirements of the county at the same time--we bought two lots. Another very nice lot that we wouldn't have bought otherwise in order to meet the requirements. And, we did what the county required us to do and put it back away from the lake according to the regulations at the time. There was a slight glitch in the way it was installed so we had to wait three years for the field to settle. We weren't able to hook up to Heceta water or not to have any plumbing until that was done. We really worked hard to satisfy the existing requirements. And, we would be willing to do more to make sure that the lake is protected. I can't say that we would like to spend a great deal

more money. I haven't tried to figure out how much all this costs so far. If the main effect of it were to really produce a not terribly likely improvement, plus the addition of people putting septic tanks in on the very lake that we were trying to protect, in ways that we wouldn't have been allowed to at the time. So, I feel very strongly about this. If we're going to spend money and we're the ones being asked to spend money. I got a nice letter from Mr. Riddle, who knows that we own an undeveloped lot. What Mr. Riddle didn't realize is that that undeveloped lot has our septic tank on it. And, we're not one of the people that he was trying to address. Saying that he really didn't care which alternative was chosen. The reason that he doesn't care is because his clients--and it wasn't clear in his letter that they were his clients, but I know they are--his clients make out like bandits under all the scenarios, they don't pay for it. And, they get something. I'm sorry I don't want to join your group. for several reasons. think there are some other alternatives. I'm concerned that sewing and full development really would not do the job. I was concerned by the suggestion of a public access for Clear Lake and for Collard Lake. I have real problems with the way we're treating grandfathering under this. In land-use matters, often a certain usage is grandfathered. Either a division of the land that already exists or usage that already exists. Because it has been going on for a long time and was permitted when the land was created. And, we treat the land in a certain way; we have to reverse that use. That doesn't really apply to some of what we're talking about. I can't credit what Mr. Howard said about the Collard Lake people being responsible for all the pollution. Either our figures are wrong or the research is wrong or the pollution that's there isn't coming just from the houses on Collard Lake. Because it doesn't add up. I think it would be good to do something about the houses on Collard Lake. If the phosphorous moves through the land and ends up in the lake anyway, we should do something to stop it. And, we should, maybe, do something to stop the phosphorous from the so-called urban runoff. One suggestion that I have not heard entertained around here--I have no idea whether it would work in the area--but, one of the things that binds phosphorous, in addition to alum is any kink of calcium compound. One suggestion that's made which might be a better suggestion than the sand filter--simpler and cheaper and perhaps just as effective and maybe--well I don't understand how sand filter's--there's a great deal in this document that I don't understand--is to dig a series of trenches below the septic fields that are there now and use this agricultural calcium--I'm sorry I don't know the trade name for it. It's in little pebble sizes--to take up some of the calcium in a benign way that's already out there. I think this probably should be done. I hate to say this, but if you decide on sewers being the thing, this probably should be done anyway, in addition, because, as someone mentioned, those septic fields that are there are already there. There aren't enough of them to

account for what is in the lake, I think. I'll try to learn more about this. The boy scout camp, they have produced some of the pollution. It went for a number of years. We have quite a bit of traffic on the dunes that you can see. You know, if we were running this watershed from scratch, we would certainly do what our hydrologist friend said, we'd buy the whole thing. We wouldn't allow anybody to go on the--and we'd fence it off. We probably do need as Ellie Dumdi suggested, some change in legislation. Such, that natural resource areas are not managed by the park department so that they can, in fact, at least that one area that Lane County owns. It's absurd that we're sitting here wracking our brains trying to figure out how to control pollution in Clear Lake and we don't keep people out of a piece of property that the county owns. Now, that would seem to be fairly simple. I'm told, that legally it's not fairly simple, and maybe we should go to the Legislature and say we need a special district for natural resource lands that are right next to lakes. I should think we could do it. We should go to the Legislature and get phosphorous out of detergents, that would help a lot. We should ask for some voluntary measures in the Collard Lake watershed that we don't even ask for, restriction of pets

(END OF TAPE i, SIDE 2, LOST SOME TESTIMONY)

Evidently he knows something about phosphorous that I don't know. No, that really is what I had and I'll submit some written testimony. I have to learn about phosphorous.

NICHOLS: Thank you. Eleanor Finley. (don't know what happened to Eleanor) Al Lashway.

LASHWAY: Well, I've lived on Collard Lake for about one year. So, I'm fairly new, but there's just a couple of meat and potatoes questions and some of it's been covered more eloquently like it's pink already-- but, why should we be forced to sewer and have a plan to allow Clear Lake developers to have septic? And, the cost to us is going to be--well, they're saying around 11,000 dollars plus. That's including repairs to our private road, which has not been mentioned in any of the other studies at all? And, to me it seems to be some form of discrimination here. Why is there any discussion about developing Clear Lake when lands are not even zoned for residences? And, why not a one-year pilot study of the alum treatment system? Because it should be allowed because sewers, or whatever, are not scheduled until--I think--October 1, 1993. And, there's been no change in the phosphorous level in the last five years, is that right? You found out?

NICHOLS: There doesn't appear to be.

LASHWAY: There doesn't appear to be. And, the study shows that--one study shows sand filters, 5,000 dollars. And the other study does not even mention sand filters. It kind of leaves you up in the air as to which route are we supposed to think about--$5,000 per property owner is a lot of money--one study says, we don't need it--another one mentions, it's in there. And, we don't know what figures to believe. So, that's all I have to say.

NICHOLS: OK, thank you, thanks Al. Bob Bodine.

BODINE: Just going to tell you ahead of time, I've got not written statement for you.

NICHOLS: You have no statement?

BODINE: No statement whatsoever. My name is Bob Bodine--Robert N. Bodine. I live over in Heceta Beach. Way, way outside the Collard-Clear Lake watershed. I'm in the watershed of the Pacific Ocean. I'm an engineer. I'm neither civil nor sanitary, I'm a chemical engineer, but I can understand some of this stuff and the water chemistry. I also used to be the full owner and am now the half-owner of a company--the hat I'm wearing is from the company, it's American Lakes and Canals. Their business is going out to lakes, small lakes, that have been ringed with recreation domiciles and septic tanks and they're full of SAVs, as we call them, Submerged Aquatic Vegetation--like you had up in Devil's Lake or they're full of algae. And, the whole thing has gone to hell in a hand basket. We go in and analyze and correct that stuff. We've never had one, out of 1,000 cases that I know of that we haven't corrected. I guess that's what got me interested in this thing.

And, I was just interested in it as sort of bypass busy body, nosy guy, until a guy named Dale Riddle, representing the owners of this land on the north side of Clear Lake, told me that I was subsidizing his non-use of the land--his clients non-use of the land--with the water that the Heceta Water District. Well, if any of yo'all ever figured out what you pay if you're a Heceta Water District user, you find out it's one of the highest rates I've seen in the United States anywhere and I'm subsidizing them--come off it. I've heard all kinds of rumors--Sunriver West. I've heard the rumor Dale's writing a new zoning law for those F-2 lands north of Clear Lake. Now, zoning, zoning's my meat. I've been the Deputy Planner of Montreal, Canada. And, so all this jargon and mish-mash, other that the urban growth boundary, which I never heard of before, until I moved to Oregon. And, if I had heard of it, I wouldn't have moved to Oregon.

Now, my next point, with a punctuation point there, is about a guy named Nichols, who has come down, God-awful number of times, for all these meetings we've had--not all of them, he hasn't been started until about a year-and-a-half ago. But, he's been to a lot of them. And, I was going to tell you all sorts of great things about him until I found out he was the Hearings Officer and he'd be sitting right there. So, maybe his boss will hear, I've been a Federal bureaucrat from GS-14 up through what they call a schedule CC, which is--I was the Assistant Secretary of Agriculture--that put all these horrible wildernesses out here in Oregon. But, anyway, I've seen bureaucrats and he is one of the 25 best I've ever seen. Unless he turns out the wrong stuff and screws us all and gives a sewer out there in Collard Lake. I mean, we noticed how--no, it was Gordon Howard who also, he's a member of the Lane County Planning Commission--not the West Lane Planning Commission at ---------. He is out here for gratuitously telling us that we need sewers to solve all the problems. He didn't say one damn word about what it's going to cost you to put the sewer in. That's sort of reminiscent of Santa Clara River Road. Boy, I have just sat through the hearings on that. I did not believe what I was hearing. It was--and Dale was in on that, too. Same client, the client is Seneca Lumber, his name is Aaron Jones. Aaron is one fine gentleman, but I wish he would show up to one of these hearings and let us see his face. I'd be embarrassed to. Maybe he's got deer to hunt or something, I don't know. But, it's wild.

Now, the second thing is, the sewers. Back, oh, 10, 15 years ago, I was wheeling and dealing as a developer-speculator around Montgomery County, Virginia. I had a miserable little 230 acres of land. And, all we had this--that damn lawyer was crookeder than I was. But, we had this scheme, and we'll go in here and we'll find a place where the darned old septic fields--you know how their sort of, oh, hum, sort of like Santa Clara--and, we'll go in there and we'll have the county put in a sewer. Well, now the laws of Oregon may not be written like the laws of Maryland and Massachusetts and Delaware and North Carolina, but if you've got a piece of land adjacent to a sewer system--OK, you go in in front of the county board and you put in a rezoning from grandeur and nature and trees and a redwood forest for three houses per acre--never heard of five houses per acre before I came to Oregon before. But, high density residential, medium density residential, high density residential is a high-rise garden apartment or something. But, anyway, and the county board turns you down, flat. So, then you go to the circuit court. And, the circuit courts everywhere else, they sit there and they thumb the law books and the law books back east say, if you've got a sewer if you're adjacent to it they cannot turn you down. They gotta rezone, they gotta give you the sewer, that's what the county's there for--to provide service. I made two-and-a-quarter million dollars on that one little 240 acres.

Now, we're worried right now about one house-break--I was told over at Heceta Water District Monday night, let's stick with where we are. Let's not project to the future. Well, I guess I've been in this game too long. I can't help but projecting in the future. Sun River West, I believe it. And, you think you've got problems over there now. Just wait until it comes.

Thank you, Dick.

NICHOLS: Thank you Bob. Bill Finley.

FINLEY: Well, I won't try to top Bob's talk. I will talk to--my name is Bill Finley. I own property in a residence on Collard Lake. I will to the issues before the commission.

Number one: should the proposed rule allow any increase in phosphorous levels over existing conditions? I say no, because I think it's a violation of ORS 468.715 which says that water should be maintained or improved.

Number two: Should the on-site sewage disposal moratorium be left as is? No, it should be resolved. We have people out there with--have bought lots they haven't been able to develop. They're paying taxes on them. They can't do anything with them. It needs to be resolved.

Number three: Should sewers be required in the rule or should this issue be left to local government? I say that sewers should not be required. If there are other alternatives--alternatives that have not even been discussed or explored that would do the job as well.

Number four: Should the loading limit for Collard Lake allow for limited flexibility that would allow other mechanisms to control phosphorous loading from sewage? I say yes.

Should the rule allow local government to routinely monitor the lakes' water to verify its quality? By all means.

Number six: Should reductions in phosphorous loadings created by sewering or modification of septic tanks be saved within the department's reserve or made available for development? I say it should be saved in the department's reserve.

I think everything else has been covered.

NICHOLS: OK, thanks, Bill. That's everybody that's signed up. Is there anybody else who would like to testify? OK. For those of you who are inspired later on after thinking about this, would still like to submit written comments, you may submit them to our office at 811 S.W. Sixth in Portland, until Friday, August the 31st at five o'clock. And I appreciate your coming, and we're happy to see so many folks here and I hope we got some pretty good information. Thank you very much.

August 30, 1990
Edith Roberts
05971 View Loop
Florence, Ore
97439
997-6105

Dear Dick,

The following property owners from the effected subdivisions & customers of Heceta Water District wish to go on record as favoring the views stated in the attached petitions.

I am also enclosing Dale Riddle's letter mailed to absentee owners of undeveloped lots. We consider this another one of his dirty tricks.

Thank you

Edie Roberts

DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
AUG 30 1990
OFFICE OF THE DIRECTOR

8-27-90

Al & Helen Lashway
06020 Collard Lake Way
Florence, Oregon 97439

Wm. P. Hutchison, Chairman
E.Q.C.
811 S.W. Sixth Ave.
Portland, OR 97204

We are absolutely opposed to any form of sewering in the Collard and Clear Lake area. It will not address the main problem and could very possibly create greater problems than we face at this time.

In our opinion, the only solution to preserving the water quality in Collard and Clear Lakes is a total buyout of all properties within the watershed.

To even consider further development here is unthinkable.

If total buyout is not possible, alternative IV seems to be the most logical choice.

It is hard to understand how D.E.Q. can, with a clear conscience, even entertain allowing further degradation of the water in order to allow more development particularly on Clear Lake since it is not zoned for any residential development at all.

It seems that there are so few really pure sources of water left, that protecting this valuable asset should be of highest priority to everyone. Rather than giving in to "big money interests" greed, let's protect our water!

Sincerely

Helen Lashway

7/10/90

MR. NICHOLS,

I RECEIVED THE E.Q.C. REPORT PREPARED JUNE 8, 1990. THE REPORT IS VERY THOUROUGH AND APPEARS TO COVER THE PROBLEM WELL. I DO HAVE A COUPLE OF BRIEF COMMENTS TO MAKE, THAT I FEEL SHOULD ENLIGHTEN YOU SOMEWHAT FOR THE AUG. 22, 1990 PUBLIC HEARING. A HEARING I WOULD VERY MUCH LIKE TO ATTEND, BUT AM UNABLE TO DUE TO FAMILY MATTER.

(1) THE MOST PRESSING PROBLEM AND BIGGEST HURDLE IN THIS WHOLE SITUATION IS THE ATTITUDE OF THE "EXISTING HOMEOWNERS". I KNOW FIRST HAND THAT THEY HAVE THE LOCAL POLITICIANS, HECETA WATER DISTRICT OFFICIALS AND OTHER INFLUENTIAL AUTHORITIES IN THEIR HIP POCKET. THEY WILL NEVER PERMIT ANY BUY OUT PROGRAM OF THEIR HOMES TO OCCUR. THEY HAVE TOLD ME ON NUMEROUS OCCASSIONS THAT WOULD PUT UP STALL AFTER STALL — ROADBLOCK AFTER ROADBLOCK TO STOP ANY SOLUTION TO THE PROBLEM THAT WOULD ULTIMATELY ALLOW THE MORATORIUM TO BE LIFTED. EVEN IF THEY WERE GRANTED LIFE ESTATES — THEY WON'T ALLOW A BUY OUT, AND THEY HAVE AND WILL STOP ANY EFFORTS. IN YOUR REPORT YOU REFER TO THE EXISTING MORATORIUM AS STARTING IN 1983, AND THE THAT IT IMPOSED A SIGNIFICANT ECONOMIC IMPACT ON THE OWNERS OF UNDEVELOPED PROPERTY (LIKE ME). AS A MATTER OF FACT — THE ECONOMIC IMPACT TO ME HAS BEEN A TOTAL NIGHTMARE. ALSO, THE MORATORIUM

PLANE

(2)

I HAD PLANNED ON OBTAINING A VA LOAN TO CONSTRUCT A RETIREMENT HOME AT COLLARD LAKE AS FAR BACK AS 1971. I WAS GOING TO DO THIS AFTER RETIRING FROM ACTIVE MILITARY SERVICE. AFTER SERVING 24 YEARS ACTIVE DUTY, MY REQUEST TO USE MY VA ENTITLEMENT AND BUILD MY HOME WERE DENIED IN FEB 81. A COUNTY SUPERVISOR TOLD ME IN WRITING, TO NOT BE CONCERNED — AS THE 2 YEAR MORATORIUM WOULD AUTOMATICALLY "SUNSET" IN DEC. 1982. I PATIENTLY CONTINUED TO RENT AND RETAIN MY VA ENTITLEMENT. OBVIOUSLY, THE COUNTY DIDN'T KNOW WHO THEY WERE UP AGAINST. AS THE EXISTING HOMEOWNERS STILL HAVE THE MORATORIUM IN EFFECT. THEIR THREATS TO ME TEN YEARS AGO HAVE TURNED OUT TO BE NOT ONLY POWERFUL THEN, BUT EVEN MORE EFFECTIVE TODAY AS THEY'VE GATHERED EVEN MORE POLITICAL STRENGTH. YOU WILL FIND THIS OUT ON AUG 22nd. THEY ARE TOO POTENT AN ENTITY FOR EVEN THE STATE TO TAKE ON — LET ALONE A FEW PROPERTY OWNERS LIKE ME. YOU TOUCH ON THE PROBLEM IN PARA 2 PAGE 4 ITEM H. AND PARA C. PAGE G-17 (RESIDENTS SATISFIED WITH THE STATUS QUO) ETC. IT'S IS GOOD THAT YOU MENTIONED IT TWICE, HOWEVER, I DON'T THINK YOU REALIZE HOW [illegible]

IMPACT THIS "STATUS QUO ACTION" "EXISTING HOMEOWNERS" HAS HAD ON MANY FAMILIES LIKE MINE. TO HAVE YOUR LIFE-LONG DREAM OF AN OREGON RETIREMENT SMASHED IS TERRIBLE. I DIDN'T MIND WAITING THE 2 YEARS AS ADVISED TO DO BY LANE COUNTY COMMISSIONER — BUT TO WAIT TEN YEARS AND NOW SEE DATES (PROPOSALS) OF 1993 IS DEVASTATING. HOW CAN THOSE PEOPLE FORCE THE "STATUS QUO" AS YOU HAVE STATED AND GET AWAY WITH IT. WHAT HAPPENED TO THE FIFTH AMENDMENT THAT STATES IN PART — "SOME PEOPLE ALONE WILL NOT BE FORCED TO BEAR PUBLIC BURDENS WHICH, IN ALL FAIRNESS AND JUSTICE, SHOULD BE BORNE BY THE PUBLIC AS A WHOLE."

WHERE IS THE FAIRNESS AND JUSTICE IN THIS CASE?

ALSO THE LOCAL FLORENCE WATER USERS DON'T WANT ANY ACTION EITHER. THEY FEEL THAT A $3.29 INCREASE IN THEIR WATER BILL IS UNACCEPTABLE. THAT IS A SMALL PRICE TO BE FOR ASSURANCE OF QUALITY WATER FOR THEM TO CONTINUE.

I WISH YOU LUCK ON AUG. 22 AND HOPE YOU AND YOUR DEPARTMENT ARE WISE ENOUGH AND STRONG ENOUGH TO STAND UP TO THE EXISTING HOMEOWNERS LOBBY.

IT SEEMS TO ME IN AN ERA WHERE WE ARE SEEING DIMINISHING GOVERNMENTS

(4) LIKE POLAND, E. GERMANY, RUSSIA, HUNGARY, THE BALTICS AND OTHER COUNTRIES COLLAPSING THAT TO SEE LOCAL GOVERNMENTS/AUTHORITIES IN THIS COUNTRY (LANE COUNTY/FLORENCE) DOMINATE AND CAUSE AN INJUSTICE ON THE TAX PAYERS IS MOST UN-ACCEPTABLE.

THANK YOU,

Dick Sargent + FAMILY
6669 TWIN OAKS. DR.
PARADISE, CA. 95969

8/22/90

89456 Sutton Lake Rd
Florence, OR 97439

RECEIVED
AUG 27 1990
WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

DEQ
Water Quality Division
811 S.W. Sixth Avenue
Portland, OR 97204

Dear DEQ,

This letter is in regards to the proposed revision of the water quality standards for the Clear and Collard Lakes. Please do not lower the phosphorous or nitrogen threshold limits in either lake.

The limits that DEQ set in 1983 have apparently worked, although the threat from motorboat use and ATV's to the quality of our water supply are still present. The cost of a water treatment plant would have to be borne by the people dependent upon the drinking water, not those who would potentially degrade the water quality.

We have a rare, high quality, water source currently. It would be prudent to retain or even strengthen the water quality standards in order to prevent a costly expenditure for a water treatment plant.

Thank you for considering my comments.

Sincerely,

Craig A. Burns

Craig Burns

Dick Nichols - FYI
WQ

Aug 24 - 90

Dear Sir:

The residents & users of Heceta Water Dist. in the Florence area should not be fooled, the current moratorium & sewering alternatives in the Collard Lk. & Clear lake watershed are not so much about water purity as they are about five major land owners possessing Hundreds of F2 & marginal land acres & are trying to circumvent LCDC Rules & with the support of Ellie Dumdi will develope the area for a full build out. Even now there are Roads & even a boat launch put in & around Clear Lake, "your drinking water" There will be & already have been attemps made to rezone. The few

Homes that have been built within the watershed have not caused any degregation of water quality in the last Five years.

Now is the time to back Heceta Water District's alternative plan for a buy out of any undeveloped property & preserve the future drinking water supply.

No more developement
No sewers & no more density

Leni Loeblein
P.O. Box 1893
Florence, OR 97439

Bill: A number of these have been coming in to be included in the hearing record. Generally letters of this type are not responded to.
If you believe differently, please advise.
Thank you.
Julie

CERTIFIED MAIL
RETURN RECEIPT

06103 View Road
P.O. Box 217
Florence, OR 97439

997-6186

August 20, 1990

Water Quality Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Dear Sirs and Madams:

In accordance with the August 1, 1990, Department of Environmental Quality Public Notice of a public hearing in Florence concerning the Clear Lake watershed, my written comments are enclosed.

Sincerely,

Walter H. Drew

Walter H. Drew
06103 View Road
P.O. Box 217
Florence, OR 97439

997-6186

August 20, 1990

Prepared Statement on Proposed Environmental Quality Commission Rule Changes for Clear Lake (near Florence) Modifying OAR 340-41-270 Special Policies and Guidelines for the Mid Coast Basin and OAR 340-71-460(7) Moratorium Areas for On-Site Sewage Disposal Systems

Summary

The rule changes which the Department of Environmental Quality proposes are a roundabout attempt to appease several people who own land bordering on Clear Lake and who want to build houses there.

The Department should have resisted the pressure brought by these people and should have carried out its mandate to protect the water supply. Instead, the Department has recommended lifting the existing moratorium on new septic systems around Clear Lake.

The Environmental Quality Commission should reject the proposed rule changes, review the Department's performance in the case, and consider asking for the resignation of the Department's director.

Preface:
Insufficient Notice Invalidates Hearing

The August 22, 1990, hearing which the Commission authorized does not satisfy the legal requirements for the public hearing which must take place before the Environmental Quality Commission (EQC) can change its rules for Clear Lake.

State law requires that the notice of the hearing be dated more than thirty (30) days before the hearing. However, the date of issue of notices for the August 22, 1990, meeting was August 1, 1990, only twenty-one (21) days before the meeting.

I have informed the Chairman of the Environmental Quality Commission by letter of the reason why this meeting cannot constitute a valid hearing and have told him that I reserve my right to contest any changes in the Clear Lake Watershed rule if a valid hearing has not first been held. See Appendix "A".

Nevertheless, without prejudice to the above objection I offer the following comments on the the Clear Lake rule changes which the Department of Environmental Quality (DEQ) has proposed.

COMMENTS

I am a member of the Collard Lake Area Watershed Supporters, a non-profit neighborhood association registered with the Lane County Government. (The Collard Lake Watershed forms an integral subordinate part of the Clear Lake Watershed).

I own land in the Clear Lake Watershed and use and depend on water drawn from Clear Lake.

Others will explain how the rule changes which the Department of Environmental Quality (DEQ) recommends would endanger rather than protect the pristine Clear Lake water supply of drinking water for 9,000 people.

In particular the Commission should review the letters of June 25 and July 17, 1990, to it from the Heceta Water District for discussion of why approval of Case IV, the only one which the DEQ recommends, "would pose a very definite and direct threat to the purity of the water at Clear Lake."

My comments focus instead on special interest pressures on DEQ and on what the public can do if the Commission regrettably approves the rule changes proposed by DEQ.

A. SPECIAL INTEREST PRESSURES TO CHANGE THE EQC RULE SO AS TO PERMIT HOUSING CONSTRUCTION ON CLEAR LAKE

The Department of Environmental Quality has evidently buckled under heavy sustained pressure from interests determined to see construction on Clear Lake. As a DEQ staff report of June 8, 1990, approved by the DEQ Director, Fred Hansen, states to the Commission,

"The inability to develop their properties has caused the property owners to put increasing pressure both on Lane County and the Department of Environmental Quality."

Participants in the pressure campaign against DEQ and, ultimately, against the Commission have included Aaron U. Jones, Gordon Brian Vincent M. Howard, Robert L. Franks, Robert L. Merz, Shirley M. Merz, Marcia Lee Smith -- all Clear Lake landowners -- and their attorney, Dale A. Riddle.

See Case No. 87-6462-E in the U.S. District Court for the District of Oregon. The Clear Lake landowners named above were all plaintiffs. The Heceta Water District; Lane County; and the State of Oregon, by and through its Environmental Quality Commission, were the defendants. The plaintiffs alleged that they were deprived of their property without due process of law. This case was dismissed by the judge.

Unjustified Fear of Possible Lawsuit Based on 1987 U.S. Supreme Court Decision

The DEQ may be intimidated in particular by fear of a lawsuit by Aaron U. Jones and others on the grounds that the existing EQC rule violates the Takings Clause and the Just Compensation Clause of the Fifth Amendment to the U.S. Constitution, as incorporated against the States by the Fourtenth Amendment.

According to a statement by Dale A. Riddle, attorney for Aaron U. Jones and some other landowners, before the Florence City Council on July 26, 1988, as recorded on pages six and seven of the council's minutes, Riddle communicated with a DEQ attorney after a federal judge refused to decide a lawsuit to have the moratorium declared illegal. The DEQ attorney, according to Riddle's statement, asked if a solution could be worked out for the watershed before the landowners refiled in state court.

According to the same Riddle statement of July 26, 1988, during Riddle's communication with DEQ's attorney solutions were determined, and they were for a filtration system plant, a sewer system in the Collard Lake subdivision, or condemnation of all properties.

There is nothing in the public record to show that DEQ's attorney indicated to Riddle any possibility that DEQ might choose to defend against a new lawsuit.

Two requests by me to DEQ under the Oregon Public Records Law for documents failed to produce any record of what DEQ and Riddle discussed at their meeting.

The first request, on December 13, 1989, asked for each 1988 or 1989 document which mentioned the interest of Aaron U. Jones in the lifting of the Clear Lake moratorium.

The second request, on May 19, 1990, asked for each document referring to a meeting in the summer of 1988 between DEQ officials and Riddle "at which DEQ officials indicated willingness to recommend removal of the Clear Lake Watershed moratorium provided that the Collard area was sewered." (In an August 19, 1988, letter to me, Riddle had stated, "This office recently took part in a meeting with DEQ officials who indicated a willingness to remove the moratorium provided the Collard Lake area was sewered.").

In a June 14, 1990, letter of reply to me, Fred Hansen, Director of DEQ, stated: "We presume the meeting referenced in the letter is one which occurred on May 9, 1988. There are no minutes or other notes concerning this meeting."

Later in the year, Riddle stated in a public meeting in Florence on October 27, 1988, as reported by The Register-Guard the following day, that if nothing were done, his clients were prepared to pursue legal action to have the moratorium lifted and that he was confident the lawsuit could be won, but that his clients preferred to work with state and local authorities.

Meanwhile, a myth developed that a 1987 U.S. Supreme Court decision required governmental bodies to compensate private landowners for any restrictions placed on the use of their land.

Lane County, for example, withdrew its moratorium on granting septic system permits for land in the Clear Lake watershed several months after the U.S. Supreme Court decision because of fear that the county might become liable for landowner claims for loss of use of their property.

The Heceta Water District unintentionally helped propagate the misperception in a June, 1990, newsletter sent to customers, as follows:

> "Also in 1986 <sic>, a U.S. Supreme Court decision ruled that landowners must be compensated when government regulations bar them, even temporarily, from using their property."

In fact, the widely publicized U.S. Supreme Court decision of June 9, 1987, Case No. 85-1199, FIRST ENGLISH EVANGELICAL LUTHERAN CHURCH OF GLENDALE v. COUNTY OF LOS ANGELES, CALIFORNIA, stated, inter alia:

> ". . . where the government's activities have already worked a taking of all use of property, no subsequent action of government can relieve it of the duty to provide compensation for the period during which the taking was effective." <Underlining supplied>.

The U.S. Supreme Court decision also stated:

> "We limit our holding to the facts presented, and of course do not deal with the quite different questions that would arise in the case of normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like which are not before us."

The owners of property on Clear Lake have not lost all use of their property because of the existing Environmental Quality Commission rules. They can still engage in forestry, so long as it is in accordance with the Oregon Forestry Practices Act.

Furthermore, the existing Commission rules do not interfere with any pre-existing property interest of the Clear Lake owners. The land has been zoned F-2 for forestry, not Rural Residential for building homes.

Indeed, in the abandoned 1987 lawsuit (Case 87-6462-E), the attorney for Aaron U. Jones and the other plaintiffs wrote in a memorandum of November 10, 1987, as follows:

> "For purposes of clarity, it should be pointed out that Plaintiffs have not alleged a taking under the Fifth Amendment, but a deprivation of property without due process and a denial of equal protection under the Fifth and Fourteenth Amendments to the United States Constitution."

Thus there is no reason to believe that a lawsuit by Aaron U. Jones and associates could succeed on the grounds of unconstitutional taking.

Benefit to Commission from Defending against Takings Clause Lawsuit

The Environmental Quality Commission, which has the resources of the Oregon attorney general to help defend it, should not cower from fear of a takings clause lawsuit. And it should not make concessions in an attempt to avoid being sued.

Instead, the Commission should welcome a lawsuit based on a claim of taking Clear Lake watershed property. A successful defense would help protect the freedom and flexibility not only of the Commission but other state and municipal corporations enacting and enforcing environmental rules and regulations.

The City of Florence Compromised and Coopted

During a dry spell in the summer of 1988 the City of Florence needed extra water from Clear Lake. The city had to ask Aaron U. Jones to allow the Heceta Water District temporarily to pipe across his land more than an automatically permitted one million gallons a day in order to meet the city's shortfall.

Jones granted the Florence request. But at the same time Jones made it clear through his attorney, Dale A. Riddle, that he expected the city to go forward with a "good faith commitment" to to build a sewer to serve the Collard Lake subarea of the Clear Lake Watershed. See Appendix "B" for full text of a July 25, 1988, letter from Riddle to Wilbur Ternyik, Mayor of Florence, setting forth the Jones understanding. A copy of Ternyik's August 5, 1988 letter of reply to Riddle is provided as Appendix "C". The key sentence in the Ternyik letter reads as follows:

> "There is unanimous agreement by this <Florence City> Council that we pledge good faith commitment to efforts towards progress in making our statutory authority to build and operate a sewer plant serving existing and future subdivisions within the Clear Lake Watershed."

Since that summer of 1988 the City of Florence has indeed faithfully supported the sewering of the Collard Lake subarea and the lifting of the Environmental Quality Commission's moratorium on new septic systems around Clear Lake, although the watershed and the Collard Lake subarea are outside the city's urban growth boundary.

In meetings of the Clear Lake Watershed Coordinated Resource Management and Planning (CRMP) Committee, the City of Florence has supported Riddle's arguments and followed his leadership. (Riddle participates as a full member of the CRMP Committee as the representative of Jones and of several other owners of land bordering on Clear Lake).

The City of Florence produced and distributed to the CRMP Committee a research report, "Feasibility of Sewering Clear Lake Subdivisions," dated November 14, 1989, in support of Riddle positions.

The Smoke and Mirrors of the CRMP Process

In the spring of 1989, Lane County asked the Siuslaw Soil and Water Conservation District, based 65 miles from Clear Lake in Eugene, to create and sponsor a Comprehensive Resource Management and Planning (CRMP) Committee to develop a plan for managing the Clear Lake Watershed.

The authority for this CRMP Committee ostensibly resided in a June, 1988, memorandum of understanding signed by the DEQ Director, Fred Hansen; by the State Conservationist of the U.S. Soil Conservation Service, Jack P. Kanalz; and by some other officials. This document committed them as follows:

> ". . . to cooperate to the fullest degree to (1) identify opportunities for using the CRMP process and (2) help develop and implement coordinated resource management plans in Oregon."

From internal Lane County documents it is clear that the purpose of the county in asking for the CRMP Committee was to obtain a CRMP recommendation to the Environmental Quality Commission to lift the moratorium on new septic systems around Clear Lake.

A February 16, 1989, memorandum from Peter Thurston, the Community and Economic Development Coordinator for Lane County, to the County Board of Commissioners states that Clear Lake "may qualify for a Coordinated Resource Management Plan which may include the required facility plan that addresses DEQ moratorium requirements."

The Thurston memorandum states explicitly that the purpose "will be" to "participate in presentation to the state Environmental Quality Commission (EQC) and DEQ."

The Siuslaw Soil and Water Conservation District (SS&WCD) readily agreed to sponsor and conduct the CRMP committee.

In a May 15, 1989, letter to CRMP participants, William "Fuzzy" Gates, a member of the Board of Directors of the Siuslaw Soil and Water Conservation District, stated,

> " . . . we feel the Clear Lake Moritorium <sic> can also be eliminated through the development of a Coordinated Resource Management Plan." He stated in the same letter, "We are looking forward to a productive solution to the Clear Lake Moritorium <sic> through the C.R.M.P. process."

Of the fifteen participants whom the SS&WCD has appointed to the CRMP committee, only two own land in or reside in the Clear Lake Watershed.

One is Robert Sleeper, a member of the board of directors of the Heceta Water District. He has never claimed to represent other landowners or residents and has spoken only for the water district.

The other landowning participant is Michael J. Keating. Keating is an officer of an association called "Coalition for the Preservation of Clear Lake as a Municipal Water Source for the City of Florence and Heceta Water District." However, he represents only some of the watershed landowners, probably a minority. I and many other landowners have never given him or any one else authority to represent us. (See Appendix "D" for my May 20, 1989, protest to SS&WCD over its landowner selection process).

The CRMP committee has been dominated by the non-landowning and nonresident appointees, including representatives of Lane County, the City of Florence, and the Oregon Department of Environmental Quality, plus Dale A. Riddle, representing some absentee owners of land bordering Clear Lake who have wanted to get the EQC moratorium lifted so that they could build there. Except for Sleeper and Keating and occasional surrogates speaking for them, private individuals who own land or reside in the watershed have never been allowed to participate in the Clear Lake Watershed CRMP, which has been meeting since June, 1989.

The SS&WCD has now announced a public hearing, the first, by the Clear Lake Watershed CRMP Committee on September 11, 1990, well after the closing date established by the Environmental Quality Commission for comments on the rule changes proposed by DEQ.

Meanwhile the CRMP committee will have completed its own comments to the Commission within the Commission's own August 24, 1990, deadline, thus neatly finessing any public input into the CRMP committee recommendations.

The DEQ is now the main source of pressure on the SS&WCD to push ahead in a hurry to get a CRMP committee recommendation before the Environmental Quality Commission. When I asked the board of directors of the SS&WCD at its monthly meeting on August 6, 1990, where the heavy pressure for speedy CRMP action was coming from, Noland Huntington, Secretary-Treasurer of the SS&WCD, said "Dick Nichols." Nichols is DEQ's action officer for the Clear Lake Watershed. He is the drafter of the proposed rule changes currently before the Commission.

CRMP Committee Lacks Official Decision-Making Powers

The Clear Lake Watershed CRMP Committee operates as a private body under Oregon law, in disregard of the Public Meetings Law and Public Records Law. But the committee implies that it has quasi-official public status in order to give clout to its "decisions."

The membership of some governmental officers and the receipt of some governmental funds, supplies, and services do not make the CRMP committee a public body or an official body. CRMP is not mentioned anywhere in Oregon or U.S. statutes.

The CRMP committee does not honor written requests for advance notice of meetings. It does not keep minutes or record votes. It does not make its files available for public inspection. And it has no rules of procedure or by-laws. It changes its practices as it goes to suit the wishes of its leaders.

Thus the CRMP Committee cannot claim or exercise the authority of an Oregon public body. It can only make recommendations, like a Chamber of Commerce or a private lobbying organization, and then only in the name of its own members.

Lane County Commissioner Ellie Dumdi, for example, is a participating and voting member of the CRMP Committee by virtue of her acceptance by SS&WCD officers. But she does not necessarily represent Lane County and cannot commit the county in the committee. The county board of commissioners has merely named her liaison officer with the Clear Lake Watershed CRMP Committee.

The Soil Conservation Service of the U.S. Department of Agriculture created the CRMP format in 1987 and has been promoting it ever since. In the case of the the Siuslaw Soil and Water Conservation District, the sponsor of the Clear Lake Watershed CRMP, the Soil Conservation Service has provided financing, staff, office space, and, perhaps most important, detailed guidance.

Wilson Scaling, chief of the Soil Conservation Service, wrote to me concerning the Clear Lake CRMP on July 12, 1989, as follows:

> "The purpose of these public meetings called by the Soil & Water Conservation District is to bring forth all concerned parties to express their views. Everyone should be invited to attend and make their feelings known."

In another letter to me on May 18, 1990, again about the Clear Lake CRMP, Scaling repeated his unfulfilled assurance of public participation, as follows:

> ". . . Coordinated Resource Management Planning (CRMP) is a process that brings together all levels of local government and the general public to discuss all issues and concerns of the community. . . . . The process in Oregon has allowed the people to define their problems and determine solutions together...people helping themselves."

Other landowners and I have been waiting for more than a year to speak before the CRMP Committee, ever since its first meeting on June 1, 1989. In spite of Scaling's assurances, clearly I and other landowners will not be permitted to address what remains essentially a kangaroo committee, stacked with members chosen to produce a predetermined recommendation to lift the moratorium from properties bordering on Clear Lake, until it is too late -- until after the CRMP Committee has already made its presentation to the Commission.

The Commission may be surprised to learn that its June 29, 1990, decision to authorize a public hearing on August 22 was prearranged by DEQ in compliance with an earlier CRMP determination. A July 11, 1990, memorandum from Peter Thurston, the Lane County Community and Economic Development Officer, to the Board of County Commissioners contains the following statement:

> "At the April 6 <CRMP> meeting it was also determined that a Environmental Quality Commission (EQC) required hearing should be held in late August. Based on the CRMP schedule DEQ staff arranged for the EQC hearing to be held in Florence on August 22."

Wilson Scaling has recently left as chief of the Soil Conservation Service as the first of a number of U.S. Department of Agriculture officials being replaced. Perhaps CRMP itself will soon go away too. Meanwhile, the Environmental Quality Commission should weigh any possible forthcoming CRMP recommendations carefully for evidence of special pleading in favor of the few people who want to build houses on Clear Lake.

Campaign Contributions and Political Interventions

Neil Goldschmidt, in his 1986 campaign for election as governor, received $15,000 from the Seneca Sawmill Co., in Eugene. Aaron U. Jones, one of owners of land on Clear Lake, is president of the Seneca Sawmill Co. Jones also donated $2,100 worth of use of his airplane, for a total of $17,100, the most donated by any Oregon timber company to Goldschmidt. These contributions came after Goldschmidt asked to meet Jones in 1986. The Register-Guard (8-6-89) published the following report on the Goldschmidt-Jones meeting:

> "Aaron Jones, president of Seneca Sawmill Co. in Eugene and a lifelong Republican, said he was surprised in 1986 when Goldschmidt, a Democrat, asked to met with him. Scheduled for a 15-minute conversation in Jones' office at the sawmill, the two men 'were still going at it after five hours,' he said."

For Goldschmidt's 1990 campaign for governor, now aborted, the Seneca Sawmill Co. gave $10,000.

The five members of the Environmental Quality Commission are appointed by the governor, and the Commission appoints the director of DEQ. No significant information has been made available to the public concerning communications about the Clear Lake Watershed between (1) the Governor's office and (2) the Commission or DEQ. A documents search conducted under the authority of the Oregon Public Records Law may be appropriate.

Lane County Commissioner Steve Cornacchia commented on the Environmental Quality Commission's Clear Lake Watershed moratorium at a meeting of the board of county commissioners on May 5, 1989. According to the Siuslaw News of May 10, 1989, he said that perhaps the county should apply pressure, presumably to get the moratorium lifted. He said the county could withhold issuing permits for the extension of water lines by the Heceta Water District or push for a sewer system in the Collard

Lake section of the watershed. Cornacchia called the Heceta Water District the "culprit" in the stalemate over the watershed.

Cornacchia, as of August 14, 1990, had not responded to a July 6, 1990, request I made under the Oregon Public Records Law to Lane County to inspect certain documents in the county's possession concerning the Clear Lake Watershed. See Appendix "E" for a copy of my request. All other Lane County commissioners and officers concerned provided access to the records or stated that they had no such records.

Cornacchia received a $500 contribution from Seneca Sawmill Co. for his 1990 campaign for reelection as Lane County Commissioner. Dale A. Riddle, who has represented Aaron Jones of the Seneca Sawmill Company in Clear Lake Watershed matters, wrote a letter which The Register-Guard published endorsing Cornacchia for reelection in 1990.

Lane County Commissioner Ellie Dumdi, who has been pushing for removal of the existing EQC moratorium, received a $250 contribution from Seneca Sawmill Co. for her successful 1990 reelection campaign.

At the request of Commissioner Dumdi, State Senator John Brenneman called a meeting in Salem with DEQ officials on May 18, 1989. A DEQ official, Robert Baumgartner, informed me on May 22, 1989, that as far as he knew DEQ had not prepared any memorandum or minute of what was said at the meeting, but that the DEQ did say at the meeting that its moratorium could be lifted with sewerage and the development of appropriate facilities. A May 26, 1989, letter from Commissioner Dumdi to Senator Brenneman thanking him for arranging and hosting the meeting is consistent with Baumgartner's statement to me.

The summary reports of campaign contributions for the 1988 primary and general elections do not show any contributions to Brenneman by Clear Lake landowners or by the Seneca Sawmill Company.

B. RECOURSES IF COMMISSION APPROVES THE RULE CHANGES WHICH DEQ HAS RECOMMENDED

If the Commission regrettably approves rule changes along the lines which DEQ proposes, there will still be some ways the public can stop Lane County from issuing septic system and building permits for properties which drain directly into Clear Lake.

An initiative petition for a ballot measure would have to be a county-wide petition, which would require about 10,000 signatures by qualified voters.

The initiative ballot measure might, for example, require Lane County to adopt an ordinance providing as follows:

> "A person shall not construct, reconstruct, place, or enlarge any building or structure, any portion of which is located within the boundary line of the Clear Lake Watershed."

The public could also lobby Lane County commissioners to adopt a policy and rules against the approval of new septic systems draining directly into Clear Lake. Not all of the present county commissioners are committed to facilitating new construction or the installation of septic systems on Clear Lake.

Formal appeals to overturn damaging Lane County actions can slow or stop County moves to permit subdivision and development of land around Clear Lake. Close monitoring of County land use actions would be necessary in order to file appeals in the short time periods allowed.

Lawsuits might challenge possible Lane County requirements for Collard Lake and Mercer Lake Heights subdivision property owners to pay for sewering their houses when it is unnecessary for public health or for the protection of the quality of drinking water and when such sewering serves only to enable persons owning property on Clear Lake to build in that area.

New state legislation to strengthen restrictions on new construction and septic systems which threaten pristine water sources is always possible. Sometimes it is more cost-effective to get the law changed than to fight environmental abuses through litigation under existing law.

Conservation easements of land around Clear Lake have been ignored in DEQ's proposed new rule package. A conservation easement is a contractual limitation on the use of land by the landowner so as to preserve natural or other features at less cost than would be required to buy the land outright. Compensation to the landowner usually comes through reduced taxes. Alternatively, Lane County could sell off unused land near the watershed and use the proceeds to pay indemnities to landowners who grant conservation easements. State laws governing conservation easements are found in ORS Chapters 271, 273, and 390.

Government grants to finance buyouts or conservation easements of land around Clear Lake have barely been considered in DEQ's new proposed rule package.

In particular, the DEQ package omits any mention whatsoever of the federal Land and Water Conservation Fund created in 1964 by Public Law 88-578. The fund is loaded with money, taking in nearly $1 billion a year, partly from offshore federal oil leases, but only a quarter of that amount has been spent in recent years; the rest has been banked. Congressional action would probably be necessary to get an allocation for Clear Lake Watershed, but we are blessed with well placed Congressmen on the right committees. The City of Florence already gets some money from the fund for use within the city limits.

Besides possible federal funding, there are state loan programs such as the Oregon Water Development Loan Program. When local financing contributions are combined with possible state and federal programs, it may well be possible to carry out a plan for the ultimate buyout of all land in the watershed.

II. RECOMMENDATIONS

The Commission should reject the rule changes proposed by the DEQ.

If the Commission nevertheless wishes to see the existing rule improved, it should ask the DEQ to disentangle the unrelated issues of (1) new construction and new septic systems inside Clear Lake Watershed, (2) sewering, and (3) buying up watershed land and placing it in public trust.

Any revised rule should require the following essential provisions:

1. No new building construction and no new septic systems anywhere in the watershed.

2. Any significant pollution found by generally accepted scientific tests to be caused by existing housing or septic systems should be stopped promptly and effectively, whether by sewering, condemnation, or other remedial action.

3. A long-range program of buying up all land in the watershed and placing it in public trust should be supported by the DEQ within the limits of its authority and resources.

The Environmental Quality Commission should also review DEQ's performance in the Clear Lake Watershed case during the past two years. If it finds, as I have concluded, that the DEQ has been unprofessionally craven and intellectually and scientifically dishonest in trying to accommodate special interest pressure, the Commission should issue a reprimand and should consider asking for the resignation of the DEQ director.

06103 View Road
P.O. Box 217
Florence, OR 97439

997-6186

August 6, 1990

Mr. William P. Hutchison, Jr.,
Chairman,
Environmental Quality Commission
333 SW Taylor Street
Portland, OR 97204-2496

Re: Inadequate Notice for EQC Hearing in Florence

Dear Chairman Hutchison:

The written public notices issued for the August 22, 1990, Environmental Quality Commission hearing in Florence on proposed rule changes for Clear Lake do not meet the requirements of state law.

Oregon Administrative Rule 340-71-460 is applicable in this case. The first two paragraphs read as follows:

"(1) Whenever the Commission finds that construction of subsurface or alternative sewage disposal systems should be limited or prohibited in an area, it shall issue an order limiting or prohibiting such construction.

(2) The order shall be issued only after public hearing for which more than thirty (30) days notice is given."

This rule in turn cannot be altered by the Commission, according to Oregon Revised Statute 183.335, without prescribed notice of the Commission's intended action.

Two notices of the August 22, 1990, hearing were issued. One, dated August 1, 1990, was issued by the Oregon Department of Environmental Quality as a Public Notice. The other notice appeared in the August 1, 1990, issue of the Oregon Secretary of State Bulletin, Vol. 30, No. 2.

Both notices are deficient in that they do not give more than thirty days notice as required. The date of the August 22, 1990, hearing is only 21 days after the August 1, 1990, date of issue of each notice.

I reserve the right to challenge any Clear Lake rule change which the Commission may make without first holding a valid hearing for which the required notice has been given.

Sincerely,

Walter H. Drew

Walter H. Drew

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EILEEN G. SIMPSON

OF COUNSEL:
LEWIS HOFFMAN

GLEAVES
SWEARINGEN
LARSEN
POTTER

July 25, 1988

Mr. Wilbur Temyik, Mayor
City of Florence
P.O. Box 1190
Florence, OR 97439

Re: Clear Lake Watershed

Dear Mayor Temyik:

This letter is in response to your request that my client, Aaron U. Jones, allow the Heceta Water District to remove in excess of one million gallons of water per day from Clear Lake in order to alleviate the current water shortage being experienced by the City of Florence. As you are aware, Mr. Jones is one of the central figures involved in working out a long-term solution to the Clear Lake Watershed controversy. Mr. Jones believes that the solution which offers the most benefits to all parties involved, including the property owners, water users, recreationalists and the City of Florence, is to build a sewer in the Watershed to serve the Collard Lake area with the ability to expand, if and when the need arises, to serve the entire Watershed. This would allow any sewage created by development and use of the land to be carried out of the Watershed while at the same time maintaining the quality of Clear Lake, providing an inexpensive water supply to all water users in the area, including City of Florence users.

Mr. Jones appreciates the support that the City of Florence has given the sewer project. Because of this, Mr. Jones is willing to grant the Heceta Water District the right to remove in excess of one million gallons of water per day from Clear Lake on a temporary basis until the current water shortage subsides without requiring a formal commitment from the City to go through with the sewer project. This offer is based upon the City of Florence's good faith commitment to continue to make progress to: (1) go forward with the sewer project; (2) assure that all property owners in the Watershed have the flexibility to hook up to the sewer, if and when the need arises, by including all properties within the Watershed within the Urban Service Area; and (3) work out a system to equitably distribute the cost of the sewer among those parties who benefit, including the property owners and the water users.

Mr. Jones looks forward to establishing a strong working relationship with the City of Florence. We trust that this letter provides you with the information you needed. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Dale A. Riddle

Dale A. Riddle

lp
cc: Aaron U. Jones

CITY OF RHODODENDRONS
FLORENCE · · OREGON · · 1893

City of Florence

P.O. BOX 340
250 HIGHWAY 101 NORTH

PH. (503) 997-3436
FLORENCE, OREGON 97439

August 5, 1988

Dale Riddle
975 Oak Street
P.O. Box 1147
Eugene, Oregon 97440-1147

Re: Clear Lake Watershed

Dear Dale:

On behalf of the Florence City Council and citizens of Florence, I wish to express our thanks for your letter of August 3, 1988. This offer by your client Aaron Jones will get us past what was rapidly approaching an emergency situation.

After our phone conversation yesterday, I contacted all members of the City Council about the intended content of this letter. There is unanimous agreement by this Council that we pledge good faith commitment to efforts towards progress in making our statutory authority to build and operate a sewer plant serving existing and future subdivisions within the Clear Lake Watershed. This assures that all land owners eligible under existing zoning would be eligible to hook up to the sewer system when their land is developed. If the City is involved in building and operating the plant, we would try to develop a system of equitably distributing the cost of the sewer project among those parties who benefit including property owners and water users.

Finally, as I discussed with you over the phone, the City can not guarantee success in our efforts. The County must take the lead in exploration of forming a sewer district. That district, if formed, will have sole authority on who is to build and operate the plant. One further complication is the coming City election where it is possible that on January 1, 1989, only one member of the current Council will still be around.

Sincerely yours,

Wilbur Ternyik
Mayor

WT:lg

cc: Ellie Dumdi
Dwight Reindl

P.O. Box 217
Florence, OR 97439

May 20, 1989

Mr. William "Fuzzy" Gates,
Member
Siuslaw Soil and Water
Conservation District
954 13th Avenue, West
Eugene, OR 97402

Dear Mr. Gates:

I refer to your May 15, 1989, letter to proposed participants in Coordinated Resource Management Planning (CRMP) sessions concerning the Clear Lake Watershed.

Guideline number two in your letter seems improper. It provides that "landowners within the watershed select a representative that is empowered to make decisions for their group."

Short of forming a special district, there is no apparent way landowners can empower anyone to make decisions for the group as such without a formal written grant of power from each and every member of the group, which seems impossible.

In my case, as an owner of land in the watershed I refuse to grant anyone the power to represent me or to speak for me at any CRMP session or to bind me to any decision or recommendation which any CRMP session may make.

Sincerely,

Walter H. Drew

cc: Heceta Water
District

06103 View Road
P.O. Box 217
Florence, OR 97439

997-6186

July 6, 1990

Ms. Margo Drivas,
Assistant Administrator
Lane County Government
Courthouse - Public Service Building
125 East 8th Avenue
Eugene, OR 97401

Dear Ms. Drivas:

In accordance with our telephone conversation today, this letter revises and supersedes my July 5 letter requesting certain public records.

This is a request under the Oregon Public Records Law to examine and possibly copy within the next two weeks certain documents, including computer files and informal notes, in the possession of the Lane County Government, as follows:

(1). All records of communications since the beginning of 1988 concerning the Clear Lake Watershed north of Florence between the following private individuals, on the one hand:

(A) Aaron U. Jones
Vincent M. Howard
Gordon Brian Howard
Dale A. Riddle

and the following units of Lane County, including their officers and staffs, on the other hand:

(B) Board of Commissioners
Legal Counsel
Planning Division
Environmental Health Services (H&HS)
Planning Division, and
Community and Economic Development Office

(2). All records of internal Lane County Government communications between, among, and within the above named County units and their personnel since the beginning of 1988 concerning the Clear Lake Watershed, including any relevant Board minutes, memoranda, resolutions, and orders.

As provided by ORS 192.440 a fee waiver for the cost of making these documents available is requested on the grounds that making the record available will primarily benefit the general public rather than me as a private individual. I will disseminate any significant information obtained to the Clear Lake Watershed Management Plan (CRMP) Committee, to the Collard Lake Area Watershed Supporters (a recently formed association of homeowners and residents), and to the audience at the public hearing scheduled by the Oregon Environmental Quality Commission in Florence on August 22. The public interest in the documents derives from controversy over whether or how the Environmental Quality Commission should change its rule concerning the Clear Lake Watershed and from the need for the public to know of any undeclared ex parte understandings or arrangements between (1) persons or units in the Lane County government and (2) private individuals interested in changing the Commission rule for the Watershed.

I am prepared to come to Eugene on fairly short notice to inspect the documents. Please advise me of the earliest convenient time and place.

Thank you for your assistance.

Sincerely,

Walter H. Drew

Heceta Water District
87845 Highway 101 North
Florence, Oregon 97439

Honorable Mayor and
Council Members
Florence City Council
Florence, Oregon;

Enclosed you will find a supplemental CRMP draft prepared by Heceta Water District and our response to the August 22, 1990 EQC Hearing for the Clear Lake Watershed. The draft and cover letter describe our current position regarding protection of the Clear Lake water supply.

We believe Clear Lake is of vital importance to the future growth and development of the Florence area. Accordingly, we believe it is to our mutual interests to work together to reach a satisfactory plan for Clear Lake that will assure the pristine quality of the water is not impaired or endangered. With mutual support, such a plan can be formulated.

Most of our past differences with the City have centered on the continuing annexations within the Water District. The District has been compelled to protest the annexations because they continue to erode our tax base. Each reduction in the tax base further limits our authority for bonded indebtedness to raise money for needed improvements and future expansion. With each annexation, the City takes our water lines, our fire hydrants, our customers, and our future bonding authority.

A mutually acceptable service boundary would eliminate this problem. The Water District believes the existing service boundary should be retained. We feel we can provide and maintain our service district within the city limits. The issue must be settled eventually and the best time to do it is now. With a service boundary agreement, we can move forward and cooperate with the City to meet the future growth and water needs of the Florence area. We want to cooperate with you and we solicit your support in protecting a priceless water supply.

Sincerely,

Steve Olienyk,
Chairman

Heceta Water District
87845 Highway 101 North
Florence, Oregon 97439

Dear Clearlake Watershed Property Owner:

You recently received a set of CRMP Management Plan drafts from the Siuslaw Soil and Water Conservation District. The attached is a supplemental draft.

Although this document covers some of the same subject matter as the CRMP draft, it includes recent developments in the planning process, and more closely addresses some of the concerns of Heceta Water District and the Collard Lake residents.

The document is an attempt to clarify some of the issues and provide more detail on estimated costs to the residents and water users who will be expected to pay for whatever protective measures are finally adopted.

The document also presents a modified alternative not previously discussed with the regular CRMP group, although it has been discussed orally with the DEQ representative.

We would have preferred to submit this proposal through the regular CRMP process, but we welcome any additional ideas and alternatives. Please favor us with a reply on the enclosed questionnaire.

Steve Olienyk

Steve Olienyk
Chairman

CLEAR LAKE WATERSHED

Heceta Water District Supplementary Coordinated Resource Management Plan (CRMP)

AUGUST, 1990

Send comments to:

HECETA WATER DISTRICT
87845 Highway 101 North
Florence, Oregon 97439

PREFACE

This separate report has been prepared by Heceta Water District as a participant in the Coordinated Resource Management Planning (CRMP) process that began in June 1989.

The district feels it must take this independent direction because of numerous recent developments that have taken place outside of the planning process. These developments appear, if implemented, to threaten the quality and purity of the municipal water source.

Heceta Water District has the responsibility to protect the water and provide pure, safe drinking water to the approximately 9,000 citizens in the Florence area who drink our water. We have engaged in the CRMP planning process in the hope that a suitable management plan could be obtained to provide maximum protection for the water. According to the CRMP planning guidelines, "Consensus, not voting, is a fundamental element of CRMP" At the August 6 CRMP meeting, the F2 land owners, the county commissioner, and the city planner tried to change the procedure from "consensus to a "majority vote" system of decision making. Both Heceta Water District and the Collard Lake representatives protested the proposed change.

The guidelines also direct that if the issue still remains controversial, the moderator should work for a decision to postpone the issue rather than risk terminating the planning process because of the controversy. We believe this is the action that should be taken.

The problem of protecting the water, as well as the rights of the individual property owners, continues.

Measures to protect the watershed and resolve the DEQ building moratorium need to proceed to completion. Rather than disband the CRMP process, the two planning documents are being submitted to the property owners for consideration. One planning document represents the views of the county commissioner, the Florence city planner, and the attorney for the owners of the large undeveloped properties outside of the Collard Lake subdivisions.

The following represents the views of Heceta Water District.

DISCUSSION

Heceta Water District is a public agency, and is owned by the property owners of Heceta Water District. The board of directors and employees of Heceta Water District have a fiduciary responsibility to protect and manage the assets of the district.

The most valuable asset is the pure water supply at Clear Lake. Heceta Water District has all water rights to Clear Lake, and the value of the water is related directly to its purity.

Today the water is so pure we only treat it lightly with chlorine, as a safety measure, before piping it to our customers. If Clear Lake is allowed to become polluted, its value will be greatly reduced. It will be just another body of water . . . only useable for drinking after it has been treated.

There seems to be a belief that, by sewering and eliminating the septic systems, residential development can safely proceed within the watershed. Sewers do nothing to eliminate the other sources of pollution. These other sources—called "non-point" sources—come from rainfall running from roofs, streets and driveways. They are from herbicides, insecticides, and fertilizers. They are from soaps, paints, and oil leaks. They are from pet droppings, swimming, boating, and water skiing. In short, they are from all of the activities associated with permanent human habitation within the watershed.

All of these pollutants eventually find their way to the water. Some are flushed from the lake by outflow. Others remain. Since it takes the lake about a year and a half to flush, some of the pollutants are likely to settle to the bottom and remain.

The Department of Environmental Quality (DEQ) has issued a public notice to all people served by Heceta Water District, and people who own property, or live within the Clear Lake Watershed. The notice is to advise property owners and Heceta Water District about proposed revisions in the rules and guidelines for protecting the water quality of Clear Lake.

The proposed rules would establish phosphorous loading limitations for Clear and Collard Lakes. The rules would also require the Collard Lake subdivisions to be sewered by October 1, 1993, unless an alternative plan is submitted to and approved by the DEQ. Subject to specific conditions, the proposal would also allow some new residences using on-site septic tank sewage disposal systems to be built on F2 timberlands within the watershed.

The proposed EQC rules would allow the quality of the water to degrade in order to accommodate more development. Every ounce of additional degradation leads us one step closer to mandated construction of an expensive water treatment plant.

At the present time, there are 45 residences in the Collard Lake residentially-zoned subdivisions. There are 67 undeveloped lots within the Collard Lake subdivisions. The owners of these 67 undeveloped lots are being denied the right to use their land for the purposes for which they are zoned. These owners should be allowed to use their lands or be compensated.

The large Clear Lake lots are primarily zoned F2 for commercial timber use under Oregon land use laws. The Oregon Department of Forestry has stated:

> "The primary use of land zoned for commercial forest use should not be impaired beyond normal responsible levels by intrusion of residential and urban uses. This is clearly the intent of Oregon's land use regulations."

These F2 land owners currently must meet Land Conservation and Development Commission (LCDC) rules and conforming county codes governing residential dwellings on forest (F2) lands. LCDC rules do not allow non-business-related dwellings such as retirement or recreational vacation homes. These lands are also subject to the rules of two county coastal shoreland overlay zones: "Significant Natural" and "Natural Resource Combining." Some of the owners of these F2 lands want to build recreational residences on their land, and claim their property rights are being violated by denying their wishes.

As of this writing there is no scientific evidence that the water in Clear Lake is deteriorating. However, a 1985 study by Cooper Consultants, "Limnology and Nutrient Dynamics of Clear Lake, Oregon, Lane County," states:

> "Increased residential development around Clear Lake will increase the phosphorous loading to the lake *whether or not a sewer system is built* (emphasis added).

Despite the conclusions and recommendations contained in this study, Lane County, in 1986, proposed to sewer the Collard Lake subdivisions as a means of resolving the DEQ septic tank moratorium. This proposal was initiated without notice or consultation with the property owners. When the Collard Lake residents objected, a Collard Lake representative was allowed to join the Clear Lake Watershed Advisory Committee.

After several meetings, the committee recommended a buy-out of all properties within 500 feet of the lake. The recommendations of the committee were ignored by the county, and no other solutions were sought until 1989, when the CRMP process was started.

Sewers again became the main thrust by the county commissioner and the Clear Lake property owners wanting to build recreational residences on their land. The issue of sewering the Collard Lake subdivisions continues to be a divisive issue.

Simply stated, the Collard Lake property owners feel they are being asked to pay for a sewer system at Collard Lake so the owners of the large F2 timberland tracts at Clear Lake can build using septic systems. The county and the Clear Lake property owners pay nothing toward the construction or operation of the sewers.

Similarly, if the water is allowed to degrade to the point that additional water treatment is required, the entire financial burden falls on the Heceta Water District customers. **It costs the F2 land owners nothing.**

If protecting the water is truly the goal, it seems inconsistent to require sewers or other protective measures in the Collard Lake subdivisions, and then allow new sources of pollution to take place at Clear Lake.

Accordingly, Heceta Water district takes specific exception to rules allowing new development on F2 lands. These F2 lands are zoned for timber production, not for residential uses. Heceta Water District has no quarrel with use of these lands as zoned, but we disagree with the use of these lands for residential use.

We take exception because we believe development of any kind, no matter how benign, is an unacceptable risk to future water quality. Any reduction in pollutants achieved by sewers at Collard Lake should be held in reserve to provide a cushion of protection for the water. The savings should not be used as a lever to allow further residential development at Clear Lake. If the rules are allowed to stand as now written, a minimum of 18 new residents on septic tanks would be allowed on the large Clear Lake tracts.

Water quality standards mandated by Environmental Protection Agency (EPA) and the State of Oregon are very restrictive. Accordingly, even seemingly minor amounts of pollutants that

reach the water cannot be tolerated. If such pollution happens, treatment of the water will be required.

A normal-sized treatment plant can be expected to cost $1,000,000 to construct, and $100,000 a year to operate. This is not a one-time cost; it goes on year after year. The cost increases each year with inflation. The cost also increases with replacement, or expansion, of the treatment plant. All of these increased costs will come with continued and increased demand for water.

We think there is a better solution. Heceta Water District would prefer to purchase all of the undeveloped residential lots in the Collard Lake subdivisions, so that they may remain undeveloped. The existing 45 residences within the subdivisions would modify their septic systems to reduce phosphorous. They would also be subject to other special restrictions regarding uses and activities. These existing residences would be allowed to remain as long as no water pollution becomes evident.

It will cost an estimated $1,768,000 to buy the undeveloped residential lots within the water shed. This is nearly twice as much as a treatment plant, but it is a one-time cost. A purchase of properties requires no operation or maintenance. Once the purchase is made, the investment is not subject to inflation or operational expense. A purchase of properties to stop further residential development in the watershed is the surest way to protect the water. Over the long term, it is also the cheapest.

It is no longer permissible to say that we "cannot afford" to protect our drinking water. Given the absolute necessity of clean water we can't afford to do otherwise. Water is not destroyed, it is only used. We cannot destroy our water, but we CAN make it unusable, and that amounts to the same thing.

Buying positive, long-term protection is still affordable, but the longer we wait, the more it will cost. Heceta Water District is currently investigating possible sources of funding.

The members of Heceta Water District board are trying to meet their responsibilities. We would rather spend money to protect the water now, than spend more money later to clean up water that has become polluted.

Heceta Water District does not find any of the proposed CRMP alternatives fully acceptable. On August 6, the county commissioner ruled out Alternative II and Alternative III when she announced the county would not support rezoning to require larger size residential lots.

This leaves us to choose between Alternative I and Alternative IV. Heceta Water District finds Alternative IV far less objectionable than the high density build-out that would be allowed under Alternative I.

Although the commissioner has refused to support Alternative IV, we believe it is still a viable solution, and the only one, at present, we can endorse.

ALTERNATIVES

Heceta Water District regrets the lack of alternatives to consider. There are other possible alternatives and compromises that could and should have been considered. Too much time has been spent on political maneuvering and dissent. Too little time has been spent on exploration and inventory of the actual physical situation, and possible physical and political solutions.

As a result, the available alternatives primarily represent the polarized views of both groups. The county, the F2 land owners, and the city planner want full sewers and full build-out of all the residential lots at Collard Lake, and at least 18 new residences on F2 and Marginal lots outside of the subdivisions.

The Collard Lake residents are almost unanimously opposed to sewers, particularly if it involves a high density build-out of all of the lots. The majority are also opposed to additional development on F2 lands outside of the subdivisions.

Alternatives I and IA are essentially identical except as to disposition and treatment of the septic effluent. Alternative I proposes to pipe the effluent to Florence for treatment at the city sewage treatment plant. This alternative is more expensive to construct and more expensive to operate.

Heceta Water district objects to the common drain field proposed by the city planner because, although the drain field is outside of the watershed, it is still inside the North Florence Dunal Aquifer. The city proposal merely moves the septic effluent to a different part of the aquifer. Clear Lake and the city wells are both inside the aquifer. The enclosed Alternative IA proposal would move the common drain field outside of the aquifer.

According to the EPA, "Rapid infiltration rates into the sand cover, combined with a shallow water table, make the North Florence Dunal Aquifer highly susceptible to contamination from surface activity." EPA further states, "Direct leaching from septic tanks located in sand-covered areas adjacent to the lakes could seriously downgrade the quality of Clear Lake—the only surface source of drinking water presently used in the area."

ALTERNATIVE I

Description

Under this alternative, all homes that lie within the Collard Lake drainage (Collard Lake, Collard Loop, and portions of the Mercer Lake Heights subdivisions) would be sewered using a new method called the Septic Tank Effluent Pumping (STEP) system.

This system requires smaller sized collection lines as it carries only the liquid effluent from the septic system rather than raw sewage. The system consists of individual sealed septic tanks and pumps at each residence. The effluent generated at each residence is pumped into the main collection line and piped to the City of Florence for treatment at the city sewage treatment plant. New septic tanks will be required for existing systems that are not sealed or cannot be modified. This determination must be made on a case-by-case basis.

Owners of large, undeveloped tracts of F2 and Marginal lands would be allowed to use their lands in any manner they are legally entitled.

No new subdivisions would be permitted on either Collard Lake or Clear Lake, or anywhere within the Clear Lake watershed.

Advantages

1. Phosphorous loading from septic systems would be eliminated.
2. All property owners within the Collard Lake subdivisions would be permitted to develop their properties.

Disadvantages

1. Sixty-seven new residences could be built in the Collard Lake drainage with the resulting increased polluting impacts associated with human habitation. Cooper Consultants has declared that if the area is fully developed, Clear Lake will become polluted in 30-35 years even if sewers are built. This is because of other by-products of human occupation such as use of pesticides, chemical fertilizers, storm runoff from roofs and driveways, soil erosion, pet droppings, spillage of petroleum products, etc. So, the construction of sewers may be only a delaying action.
2. Residents of the Collard Lake and Mercer Heights subdivisions feel they are being unfairly targeted with the responsibility of protecting Clear Lake after Lane County erred in approving the subdivisions years ago.
3. Sewers at Collard Lake do not assure that the quality of the water in Clear Lake will be maintained.
4. Additional development and construction of sewer lines will destroy an already overburdened and failing private road system that is not maintained by the county. Reconstructing and repaving the 2.6 miles of roads affected can be expected to cost approximately $140,000. This would cost each of the 112 lot owners $1,250 per lot.
5. A sewer district will have to be formed and organized to construct, monitor, and operate the system.
6. Costs of construction, operation, maintenance, and administration of the sewer system are cumulative and on-going, and are subject to inflationary costs.
7. Many construction and operational difficulties can be anticipated such as routing and separation from water lines, pumping difficulties, and power outages.
8. Storm water control structures will be required by DEQ on all new construction, leaving little room to build on many of the small lots. DEQ estimates that it will cost $7,200 to construct dry wells for a 2,000 square foot house.
9. The STEP sewer system requires a different septic tank so that some of the existing property owners may have to replace their existing septic tanks. Estimated cost: $2,000 each.
10. If the effluent is piped to the Florence city plant, it may require injection of hydrogen peroxide or other chemicals to control odor and corrosion potential.
11. Erosion control practices will be required on each new residence. DEQ estimated cost: $1,000 per house.
12. On-site septic systems inspections will be required. DEQ estimated cost: $30 per residence per year.
13. Water samples will be required to monitor the quality of the lake. DEQ estimated cost: $1,600 per year.
14. Operation of the system will cost an estimated $17 per month per household.
15. The City of Florence will charge $13 per month for sewer treatment.

Costs:

The construction costs were presented by the Florence City Planner, and may not reflect a true and complete picture of the total costs involved. Heceta Water district believes the costs are low.

If the effluent is piped to Florence for treatment at the city treatment plant:

Estimated initial construction costs of the main trunkline system to Florence	$285,000	
Interest @ 7% for 30 years	398,310	
Road reconstruction	140,000	
On-site septic costs on the individual lots will be the responsibility of each individual lot owner, and is estimated to be $2,000 per dwelling.		
112 lots x $2,000	224,000	
Storm water controls, $7,200 per lot		
67 lots x $7,200	482,400	
Erosion control practices		
67 lots x $1,000	67,000	
Lake monitoring	1,600	
Septic system inspections		
$30 per year per lot x 112 lots	3,360	
Total cost		**$1,601,670**

Individual construction costs for each lot owner are estimated as follows:

Road repairs and reconstruction $140,000/112 lots	$1,250	
On-site septic tank	2,000	
Storm water controls (new construction only)		
$7,200/residence	7,200	
Erosion control practices: $1,000 per residence	1,000	
Total construction cost per residence		**$11,450**

(COSTS continued on page 11)

Estimated monthly operational costs for each property (rounded to nearest dollar) are:

City of Florence sewer charge	$13
Sewer system operation and maintenance (DEQ estimates $25–$45)	$25
On-site septic system inspections	3

Lake water quality monitoring
$1,600 per year (DEQ estimate)/112 lots 14

Interest at 7% for 30 years to amortize
on-site construction ($11,450 per property) 76

Subtotal $131

If property owners are required to pay for the main sewer trunk line as well, the monthly cost per property owner will be:

$285,000 @7% for 30 years = $1,898/month to amortize:

$1,898/112 lots $17

Total monthly cost per property $148

There is some dispute as to how the sewer costs should be shared. Collard Lake property owners feel that they have been unfairly singled out to bear the entire cost of protecting Clear Lake. Since the construction and operation is conducted solely to protect the water, it seems reasonable that the cost of such protection should be borne by all of the users of the water. A surcharge based on actual water use has been proposed as an equitable way to share protection costs.

If all water users share in the cost of construction of the main trunkline:

A surcharge of 19 cents per thousand gallons of water used would be applied to pay for the main trunk lines. This would have the effect of increasing the average domestic water bill by about $1.33 per month for all Heceta Water District users. It would reduce the Collard Lake property owners' monthly interest costs by $17 per month.

ALTERNATIVE IA

Description

Under this alternative all homes that lie within the Collard Lake Drainage (Collard Lake, Collard Loop, and portions of the Mercer Heights subdivisions) would be sewered using the STEP sewer system described in Alternative I. The effluent generated at each residence would be pumped into the main collection line to a common drain field *outside* of the North Florence Dunal Aquifer.

Owners of the large undeveloped tracts of F2 and Marginal lands would be allowed to use their lands in any manner they are legally entitled.

No new subdivisions would be permitted anywhere within the watershed.

Costs

The Florence City Planner proposed a common drainfield near Highway 101 and Mercer lake Road. Her cost estimates for this facility were estimated at $225,000 for the trunk line and drainfield. No property acquisition or right-of-way costs were included. The advantages and disadvantages would be the same as those listed for Alternative I, with the additional advantage of being cheaper to construct and with lower monthly operation costs obtained from not having to pay the City of Florence sewer charges.

If effluent is piped to a common drain field, the initial construction cost = $225,000

$225,000 @ 7% for 30 years to amortize	$539,640
Road reconstruction	$140,000
The estimated on-site septic system cost will be the responsibility of each individual lot owner, and is estimated to be $2,000 per dwelling.	
(City planner cost estimate 112 lots x $2,000)	224,000
Storm water controls: $7,200/lot 67 lots x $7,200 (DEQ estimate)	482,400
Erosion control practices 67 lots x $1,000 (DEQ estimates)	67,000
Lake monitoring (DEQ estimate)	1,600
Septic system inspections (DEQ estimate) $30 per year per lot x 112 lots)	3,360
Total cost:	**$1,458,000**

Individual construction costs for each property owner are estimated as follows:

Road repairs and reconstruction $140,000/112 lots	$1,250
On-site septic tank (City Planner)	2,000
Storm water controls (new construction only $7,200/residence (DEQ estimate)	7,200
Erosion control practices $1,000/residence (DEQ estimate)	1,000
Total construction cost per residence:	**$11,450**

The estimated monthly operational costs for each property owner (rounded to nearest dollar) are as follows:

Sewer system operation and maintenance (DEQ estimates $25–$45)	25
On-site septic system inspections $30/year divided by 12 months	3
Lake water quality monitoring $1,600 per year/112 lots	14
Interest @ 7% for on-site construction ($11,450 per lot)	76
Subtotal	**$118**

(COSTS continued on page 13)

If property owners are required to pay for the main sewer trunk line as well, the monthly cost per property owner will be:

$225,000 @ 7% for 30 years = $1,499/month to amortize:
$1,499/112 properties $13

Total monthly cost per lot $131

If the property owners are required to absorb all of the main sewer line construction costs, the cost to each property owner over the life of the loan is calculated as follows:

Construction of the main line and drain field
$225,000 @ 7% interest for 30 years to amortize $539,640

$459,640/112 lots = $4,818 per lot

If the cost of the main trunk line and drainfield is paid for by a water surcharge, a charge of 15 cents per thousand gallons of water consumed would raise the average household water bill by $1.05 per month.

ALTERNATIVE IV

Description

Under this alternative, existing developed lots in the Collard Lake subdivisions (Collard Lake, Collard Loop, and portions of Mercer lake Heights subdivisions) would modify their septic tank systems to add alum.

The addition of alum to the septic system precipitates about 95 percent of the phosphorous from the effluent into the sludge in the bottom of the tank. This modification has the effect of reducing the total phosphorous discharge to about 0.45 pounds per year per house.

The alum is in liquid form and is injected into the sewer system by a metering device each time a toilet is flushed. The metering device costs about $80, and the liquid alum costs about $2.50 per person per year.

Undeveloped residential lots in the Mercer Heights and Collard Lake subdivisions would remain undeveloped and would be bought out by Heceta Water District or other special water management authority.

Owners of the large undeveloped tracts of F2 and Marginal lands would be allowed to use their lands in any manner they are legally entitled.

No new subdivisions would be permitted anywhere in the watershed.

Heceta Water District is trying to maintain the water at its present level of purity, and prevent the installation and operation of expensive water treatment facilities. A buy-out of undeveloped properties to protect the quality of the water is the preferred solution, and is regarded as a distinct bargain over time. Since protection of the water is advantageous to all of our customers, the district currently is considering a water surcharge to finance the buy-out.

Costs

Loans for municipal projects appear to be available at interest rates ranging from 3 percent to 7 percent. The calculations below are for the higher rate. Since the CRMP group was initiated, three new houses on septic systems have been permitted by the county. Therefore, these calculations have changed somewhat, from a 67 lot buy-out to a 64 lot buy-out.

Buy out 64 undeveloped lots: $1,768,000

$1,768,000 @ 7% interest for 30 years =
$11,755/month x 12 months = $141,060/year to amortize

Heceta Water District customers used 117,000,000 gallons of water in 1989

$141,060/117,000 = $1.20 per 1000 gallons of water usage to amortize

A 3% interest loan would raise water rates 54 cents per thousand gallons. ($3.78 per month per average household) If a matching federal grant can be obtained from EPA, increased monthly water costs could be as little as $2.40.

Advantages

1. Provides the greatest protection of any of the alternatives. Collard Lake improves considerably. The protection is long-term and lasting, and the buy-out cost is a one-time cost only. This feature, over time, will prove to be the best and least costly of any of the alternatives.
2. No sewers need be constructed.
3. No special storm water controls necessary.
4. No soil disturbance or destruction of vegetative cover.
5. Financial and traffic impacts on the non-county maintained road system would remain at present levels.
6. Road damage from sewer line construction and cross trenching would be eliminated (a cost estimated at $140,000).
7. Dwellings in the Collard Lake drainage would remain at 46 instead of a potential 112 if sewered and fully developed.

Disadvantages

1. Owners of undeveloped lots will not be able to build on their properties. These owners will be compensated at fair market value for their properties.
2. Depending on interest rates, residential water rates could increase by as little as $2.40 per month or as much as $4.62 per month.
3. Existing dwellings will need to be equipped with alum dosage meters. The device is expected to cost about $80 to install, and $2.50 per person per year to operate.
4. Since the alum system was developed in Canada, a pilot test program would be necessary in this watershed.
5. The Oregon Department of Environmental Quality believes that alum-treated septic systems will need to be monitored and maintained by a public entity such as a sanitary district or other such public entity that can be held legally accountable to maintain and operate the system. A sanitary district, financially accountable to the state, will need to be formed.
6. Lake water quality monitoring will still be required ($14 per year per lot).
7. Septic system inspections will still be required ($30 per year per lot).

ALTERNATIVE IVA

Description

This alternative has not been introduced or reviewed by the CRMP group. It is presented now, by Heceta Water District, as an independent alternative for consideration. We offer this proposal as a means of making Alternative IV more affordable.

Within the Collard Lake subdivisions are several contiguous multiple lake front lots held in single ownership. Group One lots (see map) are groupings of undeveloped lots under one ownership. Group Two lots are undeveloped lots owned by the adjoining residents. Group Three consists of two undeveloped lake front lots under common ownership, separated by a third lot in different ownership. Group Four lots are undeveloped lots whose owners use them as recreational campsites for occasional use, and who have indicated they have no wish to develop their properties. There is an additional lot that has been cleared for construction, and apparently has been issued a building permit, so must be considered developed.

Alternative IVA proposes that the Group One owners be allowed to develop their properties using alum-equipped septic systems. Group Two owners would have alum septic systems on their existing residences, but their adjoining properties would remain undeveloped. Group Three owners would be allowed to develop one residence on an alum-equipped septic system, provided they acquire the intervening lot. Group Four owners would be allowed to use their properties as campsites, provided they install sealed vault toilets and the sites remain otherwise undeveloped.

No new subdivisions would be permitted anywhere in the watershed.

Advantages

1. Buy-out costs could be reduced by as much as $500,000 or more, depending on the level of participation, making the Alternative IV option more affordable.

   These estimates do not include any Group Three or Group Four options.

2. More property owners could develop their properties.

Disadvantages

1. Requires a minimum of two or a maximum of three additional alum equipped septic systems in the watershed.
2. Water quality protection is reduced by the additional development.
3. Some additional vegetative and soil disturbance will occur as a consequence of allowing construction of two, or possibly three, additional residences.

Otherwise, all advantages and disadvantages listed under Alternative IV apply.

Costs

If only Group One is involved:

Buy out 54 undeveloped lots: $1,437,000

$1,437,000 @ 7% interest for 30 years = $114,840 per year to amortize

Annual water use (1989) = 117,000,000 gallons

$114,840/117,000 = 98 cents per 1,000 gallons used.

(COSTS continued on page 16)

If groups One and Two are involved:

Buy out 51 lots: $1,264,500

$1,264,500 @ 7% interest for 30 years = $101,064 per year to amortize

Annual water use (1989) = 117,000,000 gallons

$101,064/117,000 = 86 cents per 1,000 gallons used.

The DEQ has a revolving sewer fund that could loan money for a purchase of properties to protect water quality, if the state elects to do so. This fund reportedly carries an interest rate of 3%. If such funding could be obtained, it would reduce costs significantly and would make Alternative IVA affordable for Heceta Water District.

If only Group One is involved:

Buy out 54 lots: $1,437,000

$1,437,000 @ 3% interest for 30 years = $51,732 per year to amortize

Annual water use (1989) = 117,000,000 gallons

$51,732/117,000 = 44 cents surcharge per 1,000 gallons used

Average household water rates would increase $3.08 per month.

If groups One and Two are involved:

Buy out 51 lots: $1,264,500

$1,264,500 @ 3% interest for 30 years = $45,528 per year to amortize

$45,528 = 38 cents surcharge per 1,000 gallons used.

This would increase the average water bill by $2.66 per month.

If some lots under Group Three and Group Four were also included, the cost could be reduced proportionately more.

COST COMPARISONS

Alternative I (sewer and pipe effluent to Florence for treatment)

Construction STEP system	$285,000 (Base cost only)
Road repairs	140,000
On-site septics	224,000
Erosion control	67,000
Storm water controls	482,000
Total	**$1,198,000**

Alternative IA (sewer and pipe effluent to a common drainfield)

Construction STEP system	$225,000 (Base cost only)
Road repairs	140,000
On-site septics	224,000
Erosion control	67,000
Storm water controls	482,000
Total	**$1,138,000**

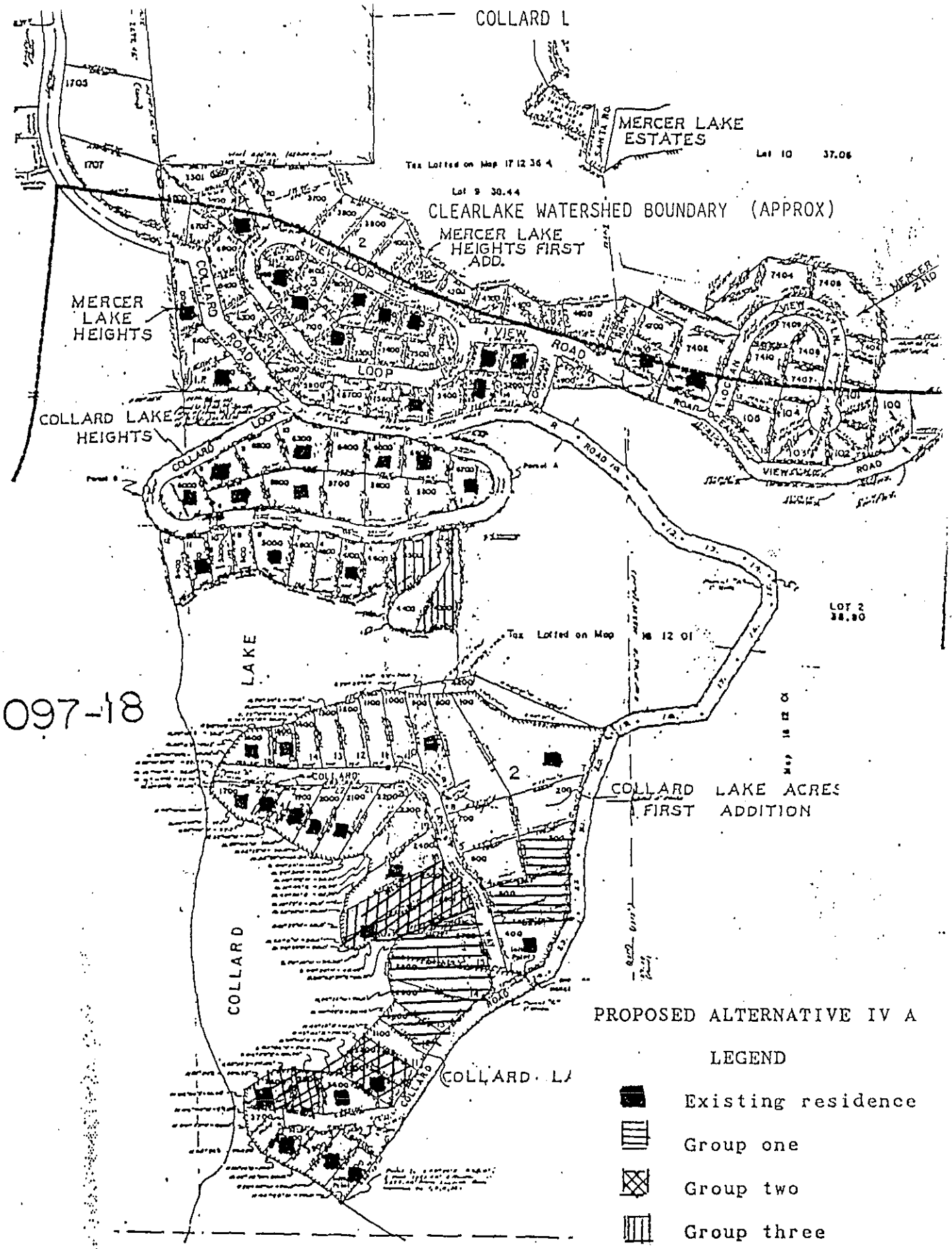
Alternative IV (Existing residences remain on alum-equipped septic systems, provided undeveloped lots are purchased by Heceta Water and remain undeveloped)

Buy 64 undeveloped lots at 7% = $141,000 per year top amortize	$1,768,000 (Base cost only)
Buy 64 undeveloped lots at 3% = $63,648 per year to amortize	$1,768,000 (Base cost only)

Alternative IVA (same as above, except consolidated owners of multiple undeveloped lots are allowed to build on alum-equipped septic systems. Adds 2 more residences.)

Buy 54 undeveloped lots at 7% = $114,840 per year to amortize	$1,437,000 (Base cost only)
Buy 54 undeveloped lots at 3% = $51,732 per year to amortize	$1,437,000 (Base cost only)

If the water is allowed to degrade, and a water treatment plant is mandated by EPA, it will cost an estimated $1,000,000 to construct and $100,000 per year to operate. As can be seen above, the operating costs alone could almost amortize the cost of buying out the undeveloped lots. The DEQ has a "revolving sewer fund" that goes out for water protection at 3 percent interest. With a rule change by EQC, this money could be used for a buy-out of properties. Over the long run, a buy-out of undeveloped residential lots is the surest and the cheapest form of protection.


COLLARD L
MERCER LAKE ESTATES
Lot 10 37.06
Tax Lotted on Map 17 12 36 4
Lot 9 30.44
CLEARLAKE WATERSHED BOUNDARY (APPROX)
MERCER LAKE HEIGHTS FIRST ADD.
MERCER LAKE HEIGHTS
COLLARD LAKE HEIGHTS
COLLARD ROAD
VIEW LOOP
VIEW ROAD
MERCER 2ND
LOT 2 38.80
Tax Lotted on Map 18 12 01
COLLARD LAKE ACRES FIRST ADDITION
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097-18
PROPOSED ALTERNATIVE IV A
LEGEND
Existing residence
Group one
Group two
Group three

HECETA WATER DISTRICT RESPONSE FORM

I have reviewed the independent CRMP draft. I would accept:

	YES	NO
Alternative I	_____	_____
Alternative IA	_____	_____
Alternative IV	_____	_____
Alternative IVA	_____	_____
I would accept none of the above.	_____	

COMMENTS: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

PROPERTY OWNER: _____

ADDRESS: _____ DATE: _____

RJN

ATTORNEYS AT LAW

975 OAK STREET
EIGHTH FLOOR
EUGENE, OR 97401-3156

GLEAVES
SWEARINGEN
LARSEN
POTTER

TELEPHONE:
(503) 686-8833

CORRESPONDENCE:
P.O. BOX 1147
EUGENE, OR 97440-1147

FACSIMILE:
(503) 345-2034

August 31, 1990

Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, Oregon 97204

ATTN: Richard Nichols
Hearings Officer

Re: Clear Lake (near Florence): Proposed Rules Modifying OAR 340-41-270 Special Policies & Guidelines for the Mid-Coast Basin and OAR 340-71-460(7) Moratorium Areas for On-Site Sewage Disposal Systems

Dear Dick:

Enclosed please find Written Comments regarding the Clear Lake Watershed for consideration in EQC's final decision on November 2, 1990.

Thank you.

Sincerely,

Dale A. Riddle

Dale A. Riddle

DAR:dl
Enclosure

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the Matter of Clear Lake (near Florence): Proposed Rules Modifying OAR 340-41-270 Special Policies & Guidelines for the Mid-Coast Basin and OAR 340-71-460(7) Moratorium Areas for On-Site Sewage Disposal Systems	WRITTEN COMMENTS

COMES NOW the Clear Lake Community Organization ("CLCO") and submits the following written comments supporting the Department's recommendation to modify the Special Policies & Guidelines for the Mid-Coast Basin, and more particularly to lift the moratorium for on-site sewage disposal systems in the Clear Lake Watershed.

CLCO is a formally recognized community organization chartered by Lane County. The membership of CLCO is open to those property owners who own property in the Clear Lake Watershed, excluding those owners of lots which are located in the subdivisions surrounding Collard Lake. The Articles of Incorporation of CLCO provide that the specific purpose of the organization is to "promote a clean, safe and scenic environment in Clear Lake, to promote environmentally sound development of Clear Lake, to communicate, advise and consult with county, city, state, and governments and agencies on all matters affecting the Clear Lake Community, including zoning, planning, development, housing, transportation, utility delivery systems, water and sewer systems and any other matters affecting the vitality and livability of the Clear Lake Community."

SUMMARY OF BACKGROUND INFORMATION

The Clear Lake Watershed (the "Watershed") is an area of approximately 1,040 acres, of which 850 acres are land and 190 acres are lakes. Clear Lake is one of a chain of dune-bound lakes which extends from Collard Lake from the north to Munsel Lake to the south. Collard Lake empties into Clear Lake, which in turn empties into Ackerley Lake, which in turn empties into Munsel Lake. The northerly portion of the Watershed around Collard Lake is heavily subdivided containing approximately 43 homes, while the southerly and westerly

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portions of the Watershed around Clear Lake are largely undeveloped.

In 1967, the Heceta Water District (the "Water District") petitioned the Oregon Water Policy Review Board (the predecessor to the Water Resources Board) (the "Water Resources Board") for permission to withdraw approximately one million gallons of water per day from Clear Lake for municipal (domestic and light commercial) purposes. As a means to gain community support for its application, the Water District represented to neighboring landowners that: (1) the use of the waters of Clear Lake for municipal purposes by the Water District would not affect or restrict in any way the use or uses of the lands in the Clear Lake Watershed; (2) the Water District would incur the expense of providing any necessary pollution control devices required to keep the water fit for human consumption; and (3) when a conflict did arise between the Water District's need for an unpolluted domestic water source and the landowners' desire to develop their properties for residential and recreational purposes, the Water District would bear the expense of resolving the conflict.

Based upon the representations described above, neighboring landowners, including members of CLCO, supported the Water District's request to the Water Resources Board and provided access easements free of charge to the Water District so that it might be able to withdraw water from Clear Lake.

On or about May 26, 1967, a hearing was held before the Water Policy Review Board on the Water District's application to withdraw water from Clear Lake for municipal purposes. At the hearing, the Water District represented to the members of the Board that the Water District's application would not restrict the multiple use of Clear Lake. The Board granted the application with the understanding that it would be the duty of the Water District to provide treatment facilities which would be made necessary by the projected increase in the development of homes and recreational facilities in the Watershed. Since 1967 and continuing up through the present, the Water District has withdrawn its water supply from Clear Lake. The Water District has refused, and continues to refuse, to build facilities to treat its water supply. The Water District has refused, and continues to refuse, to formally condemn and pay

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just compensation to owners of properties who are unable to use their land as a result of restrictions placed upon the lake to protect the Water District's water supply.

In the summer of 1979, a study of the North Florence Dunal Aquafer ("§208 Study") was initiated by Lane County and the Lane Council of Governments ("LCOG"), pursuant to §208 of the Federal Water Pollution Control Act. In June of 1982 the §208 Study was completed. It found that the primary contaminate of drinking water quality was nitrate-nitrogen resulting from septic tank effluent from the Collard Lake Subdivision. The study did not find any correlation between the recreational use of Clear Lake and water contamination.

The §208 Study offered two alternative courses of action for the Clear Lake Watershed: (1) to not allow any new nitrate-nitrogen sources and reduce existing nitrate-nitrogen sources to 170 pounds per year; or (2) to allow Clear Lake to degrade to the point allowed by the Department of Environmental Quality ("DEQ") Groundwater Protection Policy (58 pounds of nitrate-nitrogen per acre per year) which would require drinking water treatment facilities or alternative water supplies to be developed in the future.

In response to the §208 Study, the Water District asked Lane County to take appropriate action on an interim basis (two years) to protect the Watershed from any further development until an equitable solution could be arrived at and implemented concerning treatment and development control alternatives. Some property owners in the Watershed, including certain members of CLCO, also provided support for the moratorium provided that it not exceed two years in duration.

On or about October 27, 1982, the Lane County Board of Commissioners adopted an ordinance establishing a moratorium on all applications for plan amendments, zone changes, land divisions, and new construction for all properties within the Watershed. At or about the same time, the County petitioned the Environmental Quality Commission ("EQC") to adopt a moratorium on on-site waste disposal systems. On April 7, 1983, at the request of Lane County, the EQC established a moratorium on new on-site waste disposal systems for all properties within the Clear Lake Watershed.

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At the time of the adoption of the respective building and sanitation moratoriums by the Lane County Board of Commissioners and the EQC, Commissioners from both governing bodies promised on the record that the moratoriums would not last longer than two years. The reason for this promise was their shared belief that two years was sufficient time to resolve the problem of balancing the needs of the customers of the Water District against the needs of the property owners who are being denied the use of their land.

As part of Lane County's adopted findings in support of its building moratorium, it created a task force made up of representatives from the Florence Planning Commission, the Water District, the West Lane Planning Commission, and two or more citizens who owned property in the Watershed to study the issue. The task force was organized and became known as the Clear Lake Policy Advisory Committee (the "Advisory Committee"). It was to meet on a regular basis and a time schedule was adopted by the County to review the progress of the Committee every six months.

The Advisory Committee, in conjunction with the Federal Environmental Protection Agency (the "EPA") and the DEQ, helped Lane County secure funding of a project to assess the alternatives for protecting the Watershed. The project consisted of two studies: (1) a biological study of the limnology and nutrient dynamics of Clear Lake undertaken by Cooper Consultants, Inc., and (2) a technical feasibility analysis and economic evaluation study of a range of Watershed protection alternatives undertaken by Century West Engineering Corporation. It was decided that the moratoriums were to remain in effect until these studies were completed.

In February of 1985, the biological study performed by Cooper Consultants, Inc. was completed. The study found that phosphorous, not nitrate-nitrogen, was the limiting pollutant source. The study also found that the outboard motor boat use on the lake "would not cause adverse contamination of Clear Lake." Cooper Consultants, Inc., Limnology and Nutrient Dynamics of Clear Lake, Oregon (Feb. 1985), pp. 4-13.

In April of 1985, the technical feasibility analysis and economic evaluation study by

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Century West Engineering was completed. The study concluded that the best-suited alternative for resolving the Watershed issue was to sewer the Collard Lake Subdivision. This would require an initial capital expenditure of approximately $968,000, and an annual cost for operation and maintenance of approximately $98,000. The study concluded that the least-suited alternative for resolving the Watershed issue was to condemn all properties in the Watershed which would require a one-time expenditure of at least $16 million dollars.

Soon after the biological and technical feasibility studies were completed, the Advisory Committee initiated discussions concerning the adoption and implementation of the recommendations made in the studies. It was tentatively agreed between the City of Florence, the Water District and Lane County that an intergovernmental agreement be entered into to implement the recommendations. Unfortunately, no such agreement was ever completed as the Water District refused to attend further meetings on the matter and otherwise refused to take part in any discussions aimed at implementing the suggestions in the Century West Engineering. Instead, the Water District determined that properties in the Watershed should be condemned. The Water District, however, has refused to initiate condemnation proceedings. See copy of letter from Dwight E. Reindl, Chairman, Heceta Water District to Lane County Board of Commissioners, dated December 1, 1988, attached hereto as Exhibit 1.

In September of 1987, several property owners in the Watershed, including members of CLCO, filed suit in federal court against the EQC, Lane County and the Water District alleging, among other things, that the continuation of the building and sanitation moratoriums were illegal. The lawsuit against Lane County was settled upon the lifting of the building moratorium, effective October 28, 1987. In January of 1988, the remainder of the suit was effectively dismissed by opinion of the court on the grounds that the case was primarily one of state concern and should be refiled in state court.

Prior to refiling their case in state court, Plaintiffs in the above referenced litigation were contacted by counsel for the EQC. Counsel represented that DEQ staff members had expressed their recognition that the Clear Lake Watershed moratorium could not go on forever,

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and that it might be in everyone's best interest if a meeting could be arranged among affected parties to seek a long term solution to the problem. This invitation was accepted by Plaintiffs, and as a result of a series of meetings and the assistance of the Lane County Board of Commissioners, Senator John Brenneman and the Siuslaw Soil Water Conservation District, the Coordinated Resource Management Planning Committee ("CRMP") was created.

Despite the attempts by some to solve the Watershed controversy, in and about January of 1989, the Water District petitioned the State Marine Board to prohibit motorboat use on Clear Lake. This petition was denied in March of 1989 based upon the finding that there was no significant relationship between motorized boating on the lake and water quality degradation. See copy of letter from Paul Donheffner, Director, Oregon State Marine Board, with enclosures, attached hereto as Exhibit 2.

In and about March of 1989, the Water District also petitioned the Water Resources Commission in an attempt to prohibit all boating and recreational uses on Clear Lake by reclassifying the waters of Clear Lake solely for municipal uses. This petition was likewise denied as the Water District failed to show that there was any correlation between the recreational use of Clear Lake and any water quality degradation. See copy of letter from William H. Young, Director, Water Resources Department, with enclosures, attached hereto as Exhibit 3.

In the meantime, the Water District continues to withdraw water from Clear Lake that is of sufficiently high quality that filtration of any kind is not necessary. This is highly unusual. The Water District admits that this results in substantial cost savings to Water District customers. However, it is the members of CLCO who by not being allowed to use their lands are paying for this cost savings.

Similarly, it is the property owners in CLCO who are subsidizing property owners in the Collard Lake Subdivisions who have built homes on Collard Lake and who are the sole source of water degradation that has occurred as a result of development in the Watershed. These landowners continue to live in their homes (using their septic systems) while using

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undeveloped properties as their own private and secluded playgrounds without paying any sort of compensation. Meanwhile, property owners who were not so fortunate to build a home before imposition of the moratorium are left with property that has no value to them, yet they are required to continue to pay property taxes while receiving no compensation for their loss.

RESPONSE TO PROPOSED RULES MODIFICATION

The rules modification recommended by staff setting certain phosphorus loading limitations would result in the sewering of the existing subdivisions surrounding Collard Lake and full build out unless an "equivalent alternative" is demonstrated prior to October 1, 1991. Consistent with the report of the CRMP, equivalent alternatives could include:

1. Sewering of the Collard Lake subdivision and allowing future homes in the subdivision to be built only upon lots in excess of one acre. Property owners who owned lots less than one acre would be bought out at fair market value.

2. Sewering of the Collard Lake subdivisions and allowing future homes in the subdivisions to be built only upon one acre lots for lake front lots, and one-half acre lots for nonlake front lots. Property owners who owned lake front lots smaller than one acre and nonlake front lots smaller than one-half acre would be bought out at fair market value.

3. No new development would be allowed in the Collard Lake subdivisions. All undeveloped lots would be bought out at fair market value. Developed lots would be allowed to remain but would be required to modify their existing septic tank systems to add alum and to add a sand filter at the discharge from the septic tank.

4. Other.

In all alternatives described above, owners of large lots outside the subdivisions would be allowed to build only one home per lot of record provided the owner agreed to restrict certain forest harvesting activities to compensate for any increase in phosphorus loadings that might occur as a result of the addition of a home in the Watershed. This would potentially

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allow an increase of five new homes on septic systems within the Watershed, and 13 new homes with septic systems outside the Watershed.

CLCO supports staff's recommendation and does not express a preference as to which alternative (whether it be sewer or otherwise, or a new alternative) should be selected to eliminate the potential degradation of drinking water caused by the Collard Lake homeowners. It is apparent that not all strategies cost the same, nor do they all present equal problems of implementation. However, to the extent that Collard Lake property owners can agree upon a solution and implement that solution, CLCO will support that alternative should its support be necessary.

CLCO's support of staff's recommendation is not unqualified. There are certain areas of concern that need to be addressed by EQC prior to adoption of any final rule:

1. OAR 340-41-270(2) (Loading Standards): The proposed rules would use phosphorus and chlorophyll "A" as the measurement by which to determine compliance with water quality standards. CLCO agrees that these are the correct indicators of potential degradation to the lake. The proposed levels, however, are unreasonably low and are not necessary to maintain Clear Lake in its pristine state.

The first standard which has been proposed for phosphorus is 265 pounds per year from all sources. This standard is unnecessarily low as evidenced by a letter report and an independent report which has recently been published concerning Clear Lake. In his Summary of Observations on Clear Lake Water Quality, dated April 5, 1990, a copy of which is attached hereto as Exhibit 4, Dr. V. W. Kaczynski estimates that using EPA's (Volenweider) own formula Clear Lake could sustain 441 pounds per year of phosphorus and still retain oligotrophic status. The proposed rule of 265 pounds per year amounts to only 60% of that which could be achieved according to EPA standards.

Peter O. Nelson, Associate Professor, Oregon State University, in his report to the CRMP, Clear Lake Watershed Study, Phosphorus Loading Analysis and

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Management Recommendations, a copy of which is attached hereto as Exhibit 5, concludes that the water quality of Clear Lake "would remain in good-excellent condition, although some decrease in clarity and more frequent algal blooms would be evidenced" even if full build out occurred in the Watershed.

The second standard that has been proposed is that the median concentration in the epilimnion layer of Clear Lake from samples collected between May 1 and September 30 not exceed 9.5 micrograms per liter. This standard is so low that it is not capable of routine analytical measurement. It would appear to be unreasonable to set a standard that is lower than that which is capable of routine analytical measurement. It would also appear unreasonable to rely upon a standard that is less than that found in rainwater in this area. Studies indicate that average maritime rainwater contains an average of 10 micrograms per liter of phosphorus.

As a comparison, and as noted by staff in its report at page G-10, instream criteria for total phosphorus for controlling algal growth in the Tualatin is 70 ug/l. EPA recommends that total phosphorus levels in lakes and reservoirs not exceed 25 ug/l in order to prevent the development of biological nuisances and to control accelerated or cultural eutrophication. Using the loading factors recommended by staff, total phosphorus levels in Clear Lake could not exceed 9.28 ug/l, which is 250% less than that recommended by EPA.

In arriving at its loading calculations, staff assumed that all homes in the Watershed would contribute phosphorus to the waters of Clear Lake. This assumption is erroneous. Studies that have been done on the subject indicate that phosphorus does not have the ability of traveling in excess of 250 feet through soils. Based upon these studies, it is the generally held belief in the scientific community that it cannot be assumed that phosphorus can travel in excess of 500 feet. Approximately one-third of all homes that are built, or could be built, in the Watershed are in excess of 500 feet from Collard or Clear Lakes.

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Also included in staff's phosphorus loading calculations are four homes outside the Collard Lake Subdivisions. See staff report, page E-2. Property tax records for Lane County indicate that there are only three existing homes outside the subdivisions. More importantly, it would appear that all three homes are in excess of 500 feet from either Collard or Clear Lakes.

Based upon the above, CLCO would recommend an annual loading discharge into Clear Lake from all sources of 330 pounds per year. This figure is arrived at by using EPA's own standards which indicate that Clear Lake could remain in a pristine state with an annual loading limit of 441 pounds per year. Using conservative staff figures that the lake's loading is presently 218 pounds per year, one-half of the balance would be given to DEQ for reserve and one-half would be allocated to the property owners and the local economy for socioeconomic reasons.

2. OAR 340-41-270(3) (Definitions): Although the term Collard Lake Subdivisions is used several times in the proposed rules, it is never defined. Therefore, CLCO recommends adding a subparagraph to paragraph (3) as follows:

> "(a) For purposes of this rule, 'Collard Lake Subdivisions' shall include those portions of the Collard Lake Acres Subdivision as platted and recorded in File 43, Slide 15, Collard Lake Acres First Addition Subdivision as platted and recorded in File 46, Slide 25, Collard Lake Heights Subdivision as platted and recorded in File 56, Slide 26, Mercer Lake Heights Subdivision as platted and recorded in File 58, Slide 25, Mercer Lake Heights First Addition Subdivision as platted and recorded in File 59, Slide 6, and Mercer Lake Heights Second Addition Subdivision as platted and recorded in File 73, Slide 291, all as recorded in Lane County Oregon Plat Records, contained in the Clear Lake Watershed, as more particularly described in OAR 340-71-460(7)(a)."

3. OAR 340-41-207(06) (On-Site Sewage Systems): It is not clear from the rules that it is contemplated that there will be different requirements under certain circumstances for properties inside the subdivisions and those outside the subdivisions. For example, it is not contemplated under any scenario that development could occur within the subdivisions on septic tanks and still meet the phosphorus loading standards.

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Also, it is not contemplated that development within the subdivisions would require certain forest harvesting restrictions as may be required on the big properties outside the subdivisions. See also recommended changes to OAR 340-41-270(10) discussed below. Therefore, CLCO would recommend the following changes to subparagraph (6):

> "The department or its contract agent should not issue on-site sewage system construction installation permits or favorable site evaluation permits for on-site sewage systems to serve properties within the Collard Lake Subdivisions. The department or its contract agent should not issue on-site sewage system construction installation permits or favorable site evaluation permits for on-site sewage systems to serve properties within the Clear Lake Watershed, excluding lots platted in the Collard Lake Subdivisions, until a plan is submitted to and approved by the department showing how total phosphorus limitations required by this rule will be achieved and maintained. The plan shall address total phosphorus associated with erosion due to construction. It shall also address forest harvesting activities. The plan shall also include ordinances, easements, and/or contracts as appropriate and necessary to effectively implement the plan."

4. OAR 340-41-270(10) (Storm Water Quality Controls): Storm water quality control facilities, if required at all, will only be required in the subdivisions in the event that densities exceed one home per acre. See staff report, page C-3. Proposed rules modifications seem to imply that storm water quality facilities would be required on the big lots which is not the intent of the rules. Therefore, CLCO would recommend adding the words "in the Collard Lake Subdivisions" after the words "storm water quality control" in the fourth line of subparagraph (10).

5. OAR 340-71-460(7)(b) (Impracticability): CLCO believes that the rules should contain an escape valve for properties outside the Subdivisions where a portion of the property is also outside the Watershed. The proposed rules modification would require that under all circumstances the drain field be located outside the Watershed. There may be some instances where it is impracticable to locate the drain field outside the Watershed. For example, some properties may have only a very small portion which is outside the Watershed and there may not be sufficient soil for a drain field to

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be constructed. There may also be instances where the property is so far away from the septic tank that there is a higher risk of degradation caused by the piping than keeping the drain field within a safe distance from the tank. Finally, there may be some topographical hazard, such as a cliff, that must be negotiated which would make it impossible to construct the system. To accommodate the above, CLCO would suggest revising subparagraph (b) such that permits would be allowed for those lots that are not totally within the Watershed upon a showing of impracticability and that the alternative plan would place no greater hazard that phosphorus would enter the lake than if the drain field was located outside the Watershed. This seems to be especially appropriate for those drain fields that would be in excess of 500 feet from either Collard or Clear Lakes.

CONCLUSION

Subject to the suggested modifications set forth above, the Commission should accept the proposed rules modifications for adoption as recommended by staff.

DATED this 31st day of August, 1990.

Respectfully submitted,

GLEAVES SWEARINGEN LARSEN & POTTER

By: Dale A. Riddle

Dale A. Riddle, OSB #81352
Of Attorneys for Clear Lake
Community Organization

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Heceta Water District

BOX 25, FLORENCE, OREGON 97439

December 1, 1988

Lane County Board of Commissioners
Courthouse-Public Service Building
125 East Eight Avenue
Eugene, Oregon 97401

For many years Heceta Water District Board of Directors has recognized the need for a satisfactory solution for the protection of the Clear Lake natural water resource.

The Heceta Water District Board agrees with the recommendation of the Clear Lake Watershed Advisory Committee of a buy/trade out acquisition of those properties lying within the Clear Lake Watershed.

This district is requesting the Lane County Board of Commissioners for assistance in:

(1) Action at legislative levels to review state laws and water policies for the protection of Clear Lake's primary use (domestic water supply) with cooperation of the State Water Resources Board, State Department of Health, D.E.Q. and E.P.A.

(2) Provide assistance in technical engineering and legal discriptions.

(3) Changes, if necessary, in administrative rules on County and State lane use goals.

(4) Legal assistance.

(5) Funding and funding alternatives.

(6) Valuation of county lands for acquisition and/or transfer of ownership

(7) Lane County staff liaison with the district.

Sincerely,

Dwight E. Reindl
Chairman
Heceta Water District

cc: Senator John Brenneman
Sentaor Bill Bradbury
Representative John Schroeder
Representative Jim Whittey
Representative Don Butsch
Representative-Elect Hedy Rijken
Jana Doerr
State Water Resources Board
State Department of Health
Department of Environmental Quality

NEIL GOLDSCHMIDT
GOVERNOR

State Marine Board
ADMINISTRATIVE OFFICE
3000 MARKET ST. N.E., No. 505, SALEM, OREGON 97310-0650 PHONE 378-8587

April 11, 1989

Dale Riddle
P.O. Box 1147
Eugene, OR 97440

Dear Mr. Riddle:

Enclosed is a copy of the staff report from our March 17, 1989 Board meeting concerning Clear and Collard Lakes.

The Board voted unanimously to deny the petition. The decision was based in large part on Lane County's review of the petition and its decision not to endorse a request for rulemaking.

I am also enclosing a copy of a staff memo from the County Health Engineer to Commissioner Dumdi regarding water quality. It indicates that motorboats are not a significant factor in water quality degradation, and restrictions of current use levels are unlikely to benefit water quality.

Based on our Board's denial, I would recommend that the Water Resources Commission similarly deny any petitions for recreational boating restrictions, unless data can be brought forward to demonstrate that a significant water quality problem is present or likely to occur as a result of motorized use.

Access to this lake is limited by private ownership, and by all accounts motorboat use is quite minimal. Please let me know if I can be of further assistance.

Sincerely,

Paul Donheffner

Paul Donheffner
Director

PD:jes

Enclosures

cc: Aaron V. Jones
V.M. Howard
Gail Achterman

Exhibit 2
Page 1 of 4

RECEIVED APR 1 2 1989

March 17, 1989

NON-AGENDA ITEM

ISSUE: Petition for prohibition of motorboats on Clear and Collard Lakes, Lane County.

BACKGROUND:

.01 Last October we became aware of a petition circulating in western Lane County. The petition seeks a ban on motorized use of Clear and Collard Lake. Clear Lake has 140 surface acres. Collard has 32 acres.

.02 A similar request to ban motors was denied by the Marine Board in October 1978.

.03 The petition, with 94 names, was sent to Lane County. The County Commissioners examined the petitioners request, which was based on water quality. On December 20, 1988 the Commissioners decided not to endorse the requested ban.

.04 They concluded that motorized use, which is very limited, does not contribute to significant water quality degradation.

.05 On January 11, the County Commissioners tentatively reversed themselves to look at the issue again, based on new information. They asked us to "hold" on any action.

.06 On March 8 the County reaffirmed its decision not to endorse a ban (see letter).

.07 Based on the county's review and re-review, Staff does not believe the petition for rulemaking to prohibit motorboats should be accepted.

RECOMMENDATION:

.01 That the Petition for rulemaking be denied.

Lane County

March 8, 1989

Oregon State Marine Board
3000 Market Street NE #505
Salem, OR 97310

Attn: Jill Smith

Re: Petition to Prevent Motorized Boats From Using Clear Lake and Collard Lake

Dear Jill:

Lane County has had an opportunity to review the additional information that was presented regarding the above matter. This letter is to inform you that the Lane County Board of Commissioners reaffirms their decision not to endorse the ban on motorized boats on Clear Lake and Collard Lake.

There had been an assertion that boat usage contributed to a one-time clogging of an intake filter. There was no conclusive evidence that the boats were the cause of that problem. However, resident boat users voluntarily offered to slow down speeds on the lake. Heceta Water District will monitor the intake situation to see if there is any recurrence of the intake clogging. Based on this information, the Board of Commissioners continues a "no endorsement" stand on the Petition to prevent motorized boats from using Clear Lake and Collard Lake.

Sincerely,

Ellie Dumdi

Ellie Dumdi
Lane County Board of Commissioners

ED:sg

Exhibit 2
Page 3 of 4

M E M O R A N D U M

TO: Sharon Giles, Aide to Commissioner Dumdi

FROM: Harold J. Youngquist, P.E.
Public Health Engineer

SUBJECT: Petition to Prohibit Motorized Boats on Clear Lake

DATE: 11/18/88

The proposal by residents and property owners in the Clear Lake Watershed to prohibit motorized boats on Clear Lake would certainly reduce pollution in the lake. This statement can be made without equivocation as a mass balance on the lake would show that the addition of oils and other organic compounds as a result of motorized boats would add to the pollution load.

The question at hand, however, is whether or not the prohibition of motorized boats would be significant in terms of water quality. I think not. The limnological study of Clear Lake (Cooper Consultants, 1985)indicated that some taste and odor problems might result if motorized boat traffic were increased beyond the present limited amount. They also concluded that a more serious problem would be bacterial contamination if the use of the any type of boat and the resultant number of people increased significantly. My opinion is that the present motorized boat traffic on the lake does not contribute to significant water quality degradation.

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3739

April 21, 1989

Dale Riddle
Gleaves, Swearingen, Larson & Potter
975 Oak Street
PO Box 1147
Eugene, OR 97440

Dear Mr. Riddle:

Thank you for your letter regarding the Heceta Water District's petition to reclassify the waters of Clear Lake for municipal use only.

At its meeting on April 17, 1989, the Water Resources Commission denied the District's petition. In making its decision, the Commission considered the statements on the petition, the comments presented at the meeting as well as letters from agencies, affected landowners and concerned citizens about the effects of any program change.

Sincerely,

William H. Young

WILLIAM H. YOUNG, Director
Water Resources Department

WHY:LMS:sas
0639s

Exhibit 3
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RECEIVED APR 21 1989

Lane County

cc: Dale Riddle

April 12, 1989

Mr. William Blosser, Chairman
Water Resources Commission
5100 Breyman Orchard Road
Dayton, OR 97114

Re: Heceta Water District's Petition to Ban
In-lake Recreational Uses of Clear Lake, Oregon

Dear Chairman Blosser:

I urge the Water Resources Commission to deny the Heceta Water District's recently filed petition to the Water Resources Commission to ban in-lake recreational uses of Clear Lake, Oregon. The Lane County Board of Commissioners has recently gone on record as opposing the ban of motorized boats on Clear Lake before the State Marine Board. (See enclosed copy of letter from Ellie Dumdi to Oregon State Marine Board.) The reason for my opposition is straightforward: there is no evidence linking the use of motorized boats on Clear Lake to any degradation of Clear Lake. Moreover, I have serious concerns about the fairness of requiring a few selected landowners to shoulder the burden of providing inexpensive, non-filtered water to the customers of the Heceta Water District without any sort of compensation.

Thank you for giving your serious attention to this matter. Please feel free to contact me if you have any questions.

Sincerely yours,

Bill Rogers

Bill Rogers, Lane
County Commissioner

BR:bjh

Enclosure
cc (w/enc.): William H. Young, Director
Water Resources Commission members

Exhibit 3
Page 1 of 11

RECEIVED APR 14 1989

Lane County

February 28, 1989

Oregon State Marine Board
3000 Market Street NE #505
Salem, OR 97310

Attn: Jill Smith

Re: Petition to Prevent Motorized Boats From Using Clear Lake and Collard Lake

Dear Jill:

Lane County has had an opportunity to review the additional information that was presented regarding the above matter. This letter is to inform you that the Lane County Board of Commissioners reaffirms their decision not to endorse the ban on motorized boats on Clear Lake and Collard Lake.

There had been an assertion that boat usage contributed to a one-time clogging of an intake filter. There was no conclusive evidence that the boats were the cause of that problem. However, resident boat users voluntarily offered to slow down speeds on the lake. Heceta Water District will monitor the intake situation to see if there is any recurrence of the intake clogging. Based on this information, the Board of Commissioners continues a "no endorsement" stand on the Petition to prevent motorized boats from using Clear Lake and Collard Lake.

Sincerely,

Ellie Dumdi
Lane County Board of Commissioners

ED:sg

Exhibit 3
Page 3 of 11

April 13, 1989

Wilbur E. Ternyik
P.O. Box 1190
Florence, Oregon 97439

William Blosser, Chairman
Water Resources Commission
P.O. Box 1199
Dundee, Oregon 97115

Subject: Clear Lake Management, Lane County, Oregon

Dear Mr. Blosser:

This letter is prompted by the never-ending policy changes as to management and further imposed restrictions of public use of Clear Lake. I wish to go on record without reservation in opposition to the Petition to Amend Program Statement Mid-Coast Basin-Clear Lake, Lane County, dated September 25, 1984, filed by the Heceta Water District, September 25, 1984.

My knowledge of the management of this recreational and water supply lake goes back to the early meetings in 1976, when the original meetings were held to explain the Water District's up-coming program. At these meetings, clear promises were made in answer to direct questions that although the lake would serve as a water supply source, there would never be any attempt by the Heceta Water District to in anyway restrict the right of the watershed property owners to use their property for residential development. It was further stated that they would never interfere with the public's right to use Clear Lake for recreational uses, including fishing, boating, swimming, etc. I attended these meetings only out of personal interest and friendship with one of the private property owners, Leavitt Wright.

Since that time many changes have taken place. Board members have changed as well as conditions and personal attitudes. Previous commitments and promises have been ignored. The only consistent policy is broken promises.

Clear Lake, with the help of the Oregon Department of Fish and Wildlife, is perhaps the best Kokanee lake on the Oregon Coast. It also sustains a healthy population of Large Mouth Black Bass. The adjoining shoreline land base has the potential of millions of dollars in recreational real estate tax base. Clear Lake is located in a county that has the potential for a disaster at budget time due to the loss of timber revenues that it lives on. It is my opinion that this potential benefit, along with public use, far exceeds the costs anticipated for necessary filtration facilities that will be mandatory anyway.

For the past fourteen year I have served on the Florence City Council; the last four years as Mayor. The City has purchased

water from the Heceta Water District for many years. This supplements the City's main source dunal well system. Sometimes bitter exchanges took place in the past due to personality clashes by both previous staff and elected officials on both sides. When I became Mayor, I appointed a councilman, Rob Ward, to work with me in trying to work out a long-term Clear Lake management agreement with the Heceta Water District. The heart of this proposal would have been the joint ownership of the take-out facilities including treatment with a Y at the output side and each party charged actual production costs. Future maintenance and expansion this way chould be charged equally. Joint water rights would be sought.

After meeting for six months (January to August) in trying to work out a mutually agreeable long-term agreement, it became apparently to both Rob Ward and I that we were going nowhere. In fact, we never even got off the first subject, that being the Heceta Water District's desire to have a locked-in service boundary. Finally, the District stated that it really did not want to enter into a joint agreement but would prefer to furnish all the water and control the entire water supply. It also stated that the City could not get a long-term water contract with a firm price. This left our citizens at the mercy of uncontrolled rising costs. Rob Ward and I went back to the Council with a recommendation to drill three more wells and to modify our existing treatment plant.

During these meetings we learned that the Clear Lake supply, being an open water source, will require a new filtration plant estimated at $2.5 to $3 million and new transmission lines plus who know what from future never-ending new requirements. In addition, we balanced the maximum water budget of 4.3 million gallons per day versus 18 million gallons per day available from the dunal aquafer. The final problem is the District's suicidal determination to precipitate the expensive lawsuits by property owners in the watershed. Although the final costs are unknown, it will surely enter into the millions. The citizens of the City of Florence are capable of taking care of their own water supply and should not have to financially bail the Heceta Water District out of their self-made problems.

Finally, the Department of Environmental Quality has publicly stated that surface us of the lake for boating and fishing activities has no real impact on the water quality. The general public of the Florence area has no knowledge that this attempt to lock out the public is being attempted. The City Planner, Laura Gillespie, was not informed as of this date.

Thank you for your patience in reading this letter.

Sincerely yours,

Wilbur E. Ternyik

V. W. KACZYNSKI, PH.D.
12985 S.W. 135TH AVENUE
TIGARD, OREGON 97223
(503) 644-6889

April 5, 1989
K0010

Mr. William H. Young
Director, Water Resources Dept.
3850 Portland Rd., N.E.
Salem, OR 97310

Dear Mr. Young:

Subject: Letter Report, Assessment of Impact From Limited Motor Boat Use Upon Clear Lake

Mr. Riddle asked me to evaluate possible impact of limited motor boat use on Clear Lake. I have reviewed the following items as background material on Clear Lake and the Clear Lake Watershed Unit of the North Florence Aquifer:

1 Copy of Petition to Amend Program Statement filed by Heceta Water District with the Water Policy Review Board requesting that recreational uses be outlawed for Clear Lake, Lane County, Oregon.

2 Copy of Final Report, Limnology and Nutrient Dynamics of Clear Lake, Oregon prepared by Cooper Consultants, Inc., dated February, 1985.

3 Copy of Clear Lake Watershed Study, Technical Feasibility Analysis and Economic Evaluation prepared by Century West Engineering Corporation, dated April, 1985.

4 Copies of North Florence Dunal Aquifer Study and Summary.

5 Copies of letters from Roger Ovink, CH2M Hill, dated September 19 and 20, 1982, concerning the North Florence Dunal Aquifer Study.

These documents provide us with more information than usual from which we can draw conclusions. We can evaluate the potential for motor boat impact in at least 2 ways: first, present and past evidence or lack thereof; and second, a first order estimate of trace element pollutant loadings from motor boat use relative to water exchange in the lake.

Method 1: Empirical Evidence and Hydrological Limnological Status of Clear Lake.

Is there any evidence or hint of adverse effect from motor boat use on Clear Lake? Actually the question is broader. Is there any evidence of adverse effect from developments, recreational activities, motor boat use at Clear Lake; and developments, and use of the upstream watershed including Collard Lake? The answer is no.

Biogeochemistry • Fisheries • Toxicology

Clear Lake has been studied to varying degrees of thoroughness by Larson (1970, 1974), Kavanagh (1973), Bryant, et al (1979), Christensen and Rosenthal (1982), CH2M Hill (1982), Cooper Consultants (1985), and Century West (1985). The lake and watershed have a good data base including field experiments relating algal production to major nutrient dynamics.

In summary Clear Lake is:

- Oligotrophic - nutrient levels of phosphorus and nitrogen are low (well below EPA (1986) guildelines for lakes), chlorophyl-a levels are very low, algal cell counts are very low, transparency is high, turbidity is low; there is an interaction between both phosphorus and nitrogen limiting algal production; one or other are limiting at times; both nutrients must be supplied to significantly increase algal production; there is evidence that some other nutrient is in short supply and is limiting algal production in late summer.

- Similar in characteristics at all epilimnetic (upper water zone) stations. All measured parameters at the station near the boat house were similar to other stations. No adverse measurements occurred.

- Slightly acidic, soft, low in mineral salts, and unlikely to have blue green algal blooms which are usually associated with Eastern Oregon lakes which are higher in pH, have more dissolved minerals, especially hardness and calcium.

- Unusual in that the hypolimnion (deeper water zone) becomes anaerobic because of significant ground water inflow rather than decomposition of organics from epilimnetic production or terrestrial input. The presented data cause me to suspect that significant hypolimnetic water is also leaving the lake - recharging into the ground water aquifer. That is, ground water is probably passing through the lake in its deeper area, within the hypolimnion. This was probably more significant in the past before the Heceta Water District began withdrawing upwards of 1 million gallons per day. A fair portion of this flow is now gradually being incorporated upwards into the epilimnion and withdrawn. This is significant because such recharge into the aquifer would remove significant amounts of nutrient and other dissolved substances from the lake rather than have a slow continuous buildup of dissolved substances. Is there any evidence that dissolved iron concentrations have increased over time? None was apparent.

- Has a fairly fast flushing rate (water turnover or replacement rate), about 500 days. This also tends to prevent nutrient buildup.

- Has a relatively open ground water connection (but apparently significantly filtered) with the upstream Collard Lake and related watershed lands.

Overall these findings indicate that the past and present activities at Clear Lake, Collard Lake and the watershed have not upset the conditions responsible for the oligotrophic nature of Clear Lake. Motor boat use at Clear Lake pales in comparison to past logging practices, other recreational uses, natural wildlife inputs, residences, septic tanks, etc. On an

empirical basis, there is no evidence that the present limited boating has caused or is causing any adverse effect. On a relative basis (comparable to other activities) such limited boating has a very low probability of significant impact in the future. In addition it makes no scientific sense to restrict activities on Clear Lake with no restrictions on Collard Lake (and adjacent lands). Clear and Collard lakes are hydraulically connected.

Method 2:

Input concentration estimate of trace nutrients and metals from motor boat usage on Clear Lake.

- 18 gallons fuel/day (gasoline and oil) per boat (this is a high amount).
- 10 to 50% inefficient; say 25% inefficient (this is a high inefficiency for modern motors and we will assume it goes into water).
- So 18 x 0.25 = 4.5 gallons fuel/day goes into Clear Lake.
- 72 days per year usage, or 324 gallons fuel/year into Clear Lake (and most actually evaporates off into the atmosphere. We will assume that no evaporation occurs for this simple estimate. e.g., we will be very conservative).
- Trace metals in gasoline are about: (Source: EPA 600/2-75-004, March, 1975: Contributions of Urban Roadway Usage to Water Pollution).
  - Chrome 15 ppm
  - Copper 4 ppm
  - Lead 663 ppm (Note, this was in 1975 before unleaded gasoline was mandated and the amount of lead in leaded gasoline was reduced tenfold. Today this number is probably 6-10 ppm on average and close to zero if unleaded gasoline is used as the fuel for the motor boat(s).)
  - Nickel 10 ppm
  - Zinc 10 ppm
- Trace amounts of nitrogen and phosphorus are present in gasoline and lubricating oils. I was not able to find a reference for the amount. In street dirt, levels of total nitrogen and phosphorus are in the same level of magnitude as metals. So our best estimate is also ppm (parts per million).
- So for all of these contaminates we can divide the very conservative residual gallons of gasoline hypothetically in the lake (assuming no evaporation) by one million to estimate each trace component. In a few lines you will be able to see that we do not have to worry about the units.
- Or 324 gallons residual fuel/year divided by 1 million = 3.24×10^{-4} gallons of each trace component/year going into the lake..

- One gallon = 0.1337 cubic feet, or 4.33×10^{-5} cu. ft.of trace components/year.

- One year = 31,536,000 seconds.

- So 4.33×10^{-5} cu. ft./year = 1.37×10^{-12} cfs (cu. ft./sec.)

- Annual water input into Clear Lake is 6.8 cfs (Century West, 1985)

- And thus the fraction of each metal or nitrogen or phosphorus trace addition from the motor boat use is 1.37×10^{-12} cfs/6.8 cfs, or 2×10^{-13}

- This is an extremely small input. It is absolutely undetectable. In comparison, for nutrients, nitrate level is about 2×10^{-7} and phosphorus is about 1×10^{-8} in the lake today.

- In other words, to double the nitrogen or phosphorus level in the lake strictly from motor boat usage, 1 million motor boats could operate on Clear Lake at 25% inefficiency, using 18 gallons of fuel/day for 72 days per year. And even doubling the amounts of nutrients, we would not exceed EPA nutrient guidelines for lakes.

- In terms of potential human toxicity in drinking water, the trace metals and nitrates from such limited present use are also minuscule and are well below any known toxicity problem. Such inputs are well below drinking water standards.

In summary, this first order estimate indicates that low motor boat usage, such as exists presently on Clear Lake, is not making any contribution to nutrient dynamics. In fact the contribution is so small that it could not be measured. The contribution to metals is also minuscule and very much below any known level of environmental or human toxicity.

The results of Method 2 reinforce our previous empirical conclusion (Method 1) that any adverse impact from motor boat use must be negligible. It strongly strengthens our conclusion that such limited use in the future will not be significant. In fact the prediction that results is there will be no measurable effect.

I sincerely hope that this review and interpretation of data and first order calculation of trace substance inputs has assisted you in your deliberations. If you have any questions please call.

Respectfully submitted,

V W Kaczynski

V. W. Kaczynski, Ph.D.
Limnologist

VWK:mf
Enclosure: Resume

V. W. KACZYNSKI
Senior Scientist

Education

Ph.D., M.S. Limnology, Cornell University
B.S., Biology, State University of New York at Buffalo

Experience

Dr. Kaczynski often serves as project manager or senior technical consultant for multidisciplinary sediment and water quality studies. Prior to forming his consulting firm, Dr. Kaczynski was Director of Environmental Sciences for CH2M Hill. He is a recognized expert in the interpretation of toxicological and nutrient data, sediment and water quality planning and standards setting, and in the feedback process that is essential between scientists and engineers in facility planning in order to meet sediment and water quality goals.

He is currently the task leader for the Washington County Unified Sewerage Agency's (USA) comprehensive evaluation of the water quality of the Tualatin River, and serves as a member of DEQ's Tualatin Basin Technical Advisory Committee. This is a large study that incorporates hydrologic and water quality modeling, interpretive water quality and toxicology, water quality goal and standard setting, evaluation of implications to USA facilities and operations, and economic impact evaluation. He is a consultant to the City of Portland on the problems of sediment and water quality in the Columbia Slough, including PCBs, and on the development of an action plan to establish cleanup goals and screen potential remedial actions. Dr. Kaczynski recently completed a chronic toxicology evaluation of the effluent from the Tyron Creek Wastewater Treatment Plant relative to the mixing zone in the Willamette River. The requirements of this latter study were negotiated with and eventually approved by the Oregon Department of Environmental Quality.

Dr. Kaczynski was project manager of a nonpoint source water quality study for the Reynolds Metals Longview Cable Plant. This study was designed to estimate loadings attributable to the industrial complex in the Longview Drainage District. The emphasis was on priority pollutants including PCBs.

He completed an assignment for Clark County, Nevada, evaluating proposed water quality standards in the Las Vegas Arm of Lake Mead as they relate to the possible fishery toxicological problems. The implications of these proposed standards to total maximum daily loads and facility constraints were evaluated. A report to the state on the proposed standards was delivered and a summary presented at the related public hearings. Presentations were also made to County and City staff and County Commissioners.

He has designed and managed monitoring programs at coal, hydropower, nuclear, and gas turbine energy facilities, including the establishment of the environmental monitoring programs for the Trojan and Pebble Springs Nuclear Plants and Boardman coal plant.

V. W. KACZYNSKI

He was the principal investigator of Washington State's Puget Sound Oil Baseline Program, and was the project manager for the U.S. Fish and Wildlife Service's evaluation of wetland disposal of spent industrial geothermal fluid. Dr. Kaczynski was President of Beak Consultants, Inc., Environmental Technical Director for Texas Instruments, Inc., and Assistant Professor of Biological Oceanography at the University of Washington.

Professional Registration

Certified Fisheries Scientist No. 1429, AFS

Membership in Professional Organizations

American Fisheries Society
American Society of Limnology and Oceanography
Ecological Society of America
New York Academy of Science
Sigma Xi

Professional and Community Service

Dr. Kaczynski is president (and past secretary-treasurer) of the Bioengineering Section of the American Fisheries Society; he is a member of the Environmental Concerns Committee (and past Membership and Resolution Committees); he was financial chairman of the Bioengineering Symposium (Portland, Oregon, 1988). He was a curriculum advisor (hazardous waste and environmental technician program) to Mount Hood Community College, is an advisor to the Fisheries and Wildlife Department at Oregon State University, and is the president and trustee of the Portland Community College Foundation.

Publications

Dr. Kaczynski is the author of publications on pink and chum salmon early marine life history and feeding, alternative strategies for mid-Columbia River salmonid production, hatchery design, parasite effects on blue-fish, population ecology of aquatic invertebrates, temperature effects on aquatic organisms, effects of siting of large-scale industrial plants (including nuclear) on aquatic communities, effects of secondary treated pulp mill effluent on the fishes of the Wisconsin River, utilization of spent geothermal fluids to create waterfowl wetlands, utilization of wetlands for alternative industrial wastewater treatment, environmental standards for the Mexican pulp and paper industry, and ethics in fishery biology.

Expert Witness Testimony

Dr. Kaczynski has been accepted as an expert witness and testified in the following areas: toxicology, sediment and water quality, fisheries, and aquatic and marine ecology. He has testified in California criminal court, Northern Regional Water Quality Control Board, State Water Quality Board, Coastal Commission, State Courts, U.S. District Court, EPA; Oregon State Lands Board, NRC (Pebble Springs hearings); U.S. District Courts (Tacoma and Spokane), Corps of Engineers Seattle District, EPA; Alaska Department of Environmental Conservation, Corps of Engineers Anchorage District, State Courts, U.S. District Court, Court of Appeals, EPA, U.S. Senate; AEC (Indian Points Units 2 and 3 hearings); FERC.

V. W. KACZYNSKI, PH.D.
12985 S.W. 135TH AVENUE
TIGARD, OREGON 97223
(503) 644-6889

K0011
April 5, 1990
Clear Lake

Mr. Richard Nichols
Water Quality Section
Oregon Dept. Environmental Quality
811 S.W. 6th Ave.
Portland, OR 97204

Dear Mr. Nichols:

Subject: Summary of Observations on Clear Lake Water Quality and Proposed Annual Phosphorus Load Limits and Median Phosphorus and Chlorophyll -a Concentrations.

Dick, here is a summary of my observations and calculations on Clear Lake. Data source for all estimates is Cooper (1985) unless stated otherwise.

PHOSPHORUS

- The best estimate of annual average instantaneous phosphorus quantity within Clear Lake is 170 pounds; lake volume x annual average lake concentration (8.5 billion liters x 9.1 ug P/L). This is a good reference number to compare subsequent estimates.

- The estimate for instantaneous annual average phosphorus quantity within the epilimnion is (11892 g) (epilimnion volume x annual average epilimnion concentration; 1.7 billion liters x 7 ug/L) 26.2 lbs.

- Average summer estimate of phosphorus in lake is 190 pounds. (Average lake summer concentration is 10 ug P/L)

- Average summer estimate of phosphorus in epilimnion is (13166 g) 29 lbs. (Average epilimnion summer concentration is 7.8 ug/L)

- The best estimates of annual water inputs are: (Century West, 1985)

Aquifer	1.8 cfs (51 L/s)
Precipitation	1.5 cfs (42 L/s)
Runoff	1.1 cfs (31 L/s)
Collard Crk.	2.4 cfs (68 L/s)
Total	6.8 cfs (193 L/s)

- Lake turnover or replacement times is 510 days or 0.715x/year.

Exhibit 4
Page 1 of 4

RECEIVED APR - 9 1990

- Initial estimate of annual phosphorus loading is 6.8 cfs (192.6 L/s) @ 0.0091 mg P/L or 122 pounds P/year.

- Or 0.715 x 170 lbs P = 122 pounds P/year.

- A better estimate would be:

Source	Flow	Empirical Concentration	Yearly Loading
Aquifer	51 L/s	...	...
Precipitation	42 L/s	...	...
Runoff	31 L/s	...	...
Collard Crk	68 L/s	0.011 mg P/L	52 Pounds

P.O. Nelson (1990) approximated concentrations, in part apparently from Gilliom (1983):

- Precipitation - 0.0093 mg P/L which is close to the maritime average value of 0.01 used by most researchers, which should be similar here.

- Groundwater - 0.007 mg P/L; I have no basis for comparison other than it is within range of unpolluted groundwater.

- Runoff - 0.011 mg P/L; appears reasonable (to touch high).

- Collard Lake - 0.011 mg P/L; same number as average from Cooper, 1985.

- So we can construct a mass balance loading table to derive a pretty good estimate of annual phosphorus loading to Clear Lake:

Source	L/s Flow	mg P/L Concentration	Pounds P Yearly Load
Aquifer	51.0	0.0070	24.8
Precipitation	42.5	0.0093	27.5
Runoff	31.15	0.0108	23.4
Collard Crk	68.0	0.0110	52.0
Total	192.6	0.00953	127.7, say 128 pounds

P.O. Nelson (1990) estimated the annual P loading at 127 pounds. So we have estimates of 122,127 and 128 pounds P per year loading. And we have an estimate of P concentration of 0.00953 mg P/L versus a measured annual average of 0.0091. I believe we are pretty close here at 127 to 128 pounds P per year. This appears reasonable.

What is an allowable P nutrient loading for Clear Lake that would retain its oligotrophic nature?

1. EPA, 1986 "Quality Criteria for Water"

   a) In excess of 100 ug P/L may interfere with drinking water treatment processes.

b) In excess of 25 ug P/L in lakes may stimulate excess algal growth.

c) Recommends application of Vollenweider's phosphorus loading approach. Yields allowable annual P loadings that will retain oligotrophic lake quality. Expressed as grams P per square meter of surface area per year. One needs to calculate the ratio of mean depth over hydraulic detention time.

- 12.75m (mean depth)/1.4 years = 9.125 ratio
- Tabular value @ 9.125 is 0.3 g P/M^2 /year.
- @ $667,755M^2$ = 200 kg P/year for Clear Lake

Thus, per EPA (Vollenweider) the permissible phosphate phosphorus loading is 200 kg or 441 pounds per year. EPA (1986) points out that most uncontaminated lakes have a P concentration in the rage of 10 to 30 ug P/L.

2. Applying Chapra & Tarapchak @ 2.75 ug chl-a/L yields a permissible loading of about 317 pounds P/year.

3. Applying Dillon & Rigler (Gilliom) @ 2.75 ug chl-a/L yields a permissible loading of about 346 pounds P/year.

So, we can now estimate the quantities of phosphorus that could be added beyond the present loading and still retain oligotrophic status in Clear Lake: (pounds P/year)

1. EPA (Volenweider) (general oligotrophic quality)	441	(total permissible)
	-128	(1984)
	313	(potential new sources)
2. Chapra & Tarapchak (@ 2.75 ug chl-a/L)	317	
	-128	
	189	
3. Dillon & Rigler (@ 2.75 ug chl-a/L	346	
	-128	
	218	

So, our estimate of allowable new source load is between 189 and 313 pounds P/year, and the maximum allowable phosphorus loading is between 317 to 441 pounds.

Let us address the proposal median concentration limits of P and chl-a:

(2) Total phosphorus maximum annual loading (between 317 to 441 pounds) deemed exceeded if:

(a) Median concentration in epilimnion (between May 1 and Sept. 30) exceeds 9.5 ug P/L in two consecutive years.

(b) Median chl-a concentration in epilimnion (between May 1 and Sept. 30) exceeds 2.75 ug chl-a/L in two consecutive years.

Comments:

The use of 2 variables to decide if there is a problem in compliance is good. One variable by itself could be exceeded by sampling variability (shown below). The odds of two variables being exceeded by chance in sampling is remote. Therefore the criteria wording should be 2(a) and (b) exceeded in 2 consecutive years.

Cooper's 1984 data (reported in 1985) yield a mean estimate of 7.75 ug P/L in the epilimnion in Summer with a SD of 3.5 ug P/L.

The epilimnion (summer) computed median chl-a was 2.5 ug chl-a/L. Missing sample values clearly indicate that the actual summer 1984 median epilimnion value was higher. See attached table.

DEQ's tentative proposed median values appear tight. EPA's general guidance is 25 ug P/L for lakes. 10 ug P/L is in the low range (ultraoligotrophic) for lakes. 2.75 ug chl-a/L appears to be below the actual median value observed in 1984 in the Cooper study. The actual 1984 median value appears to be about 3.0, substituting typical weekly values for missing values. If there is a late spring or late summer, the actual 1984 median value would probably be about 3.0 as well. Mean summer chl-a values (and standard deviations) follow:

Data Computed		Estimate Missing Values		Late Spring	
$\bar{X}$	SD	$\bar{X}$	SD	$\bar{X}$	SD
3.26	3.74	2.97	3.22	3.56	3.22

These data indicate that a standard error estimate is 0.08 to 0.12. So, we should anticipate average measurements of chl-a in the epilimnion of Clear Lake in summer to be about 2.9 to 3.1 mg/l (low range) and 3.4 to 3.7 ug/L (high range), under existing conditions.

I sincerely hope this information is useful to you.

Best regards,

Vic

V. W. Kaczynski, Ph.D.
Limnologist

VWK:mf

CLEAR LAKE WATERSHED STUDY

Phosphorus Loading Analysis and Management Recommendations

Peter O. Nelson
Associate Professor
Civil Engineering Department
Oregon State University
Corvallis, Oregon 97331
(503) 737-2751

Exhibit 5
Page 1 of 6

Vollenweider Analysis - Phosphorus Loading to Lakes

Reference: Gilliom, R. J., "Estimation of Nonpoint Source Loadings of Phosphorus for Lakes in the Puget Sound Region, Washington" U. S. Geological Survey Water-Supply Paper 2240 United States Department of Interior, 1983.

Predicted epilimnetic steady-state mean phosphorus (P) concentration, ug/L:

$$P_{SS} = \frac{L^{*}(1-R)}{z\,A\,\rho}$$

L^{*} = P-loading to lake, kg P/yr

R = lake retention coefficient

z = mean lake depth, m

A = lake surface area, km^2

ρ = lake flushing rate, number per year (y^{-1})

Predicted lake sensitivity (S) to increased phosphorus loadings (function of physical characteristics of lake):

$$S = \frac{(1-R)}{z\,A\,\rho}$$

Therefore:

$$P_{SS} = L^{*}\,S$$

Phosphorus loading to lake:

L^{*} = precipitation + forest runoff + groundwater input + upstream lakes + residential runoff + wastewater (septic tanks) + agricultural runoff

Collard Lake Analysis

Sensitivity analysis:

$R = (1+\rho^{0.5})^{-1}$; $\rho = (RT)^{-1} = (0.44)^{-1} = 2.3\ y^{-1}$, where RT = lake retention time, y

$R = (1+2.3^{0.5})^{-1} = 0.40$

$$S = \frac{(1-0.40)}{(6.7)(0.14)(2.3)} = 0.28$$

Gilliom Table 7: S * 10 = 2.8 = <u>low-moderate sensitivity</u>

Phosphorus loading analysis:

Basis: "present" = 16 nearshore (250 ft) dwelling units
"future" = 70 nearshore (250 ft) dwelling units

$L^* =$	2.8 +	15.8 +	3.1 +	4.8 +	12.8	(56.0 future septic tanks)
	pptn.	forrest	dunal aquifer	resid. runoff	septic tanks (present)	

= 39.1 kg P/y (present)

= 82.5 kg P/y (future)

33% loading from septic tank W.W. (present)

68% loading from septic (future)

12% loading from resid. runoff (present)

Predicted phosphorus conc.:

$P_{SS} = L^* S = 39.1(0.28) = 10.9$ ug P/L (pres.)

$= 82.5(0.28) = 23.1$ ug P/L (future)

Present = <u>good water qual.</u> (Group B, Gilliom: moderate algal productivity)

Future = <u>moderate - poor w.q.</u> (Group C, Gilliom: mod. high algal prod.)

Clear Lake Analysis

Sensitivity analysis:

$R = (1+\rho^{0.5})^{-1}$; $\rho = (RT)^{-1} = (1.4)^{-1} = 0.73\ y^{-1}$, where RT = lake retention time, y

$R = (1+0.73^{0.5})^{-1} = 0.54$

$$S = \frac{(1-0.54)}{(12.8)(0.62)(0.73)} = 0.079$$

Gilliom Table 7: S * 10 = 0.8 = <u>low sensitivity</u>

Phosphorus loading analysis:

Basis: "present" = present loading from Collard L. and no nearshore dwelling units
"future" = future loading from Collard L. and 5 nearshore (≤250 ft) dwelling units

Present loading:

L^{*} =	12.4	+	10.6	+	11.3	+	0.0	+	0.0	+	23.5	=	57.8 kg P/y total
	pptn.		forrest		dunal aquifer		resid. runoff		septic tanks		Collard L.		

Future loading:

L^{*} =	12.4	+	10.6	+	11.3	+	3.0	+	4.0	+	49.5	=	90.8 kg P/y total
	pptn.		forrest		dunal aquifer		resid. runoff		septic tanks		Collard L.		

41% loading from Collard Lake (present)

55% loading from Collard Lake (future)

8% loading from resid. runoff and septic tanks (future)

Predicted phosphorus conc.:

$P_{SS} = L^{*}\ S = 57.8\ (0.079) = 4.6$ ug P/L (pres.)

$= 90.8\ (0.079) = 7.2$ ug P/L (future)

Present = <u>excellent water qual.</u> (Group A, Gilliom: low algal productivity)

Future = <u>excellent water qual.</u> (Group A, Gilliom: low algal productivity)

Summary Comments

1. The Vollenweider analysis, as developed by Gilliom, may have errors in phosphorus loading estimates ranging from 10 to 100% for each loading term. The errors are not all likely to be positive, and thus should not contribute to a substantially greater phosphorus loading than that presented.

2. For all P-loading terms, the highest feasible value was selected so as to present a "worst case", but nevertheless reasonable, loading estimate.

3. Collard Lake is moderately sensitive to increases in P-loading. At present, it is predicted to have good water quality and only moderate algal productivity (characterized by high water clarity with infrequent incidences of algal blooms). About 35% of the P-loading is from the residential development, mostly from septic systems within 250 ft. of the lake.

4. For Collard Lake in the future, should the housing subdivision become fully developed with septic systems for wastewater disposal, water quality is predicted to deteriorate to a moderate to poor condition (characterized by reduced water clarity and frequent algal blooms). About 80% of the P-loading would emanate from the residential development.

5. Clear Lake is relatively insensitive to increased phosphorus loadings, due to its greater volume. At present, it is predicted to have excellent water quality (very high water clarity and rare algal blooms). The inlet stream from Collard Lake is predicted to be the major P-loading term, accounting for about 40% of the phosphorus loading to the lake.

6. For predicted future increases in P-loadings to Collard and Clear Lakes, Clear Lake could experience a 60% increase in its phosphorus concentration (mean steady-state epilimnetic value). The water quality of Clear Lake would remain in good-excellent condition, although some decrease in clarity and more frequent algal blooms would be experienced. Collard Lake would account for about 55% of Clear Lake's P-loading. Development of five residences in the Clear Lake watershed would have little impact (less than 8% of P-loading).

7. Clear Lake presently experiences anaerobic conditions in its hypolimnion during summer stratified conditions, thought to result from dunal aquifer groundwater input. Because of this condition, any significant increase in algal productivity could result in a taste and odor problem for Clear Lake as a drinking water source. This problem would not be ameliorated by the anticipated future addition of filtration facilities to the water treatment plant.

8. It is recommended that a management strategy be implemented for the Clear Lake - Collard Lake watershed that minimizes future increases in phosphorus loadings to the lakes. Such a strategy should include at least the following elements:

   a. Minimize new installations of septic drainfield systems, where other alternatives are available (e.g., chemical toilets, dry toilets);

   b. Ensure that new septic drainfield installations are properly designed and installed;

Summary Comments, continued

8. c. Ensure that existing septic drainfield systems are functioning properly through a periodic inspection program;

d. Require upgrading of existing nonconforming wastewater disposal systems (e.g., pit toilets);

e. Reduce residential runoff sources of phosphorus through education of watershed residents that emphasizes appropriate timing and minimizes applications of fertilizers and pesticides;

f. Minimize soil erosion through practices that encourage vegetative cover of all soil. Require surface drainage control (e.g., check dams and/or settling basins) during all construction activities that disturb soil surfaces.

g. Monitor forest practices to ensure conformance with the Oregon Forest Practices Act. Encourage alternative management practices that eliminate forest use of fertilizers and pesticides and that eliminate new road construction if logging occurs.

Copy of answer to Pueblo Water District
report on Clear Lake Florence moratorium
(Requested)

September 12, 1990

To Whom It May Concern:

We received your report around the 1st of September. Thank you. I have read and reread it, and must say, was a little surprised at your attitude towards the Clear Lake F-2 owners - it seems a little undeserved. We can't speak for the others, only for our own particular 40 acre parcel - Lot 2200 -but surely you realize we had nothing to say about the zoning? This was done after the issue of pure water surfaced - and because of it.

Our property in itself met all the criteria for one acre residential (sub-area plan). I am enclosing a copy of a paper that pretty much tells the story of the four year struggle of our ex buyer.

We did not, and do not, have any wish or desire to contaminate the drinking water. This possibility was completely unforseen and unexpected by us. Nor did we wish or desire to live on 40 isolated acres and do commercial logging under the very strict rules and regulations you speak of.

Nevertheless, we also recognize the serious possible repercussions to the lake and appreciate your position. It's a very real enigma for everyone involved.

Following is our situation presently. We are 70 years old, on Social Security, and living in a mobile home on our son's property (hardship permit). Certain health problems have kept us from attending meetings. Our old age Insurance Security "bank" has gone down the drain in to Clear Lake. Not funny! Ironic? Maybe, but not funny.

As to the concerns of the residents on Collard, that's sorta hard to figure too. In our wildest dreams we did not imagine that you would not sewer the whole watershed, if any. Should we be expected to help pay for their sewers plus our septic system if we get one? Am I missing something here? All we ask is fair and equal treatment for everyone involved.

It would certainly be in our best interests if you would buy us out along with the lots on Collard. What are we? Orphans? Less deserving? Aren't we all the same common ground?

Our 40 acres is in no way suited to commercial logging, and neither are we. It is sand, brush, and jackpine and borders the sand dunes on one side. Just on general principal, in my opinion, to log it is to destroy it. It is very beautiful - close to town, the lakes, the dunes, the ocean, and not even very far from Eugene (the big city).

LCDC's own guidelines say "land near sand dunes should not be logged as disturbing the vegetation can cause sand to shift inward at a faster rate". You say you believe "development of any kind, no matter how benign, is an unacceptable risk to the future of the water quality". We can't win, can we? Our only solution is for you to buy us out also.

We did read where the legislators are considering some bills that will provide more flexibility on use of urban and rural land, which may, or may not, help us down the road - in selling (again). But just the waiting alone is a great financial burden (TAXES).

If you do consider the option of buying our property too, we have no idea what you consider fair market value. Would it be unreasonable for us to ask the assessed true cash value before the F2 zoning which was $ 93,210 in 79-80, 80-81? This averages out to just under $ 23,250 an acre approx. and would enable us to recover our loss in assessed value plus reimburse our ex-buyers partly for the losses they incurred inadvertently.

I'm not much of a mathematician, but from what I can figure, you are paying $ 26,000 each lot on Collard. No doubt, had it not been for the pure water dilemma, our property would have had a higher value.

Otherwise - I guess we will hang in (or on) and see what the future brings. It's been a long 10 years downhill.

Let us know what you think. Thanks.

Respectfully,

Mrs. [illegible]

These F2 land owners currently must meet Land Conservation and Development Commission (LCDC) rules and conforming county codes governing residential dwellings on forest (F2) lands. LCDC rules do not allow non-business-related dwellings such as retirement or recreational vacation homes. These lands are also subject to the rules of two county coastal shoreland overlay zones: "Significant Natural" and "Natural Resource Combining." Some of the owners of these F2 lands want to build recreational residences on their land, and claim their property rights are being violated by denying their wishes. They ARE! Aren't they?

As of this writing there is no scientific evidence that the water in Clear Lake is deteriorating. However, a 1985 study by Cooper Consultants, "Limnology and Nutrient Dynamics of Clear Lake, Oregon, Lane County," states:

> "Increased residential development around Clear Lake will increase the phosphorous loading to the lake *whether or not a sewer system is built* (emphasis added).

Despite the conclusions and recommendations contained in this study, Lane County, in 1986, proposed to sewer the Collard Lake subdivisions as a means of resolving the DEQ septic tank moratorium. This proposal was initiated without notice or consultation with the property owners. When the Collard Lake residents objected, a Collard Lake representative was allowed to join the Clear Lake Watershed Advisory Committee.

After several meetings, the committee recommended a buy-out of all properties within 500 feet of the lake. The recommendations of the committee were ignored by the county, and no other solutions were sought until 1989, when the CRMP process was started.

Sewers again became the main thrust by the county commissioner and the Clear Lake property owners wanting to build recreational residences on their land. The issue of sewering the Collard Lake subdivisions continues to be a divisive issue.

Simply stated, the Collard Lake property owners feel they are being asked to pay for a sewer system at Collard Lake so the owners of the large F2 timberland tracts at Clear Lake can build using septic systems. The county and the Clear Lake property owners pay nothing toward the construction or operation of the sewers. [redacted] We'll be getting nothing!

Similarly, if the water is allowed to degrade to the point that additional water treatment is required, the entire financial burden falls on the Heceta Water District customers. **It costs the F2 land owners nothing.** [redacted]

If protecting the water is truly the goal, it seems inconsistent to require sewers or other protective measures in the Collard Lake subdivisions, and then allow new sources of pollution to take place at Clear Lake. [redacted]

Accordingly, Heceta Water district takes specific exception to rules allowing new development on F2 lands. These F2 lands are zoned for timber production, not for residential uses. Heceta Water District has no quarrel with use of these lands as zoned, but we disagree with the use of these lands for residential use. [redacted]

We take exception because we believe development of any kind, no matter how benign, is an unacceptable risk to future water quality. Any reduction in pollutants achieved by sewers at Collard Lake should be held in reserve to provide a cushion of protection for the water. The savings should not be used as a lever to allow further residential development at Clear Lake. If the rules are allowed to stand as now written, a minimum of 18 new residents on septic tanks would be allowed on the large Clear Lake tracts.

Water quality standards mandated by Environmental Protection Agency (EPA) and the State of Oregon are very restrictive. Accordingly, even seemingly minor amounts of pollutants that

MR PARKS

1978 — WAS OUR "BUYER"

Bought 40 acres
unzoned

Had legal Road
County Rd. #386
all the time

fought County
for permit to
build road into
property, Bob Eagl
said there was
no public road
into property

He was there
since 1936

Property Bought - 6/1/62
Deed to Berg 2/1/78
IT CLAIMED BACK
83 or 84

1978

Coastal Sub-
Area plan
Started

STILL fighting
to get legal
access to
property

Jerry Rust said
Parks didn't need
home on property

Lane County said
Parks should
take it to Court
to get access

Parks goes
to court to get
access to
property, even
though there's
public access
there all the
time —

1979

Parks goes
to 15 public
meetings on
Coastal Plan
and finally
gets intent
to rezone to
1 acre parcel
(5 Conditions)

Parks gets
public access
through North
County Rd #386
by Courts and
builds road
into property
Cost $10,000.

THE LARGE PRINT
IS HIS - THE SMALL
IS MINE [illegible]
[illegible] OF YOUR [illegible]

THE COUNTY [illegible]
[illegible] OF THIS
[illegible]

1980

County puts
overlay on
property so
Parks couldn't
log land to
pay taxes

County starts
underground
aquifer study
(moratorium on
property so
Parks can't
comply with
Conditions so
Parks will lose
1 acre zoning)

Florence Urban
Service Boundary
set. Parks 40
acres left out

Man/40 acres
North sues
Parks $1,000,000
for building his
access his property

1981

County vacates
County Rd #386

Parks loses
all $10,000. Road
look to north

Parks has
to build new
access to
Taylor Rd.
$6,000 more

Overlay still
in force, so
no logging,
taxes goes on

underground
water study
goes on another
2 years. (STILL ON)

Coastal Sub Area
plan revised again
to take away Parks
property (Zoned 20 acre FORESTRY)

1982

1983

County zones
(LCDC) parks
property F-2
forestry

After 26 meeting
Parks gives
his land
up [redacted]

(BACK to
SELLER)
Quit claim)
TAXES
DUE
AGAIN -
83 -

WAS FF 20
property road F-2

F2 IS
nothing
Just forestry
a year
carpent
[illegible]

Kay Drummond
Michael Roeder
88573 Collard Loop Road
Florence, OR 97439

88573 Collard Loop Rd.
Florence, Or 97439
Aug 22, 1990

Dear Mr. Hutchison,

Due to my inability to attend this evening's hearing, I did still wish to make my feelings known regarding the plans of the COC for the Clear Lake Watershed.

I recently moved here, and have had to do a lot of reading in hopes of understanding the situation. I'd like to make the following points (opinions) known to the committee:

1) Current quality of Clear Lake water must be acceptable as it is now considered potable.

2) Current homeowners in the area have already invested thousands of dollars in construction of their septic systems which were approved by the county.

3) If it is further development of the area that will create the problem, then let your decisions effect those developers, not those who have already "paid their dues", and are not the problem.

With the above points in mind, I would favor any of the following:

1) Buy-out of undeveloped properties and maintenance of building moratorium.

2) If the above plan were adopted, I'd support the cost being distributed to all those who use the water from the lake on a ?$/gal basis — including that water sold to Florence.

3) Initiation of alum treatment to existing systems with continuing studies of phosphorus levels over the following 2-3 years after implementation. If phosphorus levels remain at current levels or decrease, then lift the moratorium and require new construction to install the same systems.

4) If it is seen that sewers are needed in order to allow further development, and if the buy-out is unacceptable, then at least exempt the current homeowners from their cost. They've already spent $ on their septic systems, which were approved. To then assess sewer charges is either condemning their property (for which compensation should be made) or double taxation. As in #2 above, cost of

sewers should be distributed over the population that benefits, i.e. the Hecla water users.

In summary, the only approach I would find totally unacceptable would be immediate installation of a sewer system to be paid for solely by current owners for the benefit of developers & the water users as a whole.

Thank you for your attention.

Sincerely,

Kay Drummond

c.c. other members
EQC committee

LAW OFFICES OF
JOHNSON & KLOOS

ALLEN L. JOHNSON
TILL KLOOS
ARY C. SCURLOCK

767 WILLAMETTE STREET, SUITE 203
EUGENE, OREGON 97401

AREA CODE 503
TELEPHONE 687-1004
FAX 687-1021

August 16, 1990

Department of Environmental Quality
Water Quality Division
811 S.W. Sixth Avenue
Portland, OR 97204
Attn: Richard Nichols

Re: Comments on Proposed EQC Rules Allowing Increased Phosphorus Loadings for Clear Lake

Dear Mr. Nichols:

On behalf of Mr. Michael Keating and the Collard Lake Area Watershed Supporters, we have the following comments with regard to the proposed Environmental Quality Commission rules modifying OAR 340-41-270, Special Policies and Guidelines for the Mid-Coast Basin and OAR 340-71-460(7), Moratorium Areas on On-Site Sewage Disposal Systems.

The proposed rules would change the loading limitations from nitrate-nitrogen to phosphorus. We have no argument with this change, at least in theory. It appears there is ample scientific evidence to support the DEQ's conclusion that phosphorus is the major limiting nutrient for Clear Lake.

However, we find that the proposed annual loading limitation of 265 pounds per year is unacceptably high because it conflicts with the state's nondegradation standard contained in OAR 340-965-026, which describes the policies and guidelines applicable to all basins. Section (1)(a) provides:

> "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. (emphasis added)

This provision applies to this rulemaking proceeding, which revises an existing water quality standard. *See enclosed* Water Quality Standards Issue Paper #2, Antidegradation Policy, Discussion Draft, page 6 (May 15, 1990) (listing water quality standards revisions as subject to antidegradation requirements).

The proposed rule allows an increase in phosphorus loadings over both the existing level and the level that should exist under the existing regulations. Proposed OAR 340-41-270(1) provides:

> "The total phosphorus maximum annual loading discharged into Clear Lake shall not exceed 265 pounds per year from all sources."

According to Attachment E of Dick Nichols' report of June 8, 1990, the existing annual phosphorus load for Clear Lake is 218 pounds per year. Therefore, as noted in Attachment G of the report, the new standard would allow an increase of 47 pounds of phosphorus per year. DEQ staff takes the position that this increase is "slight" (Report at page 2), and that the new standard will allow "some additional development" to occur within the lake's watershed while still maintaining the "high quality water of the lake." DEQ Report, Att. B-1. Specifically, "[t]he proposed rules would also provide for the addition of a very limited number of new on-site sewage disposal systems that are currently prohibited." Att. C-1.

The report also points out that the phosphorus load associated with the current nitrate-nitrogen loading limit would be 206 pounds per year, 12 pounds below the "current estimate of 218 pounds per year under current condition." Att. G-7. Therefore, it appears that if the current standards were being complied with, the existing phosphorus level would be in the neighborhood of 206 pounds, and that the new standard actually allows an increase of 59 pounds per year, rather that 47. The DEQ asserts that a level of 206 pounds "would be substantially below what would be needed to maintain lake water quality." Att. G-7.

It appears that the staff report interprets the word "maintain" to mean something different than "no change" when it comes to water quality. It may well be true that an annual loading of 265 pounds per year would not degrade the quality of the Clear Lake to the point of changing trophic levels, *i.e.* from the present state of oligotrophy to mesotrophy. However, this does not mean that increasing phosphorus levels, whether it be by 47 or 59 pounds per year, will not impair the undisputably "high quality" water within the meaning of the state nondegradation standard.

DEQ's Water Quality Standards Issue Paper #14, states that "degradation" may be defined as:

> "a permanent **measurable change** in the existing chemical, physical, or biological parameters of water that results in the statistically significant lowering of water quality."

ORS 468.700 defines "water pollution" as "alteration of the physical, chemical or biological

properties of any waters of the state." The federal Clean Water Act similarly defines pollutants as including "chemical wastes" and "biological materials. . . discharged into water" and defines "pollution" as "the man-induced alteration of the chemical, physical, biological and radiological integrity of waters." 33 U.S.C. § 1362(6); § 1362(19). An increase of 59 (or 47) pounds of phosphorus per year is clearly a measurable chemical change, and constitutes the "pollution" of water under both state and federal standards.

As applied to those waters in the state that are of "high quality," such as Clear Lake, the OAR 340-41-026(1) standard assumes that high quality waters should not be allowed to degrade without a conscious public decision. "Currently, lowering of water quality would only be allowed if highest and best practicable control of wastes is provided, if beneficial uses are still fully protected and water quality standards are met and only after extensive public review and Commission approval. **The goal is to prevent unnecessary degradation of water quality.**" Issue Paper at 1 (emphasis added).

It is our position that the proposed rules fail to justify the increase in phosphorus loadings for Clear Lake which is prohibited under OAR 340-026 (1) unless "after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process" it is determined that "lower water quality" should be permitted "for **necessary and justifiable economic or social development.**" The burden is on the DEQ to show that these rules are justified under the standard, and this burden is a heavy one.

The state nondegradation standard is rooted in the Clean Water Act ("CWA"), Section 101(a), which states that one of the objectives of the Act is "to restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. s.1251(a). The CWA's substantive requirements for state water quality standards also include the section 303(c) requirement that state standards "shall be such as to . . . enhance the quality of water and serve the purposes of this chapter." 33 U.S.C. § 1313(c)(2).

Current EPA regulations, 40 C.F.R s.131.12, provide that if a state does decide to allow the degradation of high quality waters, "the state shall assure water quality adequate to protect existing uses **fully.**" 40 C.F.R. s.131.12(a)(2) (1986) (emphasis added). This language replaced an earlier provision that water degradation must not "interfere or become injurious to" existing instream uses. As the EPA explained, "This means that the full use must continue to exist even if some change in water quality may be permitted." 48 Fed. Reg. 51,403 (1983).

The federal regulations also imposed additional limitations on state authority to allow degradation of high quality water by requiring a finding that the "economic or social development" causing the degradation is "important," not merely "significant." 40 C.F.R. 131.12(a)(2) (1986). According to the EPA, use of the word "important" strengthens the intent of protecting higher quality waters and affords a greater degree of environmental protection. 48 Fed. Reg. 51,403 (1983).

The EPA has made clear its position that the nondegradation policy imposes substantive limitations on prospective polluters. The latest EPA guidance document on the subject states:

> "If a planned activity will **forseeably** lower water quality to the extent that it no longer is sufficient to protect and maintain the existing uses of that waterbody, such activity is inconsistent with EPA's antidegradation policy which requires that existing uses are to be maintained. In such circumstance **the planned activity must be avoided** or adequate mitigation or preventive measures must be taken to ensure that the existing uses and the water quality to protect them will be maintained. U.S. environmental protection agency, office of water regulations and standards, QUESTIONS AND ANSWERS ON: ANTIDEGRADATION 7 (1985) (emphasis added).

The EPA has also stated that in allowing limited degradation of high quality waters, the regulations intended to provide a very narrow exception to the general standard of nondegradation. In reference to the procedures pursuant to which degradation of high quality waters is allowed:

> "This provision is intended to provide relief only in a few extraordinary circumstances where the economic and social *need* for the activity **clearly outweighs** the benefit of maintaining water quality above that required for "fishable/swimmable" water, and the two cannot both be achieved. **The burden of demonstration on the individual proposing such activity will be very high.** " *Id.* at 7. (additional emphasis added).

ORS 468.710 (2) declares it to be the public policy of Oregon "To protect, maintain and improve the quality of the waters of the state" for all legitimate beneficial uses. ORS 468.715 declares all water pollution to be against such policy and orders the DEQ to take "such action as is necessary for the prevention of new pollution and the abatement of existing pollution by * * * 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." **ORS 468.735 therefore requires the Commission to set water quality standards by rulemaking which are consistent with the above state policy and with the nondegradation policy contained in OAR 340-965-026 (1).**

OAR 349-965-026(1) allows the state to authorize water quality degradation of high quality water **only** for "necessary and justifiable economic or social development." In order for the proposed regulations to conform with the current federal scheme, "justifiable" must be interpreted to mean "important," as the term is used in 40 C.F.R. s.131.12(a)(2) (1986). As discussed above, the EPA has said that a very high standard must be met before any activity can be determined "important" within the meaning of the federal nondegradation policy. The federal mandate means that the proposed Clear Lake rules may be adopted only if "after lowering the quality of water it can be proved that the quality would still exceed the water quality standards used to **fully** protect existing uses." Even then, the state must prove that the lowered quality is absolutely necessary. EPA, QUESTIONS AND ANSWERS at 4.

(emphasis added).

The DEQ has the burden of showing that existing uses are "fully" protected as required by the federal standard and OAR 340-41-242. (requiring the management of water quality to protect beneficial uses in the Mid Coast Basin). Even then, a hearing must be held to determine that the proposed rules allow "important" economic development which justifies the degradation of a high quality water body. This standard is very high.

The only showing that has been made by the DEQ with respect to Clear Lake is that the proposed rule will probably not permit Clear Lake to change trophic levels. This is not enough. Absent a factual showing by the DEQ that the increased phoshorus loadings will not have any impact at all on the existing water quality of Clear Lake, and no adverse impact on beneficial uses, the DEQ has not convinced us that its proposed regulations meet the "protect and maintain" requirements of the state and federal nondegradation standards.

Oregon's basin standards must be evaluated in light of the federal requirement that Oregon's antidegradation standards "protect existing uses **fully**." It is the duty of the DEQ to enforce this mandate.

Thank you for your consideration.

Sincerely yours,

Mary C. Scurlock
Of Attorneys for Michael Keating and Collard Lake Ana Watershed Supporters

enclosures: Collard Lake Area Watershed Supporters List of Members
Water Quality Standards Issue Paper #2 (May 15, 1990).

cc: Michael Keating
Glenn Nickell

MCS/me
#2keating.com

MEMBERS OF THE COLLARD LAKE AREA WATERSHED SUPPORTERS

Chairman:

Glenn Nickell	2818 Metolius Eugene, OR 97401	683-1737

Vice Chairman:

Dennis Ryan	05966 View Court Florence, OR 97439	997-3358

Secretary-treasurer:

Helen Lashway	06020 Collard Lake Way Florence, OR 97439	997-1084

General Membership:

County Committee:

Jan Goldberg, Chairman	687-8318
Mike Keating	342-2303
Glenn Nickell	683-1737

City of Florence Committee:

John Loeblein, Chairman	997-3779
Dennis Ryan	997-3358
Walter Drew	997-6186
Al Lashway	997-1084

State and Federal Committee:

Dick Roberts, Chairman	997-6105
Alan Tait	997-8367
Walter Drew	997-6186

Membership Committee:

Judy Fleagle, Chairman	997-9170
Jan Goldberg	687-8318
Bill Finley	997-6255

Public Information Committee:

Edie Roberts, Charman	997-6105
Bill Finley	997-6255

Susan Kengon

These are not plans to protect the water. They are plans to increase development and to put 5 septic tanks on Clear Lake. This has been pushed through by 2 ~~lands~~ owners of forest land, who want to upzone to residential. We are being sewered at the far end of Collard Lake, so these two can put septic tanks in your drinking water.

On a dozen or so summer camp sites along Collard Lake, which could never have had approved septic tanks, people will be obliged to cut down trees, and build shoulder to shoulder, degrading lake quality, in order to pay for the sewer lines on their lots. This is not protecting drinking water. You are doing more to protect wetlands for ducks, than you are doing to protect our drinking water.

L-11

Timberlane Land Company

P. O. Box 668
Eugene, Oregon 97401

Clear Lake Testimony

August 31, 1990

Oregon Department of Environmenal Quality
811 S.W. 6th Avenue
Portland, Oregon 97204

Re: Clear Lake Watershed

Gentlemen: Att. Mr. Dick Nochols

Representatives of Timberlane Land Company have attended numerous public meetings concerning the Clear Lake Watershed and most recently the meeting in Florence concerning D.E.Q. "guideliness". Our interest stems from our being one of the largest land owners within the watershed-- the original purchase in 1959 being approximately 280 acres. Excepting for lots sold in Collard Lake First Addition and a few small parcels, the property ownership remains intact.

We had planned to developed the balance of our property into acreage size parcels so as to provide adequate drain fields and rural amenities. We had obtained preliminary approval to a 30 lot subdivision on that portion of our property located east of Collard Lake road. We had previously donated a parcel of land to Heceta Water District on which was constructed a reservoir. We also installed a water system. Completion of our 30 lot subdivision was stalled by a moratorium that was imposed on us. Since then we have been hamstrung from doing anything at all with our property including the completion of our work to plant beach grass on about 100 acres of Dunes bordering the west side of Collard Lake.

Sandwitched between Collard Lake road and our subdivision is a contiguous area of about 20 acres which was saved for further development. The D.E.Q. has presented guidelines to preserve the water quality in the watershed. It appears that the D.E.Q. recognizes a different set of standards as to the rights of one class of property owner vs another with the effect that the rights of one owner may be denied to protect the rights of another. For example, under case 11, existing houses would remain but those lot owners who did not build would be denied the rights to build. I would not be able to build a house on our 20 acres parcel nor would a house on the larger parcel of over 80 acres be permited. But in the same Watershed D.E.Q. suggest that: "houses could be built on large lots aroung Clear Lake". In short, we do not believe it is equitable or material in determining D.E.Q. guidelines to differentiate between developed or undeveloped properties or whether they are located on Collard Lake or Clear Lake. It just doesn't make sense.

Yours truly,

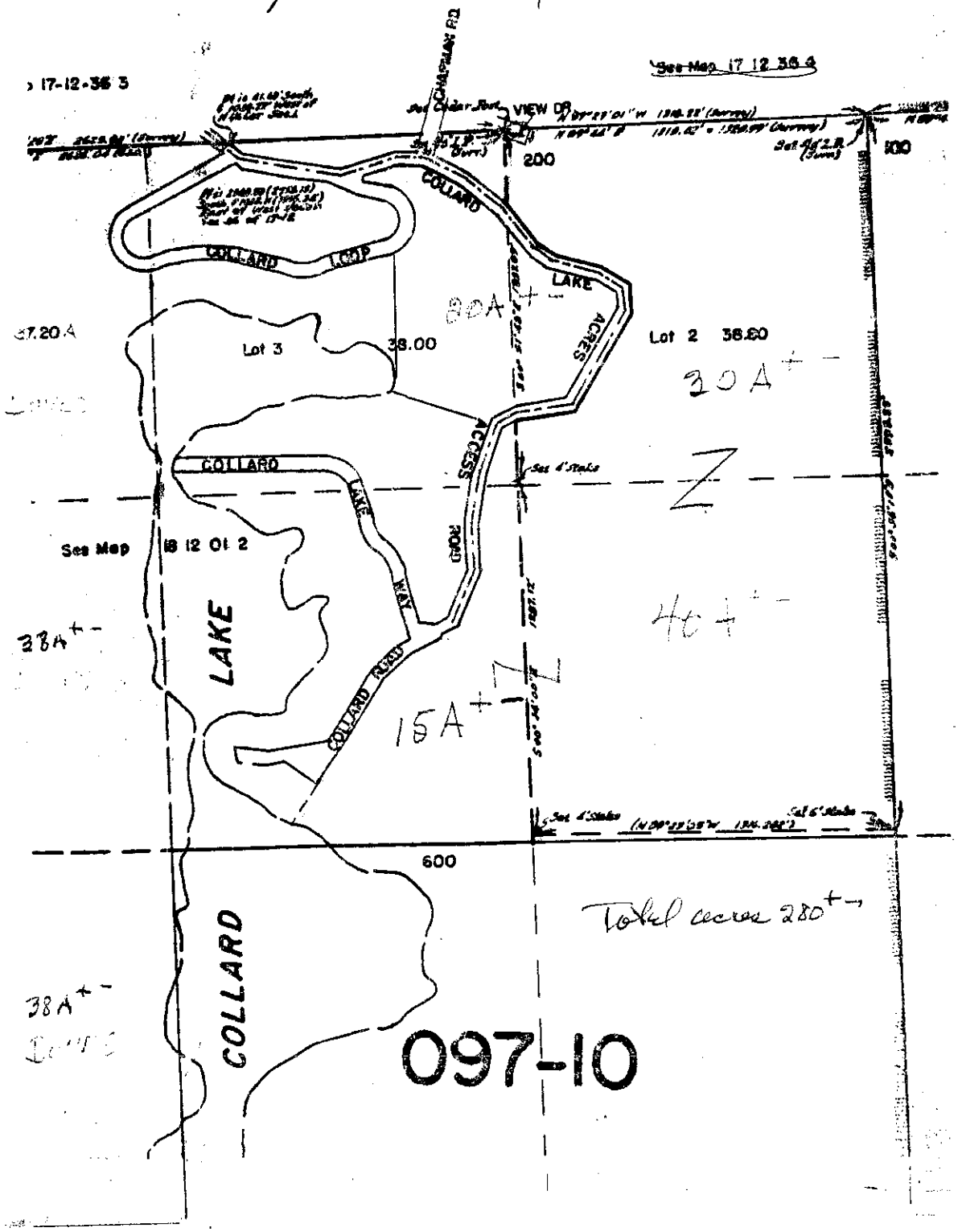
Herb Robbins

Herb Robbins

LANE COUNTY

1" = 400'

Map 18-12-01



D.11

CITY OF RHODODENDRONS
FLORENCE · · OREGON · · 1893

City of Florence

P.O. BOX 340
250 HIGHWAY 101 NORTH

PH. (503) 997-3436
FLORENCE, OREGON 97439

September 5, 1990

RECEIVED
SEP 10 1990
WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

Environmental Quality Commission
Department of Environmental Quality
Water Quality Division
811 SW 6th Avenue
Portland, OR 97204

Subject: Clear Lake Watershed

Ladies and Gentlemen:

The City of Florence wishes to express the unanimous views by members of the City Council regarding proposed rules to protect the high quality water in Clear Lake near Florence.

The City is an interested party as 30-40% of its water is purchased from Heceta Water District. During the past year, 15 cu. ft. of water from Clear Lake purchased from the District was necessary to make up the 41 cu. ft. of production to serve some 1800 customers in the City.

Based on the information available to us at this time, the City of Florence takes the following position:

- Endorses all efforts toward the preservation of Clear Lake.
- Favors the buy-out plan described as Alternative IVA, as proposed to CRMP by Heceta Water District--see attached.
- Supports Heceta Water District as taking the lead role in Watershed protection.

The City will accept its fair share of financial responsibility in achieving the goal to protect the Watershed.

Sincerely,

Robert B. Ward Jr.

Robert B. Ward, Jr.
Mayor

Note: Corrects production from gals. to cu. ft. of letter dated August 28, 1990.

CM/beo

cc. Heceta Water District
CRMP Committee
Commissioner Dumdi

MARILYN V. MILLER
P.O. Box 2080
Florence, OR 97439
(503) 997-6883

August 30, 1990

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

Re: Clear Lake Watershed

Dear Mr. Hutchison:

This letter is to express my concern with the recent DEQ decision to permit Collard Lake residential property owners to install a sewer system and open up the subdivision to further development adjacent to the lake as a solution to the current problem.

Because of the fragile nature of the watershed, evidenced by the topography and porous soil types, the pollution from human habitation - lawn fertilizers, run-off from rain gutters, loss of topsoil in construction activities, pet wastes, loss of natural vegetation, etc., etc., etc. - will be a source of contamination at least as damaging to the quality of the lake water as the the septic systems in use now. Additionally, the potential for a disastrous spill or backup during a not-so-rare electrical outage, or for whatever reason, is unacceptable if the quality of the lake water is the prime concern here.

I would also add my support to the Florence City Council which backed the buyout proposal made by Heceta Water District of the undeveloped property in the Clear Lake Watershed. Based on all the studies done over the years, it would seem that this is the only equitable solution to the preservation of the watershed: a fair price to the property owners, and a naturally clean and pure water supply for hundreds more residents for years to come.

Thank you for the opportunity to submit my comments. Over the years, I have volunteered my service on both the Dunes City Planning Commission (seven years, Chairperson five years) and the West Lane Planning Commission (three years, Chairperson one year) because of my deep concern over issues such as this. We have here the unique opportunity to act before we lose the resource - let's reverse the normal course of events (trying to replace a damaged/ruined resource after the fact) and act now to buy out this fragile watershed. A sewer system is not the answer.

Sincerely,

Marilyn V. Miller

MVM

Aug 24 - 90

Dear Sir:

The residents & users of Heceta Water Dist. in the Florence area should not be fooled, the current moratorium & sewering alternatives in the Collard Lk & Clear lake watershed are not so much about water purity as they are about five major land owners possessing Hundreds of F2 & marginal land acres & are trying to circumvent LCDC Rules & with the support of Ellie Dumdi will develope the area for a full build out. Even now there are Roads & even a boat launch put in & around Clear Lake, "your drinking water" There will be & already have been attemps made to rezone. The few

Homes that have been built within the watershed have not caused any degregation of water quality in the last Five years.

Now is the time to back Heceta Water District's alternative plan for a buy out of any undeveloped property & preserve the future drinking water supply.

No more developement
No sewers & no more density

Joni Loeblein

P.O. Box 1893
Florence, OR 97439

1990

DEQ Hearings Officer
Comments of EQC Hearing at Florence, Oregon--Aug. [illegible] 1990

From: Charles L. and Nettie J. Crump C. L. Crump & N. J. Crump

We are property owners on Collards Lk., lot # [illegible] of the Collards Lk. Acres- First Addition

We are opposed to the DEQ rule modifications which require sewering of the Collards Lk. Watershed properties. [illegible] is a partially developed lot, ie, without a residence but we do have an on-site septic tank, drain field, water and electricity. We use the property for occasional recreational use [illegible] connecting our [illegible] to the septic tank and water system. We have been [illegible] since 1972. In previous years our usage has probably not exceeded 20 to 30 days per year. However, having recently retired I expect usage time to probably increase significantly.

If some change is required we would be in favor of Alt. [illegible] the LRMP proposal and even more in favor of the modified proposed Alt. IVA by Heceta Water District.

We are definitely opposed to any development on the F2 [illegible] areas on and around Clear Lk. If we are really in favor of protecting the water quality of Clear Lk. allowing degradation of the water quality and development on that lake is surely not the way to do it.

We are especially upset with the very poor history and performance of Lane County officials--from the current Area Lane County Commisioner to county officers--in dealing with this issue beginning in the late 1970's. I feel extremely fortunate in not having to make my residence in Lane County.

The proposed DEQ rules would allow quality of water to degrade primarily to allow development on Clear Lk. This is not acceptable! At this time Clear Lk. is not at a deteriorative stage. However, allowing development on the lake will change that immediately. Again, something that Lane County politicians and officials are ignoring.

We owners of Collard Lk. properties are being asked to pay for an extremely expensive sewer system to allow F2 zoned property owners on Clear Lk. to install on-site septic systems--without sharing the cost of the sewers.

While we do not wish to sell our Collard Lk. property we would rather see a buyout of the properties by Heceta Water District than full sewering of the watershed.

Walter H. Drew
06103 View Road
P.O. Box 217
Florence, OR 97439

Prepared Statement Handed to Richard J. Nichols at
EQC Hearing at Florence, Oregon
August 22, 1990

A point of order.

I protest your acting as hearings officer for the Environmental Quality Commission tonight on the grounds of bias.

You drafted the rule package which is before the meeting tonight. You have negotiated actively with various individuals on the rule changes which DEQ proposes. Your negotiation with these individuals has at times gone far beyond providing technical information and advice; it has often constituted advocacy of your own views of what a watershed management plan should provide.

According to Noland Huntington, Secretary-Treasurer of the Siuslaw Soil and Water Conservation District, you are the main source of recent pressure on the District to resume the controversial CRMP meetings concerning a management plan for the Clear Lake watershed.

You should declare your involvement and bias, and you should recuse yourself as hearings officer in this case.

Marcia Smith
P.O. Box 325
Brea, California 92622

August 18, 1990

Department of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204

Dear Sir:

I am unable to attend the public hearing August 22nd at Florence and so I will respectfully submit a written statement for your consideration.

After more than 8 years, countless groups, and a countless number of meetings with a wide array of participants, it finally sounds like all the facts are in on the Clear Lake watershed. The results of the research clearly indicate that the Collard Lake subdivision is the source of pollution and the biggest threat to the purity of Clear Lake.

In light of these facts, I request that you take immediate steps to implement one of the three sewering alternatives, since the fourth alternative of basically doing nothing equates to nothing more than a bury your head in the sand and pretend the problem doesn't exist approach.

Thank you for your consideration.

Marcia Smith

Marcia Smith
fka Marcia Neves
Tax Lots Nos. 800-801

August 20, 1990

D.E.Q.
Water Quality Division
811 SW 6th Ave.
Portland, OR 97204

RE: August 22, 1990, Hearing
Clear Lake Watershed Moratorium
Florence, OR

Gentlemen:

I am a retired owner of property on Clear Lake. Since 1932, I have used the area for dune buggy riding, swimming, fishing, boating, water skiing, camping, hiking, ATV riding and my father lived in a trailer house and small cabin on the property after he retired until he passed on. Our family roots are deeply entrenched in the property. My son is a 4th generation owner.

Our more than 50 years use of the property has not degraded the watershed. The septic systems on Collard Lake were identified by the experts long ago as the pollution source.

Action to stop the responsible polluters should be taken and the moratorium removed. We are innocent victims of other parties actions. I would like to build my retirement home and hopefully your rules would allow for ultimate additional homes for my daughter and my son on our combined 70+ acres.

The moratorium and inaction has gone on for too long.

Sincerely Yours,

V. M. Howard

Vincent M. Howard
P.O. Box 2193
Florence, OR 97439

RECEIVED 07 1990 FYI - not testimony

WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

Dick,

I survived the weekend visit from my brother & his wife & boys 2 yrs & 3½ yrs and a day of being sick but then my printer froze up. Without hard copy, I can hardly think.

I wanted you to know that I haven't given up. I'm concerned about the new proposals and hope we'll have a chance to look at that & comment before the EQC mtg. In fact, things seem to be changing every day. Ellie Hemdi called late Fri. afternoon ~~and~~ told me about "her" idea (as opposed to the whole C. comm.) & Alan told me his proposed Man. mtg. (I'm not quite sure about that.

I am struggling with the P loading proposal & need to know what "sensitivity factor" means - I can't find the term in anything else. Also, 8 lb per day in the Gillian paper (summary) per household can't be right - that would be 3/4 ton a year!

More later, let me know about this

Chris

D. M.

August 29, 1990

Dept. of Environmental Quality
Water Quality Division
811 S.W. Sixth Ave.
Portland, Or.

Dear Sirs:

As a resident of Florence, Or., I would like to voice my concern as to the decision to be made in the case of the proposed Collard Lake subdivision and its effect on the quality of drinking water from adjacent Clear Lake, the the primary source of drinking water in this area. I am very much opposed to any further development, building, etc., in this area, and I also strongly oppose any revision of existing rules limiting lake levels of nitrates and phosphorous, unless it would be to make these limitations even more stringent. I support the Hecata Water Dist. plan of a buyout of all undeveloped lots within the Collard Lake Area, and mandatory installation of alum and sand filters to existing septic tanks.

The alternative of sewering the lake area is not a sound idea, for it would only deal with one aspect of the potential pollution problem. The watershed would continue to be at risk from the herbicides, pesticides, and fertilizers that homeowners will be using on their yards, potential for accidental and intentional dumping of toxic waste such as used motor oils, leaching of house paints, chemical pollutants from the construction process itself, and in general the impact from a burgeoning population in the watershed vicinity.

Thank you for helping the residents of this area protect the quality of their drinking water.

Sincerely,

Dennis Murch

P.O. Box 1534
Florence, Or.
97439

06103 View Road
P.O. Box 217
Florence, OR 97439

997-6186

August 28, 1990

Water Quality Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Dear Sirs and Madams:

Please make the following additional correction to the written comments on the proposed Clear Lake Watershed rule changes which I sent you on August 20 and amended once already by my letter of August 27.

On page 12 change the third full paragraph to read:

> "Lane County Commissioner Ellie Dumdi, who has been pushing for removal of the existing EQC moratorium, received a $1750 contribution from Seneca Sawmill Co., for her successful 1990 reelection campaign."

Thank you.

Sincerely,

Walter H. Drew

DN
FYI

Jon L. Sampson
1669 Town Point Road
Cambridge, Maryland 21613
(301) 228-4928

Department of Environmental Quality
Water Quality Division
811 S.W. Sixth Avenue
Portland, OR 97204

August 15th, 1990

The proposed revised DEQ rules to protect the Clear Lake watershed (near Florence), are commendable for their level of detail, their scope of the related issues, and their flexibility as expressed in the five scenarios - which range from a build-out to a buyout.

As owners of two undeveloped residential building lots in Collard Lake Acres, we support case IV of the scenarios or any modification of it which would be equally uncomplicated to implement, and which would provide equal or better protection for the water supply while at the same time recognizing the rights of affected property owners.

We cannot support the other scenarios for the reasons of cost and lack of fairness to the affected property owners; lack of confidence in Lane County's willingness, ability, or committment to carry them through (as evidenced by the lack of a county road to serve the current subdivisions - in contravention of current county code); our perception that further development is moving the wrong way in the effort to protect the water; and the obvious time required to develop the plans, organizations, and funding, let alone the implementation of sewering, stormwater control facilities, etc..

We request that if there are any changes to the proposed revised rules, they be in the direction of not only protecting but improving the water quality; that they protect the rights of property owners based on zoning, length of ownership, and time of deprivation of appropriate zoned use; and that they be as uncomplicated and quickly implementable as possible.

Sincerely,

Jon L. Sampson

Jon L. Sampson

Barbara A. Sampson

Barbara A. Sampson

Cy Furn:
Commissioners:
Hutchison
Castle
Lorenzen
Sage
Wessigner
C.R.M.P.
Heceta Water District
Mr. Finley
Mr. Riddle

DEPARTMENT OF CIVIL ENGINEERING

OREGON STATE UNIVERSITY
APPERSON HALL 206 . CORVALLIS, OR 97331-2302
TELEPHONE (503) 737-4934 . FAX (503) 737-3052

August 14, 1990

MEMORANDUM

To: Siuslaw Soil and Water Conservation District
954 13th Avenue West
Eugene, OR 97402

From: Peter O. Nelson P.O.N.
Associate Professor

Subject: Clear Lake Watershed CRMP
August 1990 (Revised Plan #3)

Although I have not been actively involved with the CRMP committee since last summer, I have followed the progress of the committee through mailings. After reading this latest revision, I believe that the plan gives a generally clear description of the issues and alternatives considered. Reasonable compromises seem to have been proposed to satisfy the diverse interests of concerned parties. The committee should be commended for their accomplishments.

I offer the following comments on two areas of the document.

1. The wording is somewhat confusing under General Issues that describes the transition point from oligotrophy to mesotrophy (p. 5, paragraph 2). The paragraph begins "There is no universal ...". I suggest a rewording of the second sentence to the following: "A review of the literature, however, seems to indicate general agreement that a mean concentration of 10 micrograms per liter of total phosphorus defines the upper boundary for the oligotrophic state." The next sentence that begins "Chapra and ..." would remain unchanged.

2. The Forestry section of the report concerns me in that it relies too heavily on the Oregon Forest Practices Act "best management practices" to protect the lake from nutrient additions. These practices have not been developed to directly protect lakes from nutrient enrichment, and may be insufficient to do so. The additional controls proposed by the DEQ should be given stronger emphasis. One additional area not addressed is the possible use of fertilizers in silvicultural practices within the watershed. This should be forbidden as an additional control measure.

Please feel free to contact me should you have questions regarding my comments.

cc Sylvia Taylor - WQ

PAUL SAARINEN, D.M.D., M.S., P.C.
ORTHODONTICS

1814 Coburg Rd.
Eugene, Oregon 97401
Phone (503) 485-4466

1717 Centennial Blvd., #3
Springfield, Oregon 97477
Phone (503) 747-8539

16 July 1990

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JUL 18 1990
OFFICE OF THE DIRECTOR

Hearings Officer
Dept. of Environmental Quality
Water Quality Division
811 S.W. 6th Avenue
Portland, OR 97204

To whom it may concern:

As owners of undeveloped property at Collard Lake, we would like to express our position for installing sewer lines into the Collard Lake Subdivision to protect the purity of the Florence water supply and to protect the rights of <u>all</u> Collard Lake property owners to fully develop their property. The installation of a sewer system seems the most equitable solution.

Sincerely,

Paul & Lonnie Saarinen

5210 Green Oak Court
Atlanta, GA 30327

August 14, 1990

DEQ
Water Quality Division
811 S.W. Sixth Avenue
Portland, Oregon 97204

Dear Department Administrator:

For eight years, our property lots (2) in Mercer Lake Estates (Collard Lake, Florence, Oregon) have been held from development as a result of the building moratorium. This issue has been politically kicked around with no decisions.

We understand you are considering four (4) options, but it boils down to two issues; 1) either lift the moratorium and allow development with sewer and/or septic; or 2) purchase the lots for a fair market value. (In regard to the latter, I paid over $25,000.00 for the lots nine years ago. I would expect to recover $38,000.00 (two lots) at a minimum.)

Please take action as has been promised for seven years!

Sincerely,

Rick Wentworth

RW/sul

c: Dave Riddle
Gleaves, Swearingen, Larsen & Potter

Department of Environmental Quality
Water Quality Division
811 S.W. Sixth Avenue
Portland OR 97204

8/23/90

Re: Clear Lake watershed

Dear DEQ:

I am one of the owners of Parcel 600, Township 18, Range 12, Section 01, property on Collard Lake. There isn't much for owners of large tracts of land in the water shed to look forward to. If one of these Alternatives is made law we will be able to build one house on our 80 acres. I don't find in the Alternatives mention of "just compensation for any loss of use of their lands" as relates to owners of large tracts.

Of those presented I favor Alternative III because it puts the cost of maintaining water quality on the community instead of individual property owners.

Sincerely

Marilee B. Rutherford
7645 S.W. 26th
Portland OR 97219

RECEIVED
AUG 24 1990
DEPARTMENT OF ENVIRONMENTAL QUALITY
PUBLIC AFFAIRS

1624 21st
Florence, OR
97439
August 22, 1990

To Whom it May concern:

I am writing to you in response to the public hearing that is being held this evening in Florence, Oregon concerning the Clear Lake Watershed.

I have my masters degree in Biological Science From OSU and I have lived in Florence For the past twenty nine (29) years.

I am adamantly opposed to any development in the Clear Lake watershed that will endanger the Future water Supply For the Community OF Florence. This area must be protected at all Costs. This is our last opportunity to insure adequate useable water economically For this Community and our Future.

Please DO NOT ALLOW THIS WATER RESOURCE TO BE COME CONTAMINATED.

Sincerely,
Richard N. Whitmore

RECEIVED
AUG 24 1990
DEPARTMENT OF ENVIRONMENTAL QUALITY
PUBLIC AFFAIRS

1624 21st
Florence, OR
97439
August 22, 1990

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Please DO NOT ALLOW THIS WATER RESOURCE TO BE COME CONTAMINATED.

Sincerely,
Richard N. Hitchman

RECEIVED
JUL 16 1990
WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

Dear Sirs. 7-14-90

We reside at 88[illegible] Collard Lake Road. within the Watershed Area of the Florence Drinking Supply.

Over two years ago at a town meeting called to address a solution to the moratorium Ellie Dumdi our Representative as Lane County Commissioner was given a clear mandate by Residence of Collard Lake, when we unanimously voted for a buy out of undeveloped properties, to protect the water.

Ellie has made it clear to us this opinion is not shared by her as (our?) Commissioner has repeatedly opted for Sewers, due perhaps to political support from land developers, who are even now putting in roads and petitioning for land splits.

We believe the only logical solution is no more building or development undeveloped water shed land to be bought out.

I would buy the lot next to my home to defray some of the cost.

[illegible] density, no sewers, please!

John D. Fell

TO: The E.Q.C. Hearing August 22, 1990, Florence, OR.

FROM: John W. Swanson, Jr.
88707 Chapman Road
Florence, OR 97439

To some how, to believe, to hope, that the percolation of development pollution is some how filtered out before reaching Clear Lake is naive and not true.

A water soluble salt poured on the ground in the water shed will eventually find its way to the Lake.

To illustrate the point: The City of Hemet, CA. now has to buy water to blend with their deep well water so the nitrites and nitrates would meet the State's requirements. Where did these impurities come from? Housing and farming development put them on the surface and in less than a lifetime the drinking of the water from this deep aquifer became a health hazard.

I believe as soon as possible human activity should be removed from the Clear Lake Water Shed. This is the only way to truly protect the water. To set limits of pollution is not only unacceptable but repugnant.

good!

Siuslaw High School

750 Quince Street
Florence, Oregon 97439
Phone 997-3448

Glenn Butler, SUPERINTENDENT
Richard Whitmore, PRINCIPAL
John Weeks, VICE PRINCIPAL
Pete Vavich, ATHLETIC DIRECTOR

Tuesday, August 21, 1990

Department of Environmental Quality
811 S.W. 6th Ave.
Portland, Oregon 97204

To whom it may concern:

I am writing to you in response to the public hearing that will be held August 22, 1990 in Florence, Oregon, concerning the Clear Lake Watershed Area including Collard Lake.

I am a concerned citizen , biologists, and biology/ecology instructor in Florence. I am concerned that the future of the Clear Lake Watershed area may be in jeopardy because of those wishing to build, either around Collard Lake which drains into Clear Lake or Clear Lake itself. The city of Florence eventually will be dependent on water from this watershed. For now, only those on Hecceta Water are completely dependent on it, Florence having its dune wells. During times of shortages, however, Florence already buys part of its water from Hecceta Water and as more demands are made on the water due to the growth of the entire area, eventually the Clear Lake Watershed will be extremely important.

This area along the Oregon Coast has a sand base. To a certain extent, sand can hold water, such as for an aquifir and can filter water, making it pure. The problem is when great demands are put on it, it cannot filter effectively. Such is the case of the Clear Lake Watershed Area. Septic systems in Collard Lake and Clear Lake will eventually drain into the Clear Lake Watershed. Some may take less than 15 years to show up, others may take 30 or more years to show up. These septics or drainfields will eventually get into the Clear Lake Watershed. When they do get into the watershed area, the water will contain numerous fertilizers which in turn feed the algae and eventually the water will turn pea green. The smell and color of such water can be removed but at great cost. I understand the cost of such a plant to be close to a million dollars or more. The object is to stop the pollution before it gets to that point. Either stop all building and buy out existing property owners or put in a separate sewer system that obviously does not drain into this watershed. I understand that this is possible but expensive.

I know of a professional hydrogeologist who studied this area very extensively and knows what options are available. He is Ralph Christensen, who was the hydrogeologist for Lane County for many years. He is currently self-employed and is available for a fee through his Eugene office at 2535 B. Prairie Rd., Eugene, Oregon 97402, phone number is 689-8110. I am sure he can advise you of the options that are available and what each will consist of.

I feel, before you go any further either way, that this man be hired and give you advice. As a resident of the Florence Area, I do not want to see out Clear Lake Watershed destroyed for it is too valuable a resource for the future of the entire area.

Sincerely,
Genevieve P. Bailey

19001-44th W.
Lynnwood, Wash.

Water Quality Division

I am unable to go to the meeting Aug. 22 in Florence regarding the Clear Lake Watershed issue.

I am a property owner (since 1967) of # lot 18 12-01-20 parcel 00700 in Collard Lake Acres - 1st addition. I want to state that I am for protecting the environment; water, air and soil, but this moratorium since 1983 has been a financial disaster for me. We bought this lot in 1967, with the hope of retiring to our favorite city of Florence some day. My husband died in 1985 without insurance, and the necessity of my selling the lot was impossible. I was on a very small limited income at the time. By the year 1987, I was forced to sell a rental lot locally that I did not want to sell but it was the only saleable thing I owned, as I still couldn't sell the Florence lot. It seems that it has taken too long for you to decide on some fair decision, but thank you for giving us the opportunity to have our say now. I would be in favor of sewering the area, if it would not harm the water or soil, and I think the city or county should pay for it, since your delay has caused a lot of us harm. We bought our lots and paid taxes in good faith.

If some of us are bought out, I would expect that we be paid fair market value, as if no moratorium had been, and there was still access to the lake, like it was when we made our

bought it, Two years ago, I got an estimate from a local real estate company

Please do the best ~~for~~ and the most ~~economically~~ reasonable for us. Good luck on the meeting and I hope you let us know how the decisions are made. Thank you

Marsha Lee Valdez
19001- 44th W.
Lynnwood, (206) 776-9338 phone #
Wash. 98036

EVERETT C. HURT
88605 COLLARD LOOP
FLORENCE, OR 97439

Hearing Record

TO ALL E.Q.C. MEMBERS:

RE: CLEAR LAKE WATERSHED AND COLLARD LAKE PROPERTY OWNERS

QUESTION: SHOULD CLEAR LAKE BE PROTECTED FROM ANY FURTHER POLLUTION FROM SEPTIC SYSTEMS AND ANY FURTHER DEVELOPMENT ON THE WATERSHED?

ANSWER: YES!

After reading all material about the many alternatives, I can only see one long term solution (albiet not the cheapest but would be, in the long term, the least costly.

1. No further development.
2. A buy-out of property now in water shed by Heceta Water District so as to make Clear Lake a reservoir and the water to be used only for domestic use.
3. Stop all recreation on or near Clear or Collard Lakes.

Sewering this area would open up the development and allow further polluting by human activities on and near the water supply of all the Florence area. Since this watershed has been declared a sole source aquifer to Clear Lake and Clear Lake is the only source of water to Heceta Water District, it must be protected.

Let us abide by Oregon State law that says "It to be Public Policy of the State to Protect, Maintain, and Improve the quality of the waters of the State for Public Water supplies.

Everett Hurt

88605 Collard Loop

Florence, Oregon 97439

August 27, 1990

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

Dear Mr. Hutchison:

The proposed EQC rules for Clear Lake are based on a plan for phosphorous limitation that will require additional expense to Heceta Water District and the property owners at Collard Lake in order for a few owners of F2 lands at Clear Lake to build recreational residences using septic systems. This seems poor public policy and should not be allowed to happen.

The proposed rules quote ORS 468.715 wherein you say it is "public policy of the state to protect, maintain, and improve the quality of the waters of the state for public water supplies." Accordingly, it also seems to be a violation of state law to permit more degradation of the water quality in order to accommodate more development.

Apparently, no detectable degradation of the water quality has yet occurred, probably thanks to the moratorium. However, this is not to say that none will occur unless something positive is done. The moratorium needs to be resolved in order to relieve the owners of residentially zoned lots who have been unable to sell or use their properties. The problem needs to be resolved but protection of the water supply should be the primary consideration.

Most of the F2 tax lots overlap the watershed. If residences are required on F2 lots to grow trees, then both the residences and the septic systems can, and should be, built outside of the watershed. The owners of the large tracts of F2 lands situated entirely within the watershed should be bought out by Heceta Water or compensated by means of Conservation Easements. Another possible solution might be to buy the F2 land but allow the owners to retain the timber rights. There are surely numerous possible sources of public funds, either within the state or the federal government, that could be obtained to fund land purchases and/or conservation easements.

EPA has certified Clear Lake as eligible for grants under the Critical Aquifer Protection Act (CAPA), see enclosed letter. This legislation has never been funded, probably because, until now, no one has ever applied for funding. Heceta Water District would need to have the Governor's endorsement for actual application for funding. We have been led to believe that Congressional legislative support for funding can be obtained.

In any case, Heceta Water District is now willing to take on the burden of purchase of properties to protect the watershed, lake

monitoring, operation of a sanitary district, preparation and operation of a watershed management plan and all of the associated jobs that go with protecting the water. Lane County clearly does not have the desire or the resources to do the job as is evidenced by the enclosed report to the County Commissioners, dated August 10, 1990.

Now, however,we have a willing municipality, Heceta Water District, ready to take on the job for their own protection. I think the EQC, the State of Oregon, and Lane County should give Heceta Water District the green light to proceed. The State and County should also help Heceta obtain the funding, the legal assistance and the technical advice, necessary to make it happen.

The Florence City Council met for a work session last night and voted to support the Heceta Water District position for a buy out to prevent further development within the watershed. You will doubtless be hearing from them soon. A copy of the Heceta Water District supplemental CRMP Draft is enclosed including the cover letter delivered to the city council.

I have been working as an unsalaried volunteer for Heceta Water District for several months. I will continue to help them for as long as may be necessary or for as long as I am able to be of some value. In the meantime, I hope the EQC will favorably consider Heceta Water District's offer to take the lead role in managing and protecting the watershed, and that you will give them the full legal, technical, and financial support they need to succeed.

Sincerely,

Bill Finley

Bill Finley
06011 Collard Lake Way
Florence, Oregon 97439
997-6255

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington

EPA

JUL 16 1990

Reply to
Attn of: WD-139

Steve Olienyk, Chairman
Board of Directors
Heceta Water District
87845 Highway 101 North
Florence, Oregon 97439

Dear Mr. Olienyk:

We have received your letter of June 18, 1990, which requests that EPA certify whether or not the North Florence Dunal Aquifer meets the critical aquifer protection area (CAPA) designation criteria. This letter was in response to our exchange of correspondence and my letter of May 11, 1990, which explained that although EPA is not accepting CAPA grant applications, because there are no funds available, we could still advise whether or not the North Florence Dunal Aquifer meets the CAPA criteria.

Section 1427 of the Safe Drinking Water Act, which authorizes the Sole Source Aquifer Demonstration Program, contains CAPA criteria in parts b and d, and directs EPA to generate more specific criteria in part d. The agency published specific criteria in a Federal Register notice of June 26, 1987. These criteria were then revised in response to public comment, and published in the Federal Register on February 14, 1989.

Based on our assessment, we consider the North Florence Dunal Aquifer to meet the above published CAPA designation eligibility criteria for the following reasons:

1) The aquifer was designated by EPA as a sole or principal source aquifer under Section 1424(e) of the Safe Drinking Water Act before June 19, 1988. (See 40 CFR Part 149.3(b), printed on page 6843 of the Federal Register of February 14, 1990.)

2) Rapid infiltration into the sand cover combined with a shallow water table make the aquifer highly susceptible to contamination. (See 40 CFR Part 149.3(b)(1), printed on page 6843 of the Federal Register of February 14, 1990.)

3) Water quality degradation of either the aquifer or lakes recharged by the aquifer could reasonably be expected to result in significant environmental and/or economic costs unless a comprehensive program to prevent such contamination is implemented. (See 40 CFR Part 149.3(b)(2) through 149.3(b)(3)(ii), printed on page 6848 of the Federal Register of February 14, 1990.)

Information which led us to these conclusions is summarized in the Federal Register notice of October 7, 1987, which announces the EPA sole or principal source aquifer designation, and in the technical support document released by the Office of Ground Water in September of 1987.

This letter only addresses the criteria in Section 1427(b) and (d) of the Safe Drinking Water Act and does not constitute a formal EPA CAPA designation. In addition, other portions of Section 1427, which describe topics such as grant application eligibility, contents of a grant application, etc., are not relevant at this time.

In the event that Congress appropriates CAPA grant funds authorized for federal fiscal year 1991, we would like you to note that provisions in Section 1427(c) require applicants to be governmental entities with some authority or jurisdiction over the CAPA, and to submit their application jointly with the state governor. Also, if grant funds were to become available under Section 1427, they would be awarded on a competitive basis.

We appreciate your interest in ground-water quality protection. Please feel free to contact us again if we can be of assistance.

Sincerely,

William A. Mullen

William A. Mullen, Chief
Office of Ground Water

cc: Amy Patton, Oregon Department of Environmental Quality
Dick Nichols, Oregon Department of Environmental Quality
David Leland, Oregon Department of Health
Harold Youngquist, Lane County Public Health Engineer

06103 View Road
P.O. Box 217
Florence, OR 97439

997-6186

August 23, 1990

Mr. William P. Hutchison, Jr.,
Chairman,
Environmental Quality Commission
811 SW Sixth Avenue
Portland, OR 97204

Dear Mr. Hutchison:

I have noted the contents of your letter of August 20, 1990, concerning public notice requirements for the August 22, 1990, Environmental Quality Commission hearing in Florence. However, I stand by my letter of August 6, 1990, on the same matter.

Now I would like to register a new complaint about the August 22, 1990, hearing in Florence.

Richard J. Nichols, who acted as the Environmental Quality Commission's hearings officer, was inherently disqualified by reason of bias. The bias is described in the enclosed copy of a prepared statement I handed to him immediately before the hearing.

Because of hearings officer bias the Commission should reject as invalid both the hearing itself and any summary report about it which may be presented to the Commission.

Sincerely,

Walter H. Drew

Enclosure:

Copy of prepared statement on bias handed by Drew to Nichols at beginning of EQC hearing at Florence, Oregon, August 22, 1990

Walter H. Drew
06103 View Road
P.O. Box 217
Florence, OR 97439

Prepared Statement Handed to Richard J. Nichols at
EQC Hearing at Florence, Oregon
August 22, 1990

A point of order.

I protest your acting as hearings officer for the Environmental Quality Commission tonight on the grounds of bias.

You drafted the rule package which is before the meeting tonight. You have negotiated actively with various individuals on the rule changes which DEQ proposes. Your negotiation with these individuals has at times gone far beyond providing technical information and advice; it has often constituted advocacy of your own views of what a watershed management plan should provide.

According to Noland Huntington, Secretary-Treasurer of the Siuslaw Soil and Water Conservation District, you are the main source of recent pressure on the District to resume the controversial CRMP meetings concerning a management plan for the Clear Lake watershed.

You should declare your involvement and bias, and you should recuse yourself as hearings officer in this case.

Walter Drew

Director's Chron

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

August 20, 1990

Mr. Walter H. Drew
P.O. Box 217
Florence, OR 97439

Dear Mr. Drew:

We have reviewed your letter of August 6, 1990, with our legal counsel. As you know, the public hearing for the proposed rule modifications is scheduled for August 22, 1990.

There are two public notice requirements that the Environmental Quality Commission and Department must meet when limiting or prohibiting construction of subsurface or alternative sewage disposal systems:

1. As you state in your letter, according to Oregon Administrative Rule (OAR) 340-71-460, a thirty day notice must be given before the public hearing. There is no requirement that this notice be placed in the Secretary of State Bulletin.

2. Because the action is rule-making, the notice must be published in the Secretary of State Bulletin at least fifteen days before the hearing.

The notice was published in the Secretary of State's Bulletin on August 1, 1990. This is the reason the date of issue in the public notice is August 1, 1990. The notice, however, was mailed to all known property owners in the affected area on July 5, 1990. Therefore, more than thirty (30) day notice was given.

We believe we have complied with the law in this regard.

Sincerely,

William P. Hutchison, Jr.
Chairman
Environmental Quality
Commission

WPH:RJN:crw
MW\WC6996
cc: Fred Hansen, DEQ
Lydia Taylor, DEQ

TESTIMONY TO EQC REGARDING

PROPOSED NEW CLEAR LAKE WATERSHED RULE

August 22, 1990

Heceta Water District (the "District") has the responsibility to protect the water in Clear Lake and provide pure, safe drinking water to approximately 9000 citizens in the Florence area. The District is a public agency, owned by the property owners within the District's boundaries.

Clear Lake has been declared a "sole source" aquifer by the U.S. Environmental Protection Agency. This means that it "is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health."

The water currently available from Clear Lake is unique in its state of purity, and does not presently require any filtration before use as drinking water.

The District believes that any amendment to the present Rule (OAR 430-41-270) ("the Rule") must start with adherence to the statutory policy contained in ORS 468.710: "... it is hereby declared to be the public policy of the state: ... (2) To protect, maintain and improve the quality of the waters of the state for public water supplies, ... (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 ... in carrying out these objectives."

The District further believes that any amendment to the Rule must also adhere to the statutory mandate contained in ORS 468.715: "(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: ... (6) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468.710... ."

To the extent that OAR 340-41-026 would permit lowering of water quality in this situation, the District takes the position that the rule is in violation of the preceeding statutes.

Insofar as the proposed amendment to the Rule contemplates, or would allow, any new or further development in the Clear Lake Watershed, the District would like to go on record as opposing the amendment in that regard. The amendment allows for

degradation of the water quality by permitting additional phosphate loading in Clear Lake by virture of the proposed development of the eight Clear Lake parcels. The District feels this is in direct violation of the statutory policy and mandate quoted above.

The District would like to emphasize that the amendment as proposed by the EQC would cost the City of Florence nothing, would cost Lane County little or nothing, and would cost the Clear Lake property owners (many of whom are seeking to develop their properties) nothing. The entire financial burden for protecting the water falls on the District and on the Collard Lake property owners. As noted in a Lane County staff memorandum dated August 6, 1990, on the proposed amendment, "What this all boils down to is that the proposal appears to be directed at securing on-site sewage approvals for the owners of eight (8) parcels in the Clear Lake Watershed."

The Rule amendment, as proposed, amounts to an expensive subsidy by the District and the Collard Lake property owners so that eight Clear Lake property owners can have on-site sewage systems and thus develop their properties. The District agrees that the loading limitations should be changed from nitrogen to phosphorus, that limits need to be placed on additional phosphate loading within the Watershed, that further there should be reduction where possible of existing phosphate loading, but contends also that the Rule amendment should not permit any <u>new</u> development within the Watershed.

Respectfully submitted,

HECETA WATER DISTRICT

By: _____
William W. Bromley

22 August 1990

The Department of Environmental Quality

Subject: Comments on proposed rule changes for Clear Lake watershed - Public hearing 22 August 1990.

I am not a property owner in the Clear Lake watershed, so I am not concerned with property use or development therein except a good citizen's desire that it all be done as allowed by all applicable laws and guidelines developed under those laws.

I am a user of drinking water obtained from Clear Lake and I am concerned about maintaining the quality of that water for my use. Regardless of what happens as a result of the present controversy over the Clear Lake watershed I [illegible] this water will be diminished enough for me, if I live to be around 80 years.

I am also a citizen with enough of a social conscience to deplore anything that happens to Clear Lake that would reduce or impair it's water quality for those coming after me.

I also believe that all law existing today that pertains to protecting the water quality of Clear Lake is not permit, and I would like to emphasize this by lowering of it's quality.

I also believe there is such a disparity between the desires and goals of those who wish to protect the Clear Lake water quality and those who would see it's watershed further developed that the two items should not even be on the same agenda. In short, the water protection should be first and foremost and then property use and development be considered.

With that said, I would like to make my own observations about the four alternatives considered by the DEQ.

Alternative 1. Unacceptable as written. Does not address what to do about the existing septic systems on Collard Lake.

Alternative 2. Unacceptable as written. Does not specify what modifications to the existing rules are contemplated. For example: To specify lake loading in lbs of phosphorus would be wise. To allow even limited additional development would be unwise, no matter whether pollutants were measured in terms of phosphorous or of nitrogen.

Alternative 3. Not acceptable. Sewering addresses only the lake loading caused by septic systems and will not protect the lakes against a steady deterioration caused by non-point source loading.

Alternative 5. Not acceptable as written for same reasons stated above.

Having rejected all the alternatives considered in the proposed rule change document, I believe the document recognizes other possible alternatives, foremost of which is a buyout of property in the watershed. I believe this to be entirely feasible and the best solution available. Therefore I would suggest consideration of one of the following alternatives:

Alternative 1. A buyout by Hesperia Water District of all property in Clear Lake watershed.

Alternative 2. A buyout of all undeveloped property in the watershed and strict rules to control pollution from the existing developed around Oilford Lake. However, if required, to be paid for by all users of Clear Lake water, no new development to be allowed in the watershed.

Burton T. Beam

Burton T. Beam
[illegible] Hunter Lake Rd
Florence, OR 97439
Phone: 997-[illegible]

August 21, 1990

D.E.Q. Water Quality Division
811 S.W. Sixth Avenue
Portland, OR 97204

I would like to encourage the D.E.Q. to proceed with one of the three alternatives set forth as a result of the C.R.M.P. process which calls for sewering the Collard Lake Subdivision.

Numerous water studies performed on the Clear Lake Watershed by both individuals and Lane County all clearly indicate that the current degradation of water quality is directly attributable to the existing Collard Lake Subdivision septic systems. In view of this, alternative No. 4 which would allow developed lots to remain, but would not allow owners of undeveloped lots to do anything but pay taxes on them, is unacceptable. Stopping additional development does not cure the current acknowledged degradation that is occurring. Sewering the high density Collard Lake Subdivision will provide long-term water quality protection for the entire watershed and since the C.R.M.P. recommendation to only allow large lot owners surrounding Clear Lake one septic system per lot as described in their meetings, we end up with the best of all worlds: 1) The water quality is protected, 2) owners of some undeveloped lots in the Collard Lake Subdivision can utilize their land, and 3) large land owners surrounding Clear Lake can also utilize their land with no detrimental effects to water quality.

The Howard family have been long-term custodians of Clear Lake. Back in the 1930s, my great-grandfather George Howard purchased the property on Clear Lake. It is important to note that this was long before Heceta Water District built the water system and before zoning designations were applied to the area. The land then passed to my grandfather Vincent Howard, Sr. The general usage of the lake has been constant throughout the years with those uses consisting of fishing, boating, skiing and camping. Grampy Howard allowed the Boy Scouts to operate a camp on the western edge of the property for a number of years. Grandfather Howard lived on the property in a small cabin with a trailer attached to it until he passed away. The land then passed to my father Vincent Howard, Jr. and his sister Marjorie Bancroft. The fourth generation of Howards came into ownership as Marjorie Bancroft (since deceased) left her ownership to her three daughters and my father passed his ownership onto my sister and myself. As you can see by this chronology, the Howard family are not short-term big buck land developers, but rather have been long-term guardians of a resource that we have been taught to respect and care for since birth.

The Howard family recognizes the need to maintain Clear Lake as a water source. In fact back in 1982 when the first moratorium was initiated, we are on record as being supportive of that action. We felt that a 2-year moratorium would be ample time to assess the water source and implement a management plan. To date, Clear Lake has been studied, the problem area (Collard Lake Subdivision) identified, and now it needs to be cured. It would appear that sewering the subdivision is the only long-term answer to this problem which will, in turn, provide customers of Heceta Water District a long-term source of water, the City of Florence an alternative back-up source of water, it will allow owners of developed properties within the watershed uninterrupted use of their property and it will allow owners of undeveloped properties to use their land all without further water degradation.

In closing, I would again urge you to implement one of the sewering alternatives because it best answers the needs of all affected parties. The research has been done, the results have been analyzed, now is the time to take action.

Thank you,

Gordon B. Howard/Connie R.
P.O. Box 775
Pleasant Hill, OR 97455
(Owner T.L. 800-801)

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SWEARINGEN
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VERNON D. GLEAVES
ARLEN C. SWEARINGEN
ERIC L. LARSEN
STANDLEE G. POTTER
LEWIS HOFFMAN
A.J. GIUSTINA
MICHAEL E. FARTHING
MELVIN J. BECK
STEPHEN O. LANE
WILLIAM H. MARTIN
MARTHA J. RODMAN
DALE A. RIDDLE
JON V. BUERSTATTE
FREDERICK A. BATSON
JENNIFER L. COOK
EILEEN G. SIMPSON
PATRICIA E. LOCKARY
LINDA Y. LEE
DAVID A. STANLEY

August 22, 1990

Environmental Quality Commission
c/o Department of Environmental
Quality Hearings Officer
811 S.W. Sixth Avenue
Portland, Oregon 97204

Re: In the Matter of Clear Lake (near Florence): Proposed Rules Modifying OAR 340-41-270 (Special Policies and Guidelines for the Mid-Coast Basin) and OAR 340-71-460(7) (Moratorium Areas for On-Site Sewage Disposal Systems)

This office represents Vincent M. Howard who owns a parcel of land on the north shore of Clear Lake near Florence in Lane County, Oregon. Mr. Howard supports the Department's recommendation to modify the existing policies and guidelines for that portion of the Mid-Coast Basin which applies to the Clear Lake Watershed.

Mr. Howard, who is now a senior citizen, inherited his property on Clear Lake through his grandfather who purchased it early in the 1930's. Mr. Howard and his ancestors have been good stewards of their property.

Mr. Howard was one of the property owners who back in 1983 reluctantly supported the moratorium which is the subject of tonight's hearing. The primary reason that Mr. Howard, and other property owners like him, generally supported the moratorium was that, at the time of its adoption, DEQ staff and Environmental Quality Commission members assured the public and individual property owners that the moratorium would be in place for only two years. Staff and Commission members represented that two years would be sufficient time to complete studies of Clear Lake and to determine the best alternative for managing the watershed.

Two years have come and gone along time ago and the moratorium is still in place. Studies of the lake have been completed, alternatives have been suggested, and the moratorium is still in place. It is time that the moratorium be replaced with a management plan that provides a realistic solution to the problem.

Mr. Howard believes that the staff's recommendation generally provides a realistic solution to the present controversy. The key to that solution is to ensure that excessive phosphorus loadings from the Collard Lake homeowners not be allowed to enter Clear Lake. In order to ensure that excessive phosphorus loadings from the Collard Lake homeowners not be allowed to enter Clear Lake, either a sewer will have to be built or an equivalent alternative will have to be installed for all residential properties in the Collard Lake subdivisions.

The most important issue facing Mr. Howard, and other property owners like him, is not which alternative is ultimately selected to address the potential pollution of the Collard Lake homeowners. Instead, the most important issue facing Mr. Howard is that at least one of the alternatives is, in fact, selected and implemented. In the long run, it really does not matter so much which alternative is selected, so long as one is selected, is implemented, and is carried out. The only unacceptable solution is that nothing be done; that is, that Collard Lake homeowners continue to potentially pollute the lake while other individual property owners not be allowed to benefit from their properties.

In closing, Mr. Howard would like to thank the staff, and in particular Dick Nichols, for the time and effort they have put into this project. Now that much of the hard work has been done, it is important that the ball not be dropped. It is imperative that Commission members go forward and implement staff recommendations.

Thank you.

Sincerely yours,

Dale A. Riddle

Dale A. Riddle

DAR:dl

cc: Mr. Vincent M. Howard

August 22, 1990
2265 Shields Ave.,
Eugene, Oregon 97405

Dept. of Environmental Quality,
Water Quality Division,
811 SW Sixth Ave.,
Portland, Oregon 97204

Dear Sirs,

We are writing in response to the proposals submitted to us regarding the preservation of the water quality of Clear Lake. We currently own property at 88588 Collard Loop and have used it on a part time basis since 1982.

We feel the best alternative to maintain the water quality of Clear Lake would be a complete buyout of all properties involved (over [illegible]) with no future development allowed. However, it is likely that money for this proposal would not be found. We therefore endorse the next best proposal which is the use of an alum system at all existing homesites and the buyout of undeveloped properties that would like to sell. Several undeveloped property owners would like to use their lots as campsites with enclosed portable toilets but do not ever want to develop. The use of the alum system would not preclude any new construction in the area which would cause pollution to both Collard and Clear Lakes. The alum system would remove 95% of the phosphorus in septic tanks and prevent it from reaching the lake to act as a catalyst for the fixation of nitrogen as shown by the Cooper Study (ref. 1).

A proposal to sewer Collard Lake and then develop all existing lots on Collard and Clear Lakes would destroy the water quality of Clear Lake because the ensuing construction required for the sewering and development of the lots would release organics capable of storing phosphorus into both Clear and Collard Lakes.

Recent chemical analytical results have shown that very little change has occured in phosphorus levels in Collard and Clear Lakes since the Cooper Report (ref. 1) was written. Doesn't that suggest that the moratorium did its job?

Please do not allow development of Clear or Collard Lake at the sacrifice of the water that we currently drink. We are truly blessed to have a source of water as pure as Clear Lake and do not want to see it become an extinct entity.

Thank you for your consideration.

Yours truly,
N. Andrew Fedoruk Ph.D.
Organic Chemistry
University of Oregon

Sandra S. Fedoruk
Teacher

REFERENCES

1) Richard B Raymond Ph.D., Steven A Wille, Limnology and Nutrient Dynamics of Clear Lake, Oregon Lane County, February 1985,

Thomas C. Nicholson, P.C.
ATTORNEY AT LAW
552 Laurel Street
P.O. Box 308
Florence, Oregon 97439-0011
Phone (503) 997-7151
Fax (503) 997-7152

RECEIVED
5 1990
WATER QUALITY DIVISION
DEPT. OF ENVIRONMENTAL QUALITY

August 30, 1990

Environmental Quality Commission
c/o Richard Nichols, Hearings Officer
811 S.W. 6th Avenue
Portland, OR 97204

Re: Clear Lake Watershed

Dear Hearings Officer Nichols:

This office represents Robert and Shirley Merz who own 89 acres of land in the Clear Lake Watershed. The Merzes are long time residents of the Florence area and have owned their property in the Clear Lake Watershed for approximately 30 years. It has been the Merzes' intent to build a home on Clear Lake when they retire. Retirement has come for the Merzes, but they have been continually frustrated in their desire to build a home on their property.

The Merzes support the department's recommendation modifying the policies and guidelines for the Clear Lake Watershed. In particular, the Merzes support lifting of the moratorium on septic tank installations. The Merzes' property is zoned marginal lands. This means that the property is not capable or suitable for sustaining agricultural or forest-related crops. Because of this, the current moratorium has rendered their property of no value.

The Merzes were one of the original parties that supported the imposition of a moratorium on septic tank installations in the Clear Lake Watershed. See copies of letters submitted to EQC dated March 1, 1983 and March 2, 1983 attached. The purpose of the moratorium was to give representatives from Lane County, Heceta Water Distict and affected property owners the opportunity to arrive at a solution to the controversy that all parties could live with, whether it be a sewage collection system, water filtration or condemnation. The duration of the moratorium was to be two (2) years. See Minutes of the April 7, 1983 meeting of the Environmental Quality Commission wherein the chairman of the

commission and staff promised those present, including property owners and representatives from Lane County, that the moratorium would only last for two (2) years.

The proposed rules modification as recommended by staff would break the deadlock that has existed between the Heceta Water District and homeowners who have already built in the Watershed, and property owners who have been unable to build since the moratorium was adopted in 1983. The Heceta Water District and homeowners in the Watershed do not want the deadlock to be broken. With the protection of the moratorium, the Water District does not have to build a filtration plant, or in the alternative, condemn (and pay just compensation) properties that are not built upon. Instead, property owners such as the Merzes, who cannot use their properties, are forced to shoulder the entire financial burden of supplying inexpensive and unfiltered water to Heceta Water District customers. Likewise, with the moratorium in place, homeowners in the Watershed are allowed to continue to pollute the lake (if it is being polluted) and are able to treat the Merzes property as if it was their own private park.

The issues which make up the Clear Lake Watershed controversy are complex and politically difficult. For this reason, the Merzes are grateful for the hard work of your staff, and, in particular, Richard Nichols. There is no easy solution to the problem unless the commission intends to condemn and pay just compensation for the entire watershed. Assuming that this is not the intent of the commission, commission members should go forward and implement the proposed rules modifications.

Thank you for your time and consideration in these matters.

Yours very truly,

Thomas C. Nicholson

TCN/sg

Enclosure

cc: Robert and Shirley Merz

March 1, 1983

Environmental Quality Commission
Box 1760,
Portland, Oregon 97207

Re: Agenda Item No. E, dated 12/3/82, EQC Meeting

Gentlemen:

This letter is in response to the meeting held at Florence, Oregon February 15, 1983 regarding Item No. 2 for the Clear Lake Watershed. We object to the permanent sanitation moratorium on property owners. The responsibility of pure water was placed on Heceta Water District when their application for water was approved. This cost should be borne by all the District water users and not borne by only property owners within the watershed. Since Heceta Water District users are the sole beneficiaries of the restrictive actions the costs should be equally shared by all, whether it be the cost for a sewage collection system, a water treatment facility, or the costs of moratorium to the property owners for their loss of use of their land. We have no objections to paying our share in such a facility, but do object to carrying the whole burden.

At the time Heceta Water District was formed and they proposed to use Clear Lake as the water source, we questioned the effect that that action would have on the use of our property. At those hearings for Heceta Water District we were assured that Heceta Water District would bear the responsibility for providing pure water and there would be no infringement upon the rights of the adjacent property owners.

In 1966, Heceta Water District filed a request to withdraw up to 2 million gallons per day from Clear Lake for municipal use. I respectfully call to your attention to the recorded minutes of the State Water Resource Board of Oregon, dated May 26, 1967 and herewith enclose a copy.

On page 25 in the testimony presented by Mr. Paul Biestel, Superintendent of Lane County Parks, he points out the eventual conflict of use for Clear Lake by allowing its use for municipal water. Mr. Biestel presented testimony that the State Board of Health and the State Sanitation Authority had advised him that when that conflict arose to maintain water quality, the burden of resolving the conflict would be placed upon the Water District. (refer to page 27). Chairman of the State Water Resource Board, Mr. Cole also states, (on page 28) "of course, it will be up to them (Heceta Water District) to provide the necessary treatment." Heceta Water District was well advised they would be responsible for providing good water without jeopardizing the growth of the area and the rights of property owners near Clear Lake.

By placing a permanent sewage moratorium on the Clear Lake Watershed you are laying the burden of cost for pure water on the property owners rather

than on Heceta Water District where it belongs and where all the State Boards said it would be when the time arrived -- that time has arrived.

There are 70 platted lots with out-of-area owners who have not been notified that septic tanks will no longer be allowed on their property. The potential economic impact of 70 houses would be in the millions of dollars for the local economy which is sorely needed at this time.

Yes, we want pure water! The lakes were the attraction of the people who bought property. The population and potential growth was why Heceta Water District went into the water business. They knew full well that the very population supporting their district would eventually grow to require water treatment or sewage facility.

In the last two years of public hearings for zoning on this area, Heceta Water District has failed to be present for questioning or testimony. It is our contention that they are fully aware of testimony given at the time they were granted municpal water rights for Clear Lake, therefore they should be involved.

As a State Commission for maintaining pure water, we believe your management plan for the Clear Lake Watershed should include directives of protection to Heceta Water District through either (1) a sewage collection system, (2) a water treatment plant, or (3) paying the property owners the cost of the moratorium for loss of use of their land. This would be a far more equitable way of resolving the problem for the entire area than the moratorium that you are now considering.

It was our understanding that the Lane County Commissioners had adopted a two year moratorium during which time the property owners, Lane County, and Heceta Water District would attempt to work out a middle ground solution. We supported that moratorium knowing that it was only for two years. We still support that moratorium and believe we can work out an equitable solution within the two year time period, however we strongly oppose your recommended imposition of a permanent moratorium.

Thank you for your consideration of our testimony.

Yours very truly,

Robert L. & Shirley M. Merz

Robert L. and Shirley M. Merz
Box 177,
Florence, Oregon 97439
Property Owners of Tax Lots #403 (30 acres); #400 (20 acres); and #900 (29 acres) all within Clear Lake Watershed.

Nicholson & Clark
ATTORNEYS AT LAW
1245 RHODODENDRON DRIVE
P. O. BOX 146
Florence, Oregon 97439

SIDNEY J. NICHOLSON
DAVID L. CLARK

TELEPHONE:
(503) 997-3446

March 2, 1983

Department of Environmental Quality
Attn: Florence Dunal Rules
895 Summer Street, N.E.,
Salem, Oregon 97310

Attn: Linda Zacher

Re: Agenda Item No. E, December 3rd, 1982 EQC Meeting
Clear Lake Watershed

Dear Ms. Zacher:

This firm represents Robert and Shirley Merz who own approximately 89 acres of real property within the Clear Lake watershed.

I was out of town February 16th, 1983 and therefore was unable to attend your public hearing here in Florence on these matters. However Shirley Merz did attend the public hearing of February 16, 1983 and has addressed her fears of what did and did not happen at the hearing to me.

After attending the meetings of February 16, 1983, it was Mrs. Merz' understanding that the Director of the Environmental Quality Commission was recommending the imposition of a permanent moratorium on all on-site septic installations within the Clear Lake watershed. Mrs. Merz formed this opinion based upon the conversations which transpired at the hearing and from the first page of your Memorandum, item (2), which makes reference only to establishing a moratorium on new on-sight waste disposal systems and makes no reference to the length of time said moratorium will be imposed.

After numerous meetings by the West Lane Planning Commission, the West Lane Planning Commission with the consent of the Merz' and other large property holders within the Clear Lake watershed recommended the imposition of a two year moratorium on building permits within the Clear Lake watershed. During these two years representatives from Lane County, Heceta Water District, and the affected land owners within the Clear Lake watershed would sit down and attempt to work out a middle ground solution that all the interested parties could live with. On October 27, 1982, the Lane County Board of Commissioners

unanimously adopted the moratorium recommendation of the West Lane Planning Commission and imposed a two year building moratorium. A time schedule has been set up for a review of progress every six months, and an organizational meeting between Lane County, Heceta Water District and the property owners has been tentatively scheduled by Roy Burns, of the Department of Lane County Sanitation, for the end of March, 1983. Lane County is officially on record as endorsing this proposed moratorium and will be the spearhead of the brain- storming sessions which will follow.

I spoke with Roy Burns this morning concerning his interpretation of what is contemplated within your department as expressed in your client's concern to him. Mr. Burns has assured me that the only reason your proposed moratorium does not have a time limitation therein is because your department does not issue time permits at this time. Mr. Burns indicated he that he will present testimony at your hearing of April 5th, 1983, in which, he will inform the Environmental Quality Commission that the full intent of this moratorium, which was pleased by the land owners within the watershed, was to be a two year moratorium within which Lane County, Heceta Water District, and the land owners could work out an equitable solution. The purpose of the moratorium itself was to preserve the quality of the lake until an equitable solution could be reached -- it was not to impose a permanent moratorium per-se.

Mr. Burns will also request that any moratorium which is adopted by the Environmental Quality Commission incorporate language reflecting the intent of the moratorium. It is also Mr. Burns' understanding that after an equitable solution is reached, Lane County would petition the Department of Environmental Quality for an amended ruling lifting the moratorium and adopting a new ruling in conformance with the equitable solution achieved.

My clients are strongly in favor of your adoption and imposition of a moratorium which carries out the intent of the agreement between Lane County and my clients. However, my clients are strongly opposed to the imposition of a permanent moratorium, and legal action may be appropriate if a permanent moratorium is imposed.

Please include this letter as part of the hearing record.

Thank you for your time and consideration in these matters.

Yours very truly,

[signature]

Thomas C. Nicholson

TCN/dzm
cc: Robert & Shirley Merz
Roy Burns

THIS COPY FOR

CITY OF RHODODENDRONS
FLORENCE · · OREGON · · 1893

City of Florence
P.O. BOX 340
250 HIGHWAY 101 NORTH
PH. (503) 997-3436
FLORENCE, OREGON 97439

August 28, 1990

Environmental Quality Commission
Department of Environmental Quality
Water Quality Division
811 SW 6th Avenue
Portland, OR 97204

Subject: Clear Lake Watershed

Ladies and Gentlemen:

The City of Florence wishes to express the unanimous views by members of the City Council regarding proposed rules to protect the high quality water in Clear Lake near Florence.

The City is an interested party as 30-40% of its water is purchased from Heceta Water District. During the past year, 15 million gallons of water from Clear Lake purchased from the District was necessary to make up the 41 million gallons of production to serve some 1800 customers in the City.

Based on the information available to us at this time, the City of Florence takes the following position:

- Endorses all efforts toward the preservation of Clear Lake.
- Favors the buy-out plan described as Alternative IVA, as proposed to CRMP by Heceta Water District--see attached.
- Supports Heceta Water District as taking the lead role in Watershed protection.

The City will accept its fair share of financial responsibility in achieving the goal to protect the Watershed.

Sincerely,

Robert B. Ward, Jr.
Mayor

CM/beo

cc. Heceta Water District
CRMP Committee
Commission Dumdi

ALTERNATIVE IVA

Description

This alternative has not been introduced or reviewed by the CRMP group. It is presented now, by Heceta Water District, as an independent alternative for consideration. We offer this proposal as a means of making Alternative IV more affordable.

Within the Collard Lake subdivisions are several contiguous multiple lake front lots held in single ownership. Group One lots (see map) are groupings of undeveloped lots under one ownership. Group Two lots are undeveloped lots owned by the adjoining residents. Group Three consists of two undeveloped lake front lots under common ownership, separated by a third lot in different ownership. Group Four lots are undeveloped lots whose owners use them as recreational campsites for occasional use, and who have indicated they have no wish to develop their properties. There is an additional lot that has been cleared for construction, and apparently has been issued a building permit, so must be considered developed.

Alternative IVA proposes that the Group One owners be allowed to develop their properties using alum-equipped septic systems. Group Two owners would have alum septic systems on their existing residences, but their adjoining properties would remain undeveloped. Group Three owners would be allowed to develop one residence on an alum-equipped septic system, provided they acquire the intervening lot. Group Four owners would be allowed to use their properties as campsites, provided they install sealed vault toilets and the sites remain otherwise undeveloped.

No new subdivisions would be permitted anywhere in the watershed.

Advantages

1. Buy-out costs could be reduced by as much as $500,000 or more, depending on the level of participation, making the Alternative IV option more affordable.

   These estimates do not include any Group Three or Group Four options.

2. More property owners could develop their properties.

Disadvantages

1. Requires a minimum of two or a maximum of three additional alum equipped septic systems in the watershed.
2. Water quality protection is reduced by the additional development.
3. Some additional vegetative and soil disturbance will occur as a consequence of allowing construction of two, or possibly three, additional residences.

Otherwise, all advantages and disadvantages listed under Alternative IV apply.

Costs

If only Group One is involved:

Buy out 54 undeveloped lots: $1,437,000

$1,437,000 @ 7% interest for 30 years = $114,840 per year to amortize

Annual water use (1989) = 117,000,000 gallons

$114,840/117,000 = 98 cents per 1,000 gallons used.

(COSTS continued on page 14)

If groups One and Two are involved:

Buy out 51 lots: $1,264,500

$1,264,500 @ 7% interest for 30 years = $101,064 per year to amortize

Annual water use (1989) = 117,000,000 gallons

$101,064/117,000 = 86 cents per 1,000 gallons used.

The DEQ has a revolving sewer fund that could loan money for a purchase of properties to protect water quality, if the state elects to do so. This fund reportedly carries an interest rate of 3%. If such funding could be obtained, it would reduce costs significantly and would make Alternative IVA affordable for Heceta Water District.

If only Group One is involved:

Buy out 54 lots: $1,437,000

$1,437,000 @ 3% interest for 30 years = $51,732 per year to amortize

Annual water use (1989) = 117,000,000 gallons

$51,732/117,000 = 44 cents surcharge per 1,000 gallons used

Average household water rates would increase $3.08 per month.

If groups One and Two are involved:

Buy out 51 lots: $1,264,500

$1,264,500 @ 3% interest for 30 years = $45,528 per year to amortize

$45,528 = 38 cents surcharge per 1,000 gallons used.

This would increase the average water bill by $2.66 per month.

If some lots under Group Three and Group Four were also included, the cost could be reduced proportionately more.

8/29/90

Page 1

Mr. Dick Nichols:

Re: Clear Lake Watershed

18-12-C1-2 Lot # 5400

Dear Sir:

To protect the uniqueness & purity of Collard & Clear Lakes we propose the following:

1. ALL property, both developed & undeveloped be purchased by Heceta Water District. Purchase of which will be paid by ALL the users of Heceta water.

2. As an alternative to 1 above
   a. No additional Buildings anywhere
   b. No additional septics anywhere
   c. Allow existing owners "Lifetime use" of their property. At the demise of the property owner - Heceta Water will purchase. Also if owner wishes to sell his property it can only be purchased by Heceta Water District.

3. As an alternative to 1 & 2 above - allow only permanent Residents of the area to live there. All other part-time vacation homes & undeveloped property to be purchased by Heceta Water

(4) Restrict the use of sanddunes west of Collard & Clear Lakes to eliminate ATVs & dune buggies. Plant beach grass to help prevent erosion.

We have enjoyed our property immensely & would be happy to have it remain the same forever — but, if the Florence area is truly developing as rapidly as all the media hype says, its obvious that drastic measures must be taken to handle this water situation.

Sincerely

George Denser

Norma Denser

89381 Fern Dr.
Elmira, Oregon
97437

Thomas C. Nicholson, P.C.
ATTORNEY AT LAW
552 Laurel Street
P.O. Box 308
Florence, Oregon 97439-0011
Phone (503) 997-7151

FAX #: (503)997-7152

FAX TRANSMISSION

Date: 8-31-90

Number of Pages: 3
Including This Sheet

TO: ~~[illegible]~~
Environmental Quality Commission

FAX NUMBER: 229-6124

FROM: Bob Merz
997-3747

MESSAGE:

If Transmission Is Not Clearly Received, Please Call (503)997-7151

ROBERT L. MERZ
P O BOX 177
FLORENCE, OREGON 97439

August 30, 1990

Environmental Quality Commission
811 SW 6th Ave.
Portland, Oregon 97204

RE: Clear Lake watershed

Dear Ladies and Gentlemen:

My wife, Shirley, and I own approximately 90 acres of land in three Tax Lots, namely:

Tax Lot 18-12-12-400
Tax Lot 18-12-02-403
Tax Lot 18-12-01-000

These are totally within the Clear Lake watershed. Two of the Tax Lots front on Clear Lake. We purchased the land approximately 30 years ago with the intention of building our retirement home there and having enough property so our children could also locate there if they so wished.

We initially supported the two year moratorium that was placed on the watershed in 1983 as we realized that the intensive development of Collard Lake without some solution to sewage disposal would probably result in degradation of the water.

Due to the reluctance of Heceta Water District to seek a solution and the vocal opposition of home owners in the Collard Lake Subdivision who have their homes built and want to keep things as they are, the two year moratorium has now become an eight year moratorium. I had to retire several years ago due to health problems and we have been unable, due to the moratorium, to use our property.

I have studied the various proposals submitted as possible solutions and think that they all have possibilities. To be totally assured that the lake remains pure, a total buy-out would be the best answer but I realize that this is probably an impossibility financially.

I know very little about the proposed Alum injection system but from what I have read, it is still in the unproven stages and I question the wisdom of trying it in such a critical area. By the time a discovery was made that it wasn't working, it would be too late to stop the pollution from entering the lake. I believe that either sewers or a total buy out are the only two sure solutions for the Collard Lake Subdivision area. From a financial standpoint, a pressurized Effluent system seems to be best.

I realize that the problem is very complex and that there are no easy solutions, but I urge you to make some difficult decisions and bring this to an end, one way or another.

If your department and staff had been involved earlier in this problem a solution could possibly have been found much sooner and all of the present day problems would have been avoided.

Respectfully,

Robert L. Merz

Robert L. Merz

WBF Copy

ATTORNEYS AT LAW

975 OAK STREET,
EIGHTH FLOOR
EUGENE, OR 97401-3156

GLEAVES
SWEARINGEN
LARSEN
POTTER

August 9, 1990

Dear Clear Lake Watershed Property Owner:

TELEPHONE:
(503) 686-8833

CORRESPONDENCE:
P.O. BOX 1147
EUGENE, OR 97440-1147

FACSIMILE:
(503) 343-2034

VERNON D. GLEAVES
ARLEN C. SWEARINGEN
ERIC L. LARSEN
STANDLEE G. POTTER
LEWIS HOFFMAN
A.J. GIUSTINA
MICHAEL E. EARTHING
MELVIN J. BECK
STEPHEN O. LANE
WILLIAM H. MARTIN
MARTHA J. ROGMAN
DALE A. RIDDLE
JON V. BUERSTATTE
FREDERICK A. BATSON
JENNIFER L. COOK
EILEEN G. SIMPSON
PATRICIA E. LOCKARY
LINDA Y. LEE
DAVID A. STANLEY

Re: Clear Lake Watershed

For the past year a group of individuals representing various state and federal agencies and private property owners have been meeting in an attempt to resolve the controversy created by the moratorium that has been placed upon properties in the Clear Lake Watershed. This group is known as the Coordinated Resource Management Planning (CRMP) Committee.

Until recently the CRMP Committee had been able to successfully agree on several strategies which could lead to a long term solution to the competing goals of maintaining the quality of Clear Lake and protecting the rights of property owners in the area. These strategies include:

(1) Sewering the Collard Lake subdivisions and allowing all buildable lots in the subdivision to develop.

(2) Sewering the Collard Lake subdivisions and allowing future homes in the subdivision to be built only upon lots in excess of one acre. Property owners who own lots less than one acre would be bought out at fair market value.

(3) Sewering the Collard Lake subdivisions and allowing future homes in the subdivision to be built only upon one acre lots for lake front lots, and one-half acre lots for nonlake front lots. Property owners who own lake front lots smaller than one acre in size and nonlake front lots smaller than one-half acre would be bought out at fair market value.

(4) No new development would be allowed in the Collard Lake subdivisions. All undeveloped lots would be bought out at fair market value. Developed lots would be allowed to remain but would be required to modify their existing septic tank systems to add alum and to add a sand filter at the discharge from the septic tank.

In all four alternative strategies set out above, large lot owners outside the subdivisions would be allowed to build one home per tax lot of record. If the lot contained property outside the watershed the septic system serving the house would have to be located outside the watershed if practicable. For the seven tax lots which are totally within the watershed their owners would be allowed to build their septic systems inside the watershed.

This office has no particular preference as to which strategy is ultimated adopted to solve the present controversy. Obviously, all of the

strategies do not cost the same nor do they all present identical problems of implementation. However, to the extent that Collard Lake property owners can agree upon a solution and implement that solution, this office will support that alternative.

The purpose of this letter is two-fold. First, we want to notify you of an upcoming DEQ hearing to be held on August 22, 1990 at Siuslaw High School auditorium, lecture rooms A and B, 30th and Oak Streets in Florence at 7:00 p.m. Written or oral comments may be presented at the hearing. In case you are unable to attend the hearing, written comments may also be sent to the DEQ, Water Quality Division, 811 S.W. Sixth Avenue, Portland, Oregon 97204, and must be received by no later than 5:00 p.m., August 24, 1990.

The second reason for writing to you is to inform you that a group of property owners who have already built homes in the Collard Lake subdivisions are trying to halt the decision making process. Their preferred solution appears to be that nothing be accomplished and that everything remain as it is, and has been, for the past eight years. In other words, they want to be able to continue to live in the subdivisions and be allowed to use their septic systems (which may be polluting the lake), and use undeveloped properties as their own private parks without having to pay for them or pay property taxes on them. In the meantime, property owners who were not so fortunate to be able to build homes prior to the moratorium would be left with property having no value, yet they would continue to pay property taxes and they would not be compensated for their loss.

We believe that it is very important that the Collard Lake Homeowners, who represent only a minority of the property owners in the watershed not be allowed to dictate what happens to everyone else's property. Therefore, we strongly encourage you to write to the DEQ expressing your opinion that something needs to be done to solve the present controversy. We cannot stress enough the importance of your writing the DEQ and letting them know your thoughts on this matter and the strategies discussed above. It would also be helpful if you could attend the hearing at Siuslaw High School in Florence on August 22, 1990 to express your opinion. If that is not possible, please submit your written comments as discussed above. We would also appreciate it if you would provide us with a copy of any comments you send to the DEQ.

Thank you for giving this matter your serious attention. We would very much appreciate your support.

Sincerely,

Dale A. Riddle

Dale A. Riddle

DAR/pr

RECEIVED
1990

PETITION TO THE ENVIRONMENTAL QUALITY COMMISSION

We, the undersigned concur with the following statement regarding ISSUES FOR THE COMMISSION TO RESOLVE, Agenda Item H, Page 7, of the Request for EQC Action, Clear Lake Watershed, Lane County, Oregon.

Issues for the Commission to Resolve:

1. Should the proposed rule allow any increases in phosphorous levels over existing conditions?
   Answer: No. Every effort should be made to maintain and improve the quality of the water

2. Should the on-site sewage disposal moratorium be left as is?
   Answer: No. The issue needs to be resolved and the rights of the owners of undeveloped residential lots recognized.

3. Should sewers be required in the rule or should this issue be left to local government?
   Answer: Sewers should not be required in the rule. There are other possible means of protecting the water that need to be explored.

4. Should the loading limit for Collard Lake allow for limited flexibility that would allow other mechanisms to control phosphorous loading from sewage?
   Answer: Allow flexibility.

5. Should the rule require local government to routinely monitor the lake's water to verify it's quality?
   Answer: Yes.

6. Should reductions in phosphorous loadings created by sewering or modification of septic tanks be saved within the Department's reserve or made available for development?
   Answer: All reductions should be saved. None should be made available for development.

Prepared and submitted by citizens and water users concerned for the protection of the Clear Lake water supply.

Date: August 27 1990

Submitted by: Edith Roberts
Edith Roberts
05971 View Loop
Florence, OR 97439

Name	Address
Shawn A. Twogo	06043 View Loop
Judith A. Eagle	06044 View Rd.

PETITION TO THE ENVIRONMENTAL QUALITY COMMISSION Page_____

Name	Address
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
Rigden C. [illegible]	88521 Collard Loop Rd 97439
[illegible]	[illegible]
[illegible]	[illegible]
Tage C Nichols	88665 " " " 97439
[illegible]	[illegible]
[illegible]	[illegible]
Innagene H. Swanson	88707 Chapman Rd. 97439
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
Kay Drummond	88573 Collard Loop Rd 97439

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Prepared and submitted by citizens and water users concerned for the protection of the Clear Lake water supply.

Date: [illegible]

Submitted by: Edith Roberts

Edith Roberts
05971 View Loop
Florence, OR 97439

Name	Address
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

PETITION TO THE ENVIRONMENTAL QUALITY COMMISSION Page_____

Name	Address
Patrick E. Clark	05967 VIEW Loop - Florence, OR 97439
Claire R. Roach	06010 View Loop - Florence
Richard E. Roach	05971 VIEW LOOP FLORENCE
John R. Stearns	05952 VIEW LOOP FLORENCE
Ralph W. Dallman	05944 View Loop Florence
Erika Dallman	05944 View Lp Flo
Rod + Joyce Johnson	05914 View Lp. Flore
Kay Wiers	05902 View Lp. Florence, OR
[illegible]	05917 View Lp. Florence
Allan Tait	06004 View Lp 97439
Donald Tepas	05966 View Court Florence Or

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Prepared and submitted by citizens and water users concerned for the protection of the Clear Lake water supply.

Date:_____ Submitted by: Edith Roberts

Edith Roberts
05971 View Loop
Florence, OR 97439

Name	Address
John E. E. Jeans	04573 FALCON ST. FLORENCE, OR
Violet B. Jeans	" " " " "
Arthur W. Hewitt	04574 FALCON ST. FLORENCE, OR.

PETITION TO THE ENVIRONMENTAL QUALITY COMMISSION Page_____

Name	Address
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[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	04727 JOSHUA [illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
Tonya A. Stoutlake	89428 Shane Court Florence Or
Cindy Estes	05489 Friendly Acres Florence Or

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Prepared and submitted by citizens and water users concerned for the protection of the Clear Lake water supply.

Date: Aug. 16, 1996

Submitted by: Edith Roberts
Edith Roberts
05971 View Loop
Florence, OR 97439

Name	Address
[illegible]	[illegible] Clear Lake Rd
[illegible] P.O Box 2984	88339 Collard Lake Rd
[illegible]	88336 Collard Lk Rd

PETITION TO THE ENVIRONMENTAL QUALITY COMMISSION Page

Name	Address
[illegible]	[illegible]
Bill [illegible]	[illegible] Collard [illegible] Florence
[illegible]	[illegible]
[illegible] Smith	88352 Collard Lk Rd 97439 Florence
Glenn [illegible] Nickell	2818 Melakwa Eugene

Comments for DEQ hearing officer:

Clear Lake is a water source that has water pure enough to be used as public drinking water with only the addition of chlorine. It is an unfiltered water supply providing 100% of the water for Heceta Water District users and approximately 50% of the water to Florence water users--about 9,000 people. Even though the Oregon State Marine Board classifies it as a recreational lake, it is being used as a municipal water supply. Therefore, it should be entitled to protection.

SOME AREAS OF CONCERN:

* Land bordering the west side of Clear Lake that belongs to the county is mostly dunes and is used by ATV riders and some campers. If the county leased the land to Heceta Water District, signs could be put up and possibly fencing to protect this lake and let people know that it is unfiltered public drinking water. Possible stabilization of the dunes by planting dune grass could be started too.

* Large F-2 landowners being able to subdivide and create large developments on the shores of Clear Lake bothers a lot of people. Limiting development to one house and one septic system to each undivided lot would be more acceptable. However, zero development on the F-2 land would provide the most protection.

* The county allowed subdivisions to small lot sizes aroung Collard Lake and in Mercer Lake Heights about twenty years ago and now the septic systems are degrading Collard Lake which flows into Clear Lake. This was the assumption upon which the building moratorium was imposed by Lane County and the septic tank moratorium imposed by the DEQ. Lane County lifted their moratorium in 1987. The DEQ has not and will not until a solution to the septic tank problem is found. The problem seems to be the phosphorus and recent testing has shown that between 1985-1990 there has been no increase in phosphorus in Clear Lake. The moratorium must be working.

POSSIBLE SOLUTIONS:

* Some favor sewers and in particular the STEP system which is a hybrid sewer/septic tank. Sewers are expensive, would require tearing up roads--including fragile Collard Road--to install, require ongoing maintenance, and are subject to spills and breakdowns particularly during power outages. Sewers do not take care of nonpoint source pollution like

fertilizers and driveway and roof runoff. Sewer spills in the watershed would eventually end up in Clear Lake and since it is not a river, it does not flush itself clean in a few days.

Lane County would like to lift the moratorium, require the installation of sewers, and allow total build out. In the long run sewers with their installation, road rebuilding, and ongoing operation, and maintenance would be the most expensive and if coupled with total build out would not protect the lake. We are not the only ones who think sewers are not the answer. Check the Cooper Study.

* Only about half of the lots in the Collard Lake and Mercer Lake Heights subdivisions have homes on them. One solution would be to buy out the undeveloped lots or at least the ones within 500 feet of the lake. According to Bill Finley, of the Clear Lake Area Watershed Supporters group and a consultant to Heceta Water District, about thirteen lots would be willing to combine or buy neighboring lots creating larger more buildable lots allowing about five more homes. About three very small lots have no intention of building and would like to continue using their lots as camping lots. This reduces the amount of lots to have to be bought out to about 1.5 million dollars. (Source Bill Finley.)

Some federal grant or loan money could be available such as: from EPA Sole Source Aquifer Demonstration Grant Program, Farmers Home Administration, or the Oregon DEQ revolving loan fund administered by EPA. The partial buyout of undeveloped lots could be done through Heceta Water District which is legally empowered to buy out and take possession of properties needed to protect the water. This type of buyout would be cheaper in the long run than a sewer system, would limit development around Collard Lake, and would do a better job of protecting Clear Lake than a sewer system.

*Since phosphorus is the main culprit in degrading water quality, there is a simple and inexpensive solution other than sewers for the existing houses in the subdivisions. The only problem is that it has not been extensively tested. According to limited tests in Canada, with the addition of alum, 95% of the phosphorus could be precipitated out of the effluent before it leaves the septic tank, and the tanks would have to be pumped every four years. Alum and the modifications to the septic system are not expensive. Before sewers are mandated, alum should be given a DEQ monitored chance to work.

A plan that includes one house per large lot on Clear Lake, buying out some or all of the undeveloped lots within the

subdivisions in the watershed, and treating existing houses' septic systems with alum should work and create a drinkable water supply for a very long time without the fear of sewage spills degrading it.

Since 1983 the property owners of the Collard Lake and Mercer Lake Heights subdivisions have been working to find solutions to the problem. Since 1987 the Clear Lake property owners have tried to get the moratorium lifted. For the past year all concerned parties--including the DEQ--have met on a regular basis. At last decision time is here. We certainly hope you will take our comments into consideration when making your decision.

Sincerely,

Judy & Walt Fleagle

Judy & Walt Fleagle
06049 View Road
Florence, OR 97439
997-9170

August 21, 1990

August 15, 1990

RE: The Clear Lake moratorium
Dilemma at Florence, Oregon

To whom it may concern:

Thank you for your efforts and the comprehensive report. By now any action is appreciated.

Please forgive me if I sound frustrated in my comments - (it's not personal).

For 10 years we have been asked (required) to consider the following entities; the State (moratorium, water study), the County (access and zoning), the Heceta Water District, and the "good people of Florence" while they never once considered us.

The County first abandoned and then in 1979-80 vacated our public road that ran through our 40 acres, and then gave us access only. Of course they had reasons - it was for the "good of the people". That road had been there for 100 years - it was historical.
And now, aren't we lucky? - 1 septic maybe perhaps on one 40 acre parcel!

This is just another fiasco that benefits alot of people (users) at a great cost to a few.

There are all kinds of ways to purify water. It's done all over the country, and as for soil erosion - cutting a few scraggly trees is not going to help or destroy anything. A good windstorm or a fire can do that.

We bought and have paid taxes on our 40 acres since 1963 (old-age insurance policy). We are 70 years old now - still waiting and time is running out as well as finances.

In 1980-81 our true cash value assessment was $93,210. And now in 1989-90 it is $35,050 - A difference of $58,200. How can this be justified? It's the same 40 acres - in the same place. It's not right - we are people too, and reasonable (at least I always thought we were). Unfortunately we are not millionaires either.

Aren't there really only 2 alternatives to this dilemma? You have heard that old saying " put up or shut up" haven't you?

#1 buy it and leave it status quo.

#2 sewer it, zone it RR and let Florence grow.

Most people are pretty decent and take pride in their surroundings. It's doubtful they'll destroy the Lake or Florence. They might even help it. Ultimately it's the people and taxes that make the world go around - not sand, or a few scraggly trees, or one pure lake, or a few spotted owls.

What a bunch of crybabies and alarmists. This whole scenario is depressing. There are some real problems in this world that there aren't such simple solutions to.

Sincerely,

Mrs. Kathryn Omlid

Kathryn Omlid (Erling G.)

cc: Lane County Commissioners
West Lane Planning Commission
City of Florence
Heceta Water District
Siuslaw Soil & Water Conservation District
Department of Environmental Quality
Dale Riddle, Attorney at Law

ROBERTS, RICHARD E. & EDITH L.
05971 View Loop, Florence, Oregon 97439-8716
(503) 997-6105

August 19, 1990

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

Attn: Hearings Officer(s)

Subj: Clear Lake (near Florence) Water Quality Protection Issue - Public Testimony

Gentlemen:

As consumers of Heceta water we are concerned about the adequacy of and/or modifications of the rules for the protection of our municipal water supply. As observers of the CRMP process we feel that Dick Nichols has done a good job in preparing the proposed rules now under consideration.

However we must take exception with these proposed rules as they do not completely fulfill your legal mandate as prescribed in ORS 468.715, "...to protect, maintain and improve the quality of the waters of the state for public water supplies." The plan asks Collard Lake residential property owners to sewer to reduce pollutants and then proposes to allow new sources of pollutants from on-site septic systems and development on the large F2 zoned land parcels not designated for such use. Yet every scientific study conducted on the Clear Lake watershed recommends no development adjacent to the lake! We believe the CRMP and EQC support of the proposal to allow one (1) house (actually EQC says one on-site septic system) on each of the large F2 timber lots is illegal and is in conflict with current zoning "restrictions" and land use regulations. Furthermore, F2 zoned timber lots are under the regulation of LCDC and are not within the purview or jurisdiction of either of these bodies which at best would render any recommendations regarding these lands moot.

We believe the proposed rules to accomodate sewering of the Collard Lake subdivision and allow a full build-out would compound the problems created by Lane County in approving these high density subdivisions (average lot size 2, [illegible] in the [illegible] branch.

We believe sewering and opening up the watershed for more development is the wrong approach (solution) for the following reasons:

(1) It fails to adequately address the pollution from non-point sources which will be extremely difficult to control with this density of development and the increased human habitation in this sensitive watershed. Many of the lots are so small that existing trees and natural vegetation cover will have to be removed to accomodate the house, the pressurized septic tank required by the STEP sewer system, plus the storm water control facilities required for lots less than one (1) acre which consist of a dry well system to retain the runoff from a 6", 24 hour rainfall with a storage volume of 1,000 ft^3 and a seepage area of 70 sq.ft.[1] For a house with 2,000 sq.ft. of roof area this would require a concrete box 7 ft. x 10 ft. x 7 ft. deep at an estimated cost of $7,200.00 or the alternate use of three (3) separate dry wells consisting of three (3) concrete rings with a six foot inside diameter and twelve (12) feet deep at an estimated cost of $1,400.00 to $2,400.00 each.[1] All of these lots drain toward the lake. When the rich top soil stripped of vegetation drains into the lake it will add additional nutrients into the lake, to say nothing about turbidity and other water degradation considerations.

(2) The watershed topography and hydrologic features make it especially susceptible to contamination. The steepness of the terrain and the high porosity of the soils allow any discharge on or in the watershed to percolate down to the water table and ultimately discharge into Clear Lake.

(3) Potential ground-water contamination is not limited to septic tanks and drainfields. With sewering there is always the possibility from leaking sewer lines and power outages which would prevent electric pumps from operating. The low point for the piping to transport sewage to a treatment plant will necessarily be at lake level. Consequently the potential for a disastrous spill directly into the lake will always be present.

---

[1] Request for EQC Action Subject: Clear Lake (near Florence): Authorization for Hearing on Proposed Rules Modifying OAR 340-41-[illegible] et al. EQC Document No. WQ6676 (6/8/90). p C-3

(4) This possibility is even more critical for Clear Lake. According to the 1985 Cooper study, water which enters Clear Lake will have a residence time of nearly a year and a half. Therefore the lake does not flush fast enough to remove nutrients before they are taken up by the plant life and are again recycled into the lake.

At the least for the above reasons we support the Heceta Water District proposal to buy-out all of the undeveloped residential lots in the Collard Lake subdivisions and equip the existing residences with an Alum dispensing systems that precipitate 95 percent of the Phosphorous component from sewage waste effluent entering the drainfield.

In conclusion we want to take exception to the ISSUE and response expressed (ibid. p G-20) in the referenced EQC document, e.g. Waldo and Crater lakes are more important to maintain in a crystal clear unpolluted condition than Clear Lake!

We believe Clear Lake, in an area that is growing at approximately the rate of 15 percent per year, provides drinking water for approximately 9,000 people in the Heceta Water District and the City of Florence, deserves the same protection as the above mentioned two lakes. Surely the protection of the source of our pure water should take precedence over <u>all</u> other considerations.

Yours very truly,

Edith L. Roberts

Mr. & Mrs. R. E. Roberts

cc: R. J. Nichols, DEQ

August 22, 1990

Lane County

WILLIAM P. HUTCHINSON, JR., Chair
Environmental Quality Commission

First, and foremost, Lane County wishes to thank the Environmental Quality Commission and the Department of Environmental Quality for your continued interest in preserving the water quality of Collard and Clear Lakes. Lane County believes the lakes are truly unique environmental resources and we greatly appreciate your work over the years. Recently, Dick Nichols of your Department has participated along with Lane County in the (Comprehensive Resource Management Planning) CRMP process. Dick's work has been extremely helpful and I wish to publicly recognize his hard work. It is both necessary and appreciated, and we urge you to authorize his continued participation.

For a variety of reasons, the CRMP process is not complete. While tonight's hearing is beneficial for information gathering, Lane County believes action at this time would be premature. Lane County's long-term policy has been to facilitate a local solution. The Board of Commissioners has not yet agreed to any role beyond that of facilitator. We genuinely desire that the local residents and local governments, Heceta Water and City of Florence, develop their own solution. To that end, we believe the CRMP process should be complete before you take final action.

We also wish to advise you of two major limitations which severely constrain Lane County's ability to be a major participant in any solution.

1. Fiscal. The proposed Administrative Rules appear to specify that an entity called a municipality, (Lane County?) must adopt land use regulations, adopt non-point source pollution regulations and perform water quality monitoring. Lane County does not have the long-term financial resources available to perform those duties. If the "munipality" referred to in your rule is Lane County, we must object to its adoption. Assuming you defer action until completion of the CRMP process, I would ask you to then bring a draft of your Administrative Rule to the Board of Commissioners where we can develop mutually agreeable provisions.

2. Statutory. In our opinion, the real solution under any alternative is the establishment of a legal entity with the full power to implement watershed management strategies. These

COURTHOUSE - PUBLIC SERVICE BUILDING / 125 EAST 8TH AVENUE / EUGENE, OREGON 97401 / (503) 687-4203

stratigies need to include sewer construction and operation, (or a management entity to provide regular service to individual sewage systems), and authority to regulate land use, regulate non-point source pollution, work with the existing water district and finally authority to enforce compliance with required regulations. To our knowledge, the Legislature has not granted to the Environmental Quality Commission, Department of Environmental Quality or Lane County authority to create such an entity. Without this basic entity with unique capacity to assure compliance, resolution of this problem in the foreseeable future is not likely.

If you agree legislation is needed, Lane County stands ready to work with the Environmental Quality Commission and Department of Environmental Quality before the 1991 Legislature to pursue appropriate legislative authority to achieve a solution.

In conclusion, Lane County strongly urges the Commission to defer action at this time pending completion of the CRMP process. Thereafter, we would request that the Department bring any proposed rules which affect Lane County to the Board of County Commissioners prior to their presentation to the Commission. Finally, Lane County is willing to work with the Environmental Quality Commission or other interested parties for any necessary law changes during the 1991 Legislative Session.

Ellie Dumdi

Ellie Dumdi, Commissioner, for the
Lane County Board of Commissioners

BCJ/4125

CITY OF RHODODENDRONS
FLORENCE · · OREGON · · 1893

City of Florence

P.O. BOX 340
250 HIGHWAY 101 NORTH

PH. (503) 997-3436
FLORENCE, OREGON 97439

August 17, 1990

Department of Environmental Quality
Water Quality Division
811 S.W. 6th Avenue
Portland, OR 97204

Re: Clear Lake - Florence

Gentlemen:

I have acted as the representative of the City of Florence on the Coordinated Resource Management Planning (CRMP) committee since it was established in June, 1989.

The goals of the CRMP are to develop a plan which protects the water quality of Clear Lake while protecting the rights of private property owners to use their land.

Dick Nichols, the DEQ representative to the CRMP has worked diligently to help achieve a solution to the present moratorium that would achieve the CRMP goals.

City of Florence supports the department's recommended alternative as the most cost-effective method of protective water quality and property owners' rights to develop their homesites.

Sincerely,

Laura Gillispie

Laura Gillispie
Planning Director

LG/amr
cc: Ellie Dumdi
Dick Nichols
Dale Riddle
Craig McMicken

August 16, 1990

Department of Environmental Quality
811 SW Sixth Street
Portland, OR 97204

To whom it may concern:

I am writing to the D. E. Q. in response to the upcoming public hearing on August 22, in Florence, Oregon concerning the Clear Lake Watershed.

I am very concerned that the proponents for development around Clear Lake will prevail. I believe that a pristine watershed will be destroyed by overdevelopment. We have a unique opportunity to save an ecosystem that would be a prized possession in any part of the country.

The only way to protect Clear Lake Watershed is to buy out all existing undeveloped properties and require a sand/alum filtering system to existing septic tanks.

Thankyou for allowing me to state my opinion in this matter.

Sincerely,

John Weeks
997-2294

8/14/90

RE: CLEARLAKE WATERSHED - CRMP
A. MY LETTER OF JULY 10, 1990
B. YOUR LETTER OF JULY 17, 1990

MR. NICHOLS,

THANK YOU FOR YOUR LETTER OF 7/17. I HAVE TWO BRIEF COMMENTS TO MAKE THAT I WANT YOU TO THINK ABOUT PRIOR TO THE DEQ HEARING IN FLORENCE 8/22/90.

(1) REFERENCE THE EXISTING HOMEOWNERS IN COLLARD LAKE AREA THAT ARE ATTEMPTING TO HALT THE DECISION MAKING PROCESS I CAN UNDERSTAND YOUR RELUCTANCE TO LABEL THEM ALL AS UN-COOPERATIVE, BUT YOU ARE BEING MISLEAD. THEY ALL TALK LIKE CO-OPERATIVE PEOPLE, BUT THEIR ACTIONS DO NOT REFLECT THEIR RHETORIC. THEY ARE A MINORITY IN PERCENTAGE OF PROPERTY OWNERSHIP — BUT THEY ARE ORGANIZED, INFLUENTIAL, DETERMINED AND VICIOUS. I KNOW WHAT I'M TALKING ABOUT AS I'VE DEALT DIRECTLY WITH THEM FOR OVER TEN YEARS. SOME HAVE LAUGHED RIGHT IN OUR FACES WHEN WE MENTIONED OUR HOME BUILDING PLANS. SOME HAVE TRIED TO BUY US OUT AT APPRX. 30% OF F.M.V. THEY ARE MORE POWERFUL POLITICALLY THAN PEOPLE LIKE YOU IMAGINE. JUST LOOK AT THEIR TRACK RECORD. THEY CONTINUE TO LIVE IN THE SUBDIVISION POLLUTING THE LAKE, USE PROPERTIES LIKE MINE FOR THEIR OWN PRIVATE PARKS/BUFFER ZONES. ALL THIS WHILE WE PAY FOR THIS PROPERTY AND PAY TAXES AS WELL IN MY CASE — FOR ALMOST THIRTY YEARS! SOME GOVERNMENT AGENCY MUST COME TO THE RESCUE AND END THIS CRIMINAL ACT. THE U.S. SUPREME COURT DECISION OF 6/10/87 (CHURCH) STATED IN PART THAT THE FIFTH AMMENDMENT EMPHATICALLY IS DESIGNED TO BAR GOVERNMENT FROM FORCING SOME PEOPLE ALONE TO BEAR PUBLIC BURDENS WHICH IN ALL FAIRNESS AND JUSTICE,

(2)

SHOULD BE BORNE BY THE PUBLIC AS A WHOLE. THE JUSTICES FURTHER STATED THAT "EVEN THE RESTRICTIVE ORDINANCE IS REVOKED, THE PROPERTY OWNERS DESERVE PAYMENT FOR A "TEMPORARY TAKING" OF HIS PROPERTY. COULD IT BE ANY PLAINER THAN THAT!

(2) YOUR LETTER SAYS "HECETA WATER DISTRICT IS SUPPORTIVE OF A BUY-OUT". THAT IS NEWS TO US. THEY HAVE IN THE PAST, SAID A BUY-OUT IS OUT OF THE QUESTION. ALSO COMMISSIONER ELLIE DUMDI OF LANE COUNTY INFORMED US IN WRITING "FOR MORE THAN A YEAR, THE COUNTY HAS BEEN EMPHATIC IN IT'S STAND THAT A BUY-OUT IS NOT A FINANCIALLY VIABLE OPTION". SHE MAY BE REACHED AT (503) 687-4203 FOR CONFIRMATION.

BOTH THESE EXTREMELY IMPORTANT MATTERS MUST BE UNDERSTOOD BY D.E.Q. OFFICIALS PRIOR TO THE AUG. 22 MEETING. YOU WILL BE STONEWALLED BY THE COLLARD LAKE HOMEOWNERS AT EVERY TURN. I PRAY THAT YOU AND OTHERS UNDERSTAND JUST WHO THE ENEMY IS, AND HAVE THE GUTS TO REPRESENT THE BEST INTEREST OF <u>ALL</u> THE PEOPLE — NOT ALLOW A MINORITY OF PROPERTY OWNERS TO DICTATE WHAT HAPPENS TO EVERYONE ELSES PROPERTY. WE WANT TO BUILD OUR RETIREMENT HOME ON COLLARD LAKE NOT RECEIVE <u>52%</u> OF <u>REAL</u> <u>MARKET</u> <u>VALUE</u> AND ALLOW A SELECT FEW TO REMAIN. THAT IS UNJUST, UN-FAIR AND WOULD BE A CRIMINAL ACT.

SINCERLY,
DICK SARGENT

OWNER LOT 1400
COLLARD LAKE
(SINCE 1966)

Mr Dick G Sargent
6669 Twin Oaks Dr
Paradise CA 95969

06004 View Loop
Florence, OR
August 9, 1990

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Dear Mr. Hansen,

In your letter to us of December 28, 1989, you stated "that development is secondary to protecting the water quality of the (Clear) lake". We believe Oregon law requires it to be public policy of the state to protect, maintain and improve the quality of the water of the state for public water supplies.

With this in mind, our input to your public notice, attachment D, of Aug. first 1990 is an emphatic NO to sewering. Cooper Engineering Company, Portland, OR, made a study in 1985 that concluded: With or without sewers, either way, the lake would become polluted in time, as long as development is allowed. We forwarded this information to your department in our letter of December 6, 1989 to Mr. Nickols.

Mr. Steve Olienyk, Chairman of the Board of Directors, Heceta Water District is very active trying to improve the water quality of the District whose sole water source is Clear Lake. Under ORS 264.240 The District has the power of eminent domain, and may condemn or purchase real property. Mr. Olienyk is persuing several promising sources of funding.

How many times must we invent the wheel! Experience has taught us that one cannot both populate and preserve water quality within a watershed. Although there are copious examples, two, well publicised examples: Los Angeles in the case of Owens Valley and Lake Matthews in Riverside County, and New York City in the case of the Catskill Lakes. In the later case, there was tremendous expense as extensive development had been allowed in the watershed.

In the Clear Lake watershed, development is quite minimal and a buy out is not only less expensive than the other cases proposed, but it is also the only way to protect and improve the water quality.

The reason a buy out is less expensive is that, because of more development, (included in all of your cases), water treatment would eventually be required. The initial cost, plus the recurring operational expenses and the negative wasteful costs of sewering, far exceed the ammount of a senseable buy out.

Another facet, not mentioned in any of your cases: There has never been a sewer system, anywhere, without a failure! When it fails (Not IF), you don't gradually pollute with nature-filtered affluent, but catistrophically with RAW SEWAGE!! It is idiotic to even contemplate sewering in a watershed!!

Unfortunately, we are out of the State and will not be present at the hearing, however we believe in the written word over that spoken. Our positions:

1. We approve of case I, provided all mention of sewers and sewering is deleted and all phosphorus loading reduction from the buy out, go to the department reserve.

2. In the event the Heceta Water District fails to obtain timely funding for the buy out, we opt for case IV as a permanent solution, provided the phophorus loading is less than 10 Ug/l in perpetuity. Otherwise, as a temporary solution, until Heceta Water does obtain funding.

In closing, we would like you to deeply think about this aquifer. It is one of the few pristine water sources left on the Oregon Coast. Please, Mr. Hansen, let us keep it that way for posterity!

Sincerely,

Alan D. Tait

Alan D. Tait

Barbara J. Tait

Barbara J. Tait

cc: William A. Mullen, Region 10 EPA

Steve Olienyk, Heceta Water

Bill Finley, Heceta Water

Glenn Nickell, C.L.A.W.S.

HECETA WATER DISTRICT
87845 Highway 101 North
Florence, Oregon 97439

July 17, 1990
Florence, Oregon

William P. Hutchison Jr., Chairman
Environmental Quality Commission
Tooze, Masrshall, Shenker, Holloway, & Duden
333 SW Taylor Street
Portland, OR 97204-2496

Dear Mr. Hutchison:

We wish to correct a misstatement in our letter of June 25, 1990 presented to EQC at the June 30th Hearing.

In the paragraph at the top of page 4 our letter states the Board of Directors passed a resolution in favor of CASE IV. This is in error. The Directors voted in favor of Alternative IV of the CRMP draft. The CRMP Alternative IV calls for a buy out of all of the undeveloped residential lots in the Collard Lake sub-divisions so that they remain undeveloped. We definitely oppose allowing the Clear Lake larger lots (F2 lands) to each develop with one house with a septic tank/drain field in the watershed. Such allowance would pose a very definite and direct threat to the purity of the water at Clear Lake.

In summation, we are opposed to any new development within the watershed.

Sincerely,

Steve Olienyk, Chairman
Heceta Water District Board
87845 Highway 101 North
Florence, Oregon 97439

Copies to:
EQC Members
Dick Nichols, DEQ

88657 Euers Rd.
Elmira, OR. 97437
8-20-90

DEQ-Water Quality Division
811 S.W. 6th ave.
Portland, OR 97204

Re: Public Notice/Clear Lake Watershed
Florence, OR.

In my opinion, this moratorium and lack of resolution has gone on for far too many years because a few vocal property owners wanted nothing accomplished. I am not a wealthy person and I put my long time savings into my lot, but who cares? Yet I'm expected to pay taxes, to keep brush & weeds clipped (for those who use the road), and to be liable should someone get hurt.

In the long run, it seems to me that the most practical solution would be for the Hecla Water District to buy out all the undeveloped property, and to charge everyone who benefits from their pure water their share of the cost. If, in the future, the water district has to install a filtration system, all water users will have to pay for that.

a second alternative would be for the water district to buy (at a fair market value) only those undeveloped lots which are within a certain number of feet from the lake and then to let the other property owners develop their property which is their Constitutional right.

Yours truly,
Kelly J. Bifoeker

cc. Gleaves, Swearingen Larson & Potter
Attorneys at Law

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

Activity Report

October and November 1990

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

October and November 1990

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MY101024 (12/90)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality, Water Quality and Solid Waste Divisions
(Reporting Unit)

October 1990
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	Month	FY	Month	FY	Month	FY	
Air							
Direct Sources	15	50	10	35	0	0	34
Total	15	50	10	35	0	0	34
Water							
Municipal	N/A						
Industrial							
Total							
Solid Waste							
Gen. Refuse	13	40	14	33	1	2	43
Demolition	0	3	0	3	0	1	4
Industrial	1	9	0	10	1	2	11
Sludge	0	0	0	0	0	0	1
Total	14	52	14	46	2	5	59
GRAND TOTAL	29	102	24	81	2	5	93

MY101025 (12/90)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PLAN ACTIONS COMPLETED

Permit Name		Source Name	County	Date Schld.	Action Description	Date Achvd.
03	2634	JOHNSON CONTROLS, INC.	CLACKAMAS	10/09/90	COMPLETED-APRVD	10/23/90
03	2744	UNOCAL	CLACKAMAS	08/24/90	COMPLETED-APRVD	10/11/90
07	0006	PINE PRODUCTS CORP.	CROOK	09/21/90	COMPLETED-APRVD	10/02/90
15	0214	UNOCAL	JACKSON	09/05/90	COMPLETED-APRVD	10/24/90
22	3010	WILLAMETTE INDUSTRIES INC	LINN	07/16/90	COMPLETED-APRVD	10/25/90
26	2424	ATOCHEM NORTH AMERICA INC	MULTNOMAH	09/27/90	COMPLETED-APRVD	10/04/90
26	2545	RIVERVIEW ABBEY CREMATOR	MULTNOMAH	09/27/90	COMPLETED-APRVD	10/22/90
26	3002	WACKER SILTRONIC CORP	MULTNOMAH	10/03/90	COMPLETED-APRVD	10/15/90
34	2677	SILGAN CONTAINERS CORP.	WASHINGTON	09/27/90	COMPLETED-APRVD	10/08/90
37	0429	RMAC INTERNATIONAL, INC.	PORT.SOURCE	03/07/90	COMPLETED-APRVD	10/22/90

TOTAL NUMBER QUICK LOOK REPORT LINES 10

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — October 1990 (Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received Month	Permit Actions Received FY	Permit Actions Completed Month	Permit Actions Completed FY	Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
Direct Sources							
New	1	17	5	11	22		
Existing	1	2	1	2	11		
Renewals	12	40	0	14	168		
Modifications	123	135	1	9	143		
Trfs./Name Chng.	1	14	3	11	4		
Total	138	208	10	47	348	1100	1137
Indirect Sources							
New	0	5	5	6	6		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	0	0	0	0		
Total	0	5	5	6	6	321	327
GRAND TOTALS	138	213	15	53	354	1421	1464

Number of Pending Permits	Comments
38	To be reviewed by Northwest Region
8	To be reviewed by Willamette Valley Region
19	To be reviewed by Southwest Region
6	To be reviewed by Central Region
12	To be reviewed by Eastern Region
36	To be reviewed by Program Operations Section
218	Awaiting Public Notice
11	Awaiting end of 30-day Public Notice Period
348	

AH11303 (11/90)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — October 1990 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Multnomah	Gresham Regional Mall, 4,500 Spaces File No. 26-9001	10/11/90	Final Permit Issued
Washington	Oak Hill Apartments, 305 Spaces File No. 34-9002	10/12/90	Final Permit Issued
Multnomah	McLoughlin Blvd./ Union-Grand via duct to River Road File No. 26-9003	10/11/90	Final Permit Issued
Multnomah	Stark St./221st-242nd Ave. File No. 26-9004	10/16/90	Final Permit Issued

AH11302 (11/90)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES

PERMITS ISSUED

Permit Number	Source Name	County	Appl. Rcvd.	Status	Date Achvd.	Type Appl.
15 0109	SABROSO CO	JACKSON	01/09/90	PERMIT ISSUED	10/08/90	EXT
24 5847	L-BAR PRODUCTS INC.	MARION	09/13/90	PERMIT ISSUED	11/01/90	TRS
30 0095	LOGSDON READY MIX, INC.	UMATILLA	10/01/90	PERMIT ISSUED	11/01/90	NCH
34 2756	DMH, INC.	WASHINGTON	00/00/00	PERMIT ISSUED	10/11/90	MOD
34 2760	GRAY & COMPANY	WASHINGTON	08/02/89	PERMIT ISSUED	10/08/90	NEW
34 2768	STAGG FOODS, INC.	WASHINGTON	04/25/90	PERMIT ISSUED	10/08/90	NEW
36 9003	THE TACK SHACK AND FEEDS	YAMHILL	09/19/90	PERMIT ISSUED	11/01/90	TRS
37 0424	ROY L. HOUCK CONSTRUCTION	PORT.SOURCE	07/27/90	PERMIT ISSUED	10/19/90	NEW
37 0425	MT. HOOD ASPHALT PRODUCTS	PORT.SOURCE	06/12/90	PERMIT ISSUED	10/10/90	NEW
37 0426	PEMCO, INC.	PORT.SOURCE	08/17/90	PERMIT ISSUED	10/18/90	NEW

TOTAL NUMBER QUICK LOOK REPORT LINES 10

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

October 1990
(Month and Year)

PERMIT TRANSFERS & NAME CHANGES

Permit Number	Company Name	Type of Change	Status of Permit
06-0084	Bracelin-Yeager Excavating and Trucking Inc.	Transfer	Issued
24-5847	L-Bar Products, Inc.	Transfer	Issued
36-9003	The Tack Shack	Transfer	Issued

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[1] In conjunction with permit renewal.
[2] In conjunction with permit modification.

AH11301 (11/90)

0c

Summary of Actions Taken on Water Permit Applications in OCT 90
11/09/90

Source Category &Permit Subtype	Number of Applications Filed						Number of Permits Issued						Applications Pending Permits Issuance (1)			Current Number of Active Permits		
	Month			Fiscal Year			Month			Fiscal Year								
	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen
Domestic																		
NEW	1	4		2	14			4			8		7	40	4			
RW	1			1						1			5	1				
RWO	3	2		9	18		2	2		11	2		80	71				
MW		1		1	1								1	2				
MWO		1		2	3			2		2	3		6	3				
Total	5	8		15	36		2	8		14	13		99	117	4	221	222	29
Industrial																		
NEW			5	3	4	22		1	12		2	26	12	16	20			
RW													2					
RWO	7	2		17	7		1	1		3	3		43	32				
MW					1		1			2			2	1				
MWO			4	3		8					2		4		2			
Total	7	2	9	23	12	30	2	2	12	5	7	26	63	49	22	154	116	520
Agricultural																		
NEW				2							1		1	1				
RW																		
RWO													1	3				
MW																		
MWO																		
Total				2							1		2	4		2	10	751
Grand Total	12	10	9	40	48	30	4	10	12	19	21	26	164	170	26	377	348	1300

1) Does not include applications withdrawn by the applicant, applications where it was determined a permit was not needed, and applications where the permit was denied by DEQ.

It does include applications pending from previous months and those filed after 31-OCT-90 .

NEW - New application
RW - Renewal with effluent limit changes
RWO - Renewal without effluent limit changes
MW - Modification with increase in effluent limits
MWO - Modification without increase in effluent limits

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
General: Cooling Water										
IND	100	GEN01	NEW	OR000189-9	65610/B	OWENS-BROCKWAY GLASS CONTAINER INC.	PORTLAND	MULTNOMAH/NWR	26-OCT-90	31-DEC-90
General: Log Ponds										
IND	400	GEN04	NEW	OR002167-9	61762/B	DIAMOND-B CORPORATION, DBA	PHILOMATH	BENTON/WVR	22-OCT-90	31-DEC-90
IND	400	GEN04	NEW	OR002176-8	83367/A	STONE FOREST INDUSTRIES, INC	WHITE CITY	JACKSON/SWR	24-OCT-90	31-DEC-90
IND	400	GEN04	NEW	OR002202-1	83366/A	STONE FOREST INDUSTRIES, INC.	SPRINGFIELD	LANE/WVR	24-OCT-90	31-DEC-90
General: Suction Dredges										
IND	700	GEN07	NEW		105376/A	EVANS, THOMAS D.		MOBILE SRC/ALL	05-OCT-90	31-JUL-91
IND	700	GEN07	NEW		105380/B	MERRICK, BLAKE		MOBILE SRC/ALL	09-OCT-90	31-JUL-91
General: Gravel Mining										
IND	1000	GEN10	NEW		105354/A	SMITH, DONALD L.	NEHALEM	TILLAMOOK/NWR	15-OCT-90	31-DEC-91
IND	1000	GEN10	NEW		105374/A	MOLALLA REDI MIX & ROCK PROD.	MOLALLA	CLACKAMAS/NWR	22-OCT-90	31-DEC-91
IND	1000	GEN10	NEW		76205/A	LTM, INCORPORATED	CENTRAL POINT	JACKSON/SWR	25-OCT-90	31-DEC-91
General: Oily Stormwater Runoff										
IND	1300	GEN13	NEW	OR003240-9	103159/A	SFPP, L. P.	EUGENE	LANE/WVR	22-OCT-90	31-JUL-93

ALL PERMITS ISSUED BETWEEN 01-OCT-90 AND 31-OCT-90
ORDERED BY PERMIT TYPE, ISSUE DATE, PERMIT NUMBER

DOM 100714 WPCF NEW	104118/A DUNLOP, SIMPSON S.	ESTACADA	CLACKAMAS/NWR	30-OCT-90	31-OCT-95

PERMIT TRANSFERS

Part of
Water Quality Division Monthly Activity Report

(Period October 1, 1990 through October 31, 1990)

Permit No.	Previous Facility Name	Facility	New Facility Name	City	County	Date Transferred
0100-J	Owens-Illinois Glass Container, Inc.	65610	Owens-Brockway Glass Container, Inc.	Portland	Mult/WVR	10-26-90 (Name Chng)
0400-J	Southwest Forest Industries, Inc.	83366	Stone Forest Industries, Inc.	Springfield	Lane/WVR	10-24-90 (Name Chng)
0400-J	Southwest Forest Industries, Inc.	83367	Stone Forest Industries, Inc.	White City	Jackson/ SWR	10-24-90 (Name Chng)
1300-J	Southern Pacific Pipeline Partnership, L.P.	103159	SFPP, L.P.	Eugene	Lane/WVR	10-22-90 (Name Chng)
0400-J	North Side Lumber	61762	Diamond-B Corporation dba Diamond-B Lumber Company	Philomath	Benton/ WVR	10-22-90 (Ownership Change)
100656	Jan Petersen, dba Taylors Landing	102594	Michael Jay Richmond Taylors Landing	Waldport	Linc/WVR	10-24-90 (Ownership Change)

IW\WC7403 (JDH)
11/13/90

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — October 1990 (Month and Year)

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action		Action
Municipal				
Multnomah	Metro South Transfer Station	10/1/90	(M)	Plans approved NWR (Engineering)
Douglas	Roseburg Landfill (265) (Received 10/1/90)	10/4/90		Report approved (Phase II Interim - Hydrogeologic Investigation)
Morrow	Finley Buttes Landfill (394)	10/8/90	(N)	Plans approved HQ (Wah Chang Sludge Monofill Design Study and Excavation)
Yamhill	Riverbend Landfill (345)	10/9/90		Report approved HQ (Landfill construction)
Coos	Beaver Hill Incinerator and Disposal Site (333) (Received 7/23/90)	10/10/90		Plan and Report approved (Phase I Report and Phase II Workplan
Curry	Port Orford Transfer Station (413)	10/15/90	(N)	Plans approved SWR
Curry	Nesika Beach Transfer Station (327)	10/17/90	(M)	Plans approved CBB
Morrow	Finley Buttes Landfill (394)	10/26/90		Plans approved (Phase 1, Sector 1 Plans and Contract Documents)

County	Name of Source/Project /Site and Type of Same	Date of Action		Action	
Jackson	Dry Creek Landfill (190)	10/29/90		Report approved (Phase II Hydrogeologic Assessment)	
Klamath	Klamath Falls Landfill (302)	10/29/90	(R)	Plans approved (Monitoring well installation)	
Curry	Brookings Transfer Station (414)	10/30/90	(N)	Plans approved	SWR
Morrow	Finley Buttes Landfill (394)	10/30/90		Plan approved (Site Operations Manual)	
Morrow	Finley Buttes Landfill (394) (Received 10/2/90 and 10/19/90)	10/31/90		Report approved (QC Report and Engineer's Cert.)	
Morrow	Finley Buttes Landfill (394) (Received 10/5/90)	10/31/90		Report approved (QA Report/Cert.)	
Wallowa	Ant Flat Landfill (261)	10/31/90		Plans disapproved	HQ
<u>Industrial</u>					
Baker	Ash Grove Cement West, Inc. Solid Waste Disposal Site (Received 3/27/87)	10/31/90	(N)	Plans disapproved	ER

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — October 1990 (Month and Year)

PLAN ACTIONS PENDING - 58

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 43					
Benton	Coffin Butte (306)	6/1/87	6/1/87	(R) Plan received	HQ
Harney	Burns-Hines (179)	12/16/87	12/16/87	(R) Plan received	HQ
Jackson	Ashland Landfill (35)	12/1/88	12/1/88	(N) Plans received	HQ
Deschutes	Alfalfa Landfill (26)	12/19/88	12/19/88	(C) Plans received	CR
Douglas	Lemolo Transfer & Demo Landfill (341)	7/24/89	7/24/89	(M) Revised Plans received (O & M Plan)	SWR
Gilliam	Gilliam County Landfill	11/21/89	11/21/89	Report received (Hydrogeologic characterization)	
Klamath	Chiloquin Landfill/Transfer Station	2/1/90	2/1/90	Plan received (Operational)	CR
Baker	City of Huntington Landfill	2/1/90	2/1/90	Plan received (Operational)	ER
Josephine	Grants Pass Landfill (159)	2/8/90	2/8/90	Plan received (5-year Operational)	
Clatsop	Wauna Landfill	2/16/90	2/16/90	Report received (Leachates Alternatives)	
Gilliam	Gilliam County Landfill (391)	2/20/90	2/20/90	Revisions to Plan received (Sampling and Analysis)	
Marion	North Marion County Disposal Facility (240)	2/21/90	2/21/90	Plan received (1989 Backup Landfill Engr. Certifications and As-Builts)	

SW\AR6

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Gilliam	Columbia Ridge Landfill (391)	4/26/90	4/26/90	Plans received (Module 2 Excavation)	
Benton	Coffin Butte Landfill (306)	4/30/90	4/30/90	Plans received (Cell 1, Phase 1, Closure)	
Baker	Baker Sanitary Service, Inc. Landfill	5/29/90	5/29/90	Plans received	HQ
Lane	Short Mountain Landfill (290)	6/12/90	6/12/90	Plan received (Groundwater monitoring network)	
Benton	Coffin Butte Landfill (306)	6/13/90	6/13/90	Plan received (CQA Manual Cell/Closure)	
Morrow	South Morrow County Transfer Station	6/18/90	6/18/90	Plans received	ER
Benton	Coffin Butte Landfill (306)	7/2/90	7/2/90	Plan received (Cell 1 Closure)	
Gilliam	Condon Transfer	7/13/90	7/13/90	Plans received	ER
Gilliam	Columbia Ridge Landfill (391)	7/16/90	7/16/90	Report received (Revised/Final Operations Manual)	
Gilliam	Columbia Ridge Landfill (391)	7/17/90	7/17/90	Plan received (Module 2 Liner & Leachate Collection System)	
Marion	North Marion County Disposal Facility (240)	7/31/90	7/31/90	Plan received (1990 Ashfill Topcap)	
Lane	Oakridge Transfer Station (411)	8/6/90	8/6/90	(N) Plans received	WVR
Josephine	Grants Pass Landfill (159)	8/22/90	8/22/90	Review draft received (Alternative Drinking Water Supply Evaluation)	
Clatsop	Wauna Landfill	8/23/90	8/23/90	Preliminary approval request received	

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Gilliam	Columbia Ridge Landfill (391)	8/30/90	8/30/90	(M) Plan received (Revised intermed. and interim final cover design)	HQ
Gilliam	Arlington Disposal Site (122)	9/4/90	9/4/90	(C) Plan received (Revised Closure)	HQ
Gilliam	South Gilliam County Disposal Site (256)	9/4/90	9/4/90	(C) Plan received (Revised Closure)	HQ
Jackson	Ashland Landfill (35)	9/4/90	9/4/90	Report received (Phase 1 Hydrogeologic Assessment)	
Marion	Ogden Martin Energy Recovery Facility (364)	9/4/90	9/4/90	(R) Plan received (Ash Sampling and Analysis)	HQ
Curry	Wridge Creek Landfill and Transfer Station (316)	9/17/90	9/17/90	(C) Report and Plans received (Site Characterization Report and Closure Plan)	
Morrow	Finley Buttes Landfill (394)	9/24/90	9/24/90	Report received (Groundwater Monitoring Well Installation and Piezometer Abandonment)	
Lincoln	South Lincoln Landfill (132)	10/4/90	10/4/90	(C) Plan received (closure)	
Marion	North Marion County Landfill (240)	10/4/90	10/4/90	Report received (Background water quality)	
Umatilla	Pendleton Landfill (105)	10/4/90	10/4/90	Final report received (Geology and Hydrogeology)	
Lane	Franklin Landfill (79)	10/9/90	10/9/90	(C) Plan received (closure)	
Tillamook	Tillamook County Landfill (148)	10/9/90	10/9/90	(C) Plan received (Landfill closure)	
Lincoln	Agate Beach Balefill (373)	10/12/90	10/12/90	(C) Plan received (1990-91 Interim Operational)	

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

County	Name of Facility	Date Plans Rec'd.	Date of Last Action		Type of Action and Status	Locatior
Morrow	Finley Buttes Landfill (394)	10/16/90	10/16/90		Plans received (Wah Chang Cell Contract Documents and CQA Manual)	
Douglas	Roseburg Landfill (265)	10/24/90	10/24/90		Plan received (County septage management update)	
Gilliam	Columbia Ridge Landfill (391)	10/24/90	10/24/90		Plans received (Rail Off-Load)	
Lane	Florence Transfer Station (416)	10/30/90	10/30/90	(N)	Plans received	WVR
<u>Demolition Waste Sources</u> - 4						
Washington	Hillsboro Landfill (112)	3/23/90	3/23/90		Plans received (Detection/Prevention of HW and Landfill Gas Monitoring/Phase IIA Expansion)	HQ
Marion	Brown's Island Demolition Landfill (399)	7/27/90	7/27/90		Plan received (Revised Operational)	
Washington	Hillsboro Landfill (112)	9/11/90	9/11/90	(R)	Plans received (Expansion Area IIA Engineering)	HQ
Washington	Hillsboro Landfill (112)	9/21/90	9/21/90	(R)	Plan received (Special Waste Management)	NWR
<u>Industrial Waste Sources</u> - 11						
Coos	Rogge Lumber (1019)	7/28/86	6/18/87	(C)	Draft amendments to applicant	HQ
Columbia	Boise Cascade St. Helens (1127)	4/6/88	4/6/88	(N)	As built plans received	HQ
Douglas	Sun Studs (1012)	6/20/88	7/1/88	(R)	Operational/groundwater plans received	HQ

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

County	Name of Facility	Date Plans Rec'd.	Date of Last Action		Type of Action and Status	Location
Douglas	IP - Gardiner (1154)	8/16/88	8/16/88	(N)	Plans received (Construction)	HQ
Lane	Bohemia Dorena Wood Waste Fill (1002)	5/11/90	5/11/90		Plan received (Operations)	HQ
Coos	Weyco-Mettman Ridge Landfill (1064)	7/13/90	7/13/90		Plan received (Closure)	
Yamhill	Boise-Cascade Willamina Mill (1140)	7/30/90	7/30/90		Plan received (Revised Operational)	
Lane	Davidson Woodwaste Landfill (1157)	8/8/90	8/8/90	(N)	Plans received	HQ
Douglas	P & M Cedar Products Landfill (1123)	9/13/90	9/13/90	(M)	Plan received (Hydrogeologic Investigation)	
Curry	South Coast Lumber Co. (1038)	9/26/90	9/26/90	(R)	Plan received (Operational)	
Douglas	Roseburg Forest Products Sawmill #2 Dike	10/30/90	10/30/90	(N)	Plans received	
<u>Sewage Sludge Sources</u> - 1						
Coos	Beaver Hill Lagoons	11/21/86	8/31/89	(N)	Add'l. info. requested	HQ

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — October 1990 (Month and Year)

SUMMARY OF SOLID WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
Municipal							
New	1	5	1	3	6		
Closures	2	3	-	1	4		
Renewals	2	6	1	3	21		
Modifications	1	9	5	9	2		
Terminations	-	-	-	-	-		
Total	6	23	7	16	33	180	180
Demolition							
New	-	-	-	-	-		
Closures	-	-	-	-	-		
Renewals	-	2	-	-	2		
Modifications	1	3	1	2	2		
Terminations	-	-	-	-	-		
Total	1	5	1	2	4	11	11
Industrial							
New	2	4	1	4	5		
Closures	2	4	-	1	5		
Renewals	3	8	1	4	15		
Modifications	3	5	1	3	4		
Terminations	-	-	-	-	-		
Total	10	21	3	12	29	107	107
Sludge Disposal							
New	-	-	-	-	1		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	1		
Modifications	1	1	-	-	1		
Terminations	-	-	-	-	-		
Total	1	1	0	0	3	18	18
Total Solid Waste	18	50	11	30	69	316	316

(SW\AR1)
MAR.5S (11/84)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — October 1990 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action		Action	
Municipal					
Multnomah	Metro South Transfer Station (350)	10/1/90	(M)	Addendum issued	NWR
Morrow	Finley Buttes Landfill (394) (Received 10/5/90)	10/8/90	(M)	Addendum issued	HQ
Curry	Port Orford Landfill (210)	10/10/90	(M)	Addendum issued	HQ
Multnomah	St. Johns Landfill (116)	10/11/90	(M)	Addendum issued	HQ
Umatilla	Milton-Freewater Landfill (106)	10/12/90	(M)	Addendum issued	HQ
Lake	Lake County Landfill (412)	10/16/90	(N)	Permit issued	HQ
Coos	Bandon Landfill (68)	10/18/90	(R)	Permit issued	HQ
Demolition					
Lane	Delta Sand and Gravel Demolition Landfill (340)	10/30/90	(M)	Permit modification denied	HQ
Industrial					
Union	Boise Cascade - Elgin (Received 10/5/90)	10/11/90	(N)	Letter of Authorization issued	ER

SW\AR2
MAR.6 (5/79)

Douglas	Glide Lumber Products Landfill (1053) (Department initiated)	10/16/90	(M)	Addendum issued
Clackamas	Eagle Foundry (A248)	10/30/90	(R)	Letter of NWR Authorization renewed

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — October 1990 (Month and Year)

PERMIT ACTIONS PENDING - 69

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 33					
Douglas	Reedsport Lndfl. (19)	5/7/87	8/21/90	(R) Draft permit to applicant	HQ
Lane	Florence Landfill (91)	9/21/87	1/12/88	(R) Draft received	HQ
Douglas	Roseburg Landfill (265)	10/21/87	12/21/87	(R) Draft received	HQ
Deschutes	Alfalfa Landfill Closure (26)	12/19/88	12/19/88	(C) Application received	CR
Union	North Powder Transfer Station (372)	12/20/88	10/29/90	(R) Applicant review	ER
Benton	Coffin Butte Landfill (306)	6/7/89	7/24/90	(R) Draft received	HQ
Lincoln	Agate Beach Balefill (373)	9/11/89	11/6/89	(R) Application suspended	HQ
Clatsop	Seaside Transfer Station (374)	9/15/89	9/15/89	(R) Application received	NWR
Union	Union Transfer Station (371)	9/20/89	10/29/90	(R) Applicant review	ER
Yamhill	Newberg Transfer & Recycling Center (366)	9/21/89	8/22/90	(R) Draft permit to applicant	WVR
Columbia	His Salvage & Transfer Station (375)	10/2/89	10/2/89	(R) Application received	NWR

(C) = Closure permit; (M) = Modification;
(N) = New source; (R) = Renewal; (T) = Termination

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Industrial Waste Sources - 29					
Wallowa	Boise Cascade Joseph Mill (1051)	10/3/83	5/26/87	(R) Applicant comments received	HQ
Curry	South Coast Lumber (1038)	7/18/86	7/18/86	(R) Application filed	RO
Baker	Ash Grove Cement West Solid Waste Disposal Site	4/1/87	10/31/90	(N) Applicant review	ER
Klamath	Modoc Lumber Landfill (1042)	5/4/87	4/3/89	(R) Applicant comments received	HQ
Wallowa	Sequoia Forest Ind.	11/25/87	11/25/87	(N) Application filed	HQ
Polk	W. I. - Dallas Wood Waste Landfill (1048)	4/3/89	4/30/90	(M) Draft permit sent out for applicant review	HQ
Klamath	Weyerhaeuser (Woodwaste Landfill)	7/10/89	7/10/89	(N) Application received	HQ
Baker	Orr Ash Disposal Site	7/10/89	7/10/89	(M) Application received	ER
Multnomah	Malarkey Roofing (1041)	10/23/89	2/22/90	(R) Requested additional information from Applicant	NWR
Clackamas	Avison Lumber Landfill (1139)	11/6/89	11/6/89	(R) Application received	NWR
Marion	Green Veneer Landfill	2/2/90	2/2/90	(R) Application resubmitted (original application dated 9/28/89 was lost and was not logged in)	WVR
Lane	Bohemia Dorena Mill Landfill (1002)	2/16/90	7/27/90	(R) Draft received	HQ
Lane	Weyco Rail Dike Landfill (1133)	2/16/90	2/16/90	(C) Application received	WVR

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Lake	Lakeview Lumber Products, Inc. (1143)	5/1/90	5/1/90	(R) Application received	CR
Hood River	Diamond Fruit Disposal Site	5/14/90	5/14/90	(R) Application received	
Polk	Garden Grow Co. (1146)	7/2/90	7/2/90	(R) Application received	WVR
Coos	Weyco-Mettman Ridge Landfill (1064)	7/13/90	7/13/90	(C) Application received	SWR
Umatilla	Smith Frozen Foods Landfill (1096)	7/27/90	7/27/90	(C) Application received	ER
Lane	Davidson Woodwaste Landfill (1157)	8/8/90	8/8/90	(N) Application received	WVR
Douglas	Sun Studs Disposal Site (1012)	8/31/90	8/31/90	(R) Application received	HQ
Douglas	Roseburg Forest Products - Dillard (1065)	9/11/90	10/22/90	(R) Draft received	HQ
Coos	Allegany Shop Disposal Facility (1102)	10/4/90	10/4/90	(C) Application received	SWR
Clatsop	James River Corp. Wauna Mill (1148)	10/10/90	10/10/90	(M) Request to modify permit received (Administratively incomplete)	
Lane	Davidson Industries Sweet Creek Landfill (1121)	10/12/90	10/12/90	(C) Application received	WVR
Linn	W. I. - Old Timber Owners (1071)	10/24/90	10/24/90	(R) Application received	WVR
Marion	Stuckart Lumber Co. - Idahna (1073)	10/25/90	10/25/90	(R) Application received	WVR

(C) = Closure permit; (M) = Modification;
(N) = New source; (R) = Renewal; (T) = Termination

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Linn	W. I. - Snow Peak Landfill (1138)	10/26/90	10/26/90	(M) Draft addendum to permittee (Department initiated)	
Lane	Weyco - Last Chance Landfill (1111)	10/29/90	10/29/90	(R) Application received	WVR
Douglas	Roseburg Forest Products Sawmill #2 Dike	10/30/90	10/30/90	(N) Application received	SWR
<u>Sewage Sludge Sources</u> - 3					
Multnomah	Bob's Sanitary Service, Inc.	12/7/89	8/1/90	(N) Draft permit to applicant	RO
Multnomah	Waste Water Management (369)	3/26/90	3/26/90	(R) Application received	
Clackamas	Cascade Phillips Sludge Site (393)	10/23/90	10/23/90	(M) Department-initiated permit modification	

CHEMICAL WASTE MANAGEMENT OF THE NORTHWEST, INC.

1990

HAZARDOUS WASTE ORIGINATION SOURCES

MONTHLY QUANTITY OF WASTE DISPOSED (TONS)[1]

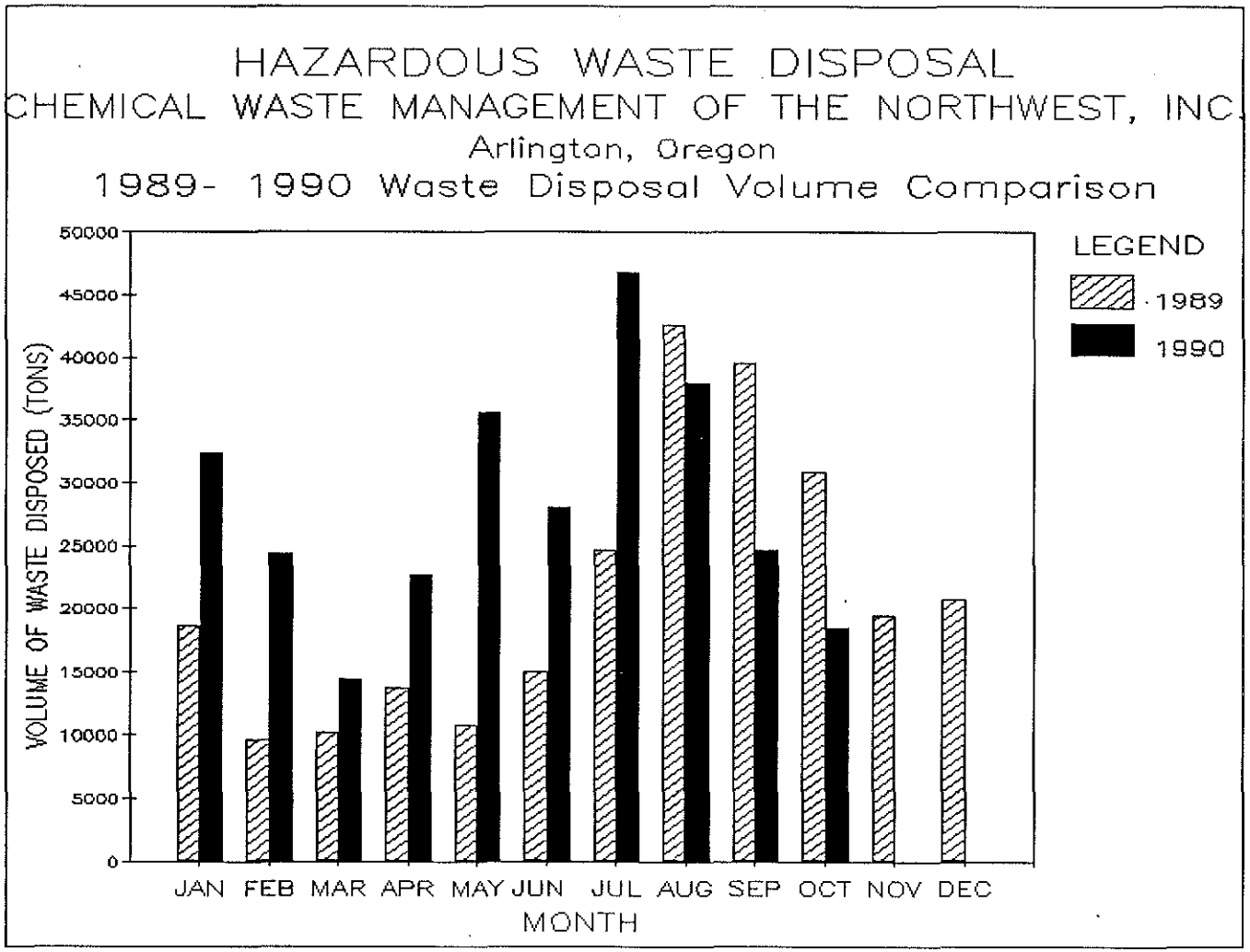
Waste Source	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	YTD
Oregon	1,474	1,162	1,697	1,962	1,677	2,082	2,657	2,078	1,817	2,159			18,765
Washington	23,825	17,245	12,267	18,842	29,210	23,320	41,222	31,655	18,737	14,084			230,407
Alaska	1	155	8	-	172	1,620	2,708	3,047	1,830	1,729			11,270
Idaho	67	-	21	1,043	1,017	120	-	190	1,692	321			4,471
CWM[2]	6,521	5,745	331	899	3,340	304	306	745	326	264			18,781
Other[3]	575	236	280	136	315	647	132	434	457	105			3,317
TOTALS	32,463	24,543	14,604	22,882	35,731	28,093	47,025	38,149	24,859	18,662			287,011

Footnotes

1 Quantity of waste (both RCRA and non-RCRA) received at the facility.

2 Waste generated on-site by CWM.

3 Other waste origination sources include California, Montana, Utah, British Columbia.


HAZARDOUS WASTE DISPOSAL
CHEMICAL WASTE MANAGEMENT OF THE NORTHWEST, INC.
Arlington, Oregon
1989- 1990 Waste Disposal Volume Comparison
VOLUME OF WASTE DISPOSED (TONS)
50000
45000
40000
35000
30000
25000
20000
15000
10000
5000
0
JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC
MONTH
LEGEND
1989
1990

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — October-November 1990 (Reporting Period)

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	RP	FY	RP	FY	RP	LAST RP
Industrial/ Commercial	5	14	0	15	157	152
Airports	-	-	0	4	3	2
Motor Sports Facilities	-	-	1	2	0	1

RP = Reporting Period

FY = Fiscal Year

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — October-November 1990 (Reporting Period)

FINAL NOISE CONTROL ACTIONS

County	Name of Source & Location		Date	Action
Industrial & Commercial				
None				
Airports				
None				
New Motor Sports Facilities				
Josephine	Kerby Racepark	22503 Redwood Hwy, Kerby OR	11/26/90	Ldn 55 Boundary Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — October-November 1990 (Reporting Period)

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	RP	FY	RP	FY	RP	LAST RP
Industrial/ Commercial	5	14	0	15	157	152
Airports	-	-	0	4	3	2
Motor Sports Facilities	-	-	1	2	0	1

RP = Reporting Period

FY = Fiscal Year

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — October-November 1990 (Reporting Period)

FINAL NOISE CONTROL ACTIONS

County	Name of Source & Location		Date	Action
Industrial & Commercial				
None				
Airports				
None				
New Motor Sports Facilities				
Josephine	Kerby Racepark	22503 Redwood Hwy, Kerby OR	11/26/90	Ldn 55 Boundary Approved

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1990

CIVIL PENALTIES ASSESSED DURING MONTH OF OCTOBER 1990

CASE NO./ RESPONDENT/ LOCATION	VIOLATION(S)	REFERRED BY/ ASSIGNED TO[1]	FINAL ACTION
HW-WVR-90-150 Oregon Department of Transportation Salem, Oregon	Various violations of the hazardous waste management rules.	T.Hopkins, WVR L.Schurr, Enf.	A $1,000 CPA was issued on 10/8/90 and paid on 10/22/90.
AQAB-ER-90-175 Insulation Removal Specialists, Inc. Ontario, Oregon	Spilled asbestos contaminated dirt over several miles of roadways.	D.Wall, AQ N.Hogan, Enf.	A $2,000 CPA was issued on 10/8/90. A default order and judgment was issued on 11/6/90.
AQAB-NWR-90-176 Bartells Materials Management, Inc. Portland, Oregon	Various asbestos rule violations during an asbestos abatement project on a ship.	D.Wall, AQ H.Duncan, Enf.	A $7,200 CPA was issued on 10/2/90 and contested by letter of 10/22/90.
HW-NWR-90-178 ectro-Chem Metal nishing, Inc. Portland, Oregon	Storage of hazardous waste greater than 180 days and failure to provide land disposal restriction notice to TSD facility.	P.Christiansen, HSW	A $2,500 CPA was issued on 10/17/90 and paid on 10/30/90.
OSI-WVR-90-185 D.J. Martsolf dba/ D.J. Martsolf Construction Yamhill County	Began constructing an on-site sewage disposal system (capping fill) before obtaining a permit.	J.Petrovich, WVR L.Cwik, Enf.	A $420 CPA was issued on 10/15/90 and paid on 11/6/90.
OSI-CR-90-192 Roy R. Carlson dba/Roy Carlson Construction Prineville, Oregon	Installed an on-site sewage disposal system before obtaining a permit.	D.Bramhall, CR N.Hogan, Enf.	A $200 CPA was issued on 10/9/90 and paid on 10/22/90.
SW-WT-90-197A Western Recovery Corp. Salem, Oregon	Storage by a tire retreader of more than 3,000 waste tires without a permit.	A.Cox, HSW N.Hogan, Enf.	A $2,520 CPA ($360 per day for 7 days) was issued on 10/26/90.

[1]AQ = Air Quality Division
WQ = Water Quality Division
HSW = Hazardous and Solid Waste Div.
DOA = Department of Agriculture
Enf. = Enforcement Section
NWR = Northwest Region
WVR = Willamette Valley Region
SWR = Southwest Region
CR = Central Region
ER = Eastern Region
DOJ = Department of Justice

CASE NO./ RESPONDENT/ LOCATION	VIOLATION(S)	REFERRED BY/ ASSIGNED TO	FINAL ACTION
AQOB-SWR-90-204 Rogue Woods, Inc. dba/TAMCO Gold Beach, Oregon	Open burning of prohibited materials.	R.Kretzschmar, SWR N.Hogan, Enf.	A $280 CPA was issued on 10/17/90 and paid on 10/29/90.
HW-NWR-90-213 Eaton Corporation Beaverton, Oregon	Several violations of the hazardous waste generator rules.	J.Vilendre, HSW	A $1,200 CPA was issued on 10/26/90.

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Date	Resp Code	Case Type & No.	Case Status
City of Milwaukie	12/88		Prtys	SA 891-706 Site Inventory	EQC dismissed appeal. Awaiting Court of Appeals disposition of motion on jurisdiction.
Richard G. & and Anne M. Schultz	3/16/89		DEQ	SW-WT-89-41	Respondents have requested dismissal.
Phillip Turnbull	3/13/89	11/30/89	Prtys	SW-SWR-89-03 and penalty $3,750	Record transmitted to Court of Appeals on 11/27/90.
~~[NRPG (Amtrak)~~	~~8/22/89~~			~~WQ-GR-89-66] [$2,700 civil penalty]~~	On 10/24/90, Congress pre-empted state and local government action. Case closed.
~~[Curtis Zelmer~~	~~10/23/89~~	~~5/21/90~~		~~SW-WT-89-178]~~	Hearing Officer's decision denying order of abatement issued 9/19/90. No appeal. Case closed.
Whiskey Creek	10/26/89		Prtys	401-FERC-10475	
Keith Shaw		4/02/90	DEQ	SW-WT-89-178	Record completed 11/01/90.
~~[John R. Gonfar~~	~~3/01/90~~		~~Prtys~~	~~OS-SWR-89-217]~~	Resolved. Case closed.
City of St. Helens	3/02/90			P 3855-J	Hearing slated for 1991.
Boise Cascade	3/02/90				Hearing slated for 1991.
Pope & Talbot, Inc.	3/05/90			P 100413	Hearing slated for 1991.
James River II	3/08/90			P 3754-J	Hearing slated for 1991.

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Date	Resp Code	Case Type & No.	Case Status
~~[Graham Oil Co.~~	~~3/15/90~~	~~6/07/90~~	~~Prtys~~	~~WQ-SWR-89-253]~~	Decision issued 10/12/90. Penalty reduced from $1,000 to $800. No appeal. Case closed.
Fred & Susan Baida dba CaveMan Auto	3/15/90		HO	AQOB-SWR-90-9	Hearing on written record.
Thomas H. Scott	3/26/90	10/10/90	Prtys	AQOB-NWR-89-255	Hearing conducted 10/10/90.
~~[Jon Darcy, dba Pacific Painting & Related Services]~~	~~4/09/90~~	~~10/02/90~~	~~Prtys~~	~~AQAB-NWR-90-27]~~	Penalty reduced to $3,500. Case closed.
Lonnie Parker	4/09/90	10/08/90	Prtys	AQFB-89-212	Settled.
J.B.'s Quality Metal Finishing, Inc. Warren Sjothun	5/17/90	10/29/90	Prtys	HW-NWR-9052	Hearing postponed for informal resolution.
Thatcher Company	5/22/90	10/22/90	Prtys	WQ-ER-90-73	Case submitted on written record 11/13/90.
Acme Trading	6/08/90	1/21/91	Prtys	HW-NWR-90-32	Hearing scheduled.
Fuel Processors	7/05/90	12/13/90	Prtys	AQAB-NWR-90-81	Hearing re-scheduled.
Robert Fuiten	7/09/90	10/5/90	Prtys	AQAB-NWR-90-59	Settlement proposed.
~~[Shockman~~	~~7/16/90~~		~~HO~~	~~OSI-ER-90-108]~~	Reinstated after default and settled. Case closed.
~~[Klamath Dairy~~	~~7/16/90~~	~~10/24/90~~	~~Prtys~~	~~WQ-GR-90-110]~~	Hearing request withdrawn. Case closed.

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Date	Resp Code	Case Type & No.	Case Status
~~[Consolidated, Inc.~~	~~8/01/90~~	~~9/10/90~~	~~HO~~	~~AQOB-WVR-90-138]~~	Hearing officer's decision issued 10/12/90. Unclaimed. No appeal. Case closed.
DBM Contractors, Inc.	8/28/90	12/17/90	Prtys	WQ-ER-90-149	Hearing scheduled.
Oregon Pacific Salmon Ranch	9/14/90		Prtys	P 0300-J	Hearing delayed to permit development of modeling information.
Romaine Village Estates, Ltd., et al	9/19/90		Prtys	WQ-CR-90-139 $6,000 civil penalty and Department order	Informal discussions.
Shockman, et al	9/26/90		Prtys	SW-ER-90-113 SW-ER-90-134,135,136 & 136A $10,000 civil penalty and Department order	Preliminary issues. Informal discussions.
Readymix, et al	9/26/90		Prtys	SW-ER-90-134 Department order	Informal discussions.
S & M Farming Company et al				HW/SW-ER-90-136A	Preliminary issues. (Juris).
Strickland, et al	10/1/90			SW-ER-90-135A $500 civil penalty and Department order	Preliminary issues. Motion to dismiss.
Columbia Helicopters	9/28/90	12/10/90	Prtys	HW-NWR-90-101 Compliance Order and $900 civil penalty	Informal discussion requested.
~~[Hall-Buck, etc.~~	~~10/3/90~~	~~11/26/90~~		~~AQ-NWR-90-163]~~ ~~[$2,000 civil penalty]~~	Penalty mitigated to $800. Case closed.

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Date	Resp Code	Case Type & No.	Case Status
Praegetzer, etc.	10/4/90	1/07/91	Prtys	HW/HM-SWR-90-173 Compliance Order and $1,000 civil penalty	Informal discussion requested.
F.E. Ward, Inc., etc.	10/04/90			WQ-SWR-90-164 $4,500 civil penalty	Settlement.
Bartells	10/24/90	1/14/91		AQAB-NWR-90-176	Hearing scheduled.
Metropolitan Wastemater	11/15/90			WPCF Permit 55990	Awaiting EPA grant decision affecting operational capacity of facility.
Insulation Removal Specialists	11/07/90			AQAB-ER-90-175	
Benj. Haynes	11/13/90	12/14/90		SW-WT-90-199	Hearing scheduled.
Western Recovery Corp.	11/19/90	1/21/91		SW-WT-90-197-A	Hearing scheduled.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality, Water Quality and Solid Waste Divisions
(Reporting Unit)

November 1990
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	Month	FY	Month	FY	Month	FY	
Air							
Direct Sources	13	63	13	48	0	0	35
Total	13	63	13	48	0	0	35
Water							
Municipal	N/A						
Industrial							
Total							
Solid Waste							
Gen. Refuse	8	48	1	34	1	3	49
Demolition	0	3	0	3	0	1	4
Industrial	1	10	0	10	1	3	11
Sludge	0	0	0	0	0	0	1
Total	9	61	1	47	2	7	65
GRAND TOTAL	22	124	14	95	2	7	100

MY101026 (12/90)

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

DIRECT SOURCES

PLAN ACTIONS COMPLETED

Permit No.		Source Name	City	Date Sch.	Action Description	Date Achvd.
03	2624	OREGON CUTTING SYSTEMS	MILWAUKIE	10/19/90	COMPLETED-APRVD	11/20/90
03	2674	PRECISION CASTPARTS CORP.	CLACKAMAS	10/09/90	COMPLETED-APRVD	11/15/90
				10/09/90	COMPLETED-APRVD	11/15/90
03	2746	BP OIL COMPANY	OREGON CITY	11/05/90	COMPLETED-APRVD	11/26/90
15	0005	CASCADE WOOD PRODUCTS INC	WHITE CITY	10/19/90	COMPLETED-APRVD	11/19/90
18	0006	JELD-WEN INC.	KLAMATH FALLS	10/29/90	COMPLETED-APRVD	11/13/90
18	0013	WEYERHAEUSER COMPANY	KLAMATH FALLS	11/14/90	COMPLETED-APRVD	11/26/90
22	6034	JAMES RIVER PAPER COMPANY	HALSEY	07/12/90	COMPLETED-APRVD	11/21/90
26	1865	OREGON STEEL MILLS, INC.	PORTLAND	10/01/90	COMPLETED-APRVD	11/19/90
26	1867	PRECISION CAST PARTS	PORTLAND	10/26/90	COMPLETED-APRVD	11/20/90
26	3264	BP OIL	PORTLAND	10/09/90	COMPLETED-APRVD	11/08/90
34	2772	BP OIL	BEAVERTON	10/30/90	COMPLETED-APRVD	11/08/90
34	2774	BP OIL COMPANY	HILLSBORO	11/02/90	COMPLETED-APRVD	11/26/90

TOTAL NUMBER QUICK LOOK REPORT LINES 13

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November 1990 (Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	Month	FY	Month	FY			
Direct Sources							
New	1	18	1	12	24		
Existing	0	2	1	3	10		
Renewals	5	45	1	15	171		
Modifications	468	603	3	12	576		
Trfs./Name Chng.	3	17	0	11	5		
Total	477	685	6	53	786	1100	1137
Indirect Sources							
New	1	6	2	8	5		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	0	0	0	0		
Total	1	6	2	8	5	323	328
GRAND TOTALS	478	691	8	61	791	1423	1465

Number of Pending Permits	Comments
39	To be reviewed by Northwest Region
8	To be reviewed by Willamette Valley Region
13	To be reviewed by Southwest Region
7	To be reviewed by Central Region
13	To be reviewed by Eastern Region
39	To be reviewed by Program Operations Section
654	Awaiting Public Notice
13	Awaiting end of 30-day Public Notice Period
786	

AH11532 (11/90)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November 1990 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Marion	Salem Hospital Parking Structure, 400 Spaces File No. 24-9005	11/14/90	Final Permit Issued
Multnomah	U.S. Bancorp Operation Center, 975 Spaces File No. 26-9010	11/23/90	Final Permit Issued

AH11529 (12/90)

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

DIRECT SOURCES
PERMITS ISSUED

Permit No.	Source Name	City	Date Sch.	Date Ach.	Status	Type Appl.
24 2318	PORTLAND GENERAL ELECTRIC	SALEM	11/07/89	11/20/90	PERMIT ISSUED	RNW
24 8063	UNIVERSAL FOREST PRODUCTS	WOODBURN	06/22/90	11/28/90	PERMIT ISSUED	NEW
25 0016	PORTLAND GENERAL ELECTRIC	BOARDMAN	11/01/90	11/28/90	PERMIT ISSUED	MOD
26 1799	HOLLADAY PARK MEDICAL CTR	PORTLAND	10/17/90	11/28/90	PERMIT ISSUED	MOD
26 2777	JAMES RIVER II, INC.	PORTLAND	10/01/90	11/28/90	PERMIT ISSUED	MOD
29 0011	GARIBALDI HARDWOODS	GARIBALDI	09/07/90	11/28/90	PERMIT ISSUED	EXT

TOTAL NUMBER QUICK LOOK REPORT LINES 6

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

November 1990
(Month and Year)

PERMIT TRANSFERS & NAME CHANGES

Permit Number	Company Name	Type of Change	Status of Permit
05-2577	Deer Island Sand & Gravel	Name Change	To be Issued
22-6029	Domtar Decorative Panels	Name Change	To be Issued
26-2332	Crown Food Packaging Co. dba Crown Cork & Seal Co.	Transfer	To be Issued
36-6008	Willamina Lumber Co.	Transfer [1]	Drafted
36-6048	Southwest Readymix Co.	Transfer	To be Issued

[1] In conjunction with permit renewal.
[2] In conjunction with permit modification.

AH11530 (12/90)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — November 1990 (Month and Year)

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action		Action	
Municipal					
Baker	City of Huntington Landfill (151)	11/2/90		Plans disapproved (Operational)	HQ
Benton	Coffin Butte Landfill (306)	11/30/90	(R)	Plan approved (Geotechnical Investigation)	HQ
Industrial					
Linn	W.I. - Old Timber Owners (1071) (Plan received 11/7/90)	11/14/90		Plan rejected (Insufficient information) (Monitoring Well Installation)	

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — November 1990 (Month and Year)

PLAN ACTIONS PENDING - 65

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 49					
Harney	Burns-Hines (179)	12/16/87	12/16/87	(R) Plan received	HQ
Jackson	Ashland Landfill (35)	12/1/88	12/1/88	(N) Plans received	HQ
Deschutes	Alfalfa Landfill (26)	12/19/88	12/19/88	(C) Plans received	CR
Douglas	Lemolo Transfer & Demo Landfill (341)	7/24/89	7/24/89	(M) Revised Plans received (O & M Plan)	SWR
Gilliam	Gilliam County Landfill	11/21/89	11/21/89	Report received (Hydrogeologic characterization)	
Klamath	Chiloquin Landfill/Transfer Station	2/1/90	2/1/90	Plan received (Operational)	CR
Josephine	Grants Pass Landfill (159)	2/8/90	2/8/90	Plan received (5-year Operational)	
Clatsop	Wauna Landfill	2/16/90	2/16/90	Report received (Leachates Alternatives)	
Gilliam	Gilliam County Landfill (391)	2/20/90	2/20/90	Revisions to Plan received (Sampling and Analysis)	
Marion	North Marion County Disposal Facility (240)	2/21/90	2/21/90	Plan received (1989 Backup Landfill Engr. Certifications and As-Builts)	
Gilliam	Columbia Ridge Landfill (391)	4/26/90	4/26/90	Plans received (Module 2 Excavation)	

SW\AR6

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

County	Name of Facility	Date Plans Rec'd.	Date of Last Action		Type of Action and Status	Location
Benton	Coffin Butte Landfill (306)	4/30/90	4/30/90		Plans received (Cell 1, Phase 1, Closure)	
Baker	Baker Sanitary Service, Inc. Landfill	5/29/90	5/29/90		Plans received	HQ
Lane	Short Mountain Landfill (290)	6/12/90	6/12/90		Plan received (Groundwater monitoring network)	
Benton	Coffin Butte Landfill (306)	6/13/90	6/13/90		Plan received (CQA Manual Cell/Closure)	
Morrow	South Morrow County Transfer Station	6/18/90	6/18/90		Plans received	ER
Benton	Coffin Butte Landfill (306)	7/2/90	7/2/90		Plan received (Cell 1 Closure)	
Gilliam	Condon Transfer	7/13/90	7/13/90		Plans received	ER
Gilliam	Columbia Ridge Landfill (391)	7/16/90	7/16/90		Report received (Revised/Final Operations Manual)	
Gilliam	Columbia Ridge Landfill (391)	7/17/90	7/17/90		Plan received (Module 2 Liner & Leachate Collection System)	
Marion	North Marion County Disposal Facility (240)	7/31/90	7/31/90		Plan received (1990 Ashfill Topcap)	
Lane	Oakridge Transfer Station (411)	8/6/90	8/6/90	(N)	Plans received	WVR
Josephine	Grants Pass Landfill (159)	8/22/90	8/22/90		Review draft received (Alternative Drinking Water Supply Evaluation)	
Clatsop	Wauna Landfill	8/23/90	8/23/90		Preliminary approval request received	
Gilliam	Columbia Ridge Landfill (391)	8/30/90	8/30/90	(M)	Plan received (Revised intermed. and interim final cover design)	HQ

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Gilliam	Arlington Disposal Site (122)	9/4/90	9/4/90	(C) Plan received (Revised Closure)	HQ
Gilliam	South Gilliam County Disposal Site (256)	9/4/90	9/4/90	(C) Plan received (Revised Closure)	HQ
Jackson	Ashland Landfill (35)	9/4/90	9/4/90	Report received (Phase 1 Hydrogeologic Assessment)	
Marion	Ogden Martin Energy Recovery Facility (364)	9/4/90	9/4/90	(R) Plan received (Ash Sampling and Analysis)	HQ
Curry	Wridge Creek Landfill and Transfer Station (316)	9/17/90	9/17/90	(C) Report and Plans received (Site Characterization Report and Closure Plan)	
Morrow	Finley Buttes Landfill (394)	9/24/90	9/24/90	Report received (Groundwater Monitoring Well Installation and Piezometer Abandonment)	
Lincoln	South Lincoln Landfill (132)	10/4/90	10/4/90	(C) Plan received (closure)	
Marion	North Marion County Landfill (240)	10/4/90	11/29/90	Addendum to report received (Background water quality)	
Umatilla	Pendleton Landfill (105)	10/4/90	10/4/90	Final report received (Geology and Hydrogeology)	
Lane	Franklin Landfill (79)	10/9/90	10/9/90	(C) Plan received (closure)	
Tillamook	Tillamook County Landfill (148)	10/9/90	10/9/90	(C) Plan received (Landfill closure)	
Lincoln	Agate Beach Balefill (373)	10/12/90	10/12/90	(C) Plan received (1990-91 Interim Operational)	
Morrow	Finley Buttes Landfill (394)	10/16/90	10/16/90	Plans received (Wah Chang Cell Contract Documents and CQA Manual)	

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

County	Name of Facility	Date Plans Rec'd.	Date of Last Action		Type of Action and Status	Location
Douglas	Roseburg Landfill (265)	10/24/90	10/24/90		Plan received (County septage management update)	
Gilliam	Columbia Ridge Landfill (391)	10/24/90	10/24/90		Plans received (Rail Off-Load)	
Lane	Florence Transfer Station (416)	10/30/90	10/30/90	(N)	Plans received	WVR
Umatilla	Milton-Freewater (106)	11/5/90	11/5/90		Report received (Beneficial Use Survey)	
Marion	Energy Recovery Facility at Brooks, Oregon (364)	11/7/90	11/7/90	(N)	Plans received (Residue Discharge Cleanup)	HQ
Marion	Energy Recovery Facility at Brooks, Oregon (364)	11/9/90	11/9/90	(N)	Plans received (Infectious Waste Handling Procedures)	HQ
Douglas	Reedsport Landfill (19)	11/14/90	11/14/90		Plan received (Phase I Site Characterization)	
Multnomah	Riedel Portland Compost Facility (404)	11/23/90	11/23/90	(N)	Plans received (Compost Storage Site)	HQ
Lane	Oakridge Landfill (86)	11/26/90	11/26/90		Closure Plan received	
Gilliam	Columbia Ridge Landfill (391)	11/29/90	11/29/90	(N)	Plans received (Backup Storage Cell)	
Josephine	Grants Pass (Merlin) Landfill (159)	11/30/90	11/30/90		Plan received (Review Draft of Phase III Hydrogeological Assessment)	

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

County	Name of Facility	Date Plans Rec'd.	Date of Last Action		Type of Action and Status	Location
Demolition Waste Sources - 4						
Washington	Hillsboro Landfill (112)	3/23/90	3/23/90		Plans received (Detection/Prevention of HW and Landfill Gas Monitoring/Phase IIA Expansion)	HQ
Marion	Brown's Island Demolition Landfill (399)	7/27/90	7/27/90		Plan received (Revised Operational)	
Washington	Hillsboro Landfill (112)	9/11/90	9/11/90	(R)	Plans received (Expansion Area IIA Engineering)	HQ
Washington	Hillsboro Landfill (112)	9/21/90	9/21/90	(R)	Plan received (Special Waste Management)	NWR
Industrial Waste Sources - 11						
Coos	Rogge Lumber (1019)	7/28/86	6/18/87	(C)	Draft amendments to applicant	HQ
Columbia	Boise Cascade St. Helens (1127)	4/6/88	4/6/88	(N)	As built plans received	HQ
Douglas	Sun Studs (1012)	6/20/88	7/1/88	(R)	Operational/groundwater plans received	HQ
Douglas	IP - Gardiner (1154)	8/16/88	8/16/88	(N)	Plans received (Construction)	HQ
Lane	Bohemia Dorena Wood Waste Fill (1002)	5/11/90	5/11/90		Plan received (Operations)	HQ
Coos	Weyco-Mettman Ridge Landfill (1064)	7/13/90	7/13/90		Plan received (Closure)	
Yamhill	Boise-Cascade Willamina Mill (1140)	7/30/90	7/30/90		Plan received (Revised Operational)	

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

County	Name of Facility	Date Plans Rec'd.	Date of Last Action	Type of Action and Status	Location
Lane	Davidson Woodwaste Landfill (1157)	8/8/90	8/8/90	(N) Plans received	HQ
Douglas	P & M Cedar Products Landfill (1123)	9/13/90	9/13/90	(M) Plan received (Hydrogeologic Investigation)	
Curry	South Coast Lumber Co. (1038)	9/26/90	9/26/90	(R) Plan received (Operational)	
Douglas	Roseburg Forest Products Sawmill #2 Dike	10/30/90	10/30/90	(N) Plans received	

Sewage Sludge Sources - 1

Coos	Beaver Hill Lagoons	11/21/86	8/31/89	(N) Add'l. info. requested	HQ

(C) = Closure plan; (M) = Modification;
(N) = New source plans; (R) = Revised operating plan

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — November 1990 (Month and Year)

SUMMARY OF SOLID WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
Municipal							
New	1	6	-	3	7		
Closures	2	5	-	1	6		
Renewals	3	9	2	5	22		
Modifications	1	11	1	10	3		
Terminations	-	-	-	-	-		
Total	7	31	3	19	38	180	180
Demolition							
New	-	-	-	-	-		
Closures	-	-	-	-	-		
Renewals	-	2	-	-	2		
Modifications	-	3	2	4	-		
Terminations	-	-	-	-	-		
Total	0	5	2	4	2	11	11
Industrial							
New	1	5	-	4	6		
Closures	1	5	-	1	6		
Renewals	1	10	1	5	16		
Modifications	-	5	2	5	2		
Terminations	-	-	-	-	-		
Total	3	25	3	15	30	107	107
Sludge Disposal							
New	-	-	-	-	1		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	1		
Modifications	-	1	-	-	1		
Terminations	-	-	-	-	-		
Total	0	1	0	0	3	18	18
Total Solid Waste	10	62	8	38	73	316	316

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — November 1990 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action		Action	
Municipal					
Lincoln	Agate Beach Balefill (373)	11/1/90	(R)	Application withdrawn (Superceded by closure permit application)	HQ
Josephine	Grants Pass (Merlin) Landfill (159) (Application received 11/2/90)	11/27/90	(M)	Addendum issued	
Lincoln	Agate Beach Convenience Station (377)	11/30/90	(R)	Permit issued	WVR
Demolition					
Washington	Hillsboro Landfill (112) (Applications received 4/11/90 and 10/12/90)	11/13/90	(M)	Addendum issued	NWR
Industrial					
Wallowa	Boise Cascade - Joseph Mill Disposal Site (1051)	11/8/90	(R)	Permit issued	HQ
Polk	W. I. - Dallas Wood Waste Landfill (1048)	11/19/90	(M)	Permit issued	HQ
Baker	Orr Ash Disposal Site (1149)	11/27/90	(M)	Addendum issued	HQ

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — November 1990 (Month and Year)

PERMIT ACTIONS PENDING - 73

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Municipal Waste Sources - 38					
Douglas	Reedsport Lndfl. (19)	5/7/87	11/27/90	(R) Second applicant review	HQ
Lane	Florence Landfill (91)	9/21/87	1/12/88	(R) Draft received	HQ
Douglas	Roseburg Landfill (265)	10/21/87	12/21/87	(R) Draft received	HQ
Deschutes	Alfalfa Landfill Closure (26)	12/19/88	12/19/88	(C) Application received	CR
Union	North Powder Transfer Station (372)	12/20/88	10/29/90	(R) Applicant review	ER
Benton	Coffin Butte Landfill (306)	6/7/89	7/24/90	(R) Draft received	HQ
Clatsop	Seaside Transfer Station (374)	9/15/89	9/15/89	(R) Application received	NWR
Union	Union Transfer Station (371)	9/20/89	10/29/90	(R) Applicant review	ER
Yamhill	Newberg Transfer & Recycling Center (366)	9/21/89	8/22/90	(R) Draft permit to applicant	WVR
Columbia	His Salvage & Transfer Station (375)	10/2/89	10/2/89	(R) Application received	NWR
Washington	Therm Tec Destruction Service	11/14/89	8/14/90	(N) Public hearing held	HQ
Union	Elgin Transfer Station	1/2/90	10/29/90	(R) Applicant review	ER

(C) = Closure permit; (M) = Modification;
(N) = New source; (R) = Renewal; (T) = Termination

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Klamath	Chiloquin Landfill/Transfer Station	2/1/90	2/1/90	(R) Application received	CR
Baker	Huntington Disposal Site (151)	2/1/90	11/2/90	(R) Applicant review	HQ
Marion	McCoy Creek Landfill (55)	5/4/90	5/4/90	(R) Application received	WVR
Klamath	Bly Disposal Site	7/3/90	7/3/90	(R) Application received	CR
Gilliam	Condon Transfer Station	7/13/90	10/30/90	(N) Applicant review	ER
Clackamas	Mt. Hood Refuse Removal, Inc. Transfer Station (121)	8/17/90	8/17/90	(R) Application received	NWR
Deschutes	Brothers Highway Disposal Site (200)	8/21/90	8/21/90	(R) Application received	
Lane	Oakridge Transfer Station (411)	8/21/90	8/21/90	(N) Application received	WVR
Curry	Port Orford Transfer Station (413)	9/5/90	9/5/90	(N) Application received	SWR
Clatsop	Astoria Transfer Station (382)	9/6/90	9/6/90	(R) Application received	NWR
Curry	Brookings Transfer Station (414)	9/21/90	9/21/90	(N) Application received	SWR
Gilliam	Columbia Ridge Landfill (391)	9/21/90	9/21/90	(M) Application received	HQ
Curry	Wridge Creek Landfill and Transfer Station (316)	9/24/90	9/24/90	(C) Application received	HQ

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Jackson	South Stage Landfill (67)	9/27/90	9/27/90	(M) Draft addendum to permittee (Department initiated)	
Lane	Cottage Grove Transfer Station (383)	10/4/90	10/4/90	(R) Application received	WVR
Lincoln	South Lincoln Landfill (132)	10/4/90	10/4/90	(C) Application received	WVR
Lane	Veneta Transfer Station (274)	10/4/90	10/4/90	(R) Application received	WVR
Tillamook	Tillamook Transfer Station	10/17/90	10/17/90	(N) Application received	
Tillamook	Tillamook County Landfill (148)	10/22/90	10/22/90	(C) Application received	NWR
Lincoln	Agate Beach Balefill (373)	11/1/90	11/1/90	(C) Application received	WVR
Lane	Franklin Landfill (79)	11/8/90	11/8/90	(C) Application received	WVR
Crook	Crook County Landfill (74)	11/13/90	11/13/90	(R) Application received	CR
Coos	Beaver Hill Disposal Site (333)	11/16/90	11/16/90	(R) Application received	HQ
Tillamook	Pacific City Transfer Station (343)	11/16/90	11/16/90	(R) Application received	NWR
Lane	Florence Transfer Station (416)	11/20/90	11/20/90	(N) Application received	WVR
Gilliam	Columbia Ridge Landfill (391)	11/29/90	11/29/90	(M) Application received (Backup Storage Cell)	HQ

(C) = Closure permit; (M) = Modification;
(N) = New source; (R) = Renewal; (T) = Termination

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Demolition Waste Sources - 2					
Marion	Salem Airport Disposal Site (136)	8/3/90	8/3/90	(R) Application received	WVR
Lincoln	North Lincoln County Demolition Landfill (182)	9/21/90	9/21/90	(R) Application received	WVR
Industrial Waste Sources - 30					
Curry	South Coast Lumber (1038)	7/18/86	7/18/86	(R) Application filed	RO
Baker	Ash Grove Cement West Solid Waste Disposal Site	4/1/87	10/31/90	(N) Applicant review	ER
Klamath	Modoc Lumber Landfill (1042)	5/4/87	4/3/89	(R) Applicant comments received	HQ
Wallowa	Sequoia Forest Ind.	11/25/87	11/25/87	(N) Application filed	HQ
Klamath	Weyerhaeuser (Woodwaste Landfill)	7/10/89	7/10/89	(N) Application received	HQ
Multnomah	Malarkey Roofing (1041)	10/23/89	2/22/90	(R) Requested additional information from Applicant	NWR
Clackamas	Avison Lumber Landfill (1139)	11/6/89	11/6/89	(R) Application received	NWR
Marion	Green Veneer Landfill	2/2/90	2/2/90	(R) Application resubmitted (original application dated 9/28/89 was lost and was not logged in)	WVR
Lane	Bohemia Dorena Mill Landfill (1002)	2/16/90	7/27/90	(R) Draft received	HQ
Lane	Weyco Rail Dike Landfill (1133)	2/16/90	2/16/90	(C) Application received	WVR

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Lake	Lakeview Lumber Products, Inc. (1143)	5/1/90	5/1/90	(R) Application received	CR
Hood River	Diamond Fruit Disposal Site	5/14/90	5/14/90	(R) Application received	
Polk	Garden Grow Co. (1146)	7/2/90	7/2/90	(R) Application received	WVR
Coos	Weyco-Mettman Ridge Landfill (1064)	7/13/90	7/13/90	(C) Application received	SWR
Umatilla	Smith Frozen Foods Landfill (1096)	7/27/90	7/27/90	(C) Application received	ER
Lane	Davidson Woodwaste Landfill (1157)	8/8/90	8/8/90	(N) Application received	WVR
Douglas	Sun Studs Disposal Site (1012)	8/31/90	8/31/90	(R) Application received	HQ
Douglas	Roseburg Forest Products - Dillard (1065)	9/11/90	11/19/90	(R) Applicant review	HQ
Coos	Allegany Shop Disposal Facility (1102)	10/4/90	10/4/90	(C) Application received	SWR
Clatsop	James River Corp. Wauna Mill (1148)	10/10/90	10/10/90	(M) Request to modify permit received (Administratively incomplete)	
Lane	Davidson Industries Sweet Creek Landfill (1121)	10/12/90	10/12/90	(C) Application received	WVR
Polk	Boise Cascade - Independence Veneer Mill (1077)	10/19/90	10/19/90	(R) Application received	WVR
Linn	W. I. - Old Timber Owners (1071)	10/24/90	10/24/90	(R) Application received	WVR

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(N) = New source; (R) = Renewal; (T) = Termination

County	Name of Facility	Date Appl. Rec'd.	Date of Last Action	Type of Action and Status	Location
Marion	Stuckart Lumber Co. - Idahna (1073)	10/25/90	10/25/90	(R) Application received	WVR
Linn	W. I. - Snow Peak Landfill (1138)	10/26/90	10/26/90	(M) Draft addendum to permittee (Department initiated)	
Lane	Weyco - Last Chance Landfill (1111)	10/29/90	10/29/90	(R) Application received	WVR
Douglas	Roseburg Forest Products Sawmill #2 Dike	10/30/90	10/30/90	(N) Application received	SWR
Clackamas	PED Manufacturing Ltd.	11/2/90	11/2/90	(N) Application received (Letter of Authorization)	
Jackson	Boise Cascade - Donna Landfill (1080)	11/13/90	11/13/90	(R) Application received	SWR
Baker	Durkee Plant Landfill	11/19/90	11/19/90	(C) Application received	ER
<u>Sewage Sludge Sources</u> - 3					
Multnomah	Bob's Sanitary Service, Inc.	12/7/89	8/1/90	(N) Draft permit to applicant	RO
Multnomah	Waste Water Management (369)	3/26/90	3/26/90	(R) Application received	
Clackamas	Cascade Phillips Sludge Site (393)	10/23/90	10/23/90	(M) Department-initiated permit modification	

(C) = Closure permit; (M) = Modification;
(N) = New source; (R) = Renewal; (T) = Termination

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1990

CIVIL PENALTIES ASSESSED DURING MONTH OF NOVEMBER 1990

CASE NO./ RESPONDENT/ LOCATION	VIOLATION(S)	REFERRED BY/ ASSIGNED TO[1]	FINAL ACTION
HW-WVR-90-199 Oregon Pacific & Eastern Railroad Co. Cottage Grove, Oregon	Various hazardous waste generator violations.	J.Taylor, WVR N.Hogan, Enf.	An $800 Civil Penalty Assessment (CPA) and Compliance Order was issued on 11/7/90 and paid on 11/29/90.
SW-SWR-90-208 Roseburg Forest Products Douglas County	Unauthorized disposal of solid waste.	R.Baker, SWR N.Hogan, Enf.	A $500 CPA and Department Order was issued on 11/14/90.
AQOB-ER-90-210 Elgin Foodtown Store Elgin, Oregon	Open burned prohibited materials.	J.Hammond, ER L.Cwik, Enf.	A $500 CPA was issued on 4/15/90.
AQ-ER-90-225 Ontario Asphalt Ontario, Oregon	Exceeded the opacity limits of its ACD permit.	L.Calkins, ER H.Duncan, Enf.	A $3,800 CPA was issued on 11/21/90.
WQ-WVR-90-227 WQ-WVR-90-227A Douglas Johnson & Kenneth White, Jr. dba/Fairway Apartments Lebanon, Oregon	Did not meet the requirements of a SFO. NPDES permit violations.	B.Burton, WVR N.Hogan, Enf.	A $1,300 CPA, Department Order, and NOI was issued on 11/19/90.
WQ-SWR-89-219 City of Port Orford	Two days of violation of a Stipulation and Final Order compliance schedule; stipulated civil penalties.		$500 paid on 11/15/90.
AQ-SWR-90-240 Roseburg Forest Products Coquille, Oregon	Excessive boiler steaming rates, in violation of ACD permit.	R.Kretzschmar, SWR H.Duncan, Enf.	A $1,000 CPA was issued on 11/20/90.
HW-WVR-90-241 Eugene Metal Finishers Eugene, Oregon	Failure to perform a complete hazardous waste determination on all solid wastes generated at the facility.	J.Taylor, WVR H.Duncan, Enf.	A $1,400 CPA and Compliance Order was issued on 11/30/90.

[1]AQ = Air Quality Division
WQ = Water Quality Division
HSW = Hazardous and Solid Waste Div.
DOA = Department of Agriculture
Enf. = Enforcement Section
NWR = Northwest Region
WVR = Willamette Valley Region
SWR = Southwest Region
CR = Central Region
ER = Eastern Region
DOJ = Department of Justice

GB10112

RMAC International, Inc.
Innovative Environmental Processes

December 14, 1990

To the Environmental Quality Commission

RE: Agenda Item M

Dear Members:

The attached briefing, is presented to you to demonstrate the existence of alternatives to landfilling petroleum contaminated soil and to provide testimony supporting the DEQ's recommendation regarding this agenda item. These alternatives were developed, in part, in anticipation of the enactment of rules restricting the disposal of petroleum contaminated soils in landfills.

In recognition of specific regulatory changes encouraging alternative treatment technologies for the handling of industrial wastes, including petroleum contaminated soils and waste tires, RMAC International, Inc. has invested in the development of an Environmental Industrial Park in Troutdale, Oregon. At this location a Soil Extractor, which treats petroleum contaminated soils, Gasifier, and Tire Chipper will be, or are already present.

RMAC has developed a technology which allows RMAC to provide both on-site and off-site treatment options for petroleum contaminated soils. This technology has been permitted in Colorado and Oregon and is operational in Colorado, A portable unit is due to arrive in Oregon in early January. The Oregon unit was scheduled to arrive sooner but was solicited to perform on-site remediation of petroleum contaminated soils for AAMACO in Colorado. The unit is in the process of completing that major project and is expected to arrive in Oregon in early January.

The unit can handle a maximum of 10 tons/hour. It will be available to provide service throughout the state of Oregon in addition to other states. As the demand warrants additional units, which are currently being built, will be distributed to Oregon.

The Portable Soil Extraction unit has received a permit from the Air Quality Division of DEQ allowing operation. As treatment will occur at the site of the contamination DEQ has determined that a solid waste permit is not required for on-site treatment.

The Soil Extraction Unit provides a method for treating hydrocarbon contaminated soils, using indirect heating to a temperature in the range of 300 degrees F to 1600 degrees F, with a residence time of about 10 minutes to 30 minutes, to separate the hydrocarbon compounds from the soil.

3601 N.W. Marine Drive
Troutdale, Oregon 97060
Mailing Address: P.O. Box 301008
Portland, Oregon 97230
Bus. (503) 665-3570
Fax (503) 255-7038

The recovered hydrocarbon vapor is subsequently condensed from the effluent air stream, with the condensed liquid accumulated as product. Uncondensed gases are used as combustion makeup air in the process. A rotating auger is used in the treatment chamber to agitate the soil and move it through the system. Steam generated during the low temperature heating of the moisture-laden soil is used to minimize temperatures and residence times required for treatment, in addition to minimizing non-condensible emissions.

RMAC strongly encourages the Commission to follow DEQ's recommendation. By doing so the Commission will continue to encourage entrepreneurial efforts which result in the technological advances that are the key to more environmentally sound industrial practices.

Respectfully Submitted,
RMAC International, Inc.

John R. Spencer
President/CEO

BRIEFING ON

RMAC INTERNATIONAL, INC.

December 14, 1990

INTRODUCTION

RMAC is located on approximately six acres, adjacent to the north side of Marine Drive in Troutdale, Oregon.

The RMAC operation will consist of four basic activities:

- waste tire shredding - the shredding and granulation of waste tires for reuse;
- gasification - the reduction of shredded tires to component elements (refineable oil, scrap steel, carbon black) through gasification;
- soil contaminate extraction - the decontamination of soils contaminated with petroleum products through a soil extraction process;
- processing waste water containing petroleum products;

Future activities may include refining of the oil based products produced by the gasifier.

CURRENT STATUS

A permit for the storage of 7,500 waste tires was issued by the DEQ in 1989, and a tire shredder on-site has been operational since May 1990. During the public hearings for the issuance of the waste tire permit, the local residents, noted for their opposition to any commercial or industrial activities in their vicinity, expressed support for the RMAC operation.

The gasifier components are on-site and its assembly is nearly complete. An evaporator is also on-site and the soil extractor is expected to arrive in early January. Upon receipt of permission to construct, the assembly of the gasifier will commence.

The soil extractor is currently being readied for shipment from Colorado and delivery is expected within 4 weeks. This process and equipment has been permitted and is operational in Colorado.

Based on previous conversations with DEQ staff, it is expected that the gasifier and soil extractor will receive letter permits to enable them to become operational. Then, based on the evaluation of their performance, subsequent permitting will be waived or required.

INDIVIDUAL OPERATIONS

Waste tire shredding - This portion of the operation is currently operational. A permit for the storage of waste tires was issued in 1989. Currently, waste tires are being shredded at the site. RMAC has shredded almost 5,000 tons of tires since the shredders went into operation earlier this year.

Tires arrive at the site by permitted carriers and the loads are logged in. The tires are taken to the storage pile where they await chipping. The chipping commences when the tires are loaded onto a conveyor which transports the tires to the shredding knives.

Shredded tires are loaded into trucks and transported to their final destination. Some shredded tires have been taken to Roseburg for roadway fill, while others await the gasifier. The shredders can handle 7-10 tons of tires per hour and, as needed, run 24 hours per day.

The shredders are Model 1600-E SSI Shredding Systems shredders. They have a 52"x36" infeed with 2" multi-hook cutters. The second shredder sizes the chips to 2" minus.

When the gasifier is operational, 100% of the shredded tires will be sent to the gasifier for processing, until granulation is started.

FUTURE OPERATIONS

Gasifier - The process is based on the Rotter gasification process.

The process operates at high temperatures (up to 1500° F.) to gasify shredded tires in a vertical retort under controlled conditions.

A feed auger will deliver shredded rubber to the top of the gasifier through a rotary air lock. The rubber will then be fed vertically through the gasifier by gravity and by a vertical screw which recirculates material from the bottom to the heated zone. As the char is formed, it falls down the gasifier to a well containing a removal auger. The char steel and fiberglass are removed intermittently. The oil and gas are removed in a series of separators and scrubbers.

Product yield information on this process was obtained from SCRAP TIRES: A RESOURCE AND TECHNOLOGY EVALUATION OF TIRE PYROLYSIS AND OTHER SELECTED ALTERNATE TECHNOLOGIES, prepared for the U.S. Department of Energy by the Idaho National Engineering Laboratory. The product yield information apparently is based on the net salable products, excluding recycled gas burned as fuel, etc. At 1100° F, the products are expressed as a percent of tire input: 7% gas, about 92% methane, with carbon dioxide, oxygen, and propane, and a heating value of 670 BTU/cu. ft; 41% oil; 10% char, market as fuel, and 6% steel.

Depending on the specific daily needs, the gas generated from this process will be used to fuel the soil extractor or sent to the evaporator to be used to evaporate water. The petroleum products generated will be sold as motor fuel to be mixed with #2 diesel 50/50%.

To date the gasifier has been dismantled and moved from its previous location on Suttle road to the RMAC facility. Reassembly will be complete within the next three weeks.

A Notice of Intent to Construct was filed with the DEQ on December 15, 1989.

Soil extraction unit - The first commercial unit has been constructed, test run, permitted, and is now fully operational in Colorado. The unit works as follows:

The process "heats and extracts" hydrocarbon-contaminated soil without oxygen (similar to pyrolysis) and extracts the contaminates from the soil. The distillation liquid, other than the water, is returned to the customer or is sold to an oil recycler. The volatilized gasses are condensed through a tube and shell condenser. Any gasses not condensed are injected with propane fuel in a 4-cycle engine-driven generator.

There is very little volume in the uncondensed phase, since generally the light ends (c2-c5) are volatilized through natural processes during the materials handling at the generation site, during transport, and during handling at the RMAC facility, and all that is left of uncondensible gasses is CO_2.

The attached drawings, which are classified as "confidential," show the basic machine and process. The soil is heated indirectly with a propane burner which produces heat around the closed material-feed and processing system. No fire or combustion is directly in contact with the soil. The soil is not burned, nor are the contaminates destroyed.

The volatilized gasses are removed from the soil train heating areas by use of vacuum pumps, as depicted on the drawings.

The liquids are returned to appropriate containers (generally 55-gallon drums) and subsequently disposed of either by returning to the customer or by delivery to a local oil recycler. Any gasses not condensed are passed though a small pump and used in the fuel stream of the 4-cycle propane engine that is used to generate the necessary electricity for the pumps and motors. There are no emissions to the atmosphere from the unit except the stacks from the propane heaters and the exhaust of the propane-fired engine.

The heaters:

The heat to extract the contaminated materials is produced from two burners mounted in the housing of the cooker. They are used to fire propane and heat the soil train indirectly, by heating the outside of the container in which the soil train is located, as depicted in the attached drawings. There are three stacks for the burners that vent the spent propane gasses to the atmosphere. The stacks are monitored for temperature. The process will operate approximately 2000 hours a year using 44 gallons of propane per hour on a 24-hour-a-day basis.

The heating of the soil is regulated to a temperature of about 700° F by controlling the fuel mixture and quantity, as well as the dampers on the stacks.

An automatic cutoff valve is set in line with the fuel line. Should the temperature of the fire box exceed 1,000° F or the soil train temperature exceed 7800° F, the fuel will automatically be reduced or terminated.

Material handling:

Generally, the extractor will be set up on the contaminated site, with the material being handled only to the feed side of the equipment. The soil is stored in a contained area that is separated form the noncontaminated soils and has a collection system for any run-off of either the contaminate or rainwater. The soil is sampled for contaminates and is processed only for hydrocarbons. No hazardous or TSCA wastes will be permitted on-site. Each separate waste stream will be profiled and sampled. A sampling plan will be prepared for each generated unit of soil. For the operations, generally, every wastestream will be analyzed for TOC and TPH. RMAC will work with the various entities of the DEQ to determine other analyses that are appropriate.

The contaminated soil will be placed in the infeed system of the extractor using a small loader, which feeds a hopper on the machine. The contaminated soil is fed from the hopper to an air lock as it enters the soil train. The cleaned soil is discharged from the end of the process though another air lock and onto a screw conveyor to a container that allows segregation of the material, until it is verified clean by analysis. If it meets the regulatory requirements to be considered clean, then it is either returned to the owner or stockpiled to be used for other proposes. If it is not "clean," it is processed again in the extractor.

Because there are no significant fugitive emissions from the process, no specific monitoring is anticipated for other than the known emissions. Temperature and pressure measuring equipment is abundant in the equipment. Each tube and shell unit is monitored for temperature and pressure. The cooker is monitored in both the fire area, as well as the soil train. A negative pressure is always maintained in the soil train when operational.

AIR ISSUES

Gasifier - Emissions from the gasifier will be sent to the soil extractor or an evaporator for the purpose of using up the fuel.

In the summer of 1988, the gasifier was run on a test basis. During the test, staff from the DEQ were present. Based on analysis of air samples from that test run, the emissions from this unit were shown to be predominately (98%) oxygen, nitrogen, CO_2, and methane, with the remainder being ethanes, propanes, butanes, pentanes and hexanes.

Soil extractor - The soil extractor will use propane or emissions of the gasifier. Based on the existing operation of the soil extractor in Colorado, no point source emissions are expected from the extractor unit.

Based on conversations with DEQ staff, it is understood that the operation will be allowed to operate under a letter permit. As the facility becomes operational, data on the emissions will be obtained and evaluated with respect to permit requirements.

WATER QUALITY

Process water: Process water will be generated from cooling the cutter blades of the shredder and from condensation from the soil extractor and the gasifier.

Cutter cooling water: Water is used to lubricate the cutters. The water is applied directly to the blades and what isn't dissipated by the heat, falls to the asphalt pad and collects in the process water holding ponds. Depending on the water needs at the time, this process water is sent to the evaporator for evaporation, evaporates in the ponds, or will be returned to the cutters. All surplus wastewater will be processed on-site.

Condensate: Water formed from condensation during the gasification and extractor's operation will be collected and recycled within the gasifier for cooling. Water generated from the soil extractor will be collected in the tankage for the evaporator and processed through that system.

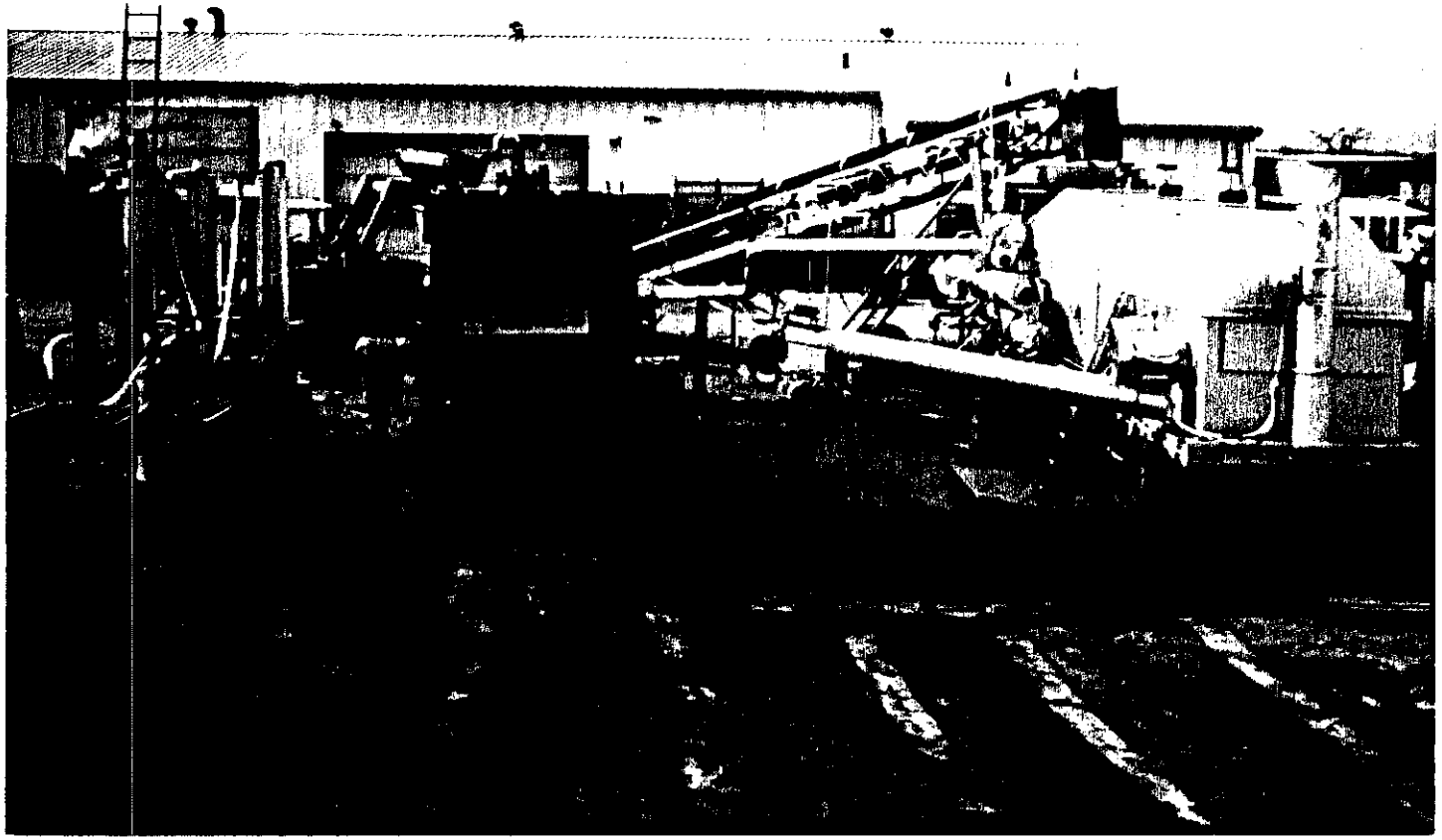
Storm water: Rainwater will be handled in two ways. The water falling on and coming in direct contact with the tires and other operational activities is collected in holding ponds. From the holding ponds, the water is either sent to the shredder for cooling purposes or is evaporated in an evaporator. The other storm water falling on the site drains to the natural surroundings.

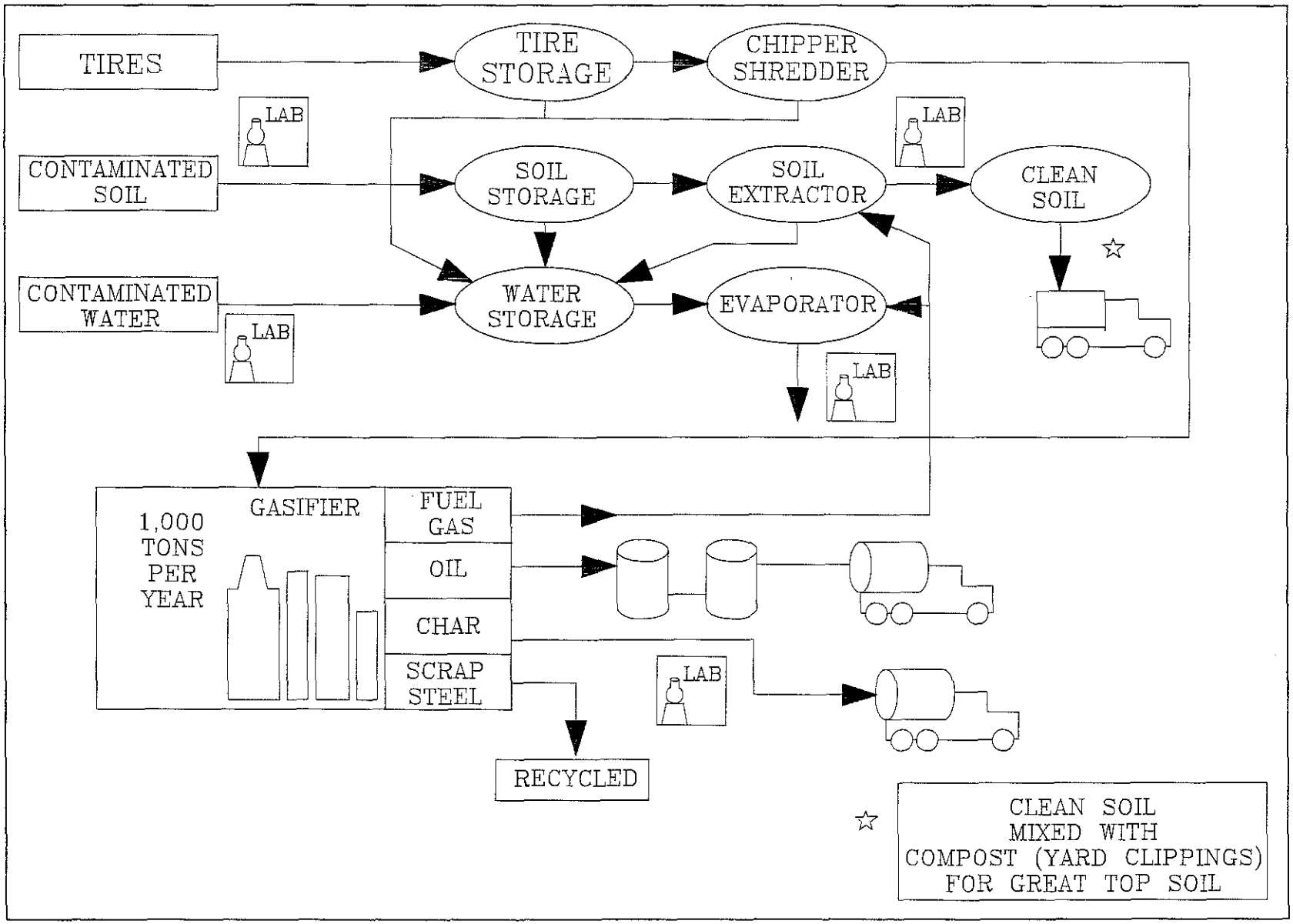
Rainwater from the piles of soil awaiting treatment will be collected and sent to reserve water tanks for treatment in the evaporator.

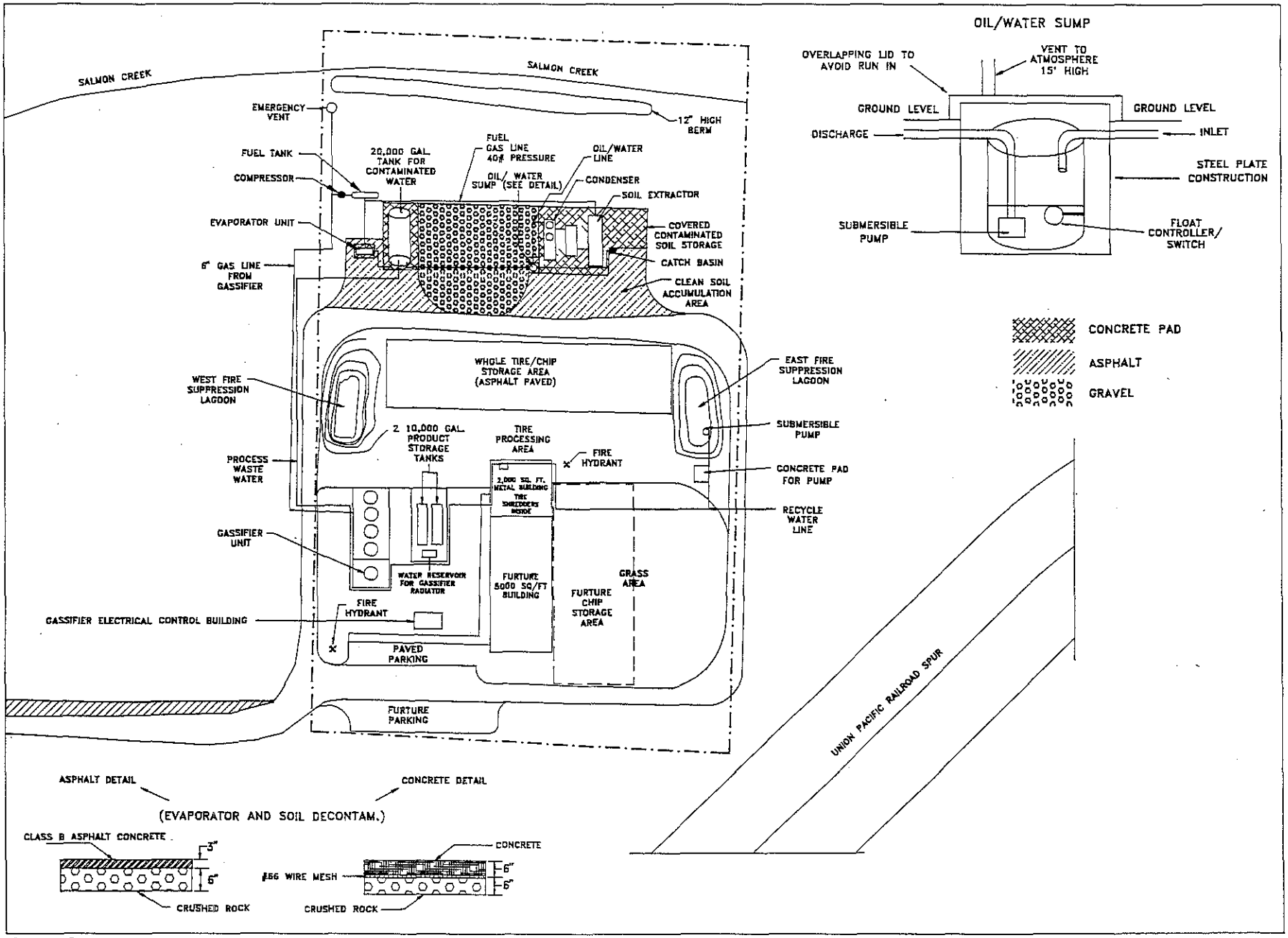
SOLID WASTE

Tires: Currently the facility has a permit for the storage of 7,500 tires. That number will be expanded to 15,000 upon operation of the gasifier.

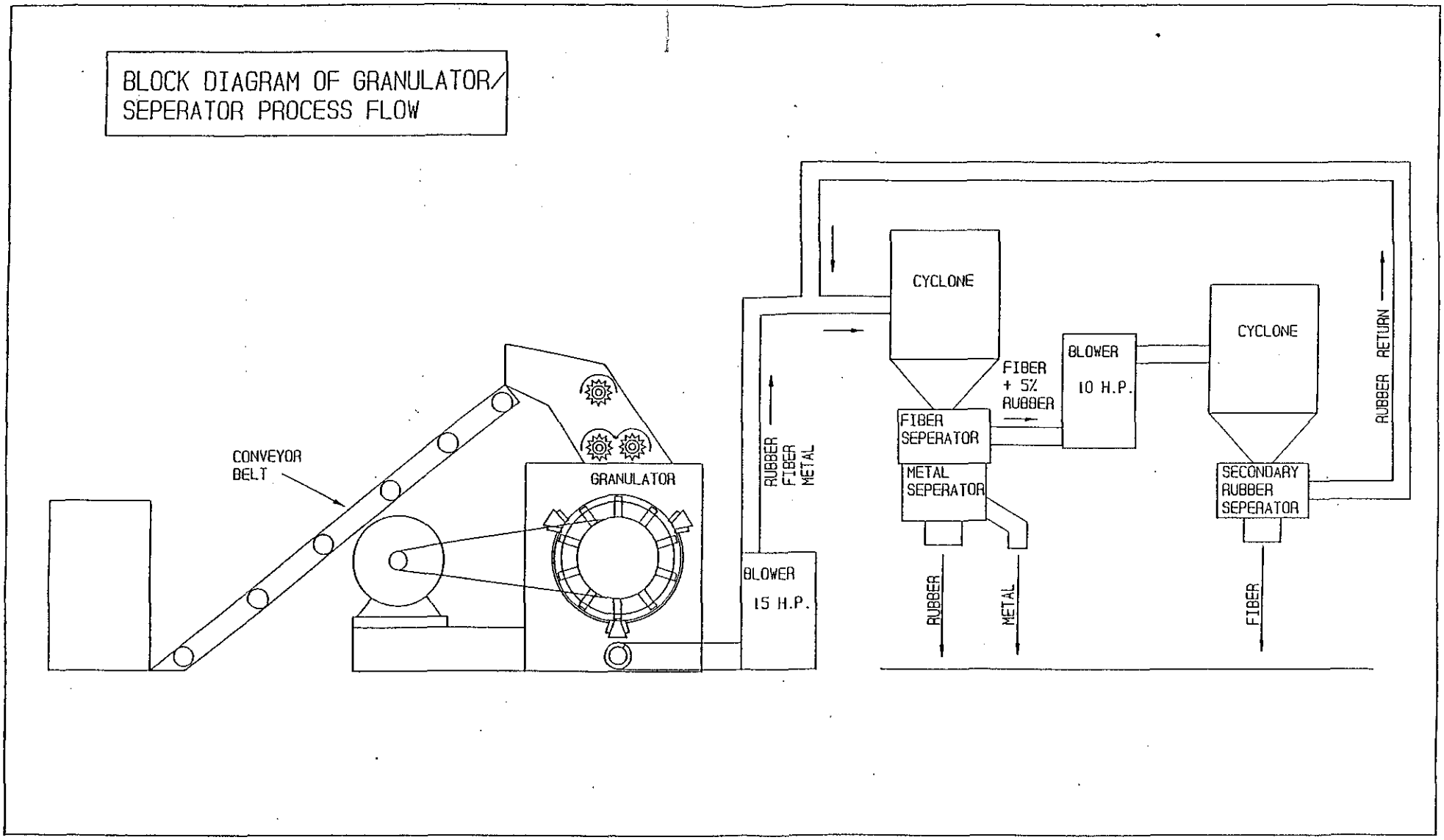
As of this writing, the issue of the permit needs for the receipt of contaminated soils has just recently been addressed. We are proceeding with an application for a solid waste permit.

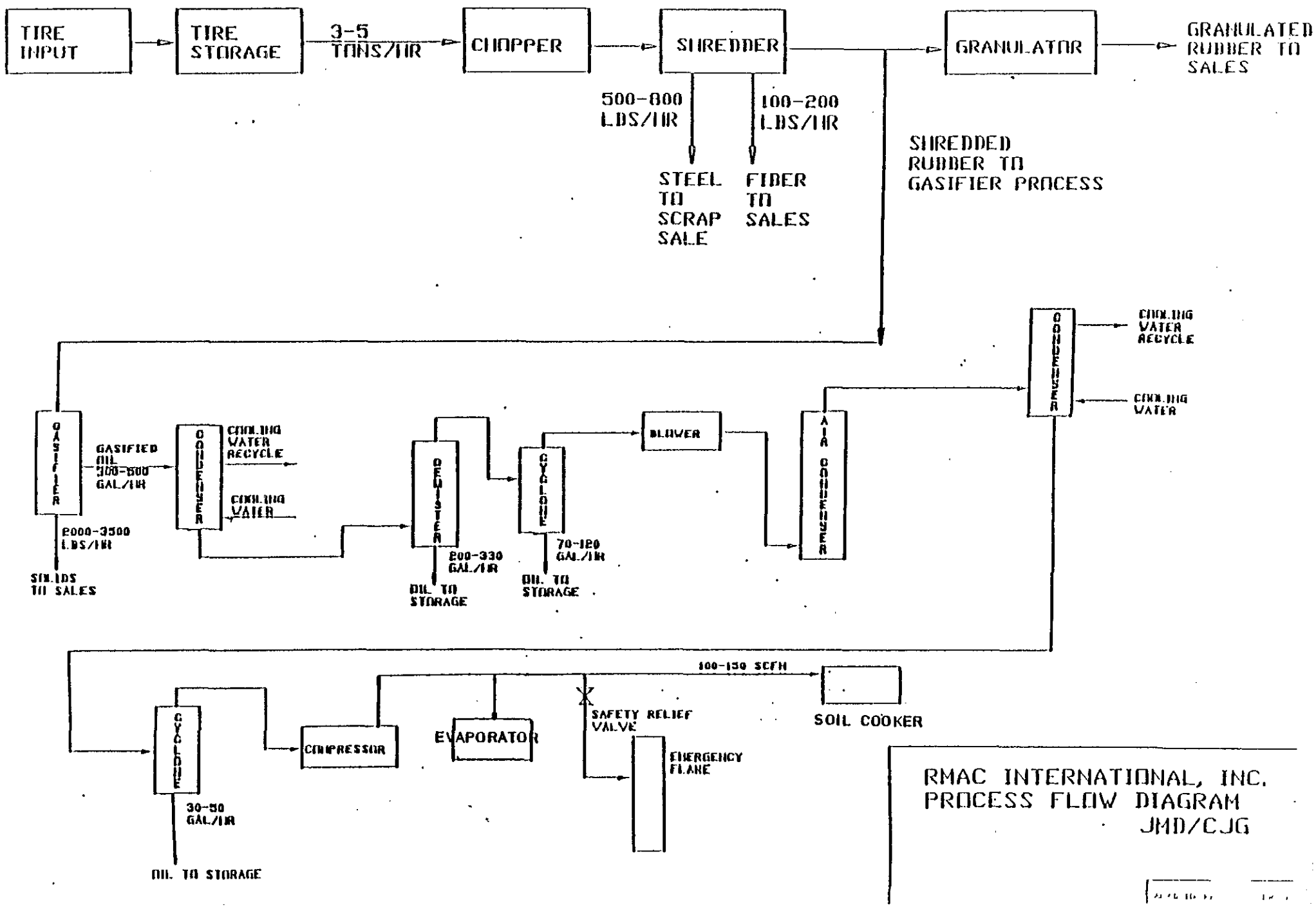



TIRES
TIRE STORAGE
CHIPPER SHREDDER
LAB
CONTAMINATED SOIL
SOIL STORAGE
SOIL EXTRACTOR
LAB
CLEAN SOIL
CONTAMINATED WATER
WATER STORAGE
EVAPORATOR
LAB
LAB
1,000 TONS PER YEAR
GASIFIER
FUEL GAS
OIL
CHAR
SCRAP STEEL
LAB
RECYCLED
CLEAN SOIL MIXED WITH COMPOST (YARD CLIPPINGS) FOR GREAT TOP SOIL


SALMON CREEK
SALMON CREEK
12" HIGH BERM
EMERGENCY VENT
FUEL TANK
COMPRESSOR
20,000 GAL. TANK FOR CONTAMINATED WATER
FUEL GAS LINE 40# PRESSURE
OIL/WATER LINE
OIL/ WATER SUMP (SEE DETAIL)
CONDENSER
SOIL EXTRACTOR
EVAPORATOR UNIT
COVERED CONTAMINATED SOIL STORAGE
6" GAS LINE FROM GASSIFIER
CATCH BASIN
CLEAN SOIL ACCUMULATION AREA
WHOLE TIRE/CHIP STORAGE AREA (ASPHALT PAVED)
WEST FIRE SUPPRESSION LAGOON
EAST FIRE SUPPRESSION LAGOON
2 10,000 GAL. PRODUCT STORAGE TANKS
TIRE PROCESSING AREA
FIRE HYDRANT
SUBMERSIBLE PUMP
PROCESS WASTE WATER
CONCRETE PAD FOR PUMP
2,000 SQ. FT. METAL BUILDING
TIRE SHREDDERS INSIDE
RECYCLE WATER LINE
GASSIFIER UNIT
WATER RESERVOIR FOR GASSIFIER RADIATOR
FURTURE 5000 SQ/FT BUILDING
GRASS AREA
FURTURE CHIP STORAGE AREA
FIRE HYDRANT
GASSIFIER ELECTRICAL CONTROL BUILDING
PAVED PARKING
FURTURE PARKING
UNION PACIFIC RAILROAD SPUR
OIL/WATER SUMP
OVERLAPPING LID TO AVOID RUN IN
VENT TO ATMOSPHERE 15' HIGH
GROUND LEVEL
GROUND LEVEL
DISCHARGE
INLET
STEEL PLATE CONSTRUCTION
SUBMERSIBLE PUMP
FLOAT CONTROLLER/ SWITCH
CONCRETE PAD
ASPHALT
GRAVEL
ASPHALT DETAIL
CONCRETE DETAIL
(EVAPORATOR AND SOIL DECONTAM.)
CLASS B ASPHALT CONCRETE
3"
6"
CRUSHED ROCK
CONCRETE
#56 WIRE MESH
6"
6"
CRUSHED ROCK

1246-5.DWG


BLOCK DIAGRAM OF GRANULATOR/
SEPERATOR PROCESS FLOW
CONVEYOR
BELT
GRANULATOR
RUBBER
FIBER
METAL
BLOWER
15 H.P.
CYCLONE
FIBER
+ 5%
RUBBER
FIBER
SEPERATOR
METAL
SEPERATOR
BLOWER
10 H.P.
CYCLONE
SECONDARY
RUBBER
SEPERATOR
RUBBER RETURN
RUBBER
METAL
FIBER



RMAC INTERNATIONAL, INC.
PROCESS FLOW DIAGRAM
JMD/CJG

SRH
GROUP

TAPE 3
side A

55 m - Steve Greenwood
Stephens

150 Ron Goodman / Lynn Frank.
Goodman Bros. Oil Heat Commission

320 Col. River H_2O Study - Update
Cordy Shea, Nina Bell, Jerry

450 P - Draft rules
Michael Huston

TAPE 3
Side B

80 Moskowitz / Amita.
~~[illegible]~~ voted conceptual approval
on 3rd party appeals.

215 GWEB report - Hutch

285 Legislative update / Director's report
Hansen

~~12/14/90 EQC Regular Meeting~~ - Portland, OR

TAPE 1 Side A

190 Richard Vial - atty for Langmak

480 vote on consent agenda

500 Gold Mining

TAPE 1 Side B

cont'd. vote carried

240 H - Drug Lab Cleanup Rules) Michael Hinsten
vote carried

320 J - vote carried, with WPH voting no.

550 K - Clear Lake

TAPE 2 Side A

cont'd.

190 Walter Drew

230 Ellie Dumdi - Lane Co. Commissioner with (?)

315 Bill Finley - Heceta H_2O dist. (handout)

455 Glen Nichols - property owner, Collard Lake

585 Muriel Hillgard - West ~~Lane~~ Lane planning comm.

TAPE 2 Side B

William Gates
vote - carried

75 - Special Item
Jay Waldron - atty. for Pope & Talbot

590 - Vote on 3rd parties

600 - L - Director's opening remarks, Merlyn Hough

FOR RECORD:

Oil Heat Comm. 12/14 letter

✓ OAR / ORS card
✓ Worksheet for Henry
✓ travel to Fred

Agenda Item B (TC-2893)

Oregon Environmental Quality Commission

Request to Present Information

HERBERT E. KLOTH
Name (Please Print Clearly)

AURORA AIRPORT, AURORA OR. 97002
Address

COLUMBIA HELICOPTERS
Affiliation

Please limit comments to five minutes.

Agenda Item B

Oregon Environmental Quality Commission

Request to Present Information

C. Bruce Vickers
Name (Please Print Clearly)

Aurora Airport
Address

Columbia Helicopters Inc.
Affiliation

Please limit comments to five minutes.

Agenda Item B

Oregon Environmental Quality Commission

Request to Present Information

A. Richard Vial (Rich Vial)

Name (Please Print Clearly)

Portland

Address

Attorney - Re: Longwoods Seal

Affiliation

Please limit comments to five minutes.

Agenda Item B

Oregon Environmental Quality Commission

Request to Present Information

Chuck Langmack
Name (Please Print Clearly)

Lebanon
Address

Former - Cross Seed
Affiliation

Please limit comments to five minutes.

— Special Item

Agenda Item Pul/P & Paper NPDES

Oregon Environmental Quality Commission

Request to Present Information

Jay Waldron

Name (Please Print Clearly)

Ste 1700 1211 SW 5th Ave Portland

Address

ATTY – Pope & Talbot

Affiliation

Please limit comments to five minutes.

Agenda Item K

Oregon Environmental Quality Commission

Request to Present Information

WALTER H. DREW
Name (Please Print Clearly)

P. O. Box 217
Address

FLORENCE, OREGON 97439-0008
Affiliation

Please limit comments to five minutes.

Agenda Item K

Oregon Environmental Quality Commission

Request to Present Information

DUNDI

Ellie Dundi, Lane County Commissioner

Name (Please Print Clearly)

125 E 8th Avenue, Eugene

Address

Lane County

Affiliation

Please limit comments to five minutes.

Agenda Item K

Oregon Environmental Quality Commission

Request to Present Information

Bill VAN VACTOR
Name (Please Print Clearly)

125 E 8th avenue Eugene OR
Address

Lane County
Affiliation

Please limit comments to five minutes.

Agenda Item K

Oregon Environmental Quality Commission

Request to Present Information

Bill Finley
Name (Please Print Clearly)

89845 Highway 101 North, Florence, OR 97439
Address

Heceta Water District
Affiliation

Please limit comments to five minutes.

Agenda Item K

Oregon Environmental Quality Commission

Request to Present Information

GLENN A NICKELL
Name (Please Print Clearly)

2818 METOLIUS DR. EUGENE
Address

PROPERTY OWNER
Affiliation

Please limit comments to five minutes.

Agenda Item K Clear Lake

Oregon Environmental Quality Commission

Request to Present Information

Muriel Hilliard
Name (Please Print Clearly)

PO Box 903, Florence, Or 97439
Address

WLPC
Affiliation

Please limit comments to five minutes.

Agenda Item K

Oregon Environmental Quality Commission

Request to Present Information

WILLIAM GATES
Name (Please Print Clearly)

06565 CANARY ROAD WESTLAKE, OR 97493
Address

SIUSLAW SOIL + WATER CONSERVATION DISTRICT
Affiliation

Please limit comments to five minutes.

Agenda Item M

Oregon Environmental Quality Commission

Request to Present Information

John Spencer
Name (Please Print Clearly)

3601 NW Marine Drive, Troutdale, Or.
Address

KMAC International, Inc.
Affiliation

Please limit comments to five minutes.

Agenda Item M

Oregon Environmental Quality Commission

Request to Present Information

LYNN FRANK
Name (Please Print Clearly)

4160 SE INTERNATIONAL WAY D107, PORTLAND, OREG 97222
Address

OIL HEAT COMMISSION
Affiliation

Please limit comments to five minutes.

Agenda Item M

Oregon Environmental Quality Commission

Request to Present Information

Ray Anderson

Name (Please Print Clearly)

P.O. Box [illegible]

Address

[illegible]

Affiliation

Please limit comments to five minutes.

R/S invite to testify in hyperlink [illegible]

Agenda Item P

Oregon Environmental Quality Commission

Request to Present Information

Karl Anuta

Name (Please Print Clearly)

Address

NEDC

Affiliation

Please limit comments to five minutes.

Agenda Item P

Oregon Environmental Quality Commission

Request to Present Information

David A Moskowitz
Name (Please Print Clearly)

10015 S.W. Terwilliger Blvd
Address

Northwest Environmental Defense Center (NEDC)
Affiliation

Please limit comments to five minutes.