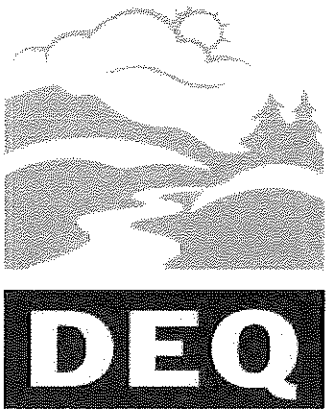
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 07/24/1991



State of Oregon
Department of Environmental Quality

REVISED **State of Oregon** REVISED

ENVIRONMENTAL QUALITY COMMISSION

A G E N D A

REGULAR MEETING -- July 24, 1991
DEQ Conference Room 3a
811 S. W. 6th Avenue
Portland, Oregon
1:00 p.m.

1:00 p.m. Public Forum

This is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of the agenda for this meeting. Individual presentations will be limited to 5 minutes. The Public Forum will be continued at the end of the meeting if a large number of speakers wish to appear.

1:15 p.m. Special Item

Approval of the Proposed City of Portland Stipulation and Final Order on Combined Sewer Overflows

Consent Items

NOTE: These are routine items that may be acted upon without public discussion. If any item is of special interest to the Commission or sufficient need for public comment is indicated, the Chairman may hold any item over for discussion. When a rulemaking hearing is authorized, a public hearing will be scheduled and held to receive public comments. Following the hearing, the item will be returned to the Commission for consideration and final adoption of rules. When rules are proposed for final adoption as Consent Items, a hearing has been held, no significant issues were raised, and no changes are proposed to the original draft that was authorized for hearing.

~~[A. Approval of Minutes of telephone conference meetings and the June 13-14, 1991 EQC Meeting]~~

B. Approval of Tax Credit Applications

C. Authorization for Rulemaking Hearing: Amendments to Waste Tire Rules to Implement HB 2246

D-1. Authorization for Rulemaking Hearing: Establishment of Fees for Inspections, and Review and Certification of Oil Spill Prevention and Emergency Response Plans for Vessels and Facilities (SB 242)

D-2. Authorization for Rulemaking Hearing: Proposed Rule to Increase Fees for the Vehicle Inspection Program

Rule Adoptions

NOTE: Hearings have already been held on these Rule Adoption items; therefore any testimony received will be limited to comments on changes proposed by the Department in response to hearing testimony. The Commission also may choose to question interested parties present at the meeting.

E. Proposed Adoption of Amendments to the Underground Storage Tank Rules

F. Proposed Adoption of Amendments to Water Quality Standards (Triennial Update)

G. Proposed Adoption of Rules on Fees and Reporting for Hazardous Waste Generators and Treatment, Storage, Disposal and Recycling Facilities

Action Items

H. Approval of Sewer Safety Net Funding Applications for FY 92

I. Proposed Adoption of Emergency Rule for Solid Waste Permit Fee Surcharge

J. Proposed Adoption of Emergency Rule to Increase Air Contaminant Discharge Permit Fees, and Authorization for Hearing to Make Rule Permanent

K. Request for Relief from Payment of Increased Compliance Determination Fee by the City of Butte Falls

Information Items

L. Information Report: Orphan Site Cleanup

M. Commission Member Reports: (Oral Reports)
- Governor's Watershed Enhancement Board

N. Director's Report (Oral Report)

1. Program Review
2. Governor Structure
3. Govmnt System Review

Permit clearinghouse
Enforcement.
Information pooling
+ coordination
Public outreach

WORK SESSION -- July 25, 1991

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

8:30 a.m. 1. Review of 1991 Legislative Actions:
- Budget for 1991-93
- Legislation affecting DEQ
- Follow-up Actions

2. Review and Update of Strategic Plan Goals (in light of new legislative mandates)

1:00 p.m. 3. Discussion of Issues Raised in Testimony on Proposed Rules for Mining Operations using Chemicals to Extract Metals from Ores

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

Because of the uncertain length of time needed, the Commission may deal with any item at any time in the meeting except those set for a specific time. Anyone wishing to be heard on any item not having a set time should arrive at the beginning of the meeting to avoid missing any item of interest.

The next Commission meeting is currently scheduled for Thursday, September 19, 1991, at the Flying-M Ranch located 16 miles northwest of McMinnville, Oregon. A work session is planned at the same location on September 18, 1991.

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

July 22, 1991

Approved _____
Approved with corrections _____
Corrections made _____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Thirteenth Meeting
June 13-14, 1991

Work Session

The Environmental Quality Commission (Commission or EQC) Work Session was convened on Thursday, June 13, 1991, at about 2:00 p.m. in Conference Room 3a of the offices of the Department of Environmental Quality, 811 S. W. 6th Avenue, in Portland, Oregon. Commission members present were: Chair Bill Hutchison, and Commissioners Carol Whipple and Henry Lorenzen. Also present were Director Fred Hansen of the Department of Environmental Quality (Department or DEQ) and Department staff.

Item 1. Background Discussion: New Federal Storm Water Rules and Their Impact on the Department

This work session item provided background information to the Commission on the provisions of the Federal Clean Water Act, the efforts of the Department to implement these provisions in the state, and the impact of new rules adopted by EPA on November 16, 1990, regarding stormwater. Kent Ashbaker, of the Water Quality Division staff, reviewed the new rules which require National Pollutant Discharge Elimination System Permits for stormwater discharges from several categories of industries (an estimated 6,000 to 10,000 permittees), municipalities with separate storm sewers serving over 100,000 persons (Portland, Eugene, Multnomah County, Washington County), landfill sites and certain sewage treatment plant sites, and construction sites where 5 acres or more are disturbed. Since DEQ operates the NPDES permit program in Oregon, and the new stormwater permit program is part of the NPDES program, Oregon is expected to implement the new program. EPA insists that it is all or nothing.

EPA rules provide for a two part application process. Part I includes general information and characterization of stormwater discharges. Part II includes more detailed data on discharges, legal authorities, proposed management programs, programs to detect illegal discharges to storm sewers, etc. Different deadlines are established for submittal of application parts by different source categories. The deadline for industrial applications is November 18, 1991 (unless EPA extends it).

The Department is proposing to issue individual permits for the six municipalities. Individual permits will also be proposed for wood treating industries. Up to ten General Permits will be proposed to cover the remaining of the industrial source categories. For Construction activities, it is proposed to use local planning entities to distribute a general permit. EPA provides no extra funding to cover this new effort. The federal rules were not adopted when the DEQ budget was prepared. The new fee schedule for the NPDES program includes fees for stormwater permits. Emergency Board approval will be necessary to use the increased fee revenue to hire added staff to accomplish the stormwater permitting work.

Mr. Ashbaker stressed that the permit is only needed for discharge of storm water by point sources to surface water. Director Hansen noted that the large number of permittees presents real problems in how to manage the task. All states are having the same problem.

Item 2. Discussion: Proposed Update of General Conditions included in NPDES Permits

Barbara Burton, Water Quality Division, briefed the Commission on proposed modification to the general conditions that are part of NPDES permits. The Department proposed to update the wording of the general conditions, gave public notice of the opportunity to comment on the draft, and received public comments. In this process, two policy issues were raised regarding Department proposals that require Commission input.

One issue is described as the "regulatory upset provision". Under this provision, exceedance of a permit limitation is not considered a violation if the occurrence is beyond the reasonable control of the permittee. The event causing the exceedance would have to be exceptional, unintentional, temporary, and beyond reasonable control. The permittee would be required to notify of the event. Finally, the burden is on the permittee to demonstrate that the exceedance is beyond reasonable control. An example of this type of event would be a grid power outage.

The other issue is described as the "single operational event provision". Exceedance of a permit limitation would be considered a violation, but may be subject to lesser penalties if the permittee can demonstrate that the event was exceptional, unintentional, immediate actions were taken to eliminate or reduce the magnitude of the violation, and the violation is not the result of improper design. An example of this type of event would be an error by a new operator of a treatment facility. The error may result in violation of limits for several permitted discharge parameters. However, if this defense in invoked by the permittee, there would be a single penalty for the "event" rather than penalties for violation of each parameter.

The Department has proposed to add these conditions because it is considered fair to the permittees to clarify how violations will be handled, will provide consistency with federal

procedures. In addition, the Clean Water Act and EPA rules for the NPDES permit program allow permittees to pursue these defenses if the conditions are included in their permit. DEQ's general conditions do not currently allow these potential protections. Finally, the Department has attempted to remain neutral in third party lawsuits. Permittees argue that they are at a disadvantage and more vulnerable to third party law suits because of the inability to assert these defenses.

Commissioner Whipple asked how often such defenses would be used. Ms. Burton replied that the Department had no estimate, however, the Department does not expect them to be successfully invoked that often. Chair Hutchison asked if the general permit conditions are rules. Ms. Burton responded that they are not in rule form and the Department has been advised by the Attorney General that they don't need to be. It was noted that if the single operational upset standard is used, the multiplier effect that could be associated with the single upset being considered multiple violations is eliminated. Director Hansen noted that use of the mitigating and aggravating factors in the enforcement rules tends to accomplish the same result. In response to a question from Chair Hutchison, Ms. Burton noted that the Department does not issue notices of non-compliance for unintentional violations. However, they must be reported to the Department, and the reports are retained.

Ms. Burton noted that the environmental community is concerned with the proposed conditions to allow defenses for exceedances because they would reduce penalties in third party lawsuits, and could reduce the incentive for permittees to comply. Commissioner Whipple asked how may third party lawsuits have been filed. Lydia Taylor responded that there have only been a few to date, but the interest in them is increasing.

Commissioner Lorenzen asked why the Department is concerned about third party lawsuits. Lydia Taylor responded that such suits affect Department actions such as permit renewals, result in office disruptions as a result of people going through files, and that the Department inevitably gets drug into the proceeding.

Director Hansen noted that the proposed revisions in the general permit conditions are needed to effectively inform permittees of requirements and expectations.

Floyd Collins, representing the Association of Oregon Sewerage Agencies supported addition of the conditions to be consistent with federal requirements.

Commissioner Lorenzen expressed the desire to discuss in more detail in the future the relationship of Department enforcement and enforcement via third party actions.

The Commission supported the idea of consistency and thanked the Department for the presentation.

Item 3. Growth Management in the Portland Metropolitan Area: Presentation by Bill Blosser, Chair of the Governor's Growth Council

Director Hansen introduced this item by noting that many of the environmental problems faced by the Commission are a direct result of increasing population growth. Therefore, it seemed appropriate to have Bill Blosser, Chair of the Governor's Growth Council, discuss the issue of growth in the metropolitan area with the Commission.

Bill Blosser explained the background of the Growth Council, which was created by Governor Goldschmidt to identify the state interest in the Portland area, coordinate state agency investments in the area, and provide a forum for solving interagency problems. Director Hansen serves on the Council. The Council has no legal authority, but provides a good forum for discussion of issues in a non-threatening environment.

Growth is expected to be rapid in the metro area -- an increase of 500,000 people in the next 20 years. The challenge will be to protect the livability of the area in the face of this growth. There is no desire or direction to limit growth.

The Council has reviewed regional goals and objectives, secured an intergovernmental agreement on the light rail project, and is working with LCDC and the Department of Transportation on development of a transportation rule that will guide transportation planning by local governments. This is important because air quality and transportation must mesh to protect livability.

Bob Stacy, from the City of Portland noted they were glad to see the State define its interests in the metro area. He noted that most of the projected growth for the metro area will occur outside the city limits of Portland. This will put pressure on to continue the auto dominated mode of transportation -- to the detriment of air quality and overall livability. He suggested that the state needs to get over its "politeness" and let the local governments know what the state vision is and what will be necessary to protect the area's livability.

Director Hansen noted that the fundamental issue is whether planning alone can bring about the changes that are necessary, or whether a combination of planning incentives, leveraged state investments, and regulations will be needed to bring about such changes as establishing minimum population densities to support services rather than just maximum densities.

After further discussion, the Work Session was adjourned.

Regular Meeting

The Environmental Quality Commission regular meeting was convened at about 8:40 a.m. on Thursday, June 14, 1991, in Conference Room 3a of the Department of Environmental Quality Offices at 811 S. W. 6th Avenue in Portland, Oregon. Commission members present were: Chair Bill Hutchison, Vice Chair Emery Castle, and Commissioners Carol Whipple and Henry Lorenzen. Commissioner Wessinger was out of town. Also present were Michael Huston of the Attorney General's Office, Director Fred Hansen of the Department of Environmental Quality and Department staff.

NOTE: *Staff reports presented at this meeting, which contain the Department's recommendations, are on file in the Office of the Director, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of this record and is on file at the above address. These written materials are incorporated into the minutes of the meeting by reference.*

Public Forum

Jerry Herrmann appeared on behalf of the Northwest Organic Wastes Processors and Consumers Association to make the Commission aware of the Association and its purpose advancing the recovery of organic material. Mr. Herrmann requested DEQ support for their efforts.

Consent Items

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

A. Approval of Minutes of the April 25-26, 1991 EQC Meeting and Telephone Conference Meetings

Drafts of the minutes for the April 25-26, 1991, Regular EQC Meeting and the April 2, 1991, April 9, 1991, and April 23, 1991, Telephone Conference Meetings were circulated to the Commission prior to the meeting.

B. Approval of Tax Credit Applications

The Department recommended that approval be granted on Pollution Control Facility Tax Credit applications as follows:

TC-2398	Teledyne Ind., Inc.	Secondary spill containment system.

TC-2432	Teledyne Ind., Inc.	Secondary spill containment system.
TC-2772	Boise Cascade Corp.	Bin vent filters; vertical eductor system; modify green liquor feed.
TC-2785	Space Age Fuel, Inc.	Installation of three fiberglass tanks and piping, spill containment basins, float vent valves, tank monitor, turbine leak detectors, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-2866	Marc Nelson Oil Company	Installation of a tank monitor system and overfill alarm.
TC-2918	Kennel Farms	Straw storage shed.
TC-3035	Oak Park Farms, Inc.	Rear's converted Hesston Loafer 60A Grass-Vac.
TC-3083	Willamette Industries, Inc.	Electrified filter bed electrostatic precipitator.
TC-3092	Willamette Industries, Inc.	Metal building enclosing sanderdust drop box.
TC-3186	Stanley Goffena	Rear's 30' tandem axle propane flamer.
TC-3252	Stimson Lumber Co.	Dip tank and lumber storage facility for anti-sapstain chemical treatment.
TC-3339	Truax Corporation	Installation of cathodic protection, spill containment basins and automatic shutoff valves.
TC-3359	Roy's Auto Repair	Auto air conditioner recycling machine.
TC-3383	Harold H. Young	Installation of four fiberglass tanks and piping, spill containment basins and a tank monitor.
TC-3388	Pacificorp	Installation of two double wall fiberglass tanks and double wall fiberglass piping, spill containment basins, tank monitor and turbine leak detectors.
TC-3390	Al's Automotive Service Center	Auto air conditioner recycling machine.
TC-3397	Mill Waste Recycling Co.	Mobile log yard debris separation system.
TC-3398	Mt. Hood Refuse Removal, Inc.	Pole building, cement slab and 3-phase wiring for storage and operation of baler; Marathon V-6030 HP baler; and 30 yd. drop box.
TC-3400	Oregon Rootstock Tree Co., Inc.	Rear's propane flamer.

TC-3401	Hazel E. Whaley	Installation of three STI-P3 tanks and fiberglass piping, spill containment basins, tank monitor, turbine leak detectors, overfill alarm, automatic shutoff valves, monitoring wells and Stage II vapor recovery piping.
TC-3402	Tim & Lori VanLeeuwen	Straw storage shed.
TC-3403	Roy A. Bowers & Sons, Inc.	New Holland 858 round baler; New Holland 216 28' rake.
TC-3405	Clyde Montgomery	Rear's Grass-Vac, John Deere conversion.
TC-3406	Clyde Montgomery	Rear's Grass-Vac, John Deere conversion.
TC-3407	Gladys VanLeeuwen Farms	New Holland 858 round baler.
TC-3408	Norm's Auto Repair	Auto air conditioner recycling machine.
TC-3409	Flying W Ranch	Deutz-Fahr round baler; Kello built #225 disk; used John Deere 8630 Trailer.
TC-3410	Christiansen Farms	Rear's 12' Grass-Vac.
TC-3411	Christiansen Farms	John Deere 4955 200 HP tractor.
TC-3412	Christiansen Farms	John Deere 2800 6-18 plow.
TC-3414	Oak Park Farms, Inc.	Rear's inverted Hesston Loafer; 60 A Grass-Vac.
TC-3415	H. T. Rea Farming Corp.	Installation of secondary containment for two above-ground storage tanks.
TC-3416	Verger Chrysler-Plymouth-Dodge, Inc.	Auto air conditioner recycling machine.
TC-3421	Laughlin-Hall, Inc.	New installation of three doublewall fiberglass tanks, doublewall fiberglass piping, spill containment basins, tank monitor, line leak detectors, overfill alarm, automatic shutoff valves, monitoring wells and Stage I & II vapor recovery.
TC-3422	Robert W. Byram	Installation of three STI-P3 tanks and fiberglass piping, spill containment basins, tank monitor, turbine leak detectors, overfill alarm, automatic shutoff valves, monitoring wells and Stage II vapor recovery piping.
TC-3423	Daniel & Jo Ann Keeley	Drain tile system; John Deer flail chopper; Howard M1100 rototiller; Massey Ferguson 1150 tractor.

TC-3424	Vanasche Farms	Rear's 30' propane flamer; Case-International tandem disk #596.
TC-3425	Vanasche Farms	John Deere 2955 tractor; John Deere 265 loader.
TC-3426	Clatskanie Mini-mart	Installation of three composite tanks and double wall fiberglass piping, spill containment basins, tank monitor, automatic shutoff valves and line leak detectors, monitoring wells and sumps.
TC-3427	G & S Chevron	Installation of spill containment basins, tank monitor and line leak detectors.
TC-3428	Scott's, Inc.	Auto air conditioner recycling machine.
TC-3429	Sunset Fuel Company, Inc.	Installation of epoxy lining in four steel tanks, spill containment basins, tank monitor and overfill alarm.
TC-3430	University Service Center	Auto air conditioner recycling machine.
TC-3431	Warden Farms	New Holland 858 round baler.
TC-3432	Neils Jensen	Harrel 3608 8 bottom plow.
TC-3433	John Singer	12' Grass-Vac with side dump attachments; converted used 1971 Ford Tilt Cab C-700 2-ton truck.
TC-3434	Landmark Ford, Inc.	Auto air conditioner recycling machine.
TC-3435	Pacific Petroleum Corp.	Installation of epoxy lining in four steel tanks, spill containment basins and underground preparation for a tank monitor system.
TC-3437	Fred Meyer, Inc.	New installation of one fiberglass tank, double wall fiberglass piping for the new and two existing tanks, epoxy lining in two existing steel tanks, spill containment basins, tank monitor, turbine leak detectors and an oil/water separator.
TC-3438	Western Stations Co.	Installation of four steel/fiberglass composite tanks and fiberglass piping, spill containment basins, sumps, tank monitor, automatic shutoff valves, monitoring wells and Stage I & II vapor recovery equipment and piping.
TC-3439	Western Stations Co.	Installation of three steel/fiberglass composite double-wall tanks, fiberglass piping, spill containment basins, tank monitor, automatic shutoff valves, monitoring

		wells and Stage I & II vapor recovery equipment and piping.
TC-3440	Alberta Body & Paint	Auto air conditioner recycling machine.
TC-3441	Creswell Comm. Srvc., Inc.	Installation of four STI-P3 tanks and fiberglass piping, spill containment basins, tank monitor, monitoring wells, turbine leak detectors, automatic shutoff valves, sumps and Stage I vapor recovery equipment.
TC-3444	Hawthorne Auto Clinic, Inc.	Auto air conditioner recycling machine.
TC-3446	4 B Farms, Inc.	Rear's 12' Grass-Vac.
TC-3447	Richard L. Allen	Installation of four fiberglass tanks and piping, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff devices, overfill alarm, monitoring wells, sumps and Stage I and II vapor recovery equipment and piping.
TC-3448	Oregon Rootstock & Tree Co.	New Holland 505 baler; New Holland balewagon; Caterpillar tractor; and hydraulic system/hay squeezer attachments.
TC-3449	Atlantic Richfield Company	Installation of four double wall fiberglass tanks and piping, interstitial monitoring, turbine leak detectors, spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3450	Atlantic Richfield Company	Installation of four double wall fiberglass tanks and piping, interstitial monitoring, turbine leak detectors, spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3451	Atlantic Richfield Company	Installation of four double wall fiberglass tanks and piping, interstitial monitoring, turbine leak detectors, spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3452	Atlantic Richfield Company	Installation of four double wall fiberglass tanks and piping, interstitial monitoring, turbine leak detectors, spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3453	Atlantic Richfield Company	Installation of four double wall fiberglass tanks and

		piping, interstitial monitoring, turbine leak detectors, spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3454	Atlantic Richfield Company	Installation of four double wall fiberglass/steel tanks and fiberglass piping, interstitial monitoring, turbine leak detectors, spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3455	Atlantic Richfield Company	Installation of five double wall fiberglass tanks and piping, interstitial monitoring, turbine leak detectors, spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
T-3456	Gresham Chevron	Auto air conditioning recycling machine.
TC-3457	Stein Oil Co., Inc.	New installation of four STI-P3 tanks and fiberglass piping, spill containment basins, turbine leak detectors, automatic shutoff valves, monitoring wells, sumps, oil/water separator and Stage I and II vapor recovery equipment and piping.
TC-3458	Stein Oil Co., Inc.	Installation of three fiberglass tanks and double wall fiberglass piping, spill containment basins, overfill alarm, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3459	Stein Oil Co., Inc.	Installation of two fiberglass tanks and double wall fiberglass piping, spill containment basins, turbine leak detectors, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3460	Merritt #1, Inc.	Installation of three double wall fiberglass/steel composite tanks, double wall fiberglass piping, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves, overfill alarm, monitoring wells, sumps and Stage I and II vapor recovery equipment and piping.
TC-3461	Merritt #2, Inc.	Installation of three double wall fiberglass/steel tanks and double wall fiberglass piping, spill containment basins, tank monitor, line leak detectors, automatic shutoff valves, overfill alarm, monitoring wells, sumps, oil/water separator and Stage I and II vapor recovery equipment and piping.

TC-3462	Merritt #2, Inc.	Installation of three double wall composite tanks and double wall fiberglass piping, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves, overfill alarm, monitoring wells, sumps and Stage I and II vapor recovery equipment and piping.
TC-3463	Merritt Truax, Inc.	Installation of three double wall composite tanks and fiberglass piping, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves, overfill alarm, monitoring wells, sumps and Stage I and II vapor recovery equipment and piping.
TC-3464	Merritt Truax, Inc.	Installation of four double wall composite tanks and fiberglass piping, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves, overfill alarm, monitoring wells, sumps, oil/water separator and Stage I and II vapor recovery equipment and piping.
TC-3465	Merritt Truax, Inc.	Installation of four double wall composite tanks and fiberglass piping, spill containment basins, interstitial monitor, turbine leak detectors, automatic shutoff valves, overfill alarm, monitoring wells, sumps, oil/water separator and Stage I and II vapor recovery equipment and piping.
TC-3466	Truax Oil	Installation of a tank monitor and an overfill alarm.
TC-3467	Pacific Petroleum Corp.	Installation of four STI-P3 tanks with anodes, fiberglass piping, spill containment basins, tank monitor, line leak detectors, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3468	Pacific Petroleum Corp.	Installation of four STI-P3 tanks with anodes, fiberglass piping, spill containment basins, tank monitor, line leak detectors, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3469	Pacific Petroleum Corp.	Installation of fiberglass piping, spill containment basins, turbine leak detectors and automatic shutoff valves.
TC-3476	Metro Metric Automotive Service	Auto air conditioning recycling machine.
TC-3477	Atlantic Richfield Company	Installation of four double wall fiberglass tanks and piping, interstitial monitoring, turbine leak detectors,

		spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3478	Atlantic Richfield Company	Installation of four double wall fiberglass tanks and piping, interstitial monitoring, turbine leak detectors, spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3479	Atlantic Richfield Company	Installation of five double wall fiberglass tanks and piping, interstitial monitoring, turbine leak detectors, spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3480	Atlantic Richfield Company	Installation of four double wall fiberglass tanks and piping, interstitial monitoring, turbine leak detectors, spill containment basins, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3481	Heller & Sons Dist., Inc.	Installation of one STI-P3 tank and cathodic protection on three steel tanks and steel piping for four tanks, spill containment basins, tank monitor system, turbine leak detectors, automatic shutoff valves and monitoring wells.
TC-3482	Stein Oil Co., Inc.	Installation of four STI-P3 tanks and double wall fiberglass piping, spill containment basins, turbine leak detectors, automatic shutoff valves, monitoring wells and Stage I and II vapor recovery equipment and piping.
TC-3483	Old Town Chevron	Auto air conditioning recycling machine.
TC-3484	McMullin Chevrolet, Pontiac, Oldsmobile, Inc.	Auto air conditioning recycling machine.
TC-3486	Merritt #1, Inc.	Installation of three double wall composite tanks and fiberglass piping, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves, overfill alarm, monitoring wells, sumps, oil/water separator and Stage I and II vapor recovery equipment and piping.
TC-3487	Apple City Auto Body Shop	Auto air conditioning recycling machine.
TC-3489	Roselawn Seed, Inc.	Straw storage shed; mobile field sanitizer; and Free-

		man baler.
TC-3490	Dean & Kathleen Schrock	Straw storage shed.
TC-3491	Sherrill Funrue	Side-delivery wheel rake; 16 x 8 buckrake; Hesston 30 stakhand.
TC-3492	Roger Eder	Straw storage shed.
TC-3493	Guthmiller's Exxon	Installation of three fiberglass tanks and piping, spill containment basins, line leak detectors, tank monitor, automatic shutoff valves, monitoring wells, overfill alarm and Stage I and II vapor recovery equipment and piping.
TC-3494	Sheldon Oil Company	Installation of three fiberglass tanks and piping, spill containment basins, tank monitor with overfill alarm, monitoring wells and automatic shutoff valves.
TC-3495	Sheldon Oil Company	Installation of one three compartment STI-P3 tank, fiberglass piping, spill containment basins, tank monitor with overfill alarm, automatic shutoff valves and monitoring wells.
TC-3496	Alan Bowdish, Inc.	Auto air conditioning recycling machine.
TC-3498	Kirsch Family Farms, Inc.	Allen 851 hay rake; Allen 852 hay rake; New Holland 505 baler, 1984; New Holland 505 baler, 1985; Freeman balewagon; V-180 forklift with bale squeeze; straw storage shed; JD 14 flail mower; JD 945 V Ripper; and International 77 cover crop disc.
TC-3500	Sherrill A. Funrue	Rear's 30' propane flamer.

The Department further recommended that a one-year filing extension be approved for Willamette Industries, Inc., Albany, to allow the company additional time to submit application TC-2794. The filing extension would terminate on June 14, 1992.

The Department also recommended that Tax Credit Certificates 2148, 2151, and 2152 issued to Merritt Truax, Inc., Salem, be revoked because the facilities have been removed and are no longer in operation.

C. Authorization for Rulemaking Hearing: Asbestos Rule Changes to Incorporate National Emission Standards for Hazardous Air Pollutants (NESHAPS) for Asbestos

This agenda item requested authorization to hold a rulemaking hearing on proposed changes to the asbestos rules to make them as stringent as the Federal NESHAPS requirements. The proposed amendments also include housekeeping amendments to streamline and clarify the asbestos rules. The proposed rule amendments were presented in Attachment A of the staff report.

D. Authorization for Rulemaking Hearing: Authorization for Enforcement Section Staff to Represent the Department in Contested Case Hearings

This agenda item requested authorization to hold a rulemaking hearing on proposed changes to the rules for Contested Case Hearings to allow the Department's Enforcement Section staff to represent the Department in contested case hearings involving civil penalties and/or Department Orders. The Attorney General had consented to Agency lay representation through a letter dated April 29, 1991. The proposed changes will streamline the enforcement process and lower legal fees for contested case hearings while still maintaining proper representation. The proposed rule was presented in Attachment A of the staff report.

Action on Consent Items

Commissioner Whipple asked that Tax Credit Application TC 3388 be handled separately from the consent agenda.

It was MOVED by Commissioner Castle that the Consent Agenda Items A, B with the exception of TC 3388, C, and D be approved as recommended by the Department. The motion was seconded by Commissioner Lorenzen and unanimously approved.

It was MOVED by Commissioner Castle that the Department recommendation on Tax Credit Application TC 3388 be approved. The motion was seconded by Commissioner Lorenzen and approved with three votes in favor and Commissioner Whipple abstaining.

E. Proposed Adoption of Rule Amendments Relating to Charging a Fee for Yard Debris Collection

This agenda item proposed adoption of a new rule and two rule amendments as presented in Attachment A of the staff report. The new rule would allow a fee to be imposed for collection and recycling of residential yard debris and establish conditions for such a fee, including the requirement that the first unit of yard debris collected would be covered in the basic charge for garbage collection, and that the charge for any additional units be at a rate

that is less that would be charged for the same amount of material as garbage. The rule amendments would also modify reporting requirements for recycling programs and would allow used motor oil to be burned for energy recovery.

Judy Roumpf, publisher of Resource Recycling Magazine, testified that she opposed changing the proposed rule to require that yard debris collection services collect up to one unit (minimum 32 gallons per unit) of yard debris at no extra charge each collection period. She pointed out that this would mean that weekly collection programs would then be giving citizens as many as 4 to 5 cans per month of "free" yard debris service, with the cost of this service being paid for in the garbage bill. Ms. Roumpf pointed out the following possible negative effects of this system:

- Having to raise garbage rates high enough to cover this yard debris service would discourage jurisdictions from offering weekly collection service for yard debris.

- Providing the "free" service would discourage people from home-composting their yard debris. Grass clippings, weeds, and leaves are generated weekly and are easy to home compost. Hedge trimmings and other woody material that are difficult to home compost are generated in larger volumes and at less frequent intervals, and may be more appropriate to be collected monthly.

- It is inefficient for the collection service to pick up small quantities each week. It would be better to offer collection weekly, but encourage homeowners to save material and put it out for collection only when they have a full can of yard debris.

Ms. Roumpf suggested wording that the first yard debris setout per month (instead of one unit of yard debris per collection period) be collected at no extra charge.

Susan Keil, representing the City of Portland, agreed with Judy Roumpf's comments. Ms. Keil gave projections of the costs of providing "free" collection as provided under the rule, and stated that the City of Portland, which intends to start out with monthly yard debris collection next spring, would likely not move to weekly collection if it means including such high costs in the base garbage rate.

Debbie Gorham, representing the Metropolitan Service District, also agreed with the testimony of the other two witnesses. Ms. Gorham suggested that Judy's wording be modified to include a limit of 32 gallons on the one "free" setout to be provided each month.

No comments were received regarding other provisions of the proposed rule and rule amendments, other than general statements that the witnesses were in agreement with the other proposed amendments.

Stephanie Hallock, Division Administrator for the Hazardous and Solid Waste Division, gave background on the development of the proposed rule and the reasons why the Department proposed that one unit of yard debris collection service be provided at no extra charge each collection period. Ms. Hallock commented that the witnesses made some good points. Ms. Hallock also pointed out that there were many uncertainties regarding the new collection program, which is why the Department proposed the rule to "sunset" in June of 1993, so that the effects of the rule could be reevaluated at that time. She noted that the Department supported the rule as proposed. Ms. Hallock said that the Department wanted to encourage weekly collection, and that providing a free unit of collection service each collection period would better encourage persons to use a weekly program. Judy Roumpf stated that the issue was not one of weekly or monthly collection, but instead an issue of who pays for collection, and that the rule as proposed by the Department would discourage jurisdictions from allowing weekly service to be provided.

It was MOVED by Commissioner Castle that the Department recommendation be approved. The motion was seconded by Commissioner Whipple. Following discussion, the motion was tabled to allow the Department to meet with the witnesses to see if agreement concerning the language could be reached. Consideration of rule adoption was then temporarily suspended until later in the meeting.

G. Proposed Adoption of Amendments to Industrial Waste Permit Fees

This agenda item proposed adoption of modifications of the Industrial Water Quality Permit Fee Schedule to increase user fees to fund the existing industrial wastewater permitting program and program enhancements, consistent with the Governor's recommended budget. The proposed rule amendments were set forth in Attachment A of the staff report. The recommended rules were modified in response to testimony received during the public hearing process.

Commissioner Lorenzen expressed some lingering concerns about the mining industry in general. He expressed a desire to receive a report from the Department at some time in the future concerning the Department's involvement in all mining activities as they relate to coordination with other agencies, real and potential environmental impacts, staff commitment, and fee revenues.

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

The new fee schedule will not be filed with the Secretary of State until the Department's budget is passed by the legislature.

H. Proposed Adoption of Amendments to On-Site Sewage Disposal Rules on Fees and Personal Hardship Mobile Home Placement

This agenda item proposed adoption of amendments to the rules for on-site sewage disposal fees and the rules for personal hardship placement of mobile homes as presented in Attachment A of the staff report. The proposed amendments to the fee schedule increase the maximum allowable fees so as to allow the Department (and contract agents) to recover the costs for operation of the on-site sewage regulatory program. The amendment to the rule on hardship placement of mobile homes removes a requirement in the existing rule that the occupant be a family member suffering physical or mental impairment. Hearings were held on the proposed rules in Pendleton, Bend, Roseburg, and Portland. The rules taken to hearing were modified in response to testimony received during the hearing process.

Kent Ashbaker indicated to the Commission the report approached the establishment of fees from the perspective of time and associated costs for providing the services in order to provide sufficient revenues to operate the program. Commissioner Lorenzen expressed his hope that the Department's Eastern Region would benefit from the staffing decision package so that the seasonal backlog of on-site work would be kept at a minimum. Chairman Hutchison asked if there changes to the proposed rules that were taken to public hearing. Sherman Olson responded that two fees were being proposed at a higher level than originally taken to hearing based on an analysis of testimony received, and this was presented in the staff report.

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

L. Consideration of Petition to Amend Oregon's Ambient Water Quality Standard for Dioxin (TCDD) Submitted by James River II, Inc., and Boise Cascade Corporation

James River II, Inc., and Boise Cascade Corporation filed a petition on May 23, 1991, to amend Oregon's ambient water quality standard for 2,3,7,8-tetrachloro-dibenzo-p-dioxin (TCDD). Specifically, the petition proposed a standard of 2.3 parts per quadrillion (ppq) in place of the current standard of 0.013 ppq. The Commission gave notice dated May 28, 1991, that it would consider, and could act upon, this petition at the June 14 meeting. The item was listed on the agenda to be considered at 10:00 a.m.

Interested persons were given the opportunity to submit written memoranda on the petition. Memoranda submitted and made available to the Commission members for review prior to the meeting were as follows:

Item Date	Date Received	Item Description
June 2, 1991	June 4, 1991	Letter from Roger and Mary Thompson
June 4, 1991	June 7, 1991	Letter from Robert J. Thompson
June 6, 1991	June 7, 1991	Letter from Northwest Pulp and Paper Association
June 6, 1991	June 7, 1991	Letter from Oregon Salmon Commission
June 7, 1991	June 10, 1991	Letter and attachments from Greenpeace
June 7, 1991	June 11, 1991	Memorandum from the Department of Environmental Quality
June 10, 1991	June 10, 1991	Letter from Northwest Environmental Advocates
June 10, 1991	June 10, 1991	Memorandum from Sierra Club Legal Defense Fund
Undated	June 11, 1991	Letter from Environmental Protection Agency
June 11, 1991	June 12, 1991	Letter from Representative Norris
June 11, 1991	June 12, 1991	Letter form Oregon Health Division
June 11, 1991	June 13, 1991	Letter from Representative Van Leeuwen
June 14, 1991	June 13, 1991	Statement from Oregon State Public Interest Research Group

Testimony was presented to the Commission as follows:

John Gould, representing James River II, Inc., and Boise Cascade Corporation, stated that there is new science relative to TCDD that has not been considered by the Department. He specifically referred to "receptor mediation", which is new enough and significant enough to ask that the TCDD standard be reconsidered. Mr. Gould also stated that what the two companies are doing for dioxin control is not understood. He stated that changing the standard would not result in any increase in dioxin discharges. The mills were committed to installing the best technology known to reduce dioxin. The change in the standard would

simply eliminate potential penalties for the mills. If the currently proposed technology does not meet the standard, the mills would have to scrap their existing mills and start over. Mr. Gould expressed concern about the anti-backsliding provision required by EPA which could prevent modification of the limit in their permit if the standard was changed later as a result of EPA review. In response to a question from the Commission, he indicated that the technology the mills had committed to install would come close to meeting the existing standard.

Dr. Russel Keenan, representing James River II, Inc., and Boise Cascade Corporation, summarized technical information from the documents supporting the mills petition on the receptor mediated model as compared to the threshhold model used by EPA.

Donald L. Kallberg, representing the City of St. Helens, recommended granting the petition. He stated that the mills will install the facilities.

John Gorley, representing the United Paper Workers International Union, Local 1097, Wauna, Oregon, stated that the workers want a clean environment and that a standard is unreasonable if you can't measure it. He urged that the number be raised.

Billy Taylor, representing the United Paper Workers International Union, Local 1097, Wauna, Oregon, urged that the petition be granted, noting that it doesn't make sense to require James River to spend money for controls when EPA Administrator Reilly has initiated review of the standard.

Linda Res, representing Association of Western Pulp and Paper Workers, Local 1, supported the petition.

Tom Donaca, representing Associated Oregon Industries, urged that the petition be granted. He noted that no one commented on the dioxin standard when it was adopted. He also felt EPA was being inconsistent when it recommends denial of the petition but advocated review of the criteria. He also expressed concern about the potential application of the anti-backsliding provision.

Kenneth Brooks, representing the U. S. Environmental Protection Agency, noted the letter from EPA and recommended that the petition be denied. EPA's position is that the mills should move ahead to implement the existing standard.

Greg deBruler, representing Columbia River Defense Project and Columbia River United, urged that the petition be denied. He urged that the Commission not increase the risk level.

Nina Bell, representing Northwest Environmental Advocates, argued that it is premature to consider the petition because there is not enough data.

Larry Edelman, Assistant Attorney General, Oregon Department of Justice, commented on the anti-backsliding issue. Anti-backsliding applies when technology based or water quality based limits are achieved. The Department believes that if the standard is changed, the permit numbers can be adjusted.

Lydia Taylor, Neil Mullane, and Gene Foster, Department of Environmental Quality, Water Quality Division, responded to questions. Gene Foster noted that the Department had previously reviewed all of the information cited by the petitioners. He noted that some of the information would result in offsetting changes. Finally, he noted that the Department concluded, after review of the information, that the 0.013 ppq standard was still appropriate.

It was MOVED by Commissioner Castle that the petition to initiate modification of the TCDD standard be denied as recommended by the Department. The motion was seconded by Commissioner Lorenzen. The Commission then discussed the motion.

Commissioner Castle stated his view that, both on institutional as well as technical grounds, it would be a mistake to grant the petition. On institutional grounds, the Commission would be sending confusing signals to the entire regulated community, as well as to the entire community of concern. He noted that uncertainty surrounds the whole issue, and any change now could be short lived as new information becomes available. He noted that industry likes firm guideposts, and that approval of the petition would signal ambivalence on the part of the Commission.

On technical grounds, Dr. Castle noted that it is very premature to be changing the existing standard. He viewed the information before the Commission as consensus, at least among some of the leading scientists, that a different theoretical way of looking at this problem should be used. But, as the testimony brought out, it is quite clear that there is not consensus among the scientific community with respect to the risk implications of this different theoretical approach.

Commissioner Lorenzen agreed with the statements made by Commissioner Castle. He indicated his concern about the Department's ability and resources to analyze this particularly complex question. The Environmental Protection Agency, which is the agency the Commission has followed in establishing the existing criterion, states that it may take one to two years to evaluate the new data that is coming in and to do it in a comprehensive manner and to evaluate revision of the dioxin standard. He questioned how the Department would have the resources to engage in such a comprehensive review. Failing such resources, any conclusion by the Commission would be based upon an inadequate foundation.

Commissioner Whipple generally agreed with the reasons presented by Commissioner Castle and Commissioner Lorenzen. She specifically noted significant testimony received about economic impacts and the feeling that the decision of the Commission may cost people jobs.

She stated that she was not sure that would in fact be the case. She noted the long term commitment by these mills to improve the water quality where they are presently located seems to already have been made. There is definitely a concern about whether they can attain 0.013, and that is a valid concern. On the other hand, the case was not made that they would pull out if the standard was not changed. She also noted a concern with the position of the environmental community that since the standard is there, it shouldn't be changed. She stated that there has to be some recognition that science does make a difference. It is possible that scientific studies will be able to show that there are levels at which there are not risks, but that information does not appear to be available now. She expected work on dioxin to continue, and that a decision today to deny this particular application will not stop that work, and will not prevent consideration of new data later.

Chair Hutchison stated that he was not persuaded that the public interest would be served by granting this petition. He noted that the Commission wasn't here today to actually draw a conclusion on whether or not the standard should be changed, but rather to make a decision about whether to initiate a rulemaking process. He was satisfied that the state process to date had integrity. He was also persuaded that the state process must work in tandem with the Federal guidance process. He was not persuaded that we can safely embrace the new science, which is still developing. As a matter of policy, he stated that the Commission must come down on the more conservative side when it comes to environmental expenditures. For the sake of consistency and predictability, he through the state was best served by moving cautiously in this area. He noted that Gene Foster's testimony was particularly persuasive on some of the questions that have been presented today. Finally, he noted that the other Commissioners had expressed their sensitivity to the need to try to strike a balance. He hoped that those who have appeared in support of the petition would appreciate that the Commission was sensitive to the economic consequences of this decision. The economics of the environment run both ways. As all have learned from the superfund program, what may seem to be pound wise at one point can turn out to be very pound foolish later. Therefore, he felt it appropriate for the Commission to adhere to the existing standard.

The motion to deny the petition to initiate modification of the TCDD standard was unanimously approved.

E. (Continued)

The Commission re-opened consideration of the proposed rule recommended for adoption in Agenda Item E. Stephanie Hallock reported that agreement had been reached, and that new wording was being proposed. The new wording would require that up to one setout per month would be collected at no extra charge. The size of the "free" setout would be 32 gallons or the standard unit of yard debris collection service provided, whichever is greater. For weekly programs, the first setout per month would be "free" regardless of which week

the yard debris was set out. Ms. Hallock said that this wording satisfied the three persons who gave testimony, and also should satisfy the concern earlier expressed by collectors that the originally-proposed rule (32 gallons "free" per month) would be difficult for collectors providing weekly programs to administer. As originally proposed, collectors offering weekly service might have to keep a running total of the amount of yard debris recycled to see when the 32 gallon limit was exceeded.

As a substitute for his earlier motion, it was MOVED by Commissioner Castle that the Department recommendation on Agenda Item E, with the amendments proposed by Ms. Hallock, be approved. The motion was seconded by Commissioner Whipple and unanimously approved.

I. Approval of Tualatin River Watershed Nonpoint Source Pollution Management Plan for Agricultural and Forestry Sources

This agenda item proposed that the Commission approve the Oregon Department of Forestry (ODF) Watershed Management Plan for the forest land uses in the Tualatin Basin and adopt the ODF compliance schedule for the implementation of the plan as presented in Attachment A-1 of the staff report. The agenda item further proposed that the Commission approve, for a period of one year, the Oregon Department of Agriculture (ODA) Watershed Management Plan for the agricultural land uses in the Tualatin Basin with recommend staff revisions, and adopt the ODA compliance schedule for the implementation of the plan as presented in Attachment B-1 of the staff report.

Don Yon and Andy Schaedel of the Water Quality Staff presented the recommendations. Approval of the Agriculture Plan for one year will allow a voluntary compliance program for nutrient/erosion control to be implemented. If the Department determines on March 1, 1992 that voluntary compliance is not effective, the EQC would need to re-approve or modify the current Agriculture Plan. The EQC in June, 1992 could also change the Agriculture Designated Management Agency from the Oregon Department of Agriculture (ODA) to the Counties within the Tualatin Basin who would implement and enforce a mandatory compliance program, if voluntary compliance is ineffective. ODA stated that they would begin working with the Basin Counties to develop a mandatory nutrient/erosion control program.

John Mellott, of the Oregon Department of Agriculture, expressed the view that the Agriculture plan is workable. He requested that the evaluation date for the voluntary effort be changed from March 1 to June 1, 1992.

The Commission asked ODA to reconsider their role in water quality management on agriculture lands in Oregon. The Commission strongly recommended that ODA change their

current position of not having the authority to regulate agricultural practices to meet water quality standards. Otherwise, the counties of the Tualatin River Basin and possibly the whole state would be asked to assume this role. ODA is the logical state agency to regulate agricultural practices and assume a leadership role.

It was MOVED by Commissioner Lorenzen that the Department recommendation, with the evaluation date for Agriculture modified from March 1 to June 1, 1992, be approved. The motion was seconded by Commissioner Castle and unanimously approved.

M. Status Report on Stipulation and Final Order for the City of Portland Regarding Combined Sewer Overflows

Barbara Burton, of the Water Quality Division, summarized the status of the proposed stipulation and final order. At the telephone conference in mid May, the Commission gave the Department direction to send the draft order to the City of Portland for their consideration. The City has responded with suggestions for changes. The Department has reviewed the City response, and rejected most of the suggested changes, but did agree to changes that would not hold the City accountable for dates if the Department was late in providing its review responses. The staff provided a copy of the last draft of the order and a cover memo dated May 24, 1991. This was the draft sent to the City. The Department also circulated a marked up draft that reflects changes proposed since the May 24, 1991 draft.

Ms. Burton noted that since the last telephone conference, there have been a number of meetings with the City, and the City has met with the third party litigants. Letters have been received from the City and Northwest Environmental Advocates (NEA). The NEA letter indicates progress is being made and further progress is expected, and included a copy of a proposed settlement. The letter from the City suggests less progress, and that the positions are getting further apart, and requested that the Commission proceed with the order. The City has also proposed a list of interim measures as requested by the Commission. The list is attached to the marked up draft of the order.

In response to questions from the Commission, Lydia Taylor noted that the City will implement the interim measures system wide that prove successful in the pilot testing process. Commissioner Lorenzen expressed the view that the process works best if the issue stays in the limelight. He noted that the list of interim measures does not seem very satisfying, and questioned if this should come back to the Commission on a regular reporting basis to keep it in the public eye. Director Hansen indicated that it would be possible to report to the Commission on a frequent basis.

Ms. Burton noted that the City has agreed to assume responsibility for issuing press releases when overflow events occur during the summer. They will also look at posting notices at

boat ramps and other high use area. Ms. Burton also noted that the City has suggested that a number of dates in the draft permit and order be extended because the dates that seemed reasonable three months ago when the documents were first drafted are perhaps not reasonable today and will not be reasonable when the order if finally issued.

Ms. Burton recommended that the Commission authorize issuance of the order as presented in the marked up draft.

Commissioner Lorenzen expressed some frustration that work on Combined Sewer Overflows had not begun earlier. Chair Hutchison expressed concern about the 20 year implementation time frame of the order. He also noted that the order provides for Department or Commission approval at different points, and thought it should state Department and Commission to keep the Commission continuously involved. He also suggested that paragraph 17 (renumbered 19) be modified to require reports to the Department and Commission.

Chair Hutchison expressed his preference to see the order redrafted to shift the burden to require implementation of interim measures unless they are proven ineffective. He wanted more rapid implementation. He also wanted the Commission plugged into the process more formally for approvals. He asked the parties to comment on these issues.

Mary Nolan, Director of Environmental Services for the City of Portland, stated that there is no issue of whether to correct the CSO problem in Portland -- the only debate is on how to do it and what is physically possible. The City is already undertaking some measures to minimize and monitor the problem. They would like to get on with the development and implementation of the long term solution. They have recommended that the City Council agree in principal with an order similar to the Department proposal. They are looking for ways to accelerate the program. The order and permit will allow them to get on with the program.

Commissioner Lorenzen asked how the order will play into the litigation. Jan Betts, of the City Attorney's office indicated that the order will play a role in potential litigation strategy. She noted that the discussion on interim measures is part of settlement discussions and is not part of the law suit. Director Hansen noted that the order will be used, and will benefit the City, and that no action on the order benefits the litigants. He stated that the Department and Commission owe it to the public to make the best judgement as the regulatory agency without regard to who it benefits.

Pat Parenteau and Nina Bell, representing Northwest Environmental Advocates, questioned if everything possible is being done to correct the problem. They believe interim controls are available that don't need study and that can reduce the impact of overflows. The also believe the Clean Water Act contains both technology and water quality requirements.

Finally, they believe the problem can be corrected in less than 20 years, but the Facility Plan will determine that. Ms. Bell stated their concern that some mechanism needs to be available to hold the City's feet to the fire, even if the City Council and the Environmental Quality Commission and the Department staff change.

Chair Hutchison suggested that the Facility Plan should speak to the potential for 10, 15, and 20 year strategies for eliminating the combined sewer overflow problem as soon as practicable.

Director Hansen stated that the Department understood the sense of the Commission and would go back and take another look at interim measures, and the opportunities for faster implementation, and report back.

Public Forum (continued)

Alvin Thompson, Mayor of Butte Falls, appeared to ask the Commission to grant the City some relief from paying increased permit fee. He noted that the town has 378 people, and half are retired. The increased annual permit compliance fee is a hardship on the City, which is facing ballot measure 5 budget cuts. Chair Hutchison advised that the Commission was sympathetic to the City's problem and would look into it.

At this point, Commissioner Castle left the meeting.

J. Request by the City of Athena for an Exception to the Dilution Requirement in the Minimum Design Criteria for Sewage Treatment Plants [OAR 340-41-655(1)(c)]

This agenda item recommended that the Commission approve a request by the City of Athena for an exception to the dilution requirement specified in the Umatilla Basin Minim Design Criteria for Treatment and Control of Wastes [OAR 340-41-655(1)(c)]. The exception would allow the City to discharge treated municipal wastewater into Wildhorse Creek during winter time periods of relative low stream flow. The Department also proposed that the City be required to monitor the treatment plant and stream flows during the life of the permit. The Department concluded that a 5 to 1 dilution ratio during the winter months would protect beneficial uses. The City has upgraded its facilities to eliminate discharge during the summer low stream flow months.

Fred Hansen introduced Dick Nichols and Mike Wiltsey to the Commission. Dick Nichols showed slides of the City of Athena's upgraded municipal wastewater facilities and of Wildhorse Creek, the receiving stream for the City's treated effluent. Mr. Nichols summarized the history of the City's sewerage facilities and briefed the Commission on the background of the Department's Minimum Design Criteria for Treatment and Control of

Wastes as it relates to wastewater dilution. Mr. Nichols also spoke on the work the Municipal Projects Section did to determine the impact of the 5 to 1 dilution exception.

Chair Hutchison asked if the Commission had authority to grant such an exception. Mr. Nichols responded that it is allowed by rule.

Mike Wiltsey spoke on the water quality data collected and the analyses performed for the Athena project and the ongoing work the Municipal Projects Section will be doing to assess the water quality impacts on streams which receive treated municipal wastewater effluent.

It was MOVED by Commissioner Lorenzen that the Department recommendation be approved. The motion was seconded by Commissioner Whipple and approved with three yes votes.

K. Approval of Waste Load Increase for the City of Lebanon

This agenda item recommended that the Commission approve an increase in the permitted discharge waste load for the City of Lebanon pursuant to OAR 340-41-026(2). The approved increase would allow the City to fully utilize the design capacity of its treatment plant without violating the mass-based effluent limitations of its permit. The Department concluded that the proposed increase would not impair beneficial uses or violate water quality standards of the South Santiam River. The proposed increase would correct an apparent error which based limits on a facility design flow of 2.5 mgd rather than the approved design flow of 3.0 mgd. No public comment was received by the Department during the comment period on the proposal.

It was MOVED by Commissioner Whipple that the Department recommendation be approved. The motion was seconded by Commissioner Lorenzen and approved with three yes votes.

N. Commission Member Reports

No Commission member reports were given.

O. Director's Report

Director Hansen reported to the Commission on the following items:

1. The Department is in day 27 before the Ways and Means Committee.

2. SB 66, the recycling bill, is on its way.

3. The water quality related language in the Forestry Bill that was previously discussed appears to be holding. Other issues may bog down the bill.

4. The enforcement bill, SB 184, passed out of the senate, then passed out of the house committee and was referred to the Judiciary committee where it appears to be dead.

5. Director Hansen testified before the Senate subcommittee on the Environment on RCRA Reauthorization. He represented the state/EPA subcommittee he chairs. The hearing focused on solid waste reduction - national goals, recycling standards, federal procurement policy, and state solid waste capacity.

6. The Department received a good response to the recycling/solid waste grant program. $250,000 is available. Eight applications were received for solid waste planning grants, 5 applications for Demonstration Recycling grants, and 18 applications for recycling grants. The total request is for $1,227,838. The awards will be announced by the end of June.

7. The household hazardous waste collection day at The Dalles had a good response.

8. Chuck Donaldson, the new Solid Waste Section Manager, and Pat Vernon, the new Waste Reduction Section Manager were introduced.

There was no further business and the meeting was adjourned at about 4:25 p.m.

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: July 09, 1991

TO: Environmental Quality Commission

FROM: Fred Hansen, Director

SUBJECT: Special EQC meetings to meet Clean Air Act Requirements

As you know the Clean Air Act Amendments which became effective on November 15, 1990 place substantial new requirements on states within relatively short time frames. The Department has successfully met the first deadlines in the Act by submitting a list of nonattainment areas and their boundaries by March 15, 1991 and submitting revised volatile organic compound rules by May 15, 1991.

The next major milestone we face is to submit PM10 SIP control strategies for five nonattainment areas in the state as well as associated amendments to industrial rules by November 15, 1991. Numerous industrial rule amendments are contemplated which are mostly housekeeping in nature and include new source review, emission trading, Grants Pass-Medford industrial, PSD increments and hardboard plants. The slash smoke management plan will also need to be revised to address PM 10. While the EQC has adopted PM10 SIP's under the old Clean Air Act requirements, 1990 amendments necessitate some changes to these plans including the addition of contingency measures that must be automatically implemented to further reduce emissions if the attainment deadline of December 31, 1994 is not met. There will likely be some controversy about the provisions of these contingency plans.

The final PM10 SIP control strategies are dependent on EPA guidance which has just come out in the last couple of months, completion of negotiations with the Department of Forestry on special slash smoke protection for PM10 nonattainment areas and final state legislation which will significantly affect our woodstove strategies. With all these requirements and constraints we cannot meet the November 15, 1991 submittal date by following the normal EQC schedule which would have hearing authorization at the July meeting and adoption at the October meeting.

Staff will need the maximum amount of time to prepare needed material in order to meet the Clean Air Act deadline. I would therefore propose that the EQC hold a special phone conference hearing authorization on August 15 or 22 (22 preference) and a special meeting for adoption on November 8 possibly in the Medford area. While hearings will be held prior to the adoption

date we expect that there will be individuals that will want to provide further direct comment to the Commission based on how the Department is proposing to address hearings comments. November 15 should be held for a telephone conference in case any issues scheduled for adoption on the 8th need to be revised or further considered between the 8th and the November 15 Clean Air Act deadline.

We are trying to get the public, industry and local governments to meet Clean Air Act requirements and deadlines and it would not be a good example, as you realize, for us to miss our own deadlines.

I believe there will be substantial material on the various plans and rules that would warrant special dedicated meetings. Please advise as to whether it would be feasible to arrange the meeting schedules as proposed or if alternative dates are better.

JFK:a
LTR\AH14243

Oregon

ENVIRONMENTAL
QUALITY
COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: July 24, 1991
Agenda Item: Special Item
Division: Water Quality
Section: Municipal Wastewater

SUBJECT:

Approval of the Proposed City of Portland Stipulation and Final Order on Combined Sewer Overflows

PURPOSE:

To review and approve the Stipulation and Final Order for the City of Portland.

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
_X_ Approve a Stipulated Order
___ Enter an Order
Proposed Order — Attachment 1

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

___ Approve Department Recommendation

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

DESCRIPTION OF REQUESTED ACTION:

The City of Portland owns and operates a sewage collection and treatment system. In addition to the treatment plant discharge, the City has 56 overflow points within the sewer system where discharges occur when it rains. The Department is proposing to issue a permit and accompanying Stipulation and Final Order to eliminate the water quality violations that may occur during overflow discharges.

The Stipulation and Final Order is for the combined sewer overflows (CSO's) only, and includes discharge limitations to be met, a detailed compliance schedule, and stipulated penalties if the City fails to meet the requirements of the Order. The content of the Order has been discussed by the Commission at the April 25 and June 14, 1991 Commission meetings. In addition, the Order was discussed at teleconference calls by the Commission on May 7, May 21, and June 25, 1991.

The attached Order includes the changes suggested by individual Commission members on June 25. These changes have been reviewed and accepted by the City, and the entire Order reviewed and approved by the Oregon Attorney General's office. The changes made are described in the memo that accompanies the Order in Attachment 1 to this report.

The Commission requested a fuller discussion of those interim control measures that are to be included with the Order. The Department's recommendations for initial interim control measures are included with the Order attached to this report. Department staff will be making a presentation at the Commission meeting that will include the evaluation process used in reviewing potential interim control measures. The interim control measures evaluated by the Department included those measures that were known to staff, those known to EPA, those suggested by the City, and those suggested by members of the public or litigants.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
___ Statutory Authority: _____ Attachment ___
_X_ Pursuant to Rule: OAR 340-45-062 Attachment 2
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints: (explain)

There are no statutory deadlines for this action. However, the purpose of the Order and accompanying permit is to compel certain actions in an orderly manner. Without the permit and Order, the City is not required to move forward.

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The discharges from the Combined Sewer Overflows have a significant impact on water quality and beneficial uses in the Willamette River and the Columbia Slough. In addition to the impact on water quality, controlling the overflows will require a significant expenditure of public monies, possibly as much as $1 billion.

PROGRAM CONSIDERATIONS:

This action is required to carry out the Department's responsibilities in the National Pollutant Discharge Elimination System (NPDES) permit program.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Issue the Order without any initial interim control measures.

2. Issue the Order with the ten proposed interim control or monitoring measures.

3. Issue the Order with the interim control measures proposed plus require more flushing, monitoring, and street sweeping.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the attached ten interim control or monitoring measures be approved by the Commission. These proposed control measures include a number of pilot projects for the more promising types of control measures, that may be applied to larger areas of the City based on evaluation of the test results. The additional monitoring proposed is directed towards detecting dry weather overflows.

Other parties have suggested that additional interim control measures be required at this time. The Department disagrees. There is very limited information available at this time to responsibly assess either the effectiveness of various possible interim control measures, nor the likely impact of these measures on either water quality or affected beneficial uses for the Portland CSO's. Mitigating the discharges from CSO's is a relatively recent development in this country. The City, the Department, and the Commission will be in a much better position to evaluate further appropriate interim control measures when the interim control measures study is completed in December, 1992. More information may also be available from other projects in other parts of the country.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

This action is consistent with the Department's responsibilities in protecting water quality and beneficial uses, and requiring that all point source dischargers operate in compliance with applicable state and federal laws.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should the Commission approve the proposed Order?

2 Should the Commission require further changes in the Order?

INTENDED FOLLOWUP ACTIONS:

If approved by the Commission, the Department will forward to the City a copy of the Order for signing. Upon return of the signed Order, and upon signing by the Commission, the Department intends to issue the National Pollutant Discharge Elimination System (NPDES) permit to the City.

Approved:

Section: Barbara A. Burton

Division: Neil Mullane for Lydia Taylor

Director: Fred Hansen

Report Prepared By: Barbara Burton

Phone: 229-6099

Date Prepared: July 16, 1991

BAB:crw
MW\WC8\WC8665
July 16, 1991

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: July 16, 1991

TO: Environmental Quality Commission

FROM: Barbara Burton

SUBJECT: Description of Proposed Changes in Portland's Order

Several changes have been included in the attached proposed Order, based on requests made by individual Commission members at the June 25 teleconference. Proposed new language is underlined and in bold; material to be deleted is in brackets with a line through the text. The City of Portland has reviewed this proposed Order and had no comments. Larry Edelman of the Attorney General's office reviewed and had no suggestions other than changing all dates that are expected to happen prior to the Order being finalized. The proposed changes are briefly identified below:

Page 4 line 23; page 2 lines 1 and 4 in Attachment 1; and page 4 line 1 in Attachment 1 - all August 1, 1991 dates in Order were changed to September 1, 1991.

Page 5, lines 15 through 18 - this change was requested by Commissioner Castle, and requires that the City demonstrate that the chosen alternatives for controlling CSO discharges are the lowest cost alternatives.

Page 7, lines 10 through 13 - this additional language was requested by Commissioner Lorenzen and Chairman Hutchison. It requires that the Commission determine the interim control measures required after the interim control measures study is received in December, 1992.

Page 9, line 13 - this change was requested by Chairman Hutchison. It makes clear that the annual progress report submitted by the City will be for the purpose of review.

Page 11, lines 4 through 9 - this language change was requested by Commissioner Lorenzen and Chairman Hutchison. It makes clear that the twenty year compliance time frame is a firm commitment on the part of the City.

Page 12, line 19 - this concept was requested by Chairman Hutchison. It emphasizes that during the review of the facilities plan, alternate discharge limitations will also be considered (i.e., limiting discharges to a one in one year storm event rather than a one in five year storm event as specified in the Order could be considered).

Page 1, lines 9 through 13, Attachment 1 - this was deleted since the report has been submitted.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, OF THE STATE OF OREGON, Department, v. CITY OF PORTLAND, Respondent.	STIPULATION AND FINAL ORDER No. WQ-NWR-91-75 MULTNOMAH COUNTY

WHEREAS:

1. On _____, 1991, the Department of Environmental Quality (Department or DEQ) issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 3881-J (Permit) to the City of Portland (Respondent), pursuant to Oregon Revised Statutes (ORS) 468.740 and the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, as amended. The Permit authorizes the Respondent to construct, install, modify or operate waste water treatment control and disposal facilities (facilities) and discharge adequately treated waste waters into the Columbia River and Willamette River, waters of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expires on _____, 1996.

2. Respondent's sewage collection system is comprised in part of combined sewers designed to collect both sanitary sewage and storm runoff water. The combined sewer system is designed and intended to collect and transport all sanitary sewage to Respondent's sewage treatment plant during periods of dry weather;

however, during some periods of wet weather, the combined sanitary sewage and storm runoff entering the system exceeds the system's capacity to collect and transport sewage to the sewage treatment plant. At such times, the excess combined sanitary sewage and storm runoff are discharged through Combined Sewer Overflows directly to the Willamette River and Columbia Slough, waters of the state, without treatment. Respondent's system includes 54 Combined Sewer Overflows. In addition, Respondent owns and operates sewage pump stations, one of which, the Ankeny Pump Station, may not be capable of pumping all incoming combined sanitary sewage and storm runoff during periods of wet weather. At such times, combined sanitary sewage and storm runoff are discharged from the Ankeny Pump Station directly to the Willamette River without treatment. The discharges of combined sanitary sewage and storm runoff from the Combined Sewer Overflows and the Ankeny Pump Station (Discharges) may cause violations of Oregon's water quality standards for Fecal Coliform bacteria and possibly other parameters in the Columbia Slough and the Willamette River.

3. Respondent's prior NPDES permit, issued on September 18, 1984, did not expressly identify the combined sewer overflow discharge points that are part of the sewer system. Prior to the development of the Department's final draft 'Oregon Strategy for Regulating Combined Sewer Overflows (CSOs)' on February 28, 1991, as a matter of policy the Department did not always list CSO discharge points in an NPDES permit but, in many instances, issued permits for an entire sewer system. EPA's Region 10 office approved the

issuance of such permits. Respondent's 1984 NPDES permit is a permit for the sewer system, which includes CSO outfalls, but did not contain specific effluent limitations for CSOs.

4. Since the adoption of water quality standards for the Willamette Basin (included in Oregon Administrative Rules 340-41-445) by the Environmental Quality Commission in 1976, Respondent has discharged combined sanitary sewage and storm runoff and may have caused violations of water quality standards. These water quality standards include limitations on visible solids and floatable material.

5. DEQ and the Respondent recognize that until new or modified facilities are constructed and put into full operation, Respondent may cause violations of the water quality standards at times.

6. Respondent presently is conducting or preparing to conduct studies and facilities planning in order to determine the quantity and quality of combined sanitary sewage and storm runoff discharged from its sewage system, and to determine appropriate methods and time schedules to eliminate violations of water quality standards.

7. The Department and Respondent recognize that the Environmental Quality Commission (Commission) has the power to impose a civil penalty and to issue an abatement order for violations of water quality standards. Therefore, pursuant to ORS 183.415(5), the Department and Respondent wish to settle those possible past violations referred to in Paragraph 4 and to limit

and resolve the future violations referred to in Paragraph 5 in advance by this Stipulation and Final Order. In light of the recent development of EPA and Departmental strategy and policy governing permitting and evaluation of CSO impacts on water quality, imposition of a civil penalty at this time is not deemed appropriate by the Department.

8. This Stipulation and Final Order is not intended to limit, in any way, the Department's right to proceed against Respondent in any forum for any past or future violations not expressly settled herein.

NOW THEREFORE, it is stipulated and agreed that:

9. The Commission hereby issues a final order:

a. Requiring the Respondent to eliminate all Discharges that violate applicable water quality standards from November 1 through April 30 except during storms greater than or equal to a storm with a five year return frequency and to eliminate all Discharges that violate applicable water quality standards from May 1 through October 31 except during storms greater than or equal to a storm with a ten year return frequency, as soon as reasonably practicable, but no later than the following schedule:

(1) By no later than **September** [August] 1, 1991, the Respondent shall submit to the Department a draft scope of study for the facilities plan. The scope of study shall include an outline of the final facilities plan content, and sufficient detail on how the necessary information is to be obtained to complete the

facilities plan. The facilities plan shall, at a minimum, include a characterization of the Discharges including volume, times of discharge, and bacterial and chemical content; alternatives for eliminating water quality violations attributable to CSO's; the environmental and other impacts of the alternatives evaluated; the estimated cost of the alternatives; an evaluation of the impact of the CSO control alternatives on the Columbia Blvd. wastewater treatment plant; if the CSO alternatives will cause permit violations at the treatment plant, an evaluation of alternatives to expand or upgrade the treatment plant so as to maintain compliance with existing discharge standards; recommended control alternatives including any required plant upgrades that will result in compliance with water quality standards for the CSO discharges and compliance with the existing treatment plant discharge standards; a detailed implementation schedule for completing the recommended actions; **a detailed demonstration that the recommended actions are the least cost/environmentally sound alternatives that will achieve the discharge limitations specified in this order;** and a mechanism for financing the recommended improvements. The facilities plan shall include detailed implementation plans and financing plans for attaining compliance with applicable water quality standards at all CSO's alternatively: (1) for attaining compliance at all CSO's by December 1, 2006; and (2) for attaining compliance at all CSO's by December 1, 2011;

(2) By no later than October 1, 1991, the Respondent shall submit to the Department a draft scope of study for

an interim control measures study. The interim control measures study shall include a brief narrative description of each control measure; which CSO's would be affected by each control measure; the estimated impact of each control measure on quantity, quality, and timing of discharge; the estimated impact of each control measure on beneficial uses; the estimated capital cost and annual operation and maintenance cost for each control measure; and the estimated time needed to install or initiate each control measure. The interim control measures to be evaluated and included in the interim control measures study shall include but are not limited to the following: screens and other technologies for removing large solids and floatables; maximization of in-line storage including passive and automatic regulators; removal of new and/or existing roof drain connections from the sewer system; increased line flushing including an evaluation of timing and location of flushing activities; increased street sweeping; the review and modification of pretreatment program; and increased cleaning of catch basins;

(3) Within thirty (30) days of receiving written comments from the Department, the Respondent shall submit to the Department final approvable scopes of study for interim control measures study and the facilities plan;

(4) By no later than December 31, 1992, the Respondent shall submit the portion of the facilities plan that characterizes Combined Sewer Overflows;

(5) By no later than December 31, 1992, the Respondent shall submit the draft interim control measures study to

be used by the Department and the Commission to determine appropriate and reasonably practicable interim control measures to reduce water quality impacts until such time as final compliance is attained.

(6) Within thirty (30) days of receiving written comments from the Department, the Respondent shall submit to the Department and the Commission the final interim control measures study that is approvable by the Department as to content and completeness;

(7) Upon submission of the final interim control measures study, the Commission, upon recommendation of the Department, shall establish the required interim control measures and the schedule for their implementation;

(8) By no later than July 1, 1993, the Respondent shall submit a draft facilities plan to the Department;

(9) Within six months of receiving written comments from the Department, the Respondent shall submit to the Department a final facilities plan that is approvable by the Department as to content and completeness. The Department will review the facilities plan and prepare recommendations to the Commission for CSO control strategies and schedules for implementing them. Final approval of the control strategies and schedules to eliminate applicable water quality standards violations attributable to CSO's will be by the Commission;

(10) By no later than October 1, 1996, the

Respondent shall remove all large solids and floatables from discharges to the Columbia Slough;

(11) By no later than December 1, 1997, the Respondent shall submit final engineering plans and specifications for construction work required to comply with Section 9(a)(13);

(12) By no later than May 1, 1998, the Respondent shall begin construction required to comply with Section 9(a)(13);

(13) By no later than December 1, 2001, the Respondent shall eliminate discharges that violate applicable water quality standards, subject to the storm return frequencies specified in Paragraph 9(a) of this Order, at 20 of the CSO discharge points, including all discharges to Columbia Slough, consistent with the facilities plan approved by the Commission;

(14) By no later than December 1, 2001 the Respondent shall submit final engineering plans and specifications for construction work required to comply with Section 9(a)(16);

(15) By no later than May 1, 2003 the Respondent shall begin construction required to comply with Section 9(a)(16);

(16) By no later than December 1, 2006 the respondent shall eliminate discharges that violate applicable water quality standards, subject to the storm return frequencies specified in Paragraph 9(a) of this Order, at 16 of the remaining CSO discharge points, consistent with the facilities plan approved by the Commission;

(17) By no later than December 1, 2006 the

Respondent shall submit engineering plans and specifications for construction work required to comply with Section 9(a)(19);

(18) By no later than May 1, 2008, the Respondent shall begin construction required to comply with Section 9(a)(19);

(19) By no later than December 1, 2011, the Respondent shall eliminate discharges that violate applicable water quality standards, subject to the storm return frequencies specified in Paragraph 9(a) of this Order, at all remaining CSO discharge points, consistent with the facilities plan approved by the Commission;

(20) By no later than September 1 of each year that this Order is in effect, the Respondent shall submit to the Department and to the Commission for review an annual progress report on efforts to minimize and eliminate discharges that violate water quality standards. These annual reports shall include at a minimum work completed in the previous fiscal year and work scheduled to be completed in the current fiscal year.

b. Requiring Respondent to implement the interim control measures as specified in Attachment 1 to this Order;

c. Requiring Respondent to comply with all the terms, schedules and conditions of the Permit, except those modified by Paragraph 9(a) above, or of any other NPDES waste discharge permit or modified permit issued to Respondent while this Order is in effect.

d. Requiring Respondent to demonstrate that each discharge is in compliance with applicable water quality standards,

by a means approved by the Department, within twelve months of the scheduled date when compliance is required in this Order. (Nothing in this paragraph shall prevent the Department from enforcing this Order during the twelve month demonstration period.)

e. Requiring Respondent to identify each discharge that is converted to a storm sewer discharge only.

f. Requiring Respondent, in the event that Respondent chooses to retain a Discharge with any connected sanitary wastes, to apply for a modification of Respondent's permit requesting a waste load increase and appropriately sized mixing zone. (Nothing in this paragraph shall affect the Department's or the Commission's discretion over granting such a request.)

g. Requiring Respondent, upon receipt of a written notice from the Department for any violations of the Stipulation and Final Order, to pay the following civil penalties:

(i) $1,000 for each day of each violation of each provision of the compliance schedules set forth in Paragraph 9(a) and Attachment 1.

(ii) $2,500 per outfall per day for each CSO outfall for which Respondent fails to demonstrate compliance with applicable water quality standards as specified in 9(d). Discharges that are listed and regulated in Respondent's Permit as may be allowed in 9(f) shall not be subject to stipulated civil penalties under the terms of this Order.

10. [~~If any event occurs that is beyond Respondent's reasonable control and that causes or may cause a delay or deviation in performance of the requirements of this Stipulation and Final Order~~] **Respondent agrees that the dates specified in Paragraph 9 above are firm commitments for the maximum time required for the completion of each task subject only to extraordinary events beyond Respondent's reasonable control which causes or may cause a delay or deviation in performance of the requirements of this Stipulation and Final Order. In the event of such an extraordinary event,** Respondent shall immediately notify the Department verbally of the cause of delay or deviation and its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Respondent proposes to carry out such measures. Respondent shall confirm in writing this information within five (5) working days of the onset of the event. It is Respondent's responsibility in the written notification to demonstrate to the Department's satisfaction that the delay or deviation has been or will be caused by circumstances beyond the control and despite due diligence of Respondent. If Respondent so demonstrates, the Department shall extend times of performance of related activities under the Stipulation and Final Order as appropriate. Circumstances or events beyond Respondent's control include, but are not limited to, acts of nature, unforeseen strikes, work stoppages, fires, explosion, riot, sabotage, or war. Increased cost of performance or consultant's failure to provide

timely reports shall not be considered circumstances beyond Respondent's control.

11. Regarding the violations set forth in Paragraph 4 and 5 above, which are expressly settled herein without penalty, Respondent and the Department hereby waive any and all of their rights to any and all notices, hearing, judicial review, and to service of a copy of the final order herein. The Department reserves the right to enforce this order through appropriate administrative and judicial proceedings.

12. Regarding the schedule set forth in Paragraph 9(a) above, Respondent acknowledges that Respondent is responsible for complying with that schedule regardless of the availability of any federal or state grant monies.

13. The terms of this Stipulation and Final Order may be amended by the mutual agreement of the Commission and Respondent, after notice and opportunity for public comment; or with respect to the compliance schedules or limitations herein, by the Commission if it finds, after review and evaluation of the facilities plan including alternative discharge limitations and the alternative schedules required under Paragraph 9(a)1, that modification of this Order is reasonable.

14. Respondent acknowledges that it has actual notice of the contents and requirements of the Stipulation and Final Order and that failure to fulfill any of the requirements hereof would constitute a violation of this Stipulation and Final Order and

subject Respondent to payment of civil penalties pursuant to Paragraph 9(e) above.

15. This Stipulation and Final Order shall terminate 60 days after Respondent demonstrates full compliance with the requirements of the schedule set forth in Paragraph 9(a) above.

16. If it becomes necessary to allocate wasteloads as a result of either the Willamette River or the Columbia River being designated as Water Quality Limited, the parties agree that Respondent's reductions in discharges pursuant to this agreement will be considered as contributing to Respondent's share of the obligation to achieve water quality standards.

ATTACHMENT 1

1. Respondent shall clean and/or flush sewers in three sub-basins, from the diversion structures to one-half mile up the sewer lines, during August, 1991 and during August, 1992. The three sub-basins shall be: (a) a sub-basin representative of sub-basins having the heaviest settleable solids accumulation; and (b) two sub-basins expected to have average settleable solids accumulation. [~~The respondent shall submit to the Department by no later than July 15, 1991 the proposed three sub-basins and substantiating information to confirm that the sub-basins meet the criteria set forth in this paragraph.~~] The respondent shall estimate the volume of settleable solids captured in each sub-basin during the annual flushing and cleaning, and shall analyze a representative sample of the settleable solids captured in each sub-basin for biochemical oxygen demand, total suspended solids, fecal coliform bacteria, silver, arsenic, cadmium, chromium, copper, mercury, nickel, lead, zinc, and cyanide. Respondent shall include all test results in the interim control measures study specified elsewhere in this Order.

2. Respondent shall intensify street cleaning in three sub-basins and study the effects of the intensified street cleaning on reducing pollutants entering the combined sewer system. Street cleaning shall be completed once per month,

[~~starting in August, 1991 and~~] ending when the interim control measures study is approved by the Department. Respondent shall submit to the Department by no later than <u>September</u> [August] 1, 1991 a draft sampling program for measuring the impact of the intensified street cleaning. Within 30 days of receiving written comments from the Department, the Respondent shall submit a final approvable sampling plan and implement the intensified street cleaning and monitoring program. Respondent shall include all test results in the interim control measures study specified elsewhere in this Order.

3. Respondent shall inspect all diversion structures on a weekly basis and clean the structures as necessary to maintain hydraulic performance. Respondent shall report all blockages at diversion structures that result in dry weather discharges on Respondent's Daily Monitoring Report submitted to the Department on a monthly basis. Respondent shall record whether or not a discharge is occurring from each diversion structure to an outfall, as observed at each diversion structure during the weekly inspections, and shall make this report available to the Department upon request by the Department.

4. Respondent shall modify diversion structures #SW55, WC58, SJ31, E5, E7, and EC7 to assure proper hydraulic performance by October 31, 1991.

5. Respondent shall design and install two innovative, "low technology" screening methods proposed by the Respondent by December 1, 1991. Respondent shall evaluate the effectiveness of each screening device and include the results in the interim control measures study specified elsewhere in this Order.

6. By no later than August 1, 1992, Respondent shall evaluate the feasibility of converting each Significant Industrial User with batch discharges to dry weather only discharges. Upon permit renewal and where reasonable, Respondent shall modify such industrial discharge permits to prohibit batch discharges during rain events.

7. Respondent shall prohibit all dischargers who request Respondent's approval prior to a non-permit, periodic, or one-time batch discharge from discharging during rain events. Exceptions shall be made only if extenuating circumstances can be demonstrated to show that it is unreasonable to apply this restriction.

8. By September [August] 1, 1991, Respondent shall post signs at each CSO discharge location indicating the presence of the CSO structure and the inadvisability of water contact activities in these locations during and subsequent to rain storms.

9. As soon as practicable, but by no later than October 31, 1992, Respondent shall install seventeen additional level flow monitoring stations at diversion structures approved by the Department. Respondent shall include in each flow monitoring installation a telemetry device that will indicate an alarm at Respondent's control terminal whenever a discharge during dry weather occurs. Respondent shall attempt to eliminate the immediate cause of any dry weather discharge within one hour of an alarm. Respondent shall report all dry weather discharges on the Daily Monitoring Report submitted to the Department monthly. The Department may require flow monitoring stations at additional diversion structures if dry weather discharges are observed.

10. Respondent shall conduct and submit to the Department a study that evaluates each CSO discharge for the presence of syringes. Respondent shall submit to the Department a draft study plan for evaluating the presence of syringes in CSO discharges by no later than October 1, 1991. Within six

months of receiving written comments from the Department, Respondent shall submit the study to the Department.

OREGON ADMINISTRATIVE RULES
340-45-062

NOTE:

The underlined portions of text represent proposed additions made to the rules.

STIPULATED CONSENT ORDERS

340-45-062

(1) The Director may issue a stipulated consent order in lieu of, or in addition to an NPDES permit or a WPCF permit where it is part of an enforcement action, wastewater disposal associated with the cleanup of a spill, or other activity which does not lend itself to the normal permitting process or permit term.

(2) The stipulated consent order may include, but not necessarily be limited to, compliance schedules, effluent limitations, monitoring and reporting requirements, and/or stipulated penalties.

(3) The term of a stipulated order, when used in lieu of a permit, shall not be longer than the term of the type of permit it is replacing.

(4) For the issuance of a stipulated consent order, the normal permitting procedures found in rules Chapter 340 Divisions 14 and 45 are not required but are optional. However, when the order is issued in lieu of an NPDES permit, a public notice announcement of that intended action will be distributed at least 30 days prior to finalizing the order, except for environmental cleanups or other instances where a delay in issuing the order may magnify the problem. In that instance, a public notice announcement may be issued at the same time the order is issued.

(5) When a stipulated order is used in lieu of a permit, the fee schedule for permits found in 340-45-075 shall apply.

Oregon

ENVIRONMENTAL QUALITY COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: July 24, 1991
Agenda Item: B
Division: MSD
Section: Administration

SUBJECT:

Approval of tax credit applications.

ACTION REQUESTED:

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

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

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

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

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

Tax Credit Application Review Reports:

TC-2152 Portland General Electric	Secondary containment facility.
TC-2523 Portland General Electric	Secondary containment facility.
TC-2527 Portland General Electric	Utility vault and oil stop valve.
TC-2780 Portland General Electric	Sand filter system.
TC-2782 Portland General Electric	Sand filter system.
TC-2795 Morse Brothers, Inc.	Asphalt plant burner Genco UF-100 with silent flame burner.
TC-2905 Willamette Industries, Inc.	Replacement pipe to convey wastewater.
TC-3312 Lane International Corporation	Reciprocating screw injection moulding machine assembly.
TC-3361 Willamette Industries, Inc.	Biochemical oxygen demand analyzer (Biox 1100).
TC-3491 Sherrill A. Funrue	Side delivery wheel rake; heavy duty buckrake; Hesston 30 Stackhand.
TC-3498 Kirsch Family Farms, Inc.	Allen 851 hay rake; Allen 852 hay rake; New Holland 505 baler; New Holland 505 baler; Freeman baler; V-180 forklift with bale squeeze; straw storage shed; JD 14' flail mower; JD 945 V ripper; International 770 cover crop disk.
TC-3499 Valley Lime, Inc.	Straw storage shed; Freeman baler 1975.
TC-3500 Sherrill A. Funrue	Rear's 30' propane flamer.
TC-3502 Dennis F. Taylor	Rear's 30' propane flamer.

TC-3504 Eder Bros., Inc.	Hesston 560 round baler.
TC-3508 Gerald E. Phelan	Allen 8827 straw rake.
TC-3509 Gerald E. Phelan	Sunney Roadrunner straw handler.
TC-3510 Gerald E. Phelan	Freeman 370 T + 6 three string baler.
TC-3512 Pohlschneider Farms, Inc.	Rear's 12' Grass-vac.
TC-3515 Robert D. MacPherson	Straw storage shed.
TC-3516 S-S Baling	1989 Freeman 370T square baler; New Holland 1085 stackwagon; V160 Caterpillar hay squeeze; New Holland 216 hydraulic rake.
TC-3526 Space Age Fuel, Inc.	Installation of four fiberglass tanks and piping, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves and stage 1 and 2 vapor recovery equipment and piping.
TC-3527 Space Age Fuel, Inc.	Installation of three fiberglass tanks, one STI-P3 tank, fiberglass piping, epoxy lining in one tank, cathodic protection, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves and stage 1 vapor recovery equipment.
TC-3543 Powell Distributing, Inc.	Installation of epoxy lining in five steel tanks, spill containment basins, automatic shutoff valves and underground preparation for a tank monitor system.
TC-3544 Powell Distributing, Inc.	Installation of epoxy lining in one steel tank, spill containment basins, automatic shutoff valves and analysis and design of a cathodic protection system to be installed at a later date.

TC-3550 Alto Automotive, Inc.	Installation of a tank monitoring system.
TC-3551 Merritt Truax, Inc.	Installation of a tank monitor and overfill alarm.
TC-3552 Merritt Truax, Inc.	Installation of a tank monitor and overfill alarm.
TC-3553 Pride of Oregon Stations	Installation of a tank monitor, an overfill alarm and line leak detectors.
TC-3554 Pride of Oregon Stations	Installation of a tank monitor and overfill alarm.

DESCRIPTION OF REQUESTED ACTION:

Issue tax credit certificates for pollution control facilities.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: ORS 468.150-468.190 Enactment Date: _____	Attachment ___
___	Statutory Authority: _____	Attachment ___
X	Pursuant to Rule: OAR 340 Division 16	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___
___	Time Constraints:	

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

None.

PROGRAM CONSIDERATIONS:

None.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

None.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the Environmental Quality Commission approve certification for tax credit applications identified above.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Yes.

Note - Pollution Tax Credit Totals:

Proposed July 24, 1991 Totals

	Certified Costs*	# of Certificates
Air Quality	$ 665,194	12
CFC - AQ	0	0
Hazardous Waste	0	0
Noise	36,700	1
Plastics	118,168	1
Solid Waste	0	0
Underground Storage Tanks	250,649	9
Water Quality	1,032,831	7
TOTAL	$ 2,103,542	30

1991 Calendar Year Totals through June 14, 1991

	Certified Costs*	# of Certificates
Air Quality	$14,112,104	80
CFC - AQ	39,762	15
Hazardous	0	0
Noise	0	0
Plastics	0	0
Solid Waste	148,199	3
Underground Storage Tanks	7,457,674	138
Water Quality	2,535,966	7
TOTAL	$24,293,705	243

*These amounts represent the total facility costs. To calculate the actual dollars that can be applied as credit, the total facility cost is multiplied by the determined percent allocable of which the net credit is 50 percent of that amount.

INTENDED FOLLOWUP ACTIONS:

Notify applicants of Environmental Quality Commission actions.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Roberta Young

Phone: 229-6408

Date Prepared: July 9, 1991

RY:y
MY101721
July 9, 1991

Application No.T-2152

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric Company
121 S.W. Salmon Street, 1WTC-10
Portland, OR 97204

The applicant owns and operates an electric utility company with operations throughout Oregon.

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

2. Description of Facility

The claimed facility consists of secondary containment structures that are designed to capture oil that might escape from oil-filled equipment.

Claimed Facility Cost: $45,479.00
(Accountant's certification was provided)

The claimed costs are:

PGE Labor	$16,426.00
PGE Materials	216.00
Contract L & M	16,704.00
Overhead	12,133.00
Total	$45,479.00

The secondary containment structures were installed at the Bull Run Plant, located approximately nine miles north and east of Sandy, Oregon.

An oil stop valve was installed in the basement floor drain leading from the Powerhouse to the tailrace. Existing floor drains were sealed, curbing was constructed and valves were installed in the cooling-water discharge piping in the Transformer Building. The graveled areas of the 57 kV Switchyard and the Station Service Yard were sealed with asphalt pavement, curbing and drainage were provided and an oil stop-valve was installed.

3. Procedural Requirements

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

The facility met the statutory deadline in that:

a. Plans were reviewed and approved under the previous preliminary certification process on August 4, 1986.

b. Construction of the facility was substantially completed on January 31, 1990 and the application for final certification was filed on December 28, 1990, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

In accordance with federal law, electric utility companies must provide oil spill containment facilities where oil-filled equipment is utilized.

Prior to installation of this facility, there was no secondary containment structure at the Bull Run Plant. In the event of an oil spill, oil would have drained directly into the Bull Run River. The potential amount of oil that could have leaked into the river as a result of a failure of the transformer housing, prior to installation of the secondary containment structures, was 10,000 gallons.

After installation of the secondary containment structures, the possibility of oil leaking into the river in the event of an oil spill has been significantly reduced. Clean-up crews can be dispatched to the site to clean up any spilled oil before it reaches surface water. Spilled oil would be disposed of at a state-approved landfill.

b. Eligible Cost Findings

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

1) The extent to which the facility is used to recover and convert waste products into a salable or usable commodity. The facility does not recover or convert waste products into a salable or usable commodity.

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

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

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

The applicant chose this method of pollution control because it considers containment at the source and other alternatives would have involved purchase of new equipment at many times the cost of the installed containment.

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

There is no savings as a result of the facility modification.

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

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

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

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $45,479.00 with 100% allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-2152.

JE Turnbaugh
IW\WC8\WC8483
(503) 229-5374
June 6, 1991

Application No.T-2523

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric Company
121 S.W. Salmon Street, 1WTC-10
Portland, OR 97204

The applicant owns and operates an electric utility company with operations throughout Oregon.

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

2. Description of Facility

The claimed facility consists of secondary containment structures that are designed to capture oil that might escape from oil-filled equipment.

Claimed Facility Cost: $152,214.00
(Accountant's certification was provided)

The claimed costs are:

PGE Labor	$66,636.00
PGE Materials	15,800.00
Contract L & M	21,905.00
Overhead	47,873.00
Total	$152,214.00

The secondary containment structures were installed at the River Mill Plant, located one mile downstream of Estacada, Oregon, on the Clackamas River.

Floor drains in the powerhouse were routed to a new 12,000 gallon sump which was designed to capture transformer oil spilled in the event of a leak. Two new sump pumps, a sump high-level alarm, drain piping modifications, high-low transformer oil-level alarms and transformer cooling water supply flow switches were installed. In addition, a sand-filter system was installed around the switch yard to intercept possible oil leakage.

3. Procedural Requirements

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

The facility met the statutory deadline in that:

a. Plans were reviewed and approved under the previous preliminary certification process on September 4, 1985.

b. Construction of the facility was substantially completed in January, 1990 and the application for final certification was filed on December 28, 1990, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

In accordance with federal law, electric utility companies must provide oil spill containment facilities where oil-filled equipment is utilized.

Prior to installation of the containment structures, the system discharged all powerhouse floor drains directly to the tailrace. In the event of an oil spill, oil would have drained directly into the Clackamas River, unless it were noticed by personnel on site at the time of the spill.

The facility has significantly reduced the possibility of oil reaching the Clackamas River in the event of an oil spill. With this facility in place, clean-up crews can be dispatched to the site to clean up the oil before it reaches the river. Contaminated material would be cleaned up by pumping and/or absorbent pads and would be disposed of offsite at a state-approved depository.

b. Eligible Cost Findings

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

1) The extent to which the facility is used to recover and convert waste products into a salable or usable commodity. The facility does not recover or convert waste products into a salable or usable commodity.

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

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

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

The applicant chose this method of pollution control because it considers containment at the source and other alternatives would have involved purchase of new equipment at many times the cost of the installed containment.

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

There is no savings as a result of the facility modification.

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

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

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

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $152,214.00 with 100% allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-2523.

JE Turnbaugh
IW\WC8\WC8486
(503) 229-5374
June 6, 1991

Application No.T-2527

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric
121 SW Salmon St., 1WTC-10
Portland, OR 97204

The applicant leases and operates a garage in Tigard, Oregon where maintenance is done on vehicles and equipment.

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

2. Description of Facility

This application is for a utility vault and oil stop valve used to prevent oil spills from entering public waters. The system is designed to contain approximately 5,000 gallons of oil. In the event of a spill, oil that is collected in the vault would be pumped into a tanker truck and disposed of at an approved facility.

Claimed Facility Cost: $9,699
(Costs were documented with invoices and receipts)

3. Procedural Requirements

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

The facility has met the statutory time frames. The application for final certification was submitted within 2 years of substantial completion of the facility. Construction of the oil containment system was substantially completed on April 30, 1990. The application for final certification was submitted on December 28, 1990.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency, to prevent water pollution. The requirement is to comply with the Code of Federal Regulations (40 CFR Part 112).

No oil spills have occurred at this site. However, without the oil containment facility, any spill that occurred could drain into public waters.

b. Eligible Cost Findings

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

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

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

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

   No return on investment can be attributed to this facility since it will not generate any revenue.

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

   The applicant considered using a berm to control oil spills. However, this alternative was not feasible because of limitations in the existing storm drainage system. No costs were determined for the berm since it was not found to be a feasible option.

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

   There are no savings or increase in costs as a result of the facility modification.

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

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

The actual cost of the facility properly allocable to pollution control, as determined by using the above factors, is 100 percent.

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with requirements imposed by the Environmental Protection Agency to prevent oils spills from entering public waters.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100 percent.

6. Director's Recommendation

Based upon these findings, the Department recommends that a Pollution Control Facility Certificate, bearing the cost of $9,699 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2527.

KMV:crw
IW\WC8\WC8539
(503) 229-5356
6-13-91

Application No.T-2780

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric
121 SW Salmon St., 1WTC-10
Portland, OR 97204

The applicant owns and operates an electrical substation in Amity, Oregon.

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

2. Description of Facility

This application is for a sand filter system used to prevent oil spills from entering public waters. Oil that is spilled on site will now be contained within the sand filter system until dispatch crews arrive to clean up the oil for disposal at an approved landfill.

Claimed Facility Cost: $10,654
(Costs were documented with invoices and receipts)

3. Procedural Requirements

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

The facility has met the statutory time frames. The application for final certification was submitted within 2 years of substantial completion of the facility. Construction of the sand filter system was substantially completed on September 30, 1989. The application for final certification was submitted on December 28, 1990.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency, to prevent water pollution. The requirement is to comply with the Code of Federal Regulations (40 CFR Part 112).

No oil spills have occurred at this site. However, without the sand filter facility, any spill that occurred could drain into public waters.

b. Eligible Cost Findings

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

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

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

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

No return on investment can be attributed to this facility since it will not generate any revenue.

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

The applicant considered two other alternatives. The first consisted of transformer/oil circuit breaker pits ($30,000 to $40,000) and the second consisted of an oil stop valve and storage container ($24,000 to $30,000). These alternatives were rejected because of cost and maintenance requirements.

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

There are no savings or increase in costs as a result of the facility modification.

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

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

The actual cost of the facility properly allocable to pollution control, as determined by using the above factors, is 100 percent.

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with requirements imposed by the Environmental Protection Agency to prevent oils spills from entering public waters.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100 percent.

6. Director's Recommendation

Based upon these findings, the Department recommends that a Pollution Control Facility Certificate, bearing the cost of $10,654 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2780.

KMV:crw
IW\WC8\WC8539
(503) 229-5356
6-13-91

Application No.T-2782

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Portland General Electric
121 SW Salmon St., 1WTC-10
Portland, OR 97204

The applicant owns and operates an electrical substation in Portland, Oregon referred to as the Sylvan substation.

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

2. Description of Facility

This application is for a sand filter system used to prevent oil spills from entering public waters. Oil that is spilled on site will now be contained within the sand filter system until dispatch crews arrive to clean up the oil for disposal at an approved landfill.

Claimed Facility Cost: $6,157
(Costs were documented with invoices and receipts)

3. Procedural Requirements

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

The facility has met the statutory time frames. The application for final certification was submitted within 2 years of substantial completion of the facility. Construction of the sand filter system was substantially completed on September 30, 1989. The application for final certification was submitted on December 28, 1990.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency, to prevent water pollution. The requirement is to comply with the Code of Federal Regulations (40 CFR Part 112).

No oil spills have occurred at this site. However, without the sand filter facility, any spill that occurred could drain into public waters.

b. Eligible Cost Findings

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

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

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

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

No return on investment can be attributed to this facility since it will not generate any revenue.

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

The applicant considered two other alternatives. The first consisted of transformer/oil circuit breaker pits ($30,000 to $40,000) and the second consisted of an oil stop valve and storage container ($24,000 to $30,000). These alternatives were rejected because of cost and maintenance requirements.

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

There are no savings or increase in costs as a result of the facility modification.

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

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

The actual cost of the facility properly allocable to pollution control, as determined by using the above factors, is 100 percent.

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with requirements imposed by the Environmental Protection Agency to prevent oils spills from entering public waters.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100 percent.

6. Director's Recommendation

Based upon these findings, the Department recommends that a Pollution Control Facility Certificate, bearing the cost of $6,157 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2782.

KMV:crw
IW\WC8\WC8539
(503) 229-5356
6-13-91

Application No. TC 2795

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Morse Bros., Inc.
PO Box 7
Lebanon, OR 97355

The applicant owns and operates an aggregate quarry site with asphalt and concrete batching plants doing business as Progress Quarry. The quarry site is located southeast of Cooper Mountain and north of Schools Ferry Road near Beaverton, Oregon in Washington County.

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

2. Description of Facility

Applicant replaced the original asphalt plant burner with a GENCO UF-100 silent flame burner. The noise emission level of the replacement burner is approximately 97 dBA at a ten foot distance compared to 114 dBA that was generated by the original burner.

Claimed Facility Cost: $36,700.00
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed February 27, 1989 less than 30 days before installation commenced on March 15, 1989. However, according to the process provided in OAR 340-16-015(1)(b), the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that installation could commence.

b. The request for preliminary certification was approved before application for final certification was made.

c. Installation of the facility was substantially completed on April 4, 1989 and the application for final certification was found to be complete on January 4, 1991 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce noise pollution. The requirement is to comply with OAR 340-35-035(1)(a), which sets forth maximum allowable decibel levels for existing industrial noise emission sources.

This reduction is accomplished by the elimination of excess noise pollution, as defined in ORS 468.275.

5. Discussion

Morse Bros., Inc. purchased Progress Quarry in October 1987. To meet the growing demand for construction gravel, asphaltic concrete, and ready-mix concrete, the company added an asphalt and concrete batching plant to the quarry site in 1988 and expanded operating hours from 6:00 a.m. to 10:00 p.m. Monday through Friday, and 6:00 a.m. to 5:00 p.m. on Saturdays. The resultant increase in noise emission levels and expanded hours of operation generated numerous citizen appeals for remedial action.

A noise compliance survey performed on August 26, 1988 confirmed that Progress Quarry was operating in violation of the State noise standards. The applicant retained the services of an acoustical engineering firm and initiated a noise compliance plan.

The Company's noise compliance plan prescribed treatment of the rock crusher diversion chute, the asphalt burner combustion air blower, the asphalt scrubber exhaust fan, and the asphalt generator exhaust stack. One of the primary noise sources was the drum-mix asphalt plant. The low frequency combustion noise emanating from asphalt plant was particularly onerous for the affected properties and impacted a widespread area. The original burner unit was replaced by a quieter Gencor-General Combustion Ultraflame burner unit.

Installation of the quieter asphalt plant burner unit in addition to other noise mitigation treatments, including replacement of the asphalt plant's particulate scrubber system with a baghouse, substantially lowered noise impact levels at nearby residential properties. Treatment of the asphalt plant resulted in an overall noise reduction of approximately 17 decibels. At the conclusion of the noise abatement project noise levels generated by the asphalt batch plant, concrete batch plant, rock crushing operation, and attendant activities were at or below legal noise limits. Citizen complaints also ceased.

The applicant incurred other costs to bring the quarry operation into noise compliance but only applied for costs associated with the purchase and installation of the quieter asphalt burner unit.

b. Eligible Cost Findings

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

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

The facility does not recover or convert waste products into a salable or usable commodity. The volume of asphalt produced is comparable to volume of product that was produced with the original burner unit.

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

The gross cost incurred for the purchase and installation of the quiet burner totalled $36,700. The $36,700 expenditure was incurred to meet requirements imposed by the Department. The return on investment is zero.

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

Enclosing the asphalt plant and installing an intake silencer was considered as a control alternative. This alternative would have cost approximately $17,000, but would have failed to attain nighttime noise compliance. Restricted access would have increased repair and maintenance costs.

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

There is no savings or increase in costs as a result of the facility modification.

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

Typically an asphalt plant burner would not be defined as a pollution control facility because it is an essential piece of processing equipment for asphalt and concrete aggregate plants. However, in this situation, replacement of the burner was the only feasible option for achieving compliance with the state noise standards. The salvage costs of the original burner have been removed from the replacement burner costs.

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

6. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce noise pollution.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100%.

7. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $36,700 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2795.

TLO:a
LEGAL\AH14002
(503) 229-5989
June 19, 1991

Application No.T-2905

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Willamette Industries, Inc.
Albany Paper Mill
3800-3825 First Interstate Tower
1300 S.W. Fifth Avenue
Portland, OR 97201

The applicant owns and operates a kraft linerboard and bag-paper pulp and paper mill two miles north of Albany, Oregon.

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

2. Description of Facility

The claimed facility consists of a 36 inch diameter replacement pipe to convey wastewater from the mill to the primary wastewater treatment ponds.

Claimed Facility Cost: $758,873.91
(Accountant's certification was provided.)

A 36 inch diameter polyethylene pipe was installed to replace a 24 inch diameter concrete pipe for conveying untreated wastewater from the mill to the primary wastewater treatment ponds. The applicant asserts that the concrete pipe had become unreliable because of corrosion of its bell-and-spigot joints. The line had failed on a number of occasions, which allowed untreated effluent to enter Murder Creek. More failures and discharges were expected.

The DEQ Regional Office reports that the facility is in compliance and that there have not been any line breaks since the new pipe was installed.

3. Procedural Requirements

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

a. Plans were reviewed and approved under the previous preliminary certification process on August 4, 1989.

b. The facility met the statutory deadline in that construction of the facility was substantially completed on September 21, 1989 and the application for final certification was filed on February 12, 1991, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The sole purpose of the facility is to control a substantial quantity of water pollution.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant chose polyethylene pipe as a replacement material because it is resistant to corrosive attack by the hydrogen-sulfide-rich wastewater. The polyethylene pipe should last for a long time, thus preserving the integrity of the effluent system.

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

There are no savings as a result of the facility installation.

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

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

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

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to control a substantial quantity of water pollution.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $758,873.91 with 100% allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-2905.

JE Turnbaugh
IW\WC8\WC8507
(503) 229-5374
June 7, 1991

Application No. TC-3312

State of Oregon
Department of Environmental Quality

RECLAIMED PLASTIC TAX CREDIT
TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Lane T. Robertson/M. Kelly Robertson
Lane International Corporation
4514 S.W. Trail Road
Tualatin, OR 97062

The applicant owns and operates a reclaimed plastic product manufacturing facility at Tualatin, Oregon.

Application was made for Reclaimed Plastic Tax Credit.

2. Description of Equipment, Machinery or Personal Property

Claimed Investment Cost: $118,168.00

Accountant's certification was provided.

The claimed equipment is utilized to manufacture a reclaimed plastic product. The equipment described in the application is a Van Dorn Model 300-RS-48 FHT reciprocating screw injection moulding machine, mold clamp assembly; and HYD supply and return and electric circuits. This equipment will be used to heat up 100% reclaimed polypropylene and inject it into a mold which will form a polypropylene manhole step.

3. Procedural Requirements

The investment is governed by ORS 468.925 through 468.965, and by OAR Chapter 340, Division 17.

The investment met all statutory deadlines in that:

a. The request for preliminary certification was filed December 27, 1990 more than 30 days before the investment was made on April 3, 1991.

b. The request for preliminary certification was approved before application for final certification was made.

c. The investment was made on April 3, 1991, prior to June 30, 1995. The application for final certification was found to be complete on May 23, 1991.

4. Evaluation of Application

a. The investment is eligible because the equipment is necessary to manufacture a reclaimed plastic product.

b. Allocable Cost Findings

In determining the portion of the investment costs properly allocable to reclaiming and recycling plastic material, the following factors from ORS 468.960 have been considered and analyzed as indicated:

1) The extent to which the claimed collection, transportation, processing or manufacturing process is used to convert reclaimed plastic into a salable or usable commodity.

This factor is applicable because the entire purpose of the manufacturing process is to produce manhole steps from 100% reclaimed polypropylene, which are marketed all over the U.S.

2) The alternative methods, equipment and costs for achieving the same objective.

The applicant indicated that there was no other alternative method which could be utilized to manufacture this item other than utilizing an injection molding machine. This machine was chosen because it was a little cheaper than comparable machines, such as the Cincinnati Milacron Vista hydraulic injection machine.

3) Any other factors which are relevant in establishing the portion of the actual cost of the investment properly allocable to the collection, transportation or processing of reclaimed plastic or to the manufacture of a reclaimed plastic product.

There are no other factors to consider in establishing the actual cost of the investment properly allocable to reclaiming and recycling plastic material.

5. Summation

a. The investment was made in accordance with all regulatory deadlines.

b. The investment is eligible for final tax credit certification in that the equipment is necessary to manufacture a reclaimed plastic product.

c. The qualifying business complies with DEQ statutes and rules.

d. The portion of the investment cost that is properly allocable to reclaiming and recycling plastic is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Reclaimed Plastic Tax Credit Certificate bearing the cost of $118,168.00 with 100% allocated to reclaiming plastic material, be issued for the investment claimed in Tax Credit Application No. TC-3312.

Moon:b
G:\RECY\RPT\YB10612
(503) 229-5479
May 24, 1991

Application No.T-3361

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Willamette Industries, Inc.
Albany Paper Mill
3800-3825 First Interstate Tower
1300 S.W. Fifth Avenue
Portland, OR 97201

The applicant owns and operates a kraft linerboard and bag-paper pulp and paper mill two miles north of Albany, Oregon.

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

2. Description of Facility

The claimed facility consists of an on-line, rapid-reading BOD (biochemical oxygen demand) Biox1100 analyzer, made by Cosa Instrument Corporation.

Claimed Facility Cost: $49,754.37
(Accountant's certification was provided.)

The analyzer provides BOD (an important permit compliance parameter) analysis results three minutes after the sample is drawn from the wastestream, providing real-time indication of effluent quality. Action can than be taken on the basis of the results to prevent BOD excursions in the wastewater which discharges to the Willamette River.

The rapid response of the analyzer gives the mill the opportunity to control the BOD content of the wastewater within tighter limits, thus potentially reducing the average BOD load to the Willamette. Without the analyzer, the normal BOD test takes at least five days.

The DEQ Regional Office reports that the mill is in compliance with its permit limits.

3. Procedural Requirements

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

The facility met the statutory deadline in that construction of the facility was substantially completed on June 22, 1990 and the application for final certification was filed on February 12, 1991, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The sole purpose of the facility is to control a substantial quantity of water pollution.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant reports that no other reliable rapid BOD analyzer is available on the market.

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

There are no savings as a result of the facility installation.

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

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

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

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to control a substantial quantity of water pollution.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $49,754.37 with 100% allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-3361.

Jerry Turnbaugh
IW\WC8\WC8508
(503) 229-5374
June 10, 1991

Application No. TC-3491

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Sherrill A. Funrue
2557 Driftcreek Road NE
Silverton, OR 97381

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

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is a side delivery wheel rake, heavy duty buckrake, and Hesston 30 stackhand, located at 2557 Driftcreek Road NE, Silverton, Oregon. The equipment is owned by the applicant.

Side delivery wheel rake	$1,000
Heavy duty buckrake	1,850
Hesston 30 stackhand	3,750

Claimed equipment cost: $6,600
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 200 perennial and 50 annual acres of grass seed under cultivation. Over the last several years the applicant has gradually reduced the number of acres he has open field burned. He has achieved the reduction by clearing the fields of bulk straw with his side delivery rake, piling the straw with his buckrake, burning the piles fieldside, and propaning the cleared fields. This operation has reduced open field burning by 125 acres.

With the addition of the Hesston stackhand, the applicant states that he will be able to reduce open field burning by an additional 50 acres without resorting to propane flaming.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on April 1, 1991, and the application for final certification was found to be complete on May 15, 1991. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment does not recover or convert waste products into a salable or usable commodity. The equipment enables the applicant to remove the straw from the field to be stack burned, avoiding open field burning.

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

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

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

The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

There is an increase in operating costs of $900 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

   a. The equipment was purchased in accordance with all regulatory deadlines.

   b. The equipment is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

   c. The equipment complies with DEQ statutes and rules.

   d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Director's Recommendation

   Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $6,600, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3491.

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

JB:bmTC3491
May 15, 1991

Application No. TC-3498

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Kirsch Family Farms, Inc.
4350 Mahony Road NE
St. Paul, OR 97137

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

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is listed below and is located at 4999 Mahony Road NE, St. Paul, Oregon. The equipment is owned by the applicant.

Allen 851 Hay Rake	$ 6,000
Allen 852 Hay Rake	6,000
New Holland 505 Baler-1984	12,200
New Holland 505 Baler-1985	9,500
Freeman Balewagon	25,000
V-180 Forklift w/bale squeeze	21,000
80' x 200' straw storage shed	76,463
JD 14' flail mower	7,000
JD 945 'V' Ripper	2,344
International 770 Cover Crop Disc	9,550

Claimed equipment cost: $175,057
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 1,100 acres of perennial grasses under cultivation. In the recent past the applicant would annually open field burn up to 300 acres, bale off and stack burn up to 700 acres, and propane flame up to 700 acres.

With acquisition of the listed equipment and facility, the applicant will remove the straw from the fields to the storage shed where it will be protected until marketing. Straw on an outgoing perennial crop field will be chopped and worked under. Both operations serving as alternatives to open field burning, stack burning and propane flaming on all of the applicant's 1,100 acres.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 15, 1990, and the application for final certification was found to be complete on May 15, 1991. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing protection from the weather for approximately 1750 tons. Straw from the remaining acres (200-400) will be worked back into the soil.

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

The actual cost of the claimed equipment ($175,057) divided by the average annual cash flow ($<212>) equals a negative return on investment factor, therefore, 100% is allocable to pollution control.

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

The method chosen is an accepted and effective method for reduction of air pollution. The straw storage building is a truss steel construction with a concrete floor. This structure is preferred by the applicant to a less expensive standard pole building for several reasons including the following:

-- concrete floor eliminates the need to destroy the lower layer of baled straw which results from moisture/rodent/ rock intrusions on non-concrete floor.
-- concrete floor is easier and less costly to maintain.
-- concrete floor is level and allows stacking machinery to do a better job in close quarters and minimizes the chance for collisions with structure.
-- truss structure is stronger than pole buildings and able to better withstand the frequent collisions with stacking equipment working in close proximity to the walls of the structure.
-- truss structure will last longer than a pole building due to above reasons as well as steel vs. wood material.
-- truss structure is less costly to maintain due to more rigid structure and more weathertight materials.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

   There is an increase in operating costs of $42,212 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

   a. The equipment was purchased in accordance with all regulatory deadlines.

   b. The equipment is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

c. The equipment complies with DEQ statutes and rules.

d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $175,057, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3498.

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

JB:bmTC3498
May 15, 1991

Application No. TC-3499

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Valley Lime, Inc.
6070 State Hwy. #214
Gervais, Oregon 97026

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

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

2. Description of Claimed Facility

The facility described in this application is a 100' x 60' x 22' truss steel construction grass straw storage shed and a 1975 Freeman baler, located at 6070 State Hwy. #214, Gervais, Oregon. The land, buildings and equipment are owned by the applicant.

straw storage shed $60,882
1975 Freeman baler 13,000

Claimed facility cost: $73,882
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 250 acres of perennial grasses under cultivation. In recent years the applicant annually open field burned up to 125 acres. The applicant would contract with a custom baler to remove straw from 130-200 acres annually. Approximately 50-75 acres had the straw chopped and worked under on cropland being rotated.

The Freeman baler provides the applicant a more economical and reliable alternative to custom baling. The straw storage shed provides weather protection for the straw. With the acquisition of the baler and shed and continued practice of chopping and plowing between stands all open field burning and stack burning will be eliminated on applicant's fields.

4. Procedural Requirements

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

Construction of the facility was substantially completed on April 10, 1991, and the application for final certification was found to be complete on May 15, 1991. The application was submitted within two years of substantial completion of the facility.

5. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

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

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

There is no annual percent return on the investment as applicant claims no gross annual income. The applicants have not received or reasonably expect to receive compensation from the straw broker for their straw.

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

The method chosen is an accepted and effective method for reduction of air pollution. The straw storage building is a truss steel construction with a concrete floor. This structure is preferred by the applicant to a less expensive standard pole building for several reasons including the following:

-- concrete floor eliminates the need to destroy the lower layer of baled straw which results from moisture/rodent/rock intrusions on non-concrete floor.
-- concrete floor is easier and less costly to maintain.
-- concrete floor is level and allows stacking machinery to do a better job in close quarters and minimizes the chance for collisions with structure.
-- truss structure is stronger than pole buildings and able to better withstand the frequent collisions with stacking equipment working in close proximity to the walls of the structure.
-- truss structure will last longer than a pole building due to above reasons as well as steel vs. wood material.
-- truss structure is less costly to maintain due to more rigid structure and more weathertight materials.

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

   There is an increase in operating costs of $14,672 to annually maintain and operate the facility. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility that is properly allocable to pollution control is 100%.

7. Reviewer's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $73,882, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-3499.

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

JB:bmtc3499
May 16, 1991

Application No. TC-3500

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Sherrill A. Funrue
2557 Driftcreek Road NE
Silverton, OR 97381

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

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is a Rear's 30' propane flamer, located at 2557 Driftcreek Road NE, Silverton, Oregon. The equipment is owned by the applicant (1/3 interest) and by Dennis Taylor (2/3 interest). The applicant is applying only for 1/3 of the $7,849 actual cost of the equipment.

Claimed equipment cost: $2,616
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 200 perennial and 50 annual acres of grass seed under cultivation. Over the last several years the applicant has gradually reduced the number of acres he has open field burned. He has achieved the reduction by clearing the fields of bulk straw with his side delivery rake, piling the straw with his buckrake, burning the piles fieldside, and propaning the cleared fields. This operation has reduced open field burning by 125 acres.

This new 30' propane flamer will enable the applicant to increase propaning by an additional 70 acres, proportionally reducing open field burning.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on June 1, 1990, and the application for final certification was found to be

complete on May 15, 1991. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(B): "Propane flamers or mobile field santizers which are alternatives to open field burning and reduce air quality impacts".

b. Eligible Cost Findings

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

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

The equipment does not recover or convert waste products into a salable or usable commodity. The propane flamer provides an alternate sanitization method to open field burning.

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

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

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

The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

There is an increase in operating costs of $660 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

   a. The equipment was purchased in accordance with all regulatory deadlines.

   b. The equipment is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

   c. The equipment complies with DEQ statutes and rules.

   d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Director's Recommendation

   Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $2,616, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3500.

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

JB:bmTC3500
May 15, 1991

Application No. TC-3502

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Dennis F. Taylor
2538 Drift Creek Road NE
Silverton, Oregon 97381

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

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is a Rear's 30' propane field flamer, located at 2538 Drift Creek Road, Silverton, Oregon. The equipment is owned by the applicant (2/3 interest) and by Sherrill Funrue (1/3 interest). The applicant is applying only for 2/3 of the $7,849 actual cost of the equipment.

Claimed equipment cost: $5,232.67
(The applicant provided copies of proof of purchase.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 728 acres of perennial grasses under cultivation. Prior to purchasing the propane flamer the applicant open field burned as much of his acreage as the weather and smoke management program permitted.

The applicant will have the fields custom baled and then sanitize them with the propane flamer; reducing open field burning by approximately 250 acres annually.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 20, 1990, and the application for final certification was found to be complete on May 22, 1991. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(B): "Propane flamers or mobile field sanitizers which are alternatives to open field burning and reduce air quality impacts."

b. Eligible Cost Findings

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

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

The equipment does not recover or convert waste products into a salable or usable commodity. The propane flamer provides an alternative field sanitization method.

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

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

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

The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

There is an increase in operating costs of $1,280 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

a. The equipment was purchased in accordance with all regulatory deadlines.

b. The equipment is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

c. The equipment complies with DEQ statutes and rules.

d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $5,232.67, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3502.

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

JB:bmTC3502
May 31, 1991

Application No. TC-3504

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Eder Bros., Inc.
11690 Hook Road NE
Mt. Angel, Oregon 97362

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

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is a Hesston 560 round baler, located at 11690 Hook Road NE, Mt. Angel, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $13,500
(The applicant provided copies of proof of purchase.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 250 acres of perennial grasses under cultivation. To reduce open field burning the applicant turned to propane flaming for field sanitization. To accomplish propane flaming, custom balers were hired to remove the bulk straw. The applicant found that custom balers were not always reliable or timely.

To continue the removal of approximately 170 acres from open field burning the applicant purchased the round baler to ensure reliable and timely bulk straw removal.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on December 27, 1990, and the application for final certification was found to be complete on May 22, 1991. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment does not recover or convert waste products into a salable or usable commodity. The round baler ensures reliable and timely removal of bulk straw from the fields to prepare them for propane flaming. Round bales have a very limited market and are usually stack burned.

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

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

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

The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

There is an increase in operating costs of $2,000 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

   a. The equipment was purchased in accordance with all regulatory deadlines.

   b. The equipment is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

   c. The equipment complies with DEQ statutes and rules.

   d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Director's Recommendation

   Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $13,500, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3504.

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

JB:bmTC3504
May 31, 1991

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Gerald E. Phelan
33973 Looney Lane
Tangent, Oregon 97389

The applicant owns and operates a grass seed farm operation and custom baling firm in Tangent, Oregon.

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is a 1990 Allen 8827 straw rake, located at 33973 Looney Lane, Tangent, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $15,385.33
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 65 acres in perennial grass seed production. He has eliminated all open field burning on all his fields. Applicant bales and removes straw from his own fields.

In addition, the applicant operates a custom baling firm that provides straw removal services to grass seed growers unable to invest in straw removal and straw handling equipment or are impeded by time or manpower constraints during that period when straw must be removed to avoid spoilage. The applicant's custom baling services include raking the straw into windrows, baling, stacking fieldside, loading, transportation to storage, unloading, providing storage, pressing, loading out of storage, and transportation to a straw broker or end user.

The applicant states that before he began straw removal for farmers located throughout the Willamette Valley they had to open field burn to sanitize their fields. The applicant's only compensation for his services is the straw that is removed from the fields. The applicant markets that straw.

Before the straw can be baled it must be gathered in rows. The rake takes a wide path of grass straw and piles it into a narrower windrow

reducing the number of passes required by the baler. The rake is used on approximately 2,500 acres annually.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on September 21, 1990, and the application for final certification was found to be complete on May 29, 1991. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by reducing a wide path of straw to a narrow path. This provides faster baling and removal from the field to the storage shed.

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

The applicant has determined the gross annual income generated by the rake to be $1.44 per acre and the annual operating expenses to be $.92 per acre. (GAI $1.44 x 2500 acres = $3,600) - (AOE $.92 x 2500 acres = $2,300) = average annual cash flow of $1,300.

The actual cost of the claimed equipment ($15,385.33) divided by the average annual cash flow ($1,300) equals a return on investment factor of 11.83. Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is 0%. Using the annual percent return and the reference annual percent return of 18.3%, 100% is allocable to pollution control.

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

   The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

   There is an increase in operating costs of $2,300 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

   a. The equipment was purchased in accordance with all regulatory deadlines.

   b. The equipment is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

   c. The equipment complies with DEQ statutes and rules.

   d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $15,385.33, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3508.

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

JB:bmTC3508
June 19, 1991

Application No. TC-3509

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Gerald E. Phelan
33973 Looney Lane
Tangent, Oregon 97389

The applicant owns and operates a grass seed farm operation and custom baling firm in Tangent, Oregon.

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is a 1990 Sunney Roadrunner straw handler, located at 33973 Looney Lane, Tangent, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $66,154
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 65 acres in perennial grass seed production. He has eliminated open field burning on all his fields. Applicant bales and removes straw from his own fields.

In addition, the applicant operates a custom baling firm that provides straw removal services to grass seed growers unable to invest in straw removal and straw handling equipment or are impeded by time or manpower constraints during that period when straw must be removed to avoid spoilage. The applicant's custom baling services include raking the straw into windrows, baling, stacking fieldside, loading, transportation to storage, unloading, providing storage, pressing, loading out of storage, and transportation to a straw broker or end user.

The applicant states that before he began straw removal for farmers located throughout the Willamette Valley they had to open field burn to sanitize their fields. The applicant's sole compensation for his services is the straw removed. The applicant then markets the straw.

The Roadrunner straw handler picks the bales from the fields and loads them onto the trucks for transportation to storage. In the storage sheds, the straw handler unloads the trucks and stacks the bales. The straw handler is used on approximately 4,000 acres annually.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 1, 1990, and the application for final certification was found to be complete on May 30, 1991. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing the means to handle large blocks of bales in the field and in the storage sheds.

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

The applicant has determined the gross annual income generated by the straw handler to be $4.48 per acre and the annual operating expenses to be $6.88 per acre resulting in a negative average annual cash flow.

The actual cost of the claimed equipment ($66,154) divided by the average annual cash flow (<$9,638>) equals a return on investment factor of <6.86>. Using Table 1 of OAR 340-16-030

for a life of 5 years, the annual percent return on investment is 0%. Using the annual percent return and the reference annual percent return of 18.3%, 100% is allocable to pollution control.

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

   The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

   There is an increase in operating costs of $27,538 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

   a. The equipment was purchased in accordance with all regulatory deadlines.

   b. The equipment is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

   c. The equipment complies with DEQ statutes and rules.

   d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $66,154, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3509.

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

JB:bmTC3509
June 20, 1991

Application No. TC-3510

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Gerald E. Phelan
33973 Looney Lane
Tangent, Oregon 97389

The applicant owns and operates a grass seed farm operation and custom baling firm in Tangent, Oregon.

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is a Freeman 370 T + 6 three string baler, located at 33973 Looney Lane, Tangent, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $36,373
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 65 acres in perennial grass seed production. He has eliminated open field burning on all his fields. Applicant bales and removes straw from his own fields.

In addition, the applicant operates a custom baling firm that provides straw removal services to grass seed growers unable to invest in straw removal and straw handling equipment or are impeded by time or manpower constraints during that period when straw must be removed to avoid spoilage. The applicant's custom baling services include raking the straw into windrows, baling, stacking fieldside, loading, transportation to storage, unloading, providing storage, pressing, loading out of storage, and transportation to a straw broker or end user.

The applicant states that before he began straw removal for farmers located throughout the Willamette Valley they had to open field burn to sanitize their fields. The applicant's sole compensation for his services is the straw removed. Applicant then markets the straw.

The baler packages the straw into a desirable size and weight for handling and marketing. The baler is used on approximately 800 acres annually.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on June 27, 1990, and the application for final certification was found to be complete on May 29, 1991. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing the appropriate size and weight in packaging.

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

The applicant has determined the gross annual income generated by the baler to be $35 per acre and the annual operating expenses to be $30 per acre. (GAI $35 x 800 acres = $28,000) - (AOE $30 x 800 acres = $24,000) = average annual cash flow of $4,000.

The actual cost of the claimed equipment ($36,373) divided by the average annual cash flow ($4,000) equals a return on investment factor of 9.09. Using Table 1 of OAR 340-16-030

for a life of 7 years, the annual percent return on investment is 0%. Using the annual percent return and the reference annual percent return of 18.3%, 100% is allocable to pollution control.

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

   The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

   There is an increase in operating costs of $24,000 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

   a. The equipment was purchased in accordance with all regulatory deadlines.

   b. The equipment is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

   c. The equipment complies with DEQ statutes and rules.

   d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $36,373, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3510.

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

JB:bmTC3510
June 20, 1991

Application No. TC-3512

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Pohlschneider Farms, Inc.
17904 French Prairie Road NE
St. Paul, Oregon 97137

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

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is a Rear's Manufacturing Co. 12' Grassvac, located at 17904 French Prairie Road NE, St. Paul, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $50,035
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 550 acres of perennial grasses under cultivation. Over the last five years the applicant has progressively reduced his reliance on open field burning by baling off the straw residue left after harvesting the grass seed. Fields were then propane burned, chain harrowed, then propaned a second time.

To replace open field burning and propane flaming the applicant purchased the 12' Grassvac. The machine chops long straw, sweeps the fields, and blows the residue into a container box leaving the field free of straw residue. The applicant states he will use the Grassvac on 400 acres in 1991; increasing to 550 acres by 1994.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on May 15, 1991, and the application for final certification was found to be complete on May 30, 1991. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a usable commodity by providing the means to pick up the straw and add water to promote decomposition.

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

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

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

The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

There is an increase in operating costs of $9,800 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

a. The equipment was purchased in accordance with all regulatory deadlines.

b. The equipment is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

c. The equipment complies with DEQ statutes and rules.

d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $50,035, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3512.

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

JB:bmTC3512
May 31, 1991

Application No. TC-3515

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Robert D. Macpherson
31580 Oakville Road
Shedd, Oregon 97377

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

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

2. Description of Claimed Facility

The facility described in this application is a 168' x 64' x 22' pole construction straw storage shed, located one mile east of Halsey, south of Highway 228. The land and buildings are owned by the applicant.

Claimed facility cost: $29,755
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicant has 1,800 perennial and 200 annual acres of grass seed under cultivation. Over the last several years the applicant has progressively reduced his reliance on open field burning.

With construction of the straw storage shed the applicant has reduced open field burning by an additional 600 acres. The applicant gives the straw to the custom baler in exchange for the baling and removal services.

4. Procedural Requirements

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

Construction of the facility was substantially completed on June 1, 1989, and the application for final certification was found to be complete on May 30, 1991. The application was submitted within two years of substantial completion of the facility.

5. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

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

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

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

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

The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

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

There is an increase in operating costs of $775 to annually maintain and operate the facility. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility that is properly allocable to pollution control is 100%.

7. Reviewer's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $29,755, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-3515.

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

JB:bmTC3515
May 31, 1991

Application No. TC-3516

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

S-S Baling
365 Timothy Lane
Junction City, Oregon 97448

The applicant owns and operates a grass seed farm operation and custom baling business in Junction City, Oregon.

Application was made for tax credit for air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is located at 91736 Greenhill Road, Junction City, Oregon. The equipment is owned by the applicant.

2	1989 Freeman 370T square balers	$79,104
1	1991 New Holland 1085 Stackwagon	72,900
1	V160 Caterpillar hay squeeze	24,100
1	1991 New Holland 216 hydraulic rake	14,500

Claimed equipment cost: $190,604
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicants have 100 acres of perennial grass under cultivation. They no longer open field burn any of their acreage. Applicant bales and removes the straw from his own fields.

The applicants also rake, bale, stack, transport, and store straw from at least seven other grass seed grower's farms. The applicants perform this service in exchange for the straw. The applicants state the growers do not have the equipment to perform the services they provide and were open field burning before they engaged the applicants to remove their straw. Applicant receives only the straw for his straw removal services.

The applicants claim that 4,500 acres have been removed from open field burning as a result of their straw removal operation. The equipment listed in this application is involved in straw removal from all the acreage.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on May 9, 1991, and the application for final certification was found to be complete on May 30, 1991. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible because the principal purpose of the facility is to reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, defined in ORS 468.275; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing increased capacity to prepare the straw for domestic and export marketing.

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

The applicant has determined that the annual operating expenses associated with the equipment in this application is approximately $37.78 per acre while generating a gross annual income of approximately $43.34 per acre (GAI $43.34 x 4,500 acres = $195,000) - (AOE $37.78 x 4,500 acres = $170,000) = average annual cash flow of $25,000.

The actual cost of the claimed equipment ($190,604) divided by the average annual cash flow ($25,000) equals a return on investment factor of 7.62. Using Table 1 of OAR 340-16-030 for a life of 7 years, the annual percent return on investment is 0%. Using the annual percent return and the reference annual percent return of 18.3%, 100% is allocable to pollution control.

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

   The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

   There is an increase in operating costs of $170,000 to annually maintain and operate the equipment. The major cost categories are raking, baling and stacking; field loading; transportation from the field to storage facilities; unloading into storage; storage expenses; loading out of storage; and transportation to straw brokers or end users. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

   a. The equipment was purchased in accordance with all regulatory deadlines.

   b. The equipment is eligible for final tax credit certification in that the principal purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

   c. The equipment complies with DEQ statutes and rules.

d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $190,604, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3516.

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

JB:bmTC3516
June 19, 1991

Application No. TC-3526

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Space Age Fuel, Inc.
P. O. Box 607
Gresham, OR 97030

The applicant owns and operates a service station at 11214 S. E. Powell, Gresham, OR, facility no. 8492.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of four fiberglass tanks and piping, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves and stage 1 and 2 vapor recovery equipment and piping.

Claimed facility cost (Accountant's certification was provided)	$ 71,981
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in March, 1991 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation in August, 1990.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

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

To respond to requirements established 12-22-88, the applicant installed:

1) For corrosion protection - Fiberglass tanks and piping.

2) For spill and overfill prevention - Spill containment basins and automatic shutoff valves.

3) For leak detection - Tank monitor and turbine leak detectors.

The applicant also installed stage 1 and 2 vapor recovery equipment and piping.

The applicant reported that soil testing was performed at the time of tank removal and no contamination was found.

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

The Department concludes that all of the costs claimed by the applicant ($71,981) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

   The applicant considered the method chosen to be the most cost effective. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

   The Department determined the percent allocable pursuant to Department procedures under Oregon Administrative Rules Chapter 340, Division 16. The result is displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Corrosion Protection:				
Fiberglass Tanks and piping	$25,795	33%	(1)	$8,512
Spill & Overfill Prevention:				
Spill containment basins	690	100		690
Automatic shutoff valves	126	100		126
Leak Detection:				
Tank monitor	6,951	90	(2)	6,256
Turbine leak detectors	672	100		672
Stage 1 & 2 vapor recovery	3,089	100		3,089
Labor and materials	34,658	100		34,658
Total	$71,981	75%		$54,003

(1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is $25,795 and the bare steel system is $17,200, the resulting portion of the eligible tank and piping cost allocable to pollution control is 33%.

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

5. Summation

a. The facility was constructed in accordance with all regulatory requirements.

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing

releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 75%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $71,981 with 75% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3526.

Barbara J. Anderson:ew
(503) 229-5870
June 17, 1991

Application No. TC-3527

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Space Age Fuel, Inc.
P. O. Box 607
Gresham, OR 97030

The applicant owns and operates a service station at 7908 N. E. Union, Portland, OR, facility no. 375.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of three fiberglass tanks, one STI-P3 tank, fiberglass piping, epoxy lining in one tank, cathodic protection, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves and stage 1 vapor recovery equipment.

Claimed facility cost (Accountant's certification was provided)	$ 77,835
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in May, 1991 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation in June, 1989.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

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

To respond to requirements established 12-22-88, the applicant installed:

1) For corrosion protection - Fiberglass tanks, STI-P3 tank, epoxy lining, cathodic protection and fiberglass piping.

2) For spill and overfill prevention - Spill containment basins and automatic shutoff valves.

3) For leak detection - Tank monitor and turbine leak detectors.

The applicant also installed stage 1 vapor recovery equipment.

The applicant reported that soil contamination was discovered at the site and cleanup was performed by the previous owner.

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

The Department concludes that all of the costs claimed by the applicant ($77,835) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

   The applicant considered the method chosen to be the most cost effective. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

   The Department determined the percent allocable pursuant to Department procedures under Oregon Administrative Rules Chapter 340, Division 16. The result is displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Corrosion Protection:				
Fiberglass and STI-P3 tanks and fiberglass piping	$23,993	32%	(1)	$7,678
Epoxy tank lining	5,423	100		5,423
Cathodic protection	346	100		346
Spill & Overfill Prevention:				
Spill containment basins	863	100		863
Automatic shutoff valves	158	100		158
Leak Detection:				
Tank monitor	8,026	90	(2)	7,223
Turbine leak detectors	840	100		840
Stage 1 vapor recovery	446	100		446
Labor and materials	37,740	100		37,740
Total	$77,835	78%		$60,717

(1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is $23,993 and the bare steel system is $16,300, the resulting portion of the eligible tank and piping cost allocable to pollution control is 32%.

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

5. Summation

a. The facility was constructed in accordance with all regulatory requirements.

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to

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

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 78%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $77,835 with 78% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3527.

Barbara J. Anderson:ew
(503) 229-5870
June 17, 1991

Application No. TC-3543

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Powell Distributing Co., Inc.
9125 N. Burrage
Portland, OR 97217

The applicant owns and operates a retail service station at 9125 N. Union, Portland OR, facility no. 6040.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of epoxy lining in five steel tanks, spill containment basins, automatic shutoff valves and underground preparation for a tank monitor system.

Claimed facility cost (Accountant's certification was provided)	$ 43,200
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on February 13, 1991 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation on February 13, 1991.

4. Evaluation of Application

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

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

To respond to requirements established 12-22-88, the applicant installed:

1) For corrosion protection - Epoxy tank lining.

2) For spill and overfill prevention - Spill containment basins & automatic shutoff valves.

3) For leak detection - Underground preparation for a tank monitor system.

The applicant reported that the soil was inspected during construction of the project and no evidence of contamination was found.

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

The Department concludes that all of the costs claimed by the applicant ($43,200) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

   The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

   The Department determined the percent allocable pursuant to Department procedures under Oregon Administrative Rules Chapter 340, Division 16. The result is displayed in the following table.

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Corrosion Protection:			
Epoxy tank lining	$32,000	100%	$32,000
Spill & Overfill Prevention:			
Spill containment basins	3,125	100	3,125
Automatic shutoff valves	3,350	100	3,350
Leak Detection:			
Underground prep for tank monitor system	2,250	100	2,250
Labor & materials	2,475	100	2,475
Total	$43,200	100%	$43,200

5. Summation

a. The facility was constructed in accordance with all regulatory requirements.

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $43,200 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3543.

Barbara J. Anderson:ew
(503) 229-5870
June 13, 1991

Application No. TC-3544

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Powell Distributing Co., Inc.
9125 N. Burrage
Portland, OR 97217

The applicant owns and operates a service station at 3602 N. Pacific Hwy., Central Point OR, facility no. 9992.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of epoxy lining in one steel tank, spill containment basins, automatic shutoff valves and analysis and design of a cathodic protection system to be installed at a later date.

Claimed facility cost (Documentation of cost was provided)	$ 11,765
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on March 15, 1991 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation on March 15, 1991.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of four steel tanks and piping with no corrosion protection and no spill and overfill prevention or leak detection equipment. A fifth tank at the site has been empty and out of use since 1968.

To respond to requirements established 12-22-88, the applicant installed:

1) For corrosion protection - Epoxy tank lining in one steel tank. Analysis and design for the later installation of cathodic protection.

2) For spill and overfill prevention - Spill containment basins & automatic shutoff valves.

The applicant reported that soil contamination had been found prior to the project. Cleanup is in progress.

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

The Department concludes that all of the costs claimed by the applicant ($11,765) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered replacing the tank as an alternative method. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable pursuant to Department procedures under Oregon Administrative Rules Chapter 340, Division 16. The result is displayed in the following table.

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Corrosion Protection:			
Epoxy tank lining	$ 9,015	100%	$ 9,015
Cathodic protection design	1,250	100	1,250
Spill & Overfill Prevention:			
Spill containment basins	625	100	625
Automatic shutoff valves	670	100	670
Labor & materials	205	100	205
Total	$11,765	100%	$11,765

5. Summation

a. The facility was constructed in accordance with all regulatory requirements.

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $11,765 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3544.

Barbara J. Anderson:ew
(503) 229-5870
June 13, 1991

Application No. TC-3550

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Alto Automotive, Inc.
PO Box 1090
Sherwood, OR 97140

The applicant leases and operates a gas station/grocery store at 21090 S.W. Pacific Hwy., Sherwood OR, facility no. 1227.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of a tank monitoring system.

Claimed facility cost (Documentation of cost was provided)	$ 8,512
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on May 20, 1991 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation on May 20, 1991.

4. Evaluation of Application

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

Prior to the installation of pollution control, the facility consisted of three corrosion protected tanks and piping, spill and overfill prevention and monitoring wells, but no tank monitoring system.

To respond to requirements established 12-22-88, the applicant installed:

1) For leak detection - Tank monitor system.

The applicant reported that the soil was inspected during construction of the project and no evidence of contamination was found.

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

The Department concludes that all of the costs claimed by the applicant ($8,512) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable pursuant to Department procedures under Oregon Administrative Rules Chapter 340, Division 16. The result is displayed in the following table.

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Leak Detection: Tank monitor	$ 7,301	90%(1)	$ 6,571
Labor & materials	1,211	100	1,211
Total	$ 8,512	91%	$ 7,782

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

5. Summation

a. The facility was constructed in accordance with all regulatory requirements.

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 91%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $8,512 with 91% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3550.

Barbara J. Anderson:ew
(503) 229-5870
June 13, 1991

Application No. TC-3551

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Merritt Truax, Inc.
P. O. Box 2099
Salem, OR 97308

The applicant owns and operates a service station at 608 N. State Street, Lake Oswego, OR, facility no. 4924.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of a tank monitor and overfill alarm.

Claimed facility cost (Documentation of cost was provided)	$ 9,160
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in April, 1991 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation in February, 1991.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

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

To respond to requirements established 12-22-88, the applicant installed:

1) For spill and overfill prevention - Overfill alarm.

3) For leak detection - Tank monitor.

The applicant reported that the soil was inspected during construction of the project and no evidence of contamination was found.

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

The Department concludes that all of the costs claimed by the applicant ($9,160) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable pursuant to Department procedures under Oregon Administrative Rules Chapter 340, Division 16. The result is displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Spill & Overfill Prevention:				
Overfill alarm	$ 182	100%		$ 182
Leak Detection:				
Tank monitor	5,220	90	(1)	4,698
Labor and materials	3,758	100		3,758
Total	$ 9,160	94%		$ 8,638

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

5. Summation

a. The facility was constructed in accordance with all regulatory requirements.

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 94%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $9,160 with 94% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3551.

Barbara J. Anderson:ew
(503) 229-5870
June 17, 1991

Application No. TC-3552

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Merritt Truax, Inc.
P. O. Box 2099
Salem, OR 97308

The applicant owns and operates a service station at 188 Washington Street, Dallas, OR, facility no. 6442.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of a tank monitor and overfill alarm.

Claimed facility cost (Documentation of cost was provided)	$ 9,786
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in April, 1991 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation in March, 1991.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of three cathodically protected steel tanks and piping with spill and overfill prevention, but no leak detection equipment.

To respond to requirements established 12-22-88, the applicant installed:

1) For spill and overfill prevention - Overfill alarm.

2) For leak detection - Tank monitor.

The applicant reported that the soil was inspected during construction of the project and no evidence of contamination was found.

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

The Department concludes that all the eligible facility cost for the project is $8,035. This represents a difference of $1,751 from the applicant's claimed cost of $9,786 due to a determination by the Department that the cost to install valves in suction lines for line testing ($1,751) is not eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable pursuant to Department procedures under Oregon Administrative Rules Chapter 340, Division 16. The result is displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Spill & Overfill Prevention:				
Overfill alarm	$ 182	100%		$ 182
Leak Detection:				
Tank monitor	4,627	90	(1)	4,164
Labor and materials	3,226	100		3,226
Total	$ 8,035	94%		$ 7,572

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

5. Summation

a. The facility was constructed in accordance with all regulatory requirements.

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 94%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $8,035 with 94% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3552.

Barbara J. Anderson:ew
(503) 229-5870
June 17, 1991

Application No. TC-3553

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Pride of Oregon Stations, Inc.
P. O. Box 2099
Salem, OR 97308

The applicant owns and operates a service station at 514 Hwy 101, Florence, OR, facility no. 6136.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of a tank monitor, an overfill alarm and line leak detectors.

Claimed facility cost (Documentation of cost was provided)	$12,926
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in April, 1991 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation in March, 1991.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

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

To respond to requirements established 12-22-88, the applicant installed:

1) For spill and overfill prevention - Overfill alarm.

2) For leak detection - Tank monitor and line leak detectors.

The applicant reported that soil contamination was discovered at the site and reported to DEQ. Investigation is underway.

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

The Department concludes that the eligible facility cost for the project is $11,226. This represents a difference of $1,700 from the applicant's claimed cost of $12,926 due to a determination by the Department that the cost to install a valve in suction lines for line testing and to decommission three waste oil tanks which were not replaced ($1,700) is not eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable pursuant to Department procedures under Oregon Administrative Rules Chapter 340, Division 16. The result is displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Spill & Overfill Prevention:				
Overfill alarm	$ 182	100%		$ 182
Leak Detection:				
Tank monitor	4,865	90	(1)	4,379
Line leak detectors	294	100		294
Labor and materials	5,885	100		5,885
Total	$11,226	96%		$10,740

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

5. Summation

a. The facility was constructed in accordance with all regulatory requirements.

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 96%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $11,226 with 96% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3553.

Barbara J. Anderson:ew
(503) 229-5870
June 17, 1991

Application No. TC-3554

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Pride of Oregon Stations, Inc.
P. O. Box 2099
Salem, OR 97308

The applicant owns and operates a service station at 2585 River Road, Eugene, OR, facility no. 5996.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of a tank monitor and overfill alarm.

Claimed facility cost (Documentation of cost was provided)	$ 8,935
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in April, 1991 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation in March, 1991.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and

water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

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

To respond to requirements established 12-22-88, the applicant installed:

1) For spill and overfill prevention - Overfill alarm.

3) For leak detection - Tank monitor.

The applicant reported that the soil was inspected during construction of the project and no evidence of contamination was found.

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

The Department concludes that all of the costs claimed by the applicant ($8,935) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

The Department determined the percent allocable pursuant to Department procedures under Oregon Administrative Rules Chapter 340, Division 16. The result is displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Spill & Overfill Prevention:				
Overfill alarm	182	100		182
Leak Detection:				
Tank monitor	3,878	90	(1)	3,490
Labor and materials	4,875	100		4,875
Total	$ 8,935	96%		$ 8,547

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

5. Summation

a. The facility was constructed in accordance with all regulatory requirements.

b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 96%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $8,935 with 96% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3554.

Barbara J. Anderson:ew
(503) 229-5870
June 17, 1991

Oregon

ENVIRONMENTAL
QUALITY
COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: July 24, 1991
Agenda Item: C
Division: HSW
Section: Solid Waste

SUBJECT:

Waste Tire Program: Hearing Authorization on Proposed Rules to Implement Changes in Waste Tire Statute from 1991 Legislative Session

PURPOSE:

To implement changes in the regulatory scope of the waste tire program and in use of the Waste Tire Recycling Account.

ACTION REQUESTED:

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

_X_ Authorize Rulemaking Hearing
___ Adopt Rules

Proposed Rules	Attachment A
Rulemaking Statements	Attachment B
Fiscal and Economic Impact Statement	Attachment C
Public Notice	Attachment D

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

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

___ Approve Department Recommendation

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

DESCRIPTION OF REQUESTED ACTION:

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

AUTHORITY/NEED FOR ACTION:

_X_ Required by Statute: 1991 HB2246; 1991 SB66	Attachment E,F
Enactment Date: 10/91; 7/1/91	
_X_ Statutory Authority: ORS 459.785	Attachment ___
___ Pursuant to Rule: _____	Attachment ___
___ Pursuant to Federal Law/Rule: _____	Attachment ___
___ Other:	Attachment ___
___ Time Constraints:	

DEVELOPMENTAL BACKGROUND:

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

Agenda Item G, 7/8/88 EQC Meeting - Waste Tire Program Permitting Requirements
Agenda Item N, 11/4/88 EQC Meeting - Reimbursement for Use and Cleanup of Waste Tires
Agenda Item K, 4/14/89 EQC Meeting - Amendments to Permitting Requirements for Waste Tire Storage Sites and Waste Tire Carriers
Agenda Item J, 1/19/90 EQC Meeting - Amendments Regulating Waste Tire Beneficial Use, and Adding Criteria for Financial Assistance
Agenda Item___, 11/2/90 EQC Meeting - Waste Tire Financial Assistance

___ Other Related Reports/Rules/Statutes: Attachment ___

___ Supplemental Background Information Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

1. Carrier permit requirement. The legislation removes several categories of persons hauling waste tires from the waste tire carrier permit requirement. Specifically, individuals and businesses hauling their own waste tires for proper disposal (including persons needing to clean up their own tire pile) will no longer be required to have a carrier permit no matter how many tires they haul. This will make proper disposal of waste tires cheaper and easier for these persons who formerly had to be permitted, or pay a permitted waste tire carrier, if they needed to dispose of more than four waste tires. However, a requirement is added for all persons to either haul their own waste tires for proper disposal, or use a permitted waste tire carrier for that task. Any person hauling over four waste tires for hire will still be required to obtain a waste tire carrier permit.

2. Record-keeping requirement. Businesses, such as retail tire dealers and wrecking yards, and other persons who generate waste tires will be required to keep records of the waste tires they generate and how they dispose of them. The records will be available to the Department upon request. This should not be a significant added recordkeeping burden, as responsible business people keep such records in any case.

3. New category under which waste tire cleanups may be completed, and criteria. The legislation establishes a new circumstance under which the Department may use Waste Tire Recycling Account funds to assist with the cleanup of waste tire piles. This statutory change will allow the Department to use a "negotiated settlement" in abating a waste tire pile when the site operator is not a waste tire storage permittee. Criteria in the rule establish the amount of money for which the affected person would be responsible under the "negotiated settlement." The Department proposes to pay 100% of the cleanup cost for small tire piles (fewer than 1,000 tires) and for low-income people; 90% of the cost for intermediate sized tire piles (from 1,000 to 100,000 tires); and base the financial contribution of persons with large tire piles (over 100,000 tires) on the financial situation of the person. A "cap" amounting to 50% of their annual income would be put on the financial responsibility of any person regardless of tire pile size.

Since the new "negotiated settlement" criteria are somewhat more generous than criteria now in rule for financial assistance to waste tire storage permittees, the rule will also apply these new criteria to assistance to permittees for tire pile cleanups. However, the criteria are not retroactive; persons who have already cleaned up their tire piles may not apply for reimbursement under these criteria.

No change is proposed in the cleanup financial assistance criteria applying to local governments. However, units of state and federal government are specifically added by rule as parties eligible to receive partial reimbursement for abatement of a waste tire danger or nuisance. Existing statute allows this, but our existing rule does not lay out criteria for assistance to them.

4. Contested case hearing. Under current law, the Department may abate problematic waste tire piles after issuing an Order for a respondent to clean up the illegal waste tire pile. A respondent may request a hearing to contest the Department's Order. The Department's Order of abatement does not become final until the respondent has exhausted all levels of appeal; only then may the Department abate the waste tire danger or nuisance. The legislative change would move the right to a contested case hearing from before the tire cleanup to after the tires had been removed. The respondent could then request a hearing to determine their financial responsibility for the cleanup. Most respondents request hearings because they do not want to have to pay for the cleanup, not because they object to having the waste tires removed. This change will still allow the respondent to appeal financial responsibility for cleanup of the tires.

5. Reimbursement. The reimbursement program provides a subsidy to the users of waste tires to enhance the waste tire market. The new legislation requires in-state users of waste tires to receive preference to out-of-state users, if insufficient reimbursement funds are available to reimburse all users. This may discourage out-of-state users (such as cement kilns) from burning Oregon tire-derived fuel, as they will not be assured of receiving the Oregon subsidy. This should not be a problem until toward the end of the reimbursement program, as we anticipate having sufficient funding for all claims, provided cleanup costs do not accelerate beyond our projections. A sunset date is also set for the reimbursement program; no use of waste tires would be reimbursed after June 30, 1992.

6. Policy on priority use of Waste Tire Recycling Account. Current rule states that the reimbursement shall take priority over waste tire pile cleanups for use of Waste Tire Recycling Account funds. Since the Legislature has determined that the reimbursement shall end on June 30, 1992, this policy needs modification. The new legislation states that funds remaining in the Account after June 30, 1992 shall be used for activities related to waste tire storage, removal or disposal. This will allow funds to be used for waste tire cleanups that might otherwise have gone to the reimbursement, and persons with smaller waste tire piles creating less environmental risk will likely receive DEQ help with site cleanup.

7. Regulation of waste tire chips. Piles of waste tire chips have been problematic in the past. Several businesses have expressed interested in producing tire chips, unfortunately often without having a market for the chips. The processing sites may become speculative chip storage facilities. The processor may then disappear, leaving a property owner with the responsibility of cleaning up the chips. Currently, DEQ rules do not regulate tire chips stored for less than six months, nor may we assist with cleanup of tire chips. A statutory change will allow the Commission to pass rules limiting, restricting or prohibiting the storage of waste tire chips, and to require permits for their storage. The Department proposes to require waste tire storage permits for any chip pile exceeding 200 cubic yards. This will discourage speculative tire chipping, and encourage movement of waste tires to legitimate processors.

8. Ban on landfilling tires. 1991 Senate Bill 66 bans the disposal of "tires" at a solid waste disposal site. The 1987 waste tire statute required most tires to be chipped before being disposed of in landfills, but allowed small quantities of waste tires to be buried whole; it also provided for an exemption to the chipping requirement if recycling of waste tires is not "economically feasible." SB 66 supercedes the 1987 law. The proposed rule incorporates the new landfill ban on tires. The alternative to landfilling tires is to process them for use as a new product. In most cases this involves shredding the tires. If the tires are too contaminated with dirt, rocks, etc., they cannot be processed. Therefore the Department proposes to allow itself discretion to determine that such contaminated tires are not "tires" but rather "solid waste." This would allow the contaminated tires to be landfilled, since there are no alternatives for their disposal.

9. Other changes.

a. "Energy recovery" given "recycling" status. A change in the statute provides that for purposes of the reimbursement for use of waste tires, "the use of processed, source-separated waste tires having a positive market value as a new product to recover energy" is to be considered "recycling." This would prohibit a preferential reimbursement rate from being set for "recycling" uses as opposed to "energy recovery" uses. Existing rule has a flat rate of $.01/lb for all uses. However, a demonstration project element established in January, 1990 allows a higher reimbursement for "recycling" (as opposed to "energy recovery") uses for which there is no "established market" in Oregon. The purpose of the demonstration program was to encourage market alternatives to the market for energy recovery, which, depending on the price of competing fuels, may be volatile. We propose to add a June 30, 1991 cutoff date for application for the demonstration projects (following current Department guidelines), so the "recycling" vs. "energy recovery" issue will not arise for any future demonstration projects. The Attorney General has told us that payment for approved demonstration projects may continue even under the statutory change.

b. Wrecking yards: higher waste tire storage threshold. The statute establishes a 1,500 (rather than 100) waste tire threshold for wrecking yards before they must obtain a waste tire storage permit. This gives them the same allowance as retail tire dealers. One hundred waste tires was not a reasonable number, as wrecking yards often generate considerable numbers of waste tires. They will now be able to more easily comply with the statute.

c. Tire retreaders. A number of changes will apply to retreaders. Retreadable casings, while under the control of a retreader, will not be regulated as "waste tires." This will ease the regulatory burden for retreaders. On the other hand, the statute will become more restrictive for retreaders concerning the number of waste tires they may store before having to obtain a waste tire storage permit. Current law allows them to store "3,000 waste tires outdoors." A change in statute will require the 3,000 waste tires to be of a type (passenger or truck) being actively retreaded by the retreader.

d. Retail tire dealers. The Department will be allowed to ask the Department of Revenue for a copy of a quarterly tire fee return. This will permit the Department to determine whether a retail tire dealer is "actively" engaged in the business of selling new replacement tires, and is thus entitled to the 1,500 waste tire threshold before needing to obtain a waste tire storage permit.

e. Permitting requirements/procedures. A new fee is established to reinstate waste tire storage ($150) or carrier permits ($100) that have been revoked. A number of other changes are proposed to waste tire storage and carrier permitting procedures and to improve program operation.

The Waste Tire Advisory Committee considered the proposed rule changes at their June 11, 1991 meeting and supported the Department's recommendations, including the new fees. The Department has incorporated the Committee suggestions into the proposed rule. The Committee also supported an "emergency" declaration which would have allowed waste tires to be landfilled whole for a limited time, if processors temporarily are not accepting such tires for recycling. Under the new landfill ban (SB 66) such landfilling would not be allowed, so the Department is not recommending the "emergency" provision.

PROGRAM CONSIDERATIONS:

1. and 2. Carrier permit requirement and record-keeping requirement. The legislative change exempting several categories of waste tire haulers (individuals hauling their own waste tires; garbage haulers; units of government) from the permit requirement was proposed by the Department. It will simplify administration of the waste tire carrier program, reducing the number of permitted waste tire carriers from 88 to about 40. It should also facilitate proper disposal of waste tires by individuals and businesses who have no inexpensive legal avenue of disposing of their waste tires. The Department received many complaints from persons who simply wanted to properly dispose of their own waste tires, and were told they had to obtain a waste tire carrier permit, including a $5,000 bond, to do so. On the other hand, waste tire generators will now be required to keep records of how they dispose of their waste tires. The Department will be able to review their records to verify proper disposal.

3. New category for cleanups, and criteria. A "negotiated settlement" will greatly simplify Department procedures in assisting with cleanup of illegal waste tire piles. Current statute requires that either a waste tire storage permit must first be issued, or a formal Department Order of Abatement must be completed before Department funds may be spent to clean up a tire pile. Under a "negotiated settlement," the Department and an applicable party would sign an agreement in advance allowing the Department to remove the waste tires, and specifying the financial liability of the party in accordance with given criteria. This will save much staff time, and ensure that all persons are treated equally.

The Department proposes to change the criteria in existing rule governing the amount of financial assistance to permittees for waste tire cleanups. The major change from the current criteria would be to base the amount of financial help -- in general -- on the size of the tire pile, rather than on the person's financial situation. The new procedure would avoid, in most cases, the need for Department staff to review the person's finances. Equal treatment of all persons based on analysis of their finances has been difficult to attain, because individual financial situations are inherently incomparable. The 10 percent and 20 percent cost contribution requirements in the new criteria correspond well to the permittee contribution as determined under existing rule after time-consuming financial analysis; most permittees have ended up with a 10 percent cost contribution (if individuals) or 20 percent (if corporations).

The Department is now moving into a new phase of the waste tire program. The tire piles left to clean up are mostly smaller (fewer than 10,000 tires), but more numerous. Expending 8 or 12 staff hours on financial analysis for a smaller site is not a good use of staff time, especially if the result is nearly always a 10% cost contribution. It makes more sense for the Department to pay the entire cost of the cleanup of smaller sites (less than 1,000 tires), and establish a fixed contribution (10% for individuals, 20% for corporations) for intermediate sites. When a large site (over 100,000 waste tires) -- and thus a larger cost -- is involved, basing the required contribution on "ability to pay" is more justifiable. The proposed criteria allow persons to request a financial analysis if they feel they cannot afford the 10% contribution. Staff believes that this provision would not be used very often.

(Note: a responsible party who declines to either become a permittee or enter into a "negotiated settlement" with the Department for removal of waste tires, would be subject to

abatement procedures as outlined in the following paragraph. Operators of abated sites would in general be responsible for repaying the Department's full costs of abating the waste tires. This is the Department's current policy.)

4. Contested case hearing. Moving the right to request a contested case hearing in a waste tire abatement action from before tire removal to after will greatly facilitate the Department's ability to remove a danger or nuisance caused by waste tires. Under current law, a respondent may request a contested case hearing after being served with an Order of Abatement of Waste Tires; this appeal can delay removal of the tires for several months if not years. A statutory change puts the right to appeal after the abatement, and limits it to determining the respondent's financial responsibility to pay for the waste tire abatement. This procedure is analogous to that in the Environmental Cleanup program, where financial responsibility is determined after a cleanup.

5. Reimbursement. During the first quarter of 1991, 45% of the Oregon waste tires used and claimed for reimbursement, were used out-of-state, with 55% used in-state. That equates to about 320,000 tires used in-state, or 1.3 million annually. That level of in-state use alone is not sufficient to absorb the annual flow of waste tires generated in Oregon. Oregon waste tires will increasingly have to compete for markets with waste tires from Washington and Idaho, both of which are phasing in waste tire programs. The Department is concerned that the June 30, 1992 sunset date for the reimbursement may be too soon for in-state markets to be able to absorb all of Oregon's waste tires (somewhat more than 2 million a year). The new in-state use preference for the reimbursement may provide a boost to in-state users.

6. Policy on priority use of Waste Tire Recycling Account. This will cause a shift of staff effort from the reimbursement to waste tire pile cleanups.

7. Regulation of waste tire chips. The statutory authority to regulate waste tire chips will give the Department an enforcement tool it lacked. It will allow the Department to curtail speculative storage of waste tire chips, and remove existing problematic chip piles if need be. It will involve additional permitting and cleanup work.

8. Landfill ban on waste tires. The Department will have to review solid waste disposal permits for conformance with the new ban on tire disposal. The Department will have to make determinations on whether certain tires are too contaminated

to be processed, and should be considered "solid waste" rather than "tires." This would allow them to be disposed of in landfills.

9. Other changes. The Department proposed the legislative changes concerning wrecking yards, tire retreaders, and retail tire dealers. We feel these changes will make program operation more equitable.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Request public hearings to take testimony on the draft rules as proposed in Attachment A.

2. Other alternatives were considered for the criteria to provide financial assistance for tire pile cleanups to permittees and under "negotiated settlements." They include:

   a. Base all required cost contributions on "ability to pay." Fine-tune existing criteria to make them more equitable. This would require a complete financial analysis of each site operator.

   b. Provide 100% financial assistance for all site cleanups. This treats all "new" sites the same, with a minimum of administrative complications. However it removes all responsibility from the "responsible party," and could exceed DEQ's available funding.

   c. Require a 10% cost contribution from all responsible parties, regardless of site size or financial situation of the person. This ostensibly treats all sites the same, but in fact creates a major financial burden for persons with large sites, or the very poor.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt Alternative 1.

The main elements in the proposed rule are required by the legislative changes. Concerning the criteria for financial assistance for waste tire cleanups, the Department believes its proposal provides the best combination of equity to all responsible parties, administrative efficiency and return on public funds. Smaller sites with less expensive cleanup

costs would receive 100% funding from DEQ, but less scrutiny. Intermediate sites would require a cost contribution (10% or 20%) from the responsible party, but in most cases, without a financial analysis of the person's situation. Large sites, of greater environmental concern to the Department, would receive more scrutiny and potentially require a larger cost contribution from the responsible party.

The proposed rule has the support of the Advisory Committee. It provides for efficient administration of the program. It makes changes required by new legislation.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rule changes in policy concerning use of the Waste Tire Recycling Account are required by changes in statute. Legislative policy as embodied in the legislative changes prefers in-state uses of waste tires over out-of-state uses, and considers "energy recovery" to be "recycling" for purposes of the reimbursement. The reimbursement program is ended on June 30, 1992, but the Department is directed to continue the regulation and cleanup of waste tires. The rule changes contribute to the agency strategic plan to provide for environmentally acceptable management of solid waste and efficient use of available resources.

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

ISSUES FOR COMMISSION TO RESOLVE:

1. Are the Department's proposed criteria appropriate for tire pile cleanup financial assistance to permittees and under "negotiated settlements"?

2. Is it appropriate to change the policy on priority uses of the Waste Tire Recycling Account before the reimbursement for use of waste tires expires (June 30, 1992)?

3. Is it appropriate to require waste tire storage permits for waste tire chip piles, basing regulation of the piles on size, and to include tire chips under the Department's waste tire abatement and cleanup authority?

INTENDED FOLLOWUP ACTIONS:

Publication of intent to hold hearings in the Secretary of State's Bulletin on September 1, 1991, and publication of notice of public hearing in newspapers.

Hold public hearings in Portland, Springfield, Klamath Falls and Ontario the week of September 16, 1991.

Receive public comment until September 20, 1991.

Prepare a hearing officer's report for final rule adoption by the Commission on October 25, 1991.

Approved:

Section: Ernest A. Schmidt

Division: Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Deanna Mueller-Crispin

Phone: 292-5808

Date Prepared: July 5, 1991

dmc
eqcwt
7/5/91

ATTACHMENT A

Proposed Amendments to OAR 340-64

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
DIVISION 64 - SOLID WASTE MANAGEMENT: WASTE TIRES
7/1/91

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

Definitions

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

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

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

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

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

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

(6) "Danger" or "nuisance" -- includes but is not limited to the unpermitted storage of waste tires or waste tire materials, or the storage of waste tires or waste tire materials in a manner that does not comply with a condition of a permittee's waste tire storage permit.

(7) [(6)] "Department" -- the Department of Environmental Quality.

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

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

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

(11) [(10)] "End user":

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

(b) For other eligible uses of waste tires: the last person who uses the tires, chips, or similar materials to make a product with economic value. If the waste tire is processed by more than one person in becoming a product, the "end user" is the last person to use the tire as a tire, as

tire chips, or as similar materials. A person who produces tire chips or similar materials and gives or sells them to another person to use is not an end user.

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

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

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

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

(15) "Negotiated settlement" -- a stipulation, agreed settlement or consent order allowing removal of waste tires.

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

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

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

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

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

(21) [(19)] "Private carrier" -- any person who receives or generates waste tires and who operates a motor vehicle over the public highways of this state for the purpose of transporting persons or property when the transportation is incidental to a primary business enterprise, other than transportation, in which such person is engaged. "Private carrier" does not include a person whose primary tire business is collecting, sorting or transporting used or waste tires.

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

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

(24) "Retreadable casing" -- a waste tire suitable for retreading.

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

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

(26) [(24)] "Store" or "storage" -- [the placing of waste tires in a manner that does not constitute disposal of the waste tires.] to accumulate waste tires above ground, or to own or control property on which there are waste tires above ground. "Storage" includes the beneficial use of waste tires as fences and other uses with similar potential for causing environmental risks. "Storage" does not include [such beneficial uses as]

the use of waste tires as a ballast to maintain covers on agricultural materials or at a construction site or a beneficial use such as planters except when the Department determines such uses create environmental risks.

(27) [(25)] "Tire" -- a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is transported, or by which they may be drawn, on a highway. [T] Except for the purposes of waste tire removal under OAR 340-64-150 through -170, and for the purposes of disposal under OAR 340-64-052, this does not include tires on the following:

(a) A device moved only by human power.

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

(c) A motorcycle.

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

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

(f) A retreadable casing while under the control of a tire retreader or while being delivered to a tire retreader.

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

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

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

(c) Private individuals or private carriers who transport the person's own waste tires to a processor or for proper disposal.

(d) The United States, the State of Oregon, any county, city, town or municipality in this state, or any agency of the United States, the State of Oregon or a county, city, town or municipality of this state.

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

(30) [(28)] "Tire retailer" -- a person actively engaged in the business of selling new replacement tires at retail, whose local business license or permit (if required) specifically allows such sale. To be "actively" engaged in selling new tires, the person must demonstrate to the Department's satisfaction that new replacement tires have been sold in the preceding calendar quarter.

(31) "Tire retreader" -- a person actively engaged in the business of retreading waste tires by scarifying the surface to remove the old surface tread and attaching a new tread to make a usable tire for sale to the public.

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

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

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

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

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

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

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

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

(36) "Wrecking business" -- a business operating according to a certificate issued under ORS 822.110.

Waste Tire Storage Permit Required

340-64-015 (1) [After July 1, 1988, a] A person who stores more than 100 waste tires or over 200 cubic yards of tire-derived products in this state is required to have a waste tire storage permit from the Department. The following are exempt from the permit requirement:

(a) A tire retailer who stores not more than 1,500 waste tires for each retail business location.

(b) A tire retreader who stores not more than 3,000 waste tires [outside] for each individual retread operation so long as the waste tires are of the type the retreader is actively retreading.

(c) A wrecking business who stores not more than 1,500 waste tires for each retail business location.

(2) The exception allowed to a tire retailer under section (1) of this rule shall not apply unless the tire retailer submits the return required under ORS 459.519 and the return indicates the sale of new tires during the reporting period.

(3) Piles of tire-derived products are not subject to regulation as a waste tire storage site if the site actively consumes the following minimum tons of tire-derived products annually:

(a) For cement kilns: 1,700 tons.

(b) For pulp and paper mills: 1,700 tons.

(c) For manufacturers using crumb rubber: 400 tons.

(d) For manufacturers using other waste tire shreds or pieces: 100 tons.

[(2) Piles of tire derived products are not subject to regulation as waste tire storage sites if they have an economic value.]

[(3) If tire derived products have been stored for over six months, the Department shall assume they have no economic value, and the site operator must either:]

[(a) Apply for a waste tire storage site permit and comply with storage standards and other requirements of OAR 340-64-005 through 340-64-045; or]

[(b) Demonstrate to the Department's satisfaction that the tire derived products do have an economic value by presenting receipts, orders, or other documentation acceptable to the Department for the tire derived products.]

(4) After July 1, 1988, a permitted solid waste disposal site which stores more than 100 waste tires, is required to have a permit modification addressing the storage of tires from the Department.

(5) The Department may issue a waste tire storage permit in two stages to persons required to have such a permit by July 1, 1988. The two stages are a "first-stage" or limited duration permit, and a "second-stage" or regular permit.

(6) Owners or operators of existing sites not exempt from the waste tire storage site permit requirement shall apply to the Department by June 1, 1988 for a "first-stage" permit to store waste tires. A person who wants to establish a new waste tire storage site shall apply to the Department at least 90 days before the planned date of facility construction. A person applying for a waste tire storage permit on or after September 1, 1988 shall apply for a "second-stage" or regular permit.

(7) A person who is using or wants to use over 100 waste tires for a beneficial use must request the Department to determine whether that use constitutes "storage" pursuant to OAR 340-64-010(26) [(24)], and is thus subject to the waste tire storage site permit requirement. The Department may recommend remedial actions which, if implemented, will eliminate any environmental risk which would otherwise be caused by a beneficial use of waste tires.

(8) Use of waste tires which is regulated under ORS 468.750 or ORS 541.605 through 541.695 and for which a permit has been acquired is not subject to additional regulation under OAR 340-64.

(9) Failure to conduct storage of waste tires according to the conditions, limitations, or terms of a permit or these rules, or failure to obtain a permit, is a violation of these rules and shall be subject to civil penalties as provided in OAR Chapter 340, Division 12 or to any other enforcement action provided by law. Each day that a violation occurs is a separate violation and may be the subject of separate penalties.

(10) After July 1, 1988 no person shall advertise or represent himself/herself as being in the business of accepting waste tires for storage without first obtaining a waste tire storage permit from the Department.

(11) Failure to apply for or to obtain a waste tire storage permit, or failure to meet the conditions of such permit constitutes a nuisance.

"Second-Stage" or Regular Permit

340-64-020 (1) An application for a "second-stage" or regular waste tire storage permit shall:

(a) Include such information as shall be required by the Department, including but not limited to:

(A) A description of the need for the waste tire storage site.

(B) The zoning designation of the site, and a written statement of compatibility of the proposed waste tire storage site with the acknowledged local comprehensive plan and zoning requirements from the local government unit(s) having jurisdiction.

(C) A description of the land uses within a one-quarter mile radius of the facility, identifying any buildings and surface waters.

(D) A management program for operation of the site, which includes but is not limited to:

(i) Anticipated maximum number of passenger and/or truck tires and/or

tire-derived products to be stored at the site for any given one year period.

(ii) Present and proposed method of disposal, and timetable.

(iii) How the facility will meet the technical tire storage standards in OAR 340-64-035 for both tires and tire-derived products currently stored on the site, and tires and tire-derived products to be accepted.

(iv) How the applicant proposes to control mosquitoes and rodents, considering the likelihood of the site becoming a public nuisance or health hazard, proximity to residential areas, etc.

(E) A proposed contingency plan to minimize damage from fire or other accidental or intentional emergencies at the site. It shall include but not be limited to procedures to be followed by facility personnel, including measures to be taken to minimize the occurrence or spread of fires and explosions.

(F) The following maps:

(i) A site location map showing section, township, range and site boundaries.

(ii) A site layout drawing, showing size and location of all pertinent man-made and natural features of the site (including roads, fire lanes, ditches, berms, waste tire storage areas, structures, wetlands, floodways and surface waters).

(iii) A topographic map using a scale of no less than one inch equals 200 feet, with 40 foot intervals on 7.5 minute series.

(b) Submit proof that the applicant holds financial assurance acceptable to the Department in an amount determined by the Department to be necessary for waste tire removal processing, fire suppression or other measures to protect the environment and the health, safety and welfare, pursuant to OAR 340-64-025 and 340-64-035.

(c) Submit an application fee of $250 (or for applications for a waste tire storage permit to operate a site where tires will be stored as a beneficial use, an application fee of $100), and an annual compliance fee as listed in OAR 340-64-025. Fifty dollars ($50) of the application fee shall be nonrefundable. The rest of the application fee may be refunded in whole or in part when submitted with an application if either of the following conditions exists:

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

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

(d) Demonstrate that the applicant has long-term control of the site.

(2) A "second-stage" permit may be issued for up to five years. "Second-stage" storage permits and combined tire carrier/storage permits shall expire on January 1.

(3) The Department may waive any of the requirements in subsections (1)(a)(C) (land use descriptions), (1)(a)(D) (management program), (1)(a)(E) (contingency plan), (1)(a)(F) (maps), [or] (1)(b) (financial assurance) or (1)(d) (long-term control) of this rule for a waste tire storage site in existence on or before January 1, 1988, if it is determined by the Department that the site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem, or if it is scheduled to be cleaned up within six months of issuance of the permit. This waiver shall be considered for storage sites which are no longer receiving additional tires, and are under a closure schedule approved

by the Department. The site must still meet operational standards in OAR 340-64-035.

(4) A permittee who wants to renew his/her "second-stage" storage permit or combined tire carrier/storage permit shall apply to the Department for permit renewal at least 90 days before the permit expiration date. The renewal shall include such information as required by the Department. It shall include a permit renewal fee of $125, or $50 in the case of a permittee storing tires as a beneficial use, and a written statement of compatibility of the beneficial use with the acknowledged local comprehensive plan and zoning requirements from the local government unit(s) having jurisdiction.

(5) A permittee may request from the Department a permit modification to modify its operations as allowed in an unexpired permit. A permit modification initiated by the permittee shall include a permit modification fee of $25.

(6) The fee to reinstate a waste tire storage permit or combined tire carrier/storage permit which has been revoked by the Department is $150. There is no fee to reinstate a waste tire storage permit or combined tire carrier/storage permit which has been suspended by the Department.

Financial Assurance

340-64-022 (1) The Department shall determine for each applicant the amount of financial assurance required under ORS 459.720(c) and OAR 340-64-020 (1)(b). The Department shall base the amount on the estimated cost of cleanup for the maximum number of waste passenger tire equivalents and/or tire-derived products allowed by the permit to be stored at the storage site or the estimated cost of fire suppression. The amount of financial assurance required for permittees storing waste tires as a beneficial use could be as low as $0 if the use meets applicable operational and storage standards in OAR 340-64-035, and the Department determines that there will no need to remove the tires. If the tire-derived products have a positive economic value and are actively being used or sold by the permittee, the Department may reduce or eliminate financial assurance for the tire-derived products.

(2) The Department will accept as financial assurance only those instruments listed in and complying with requirements in OAR 340-61-034(3)(c)(A) through (G) or OAR 340-71-600(5)(a) through (c).

(3) The financial assurance shall be filed with the Department.

(4) The Department shall make any claim on the financial assurance within one year of any notice of proposed cancellation of the financial assurance.

Permittee Obligations

340-64-025 (1) Each person who is required by ORS 459.715 and 459.725, and OAR 340-64-015 and 340-64-055, to obtain a permit shall:

(a) Comply with the provisions of ORS 459.705 to 459.790, these rules and any other pertinent Department requirements.

(b) Inform the Department in writing within 30 days of company changes that affect the permit, such as business name change, change from individual to partnership and change in ownership.

(c) Allow to the Department, after reasonable notice, necessary access to the site and to its records, including those required by other public agencies, in order for the monitoring, inspection and surveillance program developed by the Department to operate.

(2) Each person who is required by ORS 459.715 and OAR 340-64-015 to obtain a permit shall submit to the Department by February 1 of each year an annual compliance fee for the coming calendar year in the amount of $250, except that the holder of a waste tire storage permit allowing operation of the site as a beneficial use, shall submit an annual compliance fee in the amount of $50, effective February 1, 1989. The permittee shall submit evidence of required financial assurance when the annual compliance fee is submitted. For the first year's operation, the full annual compliance fee shall apply if the waste tire storage site permit is issued on or before October 1. Any new waste tire storage site issued a permit after October 1 shall not owe an annual compliance fee until February 1 of the following year.

(3) Each waste tire storage site permittee whose site accepts waste tires after the effective date of these rules shall also do the following as a condition to holding the permit:

(a) Maintain records on approximate numbers of waste tires received and shipped, and tire carriers transporting the tires so as to be able to fulfill the reporting requirements in subsection (3)(c) of this rule. The permittee shall issue written receipts upon receiving loads of waste tires. Quantities may be measured by aggregate loads or cubic yards, if the permittee documents the approximate number of tires included in each. These records shall be maintained for a period of three years, and shall be available for inspection by the Department after reasonable notice.

(b) Maintain a record of the name (and the carrier permit number, if applicable) of the tire carriers not exempted by OAR 340-64-055(3) [(4)] who deliver waste tires to the site and ship waste tires from the site, together with the quantity of waste tires shipped with those carriers.

(c) Submit a report containing the following information annually by February 1 of 1990 and each year thereafter:

(A) Number of waste tires received at the site during the year covered by the report;

(B) Number of waste tires shipped from the site during the year covered by the report;

(C) A list (and tire carrier permit number, if applicable) of the tire carriers not exempted by OAR 340-64-055(3) [(4)] delivering waste tires to the site and shipping waste tires from the site.

(D) The number of waste tires located at the site at the time of the report.

(d) Notify the Department within one month of the vehicle license plate number and name, if possible, of any unpermitted tire carrier (who is not exempt under OAR 340-64-055(3) [(4)]) who delivers waste tires to the site after January 1, 1989.

(e) If required by the Department, prepare for approval by the Department and then implement:

(A) A plan to remove some or all of the waste tires stored at the site. The plan shall follow standards for site closure pursuant to OAR 340-64-045. The plan may be phased in, with Department approval.

(B) A plan to process some or all of the waste tires stored at the site. The plan shall comply with ORS 459.705 through 459.790 and OAR 340-64-035.

(f) Maintain the financial assurance required under OAR 340-64-020(1)(b) and 340-64-022.

(g) Maintain any other plans and exhibits pertaining to the site and its operation as determined by the Department to be reasonably necessary to protect the public health, welfare or safety or the environment.

[(4) The Department may waive any of the requirements of subsections (3)(a) through (3)(c) (D) of this rule for a waste tire storage site in existence on or before January 1, 1988. This waiver shall be considered for storage sites which are no longer receiving additional tires and are under a closure schedule approved by the Department.]

Department Review of Applications for Waste Tire Storage Sites

340-64-030 (1) Applications for waste tire storage permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Division 64.

(2) Applications for permits shall be complete only if they:

(a) Are submitted on forms provided by the Department, accompanied by all required exhibits, and the forms are completed in full and are signed by the applicant and the property owner or person in control of the premises;

(b) Include plans and specifications as required by OAR 340-64-018, and 340-64-020.

(c) Include the appropriate application fee pursuant to OAR 340-64-020(1)(c).

(3) An application may be accepted as complete for processing if all required materials have been received with the exception of the financial assurance required under OAR 340-64-020(1)(b) and 340-64-022, and the written statement of compatibility of the proposed site with the acknowledged local comprehensive plan and zoning requirements from the local government unit(s) having jurisdiction. However, the Department shall not issue a "second-stage" waste tire storage permit unless required financial assurance and land use compatibility have been received.

(4) Following the submittal of a complete waste tire storage permit application, the director shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(5) The notice shall contain information regarding the location of the site and the type and amount of waste tires <u>or tire-derived products</u> intended for storage at the site. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application.

(6) The Department may conduct a public hearing in the county where a proposed waste tire storage site is located.

(7) Upon receipt of a completed application, the Department may deny the permit if:

(a) The application contains false information.

(b) The application was wrongfully accepted by the Department.

(c) The proposed waste tire storage site would not comply with these rules or other applicable rules of the Department.

(d) There is no clearly demonstrated need for the proposed new, modified or expanded waste tire storage site.

(e) The proposed waste tire storage site would in the Department's opinion cause environmental, safety or health hazards.

(8) Based on the Department's review of the waste tire storage site application, and any public comments received by the Department, the director shall issue or deny the permit. The director's decision shall be subject to appeal to the Commission and judicial review under ORS 183.310 to 183.550.

Standards for Waste Tire Storage Sites

340-64-035 (1) All permitted waste tire storage sites must comply with the technical and operational standards in this rule.

(2) The holder of a "first-stage" waste tire storage permit shall comply with the technical and operational standards in this part if the site receives any waste tires after the effective date of these rules.

(3) A waste tire storage site shall not be constructed or operated in a wetland, waterway, floodway, 25-year floodplain, or any area where it may be subjected to submersion in water.

(4) Operation. A waste tire storage site shall be operated in compliance with the following standards:

(a) An outdoor waste tire pile shall have no greater than the following maximum dimensions:

(A) Width: 50 feet.

(B) Area: 15,000 square feet.

(C) Height: 6 feet.

(b) A 50-foot fire lane shall be placed around the perimeter of each waste tire pile. Access to the fire lane for emergency vehicles must be unobstructed at all times.

(c) Waste tire piles shall be located at least 60 feet from buildings.

(d) Waste tires to be stored for one month or longer shall be ricked, unless the Department waives this requirement.

(e) The permittee shall operate and maintain the site in a manner which controls mosquitoes and rodents if the site is likely to become a public nuisance or health hazard and is close to residential areas.

(f) A sign shall be posted at the entrance of the storage site stating operating hours, cost of disposal and site rules if the site receives tires from persons other than the operator of the site.

(g) No operations involving the use of open flames or blow torches shall be conducted within 25 feet of a waste tire pile.

(h) An approach and access road to the waste tire storage site shall be maintained passable for any vehicle at all times. Access to the site shall be controlled through the use of fences, gates, or other means of controlling access.

(i) If required by the Department, the site shall be screened from public view.

(j) An attendant shall be present at all times the waste tire storage site is open for business, if the site receives tires from persons other than the operator of the site.

(k) The site shall be bermed or given other adequate protection if necessary to keep any liquid runoff from potential tire fires from entering waterways.

(L) If pyrolytic oil is released at the waste tire storage site, the permittee shall remove contaminated soil in accordance with applicable rules governing the removal, transportation and disposal of the material.

(m) In the case of tire fences, the following are also required:

(A) For vector control:

(i) Drilling a two-inch hole into each quadrant of the downside of each tire used in the fence; or

(ii) Filling each individual waste tire with dirt; or

(iii) Another treatment approved in advance by the Department.

(B) A 20-foot fire lane shall be maintained on land under control of the permittee along the entire length of the tire fence. Access to the fire lane for emergency vehicles must be unobstructed and clear of vegetation at all times.

(C) Weeds shall not be allowed to grow on or over the tire fence.

(D) A tire fence shall not be constructed wider than one tire width.

(n) In the case of waste tires stored for seasonal agricultural uses: during the annual period(s) during which the waste tires are not being used for the beneficial use, they shall be stored to meet the standards in this rule.

(5) Operational standards for storage of tire-derived products: the following standards must be met:

(a) The product pile shall have no greater than the following maximum dimensions:

(A) Width: 40 yards.

(B) Volume: 6400 cubic yards.

(C) Height: 4 yards.

(b) A maximum of four piles of product are allowed on a site.

(c) Compliance with waste tire storage standards under sections (3), (4)(b), (c), and (e) through (L).

(6) [(5)] The Department may impose additional storage requirements for an individual site which are reasonably necessary to protect the public health or the environment.

(7) [(6)] Waste tires stored indoors shall be stored under conditions that meet those in The Standard for Storage of Rubber Tires, NFPA 231D-1986 edition, adopted by the National Fire Protection Association, San Diego, California.

(8) [(7)] The Department may approve exceptions to the preceding technical and operational standards for a company processing waste tires and/or storing tire-derived product if:

(a) The average time of storage for a waste tire and/or tire-derived products on that site is one month or less; and

(b) The Department and the local fire authority are satisfied that the permittee has sufficient fire suppression equipment and/or materials on site to extinguish any potential tire and tire chip fire within an acceptable length of time.

[(8) Tire-derived products subject to regulation under OAR 340-64-015 (3) shall be subject to standards in this rule except that piles of such products may be up to 12 feet high if approved by local fire officials.]

(9) [A permittee may petition t] The director may [to] grant a variance to the technical and operational standards in this rule or the requirements of subsections (3)(a) through (3)(c)(D) of OAR 340-64-025 for a waste tire storage site in existence on or before January 1, 1988, or for a waste tire storage site using tires for a beneficial use. [The director may by specific written variance waive] This may include certain requirements of these technical and operational standards when circumstances of the waste tire storage site location, operating procedures, and fire control protection indicate that the purpose and intent of these rules can be achieved without strict adherence to all of the requirements, or when the site is not receiving additional tires and is under a closure schedule approved by the Department.

Disposal of Tires at Solid Waste Disposal Sites: Ban; Chipping Standards [for Solid Waste Disposal Sites]

340-64-052 (1) After July 1, [1989,] 1991, a person may not dispose of waste tires in a land disposal site permitted by the Department unless:

(a) The waste tires are processed in accordance with the standards in section (2) of this rule; or

(b) The waste tires are determined by the Department to be so contaminated with dirt or rocks or other materials that they cannot be processed by a processor of waste tires, and should be considered to be "solid waste" rather than waste tires. A person possessing contaminated tires must request and receive a determination from the Department that such tires should be considered "solid waste" before they may be disposed of whole in a land disposal site; and

[(b) The waste tires were located for disposal at that site before July 1, 1989; or]

[(c) The Commission finds that the reuse or recycling of waste tires is not economically feasible pursuant to OAR 340-64-053; or]

[(d) The waste tires are received from a person exempt from the requirement to obtain a waste tire carrier permit under OAR 340-64-055 (4) (a) and (b); and]

(c) [(e)] Such disposal is not prohibited by the land disposal site's solid waste permit.

(2) To be landfilled under subsection (1)(a) of this rule, waste tires must be processed to meet the following criteria:

(a) The volume of 100 unprepared randomly selected whole tires in one continuous test period must be reduced by at least 65 percent of the original volume. No single void space greater than 125 cubic inches may remain in the randomly placed processed tires; or

(b) The tires shall be reduced to an average chip size of no greater than 64 square inches in any randomly selected sample of 10 tires or more. No more than 40 percent of the chips may exceed 64 square inches.

(3) The test to comply with (2)(a) shall be as follows:

(a) Unprocessed whole tire volume shall be calculated by randomly placing the 100 unprepared randomly selected whole tires in a rectangular container and multiplying the depth of unprocessed tires by the bottom area of the container;

(b) Processed tire volume shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container.

[Economic Feasibility of Reuse or Recycling Waste Tires]

[340-64-053 (1) Reuse or recycling of oversize waste tires and solid rubber tires is not economically feasible, and they are thus exempt from the chipping requirement under OAR 340-64-052 (2).]

[(2) The standard for "economic feasibility" of tire reuse or recycling shall be based on the following:]

[(a) The Department shall conduct a survey at least once every biennium of the charges for accepting waste passenger and truck tires at each permitted land disposal site in the state.]

[(b) The Department shall use the survey results to determine the mean and modal charges for passenger and truck tire disposal in the state.]

[(c) Either the mean or the modal charge, whichever is greater, shall be used as the base for the standard.]

[(d) The standard for passenger tires shall be the base plus ten percent.]

[(e) The standard for truck tires shall be the base plus 25 percent.]

[(3) Reuse or recycling of a waste tire shall be deemed economically feasible if the cost to reuse or recycle the tire is not more than the standard.]

[(4) If the charge for waste tire disposal at the local land disposal site is more than the standard:]

[(a) The local per tire disposal charge shall be the standard used to determine whether the cost of reuse or recycling is economically feasible; and]

[(b) Reuse or recycling shall be deemed economically feasible if the cost to reuse or recycle the passenger or truck tire is equal to or less than the charge for tire disposal at the local land disposal site.]

[(5) The director shall determine whether it is economically feasible to reuse or recycle waste tires in the service area of a land disposal site permittee.]

[(6) Only a land disposal site permittee may apply to the director to make that determination. Such application may be made after the effective date of this rule. Application shall be made on a form provided by the Department.]

[(7) An applicant shall submit written documentation such as bids from contractors of the cost of at least two of the best available options to reuse or recycle waste tires in quantities which could reasonably be expected to be generated in the applicant's service area. Cost shall be determined for waste tires collected at the applicant's land disposal site. The applicant may also submit documentation for costs of reuse or recycling

from one or more other locations within its service area where quantities of waste tires are generated.]

[(8) Reuse or recycling options whose costs should be considered include transporting the waste tires to:]

[(a) The nearest permitted waste tire storage site accepting waste tires.]

[(b) A waste tire processing site.]

[(9) If the Department knows of a reasonable alternative for reuse or recycling of waste tires that the applicant did not consider, it may require the applicant to document costs of that option.]

[(10) The Department may require any additional information necessary to act upon the application.]

[(11) If the Department requires additional information, the application shall not be considered complete until such information is received.]

[(12) The director shall approve or deny a complete application within 90 days of its receipt.]

[(13) Application for this exemption shall not be made more often than once a year.]

[(14) The Department may review biennially whether any exemption granted under this part should continue in force.]

Waste Tire Carrier Permit Required

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

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

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

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

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

(b) A private individual transporting the individual's own waste tires to a processor or for proper disposal.

(c) A private carrier transporting the carrier's own waste tires to a processor or for proper disposal.

[(b)] (d) A person [Persons] transporting fewer than five tires to a processor or for proper disposal.

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

(f) Persons transporting tire chips that meet the chipping standards in OAR 340-64-052.

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

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

(g) [(f)] The United States, the State of Oregon, any county, city, town or municipality in this state or any agency of the United States, the State of Oregon or a county, city, town or municipality of this state [, or any department of any of them].

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

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

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

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

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

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

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

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

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

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

(d) Any additional information required by the Department.

(8) [(10)] A corporation which has more than one separate business location may submit one waste tire carrier permit application which includes all the locations. All the information required in section (7) [(9)] of this rule shall be supplied by location for each individual location. The corporation shall be responsible for amending the corporate application whenever any of the required information changes at any of the covered locations.

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

(10) [(12)] An application for a combined tire carrier/storage permit shall include a $250 application fee, $50 of which shall be nonrefundable,

and an annual compliance fee as listed in OAR 340-64-063. The rest of the application fee may be refunded in whole or in part when submitted with an application if either of the following conditions exists:

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

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

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

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

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

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

(13) [(15)] Any deposit of cash, certificate of deposit, letter of credit, or negotiable securities submitted under sections (11) and (12) [(13) and (14)] of this rule shall remain in effect for not less than two years following termination of the waste tire carrier permit.

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

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

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

(a) Submits to the Department:

(A) The information required in OAR 340-64-055 (7) [(9)]; and

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

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

(17) [(19)] A waste tire carrier permittee may lease additional vehicles to use under its waste tire carrier permit without adding that vehicle to its fleet pursuant to section (16) [(18)] of this rule, under the following conditions:

(a) The vehicle may not transport waste tires when under lease for a period of time exceeding 30 days ("short-term leased vehicles"). If the lease is for a longer period of time, the vehicle must be added to the permittee's permanent fleet pursuant to section (16) [(18)] of this rule.

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

(c) The permittee shall pay a $25 annual compliance fee in advance to allow use of short-term leased vehicles, in addition to any other fees

required by OAR 340-64-055 (9), (10) and (16), [(11), (12) and (18),] and 340-64-063 [(7) and] (9)[.] and (10),

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

(e) The permittee's bond or other financial assurance required under OAR 340-64-055 (11) [(13)] must provide that, in performing services as a waste tire carrier, the operator of a vehicle leased by the permittee shall comply with the provisions of ORS 459.705 through 459.790 and of this rule.

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

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

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

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

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

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

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

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

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

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

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

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

Waste Tire Carrier Permittee Obligations

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

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

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

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

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

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

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

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

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

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

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

(b) Where or from whom the waste tires were collected, and whether the waste tires are from the cleanup of a waste tire pile;

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

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

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

Annual compliance fee (per company or corporation)	$175
Plus annual fee per vehicle used for hauling waste tires	25

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

[(a) Annual compliance fee	$25]

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

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

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

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

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

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

Annual compliance fee (per company or corporation)	$250

Plus annual fee per vehicle used for hauling waste tires $ 25

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

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

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

(14) [(15)] The fee for a permit modification of an unexpired waste tire carrier permit, initiated by the permittee, is $15. Adding a vehicle to the permittee's fleet pursuant to OAR 340-64-055(16) [(18)], dropping a vehicle from the permitted fleet, or updating a changed license plate number of a vehicle in the permitted fleet does not constitute a permit modification. However, adding a vehicle is subject to a separate fee pursuant to OAR 340-64-055(16) [(18)].

(15) The fee to reinstate a waste tire carrier permit which has been revoked by the Department is $100. No fee is required to reinstate a waste tire carrier permit which has been suspended by the Department.

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

Permit Suspension or Revocation

340-64-075 (1) The Department may suspend, revoke or refuse to renew any permit issued under OAR 340-64-005 through 340-64-070 if it finds:

(a) Failure to comply with any conditions of the permit, provisions of ORS 459.710 through 459.780, the rules of the Commission or an order of the Commission or Department; or

(b) Failure to maintain in effect at all times the required bond or other approved equivalent financial assurance in the amount specified in ORS 459.720 and ORS 459.730 or in the permit; or

(c) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts; or

(d) A significant change in the quantity or character of waste tires received or in the method of waste tire storage site operation; or

(e) Failure to timely remit the annual compliance fee, or nonpayment by drawee of any instrument tendered by applicant as payment of the permit fee.

(2) Suspension or revocation of a permit shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR 340-14-045, except as otherwise provided in OAR Chapter 340, Division 64.

(3) Within 45 days of the date when the Department receives a notice of prospective cancellation of the financial assurance required of a permittee under OAR 340-64-055(11) or OAR 340-64-20, the Department may initiate procedures to suspend or revoke the permit unless notice of reinstatement is received.

(4) If an annual compliance fee as required under OAR 340-64-025 or OAR 340-64-063 is not received by the Department within 30 days of the due date, the Department may initiate procedures to suspend or revoke the permit.

Proper Disposition of Waste Tires and Documentation Required of Generators of Waste Tires

340-64-080 (1) After the effective date of these rules, any person who generates or handles more than 100 waste tires a year shall keep a log of the amount of waste tires he or she generated or handled.

(2) After the effective date of these rules, any person who generates waste tires shall either:

(a) Have the waste tires transported by a waste tire carrier operating under a permit issued by the Department under ORS 459.705 to 459.790; or

(b) Transport the waste tires generated by the person to a waste tire storage site operating under a permit issued by the Department or to another site authorized by the Department.

(c) Have any waste tires which are also retreadable casings transported by a tire retreader for the purposes of retreading.

(3) After the effective date of these rules, any person who generates waste tires shall maintain for three years a written record, including receipts, bills of lading or other similar documents to establish the disposition of the waste tires. This shall include:

(a) For persons having their waste tires transported by a permitted waste tire carrier: receipts signed by the waste tire carrier showing the name and permit number of the waste tire carrier, the date and number or volume of waste tires hauled. A person using a waste tire carrier must verify that the carrier has a Department-issued waste tire carrier permit; such verification may include noting possession by the waste tire carrier of a valid Department decal, a valid cab card, or a valid block pass; or the person may call the Department for verification.

(b) For persons hauling their own waste tires: receipts with the date, number or volume of waste tires hauled and place where the waste tires were taken. The receipts shall be signed by an official representative of the location to which the waste tires were taken for storage, processing or disposal.

(4) The written record in section (3) shall reflect the approximate amount of waste tires generated by the person or under that person's control as reflected in the log kept under section (1) of this rule.

(5) For purposes of this rule, "generation" of waste tires shall include the accumulation of waste tires on property owned or controlled by the person, the presence of which has been documented by a public official.

(6) The information maintained under sections (1) and (2) of this rule shall be made available upon request of the Department.

Policy on Use of Waste Tire Recycling Account Funds

340-64-090 Waste tires have a resource value to society that is lost if they are landfilled. One goal of the Waste Tire Program is to control the transportation and storage of waste tires so that illegal dumping is eliminated, and the tires do not cause environmental hazards. The major tools for this are the permitting requirements for tire sites and tire carriers, and civil penalties for illegal tire storage/disposal.

Another program goal is to enhance the market for reuse of waste tires so that their value is recovered, and the market helps divert the stream of waste tires from being landfilled. [For this to happen, an economically attractive alternative to landfilling must be in place.] The 1987 Legislature determined that it was appropriate to offer an incentive to enhance this market in the form of [. The major tool for this is] a reimbursement to users of waste tires from the Waste Tire Recycling Account. The 1991 Legislature determined that such a reimbursement will no longer be needed to support the waste tire market after June 30, 1992. However, the Legislature directed that funds should continue to be available to assist with tire pile cleanups. [However, some existing sites will need financial help, or they will never be cleaned up. The Waste Tire Recycling Account also addresses this need, but under limited circumstances. The Department shall recommend or determine use of available funds in the Waste Tire Recycling Account, based on the following priority order:]

[(1) Reimbursement to people who use waste tires.] Accordingly, The Department shall recommend or determine use of available funds in the Waste Tire Recycling Account based on the following priority order:

(1) [(2)] Cleanup of permitted or non-permitted waste tire storage sites, following criteria established in OAR 340-64-155. Priority shall be given to abating a danger or nuisance created by waste tires, pursuant to OAR 340-64-155.

(2) Reimbursement to persons who use waste tires in Oregon.

(3) Reimbursement to persons who use waste tires outside of Oregon.

Reimbursement for Use of Waste Tires

340-64-100 (1) Funds in the Waste Tire Recycling Account may be used to reimburse persons for the costs of using waste tires or chips or similar materials.

(2) A person may apply to the Department for partial reimbursement from the Account for using waste tires. To be eligible for the reimbursement, the tires must:

(a) Be waste tires generated in Oregon;

(b) Be tire chips or similar materials from waste tires generated in Oregon; [and]

(c) Be used for energy recovery or other appropriate uses as specified in OAR 340-64-110[.]; and

(d) Be used before July 1, 1992.

(3) Notwithstanding any other provision of ORS 459.015, for purposes of encouraging the use of waste tires under ORS 459.705 to 459.790, the use of processed, source-separated waste tires having a positive market value as a new product to recover energy shall be considered recycling under ORS 459.015(2)(a)(C).

Application for Reimbursement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Provide documentation acceptable to the Department of the net amount of pounds of waste tires used (including embedded energy from waste

tires) in the quantity of product sold, purchased or used. Examples of acceptable documentation are:

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

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

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

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

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

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

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

(e) Submit a notarized affidavit warranting that the information provided in claiming the reimbursement is true and correct to the best of the applicant's knowledge.

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

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

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

(8) In addition to any other penalty imposed by law, any person who knowingly or intentionally provides false information to the Department in claiming a reimbursement shall be ineligible to receive any reimbursement under OAR 340-64-100 through OAR 340-64-135.

Basis of Reimbursement

340-64-130 (1) In order to be eligible for reimbursement, the use of waste tires must occur after [the effective date of this rule.] November 8, 1988 and before June 30, 1992.

(2) Any one waste tire shall be subject to only one request for reimbursement.

(3) The amount of the reimbursement shall be based on $.01 per pound for rubber derived from waste tires which is used by an applicant.

(4) Before June 30, 1991, t [T]he Department may authorize reimbursement funds for demonstration projects at a rate exceeding the above per pound amount if:

(a) The project does not use the waste tires [waste tires are recycled or reused, rather than processed] for energy recovery;

(b) There is no established market in Oregon for the use which is to be demonstrated;

(c) The total funds spent on any given project do not exceed $100,000 per project;

(d) The project is located in Oregon; [and]

(e) Advance certification for the project is obtained from the Department[.]; and

(f) The project is completed before June 30, 1992.

(5) The amount of rubber used shall be based on sales of product containing the rubber; or if the applicant is an end user who consumes and does not further sell the tires, chips or similar materials, the reimbursement shall be based on net pounds of materials purchased or used.

(6) Notwithstanding (3) above, the amount of reimbursement to an end user for an eligible use of tires shall not exceed the out-of-pocket cost to the end user of using the tires.

Processing and Approval of Applications

340-64-135 (1) An applicant shall submit a complete application for a reimbursement to the Department within 30 days of the end of the quarter in which the waste tires were used. The Department shall act on an application only if it is complete.

(2) If an application is late or incomplete, the Department shall not act on the application.

(3) The applicant may submit additional information required by the Department to complete the application. However, the Department [shall] may choose not to act on such an application until the end of the following quarter.

(4) The Department shall review a complete reimbursement application form for overall eligibility. The Department shall then determine the eligible number of pounds of rubber used.

(5) When the Department has received and reviewed pursuant to section (4) of this rule all completed applications for reimbursement for a quarter, the Department shall calculate the total dollar amount of eligible reimbursements requested at $.01 per pound of rubber used.

(6) The Department shall determine the amount of available funds in the Waste Tire Recycling Account. [In determining the amount of funds

available for the reimbursement in any quarter, the Department shall first deduct the amount of prorated reimbursement from the previous quarter "made whole" under section (8) of this rule.]

(7) If the amount of eligible reimbursements requested exceeds the amount of funds available for reimbursement, the Commission shall prorate the amount of all reimbursements for eligible uses received for that quarter. The time period for reimbursement as specified by the Commission shall be a calendar quarter. The proration shall be done as follows:

(a) First, in-state users [uses which reuse or recycle the waste tires, chips or similar materials] shall receive one hundred percent of the eligible amount requested up to the amount of funds available. Available funds in the Waste Tire Recycling Account shall be reduced by that amount.

(b) Remaining available funds in the Waste Tire Recycling Account shall then be prorated among all eligible out-of-state users [applicants who have used waste tires, chips or similar materials to recover their energy value]. This proration shall be based on an equal reduction per pound of rubber used by all remaining eligible applicants.

(c) If insufficient funds are available to reimburse eligible in-state users, the Commission shall prorate the amount of available funds among the eligible in-state users and not reimburse eligible out-of-state users for waste tires used in that quarter.

(8) When the final amount of reimbursement for all applicants under section (7)(a), [and] (7)(b) and (7)(c) of this rule has been determined, the Department shall make payment in that amount to each applicant.

(9) [The Department shall keep track of the amount by which a proration under section (7)(b) of this rule has reduced an otherwise eligible amount of reimbursement for an applicant. Before making reimbursements for the following quarter, the Department shall first reserve funds from the Waste Tire Recycling Account for applicants to "make whole" any reductions in costs eligible for the reimbursement caused by prorating in the preceding quarter under section (7)(b) of this rule.] Both in-state and out-of-state users may reapply again in the next quarter for reimbursement for the waste tires, chips or similar materials used but not reimbursed during the previous quarter.

(10) Within 30 days of the filing of an application for advance certification, the Department shall request any additional information needed to complete the application. The application is not complete until such additional information requested by the Department has been received.

(11) If the Department determines that an application for advance certification is eligible, it shall within 60 days of receipt of a completed application issue an advance certification.

(12) The Department shall process applications for reimbursement which have "advance certification" before acting on other applications.

(13) To ensure that a use continues to be eligible for the reimbursement, the Department may review the eligibility of an approved advance certification form:

(a) Annually;

(b) After any revision of this rule; or

(c) After a finding of the Commission that a reimbursement is not necessary to promote the use of waste tires.

Use of Waste Tire Site Cleanup Funds

340-64-150 (1) The Department may use cleanup funds in the Waste Tire Recycling Account, subject to the priorities set in 340-64-090, to:

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

(b) Pay to remove or process waste tires from a site pursuant to a signed negotiated settlement entered into by the Department and the applicable persons, pursuant to OAR 340-64-155.

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

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

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

(3) Priority in use of cleanup funds shall go to sites ranking higher than other potentially eligible sites in criteria making them an environmental risk, pursuant to OAR 340-64-155.

(4) For the Department to reimburse a local, state or federal government unit for waste tire danger or nuisance abatement, the following must happen:

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

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

(c) The agreement may require the local, state or federal government unit to assist the Department with recovery of costs from the responsible party if the cost of the abatement is $50,000 or more, or if the local, state or federal government unit wishes to pursue cost recovery from an abatement regardless of the cost.

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

Criteria for Use of Funds to Clean Up Permitted Waste Tire Sites or Conclude Negotiated Settlements for Cleanups

340-64-155 (1) The Department shall establish an environmental ranking for waste tire piles of permittees requesting cleanup funds or of applicable parties requesting a negotiated settlement for cleanup, based on potential

degree of environmental risk created by the tire pile. Sites with a higher ranking will in general be cleaned up before lower ranked sites. The following special circumstances shall serve as criteria in determining the degree of environmental risk. The criteria, listed in priority order, include but are not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 1: Financial Assistance to Local Governments

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

(c) If a local government is out of compliance with its waste tire

storage permit, the percentage of financial assistance from Table 1 may be reduced by 10 percentage points.

(4) For waste tire pile cleanups initiated after the effective date of this rule, in determining the amount of financial assistance to a permittee who is not a local government, or the share of the applicable parties' costs under a negotiated settlement, the Department may use the following criteria:

(a) If the waste tire pile contains fewer than 1,000 passenger tire equivalents: the Department may pay 100% of the cost.

(b) If the waste tire pile contains from 1,000 to 100,000 passenger tire equivalents: the Department may pay 90% of the cost if the permittee or applicable party is a private individual or partnership; the Department may pay 80% of the cost for a corporation.

(c) If the waste tire pile contains more than 100,000 passenger tire equivalents: the Department will perform an analysis of the financial situation of the person. The person will be subject to a "spend-down" contribution to the cost of the cleanup based on the following:

(A) For individuals and partnerships:

(i) Income spend-down: the amount of the person's average gross income for the three preceding years less $32,000 must be contributed to the cost of the cleanup; and

(ii) Asset spend-down: the amount of the person's net assets (excluding one automobile and homestead, and, for businesses, excluding building, equipment and inventory) less $20,000 must be contributed to the cost of the cleanup.

(iii) However, the total spend-down requirement shall not exceed half of the person's average gross annual income for the preceding three years.

(B) For corporations:

(i) Income spend-down: the average gross household income for the three preceding years of each of the corporate officers who are also corporate stockholders, less $32,000 for each officer, must be contributed to the cost of the cleanup;

(ii) Asset spend-down: the amount of the corporation's net assets (excluding building, equipment and inventory) less $20,000 must be contributed to the cost of the cleanup; and

(iii) The Department's contribution to the cost of a cleanup for a corporation shall not exceed 80%.

(d) If a permittee or applicable party (other than a corporation) believes that the contribution required by the criteria in subsection (4)(b) above would cause him or her financial hardship, he or she may request that the Department perform a financial analysis. After the analysis, the Department may reduce the required contribution as follows:

(A) The person's contribution may be limited to 50% of his or her average gross annual income for the preceding three years; or

(B) If the person's combined average income for the preceding three years and current net assets (excluding one automobile and homestead, and, for businesses, excluding building, equipment and inventory) are less than $32,000, the person's cost share may be reduced to $0.

(e) In order for the Department to complete any financial analysis under subsections (c) or (d) of this section, the person must submit state and federal tax returns for the past three years, a business statement of net worth, and similar materials. If the person is a business, the income

and net worth of other business enterprises in which the principals of the person's business have a legal interest must also be submitted.

(5) The criteria in section (4) of this rule may not be applied retroactively to waste tire pile cleanups completed before the effective date of the rule.

(6) The criteria in section (4) of this rule may be applied to the cleanup of only those waste tire piles that existed before January 1, 1988, unless the Department determines that special circumstances exist which justify an exception.

(7) The director retains the discretion to depart from the criteria in subsections 4(b) and 4(c) of this rule in extraordinary circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

[(B) For a corporation: up to 80 percent of the cost.]

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

(8) [(7)] A permittee or applicable party may receive financial assistance or conclude a negotiated settlement with the Department for no more than one complete waste tire removal or processing job.

(9) [(8)] The Department may advance funds for up to 100 percent of the cost of the [cleanup of] removal or processing of waste tires or waste tire materials from a permitted waste tire site, if:

(a) The permittee demonstrates that it cannot pay its share of the cleanup cost, as calculated according to section (4) of this rule, at the time the cleanup is completed;

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

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

340-64-160 (1) The Department may recommend to the Commission or the Director may find that cleanup funds should be made available to [partially] pay for cleanup of a permitted waste tire storage site, if all of the following are met:

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

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

(A) A detailed description of the permittee's proposed actions, including how the waste tires will be processed or recycled;

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

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

(D) Three bids competitively obtained from responsible contractors. The plan shall also show that the permittee selected the lowest responsible contractor. The contractor shall either be [or subcontract with] a waste tire carrier permitted by the Department, or be capable of processing the waste tires on site, or otherwise demonstrate why no such permit is required for the cleanup.

(c) The plan receives approval from the Department.

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

(2) [(3)] If the Commission or the Director finds that use of cleanup funds is appropriate, the Department shall agree to pay [part of the] Department-approved costs in an amount determined by the criteria in OAR

340-64-155 incurred by the permittee to remove or process the waste tires. Final payment shall be withheld until the Department's final inspection and confirmation that the tires have been removed or processed pursuant to the compliance plan and until the Department receives written documentation satisfactory to the Department that the permittee's share of the costs have been paid.

Use of Cleanup Funds for Abatement by the Department

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

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

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

(c) A waste tire pile or other waste tire materials which an owner of real property has failed to remove as required by the Department.

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

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

(4) The Department may bring an action or proceeding against the property owner or the person having possession, care, custody or control of the waste tires or other waste tire materials to enforce the abatement order issued under ORS 459.780.

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

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

(6) The order issued under [sub]section (3) of this [section] rule may include entering the property where the danger or nuisance is located, taking the tires and waste tire materials into public custody and providing for their processing or removal.

(7) After the abatement, the Department, upon request, may conduct a hearing according to the provisions of ORS 183.310 to 183.550 applicable to contested case hearings to determine the financial responsibility of any party involved. Any person requesting a hearing shall present his or her reasons why he or she should not be considered financially responsible for the costs of the abatement. If a hearing is not requested, the Department may proceed to recover the costs incurred in abating the waste tires or other waste tire materials. This shall include providing an invoice to the responsible party with the Department's costs incurred in the abatement.

(8) [(7)] The Department may [request the attorney general to] bring an action or proceeding to recover any reasonable and necessary expenses incurred by the Department for abatement costs, including administrative and legal expenses. The Department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary. [The Department may consider the financial situation of the person in determining the amount of abatement costs to be recovered.] In general, the Department will consider a person or persons who were the subject of an abatement conducted by the Department under this rule to be responsible for repaying the Department for the full costs of the abatement.

Procedure for Use of Cleanup Funds By Negotiated Settlement

340-64-170 (1) Instead of entering an order, the Department may enter into a negotiated settlement with any or all of the applicable parties, allowing the Department to enter and remove the waste tires or other waste tire materials on the property, if the following criteria are met:

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

(b) The applicable parties agree to allow the Department or its contractors to enter the property and remove the waste tires or other waste tire materials.

(c) The applicable parties agree to pay to the Department, if so required by the Department pursuant to criteria in OAR 340-64-155, either of the following:

(A) A specified sum of money representing the Department's costs in removing the waste tires or other waste tire materials from the property; or

(B) If the exact amount of the costs are unknown at the time of the agreement, a percentage of the Department's final costs incurred in removing the waste tires or other waste tire materials from the property.

(2) Upon completion of the waste tire removal, the Department shall send to the applicable parties a certified statement indicating the total cost of removal and the percentage of the total costs the parties are required to pay to the Department, if any.

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ATTACHMENT B

RULEMAKING STATEMENTS
for
Proposed New Rules and Revisions to Existing Rules
Pertaining to Storage, Transportation, Disposal
and Cleanup of Waste Tires,
and Reimbursement for Use of Waste Tires

OAR Chapter 340, Division 64

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

STATEMENT OF NEED:

Legal Authority

The 1987 Oregon Legislature passed the Waste Tire Act regulating the disposal, storage and transportation of waste tires, and establishing a fund to clean up waste tire piles and reimburse persons who use waste tires. ORS 459.785 requires the Commission to adopt rules and regulations necessary to carry out the provisions of ORS 459.705 to 459.790. ORS 459.770 requires the Commission to adopt rules to carry out the provision of that section pertaining to reimbursement for use of waste tires. The 1991 Oregon Legislature passed HB 2246 amending and adding new provisions to the Waste Tire Act. The Commission is adopting new rules and revisions to existing rules which are necessary to implement the statutory revisions and carry out the provisions of the Act.

Need for the Rule

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

Principal Documents Relied Upon

a. 1991 HB 2246.
b. Oregon Revised Statutes, Chapter 459.
c. Oregon Administrative Rules, Chapter 340, Division 64.

ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction

The rule makes several changes required by revisions to the Waste Tire Act in 1991 HB 2246. These include removing certain persons from the requirement to obtain a waste tire carrier permit; establishing a record-keeping requirement for persons generating waste tires; creating a new procedure which the Department may use to provide financial assistance to persons who must clean up waste tire piles and changing existing criteria for financial contributions of responsible parties to waste tire cleanups; changing the appeals procedure for respondents whom the Department is ordering to clean up illegal tire piles; modifying priority uses under the Department's reimbursement to persons who use waste tires for recycling and ending the reimbursement on June 30, 1992; requiring operators of certain waste tire chip piles to obtain waste tire storage permits; changing waste tire storage regulations for tire retreaders and wrecking businesses; and allowing the Department to make an emergency determination allowing temporary disposal of whole waste tires at landfills.

II. General Public

The general public will now be allowed to transport at one time unlimited numbers of their own waste tires for proper disposal. Previous legislation required anyone hauling over four waste tires at one time to obtain a waste tire carrier permit. This meant that persons needing to dispose of even small numbers of waste tires (over four) either had to obtain a permit or use a permitted waste tire carrier. The cost of obtaining a permit was $50 plus a $5,000 bond (costing at least $100/year). The cost of using a permitted waste tire carrier could vary from about $1 per passenger tire to over $2.50. "At the gate" tipping fees for waste tires range from $.50 (processors) to $2.50 (transfer stations).

Members of the general public having illegal waste tire piles which they are required, by statute, to clean up, would be able to enter into a "negotiated settlement" with the Department. The rules specify the financial contribution required from the responsible party in this situation. Small tire piles (under 1,000 tires) would be cleaned up at no cost to the person. Operators of intermediate size tire piles (1,000 to 100,000 tires)

would be required to contribute 10% of the cost of the cleanup. Operators of large piles (over 100,000 tires) would be subject to a "spend-down" requirement (per criteria in existing rule), based on their income and assets. Cleanup of waste tire piles costs about $1 per passenger-tire equivalent. Thus the owner of a 500-tire pile cleaned up would receive a $500 financial benefit. The Department estimates that there are a few hundred tire piles with fewer than 1,000 waste tires. An operator of a 25,000-tire pile would receive a $22,500 benefit. There are 30 - 40 intermediate size piles. The benefit received by the operator of a "large" pile would depend on the size of the pile and the financial situation of the site operator. There are only one or two "large" piles.

It is likely that funds from the Waste Tire Recycling Account will be exhausted before all potentially eligible tire piles can be cleaned up. The Department's priority is to clean larger sites first.

Members of the public who have or want to create piles of over 200 cubic yards of tire chips will be required to obtain a waste tire storage site. They would be subject a to permit application fee of $250 and an annual compliance fee of $250. They would also have to provide financial assurance for the tire chips, amounting to about $20/ton. If the owner of a tire chip pile did not want to obtain a permit, he or she would be required to remove and properly dispose of the chips, again at a cost of about $20/ton. To the Department's knowledge, there are fewer than five such sites now in existence.

Members of the public needing to dispose of waste tires will be required to keep records of their proper disposal. Since this may be done merely by saving receipts, this would not be an increased financial burden.

III. Small Business

Small businesses generating and/or needing to dispose of waste tires or tire chips would be affected in the same way as the general public. Small businesses (sole proprietorships or partnerships) with waste tire piles to be cleaned up could receive the same financial assistance with tire pile cleanup under a "negotiated settlement" as members of the general public.

A number of small businesses (about 40) who transport only their own waste tires for disposal are now subject to the waste tire carrier permit requirement. Under the proposed rule changes, they will no longer need a permit if they haul only their own waste tires. Thus they will thus no longer be subject to the $25 (private carrier) or $175 (regular carrier) annual carrier permit compliance fee, or the $5,000 financial assurance requirement. However a small business which is in the business of hauling waste tires will still need a waste tire carrier permit; and may be

subject to the new permit reinstatement fee ($100) if the permit is revoked by the Department. A small business which has a waste tire storage site permit would be subject to the new permit reinstatement fee ($150) if the waste tire storage permit were revoked by the Department. Few such cases are anticipated, as the Department has not yet revoked any carrier or storage permits.

A small business which is also a wrecking yard would be allowed to store up to 1,500 waste tires without having to obtain a waste tire storage permit from the Department. This will allow wrecking yards more flexibility in managing waste tires; and may allow one or two which now have waste tire storage permits to operate without such a permit, thus saving permit fees and other permit-associated expenses.

IV. Large Business

The same remarks are true for large businesses. However, the amount of financial assistance a corporation may receive with the cleanup of a waste tire pile is 80%. Some large out-of-state businesses are now receiving a $.01/lb reimbursement from the Department for using/recycling Oregon waste tires. Under the proposed rules, in-state users of rubber from waste would be reimbursed before out-of-state users if insufficient funds exist to reimburse both. This could result in a lower reimbursement than anticipated on the part of the out-of-state users.

V. Local Governments

Local governments are exempted from the requirement to obtain a waste tire carrier permit, even if they charge a fee for collecting waste tires. Any local government now possessing a waste tire carrier permit will in the future be exempt, and thus receive an economic benefit of at least $200/year in saved permit fees. Local governments will be subject to record-keeping requirements for how they dispose of any waste tires generated, but this should cause little economic impact over current record-keeping practices.

VI. State Agencies

State agencies are specifically added as "persons" which might receive reimbursement for waste tire abatements which they carry out. The Department could reimburse them, under an Intergovernmental Agreement, for between 90% and 99% of the cost of the waste tire abatement.

fiscal

DEQ LAND USE EVALUATION STATEMENT

1. **Explain the purpose of the proposed program/rules.** To implement changes made in the waste tire program by the 1991 Oregon Legislature (in House Bill 2246), and to make housekeeping changes required for better program operation. Includes allowing the Department to regulate storage and transportation of waste tire chips, with a waste tire storage permit requirement for chip piles over a certain size.

2. **Does the proposed program/rules affect existing rules/programs/activities that have been determined land use programs in the DEQ State Agency Coordination(SAC) Program?**

yes XX **no** ____

If yes, identify existing program/rule/activity Issuance of waste tire storage permits.
If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed program/rule? yes XX **no** ____ **if no, explain** ____

If no, apply criteria 1. and 2., from the other side of this form and from Section III Subsection 2 of the SAC program document, to the proposed program/rules. In the space below, state if the proposed rules/programs are considered programs affecting land use. Be specific in citing the criteria and reasons for the determination. ____

3. **If the proposed program/rules have been determined a land use program, under 2. above, and are not subject to existing land use compliance and compatibility procedures, explain the new procedures that will be used to ensure compliance and compatibility.**

(Requirement for waste tire storage permit for tire chip piles of a certain size will be subject to same existing land use compliance procedures as for other waste tire storage permits for whole tires.)

Deanna Mueller-Crispin — SW Permits + Compliance, HSW — 7/5/91
DEQ staff signature — **Section, Division** — **Date**

Attachment D
Agenda Item C
7/24/91 EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rules Relating to Regulating Transportation and Storage of Waste Tires; Cleanup of Tire Piles; and Reimbursement to Users of Waste Tires

Hearing Dates: 9/16/91
9/17/91
9/18/91
9/19/91
Comments Due: 9/20/91

WHO IS AFFECTED: All persons generating waste tires, including retail tire dealers. Persons hauling waste tires. Persons storing tire chips or waste tires, including wrecking yards. Persons disposing of waste tires. Tire retreaders. Units of state and the federal government with waste tires. Persons using rubber from Oregon waste tires.

WHAT IS PROPOSED: The Department proposes to revise existing administrative rules OAR 340-64-010, 340-64-015, 340-64-020, 340-64-025, 340-64-030, 340-64-035, 340-64-052, 340-64-053, 340-64-055, 340-64-063, 340-64-075, 340-64-090, 340-64-100, 340-64-120, 340-64-130, 340-64-135, 340-64-150, 340-64-155, 340-64-160, and 340-64-165; to add new rules OAR 340-64-080 and 340-64-170; and to delete rule OAR 340-64-053.

WHAT ARE THE HIGHLIGHTS: Rule revisions and additions implement changes made by the 1991 Oregon Legislature, and make other changes the Department has found necessary in administering the program. The revisions will remove certain waste tire carriers from the waste tire carrier permit requirement; will establish criteria for a responsible party's financial contribution to a Department-funded tire pile cleanup; will regulate the storage of waste tire chips; will require persons generating waste tires to either use a permitted waste tire carrier, or to self-haul for proper disposal, and to keep records of how the tires are disposed of; will establish fees to reinstate a revoked waste tire carrier or storage permit; will change procedures to request a hearing concerning a Department tire pile abatement action; will change priorities in use of the $.01/lb reimbursement for reuse or recycling of waste tires; will implement a ban on landfill disposal of waste tires.

(over)

811 S.W. 6th Avenue
Portland, OR 97204

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

11/1/86

HOW TO COMMENT:

Public hearings will be held before a hearings officer at:

10 a.m.
Monday, September 16, 1991
Department of Environmental Quality
Hearing Room 3A
811 S.W. 6th Avenue
Portland, OR

7 p.m.
Tuesday, September 17, 1991
City Council Chambers, Room 184
225 5th Street
Springfield, OR

7 p.m.
Wednesday, September 18, 1991
Klamath County Library
126 South 3rd Street
Klamath Falls, OR

7 p.m.
Thursday, September 19, 1991
Malheur County Library
388 S.W. 2nd Avenue
Ontario, OR

Written or oral comments on the proposed rule changes may be presented at the hearing. Written comments may also be sent to the Department of Environmental Quality, Waste Tire Program, Hazardous and Solid Waste Division, 811 S.W. 6th Avenue, Portland, OR 97402, and must be received no later than 5:00 p.m., Friday, September 20, 1991.

Copies of the complete proposed rule package including rulemaking statements may be obtained from the DEQ Hazardous and Solid Waste Division. For further information, contact Deanna Mueller-Crispin at 229-5808, or toll-free at 1-800-452-4011.

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt rule revisions identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules., The Commission will consider the proposed rule revisions at its October, 1991 meeting.

G:\WT\RPT\SB10699

REQUEST FOR EQC ACTION

Meeting Date: July 24,1991
Agenda Item: D
Division: Water Quality
Section: Surface Water

SUBJECT:

Establishment of fees for inspections, review and certification of oil spill prevention and emergency response plans for vessels and facilities (Senate Bill 242)

PURPOSE:

Request to the Environmental Quality Commission for Hearing Authorization for establishing fee schedule to implement the provisions of Senate Bill 242.

ACTION REQUESTED:

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

_X_ Authorize Rulemaking Hearing
___ Adopt Rules
- Proposed Rules — Attachment ___
- Rulemaking Statements — Attachment 1
- Fiscal and Economic Impact Statement — Attachment 2
- Public Notice — Attachment ___

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

___ Approve Department Recommendation
- ___ Variance Request — Attachment ___
- ___ Exception to Rule — Attachment ___
- ___ Informational Report — Attachment ___

___ Other: (specify) Attachment ___

DESCRIPTION OF REQUESTED ACTION:

Senate Bill 242 authorizes the Environmental Quality Commission to establish by rule a schedule of reasonable fees to be assessed for the review of a covered vessel or facility oil spill prevention and emergency response plan, annual compliance certification of the plan, inspections of the covered vessels and facilities, and exercises of the approved plans. The fees will also cover the DEQ expenses for: 1) developing a method of natural resource valuation for assessing damages to the environment; 2) implementing spill prevention education and training programs; 3) oversight of oil transfer operations; 4) adopting an incident command system; 5) coordinating oil spill research with other west coast states; 6) annually reviewing and exercising the spill plan developed under ORS 468.831 and 468.833, providing training in its use and conducting spill exercises to test its adequacy.

The bill affects four sectors of the maritime community: oil storage facilities including pipelines, tank vessels, oil barges, and cargo vessels. Fees for cargo vessels and oil barges have been set in statute at:

1. Cargo vessels $25 per trip
2. Oil barges $28 per trip

For tank vessels and covered facilities an annual cap has been set in statute at $153,600 which is approximately 3/5 of the annual program budget. The schedule of fees to be paid by the covered facilities and tank vessels must be established by rule by the Environmental Quality Commission.

The Department proposes to meet with representatives of the facilities and tank vessels to determine an equitable fee schedule and take their recommendations out for public hearing as soon as possible.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: SB 242 ORS 468.780-815	Attachment 1
	Enactment Date: pending	
___	Statutory Authority: _____	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___

_X_ Time Constraints: Implementation of the program is dependent on establishing the fee schedule and beginning the collection of those fees.

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The proposed fees will directly impact the four sectors of the regulated community identified above. The Department has worked closely with these groups in developing the language and concepts in SB 242. Industry supported its passage and has agreed to the fee schedule and cap set in the bill.

By our calculations, the cost to the regulated community will be no more than .01 cents per gallon. It is not anticipated that this will affect costs at the gas pump for consumers.

PROGRAM CONSIDERATIONS:

The proposed program is part of the Governor's 1991-93 recommended budget. If fully funded, it will support 1 FTE under the existing program mandated by ORS 468.831 -.833. In addition, two new technical positions and one office specialist will be added to develop and implement the program. One technical position and the office specialist will be hired immediately and one position will be phased in during the second year of the biennium to review the plans as they begin to be submitted.

The proposed fee schedule will support this program. It also contains $100,000 of contract dollars which will be used to: 1) support 3/4 FTE at the Fish and Wildlife Department to

assist in plan reviews and the implementation of a wildlife rehabilitation program; and 2) implement a spill prevention education program with the OSU Sea Grant Program.

The proposed fee schedule attempts to spread the cost of the program equitably between the four sectors of the regulated community. The industry groups have agreed to this distribution.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

A plan review fee, annual compliance fee, oil transfer fee, and a per trip fee were all considered by the Department. The final approach appears to spread the cost most equitably and was therefore supported by the regulated community.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department's recommendation is to spread the annual cost of $153,600 equitably between the two sectors of the community; covered facilities and tank vessels. A schedule has not been approved by the affected parties. The Department will open immediate discussions with them to determine an acceptable balance prior to holding public hearings.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Oregon has participated on the States/BC Oil Spill Task Force formed in the wake of the Exxon Valdez spill. In October 1990, the Task Force issued a report that contained 43 recommendations for preventing spills and improving response capabilities on the west coast. Senate Bill 242 contains many of these recommendations. Oregon has also worked closely with the state of Washington to ensure that consistent rules and programs are implemented on the Columbia River where we share a common border. The language and concepts in SB 242 are consistent with legislation already passed in Washington state.

Oregon is not prepared to deal with a large oil spill. The impacts to our important natural resources and economy could

be devastating. Doing everything possible to prevent spills is the most realistic way to ensure that a large spill does not occur. SB 242 is consistent with agency and legislative policy of protecting and preserving the water quality of the state.

ISSUES FOR COMMISSION TO RESOLVE:

Can discussions with the affected parties proceed immediately with hearings to be scheduled as soon as an acceptable distribution of fees has been determined?

INTENDED FOLLOWUP ACTIONS:

Once fees are established by rule, the Department will be developing rules for: 1) the submission of contingency plans; 2) the required contents of the plans; and 3) the methods for determining the adequacy of those plans.

Approved:

Section: Andrew Z. Schaedel

Division: Lydia Taylor

Director: Jill Hallsen

Report Prepared By: Bruce Sutherland

Phone: 229-6035

Date Prepared: June 19,1991.

(Author:Typist)
(File Name/Number)
(Date Typed)

C-Engrossed
Senate Bill 242

Ordered by the House June 27
Including Senate Amendments dated April 19 and House Amendments
dated June 17 and June 27

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Budget and Management Division, Executive Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires oil contingency plans for oil facilities and vessels. Directs Environmental Quality Commission to adopt standards for plan. Permits Environmental Quality Commission to establish reasonable fees for review and approval of plan. Provides for compliance with Federal Oil Pollution Act of 1990. Directs Environmental Quality Commission to adopt rules to test adequacy of plan. Requires Department of Environmental Quality to assess fees on certain structures and vessels to pay costs incident to administration of Act. Establishes safety committee for Oregon coast to operate under direction of Ports Division of Economic Development Department. Creates Oil Spill Prevention Fund. Imposes civil and criminal penalties. Requires study regarding application of Act to hazardous materials spills. Appropriates money. **Limits expenditures.**

A BILL FOR AN ACT

Relating to oil spills; creating new provisions; amending ORS 468.780 and 777.817; appropriating money; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 and 4 to 19 of this Act are added to and made a part of ORS 468.780 to 468.815.

SECTION 2. (1) The Legislative Assembly finds that:

(a) Oil spills present a serious danger to the fragile natural environment of the state.

(b) Commercial vessel activity on the navigable waters of the state is vital to the economic interests of the people of the state.

(c) Recent studies conducted in the wake of disastrous oil spills have identified the following problems in the transport and storage of oil:

(A) Gaps in regulatory oversight;

(B) Incomplete cost recovery by states;

(C) Despite research in spill cleanup technology, it is unlikely that a large percentage of oil can be recovered from a catastrophic spill;

(D) Because response efforts cannot effectively reduce the impact of oil spills, prevention is the most effective approach to oil spill management; and

(E) Comprehensive oil spill prevention demands participation by industry, citizens, environmental organizations and local, state, federal and international governments.

(2) Therefore, the Legislative Assembly declares it is the intent of sections 4 to 19 of this 1991 Act to establish a program to promote:

(a) The prevention of oil spills especially on the large, navigable waters of the Columbia River,

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

the Willamette River and the Oregon coast;

(b) Oil spill response preparedness, including the identification of actions and content required for an effective contingency plan;

(c) A consistent west coast approach to oil spill prevention and response;

(d) The establishment, coordination and duties of safety committees as provided in section 19 of this 1991 Act; and

(e) To the maximum extent possible, coordination of state programs with the programs and regulations of the United States Coast Guard and adjacent states.

SECTION 3. ORS 468.780 is amended to read:

468.780. As used in ORS 468.020, 468.095, 468.140 (3) and 468.780 to 468.833:

(1) "Bulk" means material stored or transported in loose, unpackaged liquid, powder or granular form capable of being conveyed by a pipe, bucket, chute or belt system.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, of 300 gross tons or more. "Cargo vessel" does not include a vessel used solely for commercial fish harvesting.

(3) "Commercial fish harvesting" means taking food fish with any gear unlawful for angling under ORS 506.006, or taking food fish in excess of the limits permitted for personal use, or taking food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels.

(4) "Contingency plan" means an oil spill prevention and emergency response plan required under section 4 of this 1991 Act.

(5) "Covered vessel" means a tank vessel, cargo vessel or passenger vessel.

(6) "Discharge" means any emission other than natural seepage of oil, whether intentional or unintentional. "Discharge" includes but is not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping oil.

(7) "Exploration facility" means a platform, vessel or other offshore facility used to explore for oil in the navigable waters of the state. "Exploration facility" does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation.

(8) "Facility" means any structure, group of structures, equipment, pipeline or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil. "Facility" does not include:

(a) A railroad car, motor vehicle or other rolling stock while transporting oil over the highways or rail lines of this state;

(b) An underground storage tank regulated by the Department of Environmental Quality or a local government under ORS 466.705 to 466.835 and 466.895; or

(c) Any structure, group of structures, equipment, pipeline or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil but does not receive oil from tank vessels, barges or pipelines.

[*(1)*] **(9)** "Hazardous material" has the meaning given that term in ORS 466.605.

(10) "Maritime association" means an association or cooperative of marine terminals,

facilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that provides oil spill response planning and spill related communications services within the state.

(11) "Maximum probable spill" means the maximum probable spill for a vessel operating in the navigable waters of the state considering the history of spills of vessels of the same class operating on the west coast of the United States.

(12) "Navigable waters" means the Columbia River, the Willamette River up to Willamette Falls, the Pacific Ocean and estuaries to the head of tide water.

(13) "Offshore facility" means any facility located in, on or under any of the navigable waters of the state.

[(2)] **(14)** "Oils" or "oil" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

(15) "Onshore facility" means any facility located in, on or under any land of the state, other than submerged land, that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or adjoining shorelines.

(16) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for compensation.

(17) "Person" has the meaning given the term in ORS 468.005.

[(3)] **(18)** "Person having control over oil" includes but is not limited to any person using, storing or transporting oil immediately prior to entry of such oil into the **navigable** waters of the state, and shall specifically include carriers and bailees of such oil.

(19) "Pipeline" means an onshore facility, including piping, compressors, pump stations and storage tanks, used to transport oil between facilities or between facilities and tank vessels.

(20) "Region of operation" with respect to the holder of a contingency plan means the area where the operations of the holder that require a contingency plan are located.

[(4)] **(21)** "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

(22) "Tank vessel" means a ship that is constructed or adapted to carry oil in bulk as cargo or cargo residue. "Tank vessel" does not include:

(a) A vessel carrying oil in drums, barrels or other packages;

(b) A vessel carrying oil as fuel or stores for that vessel; or

(c) An oil spill response barge or vessel.

(23) "Worst case spill" means:

(a) In the case of a vessel, a spill of the entire cargo and fuel of the tank vessel complicated by adverse weather conditions; and

(b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

SECTION 4. (1) Unless an oil spill prevention and emergency response plan has been approved by the Department of Environmental Quality and has been properly implemented, no person shall:

(a) Cause or permit the operation of an onshore facility in the state;

(b) Cause or permit the operation of an offshore facility in the state; or

(c) Cause or permit the operation of a covered vessel within the navigable waters of the state.

(2) It is not a defense to an action brought for a violation of subsection (1) of this section that

the person charged believed that a current contingency plan had been approved by the department.

(3) A contingency plan shall be renewed at least once every five years.

SECTION 5. (1) On or before July 1, 1992, the Environmental Quality Commission shall adopt by rule standards for the preparation of contingency plans for facilities and covered vessels.

(2) The rules adopted under subsection (1) of this section shall be coordinated with rules and regulations adopted by the State of Washington and the United States Coast Guard and shall require contingency plans that at a minimum meet the following standards. The plan shall:

(a) Include complete details concerning the response to oil spills of various sizes from any covered vessel or facility covered by the contingency plan.

(b) To the maximum extent practicable, be designed, in terms of personnel, materials and equipment, to:

(A) Remove oil and minimize any damage to the environment resulting from a maximum probable spill; and

(B) Remove oil and minimize any damage to the environment resulting from a worst case spill.

(c) Consider the nature and number of facilities and marine terminals in a geographic area and the resulting ability of a facility to finance a plan and pay for department review.

(d) Describe how the contingency plan relates to and is coordinated with the response plan developed by the Department of Environmental Quality under ORS 468.831 and 468.833 and any relevant contingency plan prepared by a cooperative, port, regional entity, the state or the Federal Government in the same area of the state covered by the plan.

(e) Provide procedures for early detection of an oil spill and timely notification of appropriate federal, state and local authorities about an oil spill in accordance with applicable state and federal law.

(f) Demonstrate ownership of or access to an emergency response communications network covering all locations of operation or transit by a covered vessel. The emergency response communications network also shall provide for immediate notification and continual emergency communications during cleanup response.

(g) State the number, training preparedness and fitness of all dedicated, pre-positioned personnel assigned to direct and implement the plan.

(h) Incorporate periodic training and drill programs to evaluate whether the personnel and equipment provided under the plan are in a state of operational readiness at all times.

(i) State the means of protecting and mitigating the effects of a spill on the environment, including fish, marine mammals and other wildlife, and insuring that implementation of the plan does not pose unacceptable risks to the public or to the environment.

(j) Provide a detailed description of equipment, training and procedures to be used by the crew of a vessel, or the crew of a tugboat involved in the operation of a nonself-propelled tank vessel, to minimize vessel damage, stop or reduce spilling from the vessel and only when appropriate and the vessel's safety is assured, contain and clean up the spilled oil.

(k) Provide arrangements for pre-positioning oil spill containment and cleanup equipment and trained personnel at strategic locations from which the personnel and equipment can be deployed to the spill site to promptly and properly remove the spilled oil.

(L) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan.

(m) Provide for disposal of recovered oil in accordance with local, state and federal laws.

(n) State the measures that have been taken to reduce the likelihood a spill will occur, including but not limited to design and operation of a vessel or facility, training of personnel, number of personnel and backup systems designed to prevent a spill.

(o) State the amount and type of equipment available to respond to a spill, where the equipment is located and the extent to which other contingency plans rely on the same equipment.

(p) If the commission has adopted rules permitting the use of dispersants, describe the circumstances and the manner for the application of dispersants in conformance with the rules of the commission.

SECTION 6. (1) A contingency plan for a facility or covered vessel shall be submitted to the Department of Environmental Quality within 12 months after the commission adopts rules under section 5 of this 1991 Act. The department may adopt a schedule for submission of an oil contingency plan within the 12-month period. The schedule for the Columbia River shall be coordinated with the State of Washington. The department may adopt an alternative schedule for the Oregon coast and the Willamette River.

(2) The contingency plan for a facility shall be submitted by the owner or operator of the facility or by a qualified oil spill response cooperative in which the facility owner or operator is a participating member.

(3) The contingency plan for a tank vessel shall be submitted by:

(a) The owner or operator of the tank vessel;

(b) The owner or operator of the facility at which the vessel will be loading or unloading its cargo; or

(c) A qualified oil spill response cooperative in which the tank vessel owner or operator is a participating member.

(4) Subject to conditions imposed by the department, the contingency plan for a tank vessel, if submitted by the owner or operator of a facility, may be submitted as a single plan for all tank vessels of a particular class that will be loading or unloading cargo at the facility.

(5) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the vessel, or the agent for the vessel resident in this state. Subject to conditions imposed by the department, the owner, operator, agent or a maritime association may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(6) A person that has contracted with a facility or covered vessel to provide containment and cleanup services and that meets the standards established by the commission under section 5 of this 1991 Act may submit the contingency plan for any facility or covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(7) The requirements of submitting a contingency plan under this section may be satisfied by a covered vessel by submission of proof of assessment participation by the vessel in a maritime association. Subject to conditions imposed by the department, the association may submit a single plan for more than one facility or covered vessel or may submit a single plan providing contingencies to respond for different classes of covered vessels.

(8) A contingency plan prepared for an agency of the Federal Government or an adjacent state that satisfies the requirements of sections 4 to 7 of this 1991 Act and the rules adopted by the Environmental Quality Commission may be accepted as a plan under section 4 of this 1991 Act. The commission shall assure that to the greatest extent possible, requirements for a contingency plan

under sections 4 to 7 of this 1991 Act are consistent with requirements for a plan under federal law.

(9) Covered vessels may satisfy the requirements of submitting a contingency plan under this section through proof of current assessment participation in an approved plan maintained with the department by a maritime association.

(10) A maritime association may submit a contingency plan for a cooperative group of covered vessels. Covered vessels that have not previously obtained approval of a plan may enter the navigable waters of the state if, upon entering such waters, the vessel pays the established assessment for participation in the approved plan maintained by the association.

(11) A maritime association shall have a lien on the responsible vessel if the vessel owner or operator fails to remit any regular operating assessments and shall further have a lien for the recovery for any direct costs provided to or for the vessel by the maritime association for oil spill response or spill related communications services. The lien shall be enforced in accordance with applicable law.

(12) Obligations incurred by a maritime association and any other liabilities or claims against the association shall be enforced only against the assets of the association, and no liability for the debts or action of the association exists against either the State of Oregon or any other subdivision or instrumentality thereof, or against any member, officer, employee or agent of the association in an individual or representative capacity.

(13) Except as otherwise provided in this chapter, neither the members of the association, its officers, agents or employees, nor the business entities by whom the members are regularly employed, may be held individually responsible for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent, person or employee, save for their own individual acts of dishonesty or crime.

(14) Assessment participation in a maritime association does not constitute a defense to liability imposed under sections 4 to 19 of this 1991 Act or other state or federal law. Such assessment participation shall not relieve a covered vessel from complying with those portions of the approved maritime association contingency plan that may require vessel specific oil spill response equipment, training or capabilities for that vessel.

SECTION 7. In reviewing the contingency plan required by section 4 of this 1991 Act, the Department of Environmental Quality shall consider at least the following factors:

(1) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call-down lists, response time and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(2) The nature and amount of vessel traffic within the area covered by the plan;

(3) The volume and type of oil being transported within the area covered by the plan;

(4) The existence of navigational hazards within the area covered by the plan;

(5) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(6) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

(7) Relevant information on previous spills contained in on-scene coordinator reports covered by the plan; and

(8) The extent to which reasonable, cost-effective measures to reduce the likelihood that a spill

will occur have been incorporated into the plan.

SECTION 8. (1) The department shall approve a contingency plan only if it determines that the plan meets the requirements of sections 4 to 7 of this 1991 Act and:

(a) The covered vessel or facility demonstrates evidence of compliance with section 13 of this 1991 Act; and

(b) If implemented, the plan is capable, to the maximum extent practicable in terms of personnel, materials and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(2) An owner or operator of a covered vessel or facility shall notify the department in writing immediately of any significant change affecting the contingency plan, including changes in any factor set forth in this section or in rules adopted by the Environmental Quality Commission. The department may require the owner or operator to update a contingency plan as a result of these changes.

(3) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, after notifying the department, equipment, materials or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials and personnel as soon as feasible.

(4) The department may attach any reasonable term or condition to its approval or modification of a contingency plan that the department determines is necessary to insure that the applicant:

(a) Has access to sufficient resources to protect environmentally sensitive areas and to prevent, contain, clean up and mitigate potential oil discharges from the facility or tank vessel;

(b) Maintains personnel levels sufficient to carry out emergency operations; and

(c) Complies with the contingency plan.

(5) The contingency plan must provide for the use by the applicant of the best technology available at the time the contingency plan was submitted or renewed.

(6) The department may require an applicant or a holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including:

(a) Periodic training;

(b) Response team exercises; and

(c) Verification of access to inventories of equipment, supplies and personnel identified as available in the approved contingency plan.

(7) The department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems or enhanced crew or staffing levels have been implemented and in its discretion, may make exceptions to the requirements of this section to reflect the reduced risk of oil discharges from the facility or tank vessel for which the plan is submitted or being modified.

(8) Before the department approves or modifies a contingency plan required under section 4 of this 1991 Act, the department shall provide a copy of the contingency plan to the State Department of Fish and Wildlife, the office of the State Fire Marshal and the Department of Land Conservation and Development for review. The agencies shall review the plan according to procedures and time limits established by rule of the Environmental Quality Commission.

(9) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the plan has been approved. The certificate shall include the name of the facility or tank vessel for which the certificate is issued, the effective date of the plan and the date by

which the plan must be submitted for renewal.

(10) The approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan or constitute a defense to liability imposed under this chapter or any other state law.

SECTION 9. (1)(a) The Environmental Quality Commission by rule shall adopt procedures to determine the adequacy of a contingency plan approved under section 8 of this 1991 Act.

(b) The rules shall require random practice drills without prior notice to test the adequacy of the responding entities. The rules may provide for unannounced practice drills of an individual contingency plan.

(c) The rules may require the contingency plan holder to publish a report on the drills. This report shall include an assessment of response time and available equipment and personnel compared to those listed in the contingency plan relying on the responding entities and requirements, if any, for changes in the plans or their implementation. The department shall review the report and assess the adequacy of the drill.

(d) The department may require additional drills and changes in arrangements for implementing the approved plan that are necessary to insure the effective implementation of the plan.

(2) The Environmental Quality Commission by rule may require any tank vessel carrying oil as cargo in the navigable waters of the state to:

(a) Place booms, in-water sensors or other detection equipment around tank vessels during transfers of oil; and

(b) Submit to the department evidence of a structural and mechanical integrity inspection of the tank vessel equipment and hull structures.

(3) A tank vessel that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of subsection (1) of this section if the tank vessel has received prior approval of the department. The department may approve exemptions under this subsection upon application and presentation of information required by the department.

SECTION 10. (1) In addition to any other right of access or inspection conferred upon the department by section 9 of this 1991 Act, the department may at reasonable times and in a safe manner enter and inspect facilities and tank vessels in order to insure compliance with the provisions of sections 4 to 19 of this 1991 Act.

(2) The department shall coordinate with the State of Washington in the review of the tank vessel structural integrity inspection programs conducted by the United States Coast Guard and other federal agencies to determine whether the programs as actually operated by the federal agencies adequately protect the navigable waters of the state. If the department determines that tank vessel inspection programs conducted by the federal agencies are not adequate to protect the navigable waters of the state, the department shall establish a state tank vessel inspection program.

SECTION 11. If the department determines under section 10 of this 1991 Act that a state tank vessel inspection program is necessary, the Environmental Quality Commission shall adopt rules necessary to enable the department to implement the state tank vessel inspection program.

SECTION 12. (1) Upon request of a plan holder or on the department's own initiative, the department, after notice and opportunity for hearing, may modify its approval of a contingency plan if the department determines that a change has occurred in the operation of the facility or tank vessel necessitating an amended or supplemental plan, or that the operator's discharge experience demonstrates a necessity for modification.

(2) The department, after notice and opportunity for hearing, may revoke its approval of a contingency plan if the department determines that:

(a) Approval was obtained by fraud or misrepresentation;

(b) The operator does not have access to the quality or quantity of resources identified in the plan;

(c) A term or condition of approval or modification has been violated; or

(d) The plan holder is not in compliance with the plan and the deficiency materially affects the plan holder's response capability.

(3) Failure of a holder of an approved or modified contingency plan to comply with the plan or to have access to the quality or quantity of resources identified in the plan or to respond with those resources within the shortest possible time in the event of a spill is a violation of sections 4 to 19 of this 1991 Act for purposes of ORS 466.890, 468.140, 468.992 and any other applicable law.

(4) If the holder of an approved or modified contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under ORS 466.890 and 468.140.

(5) In order to be considered in compliance with a contingency plan, the plan holder must:

(a) Establish and carry out procedures identified in the plan as being the responsibility of the holder of the plan;

(b) Have access to and have on hand the quantity and quality of equipment, personnel and other resources identified as being accessible or on hand in the plan;

(c) Fulfill the assurances espoused in the plan in the manner described in the plan;

(d) Comply with terms and conditions attached to the plan by the department under sections 4 to 11 of this 1991 Act; and

(e) Successfully demonstrate the ability to carry out the plan when required by the department under section 9 of this 1991 Act.

SECTION 13. (1) No person shall cause or permit the operation of a facility in the state unless the person has proof of compliance with Section 1016 of the Federal Oil Pollution Act of 1990 (P.L. 101-380), if such compliance is required by federal law.

(2) No person may cause or permit the operation of an offshore exploration or production facility in the state unless the person has proof of compliance with Section 1016 of the Federal Oil Pollution Act of 1990 (P.L. 101-380).

(3) Except for a barge that does not carry oil as cargo or fuel or a spill response vessel or barge, the owner of any vessel over 300 gross tons shall have proof of financial responsibility for the following vessels:

(a) For tank vessels over 300 gross tons:

(A) $1,200 per gross ton or $2 million for vessels of 3,000 gross tons or less, whichever is greater; and

(B) $1,200 per gross ton or $10 million for vessels over 3,000 gross tons, whichever is greater; or

(b) For any other covered vessel over 300 gross tons, $600 per gross ton or $500,000, whichever is greater.

(4) On or before January 1, 1992, the department shall enter into an agreement with the United States Coast Guard to receive notification of noncompliance with the provisions of this section.

SECTION 14. The Department of Environmental Quality shall:

(1) In cooperation with other natural resource agencies, develop a method of natural resource valuation that fully incorporates nonmarket and market values in assessing damages resulting from oil discharges;

(2) Work with other potentially affected states to develop a joint oil discharge prevention education program for operators of fishing vessels, ferries, ports, cruise ships and marinas;

(3) Review the adequacy of and make recommendations for improvements in equipment, operating procedures and the appropriateness of west coast locations for transfer of oil;

(4) In cooperation with industry and the United States Coast Guard, develop local programs to provide oil discharge response training to fishing boat operators and marinas;

(5) Adopt an incident command system to enhance the department's ability to manage responses to a major oil discharge;

(6) Coordinate oil spill research with other west coast states and develop a framework for information sharing and combined funding of research projects;

(7) Annually review and revise the interagency response plan for oil spills in certain navigable waters of the state developed under ORS 468.831 and 468.833;

(8) On the Oregon coast, assist affected local agencies and industry groups to complete an inventory of existing plans and resources and to identify or establish an organization to coordinate oil spill contingency planning as part of the alternative schedule adopted for the Oregon coast described in section 6 (1) of this 1991 Act;

(9) Where adequate resources do not exist to prevent, contain, clean up and mitigate potential oil spills, assist local agencies and industry groups to secure necessary funds and equipment; and

(10) In its annual review and revision of the plan developed under ORS 468.831 and 468.833:

(a) Consult with all affected local, state and federal agencies, municipal and community officials and representatives of industry;

(b) Provide training in the use of the plan; and

(c) Conduct spill exercises to test the adequacy of the plan.

SECTION 15. The State Department of Fish and Wildlife shall develop and implement a program to provide wildlife rescue training for volunteers. In developing the program, the department shall:

(1) Work with agencies responsible for wildlife protection in other west coast states;

(2) Rely upon the oil wildlife rehabilitation plan developed under ORS 468.831; and

(3) Take such action as is required for reimbursement in accordance with the provisions of the Federal Oil Pollution Act of 1990 (P.L. 101-380).

NOTE: Section 16 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 17. (1) The Department of Environmental Quality shall assess fees on covered vessels and offshore and onshore facilities to recover the costs of reviewing the plans and conducting the inspections, exercises, training and activities required under sections 4 to 15 of this 1991 Act.

(2) The fees assessed by the department on cargo vessels and nonself-propelled tank vessels under subsection (1) of this section shall be:

(a) On all cargo vessels, $25 per trip.

(b) On all nonself-propelled tank vessels, $28 per trip.

(3) As used in this subsection, "trip" means travel to the appointed destination and return travel to the point of origin within the navigable waters of Oregon. For the purpose of assessing trip fees

under this section, self-propelled tank vessels transiting the navigable waters of the state in ballast shall be considered cargo vessels.

(4) The Environmental Quality Commission shall establish by rule a schedule of fees to be assessed under subsection (1) of this section on offshore facilities, onshore facilities and on self-propelled tank vessels in an amount not to exceed $153,600 per year for all such facilities and vessels.

(5) Moneys collected under this section shall be deposited in the State Treasury to the credit of the Oil Spill Prevention Fund established under section 18 of this 1991 Act.

SECTION 18. (1) The Oil Spill Prevention Fund is established separate and distinct from the General Fund in the State Treasury. Interest earned on the fund shall be credited to the fund. Moneys received by the Department of Environmental Quality for the purpose of oil and hazardous material spill prevention and the fees collected under section 17 of this 1991 Act shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer shall invest and reinvest moneys in the Oil Spill Prevention Fund in the manner prescribed by law.

(3) The moneys in the Oil Spill Prevention Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in subsection (4) of this section.

(4) The Oil Spill Prevention Fund may be used by the Department of Environmental Quality to:

(a) Pay all costs of the department incurred to:

(A) Review the contingency plans submitted under section 7 of this 1991 Act;

(B) Conduct training, response exercises, inspection and tests in order to verify equipment inventories and ability to prevent and respond to oil release emergencies and to undertake other activities intended to verify or establish the preparedness of the state, a municipality or a party required by sections 4 to 19 of this 1991 Act to have an approved contingency plan to act in accordance with that plan; and

(C) Verify or establish proof of financial responsibility required by section 13 of this 1991 Act.

(b) Review and revise the oil spill response plan required by ORS 468.831 and 468.833.

SECTION 19. (1) There is established a safety committee for the Oregon coast. A subcommittee shall be appointed for Coos Bay and Yaquina Bay. In addition, the department also shall consult with the State of Washington to establish a joint regional safety committee for the Columbia River and may appoint a subcommittee for the Willamette River. The safety committee shall operate under the direction of the Ports Division of the Economic Development Department pursuant to ORS 777.817.

(2) Each committee shall consist of not more than 11 members, appointed by the Director of the Economic Development Department in consultation with the Director of the Department of Environmental Quality. At a minimum, the following groups should be considered for representation on the committees:

(a) Local port authorities;

(b) Tank vessel operators;

(c) Tug and barge operators;

(d) Pilots' organizations;

(e) Cargo vessel operators;

(f) Commercial fishermen;

(g) Pleasure boat operators;

(h) Environmental organizations;

(i) Local planning authorities; and

(j) The public at large.

(3) The members shall be appointed to the safety committee for a term of four years. The Director of the Economic Development Department in consultation with the Director of the Department of Environmental Quality shall appoint the chairperson of each committee to serve a term of four years.

(4) A majority of the members shall constitute a quorum for the transaction of business.

(5) The duties of the safety committees shall include but are not limited to:

(a) Planning for safe navigation and operation of covered vessels within each harbor;

(b) Developing safety plans;

(c) Reviewing and making recommendations to the Oregon Board of Maritime Pilots, ports and the United States Coast Guard on the following:

(A) Pilotage requirements for all single boiler or single engine and single screw tank vessels carrying oil in pilotage grounds;

(B) Reducing deadweight tonnage specifications for pilotage service for vessels carrying oil;

(C) Guidelines for tugs on tank vessels for tow cable size and material specifications, cable maintenance practices, cable handling equipment design and barge recovery plan preparation;

(D) Establishing regional speed limits, based on escort vehicle limitations, for all tank vessels in inland navigable waters and critical approaches to inland navigable waters;

(E) Requiring towing systems and plans on all tank vessels carrying oil; and

(F) The feasibility of establishing a pilot program for a near-miss reporting system that is coordinated with vessel inspection information compiled as a result of inspections under sections 9 and 10 of this 1991 Act.

(6) Members of the safety committees established under this section are entitled to compensation and expenses as provided in ORS 292.495.

(7) The Department of Environmental Quality shall serve in an advisory capacity to the safety committees and review the safety plans. In addition, the United States Coast Guard shall be invited to also act in an advisory capacity to the safety committees and may participate in the review of safety plans.

SECTION 19a. If a safety committee established under section 19 of this Act determines that the United States Coast Guard has not acted on the recommendations submitted under section 19 (5)(c)(C) and (E) of this Act in a timely and adequate manner, the committee may recommend to the port that the port adopt rules to implement the committee's recommendations under section 19 (5)(c)(C) and (E) of this Act.

SECTION 20. Section 21 of this Act is added to and made a part of ORS chapter 776.

SECTION 21. In addition to its authority under ORS 776.115, the board may:

(1) Establish pilotage requirements for all single boiler or single engine and single screw tank vessels carrying oil in pilotage grounds;

(2) Review and, if appropriate, reduce deadweight tonnage specifications for pilotage service for vessels carrying oil;

(3) Establish regional speed limits, based on escort vehicle limitations, for all tank vessels in inland navigable waters and critical approaches to inland navigable waters; and

(4) Establish a pilot program for a near-miss reporting system.

SECTION 22. ORS 777.817 is amended to read:

777.817. (1) The Ports Division shall provide managerial assistance and technical referral services to ports organized under this chapter.

(2) The Ports Division shall:

(a) Disseminate such research and technical information as is available to the division; and

(b) Provide managerial assistance to ports **and the safety committees created under section 19 of this 1991 Act** requesting such assistance.

(3) The Ports Division shall work cooperatively with existing organizations and agencies that provide research and technical services, including, but not limited to:

(a) The Division of State Lands;

(b) The State Marine Board; and

(c) The Sea Grant College and marine extension services at Oregon State University.

SECTION 23. In cooperation with the State Fire Marshal, the Department of Environmental Quality shall conduct a study regarding whether the provisions of this Act also should apply to the hazardous material spills in the navigable waters of the state. As used in this section, "hazardous material" has the meaning given in ORS 466.605.

SECTION 24. In addition to and not in lieu of any other appropriation, there is appropriated to the State Department of Fish and Wildlife, out of the General Fund, for the biennium beginning July 1, 1991, the sum of $108,401 for the purpose of carrying out the department's responsibilities under this Act.

SECTION 25. In addition to and not in lieu of any other appropriation, there is appropriated to the Economic Development Department, out of the General Fund, for the biennium beginning July 1, 1991, the sum of $70,551 for purpose of carrying out the responsibilities of the safety committees under this Act.

SECTION 26. Notwithstanding any other law, the amount $456,688 is established for the biennium beginning July 1, 1991, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the Department of Environmental Quality for the purpose of carrying out the provisions of this Act.

SECTION 27. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1991.

ATTACHMENT 2:

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335 (7), this statement provides information on the Environmental Quality Commission's intended action to adopt a rule.

(1) Legal Authority

Senate Bill 242 amends Oregon Revised Statutes (ORS) 468.780 and authorizes the Department to adopt by rule a schedule of fees to be assessed on offshore facilities, onshore facilities and on self-propelled tank vessels in an amount not to exceed $153,600 per year for all such facilities and vessels.

(2) Need for the Rule

The fee schedule set forth by statute in Senate Bill 242 does not specifically identify how the $153,600 is to be divided between the covered facilities and vessels. The schedule must be established by rule in order to implement the requirements of SB 242.

(3) Principal Documents Relied Upon in this Rulemaking

Oregon Revised Statutes 468.780 to 468.833, Oil Spillage Regulation.

Senate Bill 242 C-Engrossed

LAND USE COMPATIBILITY STATEMENT

Land Use Consistency

This fee schedule does not directly affect land use. It does indirectly affect Goal 6 (Air, Water and Land Resources Quality) in that the fees are to used to implement an oil spill prevention program to control the accidental release of pollutants into waters of the state.

FISCAL AND ECONOMIC IMPACT

DIRECTLY IMPACTED REGULATED COMMUNITY

(1). Cargo vessels over 300 gross tons: # of vessels = est 1400
# of companies = unknown

Assessment by DEQ = $25/trip, est. 2000 trips/year

Annual revenue = est $50,000

Other costs: $100/trip assessment by MFSA to cover:
- contingency plan development/update
- exercise of plan
- response contract
- equipment acquired
- training

Liability insurance (required by federal law)
Financial assurance (,, ,, ,,)

(2). Oil transport barges > 300 gross tons: # of vessels = 50
# of companies = 4

Assessment by DEQ = $28/trip, est. 1700 trips/year

Annual revenue = est. $47,600

Other costs:
- contingency plan development/update
- exercise of plan
- response contract
- response equipment
- training
- liability insurance (required by feds)
- financial assurance (,, ,,)

(3). Oil storage facilities > 10,000 gallons: # of facilities =25
(includes private and public facilities)

Assessment by DEQ = to be determined using SB 242 annual ceiling of $153,600 and equitably dividing it between facilities and oil tankers.

Other costs:
- contingency plan development/update
- exercise of plan
- response contract
- response equipment
- training
- liability insurance (required by feds)

(4). Oil tankers > 300 gross tons: # of vessels = 20
# of companies = 6
# of trips = 120

Assessment by DEQ = to be determined using SB 242 annual ceiling of $153,600 and equitably dividing it between facilities and oil tankers

Other costs:
- contingency plan development/update
- exercise of plan
- response contract

- response equipment
- training
- liability insurance (required by feds)
- financial assurance (,, ,,)

(5). It is estimated that costs to the regulated community as a result of the fees assessed by DEQ on oil transported or stored in Oregon will range from .006 to .01 cents/gallon. Our assumption is that this will not affect the price of gas to the consumer at the gas pump.

(6). With the exception of the direct assessment by DEQ to manage the program mandated by SB 242, all of the identified costs above would will be required by the Federal Oil Pollution Act of 1990. In addition, cargo vessels, barges and tankers would have been covered by existing Washington state legislation and would have been required to develop nearly identical programs with similar expenses.

Oregon

ENVIRONMENTAL
QUALITY
COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: July 24, 1991
Agenda Item: D-2
Division: Air Quality
Section: Vehicle Inspection

SUBJECT:

Vehicle Inspection Rules - Request for Authorization to Hold a Public Hearing to Amend Inspection Program Fee Structure.

PURPOSE:

To increase Vehicle Inspection fee from $7 to $10 per certificate of compliance and to adjust the fleet self inspection certificate cost from $3 to $5.

ACTION REQUESTED:

_X_ Authorize Rulemaking Hearing
___ Adopt Rules

Proposed Rules	Attachment A
Rulemaking Statements	Attachment B
Fiscal and Economic Impact Statement	Attachment C
Public Notice	Attachment D

DESCRIPTION OF REQUESTED ACTION:

Authorization is requested to hold a public hearing on proposed increase in Vehicle Inspection fees. The proposal would increase the fee from the current $7 per certificate to $10 per certificate for tests performed by the state. It would also increase the fleet self inspection certificate cost from $3 to $5. Both fee increases would become effective on January 1, 1992.

Oregon law requires that fees be assessed to cover the operational cost of the state operated vehicle inspection program. Current fees are inadequate to meet overall operating costs. Additionally the Department must consider future budgeting to replace existing 16 year old manually operated exhaust gas analyzers. Analyzer upgrading is will be necessary to meet future testing requirements, and the federal Environmental Protection Agency has proposed

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

requiring computerized testing equipment for all state inspection programs.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 468.405 Attachment _E_
___ Pursuant to Rule: _____ Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints: (explain)

ORS 468.405 gives the Commission the authority to establish regulations setting the motor vehicle inspection program's certification fee up to a $10 limit.

The Vehicle I/M Program is currently operating at a loss of about $1 for each certificate issued. Fee income is currently supplemented by drawing down the DEQ Motor Vehicle Pollution Account. It had been intended that this account was set aside for funding capital costs of the program. This operational drain on the Motor Vehicle Pollution Account should be halted as soon as possible.

DEVELOPMENTAL BACKGROUND:

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

The Department operates the Vehicle Inspection Program in the Portland and Medford areas. The program has been operating in the Portland area since 1975. The program started in Medford in 1986. The program is supported only by the certificate fees received, and does not receive monies from or contribute to the State General Fund.

The Oregon Legislature under ORS 468.405 established a provision that "the fee for issuance of certificates shall be established by the Commission in an amount based upon the costs of administering this program". In 1975 the Commission set the fee at $5 per certificate. In 1981 when

cost of operation began to exceed operational costs, the Department requested of the Oregon Legislature and was granted statutory authority under ORS 468.405 to increase the fee to a maximum of $10. On June 5, 1981 the Commission granted a fee increase to $7 per certificate.

Currently operational costs are again exceeding fee income. The average cost per vehicle of administering the program during the 1989-91 biennium exceeded the $7 certificate fee. For the quarter ending June 30, 1991, the costs were approximately $8 per vehicle, meaning the program has a current operational loss of about $1 per certificate.

The Department included in the budget request to the 1991 Legislature for the Vehicle Inspection Program a budget based upon a $10 certificate fee. In HB 5536 the Legislature established Vehicle Inspection Program budget limitation for the 1991-93 biennium based on the $10 fee.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Department's current proposal would affect citizens within the Metropolitan Service District of the Portland area and within the Air Quality Maintenance Area of the Medford area. Within these areas, a vehicle owner has the responsibility to insure the vehicle passes the I/M test prior to each biennial vehicle registration.

There are approximately 700,000 vehicles registered in the Portland and Medford areas. Citizens in these areas will be charged an additional $3 per vehicle registration. The increase in fee is expected to prompt some public reaction. Nobody likes a fee increase.

The increase in cost of self testing fleet certificates from $3 to $5 per certificate will impact the inspection program's 53 self inspecting fleets. The $2 fee increase will be added to a total of approximately 10,000 fleet vehicles. It is not expected that this fee increase will present any major hardships for the fleets.

No change in the inspection procedure is intended to accompany the fee increase. There will be no change in the number or location of test facilities, or in the number of vehicle inspection personnel, as a result of the fee increase.

The bulk of the fee increase is intended to simply offset inspection program total operational cost increases. It also will provide for the acquisition of the land on which the

Beaverton test center is located and to allow for testing of prototype equipment and emergency equipment replacement.

PROGRAM CONSIDERATIONS:

The Vehicle Inspection Program is currently operating at a loss of about $1 for each certificate issued. This loss is draining the Motor Vehicle Pollution Account funds. During the 1989-91 biennium the funds in this account dropped from $883,233 at the beginning of the biennium to the current level of $460,000.

In 1975 when the Vehicle Inspection Program began operations, the certificate fee was $5. Adjusting this figure for Portland area cost of living increases to 1990, the equivalent current cost would be approximately $11.90. This means that even with the increase to $10, the certificate fee increase still would not match cost of living increases.

The 1991-93 inspection program budget includes cost increases for employee salary and facility rents. The 1991-93 budget also includes acquisition of the land at the Inspection Program's Beaverton Test Center and purchase of prototype equipment designed to develop equipment specifications for replacement vehicle exhaust gas analyzers. Purchase of computerized analyzers to replace the Inspection Program's 16 year old equipment is a minimum requirement of EPA's draft "Guidance on Inspection/Maintenance". This EPA document was written in response to the federal 1990 Clean Air Act Amendments. Programs will be required to conform to EPA I/M guidelines within the next three years based upon recent EPA guidance.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The 1991 Legislature has approved a Vehicle Inspection Program budget that incorporates a $10 certification fee. The budget covers inflation increases, funding to purchase land upon which the Beaverton inspection center is located, capital expenditures for prototype testing equipment, and reserves for catastrophic equipment failure. If the Commission wishes to select a certificate fee of less than $10, program cuts will have to be made.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the full increase in certificate fee to $10. A lesser fee would not meet the requirements for

a fully balanced budget and still allow the program to provide current levels of service to the public.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules appear to be consistent with the goals of the strategic plan and with agency and legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

Does the Commission concur with the Department that a fee increase to $10 is justified? Such fee increase will maintain the inspection program's operations at current levels of service.

INTENDED FOLLOWUP ACTIONS:

a. Public hearing in both Medford and Portland scheduled for September 20, 1991.

b. Summarize and evaluate comments.

c. Prepare a report for presentation to the Commission at the October 25, 1991 meeting.

Approved:

Section: Ron Householder

Division: Sue Greenwood

Director: Bill Hanna

Report Prepared By: Jerry Coffer
Phone: 239-8644
Date Prepared: July 9, 1991

JC:jc
VIP\1991\1
(7/9/91)

Attachment A

PROPOSED ADDITION TO OREGON ADMINISTRATIVE RULES. CHAPTER 340
MOTOR VEHICLE EMISSION CONTROL INSPECTION TEST
CRITERIA, METHODS, AND STANDARDS

MOTOR VEHICLE INSPECTION PROGRAM FEE SCHEDULE

340-24-307 The following is the fee schedule of Certificates of Compliance, and licenses issued by the Department of Environmental Quality, Vehicle Inspection Program:

(1) Certificates of Compliance $10
Issued by Department
(2) Certificate of Compliance $5
Issued of Licensed Motor Vehicle Fleet Operation
(3) Motor Vehicle Fleet Operation:
(a) Initial $5
(b) Annual renewals $1
(4) Fleet Operation Vehicle Emissions Inspectors:
(a) Initial $5
(b) Annual renewal $1
(5) Exhaust Gas Analyzer System:
(a) Initial $5
(b) Annual renewal $1

Attachment B

RULEMAKING STATEMENTS FOR PROPOSED AMENDMENTS TO RULES TO AMEND INSPECTION PROGRAM FEE STRUCTURE

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the intended action to amend a rule.

(1) Legal Authority

This proposal amends Oregon Administrative Rules (OAR) 340, Division 24. It is proposed under authority of Oregon Revised Statutes (ORS) Chapter 468.

(2) Need for these Rules

Oregon law requires that certificate fees be assessed to cover the operational cost of the state operated vehicle inspection program. The current fee of $7 is inadequate to meet routine operating costs. In the quarter ending June 30, 1991 the inspection program lost an estimated $1 per vehicle certificate issued. In HB the Oregon Legislature establisher a vehicle inspection program budget limitation of the 1991-93 biennium based on a certificate fee of $10 per vehicle. The Department estimates that such a fee increase is required to maintain current inspection program service levels without depleting reserves.

(3) Principal Documents Relied Upon

HB 1991-93 DEQ Budget

This document may be inspected at the Department of Environmental Quality, 1301 SE Morrison, Portland, Oregon, during normal business hours.

LAND USE CONSISTENCY STATEMENT

The proposed rule changes appear to not affect land use as defined in the Department's coordination program with DLCD.

Public comment on any land use issue involved is welcome and may be submitted in the same fashion as indicated for other testimony on these rules.

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

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any

appropriate conflicts brought to our attention by local, state, or federal authorities.

JC:jc

Attachment C

FISCAL AND ECONOMIC IMPACT STATEMENT FOR PROPOSED AMENDMENTS TO RULES FOR VEHICLE INSPECTION PROGRAM CERTIFICATE FEE COLLECTION

PROPOSAL SUMMARY

The proposed rules would:

- Increase vehicle certification fee for the general public from the current $7 per certificate to $10 per certificate effective January 1, 1992.

- Increase vehicle certification fee for self inspecting fleets from the current $3 per certificate to $5 per certificate effective January 1, 1992.

COSTS TO PORTLAND AND MEDFORD AREA RESIDENTS

The proposal would affect citizens within the Metropolitan Service District of the Portland area and within the Air Quality Maintenance Area of the Medford area. Within these areas, a vehicle owner has the responsibility to insure the vehicle passes the I/M test prior to each biennial vehicle registration.

There are approximately 700,000 vehicles registered in the Portland and Medford areas. Citizens in these areas will be charged an additional $3 per vehicle registration.

The increase in cost of self testing fleet certificates from $3 to $5 per certificate will impact the inspection program's 53 self inspecting fleets. Of the total of 53 fleets, 19 are private fleets and 34 are government fleets. The $2 fee increase will be added to a total of approximately 10,000 fleet vehicles. This continues to provide the fleets with a significant savings over the proposed cost of the $10 general certificate.

FISCAL IMPACT ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY

The Vehicle Inspection Program is currently operating at a loss of about $1 for each certificate issued. This loss is draining the Motor Vehicle Pollution Account which was established by the Legislature to channel funding for the inspection program. During the 1989-91 biennium the funds in this account dropped from $883,233 at the beginning of the biennium to the current level of $460,000.

The proposed certificate fee increases are necessary to meet the program's 1991-93 budget which has been approved by the 1991 Oregon Legislature under HB 5536. The 1991-93 budget includes cost increase for employee salary and facility rents. It also

includes acquisition of the land at the inspection program's Beaverton Test Center and purchase of prototype equipment designed to develop equipment specifications for replacement vehicle exhaust gas analyzers. Finally it includes funds to cover emergency equipment acquisition in case of catastrophic failure of existing equipment.

Without the full proposed increase in certificate fee, the Department would be forced to reduce the level of service offered by the inspection program.

JC:jc
(7/10/91)

Attachment D

INCREASE IN VEHICLE INSPECTION PROGRAM CERTIFICATE FEES
NOTICE OF PUBLIC HEARING

Hearing Date: September 19, 1991
Comments Due: September 24, 1991

WHO IS AFFECTED: Motor vehicle owners in the Portland Metropolitan Service District and the Medford Air Quality Maintenance Area.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340, Division 24.

WHAT ARE THE HIGHLIGHTS:

1) Proposed rule change would increase Vehicle Inspection Program's vehicle certification fee from the current $7 per certificate to $10 per certificate effective January 1, 1992.

2) Proposed rule change would increase certification fee for self inspecting fleets from the current $3 per certificate to $5 per certificate effective January 1, 1992.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from: Vehicle Inspection Program, Department of Environmental Quality, 1301 SE Morrison, Portland, OR 97214 or the regional office nearest you. For further information contact Jerry Coffer at (503) 239-8644.

Public hearings will be held before a hearings offer at:

1:30 p.m September 20, 1991 Dept. of Envir. Qual. Conference Room 3A 811 SW Sixth Avenue Portland, Or 97204	7:00 p.m. September 20, 1991 Dept. of Envir. Qual. Vehicle Insp. Prog. 3030 Biddle Road Medford, OR 97504

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ, but must be received by no later than September 24, 1991.

(3) The license issued pursuant to ORS 468.390 of any person whose bond is canceled by legal notice shall be canceled immediately by the Department. If the license is not renewed or is voluntarily or involuntarily canceled, the sureties of the bond shall be relieved from liability accruing subsequent to such cancellation by the department.

468.405 **Fees; collection; use.**

(1) The department shall:

(a) Establish and collect fees for application, examination and licensing of persons, equipment, apparatus or methods in accordance with ORS 468.390.

(A) The fee for licensing shall not exceed $5.

(B) The fee for renewal of licenses shall not exceed $1.

(b) Establish fees for the issuance of certificates of compliance. The department may classify motor vehicles and establish a different fee for each such class. The fee for the issuance of certificates shall be established by the Commission in an amount based upon the costs of administering this program established in the current biennial budget. The fee for a certificate shall not exceed $10.

(2) The department shall collect the fees established pursuant to paragraph (b) of subsection (1) of this section at the time of the issuance of certificates of compliance as required by paragraph (c) of subsection (2) or ORS 468.390.

(3) On or before the 15th day of each month, the commission shall pay into the State Treasury all moneys received as fees pursuant to subsections (1) and (2) of this section during the preceding calendar month. The State Treasurer shall credit such money to the Department of Environmental Quality Motor Vehicle Pollution Account, which is hereby created. The moneys in the Department of Environmental Quality Motor Vehicle Pollution Account are continuously appropriated to the department to be used by the department solely or in conjunction with other state agencies and local units of government for:

(a) Any expenses incurred by the department and, if approved by the Governor, any expenses incurred by the Motor Vehicles Division of the Department of Transportation in the certification, examination, inspection or licensing of persons, equipment, apparatus or methods in accordance with the provisions or ORS 468.390 and 815.310.

(b) Such other expenses as are necessary to study traffic patterns and to inspect, regulate and control the emission of pollutants from motor vehicles in this state.

468.410 **Authority to limit motor vehicle operation and traffic.**

The commission and regional air pollution control authorities organized pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454,535, 454.605 to 454,745 and this chapter by

Oregon

ENVIRONMENTAL QUALITY COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: July 25, 1991
Agenda Item: E
Division: HSW
Section: UST

SUBJECT:

Underground Storage Tank (UST) Rule Changes

PURPOSE:

Adopt Proposed Modifications to Underground Storage Tank Rules for Technical Standards, Financial Responsibility Requirements, Enforcement, and Underground Storage Tank Cleanup.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
_X_ Adopt Rules
- Proposed Rules — Attachment A,B,C,D,E,F
- Rulemaking Statements — Attachment G
- Fiscal and Economic Impact Statement — Attachment G

___ 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 ___

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

DESCRIPTION OF REQUESTED ACTION:

To obtain state approval from EPA to regulate USTs in lieu of federal regulation it is necessary for the Department of Environmental Quality (Department) to adopt technical and financial responsibility requirements that are no less stringent than the federal UST regulations, 40 CFR 280, and apply to the U.S. Environmental Protection Agency (EPA) for state program approval. The Department is currently preparing an application for state approval based upon rules adopted on June 7, 1990 and July 6, 1990. The federal UST regulations have been corrected and changed since that time. All of the corrections and some of the changes are included in the proposed rule modifications.

Modifications to the technical requirements and the licensing provisions of Oregon's UST rules along with modifications to the UST enforcement rules are also included in the proposed rule modifications.

The proposed rule modifications included the financial responsibility requirements for owners and operators of 13 - 99 tanks. A recent review of the statute allowing the Commission to adopt Financial Responsibility rules revealed the need to have legislative review before adoption. Since time was not available to seek such review, we are recommending deferral of action on this one item until review by an appropriate interim committee can be arranged. While this will not preclude our submitting an application for state authorization, adoption will have to occur before EPA can approve authorization.

Where appropriate, the rules proposed for public hearing were modified as a result of public testimony,.

The Department is requesting adoption of the rules shown in Attachments A,B,C,D,E, and F.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 466.705 - .995 Attachment ___
___ Pursuant to Rule: _____ Attachment ___
_X_ Pursuant to Federal Law/Rule: 40 CFR 280 Attachment ___

___ Other: Attachment ___

___ Time Constraints: (explain)

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Department conducted public hearings on the proposed rules during May and June at Portland, Pendleton and Medford. A UST Work Group, comprised of former members of the UST Advisory Committee that originally developed the UST rules, also reviewed the proposed rule modifications and provided comments. Attachment H contains a Hearing Report Summary and Responsiveness Summary and includes testimony from the UST Work Group. Public testimony resulted in changes to the proposed rules. The significant changes to the proposed rules are as follows:

1. The technical rules have been changed to coordinate the decommissioning soil sampling procedure with the UST cleanup rules.

2. The owner and operator will be required to give 30-day notice prior to upgrading an UST system when lining a tank, adding cathodic protection or replacing the piping system. Notice will not be required for minor system upgrades such as fill protection and overfill prevention.

3. The existing rule requiring the Department to provide followup written confirmation whenever backfilling of a cleanup excavation will not be modified, as proposed.

4. Where referenced in the rules, the TPH-HCID test is now correctly identified as DEQ TPH-HCID, Revised 12/11/90.

5. Based on a recent review of statutory authority (OAR 466.815(6)) we are now recommending delaying adoption of the financial responsibility requirements for Class III owners and operators (13 - 99 tanks) until the proposed rule is reviewed by an appropriate legislative committee.

PROGRAM CONSIDERATIONS:

Before the state UST program can be authorized to regulate USTs in lieu of EPA, it is necessary for the state to assure EPA that our rules are no less stringent and are as enforceable as the federal UST regulations.

The Department has submitted a preliminary draft of the program approval application. With adoption of these rule modifications, Oregon's program contains all current elements of the federal program except the financial responsibility requirements for UST Class III (owners and operators of 13 - 99 tanks), UST Class IV (owners and operators of 1 - 12 tanks) and Class V (local government tank owners). The Department expects the requirements for Classes IV and V to be delayed by EPA until 1992. Class III will be delayed until reviewed by a legislative committee. The Department will return to the Commission for adoption of financial responsibility rules for Classes III, IV, and V in 1992.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Do not adopt the proposed rule modifications and continue to manage the UST program with present rules.

   The proposed rule modifications correct errors, improve conflicts between rule sections, adopt changes to federal regulations, modify enforcement items, and change the definition of a reportable release. While the existing rules are workable, the proposed modifications are needed to maintain conformance with federal regulation and improve program operation.

2. Delay adoption of the proposed rule modifications.

   Delaying the proposed rule modifications would slightly hamper program management.

3. Adopt the proposed rule modifications.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt the modified underground storage tank rules shown in Attachments A,B,C,D,E, and F.

Rationale for this action is presented in the discussion of alternatives above.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The recommended action is consistent with legislative policy and with the Department's understanding of EQC direction.

ISSUES FOR COMMISSION TO RESOLVE:

Assuming the Commission supports delegation of the UST program to the State by EPA, there are no issues for the Commission to resolve.

INTENDED FOLLOWUP ACTIONS:

File the adopted rule modifications with the Secretary of State.

Communicate the rule modifications to the regulated community.

Apply for federal authorization of Oregon's underground storage tank program.

Approved:

Section: Richard P. Reiter

Division: Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Larry D. Frost

Phone: 229-5769

Date Prepared: July 3, 1991

LDF:lf
STAFFB07.91
July 3, 1991

Attachment A
Agenda Item E
7-25-91 EQC Meeting

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 150 - DEPARTMENT OF ENVIRONMENTAL QUALITY

MODIFICATIONS TO UNDERGROUND STORAGE TANK RULES
ORS 466.705 through 466.835 and ORS 466.895 through 466.995

Purpose and Scope

340-150-001 (1) These rules are promulgated in accordance with and under the authority of ORS 466.705 through ORS 466.835 and ORS 466.895 through 466.995.

(2) The purpose of these rules is;

(a) to provide for the regulation of underground storage tanks to protect the public health, safety, welfare and the environment from the potential harmful effects of spills and releases from underground tanks used to store regulated substances, and

(b) to establish requirements for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks.

(3) A secondary purpose is to obtain state program approval to manage underground storage tanks in Oregon in lieu of the federal program.

(4) Scope.

(a) OAR 340-150-002 incorporates, by reference, underground storage tank technical and financial responsibility regulations of the federal program, included in 40 CFR 280, Subparts A, B, C, D, E, F, G, and H. Persons must consult these Subparts of 40 CFR 280 to determine applicable underground storage tank requirements. Additionally, persons must consult OAR Chapter 340, Division 122 for the applicable release reporting and corrective action requirements for underground storage tanks containing petroleum.

(b) OAR 340-150-003 <u>through -004</u> incorporates <u>new language to be used in lieu of</u> [amendments to] the underground storage tank technical and financial responsibility regulations of the federal program, included in 40 CFR 280, Subparts A, B, C, <u>D,</u> E, F, G, and H.

(c) OAR 340-150-010 through -150 establishes requirements for underground storage tank permits, notification requirements for persons who sell underground storage tanks, and persons who deposit or cause to have deposited a regulated substance into an underground storage tank.

Adoption of United States Environmental Protection Agency Underground Storage Tank Regulations.

340-150-002 (1) Except as otherwise modified or specified by these rules, the rules and regulations governing the technical standards, corrective action, and financial responsibility requirements for owners and operators of underground storage tanks, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Part 280, amendments thereto promulgated prior to <u>July 1, 1991</u> [May 25, 1990], and Oregon <u>rules</u> [amendments] listed in OAR 340-150-003 and OAR 340-150-004 are

adopted and prescribed by the Commission to be observed by all persons subject to ORS 466.705 through 466.835 and ORS 466.895 through 466.995.

Oregon Rules Amending the Federal Underground Storage Tank Technical Standards.

340-150-003 In addition to the regulations and amendments promulgated prior to July 1, 1991 [May 25, 1990], as described in 340-150-002 of these rules, the following rules substituting new language in lieu of [amending] Title 40 Code of Federal Regulations, Part 280 Subparts A,B,C,D,E,[D,]F, and G are adopted and prescribed by the Commission to be observed by all persons subject to ORS 466.705 through 466.835 and ORS 466.985 through 466.995 with the following exceptions.

(1) The following language shall be substituted in lieu of 40 CFR 280.10(a) [shall read, as follows]:

> (a) The requirements of this Part apply to all owners and operators of an UST system as defined in 280.12 except as otherwise provided in paragraphs (b), (c), and (d) of this section. Any UST system listed in paragraph (c) of this section must meet the requirements of 280.11. Any UST system listed in paragraph (c)(5) of this section must meet the requirements of 280.22.

(2) The following language shall be substituted in lieu of 40 CFR 280.11(b) [shall read, as follows]:

> (b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert and the implementing agency not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

(3) The following language shall be substituted in lieu of 40 CFR 280.12 "Cathodic protection tester" [shall read, as follows]:

> "Cathodic protection tester" means a person licensed as an Underground Storage Tank Supervisor of Cathodic Protection System Testing through meeting the requirements of OAR Chapter 340, Division 160.

(4) The following language shall be substituted in lieu of 40 CFR 280.12 "Implementing Agency" [shall read, as follows]:

> "Implementing agency" means the Oregon Department of Environmental Quality.

(5) The following language shall be substituted in lieu of 40 CFR 280.12 "Operator" [shall read, as follows]:

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system, including the permittee under a permit issued pursuant to OAR Chapter 340, Division 150.

(6) The definition of "Owner" in OAR 340-150-010(11) shall be used in lieu of the definition of "Owner" in [Amend] 40 CFR 280.12 [by deleting the definition "Owner" in it's entirety].

(7) The definition of "Release" in OAR 340-150-010(13) shall be used in lieu of the definition of "Release" in [Amend] 40 CFR 280.12 [by deleting the definition "Release" in it's entirety].

(8) The following language shall be substituted in lieu of 40 CFR 280.12 "Residential tank" [shall read, as follows]:

"Residential tank" is a tank located on property used primarily for single family dwelling purposes.

(9) The following language shall be substituted in lieu of 40 CFR 280.20(a)(2) [shall read, as follows]:

(2) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) A permanent cathodic protection test station is installed;

Note: The test station can be separate or combined with an existing box and shall be located near the protected structure and away from an anode. The test station shall provide, as a minimum, an electrical connection to the structure and access for placing a reference cell in contact with the soil or backfill. When located below the surface of the ground, the test station design shall prevent run off of surface water into the soil.

(iii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iv) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and

(v) Cathodic protection systems are operated and maintained in accordance with § 280.31 or according to guidelines established by the implementing agency; or

(10) The following language shall be substituted in lieu of 40 CFR 280.20(a)(4)(i) [shall read, as follows]:

(i) The tank is installed at a site that is determined by a corrosion expert and the implementing agency not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

Note: For the purpose of complying with Paragraph 280.20(a)(4)(i), approval by the Department shall be given after reviewing the data and

information submitted by the corrosion expert and a finding that the corrosion expert's determination is justified.

(11) The following language shall be substituted in lieu of 40 CFR 280.20(a)(5) [shall read, as follows]:

(5) The tank construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a)(1) through (4) of this section.

Note: For the purpose of complying with Paragraph 280.20(a)(5), approval by the Department shall be given after reviewing the data and information submitted by a corrosion expert and a finding that the corrosion expert's determination is justified.

(12) The following language shall be substituted in lieu of 40 CFR 280.20(b)(3)(i) [shall read, as follows]:

(i) The piping is installed at a site that is determined by a corrosion expert and the implementing agency to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

Note: For the purpose of complying with Paragraph 280.20(b)(3)(i), approval by the Department shall be given after reviewing the data and information submitted by the corrosion expert and a finding that the corrosion expert's determination is justified.

(13) The following language shall be substituted in lieu of 40 CFR 280.20(b)(4) [shall read, as follows]:

(4) The piping construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b)(1) through (3) of this section.

Note: For the purpose of complying with Paragraph 280.20(b)(4), approval by the Department shall be given after reviewing the data and information submitted by a corrosion expert and a finding that the corrosion expert's determination is justified.

(14) The following language shall be substituted in lieu of 40 CFR 280.20(e) [shall read, as follows]:

(e) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph (d) of this section by providing a certification of compliance on the UST notification form in accordance with § 280.22.

(1) The installer has been licensed by the implementing agency; or

(2) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or

(3) The owner and operator have complied with another method for ensuring compliance with paragraph (d) of this section that is determined by the implementing agency to be no less protective of human health and the environment.

(15) The following language shall be substituted in lieu of 40 CFR 280.22(a) [shall read, as follows]:

(a) Any owner who brings an underground storage tank system into use after May 8, 1986, must, 30 days prior to installing, closing, using, or bringing such tank into use, submit, in the form prescribed in Sections I through VI of Appendix I of this Part (or appropriate state form), a notice of existence of such tank system to the Implementing Agency.

(16) The following language shall be substituted in lieu of 40 CFR 280.22(d) [shall read, as follows]:

(d) Notices required to be submitted under paragraph (a) of this section must provide all of the information in Sections I through VI of the prescribed form (or appropriate state form) for each tank for which notice must be given. Notices for tanks installed after December 22, 1988 must, within 30 days after bringing such tank into use, also provide all of the information in Section VII of the prescribed form (or appropriate state form) for each tank for which notice must be given.

(17) The following language shall be added to 40 CFR 280.22 [is amended] by adding a new paragraph (h) [that shall read, as follows]:

(h) Unless the implementing agency agrees to waive the requirement, at least 3 working days before beginning work to install, replace, decommission, or upgrade an UST, owners and operators or the licensed service provider performing the work must notify the implementing agency of the confirmed date and time the work will begin to allow observation of the work by the implementing agency.

(18) The following language shall be substituted in lieu of 40 CFR 280.41(a) [shall read, as follows]:

(a) Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in § 280.43 (d), (g) and (h) or must be monitored daily for releases using one of the methods listed in § 280.43 (e) and (f) [through (h)] except that:

(19) The following language shall be substituted in lieu of 40 CFR 280.41(b)(1)(ii) [shall read, as follows]:

(ii) Have an annual line tightness test conducted in accordance

with § 280.44(b) or have daily monitoring conducted in accordance with § 280.44(c).

(20) The following language shall be added to [Amend] 40 CFR 280.43 by adding a new paragraph (f)(9)[, that shall read, as follows]:

(9) The ground water monitoring system is determined by the implementing agency to be designed so that the risk to human health and the environment is not increased.

Note: For the purpose of complying with the requirements of this section, approval by the implementing agency shall be given after reviewing the data and design information submitted by a registered professional engineer or a registered geologist who is especially qualified by education and experience to design release detection systems and a finding that the leak detection system is designed so that the risk to human health and the environment is not increased.

(21) The following language shall be substituted in lieu of 40 CFR 280 Subpart F [shall read, as follows]:

Subpart F--Release Response and Corrective Action for UST Systems Containing Hazardous Substances

(22) 40 CFR 280.60 shall read, as follows:

§ 280.60 General.

Owners and operators or responsible persons of hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under § 280.10(b), where UST systems contain petroleum, and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

Note: Release Response and Corrective Action for UST Systems Containing Petroleum must meet the requirements of OAR Chapter 340 Division 122.

(23) The following language shall be substituted in lieu of 40 CFR 280.61(a) [shall read, as follows]:

(a) Report the release to the implementing agency (e.g., by telephone or electronic mail);
(1) All below-ground releases from the UST system in any quantity;
(2) All above-ground releases to land from the UST system in excess of reportable quantities as defined in OAR Chapter 340, Division 108, if the owner and operator or responsible person is unable to contain or clean up the release within 24 hours; and
(3) All above-ground releases to the waters of the state.

(24) The following language shall be substituted in lieu of 40 CFR 280.62(a) [shall read, as follows]:

(a) Unless directed to do otherwise by the implementing agency, owners and operators or responsible persons must perform the following abatement measures:

(25) The following language shall be substituted in lieu of 40 CFR 280.62(a)(4) [shall read, as follows]:

(4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator or responsible person must comply with applicable state and local requirements;

(26) The following language shall be substituted in lieu of 40 CFR 280.62(b) [shall read, as follows]:

(b) Within 20 days after release confirmation, or within another reasonable period of time determined by the implementing agency, owners and operators or responsible persons must submit a report to the implementing agency summarizing the initial abatement steps taken under paragraph (a) of this section and any resulting information or data.

(27) The following language shall be added to [Amend] 40 CFR 280.62 by adding a new paragraph (c) [that shall read, as follows]:

(c) The owner and operator, or responsible person shall provide any additional information beyond that required under paragraph (b) of this section, as requested by the implementing agency.

(28) The following language shall be substituted in lieu of 40 CFR 280.63(a)(4) [shall read, as follows]:

(4) Results of the free product investigations required under § 280.62(a)(6), to be used by owners and operators or responsible persons to determine whether free product must be recovered under § 280.64.

(29) The following language shall be substituted in lieu of 40 CFR 280.64 Free Product Removal [shall read, as follows]:

§ 280.64 Free product removal.

At sites where investigations under § 280.62(a)(6) indicate the presence of free product, owners and operators or responsible persons must remove free product to the maximum extent practicable as determined by the implementing agency while continuing, as necessary, any actions initiated under §§ 280.61 through 280.63, or preparing for actions required under §§ 280.65 through 280.66. In meeting the requirements of this section, owners and operators or responsible persons must:

(30) The following language shall be substituted in lieu of 40 CFR 280.64(d) [shall read, as follows]:

(d) Unless directed to do otherwise by the implementing agency, prepare and submit to the implementing agency, within 45 days after confirming a release, a free product removal report that provides at least the following information:

(1) The name of the person(s) responsible for implementing the free product removal measures;

(2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(3) The type of free product recovery system used;

(4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(5) The type of treatment applied to, and the effluent quality expected from, any discharge;

(6) The steps that have been or are being taken to obtain necessary permits for any discharge;

(7) The disposition of the recovered free product; and

(8) Other matters deemed appropriate by the implementing agency.

(31) The following language shall be substituted in lieu of 40 CFR 280.65 [shall read, as follows]:

§ 280.65 Corrective Action.

(a) Corrective action for cleanup of releases from underground storage tanks containing regulated substances other than petroleum shall meet the requirements of OAR 340-122-010 through 340-122-110.

(32) The following language shall be substituted in lieu of 40 CFR 280.66 [shall read, as follows]:

Note: OAR 340-122-010 through 340-122-110 contains equivalent requirements.

(33) The following language shall be substituted in lieu of 40 CFR 280.67 [shall read, as follows]:

Note: OAR 340-122-010 through 340-122-110 contains equivalent requirements.

(34) The following language shall be substituted in lieu of 40 CFR 280.71(a) [shall read, as follows]:

(a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c) of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency, on a form provided by the implementing agency, of their intent to permanently close or make the change-in-service, UNLESS such action is in response to corrective action. Unless the implementing agency agrees to waive the requirement, at least 3 working days before beginning this permanent closure, owners and operators or the licensed service provider performing the work must notify the implementing agency of the confirmed date and time the closure will begin to allow observation of the closure

by the implementing agency. The required assessment of the excavation zone under §280.72 must be performed after notifying the implementing agency but before completion of the permanent closure or a change-in-service.

(35) The following language shall be substituted in lieu of 40 CFR 280.71(b) [shall read, as follows]:

(b) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. Dispose of all liquids and accumulated sludges by recycling or dispose. The disposal method must be approved by the implementing agency prior to disposal. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material. Tanks removed from the ground must be disposed of in a manner approved by the implementing agency. The owner and operator shall document the name of the disposal firm, the disposal method and disposal location for all liquids, sludges and UST system components including tanks, piping and equipment. The owner and operator or licensed service provider shall provide a completed decommissioning checklist to the implementing agency within 30 days after tank closure.

Note: Liquids, sludges and UST system components may require management as a hazardous waste if contaminated with hazardous materials. Contact the implementing agency prior to disposal of these items to insure these wastes are correctly managed.

(36) The following language shall be substituted in lieu of 40 CFR 280.71(c) [shall read, as follows]:

(c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with § 280.72.

(37) The following language shall be added to [Amend] 40 CFR 280.71 by adding a new subpart (d) [that shall read, as follows]:

(d) The following cleaning and closure procedures shall be used to comply with this section unless the implementing agency has approved alternate procedures and determined these alternate procedures are designed to be no less protective of human health, human safety and the environment:

(1) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(2) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(3) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

(4) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard...Working in Confined Space" may be

used as guidance for conducting safe closure procedures at some hazardous substance tanks.

(38) The following language shall be added to [Amend] 40 CFR 280.72 by adding a new subpart (c) [that shall read, as follows]:

(c) The owner and operator must notify the implementing agency and meet the requirement of Subparts E and F if contaminated soil, contaminated ground water, or free product as a liquid or vapor is discovered during the measurement for the presence of a release.

(39) The following language shall be substituted in lieu of 40 CFR 280.72(a) [shall read, as follows]:

(a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. For USTs containing petroleum, the owner and operator shall measure for the presence of a release by following the sampling and analytical procedures specified in OAR Chapter 340 Division 122. A minimum of two samples must be taken below the bottom of the tank. Samples must be taken below any piping where there is evidence of contamination. A petroleum release shall be considered to have occurred if the contaminant levels are found to exceed the levels specified in OAR Chapter 340 Division 122. For USTs containing regulated substances other than petroleum and for USTs to be closed in-place, the owner and operator shall submit a sampling plan to the implementing agency for its approval prior to beginning closure.

(40)[(43)] The following language shall be substituted in lieu of 40 CFR 280 Appendix II [shall read, as follows]:

APPENDIX II - LIST OF AGENCIES DESIGNATED TO RECEIVE NOTIFICATIONS

Oregon (State Form)
Underground Storage Tank Program
Hazardous and Solid Waste Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 98204
503/229-5788

Report Releases to the Oregon Emergency Response System:

1-800-452-0311 or
1-800-452-4011

(41) The following language shall be added to 40 CFR 280.21 by adding a new subparagraph (e):

(e) At least 30 days before beginning the upgrading of an existing UST system under paragraphs (b) and (c) of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency, on a form provided by the implementing agency, of their intent to upgrade an existing underground storage tank system. Unless the implementing agency agrees to waive the requirement, at least 3 working days before beginning the upgrade, owners and operators or the licensed service provider performing the work must notify the implementing agency of the confirmed date and time the upgrade will begin to allow observation by the implementing agency. The owner and operator or licensed service provider shall provide a completed installation check list within 30 days after completion of work.

(42) The following language shall be used in lieu of 40 CFR 280.34(a):

(a) **Reporting.** Owners and operators must submit the following information to the implementing agency:

(1) Notification for all UST systems (§ 280.22), which includes certification of installation for all new UST systems (§ 280.29(e));

(2) Reports of all releases including suspected releases (§ 280.50), spills and overfills (§ 280.53), and confirmed releases (§ 280.61);

(3) Corrective actions planned or taken including initial abatement measures)§ 280.62), initial site characterization (§ 280.63), free product removal (§ 280.64), investigation of soil and ground-water cleanup (§ 280.65), and corrective action plan (§ 280.66);

(4) A notification before permanent closure or change-in-service (§ 280.71; and

(5) A notification before upgrading an existing UST system (§ 280.21).

(43) The following language shall be used in lieu of 40 CFR 280.41(a)(3):

(3) Tanks with capacity of 1,000 gallons or less may use weekly tank gauging (conducted in accordance with § 280.43(b)).

(44) The following language shall be used in lieu of 40 CFR 280.42(a):

(a) Release detection at existing UST systems must meet the requirements for petroleum UST systems in § 280.41. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph (b) of this section.

(45) The following language shall be used in lieu of 40 CFR 280.43(b)(5):

(3) Only tanks of 1,000 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 1,001 to 2,000 gallons may use the method in place of manual inventory control in §

280.43(a). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subpart.

Oregon Rules Amending the Federal Underground Storage Tank Financial Responsibility Regulations

340-150-004 In addition to the regulations and amendments promulgated prior to July 1, 1991 [May 25, 1990], as described in 340-150-002 of these rules, the following rules substituting new language in lieu of [amending] Title 40 Code of Federal Regulations, Part 280, Subpart H are adopted and prescribed by the Commission to be observed by all persons subject to ORS 466.705 through 466.835 and ORS 466.985 through 466.995 with the following exceptions.

(1) The following language shall be substituted in lieu of 40 CFR 280.91: [shall read, as follows:]

Owners of petroleum underground storage tanks are required to comply with the requirements of this subpart by the following dates:

(a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration: January 24, 1989, except that compliance with §280.94(b) is required by : July 24, 1989.

(b) All petroleum marketing firms owning 100-999 USTs: October 26, 1989.

Underground Storage Tank Permit Required

340-150-020 (1) After February 1, 1989, no person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining an underground storage tank permit from the department.

(2) Permits issued by the department will specify those activities and operations which are permitted as well as requirements, limitations and conditions which must be met.

(3) A new application must be filed with the department to obtain modification of a permit.

(4) After February 1, 1989, permits are issued to the person designated as the permittee for the activities and operations of record and shall be automatically terminated:

(a) Within 120 days after any change of ownership of property in which the tank is located, ownership of tank or permittee unless a new underground storage tank permit application is submitted in accordance with these rules;

(b) Within 120 days after a change in the nature of activities and operations from those of record in the last application unless a new underground storage tank permit application is submitted in accordance with these rules;

(c) Upon issuance of a new or modified permit for the same operation;

(5) The department may issue a temporary permit pending adoption of additional Federal underground storage tank technical standards.

(6) The permit conditions may be modified when the Commission adopts new rules.

(7) The department may issue a temporary permit addendum to define special management conditions during tank operation, installation, upgrade, retrofit, or decommissioning, including but not limited to management of contaminated solid waste, hazardous waste, contaminated water, or discharge of air contaminates.

Underground Storage Tank Permit Application Required

340-150-030 (1) On or before May 1, 1988 the following persons shall apply for an underground storage tank permit from the department.

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and May 1, 1988 and not permanently decommissioned in accordance with Section 340-150-130; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance.

(2) After May 1, 1988 the owner of an underground storage tank shall apply for an underground storage tank permit from the department prior to installation of the tank[,] and placing an existing underground storage tank in operation[,] or modifying an existing permit.

OAR 340-150-112 is added in its entirety.

UST FEE WAIVER

340-150-112 (1) The UST permit application fee required by OAR 340-150-070 may be waived by the Director.

(2) An annual UST permit compliance fee required by OAR 340-150-110 may be waived by the Director.

July 3, 1991
ATA0725.150

Attachment B
Agenda Item E
7-25-91 EQC Meeting

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 160 - DEPARTMENT OF ENVIRONMENTAL QUALITY

MODIFICATIONS TO RULES FOR REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SERVICE PROVIDERS
ORS 466.705 through 466.835 and ORS 466.895 through 466.995

AUTHORITY, PURPOSE, AND SCOPE

340-160-005 (1) These rules are promulgated in accordance with and under the authority of ORS 466.750.

(2) The purpose of these rules is to provide for the regulation of companies and persons performing services for underground storage tank systems in order to assure that underground storage tank systems are being serviced in a manner which will protect the public health and welfare and the land and waters within the State of Oregon. These rules establish standards for:

(a) Registration and licensing of firms performing services on underground storage tanks,

(b) Examination, qualification and licensing of individuals who supervise the performance of tank services,

(c) Administration and enforcement of these rules by the Department.

(3) Scope.

(a) OAR 340-160-005 through -150 applies to the installation, retrofitting, decommissioning and testing, by any person, of underground storage tanks regulated by ORS 466.705 through ORS 466.835 and OAR 340-150-001[010] through OAR 340-150-150 except as noted in Subsection (3)(b).

(b) OAR 340-160-005 through OAR 340-160-150 do not apply to services performed on the tanks identified in OAR 340-150[160]-015 or to services performed by the tank owner, property owner or permittee.

GENERAL PROVISIONS

340-160-020 (1) After May 1, 1989, no firm shall offer or perform tank services in the State of Oregon without having first registered with the Department.

(2) After September 1, 1989, no tank services provider may install, retrofit or decommission an underground storage tank in the State of Oregon without first obtaining a license from the Department.

(3) After May 1, 1990, no tank services provider shall offer to test or perform a test on an underground storage tank without first having obtained a license from the Department.

(4) After the required date, any tank services provider offering to perform tank services must have registered with or been licensed by the

Department. Proof of registration and or licensing must be available at all times a tank services provider is performing tank services.

(5) After the required date, a tank services provider registered and/or licensed to perform tank services is prohibited from offering or performing tank services on regulated tanks unless a regulated tank has been issued a permit by the Department.

(6) Any tank services provider licensed or certified by the Department under the provisions of these rules shall:

(a) comply with the appropriate provisions of OAR 340-160-005 through OAR 340-160-150;

(b) maintain a current address on file with the Department; and

(c) perform tank services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.

(7) A firm registered or, if required, licensed to perform tank services must submit a checklist to the Department following the completion of a tank installation, [or] retrofit, testing, or decommissioning.

(a) The checklist will be made available on a form provided by the Department.

(b) The installation, [and] retrofit, testing and decommissioning checklist must be signed by an executive officer of the firm and, following September 1, 1989, by the licensed tank services supervisor.

(c) An as-built drawing of the completed tank installation or retrofit shall be provided with the submission of the installation and retrofit checklist.

(8) [After September 1, 1989,] A [a] licensed tank services supervisor shall be present at a tank installation[,] and retrofit [or decommissioning] project when the following project tasks are being performed:

(a) Preparation of the excavation immediately prior to receiving backfill and the placement of the tank into the excavation;

(b) Any movement of the tank vessel, including but not limited to transferring the tank vessel from the vehicle used to transport it to the project site;

(c) Setting of the tank and its associated piping into the excavation, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(d) Placement and connection of the piping system to the tank vessel;

(e) Installation of cathodic protection;

(f) All pressure testing of the underground storage tank system, including associated piping, performed during the installation or retrofitting;

(g) Completion of the backfill and filling of the installation.

(h) Preparation for and installation of tank lining systems.

(i) Tank excavation.

[(j) Tank purging or inerting.]

[(k) Removal and disposal of tank contents from cleaning.]

(9) A licensed tank services supervisor shall be present at a tank decommissioning project when the following project tasks are being performed:

(a) Tank excavation.

(b) Removal and capping vent and product lines.

(c) Cleaning tank and removal of tank contents.

(d) Tank purging or inerting.

(e) Any movement of the tank vessel, including but not limited to transferring the tank vessel to the vehicle used to transport it from the project site.

(f) Collection of contaminated soil, water and media samples during decommissioning.

(10) A licensed tank services supervisor shall be present during the testing of an underground storage tank cathodic protection system.

(11) A licensed tank services supervisor shall be present during the leak detection testing of an underground storage tank system performed under 40 CFR 280.40.

(12)[(9)] A licensed tank services provider shall report the existence of any condition relating to an underground tank system that has or may result in a release of the tank's contents to the environment. This report shall be provided to the Department within 72 hours of the discovery of the condition.

(13)[(10)] The requirements of this part are in addition to and not in lieu of any other licensing and registration requirement imposed by law.

NOTE: Additional Oregon licenses may be required when working on underground storage tanks. See Construction Contractors License requirements in OAR 812-02-000 through -030 and Monitoring Well Constructor License requirements in OAR 690-240-005 through -180.

SUPERVISOR EXAMINATION AND LICENSING

340-160-035 (1) To obtain a license from the Department to supervise the installation, retrofitting, decommissioning or testing of an underground storage tank, an individual must:

(a) take and pass a qualifying examination approved by the Department; or

(b) meet the requirements for licensing by reciprocity by providing proof, acceptable to the Department. The applicant must:

(A) successfully pass an equivalent supervisors examination in another jurisdiction; and

(B) demonstrate knowledge of applicable Oregon rules and regulations.

(2) Applications for Supervisor Licenses - General Requirements

(a) Applications must be submitted to the Department within thirty (30) days of passing the qualifying examination.

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

(3) The application to be a Licensed Supervisor shall include:

(a) Documentation that the applicant has successfully passed the Supervisor examination.

(b) Any additional information that the Department may require.

(4) A license is valid for a period of twenty-four (24) months after the date of issue.

(5) Renewals:

(a) License renewals must be applied for in the same manner as the application for the original license, including re-examination.

(6) The Department may suspend or revoke a Supervisor's license for failure to comply with any state or federal rule or regulation pertaining to the management of underground storage tanks.

(7) If a Supervisor's license is revoked, an individual may not apply for another supervisor license prior to ninety (90) days after the revocation date.

(8) Upon issuance of a Supervisor's license, the Department shall issue an identification card to all successful applicants which shows the license number and license expiration date.

(9) The supervisor's license identification card shall be available for inspection at each project site.

RECIPROCITY WITH OTHER JURISDICTIONS

340-160-054 The Department may develop agreements with other jurisdictions for the purposes of establishing reciprocity in training, licensing, and certification if the Department finds that the training, licensing and certification standards of the other jurisdiction are at least as stringent as those required by these rules.

FEES

340-160-150 (1) Fees shall be assessed to provide revenues to operate the underground storage tank services licensing program. Fees are assessed for the following:

(a) Tank Services Provider

(b) Supervisor Examination

(c) Supervisor License

(d) Examination Study Guides

(2) Tank services providers shall pay a non-refundable registration fee of $25.

(3) Tank services providers shall pay a non-refundable license application fee of $100 for a twenty-four (24) month license.

(4) Individuals taking the supervisor licensing qualifying examination shall pay a non-refundable examination fee of $25.

(5) Individuals seeking to obtain a supervisor's license shall pay a non-refundable license application fee of $25 for a two year license.

(6) Examination study guides shall be made available to the public for the cost of production [$10].

July 3, 1991
ATB0725.160

Attachment C
Agenda Item E
7-25-91 EQC Meeting

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 162 - DEPARTMENT OF ENVIRONMENTAL QUALITY

MODIFICATIONS TO
REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SOIL MATRIX CLEANUP SERVICE PROVIDERS AND SUPERVISORS
ORS 466.705 through 466.835 and ORS 466.895 through 466.995

GENERAL PROVISIONS

340-162-020 (1) After January 1, 1991, no firm shall offer underground storage tank soil matrix cleanup services without first having obtained a license from the Department.

(2) Proof of licensing must be available at all times a service provider is performing soil matrix cleanup services.

(3) After January 1, 1991, Underground Storage Tank Soil Matrix Cleanup Service Providers licensed to perform cleanup services are prohibited from offering or performing cleanup services on regulated underground storage tanks unless an underground storage tank has been issued a permit by the Department.

(4) Any Underground Storage Tank Soil Matrix Cleanup Service Provider licensed or certified by the Department under the provisions of these rules shall:

(a) comply with the appropriate provisions of OAR 340-162-005 through OAR 340-162-150;

(b) comply with the appropriate provisions of OAR 340-122-305 through OAR 340-122-360;

(c) maintain a current address on file with the Department; and

(d) perform underground storage tank soil matrix cleanup services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.

(5) A firm licensed to perform underground storage tank soil matrix cleanup services must submit a checklist to the Department following the completion of a soil matrix cleanup. The checklist form will be made available by the Department.

(6) After January 1, 1991, a licensed underground storage tank soil matrix cleanup services supervisor shall be present at a tank site when the following tasks are being performed:

(a) During all excavations made after a leak is suspected or has been confirmed;

(b) When any tanks or lines are removed or decommissioned as a result of a suspected or confirmed release;

(c) When all soil and /or water samples are collected, stored, and packed for shipping to the analytical testing laboratory;

(d) When any soil borings, back-hoe pits or other excavations are made for the purpose of investigating the extent of contamination;

(e) During removal from the open excavation or disposal of any free product or groundwater; and

(7) After January 1, 1991 Underground Storage Tank Soil Matrix Service Providers shall not backfill or close a soil matrix cleanup excavation site before a Department inspection unless authorized verbally or in writing by the Department. Verbal approvals will be confirmed in writing within 30 days by the Department.

NOTE: Additional Oregon licenses may be required when performing soil cleanup services at underground storage tanks and heating oil tanks. See Construction Contractors License requirements in OAR 812-02-000 through -030 and Monitoring Well Constructor License requirements in OAR 690-240-005 through -180.

SUPERVISOR EXAMINATION AND LICENSING

340-162-035 (1) To obtain a license from the Department to supervise underground storage tank soil matrix cleanup services an individual must:

(a) take and pass a qualifying examination approved by the Department; or

(b) meet the requirements for licensing by reciprocity by providing proof, acceptable to the Department. The applicant must:

(A) successfully pass an equivalent supervisors examination in another jurisdiction; and

(B) demonstrate knowledge of applicable Oregon rules and regulations.

(2) Applications for Underground Storage Tank Soil Matrix Cleanup Supervisor Licenses - General Requirements

(a) Applications must be submitted to the Department within thirty (30) days of passing the qualifying examination.

(b) Application shall be submitted on forms provided by the Department and shall be accompanied by the appropriate fee.

(3) The application to be a Licensed Underground Storage Tank Soil Matrix Cleanup Supervisor shall include:

(a) Documentation that the applicant has successfully passed the Underground Storage Tank Soil Matrix Cleanup Supervisor examination.

(b) Any additional information that the Department may require.

(4) A license is valid for a period of twenty-four (24) months after the date of issue.

(5) License renewals must be applied for in the same manner as the application for the original license, including re-examination.

(6) Suspension and Revocation

(a) The Department may suspend or revoke an Underground Storage Tank Soil Matrix Cleanup Supervisor's license for failure to comply with any state or federal rule or regulation of underground storage tanks.

(b) If a Soil Matrix Cleanup Supervisor's license is revoked, an individual may not apply for another supervisor license prior to ninety (90) days after the revocation date.

(7) Upon issuance of an Underground Storage Tank Soil Matrix Cleanup Supervisor's license, the Department shall issue an identification card to all successful applicants which shows the license number and license expiration date.

(8) The supervisor's license identification card shall be available for inspection at each site.

RECIPROCITY WITH OTHER JURISDICTIONS

340-162-054 The Department may develop agreements with other jurisdictions for the purposes of establishing reciprocity in training, licensing, and certification if the Department finds that the training, licensing and certification standards of the other jurisdiction are at least as stringent as those required by these rules.

FEES

340-162-150 (1) Fees shall be assessed to provide revenues to operate the underground storage tank soil matrix cleanup services licensing program. Fees are assessed for the following:

(a) Underground Storage Tank Soil Matrix Cleanup Service Provider.

(b) Underground Storage Tank Soil Matrix Cleanup Supervisors Examination.

(c) Underground Storage Tank Soil Matrix Cleanup Supervisors License.

(d) Underground Storage Tank Soil Matrix Cleanup Examination Study Guides.

(2) Underground Storage Tank Soil Matrix Cleanup service providers shall pay a non-refundable license application fee of $100 for a twenty-four (24) month license.

(3) Individuals taking the underground storage tank soil matrix cleanup supervisor licensing qualifying examination shall pay a non-refundable examination fee of $25.

(4) Individuals seeking to obtain an underground storage tank soil matrix cleanup supervisor's license shall pay a non-refundable license application fee of $25 for a two year license.

(5) Examination study guides shall be made available to the public for the cost of production [$10].

(6) Replacement licenses will be provided by the Department for a fee of $10.

July 3, 1991
ATC0725.162

Attachment D
Agenda Item E
7-25-91 EQC Meeting

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 163 - DEPARTMENT OF ENVIRONMENTAL QUALITY

MODIFICATIONS TO
REGISTRATION AND LICENSING REQUIREMENTS FOR HEATING OIL TANK SOIL MATRIX CLEANUP SERVICE PROVIDERS AND SUPERVISORS
ORS 466.705 through 466.835 and ORS 466.895 through 466.995

GENERAL PROVISIONS

340-163-020 (1) After January 1, 1991, no firm shall offer heating oil tank soil matrix cleanup services without first having obtained a Heating Oil Tank Soil Matrix Cleanup Service Provider license from the Department.

(2) Proof of licensing must be available at all times a service provider is performing soil matrix cleanup services.

(3) Any Heating Oil Tank Soil Matrix Cleanup Service Provider licensed or certified by the Department under the provisions of these rules shall:

(a) comply with the appropriate provisions of OAR 340-163-005 through OAR 340-163-150;

(b) comply with the appropriate provisions of OAR 340-122-305 through OAR 340-122-363;

(c) maintain a current address on file with the Department; and

(d) perform soil matrix cleanup services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.

(4) A firm licensed to perform heating oil tank soil matrix cleanup services must submit a checklist to the Department following the completion of a soil matrix cleanup. The checklist form will be made available by the Department.

(5) After January 1, 1991, a licensed Heating Oil Tank Soil Matrix Cleanup Services Supervisor shall be present at a tank site when the following tasks are being performed.

(a) During all excavations made after a leak is suspected or has been confirmed;

(b) When any tanks or lines are permanently closed by removal from the ground or filled in place as a result of a suspected or confirmed release;

(c) When all soil and /or water samples are collected and packed for shipping to the analytical testing laboratory;

(d) When any soil borings, back-hoe pits or other excavations are made for the purpose of investigating the extent of contamination;

(e) During removal from the open excavation or disposal of any free product or groundwater; and

(6) After January 1, 1991 Service Providers shall not backfill or close a soil cleanup excavation site before a Department inspection unless authorized verbally or in writing by the Department. Verbal approvals will be confirmed in writing within 30 days by the Department.

FEES

340-163-150 (1) Fees shall be assessed to provide revenues to operate the heating oil tank soil matrix cleanup services licensing program. Fees are assessed for the following:

(a) Heating Oil Tank Soil Matrix Cleanup Service Provider.

(b) Heating Oil Tank Soil Matrix Cleanup Supervisors Examination.

(c) Heating Oil Tank Soil Matrix Cleanup Supervisors License.

(d) Heating Oil Tank Soil Matrix Examination Study Guides.

(2) Heating oil tank soil matrix cleanup service providers shall pay a non-refundable license application fee of $100 for a twenty-four (24) month license.

(3) Individuals taking the Heating Oil Tank Soil Matrix Cleanup Supervisor licensing examination shall pay a non-refundable examination fee of $25.

(4) Individuals seeking to obtain a Heating Oil Tank Soil Matrix Cleanup Supervisor's license shall pay a non-refundable license application fee of $25 for a two year license.

(5) Examination study guides shall be made available to the public for <u>the cost of production</u> [$10].

(6) Replacement licenses will be provided by the Department for a fee of $10.

July 3, 1991
ATD0725.163

Attachment E
Agenda Item E
7-25-91 EQC Meeting

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 12 - DEPARTMENT OF ENVIRONMENTAL QUALITY

MODIFICATIONS TO RULES FOR ENFORCEMENT PROCEDURE AND CIVIL PENALITIES

UNDERGROUND STORAGE TANK AND HEATING OIL TANK CLASSIFICATION OF VIOLATIONS 340-12-067

Violations pertaining to Underground Storage Tanks and cleanup of petroleum contaminated soil at heating oil tanks shall be classified as follows:

(1) Class One:
(a) Violation of a Commission or Department Order;
(b) Failure to [promptly] report a release from an underground storage tank [which poses a major risk of harm to public health or the environment] or a heating oil tank as required by OAR 340-150-001 through -150, OAR 340-160-005 through -150, OAR 340-162-005 through -150, OAR 340-163-005 through -150, and OAR 340-122-205 through -260;
(c) Failure to initiate the investigation or cleanup of a release from an underground storage tank or a heating oil tank [which poses a major risk of harm to public health or the environment];
(d) Failure to prevent a release [which poses a major risk of harm to public health or the environment];
(e)[(i)] Failure to submit required reports from the investigation or cleanup of a release [which poses a major risk of harm to public health or the environment];
(f)[(j)] Failure to provide access to premises or records;
(g)[(e)] Placement of a regulated material into an unpermitted underground storage tank;
(h)[(f)] Installation of an underground storage tank in violation of the standards or procedures adopted by the Department;
[(g) Providing installation, retrofitting, decommissioning or testing services on an underground storage tank without first registering or obtaining an underground storage tank service providers license;]
[(h) Providing supervision of the installation, retrofitting, decommissioning or testing of an underground storage tank without first obtaining an underground storage tank supervisors license;]
(i)[(k)] Any other violation related to underground storage tanks or cleanup of petroleum contaminated soil at heating oil tanks which poses a major risk of harm to public health and the environment.

(2) Class Two:
[(a) Failure to promptly report a release from an underground storage tank which poses a moderate risk of harm to public health or the environment;]
[(b) Failure to initiate investigation or cleanup of a release which poses a moderate risk of harm to public health or the environment;]

[(c) Failure to prevent a release which poses a moderate risk of harm to public health or the environment;]
[(d) Failure to submit required reports from the investigation or cleanup of a release which poses a moderate risk of harm to public health or the environment;]
(a) Providing installation, retrofitting, decommissioning, or testing services on an underground storage tank or providing cleanup of petroleum contaminated soil at an underground storage tank site without first registering or obtaining an underground storage tank service providers license;
(b) Providing supervision of the installation, retrofitting, decommissioning, or testing of an underground storage tank or providing supervision of cleanup of petroleum contaminated soil at an underground storage tank site without first obtaining an underground storage tank supervisors license;
(c)[(e)] Failure to conduct required underground storage tank monitoring and testing activities;
(d)[(f)] Failure to conform to operational standards for underground storage tanks and leak detection systems;
(e)[(g)] Failure to obtain a permit prior to the installation or operation of an underground storage tank;
(f)[(h)] Failure to properly decommission an underground storage tank;
(g)[(i)] Providing installation, retrofitting, decommissioning or testing services on an regulated underground storage tank or providing cleanup of petroleum contaminated soil at a regulated underground storage tank that does not have a permit;
(h)[(j)] Failure by a seller or distributor to obtain the tank permit number prior to depositing product into the underground storage tank or failure to maintain a record of the permit numbers;
(i)[(k)] Allowing the installation, retrofitting, decommissioning, testing of an underground storage tank or cleanup of petroleum contaminated soil at an underground storage tank by any person not licensed by the department;
(j) Allowing cleanup of petroleum contaminated soil at a heating oil tank by any person not licensed by the Department;
(k) Providing petroleum contaminated soil cleanup services at a heating oil tank without first registering or obtaining a heating oil tank soil matrix cleanup service provider license;
(l) Providing supervision of petroleum contaminated soil cleanup at a heating oil tank without first registering or obtaining a heating oil tank soil matrix cleanup supervisor license;
(m)[(l)] Any other violation related to underground storage tanks or cleanup of petroleum contaminated soil at a heating oil tank with poses a moderate risk of harm to public health or the environment.

(3) Class Three:
[(a) Failure to promptly report a release from an underground storage tank which poses a minor risk of harm to public health or the environment;]
[(b) Failure to initiate investigation or cleanup of a release which poses a minor risk of harm to public health or the environment;]
[(c) Failure to prevent a release which poses a minor risk of harm to public health or the environment;]

[(d) Failure to submit required reports from the investigation or cleanup of a release which poses a minor risk of harm to public health or the environment;]

(a)[(e)] Failure to submit an application for a new permit when an underground storage tank is acquired by a new owner;

(b)[(f)] Failure of a tank seller or product distributor to notify a tank owner or operator of the Department's permit requirements;

(c)[(g)] Decommissioning an underground storage tank without first providing written notification to the Department;

(d)[(h)] Failure to provide information to the Department regarding the contents of an underground storage tank;

(e)[(i)] Failure to maintain adequate decommissioning records;

(f)[(j)] Failure by the tank owner to provide the permit number to persons depositing product into the underground storage tank;

(g) Failure to report a suspected release from an underground storage tank.

(h)[(k)] Any other violation related to underground storage tanks or cleanup of petroleum contaminated soil at heating oil tanks which poses a minor risk of harm to public health and the environment.

July 3, 1991
ATE0725.067

Attachment F
Agenda Item E
7-25-91 EQC Meeting

MODIFICATIONS TO CLEANUP RULES FOR LEAKING PETROLEUM UST SYSTEMS

OAR 340-122-205 to 340-122-260

340-122-205 Purpose

(1) These rules establish the standards and process to be used for the determination of investigation and cleanup activities necessary to protect the public health, safety, welfare and the environment in the event of a release or threat of a release from a petroleum UST system subject to regulation under ORS 466.705 to 466.835 and 466.895, and [466.540 to 466.590] 465.200 to 465.380.

340-122-210 Definitions

For the purpose of this section, terms not defined in this subsection have the meanings set forth in ORS [466.540] 465.200 and 466.705. Additional terms are defined as follows unless the context requires otherwise:

(1) "Above-ground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of a petroleum UST system and releases associated with overfills and transfer operations during petroleum deliveries to or dispensing from a petroleum UST system.

(2) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from a petroleum UST system.

(3) "Below-ground release" means any release to the subsurface of the land or to groundwater **that has concentrations which are reportable by DEQ TPH-HCID test, revised 12/11/90**. This includes, but is not limited to, releases from the below-ground portion of a petroleum UST system and releases associated with overfills and transfer operations as the petroleum is delivered to or dispensed from a petroleum UST system.

(4) "Cleanup" or "cleanup activity" has the same meaning as "corrective action" as defined in ORS 466.705 or "remedial action" as defined in ORS [466.540] 465.200.

(5) "Director" means the Director of the Department of Environmental Quality or the Director's authorized representative.

(6) "Excavation zone" means the area containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the petroleum UST system is placed at the time of installation.

(7) "Free product" means petroleum in the non-aqueous phase (e.g., liquid not dissolved in water).

(8) "Heating oil" means petroleum that is No. 1, No.2, No.4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils.

(9) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No.1 or No.2 diesel fuel, or any grade of gasohol, typically used in the operation of a motor engine.

(10) "Owner", as used in this section, has the meaning set forth in ORS 466.705(8).

(11) "Permittee", as used in this section, has the meaning set forth in ORS 466.705(9).

(12) "Petroleum" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse, and crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils, diesel fuels, and any other petroleum related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute. (Note: this definition does <u>not</u> include any substance identified as a hazardous waste under 40 CFR Part 261.)

(13) "Petroleum UST system" means any one or combination of tanks, including underground pipes connected to the tanks, that is used to contain an accumulation of petroleum and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground; and includes associated ancillary equipment and containment system.

(14) "Responsible person" means any person ordered or authorized to undertake remedial actions or related activities under ORS [466.540 through 466.590] <u>465.200 through 465.380</u>.

340-122-215 <u>Scope and Applicability</u>

(1) Sections 340-122-205 through 340-122-360 of these rules apply to:

(a) An owner or permittee ordered or authorized to conduct cleanup or related activities by the Director under ORS 466.705 to 466.835 and 466.895; or

(b) Any person ordered or authorized to conduct remedial actions or

related activities by the Director under ORS [466.540 to 466.590] 465.200 to 465.380.

(2) Notwithstanding OAR 340-122-215(1)(b) and 340-122-360(3), the Director may require that investigation and cleanup of a release from a petroleum UST system be governed by OAR 340-122-010 to 340-122-110, if, based on the magnitude or complexity of the release or other considerations, the Director determines that application of OAR 340-122-010 through 340-122-110 is necessary to protect the public health, safety, welfare and the environment.

(3) Cleanup of releases from UST systems containing regulated substances under ORS 466.705 other than petroleum shall be governed by OAR 340-122-010 to 340-122-110 or as otherwise provided under applicable law.

(4) The Director may determine that the investigation and cleanup of releases from petroleum underground storage tank systems which are exempted under ORS 466.710(1) through (10) inclusive, shall be conducted under 340-122-205 through 340-122-360, based upon the authority provided under ORS [466.540 to 466.590] 465.200 to 465.380.

340-122-220 Initial Response

Upon **suspicion or** confirmation of a release or after a release from the UST system is identified in any manner, owners, permittees or responsible persons shall perform the following initial response actions within 24 hours **[of the discovery of a release]**.

(1) Report the following **suspected or confirmed** releases to the Department:

(a) All below-ground releases from the petroleum UST system [in any quantity];

(b) All above-ground releases to land from the petroleum UST system in excess of 42 gallons, or less than 42 gallons if the owner, permittee or responsible person is unable to contain or clean up the release within 24 hours; and

(c) All above-ground releases to water which result in a sheen on the water.

(2) Take immediate action to prevent any further release of the regulated substance into the environment; and

(3) Identify and mitigate fire, explosion, and vapor hazards.

July 3, 1991
ATF0725.122

Attachment G
Agenda Item E
7-25-91 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF MODIFYING OAR Chapter 340, Divisions 12 and 150	)))	STATEMENT OF NEED FOR RULES

Statutory Authority

ORS 466.705 through ORS 466.835 and ORS 466.895 through ORS 466.995 authorizes rule adoption for the purpose of regulating underground storage tanks. Specifically, Section 466.745 authorizes the Commission to adopt rules governing the standards for the installation of underground storage tanks, reporting of releases, permit requirements, requirements for maintaining records, procedures for distributors of regulated substances and sellers of underground storage tanks, decommissioning of underground storage tanks, procedures by which an owner or permittee may demonstrate financial responsibility, requirements for taking corrective action, civil penalties, and criminal penalties.

Section 466.720 authorizes the Commission and the Department to perform or cause to be performed any act necessary to obtain authorization of a state program for regulation of underground storage tanks under the provisions of Section 9004 of the Federal Resource Conservation and Recovery Act.

Section 466.730 allows the Commission to authorize the Department to enter into an agreement with an agency of the state or a local unit of government to administer all or part of the underground storage tank program.

Need for the Rules

The proposed rule modifications are needed to carry out the authority given to the Commission to adopt rules for regulation of Underground storage tanks and to obtain federal authorization of the state underground storage tank program.

Principal Documents Relied Upon

Oregon Revised Statutes, ORS 466.705 through 466.835, 466.895 and 466.995.

40 CFR 280; 50 FR 28742, July 15, 1985; Amended by 50 FR 46612, November 8, 1985; Corrected by 51 FR 13497, April 21, 1986; Revised by 53 FR 37194, September 23, 1988, Effective December 22, 1988; Amended by 53 FR 43370, October 26, 1988; Corrected by 53 FR 51274, December 21, 1988; Amended by 54 FR 5452, February 3, 1989; Amended by 54 FR 47077, November 9, 1989; 55 FR 17753, April 27, 1990; 55 FR 18567, May 2, 1990; 55 Fr 23738, June 12, 1990; 55 FR 46025, October 31, 1990; 56 FR 26, January 2, 1991.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Superfund Amendments and Reauthorization Act of 1986.

Fiscal and Economic Impact

Fiscal Impact

There should not be any new or additional fiscal impact resulting from the proposed rule modifications.

Small Business Impact

Small businesses owning or operating underground storage tanks are presently regulated by federal regulations and the present state underground storage tank rules. The rules are modified for compliance with federal regulations, to relax certain requirements and to improve the utility and effectiveness of the rules for both the regulated community and the department. These rule modifications should not result in any new or additional small business impact beyond that already imposed by the federal regulations.

7/3/91
NEED0725.91

Attachment H
Agenda Item E
7-25-91 EQC Meeting

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: June 18, 1991

TO: Environmental Quality Commission

FROM: Larry D. Frost

SUBJECT: Hearing Report Summary and Responsiveness Summary

On April 26, 1991, the Environmental Quality Commission authorized Public Hearings on proposed modifications to the Underground Storage Tank rules for technical standards, financial responsibility requirements, enforcement, and cleanup of leaking underground storage tanks. Public hearings were held on:

- o May 28, 1991 in Portland, Oregon
- o June 10, 1991 in Pendleton, Oregon
- o June 12, 1991 in Medford, Oregon
- o June 14, 1991 in Portland, Oregon

The following persons provided written testimony on the proposed rule modifications. No person provided verbal testimony.

Name/Representing	Date
UST Work Group Stu Greenburger Bob Kimmel Albert L. Knopf Gregg Miller Jack Weathersbee	5/22/91
Max Rosenberg / DEQ	5/22/91
Laurie McCulloch / DEQ	6/3/91
Mike Paisley / Time Oil Co.	6/12/91
Albert Knopf / Tank Liners	6/14/91

COMMENT AND RESPONSE TO COMMENTS ON PROPOSED RULES

1. Adoption of financial responsibility for petroleum marketers with 13-99 tanks. OAR 340-150-004(1)(c)

   COMMENT (UST Work Group): The staff report and fiscal impact statement should clearly identify the financial impact of this rule change on Oregon businesses.

   Additionally, the work group believes it may not be in the best interest of the Department to initially enforce the financial responsibility requirements on petroleum marketers with 13-99 tanks, owners and operators of 1-12 tanks, and local government UST owners.

   DEPARTMENT RESPONSE: The final staff report and fiscal impact statement adopting the financial responsibility regulations on petroleum marketers in Oregon with 13-99 tanks will identify the financial impact of the rule change.

   In accordance with policy established by the Oregon legislature, the Department will be seeking federal approval to operate Oregon's UST program in lieu of the federal UST program. Failure to adopt financial responsibility rules for petroleum marketers with 13 - 99 tanks would preclude the Department from gaining EPA approval of the state program.

2. UST Permit Fee Waiver. OAR 340-150-112 (Page A-13)

   COMMENT (UST Work Group): Allowing a fee waiver may create a climate where many tank owners will ask for a waiver. The $25 annual fee is minimal and should be paid by all UST owners.

   DEPARTMENT RESPONSE: The proposed rule was developed to allow waiver of permit fees for individuals who are financially unable to pay or were clearly victims of unfair circumstances. The Department believes it is appropriate for the Director to waive the fees under these and similar situations.

3. Soil sampling during decommissioning. 40 CFR 280.72(a) (Page A-10)

   COMMENT (UST Work Group, Al Knopf): This rule is in conflict with soil matrix rules. The rules should be changed to require soil sampling on piping only where there is evidence of contamination.

   DEPARTMENT RESPONSE: The rule will be changed to match the requirements of the soil matrix rules.

4. 30 day notice prior to upgrading an UST. 40 CFR 280.21(e) (Page A-10)

COMMENT (UST Work Group, Al Knopf, Mike Paisley): This 30-day notice requirement would be burdensome to both the DEQ and the UST owner and operator since notices would be required on all upgrades including the installation of overfill and spill protection equipment. The 30-day notice is not necessary since the rules also require a 3-day work start notice and submission of a checklist after completion of work. One person suggested that it should only be used for cathodic protection upgrades.

DEPARTMENT RESPONSE: The Department agrees that it does not want to know about minor upgrades such as fill protection and overfill protection. On the other hand, the Department wishes to have the opportunity to inspect major UST upgrades, such as tank lining, complete piping replacements, and addition of cathodic protection prior to construction. The final rule will be changed to require 30-day notice for those items only.

5. Supervision of testing. OAR 340-160-020(11) (Page B-3)

COMMENT (UST Work Group): The proposed rule requires an UST supervisor, licensed for precision tank testing, to be present during testing of an UST system. The rule is ambiguous. This rule should require this licensed "testing" supervisor to be present only during annual compliance testing of previously installed tanks and piping systems. The UST system pressure testing performed prior to, and during installation is to be supervised by the licensed "installation" UST supervisor.

DEPARTMENT RESPONSE: The rule will be changed to remove the ambiguity.

6. Service Provider reporting releases. OAR 340-160-020(12) (Page B-3)

COMMENT (UST Work Group): The existing rule should not be modified. The proposed modification diminishes the effect of the rule by allowing the service provider to wait to report a release until he is sure the owner has not reported the release.

DEPARTMENT RESPONSE: The Department agrees with the comment. The existing rule will not be modified, as proposed.

7. Department written confirmation after receiving notice of backfill. OAR 340-162-020(7) and OAR 340-163-020(6) (Pages C-2 and D-1)

COMMENT (UST Work Group, Albert Knopf): The existing rules should not be modified to allow the Department to give verbal authorization for backfilling a cleanup site without follow up written confirmation. The service provider is entitled to written authorization or written

confirmation of a verbal authorization. A simple procedure could be used to make the written authorization easy.

DEPARTMENT RESPONSE: The Department agrees with the comment. The rule will not be changed.

8. Below-ground release defined as detected by TPH-HCID test. OAR 340-122-210(3) (Page F-1)

COMMENT (Albert Knopf): The proposed rule identifies a "reportable concentration" as the detectable limit of the TPH-HCID test. The test protocol defines the detectable limit as 50% of the lowest matrix cleanup level; 50% of 40 mg/l for gasoline, 50% of 100 mg/l for diesel. Mr. Knopf is concerned that the test protocol may be revised making the "detectable limit" significantly lower in the future; possibly as low as 5 mg/l. One should not need to report contamination if the site is cleaner than Matrix standards.

DEPARTMENT RESPONSE: There are two separate issues contained in Mr. Knopf's comments.

1. Is there a release?
2. Is cleanup necessary?

Even if the answer to (2) is "no", it is in the public interest to know if there was a release, whether or not DEQ requires cleanup. If reporting is not required, the public will assume "no cleanup" means the site is perfectly clean.

The present rules require reporting if any quantity of contamination to soil or ground water is detected. Unfortunately, this creates a problem. Petroleum contamination detected by a laboratory, regardless of level, must be reported by the tank owner and operator. This "detection level" varies from 1 mg/l to 20 mg/l among laboratories.

The proposed rule quantifies the "reportable concentration" (50% of 40 mg/l for gasoline, 50% of 100 mg/l for diesel), thus is less stringent than the present rule. While the test protocol is defined as DEQ's TPH-HCID test, it is not clearly identified in the proposed rule.

The Department will modify the proposed rule by identifying the test as DEQ TPH-HCID Test, revised 12/11/90. This change should satisfy the concerns raised by Mr. Knopf.

9. Below ground release. OAR 340-122-210(3) (Page F-1)

COMMENT (Max Rosenberg): Changing the definition of "below ground release" from "any release" to "concentrations which are reportable by TPH-HCID" will require sampling for any suspected release prior to reporting. Analytical results may take as long as three weeks.

Meanwhile the release will go unreported. The present rule requires notification if detected by either sight or smell, as well as analytical results. Additionally, sampling bias, either accidental or intentional, could lead to significant releases being unreported.

DEPARTMENT RESPONSE: The Department believes both the public and environment is served by clearly quantifying a reportable release. Under present rules a petroleum release from a non-UST does not need to be reported where the person does not believe contamination exists. Under present UST rules the owner and operator is required to report all suspected releases, then investigate (test) to determine whether a release has occurred. The release must be reported if it is confirmed.

Under the new rule, all persons, whether regulated by UST rules or not, must test to confirm or deny the release, where a petroleum release is suspected.

Sampling bias can exist under the previous rule and the proposed rule. The proposed rule does, however, allow the Department to insist upon testing where a release is suspected.

For the reasons expressed above, the proposed rule will only be modified to identify the test protocol.

10. Notice required 3-days before backfilling an UST cleanup site. OAR 340-162-020(7) and OAR 340-163-020(6) (Pages C-1 and D-1)

COMMENT: (Laurie McCulloch): The UST rules allow an UST owner or operator to perform soil matrix cleanup if they perform the work alone. The rules do not, however, require the owner or operator to notify DEQ prior to backfilling the excavation. If they hire a contractor to do the cleanup, the contractor must be licensed as an UST Soil Matrix Cleanup Service Provider and must have a licensed UST Soil Matrix Cleanup Supervisor supervising the work. Rules require the service provider to give notice before backfilling to allow DEQ the opportunity to inspect the cleanup. The rules should require the owner and operator to provide the same notice where they do the cleanup.

DEPARTMENT RESPONSE: This issue was not addressed by the proposed rules modifications. The Department cannot modify an existing rule without first asking for public comments on the proposed changes. Your proposal will be considered the next time rule modifications are proposed.

11. UST decommissioning supervisor must be present during decommissioning sample collection. OAR 340-160-020(9)(f) (Page B-3)

COMMENT (Max Rosenberg): The proposed rule modification appears to require a "decommissioning" supervisor, licensed under this section, to

be present during sample collection. I don't think this is necessary. Only a licensed Petroleum Soil Matrix Cleanup Supervisor need be present.

DEPARTMENT RESPONSE: The rules allow a decommissioning to be supervised under the direction of a "decommissioning" supervisor licensed by OAR 340-160-005 through -150. Soil and water samples are required as part of the decommissioning process. This rule modification requires this "decommissioning" supervisor to be present when these samples are being taken.

If the site becomes a cleanup site and the responsible person chooses to cleanup following the soil matrix process, then cleanup must be performed by a service provider and supervisor licensed by the UST Soil Matrix Cleanup Service Provider and Supervisor rules, OAR 340-162-005 through -150.

At an UST decommissioning, the intent of the rules would be fulfilled if either of the two licensed service providers were present when samples were being taken.

12. Change wording in note. 40 CFR 280.71(b) (Page A-9)

COMMENT (UST Work Group): Change the note so that it requires the owner or operator to contact the DEQ to obtain information about correctly managing hazardous wastes during decommission an UST.

DEPARTMENT RESPONSE: The suggestion will be incorporated into the rule.

REQUEST FOR EQC ACTION

Meeting Date: July 24, 1991
Agenda Item: F
Division: Water Quality
Section: Standards & Assessment

SUBJECT:

Proposed Adoption of Amendments to the Water Quality Standards OAR 340, Chapter 41.

PURPOSE:

The purpose of this agenda item is to propose adoption of final rule language (Attachment A) for the following water quality standards:

1. Antidegradation
2. Bacteria
3. Mixing Zones
4. Toxic Substances
5. Biological Criteria
6. Turbidity

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 _B_
Public Notice — Attachment _B_

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

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

DESCRIPTION OF REQUESTED ACTION:

This is a formal action to adopt water quality standards in OAR 340-41. The Department has completed its triennial review of water quality standards required by federal regulations and is now recommending rule language for adoption by the Commission.

As part of the staff review of the testimony key policy issues have been identified and the following report will highlight some of these issues.

Summary of Triennial Review Process:

Every three years the Department reviews water quality standards in fulfillment of the Clean Water Act requirements to determine if revisions are needed to current rules to more fully protect water quality and beneficial uses. At the November 2, 1990 meeting, the Commission authorized proposed amendments to water quality standards be taken to rulemaking hearing. This action followed a series of steps including:

1. DEQ request for public review of the rules and to determine if the public was concerned about particular rules, and to solicit suggestions as to which rules should be considered for revision.

2. Preparation of issue papers on 14 topics, discussion of concerns with the rules, and proposed rule revision concepts.

3. Public notice and distribution of the Issue Papers covering those 14 topics, and workshops to discuss existing standards and potential new and revised rule language.

4. Further public comment on the issue papers resulting in the Department narrowing its package of proposed standards revisions for hearing to eight rules. These included: antidegradation, bacteria, mixing zones, toxic substances, biological criteria, turbidity, dissolved oxygen, and wetlands.

A notice of public hearings was published in the Secretary of State's Bulletin on December 1, 1990 and sent to a mailing list of interested persons on January 4, 1991.

Eight hearings were held in January 1991. Several commenters requested the hearing record be held open beyond January 25, 1991. This request was granted and a notice extending the comment period to March 1, 1991 was published and distributed to the mailing list of interested persons.

On April 25, 1991, the Department presented to the Commission, during the regularly scheduled work session an informational item outlining the policy issues surrounding the antidegradation policy and toxic substances.

At this time, the Department is bringing six proposed water quality standards revisions to the Commissions for adoption as final rules. A summary review of the Department's recommendation is contained in Attachment E. The next section reviews the principle public comment received on the proposed standards.

Public Comment on the Standards Proposals:

The principle comments made on these proposed rule revisions are:

A. Antidegradation Policy:

- Concerns about the burden of responsibility for nominating water bodies to an Outstanding Resource Water (ORW) category. Some testified that those who nominate waters to this category should bear the burden of gathering the information and developing the management plan to justify the designation of specific waters to this category. Others seriously questioned why it should be the

public's responsibility to demonstrate why some specific waters deserve to be categorized as Outstanding Resource Waters (ORW). Instead the burden should be on those who wish to degrade any water to show cause why the degradation should be allowed.

- **Concerns that some waters such as federal and state Wild and Scenic Waters aren't automatically protected as ORWs.** Some testified that the federal antidegradation policy which references types of Outstanding Resource Waters (such as National Parks) legally requires the states to automatically include these waters as ORWs. Others commented that all waters should be considered outstanding resource waters and no degradation be allowed in any waters of the state.

- **Concern that inclusion of waters in an Outstanding Resource Water category will pose economic hardships to communities and to individual landowners.** Some questioned whether it is reasonable to expect implementation of a "non-degradation" policy and questioned whether it is realistic for any waters to be assigned to this type of category.

B. **Bacteria:**

- **Concern about the impact the proposed rule would have on sewage treatment plants (STPs).** Some testified that the proposed rules would result in immediate noncompliance by STPs and that STPs would likely have to expand, upgrade, use more chlorine, create chloro-organics if the proposed values applied as effluent standards. There was also concern over the potential fiscal costs to the STPs for implementing the necessary controls.

- **Concern that winter time bacteria levels can not be accounted for by the increases in STP effluent.** Some testified that the increase in bacteria levels could not be accounted for just with what may be the increases from the STPs. There was interest in not seeing the proposed rules adopted as final standards until more monitoring information was collected to further describe bacteria sources.

C. **Mixing Zones:**

- **Concern about allowing a mixing zone for toxic contaminants.** Some testified that we should not be establishing a mixing zone for toxic constituents.

- **Concern was expressed over the case-by-case approach.** People testified that the general approach of making determinations on a case-by-case basis was not appropriate. They would suggest that all information be available for each possible situation and this be reflected in guidance. Consequently several people wanted to hold-off on this criteria until EPA had published final TSD guidance.

- **Concern was expressed that it was difficult to have the information on a discharge until the source actually discharged.** Some people testified that it was difficult to develop a toxic control program and the appropriate mixing zone until the facility was actually operating. They felt the information needed to develop the permit requirements would be better if actual plant operation data was used.

D. **Toxic Substances -- Proposed Freshwater Standards for Aluminum and Chloride; and maintain the Existing Standard for Dioxin:.**

- **Concerns about EPA's technical basis for the chloride and aluminum criteria and DEQ's use of EPA's criteria.** No single analytical method is known to be ideal to measure the various toxic forms of aluminum for expressing aquatic life criteria. The aluminum acute and chronic criteria are too stringent based on the literature cited in the EPA criteria document. The aluminum analytical methods recommended for the criteria is different from the analytical methods reported in the literature for deriving the criteria. EPA's methods for determining the acute and chronic toxicity values for chlorine have been seriously questioned. No economically feasible method for removing chloride to the proposed levels exists.

- **Concerns that a revision to the standard for 2,3,7,8 TCDD was not proposed for rulemaking hearing.** It was strongly suggested that the standard should be revised to take into account the latest scientific information. It was strongly suggested that the existing standard for dioxin be revised. No rule language for modifying the standard was taken to hearing. The Commission decided to deny a petition to revisit the 2,3,7,8-TCDD Standard at their June 14, 1991 meeting.

E. Biological Criteria:

- **Concern was expressed about developing these standards at this time.** Some people testified that action on this standard should be deferred until specifics are developed which describe testing methods, numeric criteria, appropriate reference site selection etc.

- **Concern about "appropriate reference sites".** Some recommended reference site should be with out human perturbations, others said it is not reasonable to measure all conditions against undisturbed areas.

- **Concern about use of words like "significant", "excessive", and definitions for "as naturally occurs", "ecological integrity."** Some commented that more definitions needed to be added for the terms identified above.

F. Turbidity:

- **Concern was expressed over the use of a more sensitive method.** People commented on the proposed testing methods saying that it was more sensitive and could potentially result in the identification of additional problems. It was suggested by some people that a technical committee be set up to review the proposed change in the testing method.

In addition to the topics above, the Department also received comment on the proposed rule language for the following: Dissolved Oxygen; Toxic Pollutants in Fish Tissue, and Wetlands as Waters of the State. The Department's summary and response to oral and written record of public comment is contained in Attachment C.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: ORS 468.735	Attachment ___
	Enactment Date: _____	
___	Statutory Authority: _____	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
X	Pursuant to Federal Law/Rule: Clean Water Act	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

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

Item D: Authorization for Rulemaking Hearing: Proposed Amendments to Water Quality Standards as Part of the Triennial Review Required by the Clean Water Act, November 2, 1990.

Attachment ___

___ Other Related Reports/Rules/Statutes:

Attachment ___

X Supplemental Background Information

Summary of Issues	Attachment D
Memo to EQC on Standards being proposed	Attachment E
Draft Implementation Plans	Attachment F

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The regulated community subject to the water quality standards proposals includes private industrial and domestic system dischargers, municipal wastewater treatment facilities, federal and state agricultural and forest land management agencies, cities, counties and individual citizens.

The Department received a wide range of comment from the regulated community, individuals and environmental interest groups. The Hearing Officer's Report and a Summary and Evaluation of Testimony is contained in Attachment B and C, respectively. The final staff report will mailed to those who have provided comment to date on the standards proposals and to others requesting it.

PROGRAM CONSIDERATIONS:

Some of the comments and detailed testimony express concern about the state's statutory authority to protect certain water environments. Also, some express concern about the technical/scientific basis for certain proposed rule language for standards.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

Alternatives available to the Commission include either adopting the proposed rules, retaining the current rules, or modifying the proposed rules. Although the Department already has broad authority to evaluate activities that affect water quality and to implement necessary actions to protect water quality, new information and interpretation of the rules may improve the specific language and more clearly describe procedures and regulatory requirements. The Commission must decide if the proposed rule amendments provide more adequate protection of water quality, the beneficial uses and enhance the goals of the water quality program, or that they are unnecessarily burdensome or unreasonable.

The following is a description of the alternatives considered for each proposed rule action.

Antidegradation Policy:

1. Do not adopt the proposed amendments and maintain the current policy.

2. Adopt amendments to the policy as described in Option 1.

3. Adopt amendments to the policy as described in Option 2.

Discussion:

The purpose of the Antidegradation Policy is to restore, maintain and enhance water quality to levels necessary to protect beneficial uses and ecological integrity of waters of the state. To that end, any activities that may degrade water quality need to be fully evaluated, and all alternatives to degradation be exhausted before allowing lowering of water quality. The federal Antidegradation Policy requires that states adopt an antidegradation policy that provides protection for all waters of the state and also establishes an Outstanding Resource Waters category to assure nondegradation of certain special waterbodies.

Alternative 1 would not provide the necessary policy language for the Department to come into compliance with the federal policy because the current rule does not provide protection for all waters of the state, nor does it establish an Outstanding Resource Waters category. Therefore, the Department rejects Alternative 1.

Alternative 2: Option 1 provides the Commission and the Department with policy language to comply with the federal requirements. It establishes a category and a process for the Commission to consider waterbodies for designation as Outstanding Resource Waters (ORW). However, it does not automatically designate waters as ORW's that already have another state or federal designation for their outstandingly remarkable values (i.e. Wild and Scenic Rivers).

Alternative 3: Option 2 provides the Commission and the Department with adequate policy language to comply with the federal requirements. It establishes a category and process for the Commission to consider waterbodies for designation as Outstanding Resource Waters. However, it also recognizes other state and federal designations for waterbodies and automatically includes them as Outstanding Resource Waters where existing water quality must be maintained and protected.

An implementation plan for the Department's recommended alternative is included in Attachment F.

<u>Bacteria</u>:

1. Do not adopt the proposed amendments and maintain the current policy.

2. Adopt amendments to the current rule language and replace fecal coliform bacteria with enterococci.

Discussion:

Human health is protected with the current rule language. Existing permits have applicable language to limit fecal coliform bacteria. The current fecal coliform bacteria levels are enforced as effluent limits at the end of the pipe.

Amending the current rule would make the rule more protective of human health. The enterococci bacteria has been found to be a better indicator of sewage contamination and thus a better indicator of possible human health problems.

Mixing Zone:

1. Do not adopt the proposed amendments and maintain the current policy.

2. Adopt amendments to the current rule language.

Alternative 1 maintain the current rule.

The current rule language does not adequately describe acute toxicity or the lethality in effluent due to ammonia and chlorine. There is significant interest in having a better definition of acute toxicity and also describing how to address the discharge of certain effluents containing ammonia and chlorine.

The proposed rule amendments, Alternative 2, improve the definition of acute toxicity and also allow the discharge of effluents with ammonia and chlorine as long as the effluent does not cause lethal conditions to aquatic life after immediate dilution in the mixing zone.

Toxic Substances:

1. Do not adopt the proposed amendments and maintain the current policy.

2. Adopt amendments to the current rule language.

The current rule, Alternative 1, does not address the accumulation of toxics in sediments or specify bioaccumulation in aquatic life or wildlife.

Alternative 2 would have the Commission and Department modify the current rule to include these.

Biological Criteria:

1. Do not adopt the proposed rules.

2. Adopt proposed rule language.

The Commission has not previously adopted rule language for biological criteria. The proposed rule would have the waters of the state be of sufficient quality to support biological communities. This would be the initital step in the development of biological criteria for protecting biological communities dependent on water quality.

Turbidity:

1. Maintain current rule language.

2. Adopt amendment to the current rule language.

Alternative 1 would have the Commission and Department maintain in rule language the reference to the Jackson Turbidity Units (JTUs).

Alternative 2 would have the Commission and Department modify the current rule language to recognize the NTU testing method. This method has been used as the standard method for a number of years to determine turbidity.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Department Recommendation

Antidegradation:

The Department recommends the adoption of the proposed Antidegradation Policy, Option 1 (Attachment A, p.1). This new language would be in compliance with the federal requirements and establish a process for designating Outstanding Resource Waters, within the existing staff resources of the Department. The Department will establish a schedule to review currently available data, develop criteria, evaluate the priorities and needs, and identify the waterbodies which are state and federally specially designated waters to be included as Outstanding Resource Waters.

Bacteria:

The Department recommends the adoption of the proposed bacteria water quality standard rule language (Attachment A, p. 7). The proposed rule language would provide a better bacteria contamination indicator organism. The adoption of this proposed rule would provide greater protection of human health. The use of enterococci would be phased over time as permits are renewed or opened by the Department and case-by-case compliance plans developed.

Mixing Zones:

The Department recommends the adoption of the proposed mixing zone water quality standard rule language (Attachment A, p. 9). This proposed rule language would provide new language for acute toxicity and clarification for the discharge of effluents containing ammonia and chlorine.

Toxic Substances:

The Department recommends the adoption of the proposed language including accumulation of toxics in sediments and the bioaccumulation in aquatic life and wildlife (Attachment A, p. 11). The Department also recommends the new rule language referencing the EPA criteria document. A petition was filed and rejected by the Commission to reconsider the 2,3,7,8-TCDD (dioxin) standard.

The Department recommends that the acute and chronic toxicity values for aluminum be postponed until a method is developed and approved for analyzing the toxic form of the metal.

Biological Criteria:

The Department recommends the adoption of the proposed rule language (Attachment A, p. 13) for biological criteria. This new rule will provide the state with the basic foundation for protecting biological communities dependent on water quality.

Turbidity:

The Department recommends the adoption of the proposed rule language (Attachment A, p. 14) for turbidity. This change would recognize the current testing method for turbidity and change the units for reporting.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

This report is consistent with the Department's Strategic Plan, Agency Policy, and Legislative policy to bring matters of environmental policy to the Commission's attention and to identify public comments and concerns about proposed rules. It also implements the policy to have current standards.

ISSUES FOR COMMISSION TO RESOLVE:

A number of policy issues and questions emerge from the public comment on aspects of the standards proposals. In some instances the questions would apply to standards issues in general, but they are placed under the standards proposal under which they predominantly were raised:

Issues for the Commission to Resolve:

1. Is the High Quality Waters Policy strong enough to provide adequate protection for water quality and ecological integrity?

2. Given the staff limitations and current work load, how aggressive will the Department and Commission be in establishing ORW's or will the burden for justifying and providing data for inclusion of waters be on the nominator?

3. Can the ORW be managed similar to Water Quality Limited waterbodies, that is, that existing water quality must be maintained and any new loads could only be allowed if they were within existing load allocations to the waterbody and the extraordinary value or water quality parameter of that waterbody be protected?

4. Should the proposed rule clearly recognize other waterbody designations and include them automatically in the ORW's, i.e. Wild and Scenic Rivers, State Scenic Waterways, National Parks, State Parks, etc., as is suggested in the federal policy?

5. Is a nondegradation policy realistic given that many of the specially designated waters such as Wild and Scenic Rivers are not in pristine headwaters, but rather in downstream areas affected by some level of development or use? Will designating ORW's cause economic hardships for communities and landowners?

Bacteria:

1. Should the Commission adopt a bacteria standard that is more protective of human health when there are potential increases in treatment costs?

2. How should the Commission and Department phase in the implementation of a new standard which may have fiscal costs to current permit holders?

Toxic Pollutants:

1. Should adoption of standards, such as for chloride, be postponed because economic hardships may be created to meet them?

2. Should adoption of freshwater acute and chronic toxicity values for aluminum be postponed until a method is developed and approved for analyzing the toxic form of the metal?

3. Should a new Lowest Observed Effects Level (LOEL) be adopted into Table 20 for 2,3,7,8-TCDD aquatic life effects?

INTENDED FOLLOWUP ACTIONS:

Antidegradation:

The Department will identify and review the river segments or waterbodies currently included in Federal Wild and Scenic Rivers, State Scenic Waterways, National Parks, National Wildlife Refuges, State Parks, National Monuments, National Preserves, National Wilderness Areas, National Estuarine Research Reserves, Research Natural Areas, Natural Heritage Waters, Tribal Fishing Grounds, and other waters determined by natural resource agencies to be areas of special ecological significance, to establish a list of priorities for designation. Based on the number of waterbodies, and priorities and critical nature for designation, the Department will establish a schedule for developing the management plans with public participation and review. Nominations will be accepted from the public for the Department to review during this process. The Department will return to the Commission with a list of priorities, schedule, and criteria for designation after the completion of the 1992 305(b) report.

There has been considerable comment and discussion over several of the proposed rules and several of the proposed actions which are being deferred pending the development of additional information or technical review. Department will establish a technical advisory committee which will assist in the review of proposed standards development or revision for several standards issues including:

- Dissolved Oxygen

- Dioxin
- Temperature
- Total Dissolved Solids
- Sediment Quality Standards
- Toxicity Equivalency Factors
- Wetland Water Quality Standards

In addition to the potential development or revision of water quality standards in these areas, the Department had proposed adding fish tissue guidance values to the rules in an effort to identify those values upon which the Department would evaluate toxic data to indicate where additional studies and data are needed. There has been some confusion over the use of these guidance values and therefore the Department will also be taking these fish tissue guidance values to the technical committee to discuss the intended use of these values. We will not be recommending that these guidance values be adopted in rule at this time. The Department will however, after discussion with technical committee issue a Departmental Guidance Document containing the fish tissue values that will be used to evaluate the toxic data collected by the Department or submitted to the Department.

It is the intent of the Department to appoint the technical committee within the next 60 days.

Approved:

Section: _____

Division: _____

Director: _____

Report Prepared By: Mary Halliburton
Krystyna Wolniakowski
Gene Foster
Dennis Ades
Sigrid Schwind
Richard Olsen
Richard Hafele
Neil Mullane

Date Prepared: June 30, 1991

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Attachment A

PROPOSED RULE LANGUAGE

OPTION 1: PROPOSED RULE LANGUAGE FOR ANTIDEGRADATION

340-41-026
(1) In order to maintain the quality of waters in the State of Oregon, ~~[it is]~~ the following is the general policy of the EQC ~~[that]~~:

(a) Antidegradation Policy for Surface Waters.
The purpose of the Antidegradation Policy is to guide decisions that affect water quality such that unnecessary degradation from point and nonpoint sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to protect all existing beneficial uses. The standards and policies set forth in OAR 340-41-120 through 962 are intended to implement the Antidegradation Policy.

A. HIGH QUALITY WATERS POLICY: Where ~~[E]~~ existing ~~[high quality]~~ water quality ~~[which]~~ meet or exceed those levels necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses that level of water quality shall be maintained and protected. ~~[unless it]~~ The Environmental Quality Commission ~~[chooses]~~, after full satisfaction of the intergovernmental coordination and public participation provisions of the continued planning process, and with full consideration of OAR 340-41-026 (2), (3) and (5), however, may allow a ~~[to lower]~~ lowering of water quality ~~[for]~~ in these high quality waters if they find:

i no other reasonable alternatives exist except to lower water quality; and
ii the action is necessary and justifiable for economic or social development benefits and outweighs the environmental costs of lowered water quality; and
iii all water quality standards will be met and beneficial uses protected.

B. The Director or ~~[his]~~ a designee may allow lower water quality on a short term basis in order to respond to emergencies or to otherwise protect human health and welfare.

C. WATER QUALITY LIMITED WATERBODIES POLICY: For water quality limited waterbodies, the water quality shall be managed as described in OAR 340-41-026(3).

D. ~~[In no event, however, may degradation of water quality interfere or be injurious to the beneficial use of water within surface waters of the following areas: (A) National Parks; (B) National Wild and Scenic Rivers; (C) National Wildlife Refuges; (D) State Parks.]~~ OUTSTANDING RESOURCE WATERS POLICY: Where existing high quality waters constitute an outstanding state or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values shall be maintained and protected, and classified as "Outstanding Resource Waters of Oregon". The Commission may specially designate high quality waterbodies to be classified as Outstanding Resource Waters in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those waterbodies. The Commission, either on their own initiative or through nominations from the Department or other applicants, shall consider designating these waters based upon receiving the following information:

i. An application must provide notification to affected parties and provide sufficient information to the Department as described in the petition for rulemaking (OAR 137-01-070);

ii. An application must describe the existing water quality, beneficial uses and ecological resource values of the waterbody they are nominating as Outstanding Resource Waters;

iii. An application must define the outstandingly remarkable values related to water quality of the waterbody and describe why they need additional protection;

iv. An applicant must describe the level of water quality needed to protect those values and beneficial uses.

If the application is determined to be complete, the Commission will make their decision based on the need to provide higher protection than that provided for high quality waters. If the Commission receives an incomplete application, they may request additional information to be supplied within 90 days.

In designating Outstanding Resource Waters, the Commission shall establish the water quality levels and values to be protected, and in a management plan, provide a process for determining what activities are allowed that would not affect the outstanding resource values. After the designation, the Commission shall not allow activities that may lower water quality below the level established in the management plan except on a short term basis to respond to emergencies or to otherwise protect human health and welfare.

340-41-006

(33) "Critical Habitat" means those areas which support rare, threatened or endangered species, or serve as sensitive spawning and rearing areas for aquatic life.

(34) "High Quality Waters" means those waters which meet or exceed those levels that are necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses.

(35) "Outstanding Resource Waters" means those waters designated by the Environmental Quality Commission where existing high quality waters constitute an outstanding state or national resource based on their extraordinary water quality values, or where special water quality protection is needed to maintain critical habitat areas.

(36) "Short-term disturbance" means a temporary disturbance where water quality standards may be violated briefly, but not of sufficient duration to cause acute or chronic effects on beneficial uses.

OPTION 2: PROPOSED RULE LANGUAGE FOR ANTIDEGRADATION

340-41-026
(1) In order to maintain the quality of waters in the State of Oregon, [~~it is~~] the following is the general policy of the EQC [~~that~~]:

(a) Antidegradation Policy for Surface Waters.
The purpose of the Antidegradation Policy is to guide decisions that affect water quality such that unnecessary degradation from point and nonpoint sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to protect all existing beneficial uses. The standards and policies set forth in OAR 340-41-120 through 962 are intended to implement the Antidegradation Policy.

A. HIGH QUALITY WATERS POLICY: Where [~~E~~] existing [~~high quality~~] water quality [~~which~~] meet or exceed those levels necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses that level of water quality shall be maintained and protected. [~~unless it~~] The Environmental Quality Commission [~~chooses~~], after full satisfaction of the intergovernmental coordination and public participation provisions of the continued planning process, and with full consideration of OAR 340-41-026 (2), (3) and (5), however, may allow a [~~to lower~~] lowering of water quality [~~for~~] in these high quality waters if they find:

i no other reasonable alternatives exist except to lower water quality; and
ii the action is necessary and justifiable for economic or social development benefits and outweighs the environmental costs of lowered water quality; and
iii all water quality standards will be met and beneficial uses protected.

B. The Director or [~~his~~] a designee may allow lower water quality on a short term basis in order to respond to emergencies or to otherwise protect human health and welfare.

C. WATER QUALITY LIMITED WATERBODIES POLICY: For water quality limited waterbodies, the water quality shall be managed as described in OAR 340-41-026(3).

D. ~~[In no event, however, may degradation of water quality interfere or be injurious to the beneficial use of water within surface waters of the following areas: (A) National Parks; (B) National Wild and Scenic Rivers; (C) National Wildlife Refuges; (D) State Parks.]~~ OUTSTANDING RESOURCE WATERS POLICY: Where existing high quality waters constitute an outstanding state or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values shall be maintained and protected, and classified as "Outstanding Resource Waters of Oregon". The Commission may specially designate high quality waterbodies to be classified as Outstanding Resource Waters in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those waterbodies. The Commission, either on their own initiative or through nominations from the Department or other applicants, shall consider designating these waters based upon receiving the following information:

i. An application must provide notification to affected parties and provide sufficient information to the Department as described in the petition for rulemaking (OAR 137-01-070);

ii. An application must describe the existing water quality, beneficial uses and ecological resource values of the water body they are nominating as Outstanding Resource Waters;

iii. An application must define the outstandingly remarkable values related to water quality of the waterbody and describe why they need additional protection;

iv. An applicant must describe the level of water quality needed to protect those values and beneficial uses.

If the application is determined to be complete, the Commission will make their decision based on the need to provide higher protection than that provided for high quality waters. If the Commission receives an incomplete application, they may request additional information to be supplied within 90 days.

In designating Outstanding Resource Waters, the Commission shall establish the water quality levels and values to be protected, and in a management plan, provide a process for determining what activities are allowed that would not affect the outstanding resource values. After the designation, the Commission shall not allow activities that may lower water quality below the level established in the management plan except on a short term basis to respond to emergencies or to otherwise protect human health and welfare.

E. List of Outstanding Resource Waterbodies: Water quality shall be maintained and protected at existing levels in the following waterbodies:

i. National Parks;
ii. National Wild and Scenic Rivers;
iii. National Wildlife Refuges;
iv. State Parks
v. State Scenic Waterways
vi. Waldo Lake

340-41-006

(33) "Critical Habitat" means those areas which support rare, threatened or endangered species, or serve as sensitive spawning and rearing areas for aquatic life.

(34) "High Quality Waters" means those waters which meet or exceed those levels that are necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses.

(35) "Outstanding Resource Waters" means those waters designated by the Environmental Quality Commission where existing high quality waters constitute an outstanding state or national resource based on their extraordinary water quality values, or where special water quality protection is needed to maintain critical habitat areas.

(36) "Short-term disturbance" means a temporary disturbance where water quality standards may be violated briefly, but not of sufficient duration to cause acute or chronic effects on beneficial uses.

PROPOSED RULE LANGUAGE FOR BACTERIA

The following changes are recommended for the bacteria water quality standard. These recommendations are based upon recent EPA guidance which indicates that selection of a new indicator organism is necessary for the protection of human health from swimming-associated illnesses. Rules for each basin are affected by this proposed language and each rule affected is identified following the proposed new language.

340-41- (River Basin)(2)(e) ~~[Organisms]~~ Bacteria of the coliform group associated with fecal sources and bacteria of the enterococci group (MPN or equivalent ~~[MF]~~ membrane filtration using a representative number of samples) shall not exceed the criteria values described in A-C. However, the Department may designate site-specific bacteria criteria on a case by case basis to protect beneficial uses. Site specific values shall be described in and included as part of a water quality management plan.

(A) ~~[A log mean of 200 fecal coliform]~~ Freshwaters: A geometric mean of 33 enterococci per 100 milliliters based on ~~[a minimum of 5 samples in a 30 day period with no more than 10 percent of the samples in the 30 day period exceeding 400 per 100 ml]~~ no fewer than five samples, representative of seasonal conditions, collected over a period of at least 30 days. No single sample should exceed 61 enterococci per 100 ml.

(B) Marine waters and estuarine shellfish growing waters: A fecal coliform median concentration of 14 organisms per 100 ml, with not more than 10 percent of the samples exceeding 43 organisms per 100 ml.

(C) Estuarine waters other than shellfish growing waters: ~~[A log mean of 200 fecal coliform]~~ A geometric mean of 35 enterococci per 100 milliliters based on ~~[a minimum of 5 samples in a 30 day period with no more than 10 percent of the samples in the 30 day period exceeding 400 per 100 ml]~~ no fewer than five samples, representative of seasonal conditions, collected over a period of at least 30 days. No single sample should exceed 104 enterococci per 100 ml.

(D) Existing permit effluent limitations for fecal coliform will remain in effect until permit renewal, or until the Department reopens existing permits to include an effluent limit and compliance schedule for enterococci.

RULE REFERENCES BY BASIN

Basin	Old Rule	New Rule
North Coast	340-41-205(2)(e)(A)	340-41-205(2)(e) & (A)
Mid Coast	340-41-245(2)(e)	340-41-245(2)(e) & (A)
Umpqua	340-41-285(2)(e)(C),(D)	340-41-285(2)(e) & (A)
South Coast	340-41-325(2)(e)	340-41-325(2)(e) & (A)
Roque	340-41-365(2)(e)(C),(D)	340-41-365(2)(e) & (A)
Willamette	340-41-445(2)(e)(A), (B),(C)(i),(C)(ii)	340-41-445(2)(e) & (A)
Sandy	340-41-485(2)(e)	340-41-485(2)(e) & (A)
Hood	340-41-525(2)(e)	340-41-525(2)(e) & (A)
Deschutes	340-41-565(2)(e)(A),(B)	340-41-565(2)(e) & (A)
John Day	340-41-605(2)(e)	340-41-605(2)(e) & (A)
Umatilla	340-41-645(2)(e)	340-41-645(2)(e) & (A)
Walla	340-41-685(2)(d)	340-41-685(2)(d) & (A)
Grande Ronde	340-41-725(2)(e)	340-41-725(2)(e) & (A)
Powder	340-41-765(2)(e)	340-41-765(2)(e) & (A)
Malheur	340-41-805(2)(e)	340-41-805(2)(e) & (A)
Owyhee	340-41-845(2)(e)	340-41-845(2)(e) & (A)
Malheur Lake		340-41-885(2)(e) & (A)
Goose and Summer Lakes	340-41-925(2)(e)	340-41-925(2)(e) & (A)
Klamath	340-41-965(2)(e)	340-41-965(2)(e) & (A)

RULE REFERENCES BY BASIN

Basin	Old Rule	New Rule
North Coast	340-41-205(2)(e)(B)	340-41-205(2)(e) & (B)
Mid Coast	340-41-245(2)(e)(A)	340-41-245(2)(e) & (B)
Umpqua	340-41-285(2)(e)(B)	340-41-285(2)(e) & (B)
South Coast	340-41-325(2)(e)(A)	340-41-325(2)(e) & (B)
Roque	340-41-365(2)(e)(B)	340-41-365(2)(e) & (B)

RULE REFERENCES BY BASIN

Basin	Old Rule	New Rule
North Coast	340-41-205(2)(e)(C)	340-41-205(2)(e) & (C)
Mid Coast	340-41-245(2)(e)(B)	340-41-245(2)(e) & (C)
Umpqua	340-41-285(2)(e)(A)	340-41-285(2)(e) & (C)
South Coast	340-41-325(2)(e)(B)	340-41-325(2)(e) & (C)
Roque	340-41-365(2)(e)(B)	340-41-365(2)(e) & (C)

RULE REFERENCES BY BASIN

Basin	Old Rule	New Rule
Malheur	340-41-885(2)(e)	340-41-885(2)(e)(D)

PROPOSED RULE LANGUAGE FOR MIXING ZONES

Rules for each basin are affected by this proposed language and each rule affected is identified following the proposed new language.

340-41-(River Basin)

(4) Mixing zones:

(a) The Department may allow a designated portion of a receiving water to serve as a zone of [~~initial~~] dilution for waste waters and receiving waters to mix thoroughly and this zone will be defined as a mixing zone.

(b) The Department may suspend all or part of the water quality standards, or set less restrictive standards, in the defined mixing zone, provided the following conditions are met:

(A) The water within the mixing zone shall be free of:

(i) Materials in concentrations that will cause acute [~~(96HrLC-50)~~] toxicity to aquatic life. Acute toxicity is lethality to aquatic life. Acute toxicity is measured as [~~the~~] a significant difference in lethal concentration between the control and 100% effluent in an acute bioassay test. Lethality in 100% effluent may be allowed due to ammonia and chlorine only when it is demonstrated on a case-by-case basis that immediate dilution of the effluent within the mixing zone reduces toxicity below lethal concentrations.

(ii) Materials that will settle to form objectionable deposits.

(iii) Floating debris, oil, scum, or other materials that cause nuisance conditions.

(iv) Substances in concentrations that produce deleterious amounts of fungal or bacterial growths.

(B) The water outside the boundary of the mixing zone shall:

(i) Be free of materials in concentrations that will cause chronic (sublethal) toxicity. Chronic toxicity is measured as the concentration that causes long-term sublethal effects, such as significantly impaired growth or reproduction in aquatic organisms, during a testing period based on test species life cycles. Procedures and end points will be specified by the Department in waste water discharge permits.

(ii) Meet all other water quality standards under normal annual low flow conditions.

(c) The limits of the mixing zone shall be described in the waste water discharge permit. In determining the location, surface area, and volume of a mixing zone area, the Department may use appropriate mixing zone guidelines to assess the biological, physical, and chemical character of receiving waters, and effluent, and the most appropriate placement of the outfall, to protect instream water quality, public health, and other beneficial uses. Based on receiving water and effluent characteristics, the Department shall define a mixing zone in the immediate area of a waste water discharge to:

(A) Be as small as feasible;

(B) Avoid overlap with any other mixing zones to the extent possible and be less than the total stream width as necessary to allow passage of fish and other aquatic organisms;

(C) Minimize adverse effects on the indigenous biological community especially when species are present that warrant special protection for their economic importance, tribal significance, ecological uniqueness, or for other similar reasons as determined by the Department and does not block the free passage of aquatic life;

(D) Not threaten public health;

(E) Minimize adverse effects on other designated beneficial uses outside the mixing zone.

(d) The Department may request the applicant of a permitted discharge for which a mixing zone is required, to submit all information necessary to define a mixing zone, such as:

(A) Type of operation to be conducted;

(B) Characteristics of effluent flow rates and composition;

(C) Characteristics of low flows of receiving waters;

(D) Description of potential environmental effects;

(E) Proposed design for outfall structures.

(e) The Department may, as necessary, require mixing zone monitoring studies and/or bioassays to be conducted to evaluate water quality or biological status within and outside the mixing zone boundary.

(f) The Department may change mixing zone limits or require the relocation of an outfall if it determines that the water quality within the mixing zone adversely affects any existing beneficial uses in the receiving waters.

Basin	Rule
North Coast	340-41-205(4)
Mid Coast	340-41-245(4)
Umpqua	340-41-285(4)
South Coast	340-41-325(4)
Roque	340-41-365(4)
Willamette	340-41-445(4)
Sandy	340-41-485(4)
Hood	340-41-525(4)
Deschutes	340-41-565(4)
John Day	340-41-605(4)
Umatilla	340-41-645(4)
Walla Walla	340-41-685(4)
Grande Ronde	340-41-725(4)
Powder	340-41-765(4)
Malheur	340-41-805(4)
Owyhee	340-41-845(4)
Malheur Lake	340-41-885(4)
Goose and Summer Lakes	340-41-925(4)
Klamath	340-41-965(4)

PROPOSED RULE LANGUAGE FOR TOXIC SUBSTANCES

Rules for each basin are affected by this proposed language and each rule affected is identified following the proposed new language.

340-41-(River Basin)(2) " (p) Toxic Substances:

(A) Toxic substances shall not be introduced above natural background levels in waters of the state in amounts, concentrations, or combinations which may be harmful, may chemically change to harmful forms in the environment, or may accumulate in sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare; aquatic life; wildlife or other designated beneficial uses.

(B) Levels of toxic substances shall not exceed the criteria listed in Table 20 which were based on criteria ~~[most recent criteria values for organic and inorganic pollutants]~~ established by EPA and published in Quality Criteria for Water(1986), ~~[A list of the criteria is presented in Table 20.]~~ unless otherwise noted.

(C) The criteria in paragraph (B) of this subsection shall apply unless data from scientifically valid studies demonstrate that the most sensitive designated beneficial uses will not be adversely affected by exceeding a criterion or that a more restrictive criterion is warranted to protect beneficial uses, as accepted by the Department on a site specific basis. Where no published EPA criteria exists for a toxic substance, public health advisories and other published scientific literature may be considered and used, if appropriate, to set guidance values.

(D) Bio-assessment studies such as laboratory bioassays or in-stream measurements of indigenous biological communities, shall be conducted, as the Department deems necessary, to monitor the toxicity of complex effluents, other suspected discharges or chemical substances without numeric criteria, to aquatic life. These studies, properly conducted in accordance with standard testing procedures, may be considered as scientifically valid data for the purposes if paragraph (C) of this subsection. If toxicity occurs, the Department shall evaluate and implement measures necessary to reduce toxicity on a case-by-case basis. "

Amendment to:

Table 20
Water Quality Criteria Summary
(Applicable to all basins)

The concentrations for each compound listed in this chart in a criteria or guidance value* not to be exceeded in waters of the state for the protection of aquatic life and human health. Specific descriptions of each compound and an explanation of values are included in Quality Criteria of Water (1986). Selecting values for regulatory purposes will depend on the most sensitive beneficial use to be protected, and what level of protection is necessary for aquatic life and human health.

			Concentration in Micrograms Per Liter For Protection of Aquatic Life			
Compound Name (or Class)	Priority Pollutant	Carcinogen	Fresh Acute Criteria	Fresh Chronic Criteria	Marine Acute Criteria	Marine Chronic Criteria
Chloride	N	N	860 mg/l	230 mg/l		
Dioxin (2,3,7,8-TCDD)	Y	Y	* 0.01	*38 pg/l		
Ammonia	N	N	Criteria are pH and temperature dependent See document USEPA January 1985		Criteria are pH and temperature dependent See document USEPA April 1989	

mg = milligrams
pg = picograms
Y = YES
N = No
* = Insufficient Data to Develop Criteria
Value Presented is the L.O.E.L. - Lowest Observed Effect Level

SA\WC8\WC8640

TABLE 20

WATER QUALITY CRITERIA SUMMARY

(Applicable to all basins)[1]

The concentration for each compound listed in this chart is a criteria or guidance value[4] not to be exceeded in waters of the state for the protection of aquatic life and human health. Specific descriptions of each compound and an explanation of values are included in Quality Criteria for Water (1986). Selecting values for regulatory purposes will depend on the most sensitive beneficial use to be protected, and what level of protection is necessary for aquatic life and human health.

			Concentration in Micrograms Per Liter For Protection of Aquatic Life				Concentration in Units Per Liter For Protection of Human Health		
COMPOUND NAME (OR CLASS)	PRIORITY POLLUTANT	CARCINOGEN	FRESH ACUTE CRITERIA	FRESH CHRONIC CRITERIA	MARINE ACUTE CRITERIA	MARINE CHRONIC CRITERIA	WATER AND FISH INGESTION	FISH CONSUMPTION ONLY	DRINKING WATER M.C.L.
ACENAPHTHENE	Y	N	*1,700.	*520.	*970.	*710.			
ACROLEIN	Y	N	*68.	*21.	*55.		320.ug	780.ug	
ACRYLONITRILE	Y	Y	*7,550.	*2,600.			0.058ug**	0.65ug**	
ALDRIN	Y	Y	3.0		1.3		0.074ng**	0.079ng**	
ALKALINITY	N	N		20,000.					
AMMONIA	N	N	CRITERIA ARE pH AND TEMPERATURE DEPENDENT—SEE DOCUMENT						
ANTIMONY	Y	N	*9,000.	*1,600.			146.ug	45,000.ug	
ARSENIC	Y	Y					2.2ng**	17.5ng**	0.05mg
ARSENIC (PENT)	Y	Y	*850.	*48.	*2,319.	*13.			
ARSENIC (TRI)	Y	Y	360.	190.	69.	36.			
ASBESTOS	Y	Y					30Kf/l**		
BARIUM	N	N					1.mg		1.0mg
BENZENE	Y	Y	*5,300.		*5,100.	*700.	0.66ug**	40.ug**	
BENZIDINE	Y	Y	*2,500.				0.12ng**	0.53ng**	
BERYLLIUM	Y	Y	*130.	*5.3			6.8ng**	117.ng**	
BHC	Y	N	*100.		*0.34				
CADMIUM	Y	N	3.9*	1.1*	43.	9.3	10.ug		0.010mg
CARBON TETRACHLORIDE	Y	Y	*35,200.		*50,000.		0.4ug**	6.94ug**	
CHLORDANE	Y	Y	2.4	0.0043	0.09	0.004	0.46ng**	0.48ng**	
CHLORINATED BENZENES	Y	Y	*250.	*50.	*160.	*129.	488.ug		
CHLORINATED NAPHTHALENES	Y	N	*1,600.		*7.5				
CHLORINE	N	N	19.	11.	13.	7.5			
CHLOROALKYL ETHERS	Y	N	*238,000.						
CHLOROETHYL ETHER (BIS-2)	Y	Y					0.03ug**	1.36ug**	
CHLOROFORM	Y	Y	*28,900.	*1,240.			0.19ug**	15.7ug**	
CHLOROISOPROPYL ETHER (BIS-2)	Y	N					34.7ug	4.36mg	
CHLOROMETHYL ETHER (BIS)	Y	N					.00000376ng**	0.00184ug**	
CHLOROPHENOL 2	Y	N	*4,380.	*2,000.					
CHLOROPHENOL 4	N	N			*29,700.				
CHLOROPHENOXY HERBICIDES (2,4,5,-TP)	N	N					10.ug		
CHLOROPHENOXY HERBICIDES (2,4 D)	N	N					100.ug		
CHLORPYRIFOS	N	N	0.083	0.041	0.011	0.0056			
CHLORO-4 METHYL 3 PHENOL	N	N	*30.						
CHROMIUM (HEX)	Y	N	16.	11.	1,100	50.	50.ug		0.05mg
CHROMIUM (TRI)	N	N	1,700.*	210.*	*10,300.		170.mg	3,433.mg	0.05mg
COPPER	Y	N	18.*	12.*	2.9	2.9			
CYANIDE	Y	N	22.	5.2	1.	1.	200.ug		

TABLE 20
WATER QUALITY CRITERIA SUMMARY (continued)

COMPOUND NAME (OR CLASS)	PRIORITY POLLUTANT	CARCINOGEN	Concentration in Micrograms Per Liter For Protection of Aquatic Life: FRESH ACUTE CRITERIA	FRESH CHRONIC CRITERIA	MARINE ACUTE CRITERIA	MARINE CHRONIC CRITERIA	Concentration in Units Per Liter For Protection of Human Health: WATER AND FISH INGESTION	FISH CONSUMPTION ONLY	DRINKING WATER M.C.L.
MANGANESE	N	N					50.ug	100.ug	
MERCURY	Y	N	2.4	0.012	2.1	0.025	144.ng	146.ng	0.002mg
METHOXYCHLOR	N	N		0.03		0.03	100.ug		0.1mg
MIREX	N	N		0.001		0.001			
MONOCHLOROBENZENE	Y	N					488.ug		
NAPHTHALENE	Y	N	*2,300.	*620.	*2,350.				
NICKEL	Y	N	1,400.+	160+	75	8.3	13.4ug	100.ug	
NITRATES	N	N					10.mg		10.mg
NITROBENZENE	Y	N	*27,000.		*6,680.		19.8mg		
NITROPHENOLS	Y	N	*230.	*150.	*4,850.				
NITROSAMINES	Y	Y	*5,850.		*3,300,000		0.8ng**	1240.ng**	
NITROSODIBUTYLAMINE N	Y	Y					6.4ng**	587.ng**	
NITROSODIETHYLAMINE N	Y	Y					0.8ng**	1,240.ng**	
NITROSODIMETHYLAMINE N	Y	Y					1.4ng**	16,000.ng**	
NITROSODIPHENYLAMINE N	Y	Y					4,900.ng**	16,100.ng**	
NITROSOPYRROLIDINE N	Y	Y					16.ng**	91,900.ng**	
PARATHION	N	N	0.065	0.013					
PCB's	Y	Y	2.0	0.014	10.	0.03	0.079ng**	0.079ng**	
PENTACHLORINATED ETHANES	N	N	*7,240.	*1,100.	*390.	*281.			
PENTACHLOROBENZENE	N	N					74.ug	85.ug	
PENTACHLOROPHENOL	Y	N	***20.	***13.	13.	*7.9	1.01mg		
PHENOL	Y	N	*10,200.	*2,560.	*5,800.		3.5mg		
PHOSPHORUS ELEMENTAL	N	N				0.1			
PHTHALATE ESTERS	Y	N	*940.	*3.	*2,944.	*3.4			
POLYNUCLEAR AROMATIC HYDROCARBONS	Y	Y			*300.		2.8ng**	31.1ng**	
SELENIUM	Y	N	260.	35.	410.	54.	10.ug		0.01mg
SILVER	Y	N	4.1+	0.12	2.3		50.ug		0.05mg
SULFIDE-HYDROGEN SULFIDE	N	N		2.0		2.0			
TETRACHLORINATED ETHANES	Y	N	*9,320.						
TETRACHLOROBENZENE 1,2,4,5	Y	N					38.ug	48.ug	
TETRACHLOROETHANE 1,1,2,2	Y	Y		*2,400.	*9,020.		0.17ug**	10.7ug**	
TETRACHLOROETHANES	Y	N	*9,320.						
TETRACHLOROETHYLENE	Y	Y	*5,280.	*840.	*10,200.	*450.	0.8ug**	8.85ug**	
TETRACHLOROPHENOL 2,3,5,6 **	Y	N				*440.			
THALLIUM	Y	N	*1,400.	*40.	*2,130.		13.ug	48.ug	
TOLUENE	Y	N	*17,500.		*6,300.	*5,000.	14.3mg	424.ug	
TOXAPHENE	Y	Y	0.73	0.0002	0.21	0.0002	0.71ng**	0.73ng**	0.0005mg
TRICHLORINATED ETHANES	Y	Y	*18,000.						
TRICHLOROETHANE 1,1,1	Y	N			*31,200.		18.4mg	1.03g	
TRICHLOROETHANE 1,1,2	Y	Y		*9,400.			0.6ng**	41.8ng**	
TRICHLOROETHYLENE	Y	Y	*45,000.	*21,900.	*2,000.		2.7ug**	80.7ug**	
TRICHLOROPHENOL 2,4,5	N	N					2,600.ug		
TRICHLOROPHENOL 2,4,6	Y	Y		*970.			1.2ng**	3.6ng**	
VINYL CHLORIDE	Y	Y					2.ng**	525.ng**	
ZINC	Y	N	120.+	110+	95	86			

Basin	Rule
North Coast	340-41-205(2)(p)
Mid Coast	340-41-245(2)(p)
Umpqua	340-41-285(2)(p)
South Coast	340-41-325(2)(p)
Roque	340-41-365(2)(p)
Willamette	340-41-445(2)(p)
Sandy	340-41-485(2)(p)
Hood	340-41-525(2)(p)
Deschutes	340-41-565(2)(p)
John Day	340-41-605(2)(p)
Umatilla	340-41-645(2)(p)
Walla Walla	340-41-685(2)(p)
Grande Ronde	340-41-725(2)(p)
Powder	340-41-765(2)(p)
Malheur	340-41-805(2)(p)
Owyhee	340-41-845(2)(p)
Malheur Lake	340-41-885(2)(p)
Goose and Summer Lakes	340-41-925(2)(p)
Klamath	340-41-965(2)(p)

340-41-027 Biological Criteria

(1) Waters of the State shall be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.

340-41-006

(37) "Aquatic species" means any plants or animals which live at least part of their life cycle in waters of the State.

(38) "Biological criteria" means numerical values or narrative expressions that describe the biological integrity of aquatic communities inhabiting waters of a given designated aquatic life use.

(39) "Designated beneficial use" means the purpose or benefit to be derived from a water body, as designated by the Water Resources Department or the Commission.

(40) "Indigenous" means supported in a reach of water or known to have been supported according to historical records compiled by State and Federal agencies or published scientific literature.

(41) "Resident biological community" means aquatic life expected to exist in a particular habitat when water quality standards for a specific ecoregion, basin, or water body are met. This shall be established by accepted biomonitoring techniques.

(42) "Without detrimental changes in the resident biological community" means no loss of ecological integrity when compared to natural conditions at an appropriate reference site or region.

(43) "Ecological integrity" means the summation of chemical, physical and biological integrity capable of supporting and maintaining a balanced, integrated, adaptive community of organisms having a species compostion, diversity, and functional organization comparable to that of the natural habitat of the region.

(44) "Appropriate reference site or region" means a site on the same water body, or within the same basin or ecoregion that has similar habitat conditions, and represents the water quality and biological community attainable within the areas of concern.

PROPOSED RULE LANGUAGE FOR TURBIDITY

Rules for each basin are affected by this proposed language and each rule affected is identified following the proposed new language.

340-41(BASIN)(2)(c)
Turbidity (Nephelometric Turbidity Units, NTU) ~~[(Jackson Turbidity Units, JTU)]~~; No more than a 10 percent cumulative increase in natural stream turbidities shall be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity. However, limited duration activities necessary to address an emergency or to accommodate essential dredging, construction or other legitimate activities and which cause the standard to be exceeded may be authorized provided all practicable turbidity control techniques have been applied and one of the following has been granted:

(A) Emergency activities: Approval coordinated by DEQ with the Department of Fish and Wildlife under conditions they may prescribe to accommodate response to emergencies or to protect public health and welfare.

(B) Dredging, Construction or other Legitimate Activities: Permit or certification authorized under terms of Section 401 or 404 (Permits and Licenses, Federal Water Pollution Control Act) or OAR 141-85-100 et seq. (Removal and Fill Permits, Division of State Lands), with limitations and conditions governing the activity set forth in the permit or certificate.

Basin	Rule
North Coast	340-41-205(2)(c)
Mid Coast	340-41-245(2)(c)
Umpqua	340-41-285(2)(c)
South Coast	340-41-325(2)(c)
Rogue	340-41-365(2)(c)
Willamette	340-41-445(2)(c)
Sandy	340-41-485(2)(c)
Hood	340-41-525(2)(c)
Deschutes	340-41-565(2)(c)
John Day	340-41-605(2)(c)
Umatilla	340-41-645(2)(c)
Walla Walla	340-41-685(2)(c)
Grande Ronde	340-41-725(2)(c)
Powder	340-41-765(2)(c)
Malheur	340-41-805(2)(c)
Owyhee	340-41-845(2)(c)
Malheur Lake	340-41-885(2)(c)
Goose and Summer Lakes	340-41-925(2)(c)
Klamath	340-41-965(2)(c)

Attachment B

HEARING OFFICERS REPORT

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

TO: Environmental Quality Commission DATE: May 22, 1991

FROM: Mary Halliburton and Neil Mullane, Hearing Officers

SUBJECT: Public Hearings on Proposed Water Quality Standards

On November 2, 1990 the Environmental Quality Commission authorized the Department to take proposed water quality standards to public hearing and comment.

A public notice was sent to the Secretary of State to be published in the December 1, 1990 Oregon Bulletin. Additionally, the notice was sent to the Department's mailing list for Water Quality Standards Issues advising them of eight hearings scheduled around the state (Attachment B).

The hearings were conducted as scheduled. Following a statement of purpose made by the Hearing Officer, staff provided an overview of the purpose of the standards review, activities conducted to date as part of the triennial review process and a brief explanation of the eight standards proposals. Handouts summarizing the proposals and issue papers and proposed rule language for each of the standards also were made available. The hearing record was then opened to provide an opportunity for attendees to submit oral or written testimony.

At the opening and close of each hearing, it was announced that the record would remain open to receive written testimony postmarked by January 25, 1991. At the written request of the Association of Oregon Sewerage Agency, the comment period was extended to March 1, 1991 and a second public notice was sent to those on the mailing list advising them of the extension.

Fifty-eight individuals and groups provided testimony. Seventeen presented oral testimony and forty-one submitted written testimony. A list of the primary issues and comments on the proposed rules is presented in Attachment B.

A summary of the oral and written testimony is also presented in this Attachments. Copies of the written testimony also are being made available to the Environmental Quality Commission and are available upon request. A tape of each hearing is available to the Commission.

The Department staff response to the testimony is presented in Attachment C.

SUMMARY OF WRITTEN TESTIMONY
ON PROPOSED WATER QUALITY STANDARDS REVISIONS

1. John Neely, letters dated 11/4 and 11/13/90.

   Mr. Neely comments that if the zone of initial dilution is allowed as part of a mixing zone to reduce treatment costs, acute toxicity requirements won't have to be met at the end of pipe. The resulting toxicity may increase the work load on the groundwater section. Also, it may result in abuses to the environment.

2. John C. Hall, Kilpatrick & Cody, letter and materials dated 1-2-91.

   Mr. Hall presents a preliminary review of technical and regulatory issues he is concerned about relative to the proposed Dissolved Oxygen standards (DO) and notes that more detailed information is being compiled by AOSA's fishery and modeling experts.

   Mr. Hall has the following concerns relative to dissolved oxygen:

   1. The conservative approach DEQ used to modify EPA's dissolved oxygen standards (WQS) is unnecessary to assure adequate protection of fishery resources.

   2. The DEQ did not recognize that the procedures used to develop CWA Section 304(a) criteria ensure that the National Criteria provide an adequate level of protection.

   3. Though the EPA criteria document recognizes circumstances may foster the need to establish alternative standards, those conditions do not exist on the Willamette, and

   4. The review of the administrative record developed by DEQ does not support a conclusion that EPA's criteria will not be adequate.

   Mr. Hall urges DEQ to contact Dr. Gary Chapman, author of EPA's DO criteria document to review issues Mr. Hall presents.

   Mr. Hall recommends the overall environmental impacts be fully considered. For example, he concludes higher electrical usage associated with achieving more stringent DO standards will likely cause negative impacts on the Columbia

River fisheries due to increased hydropower needs. It states it is not likely that fishery production benefits associated with the DO standard would offset the losses.

Mr. Hall draws conclusions about why the DEQ has proposed more stringent DO values than EPA's "National Criteria," and states that DEQ provides no technical support for the difference between EPA's "National Criteria" values and the proposed standards. He states that DEQ has taken EPA's guidance out of context regarding circumstances when their recommended alternative values are appropriate.

Mr. Hall states that DEQ never addresses why the "continuous exposure no production impairment" level is used. He states that according to EPA it is not necessary due to the manner in which the "National Criteria" were developed and applied.

He comments that because EPA's criteria are based on "worst case" conditions for waste load allocations and are protective at typically high seasonal temperatures, for all other conditions DO levels will be higher.

Mr. Hall states that EPA's criteria were developed using the same methodology used to establish all other acute and chronic criteria. There has been (1) no information provided to reject EPA's criteria, (2) no information to refute EPA's assumptions regarding how they are applied or (3) no information to substantiate the need to establish more stringent standards.

He comments that the effect of summer temperature in the Willamette River on salmonid growth was not given adequate consideration and it is not appropriate to establish the more stringent criteria during the summer months.

Mr. Hall presents his analysis of three points as follows:

(a) DO levels will not be maintained for "Considerable Periods" at EPA criteria values and therefore there is no risk of significant impairment.

    (1) Continuously low DO conditions have not occurred in the Willamette and the probability is low to nonexistent that such a condition will develop given the manner in which standards are applied to develop permit limitations.

    (2) EPA considers the standard and the manner of application in establishing standards, noting that national guidelines for water quality criteria are designed to protect aquatic organisms from unacceptable effects and use of the criteria for

designing waste treatment facilities requires selection of an appropriate wasteload model. He further cites EPA that DO modeling is conducted at 7/Q/10 conditions, high receiving water temperatures and assuming all dischargers are at their permitted maximum loadings. If wasteloads set this way are not exceeded, it is virtually impossible for DO levels to remain at the criteria levels for considerable periods.

(3) DEQ can't demonstrate that EPA criteria are not protective. For the criteria not to be protective the criteria would have to be met continuously for more than 60 days or longer. Since it can't be demonstrated that criteria levels are going to be maintained for 60 days, the higher criteria values are not justified.

(4) Factors that determine whether a 60 day event could occur are streamflow magnitude and duration, stream temperature variability and wastewater loadings. Mr. Hall states that if compliance with DO were based on achieving 6.5 mg/l under critical conditions it would be virtually impossible for 60 days of this level to occur. This is because:

(i) Maximum river temperatures only occur in July or August and treatment design would be for these higher temperature periods. All other regimes, lower water temperatures would ensure higher DOs.

(ii) Lower stream flows only occur in the summer period and other times they are higher. Mr. Hall states that the stream flow used for modeling is the 7/Q/10. The regulated mature of the stream results in lower flows than these being rare, and low flows are not maintained for 60 days.

(iii) The modeling assumption that all dischargers simultaneously discharge at their maximum permitted rate assures that even the 6.5 mg/l DO won't be reached.

He states that the Willamette has 20 dischargers that could influence the DO regime. No single one of these discharges sufficient loading to independently reduce DO much below a few tenths of a mg/l. All existing 20 permittees discharging <u>at</u> their permitted amount is a 1 in a billion event. The expected DO decreased under low flow events given typical effluent variation would be about 50 to 60% of worst case.

The projected worst case DO deficit is 2.0 mg/l. If the expected deficit is applied against instream dissolved oxygen value of 8.5 mg/l at saturation, the resulting DO is 7.5, well above EPA's criteria of 6.5 mg/l.

(b) EPA's Criteria Provides an Adequate Level of Protection.

Mr. Hall states that contrary to DEQ's 11/2/90 response to comments, it is not true that the National Criteria are not as protective as the qualitative effects level criteria nor could they allow for significant impairment. Mr. Hall states that this is because the averaging period and the 0.5 mg/l DO adjustment to the test result values EPA made in setting the criteria. The criteria represent EPA's best estimate of "threshold" no effect levels.

(c) Temperature Effects in Fish Growth Must be Considered.

Salmonid production is temperature dependent. Mr. Hall states that because natural conditions affect the presence of specifies that is being protected and because temperatures in the lower Willamette can rise to 23-25°C maximums, significant growth won't be occurring so there is no basis to conclude there would be impairment if EPA's criteria were achieve. Mr. Hall states that EPA was referring to high quality spawning areas and time periods of high growth when referring to situations where absolute assured no impairment levels may be desired.

Mr. Hall argues that the Willamette River does not fit this description and thus the higher values are not meaningful. Failure to consider the relative importance of temperature renders the proposed DO standard inappropriate and unattainable.

(d) Conclusions

Mr. Hall concludes by stating that because the proposed standards would require environmentally nonbeneficial construction and extraordinary operation of municipal treatment plants, several AOSA members are having water quality analysis performed to determine the impact of the proposed standards on future activities. Prior studies done by the USGS showed that current municipal discharges had a minor impact on DO. Mr. Hall is certain that increased treatment from existing dischargers would be mandated because the proposed standard would eliminate any available assimilative capacity. Thus, any future load or population increases could not occur without increased treatment.

The economic consequences would be substantial and location of new industries would be difficult.

Therefore, AOSA requests DEQ consider the applicability of EPA's criteria document because:

(1) EPA criteria are estimates of "no effect" concentrations, not "slight impairment" levels as implied by the proposal.

(2) DEQ modeling should insure the criteria won't be exceeded more frequently than recommended by EPA or remain for long periods of time.

(3) EPA's criteria are based on continuous exposure studies, thus do not represent slight or moderate impairment when applied properly.

(4) Temperatures already have an effect in the lower Willamette and thus there is little or no production benefit (to the fishery) associated with achieving an 8.0 mg/l during such temperature conditions.

(5) Monitoring frequency doesn't justify setting a more stringent criteria.

(6) Available Willamette DO data confirm levels do not approach (decrease) to EPA criteria thus there is no basis to set more stringent standards.

(7) The overall benefits and detriments of pursuing an absolute DO protection policy should be reconsidered. Impacts from increased electrical and chemical usage should be assessed.

(8) Revisiting the issue will avoid the need for dischargers to petition for a revised DO criteria or engage in non-beneficial construction.

3. Bruce Jolma, letter dated 1/7/91.

Mr. Jolma comments that the biggest problem confronting salmon fishers on the Columbia River is high water temperature. It decreases the ability of the fish to combat diseases. With water temperatures reaching 72 to 74°F in September, it is no wonder salmonid fish develop lesions and sores.

Regarding fish tissue pollutant values, he notes that it would be devastating to all salmon fisheries if high toxic values of carp tissue, for example, were applied to all fish in adjacent waters. Commercial fishermen have received enough bad press by sports and environmental groups dedicated to eliminating their livelihood.

4. Jerry Rust, Commissioner, Lane County, written testimony date 1/11/91.

   Mr. Rust comments that he supports rules that provide for "outstanding resource waters" and encourages moving forward to enact high standards to preserve these waters, such as Clear Lake and Waldo lake in Lane County. Also, he encourages consideration of all waters within Oregon wilderness areas and all wild and scenic waters to be given protection from degradation.

5. Walter Meyer, Brown and Caldwell, for the City of Medford, written testimony dated 1/14/91 submitted at the Portland Hearing.

   Mr. Meyer suggests that it is time to reevaluate the minimum design criteria for treatment and control of wastes, especially when the dissolved oxygen (DO) in the winter consistently exceeds the standard and it is influenced by surface runoff with high DO & temperature. DO concentrations in the Rogue River show a corresponding decrease as it moves downstream because of temperature.

   The move toward water quality based standards is correct and should be applied more broadly to the regulations and permit process. He recommends that DEQ should coordinate management of river basins where water quality is impacted by policies of other state agencies. DEQ also must work with local agencies to evaluate water quality. The state needs to accept an active role in evaluating the water quality of Oregon streams.

   Lastly, DEQ must have an enforcement strategy that is used, consistent, and predictable. The current practice caused delays in the implementation of water quality improvements. Though enforcement may not be popular, it is the state's responsibility. Those municipalities that embrace their responsibility lose public support when lack of action by others is tolerated. Environmental improvements will be supported when the relationship between higher fees and improved water quality can be demonstrated.

6. Carol Whitaker, James River, written testimony dated 1/14/91.

With respect to the specific standard proposal for toxic pollutants in fish tissue, James River expressed that values listed in Table 21 are backcalculations from the water quality standards using some unspecified bioconcentration factors. Contrary to the table's title these values were not used by EPA in development of water quality criteria. The values proposed have little if any relevance to actual water quality conditions in Oregon. The arithmetic manipulations are nothing more than a spreadsheet exercise and may result in each and every water body being water quality limited for one or more of the compounds listed.

Additionally, they support use of issue papers to apprise people in advance of what DEQ is considering. They comment, however, that the process has lacked substantive dialogue. They suggest that issue papers be revised in response to comments. They comment that their earlier concerns were not reflected in rulemaking package and no explanation was provided.

The economic impact of the proposed standards revisions could be devastating, yet DEQ has given this issue only cursory attention. The proposals could stifle future growth throughout state.

The scientific basis for many rule revisions is flawed. For example the dissolved oxygen rule proposals are unrealistic and do not reflect physical and biological laws operating in a stream. Toxics proposals are not supported by research literature, nor is there internally generated data.

DEQ needs to rethink some of its logic and make a serious attempt to consider with equal weight the economic consequences of its proposals. DEQ needs to work with dischargers, scientists and citizens to draft language that balances environmental protection goals with economic realities.

7. Doug Norlen, Director, Waldo Wilderness Council, letter dated 1/14/91 provided comments about the Antidegradation Policy as follows:

The Outstanding Resource Water (ORW) category could fail to protect some of the least degraded waters because:

(a) It places burden of proof on the entity who nominates it for inclusion. There are no guidelines; thus, the decision is likely to be subjective/politically influenced. There is no certainty that a deserving water would be included;

(b) There is a lack of information on fragile ecosystems such as Waldo Lake. It is difficult to address policy requirements and determine the type and amount of pollution that would lower its quality. Hence, the burden of proof again is on the side of the person an activity will lower the quality rather than on the one proposing to pollute;

(c) There is no definition to specify what a "short-term basis" or an "emergency" is;

(d) The OWR tacitly implies there are some waters that are non-outstanding and not worth the same commitment to protection. It also suggests that the state is not seeking to creatively avoid and eliminate water pollution, but rather to indicate the degree to which we will acquiesce and allow water to be defiled; and

(e) The proposed policy can be viewed as a reaction to those concerned about retaining rights to pollute rather than a commitment to address effects of water pollution. It is important to explore and evaluate all reasonable alternatives such as required by the federal National Environmental Policy Act (NEPA).

The Council supports comments of Mary O'Brien, NCAP. The state should establish the view that all of its waters are outstanding and worthy of its best efforts for protection.

Regarding the Biological Criteria proposal, they support the concept of using localized biological criteria as a basis to look for impacts which are detrimental to beneficial uses since there is simply too much diversity in the natural world to apply sweeping generic standards.

8. Steven M. Hall, City of Ashland, letter dated 1/17/91.

Mr. Hall comments that the City supports the Association of Oregon Sewerage Agencies (AOSA) recommendation.

Regarding the wetlands definitions, they request that passive treatment facilities for wastewater and storm drainage not be considered "waters of the state".

9. Environmental Protection Agency, Region X, letter dated 1/18/91. EPA comments on several standards proposals as follows:

Antidegradation Policy

(a) EPA questions what will happen to those waters previously given ORW status before they become listed through the EQC's designation process. They state it would be unfortunate if they did not receive the highest level of protection during the time required for redesignation.

(b) They disagree with statement made in (3)(a)(B) that if numeric criteria are met then uses they are designed to meet are fully protected since this overlooks non-numeric criteria such as biological criteria.

(c) They suggest substituting "existing" for "recognized" under (3)(a)(B) to be consistent with federal regulations.

(d) The proposed implementation policy for economic and social impacts from projects on high quality waters is incomplete in that it only addresses point sources. They urge the DEQ to develop a policy for nonpoint sources soon and when the policy is broadened it should consider non-numeric criteria, biocriteria, sediment and debris criteria, and aquatic habitat disruptions by channel modification, bank clearing and removal of natural debris, etc.

Dissolved Oxygen

(a) EPA mildly supports Option 2 since it gives better assurance of protecting the resources, especially since the DEQ has limited time and funds for monitoring.

(b) EPA notes that it's not clear which waterbodies are designated as salmonid or non-salmonid fish producing waters and they recommend that DEQ clearly identify designations applicable to specific waters.

Bacteria

EPA comments that Enterococci is most appropriate when dealing with both marine and freshwater situations.

Toxic Pollutants

EPA notes several housekeeping changes to references and recommends that (4) (b) (B) (i) be changed to read "Be free of materials in concentrations that will cause or have a reasonable potential to cause, or contribute to an excursion above any water quality standard including chronic

(sublethal) toxicity..." This language is needed to ensure NPDES permitted dischargers achieve water quality standards and to be consistent with EPA's 6/2/89 NPDES regulations.

Mixing Zones

The requirement for mixing zone width is too general. EPA recommends specific mixing zone width requirements be identified with lengths varying on a case by case basis as needed to protect free swimming and drifting organisms. They recommend a category (F) be added to " allow a continuous zone of passage that meets water quality standards for free-swimming and drifting organisms."

Biological Criteria

EPA encourages the Department to continue progress in this area.

10. Floyd Collins, Association of Oregon Sewerage Agencies (AOSA), letter dated 1/21/91.

Mr. Collins requests an extension of time to March 1, 1991 to submit written comments on proposed standards.

AOSA is securing detailed technical and economic information to assist DEQ staff fully evaluate the necessity and impacts of the draft rules.

They comment that any comment they might submit before 1/25/91 would be based on preliminary and incomplete evaluations and action could lead to complications and/or confusion of the issues. Thus, additional time will result in a product which will assist all parties involved.

11. Bill Gaffi, AOSA, letter dated 1/21/91 and presented at the 1/22/91 hearing in Salem.

Mr. Gaffi comments that AOSA offers collaboration and their best efforts. They share DEQ's commitment to thoughtful custodianship of the environmental and the economic resources.

They are attempting to assist the Department by contributing sound technical and economic data and will make their studies available.

They ask: (1) whether the standards proposals and requisite expenditures address priority environmental needs on a comparative risk basis, (2) do we have a clear understanding of the benefits and economic impacts of the proposed rules, i.e., will pursuing attainment of a standards yield an environmental improvement?, and (3) should the some of the proposed rules follow from or precede water quality assessments underway, particularly the DO standard?

12. Warren Nekkela, Association of Lower Columbia River Flood Control District, letter dated 1/21/91.

Mr. Nekkela states that over 47,800 acres in Multnomah and Columbia counties have been reclaimed from the lower Columbia River flood plain by a system of levees, pumping plants and tide boxes. Through contracts with the Corps of Engineers, the ownership of the land has been assigned to various local flood control entities who own the flood control and drainage systems which is an improvement to the property.

The flood control works are owned by district landowners as an integral and inseparable part of the land. Thus, including any of this property (wetlands) as "waters of the state" demonstrates a blatant disregard for the rights of property and contempt for the Constitution of the U.S. Property rights cannot be legislated away by anybody, and not by an unelected state agency.

13. Linda MacPherson, Bureau of Environmental Services, City of Portland, testimony dated 1/22/91 and presented at the Salem hearing.

The Bureau reaffirms its commitment to protect the City's water resources and to serve as responsible custodians of the public's investments in protecting water quality. Its efforts to complement the scientific and regulatory basis should not be perceived as a lack of commitment to the state's water quality.

The Bureau has the responsibility to spend the public's money wisely, thus it is important to focus attention and available resources on environmental needs that offer greatest return on investment.

They express hope to be able to contribute accurate unbiased information on the anticipated water quality and economic impact of the proposed rules to benefit rather than impair the decision making process.

14. Tri-Cities Service District, letter dated 1/22/91 and presented at the Salem hearing.

Regarding the Dissolved Oxygen standards proposals, they comment that there must be a rational balancing of the significant economic impacts resulting from construction of capital facilities and increased O & M against any expected improvement to water quality resulting from new facilities made necessary by the proposed rule changes. Tri City S.D alone estimates $8-10 million in capital and additional $750,000 in O & M with a potential improvement in dissolved oxygen of only .03 mg/l at permitted load. They state this is too negligible to justify the cost.

They add that more information will be submitted in the next few weeks and anticipate assisting DEQ in any manner it deems appropriate to assure the final adopted standards are protective, attainable, cost effective and appropriate in light of all circumstances.

15. Donald E. Rice, Beaver Drainage District, letter dated 1/22/91.

Comments that the language defining "waters of the state" gives no recognition to areas that are protected from flooding by diking and ditching and which have been used primarily for agriculture since the early 1900's. Claiming these lands as "waters of the State" is taking of personal property rights.

16. Richard Angstrom, Oregon Concrete and Aggregate Producers Association, letter dated 1/22/91.

Comments that adding wetlands to the definition of waters of the state will result in a conflict of jurisdiction between DEQ and Division of State Lands (DSL). If the intent is to regulate filling, removal, drainage, they are opposed to the inclusion since in 1989 authority over certain activities was clearly given to DSL.

17. R. J. Hess, Portland General Electric (PGE) letter date 1/23/91.

PGE provides testimony on the standards proposals as follows:

Wetlands

(a) The Department cannot change the definition of "waters of the state" unless the statute in ORS 468.700 (8) is changed by the Legislature. A rule can't change a statute. ORS 196.800 (14) and OAR 141-85-010 (2) define "wetlands". Another alternative would be to define "marshes" to include "wetlands".

(b) The standards that apply to open water should not automatically apply to "marshes" and "wetlands". The biological community and natural water quality is much different in areas of shallow, stagnant or non-flowing water.

Antidegradation Policy

(a) Protecting water quality as if all "waters of the state" were high quality is not realistic. The DEQ is open to citizen suits if they establish this policy and cannot protect and regulate all "waters of the state" as high quality waters.

(b) The DEQ should work closely with DSL in establishing outstanding water resources because these are land use issues and the DSL has statutory authority to determine land use.

(c) Terms used in the policy, such as "Social" reason, "important" need to be defined and criteria or guidelines are needed for acceptance/rejection of "applications" for special high quality waters.

(d) Some "waters of the state" may not need protection because they do not meet a standard and the natural water quality allows no beneficial use for that water. At one time, EPA and the Corp tried to regulate every ditch and puddle that fed into any portion of a navigable stream.

(e) It should be made clear that petitioners for outstanding water resources shall be made financially responsible for all the data needed to support their application.

Dissolved Oxygen

(a) The DO standards proposal are more stringent than those of the EPA. EPA has shown their DO standards are protective of the aquatic environment and the thus the DEQ must show that the EPA standards are not protective of the aquatic environment and more stringent standards are necessary.

(b) Based on the Oxygen solubility tables in Standard Methods, whenever water temperatures exceed 10° C it is impossible without supersaturation to get 11 mg/l DO in freshwater.

(c) Most rivers and lakes do not have sufficient physical mixing or falling to increase oxygen from interface with the atmosphere. Because the EQC and DEQ are limiting algal biomass in waterbodies, it may be difficult to obtain oxygen supersaturation. Thus the question, is raised as to how the influences of natural conditions can be separated from the conditions imposed by nonpoint and point source dischargers?

(d) If lakes are to be included in the rule, it is important to know that the DEQ is describing the upper meter of the water body. The DEQ should clearing state the DO refers to only the water column in running water and the epilimnion in standing waters.

(e) Dividing fish into salmonids and nonsalmonids means there are only two kinds of fish. It is unclear what specific standard is applicable at any one time and any one section of a stream, particularly difficult to determine what times are spawning, hatching or fry rearing when there are multiple races and species of salmonids, each with its own times in a specific section of a river.

Bacteria

(a) The Department should clearly define which "persons" are to be responsible for implementation of the rules... eg.. do they apply only to persons who discharge sewage treatment effluent?

(b) The proposed rule appears to apply only to point sources and in mixing zones but it is not clear about who is regulated.

(c) If a person allows recreational swimming from private property adjacent to public water is that person required to test the public waters even though there is no discharge permit for that property.

(d) If the recreational area is posted No Swimming and swimming still occurs, would tests still be required?

(e) Is the regulation of "swimming beaches" the responsibility of the DEQ or the Health Division?

Toxics

(a) PGE questions whether the DEQ has statutory authority to require fish flesh testing and regulate water quality based on tests of fish flesh. Regulating the quality of foods for human consumption is the responsibility of the Food & Drug Administration.

(b) Fish flesh should not be used as a criterion for cleanup and remedial action. Also, there is a question about the DEQ's ability to quantify any direct cause /effect relationship between water quality in the water column and fish flesh. With no scientific quantifiable relationship, the ability of DEQ to adopt regulations is compromised.

(c) Toxics were established by EPA to measure the quality of water, not to determine the quality of fish for food. This type of analyses is uneconomical, unreliable, kills fish and is outside the scope and mission of water testing.

(d) If fish flesh is monitored as a research tool in tracking chemicals, DEQ should have a separate program on Fish Flesh Quality and the Department should bear the cost of collecting the data.

(e) The proposed rule relies on calculated data rather then on empirical data and it doesn't recognize that data has been collected from various rivers and lakes to support either the need for analyses or to provide for numerical standards.

(f) Use of migratory fish as a test fish is inappropriate. Fish flesh testing may not be required in all water bodies, if fish from local areas or the species tested are not consumed, fish tissue analyses may be an unnecessary expense.

(g) Requiring bioassays "as the Department deems necessary" needs further clarification. Who will deem them necessary and for what reasons? Will it be an individual member in Water Quality or ECD or will it be the EQC after a thorough investigation for the need has been determined?

(h) DEQ will need to address the problems associated with doing bioassays before facilities generate effluent from their production. There needs to be a limit on how long bioassays need to continue to show effluent meets the standards since it is incongruous to kill fish in the name of protection of fish & wildlife.

Mixing Zones

(a) DEQ should postpone finalizing the proposed mixing zone rules until criteria from the EPA Guidance paper and the EPA 1990 Technical support Document for Mixing Zones is available for review by DEQ & the regulated public.

(b) Use of Bioassays for setting mixing zones is inappropriate. It requires the test animals to die. Using hatchery fish for test animals is probably not the equivalent of testing wild fish. Use of wild fish is contrary to the ODFW goals to increase wild fish populations.

(c) The BMP is to regulate the effluent so the mixing zone will not need such stringent regulation.

(d) There is no way to determine the mixing zone boundary needed for compliance before production begins and the effluent is available for testing. Thus it becomes an after the fact regulation and a permit modification which requires the DEQ to expend additional resources.

(e) The logic of the mixing zone seems to have been missed... it is to allow a point source discharge to mix with the receiving stream, not to require the effluent to meet ambient standards at the point of discharge.

(f) Any mathematical calculations for mixing zones must have a biological basis, but without cause-effect relationship the calculated mixing zones are arbitrary and capricious.

Biological Criteria

(a) Requiring specific numbers of species and individuals to be present as a numerical biological criteria and standard may be pushing the system too much. Counting numbers of organisms above and below an outfall may be dependent upon substrate as well as affects of discharges. Seasons also affect population dynamics and species present.

(b) The proposed criteria may conflict with the regulations which limit chlorophyll a since algae are the primary food producers and algae will limit and be limited by other species of plants and animals present.

(c) Skilled biologists who could determine the biological criteria are not readily available and the proposed criteria may be limited by this scarcity.

Particulate Matter and Turbidity

Since EPA defines turbidity with NTUs and 40 CFR 136.3 regulates methods the Department must use to test for turbidity, PGE supports the proposal.

General Comments

(a) DEQ's financial, social and economic appraisals of the water quality issues were inadequate for the complexity and extent of the proposed rules. Pollution prevention would provide a better return in resources expended for protecting the environment than promulgating additional and more stringent regulations.

(b) PGE suggests the EQC establish a list of criteria to be followed by the DEQ for good financial analyses for proposed rules. The Oregon Attorney Generals Administrative Law Manual identifies criteria which must be included and includes reference to additional costs for equipment, supplies, labor and administration needing to be included.

(c) DEQ needs to establish a sound financial policy to show that it is using its limited funds wisely. A statement for a proposed rule shows what programs will receive funding and how the proposed rules are to be funded. The Department must have a set of fiscal priorities to show the regulated public how it intends to administer the programs and how the rules will fit into both the DEQ's financial and environmental policies, its programs and its priorities.

(d) The Department needs to assure there are sufficient commercial labs at reasonable cost available to the regulated public, especially when a whole new set of materials requires analyses.

DEQ should provide supporting data and information on the water quality of Oregon waters to justify the proposed rules. For whole new areas of regulation the Department needs to show there is statutory authority for the DEQ to promulgate the proposed rules and the laws satisfies the proposed regulations. Also, an indication of whether the program is mandatory or discretionary should be provided.

18. Bob Doppelt, The Oregon Rivers Council, letter dated 1/25/91.

Comments that in the case of Wild and Scenic Rivers, Congress has already expressly mandated the protection of water quality, thus to adopt the "discretionary procedure" is in effect to extend to the EQC the authority to undo the work of Congress. If the EQC ever failed to adopt protection of a Wild and Scenic River, their decision would conflict with section 1 (b) of the Wild and Scenic Act. Water quality in wild and scenic rivers does not have to be unique or even especially good to merit protection at the highest level, but rather it merits that protection because Congress has declared it to be national policy.

19. Preston, Throgremson, Shider, Gates and Ellis for the Sauvie Island Drainage District, letter dated 1/25/91.

Expresses support of the position taken by the Association of Lower Columbia River Flood Control Districts as stated in their 1/21/91 letter.

20. George B. Heilig, letter dated 1/29/91.

Expresses comment about the proposed turbidity standards as follows:

(a) The turbidity standard should recognize there is a level below which 10 percent increases will have no significance and should not cause violations. The Jackson candle turbidimeter measures accurately to a lower limit of about 25 JTUs. A nephelometer measures accurately to less than 1 NTU. DEQ maintains that converting the measurement unit creates no change in the application of the rule and that greater than a 10 percent increase at any turbidity level as significance and should be a violation. However DEQ suggests that no adverse effects to any beneficial uses of water occur below certain levels of turbidity.

(b) Under the proposed rule, a violation of the standard would occur if an increase of .15 NTU was caused by an NPDES permittee where existing stream conditions measured 1.0 NTU. Though it would be unnoticeable and would not adversely affect uses it would be a violation Protecting against a 10 percent increase would not be technical possible.

(c) The proposed rule should be amended to establish a maximum of 20 NTUs as the level above which increases greater than 10 percent would be violations.

(d) A committee should review the proposed rule on turbidity before it is adopted similarly to DEQ's proposal for other pollutants.

21. Charles Haglund, Association of Clatsop County Flood Control District, letter dated 2/5/91.

Mr. Haglund expresses concern about adding wetlands to the definition of waters of the state. The Districts feel this action represents a taking of a property right. The Districts have improved property and farm the Columbia River floodplain as a result of contracts with the Corps of Engineers.

22. John S. Billings, Jackson Soil and Water Conservation District, letter dated 2/5/91.

The District questions whether DEQ has authority over all wetlands, specifically whether DEQ has authority over "farmed wetlands". The Division of State Lands is involved in identifying wetlands and all state agencies should coordinate their activities so their policies don't conflict.

The Jackson County Conservation District does not want natural or artificial wetlands excluded as an alternate to assist in cleaning up streams. Some irrigation return flow may pass through wetlands and be cleansed before returning to the stream.

They also express concern about the economic impacts which may come from protecting wetlands.

23. William Sherlock, Headwaters, letter dated 2/25/91.

Comments on the Antidegradation Policy revisions and the Biological Standards proposal as follows:

<u>Antidegradation</u>

The policy requiring <u>re</u>-nomination of waters of National Parks, National Wild and Scenic Rivers, National Wildlife refuges and State Parks as Outstanding resource Waters is pointless. It is inappropriate to start from scratch. It will demand a great deal of precious time and resources that could be used to consider other ecological and aesthetically vital streams and lakes that are currently unprotected. The EQC should automatically include all waters in the four existing categories as ORWs.

Biological Criteria

(a) Though proposed biological criteria is a common sense approach to safeguard water quality, they urge the EQC to adopt a strong and comprehensive version of the biological standards similar to or better than those adopted by Ohio.

(b) Violation of the biological criteria should be sufficient for the state to take action, meaning that the corroborating chemical and toxicity testing data should not be required as supporting evidence in the criteria statement. It is recommended that the rule include the riparian zone and class iv intermittent streams within the definition of aquatic environment.

(c) They question how the proposed criteria will address problems of anadromous fish habitat degradation in a real world post Measure 5 Oregon? Will it allow for more economical and efficient regulatory implementation, enforcement and monitoring?

(d) They also question how the EQC will establish identifiable monitoring or threshold parameters that allow concerned citizens to identify violations and enforce the new regulations through the citizen suit provisions?

24. Mr. Dority, letter dated 2/27/91. Provided comments on several standards proposals as follows:

Wetlands

(a) Adding wetlands to the definition of waters of the state in combination with the proposed antidegradation policy change and biological criteria will put DEQ at the lead in terms of "taking" private property. With the Supreme Court awarding monetary damages for regulatory takings without just compensation, DEQ will be wrapped up in lawsuits and payouts for years.

(b) The rule change under Section 401 would have the effect of eliminating all exemptions to wetlands regulations that are provided under Section 404 of the CWA as administered by the Corps, EPA, and DSL. An example of the exemptions allowed include removal of a beaver dam for the purpose of ditch maintenance. No matter how the respondent looks at it, the proposed rules would designate beaver as a resident biological community and prevent the act of removing their dams from the ditches. This would cause further damage to his property because of flooding.

(c) The DSL does not claim authority over all wetlands, but the proposed DEQ rule would.

(d) Property owners of wetlands were not provided public notice of the proposed rule.

(e) The term "marshes" instead of "wetlands" should be used in the definition to put a limit on what type of wetlands are regulated and to exclude the biological criteria and antidegradation policy from linkage to "wetlands". Biological criteria should be stricken or limited in scope so as not to be applicable to wetlands (ditches, wet pastures, wet meadows).

(f) Owners of property with hydrology under the surface up to eighteen inches underground could be required to flood the surface of their property to enhance "resident biological communities" whether they are plant, animal, visible or microbiologic.

(g) Adding wetlands to the definition also causes jurisdictional overlap with other agencies that are legislatively charged with protecting wetlands. Section 404 of the Clean Water Act protects wetlands and Section 401 should not be used as a defacto method of wetlands protection.

Antidegradation Policy

All additions to the antidegradation policy, specifically #1-d on pages A2-2 and A2-3 combined with "wetlands" and "biological criteria" set up a planning organization that allows DEQ to control development on private lands through a hearing process and adds a layer of government at great expense.

Narrative Biological Standard

The biological criteria would have the effect of protecting nuisance animals such as beaver and nutria and mosquitoes and other hazardous insects that spend part of their lives in water. It will cause property owners to create wetlands through flooding caused by not being able to maintain drainage ditches and it would prevent development of marginal wetlands. Application of the criteria to state owned wetlands would be OK.

General Comments

Mr. Dority states that no forethought has been given to how the rule changes would affect private property. The last thing DEQ needs is to have rules that keep the issue of taking wrapped up in court.

25. Daria Wightman, CH2M HILL for the City of Woodburn, letter dated 2/25/91.

Ms. Wightman, expresses that the City is glad to see TMDLs for the Pudding deferred until the dissolved oxygen (DO) standard issue resolved, especially because of "antibacksliding policy".

DEQ has classified the Pudding as a non-salmonid fish producing water. It is unclear whether DEQ considers the Pudding for warm water or cold water criteria. Currently, DEQ requires that DO not be less than 6 mg/l. This needs to be clarified.

DEQ proposes higher DO concentrations than the EPA "National" criteria for warm water fish. If DEQ is using cold water criteria, they are not stringent enough for early life stages (EPA's Table 8). If DEQ is adopting more stringent than EPA criteria a more detailed technical substantiation of the scientific basis is needed.

It does not seem justifiable to set the "no impairment standard" for warmwater fisheries at 6.5 mg/l for the 7 day average, and 5.5 mg/l for the 1 day minimum. The EPA criteria for warmwater fisheries specify lower DO values. The difference is significant in establishing wasteload allocations and TMDLs on the Pudding. According to the Technical Support Document for Water Quality Based Toxics Control (draft) the format used to express water quality criteria for aquatic life should take into account toxicological and practical realities.

Woodburn would like to be informed of any new criteria and how it will affect the establishment of the TMDLs.

26. Charles Knoll, Teledyne Wah Change, Albany, letter dated 2/27/91.

Mr. Knoll comments on the toxic substances standards proposals as follows:

(a) The proposed criteria for aluminum acute and chronic toxicity should be modified. EPA guidelines for acute and chronic values of 750 µg/l and 87 µg/l should not be

used until adequate data have been developed. Instead, 1500 µg/l aluminum as an acute toxicity value and 748.0 µg/l as a chronic values should be used.

It is unknown whether the values determined for toxicity levels were in a total soluble form. EPA's guidance indicates that because of the variety of forms of aluminum in ambient water and the lack of definitive information about their relative toxicities to freshwater species, no available analytical measurement is known to be ideal for expressing an aquatic life criteria. EPA's recommended acid soluble method of measurement would be in conflict with the levels determined for acute and chronic toxicity which were most likely based on soluble aluminum.

(b) It is believed that the criteria levels for chloride were improperly established as indicated in the contents of the criteria document. There is no economically feasible method for removing chloride from the Teledyne Wah Chang Albany wastewater. Improper criteria levels could require the curtailment of production to meet inappropriate standards. They question the basis of EPA's methods for determining the acute and chronic toxicity values for chloride and provide examples of their concerns. They also propose alternative values of 1720 mg/l for acute toxicity and 440 mg/l for chronic toxicity.

(c) They question why a numeric value for chloride is proposed since DEQ presently requires chronic and acute toxicity testing. Chloride toxicity may be more dependent on the metal it is associated with.

(d) Fish tissue residue values are an inappropriate tool for determining water quality compliance due to the movement of fish. This combined with the technical issue of cost and sampling and analyses difficulties make it more logical to measure and control toxics at the source rather than to regulate a discharge by an indirect and possible incorrect or impossible correlation of data.

27. Francis B. Kessler, City of Salem, letter and materials dated 2/26/91.

Expresses concerns about the proposed Bacteria Standard, especially if it were to be made a permitted effluent limit.

Results of sampling at 7 STPs indicate and support their concern about difficulty in achieving year round compliance with the proposed Enterococci standard. Facilities with low effluent ammonia and reasonable high chlorine residual might be able to achieve the lower limits, but most plants have higher amounts of effluent ammonia during the winter. This would present a dilemma to the DEQ regarding enforcement, posting of contaminated waters and initiating POTW expansions to meet the proposed limit.

The testimony recommended that the proposed standard be considered as "monitor only" limit until a comprehensive body of data can be generated from a large number of diverse POTWs to provide a better understanding of the issue and to indicate to the regulated community that the DEQ will approach the implementation of a new standard with sound information and reasoning.

Information is presented to serve as a basis for examining the ramifications of accepting the proposed instream standard as a permit limit at this time. They recommended against it because it has not been established whether existing POTWs designed to achieve disinfection parameters based on fecal coliform mortality are capable of year round compliance with the proposed standards. Also, it has not been demonstrated that the existing methods and parameters of disinfection have detrimentally impacted instream water quality.

The testimony provides a summary of an evaluation of the Willow Lake STP. They conclude that reliably meeting the proposed standard will not be possible as is likely the case with other POTWs. The study shows the following:

(a) Ammonia nitrogen in the effluent affects the plant's ability to meet mortality levels at accepted chlorine residual concentrations,

(b) Conventionally designed treatment plants not practicing nitrogen removal could lack sufficient chlorine contact basin detention times to meet the proposed standards,

(c) During the low summertime flow periods when highest recreational activity levels exist, instream water quality standards are currently maintained with existing disinfection criteria and practice,

(d) Instream water quality appears to be most severely impacted by contributions from non point source runoff associated with storm events. The increase cannot be accounted for by the modest increase represented by higher POTW effluent flows,

(e) Analysis and quantification of disinfection efficiency can be difficult to determine when the millipore filter method of analysis is used since various sample sizes can yield widely different colony counts, and

(f) There is a potential that to reliably meet the proposed standard a plant will have to be designed with extremely long detention times or the plant will have to practice yearround nutrient removal and filtration prior to disinfection. While other plants may attempt to meet the standard through increased chlorine followed by dechlorination, secondary issues of concern such as additional chlorinated hydrocarbons could increase the toxicity of the effluent.

They recommend that DEQ not adopt a standard which would result in immediate non-compliance of many POTWs when a water quality problem has not been identified. DEQ should establish a task force to investigate the impact of the proposed standard on POTWs instream water quality and treatment plant design. Secondary impacts such as increased chloro-organic compounds should be defined prior to adoption of the proposed standard.

If DEQ moves forward it should be as a "monitor only" condition until data are developed to insure the ramifications are understood and documented. If DEQ moves forward it should consider seasonal permit conditions as a method of protecting instream water quality during periods of high recreational use when POTW effluent quality may have an influence on this quality. Other times of the year nonpoint source influences prevent attainment of instream standards.

They also believe the fiscal impacts would be greater than indicated by the DEQ. Also, the majority of the streams might be defined as water quality limited if the standard is adopted. If the proposed standard is adopted there will be an increased number of Public Notices required even though no documented problem exists.

28. Kenneth H. Patterson, Corps of Engineers (COE), letter dated 2/27/91.

Comments on several of the standards proposals as follows:

Wetlands

Changing the term "marsh" to conform to the definition of "wetland" as defined in 40 CFR 230.3 and 33 CFR 328.3 should have no impact on Corps of Engineers disposal activities since they already conform with the two CFRs.

DEQ's reference to Section 401 concerning the DEQ authority to approve or deny applications for permits under Section 404 is not correct. Section 401 provides the state certify that a proposed 404 activity does not violate applicable state water quality standards. This does not constitute approval or denial of a permit as no permit is involved, although COE issuance is contingent upon obtaining 401 certification.

Antidegradation

The Corps states their assumptions about the applicability of the policy to their dredging activities. They state since nondegradation does not allow any permanent degradation and since COE dredge material disposal activities are short-term events, the policy does not pose a problem. As defined, antidegradation allows limited water quality degradation. If the state provides 401 certification, both policies will have been satisfied. By allowing non permanent and/or limited degradation, it appears there is a waiver mechanism whereby 401 certification could be met even though the water quality standards were not met.

Dissolved Oxygen

(a) It is not uncommon for disposal of dredge materials to cause small and transient reductions in DO in the immediate vicinity of the discharge as a function of the BOD and COD of the material. There is no mention of how frequently measurements must be made nor where in the water column they are to be taken nor is there a provision for mixing.

(b) The proposed standards are clearly designed for point source, continuous discharges such as industrial and sewage outfalls and are only marginally applicable to dredged material. Because of the short-term and or intermittent nature of most dredge material discharges it may be difficult to apply the standards in a meaningful and technically defensible manner. There should be a provision (exclusion) to recognize that dredge material discharges require different considerations than conventional outfall approaches.

Toxic Pollutants

(a) The issue paper does not provide convincing arguments for expressing effluent toxicity data as TUs which are merely the inverse of the calculated LC50 multiplied by 100. The paper does not discuss how the "trigger" would be determined.

(b) There is no technical or administrative justification for the 0.3 Toxicity Units (TU) TUacute and 1.0 TUchronic values contained in the recommendations.

(c) The paper does not describe how residue levels in fish tissue should be used as an additional tool for determining water quality standards compliance nor how the residues would be determined.

(d) The document is an aggregate of loosely connected ideas and issues and lacks technical substance, clarity and critical thought.

Mixing Zones

(a) There is a problem with the mixing zone as described in II(4). In stating the acute 96 hour LC50 cannot be exceeded in the mixing zone means the mixing zone is determined by the LC50. Material being discharged may exceed the LC50 at the point of discharge but may not exceed it a very short distance away because of mixing. This needs a remedy.

(b) The Corps interprets the size of the Zone of Initial Dilution (ZID) to be entirely based on toxicity. They believe that bioassay test results rather than water quality standards for specific constituents will apply. Use of chronic toxicity for establishment of a mixing zone boundary instead of 0.01 LC50 may be unnecessarily stringent. The Corps uses a percentage of the LC50 in their use of mixing zones.

(c) The Corps makes an observation that the definition of toxicity where effluents with an LC50 of less than 1 percent are toxic is the same as the federal definition but DEQ does not use it to define the mixing zone.

Biological Criteria

(a) The biological criteria are clearly directed toward continuous point source discharges and are marginally applicable to the discharge of dredge material. In specifying a disposal site, the biotic communities at and near the site should be taken into account. Sites should be specified to minimize or avoid physical impacts and off site dispersive activity. Technically the physical impacts may violate the criteria until recolonization of the dredge material occurs.

(b) Adopting a set of definitions does not establish any biological criteria.

Particulate Matter and Turbidity

The Corps comments on the proposed suspended solids standard and notes that in the absence of a mixing zone it would be difficult to meet the 25 mg/l, 5-day maximum and 80 mg/l, 1 day max.

Other Comments

There is a small probability that dredge material disposal will result in a change in dissolved solids.

29. Roger O. Campbell, Pope and Talbot, letter dated 2/28/91.

Mr. Campbell comments on several standard proposals as follows:

Biological Criteria

(a) DEQ recognizes additional steps are needed before numerical standards can be set. Until the implementation phases which DEQ and EPA identifies are completed and adopted via rulemaking, a weight of evidence application of the current proposed rules should be followed.

After the implementation phases are complete DEQ can use biological criteria along with corroborating chemical and toxicity testing to make regulatory decisions.

Pope & Talbot recommends a "weight of evidence" program implementation strategy be incorporated into a preamble to the final rule.

(b) There is a recognition of physical factors that may affect a waters ability to support a balanced community. A third "waters of the State" designation is needed to allow for "transition waters" where significant impairment has occurred, but where it is not possible to restore ecological integrity to the same level as a reference site. The third designation could provide a means to resolve conflict between competing beneficial uses that may be at cross purposes, such as hydro projects and flow for waste load allocations.

(c) For outstanding resource waters, the work "all" should be deleted between "and" and "indigenous". Based on the proposed definition for "indigenous", organisms present in the past may not be restorable to a water, or if

restored, they could alter what is now considered outstanding.

(d) Pope & Talbot recommends definitions for "as naturally occurs" be modified to be consistent with EPA guidance and a definition for "ecological integrity" be added to be consistent with EPA guidance and the issue paper.

Dissolved Oxygen

(a) No sound scientific rational or justification is made to support criteria more stringent than the EPA criteria. The AOSA documents clearly set forth:

(1) The EPA DO criteria is protective of the most sensitive aquatic organisms in the Willamette.

(2) Temperature in the Willamette during periods of the lowest DO inhibit salmonid growth. Thus, higher DO levels than the EPA criteria affords no production benefit over the current DO because the quality is limited due to natural conditions.

(3) There is no evidence that the upper Willamette River (R.M. 26.6 to 187 is used by endemic salmonids for spawning.

(4) High water temperatures during chinook salmon embryo development precludes the main stem of the Willamette from being a viable salmonid spawning habitat.

(5) ODF&W considers the Willamette as not suitable for spring chinook salmon spawning because of high water temperatures and lack of suitable holding areas.

(6) A recent TVA study verified that the EPA DO criteria of 6.5 mg/l is protective against production impairment of young salmonids.

(7) ODF&W fisheries management plan for the Willamette discourages natural spawning of fall chinook because they compete with native fish. Their primary management option is to stop releasing fall chinook smolts in the Willamette.

(8) The beneficial use of the mainstem Willamette from 26.6 to 187 should be characterized as not being a salmonid spawning area.

(b) Since DO data (including sample and diurnal variation) along the mainstem of the Willamette show values greater than the EPA 6.5 mg/l criteria, adoption of the EPA criteria should be protective for the most sensitive aquatic organism. The diurnal DO variation does deserve further study, however.

(c) Pope and Talbot proposes language for salmonid producing waters: "90% saturation at the seasonal low or not less than 90 % saturation in spawning areas during spawning, incubation hatching and fry stages. Freshwater shall have a 30 day mean of 6.5 mg/l with the one day minimum concentration not less than 4.0 mg/l, and the 7-day average not less than 5.0 mg/l. Dissolved oxygen concentrations in areas of salmonid spawning shall have a 7 day mean water column concentration of 9.5 mg/l or greater and 1 day minimum concentration of 8.0 mg/l or greater during spawning, egg incubation, hatching and early life stages up to 30 days post batch."

(d) They also recommend language modifying the beneficial use tables to specify that the mainstem Willamette (R.M. 26.6 to 187) is not a salmonid spawning area.

Toxics

(a) The State Health Department is responsible for setting fish flesh criteria for the protection of public heath. Although EPA included fish consumption criteria to arrive at the water quality criteria, it is flawed to backcalculate these values to specify fish flesh criteria.

(b) The DEQ has assumed regulatory authority outside its bounds. Other comments are made about the inappropriateness of the fish tissue values, especially that for dioxin.

(c) The scientific basis for values presented in Table 21 are seriously flawed.

(d) The DEQ should postpone changes to the freshwater acute and chronic dioxin standard since DEQ has not offered sufficient scientific information to show that the current standard (values) should be changed.

30. Dave Dunnette, letter dated 2/28/91.

Mr. Dunnette comments that the Department gave insufficient weight to public health data in retaining current standard for 2,3,7,8-TCDD.

Whereas the EPA has shifted away from an emphasis on animal studies in the risk assessment process to give more weight to human epidemiological data, the Department's rational in issue paper #9 for the current TCDD standard does not appear to consider epidemiological data. Why were these studies excluded? A list of recently published articles from the Journal of the American Medical Association and others is attached.

The testimony suggests it is more appropriate to entitle the Issue Paper # 7 "Potentially Toxic Substances" since risk to toxic substances is determined not only by intrinsic toxicity of the chemical species but also by exposure.

A general discussion of the concept of risk or its application in either of the two issue papers dealing with toxic substances could help to educate the public on what constitutes actual threats to public health. If the public remains ill informed about what constitutes the actual threat- the most significant risks, society will continue to pay a heavy price. Undue worry can create stress which pose a risk. Exclusion of a discussion on naturally occurring toxic substances promotes public misunderstanding of risks of chemicals in the environment.

31. Bruce White, letter dated 3/1/91.

Mr. White expresses concern about the proposed Antidegradation Policy as follows:

Current proposals shift the burden for making designations of high quality waters from DEQ to the public. This is contrary to the spirit, if not the letter of the law.

He supports existing policies in OAR 340-026 (1)(a) (A] and (b). Regarding designation of ORW, a reasonable interpretation of federal regulations suggests that DEQ designate up front high quality waters of the state that are outstanding resource waters. The rule clearly contemplates that such broad categories as National and State parks and Wildlife Refuges will be designated outright and DEQ is referred to 40 CFR 131.12. He recommends DEQ see the legislative history of the Omnibus Oregon Wild and Scenic Rivers Act which demonstrates that outstanding ecological and recreational resource considerations were an important factor in many wild and scenic designations.

While it might be argued that the current rule does not prescribe "nondegradation" for National and State Parks, etc, it is also true that the current rule chooses a categorical approach to designating those waters to which the highest protection will be given.

He states that DEQ's proposal sets too high a threshold for what constitutes outstanding resource waters and requires that the water's outstanding nature relate to water quality. This is not the threshold contemplated by EPA. DEQ is referred to Federal Register commentary in Vol 48, No 217, Tuesday, November 8. 1983 p. 51403. EPA sets a threshold at high quality waters that meet or exceed standard, yet ORWs may be deserving of protection but may not necessarily be of high quality.

Mr. White comments that proposed rules does hot guarantee implementation. The EPA regulations comtemplate that states will identify methods to implement the antidegradation policy. If the process involves only nomination by the public, DEQ and the EQC are abdicating their legal responsibility. He states DEQ has affirmative obligation under the CWA to promulgate and implement water quality programs and as a guardian of a public trust resource it has affirmative duties under the public trust doctrine. The burdensome nature of the process ensures that it would be decades before nominations could be considered and acted upon to confirm the status of even those segments that are on the present list.

An alternative is proposed whereby at a minimum those waters that are categorically designated in the present rule would be designated as outstanding resource waters. This alternative also includes designating as State Scenic Waterways as ONRs. He offers that the language of the State Scenic Waterways Act sets a nondegradation standard. (ORS 390.845 (2)(c)). Additionally there should be a process for adding waters to this classification, similar to the one that DEQ proposed in 1986. Society has already decided what waters should be afforded the maximum protection. The proposed standard is not a "restoration standard, it simply prevents further degradation. Recommended rule language is offered.

32. Vicky Thimmesch, Northwest Environmental Defense Council (NEDC), letter dated 2/28/91.

Ms. Thimmesch comments on several of the standards proposals as follows:

Wetlands

The proposed exemption for "constructed" wetlands is misleading. It could be read to exempt artificial wetlands that are created for mitigation purposes. The definition also should not be limited to permanent wetlands. The

presence of hydric soils is a valid wetland indicator which should be recognized in the wetlands definition. Wetlands that are seasonal should also be subject to state water quality standards.

Antidegradation

The testimony poses several questions regarding the policy:

(a) Clarification is still needed in part (ii) of OAR 340-41-026. What type of comparative analysis will be done in balancing the benefits of economic or social development against the costs of lowered water quality? Will it be approached from the standpoint of public policy or be mathematically assessed? Will the true long term costs to society having to clean up dirty water be taken into consideration?

(b) DEQ needs to clarify what "short term basis" is and what protection of human "welfare" means. Does it allows the EQC/Director to take into account economic welfare? Exception which allow for degradation should be limited to health concerns.

(c) The proposed revision for ORW designations shifts the burden of demonstrating outstanding qualification to the public. To require the public to redesignate waters that are today recognized as Outstanding Resource Waters is too great a burden. The public does not have the capacity or ability to produce the detailed data being required.

(d) Antidegradation standards do not apply solely to numerical criteria but to all beneficial uses as well as the biological integrity of the State's waters. Currently waters within National Parks, National and Wild and Scenic Rivers, national Wildlife Refuges and State Parks are protected under the Antidegradation policy as outstanding resource waters.

(e) NEDC is opposed to adoption of new rules for ORW classification except for the process to allow addition of currently "unrecognized" and "non designated" waters. Automatic recognition and listing should be retained for those waters currently cited in the rule and State Scenic Rivers should be added to those listed as ORWs.

(f) It should be made clear that the projected effects of a "short-term" disturbance are to be assessed before the disturbance is allowed. It is unacceptable to allow the disturbance until adverse effects are analyzed since, for example, a short term disturbance can cause nearly an instantaneous shift in insect species and result in devastation of stream life.

33. Douglas S. Morrison, Northwest Pulp and Paper Association (NWPPA), letter dated 2/28/91.

Mr. Morrison comments on several of the standard proposals and makes suggestions as follows:

Wetlands - Definition of State Waters

(a) DEQ must seek statutory change in the definition of "waters of the state" before proceeding to adopt water quality standards for wetlands. The respondent researched the issue and presents his reasoning. Reference is made to the DEQ having to seek authority for groundwater quality management in 1989 for the same reasons. In 1961 the legislature did not intend to regulate farmers fields as "waters of the state". When the legislature intends to include wetlands within the definition, it will do so expressly, as done in ORS 196.800(14).

(b) DEQ must evaluate the entire scope of a wetlands program including definitions, designation of beneficial uses, development of standards (whether narrative, numerical or both) and the application of the antidegradation policy to wetlands before seeking authority to expand the program. Reasons for this recommendation are provided. A complete analysis is needed. DEQ has not sufficiently explained its intentions in making this proposal to adequately inform the EQC or the regulated community of the impacts.

(c) Irrespective of any decision on wetlands, DEQ should continue to propose the changes exempting constructed waterbodies from the definition of "waters of the state".

Antidegradation Policy

(a) The proposed language contains the most far-reaching effects on water quality regulation of any of the proposals. It proposes fundamental changes in Oregon's approach to water quality programs and philosophy. It

ignores technological limits and the realities of Best Management Practices to move to a regulatory approach only considering water quality. This drastic change must be considered for its impact on all activities. This shift should be addressed through a consensus-building process. Legislative direction/approval may be needed.

(b) While the 3-tiered approach appears to follow EPA guidance, NWPPA is concerned it will require a lot of staff time to properly evaluate all nominations and suggest the rule be strengthened to require automatic rejection of incomplete nominations. NWPPA agrees, however, that proponents should provide all the needed information.

(c) Concern is expressed that DEQ/EQC will have to be in the position of deciding what is a socially important activity. The rule should provide for broad public participation and include representatives from Economic Development and Forestry. The DEQ/EQC should defer the decisions to other agencies.

(d) The proposed regulation does not address the current inability to separate background levels of pollutants from nonpoint source generated levels, and thus any monitoring data is meaningless.

(e) Just because methodologies have been published does not mean that appropriate models exist to assess cumulative effects such as forest lands or complex riverine systems. This probably will take 5 years of research to develop a reliable fores lands cumulative effects model.

(f) The necessity of a water body classification is not supported by information on Federal requirements, and four out of five of the classes would generally prohibit any negative impacts. This approach is not justified.

(g) When State Parks provides high levels of protection in their Scenic Waterway program, the law requires the Division to purchase lands. By implementing the proposed policy that provides the highest level of protection, the state would gain significant if not total control over many acres of forest land without compensation.

(h) A policy preventing cumulative impacts would have the EQC become the ultimate decision maker on all forest operations, supplanting the Board of Forestry.

(i) As part of the 1987 legislation (HB 3396) the public already has the opportunity to comment on forest operations and thus the DEQ proposal is duplicative and unnecessary.

Dissolved Oxygen

AOSA's comments should be carefully considered. Their comments prove that the proposed DO standards are not suitable.

Bacteria

DEQ should carefully consider comments made by the municipal dischargers.

Toxics

The standard for 2,3,7,8 TCDD should be modified to represent the most recent scientific date regarding dioxin's cancer potency. The testimony expresses disagreement with the Department's decision to retain the current standard for dioxin. The NWPPA incorporates, by reference, several documents into the record. These include an article titled "Critical Factors in Establishing a Health-Based Water Quality Standard for Dioxin", Russell Keenan, et al, Chemrisk, September 4, 1990 and 8 letters and an attachment from Gregory L. Coler, Secretary of the Florida Department of Environmental REgulation, regarding Dioxin risk assessment dated January 8, 1991.

Regarding Toxic Substances Issue Papers generally, NWPPA

(a) Expresses support for including language referencing the role of sediments and the potential for impacts to fish and wildlife.

(b) Questions the Department's intent in eliminating language referring to the "most recent" version of EPA's Quality Criteria for Water. This document is routinely revised to include recent advancements in the state of knowledge. NWPPA doesn't wish the Department to be limited to addressing only those compounds published in the 1986 version of EPA's criteria document.

(c) Expresses they have no comment on the proposed addition of standards for chloride, ammonia and aluminum.

(d) States that the earlier DEQ proposal to add acute and chronic toxicity standards for the protection of aquatic life is not reasonable since they are based on limited studies. The study results over estimate the NOEL for trout and must be used with caution.

(e) Expresses an objection to using Table 21 fish tissue values as a tool in assessing whether water quality standards are being met for bioaccumulative substances like dioxin that may be present in the water column below detection. Conceivably, every water body in Oregon could be found to be water quality limited for one or more of the compounds. They question how the Department realistically expects to use Table 21 for regulatory purposes given these limitations. NWPPA cites them as follows:

(1) DEQ has not evaluated the economic and fiscal impacts of the proposal. Analysis of costs for performing statistically valid fish sampling that accounts for variability in analysis is needed.

(2) It will be difficult for DEQ to connect fish tissue contamination with any single source and DEQ will have to incur the costs of the programs. The costs have not been presented to the appropriate legislative process and may not be incurred without express authority.

(3) Since a single fish exceeding the proposed tissue level could mean at least some portion of the waterbody is in violation of standard, DEQ would be obligated to perform wasteload allocations and TMDLs for the substance. This work and the costs need to be evaluated before adoption of the rule.

Biological Standard

(a) NWPP comments that DEQ's efforts to upgrade current OARs with a narrative biological criteria are laudable. DEQ recognizes 4 steps are needed before numeric standards could be set forth in rulemaking, including:

(1) Development of assessment protocols for biological communities,

(2) Identification and survey at unimpaired reference sites,

(3) Establishment of numeric biological criteria, and

(4) Adoption of numeric criteria.

Until these implementation phases are completed and adopted via the rule making process, a "weight of evidence" application of the current proposed rule

should be followed. The veracity of the information and not only whether there are positive or negative effects is a component of "a weight of evidence" program. If developed to accurately represent instream effects, they could be a more powerful tool to judge the quality of waters. It is premature to propose any type of regulatory action at this time.

(b) A third category for "waters of the State designation" to address waters "in transition" is needed to accommodate conflicting values applied to various designated beneficial uses and to recognize physical factors that may affect the water's ability to support a balanced aquatic community regardless of water quality. This category could be used for waters where significant impairment has already occurred and to aid in development of criteria for those waters where the regulatory policy is to restore ecological integrity to some level less than the reference site.

(c) In the biological criteria proposal's reference to outstanding resource waters, the word "all" should be deleted between and indigenous. It may be possible to identify organisms that existed but that cannot be restored to a water. Also, if restored, they could adversely alter what is now considered an outstanding value.

(d) NWPPA recommends changes to definitions for "as naturally occurs" and "ecological integrity". The existing definitions are too narrow/incomplete. They recommend:

(1) "As naturally occurs" means that the same ecological integrity should be found in similar habitats that are free of human influence", and

(2) "Ecological Integrity" means the summation of chemical, physical and biological integrity capable of supporting and maintaining a balanced, integrated, adoptive community of organisms having a species composition, diversity, and functional organization comparable to that of the natural habitat of the region.

General Comments

(a) There should be some general guidelines on the use of issue papers that all parties would follow. They should place the burden on DEQ to provide basic analyses of all the issues and a reasonable range of options that may meet DEQ needs. Specific recommendations are offered,

including what should be contained in the issue papers such as a precise description of the federal requirements, holding an informal discussion on the issues wherein DEQ would have alternatives developed that might meet the needs, finalizing the issue papers to reflect the discussions and reasonable range of options form consideration as a proposed rule.

(b) The public needs some assurances that their participation is worthwhile. DEQ should welcome the opportunity to carefully and fully explain their intentions, the range of ideas they considered and the rational for selecting the preferred option.

(c) The fiscal impact statements are inadequate. Reference is made to the Oregon Attorney General's Administrative Law Manual.

(d) Concern is expressed that DEQ may be proposing standards that are not necessary to maintain federal delegation and which are expected to impose significant and resource obligations. The EQC should take notice of whether any specific proposal is in fact a federally required component or whether it is discretionary. If it is the latter, the EQC is expected to be apprised of the resource implication for DEQ and the regulated community and of the need for more stringent programs.

(e) EPA criteria identified in the "gold book" are not always appropriate for all states or for all waters. DEQ must maintain an open mind with regard to following EPA guidance, particularly where new information has come available and where a need for more or less stringent values are demonstrated. DEQ must be flexible and open-minded towards its proposals, allow for meaningful comment and respond to comments in a reasoned manner.

NWPPA also submits comments on the proposed permits for International Paper and Georgia Pacific permits in the packet of testimony and materials dealing with whole effluent toxicity testing requirements

34. Mary A. O'Brien, Northwest Coalition for Alternatives to Pesticides (NCAP) and Northwest Action Center for Dioxin/Organochloride Elimination (NACDOE), letter date 2/28/91.

Ms. O'Brien comments on several of the proposals, as follows:

Antidegradation Policy

All aquatic ecosystems are potentially of "outstanding remarkable value" and the degree they have been degraded is the degree to which the human community has failed to restrain its activities so as to maintain the earth's resources. Language is proposed to be added to the antidegradation policy to address the following:

(a) A policy that classifies a waterbody other than "outstanding resource" requires ongoing consideration of actions that will improve the water quality,

(b) To reference that no other alternatives must exist except to lower quality and such evidence must be provided for public review,

(c) "Welfare" should be substituted with "health" when considering degradation,

(d) The word "unacceptable" should be eliminated from OAR 340-026(3)(B),

(e) A statement that prevents DEQ from allocating waste loads to one source without considering evidence as to whether there is no more "room" in the TMDL for that source. Pope and Talbot is given as an example.

Dissolved Oxygen

NCAP and NACDOE support Option 2 values for Dissolved Oxygen standards to insure protection of reproduction and health. It should be remembered that none of the criteria values consider interactions with toxins in the river and therefore, at best, they are non-conservative.

Toxic Pollutants

(a) Language is recommended for the use of fish tissue residue. Scientific studies to demonstrate the appropriateness of any alternative criteria proposal must ensure the most sensitive designated use that are or have been naturally present in a specific site will not be affected.

(b) To eliminate a sensitive species and then claim it won't matter if the criterion is exceeded because the sensitive use isn't present is not appropriate. Also, it should be made clear that DEQ shall use scientific literature in the absence of published EPA criteria.

(c) DEQ has not considered the chronic effects of fish carrying a body burden of 60 PPT even though scientific literature exists on this issue. Reference to Canadian studies is made.

Mixing Zones

(a) Language is offered to prohibit a mixing zone for persistent, bioaccumulative toxic compounds.

(b) The acute toxicity standard should only apply to nonpersistent, nonbioaccumulative toxins. An effluent that causes 10 percent mortality within a short test period is sufficiently damaging that the mixing zone concept should not apply.

(c) The concept of determining what lethality of effluent is acceptable allows the polluter to dilute to meet the standard. Oregon waterbodies should not be sewers for toxins. Extensive procedures are involved in determining how much goes into water, but there are essentially no procedures for considering alternatives to the discharge of toxins or their use in the first place.

(d) Case by case determinations of appropriate toxicity test methods is inappropriate as is determining the size of the ZID. It favors the polluter because there is often large financial incentive to get the ZID as large as possible, while there is little financial advantage of to challenge the complexities of the proposed mixing zone.

(e) Recommendations are offered to modify language concerning DEQ requiring mixing zone monitoring studies to eliminate ambiguities.

Biological Criteria

(a) Alternative wording for OAR 340-41-027 regarding resident biological communities is proposed to make sure that efforts will be ongoing to improve the quality of waters.

(b) The appropriate reference site should be without the effects of human perturbation. The phrase "significant" can be argued endlessly by industry and their perturbations aren't ever significant to them.

35. J. Kenneth Brody, Oregonians in Action, letter dated 3/1/91.

Mr. Brody comments that the proposed narrative standard for biological criteria, should not be adopted unless and until adequate factual, measurable, clear and understandable biological criteria are provided. A statement should be added that biological criteria should only be used as criteria and not as "regulatory triggers" until full and fair consideration of other available tests such as chemical analyses and bioassay testing is given.

The proposed rule contains neither narrative nor numerical criteria. It only commands that waters be maintained to protect naturally occurring resident biological communities and to support aquatic species without detrimental changes. Objective specific definitions of criteria including an adequate number and kinds of tests to be performed are necessary in the proposed rule.

Mr. Brody questions whether the public notice fully complies with the Administrative Procedures Act. He provides a summary of the principles of the Act to support his views.

Mr. Brody states that the rules must set out clear and objective standards. An applicant for a license must be able to know the standards by which the application will be judged before going to the expense in time, investment and legal fees necessary to make application. The rules, therefore, need to establish the tests by which the biological evaluation will be performed and the measures of compliance.

36. Bruce Apple, National Wildlife Federation, letters dated 3/1/91 and 3/6/91.

Comments on several standards proposals as follows:

Wetlands - Definition of State Waters

It is unclear what "under normal circumstances do support" means. Does it mean wetlands before being altered by human activity or does it mean under current, human altered conditions?

Antidegradation Policy

(a) The policy lacks a process whereby all reasonable alternatives to degrading practices are given hard look. This seriously impairs efforts to reverse, eliminate and prevent water quality degradation.

(b) The assumption in the issue paper is degradation will occur. The only remaining question is how much? DEQ needs to face the fact that incorporating thinking about alternatives into permitting/decisionmaking process requires innovation, requirements, will and public education.

(c) The party proposing to lower water quality should be required to prepare draft analysis of impacts and include all reasonable alternatives as well as economic effects criteria.

(d) The policy seems to say it's ok to lower water quality as long as there is some social/economic benefit gained. Long term costs, however aren't taken into account. Language is suggested to say that economic or social development and benefits of development must outweigh the economic and social cost of lowered water quality. The right to pollute should carry a heavy burden to demonstrate there are no reasonable alternates.

(e) A public notice regarding potential lowering of water quality should be accompanied by a comprehensive discussion of feasible alternative practices that would result in avoidance or reduction of such degradation. A discussion of BMPs does not substitute for a discussion of nonpolluting alternatives.

(f) Waters should be classified to the degree they are failing to retain quality. To say that "good waters" are work horse waters that don't have to be maintained as close to background levels as possible is irresponsible.

(g) It is poor public policy to not recognize all waters as having some outstanding remarkable value.

(h) A numerical estimate of all sources of a contaminant contributing to the problem in a water quality stream should be included in the TMDL.

Dissolved Oxygen

NWF expresses support for Option 2 because it offers higher protection for fish.

Bacteria

NWF expresses support for the proposal.

Toxics

(a) NWF supports the method of calculating toxic concentrations in Section (2) (B) because toxic substances do not only concentrate the food chain through the water but through the sediments. Proposed alternative language is offered:

(b) The most sensitive beneficial uses potentially present at a specific site" should substitute for the phrase "most sensitive designated beneficial use..."

(c) NWF objects to acute and chronic criteria for dioxin in Table 20. The values are guesses of the level of dioxin that would be harmful.

Mixing Zones

(a) NWF comments that no mixing zone should be allowed for persistent, bioaccumulative toxics. These practices would defeat the purpose of a mixing zone since they don't mix. Modified language is offered.

(b) Exceptions to the acute toxicity criteria on a case by case basis should not be allowed. If such practices are allowed, very strict criteria should be established to describe when such exceptions will be allowed. Standards should be established to determine how much acute toxicity will be allowed on such "exceptional" occasions.

(c) Acute toxicity should be defined as "... effluent that causes 10 percent mortality of organisms within a test period". A 50% mortality rate is not reasonable.

(d) NWF offers language to describe that mixing zones should not exceed 10 percent of the cross section flow of a stream; no overlap of mixing zones should be allowed; and monitoring studies and/or bioassays should be required on a regular basis to allow adequate evaluation of water quality and biological status.

Biological Standards

NWF supports the proposal on the whole but recommends that a statement be added to 340-41-027(2) that "efforts will be ongoing to improve the quality of waters" and that the words "significant" and "excessive" (as in significant loss and excessive dominance) should be deleted.

37. James Brown, Department of Forestry, letter dated 3/1/91.

Comments on several of the standards proposals as follows:

Dissolved Oxygen

(a) The DO standard should be reduced to reflect actual in-stream levels needed to support beneficial uses.

(b) The use of the 30 day and 7 day averages is applauded. It recognizes the variability of nonpoint sources. More use of the technique in the standards is encouraged.

(c) The proposed standards exceed those recommended by EPA guidance and DO standards should be no higher than EPA guidance recommends.

(d) The proposed standards need to reflect actual conditions of beneficial uses under existing dissolved oxygen levels in Oregon streams. The EPA studies DEQ relied on do not provide this since their studies showed support of beneficial uses at much lower DO levels.

(e) The proposed DO rule should state a process for investigating the condition of beneficial uses when the criteria are exceeded. A process for verifying the instream condition of fisheries rather than simply setting a standard of "no production impairment" from laboratory experiments is needed.

Biological Criteria

The Biological Criteria is not appropriate for use as a standard and should be reviewed with a technical advisory committee. ODF supports but urges caution in developing and using biological criteria. They may indicate the effects of multiple hard to measure conditions, but because they are an accumulation of complex conditions cause/effect relationships are not well understood. Consultation with the NPS technical panel is recommended before any such rule is adopted.

General Comments

All existing water quality standards should be modified to account for the complexity and variability of natural effects before being enforced on nonpoint sources.

The EQC should adopt a policy and procedures for using water quality standards as triggers for in-depth investigations rather than immediate enforcement action, This is because in nonpoint source situations beneficial uses are often supported in spite of exceedance of the existing standard.

38. Clark I. Balfour, Hibbard, Caldwell, Bowerman & Shultz for Oak Lodge Sanitary District, letter dated 3/1/91.

Comment that the District adopts and incorporates by reference all comments, studies and information submitted by AOSA with respect to the proposed rules and issue papers. They are extremely concerned about the adoption of dissolved oxygen criteria above those set forth by EPA. They note its adoption will result in minimal environmental improvement at a tremendous cost.

39. David J. Abraham, Department of Utilities, Clackamas County, letter dated 3/1/91.

Tri-City Service District and Clackamas County Service District No. 1, adopt and incorporate by reference all comments, studies and information submitted by AOSA.

Adoption of DO criteria above those set forth by EPA are not warranted, at least for the Willamette River. If they are adopted it will result in minimal improvement. This is distressing considering the cost the tax and rate payers must shoulder to achieve the standard. Preliminary estimates show the capital costs to be $13,600,000 with an annual O&M cost increase of $1,180,000.

They recommend that the better solution is to adopt EPA's criteria and adopt more stringent standards, if necessary on a site specific basis according to reasoned and balanced scientific analysis.

40. Gareth S. Ott, City of Gresham, letter date 3/1/91.

Comment on several of the proposed standards, revisions as follows:

<u>Dissolved Oxygen</u>

(a) When considering the DO issue, the DEQ should be using the latest and best scientific evidence. The decisions should be based on evidence and adjustments made as knowledge increases. DEQ's proposals are not supportable in the mainstem of the Willamette. An analysis of the Columbia River would also show similar results as AOSA's review of the Willamette.

(b) Water temperature has a major impact on instream DO. Arbitrarily setting a DO standard that may be exceeded during natural late summer warm periods does not appear to be reasonable.

(c) The higher DO standard should be imposed where studies show it will be effective in protecting the environment.

Biological Criteria

Supports AOSA's recommendation.

Antidegradation

Supports AOSA's recommendation.

Waters of the State

Supports AOSA's recommendation.

Bacteria

The City expresses support with the effort to better correlate potential human health problems with indicator organisms. They ask DEQ to refer to data from Salem which shows that E.Coli is present and possibly the proposed limits upstream of Salem's outfall indicating e.coli may not indicate recent fecal contamination.

Toxics Substances

Supports AOSAs comments.

Mixing Zones

Gresham states the proposed rule in which "acute toxicity" is measured as the lethal concentration of 100% effluent that causes 50 percent mortality of organism within the test period is confusing. It could be read to call for 100 % effluent and varying concentrations at the same time, or it could mean starting with 100% effluent and diluting it to determine the concentration that causes 50% mortality.

41. Bill Gaffi, Association of Oregon Sewerage Agencies (AOSA), letter and materials dated 3/1/91.

Comments on several of the proposals as follows:

Wetlands

Supports exemption of constructed wetlands for wastewater treatment from the definition of waters of the state, and recommends that the language be modified to clarify that wetlands constructed for stormwater treatment are also excluded.

Antidegradation Policy

Recommends that the precise federal language be maintained. Subsection (a)(A) i-iii doesn't accurately reflect either the state or federal rules it apparently intends to implement and this may lead to confusion.

Dissolved Oxygen

No sound scientific rational or justification is made to support criteria more stringent than the EPA criteria. AOSA states their documents clearly set forth:

(a) The EPA DO criteria is protective of the most sensitive aquatic organisms in the Willamette.

(b) Temperature in the Willamette during periods of the lowest DO inhibit salmonid growth. Thus, higher DO levels than the EPA criteria affords no production benefit over the current DO because the quality is limited due to natural conditions.

(c) There is no evidence that the upper Willamette River (R.M. 26.6 to 187) is used by endemic salmonids for spawning.

(d) High water temperatures during chinook salmon embryo development precludes the main stem of the Willamette from being a viable salmonid spawning habitat.

(e) ODF&W considers the Willamette as not suitable for spring chinook salmon spawning because of high water temperatures and lack of suitable holding areas.

(f) A recent TVA study verified that the EPA DO criteria of 6.5 mg/l is protective against production impairment of young salmonids.

(g) ODF&W fisheries management plan for the Willamette discourages natural spawning of fall chinook because they compete with native fish. Their primary management option is to stop releasing fall chinook smolts in the Willamette.

(i) The beneficial use of the mainstem Willamette from 26.6 to 187 should not be characterized as a salmonid spawning area.

Bacteria

(a) Effluent ammonia appears to inhibit enterococcus disinfection. These bacteria do not appear to be as susceptible to chloramines as are fecal bacteria. Thus, higher free chlorine residuals and longer contact times were needed to achieve proposed standard. Treatment plants would have to nitrify to meet the standard.

(b) AOSA states that data show that enterococci after storm events are elevated and apparently are the result of nonpoint sources.

(c) During low summertime flow periods when recreation activity is highest, the proposed instream standard appears achievable.

(d) Since test results of studies are highly variable and procedures are uncertain, this may lead to false positive results.

(e) The standards proposed may have unanticipated ramifications. Further study is needed prior to adoption.

(f) AOSA recommends a "monitor only" condition in discharge permits until a body of data has been established.

(g) If adopted as a standard in the future, it should be applied outside of the mixing zone.

(h) DEQ should consider seasonal variation in the instream standard.

Toxics

AOSAs supports use of statistical modeling methodologies as identified in EPA's Technical Support Document (TSD) for Water Based Toxics Control in developing effluent limitations. The language should be modified to specify that the 1985 TSD (or its update) be used.

Mixing Zones

(a) The present language may inadvertently prevent mixing zones for stormwater discharges. AOSA recommends that the proposed language be modified to add the words "stormwater" after the term "wastewater" throughout.

(b) When DEQ develops permit requirements for chronic toxicity, the 25 percent inhibition concentration (IC25) should be used in place of the No Observable Effects Concentration (NOEC) because of the uncertainties inherent in the NOEC determination. This is consistent with EPA's Technical Support Document for Water Quality Based Toxics Control".

Biological Criteria

AOSA supports the concept but has concerns with the definition of "appropriate reference site or region". It is not reasonable to measure all conditions against wholly undisturbed areas or to assume that biological communities from pristine areas should also be expected in waters with differing physical and chemical characteristics.

AOSA also submitted 3 documents as part of their testimony. These are:

(a) "Dissolved Oxygen Data Analysis and Modeling for the willamette River, Oregon", HydroQual, Inc., New Jersey, February 27, 1991.

(b) "The Biological Resources of the Willamette River", Clearwater BioStudies, Inc., February 1991, and

(c) "EPA Response to the National Science Advisory Board's Review of the Water Quality Criteria Document for Dissolved Oxygen, Gary A. Chapman, September 30, 1986.

SUMMARY OF ORAL TESTIMONY

Portland Hearing - 1/14/91

1. Walt Meyer, Brown and Caldwell on behalf of the City of Medford.

   Mr. Meyer read a statement into the record and also submitted it in writing. It is summarized under the Written Testimony Summary.

2. Carol Whitaker, James River Corporation.

   Ms. Whitaker provided oral and written testimony. It is presented under the Written Testimony Summary.

3. Lolita Carter, PGE.

   Dr. Carter noted she agrees with the issue paper process but it needs to be defined and feedback needs to be provided to those that provide comment at the workshops and in response to the issue papers. She also commented that the Financial Statements concerning the proposed rules are inadequate and specific costs are not included concerning the cost of DEQ implementing and the regulated community complying with the standards. Specific criteria for their preparation need to be developed and implemented.

   Some of the proposals are based on inadequate data bases using calculated data from federal programs in ways they were not intended to be use. No empirical data for Oregon waters is presented showing there is a problem or potential problem. Standards need to be physically possible. She cites the proposed dissolved oxygen standards as examples of those that are impossible to meet. The proposals should include statements concerning the DEQ's statutory authority to regulate. Attorney General's opinions are just first steps in the legal process. The DEQ should ask whether it could meet a court challenge for the proposals.

   Business will not support borrowing the databases from one program to another; programs that do not show a direct cause/effect scientific relationship between what is being regulated and what is at risk; being first among the states to regulate just for Oregon to be first without valid scientific data on Oregon to support the regulations; expenditures of large sums of money beyond the law of diminishing returns. Social, economic and environmental issues need to be balanced within the limits of available resources of time money and people.

4. Douglas Morrison, Northwest Pulp and Paper Association.

Mr. Morrison indicated that the Association would be providing written comment but would like to offer general comments.

Concerning the role of issue papers, the NWPPA supports the concept but believes that for it to succeed, general guidelines are needed for all parties to follow to ensure that participants feel their involvement is worthwhile. The burden should be on DEQ to provide a full range of options that meet DEQ's needs. He offers suggestions on presentation of needs analysis which Describes why DEQ needs the rules, public hearing with workshops to discuss the needs and to receive alternatives; presentation of reasonable range of options that meet needs, and then proceeding to rulemaking. He feels the presentation of a range of options is a critical step. DEQ should feel obligated to respond.

The Fiscal Impact statements are inadequate. Directions set forth in the Oregon Attorney General's Administrative Law Manual should be followed. More accurate analyses are needed or the DEQ will risk the entire rule overturned in court. NWPPA states they will provide economic information as part of their written testimony and they expect DEQ to fully evaluate it.

They are concerned about proposed rule amendments that are not necessary to maintain federal delegation and are expected to cause financial and resource obligations on both the regulated community and DEQ. They urged the DEQ and the EQC to take notice of those proposals as to whether they are federally required component for example Antidegradation or whether it is discretionary, such as the fish tissue proposal. They expect the EQC to be fully apprised of the resource impacts. Mandatory and discretionary elements should be declared in the rulemaking package.

States have a responsibility to evaluate the EPA criteria. They are not always appropriate for all states or for all waters. Sometimes the information is out dated. DEQ must maintain an open mind with regard to following EPA guidance, particularly where new information is available and the need for more or less stringent values are demonstrated. There is a need for independent state decision making on water quality standards. There are legal grounds to invalidate a state's action if the state fails to consider alternatives. The opportunity to comment on proposed rules must be meaningful and if actions are predetermined the action is in violation of rights to due process. The DEQ must maintain a flexible

and open minded attitude, allow for meaningful comment and respond to comments in a reasoned manner. To date, it is NWPPA view that the Department has not met this obligations regarding some of the proposals.

Eugene - 1/14/91

5. David Bayles, Oregon Rivers Council

Mr. Bayles comments on the antidegradation policy stating that he did not feel that it would survive a legal challenge. He felt that there were two miss assumptions in the staff material. The first being that the EQC has the responsibility to designate outstanding resource waters. He felt that Congress has the primary responsibility in the Wild and Scenic Act to designate outstanding resource waters instead of the EQC. The second miss assumption being that Wild and Scenic Rivers were not necessarily designated for their outstanding water quality and therefore it may not be appropriate to designate them as outstanding resource waters. Mr. Bayles felt this was a miss reading of the Wild and Scenic Act. He suggested that the rule language be changed to include an automatic recognition of Congressional action. Strongly supported the suggested biological criteria language.

6. Doug Norlen, Waldo Wilderness Council

Mr. Norlen provided comments on the proposed antidegradation policy. The entire policy seems to place the burden of proof on those who wish to keep waters clean rather than on those who wish to pollute. It places the burden on those that wish to nominate Outstanding Resource Waters to describe what constitutes a pollutant rather than on those who wish to pollute. This is inappropriate. Also it tacitly implies that some waters are not outstanding and the needs and commitment to protection of other waters is less. The National Environmental Policy Act serves as a model and instructs us to find alternatives in the very beginning to prevent pollution. Those who wish to pollute should demonstrate they have evaluated and considered all alternatives.

Support also was offered to the biological criteria proposal. Waldo Lake was given as an example where this criteria would apply. Local biological criteria should be applied.

7. Mary O Brien, Environmental Law Alliance Worldwide.

Ms. O Brien comments that the Antidegradation Policy explains how waters can be polluted and under what conditions. This reflects a position of how DEQ sees itself as a permitting

values have been used for a number of years. He asked whether the enterococcus and the fecal coliform data could be correlated?

9. Mel Winkleman, City of Medford City Council.

Mr. Winkleman comments that costs for improving water quality are prohibitive. He suggests that actions are needed today to eliminate raw sewage because the cost down the line will be too much for small communities. They support the rules and request that teeth be put into them to eliminate raw sewage. He suggests that the degree of treatment be based on impact to the stream downstream and not just on Best Available Treatment. The discharge requirements need to be met.

10. Liam Sherlock, Headwaters

Mr. Sherlock felt that the specific issues that Headwaters would like to see addressed are in regards to forest nonpoint source discharge and pertaining particularly to biological criteria that is being proposed which we feel is an extremely advanced state of affairs. They applaud this development tremendously; however, they really want to see it complied with and adhered to in such a way as the state of Ohio has been implementing it in terms of maintaining a real sense of ecosystem, stability and enhancement. They would like to see that the protection of the riparian zone including those riparian zones in Class 4 streams be protected. Its their firm belief that in order to protect the instream values and the beneficial uses associated with those values that you must use not just an instream ecosystem approach but include riparian zones as part of the aquatic environment

Biomonitoring obviously is a crucial aspect of all this. They would like to see that the standards that reflect biomonitoring baseline be those standards that could exist under optimal conditions and not just simply those conditions that are existing at the time of the biomonitoring is being begun. He pointed out the report that came out of the Pacific Northwest Research Station authored by James Sidall indicating that the 50% to 75% of the Columbia River salmon habitat has been degraded beyond repair.

Finally, he stated that he was disappointed that the new regulations are not considering at this point the implementation of toxic equivalent standards.

Bend - 1/16/91

No oral testimony received.

Pendleton - 1/17/91

No oral testimony received.

Baker - 1/17/91

No oral testimony received.

Salem - 1/22/91

11. Bill Gaffi, Association of Oregon Sewerage Agencies (AOSA)

    Mr. Gaffi read his written comments which are summarized in the written testimony section under item # 11.

12. Dan Helmick, Clackamas County

    Mr. Helmick read comments from the Tri Cities Service District which are summarized in the written testimony under item #14.

Newport - 1/22/91

13. Donald E. Rice

    Mr. Rice summarized the position of the Beaver Drainage District which is presented in the written testimony section under item

14. Kenneth H. Shaner, International Paper

    Mr. Shaner requests that specific chemical materials be identified in the proposed toxic substances rule.

    He also comments on mixing zones. Stating that International Paper was an ocean outfall and it is a different type of situation than most of the fresh water outfalls and I would request that you add some more flexibility to this definition. He felt there were a lot of unknowns about marine bioassay tests. His experience showed very little if any toxics impact.

15. Dan Dority III

    Mr Dority presented comments on the proposed action for wetlands. He later submitted comments in writing which are summarized in the written testimony section under item # 24.

16. Thomas Gravon

    Mr. Gravon is concerned about water quality in Yaquina Bay particular toxic substances. He works in an industry which

uses and discharges a wide range of chemical products which could potentially affect water quality. Concern was expressed about what he felt was unregulated discharges including the burning of waste material.

17. Gail Stater

Mr. Stater comments on the antidegradation policy and his desire to see water quality protected. He wanted to be sure that ocean discharges would also be regulated to limit the adverse impact on aquatic communities. The bioassay testing now being conducted was helpful. He hoped that the Department would continue to work on testing for potential biological impacts. The change to enterrococci was supported and it was suggested that it should be used for the marine waters as well. The propose language for mixing zones however seemed to be counter to the direction to protect aquatic life.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

A CHANCE TO COMMENT ON WATER QUALITY STANDARDS

Hearing Dates: Noted below
Comments Due: 1-25-91

WHO IS AFFECTED: All businesses, residents, industries and local governments in the state of Oregon.

WHAT IS PROPOSED: The Department proposes to amend water quality standards in Oregon Administrative Rules Chapter 340 Division 41 for definition of waters of the state, antidegradation policy, dissolved oxygen, bacteria, toxic substances, mixing zones, biological criteria, particulate matter and turbidity.

HIGHLIGHTS: The Department is conducting its triennial review of water quality standards. During this review the Department solicited comments from the public regarding rules that the public may have concerns. The public suggested several rule revisions, which the Department then used as the basis for developing issue papers. Issue papers were prepared and again reviewed by the public. The following proposed rule revisions incorporate public comments on the issue papers:

1. Waters of the State: The Department proposes to add "wetlands" to the definition of waters of the state to be more inclusive of protecting all kinds of marshes and wetlands. A specific definition is also included.

SW\WC7069 (10/26/90)

811 S.W. 6th Avenue
Portland, OR 97204

11/1/86

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

8. Particulate Matter and Turbidity: The Department proposes to change reference from Jackson Turbidity Units to Nephelometric Turbidity Units.

HOW TO COMMENT:

PUBLIC HEARING SCHEDULE

City	Location	Date	Time
Portland	DEQ, 3A 811 SW Sixth Avenue	1-14-91	9:00 am
Eugene	Public Serv. Bldg S. Basement Rm 125 E. 8th	1-14-91	7:00 pm
Medford	City Hall 411 SW 8th Counsel Chamber	1-15-91	1:00 pm
Bend	Central Oregon Community College 2600 NW College Way Boyle Center Room 154	1-16-91	1:00 pm
Pendleton	DEQ 700 SE Emigrant Suite 330	1-17-91	1:00 pm
Baker	City Hall 1665 First St.	1-17-91	7:00 pm
Salem	Pringle Hall 606 Church St., SE	1-22-~~90~~ 91	1:00 pm
Newport	Hatfield Marine Science Center 2030 S. Marine Science Dr.	1-22-~~90~~ 91	7:00 pm

A Department staff member will be appointed to preside over and conduct the hearings. Written comments should be sent to:

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

EXTENSION ON CHANCE TO COMMENT ON WATER QUALITY STANDARDS

Comments due: 3-1-91

The Oregon Department of Environmental Quality (DEQ) is extending the comment period on proposed changes to Oregon's water quality standards to March 1, 1991.

DEQ has proposed to amend water quality standards in Oregon Administrative Rules Chapter 340, Division 41 for definition of waters of the state, antidegradation policy, dissolved oxygen, bacteria, toxic substances, mixing zones, biological criteria, particulate matter and turbidity.

Eight public hearings have already been held around the state on the proposed modifications. The comment period was originally set to end on January 25, 1991. Written comments should be sent to:

DEQ
Water Quality Division
Attn: Mary Halliburton
811 SW Sixth Avenue
Portland, Oregon 97204

For copies of DEQ's issue papers or proposed rules, contact Dena Burian, 229-5886. If you have questions, contact Mary Halliburton, 229-6978 or toll free at 1-800-452-4011.

SW\WC7711 (1/23/91)

811 S.W. 6th Avenue
Portland, OR 97204

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

11/1/86

Issues	Respondents[1]	
	A. Oral	B. Written
WATERS OF THE STATE -- WETLANDS		
1. Questions about the Department's statutory authority to establish standards for wetlands and deal with wetland issues.	4	12,17,19,20,33,22
2. Concern about DEQ expanding its authority and duplicating efforts of other agencies such as the Corps of Engineers and Division of State Lands.	15	16,24
3. Concern that the proposal to incorporate wetlands into the definition of "waters of the state" will allow for "taking of private property". Wetlands are lands not public waters.	13,15	12,15,19,21,24
4. Questions and comments about what is a wetland, how such waters will be identified, classified and regulated, and recommendations on types that should be excluded and included in the definition of waters of the state.	4	17,19,20,32,33,36,41 8
5. Concern about the application of the antidegradation policy and biological criteria in conjunction with the addition of wetlands as waters to which the standards would apply.	15	24
ANTIDEGRADATION POLICY		
1. Suggestions that terms used in proposed rule, such as "antidegradation" and "short-term disturbance" need defining.		31,32
2. Concerns about the public having to bear the responsibility for nominating waters as Outstanding Resource Waters; DEQ is abdicating its responsibility.	6	7,31,32,34,36
3. Concerns that the proposal is not consistent with federal regulations which express intent that National Wild and Scenic Rivers, National Wildlife Refuge Waters and other waters with outstanding resource values be considered automatically as ORWs. DEQ's proposal doesn't recognize state or federal status given to certain waters in current policy.	5	18,20,31,23,9
4. Comments that waters that are ecologically significant do not have to be pristine to be categorized as ORWs.		31
5. Comments that all waters should be recognized as having some outstanding remarkable value and burden to justify degrading quality at all should be on polluters.	6	34,36
6. Comment that the proposal represents an unexplained shift in public policy and it is unrealistic to expect that level of protection for ORW without compensation to landowners.	4	33
7. Comments that a public notice regarding potential lowering of water quality should be accompanied by comprehensive discussion of feasible alternatives; that the proposed policy does not go far enough to protect high quality waters.	7	36
8. More economic analysis is needed for the policy.	4	33,9,11
9. Recommendation that a mechanism for implementing the antidegradation policy with respect to non-point sources be included.		7

NOTE: (1) "Respondents" refer to numerical listing of the person providing oral or written testimony as presented in Attachment.

Issues	Respondents(1)	
	A. Oral	B. Written
ANTIDEGRADATION POLICY (Continued)		
10. Comment that perhaps legislative review of public policy is needed.	4	33
11. Comments that public should be notified for all types of activities that may lead to water quality degradation.		36
12. Federal antidegradation policy requirements supports rule and encourages Waldo Lake and Clear Lake to be categorized as ORS.		4
13. Suggestions for language changes are offered.		17,41
DISSOLVED OXYGEN		
1. Concern that dissolved oxygen values proposed as standards are more stringent than EPA's "National Criteria" for Dissolved Oxygen and the difference is not justified.		2,17,25,29,38,39,41
2. Concern that the selection of dissolved oxygen values under Option 2 are inappropriate for the conditions present in the Willamette River and the Department has misapplied EPA guidance. Along the mainstem Willamette River, dissolved oxygen is greater than the EPA national criteria of 6.5 mg/l 30 day average, and adoption of the EPA criteria should be protective of the most tive aquatic organism.		2,29,38,39,41
3. Comments that EPA's "National Criteria values for Dissolved Oxygen provide for a "no effects level" of protection of the fisheries uses if correctly applied in water quality modeling and wasteload allocations.		2,38,39,41
4. Comments that temperatures in the Willamette River prevent the salmonid spawning use and thus the high Dissolved Oxygen values equating to full protection of the use are not warranted. Water quality standards for dissolved oxygen for this use are inappropriate and this designated use should be deleted for the mainstem Willamette.		2,29,38,39,41
5. Comments that the Dissolved Oxygen standards proposals are not warranted. If adopted, they will result in treatment limits being made more stringent and unjustified expenditures on the part of municipalities.	12	2,14,38,39,40,41
6. Comments that dissolved oxygen standard should be reduced to reflect actual instream levels need to support beneficial uses.		2,6,37
7. Comment supporting the expression of the standard in terms of average and minimum values.		36,37
8. Comment that it's not clear which waterbodies are designated as salmonid or non salmonid fish producing waters. It's recommended that DEQ clearly identify designations applicable to specific waters and their time periods of use.		9,17,25
9. Comment that if lakes are to be included in the rule, it is important to know that the DEQ is describing the upper meter of the waterbody. Also, DEQ should clearly state that the standard applies to the water column in running water and the epilimnion in standing waters.		17

NOTE: (1) "Respondents" refer to numerical listing of the person providing oral or written testimony as presented in Attachment.

Issues	Respondents[1]	
	A. Oral	B. Written
DISSOLVED OXYGEN (Continued)		
10. Comment supporting Option 2.		9,34
11. Comment that stream temperatures affect dissolved oxygen levels.		5,40
12. Comment that minimum treatment criteria should be reevaluated.	1	5
BACTERIA		
1. Concern that adoption of instream bacteria standards for enterococci would result in noncompliance by STPs, if enterococci values are also used as permitted effluent limits.		27
2. Concern that sewage treatment plants would have to expand, upgrade, and use more chlorine which would generate chloro-organics if enterococci standard applied as effluent limits. Also, the fiscal impacts will be greater than stated by DEQ.		27
3. Comment that enterococci bacteria should be a "monitor only" standard until more information is generated.		27
4. Comment that winter bacteria levels can't be accounted for by modest increase in sewage treatment plant effluent.		27
5. Comment that the proposal is unclear with respect to who and what it applies to, who will be regulated and what will be needed if water quality doesn't meet the standard.		17
6. Comment that standard should apply seasonally.		27
7. Comment that DEQ is not responsible for the regulation of swimming beaches. Questions about who will be responsible for posting waters that don't comply.		17
8. Support the proposal.	17	9
TOXIC POLLUTANTS		
A. Fish Tissue Values:		17,26,29,33
1. Questions about the Department's statutory authority to regulate water quality using fish tissue data and to require testing of fish flesh.	4	
2. Concerns about the scientific basis and appropriation of back calculating water column toxicity values in deriving fish tissue values.	2,4	6,17,29,33
3. Questions and concerns about how data will be used to regulate sources of pollution and ability to determine cause and effect relationships.	4	33
4. Concern about the impact on commercial fish industry if fish tissue of non commercial fish exceed values.		3

NOTE: (1) "Respondents" refer to numerical listing of the person providing oral or written testimony as presented in Attachment.

Issues	Respondents(1)	
	A. Oral	B. Written
TOXIC POLLUTANTS (Continued)		
5. Concerned about the lack of information on toxic substances.	16	
6. Concern about killing fish to conduct test.		17
7. Support and offer language to clarify that DEQ can use scientific literature on the absence of EPA criteria.		34,36
B. Dioxin:		
1. Concern that DEQ is not modifying dioxin standard based on recent scientific studies.	4	30,33
2. Concern that chronic effects of fish carrying a body burden of 60 ppt dioxin are not factored into standard.		34
C. Freshwater Acute and Chronic Toxicity Standards for Chloride and Aluminum and Marine Ammonia Acute and Chronic Toxicity Standards for Aluminum.		
1. Concerns about EPA's scientific basis and DEQ's proposal to use EPA's criteria values for aluminum toxicity.		26
2. Concerns about EPA's scientific basis for chloride toxicity values and ability of source to achieve compliance with proposed standards.		26
3. Recommendations on alternative values for aluminum toxicity standards.		26
MIXING ZONES		
1. Recommendation that EPA's Toxics Control Document (Guidance) needs to be finalized before the EQC adopts the standard.		17
2. Comments that the purpose of mixing zone is to enable compliance with the water quality standard and this was missed by DEQ.		17
3. Comments that there is no way to determine a mixing zone for a new source before it generates wastewater and as a result permit conditions will have to be modified after permit is issued creating a work load for DEQ.		17
4. Recommendations that the mixing zone not be allowed for persistent, bioaccumulative toxics.		34
5. Recommendation that expression of acute and chronic toxicity endpoints be clarified.		28,40,41
6. Comments that allowing "case-by-case" determination of testing methods is inappropriate and methods should be specified in rule.		34
7. Comments that criteria and guidance for allowing exceptions to the application of acute toxicity values at the end of pipe should be specified in rule. "Case-by-case" determinations are inappropriate and vague.		34

NOTE: (1) "Respondents" refer to numerical listing of the person providing oral or written testimony as presented in Attachment.

Issues	Respondents[1]	
	A. Oral	B. Written
MIXING ZONES (Continued)		
8. Comments indicating a misunderstanding that the size of the zone of initial dilution will be set based on size needed to achieve toxics standards that numeric standards will not apply if bioassay test results are acceptable.		28
9. Comments that, if zone of initial deletion is adopted, toxicity requirements will not have to be met.		1
10. Suggests rules needed to clarify that mixing zone will apply to stormwater discharges.		41
11. Comments that more work is needed on marine bioassays.	14	
BIOLOGICAL CRITERIA		
1. Questions and concerns about how natural variability will be distinguished from effects of pollution in determining and evaluating biological effects and compliance with criteria.	4	17,33,41
2. Questions about how reference sites will be selected and numerical criteria identified. (a) Recommend sites without human perturbations be used.		20,34
(b) Comment that it is not reasonable to measure all conditions against undisturbed areas.		17,29,41
3. Comment that "weight of evidence" approach be used in applying rules where the "veracity of the information" is evaluated and cause and effect relationship is documented.		29
4. Concern that criteria will prevent removal of nuisance beaver from property and this will result in flooding of property that owner is trying to prevent.	15	12,24
5. Recommendation that adoption be deferred until specifics describing testing methods, numeric criteria and reference site selection protocols are developed.		35,37
6. Recommendations for additional definitions and clarification of some terms.		29
7. Support the proposal.	4,5,6,7,10	9,20,33,34,23
PARTICULATE MATTER AND TURBIDITY		
1. Comments supporting proposed modification from Jackson Turbidity Units to Nephelometric Turbidity Units.		17
2. Concern that more sensitive test measure constitutes a change in the standard since a change in turbidity from background at turbidity levels below 25 NTUs are measurable.		20,28
MISCELLANEOUS		
1. Should some of the proposed standards follow from or precede water quality assessments, particularly DO?		10
NOTE: (1) "Respondents" refer to numerical listing of the person providing oral or written testimony as presented in Attachment.		

Issues	Respondents(1)	
	A. Oral	B. Written
MISCELLANEOUS (Continued)		
2. Changes in rules are needed, and DEQ should enforce its rules.	1	5
3. Concerns about the lack of dialogue and response to comments on the issue papers.	2,3,4	6,33
4. Better Fiscal and Economic analysis is needed.	3,4	17,33,10
5. DEQ should demonstrate it has statutory authority to implement the proposals.	3,4	17,33
6. All standards should be modified to account for natural effects.		37
7. Standards should be triggers for in-depth investigations rather than triggers for enforcement action.		37
8. Rules are not necessary to maintain federal delegation.	4	

NOTE: (1) "Respondents" refer to numerical listing of the person providing oral or written testimony as presented in Attachment.

(Please Print)

Name	Address	Zip Code	Specific Interest (if any)
[illegible]	[illegible] 121 [illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]	
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[illegible]	1120 [illegible] Portland	[illegible]	[illegible]
C K Yee	MS PV-11	98504	WDOE [illegible]
Clemisuny Correia	CH2M HILL 2020 SW 4th [illegible] Portland OR	97201	Comments [illegible]

Eugene Hearing - 1114

(Please Print) Name	Address	Zip Code	Specific Interest (if any)
Doug Norlen	Waldo Wilderness Council Box 337 Eugene 97440		water
RICHARD RAYMOND	PO Box 428, Corvallis, OR	97339	
Richard Miller	2911 NW Hayes Corvallis	97330	[illegible]
Ron Garton	1420 NW [illegible] Place Corvallis	97330	[illegible]
Mary O'Brien (please do not call before 8pm)	Environmental Law Alliance Worldwide; 1877 Garden Ave; Eugene	97403	Water
HARRY DENNIS	2189 ELYSIUM AV EUGENE	97401	[illegible]
Chuck [illegible]	18460 [illegible]	[illegible]	[illegible]

(Please Print) Name	Address	Zip Code	Specific Interest (if any)
Glenn C Welden	Josephine Co Water Resources Advisory Committee 731 NW Midland Ave Grants Pass OR	97526-1239	Water Quality & Water Policy
[illegible] Kennedy	3416 [illegible] Dr, Medford Oregon	97504	[illegible]
Wayne Weaver	3915 S. Pac. Hwy	97501	B.C.Y.S.A.
[illegible]	P.O. [illegible]	[illegible]	
Mel Winkelman	2957 Eldorado Dr Medford	97504	City of Medford
Ted DeVore	P.O. Box 9, Klamath Falls	97601	Weyerhaeuser Co.
[illegible]			
Laurie Lindell	3040 Biddle Rd, Medford	97504	BLM
[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	190 [illegible], Ashland	97520	[illegible]

(Please Print)

Name	Address	Zip Code	Specific Interest (if any)
[illegible]	[illegible]	[illegible]	[illegible]

Please Sign in — Bend

(Please Print)

Name	Address	Zip Code	Specific Interest (if any)
Roger [illegible]	334 NW [illegible] Pl. - Bend	[illegible]	[illegible]
[illegible]	CTC 1444 NW College [illegible]	[illegible]	
[illegible]	Deschutes County 1130 NW [illegible]	97701	
[illegible]	[illegible] Bend	[illegible]	
Tom Sloan	Deschutes County Environmental Health	97701	

Please Sign in - Per Act

(Please Print) Name	Address	Zip Code	Specific Interest (if any)

(Please Print) Name	Address	Zip Code	Specific Interest (if any)
Kay Norquist	HCR 88 Box 36 B Key 178.4	97814	
[illegible]	Rt. 1 Box 1-2 Baker	97814	
Jasper Coombes	Rt 1 Box 75-B Richland	97870	
Joe Hoffman	550 King Ave Ontario	97914	
Kit Kamo	381 N Oregon, Suite 2, Ontario	97914	
Harney County Farm Bureau (SP)	500 4th Ave, Ontario	97914	
"	"		
[illegible]	Rt 1 Box [illegible] Ironside	97833	

Sign up Sheet - Salem.

(Please Print)

Name	Address	Zip Code	Specific Interest (if any)
Marvin L. Daniels	City of Woodburn POTW 2815 Molalla Rd OREGON	97071	
Eileen Crawley	PO Box 95 Amity, OR	97101	
Don Fettig - City of Amity	P.O. Bx 126 Amity, Or.	97101	
Gary R. Brumbaugh	TWCA. PO Box 460 Albany, Oregon 97321	97321	
Dennis Shelton	CH2M HILL 2300 NW Walnut Bl. Corvallis Or	97330	
Tom [illegible]	USA 3125 SE River Rd Hillsboro		
Donna Heppell	USA 16580 SW 85 Tigard	97223	
Cliff [illegible]	Marion County Solid Waste 398 State St Suite [illegible] Salem	97301	
Bill Gaffi	155 N 1st St Hillsboro Or ~~97124~~	97124	
Dan [illegible]	~~[illegible]~~ 902 Abernethy Rd Oregon City	97045	
[illegible]	Bureau of Environmental Services 1120 SW 5th [illegible]	97204	
Dana Wightman	2020 SW 4th #400 2nd fl Portland OR 97201	97201	
Floyd Collins	555 Liberty St S.E Salem, Ore	97301	

Sign up Sheet - Newport

(Please Print)

Name	Address	Zip Code	Specific Interest (if any)
[illegible] Shaner	City Engineer Reedsport	97467	
[illegible] Hanover	HMC Newport	97365	
[illegible]	7911 4 Gill [illegible]	[illegible]	[illegible]
Dan Dority	11228 S.W. Capitol Hwy. Portland	97219	wetlands
Dan & Thea Dority	5939 Champoeg Rd. NE. St. Paul Or.	97137	wetlands
Gail Stanton	255 S.W. Coast Hwy, Newport	97365	Estuaries -
Tim [illegible] New	Portland [illegible]	[illegible]	[illegible]

RESPONSE TO TESTIMONY

RESPONSE TO TESTIMONY ON PROPOSED RULE REVISIONS TO THE ANTIDEGRADATION POLICY

A considerable amount of testimony was received on the antidegradation policy during the public comment period, both at the hearings and in writing through March 2, 1991. The major issues and comments are categorized into four broad areas as follows:

Defining Antidegradation:

1. Is it a water quality protection policy or a water quality degradation policy? Is the policy providing adequate protection from increased loads for high quality waters or is it just a process for allowing sources to receive load increases?

Outstanding Resource Waters (ORW):

2. Should the public be required to provide data for nominating outstanding resource waters? What is DEQ's role in nominating ORW's?

3. Should the proposed rule automatically designate the waters listed in the current rule such as Wild and Scenic Rivers, State Parks, National Parks, and National Wildlife Refuges. If not designated, could degradation or lack of adequate protection of their values be the result?

4. How will waters be protected that are not pristine in nature, but have special ecological or recreational values?

5. Shouldn't all waters of Oregon be protected as ORW? Shouldn't the burden to justify degrading water quality be on the polluter?

6. Will designating any ORW lead to economic hardships for communities and individual landowners? Isn't the proposal a an unexplained shift in public policy?

High Quality Waters:

7. Does the proposed antidegradation policy sufficiently protect high quality waters? Shouldn't all alternatives to degradation be examined?

8. How does the EQC evaluate important social and economic factors in considering whether to protect or lower water quality?

Implementation Plan:

9. How will antidegradation policies be applied to controlling nonpoint sources of pollution?

10. Should the Legislature be involved in developing an implementation plan?

11. How extensive should the public notice process be for activities that may degrade water quality?

12. Meeting federal requirements for an Antidegradation Policy.

13. Respondent presented language changes.

Specific comments and the Department's response are presented below:

1. Clarifying the Meaning of Antidegradation:

Several commentors questioned whether the antidegradation policy is a policy for protecting water quality of state waters, or whether it is a policy for allowing degradation of water quality. Others commented that it is unrealistic and unnecessary to protect all waters of the state as if they are high quality waters, that some waters do not meet standards (or that natural water quality does not meet standards), so protection is not needed.

Department's Response: In general, there was confusion over the protection needed for high quality waters. Some viewed the policy to be interpreted that if water quality is better than standards, then that water quality should be protected. Other viewed the amount of water quality that was better than standard, as "room for lowering water quality" down to the standard.

The Antidegradation Policy identifies three water quality protection approaches:

A. The first level of protection is for high quality waters that meet or exceed the numeric and narrative water quality standards. Protective actions are to be implemented such that water quality is maintained at its existing levels in high quality waters. Only under special circumstances, when all other options are exhausted, can water quality be lowered. The Department does not view the antidegradation policy as a means to degrade water quality down to the standards, even if a reserve capacity was maintained.

Rather, it is a systematic methodology for evaluating potential load increases to determine if they should allowed. The Department's water quality program is designed to prevent pollution and protect all high quality waters of the state at their existing levels. Only after careful and deliberate consideration where all feasible options have been considered, and the benefits of proceeding with the activity outweigh the environmental costs of lowering water quality, should water quality be allowed to be lowered.

B. The second level of protection is for waters that do not meet water quality standards. Those "water quality limited" waterbodies must comply with a non-degradation approach--they may not be degraded any further and steps must be taken to improve water quality so that it meets water quality standards.

C. The third is for high quality waters where an additional level of protection is needed, in some cases, to assure that water quality may not be altered, under any circumstances, that would affect any of the outstandingly remarkable values of those waterbodies. The Department recognizes that all waterbodies have outstandingly remarkable values that should be protected. However, this maximum level of protection assures that certain waterbodies will remain minimally affected by human influence in a natural state of ecological diversity. These waters should be designated as Outstanding Resource Waters.

In summary, the Antidegradation Policy sets the direction for water quality protection for all waters of the state.

The Antidegradation Policy for Surface Waters includes reference to the three tiers of water quality protection, i.e. (A)"The Water Quality Protection Policy for High Quality Waters", (B)"The Water Quality Protection Policy for Outstanding Resource Waters" and (C)"The Water Quality Protection Policy for Water Quality Limited Waterbodies".

2. <u>Who Nominates Outstanding Resource Waters?</u>

Several respondents expressed concern that the public may know which waters they believe should be considered for designation, but they do not have the data, nor the means to obtain the data to support a nomination application. On the other hand, they stated, if the public were to rely on the Department to conduct the work necessary for designating waterbodies, many waterbodies would not be able to be considered due to the Department's budget and resource constraints. Several respondents expressed that it was

the Department's responsibility to provide the data and support the nominations, and that the public should not bear the "burden of proof" by having to provide data on waters that need special protection over and beyond the level needed for protecting high quality waters. Often they do not have the data or the resources to obtain the information.

Department's Response: The proposed rule language for nominating outstanding resource waters proposed that the Department, the Commission or members of the public may nominate waters to be designated as Outstanding Resource Waters. If the public proposes candidates for designation, they will need to provide information to the Commission regarding the need and the type of management that would be appropriate to protect the outstanding values of those waterbodies. The Department may also nominate those waterbodies, based on information the Department has available.

The Department believes that a public nomination process is needed to provide an opportunity for those who do have information on particular waterbodies to submit that information to the Department and the Commission for consideration. In addition, the Department may nominate those waterbodies where existing information demonstrates the need for a non-degradation policy to be implemented to protect the outstanding resource values that are not currently protected under the high quality waters protection approach.

The question remaining is should the Department, as the state steward for water quality protection, take an aggressive role in identifying the waters for added protection and development of management plans, without the needed resources, at the expense of other critical programs? Should the public provide the information and the Department only review it? Or should there be a combination of the two, with schedules for identifying those waters based on a "basin of the year" evaluation, and amount of work done dependent on funding?

The Department recognizes that collection of information to support the nomination process may be difficult and proposes that a process be developed to obtain a candidate list of waters through a public participation process and/or advisory committee, and then focus the list on the most critical waterbodies that need immediate protection, and those that need more data collection to determine the level of protection needed. The Department will work with the public, as resources allow, to develop lists and designation applications for Commission consideration.

3. Automatic Designation for Certain Waterbodies

Several respondents commented that certain waterbodies, already designated under other state and federal programs and policies, and listed under the current Antidegradation Policy, should automatically be designated as Outstanding Resource Waters.

Department's Response: Under the existing Antidegradation Policy, specific waterbodies are listed to call attention to their importance as special waters of the state. Those currently listed include: National Wild and Scenic Rivers, State Parks, National Wildlife Refuges, and National Parks. The debate is whether or not these should automatically be designated as ORW based on the interpretation of the current rule, and the intent of those waters being designated as "special waters" under other state or federal programs. Because they are listed separately from high quality waters, it may be interpreted that these waters should be protected at a higher level for their special resource values, over and above a high quality waters protection program.

The current policy states that degradation of water quality cannot interfere with or become injurious to beneficial uses of water within the above named types of waterbodies. It does not specifically describe non-degradation of existing water quality.

If the current policy is interpreted as non-degradation of those specially mentioned waters, then the proposed rule might be "back-sliding" by removing them from automatic designation as outstanding resource waters. If the current policy is strictly interpreted as non-degradation of beneficial uses, then the proposed policy is consistent with that approach, and the opportunity still remains to identify and nominate any of those waters for outstanding resource waters category, as needed.

The federal antidegradation policy requires the states to establish an Outstanding Resource Water category. The federal language is "no degradation shall be allowed in high quality waters which constitute an outstanding National resource, such as (emphasis added) National and State Parks and wildlife refuges and waters of exceptional recreational and ecological significance." They give the example of outstanding resource waters, but leave it up to the state's discretion to decide which waters to include in their state ORW.

The Department believes that the high quality waters policy for protecting water quality is adequate to fully protect beneficial uses of all waters of the state including the Wild and Scenic Rivers, State Scenic Waterways etc. However, the Department also recognizes that non-degradation may be needed for certain waterbodies to assure no degradation of sensitive water quality values to protect critical habitat, other areas of special recreational or ecological value, or the pristine nature of certain waterbodies.

The Department has proposed a nomination and designation process to allow opportunities to review and evaluate candidate waters. This process takes into consideration the waterbodies' other state or federal designations to support special ORW status. The subsequent development of specific management plans would assure maximum water quality protection over and above that level that would be provided under the high quality water protection policy.

4. Can Waters Other than Pristine Waterbodies be an ORW?

Several respondents were concerned that only pristine waterbodies would be considered for ORW status and wanted assurance that waters of special ecological or recreational significance could also be nominated, even if water quality was not pristine.

Department's Response: The federal policy requires the states to consider waters that have special ecological and recreational values as candidate waters for ORW status. The Department's proposed policy includes those waters as potential candidates for ORW status.

5. Aren't All Waters Of Oregon Outstanding?

Comments were received that all of Oregon's waters are outstanding and should be protected at existing levels for generations to come and that any new growth and development should be accomplished within existing limits, and no further degradation should be allowed of any waterbodies in Oregon.

Department's Response: The Department believes that the existing policy for protecting high quality waters recognizes that outstanding character and beneficial uses must be protected. Only under certain circumstances will water quality be allowed to be lowered, when no other alternatives exist, and reserve capacity is available, and the benefits of lowering water quality outweigh the environmental costs of lowering water quality.

6. Will Designation of ORW Lead to Economic Hardships for Communities and Landowners?

Several respondents commented that designating any waters of Oregon as outstanding resource waters will lead to a moratorium on growth and development that will lead to economic hardship for communities. In addition, landowners may not be allowed to conduct any activities that may in some way affect water quality, regardless of whether there is an insignificant, but measurable, effect on that water quality. Several commentors stated that designating waters would make DEQ the ultimate authority over forest lands and other private lands to where it might be considered a "takings" issue.

Department's response: The purpose of designating an outstanding resource water is to provide more stringent protection for water quality values that may be sensitive, or to provide protection for critical aquatic life habitat in public waters of the state. If through the information gathered, there will need to be a non-degradation policy applied to certain waterbodies, a management plan will be developed that will identify what activities are acceptable and unacceptable to protect those waters.

The management plan would be reviewed by the public, the communities and landowners to determine the exact nature of the economic impacts of designation. However, if a waterbody requires special protection, there may be certain activities that will not be allowed in order to protect those special, sensitive public values.

Non-degradation does not mean non-development. A management plan will be designed to clearly identify the activities that are and are not permitted in or near an outstanding resource waterbody in order to protect the values.

7. Does the Proposed Policy Adequately Protect High Quality Waters?

Respondents commented that the proposed policy does not go far enough to protect high quality waterbodies.

Department's Response: The proposed policy provides a high level of protection for water quality in state waters, as long as it is implemented as required.

8. What Is The Extent of Analysis of Economic and Social Reasons to Lower Water Quality

Several comments were received that questioned the types of economic and social reasons that would be used to justify lowering water quality in high quality waterbodies. In addition, respondents questioned whether the environmental costs of lowering water quality in terms of impacts to the ecological integrity of the resources, would be weighed equally with the costs to the communities of not lowering water quality.

Department's Response: The current high water quality protection program requires that all alternatives to a discharge to public waters be evaluated and the costs identified since the current policy preference is for "no-discharge" alternatives. When proposals or permit applications are received for activities that may lead to measurably lowering water quality, the Department evaluates all the alternatives to lowering water quality, such as no-discharge requirements, meeting advanced secondary treatment levels, or implementing best management practices, and how much each of those alternatives costs to implement.

The Department also reviews the assimilative capacity of the waterbodies, whether a measurable change in water quality may result, and determines if the ecological integrity of the waterbody will be protected. Based on that information, and frequently on public review and comments, the Department, or the EQC then evaluates the levels of acceptable risk to the resources, and decides whether protection of existing water quality or whether lowering water quality to accommodate the additional loads is more appropriate.

9. How Will the Antidegradation Policy Be Applied for Waterbodies Affected by Nonpoint Sources of Pollution?

Comments were received that the proposed policy did not describe an implementation plan for controlling nonpoint source discharges of pollutants.

Department's Response: The proposed policy does include reference to OAR 340-41-120 through 962 which are intended to implement the proposed policy. These sections specifically refer to use of Best Management Practices to control nonpoint source discharges to waters of the state. In addition, the Department has completed a Nonpoint Source Statewide Management Plan that will be implemented through memorandums of agreement with designated state and federal management

agencies and other appropriate entities. The plan was developed with the assistance of an advisory committee and will be used as the basis for improving water quality impaired from nonpoint source pollutant discharges and for preventing problems from occurring in the future.

10. Shouldn't the Legislature Be Involved in Developing the Implementation Plan?

One respondent suggested that the State Legislature be involved in developing and adopting into law an antidegradation implementation plan.

Department's Response: Most states develop an implementation plan through guidance documents or adoption in administrative rule after extensive public involvement. Idaho has had Legislative involvement in the development of their implementation plan. This was an extensive, lengthy process. The Department believes that development of the implementation plan, particularly with the designation of outstanding resource waters would be more efficient and flexible if accomplished through administrative rule, considering that the Oregon Legislature is part-time and only meets every other year.

11. How Extensive Should the Public Notice and Participation Process Be?

Several respondents stated that an extensive public notice process should be required for any activity that could lead to some level of water quality degradation.

Department's Response: The Department has a public notice process for review of permits to be issued that would increase loads to a waterbody from point source discharges. However, there is no such process for activities that may lead to nonpoint source discharges, other than notification to interested persons on mailing lists for forest harvest activities.

The Department will evaluate the feasibility of developing such a public notice process for activities that may lead to significant water quality degradation from nonpoint source discharges.

12. Doesn't the Proposed Policy Go Beyond/Not Far Enough to meet the Federal Requirements?

Several respondents believed that the proposed policy go well beyond the intent of the federal antidegradation policy, while other felt that it did not go far enough to meet the requirements and spirit of the federal policy.

Department's Response: The current antidegradation policy does not meet the federal policy requirements. In order to comply with the federal policy the proposed policy needs to establish a category and nomination process for outstanding resource waters, and has to extend protection to all quality waters of the state. In addition, waters that are ecologically or recreationally significant need to be considered for nomination as outstanding resource waters.

The Department's proposed policy meets the federal policy requirements. Although several respondents expressed concern and dismay that the Department did not propose automatic designation for other state or federal designated waterbodies, the federal policy makes it clear that those waters should be considered but it is up to the states' discretion to decide which waterbodies should be included as outstanding resource waters.

RESPONSE TO TESTIMONY ON PROPOSED RULES TO ESTABLISH AN ENTEROCOCCI STANDARD FOR CONTACT RECREATIONAL FRESH AND MARINE WATERS

The issues and concerns expressed during the public hearing and comment period are discussed and summarized in this report. The majority of the testimony and comments dealt with the cost and difficulty of attaining the proposed standard. Following are the major comments for consideration and the Department's response.

1. Regulation and Responsibility for Implementation

Concern was expressed about whether only point sources such as sewage treatment plants would be regulated and about which agency would be implementing the proposed rules. Another question raised related to who regulates swimming on private beaches adjacent to public waters. Concern was expressed about the need for testing waters if swimming occurs in posted "no swimming" areas.

Department's Response: The enterococci criteria recommended by EPA is to be applied to body contact recreational waters. DEQ has been monitoring stream sites and sewage treatment plants for both fecal coliform and enterococci for several years (streams since 1985, sewage treatment plants since 1987) and will continue to do so. However, it is not the role of the DEQ to regulate swimming--that is the domain of county and state environmental health departments. Recreation is designated as a beneficial use for nearly all surface waters in Oregon.

2. Adoption of a year-round enterococci standard would result in immediate noncompliance by sewage treatment plants.

A study conducted of several sewage treatment plants concluded that many treatment plants could not meet the proposed enterococci standard year round under existing conditions. If the standard were to be enforced immediately, waters in violation would have to be posted and STPs would be out of compliance.

Department's Response: Clearly the Department would not adopt a new enterococci standard effective immediately that would place most STPs out of compliance and require posting of all waters near STP outfalls. A study of DEQ enterococci and fecal coliform data for 1987-1990 showed Willamette River samples during the same time period, the number of samples which violated the fecal coliform standard was greater than the number that exceeded the proposed enterococci standard

and most wastewater treatment plants that met the fecal coliform standard also met the enterococci standard. About twenty percent of wastewater samples studied violated an enterococci standard of 33/100ml when the fecal coliform standard of 200/100ml was not violated.

The Department will require STP operators to begin monitoring their effluents for enterococci in addition to fecal coliform. Appropriate effluent limits to meet the standard will be reviewed by a technical committee. Plants which cannot currently meet the proposed enterococci standard might be able to meet it outside the designated mixing zone.

3. In order to achieve the proposed enterococci standard, plants would either have to use more chlorine and dechlorinate or practice nutrient removal and filtration.

The previously mentioned study conducted by Willow Lake STP concluded that enterococci are more resistant to combined chlorine than fecal coliform. If little or no ammonia is present in the effluent, then free available chlorine predominates and lower enterococci levels are attainable with a shorter contact time. If treatment plants have to use more chlorine to achieve an enterococci standard, the potential for creation of chlorinated hydrocarbons increases. Nutrient removal and filtration, increased chlorine contact time, and increased use of chlorine/dechlorination all necessitate plant improvements and expenditures.

Department's Response: Disinfection studies conducted by EPA (Rice, 1990) demonstrate that enterococci are more resistant to combined chlorine than fecal coliforms. The difference in susceptibility between the two indicators is less apparent with free available chlorine. However, the superiority of enterococci over fecal coliform as a human health risk indicator has been clearly demonstrated by EPA studies and EPA recommends that states adopt one of the newly approved indicator standards. If increased chlorination /dechlorination or nutrient removal and filtration is necessary to achieve enterococci disinfection, these practices can be phased in when plant improvements are scheduled.

4. A summer enterococci standard would be easier to attain because flows are lower in summer and this would coincide with maximum recreational usage

Enterococci levels tend to be higher after storm events, possibly because of nonpoint sources. This makes it difficult to achieve low enterococci levels at these times. However, during peak recreational use in the summer months, surface runoff and nonpoint source contributions are diminished and it is easier to attain the proposed standard.

Department's Response: During storm events, it is difficult to maintain adequate chlorine contact time for proper disinfection and fecal coliform levels as well as enterococci levels are high. Also, combined sewer overflows and nonpoint sources contribute significantly to high ambient enterococci and fecal coliform levels. An enterococci standard for summer months only would find fewer plants out of compliance and would be an easier standard for plants to attain, but it would not protect human health during contact recreation the rest of the year.

5. Enterococci should be monitored for treatment plant effluents and not be a permit-required standard until data trends are established.

Department's Response: The Department agrees that wastewater treatment plants should begin to self-monitor for enterococci as well as for fecal coliform both to establish data trends and to determine if they can attain the proposed standard. As previously mentioned, the Department has been monitoring enterococci and fecal coliform in treatment plant effluents since 1987, and on streams since 1985. We have already established data trends. We realize, however, that it will take time for treatment plant operators to learn the methodology for enterococci testing. Therefore, the Department will allow a phasing-in approach for enterococci as already discussed. Operators at several treatment plants are already testing for enterococci and our agency staff are more than willing to assist with the methodology.

6. The enterococci standard should only be applied outside the mixing zone of treatment plant effluents.

Department's Response: The current fecal coliform standard is applied to treatment plant effluents at the end of the pipe and is so specified in plant discharge permits. Given the information supplied by the City of Salem it is apparent that some treatment plants will have difficulty in attaining the proposed standard at end of pipe. The stream data from the Willamette River previously mentioned indicate that fecal coliform violations are greater than or equal to enterococci violations, especially during the summer months. This trend may not hold true for all stream sites, but if it does, then perhaps many treatment plants could meet the proposed standard outside of their prescribed mixing zone. When plants begin testing effluents for enterococci they could also test outside the mixing zone. However, if the standard is to be applied outside the mixing zone, the mixing zones would have to be posted.

7. <u>The Department should carefully address the costs associated with the enterococci as a bacteria standards.</u>

Comments made were that the fiscal impacts of the proposed standard would be great and that the enterococci test results are quite variable thus compliance will be difficult to determine.

<u>Department's Response</u>: The Department has tried to be extremely careful in addressing the comments made by dischargers. We realize that expenditures might need to be made by treatment plants in order to comply with the proposed standard, but the idea of phasing in improvements according to mutually agreed upon compliance schedules would minimize the fiscal impacts. Laboratory methods such as the one for enterococci can produce variable results because of the way bacteria react to their environment, but technical assistance and practice in using the method can help considerably.

8. <u>Support the proposed standard.</u>

Comments were received supporting the proposed standard and stating that enterococci is a good indicator to choose when dealing with both marine and freshwater.

RESPONSE TO TESTIMONY ON PROPOSED RULE REVISIONS TO THE MIXING ZONE RULE

1. Concern that stormwater discharges may not be allowed mixing zones under present rule language.

Department Response

Stormwater discharges should be allowed mixing zones if the discharge can meet the rule requirements.

2. The present wording of acute toxicity is unclear in that 100% effluent that causes greater than 50% mortality would not be considered toxic.

Department Response

The Department will forward rule language to assure that the determination of toxicity in the mixing zone policy is clear and concise.

The Department's objective for the management of toxicity through the mixing zone policy is the prevention of acutely toxic conditions within the mixing zone and chronic toxicity at the edge of the mixing zone. Acute toxicity refers to aquatic life lethality caused by passage through the mixing zone by migrating fish moving up-stream or down-stream or by less mobile forms of aquatic life moving or drifting through the mixing zone. Chronic toxicity refers to sublethal effects which would include reduced growth, reproduction or fertilization.

Acute toxicity (lethality) is a function of the magnitude of pollutant concentrations and the duration an organism is exposed to those concentrations. A method was published in Water Quality Criteria - 1972 which can be used to estimate the tolerability of a mixing zone to a free swimming organism. This method utilizes estimates of the concentration of a pollutant at a given isopleth, the effective time of exposure, and the time an organism is in the isopleth.

Bioassay data can also be used for determining the toxicity of a discharge and used to estimate the effects on aquatic life. Prevention of acute toxicity within the mixing zone can be accomplished by requiring that there would be no toxicity at the end of pipe for the discharge. Therefore, there should be no statistical difference in toxicity between the control and the discharge. No statistical difference between the control and the

discharge equates to a 0.3 Toxic Unit (acute)(LC50) which is essentially and LC1 with 100% effluent. Should an effluent exhibit greater than 0.3 Toxic Unit (acute) and the toxicity is due to either ammonia or chlorine then a zone of initial dilution (ZID) may be designed.

Toxic Units (acute) are used to translate concentration based toxicity measurements. The number of Toxic Units (acute) in an effluent is 100 divided by the acute toxicity test endpoint. This would be Toxic Unit (acute) = 100/LC50. An effluent with an acute LC50 with 5% effluent contains 20 Toxic Units (acute). A limit of 0.3 Toxic Unit (acute) is used to adjust the typical LC50 endpoint (50% mortality) to an LC1 value (virtually no mortality). This approach should assure that the discharge does not create acutely toxic conditions within the mixing zone.

Discharges of pollutants shall not result in receiving water excursions above the acute criteria values found in Table 20 no more frequently than once every three years collected as a one hour average sample.

At the discretion of the Department discharges may result in excursions above the acute criteria for ammonia and chlorine as long as the criteria are met a short distance from the outfall during critical design flow periods or a discharge may exceed the 0.3 Toxic Unit (acute) value if the toxicity is due to ammonia or chlorine. The area is referred to as a zone of initial dilution (ZID). The ZID shall be designed according to USEPA technical support documents or guidance documents to be developed by the Department. The ZID is designed in such a way as to assure that aquatic life travelling through the ZID would not be exposed for sufficient lengths of time for acute toxicity to occur. In no case shall the discharge result in acute toxicity to aquatic life within the receiving water.

The allowance of a ZID for ammonia and chlorine is a reflection of the current application of the mixing zone policy.

~~As measured or estimated at the edge of the mixing zone boundary~~ discharges of pollutants shall not result in excursions above the chronic criteria values found in Table 20 no more frequently than once every three years collected as a four day average sample.

Chronic bioassays performed on at dilutions reflective of the dilution attained at the edge of the mixing zone boundary shall not result in chronic toxicity. Chronic toxicity is defined as a sublethal response to a toxicant. The biological response could include reduced reproduction, growth, or fertilization.

Rule language should be incorporated to reflect the policy that the discharge shall not result in acute toxicity to aquatic life within the receiving water.

3. There are concerns with the USEPA guidance document methods for establishment of zones of immediate dilution for acute toxicity.

Department Response

The Department recognizes that the USEPA technical support document is a draft. The Department will use this document as a guide in decision making for the design of the mixing zone. Along with using the document as a guide the Department will use Best Professional Judgement for the design of a ZID. The Department proposes to draft a guidance document to be used by staff for the design and establishment of mixing zones and ZID's.

4. Mixing zones should not be allowed for persistent, bioaccumulative toxic pollutants.

Department Response

As stated in the USEPA Water Quality Standards Handbook, December 1983 the state should carefully consider the appropriateness of a mixing zone where a substance discharged is bioaccumulative, persistent, carcinogenic, mutagenic, or teratogenic.

The USEPA guidance document does not recommend that mixing zones be prohibited for bioaccumulative pollutants. The rationale is that the criteria are developed from laboratory studies and real world conditions may alter the fate. The document does recommend that site specific factors be carefully considered and modeled prior to establishment of a mixing zone for bioaccumulative pollutants.

Based on this approach, until the Department has evaluated a discharge that contains bioaccumulative, persistent, carcinogenic, mutagenic, or teratogenic substances a mixing zone should not be allowed for these substances and criteria shall be met at the end of pipe.

5. Acute toxicity should be defined as effluent that causes 10% mortality of test organisms in a test period not 50%.

The Department believes that the approach outlined in the response to question #2 adequately addresses acute toxicity within the mixing zone and that the use of the LC50 test data will be protective of in-stream aquatic life.

6. Maximum mixing zone widths should be defined and should not exceed 10% of the stream width. Another recommendation is that a continuous zone of passage be added to the rule language.

Department Response

The maximum 10% stream width allowed for a mixing zone would not be feasible for many discharges to small streams. The limitation of a mixing zone's width is to allow the free passage of aquatic life. This can be accomplished by either limiting the percentage of stream used as a mixing zone or the quality of the mixing zone is such as not to block passage of aquatic life through either avoidance or toxicity.

Language should be incorporated into the rules stating mixing zones shall not block the free passage of aquatic life.

7. Monitoring and bioassays should be required on a regular basis.

Department Response

The Department has a program in place for mixing zone evaluations and bioassay evaluations. The frequency and magnitude of the assessment is dependent on the size of the discharge and the receiving water.

8. Case-by-case basis should be removed from the rule language.

Department Response

There are a variety of discharge and waterbody types found within the state. Each should be evaluated individually with the use of guidance documents such as the USEPA technical support document or the Department's proposed guidance document.

9. The USEPA TSD should be finalized prior to use.

The technical support document is of a quality to be used in the draft stage.

RESPONSE TO TESTIMONY ON PROPOSED RULE REVISIONS TO THE TOXIC SUBSTANCES

The proposed rule revisions for toxic substances contained several separate rule changes. Each proposed change will be discussed in a separate section.

Fish Tissue Guideline Table

There were several concerns for the use of a fish tissue guideline table forwarded by the public to the Department during the public hearing process. The concerns were as follows:

1. Fish tissue guideline values should not be developed from the re-arrangement of the equations used for deriving the water quality criteria.

2. The development of fish tissue guideline values are premature for assessing water quality criteria excursions because the relationship between water quality concentration and fish tissue concentration have not been adequately quantified for natural waters. The physical and chemical nature of natural waters and the movement of fish make the use of fish tissue for assessing water quality difficult.

3. How, where, and when the guidelines are applied have not been identified by the Department.

4. The Department lacks the statutory authority for the use of fish tissue guideline values. In addition there are other agencies responsible for protecting human health from the consumption of fish.

5. The Department has not established that there is a need for fish tissue guideline values.

6. Methods do not exist for analyzing many of the parameters listed in the fish tissue guideline table. In addition many of the values listed, which analytical techniques are available, are below the levels of detection.

7. The fish tissue guidelines would result in most of Oregon's waters to be listed as water quality limited, increasing the Department's work load.

Department's Response

It was decided that the Department will postpone action on this item and advance the discussion of this concept to a technical advisory panel.

Water Quality Criteria for 2,3,7,8-TCDD

There were several concerns for the water quality standard for 2,3,7,8-TCDD forwarded by the public to the Department during the public hearing process. The concerns were as follows:

1. The water quality criteria should be less stringent for the following reasons.

   * The cancer potency factor used by the USEPA in the development of the criteria is inappropriate in light of recent information.

   * Changes in the bioconcentration factor and fish consumption rate would not offset the change in the cancer potency factor, resulting in a less stringent criteria

   * The risk level of one in a million should be changed to one in one-hundred thousand.

Department's Response

The Department has evaluated the factors used to derive the water quality criteria for 2,3,7,8-TCDD. The information reviewed indicates that new information to change the cancer potency factor would make the criteria less stringent. New information to change the bioconcentration factor and fish consumption rate would make the criteria more stringent. Information also exists which indicates that 2,3,7,8 substituted dioxins and furans should be regulated on the basis of toxic equivalency units.

The cancer potency used in the development of the criteria was 156,000 mg/kg/day. The literature reviewed during the issue paper development process and information recently released indicates that the cancer potency factor should be reduced one to three orders of magnitude. This would change the water quality criteria from 0.013 pg/l to 13.0063 pg/l.

The bioconcentration factor used in the development of the criteria was 5000. Bioconcentration factors reported in the literature ranged from 5000 to 159,000. A bioconcentration factor of 159,000 would change the water quality criteria from 0.013 pg/l to 0/0004 pg/l.

The fish consumption rate used in the criteria was 6.5 grams/day. The consumption of 6.5 grams of fish per day represents an estimate of average consumption of fish and shellfish from estuarine and freshwaters by the U.S. population. The consumption of 180 grams of fish per day represent a reasonable worst case of the consumption of fish at rate equal to the combined consumption of red meat, poultry, fish, and shellfish by the U.S. population.

The NWPPA study estimated a fish consumption rate for anglers and native americans along the Columbia River of 13.4 grams/day and 16.4 grams/day, respectively. The NWPPA were probably low estimates (see OSHD and OSU comments). A fish consumption rate of 180 grams/day would change the water quality criteria from 0.013 pg/l to 0.0005 pg/l.

To summarize, the information reviewed indicated a one to three order of magnitude decrease in the cancer potency factor, a one to two order increase in the bioconcentration factor, and a one to two order increase in the fish consumption rate were appropriate. The cancer potency factor is not a site specific factor while the bioconcentration factor and fish consumption rate are site specific.

The Department decided not to change the 2,3,7,8-TCDD water quality standard for the protection of human health during the triennial water quality standard review process. Although 2,3,7,8-TCDD data has been collected by various state and federal agencies as well as an association representing the pulp and paper industry, in the Department's opinion quantitative information necessary for changing the site specific factors did not exist at the time of the standard review. The literature reviewed indicated that when considering the potential changes to the cancer potency factor, bioconcentration factor, and fish ingestion rate, the water quality criteria of 0.013 pg/l was appropriate. The Department, in cooperation with other state and federal agencies, is in the process of collecting data that could be used for site specific refinement of the criteria.

Until more definitive information on the cancer potency factor, bioconcentration factor, and fish consumption rate have been published the Department recommends no change in the criteria.

Water quality standards have had a risk level of 1×10^{-6} (one chance in a million) risk level adopted for the protection of human health from carcinogens. The one chance in a million risk level was a policy decision which was adopted by the Environmental Quality Commission. The Department does not recommend a change in the risk level at this time.

2. The water quality criteria should be more stringent for the following reasons.

   * The criteria does not address the other dioxin and furan congeners that are toxic.

   * The criteria does not address existing human body burdens.

   * The criteria does not address human reproductive effects.

   * The criteria does not address wildlife effects.

* The bioconcentration factor and fish consumption rate used in the criteria are low and should be increased to reflect current understanding of these factors.

Department's Response

The Department has evaluated the factors used to derive the water quality criteria for 2,3,7,8-TCDD. There is insufficient information at this time to adopt water quality standards for the 2,3,7,8 substituted dioxins and furans on either an individual basis or on the toxic equivalency unit approach. Additional information required for criteria development would include bioconcentration factors and whole animal assays for specific congeners.

The Department is reviewing human body burden data and evaluating how this information should be used in the development of criteria.

A review of the toxicological data indicates that the carcinogenic response occurs at lower doses than reproductive responses. Based on the information reviewed criteria developed on reproductive effects would lead to a less stringent standard than the present criteria.

Based on the information reviewed the criteria developed for the protection of carcinogenic response in humans is the most sensitive beneficial use and could be protective of wildlife species. The USEPA in cooperation with the U.S. Fish & Wildlife Service are developing criteria for the protection of wildlife species from dioxin exposure. The Department will continue the review of data on the responses and adverse effects levels to wildlife and aquatic life.

The information reviewed indicates that new information to change the cancer potency factor would make the criteria less stringent. New information to change the bioconcentration factor and fish consumption rate would make the criteria more stringent. Until more definitive information on these issues are developed the Department recommends no change in the criteria.

3. The proposal for adoption of an aquatic life water quality standard is premature as the rationale and the standard lacks scientific merit.

   * The standard is based on one study.

   * The standard derivation does not follow the USEPA guidelines for standard development.

   * The standard is more stringent than present USEPA criteria.

* The proposed aquatic life water quality standard should be 3.8 ppq for acute exposures and 1 ppq for chronic exposures.

Department's Response

Several studies have been performed investigating the toxicity of 2,3,7,8-TCDD to aquatic life. Fish exposed to 2,3,7,8-TCDD appear to be the most sensitive organisms studied to date. A No Observable Effect Level has yet to be established for fish exposed to 2,3,7,8-TCDD. A 56 day bioconcentration test resulted in 45% mortality for fish exposed to 38 pg/l (parts per quadrillion). This study established a Lowest Observed Effect Level for fish at 38 pg/l. Chronic toxicity values can be estimated from the LOEL.

The Office of Water recommends that an estimation factor of 1000 be used because values of that magnitude have been used for certain chemicals when chronic toxicity values were unavailable. The Office of Toxic Substances also uses a factor of 1000 to predict the chronic toxicity of a substance from a single LC50 value under TSCA. The 1000 value comes from three factors of 10 which are: 1) a range of differences in species sensitivity; 2) an acute to chronic toxicity; 3) the difference in field to laboratory effects. The Department used a factor of 10 for estimating the acute value and a factor of 100 for the chronic value. 10 was used for the range of species differences and 100 was used for species differences and the acute to chronic toxicity.

The USEPA has not published criteria for the protection of aquatic life from exposure to 2,3,7,8-TCDD. The USEPA had published the LOEL known at the time of adoption of Table 20 into the Oregon Administrative Rules. The use of a LOEL without a safety factor or converting factor would not be protective of aquatic life. The use of LOELs for standards development should include an appropriate safety or conversion factor. However, the Department does not have an established method or guidance on converting LOEL data to criteria for use as standards. Until the Department has established this procedure it would be premature to establish a criteria from a LOEL for 2,3,7,8-TCDD.

The Department recommends the adoption into Table 20 the new LOEL value for 2,3,7,8-TCDD of 38 pg/l and footnoted as other LOEL values in Table 20.

4. The proposed aquatic life standard is not protective of aquatic life as a NOEC has not been established. The standard could potentially result in tissue residues greater than 1 ppt. An acute criteria of 0.000006 pg/l and chronic criteria of 0.000006 pg/l was recommended.

Department's Response

The 1 part per trillion 2,3,7,8-TCDD concentration level in some salmonid fish species has been associated with the biological response of enzymatic induction of ethoxyresorufin-o-deethylase (EROD). This has been identified as one of the most sensitive indicators of 2,3,7,8-TCDD exposure in certain fish species. A biological response does not necessarily equate to a toxicological response. There is not sufficient toxicological data to determine that an increase in enzymatic induction results in deleterious effects to an individual fish.

5. Epidemiological studies should be used for assessing the cancer potency.

Department's Response

The criteria used by the USEPA for the use of data for the establishment of a cancer potency factor are:

1) Definitive data on human carcinogenicity.

2) In the absence of definitive data on human carcinogenicity, information on carcinogenic potency is based on long-term animal studies which takes precedence over any other data.

When the USEPA published the water quality criteria fro 2,3,7,8-TCDD definitive data on human carcinogenicity was not available. The Department determined that the epidemiological studies examined were not definitive and therefore did not warrant a change from the use of long-term animal studies.

<u>Adoption of USEPA Water Quality Criteria for Chloride and Aluminum</u>

1. The USEPA aquatic life criteria values are too stringent based on a review of the available published literature. The criteria values should be as follows.

Aluminum	Acute: 1500 ug/l	Chronic: 748 ug/l
Chloride	Acute: 1720 mg/l	Chronic: 440 mg/l

Department's Response

The freshwater Final Acute Value for aluminum at a pH between 6.5 and 9.0 was calculated to be 1,496 ug/l using the procedure described in the Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses (Stephan et al., 1985) and the Genus Mean Acute Value in Table 3 of the Ambient Water Quality Criteria for Aluminum - 1988 (EPA, 1988). The Genus Mean Acute Value results in a concentration intended to protect 95% of a group of diverse genera. The Genus Mean Acute Value for aluminum was calculated to

be 1,496 ug/l. According to the Guidelines a concentration that would severely harm 50% of the fifth percentile or 50% of a sensitive species cannot be considered to be protective of that percentile or that species. Dividing the Final Acute Value by two is intended to result in a concentration that would not severely affect too many of the species within that fifth percentile.

Dividing the Final Acute Value of 1,496 ug/l by two results in a Criterion Maximum Concentration (acute criteria) of approximately 750 ug/l.

According to the Guidelines, when the Species Mean Chronic Value of a commercially or recreationally important species is lower than the calculated Final Chronic Value, then the Species Mean Chronic Value should be used as the Final Chronic Value instead of the calculated Final Chronic Value. The calculated Finale Chronic Value was 748 ug/l. The chronic values for brook trout and striped bass were determined to be 88 ug/l and 87 ug/l, respectively. Based on the brook trout and striped bass chronic values the Criterion Continuous Concentration (chronic criteria) was determined to be 87 ug/l.

According to the Guidelines, for calculating the chloride Criterion Maximum Concentration the Final Acute Value of 1,720 mg/l should be divided by two. This results in a chloride Criterion Maximum Concentration (acute criteria) of 860 mg/l.

According to the Guidelines, the Final Chronic Value can be calculated by dividing the Final Acute Value by the Final Acute Chronic Ratio. The geometric mean of the three Acute Chronic Ratios available for chloride was 7.594. The Final Acute Value of 1,720 mg/l was divided by the Acute Chronic Ratio of 7.594 to yield a Final Chronic Value of 226.5 mg/l. This value was rounded up to 230 mg/l for establishment of the Criterion Continuous Concentration (chronic criteria).

2. Chloride toxicity is more a function of metal content and should be regulated on the basis of the metal concentration and not the chloride concentration.

Department's Response

The chlorides of potassium, calcium, and magnesium are generally more acutely toxic to aquatic organisms than sodium chloride. However, only sodium chloride had enough data available for deriving the chloride criteria. The criteria document states that most anthropogenic chloride in ambient water should be associated with sodium rather than potassium, calcium, or magnesium. The criteria could be under protective for discharges of chloride associated with potassium, calcium, or magnesium. Although chloride toxicity to aquatic life is influenced by the metal association, the control of chloride entering the aquatic system is useful for the protection of beneficial uses.

3. There is not a single analytical method appropriate for measuring all the toxic aluminum species.

Department's Response

As stated in the criteria document, because of the variety of forms of aluminum in ambient water and the lack of definitive information about their toxicities to freshwater species, no analytical measurement is known to be ideal for expressing aquatic life criteria for aluminum. However, the criteria document recommends the use of acid soluble analysis. A discussion on the merits of acid soluble analysis and the relation to criteria, ambient water, effluent discharge, and toxicological significance is provided in the criteria document. The measurement is compatible with nearly all the available data concerning toxicity of aluminum to aquatic life reviewed for the criteria document. The acid soluble method will not measure several forms of aluminum, such as aluminum occluded in minerals, clays, and sand or is strongly sorbed to particulate matter. These forms are usually not toxic and are not likely to become toxic under natural conditions. Because of toxicological and practical advantages afforded by the acid soluble method the Department concurs with the USEPA criteria document that this method be employed in the measurement of aluminum concentrations for comparison to in-stream water quality criteria. The total recoverable analytical method may be used as a surrogate method in place of the acid soluble method. However, the total recoverable analytical method involves a digestion procedure and would probably result in more aluminum being measured than if analyzed with the acid soluble method. This would result in the criteria being overprotective.

4. The aluminum analytical method and types of aluminum reported in the literature used for criteria development differed from the acid soluble analytical method and is not reflective of the toxicity associated with acid soluble aluminum recommended in the criteria document. This difference results in an overprotective criteria.

Department Response

the aluminum criteria has been developed according to USEPA methods for developing water quality criteria. The criteria document states that there is no available analytical measurement known to be ideal for expressing aluminum aquatic life criteria. Acid soluble analysis is recommended in the criteria document and as stated in the criteria document there are toxicological and practical advantages for the use of this method.

The Department will go forward with the criteria values for aluminum and chloride as proposed.

Other comments made on the proposed toxic substance rule

1. Rule language should be clarified for referencing technical support documents and water quality criteria documents.

Department Response

The Department is proposing to develop guidance documents for the interpretation and application of the narrative toxics standard.

2. Rule language adopted stating that the waters will also be kept free of materials that have a reasonable potential to cause or contribute to an excursion above any water quality standard.

Department Response

The Department believes that the present narrative standard adequately addresses the discharge of chemicals that have a reasonable potential to cause or contribute to an excursion above a water quality standard by the statement "... in amounts, concentrations, or combinations which may be harmful, may chemically change to harmful forms in the environment ...".

3. The Department should do a better job of risk communication to the public.

Department Response

Risk communication is an area that requires further development within many agencies including the Department.

4. Rule language added that addresses the protection of species that are or may have been within an area being considered for site specific standards.

Department Response

The Department is responsible for the protection of beneficial uses of a waterbody. Beneficial use protection extends to those present and those that could be present. A logical extension of this approach is to extend water quality protection to species that are present, have been historically present and are now absent due to changes in water quality, and that could be present.

5. Language requiring the Department to use published scientific literature for the establishment of criteria when no published USEPA criteria are available.

Department Response

The Department is in the process of drafting a document to translate the narrative toxics standard to allow the use of published scientific literature for chemicals that do not have published USEPA criteria.

6. Bioassays may not be an appropriate use of fisheries.

Department Response

The USEPA recommends the use of three species from three different phyla when using bioassays for assessing effluent toxicity. The recommended phyla are fish, invertebrate, and an algae. Methods have been developed for the use of fathead minnows in bioassay tests. These minnows and organisms used in testing are typically cultured and therefore do not represent a threat for diminishing natural stocks of fish through removal of individual organisms from waterbodies.

RESPONSE TO TESTIMONY TO ADD A NARRATIVE WATER QUALITY STANDARD FOR BIOLOGICAL CRITERIA

A considerable amount of testimony was received on the proposed narrative biological criteria. A number of respondents expressed support for the concept of biological criteria. Some of those who supported the proposal commented that natural variation must be taken into account and asked questions about how reference sites will be selected to establish numeric biologic criteria. Concern was expressed that physical factors also can affect the water's ability to support a balanced aquatic community regardless of water quality and it may be unrealistic to expect sites to have the biological communities of unperturbed sites.

Others questioned how cause and effect relationships will be determined and offered different suggestions on how the proposed narrative standard should be implemented and enforced until numeric criteria are developed. Others suggested the rule not be adopted until information on reference site selection protocols and numeric criteria are available for public review.

Some questioned the Department's ability to implement the standard and some asked whether citizens will be able to help monitor conditions. Others offered suggested language changes. Responses to specific comments are presented below:

1. Natural variability and references sites

There were a number of comments about natural variability and selection of reference sites for implementing the narrative biological standard and developing numerical criteria. One respondent noted that counting numbers of organisms above and below an outfall may be dependent upon substrate as well as affects of discharges. Seasons also affect population dynamics and species present.

Some expressed concerns with the definition of "appropriate reference site or region" noting that it is not reasonable to measure all conditions against wholly undisturbed areas or to assume that biological communities from pristine areas should also be expected in waters with differing physical and chemical characteristics.

Others commented that there is no recognition of physical factors that may affect the water's ability to support a balanced aquatic community regardless of water quality. A third category of "waters of the State designation" should be proposed for waters where significant impairment has already occurred. Regulatory policy for these waters would be to restore ecological integrity to some level less than the reference site, which may be precluded by irreversible

conditions, yet better than the current conditions, thus fulfilling the goals of the Clean Water Act to maintain and enhance water quality.

Department's Response: The use of reference sites to establish baseline or attainable conditions is proposed to avoid the problems stated above. The reference sites selected will need to have similar habitat (substrate, cover, gradient, etc.) conditions as the sites being assessed. The habitat conditions will be determined through a habitat assessment procedure. This will be described in the Implementation Plan. Reference sites will also be sampled at the same time study sites are assessed to avoid seasonal discrepancies.

For point source evaluations the "appropriate reference site" will usually be a location immediately upstream of the discharge with similar physical habitat characteristics as sites below the discharge. Therefore, the biological effects due to a discharge will not be based on conditions from a totally different stream or stream section. Also, because sites with similar physical and chemical characteristics will be selected above and below an outfall, natural variability in biological communities due to physical/chemical factors will be minimized.

Biological assessments detect impairments due to both physical (stream habitat) and chemical (water quality) problems. It is therefore, necessary that bioassessments include assessments of physical and chemical conditions at reference sites and study sites (see Implementation Plan). When a biological impairment is identified the factors responsible for the impairment, either physical and/or chemical, will then be determined. If irreversible habitat changes are identified as the limiting factor for the biological community, point source discharges would not be held responsible.

2. Cause and effect relationships

Caution was urged in developing and using biological criteria. Testimony suggested that cause and effect relationships are not well understood because the multiple accumulation of complex conditions are hard to measure.

Department's Response: It is because the multiple accumulation of complex conditions are hard to measure that biological criteria are needed. Biological communities integrate the complex factors and provide a sensitive picture of the health of a stream or other aquatic system that physical and chemical measurements by themselves often miss. As stated above, when biological impairment is identified the factors responsible for the impairment must then be

determined. In some cases this will be difficult and require long term assessment; in other cases specific limiting factors can be identified and corrected.

3. Use and Enforcement of the Standard

How this new standard will be used and enforced was questioned by a number of respondents. Some expressed that the narrative biological criteria would have no regulatory effect until numeric standards are set forth in rule making. Others felt the "weight of evidence" approach should be followed, which means enforcement action should not be based on biological data without substantiating chemical and toxicity results. If developed to accurately represent instream effects, biological criteria could be a more powerful tool to judge the quality of waters. The veracity of the information in establishing cause and effect relationships and not only whether there are positive or negative effects is a component of "a weight of evidence" approach.

Still others recommended the rule not be adopted unless and until adequate factual, measurable, clear and understandable biological criteria are provided. It was suggested that a statement be added that biological criteria should only be used as criteria and not as regulatory triggers until full and fair consideration of other available tests such as chemical analyses and bioassay testing.

Others commented that a violation of the biological criteria should be sufficient for the State to take action, meaning that the corroborating chemical and toxicity testing data should not be required as supporting evidence in the criteria statement. They recommended that the rule include the riparian zone and class IV intermittent streams within the definition of aquatic environment.

Lastly concern was expressed that the new standard would prevent private landowners from maintaining irrigation ditches or limit vector control measures for mosquitoes or other aquatic pests, especially if the wetland definition was adopted as rule.

Department's Response: There are three phases identified by EPA for the development and implementation of numeric biological criteria as listed in the Issue Paper. The first phase is development and adoption of narrative biological criteria as a state standards. Thus, adoption of the proposed narrative biological standard is in accordance with the implementation strategy outlined by EPA.

As outlined in EPA's Biological Criteria Guidance document adoption of narrative biological criteria is the first phase towards the development and adoption of numeric biological criteria. DEQ is also mandated by EPA and the Clean Water Act to develop and adopt narrative biological criteria by 1993. The proposed rule is consistent with these requirements. The methods for assessing the biological condition of streams are described in the implementation plan.

The "weight of evidence" approach is not considered appropriate since measurements of resident biota are capable of detecting water quality problems that may not be detected by chemical or toxicity testing. Biological assessments are also done in conjunction with physical habitat and chemical measurements. This information would be used in evaluating the cause of a biological impairment. The Department agrees that violation of the biological criteria should be sufficient for the State to take action. The rule does not exclude class IV intermittent streams from its definition of aquatic environment.

The biological community in an irrigation ditch will not be compared to the community in a free flowing stream since a stream site would not be considered an "appropriate reference site" for an irrigation ditch. Therefore, the rule should not affect the ability of landowners to keep irrigation ditches clear of beaver dams or nutria. Vector control measures should also be unaffected by this rule unless they impact components of the biological community besides the pest organism. Pest control programs often present environmental hazards. Biological criteria should provide a more sensitive assessment of the environmental impacts associated with pest control measures.

4. <u>Ability of the Department to Implement the Standard and Role of Citizens</u>

Some questioned how the proposed criteria address problems of anadromous fish habitat degradation in a real world post Measure 5 Oregon? Will it allow for more economical and efficient regulatory implementation, enforcement and monitoring?

Some also questioned how the EQC will establish identifiable monitoring or threshold parameters that allow concerned citizens to identify violations and enforce the new regulations through the citizen suit provisions?

Department's Response: The biomonitoring procedures outlined in the implementation plan includes a habitat assessment method. When biological impairment is determined to be the result of habitat degradation, habitat improvement activities would be recommended. This approach is considered to be the most efficient and effective tool available to assess, protect, and improve stream conditions.

The implementation plan describes the procedures for conducting biomonitoring assessments. At this time the plan does not include specific monitoring procedures for volunteer or citizen groups. EPA Region 10 has developed a citizen stream assessment procedure that is available to interested groups. Using these procedures would help DEQ identify areas of concern, but more intensive sampling would be required to identify specific violations.

5. Recommended changes in wording

Several respondents suggested wording changes in the rule language. These suggestions reflected concern about the interpretation and implementation of the rule as currently worded. A summary of these comments and responses is listed below.

a. It was suggested that a statement be added to 340-41-027 (2) that "efforts will be ongoing to improve the quality of waters" and the words "significant" and "excessive" as in significant loss and excessive dominance be deleted.

It was also suggested that the appropriate reference site should be without the effects of human perturbation. The phrase "significant" can be argued endlessly by industry and their perturbations aren't ever significant to them.

Department's Response: Adding "efforts will be ongoing to improve the quality of waters" to 340-41-027 needs to consistent with the definition of "other waters of the State" as proposed in the Antidegradation policy. The goal of this rule is to maintain water quality at levels that prevent impairment to beneficial uses. Areas which show impairment when compared to appropriate reference sites will be identified and corrective measures recommended whether it be physical habitat improvement or water chemistry.

The words "significant" and "excessive" have been deleted from 340-41-006 (44).

b. For outstanding resource waters the word "all" should be deleted between and indigenous. It may be possible to identify organisms that existed that cannot not be restored to a water, or if restored by adversely alter what is no considered to be of outstanding value.

Department's Response: The word "all" has been deleted from 340-41-027.

c. Changes are proposed to definitions for "as naturally occurs" and "ecological integrity". The existing definitions are too narrow/incomplete.

Department's Response: The definition for "As naturally occurs" has been changed to: A comparable aquatic community should be found in similar habitats that are free of human influences.

The definition for "ecological integrity" has been changed to: The summation of chemical, physical and biological integrity capable of supporting and maintaining a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of the natural habitat of the region.

6. Other general comments

A variety of other comments were received. They are summarized below with their corresponding responses.

a. The proposed criteria may conflict with the regulations which limit chlorophyll a since algae are the primary food producers and algae will limit and be limited by other species of plants and animals present.

Department's Response: The chlorophyll a limit is set to prevent excessive algal production due to high nutrient loading. Since the biological criteria will be based on reference sites with little human influence high chlorophyll a values due excessive nutrient loading should not occur at these sites.

b. Skilled biologists who could determine the biological criteria are not readily available and the proposed criteria may be limited by this scarcity.

Department's Response: The availability of skilled biologists is generally a function of the demand. In other areas of the country where such standards have been adopted biologists have been trained to make appropriate biological assessments. While this is an area that may need attention, it is not felt to be a reason to delay adoption of the rules.

c. How will the EQC reconcile the discrepancy between this progressive proposed rule and the Antidegradation policy which allows for new or increased discharge loads that do not unacceptably threaten or impair uses?

Department's Response: This rule will help determine if increased discharge loads unacceptably threaten or impair uses, and therefore, is an important part of implementing the antidegradation policy.

d. The biological criteria are clearly directed toward continuous point source discharges and are marginally applicable to the discharge of dredge material. In specifying a disposal site, the biotic communities at and near the site should be taken into account. Sites should be specified to minimize or avoid physical impacts and off of the site dispersive activity. Technically the physical impacts may violate the criteria until recolonization of the dredge material occurs.

Adopting a set of definitions does not establish any biological criteria.

Department's Response: The biological criteria are not directed toward continuous point source discharges. Nonpoint source pollution problems will be more effectively monitored and controlled through biomonitoring than can be attained by traditional chemical monitoring. The impacts of dredge material is not limited to benthic organisms. Fish can and will also be evaluated as part of bioassessment monitoring procedures when needed (see Implementation Plan).

The definitions proposed as part of this rule are necessary to establish the intent and meaning of the rule.

RESPONSE TO TESTIMONY ON PROPOSED RULES TO REVISE STANDARDS FOR TURBIDITY

Very little public comment was received on the Department's proposal to change the wording for the turbidity standard. Comments supported the change to nephelometric turbidity units but cautioned that such a revision in the standard would result in a more stringent standard. Comments presented to the Department and staff responses are listed below:

1. Support of Proposal

EPA defines turbidity with NTUs and prescribes methods to measure turbidity (40 CFR 136.3), therefore, the proposal to change the standard from JTUs to NTUs is supported.

Department's Response: Staff agree.

2. The Proposal is for Adoption of a More Stringent Standard

Concerns were expressed that because the nephelometer is more sensitive, 10 percent changes in turbidity will be more readily detected and more standards violations will be reportable.

The turbidity standard should recognize there is a level below which 10 percent increases in turbidity will have no significance and should not cause violations. Because the Jackson candle turbidimeter measures accurately to a lower limit of about 25 JTUs and a nephelometer measures accurately to less than 1 NTU, the proposed rule should be amended to establish a maximum of 20 NTU as the level above which increases greater than 10 percent would be a standard violation.

Department's Response: Revision of the turbidity standard reflects a past change in laboratory procedure and is appropriate in keeping with EPA and American Public Health Association (APHA) Standard Methods. The Department has used nephelometers to measure turbidity for quite some time because it provides a more reliable, objective method that offers greater accuracy and precision than the Jackson candle turbidimeter. The rule change is necessary to accurately reflect this analytical methodology and is a change in reporting units only.

Staff agree that nephelometry offers greater sensitivity at low turbidity levels than the earlier Jackson candle turbidimeter measurements. Nephelometry allows changes in turbidity to be detected at levels far lower than those likely to directly affect fish and other aquatic fauna.

However, other beneficial uses such as aesthetics and aquatic plants can be adversely affected by any reduction in water clarity or the photosynthetic compensation point.

The proposal to identify 20 NTU as a threshold level has some merit. It would provide water quality sufficient to meet the requirements of fish and other aquatic animals. However, it would allow unacceptable degradation for most waterbodies in the state which have average turbidities of less than 10 NTU, and summer levels of 3 NTU or less. Such a large reduction in clarity would dramatically reduce photosynthetic oxygen production and alter the structure of the aquatic community.

3. Committee Review of Standard

A committee should review the proposed rule before adoption.

Department's Response: Staff do not believe it is necessary to assemble a committee to review the proposed rule change. The proposal reflects existing laboratory procedures and maintains existing levels of beneficial use protection. The existing rule and the proposed rule limit increases in turbidity to 10 percent of background and are based on National Academy of Science recommendations and EPA criteria that limit reductions in the photosynthetic compensation point to 10 percent.

However, staff do agree that it may be helpful for a committee to assist the Department in a review of the applicability and implementation of the turbidity standard in point source and nonpoint source situations. It is recommended that the EQC adopt the proposed rule change and that the Department assemble a technical committee to assist staff with the implementation of the standard.

RESPONSE TO TESTIMONY ON THE PROPOSED RULE REVISIONS TO MODIFY THE DEFINITION OF WATERS OF THE STATE TO INCLUDE WETLANDS

Following is a discussion of principal issues that emerged during Public Hearings held during January 1991 and in public comments provided on proposed wetlands rule amendments. This discussion covers all testimony and comments received through March 2, 1991, and includes Department responses to issues raised.

Much of the testimony offered on the Department's proposal to add wetlands to the definition of Waters of the State verbalized the perception that adoption of this proposal expands the range in types of waters regulated by the Department. Commentors further suggested that this regulatory authority would restrict current or potential uses of their property. A few commentors believe DEQ's authority duplicates that of other agencies and is actually more inclusive.

Some questions were raised concerning what constituted a wetland, and one commentor suggested more work was needed before seeking authority to expand the definition. Two commentors questioned whether the definition of waters of the state could be modified as proposed without statutory revision. Finally, a few commentors suggested constructed wetlands for stormwater treatment (as well as wastewater treatment) or all constructed wetlands should be excluded from the definition. These issues and the Department's responses are presented in more detail below.

1. <u>DEQ cannot alter "waters of the state" definition by rule change until statute is changed by Legislature</u>

Two commentors believed the Department could not change the definition of waters of the state unless the statute in ORS 468.700(8) is changed by the legislature. Their argument was that a rule cannot change a statute.

<u>Department's Response:</u> The Department and the Environmental Quality Commission (EQC) have the responsibility for interpreting state water pollution statutes in ORS 468.700 and implementing them through adoption of Administrative Rules. The Department, through the EQC, may therefore promulgate rule amendments or revisions which provide clarifying interpretation of existing statutes. The current definition of "waters of the state" at ORS 468.700(8) (which was adopted verbatim in OAR 340-41-006(14)) includes the term "marshes" to identify one type of waterbody included in the definition.

Since the original definition was written, wetlands have received much scientific and regulatory attention and the terminology associated with wetlands has been correspondingly expanded and refined. Marshes are now classified as a single type of wetland, rather than being more inclusive as was previously the usage of the term. The Department believes the original intent of the

"waters of the state" definition was more inclusive and meant to cover more than a single type of what are known as wetlands. The term "marshes" in the current definition has been interpreted by the Department for many years to represent all forms of what are now technically and legally termed wetlands in the state.

Also, while the term "marshes" refers to only a certain type of wetland, the state, and specifically DEQ, is responsible for water quality regulation in all types of wetlands considered "waters of the U.S." under the federal Clean Water Act (33 CFR 328.3 and 40 CFR 232.2(q)). Since other types of wetlands besides marshes occur in Oregon, it is appropriate to update the waters of the state definition to reflect the indicated evolution in terminology and usage. This will also bring the state definition into line with the federal interpretation and definition of wetlands (33 CFR 328.3 and 40 CFR 232.2 (q)), and also the wetlands definition recently adopted by the state in Senate Bill 3.

All wetlands are actually included under the current definition of "waters of the state" as "...all other bodies of surface and underground waters..." (OAR 340-41-006(14)). Because the original intent of the term "marshes" has been interpreted by the Department to be to provide regulation of all water bodies that now are known as wetlands, and given the above, DEQ has been regulating <u>all</u> jurisdictional wetlands in Oregon as waters of the state.

With receipt of guidance from the State Attorney General's Office, the Department believes a statutory change is not required to update and clarify interpretation of the definition at OAR 340-41-006(14). A statutory change is not required because: (1) the administrative and statutory definitions of "waters of the state" already include "...and all other bodies of surface and ground waters..."; this phrase is interpreted to include jurisdictional wetlands; and (2) adding wetlands to the definition would merely clarify current regulatory interpretation and policy, and would not result in an alteration of regulatory coverage or practice.

2. <u>Adding wetlands to waters of the state definition would expand DEQ authority and affect private property uses</u>

Organizations representing property owners in Oregon counties bordering the lower Columbia River (where over 60,000 acres of lowlands along the river were historically drained under federal programs) expressed concern that adding wetlands to the definition would expand DEQ authority to cover waters not previously regulated. They feared this perceived expansion in regulation would affect current or potential future uses of their property. These organizations and others also believed DEQ's authority duplicates that of DSL or would be in conflict with it.

Department's Response: It is understandable that the proposal to replace the word "marshes" with "wetlands" in the definition of waters of the state could be perceived by some as an expansion in types of waters regulated. As iterated in response to (1) above, adding wetlands to the definition and further defining the term wetlands actually represents merely a clarification of current regulatory interpretation and policy. Therefore, the proposed revision in definitions would not confer new or expanded authority to the Department, nor would it directly result in regulation of types of wetlands or water bodies not previously regulated. Additionally, revision of the definition as proposed would not result in new or expanded restrictions in land or water use on private lands by the DEQ.

Although the Department does not believe the suggested rule revisions would result in conflicts with regulatory actions or policies of DSL, it should be pointed out that minor differences now exist in "waters of the state" definitions in Administrative Rules promulgated by the two agencies. Current definitions of "waters of the state" are inconsistent in that DSL explicitly excludes some types of waterbodies from regulation. Current DSL Administrative Rules at OAR 141-85-010(12) state: "...Natural waterways do not include waste treatment lagoons, created drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds or other ponds excavated from upland, unless they have established aquatic life and habitats and there is a free and open connection to waters of the state.". Proposed revisions to the DSL rules would drop the "established aquatic life" and "free and open connection" qualifiers from the definition. These rules are not consistent with the statutory definition of "waters of the state" at ORS 468.700, nor with the federal definition at 33 CFR 328.3 and 40 CFR 232.2. Such inconsistencies can be confusing in that two different definitions of "waters of the state" exist in Oregon law, one of them inconsistent with the federal definition. The Department will seek guidance from the EQC concerning this matter.

3. Definition of "Wetlands" not Clear or Definitive Enough

Some comments indicated the definition of "wetlands" was nebulous and that uncertainty existed as to what would actually constitute a wetland under the definition proposed.

Department's Response: The proposed definition of "wetlands" is the same as the current federal and state definitions. Most commentors support this definition. This definition indicates the general attributes that characterize all types of wetlands. The array of wetland types is extensive, and the actual analytical procedures used to identify and delimit the boundaries of any potential wetland area are complex. It is therefore not practical and may not be possible to develop a definition for "wetlands" appropriately concise for use in regulations.

State and federal wetlands regulatory policy states that identification and delineation of wetlands is to be accomplished using detailed procedures and criteria presented in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands". This manual is available from the Army Corps of Engineers and is universally used by regulatory agencies for these purposes.

4. More work is needed on DEQ's wetlands program before seeking authority to expand the wetlands definition

Two commentors expressed concern that if wetlands are added to the definition of waters of the state that DEQ would apply water quality standards for "open waters" to wetlands. Commentors point out that "marshes" and "wetlands" often have water quality different from "open water" areas. One commentor suggest DEQ should not alter the definition for waters of the state until a complete water quality program including water quality standards for wetlands is ready for adoption.

Department's Response: It is correct that some types of wetlands have water quality characteristics that differ markedly from what normally occurs in other surface water bodies. However, it is just as correct that lakes often have water quality characteristics that differ markedly from flowing surface waters. The differences between wetlands and lakes is no more striking than differences between some lakes and flowing surface waters. The Department, like nearly all other states, has been regulating wetlands as waters of the state under current water quality criteria designed primarily for flowing surface waters. As is universally done by water quality regulators, professional judgement and rules of reason are applied to infrequent situations that may fall outside of established norms. Some existing water quality criteria and antidegradation policies will not directly apply to wetlands; but the same is also true for other waters of the state. It is not possible to write specific regulations that cover all possible situations that may occur. Some small percentage of situations will always require application of reason and professional judgement.

The Department, in cooperation with other Oregon state agencies and with funding provided by an EPA grant, is in the process of evaluating the concept of wetlands value classes as a basis for establishing designated uses and water quality standards for wetlands. The overall objective of the EPA grant is development of water quality standards for the state's wetlands as required by the EPA before the end of fiscal 1993. These standards may be narrative, numerical, or a combination of both. It will likely be up to two years before this undertaking is complete. Even upon completion, it is believed that wetlands water quality standards will not be specific enough to uniquely cover all wetlands situations. As previously stated, this is the case with standards for other surface waters. Some level of professional judgement and use of reason and logic will continue to be necessary for

application of water quality standards and other related regulations in this and all other states.

As was indicated in response (A) above, the Department has proposed adding wetlands to the waters of the state definition primarily to update and clarify wetlands regulatory coverage relative to other federal and state laws and guidelines. The Department has been for some time applying current regulations to wetlands using professional judgement and rule of reason. Adding wetlands to the definition merely clarifies what has been occurring and updates what the Department believes was the original intent of the law. This interpretation and the wetlands regulation related to it has been consistent with federal Clean Water Act guidance from the EPA and with other state wetlands regulations and policies. The Department believes it is appropriate to update and clarify the waters of the state definition at this time to minimize confusion and to clear the way for development of designated uses and water quality standards for the state's wetlands. Because this clarification in definition will not result in regulatory or policy changes, there is no compelling reason not to do so.

5. Constructed wetlands should be excluded from the state definition of waters of the state

A few commentors suggest that all constructed wetlands or at least those created for stormwater treatment (in addition to those created for wastewater treatment as proposed) should be excluded from the definition of waters of the state.

Department's Response: The Department agrees that wetlands and other waterbodies created for stormwater treatment, as well as those created for wastewater treatment, should be excluded from the waters of the state definition. The Department therefore included this in the alternative definition language presented in IX below.

The Department does not believe all constructed wetlands should be excluded from the definition. Such an action would exclude wetlands created as mitigation to offset other wetland losses due to permitted or illegal development actions. It would also exclude from regulation wetlands and other water bodies created for reasons such as recreation, fish and wildlife habitat, public water supplies, and water quality enhancement. These types of wetlands and water bodies would be "waters of the U.S." under federal definition, and should be regulated and protected in the public interest as "waters of the state".

ALTERNATIVE RULE LANGUAGE BASED ON TESTIMONY AND FURTHER STUDY

The Department initially proposed to revise the waters of the state definition by replacing the word "marshes" with the word "wetlands". Following initial public comments, it was believed best to retain "marshes" and add "wetlands" ("...marshes, wetlands,...).

Following review of all testimony and public comment, and after consultation with the Attorney General's Office, the Department now believes it would be more appropriate to add language to the current definition at OAR 340-41-006(8). This would clarify the Department's interpretation of existing statutes regarding inclusion of wetlands within the definition of "waters of the state". The following language would be appended to the current definition of "waters of the state":

> "Other bodies of surface and underground waters include, but are not limited to, wetlands (except constructed wetlands and other water bodies used as wastewater and stormwater treatment facilities)."

The Department also believes it would be appropriate to add the following definition of "wetlands" to OAR 340-41-006:

> "Wetlands" means those areas that are inundated or saturated by surface or ground waters at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
>
> Jurisdictional identification of wetlands and delineation of wetlands boundaries shall be based upon criteria specified in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", as used for said purposes by the U.S. Army Corps of Engineers, or other alternative criteria identified and used by the Division of State Lands for delineation of jurisdictional wetlands."

The first paragraph of the proposed definition is the same as the federal regulatory definition and the one adopted by the state in Senate Bill 3. The second paragraph clarifies how jurisdictional wetlands would be identified and delineated.

RESPONSE TO TESTIMONY ON THE PROPOSED STANDARDS FOR DISSOLVED OXYGEN

A considerable amount of testimony was received on the proposed standards for dissolved oxygen. The testimony can be grouped into four broad categories with respondents questioning and commenting on the following:

1. **What justification and rationale does the Department have in proposing dissolved oxygen concentration values higher than EPA's "national criteria?**

2. **Doesn't DEQ recognize that EPA's "national criteria" values for Dissolved Oxygen provide for a "no effect level of protection if correctly applied in water quality modeling and wasteload allocations?**

3. **Why is the Department proposing dissolved oxygen values for protect the seasonal salmonid spawning use in the mainstem Willamette River above river mile 26.6?**

4. **Why are the values being proposed when any improvement in water quality would not improve the beneficial uses and the minor improvement that might occur would be at a great cost?**

Other comments were offered about the desirability of expressing the dissolved oxygen standards as average and minimum values to better reflect how concentrations naturally fluctuate. Suggestions were offered on how the proposal could be improved to clearly state that the standards apply to the water column in flowing water and to the epilimnion in standing water. It was also suggested that the current beneficial use tables do not clearly identify which waters are designated for coldwater fisheries and which ones are designated only for warmwater fisheries.

Specific comments and the Department's response are presented below:

1. <u>Dissolved oxygen values proposed as standards are more stringent than EPA's "National Criteria" for Dissolved Oxygen, for which there is no scientific basis and the difference is not justified.</u>

   Several respondents questioned the appropriateness and the basis for the Department to propose numeric values other than the EPA "National Criteria" values for dissolved oxygen. Some consider the EPA "national criteria" values to be the same as EPA standards which the state should adopt automatically.

Some respondents stated that although they understand EPA recognizes situations can warrant numeric values different than EPA's criteria values, those conditions are not present in the Willamette River, at least. They believe the Department has misapplied EPA's criteria document recommendations in proposing the higher values.

One respondent representing a large group of municipalities hired consultants to analyze the issues and present information about why they don't believe the Department has a scientific reason for establishing higher values than EPA's criteria values for dissolved oxygen. They evaluated and presented the Department's ambient water quality data on the Willamette River and data on existing point source discharge loads. They stated that with proper application of the EPA criteria via water quality modeling and wasteload allocations the EPA national criteria are adequately protective of the beneficial fisheries uses. More stringent values are not needed, at least in the Willamette River, because it achieves or exceeds the EPA "national criteria" most if not all of the time.

Department Response: The Department carefully evaluated EPA's criteria document and the scientific literature. EPA's "national criteria" were seriously considered in the review process. They were not proposed as standards for several reasons, however. These reasons are discussed below.

First, in the Forward to EPA's criteria document, as well as referenced in other guidance, EPA iterates that criteria present scientific assessments but they are not standards. Although criteria can be adopted as water quality standards by states to have regulatory effect, EPA advises that states may want to evaluate the need for adjustments to the criteria in establishment of state standards to account for specific situations.

Secondly, whereas criteria reflect the scientific knowledge and incorporate assumptions about the applicability of test conditions to the natural environment, establishment of standards are "policy decisions". Standards reflect the science, yet may (and often do) incorporate other considerations too.

These considerations can include the following:

A. What is the value of the designated use (its significance) and what level of protection of the use desired;

B. For dissolved oxygen and other water constituents which exhibit natural variability, what level of risk for greater use impairment is acceptable,

C. What level of uncertainty associated with the scientific data is acceptable; is there a need to provide more or less of a safety factor in light of both what is known or unknown,

D. What is known or unknown about the beneficial uses and their life cycle periods in specific water bodies in Oregon; and

E. What is the state's overall approach to water quality protection and pollution control program implementation (preventive or abatement oriented)?

Contrary to perceptions indicated by the testimony, the Department carefully considered the information presented in EPA's criteria document for dissolved oxygen relative to the factors identified above. The following were taken into account in applying EPA recommendations to the "national criteria":

A. <u>What Level of use protection should be provided?</u>

It has been the policy of the Environmental Quality Commission to assure water quality that provide for full protection of the recognized beneficial uses. Several policies call for water quality not to be lowered to levels that would threaten or impair any recognized (designated) beneficial uses. Water quality standards traditionally have specified water quality conditions that assure no impairment of the use except under defined conditions such as with standards for acute and chronic toxicity.[1]

The EPA criteria document summarizes a substantial amount of information from scientific studies on the effects of low dissolved oxygen on aquatic life. The studies include evaluations of the physiological, acute lethal, growth, early life stages, behavioral, and swimming effects of dissolved oxygen levels on salmonids. The studies on nonsalmonids included these as well as the effects on reproduction of warmwater fish.

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[1] Here the values are implemented in accordance with EPA guidance so that the four-day average concentration does not exceed the acute toxicity value more than one every three years on the average, and so that the one-hour average concentration does not exceed the chronic toxicity value more than one every three years on the average.

Besides a presentation of "national" criteria values, the EPA criteria document presents dissolved oxygen values related to fish growth impairment. Their professional judgements of the scientific data were applied values as "qualitative effect levels". EPA presents their qualitative protection/risk assessment for a range of dissolved oxygen concentrations using qualitative descriptions similar to those presented by past researchers. They analyzed various dissolved oxygen requirements and selected a range of values which describe qualitative degrees of fishery protection.

EPA presents four qualitative effect levels of oxygen, including:

1. No production impairment representing nearly maximal protection of fishery resources,

2. Slight production impairment representing a high level of protection of important fishery resources, risking only slight impairment of production in most cases. EPA equates slight impairment to dissolved oxygen values at which approximately 10 % growth impairment occurs in the studies

3. Moderate production impairment protecting the persistence of existing fish populations but causing considerable loss of production. EPA equates moderate impairment to dissolved oxygen values at which approximately 20 % growth impairment occurs in the studies,

4. Severe production impairment for low level protection of fisheries of some value but whose protection in comparison with other water uses cannot be a major objective of pollution control. EPA equates severe impairment to dissolved oxygen values at which 40 % growth impairment occurs in the studies.

EPA notes that growth impairment of 50 percent or greater is often accompanied by mortality and conditions allowing a combination of severe growth impairment and mortality are considered "no" protection. The chart also includes dissolved oxygen values to "avoid acute mortality".

EPA states that the selection of values to represent qualitative effects levels required some degree of judgement based upon examination of growth and survival data, generalizations of response curve shapes, and assumptions regarding the applicability of laboratory responses to natural populations. They state that production impairment levels for early life stages are quite subjective and should be viewed as convenient divisions of the range between the acute mortality limit and the no production impairment concentration of dissolved oxygen.

They note that all of the scientific data on effects of low dissolved oxygen on aquatic organisms relate to "continuous" exposures for relatively short durations (hours to weeks). The test exposure concentration served as both a minimum concentration and a mean concentration. In other words, the studies were conducted under conditions which lasted from hours to weeks where the fish were exposed to a single concentration during the test. EPA states that the "qualitative effects level" may adequately represent mean concentrations as well.

The Department took two sets of dissolved oxygen standards to hearing, Option 1 and Option 2. Both options proposed EPA's "no impairment" levels as the standard to represent the mean (average) dissolved oxygen concentration (the 7-day mean for early life stages and the 30-day mean for later life stages). It is true these values are higher than EPA's "national criteria" (Table 8, Water quality criteria for ambient dissolved oxygen concentration, presented in a 1986 criteria document Ambient Aquatic Life Water Quality Criteria for Dissolved Oxygen. The "national criteria" specify dissolved oxygen concentrations as the means which are 0.5 mg/l higher than the "slight" production impairment value.

In contrast, the dissolved oxygen mean values at the "no production impairment level" of the qualitative effects chart for each of the uses coincides with the level of use protection reflected in current water quality policies.

The Department acknowledges that infrequent exceptions to these 30 day average conditions to allow water quality to drop below these values may be needed. This is because of the combination of natural dissolved

oxygen variability, pollution assimilation and worst case stream flow and temperature conditions. The prevailing water quality conditions, however, have to be at or above the "no production impairment for full protection of the uses to be assured.

If lower dissolved oxygen values are acceptable for the exceptional case and these are cited as the standards, it is essential that specifications of the frequency and duration for the exception are included. In the absence of either specified frequencies and durations or fixed wasteloads based on validated modeling results to assure the "worst case" conditions will not occur at more frequent intervals and for longer durations, the standard should reflect the prevailing conditions that are necessary assure full protection of the uses.

B. <u>What Level of Risk of Greater Impairment is Acceptable?</u>

EPA states that the "national criteria" for dissolved oxygen reflect threshold values below which detrimental effects are expected but they are not assured "no effect" levels.

EPA's guidance discusses diurnal variation and the fact that average dissolved oxygen conditions can be very independent of the daily extremes both the lows and the highs. EPA recommends dissolved oxygen minimum be established to provide a reasonable assurance that regularly repeated or prolonged exposure for days or weeks at the allowable minimum will avoid significant physiological stress of sensitive organisms.

Biological effects of low dissolved oxygen concentrations depend upon means, minim, the duration and frequency of the minima and the period of averaging. Effects appear to be independent of the maxima in that including supersaturated dissolved oxygen values in the average may produce mean dissolved oxygen concentrations that are misleadingly high and unrepresentative of the true biological stress of the dissolved oxygen minima.

Standards which establish minima values recognizes that some diurnal variation around the mean occurs naturally, but that the extent to which the diurnal low are artificial induced as a result of pollution needs to be set to prevent: 1) dissolved oxygen levels dropping into unacceptable effect levels, or 2) conditions where the standard set for minimum occurs for extended periods or recurs at frequent intervals.

EPA recommends a daily (instantaneous) minimum be established. The instantaneous minima of the "national criteria" makes sure that no acute mortality of sensitive species occurs as a result of lack of oxygen. EPA notes that repeated exposure to concentrations at or near the acute lethal threshold will be stressful. Stress can indirectly produce mortality or other adverse effects such as through disease. They describe that their "national" criteria are designed to prevent significant episodes of continuous or regularly recurring exposures to dissolved oxygen at or near the lethal threshold by setting the daily minimum for early life stages at the subacute lethality threshold, by the use of a 7 day averaging and by stipulating a 7 day mean minimum value for other life stages and by recommending additional limits for manipulatable discharges.

EPA notes that the significance of deviations below the means depend on whether they occur continuously or in cycles, the former being more adverse than the latter. They also note that current knowledge about deviations is limited to laboratory growth experiments and by extrapolation to other activity related phenomena.

As discussed further below, EPA makes assumptions about how the criteria will be applied to reflect levels of dissolved oxygen levels that are acceptable for the worst case stream flow, stream temperature and pollutant loading condition. They assume with this application conditions will be better than the criteria nearly all the time at most sites. They further state that "In situations where criteria conditions are just maintained for considerable periods, the criteria represent some risk of production impairment. This impairment would probably slight but would depend on innumerable other factors." (emphasis added) EPA recommends that if slight production impairment is unacceptable or a small but undefinable risk of moderate production impairment is unacceptable, then continuous exposure conditions should use the "no production impairment" values as means and the slight production impairment values as minima.

In addition to considering it appropriate to prevent slight production impairment in the Department's proposal for mean dissolved oxygen values at the "no production impairment level", DEQ considers it to be appropriate to minimize the potential risk of moderate production impairment. This is reflected by the standards proposals for minimum values above EPA's

national criteria. Instead of minimum values for the early life stage at the "moderate impairment level" as reflected by EPA's "national criteria", the proposed instantaneous minimum dissolved oxygen values under both Option 1 and 2 are at the "slight" impairment level. Thus if these minimums were to occur continuously for a period of hours to weeks or to recur regularly the impairment would be slight rather than moderate.

Similarly, instead of minimum values for the later life stages at the subacute lethality value as reflected in the EPA "national criteria" the Department proposed instantaneous minimum values under Option 1 at the "moderate impairment level" and the minimum value under Option 2 at the "slight impairment level. Option 1 reflects a risk for greater impairment level than does Option 2, the potential is for less impairment than under EPA's "national criteria".

If the Option 1 and 2 minimum dissolved oxygen levels were to occur continuously for a period of hours or weeks, or recur regularly, impairment level would be limited to "moderate" under option 1 and to "slight" under option 2.

C. <u>What is the science of the effects of low dissolved oxygen on aquatic life and what uncertainties are associated with information?</u>

The following provides a brief overview of dissolved oxygen research results and some uncertainties associated with the effects of low dissolved oxygen on aquatic life.

1. EPA states that the primary determinant for development of the criteria is the lab data on growth with development rate and survival included in embryo and larval production levels. For the purpose of deriving criteria, growth in the laboratory and production in nature were considered equally sensitive to low dissolved oxygen.

2. EPA also reviews the scientific literature and discusses how the criteria are based on data developed in the laboratory under conditions which are usually artificial in several important respects. EPA notes that fish production in natural communities may be significantly more or less sensitive than fish growth in the laboratory, which represents a simplified facet of production.

3. EPA iterates that naturally occurring dissolved oxygen levels may occasionally fall below target criteria levels due to a combination of low flow, high temperature and natural oxygen demand. Also these naturally occurring conditions represent normal situation in which the productivity of fish or other aquatic organisms are at the maximum possible under ideal circumstances. However they do represent the maximum productivity under the particular set of natural conditions. Under these circumstances the numerical criteria should be considered unattainable.

   Naturally occurring conditions which fail to meet the criteria should not be considered violations. They note that although further reductions in dissolved oxygen may be inadvisable, the effects of any reduction should be compared to natural ambient conditions and not to the ideal.

   They note that situations during which attainment of appropriate criteria is most critical include periods when attainment of high fish growth is a priority, when temperatures approach upper lethal levels, when pollutants are present in near toxic quantities or when other significant stresses are present.

4. The science does not include information or studies describing the effects of low dissolved oxygen on reproduction, fertility or fecundity of salmonids according to EPA.

5. In considering the effects of daily or longer-term cyclic exposures to low DO concentrations, EPA suggests that the minimum values may be more important than the mean level, especially since the **daily minimum** was a determinant of growth rates in the salmonid growth rate studies.

   If the majority of the annual growth occurs during the period in question (ie. when DO minimums coincide with warmer temperatures, then the effects of being at the minimum could be significant. Any dissolved oxygen criteria should include absolute minima to prevent mortality due to the direct effects of low DO, but the minima alone may not be sufficient protection of the long term persistence of sensitive populations.

Thus, the minimum should also provide reasonable assurance that repeated or prolonged exposure for days or weeks at the minimum will avoid significant physiological stress of sensitive organisms.

6. The effects of low dissolved oxygen combined with chemical stresses show toxicity of various chemicals to increase at lower DO concentrations. Toxicity of zinc, lead, copper and monohydric phenols was increased at DO concentration as high as 6.2 as compared to 9.1 mg/l. The toxic effect was greater at DO levels down to 3.8 mg/l. The toxicity of ammonia is also enhanced by low DO more than that of other toxicants.

   Some researchers believe that increases in toxicity are due to increased ventilation at low DO. As a consequence of increased ventilation, more water, and thus more toxicant passes the fish's gills. Survival of rainbow trout at lethal ammonia concentrations increased over a range of DO levels between 1.5 to 8.5 mg/l. Researchers acknowledge, however, that toxics must be controlled so that their concentrations would not be harmful at prescribed, acceptable DO concentrations and DO levels should be independent of existing or highest permitted concentrations of toxic wastes.

7. Stress is a predisposing factor in fish disease according to a least one researcher. Disease problems seldom occur unless environmental quality and the host defense systems of the fish deteriorate. This researcher states that to optimize fish health, DO concentration should be 6.9 mg/l or higher because fish pathogens are continuously present in most waters. Another researcher states that outbreaks of diseases are probably more likely if the occurrence of stress coincides with the presence of pathogenic microorganisms.

8. Data on the effect of exposure to fluctuating dissolved oxygen concentrations is sketchy. Current ability to predict effects of exposure to a constant dissolved oxygen level is only fair; the effects of regular daily cycles can only be poorly estimated; and predicting the effects of more stochastic patterns of dissolved oxygen fluctuations requires an ability to integrate constant and cycling effects. The question of what are acceptable and unacceptable minima during dissolved oxygen cycles of varying periodicity is not well documented.

9. EPA also describes that the applicability of the growth data from the laboratory tests depends on the available food and required activity (swimming, defending territory, etc) of fish in natural situations. These factors are variable depending on the duration of exposure growth rate, species habitat, season and size of fish. Though the laboratory results represent the best estimates of the effects of dissolved oxygen concentrations on the potential growth of salmonids. They also note that the attainment of critical size is vital to the smolting of anadromous salmonids and may be important for all salmonids if size related transitions to feeding on larder or more diverse food organisms is an advantage.

10. The literature notes that the effects of low dissolved oxygen become more severe at higher temperatures. At higher temperatures often associated with low dissolved oxygen concentrations, the growth rate reductions would have been greater if the generalizations of the chinook salmon data are applicable to salmonids in general.

After carefully evaluating the criteria document and many of the scientific studies which the EPA's document cites, it is clear that the science is not complete. Given the uncertainties, as well as ones described below, it seems appropriate to cite that mean dissolved values which relate to judgements about "no effect" levels and minimums that relate to "slight impairment levels as the desired prevailing water quality condition. They not only provide better assurance that the uses will be fully protected, they also explicitly relate to quality and use protection policy expectations.

D. <u>What is known and not known about beneficial uses in specific waterbodies?</u>

Standards proposals are based on current designated uses. The designated uses for waterbodies by river basin appear in Table 1-19 of the Oregon Administrative Rules (OAR) Chapter 340, Division 41.

All waterbodies or stream segments designated for salmonid fish spawning would have the same numeric value apply during the period of use the standard applies except as would be allowed by another proposed standard which addresses conditions where natural conditions prevent the achievement of the numeric standard.

All waterbodies and segments designated for salmonid fish passage, or passage and rearing would have the same numeric values to protect the later life stage uses.

The coldwater later life stage values would apply yearround if the waterbody is designated salmonid fish producing but not "salmonid spawning" as well.

Under conditions of naturally variability (in flow and stream temperature as two examples) that prevent achievement of the standard (where the dissolved oxygen concentration is less than 110 percent of the numeric standard) the applicable standard was proposed to be 90 percent of the natural ambient concentration. This would limit further reduction in dissolved oxygen below the natural concentration to 10 percent.

It will therefore be critical to monitor dissolved oxygen variability and the natural and human related factors affecting dissolved oxygen in assessing causes of water quality values below the numeric criteria.

The Department did not propose dissolved oxygen standards based on any possible difference in significance a designated use may have in one waterbody compared to another. The standards also were not proposed based on any specific knowledge or lack thereof of a designated use being present, or if not present attainable in any specific waterbody designated that use. Nor were the standards proposed based on whether existing water quality conditions support the designated use.

This is because:

1. Oregon has not classified waters according to the significance of designated uses in particular waterbodies. All streams are afforded the same full level of protection with respect to the water quality standards. The uses are not assigned different levels of protection based on the application of different water quality standards.

2. Lack of information as to whether the use is present is not the determinant as to whether the designated use is appropriate and therefore whether the standard applies. If water quality conditions appear to prevent the attainment of a designated use for salmonid producing in a given waterbody, a use attainability analysis would need to be performed.

3. Lastly, current water quality is not the determinant as to whether the designated use and thus the water quality standard is applicable. If water quality does not meet the standard and it is questionable whether the uses are designated appropriately, a use attainability evaluation can be conducted. To delete a designated use or consider site specific criteria different from that which are established to protect the designated uses, a use attainability study and evaluation would have to be performed. Any Department proposals to change use designations would have to include information on current water quality conditions, detailed information on why the use is unattainable, what has been considered in the way of point and nonpoint source pollution controls to improve water quality conditions so the use can be attained, an economic impact assessment and consideration of the need for change of any criteria that relate to a proposed change in use. Public hearings would be held on the proposal. States may not delete any use that exists.

E. <u>The state's approach to water quality management - prevention versus abatement - and implementation of water pollution control programs.</u>

Testimony relates that since dissolved oxygen data including sample variation and diurnal variation along the mainstem Willamette River are greater than the EPA national criteria of 6.5 the EPA criteria is adequately protective and higher values aren't justified. The testimony suggests that the Department has misapplied the guidance offered by EPA about when it may be appropriate to use the higher qualitative effect level concentrations (no production impairment as the mean and slight production impairment as the minima) rather than the EPA "national criteria" values.

The testimony presents information about the Willamette River specifically. The respondents state that the Department has proposed adopting the "no production impairment" because of concern that concentrations may remain at the criteria conditions for extended periods of time, which would represent risk of production impairment. The testimony presents data evaluations, modeling results and conclusions that the data do not indicate that dissolved oxygen levels are remaining at or near 6.5 mg/l. Testimony states that under current maximum permitted loads in the model runs project the minimum calculated dissolved oxygen to be approximately 6.5 mg/l. Under average BOD loads the minimum

calculated dissolved oxygen is 7.1 mg/l. The testimony concludes that the likelihood that all of the point sources would discharge at their respective monthly limits at the same time is 1 in a billion and they equate this to the likelihood that dissolved oxygen levels would ever reach 6.5 mg/l.

They conclude that since conditions in the Willamette don't approximate EPA's "national criteria" value of 6.5 mg/l, 30 mean for coldwater fish later life stages (salmonid fish passage and rearing), the Department has not justification to propose the higher values as standards.

These comments imply that the conditions justifying the use of values representing a greater level of protection are only justified when the risk of moderate impairment is present.

It is the Department's view that EPA's recommendation also addresses situations where slight impairment or the small yet undefinable risk of this level of impairment is unacceptable.The In the Department's view, the risk of unacceptable moderate impairment doesn't have to exist first, because that risk can change over time with the potential for increased loads, potential future changes in flow regime, etc.

Similarly, unacceptable conditions do not have to exist before the standards can be set to prevent the unacceptable situation. As noted by EPA, "ultimately there may be a philosophical issue as to whether one sets standards at the criteria level until magnitude, frequency, etc. of low dissolved oxygen events approach troublesome values (by criteria guidance) and then raise the standards, or whether the standards are set at more protective values than might be necessary, but so that conditions never approach troublesome values."

The Department's proposal to have values representative of "no production impairment" as means and the "slight" impairment level as the minima is reflective of an approach and philosophy where the underlying principles are water pollution prevention rather than water pollution abatement.

2. DEQ doesn't recognize that EPA's "National Criteria" values for Dissolved Oxygen provide an adequate level of protection" of the fisheries uses and if correctly applied in water quality modeling and wasteload allocations no impairment results.

Department's Response:

There is a disagreement about what constitutes a reasonable basis to propose the alternate dissolved oxygen values to the "national criteria". Perhaps this is primarily due to different assumptions as to how the standards will be used and what types of water quality conditions the standards are expected to represent.

First, as described above, if alternate higher criteria values, as suggested by EPA are appropriate to abate troublesome conditions, they should also be appropriate to prevent the troublesome conditions from occurring.

Second, the EPA criteria document does not conclude that the growth tests were conducted over a full growth period, but rather the effect levels are representative of laboratory tests and relate to continuous exposure for relatively short duration (hours to weeks). The Department supports the concept that the national criteria may be representative of an adequate level of use protection during a "worst case" temperature and stream flow condition. However, the Department and the respondent differ on constitutes a reasonable duration and frequency at which the national criteria values while still providing full protection to the uses.

Also, even though wasteloads are not ordinarily developed until water quality standards are violated, application of the national criteria assume that the values will be used in wasteload allocations to define the maximum load for the 7/Q/10.

To ensure water quality conditions better than the national criteria most of the time, the wasteloads which prevent unacceptable conditions during the worst case would have to apply during other times as well. In contrast wasteload allocations developed in Oregon to address water quality standards violations have been flow based. This affords some flexibility to the discharger to discharge higher loads when flow conditions are better than the "worst case".

It is the Department's view that the issues raised in testimony concerning the adequacy of EPA's criteria values are largely based on a different in view of what the proposed standards are intended to represent. Because it will take considerable time to define the duration and frequency of acceptable "worst case" conditions for all streams, to establish wasteloads for each of the waterbodies, the standards are proposed to address necessary "prevailing" conditions that are representative of water quality necessary to ensure full protection of uses. As information is developed which better defines the natural variation and factors affecting assimilative capacity, within specific streams the standards can be refined to include an appropriate frequency and duration of "worst case" lower dissolved oxygen values.

3. <u>Temperatures in the Willamette River prevent the salmonid spawning use and thus the high Dissolved Oxygen values equating to full protection of the use are not warranted.</u>

Testimony recommended the lower values associated with salmonid later life stages apply yearround in the Willamette River. Testimony suggests that higher values appropriate for coldwater early life stage periods should not apply to the Willamette above River Mile 26.6. Testimony states that warm water temperatures in the Willamette River in the late summer affect the growth of salmonids. This fact was not adequately considered in DEQ's standards proposal.

They commented that the Oregon Fish and Wildlife fisheries management plan for the Willamette calls for an increase in production of native trout that compete with other salmonids. They stated that the native trout are not known to use the mainstem for spawning. They offered rule language to delete salmonid spawning on the Willamette as a beneficial use.

Testimony is presented which states that there is little or no natural salmonid spawning or early life stage development on the mainstem Willamette below River Mile 187 and thus DO values to protect the early life stages may not be appropriate.

A fisheries report submitted as part of one groups testimony suggests that DO standards for salmonid spawning may not be justified because the only confirmed salmonid spawning on the mainstem of the Willamette is the fall chinook. Other chinook races and other salmonid species do not spawn in the mainstem Willamette due either to high temperature or lack of acceptable habitat.

The view is expressed that because fall chinook spawn in September and October when water temperatures affect the survival of eggs that are spawned in these reaches. Since reproduction is impaired, production of fish may not result. It is suggested that a dissolved oxygen level to support salmonid spawning and early life stages is not appropriate for the portion of the mainstem Willamette above Salem which is currently designated for this seasonal use.

Comments were received suggesting more study is need to determine that it is necessary to protect fall chinook salmonid production and when spawning occurs. The testimony recommends this research be conducted before applying the early life stage criteria to the upper reaches of the mainstem Willamette.

Department's Response:

The Department cannot conclude that because temperatures in the Willamette River may reach levels above those that are conducive for spawning that the designated use for the river should be modified.

As described about in 1.D. factors other than questions about the use is present or impaired affect whether the use is appropriately designated. Furthermore, the Oregon Department of Fish and Wildlife have related to the Department that they believe cutthroat trout, a coldwater fish, do spawn in the mainstem Willamette River but the extent is now known. ODF&W staff also believe that about one fourth to one third of the wild fall chinook run spawn in the mainstem Willamette. The agency would like to fund studies to get better information factors such as temperature and water quality that may currently limit full production and steps that can aid in enhancing it in the Willamette.

4. **The Dissolved Oxygen standards proposals are not warranted and, if adopted, will result in treatment limits being made more stringent and unjustified expenditures on the part of municipalities.**

Testimony offered that if the proposed dissolved oxygen values were adopted as standards, compliance with the standard would require treatment plant upgrades to provide higher levels of treatment. They believe the upgrades would be required sooner resulting in greater expense than otherwise would be required. They cite that with higher dissolved oxygen standards there would be less "assimilative capacity for existing permittees as they accommodate growth and expand their treatment systems and for new sources.

Testimony encourages a balancing of the significant economic impacts resulting from construction of capital facilities and increased O & M against any expected improvement to water resulting from new facilities.

The testimony relates that water quality model results indicate that eliminating all existing point source loadings from the river would result in an average DO increase of approximately 0.4 mg/l with a maximum concentration increase of 0.65 mg/l at river mile 5.0 mg/l. The modest increase in DO concentration associated with reducing or eliminating all existing point source discharges suggests that:

1. The existing point source dischargers are not significant contributors to dissolved oxygen levels in the mainstem of the Willamette,

2. More stringent treatment requirements on municipal wastewater treatment plants to effect higher DO concentrations in the river would have high cost and would result in little increase in water column DO concentration, and

3. Secondary adverse environmental impacts have not been evaluated but may exceed any benefits obtained by requiring tertiary treatment.

Department's Response:

The design criteria for sewage wastes for the Willamette River call for a higher effluent quality upon expansion or upgrade of facilities than currently being provided by many of the municipal discharger. These treatment criteria or the equivalent of no discharge would still be applicable.

5. Comment that dissolved oxygen standard should be reduced to reflect actual instream levels need to support beneficial uses.

Department's Response:

The Department believes that standards proposals do reflect the levels of dissolved oxygen necessary to provide full production of the designated fisheries. It should also be recognized that the Department proposed language to address situations where natural variation results in quality below the proposed numeric values.

The Department also notes that some respondents may wish to have the uses protected to a lower level than that reflected by the proposed standards and will pose this as a policy questions to the Commission.

6. Comment supporting the expression of the standard in terms of average and minimum values.

Department's Response:

The Department agrees. Our existing percent saturation standards do not explicitly state whether they represent average or minimum values. They have been applied, however, as absolute minimum values although some variability is recognized in data analyses and evaluations.

Dissolved oxygen concentrations vary naturally over a day due to additions of oxygen from aquatic plant photosynthesis during periods of sunlight and depletions from aquatic plant and animal respiration. Also, seasonal and annual DO cycles occur as water temperatures changes with ambient air and hydrologic cycles. Since aquatic organisms are expose naturally to daily and seasonal variations in dissolved oxygen levels, it is appropriate to have two-number standards which include both an average DO and a minimum DO which will protect the uses.

7. Comment that it's not clear which waterbodies are designated as salmonid or non salmonid fish producing waters.

Testimony recommends that DEQ clearly identify designations applicable to specific waters.

Department's Response:

The Department agrees that this is needed. However, in the meantime, unless a stream segment is clearly designated for only warmwater fishery or resident aquatic life, the standard for the more sensitive coldwater fishery use would apply unless it is clearly demonstrated this designation is inappropriate and unattainable.

8. Comment that if lakes are to be included in the rule, it is important to know that the DEQ is describing the upper meter of the waterbody.

Commentors suggest that DEQ clearly state that the standard applies to the water column in running water and the epilimnion in standing waters.

Department's Response:

The Department intends to evaluate water quality standards specific to lakes with an advisory committee. The adequacy of a meter of lake water achieving the standard may vary depending upon the depth of the lake.

SUMMARY OF ISSUES

SUMMARY OF COMMENTS

Antidegradation

Major Issues:

- Burden placed on public to nominate; this is inappropriate, etc.
- Proposal for ORW should/must include Wild & Scenic, etc. & reasons why are stated.
- Not consistent with regulatory responsibilities/or federal regs.
- Nonpoint source implementation plan not included.
- Represents unexplained shift in public policy.. protection expectations & it's unrealistic to expect level of protection without compensation to land owners/broad public policy review & perhaps legislative decisions.
- Short-term disturbance + other terms need defining.
- Language addition/substitution proposals are offered.
- Proponents should have to supply all needed info/mechanism to reject incomplete nominations needed.

1. Supports rules that provide for "outstanding resource waters" and encourages moving forward to enact high standards to preserve these waters, such as Clear Lake and Waldo lake in Lane County. Also, encourages consideration of all waters within Oregon wilderness areas and all wild and scenic waters to be given protection from degradation. 1/11/91 Jerry Rust

2. Concern that ONR category could fail to protect some of least degraded waters because:

   (a) Places burden of proof to entity who nominates it for inclusion, there are no guidelines, thus decision likely to be subjective/politically influenced... no certainty that a deserving water would be included;

   (b) Lack of info on fragile ecosystems such as Waldo Lake make it difficult to address policy requirements & determine type/amount of pollution that would lower its quality, hence burden of proof again is on side that suggests an activity will lower the quality;

(c) There is no definition to specify what a short-term basis" or "emergency" is;

(d) ONR tacitly implies there are some that are non-outstanding and not worth of same commitment to protection which also suggests that state is not seeking to creatively avoid and eliminate water pollution, but rather indicate the degree to which we will acquiesce and allow water to be defiled;

(e) The proposed policy can be viewed as a reaction to those concerned about retaining rights to pollute rather than commitment to address effects of water pollution, explore and evaluate all reasonable alternatives such as required by NEPA. Recommendations are offered. (1/14/91 Waldo Wilderness Council)

3. It's not clear what happens to those previously identified waters that received ORW status before they become listed through the EQC's designation process. It would be unfortunate if they did not receive the highest level of protection during the time required for designation.

4. Disagree with statement made in (3)(a)(B) that if numeric criteria are met then uses they are designed to meet are fully protected since this overlooks non-numeric criteria such as biological criteria.

5. Suggest substituting "existing for" recognized under (3)(aZ) (B) to be consistent with federal regs.

6. The proposed implementation policy for economic and social impacts from projects on high quality waters is incomplete in that it only addresses point sources. Urge the DEQ to develop a policy for nonpoint sources soon and when the policy is broadened it should consider non-numeric criteria ... biocriteria, sediment and debris criteria, and aquatic habitat disruptions by channel modification, bank clearing and removal of natural debris, etc. (1/18/91 EPA)

7. In the case of Wild and Scenic Rivers, Congress has already expressly mandated the protection of water quality, thus to adopt the "discretionary procedure" is in effect to extend to the EQC the authority to undo the work of Congress. If the EQC ever failed to adopt protection of a Wild and Scenic River, that decision would conflict with section 1 (b) of the Wild and Scenic Act. Water quality in wild and scenic rivers does not have to be unique or even especially good to merit protection at the highest level, but rather it merits that protection because Congress has declared that to be national policy. (1/25/91 The Oregon Rivers Council)

8. Protecting water quality as if all "waters of the state" were high quality is not realistic. The DEQ is open to citizen suits if they establish this policy and cannot protect and regulate all "waters of the state" as high quality waters.

9. The DEQ should work closely with DSL in establishing outstanding water resources because these are land use issues and the DSL has statutory authority to determine land use.

10. "Social reason", "important" need to be defined and criteria or guidelines are needed for acceptance/rejection of "applications for special high quality waters.

11. Some "waters of the state" may not need protection because they do not meet a standard and the natural water quality allows no beneficial use for that water. At one time, EPA and the Corp tried to regulate every ditch and puddle that fed into any portion of a navigable stream.

12. It should be made clear that petitioners for outstanding water resources shall be made financially responsible for all the data needed to support their application. (1/23/91 PGE)

13. The policy which would require the nomination of the waters found in national parks, national wild and scenic rivers, national wildlife refuges, and state parks as ORW is pointless and it is inappropriate to start from scratch. It will demand a great deal of precious time and resources that could be used to consider other ecological and aesthetically vital streams and lakes that are currently unprotected. The EQC should automatically include all waters in the four existing categories as ORWs. (2/25/91 Headwaters)

14. All additions to the antidegradation policy, specifically #1-d on pages A2-2 and A2-3 combined with "wetlands" and "biological criteria" set up a planning organization that allows DEQ to control development on private lands through a hearing process and adds a layer of government at great expense. (2/27/91 Dority)

15. Since nondegradation does not allow any <u>permanent</u> degradation and since COE dredge material disposal activities are a short-term event this would not pose a problem. As defined antidegradation allows limited water quality degradation. If the state provides 401 certification, both policies will have been satisfied. By allowing non permanent and/or limited degradation, it appears there is a waiver mechanism whereby 401 certification could be met even though the water quality standards were not met. (2/27/91 Corps of Engineers)

16. What type of comparative analysis will be done in balancing the benefits of economic or social development against the costs of lowered water quality? Will it be approached from

the standpoint of public policy or be mathematically assessed? In other words, will the true long term costs to society having to clean up dirty water be taken into consideration?

17. DEQ needs to clarify short term basis and what protection of human "welfare" means... it this economic welfare. The exception should be limited to health concerns.

18. The proposed revision shifts the burden of demonstrating outstanding qualification to the public. To require the public to redesignate waters that are today recognized as Outstanding Resource waters is too great a burden. The public does not have the capacity or ability to produce the detailed data being required.

19. Antidegradation standards do not apply solely to numerical criteria but to all beneficial uses as well as the biological integrity of the State's waters. Currently waters within National Parks, National and Wild and Scenic Rivers, national Wildlife Refuges and State Parks are protected under the Antidegradation policy as outstanding resource waters.

20. Oppose adoption of new rules for ORW classification except of currently unrecognized and non designated waters. Automatic recognition and listing should be retained for those currently listed and state Scenic Rivers should be added.

21. It should be made clear that the projected effects of a "short-term" disturbance are to be assessed before the disturbance is allowed. It is unacceptable to allow the disturbance until adverse effect s are analyzed since, for example, a short term disturbance can cause nearly an instantaneous shift in insect species and result in devastation of stream life. (2/28/91 NEDC)

22. All aquatic ecosystems are potentially of "outstanding remarkable values" and the degree they have been degraded is the degree to which the human community has failed to restrain its activities so as to maintain the earth's resources. Language is proposed to be added to the antidegradation policy to include:

    (a) A policy that any classification of a waterbody other than"outstanding resource" requires ongoing consideration of actions that will improve the water quality".

    (b) No other alternatives exist except to lower quality and evidence must be provided for public review.

    (c) "welfare" should be substituted with "health" when considering degradation.

(d) The word "unacceptable" should be eliminated from OAR 340-026(3)(B).

(e) A statement that prevents DEQ from allocating waste loads to one source without considering evidence as to whether there is no more "room" in the TMDL for that source. (Pope and Talbot is given as an example) (2/28/91 NCAP & NACDOE)

23. The proposed language contains the most far-reaching effects on WQ regulation of any of the proposals and it proposes fundamental changes in Oregon's approach to water quality programs and philosophy. It ignores technological limits and the realities of BMPs to move to a regulatory approach only considering water quality. This drastic change must be considered for its impact on all activities.. This shift should be addressed through a consensus-building process. Legislative direction/approval may be needed.

24. While the 3-tiered approach appears to follow EPA guidance, they are concerned it will require a lot of staff time to properly evaluate all nominations and suggest the rule be strengthened to require automatic rejection of incomplete nominations They agree however that Proponents provide <u>all</u> the needed information.

25. Concern is expressed that DEQ/EQC will have to be in the position of deciding what is a socially important activity. The rule should provide for broad public participation and include representatives from Economic Development and Forestry. The DEQ/EQC should defer the decisions to other agencies

26. The proposed regulation does not address the current inability to separate background levels of pollutants from nonpoint source generated levels and thus any monitoring data is meaningless.

27. Just because methodologies have been published does not mean that appropriate models exist to assess cumulative effects such as forest lands or complex riverine systems. This probably will take 5 years of research to develop a reliable fores lands cumulative effects model.

28. The necessity of a water body classification is not supported by info on Federal requirements, and 4/5 of the classes would generally prohibit any negative impacts. This approach is not justified.

29. When State Parks provides high levels of protection in their Scenic Waterway program, the law requires the Division to purchase lands. By implementing the proposed policy that provides the highest level of protection, the state would

gain significant if not total control over many acres of forest land without compensation.

30. A policy preventing cumulative impacts would have the EQC become the ultimate decision maker on all forest operations, supplanting the Board of Forestry.

31. As part of the 1987 legislation, HB 3396. the public already has the opportunity to comment on forest operations and thus the DEQ proposal is duplicative and unnecessary. (2/28/91 NWP&PA)

32. Current proposals shift the burden for making designations of high quality waters from DEQ to the public. This is contrary to the spirit, if not the letter of the law.

33. Support for OAR 340-026 (1)(a) (A) and (b) is presented.

34. Regarding designation of ORW, a reasonable interpretation of federal regs suggests that DEQ designate up front high quality waters of the state that are outstanding resource waters. The rule clearly contemplates that such broad categories as National and state parks and wildlife refuges will be designated outright and DEQ is referred to 40 CFR 131.12. See also legislative history of the Omnibus Oregon Wild and Scenic Rivers Act demonstrating that outstanding ecological and recreational resource considerations were an important factor in many wild and scenic designations.

35. EPA regs contemplate that resource factors other than water quality play an important part in determining such designations (40 CFR 131.12)

36. While it might be argued that the current rule does not prescribe "nondegradation for National and State Parks, etc, it is also true that the current rule chooses a categorical approach to designating those waters to which the highest protection will be given.

37. DEQ's proposal sets too high a threshold for what constitutes outstanding resource waters. It states that their outstanding nature must relate to their water quality. This is not the threshold contemplated by EPA... see Federal Register commentary in Vol 48, No 217, Tuesday, November 8. 1983 p. 51403.

    EPA sets a threshold at high quality waters that meet or exceed standard, yet ORWs may be deserving of protection but not necessarily of high quality.

38. The proposal does no guarantee implementation. The EPA regs contemplate that states will identify methods to implement the antidegradation policy. If to only be nominated by the

public, DEQ and the EQC are abdicating their legal responsibility. (DEQ has affirmative obligation under the CWA to promulgate and implement WQ programs and as a guardian of a public trust resource it has affirmative duties under the public trust doctrine) The burdensome nature of the process ensures that it would be decades before nominations could be considered and acted upon to confirm the status of even those segments that are on the present list.

39. An alternative is proposed whereby at a minimum those that are categorically designated in the present rule would be designated as outstanding resource waters as well as state scenic water ways. It is offered that the language of the State Scenic Waterways Act sets a nondegradation standard. (ORS 390.845 (2) (c). Additionally there should be a process for adding waters to this classification, similar to the one that DEQ proposed in 1986.

    Society has already decided what waters should be afforded the maximum protection. The proposed standard is not a "restoration standard, it simply prevents further degradation. Recommended rule language is offered. (3/1/91 Bruce White)

40. It is recommended that the precise federal language be maintained. Subsection (a)(A) i-iii doesn't accurately reflect either the state or federal rules it apparently intends to implement and this may lead to confusion. (3/1/91 AOSA; 3/1/91 Gresham; 3/1/91 Oak Lodge; and 3/1/91 Clackamas County)

41. Lack of a process whereby all reasonable alternatives to degrading practices are given hard look seriously impairs efforts to reverse, eliminate and prevent water quality degradation.

42. The assumption in the issue paper is degradation will occur; with the only remaining question is how much.... DEQ needs to face fact that incorporating thinking about alternatives into permitting/decisionmaking process requires innovation, requirements, will and public education.

43. The party proposing to lower water quality should be required to prepare draft analysis of impacts and include all reasonable alternatives as well as economic effects criteria.

44. Policy seems to mean it's ok to lower water quality as long as there is some social/economic benefit gained, yet long term costs aren't taken into account... suggest language that economic or social development and benefits of development must outweigh the economic and social cost of lowered wq. Right to pollute should carry heavy burden to demonstrate there are no reasonable alternates.

45. Public notice regarding potential lowering of wq should be accompanied by a comprehensive discussion of feasible alternative practices that would result in avoidance or reduction of such degradation.... a discussion of BMPs does not substitute for a discussion of nonpolluting alternatives.

46. Waters should be classified to the degree they are failing to retain quality. To say that "good waters" are work horse waters that don't have to be maintained as close to background levels as possible is irresponsible.

47. It is poor public policy to not recognize all waters as having some outstanding remarkable value.

48. A numerical estimate of all sources of a contaminant contributing to the problem in a WQL stream should be included in the TMDL. (3/1/91 NWF)

Bacteria

Major Issues:

- Adoption would result in immediate noncompliance by STPs.
- STPs likely will have to expand, upgrade, use more chlorine, create chloro-organics if values applied as effluent standards.
- Fiscal impacts greater than stated.
- Proposal unclear wrt who/what is applies to, who will be regulated, what is needed if WQ doesn't achieve standard.
- Recommend seasonal standard.
- Recommend proposal as "monitor" only until more information on what it will take to comply and how compliance will be achieve.
- Increase in winter bacteria levels can't be accounted for by modest increase in STP effluent.
- Responsibility for regulation of "swimming" beaches.

1. Enterococci is most appropriate when dealing with both marine and freshwater situations. (1/18/91 EPA)

2. The Department should clearly define which "persons" are to be responsible for implementation of the rules... eg.. do they apply only to persons who discharge sewage treatment effluent?

3. The proposed rule appears to apply only to point sources and in mixing zones but it is not clear about who is regulated.

4. If a person allows recreational swimming from private property adjacent to public water is that person required to test the public waters even though there is no discharge permit for that property.

5. If the recreational area is posted No Swimming and swimming still occurs, would tests still be required?

6. Is the regulation of "swimming beaches" the responsibility of the DEQ or the Health Division? (1/23/91 PGE)

7. Results of sampling at 7 STPs indicate and support concern of difficulty in year round compliance with the proposed Enterococci standard. FAcilities with low effluent ammonia and reasonable high chlorine residual might be able to achieve the lower limits, but most plants have higher amounts of effluent ammonia during the winter. This would present a dilemma to the DEQ regarding enforcement, posting of contaminated waters and initiating POTW expansions to meet the proposed limit.

8. The proposed standard should be considered as "monitor only" limit until a comprehensive body of data can be generated from a large number of diverse POTWs to provide a better understanding of the issue and to indicate to the regulated community that the DEQ will approach the implementation of a new standard with sound information and reasoning.

9. Information is presented to provide a basis for examining the ramifications of accepting the proposed instream standard as a permit limit at this time. It has not been established whether existing POTWs designed to achieve disinfection parameters based on fecal coliform mortality are capable of year round compliance with the proposed standards. It has not been demonstrated that the existing methods and parameters of disinfection have detrimentally impacted instream water quality.

10. Findings of the Willow Lake study indicate that reliably meeting the proposed standard will not be possible as is likely the case with other POTWs The study shows the following:

    (a) Ammonia nitrogen in the effluent affect the plant's

ability to meet mortality levels at accepted chlorine residual concentrations,

(b) Conventionally designed treatment plants not practicing nitrogen removal could lack sufficient chlorine contact basin detention times to meet the proposed standards,

(c) During the low summertime flow periods when highest recreational activity levels exist, instream water quality standards are currently maintained with existing disinfection criteria and practice,

(d) Instream water quality appears to be most severely impacted by contributions from non point source runoff associated with storm events. The increase cannot be accounted for by the modest increase represented by higher POTW effluent flows,

(e) Analysis and quantification of disinfection efficiency can be difficult to determine when the millipore filter method of analysis is used since various sample sizes can yield widely different colony counts, and

(f) There is a potential that to reliably meet the proposed standard a plant will have to be designed with extremely long detention times or the plant will have to practice yearround nutrient removal and filtration prior to disinfection. While other plants may attempt to meet the standard through increased chlorine followed by dechlorination, secondary issues of concern such as additional chlorinated hydrocarbons could increase the toxicity of the effluent.

11. It is recommended that DEQ not adopt a standard which would result in immediate non-compliance of many POTWs when a water quality problem has not been identified, DEQ establish a task force to investigate the impact of the proposed standard on POTWs instream water quality and treatment plant design, that secondary impacts such as increased chloro-organic compounds be defined prior to adoption of the proposed standard, if DEQ moves forward it be as a monitor only condition until data are developed to insure the ramifications are understood and documented, and if DEQ moves forward it consider seasonal permit conditions as a method of protecting instream water quality during periods of high recreational use when POTW effluent quality may have an influence on this quality. Other times of the year nonpoint source influences prevent attainment of instream standards.

12. The fiscal impacts would be greater than indicated by the DEQ. Also, the majority of the streams might be defined as WQL if the standard is adopted. If the proposed standard is adopted there will be an increased number of Public Notices

required even though no documented problem exists. (2/26/91 City of Salem)

13. DEQ should carefully consider comments made by the municipal dischargers. (2/28/91 NWP&PA)

14. Support proposal. (3/1/91 NWF)

15. Support effort to better correlate potential human health problems with indicator organisms. Asks DEQ to refer to data from Salem which shows that E.Coli is present and possibly the proposed limits upstream of Salem's outfall indicating e.coli may not indicate recent fecal contamination. (3/1/91 Gresham)

16. Effluent ammonia appears to inhibit enterococcus disinfection. They do not appear to be as susceptible to chloramines as are fecal bacteria. Thus higher free chlorine residuals and longer contact times were needed to achieve proposed standard. Plants would have to nitrify to meet the standard.

17. Data shows that elevated enterococci after storm events are elevated and apparently the result of nonpoint sources.

18. During low summertime periods when recreation activity is highest, the proposed instream standard appears achievable.

19. Test results of studies are highly variable... procedure uncetain and may lead to false positive results.

20. Proposal may have unaticipated ramifications. Further study is needed prior to adoption.

21. Recommend a monitor only condition in discharge permits until a body of data has been established.

22. If adopted as a standard in the future, it should be applied outside of the mixing zone.

23. Consider seasonal variation in the instream standard. (3//1/91 AOSA)

Mixing Zones

Major Issues:

- **Final EPA TCD guidance is needed prior to adoption.**

- No way to determine mixing zone before new source generates wastewater.
- Purpose of mixing zone to enable compliance with WQ standards was missed by DEQ.
- Case-by-case determination of testing methods inappropriate.
- Case-by-case determination of exceptions to acute toxicity criteria is inappropriate/criteria guidelines needed to be established if adopted.
- Appropriateness of rule language recommended by respondents.
- No mixing zone shold be allowed for persistent bioaccumulative toxics.
- Perception that mixing zone ZID size is function of what is needed to achieve toxics standards.
- Clarity of interpretation of acute to LC50 and effluent dilution.

1. ZID, if initiated, abuses the environment and creates more work for the Groundwater Section 11/4,13 & 14/90 -- Neely.

2. The requirement for mixing zone width is too general. Specific mixing zone width requirements with lengths varying on a case by case basis may be needed to protect free swimming and drifting organisms, thus a category (F) should be added "allow a continuous zone of passage that meets water quality standards for free-swimming and drifting organisms." (1/18/91 EPA)

3. DEQ should postpone finalizing the proposed mixing zone rules until criteria from the EPA Guidance paper and the EPA 1990 Technical support Document for Mixing Zones is available for review by DEQ & the regulated public.

4. Use of Bioassays for setting mixing zones is inappropriate. It requires the test animals to die. Using hatchery fish for test animals is probably not the equivalent of testing wild fish. Use of wild fish is contrary to the ODFW goals to increase wild fish populations.

5. The BMP is to regulate the effluent so the mixing zone will not need such stringent regulation.

6. There is no way to determine the mixing zone needed before production begins and the effluent is available for testing; thus it becomes an after the fact regulation and may require

permit modification which requires the DEQ to expend additional resources.

7. The logic of the mixing zone seems to have been missed... it is to allow a point source discharge to mix with the receiving stream, not to require the effluent to meet ambient standards at the point of discharge.

8. Any mathematical calculations for mixing zones must have a biological basis, but without cause-effect relationship the calculated mixing zones are arbitrary and capricious. (1/23/91- PGE)

9. There is a problem with the mixing zone as described in II(4). By stating the acute 96 hour LC50 cannot be exceeded in the mixing zone is determined by the LC50. Material being discharged may exceed the LC 50 at the point of discharge but may not exceed it a very short distance away... this needs a remedy.

10. The Corps interprets the mixing zone ZID to be entirely based on toxicity and understands that bioassay testing rather than water quality standards for specific constituents will apply. Us of chronic toxicity for mixing zone boundary instead of).01 LC 50 may be unnecessarily stringent.

11. The Corps makes an observation that the definition of toxicity where effluents with an LC50 of less than 1 percent are toxic is the same as the federal but DEQ does not use it to define the mixing zone. (2/27/91 Corps of Engineers)

12. Language is offered to prohibit a mixing zone for persistent, bioaccumulative, toxic compounds.

13. The acute toxicity standard should only apply to nonpersistent, nonbioaccumulative toxins. An effluent however, that causes 10 percent mortality within a short test period is sufficiently damaging that the mixing zone concept should not apply.

14. The concept of determining what lethality of effluent is acceptable allows the polluter to dilute to meet the standard. Oregon waterbodies should not be sewer for toxins. Extensive procedures are involved in determining how much goes into water, but there are essentially no procedures for considering alternatives to the discharge of toxins. or tho their use in the first place.

15. Cases-by-case determinations of appropriate toxicity test methods is inappropriate as is determining the size of the ZID. It favors the polluter because there is often large financial incentive to get the ZID as large as possible,

while there is little financial advantage of to challenge the complexities of the proposed mixing zone.

16. Recommendations are offered to modify language concerning DEQ requiring mixing zone monitoring studies to eliminate ambiguities. (2/28/91 NCAP & NACDOE)

17. The present language may inadvertently prevent mixing zones for stormwater discharges. Recommend that the proposed language be modified to add the words "stormwater: after the term "wastewater" throughout.

18. When DEQ develops permit requirements regarding chronic toxicity, the 25 percent inhibition concentration (IC25 should be used in place of the No Observable Effects Concentration (NOEC) because of the uncertainties inherent in the NOEC determination. This is consistent with TSD for Water Quality Based Toxics Control" (USEPA). (3/1/91 AOSA; 3/1/91 Gresham; 3/1/91 Oak Lodge S.D.; 3/1/91 Clackamas County)

19. The proposed rule stating that "acute toxicity is measured as the lethal concentration of 100% effluent that causes 50 percent mortality of organism within the test period is confusing. It could be read to call for 100 % effluent and varying concentrations at the same time or starting with 100% effluent and diluting it to determine the concentration that causes 50% mortality. (3/1/91 Gresham)

20. No mixing zone should be allowed for persistent bioaccumulative toxics. These practices would defeat the purpose of a mixing zone... they don't mix. Language is offered to be added.

21. Exceptions to acute toxicity criteria on a case by case basis should not be allowed. If such practices are allowed, very strict criteria should be established when such exceptions will be allowed and standards should be established to determine how much acute toxicity will be allowed on such "exceptional" occasions.

22. Acute toxicity should be defined as "... effluent that causes 10 percent mortality of organisms within a test period". A 50% mortality rate is outrageous.

23. Language is offered to state that mixing zones should not exceed 10% of the cross section flow of a stream, no overlap of mixing zones should be allowed and monitoring studies and/or bioassays should be required on a regular basis that will allow adequate evaluation of water quality and biological status. (3/1/91 NWF)

Toxic Substances

Major Issues:

Fish flesh:

- Question of statutory authority to regulate and require testing of fish flesh.
- Relies on calculated data, inappropriate scientific basis.
- Question of cause/effect relationships.

Dioxin:

- Haven't considered chronic effects of fish carrying a body burden of 60 PPT dioxin..
- Acute/chronic criteria for dioxin seriously questioned.
- Lack of standards modification in response to new info.

Chloride/Ammonia:

- Technical basis for proposed values questioned, alternatives recommended for acute/chronic toxicity.

1. The fact that commercial fish of the Columbia River are highly migratory must be considered. Also, it would be unacceptable if the quality of carp living next to an outfall is applied to all fish in adjacent waters. Alot of fish maladies are caused by thermal pollution. 1/7/91 Bruce Jolma

2. Values listed in Table 21 are backcalulation from the WQ standards using some unspecified bioconcentration factors; contrary to table title they were not used by EPA for development of WQ criteria. Values proposed have little if any relevance to actual water quality conditions in Oregon.. and arithmetic manipulations are nothing more than a spreadsheet exercise and may result in each and every water body being WQL for one or more of the compounds listed. (1/14/91 James River)

3. Notes several housekeeping changes to references and recommends that (4) (b) (B) (i) be changed to read "Be free of materials in concentrations that will cause or have a reasonable potential to cause, or contribute to an excursion

above any water quality standard including chronic (sublethal) toxicity..." to ensure NPDES permitted dischargers achieve water quality standards and to be consistent with EPA's 6/2/89 NPDES regulations. (1/18/91 EPA)

4. Doesn't believe that the DEQ has statutory authority to require fish flesh testing and regulate water quality based on test of fish flesh. Regulating the quality of foods for human consumption is the responsibility of the Food & Drug Administration.

5. Fish flesh should not be used as a criterion for cleanup and remedial action. Also, there is a question about the DEQ's ability to quantify any direct cause /effect relationship between water quality in the water column and fish flesh. With no scientific quantifiable relationship, the ability of DEQ to adopt regs is compromised.

6. Toxics were established by EPA to measure the quality of water, not to determine the quality of fish for food. This type of analyses is uneconomical, unreliable, kills fish and is outside the scope and mission of water testing.

7. If fish flesh is monitored as a research tool in tracking chemicals, DEQ should have a separate program on Fish Flesh Quality and the Department should bear the cost of collecting the data.

8. The proposed rule relies on calculated data rather then on empirical data and it doesn't recognize that data has been collected from various rivers and lakes to support either the need for analyses or to provide for numerical standards.

9. Use of migratory fish as a test fish is inappropriate.

10. Fish flesh testing may not be required in all water bodies, if fish from local areas or the species tested are not consumed, fish tissue analyses may be an unnecessary expense.

11. Requiring bioassays as the Department deems necessary needs further clarification... who will deem them necessary and for what reasons? Will it be an individual member in Water Quality or ECD or will it be the EQC after a thorough investigation for the need has been determined?

12. DEQ will need to address the problems associated with doing bioassays before facilities generate effluent from their production. There needs to be a limit on how long bioassays need to continue to show effluent meets the standards since it is incongruous to kill fish in the name of protection of fish & wildlife. (1/23/91 PGE)

13. The proposed criteria for aluminum acute and chronic toxicity should be modified and EPA guidelines of a chronic value of 748 ug/l should be used until adequate data have been developed. It is unknown whether the values determined for toxicity levels were in a total soluble form, EPA's guidance indicates that because of the variety of forms of aluminum in ambient water and the lack of definitive info about their relative toxicities to freshwater species, no available analytical measurement is known to be ideal for expressing an aquatic life criteria. EPA s recommended acid soluble method of measurement would be in conflict with the levels determined for acute and chronic toxicity which were most likely based on soluble aluminum.

14. It is believed that the criteria levels for chloride were improperly established as indicated in the contents of the criteria document. These is not an economically feasible method for removing chloride from the Teledyne Wah Chang Albany wastewater and they are concerned that improper criteria levels could require the curtailment of production to meet inappropriate standards. They question the basis of EPA's methods for determining the acute and chronic toxicity values for chloride and provide examples of their concerns. They also propose alternative values.

15. It's questioned why a numeric value for chloride is proposed since DEQ presently requires chronic and acute toxicity testing and chloride toxicity may be more dependent on the metal is it associated with.

16. It would be impossible to use the measurement of residue levels of fish tissue levels as an additional tool for determining water quality compliance due to the movement of fish. This combined with the technical issue of cost and sampling and analyses difficulties it appears more logical to measure and control toxics at the source rather than to regulate a discharge by an indirect and possible incorrect or impossible correlation of data. (2/27/91 Teledyne Wah Chang Albany)

17. The issue paper does not provide convincing arguments for expressing effluent toxicity data as TUs which are merely the inverse of the calculated LC50 multiplied by 100/ The paper does not discuss how the trigger would be determined.

18. There is no technical or administrative justification for the 0.3 TUa and 1.0 TUc contained in the recommendations.

19. The paper does not describe how residue levels in fish tissue should be used as an additional tool for determining water quality standards compliance nor how the residues would be determined.

20. The document is an aggregate of loosely connected ideas and issues and lacks technical substance, clarity and critical thought. (2/27/91 Corps of Engineers)

21. Language is recommended for the use of fish tissue residue: scientific studies to demonstrate the appropriateness of any alternative criteria proposal must ensure the most sensitive designated use that are or have been naturally present in a specific site will not be affected. To eliminate a sensitive species and then claim it won't matter if the criterion is exceeded because the sensitive use isn't present is not appropriate. Also, it should be made clear that DEQ shall use scientific literature in the absence of published EPA criteria.

22. DEQ has not considered the chronic effects of fish carrying a body burden of 60 PPT even though scientific literature exists on this issue. Reference to Canadian studies is made.(2/28/91 NCAP & NACDOE)

23. Whereas the EPA has been shifting away from an emphasis on animal studies in the risk assessment process to giving more weight to human epidemiological data, the Department's rational in issue paper #9 for the current TCDD standard does not appear to consider epidemiological data. Why were these studies excluded. A list of recently published articles from the Journal of the American Medical Association and others is attached.

24. It may be more appropriate to entitle the Issue Paper # 7 Potentially Toxic Substances since risk to toxic substances is determined not only by intrinsic toxicity of the chemical species but also by exposure.

25. A general discussion of the concept of risk or its application in either of the two issue papers dealing with toxic substances could help to educate the public on what constitutes actual threats to public health. If the public remains ill informed about what constitutes the actual threat -- the most significant risks, society will continue to pay a heavy price. Undue worry can create stress which pose a risk. Exclusion of a discussion on naturally occurring toxic substances promotes public misunderstanding of risks of chemicals in the environment. (2/28/ Dave Dunnette)

26. The standard for 2,3,7,8 TCDD should be modified to represent the most recent scientific data regarding dioxin's cancer potency. Information is presented to support this request.

27. Detailed comments are made on Toxic Substance proposals... to be summarized and responded to in Attachment C. (2/28/91 NWP&PSA)

28. The State Health Department is responsible for setting fish flesh criteria for the protection of public heath. EPA included fish consumption criteria in the criteria development to arrive at the water quality criteria, it is flawed to back calculate to specify fish flesh criteria.

29. The DEQ has assumed regulatory authority outside its bounds. Other comments are made about the inappropriateness of the dioxin fish tissue value.

30. The DEQ should postpone changes to the freshwater acute and chronic dioxin standard since DEQ has not offered sufficient scientific information to show that the current standard (values) should be changed. (2/28/91 Pope & Talbot)

31. Supports method of calculating toxic concentrations in Section (2) (B) because toxic substances do not only the food chain through the water but through the sediments in which they concentrate.

32. "The most sensitive beneficial uses potentially present at a specific site" should substitute the phrase"... most sensitive designated beneficial use..."

33. Object to acute and chronic criteria for dioxin in Table 20; they are guess at the level of dioxin that would be harmful. (3/1/91 NWF)

34. Support use of statistical modeling methodologies as identified in the EPA Support Document for Water Based Toxics Control in developing effluent limitations. The language should be modified to specify that the 1995 TAD (or its update) be used. (3/1/91 AOSA; 3/1/91 Gresham; 3/1/91 Oak Lodge S.D.; 3/1/91 Clackamas County)

Biological Criteria

Major Issues:

- Defer adoption until specifics developed which describe testing methods, numeric criteria, appropriate reference site selection etc. No real narative criteria to apply.
- Question how rule will be enforced.
- Will prevent property owners from being able to remove beaver dams & deal with mosquitoes, etc.

- Concern about "appropriate reference site, some recommend reference site should be with out human perturbations, others say it is not reasonable to measure all conditions against undisturbed areas.

- Weight of evidence approach should be used in rule application which requires "veracity of info" be evaluated and not only consideration of whether there are positive or negative effects based on information... (i.e., cause/effect relationship must be documented to apply).

- Concern about use of words like "significant", "excessive", and definitions for "as naturally occurs", ecological integrity"

1. Supports concept of using localized biological criteria as a basis to look for impacts which are detrimental to beneficial uses since there is simply too much diversity in the natural world to apply sweeping generic standards. (1/14/91 Waldo Wilderness Council)

2. Making specific numbers of species and individuals present as a numerical biological criteria and standard may be pushing the system too much. Counting numbers of organisms above and below an outfall may be dependent upon substrate as well as affects of discharges. Seasons also affect population dynamics and species present.

3. The proposed criteria may conflict with the regulations which limit chlorophyll a since algae are the primary food producers and algae will limit and be limited by other species of plants and animals present.

4. Skilled biologists who could determine the biological criteria are not readily available and the proposed criteria may be limited by this scarcity. (1/23/91 PGE)

5. Though proposed biological criteria is a common sense approach to safeguard water quality, they urge the EQC to adopt a strong and comprehensive version of the biological standards similar to or better than those adopted by Ohio.

6. How will the EQC reconcile the discrepancy between this progressive proposed rule and the Antidegradation policy which allows for new or increased discharge loads that do not unacceptably threaten or impair uses?

7. Violation of the biological criteria should be sufficient for the state to take action, meaning that the corroborating chemical and toxicity testing data should not be required as supporting evidence in the criteria statement. It is recommended that the rule include the riparian zone and class

iv intermittent streams within the definition of aquatic environment.

8. How does the proposed criteria address problems of anadromous fish habitat degradation in a real world post Measure 5 Oregon? Will it allow for more economical and efficient regulatory implementation, enforcement and monitoring?

9. How will the EQC establish identifiable monitoring or threshold parameters that allow concerned citizens to identify violations and enforce the new regulations through the citizen suit provisions? (2/25/91 Headwaters)

10. The biological criteria would have the effect of protecting nuisance animals such as beaver and nutria and mosquitoes and other hazardous insects that spend part of their lives in water It will cause property owners to create wetlands through flooding caused by not being able to maintain drainage ditches and it would prevent development of marginal wetlands. Application of the criteria to state owned wetlands would be OK. (2/27/91 Dority)

11. The biological criteria are clearly directed toward continuous point source discharges and are marginally applicable to the discharge of dredge material. In specifying a disposal site, the biotic communities at and near the site should be taken into account. Sites should be specified to minimize or avoid physical impacts and off of the site dispersive activity. Technically the physical impacts may violate the criteria until recolonization of the dredge material occurs.

12. Adopting a set of definitions does not establish any biological criteria. (2/27/91 Corps of Engineers)

13. Wording in 340-41-027 regarding resident biological communities is proposed to make sure that efforts will be ongoing to improve the quality of waters.

14. The appropriate reference site should be without the effects of human perturbation. The phrase significant can be argued endlessly by industry and their perturbations aren't ever significant to them. (2/28/91 NCAP & NACDOE)

15. DEQ's efforts to upgrade current OARs with a narrative biological criteria are laudable and DEQ recognizes 4 steps are needed before numeric standards could be set forth in rulemaking. Until these implementation phases are completed and adopted via the rule making process, a "weight of evidence application of the current proposed rule should be followed. If developed to accurately represent instream effects, they could be a more powerful too to judge the quality of waters. It is premature to propose any type of

regulatory action at this time except for further program development, clearly stated in a preamble for this rule. The veracity of the information and not only whether there are positive or negative effects is a component of "a weight of evidence" program.

16. A third "waters of the State designation" to address waters in transition is needed to accommodate conflicting values applied to various designated beneficial uses and to recognize physical factors that may affect the water's ability to support a balanced aquatic community regardless of water quality. It could be a category for waters where significant impairment has already occurred and could be used to aid biological criteria development for those waters where regulatory policy is to restore ecological integrity to some level less than the reference site.

17. For outstanding resource waters the word "all" should be deleted between and indigenous. It may be possible to identify organisms that existed that cannot not be restored to a water, or if restored by adversely alter what is no considered to be of outstanding value.

18. Changes are proposed to definitions for "as naturally occurs" and "ecological integrity". The existing definitions are too narrow/incomplete. (2/28/91 NWP&PA and 2/28/91 Pope & Talbot)

19. The Biological Criteria is not appropriate for use as a standard and should be reviewed with a technical advisory committee. (3/1/91 Cover letter DOF)

20. ODF supports but urges caution in developing and using biological criteria. They may indicate the effects of multiple hard to measure conditions, but because they are an accumulation of complex conditions cause/effect relationships are not well understood. Consultation with the NPS technical panel is recommended before any such rule is adopted. (3/1/91 DOF supplement to cover letter)

21. Support concept but have concerns with the definition of "appropriate reference site or region". It is not reasonable to measure all conditions against wholly undisturbed areas or to assume that biological communities from pristine areas should also be expected in waters with differing physical & chemical characteristics. (3/1/91 AOSA; 3/1//91 Gresham; 3/1/91 Oak Lodge; 3/1/91 Clackamas Co.)

22. Support the proposal on the whole but recommend that a statement be added to 340-41-027 (2) that "efforts will be ongoing to improve the quality of waters" and the words "significant" and "excessive" as in significant loss and excessive dominance be deleted. (3/1/91 NWF)

23. The rule should not be adopted unless and until adequate factual, measurable, clear and understandable biological criteria are provided. A statement that biological criteria should only be used as criteria and not as regulatory triggers until full and fair consideration of other available tests such as chemical analyses and bioassay testing.

24. The proposed rule contains neither narrative nor numerical criteria.. only commands that waters be maintained to protect naturally occurring resident biological communities and to support aquatic species without detrimental changes. Objective specific definitions of criteria including an adequate number and kinds of tests to be performed are necessary in the proposed rule. (3/1/91 Oregonians in Action)

Turbidity

Major Issues:

- **Test method more sensitive, therefore proposal consitutes change in standard.**
- **Committee should review.**

1. Since EPA defines turbidity with NTUs and 40,CFR 136.3 regulates methods the Department must use to test for turbidity, PGE supports the proposal. (1/23/91 PGE)

2. The turbidity standard should recognize there is a level below which 10 percent increases will have no significance and should not cause violations. The Jackson candle turbidimeter measures accurately to a lower limit of about 25 JTUs. A nephelometer measures accurately to less than 1 NTU. DEQ maintains that converting the measurement unit creates no change in the application of the rule and that greater than a 10 percent increase at any turbidity level as significance and should be a violation. However DEQ suggests that no adverse effects to any beneficial uses of water occur below certain levels of turbidity.

3. Under the proposed rule, a violation of the standard would occur if an increase of .15 NTU was caused by an NPDES permittee where existing stream conditions measured 1.0 NTU. Though it would be unnoticeable and would not adversely affect uses it would be a violation Protecting against a 10 percent increase would not be technical possible.

4. The proposed rule should be amended to establish a maximum of 20 NTUs as the level above which increases greater than 10 percent would be violations.

5. A committee should review the proposed rule on turbidity before it is adopted similarly to DEQ's proposal for other pollutants. (1/29/91 George B. Heilig)

6. The Corps comments on the proposed suspended solids standard and notes that in the absence of a mixing zone it would be difficult to meet the 25 mg/l 5-day maximum and 80 mg/l 1 day max. (2/27/91 Corps)

Dissolved Oxygen

Major Issues:

(MMH to summarize from below + add more technical detail of AOSA comments for meeting discussion.)

1. It's time to reevaluate the minimum design criteria for treatment and control of wastes, especially when the DO in the winter consistently exceeds the standard and it influenced by surface runoff with high DO & temp.

2. DO concentrations in the Rogue River show a corresponding decrease as in moves downstream because of temperature. (Brown and Caldwell)

3. Mildly support Option 2 since it gives better assurance of protecting the resources, especially since the DEQ has limited time and funds for monitoring.

4. It's not clear which waterbodies are designated as salmonid or non-salmonid fish producing waters and it's recommended that DEQ clearly identify designations applicable to specific waters. (1/18/91 EPA)

5. There must be a rational balancing of the significant economic impacts resulting from construction of capital facilities and increased O & M against any expected improvement to water quality resulting from new facilities made necessary by the proposed rule changes for DO. Tri City S.D alone estimates $8-10 million in capital and additional $750,000 in O & M with a potential improvement in DO of only

.03 mg/l at permitted load. This is too negligible to justify the cost. (1/22/91 Tri Cities S.D.)

6. The DO standards proposal are more stringent than those of the EPA. EPA has shown their DO standards are protective of the aquatic environment and the thus the DEQ must show that the EPA standards are not protective of the aquatic environment and more stringent standards are necessary.

7. Based on the Oxygen solubility tables in Standard Methods, whenever water temps exceed 10 C it is impossible without supersaturation to get 11 mg/l DO in freshwater.

8. Most rivers and lakes do not have sufficient physical mixing or falling to increase oxygen from interface with the atmosphere. Because the EQC and DEQ are limiting algal biomass in waterbodies, it may be difficult to obtain oxygen supersaturation. Thus the question, how can the influences of natural conditions be separated from the conditions imposed by nonpoint and point source dischargers?

9. If lakes are to be included in the rule, it is important to know that the DEQ is describing the upper meter of the water body. The DEQ should clearing stat the DO refers to only the water column in running water and the epilimnion in standing waters.

10. Dividing fish into salmonids and nonsalmonids means there are only two kinds of fish. It is unclear what specific standard is applicable at any one time and any one section of a stream, particularly difficult to determine what times are spawning, hatching or fry rearing when there are multiple races and species of salmonids, each with its own times in a specific section of a river. (1/23/91 PGE)

11. Glad to see TMDLs for the Pudding deferred until DO standard issue resolved, especially because of "antibacksliding policy".

12. DEQ has classified the Pudding as a non-salmonid fish producing water. It is unclear whether DEQ considers the Pudding for warm water or cold water criteria. Currently, DEQ requires that DO not be less than 6 mg/l.

13. DEQ proposes higher DO concentrations than the EPA "National" criteria for warm water fish. If DEQ is using cold water criteria, they are not stringent enough for early life stages (EPA's Table 8). If DEQ is adopting more stringent than EPA criteria a more detailed technical substantiation of the "scientific basis is needed.

14. It does not seem justifiable that the no impairment standard for DO of 6.5 mg/l be established for a 7 day average and 5.5

for the 1 day minimum. It represents a great difference in establishing wasteload allocations and TMDLs on the Pudding. According to the Technical Support Document for Water Quality Based Toxics Control (draft) the format used to express water quality criteria for aquatic life should take into account toxicological and practical realities.

15. Woodburn would like to be informed of any new criteria and how it will affect the establishment of the TMDLs. (2/25/91 CH2M for Woodburn)

16. It is not uncommon for disposal of dredge materials to cause small and transient reductions in DO in the immediate vicinity of the discharge as a function of the BOD and COD of the material. There is no mention of how frequently measurements must be made nor where in the water column they are to be taken nor is there a provision for mixing.

17. The proposed standards are clearing designed for point source, continuous discharges such as industrial and sewage outfalls and are only marginally applicable to dredged material. Because of the short-term and or intermittent nature of most dredge material discharges it may be difficult to apply the standards in a meaningful and technically defensible manner. There should be a provision (exclusion) to recognize that dredge material discharges require different considerations than conventional outfall approaches. (2/27/91 Corps of Engineers)

18. Supports Option 2 to insure protection of reproduction and health. The proposed regulations do not consider interactions with toxins in the river and therefore, at best, non-conservative.

19. AOSA's comments should be carefully considered. Their comments prove that the proposed DO standards are not suitable. (2/28/91 NWP&PA)

20. No sound scientific rational or justification is made to support criteria more stringent than the EPA criteria. The AOSA documents clearly set forth:

    (a) The EPA DO criteria is protective of the most sensitive aquatic organisms in the Willamette.

    (b) Temperature in the Willamette during periods of the lowest DO inhibit salmonid growth. Thus, higher DO levels than the EPA criteria affords no production benefit over the current DO because the quality is limited due to natural conditions.

    (c) There is no evidence that the upper Willamette River

(R.M. 26.6 to 187 is used by endemic salmonids for spawning.

(d) High water temperatures during chinook salmon embryo development precludes the main stem of the Willamette from being a viable salmonid spawning habitat.

(e) ODF&W considers the Willamette as not suitable for spring chinook salmon spawning because of high water temperatures and lack of suitable holding areas.

(f) A recent TVA study verified that the EPA DO criteria of 6.5 mg/l is protective against production impairment of young salmonids.

(g) ODF&W fisheries management plan for the Willamette discourages natural spawning of fall chinook because they compete with native fish. Their primary management option is to stop releasing fall chinook smolts in the Willamette.

(h) The beneficial use of the mainstem Willamette from 26.6 to 187 should be characterized as not being a salmonid spawning area.

21. Since DO data including sample variation and diurnal variation along the mainstem of the Willamette are greater than the EPA 6.5 mg/l criteria, adoption of the EPA criteria should be protective for the most sensitive aquatic organism. The diurnal DO variation does deserve further study, however.

22. Language is proposed to have salmonid producing waters specify 90% sat at the seasonal low or less than 90 % saturation in spawning areas during spawning, incubation hatching and fry stages. Freshwater shall have a 30 day mean of 6.5 mg/l with the one day minimum concentration to be not less than 4.0 mg/l and the 7-day average to not be less than 5.0 mg/l. ??? (2/28/91 Pope & Talbot)

23. The DO standard should be reduced to reflect actual in-stream levels needed to support beneficial uses. (3/1/91 DOF)

24. Supports Option 2 because it offers higher protection for fish which is what we're trying to do. (3/1/91 NWF)

25. The use of the 30 -day and 7 -day averages is applauded. It recognizes the variability of notpoint sources. More use of the technique in the standards is encouraged.

26. The proposed standards exceed those recommended by EPA guidance and DO standards should be no higher than EPA guidance recommends.

27. The proposed standards need to reflect actual conditions of beneficial uses under existing dissolved oxygen levels in Oregon streams. The EPA studies DEQ relied on do not provide this since their studies showed support of beneficial uses at much lower DO levels.

28. The proposed DO rule should state a process for investigating the condtion of beneficial uses when the criteria are exceeded. A process for verifying the instream condition of fisheries rather tan simply setting a standard of "no production impairment" from lab experiments is needed. (3/1/91 DOF)

29. Adoption of DO criteria above those set forth by EPA are not warranted, at least for the Willamette River. If they are adopted it will result in minimal improvement. This is distresssing considering the cost the tax and rate payers must shoulder to achieve the standard. Preliminary estimates show the capital costs to be $13,600,000 with an annual O&M cost increase of $1,180,000.

30. The better solution is to adopt EPA's criteria and adopt more stringent standards, if necessary on a site specific basis according to reasoned and balanced scientific analysis. (3/1/91 Clackamas County,3/1/91; Oak Lodge S.D.)

31. When considering the DO issue, the DEQ should be using the latest and best scientific evidence. The decisions should be based on evidence and adjustments made as knowledge increases.

    DEQ's proposals are not supoortable in the mainstem of the Willamette. An Analysis of the Columbia River swould also show similar results as AOSA's review of the Willamette.

32. Water temperature has a major impact on instream DO. Arbitrarily setting a DO stadard that may be exceeded durin natural late summer warm periods does not appear to be reasonable.

33. The higher DO standard should be imposed where studies show it will be effective in protecting the environment. (3/1/91 Gresham)

Wetlands as Waters of the State

Major Issues:

- Statutory authority seriously questioned
- Taking of property & private property owners rights.
- Expansion of DEQ's authority/duplication of other agencies responsibility.

  Questions of what is a wetland (hydric soils).
- More work needed before seeking authority to expand program.
- Concerns about application of antidegradation/biological criteria in concert with the addition of wetlands.

1. Over 47,800 acres in Multnomah and Columbia counties have been reclaimed from the lower Columbia River flood plain by a system of levees, pumping plants and tide boxes. Through contracts with the Corps, the ownership of the land has been assigned to various local flood control entities who own the flood control and drainage systems which is an improvement to the property.. the flood control works are owned by district landowners as an integral and inseparable part of the land... thus including any property as waters of the state demonstrates a blatant disregard for the rights of property and contempt for the Constitution of the U.S. property rights cannot be legislated away by any body, and not by an unelected state agency. (1/21/91 Assoc, of Lower Columbia River Flood Control Districts, 1/25/91 Preston Throgrimson Shider Gates & Ellis for the Sauvie Island Drainage District)

3. The language defining "water of the state" give no recognition to areas that are protected from flooding by diking and ditching and used primarily for agriculture since the early 1900's. Claiming these lands as "waters of the State" is taking of personal property rights. (1/22/91 Beaver Drainage District)

4. Adding to the definition of waters of the state to include "wetlands" will result in a conflict of jurisdiction between DEQ and DSL.If the intent is to regulate filling, removal, drainage, they are opposed to the inclusion since in 1989 authority over certain activities was clearly given to DSL. (1/22/91 Oregon Concrete & Aggregate producers Association, Inc.)

5. The Department cannot change the definition of "waters of the state" unless the statue in ORS 468.700 (8) is changed by the Legislature. A rule can't change a statute. ORS 196.800 (14) and OAR 141-85-010 (2) define "wetlands" Another alternative would be to define "marshes" to include "wetlands".

6. The wq standards that apply to open water should not automatically apply to "marshes" and "wetlands". The biological community and natural water quality is much different in areas of shallow, stagnant or non-flowing water. (1/23/91 PGE)

7. Same comments as from Assoc. of Lower Columbia Flood Control District except with respect to representation of 14 incorporated flood control districts in 15,000 acres in Clatsop County. (2/5/91 Association of Clatsop County Flood Control District)

8. Adding wetlands to the definition of waters of the state in combination with the proposed antidegradation policy change and biological criteria will put DEQ at the lead in terms of "taking private property. With the Supreme Court awarding monetary damages for regulatory takings without just compensation, DEQ will be wrapped up in lawsuits and payouts for years.

9. The rule change under Section 401 would have the effect of eliminating all exemptions to wetlands regulations that are provided under Section 404 of the CWA as administered by the Corps EPA, and DSL. An example of the exemptions allowed include removal of a beaver dam for the purpose of ditch maintenance. No matter how the respondent looks at it, the proposed rules would designate beaver as a resident biological community and prevent the act of removing their dams form the ditches. This would cause further damage to his property because of flooding.

10. The DSL does not claim authority over all wetlands, but the proposed DEQ rule would.

11. No property owners of wetlands were provided the public notice.

12. The term marshes instead of wetlands should be used in the definition to put a limit on what type of wetlands are regulated and exclude the biological criteria and antidegradation policy from linkage to "wetlands". Biological criteria should be stricken or limited in scope so as not to be applicable to wetlands (ditches, wet pastures, wet meadows).

13. Owners of property with hydrology under the surface up to eighteen inches underground could be required to flood the surface of their property to enhance "resident biological community... plant, animal, visible or microbiologic.

14. Adding wetlands to the definition also causes jurisdictional overlap with other agencies that are legislatively charged with protecting wetlands. Section 404 of the Clean Water Act protects wetlands and Section 401 should not be used as a defacto method of wetlands protection. (2/27/91 Dority)

15. The changing of the term "marsh" to conform to the definition of "wetland's as defined in 40 CFR 230.3 and 33 CFR 328.3 should have no impact on Corps of Engineers disposal activities since they already conform with the two CFRs.

16. Reference to Section 401 granting the DEQ authority to approve or deny applications for permits under Section 404 is not correct. Section 401 provides the state certify that a proposed 404 activity does not violate applicable state water quality standards. This does not constitute approval or denial of a permit as no permit is involved, although COE issuance is contingent upon obtaining 401 certification. (2/27/91 Corps of Engineers)

17. The exemption for "constructed wetlands is misleading; it could be read to exempt artificial wetlands created for mitigation. The definition should not be limited to permanent wetlands. The presence of hydric soils is a valid wetland indicator which should be recognized in the wetlands definition. Wetlands that are seasonal should also be subject to state water quality standards. (2/28/91 NEDC)

18. DEQ must seek statutory change in the definition of "waters of the state" before proceeding to adopt water quality standards for wetlands. The respondent has researched the issue and explains their reasoning. Reference is made to the DEQ having to seek authority for groundwater quality management in 1989.

19. DEQ must evaluate the entire scope of a wetlands program including definitions, designation of beneficial uses, development of standards (whether narrative, numerical or both) and application of the antidegradation policy to wetlands before seeking authority to expand the program. Reasons this is recommended are provided.

20. Irrespective of any decision on wetlands, DEQ should continue to propose the changes exempting constructed waterbodies from the definition of "waters of the state". (2/28/91 NWPPA)

21. It is unclear what "under normal circumstances do support" means. Does it mean wetlands before being altered by human

activity or does it mean under current, human altered conditions? (3/1/91 NWF)

22. Support exemption of constructed wetlands for wastewater treatment from the definition of waters of the state, and recommend that the language be modified to clarify that wetlands constructed for stormwater treatment are also excluded. (3/1/91 AOSA; 3/1/91 Gresham, 3/1/91 Oak Lodge S.D.; and 3/1/91 Clackamas County)

Other Comments

1/14/91 Brown & Caldwell on behalf of City of Medford

1. The move toward water quality based standards is correct and should be applied more broadly to the regulations and permit process.

2. DEQ should coordinate management of river basins where WQ is impacted by policies of state departments.

3. DEQ must work with local agencies to evaluate WQ. State needs to accept an active role in evaluating the water quality of Oregon stream.

4. DEQ must have an enforcement strategy that is used, consistent, and predictable. The current practice caused delays in the implementation of water quality improvements. Though enforcement may not be popular, it is the state's responsibility. Those municipalities that embrace their responsibility, loose public support when lack of action by others is tolerated.

5. Environmental improvements will be supported when the relationship between higher fees and improved WQ can be demonstrated.

1/14/91 James River

1. Supports/commends use of issue papers to apprise in advance what DEQ is considering, but process lacked substantive dialogue. Suggestion that issue papers be revised in response to comment as not acted upon. Concerns not reflected in rulemaking package with no explanation.

2. Economic impact of revisions could be devastating, yet DEQ has given issue only cursory attention. Proposals could stifle future growth throughout state.

3. Scientific basis for many rule revisions is flawed, For example DO rules are unrealistic and do not reflect physical and biological laws operating in a stream. Toxics not supported by research literature, nor is there internally generated data.

4. DEQ needs to rethink some of its logic and make serious attempt to consider with equal weight the economic consequences of its proposals... and works with dischargers, scientists and citizens to draft language that balances environmental protection goals with economic realities.

1/21/91 AOSA

1. Do standards proposals and requisite expenditures address priority environmental needs on a comparative risk basis? AOSA supports concepts adopted by the EPA of reducing risk by establishing priorities among environmental needs, Limited public financial resources should focus on priority needs first and proposals that offer net environmental benefits

2. Do we have a clear understanding of the benefits and economic impacts of the proposed rules?... It seems that many more rivers will be designated WQL even though no impairment is actually occurring. If analysis supports this concern, the economic impacts and regulator workload in pursuing attainment of a standard could be staggering while yielding no improvement.

3. Should various of the rules follow from rather than precede water quality assessments currently underway? Studies are underway that could help determine the need for and effectiveness of certain of the proposed standards, e.g., DO std.

1/23/91 PGE

1. The financial, social or economic appraisals by the DEQ of the water quality issues were inadequate for the complexity and extent of the proposed rules. Pollution prevention would provide a better return in resources expended for protecting the environment the promulgating additional and more stringent regulations.

2. Suggests the EQC establish a list of criteria to be followed by the DEQ for good financial analyses for proposed rules. The Oregon Attorney Generals Administrative Law Manual identifies criteria which must be included and includes reference to additional costs for equipment, supplies, labor and administration needing to be included.

3. DEQ needs to establish a sound financial policy to show that it is using its limited funds wisely.A statement for a proposed rule shows what programs will receive funding and how the proposed rules are to be funded. The Department must have a set of fiscal priorities to show the regulated public how it intends to administer the programs and how the rules will fit into both the DEQ's financial and environmental policies , its programs and its priorities.

4. The Department needs to assure there are sufficient commercial labs at reasonable sot available to the regulated public, especially when a whole new set of materials requires analyses.

   DEQ should provide support data and information on the water quality of Oregon waters to justify the proposed rules. For whole new areas of regulation the Department needs to show there is statutory authority for the DEQ to promulgate the proposed rules and the laws satisfies the proposed regulations. Is the program mandatory or discretionary.

5. No forethought has been given to how the rule changes would affect private property. The last thing DEQ needs is to have rules that keep the issue of taking wrapped up in court. (2/27/91 Dority)

6. There is a small probability that dredge material disposal will result in a change in dissolved solids. (2/27/91 Corps of Engineers)

<u>2/28/91 Northwest Pulp & Paper</u>

1. There should be some general guidelines that all parties would follow on the use of the issue papers. they should place the burden on DEQ to provide basic analyses of all the issues and a reasonable range of options that may meet DEQ needs. Specific recommendations are offered, including what should be contained in the issue papers such as a precise description of the federal requirements, holding an informal discussion on the issues wherein DEQ would have alternatives developed that might meet the needs, finalizing the issue papers to reflect the discussions and reasonable range of options form consideration as a proposed rule. The public

needs some assurances that their participation is worthwhile. DEQ should welcome the opportunity to carefully and fully explain their intentions, the range of ideas they considered and the rational for selecting the preferred option.

2. The fiscal impact statements are inadequate. Reference is made to the Oregon Attorney General's Administrative Law Manual.

3. Concern is expressed that DEQ may be proposing standards that are not necessary to maintain federal delegation and which are expected to impose significant and resource obligations. The EQC should take notice of whether any specific proposal is in fact a federally required component or whether it is discretionary. If it is the latter, the EQc is expected to be apprised of the resource implication for DEQ and the regulated community and of the need for more stringent programs.

4. EPA criteria identified in the "gold book" are not always appropriate for all states or for all waters. DEQ must maintain an open mind with regard to following EPA guidance, particularly where new information has come available and where a need for more or less stringent values are demonstrated. DEQ must be flexible and open-minded towards its proposals, allow for meaningful comment and respond to comments in a reasoned manner.

5. Comments on the proposed permits for International Paper and Georgia Pacific permits are included in the packet of materials dealing with whole effluent toxicity testing requirements.

3/1/91 Dept. of Forestry

1. All existing water quality standards should be modified to account for the complexity and variability of natural effects before being enforced on nonpoint sources.

2. The EQC should adopt a policy and procedures for using wq stds as triggers for in-depth investigations rather than immediate enforcement action, This is because in nonpoint source situations beneficial uses are often supported in spite of exceedance of the existing standard.

3/1/91 Oregonians in Action

1. Question whether the public notice fully complies with the Administrative Procedures Act. A summary of the principles of the Act are provided.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: July 1, 1991

TO: Environmental Quality Commission

FROM: Neil J. Mullane, Manager
Standards and Assessments Section

SUBJECT: Water Quality Standards being Proposed to Commission

The Commission authorized the Department in November 1990 to take eight proposed water quality standards to public rulemaking hearing during January 1991. This included:

1. Antidegradation Policy
2. Bacteria
3. Mixing Zones
4. Toxic Substances
5. Biological Criteria
6. Turbidity
7. Dissolved Oxygen
8. Wetlands

Considerable public comment was received during the hearing process. Attachments B, C, D, and E of the July 1991 EQC staff report attest to the many issues and concerns raised during the comment period. During the review of the hearing record and consideration of the public comment the Department was asked to review with various groups the status of our evaluation and what progress we were making towards final recommendations. We also heard from these groups their concerns and objections to the proposed standards. In most cases, the comments received during this period reflected the formal comments received during the hearing process. Some groups continued to press the Department during this period to take their concerns into consideration. Some of these discussions included comments on what proposed standards would be brought forward to the Commission for final adoption and what proposed standards would be held over for further review. These groups also pressed their positions as to what standards should be brought by the Department to the Commission.

Unfortunately, these discussions have been considered by some to have affected the Department's decisions and have potentially changed decisions the Department would have made otherwise. I would like to review each decision made on the eight proposed standards to summarize the rational for either moving forward with recommendations for adopting proposed rule changes or referring them for futher review.

1. Antidegradation

There has been considerable discussion over the antidegradation policy and its potential impacts. The Department's staff have put considerable effort into developing the antidegradation policy which reflects the needed requirements of the federal legislation and regulations while also being a workable policy for the state. The recommended policy is, in the view of the agency, the best policy the state can adopt to address the needs and concerns.

There was no doubt that this proposed policy would be forwarded to the Commission at this time.

2. Bacteria

There has been some discussion over the proposed bacteria standard. Most of this discussion was not to dispute the technical basis for the proposed standard but to identify concerns relative to the potential difficulty of implementing the proposal. There does need to be some attention given by the Department to individual permit holders as permits are reviewed, renewed and issued so that on a case by case basis the appropriate implementation plan can be developed for this standard. Current permit holders should not be judged to be out of compliance with the new standard until the Department has had the opportunity to review permits and make the appropriate changes in the effluent limitations for bacteria.

Although there was some discussion for delaying the adoption of this standard, the Department does not feel the reasons were compelling.

3. Mixing Zones

The Department currently has a mixing zone standard. The proposed rule language would update this standard and reflect what the Department is currently doing to address toxic contaminants.

There was no compelling reason for not bringing this standards to the Commission at this time.

4. Toxic Substances

Fish Tissue Guidance Values - The Department proposed guidance values for toxics levels in fish tissue as part of the rule that went out for public hearing. The guidance values would be used to compare with lab results to indicate the level of contamination in a particular sample of fish tissue. This would give the Department a tool to sort through fish tissue data and identify areas for future followup study. There was confusion over the proposal that the values would be water quality standards. Commenters during the hearing process, as well as after the hearing, requested the Department not to include the fish tissue guidance values in rule.

The Department has decided to issue the values as Agency guidance from the Water Quality Division and not as administrative rule. The Department will discuss with the Technical Committee the intent of these guidance values before issuing them as guidance.

Dioxin (2,3,7,8 - TCDD)

The Department during the Triennial review evaluated the current information with respect to the dioxin standard and has recommended that the Commission not change the standard. The Commission received a petition requesting rulemaking to change the current dioxin standard. The Commission denied the petition at the EQC meeting in June 1991.

New Criteria for Chloride and Ammonia

The Department reviewed the need to add these two parameters to Table 20. The Department has moved forward with this proposal.

The Department also reviewed the need to add an aluminum acute and chronic criteria however work still remains to decide on an appropriate test method. Therefore the Department will delay adding aluminum until a test method is agreed upon.

5. Biological Criteria

This is a new criteria and the comments received were generally favorable. The Department has moved forward with this proposal.

6. Turbidity

The Department received limited testimony on this proposed rule change. The change is considered by the Department to be very much a house-keeping item where the analytical method in use for a number of years will now be reflected in rule as well as the reporting units.

7. Dissolved Oxygen

The Department received considerable testimony on the proposed changes in the dissolved oxygen(DO) standard. There were numerous meetings held with the regulated community and public to discuss this proposed change. Simply put, there was considerable discussion over what the proposal would do and why the Department was proposing the specific levels. The selection and recommendation of DO levels requires the review of both the technical basis of the criteria and the policy choices which result in recommending different DO levels. This combination of policy and technical issues proved to be very difficult to explain and reach a reasonable understanding.

The Department, did not feel that a clear enough understanding existed on what was being proposed and what the potential impacts would be so that there was general agreement on the intent of the rule. Although the Department continues to support its position as to what should be recommended, it is not possible to discuss the impact of the proposed changes without additional work with the public and regulated community.

The Department, in deciding not to bring this standard to the Commission at this time, reviewed the current standards and the potential impact on the environment if the proposed standard was not acted upon. The Department believes that the current DO standard provides sufficient protection to the designated beneficial uses to recommend a delay in considering a change in the standard until the next triennial standards review.

8. Wetlands

The Department proposed to include the word "wetlands" in OAR 340-41. A considerable amount of testimony was received regarding this proposed change. The Department is a bit puzzled over the out pouring of comment on this issue. It was considered by the Department to be a simple recognition of wetlands in the rules. The Department has been involved in the protection of wetland water quality for a number of years. The inclusion of the term "wetlands" in the rules does not change the Department's authority or program. However, considerable interest was generated over this proposal. There seems to be a considerable amount of confusion over the proposed change and the role the Department plays in regulating wetland water quality.

The Department finds no technical reason to delay adoption of the rule proposal as a result of hearing testimony.

However, with as much confusion as has been identified, the Department would recommend that a brief period of time (6 months) be taken to provide an opportunity to distribute information to the public on the Department's role in protecting wetland water quality before the Commission takes final action on the proposed rules.

9. Other Issues

The Department has already decided to refer issues related to standards for temperature, total dissolved solids, sediment criteria, and toxicity equivalency factors to the Technical Review Committee for further review and development.

Attachment F

DRAFT IMPLEMENTATION PLANS

DRAFT IMPLEMENTATION PLANS

Antidegradation Policy Implementation Plan Outline

In order to begin the process of implementing the proposed Antidegradation Policy for the different levels of water quality protection, the following process is being proposed for high quality , outstanding resource waters, and water quality limited waterbodies:

High Quality Waters:

Four basic steps should be included in implementing the antidegradation policy for high quality waters:

Task A. The first step is to determine whether the proposed action will require a detailed water quality and economic impact analysis, and what classification the waterbody has, is it a water quality limited waterbody, a high quality, or an outstanding resource waterbody.

Task B. The second step is to determine if the proposed action will cause a significant lowering of water quality within the classification. If the predicted change is not "significant", then no further analysis is required. If the change is significant, then proceed to step three.

Task C. The third step involves the demonstration to the Environmental Quality Commission that lower water quality is necessary to accommodate important economic and social development in the area where the waters are located if the waterbody has a "high quality" classification. For "water quality limited" and "outstanding resource waters", no significant degradation would be allowed.

Task D. The fourth step is to assure that the intergovernmental coordination and public participation requirements are completed.

Task A

Before any action that might lower water quality is considered, two conditions must be met. First, the waterbody that might be affected must be considered a high quality water where standards are met or exceeded. If the waterbody is water quality limited or an outstanding resource water, then proposed actions that may permanently degrade water quality would not be allowed.

Second, the proposed activity will not result in violations of water quality standards. In order to assess this, it is necessary to:

- Document the degree to which water quality exceeds that necessary to protect uses, assess which water quality parameters might be affected, and how beneficial uses are likely to be affected (use ambient monitoring information, or conduct special assessments);
- Quantify the extent to which water quality will be lowered as a result of the proposed action using simple mass balance equations, or mathematical modelling (as appropriate);
- Determine if repeated or multiple small changes in water quality (which individually would not create water quality problems) can result in significant long term permanent water quality degradation.

If the water quality of the waterbody may be affected, and the proposed action will permanently lower water quality, but not below the standards, then an analysis to determine if the lower water quality is significant and environmentally acceptable must be conducted.

Task B

The next step is to determine if the proposed action will cause a "significant" permanent lowering of water quality, and to define the degree of water quality change that is acceptable. Water quality change can be based on direct measures such as absolute or percent change in ambient concentrations of the affected parameter, or on indirect changes such as primary productivity caused by nutrients or fluctuating diurnal dissolved oxygen concentrations.

In order to determine if the lowering of water quality is "significant", a number of factors need to be considered on a site-specific basis. It is impractical to assign definite values for each pollutant that define significant degradation. The factors will be different for different categories of pollutants, and for the type of biological resources and aesthetic values of particular waterbodies, and would not account for additive and synergistic effects. For instance, a small increase in carcinogenic or persistent substances may be more significant due to bioaccumulation potential, or no safe threshold concentration, than an equal increase in conventional pollutants. Consideration of repeated or multiple "insignificant" changes is also necessary since they may cumulatively cause significant changes in water quality (multiple discharges into the same waterbody). In addition, the location of the waterbody in relation to water quality limited or ORW waters is also important. If a proposed action lowers water quality in a waterbody that is upstream of these non-degradation waterbodies, additional analyses may be required.

If it is determined that the proposed action will significantly lower water quality, but still protect beneficial uses, then an analysis will be necessary to establish a strong tie between the proposed lower water quality level and "important" economic or social development, and weight that lowering with the associated environmental risks.

Task C

The next step is to determine that lower water quality is necessary to accommodate important social or economic development in the area in which the waters are located. There have been many questions as to what factors are considered in judging a development to be necessary, justifiable, economically or socially important enough to degrade water quality. No one set of factors apply because of varying environmental, social, and economic conditions throughout the state. Site-specific decisions could be made based on evidence presented by the party proposing the water quality change and the public. The benefits of the project must be weighed against the costs to the community and the environment.

The following criteria may be used as guidance in the decision-making process to demonstrate important social and economic development. First, the party proposing the water quality change must demonstrate that the lowering of water quality is necessary to accommodate a new discharge, increased loading because of community growth, or other activities where a no-discharge option is not feasible. Second, the party proposing the change must describe and analyze the current state of economic and social development in the affected are to identify "baseline" conditions.

The area's use dependence on the water resource affected by the proposed action should also be included, so that it can be determined if the lowering of water quality is in the public interest. The following factors should be included in the baseline analysis:

- Population.
- Area employment.
- Area indirect or direct income, and/or community tax base

Third, the party proposing the change must demonstrate the extent to which the proposed decrease in water quality would create an increase in the rate of economic or social development, and specifically why the water quality change is necessary to achieve such development.

The factors to be included in the analysis of incremental effects expected to result from the water quality degradation include:

- Expected employment growth.
- Expected income effects.
- Increases in the community tax base.

The requirements for a given analysis will be site-specific, depending on factors such as data availability, conditions specific to the affected waterbody, and the boundaries of the affected area (local, city, county or state-wide). The relative costs of all the treatment alternatives, or implementation of best management practices should also be included. In the case where precise or detailed social or economic information is not available, professional judgement must be exercised in accepting demonstrations based on reasonable estimates derived from existing data sources.

If this information is provided, then an opportunity for public comment must follow, with a review and a decision made by the Environmental Quality Commission.

Task D

Public participation and intergovernmental coordination are essential elements of antidegradation policy implementation. Potential participants must be explicitly aware of the

antidegradation policy issues and the potential impact of lowering water quality. The public participation requirement can be met by holding public hearings. Intergovernmental coordination consists of reviews of proposed actions by affected local, state and federal agencies.

A public notice related to the potential lowering of water quality should address at least the following topics:

- A description of the antidegradation policy.
- Specific identification of substances that may enter the waterbody, and known and suspected environmental effects.
- A determination that uses will be maintained and protected.
- Description of the current water quality and the level that it exceeds standards.
- Description of the impact that the proposed action will have on water quality.
- A summary of other actions that have lowered water quality and determination of cumulative impacts.
- A determination that lower water quality is necessary to accommodate important social and economic development.
- A description of the intergovernmental coordination process that has taken place.
- A determination that there has been achieved the highest statutory and regulatory requirements for all new and existing point sources, and all cost-effective and reasonable best management practices for nonpoint sources.

Water Quality Limited Waters:

These waters may not be degraded, nor will any increases in loads be permitted during the season that the waters are considered water quality limited. (See OAR 340-41-026 (3).

Outstanding Resource Waters (ORW):

In order to identify, nominate and designate high quality waters as Outstanding Resource Waters, the following steps will be taken to implement the antidegradation policy. As this time, staff resources are limited. The implementation plan will be phased in, as resources and data are available.

1. Establish an ORW Working Committee with representatives appointed by the Director of DEQ. These representatives should be from the recreation/environmental community, state and federal agencies, and representatives from industry and tribes, or other appropriate affected agencies, or organizations.

2. Define the water quality criteria that will be used to judge whether a waterbody needs to be designated as an ORW (for example waters that provide critical habitat, exceptional pristine water quality, exceptional recreational opportunities, and/or already designated by other state or federal agencies as a special waterbody etc.) Develop a point and ranking system in order to prioritize the waterbody segments.

3. Identify stream segments/lakes of concern that meet the criteria where data is available. Identify and prioritize stream segments/lakes that need further monitoring information gathered to determine if they should be listed as candidate waters.

4. Conduct public meetings on the candidate stream segments/lakes to obtain additional information about the identified stream segments and relative priority for protection. Determine if a basin by basin approach will be feasible, or whether the highest priority waterbodies statewide will be identified, with the amount of resources available determining the level of effort.

5. Identify the types of management plan that may be needed for the stream segments/lakes. Assure cooperation and involvement of affected parties. A management plan is intended to be document describing the waterbody, the type of activities that may be allowed or prohibited in order to protect the waterbody and identification of responsibilities for protecting those waters. If the waterbody is on federal or state lands, draft memorandums of agreement with appropriate agencies to be used to establish the management plans.

6. Present the priority candidate list, the water quality information, and management plan for the waterbodies identified to the EQC for adoption.

7. Establish memorandums of agreement with appropriate local, state or federal agencies for implementing the management plans.

8. Management plans should be designed to protect and enhance the values of the waterbody by identifying the kinds and amounts of public use the waterbody can sustain without impact to the values for which it was designated. Identification of special values or beneficial uses, level of water quality needed to protect those values and uses, and a management approach to restrict uses will be needed using a watershed protection approach. Land uses existing at the time of designation may continue if the special resource values will be protected. However, any new uses or activities will need to be reviewed in terms of compatibility with the management plan.

9. Under OAR 340, Division 13-005 Wilderness Policy, the department must "maintain the environment of wilderness areas essentially in a pristine state free from air, water and noise pollution". Also in OAR 340-13-015 and -020, it states that no person shall commence activities which cause emissions of water pollutants, or may discharge wastes or conduct activities that cause measurable increases in color, turbidity, temperature, or bacterial contamination; a measurable decrease in dissolved oxygen; a change in pH; or any toxic pollutants.

   Given this policy, and the Department's desires to begin gathering information for appropriate designations, the Department recommends that information related to waterbodies located in wilderness areas, State Scenic Waterways and Federal wild and Scenic Rivers be evaluated within the first year after adoption of the antidegradation policy. Other waterbodies will be considered for designation based on the recommendations of the ORW Review Committee, public review, and/or staff resources.

Bacteria -- Implementation Plan

Ambient Waters. Compliance with the proposed standard will be determined on a year-round and summer basis for each waterbody through the 305(b) evaluation process. The Department may pool data collected during the assessment period so that at least 10 data points are available for each evaluation. For example, ambient river fecal coliform data collected over a 10 year period were included in the 1990 305(b) assessment.

Noncompliance with the standard may also be determined by an unacceptably high single sample value. Proposed rule language establishes a statistically-derived acceptable maximum value that is greater than the geometric mean value, but is intended to provide the same level of protection as the mean value. The

Department will use the EPA criteria value of 61 counts per 100 ml for this maximum value, or upper confidence limit, unless sufficient data are available to calculate a site specific standard deviation and 75 percent upper confidence limit.

Shellfish Growing Waters. The Department is not proposing any rule change for shellfish growing waters. The Department will continue to use fecal coliform as an indicator of water quality in these areas until EPA or FDA provide information or guidance that warrant a change of the standard. Water quality in shellfish growing areas is evaluated using a minimum of 15 values collected over a period of three years. This follows guidance established by the FDA and the International Shellfish Sanitation Conference. As indicated in the 1990 305(b) report, waterbodies are identified as not supporting commercial and recreational shellfish growing and harvest for consumption if the median value exceeds 88 fecal coliform per 100 ml or 10 percent of the data exceed 300 fecal coliform per 100 ml. Waterbodies are identified as partially supporting this use when fecal coliform values exceed a median of 14 per 100 ml or 10 percent of the samples exceed 49 per 100 ml.

Effluent Limits. The proposed rule change affects the existing instream bacteriological standard and may not be applied as an effluent limit to all wastewater treatment facilities. The Department will review each facility on a case by case basis and consider the performance and design features of the treatment plant, effluent mixing characteristics, and public use of the receiving water in the vicinity of the discharge before proposing new bacteriological effluent limits. However, it is likely the Department will require wastewater treatment plant operators to begin monitoring effluents for enterococcus if the Commission adopts the proposed standard. It is expected that this new monitoring requirement will be phased in over a number of years and Department staff will be available to assist with the implementation of this new monitoring requirement. The new standard would be incorporated into the permits at the time of their next renewal or if the Department reopens a permit to include limits and a compliance plan.

Mixing Zone -- Implementation Plan

Effluent Limits.

Acute toxicity in final effluent discharged to waterbodies would not be allowed with the exception of acute toxicity associated with chlorine and ammonia in an area of immediate mixing around the outfall pipe. Acute toxicity in final effluent discharged to waterbodies would be allowed for ammonia and chlorine when immediate dilution would reduce the lethal concentration within a short distance of the discharge.

The area of immediate dilution within the mixing zone for the dissipation of acute toxicity will be designed to protect in-stream aquatic life from lethal conditions. Methods for the design of these areas are contained in "Technical Support Document For Water Quality-based Toxics Control" EPA/505/2-90-001; PB91-127415; March 1991 (TSD). There are different methods discussed for the design of the areas of immediate dilution in the TSD. The Department will issue guidance to permit writers on the preferred procedure for design of these areas within six months of adoption into the mixing zone rule.

The use of bioassays and chemical specific criteria are needed for assessing compliance with the mixing zone toxicity rule. Water quality standards for ammonia and chlorine have been adopted into rule. Bioassays are being required of municipal and industrial dischargers. Monitoring for ammonia and chlorine are required for some of these same dischargers. The data will be available from these permit requirements to evaluate compliance with the rule.

Toxic Substances -- Implementation Plan

Ambient Waters. Compliance with the proposed standards for aluminum, chloride, and ammonia would be determined on a year round basis according to methods for evaluating Table 20 pollutants. USEPA criteria were designed to protect 95% of aquatic life species if the criteria are exceeded no more frequently than once every three years on a one-hour average for acute criteria and a three-day average for chronic criteria.

Guidance needs to be developed by the Department for the interpretation and implementation of the narrative standard.

Effluent Limits. The proposed rule change may not be applied to all dischargers. The Department will determine if effluent limits are required for these pollutants upon NPDES permit renewal. Some dischargers may not be able to meet the criteria under their present treatment and mixing zone design. Improved treatment, redesign of the mixing zone, or a variance of the standard may be necessary for some dischargers.

Biological Criteria -- Implementation Plan

Adoption of new narrative biological criteria into State standards has brought into focus several issues. These issues include:

- The need for sampling methods that are sensitive, cost effective, and consistent so effective comparisons and evaluations can be made throughout the State.

- The need for sampling methods that address all levels of the aquatic ecosystem: biological, physical habitat, and chemical.

- Selection of sampling locations, both reference and study sites, that provide accurate evaluations of potential impacts.

- Assessment and analysis techniques that take into account natural variability and the variety of factors that can affect biological communities.

- What action needs to be taken by DEQ when biological impairment is identified?

- What data needs and program development are required to recommend and implement numeric biological criteria four or five years from now?

The following implementation plan attempts to address these issues, and provide a framework that will allow consistent application of the new standards. This plan is not static, and will be added to and changed as new information and experience requires.

SAMPLING PROCEDURES

Advantages of biological assessments in water monitoring include:

- Biological communities reflect overall ecological integrity. Therefore, biosurvey results directly assess the status of a waterbody relative to protection of beneficial uses.

- Biological communities integrate the effects of different environmental stressors and thus provide a holistic measure of their overall impact.

- Biological surveys can be relatively inexpensive, particularly when compared to the cost of assessing toxic pollutants, either chemically or with toxicity tests.
- The status of biological communities is of direct interest to the public as a measure of a safe environment.

- Where criteria for specific ambient impacts do not exist (e.g., nonpoint source impacts that degrade habitat), biological surveys may be the only practical means of evaluation.

For biological surveys to be effective, however, they need to assess more than just biological communities; habitat and water chemistry must also be included.

Biological Community Assessment Procedures

The primary biological communities used for assessing aquatic environments are fish and macroinvertebrates. Aquatic plants and algae are also important components of aquatic systems, but their use in monitoring water quality impacts is not as widespread. A variety of methods are available for assessing fish and macroinvertebrate populations. The methods currently used at DEQ are EPA's, Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish (Plafkin, etal. 1989). These protocols (known as RBP methods) are recommended for general bioassessment surveys.

Fish:

Fish assessments are based on sampling a representative reach, incorporating at least one (preferably two) rifles, runs, and pools if these habitats are typical of the stream in question. Typical sampling station lengths range from 100-200 meters for small streams to 500-1000 meters for rivers. The size should be sufficient to produce 50 or more individuals and 80-90 percent of the species expected from a 50 percent increase in sampling distance. Sampling is typically done during the day by electrofishing. Block nets should be used where possible. More detailed discussion of sampling methods is presented in Plafkin, etal. (1989) under protocol V.

Macroinvertebrates:

Plafkin, etal. (1989) list three protocols, varying in sampling intensity and sensitivity, for macroinvertebrate surveys. Protocols II and III are recommended for most biosurveys. These protocols both incorporate random kick net sampling from the dominant habitat types, preferably riffles. Three to five samples are collected and composited at each site, and 100 organisms are randomly sorted from the composite in the field (protocol II) or in the lab (protocol III). Sorted specimens are then identified to family (protocol II) or to genus/species (protocol III). Details of the sampling procedures are discussed in the RBP manual.

Both fish and macroinvertebrate communities should be sampled for a thorough bioassessment. However, where fish populations are sparse or difficult to collect, macroinvertebrates provide the best community for assessing environmental impacts.

Physical Habitat Assessment Procedures

Characterizing the physical habitat at both study and reference sites is critical for proper evaluation of environmental conditions and possible causes for biological impairment if observed. Habitat parameters pertinent to the assessment of habitat quality are separated into three principal categories: substrate and instream cover, channel morphology, and riparian and bank structure. Specific assessment procedures for habitat quality are discussed in Plafkin, etal. (1989).

Water Chemistry Assessment Procedures

For a complete biosurvey water quality parameters should also be measured. These include both field and laboratory constituents. In the field measurements of should be taken for temperature, pH, dissolved oxygen and if possible conductivity. Samples should be returned to a lab to analyze for nutrients (ammonia, nitrate, nitrite, TKN, total phosphate and dissolved phosphate), BOD (biological oxygen demand), sulfate, total dissolved solids and suspended solids. Other parameters such as, metals or organics, might be added for analysis if suspected as contaminants. Specific procedures for analysis can be found in Standard Methods for the Examination of Water and Wastewater.

SAMPLING LOCATION

To meaningfully evaluate biological condition, sampling locations must be carefully selected to ensure generally comparable habitat at each station. Unless basically comparable physical habitat is sampled at all stations, community differences attributable to a degraded habit will be difficult to separate from those resulting from water quality degradation. Availability of habitat at each sampling location can be established during preliminary reconnaissance. Where several stations on a waterbody will be compared, the station with the greatest habitat constraints (in terms of productive habitat availability) should be noted. The station with the least number of productive habitats available will often determine the type of habitat to be sampled at all stations of comparison.

Reference Sites

Reference sites are used as the basis for determining impairment or level of impairment at selected study sites. Reference sites can be either site-specific or regional reference stations.

Site-specific reference sites are often used for assessing point source impacts and may be located just upstream (if in streams or rivers) of discharge or impact locations. These upstream reference sites should be representative of "best attainable" conditions excluding the effects of the point source impact. Regional reference sites represent the "best attainable" conditions for a region of similar character (often defined as an "ecoregion"). Regional reference sites are often required for assessing nonpoint source impacts. Regional reference conditions have also been used as the basis for numeric biological criteria. Reference sites need to be sampled at the same time as study sites to avoid seasonal variability.

Study Sites

Study sites should be located in areas that allow evaluation of conditions of concern, whether that be point source discharges or less specific impacts from nonpoint source pollution. It is preferable to establish an network of sampling stations at points of increasing distance from the impact to provide a basis for delineating impacts and recovery zones.

EVALUATION & ASSESSMENT PROCEDURES

The evaluation and assessment process involves comparing biological and habitat conditions at the selected reference sites to the potentially impaired or impacted sites. Assessment of the biological condition using the macroinvertebrate and fish RBP methods is based on a number of "biometrics" or population characteristics. These are summarized below.

Macroinvertebrate Biometrics:

1. Taxa Richness - This equals the total number of taxa (genera and/or species) identified from each site. Taxa richness generally increase with increasing water quality.

2. HBI - The Hilsenhoff Biotic Index (HBI) ranges from 0 to 10, increasing as water quality decreases. It is based on the pollution tolerance and relative abundance of each taxon at a sample site. The index was developed by W.L. Hilsenhoff (1987) as a means of detecting organic pollution.

3. Ratio of Scrapers/Filt. Collectors - The ratio of invertebrate feeding groups, in this case scrapers and filtering collectors, provides insight into the nature of potential water quality changes. Predominance of one feeding type may indicate an unbalanced community responding to an overabundance of a particular food source.

4. Ratio of EPT & Chironomidae Abundances - This metric compares the abundance of Ephemeroptera, Plecoptera and Trichoptera (EPT) relative to Chironomid (midge) abundance. Chironomids tend to become increasingly abundant in response to increased organic enrichment or heavy metal concentrations.

5. Percent Contribution of Dominant Taxon - The percent contribution of the ten numerically dominant taxa to the total number of organisms is an indication of the community balance and health. A community dominated by relatively few species indicates environmental stress.

6. EPT Index - The EPT index is the total number of distinct taxa within the orders Ephemeroptera, Plecoptera and Trichoptera. The EPT Index generally increases with increasing water quality.

7. Community Loss Index - This index is a measure of the loss of benthic species between a reference or control station and a study site. The index ranges from 0 to infinity and increases as the dissimilarity between sites increases.

As outlined in EPA's RBP manual, these biometrics are scored for each site according to their percent of variation from the reference condition. These scores are then summed to provide an overall site assessment. Consult Plafkin, etal. (1989) for a complete discussion.

Fish:

Fish biometrics need to be developed for specific drainages or regions because of natural differences in fish populations and management practices. Below is a list of biometrics used for characterizing Western Oregon fish populations.

1. Number of native fish species.

2. Number of salmonid age classes.

3. Number of sculpin species.

4. Number of salmonid yearlings.

5. Number of cyprinid species.

6. Number of sucker species.

7. Number of adult trout species.

Like the macroinvertebrate metrics, these metrics are scored according to their variation from the reference site and a total score for each site is calculated.

Habitat:

Habitat assessments follow a similar approach as the biological assessments: specific habitat characteristics at each site are scored and the percent of comparability to the reference site score determines the habitat condition ranking at the study sites. The habitat assessment categories are summarized below.

Habitat Assessment Category	Percent of Comparability
Comparable to Reference	>90%
Supporting	75-88%
Partially Supporting	60-73%
Non-Supporting	<58%

When biological and habitat assessments have been completed the condition of each site can be evaluated. The condition at specific sites generally falls into one of the categories listed below.

Biological Condition	Habitat Condition	Conclusion
No Impairment required	Comparable	No action
Slight to severe impairment	Comparable	Probable water quality problem.
Slight to severe impairment	Partially or non-supporting	Habitat and/or water quality problems. Further studies needed.

Follow-Up Action:

Once the above evaluations are completed follow-up action can be taken. If a water quality problem is indicated specific chemical parameters should be assessed to determine the problem constituents. After they have been identified a program should be designed to improve water quality conditions. Monitoring the biological communities should continue to determine the effectiveness of the water quality improvement plan. If biological conditions and habitat conditions are both impaired compared to reference sites then both habitat and water chemistry factors need to be further assessed to determine potential limiting factors, and an improvement plan developed.

IMPLEMENTATION SCHEDULE

The narrative criteria should become effective upon adoption of the new rule language. To reach the goal of developing numeric criteria a number of steps need to be taken. These include:

1. Create a technical work group to evaluate and recommend reference site selections, sampling methods and analysis techniques that will be appropriate for developing and implementing numeric biological criteria. (Establish by January 1992)

2. Identify and conduct biosurveys at unimpaired reference sties within ecoregions or specific basins. (Begin in summer of 1992)

3. Establish numeric biological criteria based on results of reference site studies, and evaluate effectiveness and sensitivity of proposed numeric criteria at potentially impaired sites. (Complete by end of 1995)

4. Adopt numeric criteria as water quality standards for biological communities. (Adopt in 1996)

References

Plafkin, J.L., M.T. Barbour, K.D. Porter, S.K. Gross, and R.M. Hughes. 1989. Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish. U.S. EPA, Assessment and Watershed Protection Div., Washington D.C.

Turbidity -- Implementation Plan

Ambient Waters. Compliance with the proposed standard would be determined on a year round basis for each waterbody through the 305(b) evaluation process. The Department's water quality laboratory collects turbidity data in NTU's and the change in the standard would not affect the Department's ambient data collection.

Effluent Limits. The proposed rule change may not be applied to all dischargers. The Department will make appropriate changes upon NPDES permit renewal. Some dischargers may not be able to meet the criteria under their present treatment and mixing zone design. Improved treatment, redesign of the mixing zone, or a variance of the standard may be necessary for some dischargers.

F. Proposed Adoption of Rule to Authorize Enforcement Section Staff to Represent Department in Contested Case Hearings

This agenda item recommended that the Commission adopt proposed rules that would authorize the Department's Enforcement Section staff to represent the Department in contested case hearings involving civil penalties and/or Department orders. The proposed rules were presented in Attachment A of the staff report. ORS 183.450(7) allows an agency to be represented by employees of the agency if the Attorney General consents to the representation and if the agency has authorized the practice through rulemaking. The Attorney General has consented to the agency lay representation through a letter dated April 29, 1991. A public hearing was held on July 24, 1991. No oral or written comments were received on the proposal.

Director Hansen noted that the authority sought provides flexibility and is permissive, and not mandatory. He also noted that the Departments of Forestry and Fish and Wildlife already have this authority.

Commissioner Whipple asked about the effect on the other side in such cases. Director Hansen noted that the feeling would be better in those cases where the other side chooses to represent themselves rather than be represented by counsel.

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

G. Proposed Adoption of Amendments to the Water Quality Standard for Antidegradation
(deferred from July meeting)

This agenda item proposed adoption of amendments to the provisions of the state Water Quality Standards dealing with antidegradation. The proposed rule amendments were presented in Attachment A of the staff report. Proposed revisions to the antidegradation rules were considered in eight public hearings held in January 1991. The Commission discussed the matter at a work session in April 1991. This item was deferred from the July meeting with the request that staff take the comments and concerns of the Commission into account and return the matter to the Commission for consideration in September.

Specifically, the Commission asked for additional detail on current rules on wilderness areas and state scenic waterways, the intent of the Congressional designation of Wild and Scenic Rivers with respect to protection of water quality, the Department's nomination process and timing of public requests for designation, the Department's resources for reviewing and forwarding nominations to the Commission, and more specific information about approaches

for how Outstanding Resource Waters could be managed to protect existing water quality without a moratorium on all human activities.

The proposed rule in Attachment A of the staff report would provide the Commission and Department with policy language to comply with federal requirements. It would establish three categories for designation of waterbodies: High Quality Waters, Water Quality Limited Waters, and Outstanding Resource Waters (ORW). All waters would be considered High Quality Waters unless specifically classified as Water Quality Limited Waters or Outstanding Resource Waters. The proposed rule provided a process for evaluation and designation of ORWs. It did not automatically place any waterbodies in the ORW classification.

Neil Mullane and Krystyna Wolniakowski of the Water Quality Division staff briefed the Commission on this item. They noted that rules already provide for designation of water quality limited waters and development of improvement programs. All other waters would be designated as high quality waters, and that affords a very high level of protection. Beneficial uses must be protected. Quality can be lowered only in very limited circumstances where the Commission finds that no options are available, and all existing uses will be protected. The ORW category was intended for those very few situations where extraordinary circumstances justify a policy of allowing no changes to water quality, and thus essentially no change in development status or no new activities.

Commissioner Wessinger expressed concern about the magnitude of the evaluation program required for ORWs and the adequacy of staff resource to handle it. Mr. Mullane responded that additional resources would be required.

Chair Hutchison expressed concern about the application process for ORWs in the proposed rules. He indicated he would be more comfortable with some form of an annual or biennial review process where the Commission could see if added protection is needed for some waters. He preferred something that would generate a priority list for evaluation and be subject to comment as part of the periodic review process. He was concerned that the application process would be unmanageable. Mr. Mullane indicated that a list of waterbodies that are candidates for evaluation for ORW designation could be developed as part of the 305b report process. He suggested that the application process on page A-2 of the rule could be deleted, and in place of it provide for handling through the 305b report and triennial review process.

Director Hansen noted the need for a clearly delineated process that meshes with the limited available resources.

Karl Anuta, representing Northwest Environmental Defense Center, urged the Commission not to back away from the current rule. He supported automatic designation of state parks and scenic waterways as ORWs.

Mary Scurlock, representing the Oregon Rivers Council, urged protection of the wild and scenic rivers. She endorsed Alternative 3 of the staff report which included automatic designation of ORWs and would not require time and resources to be expended in evaluation of these waterbodies prior to designation.

Commissioner Lorenzen expressed concern that existing designations of wild and scenic rivers were driven by values other than water quality, and that automatic designation as ORWs would impose conditions and criteria not contemplated.

Director Hansen noted again that the High Quality Waters policy provides a very high level of protection of water quality.

Following a brief recess, Ms. Wolniakowski presented proposed amendments to address the Commission concerns as follows:

- Page A-1 340-41-026(1)(a)(A) -- correct the wording as follows:

  HIGH QUALITY WATERS POLICY: Where existing water quality meets or exceeds those .....

- Page A-2 340-41-026(1)(a)(D) -- amend the proposal as follows:

  Delete the language beginning with the words "The Commission, either on their own initiative or through...." and continuing to the end of the page.

  Add the following language after the first two sentences of paragraph D:

  The Department will develop a screening process and establish a list of nominated waterbodies for Outstanding Resource Waters designation in the Biennial Water Quality Status Assessment Report (305(b) Report). The priority waterbodies for nomination include:

  i National Parks;
  ii National Wild and Scenic Rivers;
  iii National Wildlife Refuges;

iv State Parks; and
v State Scenic Waterways.

The Department will bring to the Commission a list of waterbodies which are proposed for designation as Outstanding Resource Waters at the time of the Triennial Water Quality Standards Review.

The final paragraph of the section which appears on page A-3 would be retained unchanged.

Chair Hutchison expressed the sense of the Commission that there is a reluctance to automatically designate ORWs, that the High Quality Waters designation provides good protection, and that a systematic process would be available for consideration of potential ORWs.

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

H. Approval of Sewer Safety Net Funding Applications for FY 92

This agenda item recommended approval of individual community Sewer Safety Net (Assessment Deferral Loan) Programs and the overall Funding Allocation Plan for the 1991-93 biennium as presented in Attachments A and B of the staff report. Existing Commission rules require applications from eligible communities before the start of the biennium. Each community plan must be approved by the Commission to receive an allocation of available funds. Renewal applications were received from Portland, Gresham and Eugene. New applications were received from (1) the Marion County Service District for the Brooks Health Hazard Area, (2) the City of Albany for the North Albany Health Hazard Annexation Area, (3) the City of Oregon City for the Holcomb-Outlook-Park Place Health Hazard Annexation Area, and (4) The City of Corvallis for the West Philomath Boulevard, Skyline West, and West Hills Health Hazard Annexation Areas.

The Department recommended that all seven applications be approved with the exception of any program elements that exceed the scope of a 1991 budget note, and with approval for the Department to make fund allocation and program changes during the biennium within the limits of the budget note. (The 1991 legislative Ways and Means Committee adopted a budget note which was intended to limit the scope of eligibility to currently approved programs or standards that are not more lenient than current approved programs.)

Oregon

ENVIRONMENTAL QUALITY COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: July 24, 1991
Agenda Item: G
Division: HSW
Section: HWRTA

SUBJECT:

Adoption of Proposed Rule Amendments to the Hazardous Waste Reporting and Fee Regulations.

PURPOSE:

Adoption of amendments to Oregon Administrative Rules (OAR) pertaining to reporting requirements for hazardous waste generators and treatment, storage, disposal and recycling facilities (TSDRF), and to hazardous waste generator and TSDRF fees.

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 Rule Amendments	Attachment A
Rulemaking Statements	Attachment B
Fiscal and Economic Impact Statement	Attachment B
Public Notice	Attachment ___

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

___ 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:

Adoption of proposed regulatory amendments (Attachment A) to the Department of Environmental Quality's (Department, DEQ) hazardous waste regulations, Chapter 340, Divisions 102, 104 and 105.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ — Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 466.020, 466.075, 466.195, 466.165 — Attachment ___
___ Pursuant to Rule: _____ — Attachment ___
___ Pursuant to Federal Law/Rule: _____ — Attachment ___

_X_ Other:

Need For Action

- The Department's lack of accurate and comprehensive hazardous waste information results in an incomplete understanding of the generation and fate of hazardous waste in Oregon.

  The Department's hazardous waste program is charged with regulating the generation and management of hazardous waste in Oregon. To date, the primary focus of the program has been on those wastes which are transported, under the federal manifest system, from large quantity (LQG) and small quantity (SQG) hazardous waste generators to treatment, storage, disposal and recycling facilities (TSDRF). Current Department reporting requirements do not generate adequate, accurate information about the status of hazardous waste generation and management in Oregon. The Department has a responsibility to provide the

legislature and the citizens of Oregon with complete, current and accurate hazardous waste information on which to base decisions about the protection of our environment and quality of life. This cannot be done with the information currently collected from a limited segment of the regulated community.

- The Environmental Protection Agency requires the Department to report certain information.

  EPA reporting requirements necessitate that the Department develop a much more thorough and comprehensive understanding of all waste streams and the methods by which they are managed. EPA uses such information in its Biennial Report to the Congress, and in determining the need for locating new hazardous waste management facilities in the nation. These latter data are contained in the Capacity Assurance Plan which the Department must prepare and submit to EPA every two years.

- The Department and EPA current reporting requirements are redundant.

  The current reporting requirements under the Department and EPA regulations are inconsistent and often redundant. TSDRFs and LQGs must report every two years on EPA Biennial Report forms and must also provide the Department with monthly, quarterly and/or annual reports of varying levels of complexity. Reporting by SQGs is currently limited to copies of the shipping documents (manifests) covering wastes transported from their property. In addition to mechanical difficulties in the organization and transcription of these data, the manifests provide no information on the way in which the wastes are managed and, therefore, provide no overall picture of waste generation and management at a given site. In addition, to comply with federal reporting requirements, the Department has found it necessary to periodically undertake special surveys of the hazardous waste community. The Department wishes to establish a system of uniform and consistent annual reporting standards to meet all of these legitimate data needs and at the same time provide meaningful information to businesses as well as to the state and EPA. Such reporting would also be a precondition for changing the hazardous waste fee schedule to tie fee calculations to the hierarchy of hazardous waste management methods.

- The current hazardous waste fee schedule does not support Oregon's statutorily and regulatorily mandated hierarchy of preferred hazardous waste management methods.

  The fee structure charges the same for all wastes, regardless of how they are managed. The Department and the Hazardous Waste Advisory Committee believe it both appropriate and effective to offer incentives that encourage hazardous waste management in accordance with the prescribed hierarchy, and to equitably distribute the fee.

- The hazardous waste fee structure is regressive.

  The current fee schedule is inherently regressive, acting as a disincentive to waste minimization, because the per ton fee decreases as the total tonnage of hazardous waste increases. Furthermore, the current waste tonnage categories are so broad that there is no incentive to reduce waste within a category.

- Some LQGs and SQGs do not pay their fair share of fees.

  Large quantity and small quantity hazardous waste generators must register with the Department (through the notification process). The wastes they generate and manage form a part of Oregon's overall environmental risk. Since generator fees are currently assessed only on wastes transported off site, those generators who recycle, or participate in waste exchanges, will pay if wastes are manifested off site. LQGs and SQGs who manage wastes on-site do not pay fees and, therefore, do not contribute their share to support Oregon's hazardous waste program.

- The generator universe has not been entirely identified.

  New generators will be identified and brought into the program through an improved reporting system. The size of the regulated universe is large (1,600 plus) and is growing. The Department can never have the field resources necessary to properly identify and monitor all possible generators. The improved reporting system will allow the Department to more easily track the activities of generators, through annual updates, and simplify generator reporting requirements, making it easier for generators to properly register with the Department. Improved reporting will also benefit field

operations staff through access to better and more current information.

The change from a quarterly report to an annual report will:

- Provide the information necessary to enable the Department to move to a more equitable fee schedule which supports the hierarchy of waste management and acts as an incentive for waste reduction.

- Enhance the Department's ability to more effectively target technical assistance through a better characterization of the generator universe. This will especially benefit small quantity generators.

- Enable the Department to fully and correctly characterize hazardous waste reduction, generation, treatment, shipment, recycling, and disposal in Oregon. This knowledge is essential in complying with EPA's reporting requirements, and assuring that hazardous waste is being appropriately managed.

- Improve the Department's ability to identify new generators and to monitor their activities on a routine basis.

- Allows the Department to better understand the interchange of hazardous waste between states and improves our ability to discuss interstate waste flow issues with other states through the collection of better data on a more routine basis.

TIME CONSTRAINTS

_X_ Time Constraints:

- Federal capacity assurance and biennial reports are due from the Department early in 1992 and 1993.

  In order to meet this deadline, we must amend our hazardous waste reporting regulations to allow us to report on elements of hazardous waste management not previously required by the Department from the regulated community.

- Hazardous waste generator and TSDRF fees have expired.

  The current hazardous waste fee schedule expired on

June 30, 1991. A permanent TSDRF fee schedule and a temporary generator fee schedule are proposed, in accordance with recommendations of the Hazardous Waste Advisory Committee. This is the first step in changing the entire hazardous waste fee structure to encourage waste management methods which reflect the hierarchy and include a broader base of generators. A permanent generator fee schedule is targeted to be in place by June 30, 1992.

DEVELOPMENTAL BACKGROUND:

____Advisory Committee Recommendation	Attachment ___
_X_ Hearing Officer's Report/Recommendations	Attachment _C_
_X_ Response to Testimony/Comments	Attachment _D_
___ Prior EQC Agenda Items: (list)	Attachment ___
___ Other Related Reports:	Attachment __
_____Supplemental Background Information:	Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

As authorized by the Commission, the Department held a public hearing on the proposed amendments on May 13, 1991. The Hearings Officer's report appears in Attachment C. The public comment period remained open through May 24, and a summary of comments received and the Department's responses appears in Attachment D. The Department also conducted a "pre-test" of the new reporting forms on June 19 to obtain input on the logic, content and format of the reporting forms packet. As a result of concerns raised by the regulated/affected community, the Department has made several revisions to the proposed rules.

Sections 340-102-041(2) and (3) and 340-104-075(3) have been revised to delete references to the Toxics Use Reduction and Hazardous Waste Reduction Act reporting requirements of OAR 340-135-070.

The March 1st reporting deadline in sections 340-102-041(2) and 340-104-075(3) have been changed to the later of 65 days from the date of mailing by the Department or by March 1st, whichever is later. In addition, the Department may grant an extension to the reporting deadline of up to 30 days.

The amendments proposed to the periodic survey rules at 340-102-

045 are withdrawn and the Department now proposes to delete the existing rule in its entirety.

PROGRAM CONSIDERATIONS:

These rules reflect the Department's commitment to technical assistance and streamlining the reporting requirements for the regulated community.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Reporting

   a. Maintain current reporting requirements.

   The current system is inefficient and does not provide reliable, comprehensive data. It is difficult to fulfill EPA reporting requirements without placing an undue burden on the regulated community. Without having collected the required information over time, the regulated community would be hard pressed to complete EPA's Biennial Reports, which form the basis for the Department's Capacity Assurance Plan. The current system does not provide the information necessary to change the Department's current inequitable fee system.

   b. Switch to all voluntary reporting.

   Current law already requires much of the data to be submitted by each TSDRF, LQG, and to some extent SQGs. The need for mandatory reporting of some information from all regulated entities is an essential part of Oregon's hazardous waste program. We believe, however, that voluntary reporting and surveys can be an appropriate tool for collecting some information beyond the mandatory requirements. Valid and comprehensive baseline data about hazardous waste management can only be obtained through mandatory reporting.

   c. Adopt proposed rules which expand and improve reporting requirements.

   The Department believes it is necessary to collect this additional information in order to improve our understanding of the hazardous waste picture in Oregon. Only through a detailed understanding of hazardous waste trends can the Department make good decisions about future management options. Also, EPA is currently in the process of expanding its reporting authority by the end of 1991.

2. Generator Fees

a. Reinstate the existing generator fee structure which expired June 30, 1991.

This alternative does not address the issue of equity and appropriateness of the fee.

b. Immediately implement the two-part fee structure recommended by the Hazardous Waste Advisory Committee which would collect:

(1) An annual flat fee (re-registration fee) from all generators of hazardous waste, independent of the method by which the waste is managed, and whether it is shipped off-site; and

(2) A unit fee for each pound of waste generated, subject to a factorial multiplier which takes account of the management method employed for each waste stream, according to the recognized desirability of each method. For example, at a flat rate of $.10 per pound, a pound of waste sent to a landfill might be charged at 1.5 times the base, or $.15, while the same pound if recycled might be subject to .5 times the base, or $.05.

c. Implement a scheme as in 2b, but phase it in over two years, collecting the flat fee portion this year, but waiting until next year to change to the unitary system, since data required to support this system are not currently collected. As an interim measure, reduce the existing generator fees by the amount projected to be collected through the new annual re-registration fee.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

- Reporting.
The Department recommends adoption of alternative 1c in order to extend current authority through rulemaking procedure. This would allow the Department to collect data necessary to evaluate hazardous waste management in Oregon; prepare the required EPA reports; consolidate and simplify generator and TSDRF reporting requirements; and reduce the burden on the regulated community of having to complete several different reports on the same hazardous waste activity.

- Fees.

  The Department recommends adoption of 2c as the only feasible way to achieve the ultimate goals of creating a fee system into which all generators contribute, and one which encourages responsible hazardous waste reduction/minimization and appropriate management of hazardous waste. This is also the option supported by the Hazardous Waste Advisory Committee.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

- Reporting requirements.

  The Department seeks to comply with all EPA reporting requirements, and at the same time minimize the reporting burden on the regulated public. The action recommended will allow the Department to obtain at one time the information it needs, rather than returning to the regulated public. In addition, the action will enable the Department to assess the hazardous waste management efforts in Oregon and develop the hazardous waste technical assistance program accordingly.

- Fees.

  The Department must maintain and stabilize program funding. Currently, approximately fifty percent of the hazardous waste program funding comes from fees. Supporting the program through fees is in keeping with the policy of requiring those we regulate to pay for a portion of the program. In addition, the proposed changes to the fee structure will be more equitable and will be based on the hazardous waste management hierarchy mandated by the statutes and regulations.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should DEQ expand its authority to collect information from the regulated community?

INTENDED FOLLOWUP ACTIONS:

Upon approval by the Commission, the Department will file the amended regulations with the Secretary of State.

Approved:

Section: Calaba for L. Brawner

Division: Stephanie Hallock

Director:

Report Prepared By: Calaba / Read / Latham
Phone: 229-5913
Date Prepared: July 5, 1991

calaba:aou
HWPD\ZB1\ZB10435
July 5, 1991

Attachment A
Meeting Date: July 24, 1991
Agenda Item: G

Before the Environmental Quality Commission of the State of Oregon:

In the matter of Amending OAR 340,) Proposed Amendments
Divisions 102, 104, and 105)

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

1. Rule 340-102-012 is proposed to be amended as follows:

Identification Number and Verification

340-102-012 In addition to the provisions of 40 CFR 262.12, as a matter of policy, the Department will accept EPA identification numbers already assigned and use a modified EPA registration form and identification number system (Dun and Bradstreet) for generators who register in the future. Effective January 1, 1991, and annually thereafter, hazardous waste generators and hazardous waste management and recycling facilities shall verify registration information on a form provided by the Department.

2. Rule 340-102-040 is proposed to be amended as follows:

Recordkeeping

340-102-040 (1) The provisions of section (2) of this rule replace the requirements of 40 CFR 262.40(b).

(2) A generator must keep a copy of reports submitted to the Department [each Quarterly Report and Exception Report] for a period of at least three years from the due date of the report.

3. Rule 340-102-041 is proposed to be amended as follows:

[Quarterly] **Generator Reporting**

340-102-041 (1) The provisions of this rule replace the requirements of 40 CFR 262.41.

(2) A person producing at any time more than one (1) kilogram of acutely hazardous waste, a total of more than 100 kilograms [or more] of hazardous waste in a calendar month, or who accumulates on-site at any time a total of more than 1,000

kilograms of hazardous waste, shall submit Quarterly Reports through the period ending December 31, 1991 to the Department. Effective January 1, 1992, and annually thereafter, a report shall be submitted to the Department, on a form provided by the Department, or by other means agreed to by the Department, by persons defined as small quantity hazardous waste generators, large quantity hazardous waste generators, and/or hazardous waste recyclers. The report shall contain information required by the Department covering activities from the preceding calendar year. Reports shall be submitted by March 1, or within sixty-five days of mailing by the Department, whichever is later. Upon written request and reasonable justification, the Department may grant an extension to the reporting deadline of up to 30 days. The annual report shall contain:

(a) Information required for purposes of notification of hazardous waste activity and/or annual verification of hazardous waste generator status;

(b) Information required for purposes of describing hazardous waste generator and waste management activity, including information pertaining to hazardous waste storage, treatment, disposal, and recycling efforts and practices;

(c) Information required for the assessment of fees; and

(d) Information required for the Department's preparation and completion of the Biennial Report and Capacity Assurance Plan.

[from that point forward, unless no additional hazardous waste is generated for a period of one year and the person requests in writing that the Department withdraw his/her generator registration.]

(3) Quarterly Reports are due within 45 days after the end of each calendar quarter for 1991 (the final quarterly report will be due February 15, 1992). The quarterly reporting requirement will sunset on December 31, 1991:

(a)(A) The Quarterly Report shall include, but not be limited to the following information:

(i) A copy of the completed manifest or a listing of the information from each manifest for each shipment made during the calendar quarter.

(ii) A listing of all additional hazardous waste generated during the quarter that was sent off-site without a manifest or was used, reused or reclaimed on-site, on a form provided by the Department. The listing shall include, but not be limited to:

(I) The generator's name and address;

(II) The generator's U.S. EPA/DEQ Identification Number;

(III) Identification of the calendar quarter in which the waste was generated;

(IV) The type and quantity of each waste generated, by EPA

code number; and

(V) The disposition of each waste, including the identity of the receiving party for wastes shipped off-site and handling method; and

(iii) If no hazardous waste was generated during the quarter, a statement to that effect, on a form provided by the Department.

(B) Reports submitted to the Department [The Quarterly Report] must be accompanied by the following certification signed and dated by the generator or his authorized representative:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

[(3)](4) Any generator who is receiving hazardous waste from off-site, generating or managing hazardous waste on-site, including recycling, except closed-loop recycling [required to have a permit for the treatment, storage or disposal of hazardous waste on-site] must [also] submit an annual report covering those wastes and activities in accordance with the provisions of rule 340-104-075 and of 40 CFR, Part 266.

[(4) In addition to the requirements of sections (2) and (3) of this rule, on an annual basis, a person subject to the requirements of section (2) of this rule shall also submit, with the fourth quarter report, the following information:

(a) A description of the efforts undertaken during the calendar year to reduce the volume and toxicity of wastes generated and to recycle wastes, on a form provided by the Department;

(b) A description of the changes in volume and toxicity of wastes actually achieved during the calendar year, in comparison to previous years, to the extent such information is available, on a form provided by the Department.]

4. Rule 340-102-045 is proposed to be deleted:

[**Periodic Survey**

340-102-045 Beginning July 1, 1988, hazardous waste generators who receive a survey form from the Department, concerning the waste generated and waste handling practices, shall either confirm their current notification status on the form or complete the form. The form shall be returned to the

Department, within 30 days of receipt.]

5. Rule 340-102-065 is proposed to be amended as follows:

Hazardous Waste Generator Fees

340-102-065 (1) Each person generating hazardous waste shall be subject to an annual fee based on the weight of hazardous waste generated during the previous calendar year. The [biling] billing cycle shall be the calendar year [state's fiscal year (July 1 through June 30)] and fees shall be paid annually within 30 days of the invoice date. A late charge [in the amount of $200] equal to ten percent of the fee due shall be paid if the fees are not postmarked [received] by the due date on the invoice. An additional [$200] late charge of fifteen percent of the total due (original fee plus the ten percent late charge) shall also be paid each 90 days that the invoice remains unpaid. Invoices 90 days or more overdue shall also be increased by twenty [20] percent of the total due (original fee plus ten percent and fifteen percent late charges) and referred to the state Department of Revenue for collection.

(2) For the purpose of determining appropriate fees, each hazardous waste generator shall be assigned to a category in Table 1 of this Division based upon the amount of hazardous waste generated in the calendar year identified in section (1) of this rule except as otherwise provided in section (5) of this rule.

Table 1

Hazardous Waste Generation Rate (Metric Tons/Year)	Fee
<1	[230]180
1 but <3	[685]540
3 but <14	[1,250]1,000
14 but <28	[2,000]1,600
28 but <142	[4,500]3,600
142 but <284	[10,200]8,150
[<]≥284	[14,480]11,600

(3) For the purpose of determining appropriate fees, hazardous waste shall be included in the quantity determinations required by section (1) of this rule as follows:

(a) Except as provided in subsection (b) of this section, all quantities of "listed" and "characteristic" hazardous waste shall be counted that are:

(A) Accumulated on-site for any period of time prior to subsequent management;

(B) Packaged and transported off-site;

(C) Placed directly in a regulated on-site treatment or disposal unit; or

(D) Generated as still bottoms or sludges and removed from product storage tanks.

(b) Hazardous wastes shall not be counted that are:

(A) Specifically excluded from regulation under 40 CFR 261.4, 261.5 (d), or 261.6;

(B) Continuously reclaimed on-site without storage prior to [reclaimation] reclamation. (Note: Any residues resulting from the reclamation process, as well as spent filter materials, are to be counted);

(C) Managed in an elementary neutralization unit, a totally enclosed treatment unit, or an exempt wastewater treatment unit;

(D) Discharged directly under a permit or authorization to a publicly-owned wastewater treatment works, without first being stored or accumulated. (Note: Any such discharge must be in compliance with applicable federal, state and local water quality regulations); or

(E) Already counted once during the calendar month, prior to being recycled.

(4) In order to determine annual hazardous waste generation rates, the Department may use generator [quarterly] reports required by rule 340-102-041; treatment, storage and disposal reports required by rule 340-104-075; information derived from manifests required by 40 CFR 262.20, and any other relevant information. For wastes reported in the units of measure other than metric tons, the Department will use the following conversion factors: 1.0 metric tons = 1,000 kg = 2,200 lbs. = 35.25 cubic feet = 264 gallons = 1.10 tons (English) = 4.80 drums (55 gallons).

(5) Owners and operators of hazardous waste treatment, storage and disposal facilities shall not be subject to the fees required by section (1) of this rule for any wastes generated as a result of storing, treating or disposing of wastes upon which an annual hazardous waste generation fee has already been paid. Any other wastes generated by owners and operators of treatment, storage and disposal facilities are subject to the fees required by section (1) of this rule.

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

(7) The fee [scheudle] schedule in section (2) of this rule

shall expire on June 30, 199[1]2.

(8) Effective January 1, 1991, each hazardous waste generator shall be subject to an annual hazardous waste activity re-registration verification fee, upon billing by the Department, as follows:

(a) Large Quantity Generator: $350.

(b) Small Quantity Generator: $200.

(c) Conditionally Exempt Small Quantity Generator: NO FEE

6. Rule 340-104-075 is proposed to be amended as follows:

[Periodic] Facility R[r]eporting

340-104-075 (1) The provisions of this rule replace the requirements of 40 CFR 264.75 and 40 CFR 265.75.

(2) Through December 31, 1991, [T]the owner or operator of a hazardous waste management facility or recycling facility [of a hazardous waste management facility or recycling facility] must prepare and submit an operating report to the Department on a form provided by the Department. Disposal facility reports are due monthly within 45 days after the end of each calendar month, and treatment and storage facility reports are due within 45 days after the end of each calendar quarter. The report must cover facility activities during the previous month or quarter, as appropriate, and must include, but not be limited to the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The period covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the period; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the period and the final handling method by EPA handling code for each waste. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) The most recent closure cost estimate under 40 CFR 264.142, or 40 CFR 265.142, as appropriate, and, for disposal facilities, the most recent post-closure cost estimate under 40

CFR 264.144, or 40 CFR 265.144, as appropriate;

(g) A certification signed by the owner or operator of the facility or his authorized representative as required by 40 CFR 270.11(b).

(h) Copies of manifests or other shipping documents for all hazardous wastes received or a listing of the information from each manifest or shipping document; and

(i) Monitoring data under 40 CFR 265.94(a)(2)(ii) and (iii), and (b)(2), where required.

(3) Effective January 1, 1992, and annually thereafter, a report shall be submitted to the Department on a form provided by the Department, or by other means agreed to by the Department, by hazardous waste treatment, storage, disposal facilities, and off-site hazardous waste recycling and non-RCRA permitted hazardous waste management or recycling facilities. The report shall contain information required by the Department covering the activities from the preceding calendar year. Reports shall be submitted by March 1, or within sixty-five days of mailing by the Department, whichever is later. Upon written request and reasonable justification, the Department may grant an extension to the reporting deadline of up to 30 days. The annual report shall contain:

(a) Information required for purposes of notification of hazardous waste activity and/or annual verification of hazardous waste generator or management or recycling facility status;

(b) Information required for purposes of describing hazardous waste management and facility information, including information pertaining to storage, treatment, disposal, and recycling of hazardous waste received, or generated on-site; and

(c) Information required for the assessment of fees;

(d) Information required for the Department's preparation and completion of the Biennial Report and Capacity Assurance Plan;

(e) The most recent closure cost estimate under 40 CFR 264.142, or 40 CFR 265.142, as appropriate, and, for disposal facilities, the most recent post-closure cost estimate under 40 CFR 264.144, or 40 CFR 265.144, as appropriate;

(f) A certification signed by the owner or operator of the facility or his authorized representative as required by 40 CFR 270.11(b); and

(g) Monitoring data under 40 CFR 265.94(a)(2)(ii) and (iii), and (b)(2), where required.

7. Rule 340-105-110 is proposed to be amended as follows:

Facility p[P]ermit fees.

340-105-110 (1) Each person required to have a hazardous

waste storage, treatment or disposal permit (management facility permit) shall be subject to a three-part fee consisting of a filing fee, an application processing fee and an annual compliance determination fee as listed in rule 340-105-113. The amount equal to the filing fee, application processing fee and the first year's annual compliance determination fee shall be submitted as a required part of any application for a new permit. The amount equal to the filing fee and application processing fee shall be submitted as a required part of any application for renewal or modification of an existing permit.

(2) As used in this rule, the following definitions shall apply:

(a) The term management facility includes[,but is not limited to]:

(A) Hazardous waste storage facility;

(B) Hazardous waste treatment or recycling facility; and

(C) Hazardous waste disposal facility.

(b) The term hazardous wastes includes any residue or hazardous wastes as defined in Division 101 or 40 CFR Part 261 handled under the authority of a management facility permit.

(c) The term license and permit shall mean the same thing and will be referred to in this rule as permit.

(3) The annual compliance determination fee shall be paid for each year a management facility is in operation and, in the case of a disposal facility, for each year that post-closure care is required. The fee period shall be the calendar year [state's fiscal year (July 1 thorough June 30)] and shall be paid annually within 30 days of the invoice date. A late charge [in the amount of $200] equal to ten percent of the fee due shall be paid if the fees are not postmarked [received] by the due date on the invoice. An additional [$200] late charge of fifteen percent of the total due (original fee plus the ten percent late charge) shall also be paid each 90 days that the invoice remains unpaid. Invoices 90 days or more overdue shall also be increased by twenty [20] percent of the total due (original fee plus ten percent and fifteen percent late charges) and referred to the state Department of Revenue for collection. Any annual compliance determination fee submitted as part of an application for a new permit shall apply to the calendar year the permitted management facility is put into operation. For the first year's operation, the full fee shall apply if the management facility is placed into operation on or before April 1. Any new management facility placed into operation after April 1 shall not owe a compliance determination fee until the invoice due date of the following year. The Director may alter the due date for the annual compliance determination fee upon receipt of a justifiable request from a permittee.

(4) For the purpose of determining appropriate fees, each management facility shall be assigned to a category in rule 340-105-113 based upon the amount of hazardous waste received and upon the complexity of each management facility. Each management facility which falls into more than one category shall pay whichever fee is higher. The Department shall assign a storage and treatment facility to a category on the basis of design capacity of the facility. The Department shall assign a new disposal facility to a category on the basis of estimated annual cubic feet of hazardous waste to be received and an existing disposal facility on the basis of average annual cubic feet of hazardous waste received during the previous three calendar years.

(5) Where more than one management facility exists on a single site, in addition to the compliance determination fee required by sections (3) and (4) of this rule, a flat fee of $250 shall be assessed for each additional management facility.

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

(7) Upon the Department accepting an application for filing, the filing fee shall be nonrefundable.

(8) The application processing fee, except for disposal permits, may be refunded in whole or in part when submitted with an application if either of the following conditions exist:

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

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

(9) The annual compliance determination fee may be refunded in whole or in part when submitted with a new permit application if either of the following conditions exist:

(a) The Department denies the application.

(b) The permittee does not proceed to construct and operate the permitted facility.

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

[(11) The fee schedule in rule 340-105-113(3) shall expire on June 30, 1991.]

8. Rule 340-105-113 is proposed to amended as follows:

Fee Schedule

Attachment A
Meeting Date: July 24, 1991
Agenda Item: G

340-105-113 (1) Filing Fee. A filing fee of $50 shall accompany each application for issuance, reissuance or modification of a hazardous waste management facility or PCB treatment or disposal facility permit. This fee is nonrefundable 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 shall be submitted with each hazardous waste management facility or PCB treatment or disposal facility permit application or Authorization to Proceed request, if such a request is required under OAR 340-120-005. The intent of the application processing fee is to cover the Department's costs in investigating and processing the application. For all applications, any portion of the application processing fee which exceeds the Department's expenses in reviewing and processing the application shall be refunded to the applicant. In the case of permit reissuance, a fee is not initially required with the application. Within sixty days of receipt of the application, the Department will estimate its costs to reissue the permit and will bill the applicant for those costs, up to the amount specified in subsection (2)(b) of this rule. The application will be considered incomplete and processing will not proceed, until the fee is paid, or until other arrangements have been made with the Department. In the event that the Department underestimates its costs, the applicant will be assessed a supplemental fee. The permit shall not be reissued until all required fees are paid. The total fees paid shall not exceed the amount specified in subsection (2)(b) of this rule. The amount of the fee shall depend on the type of facility and the required action as follows:

CATEGORY	FEE
(a) A new permit:	
(A) Storage facility	$ 70,000
(B) Treatment facility	70,000
(C) Disposal facility	70,000
(D) Disposal facility - post closure	70,000
(b) Permit Reissuance:	
(A) Storage facility	50,000
(B) Treatment facility	50,000
(C) Disposal facility	50,000
(D) Disposal facility - post closure	50,000
(c) Permit Modification[- major:]	
(A) Storage facility	No Fee
(B) Treatment facility	No Fee

(C) Disposal facility	No Fee
(D) Disposal facility - post closure	No Fee
[(d) Permit Modification- minor:	
All Categories	No Fee]

(3) Annual Compliance Determination Fee. Except as provided in rule 340-105-110(5), in any case where a facility fits into more than one category, the permittee shall pay only the highest fee as follows:

CATEGORY	FEE
(a) Storage facility:	
(A) 5-55 gallon drums or 250 gallons total or 2,000 pounds	$ 1,940
(B) 5 to 250 - 55 gallon drums or 250 to 10,000 gallons total or 2,000 to 80,000 pounds	3,420
(C) >250 - 55 gallon drums or >10,000 gallons total or >80,000 pounds	7,980
(D) Closure	3,990
(b) Treatment Facility:	
(A) <[,]25 gallons/hour or 50,000 gallons/day or 6,000 pounds/day	1,940
(B) 25-200 gallons/hour or 50,000 to 500,000 gallons/day or 6,000 to 60,000 pounds/day.	3,420
(C) >200 gallons/hour or >500,000 gallons/day or >60,000 pounds/day.	7,980
(D) Closure.	7,980
(c) Disposal Facility:	
(A) <750,000 cubic feet/year [of]or <37,500 tons/year.	100,000
(B) 750,000 to 2,500,000 cubic feet/year or 37,500 to 125,000 tons/year	150,000
(C) >2,500,000 cubic feet/year or >125,000 tons/year	200,000
(D) Closure.	13,680
(d) Disposal Facility - Post Closure:	
All categories	13,680

9. Rule 340-105-120 is proposed to be amended as follows:

Attachment A
Meeting Date: July 24, 1991
Agenda Item: G

Hazardous Waste Management Fee

340-105-120(1) [Beginning July 1, 1987, e]Every person who operates a facility for the purpose of disposing of hazardous waste or polychlorinated biphenyl (PCB) that is subject to interim status or a permit [used] issued under ORS Chapter 466 shall pay a monthly hazardous waste management fee [Hazardous Substances Remedial Action Fee] by the 45th day after the last day of each month in the amount authorized by [statute.] ORS 465.375 [establishes a fee of $20 per ton for all waste brought into the facility for treatment by incinerator or for disposal by landfill at the facility]. For purposes of calculating the [Hazardous Substances Remedial Action F]fee required by this section, the facility operator does not need to include hazardous waste resulting from on-site treatment processes used to render a waste less hazardous or reduced in volume prior to land disposal.

(2) The term "hazardous waste" means any hazardous waste as defined by rules adopted by the Environmental Quality Commission and includes any hazardous waste as defined in OAR 340 - Division 100 or 101 or 40 CFR Part 261 handled under the authority of interim status or a management facility permit.

(3) The term PCB shall have the meaning given to it in OAR 340 -Division 110.

(4) The term "ton" means 2000 pounds and means the weight of waste in tons as determined at the time of receipt at a hazardous waste or PCB management facility. The term "ton" shall include the weight of any containers treated or disposed of along with the wastes being held by the container.

(5) In the case of a fraction of a ton, the fee imposed by section (1) of this section shall be the same fraction multiplied by the amount of such fee imposed on a whole ton.

(6) Every person subject to the fee requirement of section (1) of this rule shall record actual weight for all waste received for treatment by incinerator or disposal by landfilling in tons at the time of receipt. [Beginning January 1, 1986, t]The scale shall be licensed in accordance with ORS Chapter 618 by the Weights and Measures Division of the Department of Agriculture.

(7) Accompanying each monthly payment shall be a detailed record identifying the basis for calculating the fee. [that is keyed to the monthly waste receipt information report required by OAR 340-104-075(2)(c) and (2)(d).]

(8) All fees shall be made payable to the Department of Environmental Quality. All fees received by the Department of Environmental Quality shall be paid into the State Treasury [and credited to the Hazardous Substances Remedial Action Fund].

Attachment B
Meeting Date: July 24, 1991
Agenda Item: G

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF AMENDING CHAPTER 340, DIVISIONS 102, 104, AND 105	)))	STATEMENT OF NEED FOR RULEMAKING

STATUTORY AUTHORITY

1. ORS 466.020 requires the Commission to:

   (a) Adopt rules to establish minimum requirements for the treatment, storage, and disposal of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, storage and disposal sites, and requirements and procedures for selection of such sites.

   (b) Adopt rules relating to reporting by generators of hazardous wastes concerning type, amount and disposition of hazardous waste and waste minimization activities.

2. ORS 466.075 requires the Commission to:

   (a) Adopt rules requiring hazardous waste generators to identify themselves, list the location and general characteristics of their activity and name the hazardous wastes generated.

   (b) Adopt rules requiring generators to keep records identifying quantities of hazardous waste, the constituents thereof and their disposition and waste minimization activities.

   (c) Adopt rules requiring generators to submit reports to the Department setting out quantities of hazardous waste generated during a given time period, the disposition of all such waste and waste minimization activities.

3. ORS 466.165 allows the Department to require an annual fee of

every generator and permittee. The fee amount is determined by the Commission to be adequate to carry on the monitoring, inspection and surveillance program and to cover related administrative costs.

4. ORS 466.195 requires any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes, to furnish information relating to such wastes to any officer, employe or representative of the Department.

NEED FOR THE RULES:

The Department must address generator and TSDRF fees that expired on June 30, 1991. The Department proposes to establish temporary hazardous waste generator fees, retain the current TSDRF fees, and intends to propose permanent generator fees later this year, which will become effective in 1992. In addition, the Department is proposing to simplify and consolidate several hazardous waste generator and TSDRF reporting requirements. Currently, generators and TSDRFs must report waste management activities and capacity assurance information on different forms. This results in many hazardous waste handlers having to report the same information on different forms.

PRINCIPAL DOCUMENTS RELIED UPON:

Oregon Administrative Rules, Chapter 340, Divisions 102, 104 and 105.

FISCAL AND ECONOMIC IMPACT

Proposed Changes to Fees.

- Impact on TSDRFs.

  There is no fiscal impact on this regulated group, since the effect of the proposed rulemaking is to make permanent the same fees in effect for the past two years.

- Impact on hazardous waste generators.

  Registered generators who do not manifest waste off-site currently pay no fees: the proposed rulemaking would impose an annual re-registration fee of either $350 or $200 (depending upon generator size) on these regulated

entities. The Department estimates that approximately 200 businesses not currently paying generation fees will be affected, and that most of these are not small businesses.

Registered generators who manifest waste off-site, a regulated group numbering about 700, currently pay generation fees ranging from $230 to $14,480 annually. The proposed rulemaking would reduce these fees by approximately twenty percent for 1991. This regulated group would also be subject to the proposed annual re-registration fees of $200 or $350 annually, depending upon generator status. The combined net effect of these two changes varies with the level of generation fee assessed, and is shown in detail on page B-5. The Department does not know how many small businesses are included in the regulated group, but believes that more large businesses will be affected than small businesses. Since the Department plans to revise its fee structure for generators by the end of the year, the effects of the present rulemaking will be limited to the current year's billing.

Proposed changes to reporting.

The fiscal impact of the reporting requirements will vary. LQGs will probably experience a smaller burden due to the amalgamation of the several reports they must now complete. SQGs currently must submit a quarterly report, but will be going to an annual, more extensive report. Most of the data for these reports are primarily available from records required to be kept on site by the regulated community.

- Impact on TSDRFs.

  There will be little fiscal impact on TSDRFs. They are currently required to report either monthly or quarterly, depending on facility type, and are also required to complete the federal Biennial Report. Consequently, they are submitting much identical information on different reports many times throughout the year. The proposed annual combined data form will eliminate much of that redundancy.

- Impact on Large Quantity Hazardous Waste Generators (LQGs).

LQGs are currently submitting quarterly reports. The reports consist of copies of shipping manifests. No data is submitted concerning on-site management of waste. LQGs are required to complete the federal Biennial Report. Since there is considerable duplication of data in the reports LQGs are currently submitting, it is expected that there will be little fiscal impact on them.

- Impact on Small Quantity Hazardous Waste Generators (SQGs).

  Like LQGs, SQGs currently submit quarterly reports consisting of manifests. SQGs are not required to complete the federal Biennial Report. Although duplication of data reported will be eliminated, SQGs will have more data to report than is currently required in the quarterly reports.

Chart A
Fiscal Impact of Proposed Fees

Fee Class (Tonnage Generated)	Number In Class*	Current Generation Fee	Proposed Generation Fee	Proposed Re-Registr. Fee	Total Proposed Fees	Increase or (Decrease)
<1 mt.	223	$230	$180	$200	$380	$150
>1<3 mt.	223	$685	$540	$200	$740	$55
>3<14 mt.	131	$1,250	$1,000	$200	$1,200	($50)
>14<28 mt.	34	$2,000	$1,600	$350	$1,950	($50)
>28<142 mt.	35	$4,500	$3,600	$350	$3,950	($550)
>142<284 mt.	3	$10,200	$8,150	$350	$8,500	($1,700)
>284 mt.	13	$14,480	$11,600	$350	$11,950	($2,530)

* Based on DEQ billing to LQGs and SQGs in 1990 for wastes generated in 1989. Conditionally exempt generators (CEGs) are not subject to these fees.

Attachment B
Meeting Date: July 24, 1991
Agenda Item: G

Attachment C
Meeting Date: July 24, 1991
Agenda Item: G

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY **INTEROFFICE MEMORANDUM**

DATE: May 13, 1991

TO: Environmental Quality Commission

FROM: David Rozell, Public Hearings Officer

SUBJECT: Hearings Officer Report on Hazardous Waste Rules Regarding Fees and Reporting

On April 14, 1991 the Environmental Quality Commission authorized a public hearing pertaining to amendments to hazardous waste generator and treatment, storage, disposal and recycling facility (TSDRF) reporting requirements, and generator and TSDRF hazardous waste fees. On May 13, 1991 the Department held a public hearing on the proposed administrative rule changes to OAR Chapter 340, Divisions 102, 104 and 105.

At this meeting there were eighteen people in attendance. The hearing was opened at 9:00 am. There was no one wishing to testify at that time so the hearing was temporarily closed at 9:10 am followed by about one hour of informal discussion between the DEQ staff and those in attendance. At 10:15 am the hearing was reopened and two people chose to speak for the record. The hearing was officially closed at 10:22 am.

Public comments are included below. Staff responses to these recommendations will be included in the staff report to the EQC.

Comment #1:

Robert Westcott, Westco Parts Cleaners

Mr. Westcott spoke in support of on-site recycling as a waste

reduction technique and supported the staff recommendation that on-site recycling be counted differently and more favorably than off-site recycling per ORS 261.5 for conditionally exempt hazardous waste generators.

Comment #2:

Lolita Carter, Portland General Electric Company

Ms. Carter spoke to the fact that Chart A (Fiscal Impact of Proposed Rules) on page B5 of the 4/26/91 staff report seemed to be contrary to the proposed generator fee schedule for conditionally exempt generators (CEG). This rule, OAR 340-102-065 (8) (c), proposes that CEG's pay no re-registration verification fee and the speaker thought that the chart seemed to indicate that CEG's would have to pay a $200 annual fee and requested that the staff make this more clear.

Attachment D
Meeting Date: July 24, 1991
Agenda Item: G

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY **INTEROFFICE MEMORANDUM**

DATE: July 5, 1991

TO: Environmental Quality Commission

FROM: Roy W. Brower, Manager, Hazardous Waste Reduction and Technical Assistance

SUBJECT: Response to Comments

The public hearing was held on May 13 (see Attachment C for a copy of the Hearing Officer's report). The formal public hearing was closed and an informal discussion was held on the proposed regulations. Some issues raised informally were subsequently received in written testimony. Written comments were received from the American Electronics Association, Portland General Electric, Associated Oregon Industries, Tektronix and Wacker Siltronics. Following is the Department's response to the comments.

Public Hearing Comments and Responses

1. Robert Wescott, Wesco Parts Cleaners.

Mr. Wescott spoke in support of on-site recycling as a waste reduction technique and supported the staff recommendation that on-site recycling be counted differently and more favorably than off-site recycling per 40 CFR 261.5 for conditionally exempt hazardous waste generators.

Department Response: While this provision is not part of the current rulemaking, the Department plans to consider such rules later this year.

2. Lolita Carter, Portland General Electric.

Ms. Carter said that Chart A (Fiscal Impact of Proposed Rules

on page B5 of the 4/26/91 staff report seems to contradict the proposed generator fee schedule for conditionally exempt generators (CEG). The revised rule, OAR 340-102-065 (8) (c), proposes that CEGs pay no registration verification fee and the speaker thought that the chart seems to indicate that CEGs would have to pay a $200 annual fee and requested that the staff make its intent clear.

Department Response: The Department's hazardous waste activity registration and annual verification fee proposal (OAR 340-102-065, Attachment A, page A-5) specifically exempts CEGs from the registration or verification fee. In addition, CEGs are not required to pay hazardous waste generator fees, and a note to that effect has been added to Chart A.

Summary of Written Comments

American Electronics Association (AEA): Our basic position is that the toxics use reduction act (TURA [TURHWR]) should remain a free-standing law and should not be merged into the hazardous waste rules of the department.

The department bases its legal authority for this rulemaking on ORS 466.020, which concerns hazardous waste. The TURA [TURHWR] is a self-contained law found at ORS 465.003-034. We do not believe that the department has legal authority to blend references to TURA [TURHWR] into the RCRA-related sections of its rules.

HB 3515 is a law of limitations regarding the area of toxics use reduction. That is, the department only has the authority in this field that was specifically granted to it under ORS 465.003-034. There was no broad granting of authority for rulemaking ... The broader grant of authority at ORS 466.020 does not apply to TURA [TURHWR].

We would argue that references to TURA [TURHWR] should be deleted altogether from these proposed rules. . . . we will continue to hold to the position that TURA [TURHWR] stands alone and should not be referenced in these proposed rules. For the reasons stated above, we believe we have firm legal authority for our position.

Department Response: It should be recognized that the state is authorized by EPA to operate a hazardous waste minimization

program under RCRA. Furthermore, ORS 466.020(4) states the Commission has the authority to "adopt rules and issue orders thereon relating to reporting by generators of hazardous waste concerning type, amount and disposition of such hazardous waste and waste minimization activities." This citation provides specific authority for the Commission to establish rules related to minimization. Furthermore, since the ORS 466 requirements are authorized by EPA to be implemented in lieu of the national RCRA law, this particular statute takes precedence over TURHWR law. The provisions contained in the proposed revision to the hazardous waste rules in OAR 340-102 were simply intended to reference the TURHWR reporting provisions. The originally proposed cross references between OAR 340-102 and OAR 340-135 have been deleted.

AEA: The TURA [TURHWR] establishes a reporting date for plan completion and annual progress reports of September 1. . . . These proposed rules attempt to fold TURA [TURHWR] reporting into a consolidated March 1 scheme. . . . It does not make sense to upset that goal before regulated companies have even completed their first round of plan completion and annual progress reports.

Tektronix (TEK): TEK supports the comments submitted by Jim Craven on behalf of the American Electronics Association in regard to exclusion of the Toxic Use Reduction and Hazardous Waste Reduction data reporting requirements....the March 1 due date is nearly impossible requirement [to meet] since year end summaries and other data is not available within the time frame to submit the [Department] report. . . . Issues raised in comments by Tom Donaca on behalf of Associated Oregon Industries (item#2) address various reports...it is not felt that a March 1 due date accomplishes this goal.

Associated Oregon Industries (AOI): There are several reports due....of the above scheduled reports [only] the SARA 312 and 313 and TURA [TURHWR] reports are statutory. We recommend the DEQ require the first report on March 1, 1993 rather than in 1992, and that the SARA 312 and 313 and TURA [TURHWR] reports be used to meet the 1992 generator requirements. We support AEA's position on generator reporting.

Wacker: Reporting of this magnitude by February or March is impractical. Several data points are dependent on other reports not yet available by this time....SARA 312 report due March 1, the SARA 313 report due July 1, and Plan Development and modifications to TURA [TURHWR] due September 1. If an LQG or toxics user were to

submit the proposed data by March 1, many data points would be listed as unknown or unavailable. We recommend the due date of this report be moved back to January 1, 1993 to allow for more accurate data submittal.

> **Department Response:** The Department understands and is sensitive to the difficulties of report timing. The consolidated reporting is intended to combine many reporting requirements, including quarterly manifest reports, EPA's Biennial Reports, EPA's biennial TSDR survey, and EPA's hazardous waste minimization report. The EPA's due date for the federal Biennial Report is February 1. By making the Department's forms due March 1, we are applying the maximum extension allowable to us by the EPA. While the March 1 date might be an imposition to some large companies, it may be very desirable for many small businesses to complete their reporting at one time rather than spread it out over a long period. The Department is not proposing to change the September 1 date for reporting TURHWR information required by OAR 340-135.

AEA: We question the authority of the department to revise OAR 340-102-045 relating to periodic surveys. . . . we oppose a broad authority for the department to mandate compliance with surveys regarding the toxics use reduction program.

> **Department Response:** This proposal does not expand the Department's authority to conduct surveys nor does it require those receiving surveys to respond. The proposal was only meant to clarify the Department's authority to conduct surveys. The Department accept the concerns raised and recommends deleting the periodic survey regulation entirely.

AOI: We support the proposed changes in the fee schedule. As proposed, the fee schedule will broaden the base financial support of the waste program to a larger number of generators and provide incentives for the reduction of hazardous waste.

> **Department Response:** The Department agrees that this fee schedule is the first step toward developing a more equitable fee systems.

AOI: The reporting requirements of TURA [TURHWR] has the potential to require disclosure of confidential information. We support

Attachment D
Meeting Date: July 24, 1991
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AEA's position in reporting TURA [TURHWR] information.

Wacker: The Toxic use reduction and Hazardous Waste Reduction (TURHWR) information must be kept separate from this proposal. The primary reasons are that confidential business information is likely to be disclosed directly or through reverse engineering. Also, the TURHWR data is dependent on SARA 312, SARA 313, Hazardous Generation Data and Operating Data, all of which will not be available by March 1. We recommend that all toxic use reduction and hazardous waste reduction information required under OAR 340-135 be excluded from these proposed reporting requirements.

> **Department Response:** It is not the Department's intent to require generators to report confidential business information under either the TURHWR or hazardous waste reporting rules. Where a reporter deems any requested information to be so privileged, a process exists in state statutes and regulations describing how confidential business information is to be submitted to the Department and how the Department will handle the information (see hazardous waste regulation, OAR 340-100-003, and toxics use reduction regulation, OAR 340-135-100).

AOI: Under OAR 340-102-041(2)(a) through (e), it is unclear about what is meant by "hazardous waste" or the definition of "when a waste is generated." .....

Wacker: The magnitude of the administrative burden associated with the proposed reporting requirements is incalculable. The lack of definitions regarding what wastes are subject to reporting...during the public hearing on these rules, definitions were given verbally and were not consistent with current rules. Definitions must be clear. Rule 340-102-065 (3)(b) exempts wastes from operations listed under 40 CFR 261.4, 261.5, or 261.6 from fees...we recommend that rule 340-102-065(3)(b) be amended and renumbered as follows:

340-102-065 [(3),(b)] New (4) Hazardous Wastes shall not be [counted] subject to these reporting requirements that are:

TEK: Tom Donaca's comments (item 4) deals with reporting data for which no information is available. Many processes at Tektronix are piped directly to the waste water treatment facility. These materials are not containerized, so waste determinations, etc. are not made. It is unclear in these proposed rules how this situation should be addressed.

> **Department Response:** Nothing in the cited proposed regulation

(OAR 340-102-041(2)(a) through (d)) affects the definition of either "hazardous waste" or "when a waste is generated" as currently in use by EPA, the Department, generators, and TSDRs. The purpose of the rulemaking is to consolidate existing, well-defined reporting requirements of EPA and DEQ.

TEK: It is Tektronix's understanding that the EPA has not approved DEQ's new reporting form and there is some potential they will require Oregon facilities to also submit the Biennial Report. If this is indeed the case, then it would seem that DEQ's consolidated report is an excessive reporting burden on oregon's hazardous waste generators.

Department Response: As part of its obligations under EPA authorization, the Department is required to ensure that federal Biennial Report information is submitted to the EPA. As long as that requirement is met, the EPA will not oppose the consolidation of reporting requirements or the use of new reporting forms, and cannot legally impose additional reporting burdens on the regulated community.

Wacker: We [Wacker Siltronics] do not believe the proposed reporting requirements are a wise use of our resources or the department's. We do not believe the proposed rule amendments will result in data which is accurate, conclusive, or even useful.

Department Response: Currently, the Department's data base is limited to information from hazardous waste manifests, which describe only wastes that are shipped off-site. The Department needs to collect information about how wastes are managed both on-site and off-site, in order to establish a more equitable fee system and to meet federal reporting requirements, and these proposed rules will allow such information to be collected. All but four data elements are required by EPA for the Biennial Report and the Capacity Assurance Plan. Only four additional elements are included in the reporting requirements. These are: number of employees; who to contact about billing and fees; and the quantity of non-RCRA managed within a RCRA system.

Portland General Electric (PGE): PGE agrees that consolidation of multiple reporting requirements into a single format is a step forward. It is important to designate the proper format and allow enough time to fill out the report. PGE's experience at filling

out reports is that 60 days from the date of receipt is a reasonable time frame.

Department Response: The Department's intention was to allow 60 days in which to complete the report, that is, reports for a calendar year would be due by March 1st after the end of the year, a period of 60 days. The Department recommends revising the provision to allow submittal of the completed report either 65 days after being sent by the Department or by March 1st, whichever is later. This places the burden on the Department to notify reporters prior to January 1st of each year.

PGE: The DEQ and the Oregon Fire Marshal should coordinate annual reports required by both agencies to reduce redundant reporting requirements. In addition, PGE is concerned that both reports are due March 1. These are major, complex reports requiring may data be obtained, collated and reported. Businesses with many facilities will find it difficult to fulfill the requirements for these complex and involved reports by the same reporting date.

Department Response: In the coming biennium, the Department hopes to investigate the possibility of coordinating annual reports with other state agencies, including the Fire Marshal, with the aim of reducing the burden on the reporting community and eliminating redundant reports. However, until the EPA decides to combine and consolidate its Biennial Report and Toxic Release Inventory (SARA 311, 312, 313 reports), the Fire Marshal and DEQ will be unable to combine reports.

Most of the information required on the proposed DEQ reporting form is a federal requirement. The EPA Biennial Report, which will be subsumed by the Department's new reporting requirements, is due by February 1st. By allowing the reports to be returned by March 1st, the Department is already allowing the maximum extension authorized by the EPA. In addition, the state's 20-year Capacity Assurance Plan (CAP) is due on February 17, 1992 and October 17, 1993, and the information used to complete the CAP is taken from the Biennial Report.

PGE: Why is the annual re-registration of Hazardous Waste Generators made separate from the annual reporting? The re-registration occurs when the report is submitted. It appears that the annual re-registration fee is to support the establishment of a

large data base. The regulated public need to be assured that each datum is really necessary or is justified by a specific regulation, rather than just "nice to have". Also, the cost to the regulated public to annually re-re-register over a period of years will be considerable. Once the data base is established, a reduction in fees should be made to reelect the reduction in resources needed to maintain rather than establish a data base. Is there an analysis of what the cost to the DEQ, itself, will be for the data base and whether the proposed fees are excessive for establishment of the data base? In those cost analysis included in the financial impact statement for the rule? Why was this information not presented to the regulated public for comment?

Department Response: The annual re-registration verification of generators will be accomplished at the same time and through the same set of forms as the annual reporting. The re-registration information is limited in scope and is a data verification process, rather than a reporting requirement. The aim is to maintain an accurate and current picture of Oregon companies handling hazardous waste.

The annual re-registration verification fee is not dedicated to funding the creation or maintenance of a database, or any other specific activities within the Department's hazardous waste program: it is intended as a mechanism to more fairly apportion the costs of the existing program. Currently, registered generators who do not manifest their hazardous wastes off-site do not pay their share of program costs which they would do under the proposed annual re-registration fee. No new or increased revenues are anticipated from this new fee collection method, therefore, no fiscal analysis was undertaken.

PGE: . . .The proposed changes to the rules will penalize CEG, who become SQG for one month, by proportionately increasing their fees at the same time there is a decrease in the fees for those who are Small Quantity or Fully Regulated Generators. This is counter to the DEQ stated goal to make the fees dependent upon the amount of waste generated. Would a Conditionally Exempt Small Quantity Generator become a Small Quantity Generator for a full-year if inadvertently more than 100 kg. were produced in one month? Would the CEG then be required to produce a full report and re-register as a SQG? This is very expensive compared to the SQG who generates above 100 kg. every month.

The Conditionally Exempt and Small Quantity Generators bear a much

greater burden for the support of the program than do the Large Quantity Generators. This is counter to the DEQs previous philosophy to stress pollution prevention and require payment for amounts of waste generated. Either charge all fees by the metric ton or make it costlier to generate more waste.

Department Response: This proposed rulemaking is not intended as a sweeping redefinition of the way in which hazardous waste fees are levied in the state of Oregon. It is, however, the first step toward a more equitable fee structure, as recommended by the Hazardous Waste Advisory Committee, which would replace the current tonnage categories with a weight-based fee, modified by a waste-management/recycling factor, intended to provide incentives for preferred waste management practices, such as recycling and beneficial reuse. The Department plans to propose rules implementing such a system by this fall or early 1992. The Department agrees that the current fee system is regressive (see page 4 of the Staff Report).

For purposes of reporting (OAR 340-102-041) and paying fees, the Department considers any generator who exceeds the threshold values for CEGs in any calendar month to be either a SQG or LQG and not a CEG for that year. The Department recommends no change to this provision, since the rule acts as an encouragement for generators to routinely and consistently manage all their hazardous wastes at the CEG level in order to maintain their CEG status. The reporting requirements proposed here are not intended to change the Department's current handling of this issue. The federal reporting requirement is identical.

PGE: Chart A is confusing and implies that CEGs need to pay generator fees.

Department Response: The Department has amended Chart A to more clearly show that it is based on actual billings to LQGs and SQGs in 1990 for wastes generated in 1989, and that no CEGs are included. The 223 generators in the lowest fee class, each generating less than one metric ton of hazardous waste in 1989, are registered as LQGs and SQGs.

PGE: PGE is concerned that small businesses, many of whom are PGE customers are being unduly impacted by the proposed rule changes. The financial impact statement should reflect a more reasonable and

accurate financial impact statement.

Department Response: In the past, the Department has not collected data which would permit it to ascertain whether generators are large or small businesses within the meaning of ORS 183.310 to 335. This proposed rulemaking would address this deficiency by requiring businesses to indicate the number of employees at a business. Without data available through the proposed reporting system, information such as size of business can only be inferred from handler status. For example, it is reasonable to assume for analytical purposes that LQGs are, as a general rule, large businesses, while CEGs are more likely to be small businesses. It is on this basis that the Department concludes that large businesses will share more of the burden.

REQUEST FOR EQC ACTION

Meeting Date: July 25, 1991
Agenda Item: H
Division: Water Quality
Section: Wastewater Finance

SUBJECT:

Approval of individual community Sewer Safety Net (Assessment Deferral Loan) Programs and overall Funding Allocation Plan for the 1991-93 Biennium.

PURPOSE:

OAR 340-81-110 directs the Department to ask for applications from eligible communities before the start of each biennium. Each community program plan must be approved by the Commission to receive an allocation of available funds.

ACTION REQUESTED:

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

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

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

_X_ Approve Department Recommendation
- ___ Variance Request — Attachment ___
- ___ Exception to Rule — Attachment ___

___ Informational Report — Attachment ___
_X_ Other:
Approve the 1991-93 Sewer Safety Net programs:
_X_ Review of Applications — Attachment A
_X_ Allocation of 1991-93 Funds — Attachment B

DESCRIPTION OF REQUESTED ACTION:

1. Review and approve the seven community applications received and the proposed biennial Fund Allocation Plan.

2. Clarify the extent of Department authority to act on requests for changes to approved programs. Program rules require EQC program approval, but are mute with respect to subsequent changes. Two types of changes have arisen: reallocation of funds among approved communities and requests by cities with approved programs to amend eligibility criteria.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ — Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 454.430 to 454.445 — Attachment C
_X_ Pursuant to Rule: OAR 340-81-110 — Attachment D
___ Pursuant to Federal Law/Rule: _____ — Attachment ___

_X_ Other: — Attachment E
Summary of Rules: Basic Eligibility Requirements, Program Information Requirements and Approval Criteria

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Funds are allocated based upon the proportion of sewer connections scheduled to made during the biennium to households with incomes less than 200% of the poverty level, but communities may vary their program to meet local needs.

For this and other reasons, some communities run out of money before the end of the biennium while others have excess.

The program started in 1987 with the cities of Portland and Gresham. Both cities adopted conservative eligibility criteria. Portland liberalized its program in 1989. Eugene's program was also approved in 1987 with even more liberal criteria. They do not yet report making any loans, but propose to expand eligibility to include people above 200% of the poverty level who own large lots.

In addition to renewal applications, the following four new applications have been received: 1) The Marion County Service District for the Brooks Health Hazard Area, 2) the City of Albany for the North Albany Health Hazard Annexation Area, 3) the City of Oregon City for the Holcomb-Outlook-Park Place Health Hazard Annexation Area, and 4) the City of Corvallis for the West Philomath Boulevard, Skyline West, and West Hills Health Hazard Annexation Areas. While each of these new applicants are eligible, elements of several are incomplete.

Another important constraint is the issue of legislative intent. During the Department's presentation of the 1991-93 Biennial Budget to the Transportation and Regulation Subcommittee of the Joint Legislative Ways and Means Committee, considerable interest was shown in this program. In fact, DEQ's approved budget includes $5,500,000 for Sewer Safety Net funding, a substantial increase over the $1,040,250 recommended by the Governor.

However, legislative concern was expressed that the program could become unaffordable if the Commission were too liberal in approving eligibility criteria. This culminated in the inclusion of an Assessment Deferral Loan Program budget note in DEQ's approved budget. (See Attachment E.) While not statutory law, budget notes are a very strong indication of legislative intent which the Department and Commission should carefully consider in making approval decisions. The Department recommendation is consistent with the budget note.

PROGRAM CONSIDERATIONS:

Increased program activity requires additional Department staff time during 1991-93. It is recommended that $40,000 of the 1991-93 funds be allocated to administrative expense, as allowed by Rule. This will pay for 20% of the SRF Municipal Finance Specialist's time plus some support and management

time. Workload varies during the biennium, but some on-going effort is needed to track loans and repayments accurately.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Approve all seven community programs and the related fund allocation plan within the conceptual limits of the budget note, and allow the Department to approve subsequent program changes during the biennium as long as they do not exceed the limits set out in the budget note.

2. Approve all of the programs as submitted by the applicant communities, and require any subsequent changes in approved programs to be considered by the Commission prior to approval.

3. Approve some of the programs and conditionally approve other programs. The conditions would require changes specified by the Commission, such as more restrictive eligibility requirements. When the Department is satisfied that the Commission's conditions have been met, implementation would be allowed.

4. Approve some of the programs and require other programs to return to the Commission for approval after making changes directed by the Commission. This option maximizes the Commission's involvement in program details.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends approval of Alternative 1: approval of all community programs as presented with exception of program elements that exceed the scope of the budget note, and with approval for the Department to make fund allocation and program changes during the biennium up within the limits of the budget note.

This would allow the Department to sign new loan agreements with each eligible applicant, and provide funding for the programs needing immediate disbursements. It would also make it clear that the Department has the flexibility to make minor adjustments in approved programs as needs are identified. It would also enable the Department to work with new programs on detailed procedures before signing loan agreements and disbursing requested funds.

If funding levels prove to be sufficient to support more liberal eligibility criteria, the communities could implement

changes quickly (within established limits), instead of waiting until the matter can be scheduled for a hearing by the Commission. This option minimizes Commission involvement in program mechanics while maintaining an appropriate level of policy control.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The only Priority Objective of the Strategic Plan to which this program relates is "D. Expand Groundwater Quality Protection Efforts". Reducing financial barriers to the elimination of failing on-site sewage treatment systems is consistent with that objective. The program is also consistent with agency and legislative policy, as evidenced by inclusion in the 1991-93 Governor's and Legislatively approved Budgets.

ISSUES FOR COMMISSION TO RESOLVE:

1. Eligibility Criteria - Are all of the individual community programs eligible under existing statute and rule? They appear to be with the exception of Eugene's proposal to add a new category to defer part of "Large Lot" assessments without reference to whether or not the income of homeowners exceeds 200% of the federal poverty level.

2. Changes in Funding Allocations and Program Eligibility Criteria to Approved Programs - Is it appropriate for the Department to make minor financial and programmatic adjustments to approved programs without specific prior authorization of the Commission?

INTENDED FOLLOWUP ACTIONS:

a. Write and sign loan agreements with established programs by August 30, 1991.

b. Work with new programs on loan agreements to be signed by September 1991, or as soon thereafter as the community is ready to disburse funds.

c. Issue Pollution Control Bonds to fund the program during September 1991 and September 1992, or as soon as possible after the State Treasurer rescinds the moratorium on the sale of State general obligation bonds.

d. Continue to disburse funds to communities, as requested; monitor program effectiveness, and track cash flows.

Approved:

Section: Martin [signature]

Division: [signature] for Lydia Taylor

Director: [signature]

Report Prepared By: Peggy Halferty

Phone: 229-6412

Date Prepared: June 17, 1991

(PKH:typist)
(File Name/Number)
(Date Typed)

EQC MEETING DATE: July 25, 1991
Agenda Item: H
Attachment A

ASSESSMENT DEFERRAL LOAN PROGRAM
REVIEW OF 1991-93 SEWER SAFETY NET PROGRAM APPLICATIONS

I. PORTLAND

Portland meets the basic eligibility requirements for the Assessment Deferral Loan Program. They have been making loans since September 1988.

Owner-occupied homes are eligible for a five-year deferred loan at 5% interest for a part of the assessment and connection costs as described on the Summary. Income includes the gross household income less any unreimbursed medical and nursing home costs, child support, the annualized costs of sewer assessments above $4500, and the annualized costs of private plumbing connections above $1,999. Net household assets which could be available for liquidation or for use as collateral (less the primary residence, its contents and one car) are limited to $20,000. Applicants over the age of 50 may hold net household assets of up to $50,000.

Initially, Deferrals of part of assessed costs (averaging $7,500) began at 200% of the federal poverty level, and deferral of all of the assessment was allowed when income was at or below 75% of the poverty level ($10,050 for a family of four in 1991). Portland has liberalized eligibility criteria to defer 50% at 175% of the poverty level and 100% at 125% of the poverty level. The deferral may be extended if the applicant continues to qualify. A qualifying heir of the property may assume the deferral loan. If the property is sold or transferred, the deferral must be paid in full. At the end of the deferral period, the loan is amortized over five to 20 years depending upon the total principal and accrued interest outstanding, with monthly payments.

The program was developed in conjunction with the Citizen Sewer Advisory Board which continues to monitor the program and review any proposed changes. The Department has reviewed the information on the administration of the program, the schedule for construction, and the resolution passed by the City Council adopting the program. These meet the requirements of the program. Based on these criteria, Portland will have made in excess of $800,000 in loans by 6/30/91.

The Department recommends that the Portland Assessment Deferral Loan Program be approved by the Commission as meeting the intent of the program to provide financialwho would experience extreme financial hardship from payment of sewer assessments.

EQC MEETING DATE: July 25, 1991
Agenda Item: H
Attachment A

II. GRESHAM

Gresham meets the eligibility criteria for the Assessment Deferral Loan Program. They have been making loans since August 1990.

Owner-occupied homes are eligible for a deferred loan at 5% interest for a part of the assessment and connection costs as described on the Summary. Income includes the gross household income less documented unreimbursed medical payments, and housing costs (mortgage payments, property insurance, property taxes, average utility costs -excluding telephone), assessment bond costs, and payments for private plumbing costs) must exceed 30% of the household income.

Net household assets excluding the primary residence, its contents and one car are limited to $20,000. (For assets between $20,000 and $25,000, the homeowner may qualify for a deferred loan for the amount that the assessment exceeds the difference between assets and $20,000.) If only one of the assets and housing costs criteria are met, but the income level qualifies for a deferred loan, homeowners may qualify if the City determines that the homeowner has extraordinary costs associated with the sewer implementation program.

Sole proprietorships and partnerships may qualify for the deferred loans on a basis equivalent to the owner-occupied homes. Income is the gross income less payroll expense of non-owners. A sole proprietorship has a household size of one. Partnerships have the number of household members as the number of active partners.

Assessments average about the same as for Portland ($7,500) and Gresham maintains the original eligibility criteria they adopted in 1989. Deferral recipients complete a questionnaire every three years to confirm continued eligibility. The deferral may continue until the property is sold or transferred. About $300,000 was needed for deferrals through June 30, 1991.

The Department has reviewed the information on the administration of the program, public involvement, the schedule for construction, and the resolution passed by the City Council adopting the program. These meet the requirements of the program.

The Department recommends that the Gresham Assessment Deferral Loan Program be approved by the Commission as meeting the intent of the program to provide financial assistance to low-income property owners who would experience extreme financial hardship from payment of sewer assessments.

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III. EUGENE

Eugene meets the basic eligibility requirements for the Assessment Deferral Loan Program. Eugene has begun construction of the River Road/Santa Clara Project which will include 9,253 connections. Owner-occupied homes are eligible for a deferral of all or a part of the assessment and connection costs if the homeowner owns no interest in another property allowed a deferral and household income does not exceed 200% of the federal poverty level.

At less than 150% of the federal poverty level, 100% of all components of the assessment and connection costs may be deferred. At 150% to 175% of the federal poverty level, homeowners may defer 100% of the trunk costs only, which average 55% of the total eligible items for deferral. At 175% to 200% of the Federal Poverty Level, homeowners may defer only 50% of trunk costs.

Eligibility of deferral recipients is reviewed each year. The deferral may continue until the property is sold or transferred, or until the homeowner fails to qualify two years in a row.

Eugene also proposes a change in its existing (and submitted) program; expanding eligibility to include homeowners who may have incomes above 200% of the poverty level but experience hardship due to ownership of large lots. (Assessments in River Road and Santa Clara are expected to average $5,200 but since lot size is a factor, some may run as high as $30,000.) The Department has reviewed the information on the administration of the program, public involvement, the schedule for construction, and the resolution passed by the City Council adopting the program. These meet the requirements of the program.

The documentation submitted by Eugene with their application for the 1991-93 Assessment Deferral Loan Program is what is described above and on the Summary. This was the program approved by the Commission for 1989-91. However, the Eugene staff have told us verbally that this does not accurately represent the program as it is currently being administered. At the Legislative Ways and Means committee meetings, Eugene represented their program to include the "large lot" deferrals which extend the program to those with income above 200% of the federal poverty level.

The Department recommends that the Eugene Assessment Deferral Loan Program be approved by the Commission as meeting the intent of the program to provide financial assistance to low-income property owners who would experience extreme financial hardship from payment of sewer assessments. The program should be approved as

submitted, excluding any changes made since the Commission approved the 1989-91 program. The requested changes would move eligibility criteria above the limitations requested in the Budget Note.

IV. BROOKS COMMUNITY SEWER DISTRICT

Brooks Community Sewer District (Marion County) is required to construct collector sewers in a Health Hazard Area by their federal grant agreement as a result of Sanitary Survey conducted by DEQ and Marion County in 1988. The entire project will be constructed during 1991-93, as described on the Summary.

Owner-occupied homes are eligible for a 5% interest, ten-year loan for 100% of connection costs if the gross household income is 150% of the federal poverty level or less. The loan will be amortized over ten years and added to each homeowner's sewer bill.

The Department has reviewed the information on the administration of the program, public involvement, and the schedule for construction. Since the program is still being organized, the Department will continue to give guidance to be sure that appropriate safeguards and accounting procedures are incorporated into the program. A resolution will be passed by the Brooks Community Service District before a loan agreement is written.

The Department recommends that the Brooks Community Sewer District Assessment Deferral Loan Program be approved by the Commission as meeting the intent of the program to provide financial assistance to low-income property owners who would experience extreme financial hardship from payment of sewer assessments.

V. CITY OF CORVALLIS

The City of Corvallis is required to construct collector sewers in the West Philomath Boulevard area by a Health Division Order and by a Stipulated Order of the Commission. The City of Corvallis is required to construct collector sewers in the Skyline West and West Hills areas by Stipulated Orders of the Commission.

Corvallis has completed construction of these projects, but have not yet assessed property owners. Statistics on the total project are on the Summary. While the average assessment is only $3,286 for the total project, the average assessment in the West Philomath Boulevard area is $11,591. This area of 21 connections

has approximately 34% of households below 200% of the federal poverty level.

The Department is still discussing appropriate eligibility criteria with Corvallis. This program has not yet been adopted by a Resolution of the City Council and may be withdrawn by Corvallis.

A program for Corvallis should be approved to address the need of low-income homeowners in the area. Details of the final eligibility criteria and procedures would be worked out in cooperation with the Department. A resolution would be passed by the City Council before a loan agreement would be signed.

VI. NORTH ALBANY

North Albany Service District is required to construct collector sewers by a 1989 Health Division declaration of a Health Hazard Area. The project will be completed within the 1991-93 biennium with a total of 465 connections. Additional statistics on the 1991-93 connections are on the Summary.

Owner-occupied homes would be eligible for a five-year deferred loan at 5% interest for a part of the assessment and connection costs as described on the Summary. The deferral may be extended if the applicant continues to qualify. The program is being developed in cooperation with the North Albany Citizen's Advisory Committee. The Department is working with North Albany to address the issues related to the coordination of this program with a Community Development Block Grant for low- and moderate- income households.

The Department recommends that an Assessment Deferral Loan Program be approved for North Albany by the Commission as meeting the intent of the program to provide financial assistance to low-income property owners who would experience extreme financial hardship from payment of sewer assessments. While the program has been approved by resolution, changes will probably be appropriate as the detailed procedures are worked out.

VII. OREGON CITY

Oregon City is required to construct collector sewers in the Holcomb, Outlook, Park Place (HOPP) area by a 1988 Health Division declaration of a Health Hazard Area. The project is anticipated to be completed in 1991-93 with a total of 457 connections. Additional statistics are on the Summary.

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In the program submitted by Oregon City, owner-occupied homes would be eligible for a deferred loan for a part of the assessment and connection costs as described on the Summary. Above 150% of the federal poverty level, the deferral amount would be based upon a sliding scale. However, the program is still being developed in cooperation with the Park Place/Holcomb Neighborhood Association Sewer Committee and has not received formal adoption by the City Commissioners.

The Department recommends that an Assessment Deferral Loan Program be approved for Oregon City by the Commission as meeting the intent of the program to provide financial assistance to low-income property owners who would experience extreme financial hardship from payment of sewer assessments. Detailed eligibility criteria and procedures would be approved by the Department before a loan agreement would be signed.

ATTACHMENT A

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ASSESSMENT DEFERRAL LOAN PROGRAM
REVIEW OF APPLICATIONS
SUMMARY

	AVERAGE ASSESSMENT	NUMBER OF CONNECTIONS	% HOUSEHOLDS AT < 200% OF FEDERAL POVERTY LEVEL	% DEFERRAL BY % OF FEDERAL POVERTY LEVEL				
				0%-74%	75%-124%	125%-149%	150%-174%	175%-200%
Income Level for 1991 for a four-person Household:				$0-$10,049	$10,050-$16,749	$16,750-$20,099	$20,100-$23,449	$23,450-$26,800
ALBANY	$9,500	465	15%	100%	80%	50%	30%	30%
BROOKS	$850	210	48%	100%	100%	100%	0%	0%
CORVALLIS	$3,286	339	11%	100%	80%	50%	20%	20%
EUGENE	$5,200	2,360	25%	100%	100%	100%	55%	28%
GRESHAM	$6,200	1,860	26%	100%	80%	50%	20%	20%
OREGON CITY	$5,200	457	50%	100%	100%	100%	100%-50%	50%-0%
PORTLAND	$5,210	6,000	27%	100%	100%	50%	50%	0%

ATTACHMENT B

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ASSESSMENT DEFERRAL LOAN PROGRAM
ALLOCATION OF 1991-93 FUNDS

SOURCES OF FUNDS	
Revolving Fund Account Balance:	
7/1/89 Cash Balance	0
Repayments of Principal 7/1/89-4/30/91	39,481
Payments of Interest 7/1/89-4/30/91	7,783
Investment Earnings 7/1/89-4/30/91	3,032
Revolving Fund Account Balance 4/30/91	50,297
1987-89 Bond Proceeds Not Distributed	114,000
1991-93 Budgeted Bond Proceeds	5,500,000
TOTAL FUNDS AVAILABLE FOR THE 1991-93 PROGRAM	$5,664,297

USES OF FUNDS		% of Total Loans
COMMUNITY LOANS:		
Albany	126,146	2%
Brooks	181,095	3%
Corvallis	66,994	1%
Eugene	1,059,978	19%
Gresham	868,823	15%
Oregon City	410,517	7%
Portland	2,910,448	52%
Total Allocated to Community Loans	5,624,000	100%
Administrative Expense	40,000	
TOTAL 1991-93 USES OF FUNDS	$5,664,000	
UNALLOCATED FUNDS (see Note)	$297	

NOTE: Repayments and interest earnings during 1991-93 will increase the 6/30/93 Ending Cash Balance of the Revolving Fund. However, due to the unpredictable nature of the loan repayments, these amounts are not assumed in the funds available for 1991-93.

section shall not apply. If the committee requests further documentation and explanation regarding the report, the municipality shall provide such information. Any findings of the committee following this review shall be reported to the commission and to the governing body of the municipality, along with any recommendations the committee may offer. [1987 c.627 §7]

CONSTRUCTION OF SEWAGE SYSTEMS

454.405 Definitions for ORS 454.425 and 468.742. As used in ORS 454.425 and 468.742:

(1) "Construct" includes a major modification or addition.

(2) "Person" means any person as defined in ORS 174.100 but does not include, unless the context specifies otherwise, any public officer acting in an official capacity or any political subdivision, as defined in ORS 237.410. [Formerly 449.390; 1975 c.248 §1; 1987 c.158 §86]

454.415 [Formerly 449.395; 1975 c.248 §2; renumbered 468.742]

454.425 Surety bond required; exception; action on bond. (1) Every person proposing to construct facilities for the collection, treatment or disposal of sewage shall file with the Department of Environmental Quality a surety bond of a sum required by the Environmental Quality Commission, not to exceed the sum of $25,000. The bond shall be executed in favor of the State of Oregon and shall be approved as to form by the Attorney General.

(2) A subsurface sewage disposal system designed for and used in not to exceed a four-family dwelling shall be exempt from the provision of subsection (1) of this section. The commission may adopt rules exempting other facilities from the requirements of subsection (1) of this section.

(3) The department may permit the substitution of other security for the bond, in such form and amount as the commission considers satisfactory, the form of which shall be approved by the Attorney General.

(4) The bond or other security shall be forfeited in whole or in part to the State of Oregon by a failure to follow the plans and specifications approved by the department in the construction of the sewerage system or by a failure to have the system maintained and operated in accordance with the rules and orders of the commission. The bond or other security shall be forfeited only to the extent necessary to secure compliance with the approved plans and specifications or the rules and orders of the commission. The commission shall expend the amount forfeited to secure compliance with the approved plans and specifications or the rules and orders of the commission.

(5) When a failure as described in subsection (4) of this section occurs and part of the bond or other security remains unforfeited, any person, including a public person or body, who has suffered any loss or damage by reason of the failure shall have a right of action upon the bond or other security and may bring a suit or action in the name of the State of Oregon for the use and benefit of the person. This remedy shall be in addition to any other remedies which the person who suffered loss or damage may have against the person who has failed to follow the approved plans and specifications or to comply with the rules and orders of the commission.

(6) When the ownership of the sewerage system is acquired or its operation and maintenance assumed by a city, county, sanitary district, or other public body, the bond or other security shall be considered terminated and void as security for the purposes of this section and shall be returned to the person who filed the security. [Formerly 449.400; 1975 c.248 §3]

ASSESSMENT DEFERRAL LOAN PROGRAM

454.430 Definitions for ORS 454.430 to 454.445. As used in ORS 454.430 to 454.445:

(1) "Assessment" includes all costs, fees or other charges for the construction of or connection to sewage treatment works that are eligible for instalment payments under ORS 223.205 to 223.785.

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

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

(4) "Extreme financial hardship" has the meaning given within the assessment deferral programs adopted by public agencies and approved by the Department of Environmental Quality.

(5) "Public agency" means any state agency, incorporated city, county, sanitary authority, county service district, sanitary district, metropolitan service district or other special district authorized to construct water pollution control facilities.

(6) "Treatment works" means a sewage collection system. [Formerly 468.970]

Note: 454.430 to 454.445 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 454 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

454.433 Policy. It is declared to be the policy of this state:

(1) To provide assistance to property owners who will experience extreme financial hardship resulting from payment of assessed costs for the construction of treatment works required by a federal grant agreement or an order issued by a state commission or agency.

(2) To provide assistance through an interest loan program to defer all or part of property assessments.

(3) To capitalize an assessment deferral loan program with moneys available in the Pollution Control Fund, available federal funds or available local funds. [Formerly 468.973]

Note: See note under 454.430.

454.436 Assessment Deferral Loan Program Revolving Fund; uses; sources. (1) There is established the Assessment Deferral Loan Program Revolving Fund separate and distinct from the General Fund in the State Treasury. The moneys in the Assessment Deferral Loan Program Revolving Fund are appropriated continuously to the Department of Environmental Quality to be used for the purposes described in ORS 454.439.

(2) The Assessment Deferral Loan Program Revolving Fund may be capitalized from any one or a combination of the following sources of funds in an amount sufficient to fund assessment deferral loan programs provided for in ORS 454.439:

(a) From the Water Pollution Control Revolving Fund.

(b) From capitalization grants or loans from the Pollution Control Fund.

(3) In addition to those funds used to capitalize the Assessment Deferral Loan Program Revolving Fund, the fund shall consist of:

(a) Any other revenues derived from gifts, grants or bequests pledged to the state for the purpose of providing financial assistance to water pollution control projects;

(b) All repayments of money borrowed from the fund;

(c) All interest payments made by borrowers from the fund;

(d) Any other fee or charge levied in conjunction with administration of the fund; and

(e) Any available local funds.

(4) The State Treasurer may invest and reinvest moneys in the Assessment Deferral Loan Program Revolving Fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the Assessment Deferral Loan Program Revolving Fund. [Formerly 468.975]

Note: See note under 454.430.

454.439 Conditions for program; administrative expenses; priority; report. (1) The Department of Environmental Quality shall use the moneys in the Assessment Deferral Loan Program Revolving Fund to provide funds for assessment deferral loan programs administered by public agencies that meet all of the following conditions:

(a) The program demonstrates that assessments or charges in lieu of assessments levied against benefited properties for construction of treatment works required by a federal grant agreement or by an order issued by a state commission or agency will subject property owners to extreme financial hardship.

(b) The governing body has adopted a program and the department has approved the program.

(c) The treatment works meets the requirements of section 2, Article XI-H of the Oregon Constitution concerning eligibility of pollution control bond funds.

(2) The department also may use the moneys in the Assessment Deferral Loan Program Revolving Fund to pay the expenses of the department in administering the Assessment Deferral Loan Program Revolving Fund and to repay capitalization loans.

(3) In administering the Assessment Deferral Loan Program Revolving Fund, the department shall:

(a) Allocate funds to public agencies for assessment deferral loan programs in accordance with a priority list adopted by the Environmental Quality Commission.

(b) Use accounting, audit and fiscal procedures that conform to generally accepted government accounting standards.

(c) Prepare any reports required by the Federal Government as a condition to the award of federal capitalization grants.

(4) The Department of Environmental Quality shall submit an informational report to the Joint Committee on Ways and Means or, if during the interim between sessions of the Legislative Assembly, to the Emergency Board before awarding the first loan from the Assessment Deferral Loan Program Revolving Fund. The report shall describe the assessment deferral loan program and set forth in detail the operating procedures of the program. [Formerly 468.977]

Note: See note under 454.430.

454.442 Application for loan; terms and conditions. Any public agency desiring funding of its assessment deferral loan program from the Assessment Deferral Loan Program Revolving Fund may borrow from the Assessment Deferral Loan Program Re-

volving Fund in accordance with the procedures contained in ORS 454.430 to 454.445 and 468.220. The public agency shall submit an application to the department on a form provided by the department. After final approval of the application, the department shall offer the public agency funds from the Assessment Deferral Loan Program Revolving Fund through a loan agreement with terms and conditions that:

(1) Require the public agency to repay the loan with interest according to a repayment schedule corresponding to provisions governing repayment of deferred assessments by property owners as defined in the public agency's adopted assessment deferral loan program;

(2) Require the public agency to secure the loan with an assessment deferral loan program financing lien as described in ORS 454.445; and

(3) Limit the funds of the public agency that are obligated to repay the loan to proceeds from repayment of deferred assessments by property owners participating in the assessment deferral loan program adopted by the public agency. [Formerly 468.980]

Note: See note under 454.430.

454.445 Lien against assessed property; docket; enforcement. (1) Any public agency that pays all or part of a property owner's assessment pursuant to the public agency's adopted assessment deferral loan program shall have a lien against the assessed property for the amount of the public agency's payment and interest thereon as specified in the public agency's assessment deferral loan program.

(2) The public agency's auditor, clerk or other officer shall maintain a docket describing all payments of assessments made by the public agency pursuant to its adopted assessment deferral loan program. The liens created by such payments shall attach to each property for which payment is made at the time the payment is entered in this docket. The liens recorded on this docket shall have the same priority as a lien on the bond lien docket maintained pursuant to ORS 223.230. A lien shall be discharged upon repayment to the public agency of all outstanding principal and interest in accordance with the requirements of the public agency's adopted assessment deferral loan program.

(3) The lien may be enforced by the public agency as provided by ORS 223.505 to 223.650. The lien shall be delinquent if not paid according to the requirements of the public agency's adopted assessment deferral loan program. [Formerly 468.983]

Note: See note under 454.430.

STATE AID FOR CONSTRUCTION OF MUNICIPAL SEWAGE TREATMENT WORKS

454.505 Definitions for ORS 454.505 to 454.535. As used in ORS 454.505 to 454.535, unless the context requires otherwise:

(1) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, and the inspection and supervision of the construction of sewage treatment works.

(2) "Eligible project" means a project for construction of sewage treatment works:

(a) For which the approval of the Department of Environmental Quality is required under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468;

(b) Which is, in the judgment of the Environmental Quality Commission eligible for federal pollution abatement assistance, whether or not federal funds are then available therefor;

(c) Which conforms with applicable rules of the commission; and

(d) Which is, in the judgment of the commission, necessary for the accomplishment of the state's policy of water purity as stated in ORS 468.710.

(3) "Federal pollution abatement assistance" means funds available to a municipality, either directly or through allocation by the state, from the Federal Government as grants for construction of sewage treatment works pursuant to the Federal Water Pollution Control Act of 1956 (P.L. 84-660) as amended, or pursuant to any other federal act or program.

(4) "Municipality" means any county, city, special service district or other governmental entity having authority to dispose of sewage, industrial wastes or other wastes, any Indian tribe or authorized Indian tribal organization, or any combination of two or more of the foregoing acting jointly, in connection with an eligible project.

(5) "Sewage treatment works" means any facility for the purpose of treating, neutralizing or stabilizing sewage or industrial

STATE FINANCIAL ASSISTANCE

DIVISION 81

STATE FINANCIAL ASSISTANCE TO PUBLIC AGENCIES FOR WATER POLLUTION CONTROL FACILITIES

Purpose

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

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

Definitions

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

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

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

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

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

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

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

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

Water Pollution Control Facilities

Eligible Projects

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

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

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

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

Eligible Costs

340-81-020 Costs for planning, design, implementation, and construction, including essential land acquisition and related fiscal and legal costs may be included as eligible costs for projects receiving financial assistance unless otherwise provided by law. Costs shall be limited to those reasonable and necessary to complete an operable facility that will serve the projected population during the design life of the facility, consistent with the applicable Land Use Plan.

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

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

Application Documents

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

Nature and Limitations of Financial Assistance

340-81-026 (1) Unless otherwise approved by the Legislature, Legislative Ways and Means Committee or Legislative Emergency Board, financial assistance shall be limited to loans.

(2) Loans secured by means other than sale of General Obligation Bonds by the public agency shall be subject to approval by the Environmental Quality Commission.

(3) Loans shall not exceed 100 percent of the eligible project cost. In the event the project receives grant or loan assistance from any other sources, the total of such assistance and any loan provided from the Pollution Control Fund shall not exceed 100 percent of eligible costs.

(4) The loan interest rate paid by the public agency shall be equal to the interest rate on the state bonds from which the loan is made, except as provided in sections (5) and (6) of this rule.

(5) The Department shall add to the rate of interest otherwise to be charged on loans a surcharge not to exceed an annual rate of one-tenth of one percent to be applied to the outstanding principal balances in order to offset the Department's expenses of administering the loan and the Pollution Control Fund.

(6) The Department may assess a special loan processing fee of up to $10,000 to recover extraordinary costs for legal and financial specialists that may be needed to enable the Department to satisfy itself that the loan is legally and financially sound.

(7) The public agency must retire its debt obligation to the state at least as rapidly as the state bonds from which the loan funds are derived are to be retired; except that special

debt service requirements on the public agency's loan may be established by the Department when:

(a) A debt requirement schedule longer than the state's bond repayment schedule is legally required; or

(b) Other special circumstances are present.

(8) Interest and principal payments shall be due at least thirty days prior to the interest and principal payment dates established for the state bonds from which the loan is advanced.

(9) Any excess loan funds held by the public agency following completion of the project for which funds are advanced shall be used for prepayment of loan principal and interest.

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

Application Review

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

Preliminary Request for Financial Assistance

340-81-031 (1) Public agencies desiring to receive financial assistance from the Department shall file a preliminary application on forms supplied by the Department. This application will set forth:

(a) A description of the project for which funding assistance is desired;

(b) A description of the pollution control problem that the project will assist in resolving;

(c) The estimated cost of the project;

(d) The schedule for the project including the schedule for a bond election if one is necessary;

(e) The funding sources for the project;

(f) The method for securing the loan being requested from the Department;

(g) Such other information as the Department deems necessary.

(2) Preliminary applications may be filed with the Department at any time.

(3) The Department may give notice of intent to receive preliminary applications by a date certain in order to prepare a priority list if such lists becomes necessary to allocate anticipated available funds.

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

Loan or Bond Purchase Agreement

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

Prioritization of Preliminary Applications

340-81-036 (1) If it appears that the potential requests for financial assistance may exceed the funds available, the Department shall notify potential applicants of the deadline for submitting preliminary applications to receive consideration in the prioritization process. Such prioritization will generally occur no more frequently than once per year. To the extent possible, the prioritization process will be completed in February in order to mesh with local budget processes and facilitate project initiation during favorable construction weather.

(2) The process for prioritization shall be as follows:

(a) Each project shall be assigned points based on the schedule contained in OAR 340-81-141.

(b) Projects shall be ranked by point total from highest to lowest with the project receiving the highest points being the highest priority for funding assistance. A fundable list shall then be established based on available funds.

(c) The Department shall notify each public agency within the fundable range on the list and forward a draft loan agreement for review, completion, and execution.

(d) If the loan agreement is not completed, executed, and returned to the Department within 60 days of notification, the public agency's priority position for funding assistance during that year shall be forfeited, and the funds made available in order of priority to projects below the fundable line on the list. The 60-day time limit may be extended by the Department upon request of the applicant with a demonstration of need to complete required legal and administrative processes.

(3) If funds remain after all qualifying applications on the list are funded, the Department may fund new requests from qualifying applicants on a first come first serve basis.

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

Construction Bid Documents Required

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

Priority Point Schedule

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

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

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

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

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

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

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

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

Advancement of Loan Funds

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

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

Execution of Loan Agreement

340-81-046 (1) The loan agreement shall at a minimum specify:

(a) The specific purpose for which funds are advanced;

(b) The security to be provided;

(c) The schedule for payment of interest and principal;

(d) The source of funds to be pledged for repayment of the loan;

(e) The additional approvals that must be obtained from the Department prior to advance of funds or start of construction.

(2) The loan agreement shall have as attachments the following:

(a) A list of general assurances and covenants as approved by the Attorney General;

(b) An official resolution or record of the public agency's governing body authorizing the loan agreement and authorizing an official of the public agency to execute all documents relating to the loan;

(c) A legal opinion of the public agency's attorney establishing the legal authority of the public agency to incur the indebtedness and enter into the loan agreement;

(d) Copies of ordinances pertinent to the construction, operation, and loan repayment for the project and the public agency's total sewerage facility including relevant user charges, connection charges, and system development charges;

(e) A 5-year projection of revenues and expenditures related to the construction, operation and debt service for the project and the public agency's total sewerage facility which assures that the project is self-supporting and self-liquidating.

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

Advancement of State Grant Funds

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

Loan Closing

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

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

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

Rejection of Applications

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

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

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

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

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

Assessment Deferral Loan Program Revolving Fund

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Eligbility criteria;

(ii) Basis of choosing the eligibility criteria;

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

(D) A schedule for construction or collector sewers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT E

EQC Meeting Date: July 25, 1991
Agenda Item: H

ASSESSMENT DEFERRAL LOAN PROGAM
SUMMARY OF STATUTES AND RULES CONCERNING PROGRAM APPROVALS

BACKGROUND

The Sewer Safety Net Program provides long-term, five percent interest rate loans to qualifying communities required to construct sewage collection systems by order of the Environmental Quality Commission (EQC), Oregon Health Division (OHD), or by federal grant agreement. Applicant communities use loan proceeds to pay part, or all, of the construction costs assessed against owner occupied homes where payment of that assessment, or use of normal financing mechanisms, would impose an "extreme financial hardship".

Neither ORS 454.430, nor OAR 340-81-110 defines what is meant by "extreme financial hardship". However, the allocation formula in the rules distributes funds based upon the relative proportion of mandated connections to be made to households where income is less than 200% of the federal poverty level. This is used as the definition of hardship. Amounts deferred are repaid to the City (and DEQ) when the hardship abates due to increased income or a change in property ownership.

Funds are allocated based upon the proportion of sewer connections that will be made during the biennium to households with incomes less than 200% of the poverty level. However, repayments, percentages of owner occupied homes, eligibility rules and implementation schedules vary from community projections, with the result that some communities run out of money before the end of the biennium while others have more than they need.

BASIC ELIGIBILITY REQUIREMENTS

Before consideration for the Assessment Deferral Loan Program, the public agency must meet the basic eligibility criteria described in OAR 340-81-110(1). Each public agency must be

(1) required by federal grant agreement or by an order issued by the Commission or the Oregon Health Division to construct a sewage collection system;
(2) adopt an assessment deferral loan program;
(3) have a sewage collection system that is at least 70% self-supporting and self-liquidating.

PROGRAM INFORMATION REQUIREMENTS

In applying for the Assessment Deferral Loan Program, the public agency must provide information on the following elements as detailed in OAR 340-81-110(3):

(1) The number of sewer connections to be made in the eligible area with an analysis of the income level and cost of sewer assessments for affected property owners.

(2) Description of the proposed local loan program, including eligibility criteria and the basis for its selection; and how funds will be distributed among eligible property owners.

(3) A schedule for construction of collector sewers.

(4) A description of the administrative procedures of the local program, including placing liens on properties, repayment procedures, and accounting procedures.

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

(6) A resolution showing adoption of the program by the governing body.

APPROVAL CRITERIA

OAR 340-81-110(3)(b) sets out the following criteria which must be used in reviewing the assessment deferral loan applications submitted by public agencies:

(1) The degree to which the public agency and its proposed program will meet the intent of the Assessment Deferral Loan Program Revolving Fund in providing financial relief to property owners subjected to "extreme financial hardship" by sewer assessments or charges in lieu of assessments levied against benefited properties of a sewage collection system required to be built by federal grant agreement or by an order issued by the Commission or the Oregon Health Division.

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

EQC Meeting Date: July 25, 1991
Agenda Item: H
Attachment E

BUDGET NOTE RESTRICTIONS

The Transportation Subcommittee of the Ways and Means Committee of the 1991 Legislature reviewed the budget for the Assessment Deferral Loan Program. As a result of their discussions, the budget was increased from the $1,040,250 level recommended by the Governor to $5,500,000. In addition, they expressed a concern that neither new nor renewal programs approved by the Commission be any more liberal in eligibility criteria than the most liberal program already in place. Their concern gave rise to the following budget note that appears on page 5 of DEQ's Legislatively approved budget (SB 5536):

> Funding for the sewer safety net was increased by the Committee to $5.5 million with approval of Decision Package No. 125. The amount authorized full finances ageements in place as of July 1, 1991. The Subcommittee expects that those in place will not be amended, incresing program costs, nor will plans adopted in the future contain eligibility standards in excess of those contained in existing approved plans.

The Department interprets this to restrict future programs to the eligibility criteria currently approved by the Commission for Eugene. This program requires that the homeowner be no higher than 150% of the federal poverty level to receive full deferral of assessments and connection costs. For homeowners at 150% to 200% of the federal poverty levels, the deferral should be scaled on some basis so that at 200% of the federal poverty level, the deferral is for no more than about 30% of the assessments and connection costs.

ATTACHMENT F

EQC Meeting Date: July 25, 1991
Agenda Item: H

ASSESSMENT DEFERRAL LOAN PROGRAM
BACKGROUND INFORMATION

THE NEED FOR THE PROGRAM

In the early 1970's, the Department of Environmental Quality (DEQ) began studies in Mid-Multnomah County that showed that the groundwater contained abnormally high levels of nitrates. Later, the Legislature passed the Threat to Drinking Water Act (ORS 454.275 - 454.380), which established a procedure to determine if a threat existed based on three out of four specific criteria.

Following nearly two years of hearings and evaluation, the EQC found that three of the criteria have been met or exceeded in Mid-Multnomah County: (1) more than 50% of the area contains rapidly draining soils; (2) the groundwater is a potential source of drinking water; and (3) more than 50% of the area's sewage is discharged into the ground via cesspools. As a result, on April 25, 1986, the Environmental Quality Commission (EQC) issued an order requiring sewer service to be provided in this area by the year 2005 by the cities of Portland and Gresham.

A very important issue to the EQC in making this decision was the affordability of the project to local homeowners. The Commission was very concerned about being able to assure homeowners that they would not be forced out of their homes due to the inability to pay for sewer construction costs.

DEVELOPMENT OF THE PROGRAM

One of the financial programs developed by the 1987 legislature to assist property owners in Mid-Multnomah County and other areas required to connect to sewers was the Assessment Deferral Loan Program (also known as the Safety Net Program). Under this program, public agencies apply to the Department for a loan and in turn provide loans to individual property owners. In order for a public agency to receive a loan, the EQC must approve the public agency's proposed loan program and the Department must enter into a loan agreement with the public agency. In December 1987, the Environmental Quality Commission adopted rules to implement the loan program (OAR 340-81-110). Under these rules, all public agencies must apply for funding for each biennium.

EQC Meeting Date: July 25, 1991
Agenda Item: H
Attachment F

THE 1987-89 PROGRAM

Assessment deferral loan applications were received from Portland and Gresham for the Mid-Multnomah County area and from Eugene for the River Road/Santa Clara area. The programs for Portland and Gresham cover the entire Mid-Multnomah County area required to be sewered by the EQC order, including the unincorporated area in Multnomah County. The River Road/Santa Clara area is required, under a federal grant agreement, to connect to sewers due to the threat to groundwater.

The EQC approved the applications from Portland, Gresham and Eugene during the 1987-89 biennium. Of the $300,000 available in the Sewer Safety Net Fund, Portland borrowed $186,000 which was the full amount the city was allocated. Gresham and Eugene did not borrow any money from the Sewer Safety Net Fund during 1987-89 because project construction was behind schedule.

THE 1989-91 PROGRAM

During the 1989-91 biennium, $950,000 of General Fund monies were appropriated for the Sewer Safety Net. Portland received $647,520. In June 1990 Gresham signed a loan agreement and, subsequently, received a total of $168,040. Eugene signed a loan agreement in November 1990 and received $109,440 in May 1991. The remaining $25,000 was unscheduled by the Executive Department in December 1990 budget cuts.

DEPARTMENT PROCEDURES FOR LOAN AGREEMENTS AND DISBURSEMENTS

After the Environmental Quality Commission's approval of these programs, the Department will enter into loan agreements and/or amendments with each jurisdiction. This agreement will cover items not covered in the proposed programs such as procedures for repayment of the loan by the public agency, accounting and reporting procedures, and administrative and foreclosure procedures to minimize losses. Changes in the loan agreements will be made if procedural changes proposed by the communities are consistent with the intent of the program and meet the requirements of the Department.

Funds will be disbursed after loan agreements are signed, as communities request funds. Quarterly reports document loans, disbursements, repayments, and other interest earnings.

Oregon

REQUEST FOR EQC ACTION

Meeting Date: July 24, 1991
Agenda Item: I
Division: HSW
Section: Solid Waste

SUBJECT:

Adoption of temporary rules for a permit fee increase for solid waste disposal facilities.

PURPOSE:

The purpose of the fee increase is to comply with legislation passed by the 1991 Legislature.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
_X_ Adopt Rules

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

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

Proposed Order	Attachment ___

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

___ Approve Department Recommendation

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

DESCRIPTION OF REQUESTED ACTION:

In accordance with the budget authorized by the 1991 Legislature for the Department of Environmental Quality (Department, DEQ), the Department is required to assess additional solid waste permit fees in the 1991-93 biennium to cover expenses for additional solid waste permitting staff and part of Senate Bill 66 (SB 66):

Solid waste permitting:	$ 835,000
SB 66:	$ 287,500
Total	$1,122,500

The action requested at this time is to adopt a temporary rule increasing the annual compliance determination fee for all solid waste disposal permittees by $417,500 for the period from July 1, 1991 to June 30, 1992 (FY 92). This amount represents half of the additional funds approved by the Legislature for solid waste permitting. The $417,500 increase would be spread equally across all solid waste permit compliance fee categories, and would be billed to permittees in August, 1991. Another $417,500 for solid waste permitting and the $287,500 supplementary permit fee increase for activities under SB 66 will be addressed in the context of a permanent fee increase (see Program Considerations, p. 4), and will be billed in May 1992 for FY 93.

AUTHORITY/NEED FOR ACTION:

X	Required by Statute: 1991 SB 66, SB 5536	Attachment C,D
	Enactment Date: July 1, 1991	
___	Statutory Authority: _____	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___

X Time Constraints:
Funds from this fee increase are part of the Department's 1991-93 Legislatively Adopted Budget, and include funding for five new solid waste positions to improve Department

permitting capability, as directed by the Legislature. The budget is effective upon signature by the Governor. Fee collection needs to start as soon as possible in order to hire new staff. The Environmental Quality Commission (Commission, EQC) must adopt rules to allow the Department to collect the permit fee increase. The Department plans to bill the permittees for the additional fee upon approval by the EQC. The Department, however, is proposing to allow until January 1, 1992 for solid waste permittees to remit payment of the fee increase to provide enough time for necessary adjustments in their waste disposal rates.

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Fiscal and economic impacts are anticipated for generators of solid waste and ratepayers as a result of the proposed regulation.

The temporary rule would require an additional fee payment from permittees in FY 92 of between $60 (small transfer stations, closed small landfills) and $73,440 (largest category of solid waste disposal site, receiving over 500,000 tons of solid waste annually).

The impact of the current annual compliance fee on per-ton disposal rates paid by a landfill customer is between 5 and 10 cents a ton. The increase moves this rate to between 11 and 22 cents a ton for FY 92. For reference, 25 cents a ton equates to about 24 cents a year for each household with one-can garbage service.

Most solid waste permittees will incur administrative expenses in gaining approval to raise rates to cover the permit fee increase, and in implementing any resulting new fee structure.

The Solid Waste Advisory Committee considered and endorsed the addition of eleven positions to the Department's solid waste program and a permit fee increase to pay for them. The Governor's Recommended Budget included five new positions for core technical support in the solid waste program to address landfill upgrades, closures and cleanups, and to ensure that landfills do not cause pollution in the future. The Department's Legislatively Approved Budget for 91-93 approves collection of $835,000 for these purposes, including the five new positions. In testimony before a legislative Ways and Means Subcommittee, representatives of Oregon Sanitary Service Institute, Waste Management Inc., and the Association of Oregon Counties supported the permit fee increases to pay for both these new positions and part of the cost of implementing SB 66, the comprehensive solid waste recycling and planning bill.

PROGRAM CONSIDERATIONS:

The billing for solid waste permit compliance fees is sent to permittees in late May of each year, and fees are due on July 1. The regular billing for FY 92 solid waste annual compliance fees has already been completed. At issue, then, is when the fee increase should be paid, and how the fee should be assessed among the solid waste permittees.

The Department's recommended course of action is to treat the required fee increase as an additional assessment applied equally to all permittees for FY 92. We would send this additional billing to permittees upon adoption of the temporary rule by the Commission. The proposed due date for this assessment would be January 1, 1992.

For the billing in FY 93 and after, the Department and the Solid Waste Advisory Committee will reevaluate and overhaul the solid waste fee schedule over the winter in the context of adopting a permanent rule. Besides the revenue needed for the second year of operations for solid waste permitting and compliance work, the permanent rulemaking will include a $287,500 supplemental solid waste permit fee which the Legislature approved for the purposes of SB 66. This supplemental permit fee is to be based on the amount of solid waste received in the previous calendar year, and will be

collected annually.[1] The permit fee restructuring will be completed in time for, and implemented through, the FY 93 billing.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Request adoption of temporary rules as proposed in Attachment A.

2. Request authorization for a public hearing now, and adopt this requested rule change in October via the standard rulemaking process.

3. Adopt no rule now. Complete the reevaluation of the permit fee structure during the winter, and adopt a permanent rule change next spring to increase the fee. Bill solid waste permittees for the entire required increase along with their regular July, 1992 billing. (FY 93 receipts)

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends Alternative 1. This alternative implements the statute, and provides resources to carry out Legislative solid waste mandates in a timely manner. It puts solid waste permittees on notice that an additional compliance fee assessment will be owed for FY 92, but allows them until January 1, 1992 to pay it. It "softens the blow" for permittees, breaking the fee increase into two payments instead of having the whole amount due in July, 1992. The Solid Waste Advisory Committee has conceptually approved this course of action.

Alternative 2, delaying rule adoption until October, would leave permittees only two months before the assessment would become due, very little time to come up with the additional funds.

---

[1] The Legislature's intent was for this supplemental fee to generate funds equal to a $.10 per ton fee assessed for 18 months in the 91-93 biennium. However, rather than do a separate billing for this fee, the Department will collect it all in the FY 93 billing.

Alternative 3 would result in a four-fold increase in financial impact to permittees in FY 93. Alternative 3 would also defer necessary operating revenues to July 1, 1992.

From both the Department's perspective and the permittees' perspective, it is preferable to collect part of the permit fee increase in FY 92 as proposed.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposal follows Legislative direction, and is consistent with Department policy. In discussing this permit fee increase, the Legislature assumed it would take effect this fiscal year. The proposal provides resources in a timely manner to enhance the existing solid waste program which is an important part of the Department's environmental mandate.

ISSUES FOR COMMISSION TO RESOLVE:

Should the solid waste compliance fee increase take effect:

1. Through a temporary rule and be due on January 1, 1992 (Alt 1)?

2. Through a permanent rule and be due on January 1, 1992 (Alt 2)?

3. Through a permanent rule and be due in July, 1992 (Alt 3)?

INTENDED FOLLOWUP ACTIONS:

Upon Commission adoption, file temporary rules with the Secretary of State's Office.

Mail a billing in early August to solid waste permittees for the additional compliance fee assessment necessary to fund the additional solid waste permitting activities in FY 92.

Reevaluate the solid waste compliance determination fee schedule during winter and spring 1991-92 to develop a proposal for rule changes to permanently incorporate the required revenue increases. Rule changes would be adopted by the Commission in spring, 1992.

Approved:

Section: Ernie Schmidt

Division: Stephanie Hallock

Director: Fred Hansen

Report Prepared By: Deanna Mueller-Crispin

Phone: 229-5808

Date Prepared: July 10, 1991

dmc
eqcfee.2
7/10/91

ATTACHMENT A

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
DIVISION 61 - SOLID WASTE MANAGEMENT
6/26/91

Additions to rule are underlined.
Deletions are in brackets [].

PERMIT FEES

340-61-115

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

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

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

(b) Building demolition or construction wastes and land clearing debris, if delivered to disposal sites that are not open to the general public;

(c) Yard debris, if delivered to disposal sites that receive no other residential wastes.

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

application for a new permit shall apply to the fiscal year the permitted disposal site is put into operation. For the first year's operation, the full fee(s) shall apply if the disposal site is placed into operation on or before April 1. Any new disposal site placed into operation after April 1 shall not owe a compliance determination fee and, if applicable, a recycling program implementation fee until July 1. The Director may alter the due date for the annual compliance determination fee and, if applicable, the recycling program implementation fee upon receipt of a justifiable request from a permittee.

(4) For the purpose of determining appropriate fees, each disposal site shall be assigned to a category in OAR 340-61-120 [Table 1] based upon the amount of solid waste received and upon the complexity of each disposal site. Each disposal site which falls into more than one category shall pay whichever fee is the basis of estimated annual tonnage or gallonage of solid waste received unless the actual amount received is known. Estimated annual tonnage for domestic waste disposal sites will be based upon 300 pounds per cubic yard of uncompacted waste received, 700 pounds per cubic yard of compacted waste received, or, if yardage is not known, one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. Loads of solid waste consisting exclusively of soil, rock, concrete, rubble or asphalt shall not be included when calculating the annual amount of solid waste received.

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

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

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

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

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

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

PERMIT FEE SCHEDULE

340-61-120

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

(2) Application Processing Fee. An application processing fee varying between $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

---

[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 change):

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

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

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

(f) Permit modification (without significant change in facility design or operation):
All categories ..... $ 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 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.....$ 1,000

(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 which received more than 10,000 tons of solid waste per year: ..... $ 500
(M) A transfer station which received less than 10,000 tons of solid waste per year: ..... $ 50
(N) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives more than 100,000 tons of solid

waste per year: ..... $ 8,000

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

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

(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: ..... $ 250 for each well or sampling point.

(f) All permittees subject to the annual permit compliance determination fees in this Section shall also be subject to an additional annual permit compliance fee assessment for the state's fiscal year from July 1, 1991 through June 30, 1992. This assessment shall be paid to the Department by January 1, 1992.

The additional assessment shall be as follows (in any case where a facility fits into more than one category, the permittee shall pay only the highest fee):

(A) Domestic Waste Facility:

(i) A landfill which received 500,000 tons or more of solid waste per year: $73,440

(ii) A landfill which received at least 400,000 but less than 500,000 tons of solid waste per year: $58,750

(iii) A landfill which received at least 300,000 but less than 400,000 tons of solid waste per year: $44,060

(iv) A landfill which received at least 200,000 but less than 300,000 tons of solid waste per year: $29,380

(v) A landfill which received at least 100,000 but less than 200,000 tons of solid waste per year: $14,690

(vi) A landfill which received at least 50,000 but less than 100,000 tons of solid waste per year: ..... $ 7,340

(viii) A landfill which received at least 25,000 but less than 50,000 tons of solid waste per year: ..... $ 3,670

(ix) A landfill which received at least 10,000 but less than 25,000 tons of solid waste per year: ..... $ 1,840

(x) A landfill which received at least 5,000 but not more than 10,000 tons of solid waste per year: ..... $ 920

(xi) A landfill which received at least 1,000 but not more than 5,000 tons of solid waste per year: ..... $ 245

(xii) A landfill which received less than 1,000 tons of solid waste per year: ..... $ 120

(xiii) A transfer station which received more than 10,000 tons of solid waste per year: ..... $ 610

(xiv) A transfer station which received less than 10,000 tons of solid waste per year: ..... $ 60

(xv) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives more than 100,000 tons of solid waste per year: ..... $ 9,790

(xvi) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives at least 50,000 tons but less than 100,000 tons of solid waste per year: ..... $ 4,900

(xvii) An incinerator, resource recovery facility, composting facility and each other facility not specifically classified above which receives less than 50,000 tons of solid waste per year: ..... $ 2,450

(B) Industrial Waste Facility:

(i) A facility which received 10,000 tons or more of solid waste per year: ..... $ 1,840
(ii) A facility which received at least 5,000 tons but less than 10,000 tons of solid waste per year: ..... $ 920
(iii) A facility which received less than 5,000 tons of solid waste per year: ..... $ 185

(C) Sludge Disposal Facility:

(i) A facility which received 25,000 gallons or more of sludge per month: ..... $ 185
(ii) A facility which received less than 25,000 gallons of sludge per month: ..... $ 120

(D) Closed Disposal Site: Each landfill which closes after July 1, 1984: ..... 10% of fee which would be required, in accordance with subsections (f)(A), (f)(B), and (f)(C) above, if the facility was still in operation or $60 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: ..... $ 310 for each well or sampling point.

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

(a) A disposal site which received 500,000 tons or more of solid waste per year $20,000
(b) A disposal site which received at least 400,000 but less than 500,000 tons of solid waste per year: $18,000
(c) A disposal site which received at least 300,000 but less than 400,000 tons of solid

waste per year: $14,000

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

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

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

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

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

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

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

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

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

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

(b) Submittal schedule:

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

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

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

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

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

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

(D) Waste going to an industrial waste facility;

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

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

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

(6) Surcharge on disposal of solid waste generated out-of-state. Each solid waste disposal site or regional solid waste disposal site that receives solid waste generated out-of-state shall submit to the Department of Environmental Quality a per-ton surcharge of $2.25. This surcharge shall apply to each ton of out-of-state solid waste received at the disposal site.

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

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

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

OAR61.115

ATTACHMENT B

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
811 S.W.6TH AVENUE
PORTLAND, OREGON

STATEMENT OF NEED
TEMPORARY RULE ESTABLISHING FEES ON PERMITS
AND DISPOSAL OF SOLID WASTE

In accordance with ORS 183.335(5), the undersigned Director of the Department of Environmental Quality makes the following findings and declarations in support of the issuance of a temporary rule relating to the establishment of Solid Waste Permit Annual Compliance Determination fees:

(1) ORS 459.235 authorizes the Environmental Quality Commission to adopt rules establishing solid waste permit fees;

(2) The 1991 Legislature passed Senate Bill 5536 establishing the Department of Environmental Quality's 1991-93 budget with funding for five new solid waste positions. In accordance with its Legislatively Authorized Budget, the Department is required to assess additional solid waste period fees in the amount of $1,122,500 for the 91-93 biennium to cover the Department's approved expenses. Fee collection needs to start as soon as possible in order to hire new staff to improve the Department's permitting capability, as directed by the Legislature;

(3) Failure to act promptly will result in the Department's inability to collect the permit fee increase in a timely manner and make cash-flow management more difficult for the Department; and will result in permittees not having sufficient time to allow garbage rates to be adjusted for the fee increase;

(4) The rule is needed to allow the Department to collect the fees, and to specify the amount of each fee category and the manner in which they shall be collected.

Principal documents relied upon:
(1) 1991 Senate Bill 66
(2) 1991 Senate Bill 5536
(3) Oregon Revised Statutes 459.294
(4) Oregon Administrative Rules, Chapter 340, Division 61

Dated: _____

_____
Fred Hansen, Director
Oregon Department of Environmental Quality

66th OREGON LEGISLATIVE ASSEMBLY--1991 Regular Session

D-Engrossed
Senate Bill 66

Ordered by the House June 17
Including Senate Amendments dated March 4 and April 25 and House Amendments dated June 7 and June 17

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Committee on Environment, Energy and Hazardous Materials)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes statewide integrated solid waste management program. Establishes solid waste reduction goals and rates. Specifies duties of local governments on solid waste reduction. Establishes procurement requirements for state and public agencies for reused or recycled products. Modifies waste disposal rates and schedules. Establishes education requirements. Creates Recycling Markets Development Council and Oregon Newsprint Recycling Task Force. Establishes minimum content requirements for newsprint and labeling requirements for plastic containers. Appropriates money. **Limits expenditures.**

Declares emergency, effective July 1, 1991.

A BILL FOR AN ACT

Relating to solid waste; creating new provisions; amending ORS 182.375, 279.731, 279.733, 279.739, 459.005, 459.015, 459.165, 459.175, 459.180, 459.185, 459.190, 459.235, 459.294 and 459.995; appropriating money; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 459.292, 459.293, 459.294 and 459.295 and sections 2, 4, 5 and 13a of this Act are added to and made a part of ORS 459.165 to 459.200.

SECTION 2. (1) It is the goal of the State of Oregon that by January 1, 2000, the amount of recovery from the general solid waste stream shall be at least 50 percent.

(2) In addition to the requirements of ORS 459.165, the "opportunity to recycle" shall include the requirements of subsection (3) of this section, which shall be implemented on or before July 1, 1992, by using the following program elements:

(a) Provision of at least one durable recycling container to each residential service customer by not later than January 1, 1993.

(b) On-route collection at least once each week of source separated recyclable material to residential customers, provided on the same day that solid waste is collected from each customer.

(c) An expanded education and promotion program conducted to inform citizens of the manner and benefits of reducing, reusing and recycling material. The program shall include:

(A) Provision of recycling notification and education packets to all new residential, commercial and institutional collection service customers that includes at a minimum the materials collected, the schedule for collection, the way to prepare materials for collection and reasons that persons should separate their material for recycling;

(B) Provision of quarterly recycling information to residential, commercial and institutional collection service customers that includes at a minimum the materials collected, the schedule for

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

1991 Act.

(b) The commission may grant all or part of a variance under this section.

(c) Upon granting a variance, the commission may attach any condition the commission considers necessary to carry out the provisions of ORS 459.015, 459.165 to 459.200 and 459.250.

(d) In granting a variance, the commission must find that:

(A) Conditions exist that are beyond the control of the applicant;

(B) Special conditions exist that render compliance unreasonable or impractical; or

(C) Compliance may result in a reduction in recycling.

[*(9)*] **(2)** An affected person may apply to the commission to extend the time permitted under ORS 459.005, 459.015, 459.035, 459.165 to 459.200, 459.250, 459.992 and 459.995 for providing for all or a part of the opportunity to recycle or submitting a recycling report to the department. The commission may:

(a) Grant an extension upon a showing of good cause;

(b) Impose any necessary conditions on the extension; or

(c) Deny the application in whole or in part.

SECTION 12a. ORS 459.235 is amended to read:

459.235. (1) Applications for permits shall be on forms prescribed by the department. An application shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by the local government unit or units having jurisdiction and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon and the operation will comply with applicable requirements.

(2) [*Subject to the review of the Executive Department and the prior approval of the appropriate legislative review agency,*] The commission [*may*] **shall** establish a schedule of fees for disposal site permits. The permit fees contained in the schedule shall be based on the anticipated cost of filing and investigating the application, of issuing or denying the requested permit and of an inspection program to determine compliance or noncompliance with the permit. The permit fee shall accompany the application for the permit.

(3) In addition to the fees imposed under subsection (2) of this section, the commission shall establish a schedule of annual permit fees for the purpose of implementing this 1991 Act. The fees shall be assessed annually and shall be based on the amount of solid waste received at the disposal site in the previous calendar year.

[*(3)*] **(4)** If the application is for a regional disposal facility, the applicant shall file with the department a surety bond in the form and amount established by rule by the commission. The bond or financial assurance shall be executed in favor of the State of Oregon and shall be in an amount as determined by the department to be reasonably necessary to protect the environment, and the health, safety and welfare of the people of the state. The commission may allow the applicant to substitute other financial assurance for the bond, in the form and amount the commission considers satisfactory.

SECTION 13. ORS 459.294 is amended to read:

459.294. (1) In addition to the permit fees provided in ORS 459.235, the commission shall establish a schedule of fees [*to begin July 1, 1990,*] for all disposal sites that receive domestic solid waste except transfer stations. The schedule shall be based on the estimated tonnage or the actual

66th OREGON LEGISLATIVE ASSEMBLY--1991 Regular Session

Senate Bill 5536

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Budget and Management Division, Executive Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Appropriates money from General Fund to Department of Environmental Quality for biennial expenses.

Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by Department of Environmental Quality.

Limits biennial expenditures of Department of Environmental Quality from federal funds.

Excludes debt service requirements and loans made from Pollution Control Bond Fund and Water Pollution Control Revolving Fund from expenditure limitations.

Subjects agency to Executive Department allotment process.

Declares emergency, effective July 1, 1991.

A BILL FOR AN ACT

Relating to the financial administration of the Department of Environmental Quality; appropriating money; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. There is appropriated to the Department of Environmental Quality, for the biennium beginning July 1, 1991, out of the General Fund, the amount of $22,356,453.

SECTION 2. Notwithstanding any other law, amount of $67,452,064 is established for the biennium beginning July 1, 1991, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, excluding the proceeds of bonds, collected or received by the Department of Environmental Quality.

SECTION 3. Notwithstanding any other law, the amount of $78,148,663 is established for the biennium beginning July 1, 1991, as the maximum limit for the payment of expenses from federal funds collected or received by the Department of Environmental Quality.

SECTION 4. Section 2 of this Act does not limit, affect nor apply to expenditures for debt service paid from other funds or for loans made from the Pollution Control Bond Fund or for loans made from the Water Pollution Control Revolving Fund.

SECTION 5. Notwithstanding any other law, all sections of this Act are subject to Executive Department rules related to allotting, controlling and encumbering funds.

SECTION 6. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1991.

Note: For budget, see 1991-93 Biennial Budget, Page D-15

NOTE: Matter in **bold face** in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.

I

REVISED ATTACHMENT B

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
811 S.W.6TH AVENUE
PORTLAND, OREGON

STATEMENT OF NEED
TEMPORARY RULE ESTABLISHING FEES ON PERMITS
AND DISPOSAL OF SOLID WASTE

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(2) The 1991 Legislature passed Senate Bill 5536 establishing the Department of Environmental Quality's 1991-93 budget with funding for five new solid waste positions. In accordance with its Legislatively Authorized Budget, the Department is required to assess additional solid waste period fees in the amount of $1,122,500 for the 91-93 biennium to cover the Department's approved expenses. Fee collection needs to start as soon as possible in order to hire new staff to improve the Department's permitting capability, as directed by the Legislature;

(3) Failure to act promptly will result in the Department's inability to collect the permit fee increase in a timely manner and make cash-flow management more difficult for the Department; and will result in permittees not having sufficient time to allow garbage rates to be adjusted for the fee increase;

(4) The rule is needed to allow the Department to collect the fees, and to specify the amount of each fee category and the manner in which they shall be collected.

Principal documents relied upon:
(1) 1991 Senate Bill 66
(2) 1991 Senate Bill 5536
(3) Oregon Revised Statutes 459.294
(4) Oregon Administrative Rules, Chapter 340, Division 61

Adopted by the Environmental Quality Commission
Dated: _____

_____
William P. Hutchison, Jr., Chair

I

REVISED ATTACHMENT B

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
811 S.W.6TH AVENUE
PORTLAND, OREGON

STATEMENT OF NEED
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(3) Failure to act promptly will result in the Department's inability to collect the permit fee increase in a timely manner and make cash-flow management more difficult for the Department; and will result in permittees not having sufficient time to allow garbage rates to be adjusted for the fee increase;

(4) The rule is needed to allow the Department to collect the fees, and to specify the amount of each fee category and the manner in which they shall be collected.

Principal documents relied upon:
(1) 1991 Senate Bill 66
(2) 1991 Senate Bill 5536
(3) Oregon Revised Statutes 459.294
(4) Oregon Administrative Rules, Chapter 340, Division 61

Adopted by the Environmental Quality Commission
Dated: _____

_____
William P. Hutchison, Jr., Chair

Agenda Item J -- Emergency Adoption of Revised Air Contaminant Discharge Permit Fees, OAR 340-20-155, and Authorization of Hearing for Permanent Rule Revision

Corrections to the Staff Report

July 19, 1991

Staff Report (Request for EQC Action) Page 4, First Paragraph:

Replace the first paragraph with the following to more clearly reflect the discussion leading to approval of the Department's 1991-93 budget:

> During the 1991 legislative session, industrial representatives including Associated Oregon Industries expressed support for the air program and fee increases. The Ways and Means committee made reductions to the Governor's Recommended air program budget. After reviewing the reductions to the program budget, the Department presented the committee with options for the use of general fund and fees in the program budget. The Committee elected to approve the 213% increase in fee revenue as presented in the budget. The budget was approved by the legislature on June 29, 1991. Detailed discussions with industry of the fee increase specifics are now continuing based on the legislative action.

Attachment E (Itemized Changes for Categories) Page 1:

Correct "Category Number" as follows:

2a should be changed to 75a

2b should be changed to 75b

Oregon

ENVIRONMENTAL QUALITY COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: July 24, 1991
Agenda Item: J
Division: Air Quality
Section: Program Operations

SUBJECT:

Emergency Adoption of Revised Air Contaminant Discharge Permit Fees, OAR 340-20-155 and Authorization of Hearing For Permanent Rule Revision.

PURPOSE:

An overall increase in fees, addition of special activity fees, and improved specification of permit categories is requested. The increased fee revenue will fund a portion of the existing air quality programs for the 1991-1993 fiscal biennium.

ACTION REQUESTED:

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

_X_ Authorize Rulemaking Hearing
_X_ Adopt Rules

Proposed Rules	Attachment A
Rulemaking Statements	Attachment B
Fiscal and Economic Impact Statement	Attachment C
Public Notice	Attachment D

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

Proposed Order	Attachment ___

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

___ Approve Department Recommendation

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

DESCRIPTION OF REQUESTED ACTION:

The Department's 1991-1993 air quality budget includes industrial permit fees totaling $2.5 million. At the current fee rates, $800,000 would be collected in the biennium. The proposed action increases the Air Contaminant Discharge Permit fees paid by all permitted industrial sources, effective July 1, 1991, on an emergency basis, and authorizes hearings to the permanent rule change.

Air permit fees currently include a $75 filing fee, an annual compliance determination fee, and an application processing fee. The latter two fees are established by industry code, based on the Department's workload for compliance assurance and permitting.

The proposed rule maintains the existing filing fee, increases application processing fees by a mean of 283% with a minimum of $400, and increases compliance determination fees by a mean of 198% with a minimum of $500. Further changes add specific charges for activities that increase the workload involved in permitting beyond the norm, adjust categories where the workload has become disproportionate to the fees, clarify permitting categories, and extend the fuel burning categories to the PM_{10} non-attainment areas which were not previously listed. The changes are shown on Table I of OAR 340-20-155 (Attachment A).

The proposed rule removes the one-time surcharge approved in 1990.

The emergency rule will be effective from July 1, 1991 through December 31, 1991. Some revisions to the emergency rule may be made in the permanent rule. To ensure equitable treatment of permittees throughout the year long billing cycle, the Department intends to request that the schedule adopted as the emergency rule be maintained in the permanent rule through June 30, 1992, and that any revisions take effect on July 1, 1992.

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
_X_	Statutory Authority: ORS 468.065	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___

_X_ Time Constraints: (explain)

It is critical that the fees be collected at the new rates for the entire biennium beginning July 1, 1991. The approved budget for the Air Quality Division relies on this fee increase to maintain budgeted positions in the 1991-1993 biennium.

DEVELOPMENTAL BACKGROUND:

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

A table comparing the changes for specific categories to the general increases is provided as Attachment E.

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

An increase in permit fees will be paid directly by all permitted sources, and all sources that apply for permits, both large and small. The dollar amount of the fee increase will be greater for larger, more complex, sources than it will for smaller sources. For instance, the application processing fee for a sawmill or planing mill will increase to $800 from the current $200, and the compliance determination fee will increase to $1200 from the current $375.

The fee increases for the mineral industries categories are smaller than for other categories. The businesses covered by these categories are primarily small and less complex to permit or inspect.

Industrial representatives, including Associated Oregon Industries, expressed support for the overall increases during the 1991 legislative session. Reductions were made in the Department's requested budget by the Ways and Means Committee, and the Department recommended corresponding reductions in the increase in industrial permit fees. However, the legislature elected instead to reduce the general fund appropriation for this activity, retaining the need for a 213% increase in fee revenue. The Department's budget was approved by the legislature on June 30, 1991, which did not provide time for detailed discussion with industry on the specifics of the fee increases.

Air Contaminant Discharge Permit holders are billed for permit fees on a year-round cycle. Permittees are invoiced two months in advance of the due date for their compliance determination fees, or three months in advance when a permit needs to be renewed. For this reason, bills have already been sent that were due in July and August 1991. Eighty (80) affected sources will need to be rebilled for the difference between the old and new fees if the Commission approves the emergency rule.

The Department has held back invoicing for any future months until after the Commission acts on this proposed emergency rule.

PROGRAM CONSIDERATIONS:

The increased permit revenue, along with the federal base grant and general fund revenues, will be used to maintain the industrial source control programs by funding existing positions in Air Quality's Program Operations, Technical Services and Planning and Development Sections, the Regional Operations Division, and the Laboratory.

The permanent rule change will be made as an amendment to the State Implementation Plan (SIP). Newly named source categories will then be required to have permits under the SIP.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Adopt an emergency rule to revise Air Contaminant Discharge Permit fees by adopting special activity charges and increasing the application processing fees and the compliance determination fees and authorize a hearing on permanent adoption of the same rule changes.

This is the recommended alternative. Fees for specific industries will be adjusted to reflect workload. It will allow the Air Quality Division to collect the higher fees for the full 1991-1993 biennium with a minimum amount of inconvenience and added effort by the program.

It also includes administrative improvements to specifically list categories which are now processed under general categories, replace fee ranges in some categories with specific fees, revise category descriptions to match current nonattainment area requirements and improve consistency in the way categories are described.

2. Follow the normal rulemaking process and do not request emergency adoption.

   This option makes it difficult to collect sufficient fee revenue in the manner recently approved by the Legislature. It either requires that the percentage increases be made larger to compensate for the late onset of the higher fees or it requires retroactive imposition of the fee increase with accompanying Department workload increases.

3. Use a different adjustment to the fee table, such as a flat across-the-board increase in the existing schedule of application processing fees and compliance determination fees.

   This alternative is the simplest but not the most equitable. It would not incorporate adjustments for permit activities or source categories which are greater or lesser work for the Department and would not provide administrative efficiencies possible under Alternative 1.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends approval of Alternative 1; adopting an emergency rule allowing increases to the categories currently on Table 1, the addition of needed categories to Table 1, and the addition of surcharges for extraordinary permit review activities.

The recommendation provides adequate revenue to fund existing industrial source control programs for the 1991-1993 biennium.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The revised fee table is expected to be consistent with the strategic plan, agency policy and legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

Should the emergency rule be an across-the-board percentage increase for all sources, or should the fee increases be set as proposed, with variation according to workload impacts.

INTENDED FOLLOWUP ACTIONS:

1. Assuming the Commission approves the emergency fee change, the Program has scheduled public hearings for August 27, 28 and 29, 1991 in Medford, Bend and Portland respectively, to receive comments for the permanent rule change that will be brought before the Commission no later than December 1991.

2. In early August, rebill eighty (80) sources for the difference between the old and new rules.

Approved:

Section: Terri Sylvester for WLS

Division: Sha Greenwood

Director: Fred Hansen

Report Prepared By: Terri Sylvester

Phone: 229-5181

Date Prepared: July 02, 1991

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TABLE 1
AIR CONTAMINANT SOURCES AND
ASSOCIATED FEE SCHEDULE

(340-20-155)

NOTE: Fees in A-F are in addition to any other applicable fees

A. Late Payment
a) 8-30 days $200
b) > 30 days $400

B. RACT/LAER Determination - $12,500 each

C. Ambient Monitoring Network Review - $900

D. Modeling Review
a) Screening methodology $ 500
b) Refined methodology $1,000

E. Alternative Emission Control Review - $1,500

F. Non-technical permit modification (name change, ownership transfer, and similar) - $50

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fee for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	[Fees to be Submitted] [with new Application]	[Fees to be Submitted] [with Renewal] [Application]	[Fees to be Submitted] [with Application to] [Modify Permit]
1. Seed cleaning located in special control areas, commercial operations only (not elsewhere included)	0723	75	[100]400	[190]610	[365]	[365]	[175]
2. Reserved							
3. Flour and other grain mill products in special control areas	2041						
a) 10,000 or more [t/y]tons/yr		75	[325]1300	[375]1200	[775]	[775]	[400]
b) Less than 10,000 [t/y]tons/yr		75	[250]1000	[160]515	[485]	[485]	[325]
4. Cereal preparations in special control areas	2043	75	[325]1300	[270]865	[670]	[670]	[400]
5. Blended and prepared flour in special control areas	2045						
a) 10,000 or more [t/y]tons/yr		75	[325]1300	[270]865	[670]	[670]	[400]
b) Less than 10,000 [t/y]tons/yr		75	[250]1000	[135]500	[460]	[460]	[325]
6. Prepared feeds for animals and fowl in special control areas	2048						
a) 10,000 or more [t/y]tons/yr		75	[325]1300	[375]1200	[775]	[775]	[400]
b) Less than 10,000 [t/y]tons/yr		75	[200]800	[295]945	[570]	[570]	[275]
7. Beet sugar manufacturing	2063	75	[425]1700	[1860]5955	[2360]	[2360]	[500]
8. Rendering plants	2077						
a) 10,000 or more [t/y]tons/yr input		75	[250]1600	[460]1920	[785]	[785]	[325]
b) Less than 10,000 [t/y]tons/yr input		75	[250]1200	[270]1040	[595]	[595]	[325]
9. Coffee roasting, [-] 30 [F/y]tons/yr or more roasted product	[2095] 2095	[75] 75	[200] 800	[245] 785	[520]	[520]	[275]

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10. Sawmills and/or planing mills	2421, 2426 [2426]						
a) 25,000 or more bd.ft./ shift finished product		75	[200] 800	[375] 1200	[650]	[650]	[275]
b) Reserved							
11. Reserved							
12. Reserved							
13. Millwork (including structural wood members), 25,000 or more bd.ft./shift input	[2431] 2431, 2439	[75] 75	[150] 600	[295] 945	[520]	[520]	[225]
14. Plywood manufacturing and/or veneer drying	[2435] 2435, [2436]						
a) 25,000 or more sq.ft./hr, 3/8" basis finished product [Basis finished product]		75 [75]	2500 [625]	2420 [755]	[1455]	[1455]	[700]
b) 10,000 or more but less than 25,000 sq.ft./hr, 3/8" basis finished product		75	[450] 1800	[510] 1635	[1035]	[1035]	[525]
c) Less than 10,000 sq.ft./hr, 3/8" basis finished product		75	[150] 600	[270] 865	[495]	[495]	[225]
15. Reserved							
16. Wood preserving (excluding waterborne)	[2491] 2491	[75] 75	[150] 1000	[270] 960	[495]	[495]	[225]
17. Particleboard manufacturing (including strandboard, flakeboard and waferboard)	[2492] 2493						
a) 10,000 or more sq.ft./hr, 3/4" basis finished product		[75] 75	[625] 2500	[890] 2850	[1590]	[1590]	[700]
b) Less than 10,000 sq.ft./hr, 3/4" basis finished product		[75] 75	[300] 1200	[425] 1360	[800]	[800]	[375]

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18. Hardboard manufacturing ([H]including fiberboard)	[2499] 2493						
a) 10,000 or more sq.ft./hr, 1/8" basis finished product		75	[625] 2500	[730] 2340	[1430]	[1430]	[700]
b) Less than 10,000 sq.ft./hr, 1/8" basis finished product		75	[300] 1200	[375] 1200	[750]	[750]	[375]
19. Battery seperator mfg.	2499	75	[100] 1000	[540] 2080	[715]	[715]	[175]
20. Furniture and fixtures	2511	[75]	[150]	[295]	[520]	[520]	[225]
a) 25,000 or more bd.ft./ shift input		75	600	945			
b) Reserved							
21. Pulp mills, paper mills, and paperboard mills	[2611] 2611, 2621, 2631 [2631]	[75]	[1250]	[3235]	[4560]	[4560]	[1325]
a) [(]Kraft, sulfite, & neutral sulfite only[)]		75	5000	10352			
b) 100 or more tons/yr emissions, not elsewhere classified		75	5000	10352			
22. Building paper and building-board mills	[2661] 2621, 2493	75	[200] 800	[245] 785	[520]	[520]	[275]
23. Alkalies and chlorine mfg.	2812	[75]	[350]	[645]	[1070]	[1070]	[425]
a. High cost		75	2450	2750			
b. Low cost		75	1400	2065			
24. Calcium carbide manufacturing	2819	[75]	[375]	[645]	[1095]	[1095]	[450]
a. High cost		75	2625	2750			
b. Low cost		75	1500	2065			
25. Nitric acid manufacturing	2819	[75]	[250]	[325]	[650]	[650]	[325]
a. High cost		75	1750	1385			
b. Low cost		75	1000	1040			
26. Ammonia manufacturing	2819	[75]	[250]	[375]	[700]	[700]	[325]
a. High cost		75	1750	1600			
b. Low cost		75	1000	1200			

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27. Industrial inorganic and organic chemicals manufacturing (not elsewhere included)	2819, 2869	[75]	[325]	[460]	[860]	[860]	[400]
a. High cost		75	2275	1960			
b. Low cost		75	1300	1475			
28. Synthetic resin manufacturing	2821	[75]	[250]	[375]	[700]	[700]	[325]
a. High cost		75	1750	1600			
b. Low cost		75	1000	1200			
29. Charcoal manufacturing	2861	75	[350] 1400	[780] 2500	[1205]	[1205]	[425]
30. Pesticide manufacturing	2879	75	[625] 2500	[3235] 10355	[3935]	[3935]	[700]
31. Petroleum refining	2911	[75]	[1250]	[3235]	[4560]	[4560]	[1325]
a) Refining, general		75	5000	10355			
b) Asphalt production by distillation		75	1000	1200			
32. [Asphalt production by] [distillation] Reserved	[2951]	[75]	[250]	[375]	[700]	[700]	[325]
33. Asphalt blowing plants	[2951] 2952	75	[250] 1000	[485] 1555	[810]	[810]	[325]
34. Asphaltic concrete paving plants	2951						
a) Stationary		75	[250] 500	[295] 590	[620]	[620]	[325]
b) Portable		75	[250] 500	[375] 750	[700]	[700]	[325]
35. Asphalt felts [and] or coating	2952	75	[250] 500	[565] 900	[890]	[890]	[325]
36. Rerefining of lubricating oils and greases, and reprocessing of oils and solvents for fuel	2992	75	[225] 900	[350] 1120	[650]	[650]	[300]
37. Glass container manufacturing	3221	75	[250] 1000	[460] 1475	[785]	[785]	[325]
38. Cement manufacturing	3241	75	[800] 3200	[2370] 7585	[3245]	[3245]	[875]
39. Concrete manufacturing, including redimix and CTB	[3273] [3271] 3271, 3272, 3273	75	[100] 200	[160] 320	[335]	[335]	[175]

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40. Lime manufacturing	3274	75	[375] 1500	[245] 785	[695]	[695]	[450]
41. Gypsum products	3275	75	[200] 800	[270] 865	[545]	[545]	[275]
42. Rock crusher	1442, 1446, 3295						
a) Stationary		75	[225] 450	[295] 590	[595]	[595]	[300]
b) Portable		75	[225] 450	[375] 750	[675]	[675]	[300]
43. Steel works, rolling and finishing mills, electro-metallurgical products	[3312] [3313] 3312, 3313	[75] 75	[625] 2500	[645] 2065	[1345]	[1345]	[700]
44. Incinerators	4953						
a) 250 or [greater] more tons/day capacity or any off-site infectious waste incinerator		75	[3000] 12000	[1615] 5170	[4690]	[4690]	[3075]
b) 50 or more but less than [to] 250 tons/day capacity		75	[375] 3000	[245] 1570	[695]	[695]	[450]
c) 2 or more but less than [to] 50 tons/day capacity		75	[125] 500	[190] 610	[390]	[390]	[200]
d) Crematoriums and pathological waste incinerators, not elsewhere classified		75	[125] 500	[190] 610	[390]	[390]	[200]
e) PCB and/or off-site hazardous waste incinerator		75	[3000] 12000	[1615] 5170	[4690]	[4690]	[3075]
45. Gray iron and steel foundries, Malleable iron foundries, Steel investment foundries, Steel Foundries (not elsewhere classified)	[3321] [3322] [3324] 3321, 3322, 3324, 3325						
a) 3,500 or more [t/y] tons/yr production		75	[625] 2500	[565] 1810	[1265]	[1265]	[700]
b) Less than 3,500 [t/y] tons/yr production		75	[150] 600	[295] 965	[520]	[520]	[225]
46. Primary aluminum production	3334	75	[1250] 5000	[3235] 10355	[4560]	[4560]	[1325]
47. Primary smelting of zirconium or hafnium	3339	75	[1250] 5000	[3235] 10355	[4560]	[4560]	[1325]

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48. Primary smelting and refining of ferrous and nonferrous metals (not elsewhere classified)	3331, 3339						
a) 2,000 or more [t/y] tons/yr production		75	[625] 2500	[1400] 4480	[2100]	[2100]	[700]
b) Less than 2,000 [t/y] tons/yr production		75	[125] 500	[540] 1730	[740]	[740]	[200]
49. Secondary smelting and refining of nonferrous metals, 100 or more [t/yr] tons/yr metal charged	[3341] 3341	75	[300] 1200	[375] 1200	[750]	[750]	[375]
50. Nonferrous metals foundries, 100 or more [t/y] tons/yr metal charged	[3360] 3363, 3364, 3365, 3366, 3369	75	[150] 600	[325] 1040	[550]	[550]	[225]
51. Reserved							
52. Galvanizing and pipe coating [--] (excluding all other activities)	3479	75	[125] 500	[245] 785	[445]	[445]	[200]
53. Battery manufacturing	3691	75	[150] 600	[325] 1040	[550]	[550]	[225]
54. Grain elevators [--], intermediate storage only, located in special control areas	4221						
a) 20,000 or more [t/y] tons/yr grain processed		[75] 75	[225] 900	[510] 1635	[810]	[810]	[300]
b) Less than 20,000 [t/y] tons/yr grain processed		[75] 75	[125] 500	[245] 785	[445]	[445]	[200]
55. Electric power generation	4911*						
a) Wood or Coal Fired, [--Greater] 25 MW or [greater MW] more		[75] 75	[5000] 20000	[3235] 10355	[3310]	[3310]	[5075]
b) Reserved							
c) Oil or Natural Gas Fired, [-] 25 MW or [greater MW] more		[75] 75	[450] 1800	[780] 2500	[1305]	[1305]	[525]
56. Gas production and/or [mfg.] distribution	4922, 4925	[75]	[475]	[375]	[925]	[925]	[550]
a) Natural gas transmission		75	1900	1200			
b) Natural gas production and/or mfg.		75	1900	1200			

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57. Grain elevators~~[—]~~, terminal elevators primarily engaged in buying and/or marketing grain~~[—]~~, in special control areas	5153						
a) 20,000 or more ~~[t/y]~~tons/yr grain processed		~~[75]~~ 75	~~[625]~~ 2500	~~[645]~~ 2065	~~[1345]~~	~~[1345]~~	~~[700]~~
b) Less than 20,000 ~~[t/y]~~tons/yr grain processed		~~[75]~~ 75	~~[175]~~ 700	~~[245]~~ 785	~~[495]~~	~~[495]~~	~~[250]~~
58. Fuel Burning equipment within the boundaries of the Portland~~[,]~~ ~~[Eugene-Springfield]~~ and Medford-Ashland Air Quality Maintenance Areas~~,~~ ~~[and the]~~ Salem Area Transportation Study Boundary, and Grants Pass Klamath Falls, and LaGrande Urban Growth Areas**, ***	~~[4961**]~~ ~~(Fees will be based on the total aggregate heat input of all fuel burning equipment at the site)~~ 4961 (Fees will be based on the total aggregate heat input of all fuel burning equipment at the site)						
a) Residual or distillate oil fired, 250 million or more ~~[B]~~Btu/hr heat input		~~[75]~~ 75	~~[400]~~ 1600	~~[490]~~ 1570	~~[965]~~	~~[965]~~	~~[475]~~
b) Residual or distillate oil fired, 10 or more but less than 250 million Btu/hr heat input		~~[75]~~ 75	~~[250]~~ 1000	~~[270]~~ 865	~~[595]~~	~~[595]~~	~~[325]~~
c) Reserved							
59. Fuel Burning equipment within ~~[the]~~ the boundaries of the Portland~~[,]~~ ~~[Eugene-Springfield]~~ and Medford-Ashland Air Quality Maintenance Areas~~,~~ ~~[and the]~~ Salem Area Transportation Study Boundary, and Grants Pass Klamath Falls, and LaGrande Urban Growth Areas**, ***	~~[4961**]~~ ~~(Fees will be based on the total aggregate heat input of all fuel burning equipment at the site)~~ 4961 (Fees will be based on the total aggregate heat input of all fuel burning equipment at the site)						
a) Wood or coal fired, 35 million or more Btu/hr heat input		~~[75]~~ 75	~~[400]~~ 1600	~~[490]~~ 1570	~~[965]~~	~~[965]~~	~~[475]~~
b) Wood or coal fired, less than 35 million Btu/hr heat input		~~[75]~~ 75	~~[100]~~ 400	~~[270]~~ 865	~~[445]~~	~~[445]~~	~~[175]~~

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60. Fuel Burning equipment outside the boundaries of the Portland[,] [Eugene-Springfield] and Medford-Ashland Air Quality Maintenance Areas, [and the] Salem Area Transportation Study Boundary, and Grants Pass Klamath Falls, and LaGrande Urban Growth Areas**	[4961** (Fees will be based on the total aggregate heat input of all fuel burning equipment at the site)] 4961 (Fees will be based on the total aggregate heat input of all fuel burning equipment at the site)						
All oil fired 30 million or more Btu/hr [(]heat input[)], and all wood and coal fired 10 million or more Btu/hr [(]heat input[)]		[75] 75	[250] 1000	[270] 865	[595]	[595]	[325]
61. New sources not listed herein which would emit 10 or more tons/yr [per year] of any air contaminants including but not limited to particulates, SO_x, or Volatile Organic Compounds (VOC), if the source were to operate uncontrolled.****	any						
a) [Low cost]High cost		75	[****]9000	[150]6400	[****]	[****]	[****]
b) Medium cost		75	[****]2500	[350]1120	[****]	[****]	[****]
c) [High cost]Low cost		75	[****]600	[2000]480	[****]	[****]	[****]
62. New sources not listed herein which would emit significant malodorous emissions, as determined by Departmental [or Regional Authority] review of sources which are known to have similar air contaminant emissions.****	any						
a) [Low cost]High cost		75	[****]9000	[150]6400	[****]	[****]	[****]
b) Medium cost		75	[****]2500	[350]1120	[****]	[****]	[****]
c) [High cost]Low cost		75	[****]600	[2000]480	[****]	[****]	[****]
63. Existing sources not listed herein for which an air quality problem is identified by the Department [or] [Regional Authority.]****	any						
a) [Low cost]High cost		75	[****]9000	[150]6400	[****]	[****]	[****]
b) Medium cost		75	[****]2500	[350]1120	[****]	[****]	[****]
c) [High cost]Low cost		75	[****]600	[2000]480	[****]	[****]	[****]

TABLE 1
AIR CONTAMINANT SOURCES AND
ASSOCIATED FEE SCHEDULE

NOTE: Fees in A-F are in addition to any other applicable fees (340-20-155)

A. Late Payment
a) 8-30 days $200
b) > 30 days $400

B. BACT/LAER Determination - $12,500 each

C. Ambient Monitoring Network Review - $900

D. Modeling Review
a) Screening methodology $ 500
b) Refined methodology $1,000

E. Alternative Emission Control Review - $1,500

F. Non-technical permit modification (name change, ownership transfer, and similar) - $50

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fee for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	[Fees to be Submitted] [with new Application]	[Fees to be Submitted] [with Renewal] [Application]	[Fees to be Submitted] [with Application to] [Modify Permit]
64. Bulk Gasoline Plants regulated by OAR 340-22-120****	[5100-*****] 5171	[75] 75	[55] 400	[160] 515	[290]	[290]	[130]
65. Bulk Gasoline Terminals****	5171 [*****]	75	[1000]4000	[540]1730	[1615]	[1615]	[1075]
66. Liquid Storage Tanks, 39,000 gallons or more capacity, regulated by OAR 340-22-160 ([B]not elsewhere included)****	[4200*****] 5169, 5171	[75] 75	[50/tank] 200/tank	[110/tank] 355/tank			
67. Can or drum Coating**** a) 50,000 or more units/mo. b) Less than 50,000 units/mo.	3411, 3412 [*****]	75 75	[1500]6000 [100]400	[970]3105 [215]690	[2545] [390]	[2545] [390]	[1575] [175]
68. Paper or other substrate Coating****	[2641]2672 [or], 3861 [*****]	75	[1500]6000	[970]3105	[2545]	[2545]	[1575]
69. Coating Flat Wood regulated by OAR 340-22-200****	[2400-*****] 2435	[75] 75	[500] 2000	[325] 1040	[900]	[900]	[575]
70. Surface Coating, Manufacturing**** [a) 10 or more but less than 40 tons VOC/yr]	[2500; 3300; 3400; 3500; 3600; 3700; 3800; 3900*****] any	[75]	[25]	[90]	[190]	[190]	[100]
[b) 40 or more but less than 100 tons VOC/yr]		[75]	[100]	[215]	[390]	[390]	[175]
[c) 100 or greater] [tons VOC/yr]		[75]	[500]	[430]	[1005]	[1005]	[575]
a) 100 or more tons VOC/yr		75	2000	1380			
b) 10 or more but less than 100 tons VOC/yr		75	600	690			
c) less than 10 tons VOC/yr (at sources' request)		75	200	290			
71. Flexographic or Roto-graveure Printing, [over] 60 or more tons VOC/yr per plant****	[2751; 2754*****] 2754, 2759	[75] 75	[50/press] 2250	[160/press] 2000			
72. Reserved							
73. Sources subject to NESHAPS rules (except demolition and renovation)	any	75	[100]400	[150]500	[325]	[325]	[175]
74. Sources [of] requiring toxic air pollutant[s] review (not elsewhere classified)	any	75	[250]1000	[300]960	[625]	[625]	[325]

TABLE 1
AIR CONTAMINANT SOURCES AND
ASSOCIATED FEE SCHEDULE

NOTE: Fees in A-F are in addition to any other applicable fees (340-20-155)

A. Late Payment
a) 8-30 days $200
b) > 30 days $400

B. BACT/LAER Determination - $12,500 each

C. Ambient Monitoring Network Review - $900

D. Modeling Review
a) Screening methodology $ 500
b) Refined methodology $1,000

E. Alternative Emission Control Review - $1,500

F. Non-technical permit modification (name change, ownership transfer, and similar) - $50

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fee for other applicable category.

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	[Fees to be Submitted] [with new Application]	[Fees to be Submitted] [with Renewal] [Application]	[Fees to be Submitted] [with Application to] [Modify Permit]
75. Soil Remediation Plants	1799						
a) Stationary		75	1000	945			
b) Portable		75	1000	1200			

* Excluding hydro-electric and nuclear generating projects.
** Including co-generation facilities of less than 25 megawatts.
*** [Maps of these areas are attached.] Legal descriptions and maps of these areas are on file in the Department.
[**** Sources required to obtain a permit under items 61, 62, and 63 will be subject to the following fee schedule to be applied by the Department based upon the anticipated cost of processing:]
**** Permit for sources in categories 64 through 71 are required only if the source is located in the Portland AQMA, Medford-Ashland AQMA or Salem SATS.

[Estimated Permit Cost	Application Processing Fee]
[Low cost	$ 100.00 -- $ 250.00]
[Medium cost	$ 250.00 -- $1500.00]
[High cost	$1500.00 -- $3000.00]

[As nearly as possible, applicable fees shall be consistent with sources of similar complexity as listed in Table 1.]

[***** Permit for sources in categories 64 through 71 are required only if the source is located in the Portland AQMA, Medford-Ashland AQMA or Salem SATS.]

RPT\AH14007
(7/91)

ATTACHMENT B

RULE MAKING STATEMENTS FOR PROPOSED AMENDMENTS TO THE AIR CONTAMINANT DISCHARGE PERMIT PROGRAM

STATEMENT OF NEED FOR RULE MAKING

Pursuant to Oregon Revised Statutes (ORS) 183.335, this statement provides information on the intended action to amend a rule.

(1) Legal Authority

This proposal would amend Oregon Administrative Rule (OAR) 340, Division 20, Section 155 Table 1. It is proposed under the authority of Oregon Revised Statutes (ORS) Chapter 468.065(2) which directs the Environmental Quality Commission to establish pollution permit fees "based upon the anticipated cost of filing and investigating the application, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompliance with the permit".

(2) Need For These Rules

Permit fee increases are needed to maintain existing air pollution control programs.

(3) Principal Documents Relied Upon

Oregon Administrative Rules (OAR) Chapter 340, Division 20, Section 155 Table 1.

Oregon Revised Statutes (ORS) 468.065.

All documents referenced may be inspected at the Department of Environmental Quality, 811 SW 6th Avenue, Portland, Oregon, during normal business hours.

LAND USE COMPATIBILITY STATEMENT

The proposed rules do not affect land use.

ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT FOR PROPOSED AMENDMENTS TO THE AIR CONTAMINANT DISCHARGE PERMIT PROGRAM

FISCAL AND ECONOMIC IMPACT STATEMENT

The rules proposed for emergency adoption and hearing authorization would increase fees for Air Contaminant Discharge Permits. Application Processing Fees would be raised by an average of 283%. Annual Compliance Determination Fees would rise by an average of 198%. The greatest percentage increases would affect rendering, wood preserving, surface coating, bulk gasoline, and chemical manufacturing plants, and operators of infectious waste incinerators. The rock products industry would be affected by the smallest percentage increase. Increases in other categories would be close to the average increases.

The entire cost of the fee increases would be a direct impact on current and future holders of Air Contaminant Discharge Permits, which are held primarily by both large and small businesses. Many of the permits held by small businesses are Minimal Source Permits, which are less affected by the proposed fee increases because they only pay fees once every five years.

Only those local and state governmental agencies that have permits would be affected. The State Highway Division and various County Road Departments own and operate permitted rock crushing and asphalt paving plants which would be impacted by the smallest percentage increase. Agencies that operate permitted fuel burning equipment would be impacted by the amount of the general increase. Agencies that operate fuel burning equipment in the PM_{10} non-attainment areas that are being added to the permit table could be subject to permitting for the first time.

There would be no direct economic impact to the general public. The only known indirect cost to the general public would be pass-through of costs to customers.

The economic impact to the Department of Environmental Quality will be an increase in revenues. Revenues are projected to increase from approximately $800,000 to $2.5 million for the 1991-1993 biennium. There would be no increased expenses because the new fees would be implemented through the existing billing system.

RPT\AH14233

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Hearing Dates: August 27, 28, 29, 1991
Comments Due: September 5, 1991

WHO IS AFFECTED:

Industries in the State of Oregon.

WHAT IS PROPOSED:

The Department of Environmental Quality is proposing to amend Oregon Administrative Rule Chapter 340, Division 20, Section 155.

WHAT ARE THE HIGHLIGHTS:

The amendments increase the Air Contaminant Discharge Permit fee revenue by approximately 213%. This includes general increases in application processing and compliance determination fees of 300% and 200% respectively. Filing fees remain unchanged. Fees for some industrial categories including rock crushers, cement plants, asphalt plants and chemical plants would be changed by different amounts to better reflect the Department's workload for those categories. Late fees and other special activity fees have also been added.

HOW TO OBTAIN ADDITIONAL INFORMATION:

Copies of the proposed rule package may be obtained from the Air Quality Division, 811 SW 6th Avenue, Portland, Oregon, or from the regional office nearest you. For further information, contact Terri Sylvester at (503) 229-5181.

WHERE ARE THE HEARINGS AND HOW TO COMMENT:

The first public hearing is scheduled for: August 27, 1991, at 1:00 p.m. in the City Hall Council Chambers, 3rd Floor, 411 West 8th (Corner of 8th and Oakdale), Medford, Oregon.

The second hearing is scheduled for: August 28, 1991, at 1:00 p.m. in Room 314 of the Bend School District Administration Bldg., 720 NW Wall Street, Bend, Oregon.

The third hearing is scheduled for: August 29, 1991, at 1:00 p.m. in Room 3A, 811 SW 6th Avenue Portland, Oregon.

Oral and written comments will be accepted at the public hearings. Written comments may be sent to the DEQ, but must be received by no later than 5:00 p.m., September 5, 1991.

811 S.W. 6th Avenue
Portland, OR 97204

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

WHAT HAPPENS NEXT:

After the public hearings, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation would come during a regularly scheduled meeting on or before December 31, 1991.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

TS:a
LEGAL\AH14202

ITEMIZED CHANGES FOR CATEGORIES ON TABLE 1

This table shows the categories which receive fee adjustments that vary from the standard increases. The center columns show the fee increases relative to the standard increases. The proposed fee divided by the fee that would be in effect with the standard increase is indicated.

Category Number	Category	Application Processing Fee	Compliance Determination Fee	Basis for Adjustment From Standard
--	Most Categories	1.0	1.0	Equals 300% increase in processing fees and 220% increase in compliance fees.
2a	Stationary soil remediation plant	0.5	0.84	New category for sources currently permitted under category 61b.
2b	Portable soil remediation plant	0.5	1.07	New category for sources currently permitted under category 61b.
8a	Rendering Plants >10,000 tpy	1.6	1.3	Greater complexity of permit & inspection, & public involvement.
8b	Rendering Plants <10,000 tpy	1.2	1.2	Greater complexity of permit & inspection, & public involvement.
16	Wood Preserving	1.67	1.11	Greater complexity of permit & inspection.
21b	Pulp, paper and paperboard mills, with >100 TPY emissions, not elsewhere classified	1.0	1.0	Addition of category because of recent discovery of large amount of VOC emissions from previously unpermitted sources.
23a through 28a	Chemical mfg., various, high cost	1.75	1.33	"a" designation added for sources in each category which requires more complex permitting and inspections.

Category Number	Category	Application Processing Fee	Compliance Determination Fee	Basis for Adjustment From Standard
23b through 28b	Chemical mfg., various, low cost	1.0	1.0	"b" designation added for less complex sources in each chemical manufacturing category.
31b	Asphalt production by distillation	1.0	1.0	Previously category 32.
34a	Stationary asphalt concrete paving plants	0.5	0.62	Low workload per source. Minimal source or highly standardized permits.
34b	Portable asphalt concrete paving plants	0.5	0.63	Low workload per source. Minimal source or highly standardized permits.
35	Asphalt felts or coatings	0.5	0.5	The process has changed and permitting and compliance have been greatly simplified.
39	Concrete mfg.	0.5	0.62	Low workload per source. Minimal source or highly standardized permits.
42a	Stationary rock crusher	0.5	0.62	Low workload per source. Minimal source or highly standardized permits.
42b	Portable rock crusher	0.5	0.63	Low workload per source. Minimal source or highly standardized permits.
44a	Incinerator, 250 or more tons per day or off-site infectious waste incinerator	2.0	2.0	Greater complexity of permit & inspection.
56a	Natural gas transmission station	1.0	1.0	New category to address major sources that are currently not on permits.
56b	Natural gas production and/or mfg.	1.0	1.0	Was category 56.

Category Number	Category	Application Processing Fee	Compliance Determination Fee	Basis for Adjustment From Standard
61a-c	New sources			Administrative efficiency and clarity of regulations improved by replacing fee ranges with specific fees.
	low	1.0	1.0	
	medium	1.0	1.0	
	high	1.0	1.0	
62a-c	New sources			Administrative efficiency and clarity of regulations improved by replacing fee ranges with specific fees.
	low	1.0	1.0	
	medium	1.0	1.0	
	high	1.0	1.0	
63a-c	New sources			Administrative efficiency and clarity of regulations improved by replacing fee ranges with specific fees.
	low	1.0	1.0	
	medium	1.0	1.0	
	high	1.0	1.0	
64	Bulk gasoline	1.82	1.0	Increase to minimum fee amount.
70b	Surface coating mfg. 10-99 tpy	1.5	1.0	Greater complexity of permit & inspection. Deletion of 40 tpy cutpoint due to 1991 VOC rule changes.
70c	Surface coating mfg. <10 tpy, at source's request	2.0	1.0	New category for sources affected by 1991 VOC rules.

TS:a
RPT\AH14084
(7/91)

Oregon

ENVIRONMENTAL QUALITY COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: July 24, 1991
Agenda Item: K
Division: Water Quality
Section: Municipal Wastewater

SUBJECT:

Request for Relief From Payment of Increased Compliance Determination Fee By the City of Butte Falls

PURPOSE:

To determine if the City of Butte Falls should be granted a decrease in annual fee for the City sewage treatment facility, based on hardship.

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 ___

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696

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

_X_ Approve Department Recommendation
___ Variance Request — Attachment ___
_X_ Exception to Rule — Attachment 1
_X_ Informational Report — Attachment 2
___ Other: (specify) — Attachment ___

DESCRIPTION OF REQUESTED ACTION:

The City of Butte Falls has requested relief from paying the full annual compliance determination fee for 1990-91 and subsequent fiscal years. Oregon Administrative Rules (OAR) 340-45-070(2) allows but does not require that the Commission may reduce or suspend the annual fee if a proven hardship is demonstrated. The action being requested is for the Commission to grant or deny a fee reduction or suspension for the City of Butte Falls.

The fee in question is charged to all sewage treatment facilities in Oregon, and is used to pay in part for Department activities necessary to insure that the facility is operated in compliance. Typical Department compliance activities include review of monthly monitoring reports submitted by permittees, regular inspections of facilities, investigation of complaints regarding activities associated with the sewage treatment facilities, tracking of compliance schedules, inspection of sludge disposal sites, and other related activities. The City has paid $300.00 of the total $755.00 that was due July, 1990.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ — Attachment ___
Enactment Date: _____
___ Statutory Authority: _____ — Attachment ___
_X_ Pursuant to Rule: OAR 340-45-070(2) — Attachment 1
___ Pursuant to Federal Law/Rule: _____ — Attachment ___

___ Other: — Attachment ___

_X_ Time Constraints: (explain)

Annual compliance fees are due and payable July 1 of each year. The City of Butte Falls has requested relief from fees due over a year ago. There is no absolute deadline for submitting fees. However, the Department needs to be able to collect fees in a timely manner in order to fund necessary activities.

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The Commission increased the annual compliance fees for sewage treatment facilities May 25, 1990. The fees were set after considerable prior discussion with municipalities in order to assure that the fees were fairly distributed, and are based on the actual expenses incurred by the Department. A differentiation in fees was made based on the size and type of facility. The City of Butte Falls is being charged the same fee as all other municipalities with treatment facilities of like size and complexity.

If the Commission were to decide to offer relief to the City of Butte Falls, communities that have paid the annual fee in good faith may feel that they are being treated unfairly. The Department finds that fee increases can often be supported by the regulated community, but only if the fee increases are perceived to be fairly distributed and based on real program needs. Granting an exception to the City of Butte Falls may undermine current or future support for compliance or permit fees.

PROGRAM CONSIDERATIONS:

The Department depends in part on annual compliance fees to fund necessary activities. The budget approved by the Oregon Legislature assumes a certain level of funding from these fees. Granting fee waivers could jeopardize activities and positions within the Department. In addition, granting waivers compromises the perception of fairness that the Department depends on in many areas of activity.

If the City of Butte Falls is granted a waiver, the Department anticipates many requests for waivers would then be made. Each would require staff time to prepare a Commission report and presentation.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Grant an exception for the City of Butte Falls for part of the 1990-1991 fee that has not yet been paid ($300 has been paid; $455 is still owed).

2. Deny the request and require payment within 30 days.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission deny the City of Butte Falls request for relief on the annual compliance determination fee. The fee charged to the City is fair and the same charged to other municipalities with similar sewage treatment plant facilities. The fee increase is less than $1.00 per resident per year, and the City has not demonstrated that this is true hardship.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

It is Commission policy to be as fair and consistent as possible in fee assessments. Granting a fee waiver to the City of Butte Falls would not be fair or consistent with fees assessed to other similar municipalities. Granting a fee waiver would not be consistent with the Department's goal of making programs increasingly supported by the regulated community.

ISSUES FOR COMMISSION TO RESOLVE:

1. Has the City of Butte Falls demonstrated a hardship?

2. Would a fee waiver likely be viewed as unfair by other members of the regulated community?

3. Would a fee waiver likely generate many other similar requests, resulting in additional work load and reduced revenues for the Department?

INTENDED FOLLOWUP ACTIONS:

The Department will notify the City as to the Commission's decision. If the Commission chooses to deny the request, the Department will give the City 30 days in which to pay the remaining fee due.

Approved:

Section: Barbara A. Burton

Division: Neil J. Mullane for Lydia Taylor

Director: Fred Hansen

Report Prepared By: Barbara Burton

Phone: 229-6099

Date Prepared: July 10, 1991

BAB:crw
MW\WC8\WC8635
July 10, 1991

applicable, shall be submitted as a required part of any application for renewal or modification of a NPDES or WPCF permit.

(2) The annual compliance determination fee, as listed in OAR 340-45-075(3), must be paid for each year a disposal system is in operation or during which a discharge to public waters occurs. The fee period shall correspond with the state's fiscal year (July 1 through June 30) and shall be paid annually during the month of July. Any annual compliance determination fee submitted as part of an application for a new NPDES or WPCF permit shall apply to the fiscal year the permitted facility is put into operation. For the first year's operation, the full fee shall apply if the facility is placed into operation on or before May 1. Any new facility placed into operation after May 1 shall not owe a compliance determination fee until the following July. The Director may alter the due date for the annual compliance determination fee upon receipt of a justifiable request from a permittee. The Commission may reduce or suspend the annual compliance determination fee in the event of a proven hardship.

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

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

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

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

(b) The Department determines that the wrong application has been filed.

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

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83

Permit Fee Schedule

340-45-075 (1) Filing Fee. A filing fee of $50 shall accompany any application for issuance, renewal, modification, or transfer of an NPDES Waste Discharge Permit or Water Pollution Control Facilities 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 $75 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) New Applications:
(A) Major industries[1] $2000
(B) Minor industries ..... $ 600
(C) Major domestic[2] $1500
(D) Minor domestic ..... $ 600
(E) Agricultural ..... $ 300

(b) Permit Renewals (including request for effluent limit modification):
(A) Major industries[1] $1000
(B) Minor industries ..... $ 300
(C) Major domestic[2] ..... $ 750
(D) Minor Domestic ..... $ 300
(E) Agricultural ..... $ 150

(c) Permit Renewals (without request for effluent limit modification):
(A) Major industries[1] ..... $ 500
(B) Minor industries ..... $ 200
(C) Major domestic[2] ..... $ 500
(D) Minor domestic ..... $ 200
(E) Agricultural ..... $ 100

(d) Permit Modifications (involving increase in effluent limits):
(A) Major industries[1] $1000
(B) Minor industries ..... $ 300
(C) Major domestic[2] ..... $ 750
(D) Minor domestic ..... $ 300
(E) Agricultural ..... $ 150

(e) Permit Modifications (not involving an increase in effluent limits): All categories ..... $ 75

(3) Annual Compliance Determination Fee Schedule:

(a) Domestic Waste Sources (Select only one category per permit) (Category, Dry Weather Design Flow, and Initial and Annual Fee):
(A) Sewage Disposal — 10 MGD or more .$1150
(B) Sewage Disposal — At least 5 but less than 10 MGD ..... $ 900
(C) Sewage Disposal — At least 1 but less than 5 MGD ..... $ 500
(D) Sewage Disposal — Less than 1 MGD ..... $ 300
(E) Non-overflow sewage lagoons ..... $ 150
(F) Subsurface Sewage disposal systems larger than 20,000 gallons per day ..... $ 150
(G) Subsurface sewage disposal systems larger than 5000 gallons per day but not greater than 20,000 gallons per day ..... $ 100

(b) Industrial, Commercial and Agricultural Sources (Source and Initial and Annual Fee):

(For multiple sources on one application select only the one with highest fee)

(A) Major pulp, paper, paperboard, hardboard, and other fiber pulping industry $1400
(B) Major sugar beet processing, potato and other vegetable processing, and fruit processing industry $1400
(C) Fish Processing Industry:
(i) Bottom fish, crab, and/or oyster processing ..... $ 175
(ii) Shrimp processing ..... $ 175
(iii) Salmon and/or tuna canning ..... $ 300
(D) Electroplating industry (excludes facilities which do anodizing only):
(i) Rectifier output capacity of 15,000 Amps or more $1400
(ii) Rectifier output capacity of less than 15,000 Amps, but more than 5000 Amps $700

ATTACHMENT 2

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: June 24, 1991

TO: Barbara Burton, Manager
Municipal Waste Section

FROM: Rajeev Kapur

SUBJECT: Town of Butte Falls
Annual Compliance Determination Fees

On June 14, 1991, Alvin Thompson, the Mayor of Butte Falls, testified before the Environmental Quality Commission. Mr. Thompson protested the annual compliance determination fee of $755.00 assessed by the Department of Environmental Quality as being excessive and one which the Town would not be able to pay because of their size, limited resources and economic plight. The Town had previously protested the increase in the annual compliance determination fees (see attached letter dated September 14, 1990 from Robert Henderson, Mayor of Butte Falls, and the Department's reply dated September 24, 1990).

Chapter 340, Division 45, "Regulations Pertaining to WPCF and NPDES Permits" (attached), gives the Commission the authority to reduce or suspend annual compliance determination fees in the event of a proven hardship.

The sewer rate in Butte Falls is $12.00 per month. A review of the recent survey of sewer rates across Oregon indicates that this rate is about average for cities of similar size (ie. less than 1,000 population). Butte Falls is the only municipality that has not paid the annual compliance determination fee for the year from July 1, 1990 - June 30, 1991. The Department has not made any exceptions to the annual compliance determination fees in the past.

The treatment facility in Butte Falls is in compliance with the requirements of the waste disposal permit and has submitted a timely renewal application along with the required fees. The facility, however, is not in compliance with Operator Certification Requirements (Chapter 340, Division 49), which requires that the wastewater treatment system be supervised by an operator certified at a grade level equal to or higher than the system classification. The operator at this facility is certified at a treatment level lower than the system classification and is not certified in collection.

Oregon

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

May 29, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

City of Butte Falls
P. O. Box 268
Butte Falls, OR 97522

Re: Waste Discharge Permit
No. 100266
File No. 12800
Annual Compliance Determination
Fee Invoice No. WQ91DOM-0738

On September 3, 1990, we sent you the above invoice in the amount of $755.00. On October 11, 1990, you were sent a "past due" notice of the same invoice. On October 24, 1990, we received a partial payment in the amount of $300.00. According to our records, the remaining balance of $455.00 has not been paid.

This will serve as notice that we must receive the past due amount of $455.00 within 30 days of the date of this letter. If payment is not received by that date, we will have no recourse but to suspend your permit. If this action is necessary, you will be unable to operate your facility until such time as the account is brought current. Additionally, if your permit is suspended, a $50 filing fee will be required to lift the suspension. Note that discharging without a valid NPDES permit is a Class I violation of the Federal Clean Water Act and is subject to penalties up to $10,000.00 per day.

We ask that you give this your immediate attention by remitting the amount due. If you have questions, please call Rajeev Kapur at 229-5351.

Sincerely,

Barbara A. Burton

Barbara A. Burton, Manager
Municipal Waste Section
Water Quality Division

BAB:RK:crw
MW\WC8\WC8412
cc: Business Office, DEQ
Southwest Region, DEQ

811 SW Sixth Av
Portland, OR 972[illegible] 139
(503) 229-5696

NEIL GOLDSCHMIDT
GOVERNOR

Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1390 PHONE (503) 229-5696

CLEARANCE		
TO	INITIAL	DATE
		9-24
		9/25
Pls hand write note		

September 24, 1990

The Honorable Robert Henderson, Mayor
Town of Butte Falls
Butte Falls, Oregon 97522

Dear Mayor Henderson:

We have your letter of September 14, 1990, protesting the increase in annual fees for your city sewerage facility permit.

At your request, I have enclosed a copy of House Bill 5033, which, as you will see, will not provide much insight as to the reason for the increase in fees. To provide additional information, I have enclosed a copy of the Environmental Quality Commission report upon which the Commission approved the increased fees. I have also attached the Legislative Emergency Board Request from the Department for new positions in pretreatment and sludge.

As required by House Bill 5033, the Emergency Board approved the increased fees in July, 1990.

The increased fees are necessary to fund additional positions in the Department. The new positions will be used to evaluate groundwater problems associated with sewage treatment plants, assure that municipal sewage sludge is properly utilized consistent with the Department rules for sludge, and to conduct an industrial pretreatment program.

The fee that was assessed your city includes dollars that will be used to fund the groundwater position and the sludge positions. Because you have no formal industrial pretreatment program, your fee was not increased to pay for positions that deal with pretreatment.

The Department tried to prorate the costs of paying for these additional positions based upon the size of treatment facilities. Larger cities are paying substantially more than the smaller cities.

We recognize and sympathize with the problems of meeting and paying for the demands placed upon municipal governments, particularly smaller ones. The Department, however, also believes it is essential to assure that groundwater is protected and that sewage sludge is properly used. If these issues are neglected, the costs for correcting the resulting problems will likely be much greater.

Sincerely,

Lydia Taylor

Lydia R. Taylor
Administrator
Water Quality Division

LRT:RJN:crw
MW\WC7181
cc: Southwest Region, DEQ

Mayor Henderson,

IF it would help your city to make two or three payments over the year instead of one full payment, I'd be happy to speak with our business office to see if that could be arranged.

Lydia T.

Ph: 229-5324

Town of Butte Falls

ALTITUDE OVER 2400 FEET

In the Land of Pure Water, Pure Air, Sunshine and Health

BUTTE FALLS, OREGON 97522

September 14,1990

Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

Dear Sirs:

In response to your recent letter concerning a rate increase of 150%.

We wish to strongly protest this action.

Butte Falls is a timber dependent community and the timber industry will be on its ear in 2-5 years.

One local operator has not given a raise in 6 years, another took a 10% decrease in pay 6 years ago, and got a 6 % raise 2 years ago. They are still 4% down. Timber faller employment is off aprox. 80% over what it was last year.

If you need this increase to give personal raises ours is not a sympathetic ear. If this is to finance other projects, we request you persue other sources. The Town population has remained stable with no growth since the building the treatment plant.

Butte Falls Town employees received a 3% increase in 90-91, 2% in 89-90, and quite possibly none in 91-92.

These are extremely tough financial times with worse ahead. The Town foresees no increase in service from your agency for this increase in fees.

The council has voted to withhold payment of this bill pending a letter from you justifing this large increase.

A return letter itemizing reasons for this increase is requested, also please send a copy of house bill 5033.

Sincerely;

Robert Henderson

Robert Henderson
Mayor
Town of Butte Falls

cc: DEQ, Medford & Portland, Nancy Peterson, Lenn Hannon, County commissioners, attorney general and the Governor.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: June 21, 1991

TO: Members of the Environmental Quality Commission (EQC)

FROM: Fred Hansen, Director

SUBJECT: Agenda Item: L; July 24, 1991 EQC Meeting

Information Report: Initiation of the Orphan Site Account

BACKGROUND

The Environmental Cleanup Division is working on seven cleanup projects where persons responsible for the contamination are either unknown, unable, or unwilling to conduct the investigations and cleanuup. Six of the sites are eligible for Orphan Site Account funding and one is not. The one site (Alkali Lake site), is a state owned site. The 1989 legislature established three fees to support cleanup-related work at orphan sites, or to support bond sales to provide revenue for the orphan site work. The three fees are: (1) solid waste tipping fee, (2) bulk petroleum load fee, and (3) hazardous substance possession fee.

DEQ PLANNED ACTION

DEQ will make a request to the Legislative Emergency Board for funding of the Orphan Site investigation and cleanup work. This will be a request to authorize the budget for orphan site investigation and cleanup work. Authorization of the budget initiates collection of fees to support a bond sale planned for November 1991.

The Orphan Site request package is to provide staff and funds for management of investigations and cleanup of the following orphan sites:

McCormick and Baxter Creosoting -

A wood treater located on the Willamette River in Portland. Heavy contamination has occurred in soils, groundwater, and the Willamette River with creosote compounds, pentachlorophenol, heavy metals, dioxins and furans. DEQ has, with the support of the Department of Fish and Wildlife and the Health Division, placed cautionary signs near the site

warning the public about site hazards and placed a moratorium on fishing near the site.

Milwaukie Area Groundwater -

This is an area-wide groundwater contamination problem, affecting the City of Milwaulie's drinking water supply. DEQ has identified 200 potential sources of groundwater contamination in the Milwaukie area. The principal contaminants are chlorinated organic compounds; trichloroethene and others. DEQ is trying to identify the sources of contamination which are affecting the water supply wells. The state must proceed with the cleanup to protect the groundwater. Identified contamination sources will be required to participate in the investigation and cleanup as soon as data is available to support that requirement.

East Multnomah County Groundwater -

This is an area-wide groundwater contamination problem, affecting the City of Portland's backup drinking water supply, private well users, a small water district, a water supply system for a mobile home park, water supply wells for irrigation, industrial supply wells, and development in the area. The principal contaminants are chlorinated organic compounds; trichloroethene and others. The state must proceed with the cleanup to protect area groundwater. Identified contamination sources will be required to participate as soon as data supports that requirement. DEQ has identified three sources of contamination in the area and is requiring the companies to cleanup. It takes a considerable amount of effort and resources to identify the sources of contamination, to develop the technical and legal facts needed to require responsible parties to cleanup and to apportion responsibility.

Nuway Oil Company -

A waste oil recycler located on the Columbia Slough in Portland. The site is heavily contaminated with petroleum waste, oil sludges, PCBs, heavy metals, and volatile organic compounds. Site soils, groundwater, and the slough are contaminated from past site practices. DEQ is conducting investigations to determine the most practicable way to clean up the site. The responsible party is unable to finance cleanup of the site.

Lakewood Estates -

This is a rural community, located near Aurora, whose sole drinking water supply has been contaminated with chlorinated organic compounds, dichloroethylene and trichloroethane. The source of the contamination is unknown and the community is without a safe and permanent drinking water supply. DEQ is conducting investigations to locate the source of the contamination and evaluating the short and long term options for a community water supply. DEQ will be required to either: install a new well; reconstruct or provide treatment at the existing well; or install a new well with a treatment system.

N.W. Pipe and Casing -

A pipe manufacturing and coating company which went out of business in about 1985 leaving the site heavily contaminated with pipe coating wastes, organic solvents, heavy metals, and PCBs. The site is located in Clackamas County near Milwaukie. There are buried wastes on site and suspicions of buried drums of waste solvents and coal tar residues. DEQ has implemented security measures for the site. The property owner is retired and has very limited funds. DEQ is investigating the nature and extent of the contamination which is tying up development in the neighboring industrial park and the threat the site maybe impacting local groundwater which feeds into the Milwaukie City water supply.

DEQ has estimated these orphan sites will require about $7,023,500 in investigation and cleanup work over the next biennium (July 1991 to June 1993) and that 5 FTE or 6 positions for 20 months (starting November 1991) will be required to manage the complex cleanup activities. The following table summarizes the estimated resources need for Orphan site investigations and cleanup over the next biennium.

Attachment 1 provides detailed work descriptions and budget details.

INVESTIGATION AND CLEANUP COSTS (91-93)

Orphan Site	Estimated Cost (91-93)
McCormick and Baxter	$3,425,000
Milwaukie Area Groundwater	$653,000
East Multnomah County Groundwater	$535,500
NuWay Oil Company	$1,095,000
Lakewood Estates	$840,000
N.W. Pipe and Casing	$475,000
TOTAL ESTIMATE	**$7,023,500**

ADDITIONAL STAFF REQUIRED

Six Positions and 5 FTE (positions would be for 20 months starting November 1991). Attachment 2 provides budget details.

Estimated Staff Costs: $588,122

TOTAL REQUEST

$7,611,622

McCormick and Baxter Creosoting

1991-93 Biennium Budgeted: $3, 425, 000

TASKS	SUBTASKS	TASK COSTS	SUBTASK COSTS	COMMENTS
1. Completion of RI/FS investigaton & Reports		1, 625, 000		
2. Implement interim remedial actions		1, 550, 000		
	a. DNAPL extraction system		500, 000	
	b. Surface water treatment		1, 000, 000	
	c. Dust suppression		50, 000	
3. Begin remedial design		250, 000		
TOTAL		3, 425, 000		

Attachment 1

Milwaukie

1991-93 Biennium

Budgeted: $653, 000

TASKS	SUBTASKS	TASK COSTS	SUBTASK COSTS	COMMENTS
1. Database		120, 000		
	a. Planning and development		20, 000	
	b. Implement Work Plan		100, 000	
2. Hydrogeological Investigation		450, 000		
	a. Regional Geology Investigation		45, 000	
	b. Industrial area assessment		20, 000	
	c. Monitorying well design		10, 000	
	d. Monitoring well installation		275, 000	Possibly 5 clusters sof wells
	e. Well tests		12, 000	
	f. Isotopic/chemical sampling		70, 000	QA/QC included
	g. Data interpretation		11, 000	
	h. Report Preparation		7, 000	
3. Sampling and analysis plan		48, 000		
	a. Plan development		15, 000	
	b. Implementation of SAP		28, 000	
	c. Report of results		5, 000	
4. Wellhead protection plan		15, 000		
5. Cost recovery		20, 000		
	a. PRP identification		12, 000	
	b. Report Preparation		8, 000	
	c. Litigation		??????	
TOTAL		653, 000		

East Multnomah County

1991-93 Biennium

Budgeted: $535, 500

TASKS	SUBTASKS	TASK COSTS	SUBTASK COSTS	COMMENTS
1. Wellfield protection criteria		75, 000		
	a. Review of pump plan		12, 000	Pump plan prepared by City of Portland
	b. Implementation oversight		25, 000	
	c. DEQ analysis/testing		30, 000	Sampling/measuring wells
	d. Report of results		8, 000	
2. Database/model(continuation)		350, 000		
	a. Database development		90, 000	
	b. Model Implementation		175, 000	Includes calibration, verification
	c. Sampling and analysis plan (pump tests)		85, 000	Costs depend on extent of data gaps identified for model
3. Wellfield Management Plan		110, 500		
	a. Scoping/work plan		8, 500	
	b. Plan development		65, 000	
	c. Model verification/tesing		25, 000	
	d. Report		12000	
TOTAL		535, 500		

Nuway Oil Company

1991-93 Biennium

Budgeted: $1, 095, 000

TASKS	SUBTASKS	TASK COSTS	SUBTASK COSTS	COMMENTS
1. Site Security		15, 000		
	a. Fencing			
	b. Interim drainage controls			
2. Remedial Investigation/planning/implementation		336, 400		
	a. Air sampling & modeling		57, 200	
	b. Soil & sediment sampling		104, 300	
	c. Surface water sampling		43, 700	
	d. Goundwater sampling		131, 200	Inc.monitoring well install./aquifer testing
3. Laboratory analysis		116, 000		
	a. Air samples			
	b. Soil & sediment samples			
	c. Surface water samples			
	d. Ground water samples			
4. Data evaluation		69, 600		
5. Risk assessment		58, 000		
6. Interim remedial action		300, 000		e.g.limited soil excavation & disposal
7. Feasibility study		200, 000		
TOTAL		1, 095, 000		

Lakewood Estates

1991-93 Biennium

Budgeted: $840, 000

TASKS	SUBTASKS	TASK COSTS	SUBTASK COSTS	COMMENTS
1. Field Work		10, 000		
2. Analytical		20, 000		
	a. Ground water		10, 000	
	b. Surface water		7, 500	
	c. Sediments		2, 500	Lake samples
3. Project Review		10, 000		PRP DECISION POINT
4. Field work		450, 000		IF NO PRP IS FOUND
	a. Plume reconnaisance		30, 000	
	b. Well installation		300, 000	10 wells - various depths
	c. Soil sampling		40, 000	
	d. Ground water sampling		40, 000	
	e. Surface water sampling		40, 000	
5. Analytical		150, 000		
	a. Ground water		50, 000	100 samples
	b. Surface water		50, 000	100 samples
	c. Soils		50, 000	100 samples
6. Risk Assessment		50, 000		
7. Feasibility studies		50, 000		
8. Assistance w/ alt. water supply		100, 000		Does not incl. instal. of new well - covered by community
TOTAL		840, 000		

N.W.Pipe and Casing - Clackamas

1989-90 Biennium Budgeted: $50, 000 Actual: $0

1991-93 Biennium Budgeted: $475, 000

TASKS	SUBTASKS	TASK COSTS	SUBTASK COSTS	COMMENTS
1. Planning & development-site security		50, 000		
2. RI/FS planning and implementation		175, 000		
3. Interim remedial action		250, 000		(Removal)
TOTAL		475, 000		

STRATEGIC PLAN GOALS (Potential revision discussed with the Commission at the March 11, 1991 Work Session.)

Strategic Goals identify the direction the Agency seeks to go or the general results the Agency desires to accomplish over the course of the next few years. The Strategic Goals are not specific as to how the desired results are to be accomplished. The Goal statements provide a "sense of direction" which guide the development of major projects or activities as well as the numerous decisions made by Department managers each day.

To aid in understanding the intent of the goal, descriptive statements are presented to provide additional detail on agency wide direction.

1. **Increase the use of *Risk Reduction* principles and methodologies in the development, analysis, and selection of environmental quality control strategies and programs.**

   The environment has limited capacity to assimilate pollutants from human activities without interfering with public health, environmental quality, and the quality of life our citizens enjoy. This goal recognizes that future pollution control efforts will generally be costly for small increments of environmental gain (the easy, comparatively inexpensive things have already been done). It is becoming more difficult for the Commission and the Department to identify where to spend limited resources to achieve the greatest environmental gain. Use of risk reduction principles and methodologies by the Commission and the Department offers a new way to evaluate alternative pollution control strategies. Use will require continuing development of methodologies and a greatly expanded data base to support the required analyses. Effective use of risk reduction principles and methodologies will require special efforts to assure that agency actions and standards protect health and the environment. The methodologies will need to be based on uniform acceptable risk factors, appropriately consider cumulative effects of pollutant exposure through various pathways, and provide an adequate margin of safety.

2. **Significantly increase the emphasis on *Pollution Prevention* as the preferred method for protecting public health and environmental quality.**

   Prevention has always been a recognized way of controlling pollution. However, regulatory programs mandated over the past two decades by federal and state legislation for municipal and industrial sources have resulted in a primary emphasis on installation of waste treatment and control facilities. This goal will require a conscious effort by the Commission, Department, and others to deviate from the traditional pollution control approaches.

   Expanded education will be a primary way of accomplishing this goal. Pollution control efforts are increasingly targeting the large number of small sources -- particularly the activities of each of us as individuals. Thus, to achieve environmental quality goals, we need to secure assistance from experts in developing strategies for changing attitudes of the public regarding their actions and environmental quality. We also need to develop a broad-based strategy for informing the public of the relationship between their actions

and environmental quality, and integrate implementation of this strategy into all agency actions.

Other pollution prevention options include increased technical assistance for existing regulated sources to encourage alternatives to the waste treatment technologies relied upon to date, increased use of charges for pollutant discharges, and increased use of market incentives including product labeling as a means of fostering awareness of environmental effects of marketplace products. Attaching economic consequences to the degree of environmental insult should become a significant component of pollution prevention efforts (i.e. the polluter pays).

Finally, significant gains in pollution prevention will require improved knowledge of current conditions and future trends in order to take timely advantage of "opportunities". This includes improved monitoring to provide essential data to describe current environmental quality, evaluate identified problems, model environmental effects of proposed actions, and evaluate trends in environmental quality. It will also be desirable to develop the capability to track regional/national/international technical/social/economic events and trends that may have significant relationship to Oregon environmental trends, programs, and opportunities for preventive action. It will be necessary to develop enhanced and new capability to perform environmental trends analysis and evaluate varied sources of information to anticipate problems and develop problem-preventive strategies. Ongoing involvement in the state's land use program is also a key step in protecting the state's environmental quality in the face of growth.

3. Address environmental issues on the basis of a comprehensive cross-media (air, water, land) approach. (Cross-Media Pollution Control)

Federal and state pollution control legislation has developed over time to address specific perceived problems related to air pollution, water pollution, hazardous waste disposal, etc. The timing of requirements in the various pieces of legislation, particularly at the federal level, has not been coordinated. As a result, we are becoming increasingly aware of the potential for control approaches in one environmental problem area (media) actually adding to problems in another.

This goal will require the Commission and Department to revise and update procedures for permit application evaluation, permit issuance, review of engineering plans, and review of technical proposals to assure that requirements in one environmental medium (air, water, land) complement the efforts in other media and do not create new problems. To support this goal, it will be necessary to establish a data management system in which ambient environmental data, source emission data, and compliance information from each program are accessible and useful to other programs.

This goal also recognizes that the environment has limited capacity to assimilate pollutants from human activities without interfering with public health and the quality of life our citizens enjoy. After extensive pollution prevention and control efforts, existing industries, cities, and citizen activities will produce some residual pollution that utilizes portions of this assimilative capacity. This goal seeks to assure a coordinated approach to management of that assimilative capacity to maintain room for planned growth with an appropriate factor of safety.

4. **Minimize the extent and duration of unpermitted pollutant releases to the environment through a technically sound compliance program which is timely, serves as a deterrent, and ensures that an economic advantage is not gained by non-compliance.**

Oregonians have made a substantial investment in the construction and operation of pollution control facilities. Continued attention to the proper maintenance and operation of these facilities is essential to achieve environmental quality requirements. Efforts to shift the focus of attention to pollution prevention as a means of meeting future goals does not diminish the ongoing need to emphasize compliance for existing pollution control facilities.

This goal anticipates review and restructuring of existing compliance assurance activities to assure that environmental quality objectives are achieved. Examples of actions that may be desirable to assist in achieving this goal include: review of existing permits and revision as necessary to assure that permits are achievable and clearly understood by permittees, and that conflicting, unenforceable, or unessential permit conditions are eliminated; expansion of the use of self monitoring and reporting by sources (which is objective and valid) as a means to make more effective use of existing DEQ field staff; improvement of technical training of agency staff to make compliance determinations; and enhancement of the capacity and range of laboratory analytical capability to support field compliance determinations.

5. **Develop a diverse highly qualified staff that employs the highest professional and ethical standards in dealing with the public, regulated community and co-workers, and continually seeks to streamline programs and make efficient use of limited resources.**

If environmental goals are to be achieved, attention must also be paid to the development of a quality work force and a quality work environment. We need to provide adequate time and opportunity for staff to perform quality work, to systematically acknowledge quality work, to promptly address deficient performance, to provide an environment which fosters participation and creativity, to assure a safe work-place through training and effective implementation of safety programs, and to continuously strive to meet affirmative action goals. We also need to develop a clear statement of values to guide agency actions and attitudes. In part, this statement should reflect respect and appreciation for the views of others, and continue to result in decisions that are unbiased, objective, equitable, and based upon sound facts. All staff should be trained to ensure that a consistent approach reflecting department values is followed in dealing with the public, regulated community, and co-workers.

Finally, we must continually recognize that resources are limited and improved efficiency is a standing goal. The Agency must systematically evaluate rules, permits, procedures, policies, and activities to find ways to streamline and find more efficient ways to accomplish the desired results. This goal encourages ongoing identification of programs or activities that can more effectively and efficiently be accomplished by other government agencies and seek to transfer such activities to those agencies. Efforts are also appropriate to identify and eliminate work tasks which contribute little to environmental quality protection so as to free resources for higher priority tasks.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY MEMORANDUM

DATE: July 19, 1991

TO: Environmental Quality Commission

SUBJECT: 1991-93 Budget Highlights

The following summary is intended to provide quick facts about the 1991-93 DEQ budget approved by the Legislature. Additional information will be presented at the July 25 work session.

The summary information below is divided into four sections: general budget information, major policies supported by the legislature, Governor Recommended DEQ legislation and additional legislation.

1. General Budget Information

- Total budget (excluding debt service and loans) (See Attachment A):

$161,482,365
618 positions
568.69 FTE

- Across the board reductions from the Governor's Recommended Budget in all programs and expenditure categories, primarily in General and Federal Funds

- Eliminated 7 vacant base positions, in addition to the 3 Noise positions reduced in the Governor's Recommended Budget

- Approved additional General Fund appropriations to replace steady or declining fee and Federal Fund revenues in Air and Water Quality Programs

- Approved decision packages for the new cross media and pollution prevention initiatives

- Approved Water Quality & HSW permitting staff increases and requested status reports to the Legislature concerning permitting and backlogs for all programs

- Continued 1989-91 biennium limited duration positions as permanent positions in 1991-93 for Pretreatment/Sludge, State Revolving Fund, and Environmental Cleanup activities including Voluntary Cleanup

- Approved expenditure of Certificate of Participation proceeds for purchase of Beaverton vehicle inspection station

- $1.26 million in funding ($400,000 General Funds and $860,000 in private and Federal Funds) for continued study of the Willamette River was added to the budget.

2. Major Policies Supported by the Legislature

- Sale of Pollution Control Bonds to provide matching funds for State Revolving Fund federal dollars

- Increased amount of bond proceeds supporting sewer assessment loan deferral program (sewer safety net) from $1.0 to $5.5 million

- Supported significant increase of fees, as proposed, within EQC administrative authority - vehicle emission and air contaminant discharge fees in Air Quality, municipal & industrial & subsurface fees in Water Quality, solid waste permit fee (See Attachment B)

- Funded one year of Columbia River Study and reserved $200,000 in General Fund for second year should Federal Funds not become available

- Approved use of federal oil overcharge funds for assistance to low-income woodstove owners in Klamath Falls nonattainment area

- Authorized sale of $7.6 m. Pollution Control Bonds for Orphan Site cleanups; to return to Emergency Board for expenditure limitation when amount of first bond sale is finalized

- Continued General Fund as primary funding of illegal drug lab cleanup; recognition that local cost share provisions are not providing any significant financial support

- Discontinued Air Quality Noise program

3. Governor Recommended DEQ Legislation

Passed:

- Comprehensive Air Bill. Established industrial emission fee and appropriated General Funds to support 22 positions to

develop the industrial permitting program required under the 1990 Federal Clean Air Act. Established motor vehicle emission registration fee to begin in the 1993-95 biennium. Did not approve provisions for woodstove or slash burning fees. (HB 2175)

- Recycling Bill. Similar to DEQ's Recycling Goals and Standards bill. Increased tipping fee from $.50 to $.85 a ton in 1991-93; additional funding through supplemental Solid Waste permit fee and General Funds. Established out-of-state solid waste tipping fee at same level as in-state to replace out-of-state surcharge. Out-of-state revenue to support base Solid Waste positions. (SB 66)

- Waste Tire Fee. Continued $1 waste tire fee through October, 1992, with intent of continuing current program and providing maintenance level of regulation and assistance through 1999. (HB 2246)

- Hazardous Waste Management and Technical Assistance. Approved increase in Hazardous Waste Disposal Fee from $20 to $30 a ton in increments, reaching $30 by April, 1993. Fee supports base Hazardous Waste program, technical assistance and improved oversight at Arlington. (SB 241)

- Oil Spill Planning. Authorized 3 additional positions for oil spill planning and approved associated fee on oil vessels and facilities. (SB 242)

- TMDL Surcharge and Fill and Removal Permit Fees. Passed bill containing technical changes. Did not authorize new fees, but instead restored General Funds supporting those activities. (SB 330)

- Enforcement Bill. Approved changes in penalties; no budgetary impact on DEQ. (SB 184)

<u>Not approved</u>:

- Repeal of the Pollution Control Tax Credit program.

- Asbestos bill requiring survey of public access buildings and establishing licensing program and associated fees for asbestos inspectors. (SB 185)

- Certification of laboratories submitting data to DEQ with associated fees. (HB 2276)

4. Additional Legislation and Resources

- UST Financial Assistance Program. Greatly expanded the existing program (HB 3080 from 1989 Legislative Session) with a package of grants, interest rate subsidies, insurance co-payments, and other assistance to gasoline retailers. The bill replaces the $10 petroleum load fee with a gasoline assessment as a source of funding; authorized 31 positions and expenditures of $19.6 million. (SB 1215)

- Provided $375,000 General Fund for DEQ to contract for additional study of the Tualatin River. (HB 3338)

- The Forest Practices Act appropriated General Funds and authorized 3 positions to review forest operation proposals for water quality impacts. (SB 1125)

DEPARTMENT OF ENVIRONMENTAL QUALITY
1991-93 BUDGET SUMMARY

ATTACHMENT A

	1989-91	1991-93			Committee Percent Change from	
	Legislatively Approved Budget	Governor's Recommended	Committee Recommendation	Differences from Governor's Recommended	Gov's. Rec.	1989-91 App'vd
DEQ budget WITHOUT State Revolving Fund, Sewer Safety Net, & UST Financial Assistance						
General Fund	15,299,079	22,356,453	20,654,334	(1,702,119)	-7.6%	35.0%
Other Funds	34,867,333	50,829,671	51,684,295	854,624	1.7%	48.2%
Federal Funds	18,035,467	16,648,663	15,752,298	(896,365)	-5.4%	-12.7%
Total	68,201,879	89,834,787	88,090,927	(1,743,860)	-1.9%	29.2%
ADD: State Revolving Fund, Sewer Safety Net, & UST Financial Assistance						
General Fund	9,750,000	0	0	0	NA	-100.0%
Other Funds	4,381,827	16,622,393	29,607,816	12,985,423	78.1%	NA
Federal Funds	25,594,434	61,500,000	43,783,622	(17,716,378)	-28.8%	71.1%
Total	39,726,261	78,122,393	73,391,438	(4,730,955)	-6.1%	84.7%
TOTAL LIMITED BUDGET						
General Fund	25,049,079	22,356,453	20,654,334	(1,702,119)	-7.6%	-17.5%
Other Funds	39,249,160	67,452,064	81,292,111	13,840,047	20.5%	107.1%
Federal Funds	43,629,901	78,148,663	59,535,920	(18,612,743)	-23.8%	36.5%
Total	107,928,140	167,957,180	161,482,365	(6,474,815)	-3.9%	49.6%
POSITION SUMMARY						
Authorized Positions	508	576	618	42	7.3%	21.7%
Full-Time Equivalent Positions	461.13	540.53	568.71	28.18	5.2%	23.3%

ATTACHMENT B

DEPARTMENT OF ENVIRONMENTAL QUALITY

1991-93 LEGISLATIVELY ADOPTED BUDGET
IMPACT ON FEE REVENUES

DRAFT

11-Jul-91

	Purpose or Type of Fee	Who Pays	1991-93 W/out Fee Increase	1991-93 LAB	1991-93 Revenue Increase	IMPACT
			(Thousands of Dollars)			
Air Quality	Air contaminant discharge fee	Source discharger	$800	$2,500	$1,700	213% average fee increase effective July 1, 1991. Emergency Rule Making at July EQC to incorporate the increase as of July 1, 1991.
	Industrial Emmission Fee	Major Source Discharger	0	910	910	From HB2175. $13/ton of emmission. Effective July 1, 1992.
	Vehicle emission inspection fee	Vehicle owners	4,700	7,171	2,471	Increase fee from $7 to $10 (43% increase). Volume increase of 5%. Effective January 1, 1992.
Water Quality	Industrial waste discharge fee	Permittees discharging into waterways	384	1,328	944	245% average fee increase. Increase will be incorporated in July 91 bil
	Municipal waste discharge fee	Permittees discharging into waterways	1,080	2,016	936	87% average fee increase. 1989-91 Est. incorporates biennial effect of permanent fee increase authorized by July, 1990 Emergency Board. The $936K is an increase for the entire biennium, but will be collected in second fiscal year along with normal billing.
	Subsurface sewage disposal fees	Sewage system installers and pumpers	1,244	1,729	485	37% average fee increase. 1989-91 Est. includes the expected volume inc in 1991-93 of 12% . Effective Date of this $485K increase is July 1, 1991.
	Oil Spills Fee	Owners/Operators of oil barges & Facilities	0	492,614	492,614	From SB242. Generated through $25/trip on Cargo and $28/trip on Barges. A fee will be assessed on facilities and tankers as well. Revenue shoul be realized from these fees between Oct. 91 and Jan. 92.
Hazardous & Solid Waste	Solid waste disposal (tipping) fee	Solid waste facility permittees	2,300	5,387	1,787	From SB66: Existing Domestic fee increased from $.50 to $.85/ton effecti Jan. 1, 1992. Existing fee $.50/ton applies to out-of-state effective Ju 1991 and increases to $.85/ton on Jan. 1, 1992. This fee, commonly ref to as the Tipping Fee, is a single fee applied to both in & out-of-state
	Hazardous Waste Disposal	Hazardous waste facility permittees	6,600	8,334	1,734	From SB241: The $20/ton fee at Chem Waste is increased to $24/ton effect 7-1-91; $25.50/ton 1-1-92; $27/ton 7-1-92; $28.50/ton 1-1-93; $30/ton 4-
	Solid Waste Permits	Solid waste facility permittees	671	1,793	1,122	This Fee increase will go for temporary rule making to bill for a part o needed increase in August for receipt by Jan. 1, 1992. Remaining increa will be recognized within July, 1992 billing.
	UST Financial Assistance	UST Factility Owner	4,290	25,169	23,540	From SB1215: The existing $10/load will sunset on Sept. 30, 1991. A new UST Assessment (gas tax of 1.1 cents per gallon) will start on Oct 1, 1991. The $ will continue to be deposited into the UST Corrective Ac and Compliance Fund. This is a Transfer In of Revenue.

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STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: July 19, 1991

TO: Bill Hutchison, Chair
Environmental Quality Commission

FROM: Roberta Young, MSD

SUBJECT: Agenda B - Pollution Control Tax Credits

Seven tax credit applications have been withdrawn from the July 24 agenda. Three of the applications, TC 3491, TC 3498 and TC 3500 were included by error and were previously approved. The remaining four, TC 3508, TC 3509, TC 3510 and TC 3516 have been withdrawn at the request of the applicants.

The latter four applicants are custom balers which has surfaced some policy questions for staff. The applicants have been asked to submit additional financial data to provide staff with complete information on the overall business. None of the applicants were able to submit the information in a timely manner for this EQC meeting. These applications will be on the September agenda and staff will present the policy implications to the Commission at that time.

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 16, 1991

To: Environmental Quality Commission

From: Fred Hansen

Subject: Work Session Item 3; July 25, 1991 EQC Meeting
PROPOSED MINING RULES (OAR Chapter 340, Division 43)

Following is an outline of the proposed discussion on Mining Rules at the Work Session on July 25, 1991:

A. Work Session Objectives

1. Summarize public input
2. Define key issues, note differences between the proposed rules and comments
3. Review the regulatory concepts used by the proposed rules
4. Receive Commission input relative to anticipated adoption of the proposed rules at the September Commission meeting

B. Public Hearings Held

1. Portland, May 15
2. Nyssa, May 17
3. Grants Pass, May 20

C. Groups Commenting

1. State, federal agencies (USF&W, ODF&W, OWRD, DOGAMI, NDOW)
2. Mining interests (Simplot, Horizon Gold, Atlas, Sunshine Mining, Phelps Dodge, NWMA, OMC)
3. Environmental advocacy groups (OEC, Wilderness Society, National Wildlife Federation, NEDC Audubon Society, Native Plants Society, Sierra Club)

4. Economic development interests (Mayors, citizens of Nyssa, Ontario, Jordan Valley, Vale and Adrian)

D. Specific Regulatory Concept Differences Between the Proposed Rules and the Mining Industry (as defined in comments by Oregon Mining Council, OMC)

1. <u>End-of-pipe tailings cyanide treatment vs. no treatment or "natural" treatment</u>

The rules are based on end-of-pipe treatment as a basic pollution prevention method.

OMC comments deleted end-of-pipe treatment in favor of graduated containment of tailings wastes.

2. <u>Use of technology-based waste treatment criteria vs. application of water-quality standards for heaps and tailings</u>

The rules require treatment of tailings and heaps to "technolgy-based" criteria, regardless of whether groundwater or surface is likely to be affected.

OMC comments would apply present water-quality standards or prevention of aquatic beneficial uses (only when water is affected) as appropriate regulatory criteria.

3. <u>Leak-detection and compliance at the heap liner vs. an allowable perimiter of soil contamination</u>

The rules require a "triple" liner configuration that provides for leak detection in the uppermost liner, with a requirement for repair if leakage exceeds an allowable "de-minimis" rate.

OMC proposes, at maximum, a "double" liner system with a leak detection system and repair if the leak exceeds the gravity flow capacity of the leak detection system.

4. <u>Positive wildlife exclusion vs. "safe" cyanide level</u>

The rules require "positive" exclusion (netting, fences, etc.) of wildlife (undefined) from all cyanide-containing waters, on the basis that no

appropriate standard for "safety" exists.

OMC proposes that a known safe cyanide level exists (perhaps 50 parts per million) and should be used instead of exclusion.

5. Long-term vs. short-term post-closure monitoring

The rules state that the permit may be continued in force for a "nominal" period of 30 years for monitoring purposes.

OMC proposes that the permit be continued up to a maximum of five years after closure.

6. Remedial actions relative to open pits

The rules require a closure plan to define remedial/protective measures for the pit, if there is a potential for accumulation of contaminated water.

OMC proposes essentially the same thing but removes references to some items to be considered, such as pit-filling or mining avoidance of certain areas.

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