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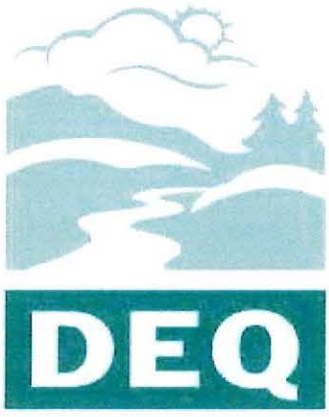
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 09/18/1991



State of Oregon
Department of Environmental Quality

Approved _____
Approved with corrections ____
Corrections made ____

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ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Fourteenth Meeting
July 24-25, 1991

Regular Meeting

The Environmental Quality Commission regular meeting was convened at about 1:10 p.m. on Wednesday, July 24, 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 Bill Wessinger, Carol Whipple and Henry Lorenzen. Also present were Michael Huston of the Attorney General's Office, Director Fred Hansen of the Department of Environmental Quality and Department staff.

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

Public Forum

Stephen Brown, representing the Oregon Mining Council, made a brief statement regarding the mining related rulemaking underway by the Water Quality Division. He thanked the Department for the frank and open dialogue that had occurred to date in the process. He noted that comprehensive comments on the proposed rules had been submitted by the Oregon Mining Council, and that the comments reflect the serious concerns the Council has about the proposed rules. He indicated that additional information was being provided on wildlife concerns, and that the Council would have representatives present at the work session to respond to questions.

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

This item requested Commission approval of a proposed Stipulation and Final Order relating to combined sewer overflows from the City of Portland. The proposed Stipulation and Final Order contains discharge limitations to be met, a detailed

compliance schedule, and stipulated penalties if the City fails to meet the requirements of the order. The proposed order had been discussed by the Commission at meetings on April 25 and June 14, 1991, and at telephone conference calls on May 7, May 21, and June 25, 1991. The proposed order which was presented in Attachment 1 to the staff report included changes made in response to suggestions by the Commission during the June 25, 1991, conference call. Attachment 1 to the proposed order contained proposed interim control measures. The staff report also contained a summary description of the changes made to the order since the last discussion. The proposed changes to the order had been reviewed and accepted by the City of Portland and the entire order had been reviewed and approved by the Attorney General's office.

Barbara Burton of the Water Quality Division staff summarized the proposed changes to the order. At the request of the Commission, Ms. Burton then made an oral presentation which reviewed potential interim control measures for combined sewer overflows and presented the Department's assessment of the available information and potential benefits of each. At the conclusion of this presentation, she noted that the proposed interim measures included in the attachment to the order represented the Department's best judgement on what is appropriate for interim control measures based on current information.

In response to questions from the Commission, Lydia Taylor, Administrator of the Water Quality Division, stressed that the Department is requiring that water quality standards be met in the stream, and that a combination of control techniques, including some separation of combined sewers, would probably be required.

Chair Hutchison summarized the consensus of the Commission that the order, as proposed, is the best that can be done under the complex set of circumstances. Commissioner Wessinger asked what the procedure would be for deleting interim control measures if any proved to be impractical. Director Hansen noted that the permit and/or order could be modified if necessary.

It was MOVED by Commissioner Wessinger that the proposed order as presented in Attachment 1 of the staff report be approved contingent upon signing by the City, and that the Chair be authorized to sign the order on behalf of the Commission. The motion was seconded by Commissioner Castle and unanimously approved.

Consent Items

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

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

This item was removed from the agenda because preparation was not completed.

B. Approval of Tax Credit Applications

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

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.

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

This agenda item requested authorization to hold a rulemaking hearing on proposed amendments to the Waste Tire rules to implement HB 2246 passed by the 1991 legislature. The proposed rules were set forth in Attachment A of the staff report. The proposed rule changes remove certain waste tire carriers from the waste tire carrier permit requirements, establish criteria for a responsible party's contribution to a Department-funded tire pile cleanup, regulate the storage of waste tire chips, require self-haul or use of a permitted waste tire carrier to transport waste tires for proper disposal and requires records to be maintained on the disposal, ban the disposal of waste tires in landfills, and change the priorities for use of reimbursement funds for waste tire reuse or recycling.

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)

This agenda item requested authorization to hold a rulemaking hearing on rules to establish fees for inspections, review and certification of oil spill prevention and emergency response plans for vessels and facilities. New rules are necessary to implement SB 242 passed by the 1991 legislature. A specific rule draft was not presented with the agenda item because it was still being developed in consultation with the affected parties. The Department requested authority to proceed to hearing after the specific proposed rule language is finalized, based on directions in the statute and concepts presented in the staff report.

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

This agenda item requested authorization to hold a rulemaking hearing on rules to increase the fees charged for the Air Quality Vehicle Inspection Program, consistent with existing legal authority and the budget approved by the legislature. The proposed rule amendments were presented in Attachment A of the staff report. The fee for a certificate of compliance would go from $7 to $10, and the fleet self inspection certificate cost would go from $3 to $5.

Action on Consent Items

Agenda Item A was withdrawn from consideration because minutes were not completed for distribution prior to the meeting due to vacations and other staff work priorities.

Tax Credit Applications TC 3491, TC 3498, and TC 3500 were withdrawn because they were previously approved, and were included in the agenda item by error.

Tax Credit Applications TC 3503, TC 3509, TC 3510, and TC 3516 were withdrawn at the request of the applicants to allow additional time for submittal of information requested by the Department.

It was MOVED by Commissioner Whipple that the Department recommendations on the Consent Items, with deletions noted above, be approved. The motion was seconded by Commissioner Lorenzen and unanimously approved.

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

This agenda item proposed adoption of rule amendments to the Underground Storage Tank Rules as presented in Attachments A, B, C, D, E, and F of the staff report. These rule amendments deal with underground tank technical standards, financial responsibility requirements, enforcement, and underground storage tank cleanup. The proposed amendments make the state program consistent with federal requirements, and are necessary for the state to be authorized to regulate underground tanks in Oregon in lieu of direct federal regulation.

In response to a question from the Commission, Rich Reiter, Manager of the Underground Tank Program, noted that the Department is working on a program of reciprocity with adjacent states for certification of installers and cleanup contractors.

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

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

This agenda item proposed adoption of amendments to water quality standards for antidegradation, bacteria, mixing zones, toxic substances, biological criteria, and turbidity as presented in Attachment A of the staff report. The recommended action completes the triennial review of standards that began with the circulation of 14 issue papers for public review and comment, followed by workshops to discuss the issues, authorization by the Commission in November 1990 for rulemaking hearing, eight public hearings in January 1991, and EQC Work Session discussion in April 1991. The staff report summarized the issues raised during the public hearing process on the rule proposals.

Director Hansen and Chair Hutchison noted that this item has been complex and has generated a lot of testimony and concern. Neil Mullane briefly reviewed the material in the staff report. He noted that the Department had originally proposed amendments to the standards for dissolved oxygen and wetlands, and has now withdrawn these proposals pending further technical review and study. He stated that the Department had a proposal for clarifying the wording of the Mixing Zone rule to address recent issues raised on the intent of the rule amendments.

James Denham, representing Teledyne Wah Chang Albany (TWCA), read a letter from Chuck Knoll, Manager of Environmental Quality for TWCA which expressed their concern about the proposed toxic substance standard for chloride and the mixing zone rule. They did not believe that sufficient data was available to support the proposed standard for chloride. They believe the proposed standard is inconsistent with their experience and is not necessary to meet environmental objectives. They also noted that 60 to 90 percent of the chloride in their discharge is the result of air and water pollution control systems. They state that there is currently no economically feasible method of removing chloride from wastewater. They also expressed concern about the intended meaning of the words "significant difference" in the mixing zone proposal. They further suggested that the proposed exemption in the mixing zone rule be applied equally to all discharges, not just ammonia and chlorine. Mr. Denham recommended that the mixing zone rule be clarified and that the proposed chloride standard not be adopted.

Garry Ott, representing the City of Gresham, suggested that the mixing zone rule be clarified along the lines that would be suggested by staff. He noted that water quality standards are not intended to be effluent standards, and should not be applied in the end of the discharge pipe.

A. D. Dority III, representing himself, expressed disappointment with staff response to his hearing testimony relating to wetlands. He suggested that the Department proposals would bring farmland under wetland control, and could be interpreted as the taking of private property. He expressed disagreement with the staff report discussion on wetlands, antidegradation, and biological issues.

Neil Mullane then started the Commission through the proposed rule language in Attachment A, beginning with antidegradation. He passed out a one page summary of how the recommendation for antidegradation would be implemented, and a list of state scenic waterways and federal wild and scenic rivers in Oregon. Krystyna Wolniakowski of the Water Quality Division, used example proposals to explain the difference in how a proposal would handled if a stream were designated has a "high quality water" and as an "outstanding resource water".

Chair Hutchison asked how long it would take to evaluate scenic waterways for designation as outstanding resource waters under the process outlined in option 1 of the staff report. Ms. Wolniakowski responded that the federal and state scenic waterways could be completed by the end of 1992. Chair Hutchison expressed concern about the time it would take, and expressed a preference for a process that would presumptively place all such waterways on the outstanding list, with a burden of proof placed on others to demonstrate that they should not be on the list.

Commissioner Lorenzen noted that scenic waterways are not necessarily designated based on water quality attributes, therefore, automatic designation as outstanding for water quality is not appropriate. Neil Mullane agreed and noted that was why the Department recommended the option 1 process for case by case evaluation and designation only where found appropriate. Lydia Taylor noted that the proposed rule would protect all scenic waterways as "high quality waters" and this classification protects existing quality and is a very high level of protection. The outstanding resource water designation provides extraordinary "non-degradation" protection and is intended to be used only in very special circumstances after careful study. Chair Hutchison emphasized his concern that the Option 1 process would not work and that outstanding resource waters could not be successfully designated. Concern was also expressed by the Commission regarding adequacy of resources to evaluate candidate waters for inclusion as outstanding resource waters and respond to nominations of such waters.

With respect to the proposed amendments to the mixing zone standard, Gene Foster of the Water Quality Division staff explained that the approach proposed is to use whole effluent toxicity criteria for ammonia and chlorine rather than instream criteria, and to provide a zone of immediate dilution at the end of the pipe. The Department presented proposed clarifying amendments to the recommendation on page A-9 in Attachment A. The changes would modify 340-31-___ (4)(b)(A)(i) by adding the words "as measured by a Department approved bioassay method." to the end of the first sentence and adding a new sentence at the end of the paragraph as follows: "The Department may on a case-by-case basis establish a zone of immediate dilution if appropriate for other parameters."

Commissioner Whipple asked about the TWCA concern on the words "significant difference". Gene Foster responded that bioassay procedures define how significant difference is determined. Commissioner Whipple suggested that the second and third sentences of paragraph 340-31-___ (4)(b)(A)(i) be combined to read as follows: "Acute toxicity is lethality to aquatic life[.] as [Acute toxicity is] measured [as] by a significant...."

Neil Mullane suggested that the following language could be added to address the question of definition of significant difference: "For the purpose of this subsection,

"significant difference" shall be determined on a permit by permit basis using current scientific protocol." Dr. Castle indicated that this language gave him problems because scientists will disagree on what is appropriate protocol, and would prefer to remain silent and determine what constitutes a significant difference at the time. Director Hansen noted that if a permittee and the Department were in disagreement, a permittee could raise the issue on appeal of permit conditions to the Commission. This potential amendment was not further pursued.

Gene Foster indicated that the proposed toxicity standard for chloride was taken from EPA criteria, and that the EPA data is supportive. In response to a question from the Commission, he noted that the TWCA data on effluent toxicity does not use the most sensitive species.

After further discussion, it was MOVED by Commissioner Castle that the Department recommendation on the proposed standards for bacteria, mixing zones with amendments proposed by the Department and Commissioner Whipple, toxic substances, biological criteria, and turbidity be approved. The motion was seconded by Commissioner Whipple and unanimously approved.

It was MOVED by Commissioner Wessinger that action be deferred on the Department recommendation relative to the antidegradation standard and that the staff take the comments and concerns of the Commission into account and return the matter to the Commission for consideration in September. The motion was seconded by Commissioner Castle and unanimously approved.

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

This agenda item proposed adoption of rule amendments to the hazardous waste reporting and fee regulations as presented in Attachment A of the staff report. Current reporting requirements do not generate adequate, accurate information about the status of hazardous waste generation and management in Oregon. In addition, current Department and EPA reporting requirements are redundant. The proposed rules would expand, simplify and consolidate reporting requirements to provide adequate information. The current hazardous waste fee structure is regressive and acts as a disincentive to waste minimization because the per ton fee decreases as the quantity of hazardous waste increases. In addition, since current fees are collected only for wastes moved off site, all generators do not contribute fairly for the cost of Oregon's hazardous waste management program. The proposed fee schedule will address these issues and will be phased in over a two year period.

It was MOVED by Commissioner Wessinger that the Department 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 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.)

Martin Loring of the Water Quality Division staff noted that Eugene had modified its program in a manner that the Department believes is inconsistent with the budget note, therefore the new "large lot" deferral program of Eugene cannot be approved.

Terry Smith, representing the City of Eugene, disagreed with the Department's conclusions and stated that Eugene does not believe the budget note was intended to eliminate their large lot program.

After some discussion, the Commission by consensus agreed to defer action on this item until the next meeting so that the Department could do more research on legislative intent relative to the budget note.

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

This agenda item recommended adoption of findings of need and a temporary rule to increase permit fees for solid waste facilities to comply with legislation passed by the 1991 legislature. The proposed temporary rule was presented in Attachment A of the staff report. Attachment B presented the proposed findings of need for the temporary rule. A revised version of Attachment B was distributed to the Commission at the meeting. The Department proposed to reevaluate the compliance determination fee following the adoption of the temporary rule and propose a permanent rule to the Commission during the spring of 1992.

It was MOVED by Commissioner Castle that the Department recommendation to adopt the temporary rule amendments in Attachment A and the findings of need in revised Attachment B be approved. The motion was seconded by Commissioner Wessinger and unanimously approved.

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

This agenda item proposed adoption of a temporary rule to increase Air Contaminant Discharge Permit fees as presented in Attachment A of the staff report, and to authorize hearing on a permanent rule revision. The proposed temporary rule is necessary to increase revenues pursuant to budget approval by the 1991 legislature. The proposed rule provides an overall increase in fees, improved specification of permit categories, and addition of special activity fees. A sheet of corrections to the staff report was distributed.

It was MOVED by Commissioner Lorenzen that the Department recommendation as presented in Attachment A be approved, based upon a finding that failure to act would not allow collection of sufficient revenue within this biennium to operate the air permit program and carry out the statutory requirements to regulate air sources. The motion was seconded by Commissioner Wessinger and unanimously approved.

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

This agenda item presented the request from the City of Butte Falls for financial hardship relief from payment of increased permit compliance determination fees. Commission rules allow but do not require the Commission to reduce or suspend the compliance determination fee upon demonstration of a hardship. The fee in question

is charged for 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. The City has paid $300 of the total $755 that was due July 1990.

The Department recommended that the request of the City be denied. The fee increase is less than $1.00 per resident per year, and the City has not demonstrated a true hardship. The fee is fair and the same charged to other municipalities with similar sewage treatment facilities.

It was MOVED by Commissioner Lorenzen that the Department recommendation be approved. The motion was seconded by Commissioner Castle and approved with four yes votes. Commissioner Wessinger had to leave the meeting prior to action on this item.

The meeting was adjourned at about 5:45 p.m. to reconvene the next morning.

Continuation of Regular Meeting and Work Session

The Environmental Quality Commission Meeting and Work Session was convened on Thursday, July 25, 1991, at about 8:40 a.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, Vice Chair Emery Castle, and Commissioners Bill Wessinger, Carol Whipple, and Henry Lorenzen. Also present were Director Fred Hansen of the Department of Environmental Quality (Department or DEQ) and Department staff.

The meeting began with Martha Pagel, Assistant to the Governor for Natural Resources, briefing the Commission on the Governor's Task Force on State Government that was established for dealing with the affects of Ballot Measure 5. This included the appointment of an overall task force, the review of programs, the review of systems, the review of government structure, and the Governor's Conversation with Oregon.

The Commission then proceeded to complete the agenda from the Wednesday meeting.

L. Information Report: Orphan Site Cleanup

Mike Downs, Administrator of the Environmental Cleanup Division, briefed the Commission on the Orphan Site Cleanup program and the initiation of the Orphan Site Account for funding cleanups where responsible parties are unknown. The Department

is working on seven cleanup projects where persons responsible for the contamination are either unknown, unable, or unwilling to conduct the investigations and cleanup. The 1989 legislature established three fees to support orphan site cleanup work, or to support bond sales to provide revenue for the work. The three fees are the solid waste tipping fee, the bulk petroleum load fee, and the hazardous substance possession fee.

The Department will make a request to the Legislative Emergency Board for authorization of a budget for Orphan Site investigation and cleanup work. Authorization of the budget will initiate collection of fees to support a bond sale planned for November 1991. Projects to receive funding include McCormick and Baxter Creosoting, Milwaukie Area Groundwater, East Multnomah County Groundwater, Nuway Oil Company, Lakewood Estates, and N. W. Pipe and Casing. The Department estimated that this work would require about $7,023,500 in investigation and cleanup work between July 1991 and June 1993. The estimate for cleanup is $20 million.

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

Commissioner Whipple reported that GWEB was meeting on the same day as the Commission meeting, therefore she could not attend. She had been briefed by staff on GWEB issues and had the opportunity to visit some watershed projects.

N. Director's Report (Oral Report)

Director Hansen reported on the following items:

- The State Treasurer's Bond Moratorium may affect the issuance of bonds for orphan site cleanup, the assessment deferral loan program, and the state match for the State Revolving Loan Fund. The schedule for Commission approval to initiate bond sales may slip because of the Treasurer's actions.

- The City of Happy Valley is presently served by on-site sewage facilities and has been an area of concern for some time. The Commission had entered a correction order for the area many years ago. A sanitary survey conducted by a private consultant shows high fecal coliform levels in surface waters in the area indicating continuing failure of on-site systems. The Department will conduct sampling to confirm the problem and will take action to assure posting of areas where there is a potential for public exposure. The Department will return to the Commission with recommendation for any appropriate order or other legal action as needed to solve the problem.

- The Department has established a Governor's award to encourage the implementation of the Toxics Use Reduction program through public recognition. Winners will be presented with a plaque by Governor Roberts at the Hazardous Materials Management Conference in September.

- The Department is working with Bill Naito on an idea he put forward to help Portland's air pollution. Because most of the carbon monoxide and ozone pollution is from cars, Mr. Naito has suggested a program that uses the media to ask people not to drive on days with high potential for air pollution. The Department is planning to launch this program next month.

- The Environmental Cleanup Division has issued the first new list of confirmed release sites. It was issued under a new process that went smoothly.

- Seven municipal NPDES permits that were recently issued have been appealed. These include permits for Salem, Albany, Tri-City Service District in Clackamas County, and four Unified Sewerage Agency permits. An effort will be made to consolidate these appeals. Judge Denecke has indicated a willingness to act as Hearings Officer in these appeals.

Other Business

By consensus, the Commission authorized contracting with Judge Denecke to be the Hearings Officer for the contested case proceedings involving the seven municipal NPDES permits.

The Commission also considered a Petition for Hearing EN BANC filed by James River II, Inc. and Boise Cascade Corporation. This petition asked the Commission to sit en banc to hear and decide matters presented to them at hearing scheduled to commence September 4, 1991, in the matter of NPDES Permit No. 100715 issued to the City of St. Helens on November 14, 1990, and NPDES Permit No. 100716 issued to James River II, Inc. on November 14, 1990.

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

The Commission then proceeded to the Work Session agenda.

Item 1. Review of 1991 Legislative Actions:

The Commission had been provided a summary of bills affecting the Department that were enacted during the 1991 legislative session. John Loewy, Stephanie Hallock, Mike Downs, Steve Greenwood, Lydia Taylor, and Director Hansen summarized the bills passed and responded to questions from the Commission regarding the legislative actions.

The session turned out to be one of significant accomplishment in the environmental arena. Seven of the nine bills introduced on behalf of the Commission and Department passed. These included Senate Bills 66 (Recycling), 184 (Enforcement), 241 (Hazardous Waste Disposal Fees), 242 (Oil Spill Prevention), 330 (Water Quality Funding) and House Bills 2175 (Air Quality), and 2246 (Waste Tires). The Department was unsuccessful with House Bill 2276 (Environmental Laboratory Certification) and Senate Bill 185 (Asbestos In Public Access Buildings).

Several important pieces of environmental legislation not sponsored by the Department, but in which the Department played a role and which will have an impact, were also passed. HB 3343 (Field Burning), HB 2244 (Gold Mining), SB 1125 (Forest Practices), and SB 1215 (Underground Storage Tank Financial Assistance) all passed in the closing days of the session.

The Department also played a role in seeking modification of proposals which were perceived to be inconsistent with good environmental policy. House Bill 3349, as drafted and passed by the House, would have exempted a wide range of lenders and fiduciaries from liability for hazardous waste contamination. The bill as amended in the Senate and ultimately passed was substantially narrowed in scope and impact to be reflective of newly proposed Environmental Protection Agency rules. Another example was House Bill 3419, which would have created a science advisory board apart from the Environmental Quality Commission and to which the Commission would have had to justify many of its actions. The House Rules Committee ultimately decided to drop this proposal after receiving input from the Department and the Commission.

Two procedural bills passed which will have some effect on the way the Department does business. Senate Bill 101 establishes uniform procedures for imposition of civil penalties by state agencies. The bill specifies what notice is required, service of the notice, and judicial review. While the bill will not have a material impact on the Department's current enforcement policy or civil penalty procedures, it may require some minor revisions of the civil penalty rules.

Senate Bill 1233 removes the power of the Emergency Board to modify or to give prior approval to fees and charges. It is the result of the legal challenges to the requirement

for Emergency Board approval of the out-of-state solid waste fee which was established by the Commission pursuant to HB 3515 passed in the 1989 Legislative session. The bill addresses certain other Department related fees that have this statutory requirement (sewage treatment works operator certification fees, solid waste recycling program certification fee, hazardous substance fee) as well as many additional fees related to other state agencies, boards, and commissions.

The bill requires a new procedure for setting the identified fees that previously required Emergency Board approval. This procedure requires prior approval by the Executive Department before the fee may be increased. A report on the action must be submitted to the Emergency Board prior to the approval by the Executive Department of the new fees.

The bill also requires the same procedures be followed for the total amount to be collected annually and deposited in the Orphan site account. The amounts collected are used to pay the debt service on pollution control bonds sold to fund orphan site cleanups. This applies to the three fees that support the orphan site activity: the hazardous substance, petroleum load, and solid waste fees. The amount to be collected shall be subject to prior approval by the Executive Department and a report to the Emergency Board, and the amount must be consistent with the approved budget.

Chair Hutchison discussed the proposed bill to establish a Science Advisory Board that did not pass. He noted that he had expressed the preference for a system that would plug into the existing system of advisory committees used by the Commission and Department rather than establish a single advisory board. Chair Hutchison passed out a draft of rules that the proponents of the Science Advisory Board legislation had prepared for the Commission to consider. These rules would provide for the Commission to appoint a scientific and technical advisory committee to advise the Commission on specific rulemaking actions. Chair Hutchison then asked for advise from the Commission on how to proceed on the issue. He suggested that the staff could return with specific recommendations after it has a chance to review the proposal.

Commissioner Lorenzen indicated he had mixed feelings on the proposal. He felt the need for expert advise on complex technical issues, but was concerned about the relationship with the technical staff of the agency. Commissioner Castle suggested that a special committee of experts established to advise both the staff and the Commission on particular issues may be desirable. He noted that the charge given to any committee is extremely important and requires a lot of staff work to develop. He noted that a science panel would not advise on policy issues; it would advise on specific technical issues that are derived from the policy issue and articulated in the charge to the panel. Commissioner Whipple asked if such a panel would make information available that would not otherwise be available. Commissioner Lorenzen suggested that the role would

more likely be to assist in distilling the information presented to the Department and Commission.

Pete Dalke summarized information handed to the Commission summarizing the budget approved by the Legislature. The Department was before the Ways and Means Committee for 33 days -- the longest appearance for any agency. The total budget exclusive of debt service and loans was $161,482,365 and authorized 618 positions with 568.69 FTE.

Item 3. Discussion of Issues Raised in Testimony on Proposed Rules for Mining Operations using Chemicals to Extract Metals from Ores

Jerry Turnbaugh of the Water Quality Division staff reviewed the activities of the public comment period, including the dates and places the hearings were held, a summary of who provided formal testimony and the nature of the testimony. Mr. Turnbaugh then went on to contrast the position of the Department (as reflected in the proposed rules) with the comments and subsequent proposals by the Oregon Mining Council/Northwest Mining Association (OMC). Most of the discussion centered on the following issues:

1. End-of-pipe tailings cyanide treatment vs. no treatment or "natural" treatment.

2. Use of technology-based waste treatment criteria vs. application of water-quality standards for heaps and tailings.

3. Leak-detection and compliance at the heap liner vs. an allowable perimeter of soil contamination.

4. Positive wildlife exclusion vs. "safe" cyanide level.

The Commission asked questions to clarify points of difference between the Department and OMC. Considerable discussion centered on the applicability of technology-based, BPJ (best professional judgment) criteria for mine waste detoxification versus water-quality-based criteria. The Commission also again sought assurances that the Department has the authority to regulate mining on federal lands.

The Commission concluded the session by requesting Staff to:

1. Complete a summary write-up of the hearings comments.

2. Complete a final draft of the proposed rules, based on the comments received and circulate the draft for review prior to the next Commission discussion of the issue.

3. Arrange for an advisory panel consisting of key representatives of the mining industry, environmental groups and the Department to meet with the full Commission during a Work Session to discuss the proposed rules.

The Commission would then follow the Work Session with specific direction to the Department on the next steps to be taken.

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

Due to the late hour, there was minimum discussion on the strategic plan. Director Hansen noted that there was a need to translate all of the discussion on legislation and budget, and the review efforts of the Task Force on State Government, into the strategic plan. He noted that the existing strategic plan was in harmony with most of the legislation passed in 1991. Therefore, the discussions will be more in the nature of fine tuning.

The Commission noted that discussions resulting from ballot measure 5 will drive issues for the next few months. The Commission asked that some attention be given to streamlining agendas to make more efficient use of staff time. This could mean rescheduling some items to minimize staff that will have to travel to the planned Medford meeting which is scheduled to deal primarily with air quality issues.

After further discussion, the Work Session was adjourned at about 3:30 p.m.

State of Oregon

ENVIRONMENTAL QUALITY COMMISSION

A G E N D A

REGULAR MEETING -- September 18, 1991
DEQ Conference Room 3a
811 S. W. 6th Avenue
Portland, Oregon
8:30 a.m.

8:30 a.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.

8:45 a.m. Consent Items

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

A. Approval of Minutes of the June 13-14, 1991, July 24-25, 1991, and Telephone Conference Meetings

B. Approval of Tax Credit Applications

C. Authorization for Rulemaking Hearing: Revisions to Drug Lab Cleanup Rules to Eliminate Cost Share Requirements

D. Authorization for Rulemaking Hearing: Proposed Increase in Solid Waste Tipping Fee (1) as Required by SB 66, and (2) to Initiate Funding for Orphan Site Cleanup Account (contingent upon E-Board action to authorize spending on orphan sites)

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 Rule Amendments to Incorporate National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos

F. Proposed Adoption of Rule to Authorize Enforcement Section Staff to Represent Department in Contested Case Hearings

G. Proposed Adoption of Amendments to Water Quality Standard for Antidegradation (deferred from July meeting)

Action Items

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

I. Pollution Control Bonds: Authorization to Issue State of Oregon Pollution Control Bonds (approval by State Treasurer also required)

J. Pollution Control Bonds: Review and Approval of Amendments to the Intergovernmental Agreement with the City of Portland; Review of Bond Purchase Agereement; and Authorization of Special Assessment Improvement Bond Purchases from Portland

Information Items

K. Background Discussion: Risk Analysis in Environmental Programs (initial phase of a multi-stage discussion)

L. Background Discussion: Eligibility of Agricultural Practices for Pollution Control Tax Credit Certification

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

N. Director's Report (Oral Report)

O. Chair's Report

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

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

August 27, 1991

State of Oregon

ENVIRONMENTAL QUALITY COMMISSION

A G E N D A

REGULAR MEETING -- September 18, 1991
DEQ Conference Room 3a
811 S. W. 6th Avenue
Portland, Oregon
8:30 a.m.

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Approved

A. Approval of Minutes of the June 13-14, 1991, July 24-25, 1991, and Telephone Conference Meetings

Approved

B. Approval of Tax Credit Applications

Approved

C. Authorization for Rulemaking Hearing: Revisions to Drug Lab Cleanup Rules to Eliminate Cost Share Requirements

Approved

D. Authorization for Rulemaking Hearing: Proposed Increase in Solid Waste Tipping Fee (1) as Required by SB 66, and (2) to Initiate Funding for Orphan Site Cleanup Account (contingent upon E-Board action to authorize spending on orphan sites)

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.

Approved as submitted by staff

E. Proposed Adoption of Rule Amendments to Incorporate National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos

Approved

F. Proposed Adoption of Rule to Authorize Enforcement Section Staff to Represent Department in Contested Case Hearings

Approved w/ minor amendments

G. Proposed Adoption of Amendments to Water Quality Standard for Antidegradation (deferred from July meeting)

Action Items

Approved

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

approved subject to Meeker's recommendation

I. Pollution Control Bonds: Authorization to Issue State of Oregon Pollution Control Bonds (approval by State Treasurer also required)

J. Pollution Control Bonds: Review and Approval of Amendments to the Intergovernmental Agreement with the City of Portland; Review of Bond Purchase Agereement; and Authorization of Special Assessment Improvement Bond Purchases from Portland

Information Items

Directed Staff to adopt policies to include agricultural practices under Sole purpose criteria

K. Background Discussion: Risk Analysis in Environmental Programs (initial phase of a multi-stage discussion)

Received Report to be Put on extended discussion for future Mtgs

L. Background Discussion: Eligibility of Agricultural Practices for Pollution Control Tax Credit Certification

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

N. Director's Report (Oral Report)

O. Chair's Report

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

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August 27, 1991

Approved _____
Approved with corrections ____
Corrections made ____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Phone Conference Update on Legislation
April 30, 1991

The Environmental Quality Commission legislative update telephone conference meeting was convened at about 8:05 a.m. on Tuesday, April 30, 1991. Participating in the conference call were Chair Bill Hutchison, Vice Chair Emery Castle, Commissioners Henry Lorenzen and Carol Whipple, Director Fred Hansen, and John Loewy, Rich Reiter and Harold Sawyer of the Department staff. The public could participate by speaker phone in Conference Room 3b of the Department of Environmental Quality Offices at 811 S. W. 6th Avenue in Portland, Oregon. No members of the public were present.

Rich Reiter reported on the underground tank program legislation that is working its way through the Senate Business, Housing and Finance Committee. Committee Chair Jim Hill appointed a work group that included John Burns for Western States Petroleum Association, Brian Boe for Oregon Petroleum Marketers, Peggy Manning for Oregon Gasoline Dealers Association, and John McCulley for Oregon Agricultural Coops. The Department has worked with this group to come up with an improved or enhanced financial assistance program to help small businesses that can't come up with funding to meet federal requirements.

The group has developed a proposal to (in addition to the existing loan guarantee and interest rate subsidy programs):

- provide direct grants for smaller businesses as follows:
  - a 50% grant to those owning 99 or fewer tanks.
  - an 85% grant for those with fewer than 12 tanks that meet locational criteria (one facility in a city, or one facility in a 25 mile radius).

- Help pay for insurance for a period of up to 6 years.

- Augment the existing interest rate subsidy (to as low as 1.5%).

- Continue the existing tax credit program.

The proposed program could provide assistance totaling 84% of project expenses for the first 6 years for qualifying businesses, leaving them 16% to pay. This is a substantial enhancement of the existing program. Others could get 66% of project expenses paid, leaving them 34% to pay.

Funding for the program would total $100,000,000 to pay for the direct assistance, plus $34 million for the tax credits. Tank owners would pay $148 million. These estimates are based on the universe of owners that sell to the motoring public.

The proposed funding source is a 1 cent per gallon fee on persons taking delivery of motor fuel. An Attorney General's opinion is being prepared on the funding proposal. The preliminary view is that it will not conflict with the Highway Trust Fund. A fall-back position on funding would be to increase current fee of $10 per load to $65 per load. This fee, levied over several additional years, would raise same amount of revenue.

The Department is also talking to EPA about suspending enforcement during the four years that construction would be underway. EPA may go along with an aggressive program such as this.

The concept and recommendation will be presented to the Committee later in the week.

Commissioner Lorenzen said he was thrilled to hear the direction this was going. Commissioner Castle agreed, but expressed caution about getting operators into too much debt. Commissioner Whipple agreed.

Mr. Reiter noted that banks will still be involved in the process and will be evaluating the ability of the businesses to repay debt. In response to a question from the Commission, Mr. Reiter also noted that the program would be available for construction back to September 1989, assuming the business meets the criteria for benefits. Thus there would be no disadvantage to those who proceeded to get into compliance earlier.

Director Hansen then reported to the Commission on discussions that are continuing on legislative provisions related to forestry activities and water quality. He read draft language put together on Friday regarding reporting by the Board of Forestry to the Governor on evaluation of Best Management Practices, and requiring action to prevent significant deterioration of water quality while forest practices are being revised to address significant problems identified in the evaluation process.

Commissioner Castle urged that the provision needed to assure compliance with water quality standards and best management practices (BMP's). Director Hansen stated that the use of the word effectiveness (to meet water quality standards) was intended to address both issues. Chair Hutchison suggested the language include effectiveness and extent of compliance with BMP's which are designed to achieve water quality standards. He also stated support for the language which would prohibit significant deterioration in the interim. Director Hansen noted that further discussion on this would take place later that day with the Forestry Department.

Chair Hutchison asked if subparagraph 5 which includes factors we consider in setting standards was needed. Director Hansen noted that the provision was discretionary, and reflects current practice.

Commissioner Lorenzen then advised the Commission of his concerns with the draft stipulated order on Portland Combined Sewers Overflows (CSO) provided to the Commission at the last meeting. His concerns were as follows:

- Page 2, Paragraph 3 which lists CSO discharges in the permit: This serves no purpose in a stipulation. If we want to provide some history of past assumptions or decision, it should be placed in another document.

- Page 4, top of page: The wording "and to limit and resolve the future violations resolved in paragraph 5" should be changed. It is inappropriate to resolve future violations or to try to limit the ability of this or future commissions to deal with future violations. It would be preferable to delete "and resolve the" and make it read "limit future violation."

- Page 4, beginning on the third line with the underlined material ("This action by the Commission and Department constitutes diligent prosecution of all violations that may have occurred prior to the effective date of this Order"): This sentence should be removed because it adds nothing (i.e. it is if it in fact is, not because we say it is).

Chair Hutchison noted that the Portland stipulated order should be subject for discussion at a future conference call meeting.

The telephone conference was adjourned at about 8:55 a.m.

Approved _____
Approved with corrections ____
Corrections made ____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Phone Conference Update on Legislation
May 7, 1991

The Environmental Quality Commission legislative update telephone conference meeting was scheduled to convene at 4:30 p.m. on Tuesday, May 7, 1991. The public could participate by speaker phone in Conference Room 3b of the Department of Environmental Quality Offices at 811 S. W. 6th Avenue in Portland, Oregon.

Prior to the regular conference call meeting, a conference call discussion was convened at 4:20 p.m. on proposed legislation which involves issues relating to forest practices and water quality. Present on the conference call were Chair Bill Hutchison, Vice Chair Emery Castle, Director Fred Hansen, Board of Forestry Chair Janet McClennan, Water Quality Division Administrator Lydia Taylor, and Harold Sawyer of the DEQ staff.

Director Hansen summarized the concerns that related to the proposed forestry bill, and the need to clarify the position Department staff should take in testimony before the Senate Agriculture and Natural Resources Committee on Wednesday morning.

After extensive discussion, it was concluded that the Department should support statutory language that would require an evaluation of the effectiveness rules applying to forest practices to be included in the triennial review that the Board of Forestry and Department of Forestry would conduct pursuant to the Administrative Practices Act. It was also concluded that any additional statutory delineation of factors to be considered in the adoption of water quality standards should be generally applicable to all non-point sources and not just forest activities, that such criteria should appear in the water quality statutes, and that such criteria would be considered only "where applicable". Director Hansen expressed some concern with the precedent setting nature of requiring consideration of criteria applicable to a specific class of sources when setting water quality standard to protect all beneficial uses.

Janet McClennan then left the Conference Call and Commissioners Lorenzen and Whipple were added. Commissioner Wessinger was out of town and not available for the call. Also participating were Jeff Baumann of the City of Portland, Craig Johnson representing Northwest Environmental Advocates, and other staff members. The regular conference call meeting was convened at about 4:50 p.m. The only item for discussion was the Draft Stipulated Order for the City of Portland regarding Combined Sewer Overflows.

Lydia Taylor noted that the Commission had discussed the Portland order at its meeting on April 25, 1991. The Department redrafted the proposed order and summarized changes in

a Memorandum to the Commission dated April 26, 1991. The question before the Commission was whether the changes met the Commissions concerns. Director Hansen indicated that if the Commission was comfortable with the proposed order, it should authorize the Department to forward it to the City for signature. He also suggested that the Commission could authorize the Chair to sign the order on behalf of the Commission following approval by the City.

Barbara Burton of the Water Quality Staff noted that the Chair had asked questions about interim controls. The Department had provided Commission members with a memorandum on the matter and did not propose any further changes in the order relative to interim controls.

Chair Hutchison noted that he had received a proposal from the City for a new paragraph to be inserted between paragraphs 13 and 14 and asked for the staff recommendation on that proposal. Lydia Taylor responded that the Department does not believe the paragraph is needed because the order already contains the necessary flexibility.

Director Hansen read the proposed language as follows:

> Regarding the Commission's approval of the facilities plan as referenced in paragraphs 9(a)(6) and 13 above, it is anticipated that the Commission will require full compliance with all the terms, design criteria, schedules, and limitations called for in this stipulation and final order; however, as part of this approval process, the Commission will give due consideration to federal and/or state regulatory guidance in existence at that time, the reasonableness of alternative design criteria, control strategies, and schedules which may be presented before the Commission.....

Director Hansen noted that the language seems to add nothing and not be necessary, however, it could have some future implications. Chair Hutchison stated he thought it should be left out.

Jeff Baumann, representing the City of Portland, noted that the City believed a clearer statement of intent was needed. The facility plan is not complete, federal guidance on some issues has not been issued, and better information will be available later. The City was concerned that the present order, as drafted, is permissive and would allow the Commission to consider the better information, but would not clearly express the intent to do so.

Director Hansen noted that part of the concern is the use of the word "will" (..will give due consideration to...) rather than may. Lydia Taylor noted also that the proposed wording does not consider water quality standards, and limiting consideration to EPA regulatory guidance that is technology based rather than water quality based would be a problem.

Commissioner Lorenzen noted that future Commissions could always consider modification of the order, therefore, he saw no need to include the proposed language in this order.

Commissioner Castle indicated he was troubled by the proposed paragraph and agreed that it should not be included.

Chair Hutchison asked for further discussion on interim measures and asked Barbara Burton to discuss the matter. Ms. Burton noted that the question was whether there were interim control measures on combined sewer overflows that could be taken that would be effective pending completion of the permanent long-term solution. The Department evaluated the matter during the drafting of the order. The order requires the City to evaluate and propose interim controls for Department review, but does not require specific controls. The Department has been unable to develop satisfactory criteria for approval of such controls, is concerned about potential cost relative to benefit, and does not want to see measures implemented that would later have to be thrown away because they were inconsistent with the long term controls. Ms. Burton then reviewed several potential interim control measures considered by the Department.

Chair Hutchison agreed with the need to consider costs and benefits, but remained concerned about the length of time that it will take to implement the program, and the desirability to show progress sooner. Lydia Taylor noted that the permit does contain requirements for notification of the public. The permit is subject to renewal every five years and that interim control measures or other requirements can be added during renewal if needed to address public concerns.

Commissioner Lorenzen asked if the Commission was under pressure to act. Lydia Taylor noted that the Department is under pressure from EPA to issue the City's permit by June 30, 1991. The permit and stipulated order must be coordinated and issued simultaneously.

Craig Johnson, representing Northwest Environmental Advocates (NEA), urged the Commission not to approve the order at this time. He noted that his client was seeking to reach resolution of their lawsuit with the City by the end of May. They hope to reach agreement for a Consent Decree issued by the Court. They believe a Consent Decree would override a stipulated order and make it unnecessary. Jeff Baumann representing the City of Portland indicated that negotiations were ongoing with NEA.

Chair Hutchison expressed his desire to see the Department play a role in resolution of the dispute between the City and NEA. He noted it was important to do things right, even if it took more time. Commissioner Lorenzen asked is there was any harm in delaying the stipulation. Lydia Taylor responded that there was not. Director Hansen noted that EPA is concerned with the backlog of renewal permits, and the Department needs to issue the permit.

Commissioner Lorenzen asked if the issuance of the order would reduce the incentive of the City to settle the lawsuit. Craig Johnson responded that it would not, however, the City would use the order as justification for not including additional provisions in the settlement.

Commissioner Whipple expressed the desire to delay consideration of the proposed order for up to two weeks. Director Hansen noted that if the permit is issued without the order, the City is in instant violation. The order sets forth the program and schedules for dealing with those violations. Issuance of the permit and order would probably strengthen the City's hand in dealing with the Court. Chair Hutchison urged the City and NEA to reach settlement of their issues. Finally, he stated that the permit and order should be issued together.

Chair Hutchison summarized the consensus that the Commission not act now, and consider the matter again in two weeks.

The telephone conference was adjourned at about 5:45 p.m.

Approved _____
Approved with corrections ____
Corrections made ____

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ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Phone Conference Update on Legislation
May 14, 1991

The Environmental Quality Commission legislative update telephone conference meeting was convened at about 4:00 p.m. on Tuesday, May 14, 1991. Participating in the conference call were Chair Bill Hutchison, Vice Chair Emery Castle, Commissioners Henry Lorenzen, Director Fred Hansen, and Harold Sawyer, Steve Greenwood, Wendy Sims and Brian Finneran of the Department staff, and Shelley McIntyre of the Attorney General's office. Commissioner Whipple was added to the conference call shortly after it began. The public could participate by speaker phone in Conference Room 3b of the Department of Environmental Quality Offices at 811 S. W. 6th Avenue in Portland, Oregon. Several people were present representing the public.

Director Hansen introduced the first topic of discussion which was consideration of the Proposed Adoption of Amendments to the Industrial Volatile Organic Compound (VOC) Rules for the Portland Non-Attainment Area. This item was considered at the April 26, 1991, EQC meeting, and was deferred until the May 14, 1991, conference call to allow the Department time to meet with affected industries on the proposed rules.

Brian Finneran, of the Air Quality Staff, explained that the Department had met with the industries on two occasions. A summary of the major issues, and the resolution proposed was faxed to the Commission members this morning. Mr. Finneran reviewed the major issues, and Department Response as follows:

1. Sources should be given time to comply through compliance schedules established by permit modification, without enforcement action.

   Answer: The Department intends to issue compliance schedules, and recommends exempting affected sources by rule for a 60 day period.

2. The Department is not required to adopt a rule requirement to apply RACT (Reasonably Available Control Technology) to major sources not covered by federal CTGs (Control Technology Guidance document).

   Answer: Based on written confirmation of this requirement from EPA, the Department does not recommend its deletion.

3. Special provisions in the VOC rules should not require EPA approval through "source-specific SIP revisions".

Answer: EPA has confirmed these are required, and therefore the Department does not recommend deleting this requirement.

In response to a question from Chair Hutchison, Mr. Finneran stated that the industries had accepted the recommendations as presented. In response to a question from Chair Hutchison, Shelley McIntyre noted that she is handling litigation that is directly related to this issue. She has noted in her answer in the case that the Commission would be considering the matter. Further, she indicated that the litigation is not driving the action proposed but that action by the Commission would be helpful in the litigation.

Pat Parenteau, representing Boeing, noted that the Department had been responsive to Boeing's request that a compliance schedule be incorporated in the permit. He stated that it will be necessary to build into the compliance schedule the time that it will take EPA to approve alternative emission limits.

Director Hansen noted that an argument has been advanced that since the rule adopted by the Commission several years ago was not in compliance with federal law and was therefore not appropriate, there should be immediate compliance with the new rule upon promulgation. The Department believes that it is legitimate for Oregon sources to rely on the rule adopted by the Commission until it is changed. The Department also believes it is important for sources to move rapidly to achieve compliance with the new rule. Therefore, the Department is proposing that if a specific compliance schedule is not agreed to within 60 days, then the source will be in violation of the new rule. This is an incentive to get a compliance schedule in place in short order. Director Hansen concluded that the Department is asking the Commission to adopt the rules with the amendments proposed.

Mr. Finneran then reviewed a number of minor issues that were raised and the changes (clarifications) recommended by the Department in response as summarized in the materials faxed to the Commission.

Teresa Perone, representing Textronix, noted for the record that they have a question as to whether the PSEL (plant site emission limit) is federally enforceable, and are awaiting resolution of the question.

David Paul, representing the Sierra Club, urged the Commission to reject the Department recommendation under the minor issues to add three months to the time allowed for RACT analysis. He further stated that the Commission should pass the rule, but anything less than immediate compliance would not make his client happy.

Mr. Finneran responded that since there are no federal guidelines for how to develop RACT for non-regulated sources, there may be come difficulty in completing the process. Therefore, the Department recommended the revision to give the Department the ability to approve an additional 3 months "for good cause".

In response to a question from Chair Hutchison, Wendy Sims stated that the proposed rule addresses requirements of the 1990 Clean Air Act as well as requirements that were not properly addressed from the earlier legislation. Commissioner Castle noted that the Department's position seemed reasonable. Commissioners Lorenzen and Whipple agreed.

It was MOVED by Commissioner Castle that the proposed Rules, as amended by the Department's recommendations, be adopted. The motion was seconded by Commissioner Lorenzen and unanimously approved by the four members participating in the conference call.

Director Hansen reported that the Department is in the 10th day of presentations before the Ways and Means Subcommittee. To date, the Department has completed an overview, and is almost through with the Water Quality Program discussions. A public hearing on the budget has also been held. Discussions are focusing on the substance of the issues.

With respect to the Air Fee bill (HB 2175), there will be a work session to mark up the bill. A minority report is expected. The American Electronics Association is supporting the funding levels in the bill. The Northwest Pulp and Paper Association opposes the funding levels. There is some support from industry for the fees on woodstoves and a start of fees on automobiles.

Commissioner Whipple asked about the Science Advisory Board bill. Chair Hutchison noted that both he and Vice Chair Castle had testified on the bill. They had provided detail on the advisory committee process used by the Commission and Department. The bill had been tabled.

Director Hansen noted that most other bills were through one house and either in the other house or before ways and means. The only Commission bill that was tabled so far was the Lab Certification proposal. He also noted that there had been meetings with the Department of Forestry and the Oregon Forest Industries Council on the forestry bill (SB 1125). Few differences are left, and language is being worked out.

Finally, Director Hansen noted that FERC had adopted a rule on May 8 that appears to ignore conditions of state certification under Section 401 of the Clean Water Act. The Department intends to appeal the FERC rule determination.

There was no further business, and the telephone conference meeting was adjourned at 4:55 p.m.

Approved _____
Approved with corrections ____
Corrections made ____

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ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Phone Conference Update on Legislation
May 21, 1991

The Environmental Quality Commission legislative update telephone conference meeting was convened at about 4:00 p.m. on Tuesday, May 21, 1991. Participating in the conference call were Chair Bill Hutchison, Vice Chair Emery Castle, Commissioners Bill Wessinger, Henry Lorenzen, and Carol Whipple, Director Fred Hansen, John Loewy, Lydia Taylor, Barbara Burton, and Harold Sawyer of the Department staff. The public could participate by speaker phone in Conference Room 3b of the Department of Environmental Quality Offices at 811 S. W. 6th Avenue in Portland, Oregon. Several people were present representing the public.

John Loewy reported that HB 2175, the Air Fee bill, was voted out of the House Energy and Environment Committee and was on its way to the floor with a minority report. The procedures do not allow for floor amendments. Bills are either approved or rejected on the floor. Two or more members can file a minority report. The committee bill and the minority report are debated on the floor at the same time. The committee bill reflects the position taken by the Northwest Pulp and Paper Association and would provide funding for 3.6 FTE rather than the 8-11 FTE the Department feels is necessary. The bill bases emission fees on actual emissions rather than ultimate emissions. It restricts the Commission's ability to take any actions more stringent than those provided for in the Federal Clean Air Act. It also includes criminal penalty provisions which the Department believes are premature because EPA has not written rules to define what will be necessary to meet the Clean Air Act requirements. The minority report contains language regarding wood stoves and includes a fee on motor vehicles. In response to a question from Commissioner Wessinger, Mr. Loewy indicated that the minority report is expected to fail in the house, and the committee bill will be passed and then go to the Senate.

Director Hansen reported that the Department was in its 14th day before the Ways and Means Committee. The committee appears satisfied on the presentation of program issues. The overall concern is that the individual issues add up to a budget increase that will be difficult to pass on the floor. The current strategy on other budgets has been to place the base budget in one package, and then assemble packages that involve fee increases in a manner to hopefully secure approval. Agriculture and Fish and Wildlife budgets were defeated on the floor, which suggests the potential difficulties ahead.

Barbara Burton presented an update on the City of Portland order. She reported that Portland and Northwest Environmental Advocates (NEA) have met and been exploring near-

term interim controls. The discussions appear to be in a preliminary stage. The Department has written to the City asking for more detailed information on interim controls, and the City has replied. The response is quite qualitative at this point. Within the next 30 days, the City will come up with a list of interim measures that are quick to implement. It will still take 12-18 months before more detailed interim control measures are defined.

In response to a question from Chair Hutchison, Ms. Burton indicated that the Department would like to wrap things up by June 30. The long term controls will not be known by that time. However, a condition in the order would require the City to study long term study and submit the results to the Department. If the Commission is reasonably satisfied with the order, it could be sent to the City for review. The City could also be asked to respond with a list of interim controls they are prepared to implement.

Commissioner Lorenzen asked about the status of negotiations between NEA and the City. Ms. Burton responded that negotiations are under way, and they are pushing to conclude them by June 30. The Department could append whatever they agree on to the stipulated order.

Commissioner Lorenzen asked if the litigants had reviewed the proposal. Nina Bell responded that NEA's attorneys are out of town and have not reviewed the City's written response to the Department letter. Ms. Burton indicated the April 26, 1991, draft of the order is the latest draft; the list of interim measures would be the one that the City would submit based on negotiations with NEA and is therefore not available yet.

Commissioner Whipple indicated she was looking for more specifics on interim measures and would be satisfied if her understanding is correct that more specifics would be added by a list attached to the order. Ms. Burton indicated that what would come back from the City would be a signed order with an appended list of interim controls that would be implemented by specific dates.

Nina Bell noted that Pat Parenteau has indicated that he has a few more comments on the Draft Order. She also stated the position of NEA that an order should not be entered until near the end of June to give the parties time to conclude negotiations.

The Commission indicated that it would start the process of looking at the form of the order now with the target for completing the order was the end of June.

Chair Hutchison advised the Commission of concerns brought to him by the Chair of the Fish and Wildlife Commission about the Governor's proposal to restrict filling of management positions in state government during the next biennium and the potential adverse impact it could have on their ability to do their job. Director Hansen noted that the Governor is proposing that the Executive Department review and approve of the filling of existing management positions and that there is to be no net increase in the number of management positions during the next biennium. Fish and Wildlife could be hit hard because

they have 23 managers retiring on July 1. DEQ has a "flat" organization with fewer managers than most agencies, thus the review process is not expected to present a problem to DEQ.

Chair Hutchison asked Director Hansen to report on the status of the legislation the deals with the relationship between the Department of Forestry and DEQ on water quality. He expressed concern about this legislation and its relationship to the requirements of the Federal Clean Water Act.

Director Hansen summarized concerns being expressed by the environmental community. These were whether the word "impact" would be more appropriate than "prevent" relative to achievement of water quality standards, whether findings would be required to support a decision by the Board of Forestry to dismiss a petition for review, and whether effluent limitations (as defined in the Clean Water Act) should be applied to forest activities. On this last point, the language of the bill would prohibit the EQC or DEQ from imposing effluent limits unless specifically required to do so by federal law. Of greater concern, however, is the relationship between the load allocations for Non-Point Sources on a TMDL stream and effluent limits, and the issue of whether BMP's are a means of achieving a load allocation or whether the BMP's replace the load allocation. Director Hansen noted that the Board of Forestry and the EQC may need to talk on these issues, but it may be difficult due to the desire of the Senate to get the bill out on Wednesday.

Chair Hutchison asked if it would be possible to delete the section on effluent limits from the bill. Lydia Taylor advised that Forestry would never agree to that. Chair Hutchison stressed the importance of DEQ maintaining primacy for the Clean Water Act, and for assuring that state legislation does not conflict with the federal law. Ms. Taylor advised that the Environmental Community has been asked to suggest alternative wording. In addition, Michael Huston is reviewing the language of the bill. The Commission supported the effort for legal review.

There was no further business and the telephone conference meeting was adjourned at about 4:50 p.m.

Approved _____
Approved with corrections ____
Corrections made ____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Phone Conference Update on Legislation
May 28, 1991

The Environmental Quality Commission legislative update telephone conference meeting was convened at about 4:00 p.m. on Tuesday, May 28, 1991. Participating in the conference call were Chair Bill Hutchison, Commissioners Bill Wessinger and Carol Whipple, Director Fred Hansen, and Harold Sawyer of the Department staff. The public could participate by speaker phone in Conference Room 3b of the Department of Environmental Quality Offices at 811 S. W. 6th Avenue in Portland, Oregon.

Director Hansen reported that the House considered HB 2175 (the Comprehensive Air Bill) and the minority report last friday. The minority report was defeated, receiving only about 14 votes. The majority report then passed 59-0. The bill now moves to the Senate.

SB 66, the vehicle chosen by the Senate to address solid waste issues, included several major components: goals and standards for recycling to be established by the EQC, a statewide information hotline to be run by METRO, and a major household hazardous waste collection and cleanup effort to be funded by a $0.50 increase in the solid waste tipping fee. The bill passed the Senate unanimously. The bill was before the House yesterday. The House agreed to delete the information hotline and the household hazardous waste provisions. The bill now will either go to a conference committee or to the ways and means committee.

The players on the forestry bill (DEQ, Forestry, the Forest Industries Council, and the Environmental Groups) reached general agreement on the water issues. The amendments involved three amendments and four words. The committee voted the amendments out unanimously to the Senate floor.

Commissioner Wessinger asked if anything was happening on mining. Director Hansen responded that the House committee took up the issue. Martha Pagel's work group led the effort and reached agreement on the administration's proposal to take forward. The proposal was introduced on the House side and came out of committee and is headed though the process. That legislation includes a moratorium on new mining applications until October 1 to give agencies time to assure that all rules are in place. The legislation has a good chance of making it. Commissioner Whipple noted that she had received a package from the mining council and wondered if it applied to all agencies or just to DEQ. Director Hansen noted that one of the issues has been the proposal to require highest and best practicable technology relative to all agency requirements. The package forwarded to the EQC members by the mining council asserts that DEQ has gone beyond what is practicable to the

"theoretically possible, but not doable". While all agreed to the general concept of best practicable, there will be disagreement when you get to the specific application.

Director Hansen reported that the Department has been before Ways and Means for 17 days so far, and will be there for about another two weeks. The discussion on the programs and issues has been good, with good questions, and good understanding. However, there is not agreement on what the budget should look like. The problem will be that when the pieces are added up, the total will exceed the target. In addition, the fees exceed the limits discussed by the Republican Caucus. Fee payers are generally supportive of the fee proposals. Director Hansen also noted that the Department's budget staff has been spending 14-16 hour days to assemble the data requested by the committee.

On other items, Director Hansen noted that Boise Cascade and James River have petitioned the Commission for modification of the dioxin standard. The petition is scheduled for consideration at the June 14 meeting. The agenda item on water quality standards triennial review was originally scheduled for the June meeting but will be postponed due to the diversion of resources to legislative activities. Extensive testimony was received on proposed mining rules, and it will take beyond the June meeting to evaluate the comments and prepare recommendations. Director Hansen noted that it may be desirable to have a work session for in-depth discussion prior to consideration for rule adoption.

Commissioner Wessinger announced that he would be out of town and unable to attend the June 13-14 meeting.

There was not further business, and the telephone conference meeting was adjourned at about 4:25 p.m.

Approved _____
Approved with corrections ____
Corrections made ____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Phone Conference Update on Legislation
June 4, 1991

The Environmental Quality Commission legislative update telephone conference meeting was convened at about 4:00 p.m. on Tuesday, June 4, 1991. Participating in the conference call were Chair Bill Hutchison, Vice Chair Emery Castle, Commissioners Bill Wessinger, Henry Lorenzen and Carol Whipple, John Loewy, Bruce Sutherland, and Harold Sawyer of the Department staff. The public could participate by speaker phone in Conference Room 3b of the Department of Environmental Quality Offices at 811 S. W. 6th Avenue in Portland, Oregon.

John Loewy reported that the Department has been before the Ways and Means Committee for 20-21 days so far, has this week off, and will be back next week. The overviews of all programs except Agency Management have been completed. Of nine bills proposed by the Department and Commission, five are in Ways and Means, and 2 more will arrive tomorrow. The enforcement bill came out of the House Energy and Environment Committee on an 8-1 vote and is headed to the floor. If it passes, it will be the first Department bill to reach the Governor for signature.

Chair Hutchison asked how the Comprehensive Air Fee bill looks regarding inclusion of the automobile fee. Mr. Loewy reported that the House passed the bill without the auto fee. The Senate is expected to put in a motor vehicle component and a wood stove component and then send the bill to Ways and Means. The bill is expected to end up in a conference committee unless Ways and Means strips it to the house version.

Bruce Sutherland reported on the Oil Spill Bill. The Department has worked with industry to put a compromise package together that is consistent with the State of Washington and Federal programs. The bill requires facilities to have contingency plans. The EQC is to establish standards for contingency plans, rules for vessel inspections, and criteria for training. DEQ is required to review the plans and inspect vessels. The EQC can also assess fees. The bill is through the Senate and is now in the House Energy and Environment Committee. The bill will be heard again on Wednesday.

John Loewy reported that substantive committees must report bills out by Friday. Bills not reported will be dead.

There was no further business and the telephone conference was adjourned at about 4:20 p.m.

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.

Approved _____
Approved with corrections _____
Corrections made _____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Phone Conference Update on Legislation
June 18, 1991

The Environmental Quality Commission legislative update telephone conference meeting was convened at about 4:10 p.m. on Tuesday, June 18, 1991. Participating in the conference call were Chair Bill Hutchison, Vice Chair Emery Castle, Commissioners Henry Lorenzen and Carol Whipple, Larry Edelman of the Attorney General's office, Lydia Taylor, Barbara Burton, and Harold Sawyer of the Department staff. The public could participate by speaker phone in Conference Room 3b of the Department of Environmental Quality Offices at 811 S. W. 6th Avenue in Portland, Oregon. Nina Bell, Pat Parenteau, and Craig Johnson representing Northwest Environmental Advocates, and Mary Nolan, Bob Eimstead, and Jan Betts of the City of Portland were present representing the public.

Lydia Taylor, Administrator of the Water Quality Division announced that Fred Hansen and John Loewy would not be able to join the telephone conference because they were in Salem meeting on the Air Fee bill.

Ms. Taylor reported on the status of legislation as follows:

HB 2246 (Waste Tire Bill) - There is discussion of continuing the fee on waste tires (beyond the one year extension previously agreed to) for the purpose of funding parks.

SB 184 (Enforcement Bill) - This bill is not yet dead. It is up for hearing Thursday in the House Judiciary Committee.

HB 1125 (Gold Mining Process Bill) - This bill has passed the Senate and the House and is in Ways and Means. This bill is the compromise "process" bill that provides for a single consolidated application to the State for any large mine proposal. Uniform consolidated hearings would be held, a "mini" EIS would be done, and then all agencies would proceed with there individual permit issuance processes under their individual authorities.

SB 66 (Recycling Bill) - This bill has been returned to the House Floor. The bill now has a fee of $0.35 per ton during the upcoming biennium, and would be reduced to $0.31 per ton the subsequent biennium, and substitutes general fund dollars to make up the difference between the $0.35 and the original $0.50 per ton in the budget.

SB 241 (Hazardous Waste Fee Bill) - This bill would impose an additional $10 per ton fee at the Arlington Hazardous Waste site. The bill is going back to the Senate floor for consideration.

SB 185 (Asbestos in Public Buildings Bill) - A hearing is scheduled in Ways and Means. There is a fair amount of opposition to this bill from industry.

SB 242 (Oil Spill Planning Bill) - A hearing is scheduled before Ways and Means. The bill has passed both the Senate and the House.

SB 330 (Water Quality Fee Bill) - This bill will be before the Ways and Means Committee again on Wednesday. The committee may choose to substitute general fund for the proposed fees on 401 certification and TMDL work.

Budget - The budget is still before Ways and Means. The budget is not expected to come out of Ways and Means before a week from Friday.

Commissioner Lorenzen asked about the status of the Science Advisory Board bill. Chair Hutchison advised that Jay Waldron and Pope and Talbot had asked to meet with him on Friday to discuss some sort of a proposal for an EQC approach that would treat the issue.

Lydia Taylor and Barbara Burton then discussed modifications to the proposed Stipulation and Final Order for the City of Portland, and the proposed Attachment I for interim measures.

Barbara Burton walked the Commission through the proposed changes to the order. In addition to minor editorial changes, the following more significant changes were made:

page 4, line 11 - the change would reinforce the idea that the schedule would be shortened if in fact it was possible to correct the discharges in less than 20 years.

page 4, lines 15-17 - the change would insure that there will be a good initial outline of the study so all can be sure that information gathered in the facility planning process will be sufficient for the Department and the Commission to make decisions. Chair Hutchison, Commissioner Lorenzen, and Pat Parenteau, representing Northwest Environmental Advocates, asked for an inventory of existing information currently available as well as detail on how added information will be obtained. Portland had no objection to the addition. Chair Hutchison noted the concept could also be included on the next page in paragraph 2.

page 5 - the change would required detailed information on implementation and financing in the facility plan regarding how the City would comply under alternative deadlines of 10 years, 15 years, and 20 years.

Commissioner Lorenzen asked if it would be appropriate to change the compliance schedule in the order to bring the full system into compliance in 15 years with the opportunity to modify the date if the facility plan indicates that is not practical. Ms. Burton indicated there were already two places in the order already where the Commission will look at alternative schedules if they are appropriate after review and evaluation of the Facility Plan. She noted that the Department believes that 20 years is ambitious, but a realistic schedule. Mary Nolan, City of Portland, noted that the Facility plan is not a trivial undertaking, and will cost more than $2 million. She suggested that public funds not be spent chasing after something (a 10 year schedule) that is impossible to achieve. Commissioner Lorenzen agreed and further noted that it is easier to loosen deadlines than tighten them.

Commissioner Lorenzen asked why it should take 7 years after the start of studies for the beginning of construction on the permanent solution. Mary Nolan responded that construction will be started on other elements sooner. Also the facility plan must be completed, reviewed and approved by the Department and Commission before it would make sense for the City to commit funds to the design process. Bob Eimstead noted that major construction will be required prior to 1998 by other provisions of the order (removal of solids from discharged to Columbia Slough for example). Pat Parenteau suggested that the Commission either establish a 15 year target date for completion of construction as a "political statement" to guide the facility planning process, or leave the dates out all together until the facility plan is complete, and then establish the schedule. He suggested that any dates placed in the order now would probably change. Jan Betts, Attorney for the City of Portland, stated that there is data available to support the 20 year deadline, and the city would prefer to see the 20 year date in the order at this time with it changed in the future if the facility plan dictates. Chair Hutchison expressed his preference that the order clearly require completion as soon as practicable, and that the matter will be revisited at the conclusion of the facility plan.

Lydia Taylor noted that it was the Department that wanted a specific deadline in the order. The City would have been happy leaving it until the facility plan is complete. Commissioner Lorenzen suggested that if the Commission stays with 20 years, there should be language in the order that would not allow any slippage without an extraordinary showing that 20 years was not achievable. Commissioner Castle suggested that it may be appropriate for the language to clearly state that the time may be shortened from the 20 years upon review of the facility plan. Commissioner Whipple said she wants the order to nail down the up front commitment so that all understand it must be done. She stated she leaned toward a 15 year target in the order with extension only upon demonstrated need. Commissioner Castle indicated he would have no objection with 15 years if the rest of the Commission was more comfortable. Chair Hutchison and Commissioner Lorenzen also agreed. By consensus, the Commission agreed that the deadline for completion in the order should be December 1, 2006.

Mary Nolan advised the Commission that the order, with changes suggested, would be requiring the City to produce two facilities plans -- a 15 year and a 20 year. While the City

understood the Commissions concerns, they had no information to suggest that the 15 year date was doable, therefore, the order would be asking the City to commit to a date it does not believe it can meet.

Chair Hutchison indicated some discomfort with the process of attempting to modify the order by committee. He suggested that staff return next week with suggested changes in an effort to address the Commission desire that the order give a strong bias toward 15 years to start with. Lydia Taylor indicated the Department could come back with suggestions, and would also look at the adjustment of interim compliance dates consistent with a 15 year target. Chair Hutchison also suggested the order be crafted to involve the Commission in a consistent and significant way. This would in part involve approval by both the Department and the Commission.

The telephone conference was adjourned at about 5:25 p.m.

Approved _____
Approved with corrections _____
Corrections made _____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Phone Conference Update on Legislation
June 25, 1991

The Environmental Quality Commission legislative update telephone conference meeting was convened at about 4:10 p.m. on Tuesday, June 25, 1991. Participating in the conference call were Chair Bill Hutchison, Vice Chair Emery Castle, Commissioners Bill Wessinger, Henry Lorenzen and Carol Whipple, Fred Hansen, Barbara Burton, and Harold Sawyer of the Department staff. The public could participate by speaker phone in Conference Room 3a of the Department of Environmental Quality Offices at 811 S. W. 6th Avenue in Portland, Oregon. Members of the public present included Pat Parenteau and Nina Bell representing Northwest Environmental Advocates (NEA), and Mary Nolan, Jan Betts, Jeff Bauman, and Dave Kliwer representing the City of Portland.

Director Hansen was not connected for portions of the phone conference meeting because he had to deal with legislative matters in Salem.

Chair Hutchison noted that the legislative report would come at the end of the meeting if time permitted. The Commission then proceeded to discussion of the Portland Stipulation and Final Order. He suggested that this be the last discussion in conference call on the issue and that the matter be dealt with at the regular July Commission meeting. Chair Hutchison noted that he had worked with Barbara Burton to develop a revised order that was responsive to the discussions at the last conference call.

Barbara Burton summarized the changes in the order as follows:

page 6 -- the change spells out the types of interim control measures that the Department would require the City to evaluate in their study.

page 6 (bottom) - 7 -- the change stresses the importance of interim control measures that reduce water quality impacts.

page 9 -- this change requires the annual progress report go to both the Department and the Commission.

page 5 -- the change would require the facility plan to evaluate compliance by the years 2006 and 2011.

Ms. Burton summarized that the order has detailed dates assuming that compliance with all CSO points would be achieved over a 20 year period with 1/3 controlled in 10 years, 1/3 controlled in 15 years, and 1/3 controlled in 20 years; however the order would require evaluation of the completion of all work in 15 years. When the facility plan is completed, the Commission will have to make a major decision on the schedule and may open the order to change the schedule.

Chair Hutchison asked for an explanation of why language was not added regarding the burden of proof that would be necessary to justify an extension beyond 20 years. Ms. Burton responded that order as drafted gives the Commission the sole discretion to change the schedule in the order. Director Hansen responded that the Department did not want to suggest that it would be an option and thus invite a request. Ms. Burton noted that the Attorney General's office had advised that the order should direct the City and should not direct the Department or Commission. Pat Parenteau expressed support for including a benchmark in the order for future commissions that would clearly indicate the Commission's intent. Director Hansen disagreed, expressing preference for the flat 20 year deadline with stipulated penalties to begin if it is not met.

Commissioner Lorenzen asked how the City viewed this matter. Mary Nolan responded that penalties would begin December 2, 2011, if everything is not in place. Commissioner Whipple suggested that the required annual report would permit an early judgement on the potential to meet the end deadline. Ms. Burton agreed and also noted that compliance with the interim dates in the order gives a good indication of ability to meet the end date. Commissioner Whipple stated that she originally thought 20 years was too long, but had now modified her view. The tightening up on the interim steps has caused here to lean toward the flat end date of 20 years. She also indicated she may be willing to drop the requirement for a detailed plan for completing the project in 15 years.

Commissioner Lorenzen suggested that it was helpful to see two alternatives to give a better feel for the final evaluation and ultimate decision on approval and the schedule. He further indicated he would like to consider language that would give comfort to the intent to hold firm on 20 years. He indicated he would propose specific language to accomplish that intent.

Chair Hutchison suggested that language be added on page 7 following paragraph 6 to provide that the Commission would establish the required interim control measures and schedule for implementation following submittal of the interim control measure study. The Department had no objection.

Commissioner Lorenzen urged continued discussion of the issue of interim control measures. He stated his belief that citizen law suits serve a useful purpose and urged the Department to help in bringing about an agreement between the parties. He asked the Department to return at the July meeting with a summary and analysis of the positions of the parties. Pat Parenteau suggested that a constructive third party role for the Department would be to

provide the Commission with the basis of its best professional judgement that various potential interim control measures are or are not practicable.

Chair Hutchison referred to page 5 at the end of section 1 where the order describes what the facility plan should include and refers to paragraph 9a which expresses the standards which will apply. He noted that one of the standards is written in rule and one is a form of practice and not written in the rules. He stressed the need to consider harmful effects to human health and the environment in the interim, and that an alternative be selected following the facility plan that is cost effective. He stated that the paragraph describing what the facility plan should include should be amplified to express the evaluation standards, and asked for advise on how the Commission might express the evaluation standards. Chair Hutchison stated that no where in the order does it say that the limitations will be reevaluated. Ms. Burton noted that the order provides that the Commission may unilaterally modify either compliance schedules or the limitations of the order. Director Hansen noted that the City could always petition for a change of the standard. He was not sure that it should be invited in the order. Jan Betts noted that the issue is already addressed in the order relative to alternatives. Chair Hutchison asked how one would deal with new federal standards. Director Hansen stated that the ability unilaterally modify the order provides a mechanism to deal with this issue.

Chair Hutchison expressed concern about applying a standard that is not written down in a rule, and may not be consistent with applicable federal standards, and may cause certain technological fixes and time periods to be recommended that don't deliver as great an environmental benefit as initially believed. He was concerned that a false premise may be built into the order. Director Hansen noted that the order is based on water quality standards compliance, and those standards are in rule. He noted that the City could petition for a rule to modify existing standards, or establish new provisions if it so desired. Barbara Burton stated that the provision of the order limiting CSO discharges to 1 event in 5 years that violates water quality standards is a best professional judgement design criteria decision that the Department has required but is not in the rule. She noted that the Commission could opt to specify a different design basis, however. Chair Hutchison asked that the parties consider a way to express the concept when the matter comes back in July. Commissioner Whipple stated that the order should not suggest that the standard be changed.

Chair Hutchison suggested that the matter be considered again at the July meeting. Mary Nolan advised that the City Council would consider the draft order this week. They had anticipated Commission approval of the order today. The decision to consider the matter again in July produces a one month delay and could affect anticipated summer season activities. The City is reluctant to proceed without knowing what the order will say. Commissioner Lorenzen stated that he did not see anything changing that would affect actions that the City would take this summer. He encouraged the City to move forward on matters that will protect the environment and not wait for a signed order.

Chair Hutchison urged the City and NEA to get together and resolve their differences before the July meeting. He also stated his understanding that the City would sign the order after the minor changes discussed today were incorporated, and that the order would be ready for Commission action in July. Commissioner Lorenzen expressed concern that the Commission have a chance to further review and agree with the language before the City signs the order. Commissioner Wessinger suggested circulation of a final draft to the Commission prior to the July meeting. Commissioner Lorenzen suggested that the Commission should sign off first and then send the order to the City and say this is what we think is appropriate.

By consensus, the Commission decided to consider the Portland order early in the agenda at the July 24 meeting.

The telephone conference was adjourned at about 5:30 p.m.

MINUTES OF AUGUST 22, 1991 APPROVED AT OCTOBER 10, 1991 MEETING

Approved _____
Approved with corrections _____
Corrections made _____

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Phone Conference Meeting
August 22, 1991

The Environmental Quality Commission Special Telephone Conference Meeting was convened at about 9:00 a.m. on Tuesday, August 22, 1991. Participating in the conference call were Chair Bill Hutchison, Vice Chair Emery Castle, Commissioner Bill Wessinger, Director Fred Hansen, and various Department staff members. The public could participate by speaker phone in Conference Room 3b of the Department of Environmental Quality Offices at 811 S. W. 6th Avenue in Portland, Oregon.

The purpose of the meeting was to consider Department recommendations to authorize public hearings on seven items in response to requirements of the 1990 Federal Clean Air Act Amendments. The items cover four control strategies and eight rules relating to PM_{10} (solid or liquid particles of less than 10 microns in size).

Control strategies for the Eugene/Springfield, Grants Pass, Medford, and Klamath Falls areas were previously adopted in the November 1990-January 1991 period. The 1990 Federal Clean Air Act Amendments impose new requirements which necessitate, in some cases, revisions to the existing control strategies, adoption of new control strategies, and adoption of new or revised PM_{10} related rules. Specifically, the 1990 amendments:

- Establish November 15, 1991 as the deadline to submit PM_{10} control strategy revisions to the state implementation plan.
- Establish December 31, 1994 as the deadline for compliance with the PM_{10} standard.
- Require adoption of specific Reasonably Available Control Measures (RACMs) for woodheating, open burning and industry.
- Require adoption of contingency plans that will be automatically implemented if the December 31, 1994 attainment date of the Act is not met.
- Require adoption of specific Best Available Control Measures for industry within 18 months of the date an area fails to meet the attainment deadline.

- Require that all PM_{10} related rules and enforceable provision of the control strategy be approved by EPA as a condition of EPA being able to fully approve the PM_{10} control strategies.

The Department proposed that the Commission authorize public hearings on the following agenda items with the intent that hearings be held and the matters returned for Commission adoption at a meeting to be held on November 8, 1991:

A. Hearing Authorization: Revised PM_{10} Control Strategy for the Medford-Ashland Air Quality Maintenance Area (AQMA)

This item presented a proposed addendum to the Strategy for the Medford-Ashland area to include specific Reasonably Available Control Measures and a contingency plan. The Department is proposing to utilize its new backup woodstove curtailment authority for Central Point to meet the enforceability requirement of the act for RACMs for woodstoves. Other RACMs include a ban on sale and installation of used non-certified woodstoves and a more restrictive ventilation index for open burning. Attachment A of the staff report contains the proposed addendum to the strategy.

Proposed contingency plans that would automatically go into effect if the area fails to attaint the PM_{10} standard by the deadline of December 31, 1994 included removal and destruction of non-certified woodstoves upon home sale, a November-February ban on open burning, and additional industrial control systems that meet the Act's requirement for Reasonable and Best Available Control Technology.

B. Hearing Authorization: Revised PM_{10} Control Strategy for the Klamath Falls Non-Attainment Area

This item presented a revised control strategy for Klamath Falls as presented in Attachment A of the staff report. The revised strategy includes specific Reasonably Available Control Measures and a contingency plan. The RACM provisions of the recently adopted Klamath County Clean Air Ordinance have been incorporated into the control strategy and include a mandatory curtailment program, a year around 20% visible emissions requirement for woodstoves and a ban on installation of used non-certified woodstoves.

Proposed contingency plans include a) removal and destruction on non-certified woodstoves upon home sale, b) a mandatory fuelwood seasoning requirement, c) expansion of Klamath County's air quality control area, d) a prohibition on installation of more than one woodstove in a new dwelling, e) additional dust control measures, and f) mandatory forestry and agriculture smoke management programs within Klamath County. Industry within the non-attainment area would also be required in the contingency plan to install new control measures to meet

the Act's requirements for Reasonable and Best Available Control Technology (RACT/BACT). Industry located near the non-attainment area would be required to install RACT/BACT controls if their emissions are found to have a significant impact on the non-attainment area.

C. Hearing Authorization: Revised PM_{10} Control Strategy for Grants Pass

This item presented a proposed addendum to the control strategy for PM_{10} for the Grants Pass area. The proposed addendum was included as Attachment A of the staff report. The addendum includes specific Reasonably Available Control Measures and a contingency plan. The RACM elements to be added include a ban on the sale or installation of used, non-certified woodstoves, and a more restrictive ventilation index for open burning.

Proposed contingency plan measures include a) state backup mandatory curtailment authority for residential woodburning if local government fails to adopt or implement this program, b) destruction of non-certified woodstoves upon home sale, c) new emission controls for certain sized industrial wood dust handling systems, and d) a ban on open burning within the Grants Pass Urban Growth Boundary during the heating season. The industrial contingency element would meet the Acts requirements for RACT/BACT.

D. Hearing Authorization: New PM_{10} Control Strategy for the La Grande Air Quality Non-Attainment Area

This item presented a proposed control strategy for PM_{10} for the La Grande Non-Attainment Area (Attachment A of the staff report). The proposed strategy will include Reasonably Available Control Measures and a contingency plan. RACM provisions of the recently adopted La Grande Air Quality Improvement Ordinance have been incorporated into the control strategy, and include a voluntary woodburning curtailment program, a public education program, and fugitive dust control measures. Additional reductions are expected from the phase in of certified woodstoves, a ban on the installation of used, non-certified stoves, and seasonal restrictions on open burning.

Proposed contingency plan measures include implementation of a mandatory woodburning curtailment to be established under city ordinance (with state backup authority), state authority for destruction of non-certified woodstoves upon sale of a home, and a requirement to install new industrial controls which will meet the requirements for RACT/BACT.

E. Hearing Authorization: New Industrial PM_{10} Emission Standard Rules and other Related House-Keeping Measures

This item requested authorization to hold a rulemaking hearing on a package of new rules and rule revisions needed in support of revised and new PM_{10} control strategies. The proposed rules were presented in Attachment A of the staff report. Included are new industrial contingency particulate emission standards that would be applicable to industrial sources located in PM_{10} non-attainment areas that fail to reach attainment by December 31, 1994, as well as industrial sources outside the non-attainment area which could significantly affect the area. Also included are housekeeping amendments to clarify statewide industrial rules applicable to veneer dryers and a number of additional PM_{10} sources subject to special control rules in the Medford-Ashland and Grants Pass areas.

F. Hearing Authorization: Rule Amendments for the Rogue Basin Open Burning Special Control Area

This item requested authorization to hold a rulemaking hearing on rule changes that would require more restrictive ventilation criteria for the Rogue Basin Open Burning Control Area consistent with local ordinances. The proposed rules were presented in Attachment A of the staff report. The proposed rule changes would also impose a ban on open burning in the entire Open Burning Control Area during November, December, January, and February as part of the contingency plans if the Medford-Ashland or Grants Pass area fails to meet PM_{10} standard by December 31, 1994.

G. Hearing Authorization: Residential Wood Heating Rule Amendments

This item requested authorization to hold a rulemaking hearing on new residential woodheating rules to meet control measure and contingency measure requirements of the Clean Air Act. These rules, presented in Attachment A of the staff report, were authorized by HB 2175 passed by the 1991 legislature and cover the following areas:

- Prohibition on the sale of used non-certified woodstoves.
- State backup enforcement of residential woodheating curtailment in PM_{10} non-attainment areas.
- Requirement for the removal and destruction of used non-certified woodstoves upon sale of a home in a PM_{10} nonattainment area that does not attain compliance with the standard by December 31, 1994.

The proposed rules would be codified into a new Division 34 of OAR Chapter 340, and existing woodstove certification rules would be moved from Division 21 to Division 34.

Department staff noted in discussions that Lane Regional Air Pollution Control Authority will be conducting hearings on a revised Eugene/Springfield PM_{10} control strategy. This will be brought to the Commission for adoption in November along with the final proposals on the above proposed hearing authorizations. The Department also noted that the Oakridge area is a recently designated non-attainment area for PM_{10}. Oakridge has until December 1992 for adoption of a control strategy due to its recent designation.

It was MOVED by Commissioner Castle that the Department recommendation be approved. The motion was seconded by Commissioner Wessinger and approved by the three Commission members present.

The telephone conference was adjourned at about 9:50 a.m.

Oregon

ENVIRONMENTAL
QUALITY
COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: September 18, 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 ___

Tax credit application review report.

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

Tax Credit Application Review Reports:

TC-2187 Praegitzer Industries, Inc.	Wastewater spill containment and treatment facility.
TC-2264 Coast Wide Ready Mix Co.	Wastewater settling pond.
TC-2387 Delta Engineering and Manufacturing Co.	Modification of wastewater treatment system.
TC-2488 A. Edward & Betty Hemenway	Wastewater control facility.
TC-2732 Willamette Industries, Inc.	Wastewater treatment system.
TC-2793 Charles T. Collins Colsper Corp.	Baler, hogger and conveyor belt system.
TC-2871 Steinfeld's Products Co.	Modification of wastewater pretreatment system.
TC-3106 Glenbrook Nickel Co.	Large duct to stacks of electrostatic precipitator.
TC-3250 Precision Castparts Corp.	pH monitoring system.
TC-3413 Parson's Pine Products, Inc.	Modifications to cyclone and conveyance systems.
TC-3436 Anodizing, Inc.	Wastewater treatment system.
TC-3501 Clemens Automotive	Auto air conditioner recycling equipment.
TC-3503 Mike McCarter Ford's Automotive	Auto air conditioner recycling equipment.
TC-3505 Fisher's Arco	Auto air conditioner recycling equipment.

TC-3506 Roe Motors, Inc.	Auto air conditioner recycling equipment.
TC-3513 Hillsboro Chevron Service Center	Auto air conditioner recycling equipment.
TC-3517 Kenneth W. Darrow	Auto air conditioner recycling equipment.
TC-3518 Roberson Shell	Auto air conditioner recycling equipment.
TC-3523 Jim Doran Chevrolet-Olds, Inc.	Auto air conditioner recycling equipment.
TC-3524 Paul D. Parker	Two terex front end loaders.
TC-3530 Teledyne Ind., Inc.	Modification of furnace seals.
TC-3532 Sandra Powell	Auto air conditioner recycling equipment.
TC-3533 Dean and Kathleen Schrock	Rear's 12' grass vac; John Deere 27 flail chopper; Rear's 30' propane flamer; John Deere 4450 140 HP tractor.
TC-3536 Lucas Mack Sales & Service, Inc.	Auto air conditioner recycling equipment.
TC-3537 McCullum's Texaco Service, Inc.	Auto air conditioner recycling equipment.
TC-3538 Steve's Automotive	Auto air conditioner recycling equipment.
TC-3539 Kuschnick Bros. Farms	Used propane field flamer.
TC-3540 Steven J. Rohner	John Deere 14' flail chopper.
TC-3541 Nyquist Country Farms	New Holland 505 baler.

TC-3542 Langdon & Sons	Allis Chalmer 8070 tractor; MF 33 wheel loader; Rugby bale mover; New Holland 855 baler; 5 wheel hay rake/bale fork tines/rototiller.
TC-3545 Johnson Creek Texaco	Auto air conditioner recycling equipment.
TC-3546 American Auto Recycling, Inc.	Auto air conditioner recycling equipment.
TC-3547 Buck Medical, Inc.	Auto air conditioner recycling equipment.
TC-3548 McCullum's Texaco, Inc.	Installation of four STI-P3 tanks and fiberglass piping, spill containment basins, tank monitor, line leak detectors, automatic shutoff valves, overfill alarm and monitoring wells.
TC-3549 Albina Fuel Company	Installation of epoxy lining in thirteen tanks, doublewall fiberglass piping, spill containment basins, tank monitor, line leak detectors, oil/water separator and Stage I vapor recovery equipment.
TC-3555 Quentin & Lola Probst	Installation of three STI-P3 tanks, fiberglass piping, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves, monitoring wells, Stage I vapor recovery equipment, sumps and an overfill alarm.
TC-3556 Bi Mart Corp.	Auto air conditioner recycling equipment.
TC-3557 Chambers Plumbing & Heating, Inc.	Auto air conditioner recycling equipment.
TC-3558 Elliot's Auto Service, Inc. Inc.	Auto air conditioner recycling equipment.
TC-3559 Ted's Collision Repairs, Inc.	Auto air conditioner recycling equipment.

TC-3561 Don Rasmussen Co.	Auto air conditioner recycling equipment.
TC-3570 Troutdale Chevron, Inc.	Auto air conditioner recycling equipment.
TC-3574 McCall Heating Co.	Installation of three fiberglass tanks and piping, spill containment basins, tank monitor, monitoring wells, sumps, oil/water separator, automatic shutoff valves and line leak detectors.
TC-3577 Jantzen Beach Chevron	Auto air conditioner recycling equipment.
TC-3578 Dennis Thompson	Installation of two fiberglass tanks, fiberglass piping, spill containment basins, line leak detectors and monitoring wells.
TC-3579 Capital City Co., Inc.	Installation of four STI-P3 tanks, fiberglass piping, spill containment basins, tank monitor, line leak detectors, overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I and II vapor recovery equipment and piping.
TC-3581 Capital City Co., Inc.	Installation of three STI-P3 tanks and double wall fiberglass piping, spill containment basins, tank monitor, line leak detectors, overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I and II vapor recovery equipment and piping.
TC-3583 C.T. Auto Repair	Auto air conditioner recycling equipment.
TC-3584 Daily's Tire & Wheel	Auto air conditioner recycling equipment.
TC-3608 Estacada Oil Co.	Installation of six STI-P3 tanks, double wall fiberglass piping, spill containment basins, tank monitor, line leak detectors and an oil/water separator.

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	Attachment ___
	Enactment Date: _____	
___	Statutory Authority: _____	Attachment ___
___	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:

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 September 18, 1991 Totals

	Certified Costs*	# of Certificates
Air Quality	$ 697,731	7
CFC - AQ	71,665	24
Hazardous Waste	0	0
Noise	69,955	1
Plastics	0	0
Solid Waste	52,453	2
Underground Storage Tanks	792,724	8
Water Quality	1,485,857	8
TOTAL	$ 3,170,385	50

1991 Calendar Year Totals through July 25, 1991

	Certified Costs*	# of Certificates
Air Quality	$14,284,509	85
CFC - AQ	39,762	16
Hazardous	0	0
Noise	36,700	1
Plastics	118,168	1
Solid Waste	148,199	3
Underground Storage Tanks	7,708,323	146
Water Quality	3,568,797	14
TOTAL	$25,904,458	266

*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: Roberta Young

Division:

Director: Neil Harmon

Report Prepared By: Roberta Young

Phone: 229-6408

Date Prepared: August 9, 1991

RY:y
MY101908
August 14, 1991

Application No. T-2187

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Praegitzer Industries, Inc.
1270 Monmouth Cut-off Road
Dallas, OR 97338

The applicant owns and operates a printed circuit board manufacturing and assembly plant in Dallas, Oregon.

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

2. Description of Facility

The wastewater treatment and spill containment facility consists of a packaged membrane filtration (Memtek) unit, batch neutralization/flow stabilization tank, sludge filter press and drying equipment, corrosion preventive coating/liners, trenches, vaults, dikes, tanks and associated electrical and plumbing system.

Claimed Facility Cost: $586,507.31
(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 September 26, 1986, more than 30 days before construction commenced on November 1, 1987.

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

c. Construction of the facility was substantially completed on January 1, 1989 and the application for final certification was found to be complete on July 6, 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 City of Dallas, to control water pollution. Department statutes and rules require that all owners of sewerage systems which receive industrial waste subject to federal or state pretreatment standards shall implement a pretreatment program for controlling industrial dischargers. This control is accomplished by the use of treatment works for industrial waste as defined in ORS 468.700.

Prior to the construction of the facility, Praegitzer's waste treatment system consists of a conventional neutralization, flocculation and sedimentation. The existing facility did not meet the new Environmental Protection Agency (EPA) effluent guidelines for discharges from a printed circuit board manufacturing operation to a sewage treatment plant like the City of Dallas. There was no spill containment for the bulk chemicals and waste storage areas.

Currently, approximately 100 gallons per minute of printed circuit board process water is being treated in the Memtek system. Prior to discharge to the sewer, pH is adjusted to meet city requirements. Sludge generated from the Memtek system is filtered and dried thus reducing the volume that is being disposed to an off-site permitted hazardous waste recycling facility.

With the construction of the spill containment facility, any accidental discharges from the chemical processing areas, hazardous waste storage and bulk chemical loading and storage areas will be confined and properly treated and disposed.

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.

Sludge generated by the treatment system is disposed of to an off-site permitted recycling facility at $400 per ton.

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

There is no return on investment for this facility.

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

Conventional flocculation method was evaluated but it did not achieve the required metal concentration of the discharge to the city sewer.

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

There are no savings from the facility. The cost of maintaining and operating the facility is $214,600 annually.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the City of Dallas, to control water pollution and accomplishes this purpose by the use of treatment works for industrial waste as defined in ORS 468.700.

c. The facility complies with the City of Dallas pretreatment program and DEQ rules and statutes.

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 $586,507.31 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2187.

RCDulay:crw
IW\WC8\WC8735
(503) 229-5876
7-26-91

Application No. T-2264

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Coast Wide Ready Mix Company
P.O. Box 8
Tillamook, OR 97141

The applicant owns and operates a gravel processing plant in Tillamook, Oregon.

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

2. Description of Facility

Wastewater settling pond.

Claimed Facility Cost: $3,450.12

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 March 30, 1987, more than 30 days before construction commenced on May 5, 1987.

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

c. Construction of the facility was substantially completed on June 1, 1987 and the application for final certification was found to be complete on May 9, 1989, 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 control water pollution. The requirement is to comply with ORS 468.720(a). This control is accomplished by the use of treatment works for industrial waste as defined in ORS 468.700.

Prior to the construction of the wastewater settling pond, an existing pond located within the flood plain along the Kilchis River washed away during a storm. A notice of violation dated December 10, 1986 was issued to Coast Wide Ready Mix Company. The Department required the company to build a new pond or repair the existing pond.

The company constructed a new pond above the 50 year flood plain in the vicinity of the plant. Solids collected in the pond are removed by dragline and disposed off-site. Subsequent inspections conducted by the Department showed that the facility was in compliance with its permit conditions and the provisions of ORS 468.720(a).

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 return on investment for the facility.

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

   There are no known alternatives.

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

   There are no savings from the facility. The cost of maintaining and operating the facility is $300 annually.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to control water pollution and accomplishes this purpose by the use of treatment works for industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules and permit conditions.

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 $3,450.12 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2264.

RCDulay:crw
IW\WC8\WC8736
(503) 229-5876
7-26-91

Application No. T-2387

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Delta Engineering and Manufacturing Company
Plating
19500 SW Teton
Tualatin, OR 97062

The applicant own and operates a metal plating and chromate conversion plant in Tualatin, Oregon.

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

2. Description of Facility

The waste treatment system is consists of a pH adjustment equipment, clarifier, sludge tower and associated plumbing system.

Claimed Facility Cost: $46,277
(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 on November 23, 1987, more than 30 days before construction commenced on January 2, 1988.

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

c. Construction of the facility was substantially completed on May 2, 1988 and the application for final certification was found to be complete on April 12, 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 Unified Sewerage Agency of Washington County (USA), to control water pollution. Department statutes and rules require that all owners of sewerage systems which receive industrial waste subject to federal or state pretreatment standards shall implement a pretreatment program for controlling industrial dischargers. This control is accomplished by the use of treatment works for industrial waste as defined in ORS 468.700.

Prior to the modification, the existing treatment system was incurring intermittent upsets which resulted to being out of compliance with the required discharge limit to the USA sewer system. Delta Engineering was issued a discharge permit by USA as required in the DEQ approved pretreatment program.

With the addition of a new clarifier and sludge treatment system, flocculation of metals improved and the generated sludge is sent to a recycler. Delta Engineering is now consistently meeting its permit limitations for metals and pH discharges to the USA sewer.

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 sludge generated from the facility is recycled to a smelter. The company pays the recycler $150 per drum of sludge.

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

There is no return on investment for the facility.

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

Evaporation, electrolytic recovery and ion exchange were considered for cost effective alternatives. These alternatives were found to be too expensive.

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

There are no savings from the facility. The cost of maintaining and operating the facility is $35,000 annually.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Unified Sewerage Agency to control water pollution and accomplishes this purpose by the use of treatment works for industrial waste as defined in ORS 468.700.

c. The facility complies with permit conditions of the discharge permit issued by Unified Sewerage Agency.

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 $46,277 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2387.

RCDulay:crw
IW\WC8\WC8707
(503) 229-5876
7-22-91

Application No. T-2488

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

A. Edward Hemenway and
Betty A. Hemenway
80254 Sears Road
Cottage Grove, OR 97424

The applicant owns and operates a dairy farm in Cottage Grove, Oregon.

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

2. Description of Facility

The facility is a manure control facility consisting of a 350 ft x 750 ft x 10 ft earthen storage lagoon, solids separator, 1,200 square foot concrete solids storage area, gutters, pumps and associated plumbing and electrical system.

Claimed Facility Cost: $65,194.89
(The total cost of the facility which the Accountant certified is $101,354.89. The U.S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant $35,000. The applicant's own cash investment in the claimed facility is $66,354.89. However, this was adjusted downward due to an ineligible administrative cost.)

The U.S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant $35,000.00.

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 August 1, 1990 and the application for final certification was found to be complete on January 15, 1991, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to control a substantial quantity of water pollution. This control is accomplished by the elimination of industrial waste as defined in ORS 468.700.

Prior to the installation of the control facility, about 80,000 gallons per day of wastewater was generated from the dairy operation. The wastewater was pumped twice daily year round to the pastureland and open cropland which resulted to considerable runoff even during wet weather conditions. In addition to the flush water, runoff from the shed roofs added to the volume of the wastewater. This resulted to the discharge of contaminated runoff to the Waterhouse Slough and Gidding Slough.

With the construction of the manure control facility, about 2,000 gallons per day of fresh water is used in the milking parlor and holding pen. All other areas are cleaned with recycled water from the earthen lagoon. All runoff from the roofs are diverted away from the waste storage areas. The lagoon has a storage capacity of 200+ days thus eliminating the disposal of manure during wet weather conditions. The application of manure to land during drier months has greatly reduced contamination of field runoff. The solids separator has also increased the holding capacity of the lagoon by the removal of solids from the wastewater prior to discharging into the lagoon.

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.

Approximately 2% of the solids recovered from the solids separator are sold to local gardeners but the amount is negligible, about $100-150 per year. The major portion is disposed onto the pastureland.

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

There is no return on investment for this facility. Prior to the installation of the facility the collected manure was spread on land. The same disposal practice is being implemented after the installation of the control facility.

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

The method chosen is the accepted method for control of manure. This method is the least cost and most effective method of controlling contaminated runoff.

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

There are no savings from the facility.

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 and accomplishes this purpose by the elimination 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 $65,194.89 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2488.

RCDulay:crw
IW\WC8\WC8683
(503) 229-5876
7-19-91

Application No. T-2732

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Willamette Industries, Inc.
Paper Group
3800 First Interstate Tower
Portland, OR 97201

The applicant owns and operates a kraft paper converting plant in Beaverton, Oregon.

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

2. Description of Facility

The facility consists of a packaged flexographic ink and oily starch waste treatment system, 10,000 gallon waste collection tank, sampling vault with flowmeter and associated controls and plumbing system.

Claimed Facility Cost: $214,445.95
(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 on January 24, 1989 and approved on January 24, 1989 before construction commenced on February 1, 1989.

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

c. Construction of the facility was substantially completed on April 14, 1989 and the application for final certification was found to be complete on October 31, 1989, 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 Unified Sewerage Agency of Washington County to control water pollution. Department statutes and rules require that all owners of sewerage systems which receive industrial waste subject to federal or state pretreatment standards shall implement a pretreatment program for controlling industrial dischargers. This control is accomplished by the use of treatment works for industrial waste as defined in ORS 468.700.

Prior to the installation of the facility, Willamette Industries was issued a permit by Unified Sewerage Agency (USA) to discharge wastewater to the sewer system with variance for copper and lead limits. However, on April 27, 1988 the company was notified that the variance was no longer allowed under the USA approved pretreatment program. The discharge permit was reissued with new copper and lead limits and the company was required to meet the new discharge limitations by January 1, 1989.

With the installation of the packaged waste treatment system all the wastewater from the kraft paper converting operations is collected and treated prior to discharge to the USA sewer system. Sampling results have shown that permit limits for copper and lead are being met.

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 sludge generated by the control facility is disposed in a landfill.

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

There is no return on investment for the facility.

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

Willamette Industries considered evaporation and microfiltration for its waste but were found to be energy inefficient and expensive.

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

There ars no savings from the facility. The cost of maintaining and operating the facility is $106,323 annually.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Unified Sewerage Agency of Washington County to control water pollution and accomplishes this purpose by the use of treatment works for industrial waste as defined in ORS 468.700.

c. The facility complies with permit conditions of the discharge permit issued by the Unified Sewerage Agency.

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 $214,445.95 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2732.

RCDulay:crw
IW\WC8\WC8695
(503) 229-5876
7-22-91

Application No. T-2793

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Charles T. Collins
Colsper Corp.
Astoria Recycling, Inc.
P.O. Box 115
Astoria, OR 97103

The applicant owns and operates a franchised garbage collection and transfer station in Astoria, Oregon.

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

2. Description of Facility

The equipment described in the application is a baler, hogger, and conveyor belt system used to bale cardboard and waste paper.

Claimed Facility Cost: $12,567

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Installation of the facility was substantially completed on June 26, 1989 and the application for final certification was found to be complete on July 18, 1991 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

b. Eligible Cost Findings

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

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

This factor is applicable because the entire purpose of the baler, hogger and conveyor belt system is to process and bale increased quantities of cardboard and waste paper collected from Astoria's residents and businesses. Prior to utilizing this baler, the applicant used a down stroke baler which had a much smaller capacity and could not keep up with the larger amounts of waste paper generated by the newly established curbside recycling program.

In the two years of operation, this baler has removed over 788 tons of waste paper from the waste stream; the waste paper is used for recycled paper.

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

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

The applicant states that for the first five years of operation, there will be a negative cash flow. This results because the facility's operating and maintenance expenses exceeds estimated annual income. The applicant is able to absorb the cost because the franchised garbage collection and transfer station in Astoria currently subsidizes the recycling operation.

Using table of OAR 340-60-030, for a life of 5 years, the percent return on investment is zero. As a result, the percent allocable would be 100%

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

No other equipment was considered by the applicant. He knew a larger baler system was needed to process the increased material collected through the curbside recycling program. When a used baler at an affordable cost was found, he purchased it.

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

There are no savings from the facility. The cost of maintaining and operating the facility is approximately $26,761 annually. The income from this facility is approximately $25,648 annually and has been included in the ROI calculation.

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

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

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of solid waste through recycling.

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

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $12,567 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2793.

Jacquie Moon:b
G:\RECY\RPT\YB10763
229-5479
7/30/91

Application No.T-2871

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Steinfeld's Products Company
1001 N. Rivergate Boulevard
Portland, OR 97203

The applicant owns and operates a food processing plant in Portland, Oregon.

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

2. Description of Facility

The facility consists of a two-stage pH control system, tanks, activated sludge reactor (Bio-Por), collection sumps, electronic controls and associated plumbing and electrical system.

Claimed Facility Cost: $447,790
(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 the statutory deadline in that construction of the facility was substantially completed on November 15, 1990 and the application for final certification was found to be complete on March 12, 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 City of Portland to reduce water pollution. Department statutes and rules require that all owners of sewerage systems which receive industrial waste subject to federal or state pretreatment standards shall implement a pretreatment program for controlling industrial dischargers. This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468.700.

Prior to the modification, the pretreatment system consists of a hydrosieve, pH probe, caustic tank with a metering pump and collection sumps. Due to the inadequate capacity and unreliability of control equipment discharges to the city sewer exceeded allowable pH and flow limits. The City of Portland notified Steinfeld's Products Company to reduce and control the discharge to the sewer.

The claimed facility consists of a major modification of the existing pretreatment system. All wastewater are collected to a central collection sump and pumped to an equalization tank. Following the tank is a two-stage pH control system where pH is adjusted to allowable limits. High strength wastewater is diverted to Bio-Por reactor for nutrient reduction prior to discharge to the city sewer. Currently, the discharge from the treatment facility is meeting the requirements of the waste discharge permit issued by the City of Portland.

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 return on investment for this facility.

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

Steinfeld's Products Company considered several pretreatment systems recommended by engineering consulting firms. After extensive research and consultations including the City of Portland, the company chose the Bio-Por system which assured compliance with the constraints placed on the discharge permit issued by the City of Portland.

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

There are no savings from the facility. The cost of maintaining and operating the facility is $236,653 annually.

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

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

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the City of Portland to reduce water pollution and accomplishes this purpose by redesign to eliminate industrial waste as defined in ORS 468.700.

c. The facility complies with permit conditions of a discharge permit issued by the City of Portland.

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 $447,790 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2871.

RCDulay:crw
IW\WC8\WC8675
(503) 229-5876
7-18-91

Application No. TC 3106

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Glenbrook Nickel Co.
P O Box 85
Riddle, OR 97469

The applicant owns and operates a nickel smelter treating Laterite nickel ore to produce 50% ferronickel pigs.

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

2. Description of Facility

The facility is a large duct attached to both the main stack and bypass stacks of the electrostatic precipitator which diverts excess emissions to the melt furnace baghouse.

Claimed Facility Cost: $376,400
(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 July 16, 1990.

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

c. Construction and erection of the facility was substantially completed on February 1, 1991 and the application for certification was found to be complete on May 13, 1991 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

This reduction is accomplished by the redesign to eliminate air contaminants, as defined in ORS 468.275.

On September 20, 1989 a Department inspection showed that emissions from the calciner electrostatic precipitator exceeded permit limits.

The facility claimed in this application was tested on June 24, 1991 and found in compliance with grain loading and opacity requirements.

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 saleable or usable commodity.

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

The annual operating expense of the claimed facility is $142,343.00. The annual gross income is $0.00. Therefore the annual percent return on investment is zero.

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

Alternative facilities considered		Estimated Cost
1.	New electrostatic precipitator	$1,600,000.
2.	Scrubber	$ 750,000.
3.	Wet electrostatic precipitator installed in series with current precipitator.	$ 600,000.

The method chosen was the most cost effective for this application.

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

There are no savings from the facility. The cost of maintaining and operating the facility is $142,343.00 annually.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the redesign to eliminate air pollution as defined in ORS 468.700.

c. The facility complies with DEQ statutes, rules and permit conditions.

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 $376,400 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3106.

Bob Harris:a
LEGAL\AH14306
(503) 229-5259
August 5, 1991

Application No. T-3250

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Precision Castparts Corporation
Large Structures Business Operation
4600 SE Harney Drive
Portland, OR 97206

The applicant owns and operates a foundry in Portland, Oregon.

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

2. Description of Facility

The facility consists of pH digital controller, chart recorder, 2 pH probes and an audible alarm system.

Claimed Facility Cost: $17,639
(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 the statutory deadline in that installation of the facility was substantially completed on March 3, 1989 and the application for final certification was found to be complete on November 16, 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 City of Portland, to control water pollution. Department statutes and rules require that all owners of sewerage systems which receive industrial waste subject to federal or state pretreatment standards shall implement a pretreatment program for controlling industrial dischargers. This control is accomplished by the use of treatment works for industrial waste as defined in ORS 468.700.

Prior to the installation of the pH monitoring system, there was no wastewater pH control. This condition resulted to a high probability of discharging low or high pH to the sewer system. By a letter dated September 18, 1987, the City of Portland required Precision Castparts Corporation to install a pH recording and control system for its discharge.

With the installation of the pH control system, pH of the discharge to the sewer is constantly monitored. In addition, the system provides an early warning for discharges outside of the pH permit limits established by the City of Portland. Strip chart data have shown that Precision Castparts is in compliance with pH permit limitations.

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 return on investment for this facility.

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

There are no known alternatives.

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

There are no savings from the facility. The cost of maintaining and operating the facility is $700 annually.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the City of Portland, to control water pollution and accomplishes this purpose by the use of treatment works for industrial waste as defined in ORS 468.700.

c. The facility complies with permit conditions of the discharge permit issued by the City of Portland.

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 $17,639 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3250.

RCDulay:crw
IW\WC8\WC8712
(503) 229-5876
7-23-91

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Parsons Pine Products, Inc.
P. O. Box 670
Ashland, OR 97520

The applicant owns and operates a wood products facility located at 295 Helman Street (northeast intersection Helman and Hersey Streets) in Ashland, Oregon.

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

2. Description of Facility

Claimed facility includes modifications to the cyclone dust collection, hog, and the pneumatic wood chip conveyance systems.

a. The hopper cyclone was relocated adjacent to two cyclones at the main plant. The three cyclones, 100-horsepower and 125-horsepower fans and blowers were collectively enclosed within a 1/2 inch hardboard structure lined with 3-inch-thick mineral fiber material wrapped in a 1.5 mil polyethylene liner.

b. The hog material transfer duct was enclosed within a 1/2 inch hardboard structure lined with fiberglass batts.

c. The pneumatic wood chip transfer system was replaced by an enclosed wood waste flight conveyor.

Claimed Facility Cost: $69,955.
(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.

a. The facility met all statutory deadlines in that installation of the facility was substantially completed on March 1, 1991 and the application for final certification was found to be complete on March 28, 1991 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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**

a. Parsons Pine Products is a independently owned and operated lumber mill which re-manufactures scrap, odd-cut lumber into custom-made louvers, rails, door and window finger joints, mousetrap bases, and miscellaneous toy products. The mill has operated at its present location since 1967. Prior to installation of noise controls the mill's dust control and wood chip conveyance systems were operating in violation of both state and local noise standards. The noise standards for the City of Ashland are five decibels more stringent than those enacted by the Environmental Quality Commission.

The Ashland planning department responding to citizen complaints performed a noise compliance survey on November 7, 1989 from residential properties nearest to the mill site. Measured noise levels exceeded the state daytime L50 standard by 6 decibels and the City's L50 standard by 11 decibels. The applicant was served a notice of noncompliance by the City of Ashland and was requested to remediate its noise problem. The mill retained the services of an acoustical engineering firm and embarked on a comprehensive noise compliance program.

Because the mill predates many of the affected residences, and because complying with the stricter city standards would have been substantially more costly, Parsons Pine Products requested and received noise variance from the more stringent city noise standards. However, as a condition of approval, the Ashland City Council required the mill to comply with all applicable state daytime standards. The mill currently operates between the hours of 8:00 a.m. to 5:00 p.m.

Installation of sound-proofed enclosures around the cyclone dust collectors, hog, and replacing the pneumatic chip transfer system with an enclosed wood waste flight conveyor, reduced the averaged L50 noise level from 61 to 55 decibels and the maximum L1 level from 69 to 60 decibels. The allowable state daytime maximum L50 and L1 levels are 55 and 75 decibels.

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. Collected wood chips are sold to a particle board processing plant.

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

The claimed cost for the purchase and installation noise controls totalled $69,955 (materials and labor costs minus salvage value of a cyclone and blower unit). The adjusted $69,955 expenditure was incurred to meet requirements imposed by the Department. The return in investment is zero.

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

There is no known alternative.

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.

A decommissioned cyclone dust collector and blower unit with a gross salvage value of $1,325 was not eligible for noise pollution control tax credits. The $1,325 was debited to the total incurred noise abatement 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 noise 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 $69,955 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3413.

TLO:a
RPT\AH14435
August 6, 1991

Application No.T-3436

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Anodizing, Inc.
Coatings Division
7933 N.E. 21st Avenue
P.O. Box 11263
Portland, OR 97211-0263

The applicant operates a contract painting shop in Portland, Oregon.

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

2. Description of Facility

The claimed water pollution control facility consists of a wastewater treatment system to meet the pre-treatment permit requirements of the Portland publicly-owned wastewater treatment works.

The facility treats all wastewater generated by the process operations performed at the Coatings Division. The facility monitors total toxic organics (TTO) for a minimum of EPA priority pollutants, including volatile organics, acid-extractables, and base/neutral extractables.

Claimed Facility Cost: $104,563
(Accountant's certification was provided.)

The claimed costs are:

Waste treatment unit	$ 82,231
Installation of treatment unit	22,332
Total	$ 104,563

The pre-treatment facility was installed during construction of the manufacturing plant. If the facility had not been installed, the wastewater would not have met the pre-treatment requirements of the City of Portland.

Plans and specifications for the wastewater treatment system were not submitted to the Department (as required by OAR Chapter 340, Division 52), but were submitted to the City of Portland. The Department considers the City of Portland review staff to be qualified for plan review and accepts their review as meeting the requirements of Division 52.

Michael Pronold, an environmental specialist with the industrial waste section of the City of Portland, reports that the applicant is in "substantial compliance" with its discharge permit.

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 in September, 1989 and the application for final certification was filed on April 17, 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 federal Environmental Protection Agency (pre-treatment) to control water pollution. This control is accomplished by treatment to reduce a substantial quantity of industrial waste as defined in ORS 468.700.

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.

Telkamp Systems of California was the contractor helping Anodizing with the construction of the paint line. As part of their construction quote they included a waste treatment facility which would allow Anodizing to comply with its waste-water permit. Telkamp Systems was familiar with the operation Anodizing wanted to start. Telkamp Systems and Anodizing personnel decided on the best and most practical facility for our size operations.

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 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 reduction 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 $104,563 with 100% allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-3436.

Jerry Turnbaugh
(503) 229-5374
IW\WC8\WC8618
July 5, 1991

Application No. T-3501

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Clemens Automotive
3401 N Lombard
Portland, OR 97217

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Portland, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $2995.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 12/90, and the application for certification was filed on 5/14/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.50/pound. The applicant estimated an annual coolant recovery rate of 120 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2995.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3501.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3503

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Mike McCarter dba/Ford's Automotive
4504 NE 102nd
Portland, OR 97220

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Portland, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $4252.50
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 5/6/91, and the application for certification was filed on 5/14/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.35/pound. The applicant estimated an annual coolant recovery rate of 60 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $4252.50 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3503.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3505

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Fisher's Arco
1002 McLoughlin Blvd.
Oregon City, OR 97045

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Oregon City, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $4295.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 5/10/91, and the application for certification was filed on 5/15/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.50/pound. The applicant estimated an annual coolant recovery rate of 60 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $4295.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3505.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3506

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Roe Motors, Inc.
201 NE 7th St./PO Box 499
Grants Pass, OR 97526

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Grants Pass, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 10 years.

Claimed Facility Cost: $2180.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 5/24/90, and the application for certification was filed on 5/15/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $3.17/pound. The applicant estimated an annual coolant recovery rate of 357 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2180.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3506.

Jerry Coffer:JC
(503) 239-8644
August 5, 1991

Application No. T-3513

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Hillsboro Chevron Service Center
275 E. Baseline
Hillsboro, OR 97123

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Hillsboro, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $1803.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 2/11/91, and the application for certification was filed on 5/17/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.50/pound. The applicant estimated an annual coolant recovery rate of 65 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $1803.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3513.

Jerry Coffer:JC
(503) 239-8644
August 5, 1991

Application No. T-3517

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Kenneth W. Darrow
6009 S. 6th
Klamath Falls, OR 97603

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Klamath Falls, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 10 years.

Claimed Facility Cost: $2805.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 4/29/91, and the application for certification was filed on 5/20/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $4.33/pound. The applicant estimated an annual coolant recovery rate of 50-100 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- o Electricity consumption of machine
- o Additional labor to operate machine
- o Machine maintenance costs
- o Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2805.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3517.

Jerry Coffer:JC
(503) 239-8644
August 6, 1991

Application No. T-3518

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Roberson Shell
5820 NE Glisan
Portland, OR 97213

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Portland, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $3000.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 5/10/91, and the application for certification was filed on 5/20/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.50/pound. The applicant estimated an annual coolant recovery rate of 60 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $3000.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3518.

Jerry Coffer:JC
(503) 239-8644
August 1, 1991

Application No. T-3523

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Jim Doran Chevrolet-Olds., Inc.
1315 E Third St.
McMinnville, OR 97128

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in McMinnville, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 5 years.

Claimed Facility Cost: $2180.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 5/29/90, and the application for certification was filed on 5/28/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $4.67/pound. The applicant estimated an annual coolant recovery rate of 60 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2180.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3523.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3524

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Paul D. Parker
Mill Waste Recycling Company
4993 Osage
Sweet Home, OR 97386

The applicant owns and operates a mobile log yard debris separation system.

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

2. Description of Facility

The equipment described in the application is 2 Terex front-end loaders used to load log yard debris into mobile log yard debris separation systems.

Claimed Facility Cost: $39,886
(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:

Installation of the facility was substantially completed on September 7, 1989 and the application for final certification was found to be complete on July 8, 1991, within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

b. Eligible Cost Findings

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

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

This factor is applicable because the entire purpose of the front-end loaders is to load log yard debris into the mobile log yard debris separation system. This system separates wood waste and rock (20%), soil amendments and decorative landscape products (65%), and hog fuel (15%). Prior to utilizing the mobile log yard debris system and front-end loaders, the dirt, rock and bark accumulated on the log yard and was periodically pushed into piles or landfilled.

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

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

Average annual cash flow is $1,798.14. This results from the value of the recycled material less operating costs. Dividing the annual average cash flow into the cost of the facility gives a return on investment factor of 22.18. Using Table 1 of OAR 340-60-030, for a life of 10 years, the percent return on investment is 0%. As a result, the percent allocable would be 100%.

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

A caterpillar front-end loader was also considered by the applicant, but was not chosen because it cost $52,000. Based on the price difference, the Terex front-end loaders were chosen.

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

There are no savings from operating the facility. The cost of maintaining and operating the facility is $39,160 annually. The income from this facility is approximately $40,958 annually and has been included in the ROI calculation.

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

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

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

5. Summation

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

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of solid waste through recycling.

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

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $39,886 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3524.

JM:b
G:\RECY\RPT\YB10469
(503) 229-5479
April 19, 1991

Application No. TC-3530

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Teledyne Industries Inc.
Teledyne Wah Chang-Albany
P O Box 460
Albany, OR 97321

The applicant (TWCA) owns and operates a zirconium, hafnium, tantalum and niobium metals manufacturing facility in Albany, Oregon.

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

2. Description of Facility

The seals for the furnaces were modified for the sole purpose of elimination of the use of Lead (Pb) which previously had resulted in the generation of hazardous wastes and toxic emissions.

Claimed Facility Cost: $82,850.00
(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. Installation of the facility was started in February, 1990 and substantially completed in June 1990. The application for certification was found to be complete on May 28, 1991 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to prevent a substantial quantity of air pollution.

This prevention is accomplished by elimination of air contamination sources as defined in ORS 468.275.

Furnace seals which utilized a molten lead antimony alloy as the sealing media were previously used. The lead alloy was used at an annual consumption rate of about 8000 pounds per year. As a potential process contaminant, some of the lead would be lost to the environment via TWCA's wastewater treatment system where it

would be removed within the sludge in a nonleachable/nonhazardous form. The molten alloy fumes would also be released to the atmosphere posing a potential health hazard to employees. As part of the normal maintenance operation, the lead seals would be periodically replaced with a new lead seal. That portion of the seal which could not be recycled into usable seal material would be disposed as a hazardous waste. The lead alloy was carefully managed to eliminate or minimize the contamination of byproduct streams to eliminate the generation of additional hazardous wastes and lead contaminated wastewater.

Molten metal bismuth seals were installed to replace lead with antimony alloy seals on eighty (80) reduction furnaces used for the manufacture of zirconium metal. The replacement of the seal included the modification of the furnace top to install a taller pressure seal for use with bismuth.

A potential source of lead as contained in the wastewater and sludge generated by the wastewater treatment system has been reduced. Molten lead fumes have been eliminated. Bismuth, which replaced the lead antimony alloy seals, is not considered a toxic or hazardous material. A source of hazardous waste generation has been eliminated as nonrecycleable seal material or contaminated byproduct streams.

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 saleable or usable commodity.

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

No annual operating expenses are incurred or income received, therefore there is no return on investment.

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

There is no known alternative. This is a new idea which has been patented.

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 cost 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 tax credit certification in that the sole purpose of the facility is to prevent, a substantial quantity of air pollution and accomplishes this purpose by the elimination of hazardous wastes and air pollutants defined in ORS 468.700.

c. The facility complies with DEQ statutes, rules and permit conditions.

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 $82,850.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3530.

Bob Harris:a
LEGAL\AH14292
(503) 229-5259
August 5, 1991

Application No. T-3532

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Sandra Powell
Rt. 2 Box 2190B
Hermiston, OR 97838

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Umatilla, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 7-10 years.

Claimed Facility Cost: $5596.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 8/89, and the application for certification was filed on 5/29/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.53/pound. The applicant estimated an annual coolant recovery rate of 10 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $5596.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3532.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. TC-3533

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Dean Schrock; Kathleen Schrock
31696 Allen Lane
Tangent, Oregon 97389

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

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

2. Description of Claimed Facility

The equipment described in this application is located at 32397 Highway 34, Tangent, Oregon. The equipment is owned by the applicant.

Rear's 12' Grass Vac	$44,647
John Deere 27 flail chopper	8,300
Rear's 30' propane flamer	6,565
John Deere 4450 140 hp tractor	75,000

Claimed equipment cost: $134,512
(Accountant's Certification was provided.)

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

The applicant has 900 perennial acres and 900 annual acres of grass seed under cultivation. Prior to construction of the straw storage shed (previously certified as T.C. 3490) and purchase of straw handling equipment, including the equipment listed in this review report, the applicant open field burned as much of his acreage as the weather and smoke management program permitted.

As an alternative, the applicant bales off, stores and markets the straw from over 1,000 acres. Annual fields are then flail chopped and plowed under while perennial fields are flail chopped, vacuumed and alternately propane flamed.

The flail chopper is used to chop straw on annual fields prior to plowing under. The Grass Vac is used to flail chop and vacuum perennial fields. The propane flamer is used to sanitize and stimulate plant growth on perennial fields. The tractor powers the equipment.

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 1, 1991, and the application for final certification was found to be complete on June 17, 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): "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 promotes the conversion of a waste product (straw) into a salable commodity by providing an alternate field treatment 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. Gross annual income was assigned to the straw storage shed certified in tax credit application #3490.

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 $61,595 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.

   The established average annual operating hours for tractors is set at 450 hours. To obtain a total percent allocable, the annual operating hours per implement used in reducing acreage open field burned is as follows:

   Annuals

Implement	Acres Worked	Acres/Hour	Annual Operating Hours
Fail Chopper	700	6	117
Perennials			
Grass Vac	1,400 (700x2)	5	280
Propane Flamer	800	10	80
Total annual operating hours			477

   The total annual operating hours exceeds the established average annual operating hours.

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 $134,512, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3533.

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

JB:bmTC3533
June 19, 1991

Application No. T-3536

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Lucas Mack Sales & Service, Inc.
2933 Greensprings Dr.
Klamath Falls, OR 97601

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Klamath Falls, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $2804.15
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 5/24/91, and the application for certification was filed on 6/3/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.00/pound. The applicant estimated an annual coolant recovery rate of 125 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2804.15 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3536.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3537

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

McCullum's Texaco Service, Inc.
912 SE Stephens
Roseburg, OR 97470

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Roseburg, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 10 years.

Claimed Facility Cost: $4887.02
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 3/29/91, and the application for certification was filed on 6/3/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $4.95/pound. The applicant estimated an annual coolant recovery rate of 60-90 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $4887.02 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3537.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3538

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Steve's Automotive
22 NW 14th St.
Portland, OR 97209

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Portland, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $3000.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 4/15/91, and the application for certification was filed on 6/3/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.50/pound. The applicant estimated an annual coolant recovery rate of 60 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $3000.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3538.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. TC-3539

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Kuschnick Bros. Farms
Thomas M. Kuschnick - Jeff J. Kuschnick
10504 Mt. Angel-Gervais Road NE
Gervais, Oregon 97026

The applicant owns and operates a grass seed farm operation in Gervais 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 used propane field flamer, located at 10504 Mt. Angel-Gervais Road NE, Gervais, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $2,416.67
(The applicant provided copies of proof of purchase.)

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

The applicants have 108 acres of perennial grass seed under cultivation. Prior to purchasing the propane flamer applicants open field burned as much acreage as the weather and smoke management program permitted.

The applicants remove the bulk straw by baling and then propane flame to remove diseases, insects, and seeds. The applicants state that they will no longer open field burn on any of their 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 July 1, 1989, and the application for final certification was found to be complete on June 25, 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 equipment provides the applicants with 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 $1,620 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 $2,416.67, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3539.

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

JB:bmTC3539
July 1, 1991

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Steven J. Rohner
31868 Peoria Road
Albany, Oregon 97321

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

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

2. Description of Claimed Facility

The equipment described in this application is a model 27 John Deere 14' flail chopper, located at 31868 Peoria Road, Albany, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $7,350
(The applicant provided copies of proof of purchase.)

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

The applicant has 236 perennial acres and 188 annual acres of grass seed under cultivation. Prior to purchasing straw handling and incorporating equipment the applicant open field burned as much of his acreage as the weather and smoke management program permitted.

With purchase of a tractor, baler, flail chopper and plow, the applicant states that he has reduced open field burning by 309 acres annually.

On perennial fields the applicant bales off the straw and flail chops the remaining stubble. Annual fields are flail chopped twice then the straw is plowed into the soil.

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 15, 1991, and the application for final certification was found to be complete on June 17, 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 flail chopper provides an alternative treatment of the straw in lieu of 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 $190 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.

   The actual cost of the claimed facility is $7,550 with the applicant claiming a salvage value of $3,500 for the flail chopper removed from service as a result of purchase of the claimed facility. The applicant states that the old flail chopper was worn and needed to be updated. The cost to the applicant was $4,050 or 54% of the actual cost of the claimed facility.

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 54%.

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 54%.

7. Director's Recommendation

   Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $7,550, with 54% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3540.

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

JB:bwTC3540
June 19, 1991

Application No. TC-3541

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Dan Lowrie; Paul Singer;
Pete Feller; Nyquist Country Farms
1735 23rd Street NE
Salem, Oregon 97303

The applicants own and operate grass seed farm operations in Hubbard, 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 New Holland 505 baler, located at 20265 Butteville Road NE, Hubbard, Oregon. The equipment is owned by the applicants.

Claimed equipment cost: $24,170
(Accountant's Certification was provided.)

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

Collectively, the applicants have 1,050 acres of perennial grasses under cultivation. During the last five years the applicants have made the effort to reduce open field burning by contracting with custom balers to remove straw from their fields.

To ensure more reliable and timely straw removal the applicants collectively purchased the New Holland 505 baler which accommodates straw removal on 650 acres.

The applicants have been able to get some of the bales removed from the fields by users for livestock feed and cubing operations. Straw that is not removed is stack burned.

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, 1990, and the application for final certification was found to be complete on June 19, 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 packaging in a form that accommodates removal from the field.

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

There is no annual percent return on the investment as applicant claims no gross annual income. The applicants have given some straw away but have not been able to sell it.

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 $32,500 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 $24,170, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3541.

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

JB:bmTC3541
June 27, 1991

Application No. TC-3541

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Langdon & Sons
30600 Diamond Hill Drive
Harrisburg, Oregon 97446

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

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

2. Description of Claimed Facility

The equipment described in this application is located at 30600 Diamond Hill Drive, Harrisburg, Oregon. The equipment is owned by the applicant.

Allis-Chalmers 8070 tractor (170 hp)	$31,432
MF 33 Wheel loader	14,413
Rugby bale mover	6,200
New Holland 855 baler	16,637
5 wheel hay rake/bale fork tines/rototiller	1,150

Claimed equipment cost: $69,832
(Accountant's Certification was provided.)

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

The applicant has 1,005 perennial acres and 896 annual acres under grass seed cultivation. The applicant has averaged 1,150 acres of open field burning over the last three years.

With the purchase of the equipment listed above the applicant will rake the straw from perennial fields into windrows, round bale it, move it to fieldside, and sell it, give it away or stack burn it. On annual fields the straw will be flail chopped and plowed into the soil; the field will be prepared for seeding by harrowing. The tractor will power most of the equipment used.

The applicant states that he will reduce open field burning by approximately 630 acres annually utilizing these alternatives.

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, 1989, and the application for final certification was found to be complete on June 21, 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) from perennial grass fields into a salable commodity by providing a method to package and remove the residue from the fields.

The equipment does not recover or convert waste products into a salable or usable commodity on applicants annual grass seed fields. The equipment does enable the applicant to flail chop and plow under the residue and harrow the field in preparation for seeding.

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

The actual cost of the claimed equipment ($69,832) divided by the average annual cash flow ($<8,398>) equals a return on investment factor of <8.32>. 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 $11,448 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.

The established average annual operating hours for tractors is set at 450 hours. To obtain a total percent allocable, the annual operating hours per implement used in reducing acreage open field burned is as follows:

Annuals Implement	Acres Worked	Acres/hr	Annual Operating Hours
Flail chopper	246 (123 x 2)	6	41
Plow	123	6	21
Harrow	492 (123 x 4)	7	70
Sub total			132
Perennials			
Round baler	510	4	128
Hay rake	510	10	51
Bale mover	510	10	51
Sub total			230
Total annual operating hours			362

The total annual operating hours of 362 divided by the average annual operating hours of 450 produces a percent allocable of 80%.

Equipment	Claimed Cost	Percent Allocable	Cost Allocable
Tractor	$31,432	80%	25,146
Wheel loader	14,413	100%	14,413
Bale mover	6,200	100%	6,200
Baler	16,637	100%	16,637
Hay rake	1,150	100%	1,150
Total	69,832	91%	63,546

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 91%.

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 91%.

7. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $69,832, with 91% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3542.

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

JB:bmTC3542
July 1, 1991

Application No. T-3545

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Johnson Creek Texaco
8430 SE 45th
Portland, OR 97222

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Portland, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $4250.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 5/29/91, and the application for certification was filed on 6/11/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.50/pound. The applicant estimated an annual coolant recovery rate of 50 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- o Electricity consumption of machine
- o Additional labor to operate machine
- o Machine maintenance costs
- o Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $4250.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3545.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3546

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

American Auto Recycling, Inc.
626 N Columbia
Portland, OR 97217

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Portland, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 4 years.

Claimed Facility Cost: $1500.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 6/1/91, and the application for certification was filed on 6/11/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $1.50/pound. The applicant estimated an annual coolant recovery rate of 360 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- o Electricity consumption of machine
- o Additional labor to operate machine
- o Machine maintenance costs
- o Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $1500.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3546.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3547

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Buck Medical Inc.
PO Box 15339
Portland, OR 97215

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Milwaukie, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $2850.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 5/29/91, and the application for certification was filed on 6/11/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.50/pound. The applicant estimated an annual coolant recovery rate of 60 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2850.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3547.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

McCullum's Texaco Service, Inc.
Charles and Carol McCullum
912 SE Stephens
Roseburg, OR 97470

The applicant owns and operates a service station at 912 SE Stephens, Roseburg OR, facility no. 147.

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 STI-P3 tanks and fiberglass piping, spill containment basins, tank monitor, line leak detectors, automatic shutoff valves, overfill alarm and monitoring wells.

Claimed facility cost (Accountant's certification was provided)	$ 86,178
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed on December 5, 1990 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 December 5, 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. There is also one heating oil tank at the site.

To respond to requirements established 12-22-88, the applicant installed:

1) For corrosion protection - STI-P3 tanks and fiberglass piping.

2) For spill and overfill prevention - Spill containment basins, overfill alarm and automatic shutoff valves.

3) For leak detection - Tank monitor, line leak detectors and monitoring wells.

The applicant reported that soil testing was performed at the time of tank removal and some 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 ($86,178) 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 did not indicate if any 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:			
STI-P3 tanks & fiberglass piping	$16,066	38%(1)	$ 6,105
Spill & Overfill Prevention:			
Spill containment basins	870	100	870
Overfill alarm	182	100	182
Automatic shutoff valves	3,222	100	3,222
Leak Detection:			
Tank monitor	2,512	90 (2)	2,261
Line leak detectors	756	100	756
Monitoring wells	640	100	640
Labor & materials	61,930	100	61,930
Total	$86,178	88%	$75,966

(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 $16,066 and the bare steel system is $9,976, the resulting portion of the eligible tank and piping cost allocable to pollution control is 38%.

(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 88%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $86,178 with 88% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3548.

Barbara J. Anderson:ew
(503) 229-5870
July 19, 1991

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Albina Fuel Company
3246 NE Broadway
Portland, OR 97232

The applicant owns and operates a heating oil sales and cardlock fueling site at 3246 NE Broadway, Portland OR, facility no. 1431.

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 thirteen tanks, doublewall fiberglass piping, spill containment basins, tank monitor, line leak detectors, oil/water separator and Stage I vapor recovery equipment.

Claimed facility cost (Accountant's certification was provided)	$196,115
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in February, 1990 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation in February, 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 thirteen 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 and doublewall fiberglass piping.

2) For spill and overfill prevention - Spill containment basins.

3) For leak detection - Tank monitor and line leak detectors.

The applicant also installed an oil/water separator and Stage I vapor recovery equipment.

The applicant reported that tank tightness testing was performed before construction of the project and only one small leak around a fill spout was found and repaired.

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 ($196,115) 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	$121,330	100%	$121,330
Doublewall fiberglass piping	2,388	77 (1)	1,839
Spill & Overfill Prevention:			
Spill containment basins	3,371	100	3,371
Leak Detection:			
Tank monitor	19,264	90 (2)	17,338
Line leak detectors	372	100	372
Labor & materials (includes oil/water separator & vapor recovery)	49,390	100	49,390
Total	$196,115	99%	$193,640

(1) The Department has determined the percent allocable on the cost of a corrosion protected piping system by using a formula based on the difference in cost between the protected 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 $2,388 and the bare steel system is $542, the resulting portion of the eligible tank and piping cost allocable to pollution control is 77%.

(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 99%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $196,115 with 99% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3549.

Barbara J. Anderson:ew
(503) 229-5870
July 22, 1991

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Quentin D. & Lola M. Probst
2409 Willow Drive
Newberg, OR 97132

The applicant owns and operates a service station at 150 N. Yamhill, Carlton OR, facility no. 1605.

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 STI-P3 tanks, fiberglass piping, spill containment basins, tank monitor, turbine leak detectors, automatic shutoff valves, monitoring wells, Stage I vapor recovery equipment, sumps and an overfill alarm.

Claimed facility cost (Accountant's certification was provided)	$ 64,953
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 August, 1990 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 five steel tanks, two with corrosion protection, piping type unknown, with no spill and overfill prevention or leak detection equipment.

To respond to requirements established 12-22-88, the applicant installed:

1) For corrosion protection - STI-P3 tanks and fiberglass piping.

2) For spill and overfill prevention - Spill containment basins, automatic shutoff valves, sumps and an overfill alarm.

3) For leak detection - Tank monitor, turbine leak detectors and monitoring wells.

The applicant also installed Stage I vapor recovery equipment.

The applicant reported that soil testing was performed at the time of tank removal and some 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 ($64,953) 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:			
STI-P3 tanks & fiberglass piping	$16,618	27%(1)	$ 4,487
Spill & Overfill Prevention:			
Spill containment basins	587	100	587
Automatic shutoff valves	569	100	569
Sumps	2,021	100	2,021
Overfill alarm	246	100	246
Leak Detection:			
Tank monitor	5,400	90 (2)	4,860
Turbine leak detectors	1,620	100	1,620
Monitoring wells	332	100	332
Stage I vapor recovery	539	100	539
Labor & materials	37,021	100	37,021
Total	$64,953	80%	$52,282

(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 $16,618 and the bare steel system is $12,187, the resulting portion of the eligible tank and piping cost allocable to pollution control is 27%.

(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 80%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $64,953 with 80% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3555.

Barbara J. Anderson:ew
(503) 229-5870
July 26, 1991

Application No. T-3556

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Bi-Mart Corporation
PO Box 2310
Eugene, OR 97402

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Eugene, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 5 years.

Claimed Facility Cost: $3000.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 6/5/91, and the application for certification was filed on 6/17/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $4.67/pound. The applicant estimated an annual coolant recovery rate of 30 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- o Electricity consumption of machine
- o Additional labor to operate machine
- o Machine maintenance costs
- o Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $3000.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3556.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3557

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Chambers Plumbing & Heating, Inc.
225 W. Lockhart Ave./PO Box 1320
Coos Bay, OR 97420

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Coos Bay, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 5 years.

Claimed Facility Cost: $2849.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 5/24/91, and the application for certification was filed on 6/19/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $3.56/pound. The applicant estimated an annual coolant recovery rate of 400 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2849.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3537.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3558

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Elliott's Auto Service, Inc.
4516 Sunnyside Road SE
Salem, OR 97302

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Salem, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 5 years.

Claimed Facility Cost: $2599.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 6/19/90, and the application for certification was filed on 6/18/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.60/pound. The applicant estimated an annual coolant recovery rate of 187.5 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2599.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3558.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3559

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Ted's Collision Repair, Inc.
4570 West Eleventh Ave.
Eugene, OR 97402

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Eugene, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 5 years.

Claimed Facility Cost: $2200.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 5/22/91, and the application for certification was filed on 6/19/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $4.30/pound. The applicant estimated an annual coolant recovery rate of 48 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- o Electricity consumption of machine
- o Additional labor to operate machine
- o Machine maintenance costs
- o Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2200.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3559.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3561

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Don Rasmussen Company
1710 SW Morrison St.
Portland, OR 97205

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Portland, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 10 years.

Claimed Facility Cost: $1786.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 4/23/91, and the application for certification was filed on 6/24/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $3.17/pound. The applicant estimated an annual coolant recovery rate of 415 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $1786.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3561.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. T-3570

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Troutdale Chevron Inc.
1260 NW Frontage Rd.
Troutdale, OR 97060

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Troutdale, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 4 years.

Claimed Facility Cost: $2063.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 6/14/91, and the application for certification was filed on 6/25/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.00/pound. The applicant estimated an annual coolant recovery rate of 52 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2063.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3570.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

Application No. TC-3574

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

McCall Heating Co.
808 SW 15th Ave.
Portland, OR 97205

The applicant owns and operates a heating oil distribution center at 1650 NE Lombard, Portland OR, facility no. 5439.

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 and piping, spill containment basins, tank monitor, monitoring wells, sumps, oil/water separator, automatic shutoff valves and line leak detectors.

Claimed facility cost (Accountant's certification was provided)	$123,846
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 September, 1989 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 September, 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 and piping.

2) For spill and overfill prevention - Spill containment basins, sumps and automatic shutoff valves.

3) For leak detection - Tank monitor, line leak detectors and monitoring wells.

The applicant also installed an oil/water separator.

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 ($123,846) 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 only alternative to shutting down the facility. 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 & piping	$ 23,925	20%(1)	$ 4,785
Spill & Overfill Prevention:			
Spill containment basins	983	100	983
Sumps	2,460	100	2,460
Automatic shutoff valves	173	100	173
Leak Detection:			
Tank monitor	4,564	90 (2)	4,108
Monitoring wells	2,283	100	2,283
Oil/water separator	1,466	100	1,466
Labor & materials (includes line leak detectors)	87,992	100	87,992
Total	$123,846	84%	$104,250

(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 $23,925 and the bare steel system is $19,106, the resulting portion of the eligible tank and piping cost allocable to pollution control is 20%.

(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 84%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $123,846 with 84% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3574.

Barbara J. Anderson:ew
(503) 229-5870
July 22, 1991

Application No. T-3577

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Jantzen Beach Chevron
12105 N Jantzen Dr.
Portland, OR 97217

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Portland, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 7 years.

Claimed Facility Cost: $2981.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 3/1/91, and the application for certification was filed on 6/28/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $4.00/pound. The applicant estimated an annual coolant recovery rate of 90 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2981.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3577.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Dennis Thompson
12475 SW Main St.
Tigard, OR 97223

The applicant owns and operates a gas station at 12475 SW Main St., Tigard OR, facility no. 2371.

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 two fiberglass tanks, fiberglass piping, spill containment basins, line leak detectors and monitoring wells.

Claimed facility cost (Accountant's certification was provided)	$ 38,887
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in October, 1989 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 October, 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 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 corrosion protection - Fiberglass tanks and piping.

2) For spill and overfill prevention - Spill containment basins.

3) For leak detection - Line leak detectors and monitoring wells.

The applicant reported that soil testing was performed at the time of tank removal and some 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 ($38,887) 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:			
Fiberglass tanks & piping	$11,646	34%(1)	$ 3,960
Spill & Overfill Prevention:			
Spill containment basins	3,000	100	3,000
Leak Detection:			
Monitoring wells	1,200	100	1,200
Labor & materials (includes line leak detectors)	23,041	100	23,041
Total	$38,887	80%	$31,201

(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 $11,646 and the bare steel system is $7,666, the resulting portion of the eligible tank and piping cost allocable to pollution control is 34%.

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 80%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $38,887 with 80% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3578.

Barbara J. Anderson:ew
(503) 229-5870
July 29, 1991

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Capital City Companies, Inc.
1295 Johnson St. NE
Salem, OR 97303

The applicant owns and operates a service station and cardlock at 1410 SE Hwy. 101, Lincoln City OR, facility no. 3264.

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 STI-P3 tanks, fiberglass piping, spill containment basins, tank monitor, line leak detectors, overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I and II vapor recovery equipment and piping.

Claimed facility cost (Accountant's certification was provided)	$ 92,145
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 January 4, 1990 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 January 4, 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 - STI-P3 tanks & fiberglass piping.

2) For spill and overfill prevention - Spill containment basins, sumps, overfill alarm & automatic shutoff valves.

3) For leak detection - Tank monitor, line leak detectors & monitoring wells.

The applicant also installed Stage I & II vapor recovery equipment & piping.

The applicant reported that soil testing was performed at the time of tank removal and some 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 ($92,145) 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 fiberglass tanks, but chose STI-P3 due to the presence of groundwater. 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:			
STI-P3 tanks & fiberglass piping	$26,707	22%(1)	$ 5,876
Spill & Overfill Prevention:			
Spill containment basins	780	100	780
Overfill alarm	175	100	175
Sumps	2,476	100	2,476
Automatic shutoff valves	736	100	736
Leak Detection:			
Tank monitor	6,451	90 (2)	6,451
Line leak detectors	1,976	100	1,976
Monitoring wells	208	100	208
Vapor recovery	2,158	100	2,158
Labor & materials	50,478	100	50,478
Total	$92,145	77%	$70,669

(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 $26,707 and the bare steel system is $20,898, the resulting portion of the eligible tank and piping cost allocable to pollution control is 22%.

(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 77%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $92,145 with 77% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3579.

Barbara J. Anderson:ew
(503) 229-5870
August 5, 1991

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Capital City Companies, Inc.
1295 Johnson St. NE
Salem, OR 97303

The applicant owns and operates a grocery store and gas station at 530 Cascade St., Sisters OR, facility no. 5332.

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 STI-P3 tanks and double wall fiberglass piping, spill containment basins, tank monitor, line leak detectors, overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I and II vapor recovery equipment and piping.

Claimed facility cost (Accountant's certification was provided)	$ 97,993
Percent allocable to pollution control	100%

3. Procedural Requirements

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

The facility met all statutory deadlines in that installation of the facility was substantially completed in December, 1989 and the application for certification was found to be complete within two years of substantial completion of the facility. The facility was placed into operation in November, 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 - STI-P3 tanks & fiberglass piping.

2) For spill and overfill prevention - Spill containment basins, sumps, overfill alarm & automatic shutoff valves.

3) For leak detection - Tank monitor, line leak detectors & monitoring wells.

The applicant also installed Stage I & II vapor recovery equipment & piping.

The applicant reported that soil testing was performed at the time of tank removal and some 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 ($97,993) 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 also considered installing fiberglass tanks. 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:			
STI-P3 tanks & fiberglass piping	$19,829	47%(1)	$ 9,320
Spill & Overfill Prevention:			
Spill containment basins	780	100	780
Overfill alarm	175	100	175
Sumps	2,476	100	2,476
Automatic shutoff valves	828	100	828
Leak Detection:			
Tank monitor	6,811	90 (2)	6,130
Line leak detectors	1,996	100	1,996
Monitoring wells	240	100	240
Vapor recovery	1,875	100	1,875
Labor & materials	62,983	100	62,983
Total	$97,993	89%	$86,803

(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 $19,829 and the bare steel system is $10,492, the resulting portion of the eligible tank and piping cost allocable to pollution control is 47%.

(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 89%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $97,993 with 89% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3581.

Barbara J. Anderson:ew
(503) 229-5870
August 5, 1991

Application No. T-3583

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

C. T. Auto Repair
1078 Court St. #108
Medford, OR 97501

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Medford, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 5 years.

Claimed Facility Cost: $3095.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 8/5/91, and the application for certification was filed on 7/9/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $3.50/pound. The applicant estimated an annual coolant recovery rate of 150 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $3095.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3583.

Jerry Coffer:JC
(503) 239-8644
August 9, 1991

Application No. T-3584

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Dailey's Tire & Wheel
220 E Baseline
Hillsboro, OR 97123

The applicant owns and operates an auto air conditioner coolant recovery and recycling machine in Hillsboro, Oregon.

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

2. Description of Facility

Facility is a machine which removes and cleans auto air conditioner coolant. The machine is self contained and includes pumps, tubing, valves and filters which rid the spent coolant of oil, excess air, water, acids and contaminant particles.

The applicant has identified the useful life of the equipment to be 3 years.

Claimed Facility Cost: $2695.00
(Costs have been documented)

3. Procedural Requirements

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

The facility has met all statutory deadlines in that the facility was determined substantially completed on 6/8/90, and the application for certification was filed on 6/11/91, within two years of substantial completion.

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 air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J1991, or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

In determining the percent of the 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 recovery and recycling machine serves two purposes. It prevents the release of spent auto A/C coolant to the environment, thereby meeting Department regulations requiring capture of this air contaminant. Second, it provides a means to recover and clean waste coolant for reuse as an auto A/C coolant.

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

The percent return on investment from facility use was calculated using coolant cost and retrieval rate data from the applicant and generic cost of facility operations estimated by the Department.

Specifically, the applicant estimated the cost to applicant of virgin coolant at $5.50/pound. The applicant estimated an annual coolant recovery rate of 72 pounds.

In estimating the operating costs for use of the recovery and recycling machine, the Department developed a standardized methodology which considers the following factors:

- Electricity consumption of machine
- Additional labor to operate machine
- Machine maintenance costs
- Depreciation of machine

Based on these considerations, the applicant estimated the return on investment to be less than zero, in that machine operating costs exceeded income from the use of the machine.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. However, increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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 tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce air 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 $2695.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3584.

Jerry Coffer:JC
(503) 239-8644
August 2, 1991

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Estacada Oil Co.
PO Box 639
Estacada, OR 97023

The applicant owns and operates a wholesale petroleum outlet at 512 SE Currin St., Estacada OR, which replaces a former facility at 502 SE Main, Estacada OR, facility no. 9245.

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 six fiberglass tanks, double wall fiberglass piping, spill containment basins, tank monitor, line leak detectors and an oil/water separator.

Claimed facility cost (Accountant's certification was provided)	$94,232
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 September, 1989 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 September, 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 a vacant lot containing one unknown tank. The facility that this project replaces 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 corrosion protection - Fiberglass tanks and double wall fiberglass piping.

2) For spill and overfill prevention - Spill containment basins.

3) For leak detection - Tank monitor and line leak detectors.

The applicant also installed an oil/water separator.

The applicant reported that soil testing was performed at the present site and no contamination was found. However, contamination was found at the former site and is being cleaned up.

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 $92,607. This represents a difference of $1,625 from the applicant's claimed cost of $94,232 due to a determination by the Department that the cost of the site assessment ($1,625) 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
Corrosion Protection:			
Fiberglass tanks and doublewall piping	$31,774	33%(1)	$10,485
Spill & Overfill Prevention:			
Spill containment basins	6,258	100	6,258
Leak Detection:			
Tank monitor	8,945	90 (2)	8,051
Oil/water separator	10,444	100	10,444
Labor & materials (includes line leak detectors)	35,186	100	35,186
Total	$92,607	76%	$70,424

(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 $31,774 and the bare steel system is $21,230, 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 76%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $92,607 with 76% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3608.

Barbara J. Anderson:ew
(503) 229-5870
August 9, 1991

Oregon

ENVIRONMENTAL QUALITY COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: September 18, 1991
Agenda Item: C
Division: ECD
Section: Administration

SUBJECT:

Request for authorization to hold public hearings on the Illegal Drug Lab Cleanup Rules

PURPOSE:

To provide opportunity for comment on the proposed changes to OAR 340-140-010 to 100 directed by the 1991 Legislature.

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 C
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

X	Approve Department Recommendation	
___	Variance Request	Attachment ___
___	Exception to Rule	Attachment ___
___	Informational Report	Attachment ___
X	Other: To hold hearings on proposed changes to OAR 340-140-010 to 100	Attachment A

DESCRIPTION OF REQUESTED ACTION:

The Department is requesting authorization to hold hearings on proposed changes in OAR 340-140-010 to 100. These proposed changes include that the mandatory cost share provisions of the current rules be rescinded for state and local law enforcement agencies requesting drug lab cleanup assistance. Cost share for federal agencies will remain in place unchanged. Further, the Department proposes to request comments on how a voluntary cost share program could be implemented during the biennium at the hearing and during the comment period for these rules. This conforms with legislative direction to pursue a voluntary cost share program in lieu of the mandatory provisions which are being rescinded.

In addition there are housekeeping changes proposed:

1. The term "Partner agency" was applied to agencies working with the Department on cleanups and sharing the expenses of that activity. The words "law enforcement agency" have replaced this terminology.

2. The part of the rule dealing with vehicles in custody (340-140-100 (2)) is proposed to be dropped. This condition has been shown to be unworkable due to the consistent low value of confiscated vehicles. Department of Human Resources rules on contaminated property from drug labs will still apply (OAR 333-40-090 and 333-40-170).

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
X	Statutory Authority: ORS 475.405 - 475.495	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
___	Pursuant to Federal Law/Rule: _____	Attachment ___
___	Other:	Attachment ___

X Time Constraints: Current rules require cost share with law enforcement agencies, but the 1991 legislature directed they be rescinded. Rules should be changed as quickly as possible to reflect agency practice of no longer requiring cost share, except where federal agencies request the cleanup assistance.

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 B

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The proposed changes in the rules affect law enforcement agencies in Oregon requesting DEQ's assistance with cleanup at illegal drug lab sites.

PROGRAM CONSIDERATIONS:

Information submitted to the Department during the public hearing will be used to update the legislature on the status of local funding for cleanups. This information in turn may be used to determine the proper budget for the cleanup program.

When directing the Department to rescind the mandatory cost share provision of the rules the Legislature also directed that there would be an effort made to get some funds from local agencies on a voluntary basis. This activity will be pursued, and comments about how it can be accomplished will be requested during the public comment period prior to Commission action on these proposed rules changes.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Authorize the Department to hold public hearings to receive comments on the proposed rule changes, and present the rules after review of comments for adoption at a later meeting.

2. Direct the Department to continue under the existing rules, but not invoice cost share to law enforcement agencies.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the Commission approve alternate 1; Authorize the Department to hold public hearings.

This will insure compliance with the directives of the 1991 legislature and that agency practice conforms to the rules of the Commission.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The recommended action is consistent with legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should the Department modify existing rules to address legislative direction, or work within existing rules to achieve equivalent results.

INTENDED FOLLOWUP ACTIONS:

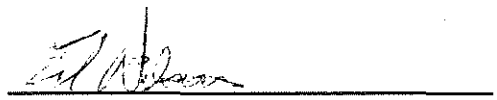
File "a Chance to Comment on" notice upon Commission approval to hold hearings in the November Secretary of State's Bulletin.

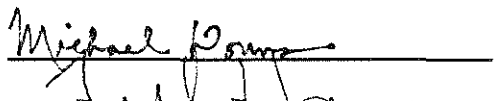
Hold hearing on November 20, 1991, and compile comments.

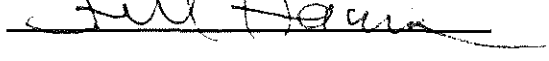
Reassemble the advisory groups that have previously provided advice on drug lab issues to discuss the development of a voluntary cost share program.

Request adoption of the revised rules by the EQC at the February 1992 meeting.

Approved:

Section: 

Division: 

Director: 

Report Prepared By: Ed Wilson

Phone: 229-5373

Date Prepared: 8/26/91

(EW:ew)
(drg-rul.140)
(8/26/91)

Attachment A
Agenda Item C
9/18/91 meeting

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 140 - DEPARTMENT OF ENVIRONMENTAL QUALITY

ILLEGAL DRUG LAB CLEANUP ASSISTANCE

AUTHORITY, PURPOSE, AND SCOPE

340-140-010 (1) These rules are promulgated in accordance with and under the authority of ORS 475.405 through ORS 475.495.

(2) The purpose of these rules is to establish the policies of the Department of Environmental Quality when responding to a request made by a law enforcement agency for assistance with the cleanup of hazardous materials and chemicals related to the production of illegal drugs.

(3) These rules establish relationships and responsibilities relative to:

(a) The Department's role in drug lab waste management.

(b) The assisted law enforcement agency's role in drug lab waste management.

(c) The taking of representative samples, and/or packaging, of materials needed for evidence.

~~[(d) The sharing of costs of drug lab cleanup activity undertaken by the Department.]~~

[~~(e)~~](d) The documentation of waste management and site contamination.

[~~(f)~~](e) The role of the Department in the recovery of funds from responsible parties.

[~~(g)~~](f) The disposition of those materials managed by the Department as a result of the assistance provided that are not disposed as waste.

DEFINITIONS:

340-140-020 As used in these rules,

(1) "Administrative costs" means direct staff, overhead and indirect costs of operating the program. Costs will be established using previous experience with cleanup management.

~~[(2) "Budgeted programs" means those programs and law enforcement services made available to the community through a partner agency that have been previously planned, and are funded through revenue sources known to exist at the inception of the budget period.]~~

[(3)](2) "Chemical" has that meaning set forth in ORS 475.405(1).

[(4)](3) "Cleanup costs" has the meaning set forth in ORS 475.405(3).

~~[(5) "Cost share" is the assessed portion of the Department's cleanup costs incurred as a result of assisting a partner agency, to be invoiced to that agency.]~~

~~[(6) "Current budget" means the law enforcement budget approved by the governing body for the current fiscal year or period.]~~
[(7)](4) "Department" means the Department of Environmental Quality, or its authorized representative.
[(8)](5) "Full cost" means all cleanup costs, as defined in ORS 475.405(3), incurred by the Department at or related to a site.
[(9)](6) "Generator Status" means the role accepted by either the Department or the ~~[partner]~~law enforcement agency where a registered hazardous waste generator is required for waste disposal, and at those times when materials are in transport with a contracted waste hauler.
[(10)](7) "Illegal Drug Cleanup Fund" is the funding account established under ORS 475.495.
[(11)](8) "Illegal Drug Lab Material Management" refers to the legal and responsible custody of hazardous materials and hazardous waste from the time they are received from a ~~[partner]~~law enforcement agency to the time of final disposal.
[(12)](9) "Invoice" for the purpose of these rules shall mean any written notification from the DEQ to the ~~[Partner]~~law enforcement agency used to identify the amount of money to be repaid to the DEQ for the illegal drug lab cleanup fund.
[(13)](10) "Law Enforcement Agency" means any organization authorized under federal, State, or local law or ordinance to administer or enforce federal, State, or local laws or ordinances related to illegal drug manufacturing.
~~[(14) "Lead agency" for the purpose of these rules will be the member of a joint law enforcement effort designated by that group to act as the partner agency in relation to the Department.]~~
~~[(15) "Partner Agency" means any law enforcement agency (or consortium of law enforcement agencies) participating in drug lab cleanup in accordance with these rules.]~~
[(16)](11) "Qualified vendor" means any waste management company able to provide proper waste management for the type of materials being managed, who is not currently in violation of any relevant statutes or rules.
[(17)](12) "Residual contamination" means the residual odors and trace chemicals resulting from the operation of an illegal drug lab, or storage of materials associated with illegal drug manufacturing.
[(18)](13) "Responsible Party" means a person or persons who is liable for cleanup costs under ORS 475.455.
[(19)](14) "Scheduled substances" are chemicals listed by the State Board of Pharmacy and/or federal government as controlled substances.
[(20)](15) "Site" has the meaning set forth in ORS 475.405(9). The Department may include as part of the site those locations to which chemicals have been taken.
[(21)](16) "Site Cleanup" means the limited removal of chemicals related to the production of illegal drugs from any location identified by the participating agency to prevent further site contamination or criminal activity.
[(22)](17) "Temporary Storage" means the secure warehousing of

confiscated material being held as evidence away from the point of seizure by the [~~partner~~]law enforcement agency.
[(23)](18) "TSDF" means a treatment, storage, or disposal facility that is a fully regulated and licensed waste management operation possessing proper approvals to handle the waste stream type originating from an illegal drug lab.

EXTENT OF ASSISTANCE TO BE PROVIDED

340-140-040 (1) Upon the request of a law enforcement agency, the Department of Environmental Quality may identify, cleanup, store and dispose of chemicals located at or resulting from an alleged drug manufacturing site. ~~[The law enforcement agency making the request will become the Partner agency.]~~

(2) To arrange for assistance as provided in this rule the agency requesting services must contact the DEQ either directly or through the Oregon Emergency Response System, a 24 hour emergency reporting system at 1-800-452-0311.

(3) The Department will issue where needed a task order to a qualified vendor(s) to provide waste management services. Upon receiving and accepting an official request for assistance, the Department will schedule or dispatch the contractor to the location identified. It will be the responsibility of the Department to see that the contractor is competent and able to respond in a reasonable time to the requested location.

(4) The Department's contractor may be tasked to manage all or part of the cleanup operation and disposal in stages, such as:

(a) Assessment of need for action and implementation of appropriate pre-approved Department options.

(b) On-site cleanup and packaging of materials, and transportation to the TSDF.

(c) On-site representative sampling, and/or packing of materials to be transported by the ~~[partner]~~ law enforcement agency as evidence to a storage location of their choice.

(d) If temporary storage has been used, cleanup may take place at the storage location.

RESPONSIBILITIES FOR OWNERSHIP OF WASTE, STORAGE, AND SECURITY

340-140-050 (1) When the disposal of chemicals from an illegal drug lab cannot be accomplished immediately after discovery, all confiscated materials will be the responsibility of the ~~[partner]~~ law enforcement agency and declared to be potential evidence pending investigation of an alleged crime. The ~~[partner]~~law enforcement agency will remain responsible for the materials from the time of discovery to loading by the Department's contractor for final transport to the TSDF or an alternate legal disposal. In those cases where the ~~[partner]~~law enforcement agency is the registered waste generator the responsibilities will continue as defined by federal and state statutes.

(2) The Department will serve as the legal generator of any

hazardous wastes identified at the time of loading for transport to disposal, unless:

(a) any such material is transported to disposal from a site owned by the [~~partner~~]law enforcement agency or the governmental entity it represents and that site already has a waste generator identification number for some other generator. Drug lab waste shipped from such sites will not be counted in calculating the waste generator fees assessed by DEQ for other waste management activities;

(b) opportunity and justification exists to assign this responsibility to the responsible party;

(c) the Department has been unable to secure sufficient funds to properly manage the materials and has returned control of the disposal to the [~~partner~~]law enforcement agency.

(3) The Department will make application to the Environmental Protection Agency for generator status when applicable, or assist the [~~partner~~]law enforcement agency in achieving registration.

(a) Contractors moving hazardous waste from a cleanup site to disposal will use the registration number provided by, or through, the Department for that purpose.

(b) [~~Partner~~]Law enforcement agency contractors moving evidence from a cleanup site to storage designated by the [~~partner~~]law enforcement agency will follow all applicable transporter regulations for transport of hazardous materials.

(c) As part of the work done for the Department, within 5 days of removing hazardous materials from an illegal drug lab site covered by ORS 453.855 - 453.992, contractors will provide copies of hazardous waste manifests, associated packing lists, and any related documentation of chemicals found at the site, to the Oregon Health Division, Office of Epidemiology and Health Statistics.

(4) Security at the cleanup site or storage location for contractor's staff and the confiscated materials, will be provided by the agency requesting the cleanup assistance.

EVIDENCE MANAGEMENT

340-140-060 (1) After site cleanup operations there may be confiscated materials that must be managed by the [~~partner~~]law enforcement agency receiving cleanup assistance under some conditions:

(a) Materials transported to temporary storage because they are needed in the prosecution of an alleged crime shall be labeled as evidence, and will be the responsibility of the [~~partner~~]law enforcement agency involved.

(b) Materials, such as laboratory equipment and clean glassware, that present a hazard but are not hazardous waste may require temporary storage or local disposal options. Actions taken will be at the discretion of the [~~partner~~]law enforcement agency.

FUNDING PARTICIPATION

340-140-070 (1) The initial funds needed to support the operation of this program will be provided by the Department. [~~The applicable cost share will be invoiced to the partner agency by the Department.~~]

[~~(2) Cost share will be dependent on the status of the partner agency requesting assistance:~~

~~(a) Partner agencies shall pay one half of all cleanup costs, including contractor fees, disposal fees, permit fees, transport fees, and administrative costs. This cost share payment will be invoiced to the agency requesting the assistance and will be due 30 days after receipt.~~]

[~~(b)~~](a) [~~Partner~~]Federal law enforcement agencies [~~that are federal government agencies~~] will be asked to repay the full cost of the cleanup. [~~, and are not eligible for exemption from payment under OAR 340 140 070 (3).~~]

(b) Any agency that is invoiced for cleanup costs must make payment within 30 days, or further assistance may be withheld.

[~~(c) Partner agencies that represent joint law enforcement efforts and/or are acting as partner agencies as the result of a contract will collectively be responsible for cost share if no prior lead agency designation exists.~~]

[~~(3) Partner agencies may be exempted from payment of invoiced cost share under the following conditions:~~

~~(a) At the point in time the invoice is to be paid the partner agency would be able to pay the invoice only by taking funds away from programs in the current budget, the result of which would be a reduction in law enforcement services by that agency, and~~

~~(b) Sufficient funds are not available to pay the current invoice, but may be available to pay for subsequent cleanups, if the subsequent cleanup cost share is within budget when the invoice is received.~~

~~(c) Partner agencies as described in (2)(c) of this section may be exempt if their contract or interagency agreement specifies another member of the group to be responsible for all law enforcement costs, and that member is eligible for exemption.~~]

[~~(4) Partner agencies declaring an exemption shall return the Department's invoice within 30 days of receipt endorsed by an authorized representative of the partner agency certifying that a review of the available funds in the current budget has been undertaken and payment would result in a reduction of budgeted law enforcement services by that agency, and sufficient funds might be available for subsequent cleanups as described in (3)(b) of this section.~~]

[~~(5) If a partner agency either does not pay the invoice or declare an exemption within 30 days of receipt, the Department will cease providing drug lab cleanup services to the partner agency until payment is received or an exemption is declared.~~]

[~~(6) The Department will attempt to manage accumulated small quantities of confiscated drug lab chemicals held by a partner agency as a single cleanup for the purposes of cost share when only one response is requested.~~]

RECORDS OF CLEANUPS AND DISPOSALS

340-140-080 (1) The Department shall keep records of drug lab cleanups and resulting hazardous materials and waste management activities of its contractors.

(2) Each operation will be recorded in a file available in accordance with the public records law, and include:

(a) the operation date based on the request for assistance,

(b) the [~~partner~~]**law enforcement** agency's name and representative making the request for assistance,

(c) the location of the initial response,

(d) the cleanup and disposal contractor's name,

(e) the location of the disposal facility or temporary storage if used,

(f) costs for each part of the operation,

(g) cost recovery information if applicable,

(h) and any related information.

RECOVERED FUNDS

340-140-090 (1) The Department may demand repayment of cleanup costs from the responsible party when that person is known to the Department.

(2) The [~~partner~~]**law enforcement** agency **assisted** shall provide the Department with a schedule of any court actions involving the prosecution of persons potentially liable for cleanup costs.

(3) The Department will prepare invoices for the actual or estimated amount of the total cleanup costs and forward these invoices to the District Attorney's office handling the criminal prosecution of the case prior to the scheduled hearing date.

(4) Where a law enforcement agency cannot assist the Department in cost recovery through court ordered restitution in a criminal proceeding, the [~~partner~~]**law enforcement** agency may be requested to provide assistance in a civil cost recovery action.

(a) [~~Partner~~]**Law enforcement** agencies may be asked to provide information on the identity and whereabouts of the responsible party.

(b) [~~Partner~~]**Law enforcement** agencies may be requested to serve notices on behalf of the Department.

(5) All funds received by the Department identified as [~~cost share, full~~] cost repayment, restitution, and any other name used to describe repayment of drug lab cleanup expenses and administrative costs will be deposited in the Illegal Drug Cleanup Fund.

(6) When money is recovered from a responsible party under ORS 475.405 through 475.495, such money will be deposited in the Illegal Drug Cleanup Fund.

CONFISCATED MATERIALS MANAGEMENT

340-140-100 (1) In carrying out cleanup operations, items with residual contamination, in addition to hazardous waste, may be taken into custody and turned over to the Department by a [~~partner~~] **law enforcement** agency to protect public health and/or the environment. Any such items will be managed according to the appropriate statutes and rules for those materials. Unless otherwise regulated these items may be handled in the following ways:

(a) Items where the value after decontamination will be less than the cost of decontamination will be disposed of as solid waste, or to provide additional security, as hazardous waste.

(b) Items not characterized as hazardous waste may be held until an acceptable recipient capable of decontaminating the items, and/or salvaging parts of the items, can be found. Recipients may be considered acceptable and capable of decontaminating or salvaging if they engage in that business professionally and have proper business licenses, and if required, Health Division approval. They must be willing to accept all risks and liabilities associated with ownership, operating, or re-selling potentially contaminated items.

[~~(2) Vehicles in custody, either through the satisfaction of liens or confiscated as contaminated property, will not be sold or released until decontaminated to meet Health Division requirements.~~]

[(3)] **(2)** All revenue generated by the Department under (1b) [~~and (2)~~] of this section will be deposited in the Illegal Drug Cleanup Fund.

Attachment B
Agenda Item C
9/18/91 meeting

Legislative Direction

When reviewing and approving the Department's 1991-93 budget the Legislative Ways and Means Subcommittee discussed the issue of local cost share for cleanups. The Budget Report of the Joint Committee on Ways and Means contains the following summary of Subcommittee action on the Drug Lab Cleanup budget:

(SB 5536 budget report, page 7, reads in part)

> "The Subcommittee reduced the base General Fund for illegal drug laboratory clean-ups by $210,315, consistent with 1989-91 biennium experience. The $1.1 million retained is sufficient to fund fully current projections of 1991-93 costs assuming no cost share by state and local law enforcement agencies. The Subcommittee concurred that the cost-share regulations should be rescinded, but that the Department would continue to work with local agencies to secure voluntary local participation. The Subcommittee was particularly concerned that local participation become a resource should costs increase beyond the projected level. The Department is, in the event that efforts to achieve voluntary cost-share fail, to return with corrective legislation for consideration by the 1993 Legislative Assembly."

The Subcommittee also directed that the Department would continue to require full cost reimbursement from federal agencies.

Attachment C
Agenda Item C
9/18/91 EQC Meeting

IN THE MATTER OF ADOPTING OAR Chapter 340 Division 140	)))	STATEMENT OF NEED PRINCIPAL DOCUMENTS RELIED UPON STATEMENT OF FISCAL IMPACT FOR PERMANENT RULES

Statutory Authority

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt and amend rules. ORS 475.405 through 475.495 authorizes rule adoption for the purpose of setting policy to define the relationship between the Department and those law enforcement agencies that request Department assistance with the management of hazardous chemicals and materials from illegal drug labs.

Need for the Rules

The proposed rules are necessary in order to establish the process and criteria for DEQ assistance to law enforcement agencies in the cleanup, storage, and disposal of hazardous chemicals located at illegal drug manufacturing sites. The statutory authority provides that the Department's assistance with cleanup is discretionary. The Department wishes to avoid ambiguity and unequal treatment of those asking for assistance by establishing policy through rules.

Principal Documents relied Upon

(1) 1991 Legislative Ways and Means Subcommittee budget report. (please see attachment 'B')
(2) Federal Guidelines for the Cleanup of Clandestine Drug Labs, March 1990.

Fiscal and Economic Impact

Local law enforcement agencies not qualifying under the exemption provision of OAR 340-140-070 under the existing rule are required to repay half of the cost of cleanup. The proposed changes to OAR 340-140-010 to 100 will remove mandatory cost share for local law enforcement agencies in illegal drug lab cleanups. The requirement in the rule that federal law enforcement agencies repay the full cost of cleanup is to remain unchanged.

Since a voluntary method of cost share for local law enforcement agencies is to be developed as a replacement for the existing rule, there may be no net change in the cost to the agencies assisted by DEQ. In some cases where 50% of the cost presented a great enough burden to local agencies to cause them to file notice of exemption under OAR 340-140-070, a voluntary payment of some other percentage of the cost may result in an increased fiscal impact.

Attachment D
Agenda Item C
9/18/91 meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Revision to the Illegal Drug Lab Cleanup rules

WHO IS AFFECTED: Law enforcement agencies in Oregon that require the assistance of the DEQ at illegal drug lab sites, dumps, and storage locations.

BACKGROUND: ORS 475.405 to 475.495 creates the DEQ's Illegal Drug Lab Cleanup Program and directs the Environmental Quality Commission (EQC) to adopt administrative rules to guide the Department. In 1989 rules were adopted defining the services of the program and the relationships between the DEQ and law enforcement agencies. In those rules there is a provision for cost share to be paid by the agencies assisted and an exemption provision for those agencies unable to make the cost share payment.

In practice cost share did not generate the revenue anticipated. The 1991 legislature decided to provide sufficient funds to allow program operations to continue at projected biennium levels without mandatory local cost share participation.

WHAT IS PROPOSED: The DEQ has been directed to rescind cost share and replace it with a method of voluntary repayment to the DEQ. This will be done by removing from the rules the requirement for a 50% mandatory cost share, and making minor housekeeping changes in the rules. The DEQ will develop the voluntary repayment method with the assistance of an advisory group, and requests comments on how a voluntary cost share program could work during this public comment period.

WHAT ARE THE HIGHLIGHTS:

* Rules sections that reference 50% cost share and exemption from 50% cost share are to be removed.
* Repayment of DEQ full cost will remain for federal agencies assisted.
* DEQ responsibilities to provide services will remain the same.

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 Hearing Schedule

PORTLAND
November 20, 1991 at 1:30 P.M. , room 10 A
Department of Environmental Quality
811 S.W. 6th
Portland, Oregon 97204

Additional meetings will be scheduled if sufficient need is identified. For information on the proposed rule changes and hearings contact Ed Wilson, 229-5373.

A Department staff member will be appointed to preside over and conduct the hearing. Written comments should be sent to the Department of Environmental Quality, 811 S.W. 6th, Portland, Oregon 97204.

The comment period will end December 6, 1991. All comments should be received by 5:00 pm.

WHAT IS THE NEXT STEP:

After the public testimony has been received and evaluated, the revised Drug Lab Cleanup Rules will be presented to the Environmental Quality Commission in February 1992. The Commission may adopt the revised rule, recommend further amendments, or take no action.

REVISED

Attachment D
Agenda Item C
9/18/91 meeting

Oregon Department of Environmental Quality

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WHO IS AFFECTED: Law enforcement agencies in Oregon that require the assistance of the DEQ at illegal drug lab sites, dumps, and storage locations.

BACKGROUND: ORS 475.405 to 475.495 creates the DEQ's Illegal Drug Lab Cleanup Program and directs the Environmental Quality Commission (EQC) to adopt administrative rules to guide the Department. In 1989 rules were adopted defining the services of the program and the relationships between the DEQ and law enforcement agencies. In those rules there is a provision for cost share to be paid by the agencies assisted and an exemption provision for those agencies unable to make the cost share payment.

In practice cost share did not generate the revenue anticipated. The 1991 legislature decided to provide sufficient funds to allow program operations to continue at projected biennium levels and required DEQ to pursue a voluntary cost share plan with the assisted agencies.

WHAT IS PROPOSED: The DEQ has been directed to rescind cost share and replace it with a method of voluntary repayment of some part of the cost of drug lab cleanup. This will be done by removing from the rules the requirement for a 50% mandatory cost share, and making minor housekeeping changes in the rules. The DEQ will develop a plan for voluntary repayment method prior to proposing EQC adoption of modified rules. The plan will be designed with assistance from a rules development advisory group, local law enforcement groups, and public comments on voluntary cost share. The voluntary program design will be presented to the EQC as an informational document.

WHAT ARE THE HIGHLIGHTS:

* Rules sections that reference 50% cost share and exemption from 50% cost share are to be removed.
* Repayment of DEQ full cost will remain for federal agencies assisted.
* DEQ responsibilities to provide services will remain the same.

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Oregon

ENVIRONMENTAL
QUALITY
COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: 9/18/91
Agenda Item: D
Division: HSW/ECD
Section: Solid Waste/Policy & Program Development

SUBJECT:

Solid Waste Disposal Fee: Hearing Authorization on Proposed Rules to Implement Fee Increase

PURPOSE:

To implement a per-ton disposal fee increase required by 1991 Senate Bill 66, and an additional per-ton amount for the orphan site account (OSA). For purposes of implementing Senate Bill 66, the per-ton disposal fee increase is $.35 between January 1, 1992 and December 31, 1993. For the orphan site account, the requested fee increase is $.15 per ton. Both will be added to the existing $.50 per ton disposal fee so that, as of January 1, 1992, the total solid waste disposal fee will be $1.00 per ton.

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

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:

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

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: SB 66 (for SB 66) — Attachment E
Enactment Date: 1991
___ Statutory Authority: ORS 459.236 (for OSA) — Attachment F
___ Pursuant to Rule: _____ — Attachment ___
___ Pursuant to Federal Law/Rule: _____ — Attachment ___

___ Other: — Attachment ___

___ Time Constraints:

Effective January 1, 1992, Senate Bill 66 increases the solid waste disposal fee from $.50 to $.85 per ton. While the increase is authorized by statute, current rules and collection procedures should be revised to correspond with the statute.

An additional solid waste disposal fee of $.15 per ton is required by January 1, 1992 to provide revenue for orphan sites and/or for the scheduled payment of debt service retirement associated with the planned sale of pollution control bonds for the orphan site account. The total solid waste disposal fee increase being proposed by these rule changes is $.50 per ton; thus on January 1, 1992 the disposal fee would become $1.00 per ton.

The Department is responsible for conducting environmental cleanup of orphan sites. An "orphan site" is a site (such as an abandoned landfill) characterized by a release of hazardous substances into the environment, an established need for corrective action to protect public health, safety and the environment, and the absence of a known responsible party willing and able to conduct required activities.

Initiation of the orphan site account is contingent upon a report to the Emergency Board and authorization of an increase in expenditure limitation on September 5, 1991. Issuance of pollution control bonds for the orphan site account is also dependent upon approval for the sale of bonds by the Office of the State Treasurer. In the event the State Treasurer's existing moratorium on issuance of bonds is not lifted, the Department proposes to use orphan site account fee revenue directly to complete a portion of required orphan site investigation and cleanup activities.

DEVELOPMENTAL BACKGROUND:

___ Advisory Committee Report/Recommendation — Attachment ___
___ Hearing Officer's Report/Recommendations — Attachment ___
___ Response to Testimony/Comments — Attachment ___
_X_ Prior EQC Agenda Items:
Agenda Item Q, 12/1/89 EQC Meeting - 50 Cent per Ton Disposal Fee on Solid Waste — Attachment ___
___ Other Related Reports/Rules/Statutes: — Attachment ___
_X_ Supplemental Background Information:
Emergency Board Request, 8/9/91 - Orphan Site Account — Attachment G
Fact Sheet: Solid Waste Compliance and Per-Ton Fees — Attachment H
Land Use Evaluation Statement — Attachment I

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Domestic (in-state) solid waste is currently subject to a $.50 per ton disposal fee. SB 66 increases this fee to $.85 per ton on January 1, 1992, and drops the fee to $.81 per ton on January 1, 1994. The orphan site fee would add $.15 per ton to both domestic and out-of-state waste.

SB 66 applies the same per-ton disposal fee to out-of-state solid waste.[1] Out-of-state waste is also subject to the orphan site fee. Operators of solid waste disposal sites need to know which solid waste is subject to the fee increase, which sites must collect the fees, and how the fees are to be collected. DEQ has prepared a fact sheet summarizing the per-ton and other permit fee increases approved by the Legislature (see Attachment H).

Many solid waste permittees will incur administrative expenses in gaining approval to raise rates to cover this fee increase.

In addition, solid waste collection companies will be impacted by the fee increase, since the cost of disposal of domestic solid waste is an expense of doing business as a collection service. Most collection service companies will also incur administrative expenses in gaining approval to raise rates to cover the disposal fee increase. ORS 459.294 allows the collection companies to pass through to their customers any state disposal fee increase.

As a result of the fee increase, fiscal and economic impacts are anticipated for generators of solid waste and ratepayers including residential customers, small businesses, industries and government agencies. The cost of solid waste collection and disposal services varies by type of customer and jurisdiction.

For residential customers, the Department estimates that the effect of the combined per ton disposal fee increases ($.35 per ton for SB 66 and $.15 per ton for the orphan site account) will cost a typical household with a one-can per week garbage service an additional 47 cents per year.

For additional information regarding projected fiscal impact of the proposed rules, please see Attachment C.

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[1]Out-of-state solid waste became subject to a surcharge of $2.25 per ton on January 1, 1991. However, the constitutionality of this surcharge is being challenged in court, and DEQ is under injunction not to collect it. Consequently in-state solid waste has been subject to a per-ton disposal fee which out-of-state solid waste has not been subject to. To remedy this, the Legislature in SB 66 determined that out-of-state waste should pay the same disposal fees as in-state waste, effective July 1, 1991, and pending final determination of the legal challenge to the $2.25 surcharge.

PROGRAM CONSIDERATIONS:

For purposes of implementing SB 66, DEQ estimates that the disposal fee increase on domestic and out-of-state solid waste will generate about $1,785,000 in the biennium.

Approval of the $.15 per ton fee for OSA will generate approximately $435,000 per year or $544,000 for the current biennium. The Department will evaluate the OSA revenue and, if necessary, will request Environmental Quality Commission (Commission, EQC) action to increase or decrease the per-ton fee for OSA.

Current rules require most solid waste permittees to submit quarterly solid waste disposal reports together with a $.50 per-ton disposal fee for solid waste accepted in the preceding quarter. Sites receiving less than 1,000 tons of solid waste per year may submit reports and fees annually.

The Department proposes to keep the same collection schedule for the disposal fee increase, and will revise its reporting form to accommodate the increase. Permittees will have to submit the increased fee with the April 15, 1992 solid waste disposal reports.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Request public hearing to take testimony on the draft rules as proposed in Attachment A.

2. Rely on statutory direction for the fee increase contained in Senate Bill 66, and not incorporate the $.35/$.31 per-ton tipping fee increase into rule. Request public hearing to take testimony on the portion of the draft rules pertaining to the orphan site account solid waste disposal fee increase only.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission adopt Alternative 1.

The $.35/$.31 per-ton tipping fee increase is required by statute. However, clarification by rule of how collection is to proceed, and which fees apply to in-state and to out-of-state solid waste will ensure that all parties understand how the Department interprets the statute. This knowledge will assist permittees in administering collection of the fee.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

1991 Senate Bill 66 requires the $.35/$.31 per-ton fee increase to partially fund solid waste management and reduction activities required by that bill.

Enabling legislation for the orphan site account was adopted in 1989 (ORS 465.380), including support fees. Support fees for the orphan site account include the hazardous substances fee (ORS 453.396-414), petroleum load fee (ORS 465.101-131) and the solid waste tipping fee (ORS 459.236).

The Department and Commission's 1990 Strategic Plan recognizes the initiation of the orphan site account as a high priority for the Environmental Cleanup Division (ECD High Priority 4).

ISSUES FOR COMMISSION TO RESOLVE:

At this time, the Department is not aware of any issues requiring Commission consideration or resolution, except as described for the alternative actions previously discussed.

INTENDED FOLLOWUP ACTIONS:

Publication of intent to hold a public hearing in the Secretary of State's Bulletin on October 1, 1991, and publication of notice of public hearing in newspapers.

Hold a public hearing in Portland on October 23, 1991.

Receive public comment until October 31, 1991.

Prepare a hearing officer's report for final rule adoption by the Commission on December 13, 1991.

The Department will monitor the revenue generated by the per-ton fee for OSA activities, and OSA program needs. The Department will conduct this review at least annually and will request Commission action if an increase or decrease in the per-ton fee is warranted.

Approved:

Section: _____ Section: _____

Division: Stephanie Hallock Division: _____

Director: _____

Report Prepared By: Deanna Mueller-Crispin and Jeff Christensen

Phone: 229-5808/229-6391

Date Prepared: 8/23/91

dmc/jc
eqcorfan.two
8/23/91

ATTACHMENT A
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
DIVISION 61 - SOLID WASTE MANAGEMENT
(8/12/91)

Proposed additions to rule are underlined.
Proposed 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.

(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 fees 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] the following fees [of 50 cents per] for each 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] A per-ton fee of 50 cents.

(b) From January 1, 1992, to December 31, 1993, an additional per-ton fee of 35 cents.

(c) Beginning January 1, 1994 the additional per-ton fee established in subsection (5)(b) of this rule shall be reduced to 31 cents.

(d) Beginning January 1, 1992, an additional per-ton fee of 15 cents for the orphan site account pursuant to ORS 459.236 and ORS 465.380.

(e) [(b)] Submittal schedule:

(A) [This] These per-ton fees shall be submitted to the Department quarterly, or on the same schedule as the waste volume reports required in the disposal permit, [or quarterly,] whichever is [more] less 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 fees 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 fees shall be accompanied by an estimate of the population served by the disposal site.

(f) [(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.

(g) [(d)] For solid waste delivered to disposal facilities owned or operated by [generated within the boundaries of] a metropolitan service district, the [50 cent per ton disposal] fees established in this section shall be levied on the district, not on the disposal site.

(6) Per-ton fee on solid waste generated out-of-state. Each solid waste disposal site or regional disposal site that receives solid waste generated out-of-state shall submit to the Department of Environmental Quality a per-ton fee. The per-ton fee shall be the sum of the per-ton fees established for domestic solid waste in section (5) of this rule.

(a) The per-ton fees shall become effective on the dates specified in section (5) of this rule and shall apply to all solid waste received after July 1, 1991.

(b) As used in this section, the term "solid waste" does not include source separated recyclable materials, or material recovered at the disposal site.

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

(d) If, after final appeal, the surcharge established in section (7) of this rule is held to be valid and the state is able to collect the surcharge, the person responsible for payment of the surcharge may deduct from the amount due any fees paid to the Department of Environmental Quality on solid waste generated out-of-state under this section, with the exception of the amount of the fee required by subsection (5)(d).

(7) [(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 quarterly, or on the same schedule as the waste volume reports required in the disposal permit, [or quarterly,] whichever is [more] less 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.

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ATTACHMENT B

RULEMAKING STATEMENTS
for
Proposed Revisions to Existing Rules
Pertaining to Fees on Domestic and Out-of-State Solid Waste

OAR Chapter 340, Division 61

Pursuant to ORS 183.335, these statements provide information on the intended action to adopt a rule for implementation of the following solid waste tipping fee amendments: a) an increase required by Senate Bill 66; and b) an increase required for orphan site account activities.

STATEMENT OF NEED:

Legal Authority

The 1991 Oregon Legislature passed Senate Bill 66 which imposes an additional per-ton fee on domestic solid waste effective January 1, 1992, and requires out-of-state solid waste to pay the same fee as domestic solid waste (effective July 1, 1991).

Legal authority for solid waste tipping fee increases relative to the orphan site account includes ORS 459.236 and 465.380.

Need for the Rule

The Legislature established the per-ton fee increase on solid waste. It specified that the per-ton fee on out-of-state solid waste would be collected in the same manner as the per-ton fee on domestic solid waste. However, the two universes of solid waste are not identical; some kinds of domestic solid waste are exempted by statute from the fee. These exemptions do not apply to out-of-state solid waste. Eligibilities and collection procedures should be clarified by rule. The proposed rule will implement Senate Bill 66, and make existing rule conform to legislative requirements.

ORS 459.236 and 465.380 establish a requirement to impose a per-ton fee on domestic solid waste to be effective upon initiation of the orphan site account. The account will be initiated beginning January 1992. The amount of the solid waste tipping fee and the means by which the fee will be collected are to be established by rule by the Environmental Quality Commission.

Principal Documents Relied Upon

a. 1991 Senate Bill 66.
b. Oregon Revised Statutes 459.236 and 465.380.
c. Oregon Administrative Rules, Chapter 340, Division 61.

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ATTACHMENT C

FISCAL AND ECONOMIC IMPACT STATEMENT

I. Introduction

Proposed Actions:

1991 Senate Bill 66 (SB 66) raises the existing $.50 per-ton disposal fee on domestic solid waste by $.35 per ton on waste disposed of between January 1, 1992 and December 31, 1993, for a total of $.85 per ton. After January 1, 1994 the per-ton fee increase will be reduced from $.35 to $.31 (or a total of $.81 per ton). SB 66 also makes solid waste generated out-of-state and disposed of in Oregon subject to the same fee schedule, beginning on July 1, 1991.

In addition, a $.15 per-ton fee is to be established to provide partial financing for the investigation and cleanup of "orphan sites". Orphan sites are characterized by a release of hazardous substances into the environment, an established need for corrective action to protect public health and the environment, and the absence of a responsible party willing and able to conduct required activities. ORS 465.380 establishes a mechanism for financing the cleanup of orphan sites, which includes a solid waste tipping fee increase addressed by the proposed regulations.

The proposed rule specifies the fee amount to be established for the orphan site account, procedures for collecting each of the per-ton disposal fees, and which wastes are subject to the fees. Certain wastes are exempt by statute from the per-ton fee on domestic solid waste; however, no such statutory exemptions exist for solid waste generated out-of-state.

Overall Economic Impacts:

DEQ estimates that the $.35 per-ton fee increase on domestic solid waste will generate about $1 million in the 1991-93 biennium. The revenue will be used for enhanced recycling activities including household hazardous waste collection. In addition, the disposal fee on out-of-state waste is expected to generate about $785,000 in the biennium, with revenue to be used to continue existing solid waste programs.

DEQ estimates that the $.15 per-ton fee increase for orphan site account activities will generate about $544,000 during the 1991-93 biennium, which represents approximately a third of the current projected cost of orphan site account activities for the biennium.

The statute allows landfill operators and garbage haulers to pass the cost of the solid waste disposal fee through to their

customers. As such, the major impact of the fee will fall on solid waste generators and ratepayers (see "General Public").

The collection and payment procedures are identical to existing requirements, so they are not expected to require additional resources from the landfill operator to implement. Some administrative expense would be incurred in gaining approval to raise rates, and implementing any resulting new fee structure. Both landfill operators and garbage haulers may have to raise rates to cover the fee increases. Expenses incurred by a landfill operator might range from a few hundred dollars if filing is relatively simple, to as much as $5,000, including legal costs if the fee increase requires adopting an ordinance.

II. General Public

Current fees for garbage service vary widely by vendor and geographic area. Per-ton monthly rates for one-can service range from about $5.50 to $17.

The general public will be affected by increased rates for disposal of solid waste because landfill operators and garbage haulers are allowed to pass through the effect of the fee increase to their ratepayers. It is anticipated that increased per-ton fee increases would go into effect on January 1, 1992. The Department estimates that the effect of the combined per-ton disposal fee increases will cost a typical household with one-can per week garbage service an additional 47 cents per year.

It is also possible the fee increase will serve as some disincentive for generation of garbage requiring disposal in landfills. In particular, given use of revenue derived from the fee for solid waste recycling activities, the fee increase may have positive economic benefits in terms of promoting reductions in the generation of nonrecyclable solid waste.

III. Out-of-State Impact

The general public outside of Oregon who send their solid waste to Oregon for disposal may also be affected. Such waste became subject to a surcharge of $2.25 per ton on January 1, 1991. However, this surcharge is being challenged in court, and DEQ is under injunction not to collect the $2.25 surcharge. This resulted in domestic (in-state) solid waste being subject to a per-ton disposal fee not paid by out-of-state solid waste. To remedy that situation, the 1991 Legislature in SB 66 determined that out-of-state waste should pay the same disposal fees as domestic solid waste, effective July 1, 1991, until the legal issues are resolved. Out-of-state waste will pay $.50 per ton between July 1, 1991 and December 31, 1991, and $1 per ton thereafter. Thus out-of-state solid waste generators have to pay more than they would if the $2.25 per ton surcharge is held to be

unconstitutional, but less than they would pay under the surcharge.

IV. Small Business

Small businesses would be affected in the same way as the general public. However, the impact on businesses will be proportionately greater than for residential garbage customers because as a general rule commercial (and other large volume generators of solid waste) pay less per unit measure for garbage services. A typical range for commercial garbage rates is between $30 and $70 a month for weekly collection of a one-yard container. DEQ estimates that the rate increase to businesses will still be relatively insignificant (less than 2% additional costs for garbage service).

V. Large Business

Large businesses would also be affected in the same way as the general public and small businesses, except that waste going to an industrial waste facility is exempt from the disposal fee on domestic solid waste.

VI. Local Governments

Local governments would be affected in the same way as the general public and as small or large businesses which own or operate landfills or garbage hauling companies. Much of the disposal fee for domestic solid waste will be used for household hazardous waste collection which will benefit citizens of local governments; DEQ's budget includes about $450,000 for this purpose.

VII. Other State Agencies

DEQ has received authority for 10 new positions to carry out activities funded by the domestic and out-of-state solid waste disposal fees. The Forestry Department will receive $37,000 from the domestic solid waste fee for programs to encourage use of recycled materials and for composting activities. As generators of solid waste, other state agencies would be affected by modestly increased collection service rates in the same way as the general public.

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ATTACHMENT D
Agenda Item D
9/18/91 EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Hearing Date: 10/23/91
Comments Due: 10/31/91

WHO IS AFFECTED: General public disposing of solid waste, other generators of solid waste (including generators in states other than Oregon who send solid waste to Oregon for disposal), owners and operators of solid waste landfills, garbage haulers, local governments.

WHAT IS PROPOSED: The Department proposes to modify its rules to implement a per-ton disposal fee increase required by 1991 Senate Bill 66; and to initiate an additional per-ton amount for the orphan site account.

WHAT ARE THE HIGHLIGHTS: The proposed amendments would increase the per-ton fee for disposal of solid waste by $.50 per ton effective January 1, 1992, as follows:

- Increase the per-ton disposal fee on domestic and out-of-state solid waste by $.35 for solid waste and recycling activities as specified in SB 66;
- Add another $.15 per ton to domestic and out-of-state solid waste for environmental cleanup of "orphan" solid waste sites; and
- Require that the fee be submitted quarterly, on the same schedule that per-ton fees are currently submitted to the Department of Environmental Quality.

HOW TO COMMENT: A public hearing will be held before a hearings officer at:

10 am to noon
Wednesday, October 23, 1991
Department of Environmental Quality
Hearing Room 3A
811 S.W. 6th Avenue
Portland, Oregon

(continued)

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.

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, Environmental Cleanup Division, 811 S.W. 6th Avenue, Portland, OR 97204, and must be received no later than 5:00 p.m., Thursday, October 31, 1991.

Copies of the complete proposed rule package including rulemaking statements may be obtained from the DEQ Environmental Cleanup Division (ECD) at 229-6170. For further information, contact Jeff Christensen of ECD (for orphan site account questions) at 229-6391; or Deanna Mueller-Crispin, Hazardous and Solid Waste Division (for SB 66 fee increase questions) at 229-5808. Or call 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 November 1991 meeting.

SW\RPT\SK3717

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

tonnage, if known, received at the site and any other similar or related factors the commission finds appropriate. The fees collected pursuant to the schedule shall be sufficient to assist in the funding of programs to reduce the amount of domestic solid waste generated in Oregon and to reduce environmental risks at domestic waste disposal sites.

(2) For solid waste [*generated within the boundaries of*] **delivered to disposal facilities owned or operated by a metropolitan service district, the schedule of fees, but not the permit fees provided in ORS 459.235, established by the commission in subsection (1) of this section shall be levied on the district, not the disposal site.**

(3) The commission also may require submittal of information related to volumes and sources of waste or recycled material if necessary to carry out the activities in ORS 459.295.

(4)(a) A local government that franchises or licenses a domestic solid waste site shall allow the disposal site to pass through the amount of the fees established by the commission in subsection (1) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsection (1) of this section to a solid waste collector who uses the site, a local government that franchises or licenses the collection of solid waste shall allow the franchisee or licensee to include the amount of the fee in the solid waste collection service rate.

(5) The fees generated under subsection (1) of this section shall be sufficient to accomplish the purposes set forth in ORS 459.295 but shall be no more than 50 cents per ton.

(6) There shall be a fee on solid waste generated out of state. This fee shall be an amount equal to the sum of the fees established under subsection (1) of this section and section 13a of this 1991 Act and shall be collected in the same manner as fees established under subsection (1) of this section and section 13a of this 1991 Act.

SECTION 13a. (1) From January 1, 1992, to December 31, 1993, the schedule of fees as established by the Environmental Quality Commission under ORS 459.294 (1) is increased by 35 cents per ton and shall be deposited into the General Fund and credited to an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the department to implement the provisions of this 1991 Act.

(2) Beginning January 1, 1994, the schedule of fees as established by the commission under ORS 459.294 is increased by 31 cents per ton and shall be deposited into the General Fund and credited to an account of the department. Such moneys are continuously appropriated to the department to implement the provisions, excluding section 51, of this 1991 Act.

SECTION 13b. The Department of Environmental Quality shall study funding alternatives for the management of household hazardous waste including the provisions of section 51 of this Act, and make recommendations for long-term funding to the Sixty-seventh Legislative Assembly.

SECTION 14. ORS 459.995 is amended to read:

459.995. (1) In addition to any other penalty provided by law:

(a) Any person who violates ORS **459.165 to 459.200,** 459.205, 459.270 or the provisions of ORS 459.180, 459.188, 459.190, 459.195, 459.710 or 459.715 or the provisions of ORS 459.386 to 459.400 **or section 29, 34 or 34a to 34c of this 1991 Act** or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, shall incur a civil penalty not to exceed $500 a day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty

459.311 and interest on such moneys, in accordance with an agreement between the local government unit and the department. A local government unit is not required to repay the first $100,000 the local government unit expends on removal or remedial action.

(6) As used in this section, "removal" and "remedial action" have the meaning given those terms in ORS 466.540. [1989 c.833 §138]

Note: 459.236 was added to and made a part of ORS 459.005 to 459.428 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

459.240 [1969 c.90 §4; repealed by 1971 c.648 §33]

459.245 Issuance of permits; terms. (1) If the disposal site meets the requirements of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385, the department shall issue the permit. Every completed application shall be approved or disapproved within 60 days after its receipt by the department. Except as provided in ORS 459.055, if the department fails to act within the time allowed, the application shall be considered approved unless an extension of time is granted by the commission on a showing of good cause by the department.

(2) Disposal site permits shall be issued for a period not to exceed 10 years, to be determined by the department and specified in the permit.

(3) Subject to the provisions of ORS 183.310 to 183.550, the department may refuse to renew a permit unless the disposal site and the facilities thereon meet the requirements of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385 and the rules of the commission adopted pursuant thereto. [1971 c.648 §10; 1973 c.835 §142; 1979 c.773 §8]

459.250 Place for collecting source separated recyclable material required for disposal site permit; revision of permits. (1) After January 1, 1985, the department shall require as a condition to issuing a disposal site permit under ORS 459.245 that a place for collecting source separated recyclable material located either at the disposal site or at another location more convenient to the population served by the disposal site is provided for every person whose solid waste enters the disposal site.

(2) Before July 1, 1986, the department shall revise all disposal site permits issued under ORS 459.245 before January 1, 1985, to require as a condition to the permit that a place for collecting source separated recyclable material located either at the disposal site or at another location more convenient to the population served by the disposal site is provided for every person whose solid waste enters the disposal site.

(3) The department may modify the requirements of this section if the department finds that the opportunity to recycle is being provided through an acceptable alternative method. [1983 c.729 §4]

459.255 Suspension of permits. (1) A permit may be suspended or revoked at any time if the department determines that the site or the solid waste management facilities located on the site are being operated in violation of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385 or rules of the commission adopted pursuant thereto.

(2) The procedures for denial, suspension, modification of a condition or variance, revocation or refusal to renew a permit shall be those specified for a contested case in ORS 183.310 to 183.550. [1971 c.648 §11; 1973 c.835 §143]

459.265 Hearings; appeal. (1) Except as provided by ORS 459.376, the commission may on its own motion or upon the request of the department, and shall upon application of any person entitled to appeal, fix a time and place for a public hearing on any action of the department or commission:

(a) Ordering action to be taken by a person subject to regulation under ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385.

(b) Ordering, or approving action resulting in, the closure or curtailment of use of a disposal site.

(2) In making its determination upon appeal from the action of a local government unit or the department, which action would result in the closure or curtailment of the use of a disposal site, the commission shall consider and make findings with respect to:

(a) The nature and magnitude of the problems created by the site or its operation.

(b) The applicable solid waste management plan.

(c) The existence or threat of air or water pollution.

(d) The need for the particular disposal site and alternative methods of disposal or alternate disposal sites.

(e) The costs, funds available to meet the costs and the minimum time required for a change in disposal method or disposal site.

(3) In making its determination under subsection (2) of this section with respect to a disposal site owned or operated by a local government unit, and prior to ordering closure or curtailment of use of the site, the commission shall make a finding as to whether there is an alternative method of disposal or an alternate disposal site. [1971 c.648 §12; 1973 c.835 §144]

(4) A variance or conditional permit may be revoked or modified by the commission after a public hearing held upon not less than 10 days' notice. Such notice shall be served upon all persons who the commission knows will be subjected to greater restrictions if such variance or conditional permit is revoked or modified, or who are likely to be affected or who have filed with the commission a written request for such notification.

(5) The establishment, operation, maintenance, expansion, alteration, improvement or other change of a disposal site in accordance with a variance or a conditional permit is not a violation of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385 or any rule or regulation adopted pursuant thereto.

459.230 [1969 c.90 §3; repealed by 1971 c.648 §33]

459.235 Applications for permits; fees; bond. (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 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) 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. [1971 c.648 §9; 1977 c.37 §1; 1983 c.144 §1; 1987 c.876 §18; 1989 c.833 §154]

459.236 Additional permit fees for remedial action or removal; amount; utilization; eligibility of local governments. (1) In addition to the permit fees provided in ORS 459.235, upon approval by the Emergency Board of the sale of bonds to provide funds for the Orphan Site Account, and annually on January 1 thereafter, there is imposed a fee on all disposal sites that receive domestic solid waste except transfer stations. The amount raised shall be up to $1 million per year, based on the estimated tonnage or the actual tonnage, if known, received at the site and any other similar or related factors the commission finds appropriate.

(2) For solid waste generated within the boundaries of a metropolitan service district, the fee imposed under subsection (1) of this section, but not the permit fees provided in ORS 459.235, shall be levied on the district, not the disposal site.

(3)(a) A local government unit that franchises or licenses a domestic solid waste site shall allow the disposal site to pass through the amount of the fees established by the commission in subsection (1) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsection (1) of this section to a solid waste collector who uses the site, a local government unit that franchises or licenses the collection of solid waste shall allow the franchisee or licensee to include the amount of the fee in the solid waste collection service rate.

(4) Except as provided in subsection (5) of this section, moneys collected under this section shall be deposited in the Orphan Site Account created under ORS 466.590 to be used to pay the costs of removal or remedial action of hazardous substances, in excess of the maximum amount collected under ORS 459.311 at:

(a) Solid waste disposal sites owned or operated by a local government unit; or

(b) Privately owned or operated solid waste disposal sites that receive or received domestic solid waste for which the department determines the responsible party is unknown, unwilling or unable to undertake any portion or phase of a removal or remedial action.

(5) The moneys collected under this section, or proceeds of any bond sale under ORS 468.195 for which moneys collected under this section are pledged for repayment shall be made available to a local government unit to pay removal or remedial action costs at a site if:

(a) The local government unit is responsible for conducting removal or remedial action under ORS 466.570; and

(b) The local government unit repays any moneys equal to the amount that may be raised by the charge imposed under ORS

Oregon

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

August 9, 1991

The Honorable John Kitzhaber, Co-Chairperson
The Honorable Larry Campbell, Co-Chairperson
State Emergency Board State Capitol
Salem, OR 97310

The Department of Environmental Quality respectfully requests expenditure limitation to spend funds for Orphan Site Account activities in the Environmental Cleanup program. Authorization is requested to establish seven limited duration positions to support orphan site cleanups.

NATURE OF EMERGENCY

The Department of Environmental Quality is responsible for conducting environmental cleanup of orphan sites. These sites are characterized by a release of hazardous substances into the environment, an established need for corrective action to protect public health, safety and the environment, and the absence of a known responsible party willing and able to conduct required activities.

During the 1989 legislative session, the legislature, industry, environmental groups, the Department, and others engaged in extensive discussions about funding for orphan site work. The Orphan Site Account, with revenue from various fees, is the agreed upon means for funding orphan site activity. For the current biennium, the legislature established a $1 Other Funds expenditure limitation for the Orphan Site Account. This action authorized bond sales and implementation of revenue streams for debt service. What is requested of the Emergency Board is an increase in Other Funds expenditure limitation and establishment of limited duration positions to allow the Department to move forward on investigation and cleanup at six orphan sites.

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AGENCY ACTION

Currently, the Site Response Section of the Department is conducting cleanup activities at 38 sites using federal funds, funds recovered from responsible parties and the Hazardous Substances Remedial Action Fund (HSRAF). Six of the sites now undergoing environmental investigation and cleanup are eligible for funding under the Orphan Site Account (ORS 465.380).

All of the eligible sites are presently funded by HSRAF, although HSRAF revenue is not adequate for the cleanup work necessary during 1991-93 biennium. Therefore, the funding mechanism intended for this work must be initiated to continue orphan site cleanup activity.

The request for expenditure limitation totals $7,347,265. Of the amount requested, $6,532,493 is required for professional service contracts for investigation, engineering design and construction of cleanup facilities for the current fiscal year (July 1991-June 1992). Total professional service contracts for the 1991-93 biennium are estimated at approximately $11,000,000, but since later costs depend on the outcomes of earlier activity, a second request for expenditure limitation is contemplated.

Seven limited duration positions are requested. These include: an Environmental Specialist 4, Environmental Specialist 3, Environmental Specialist 2, Hydrogeologist 2, Chemist 3, Programmer/Analyst, and Office Specialist 2. These positions are required for oversight of investigation and cleanup activities.

Proposed activities and associated costs are summarized in Attachments A and B. Attachment C provides information about the sites and activities completed to date.

FEE REPORT PROVIDED

The Department is hereby reporting to the Emergency Board that authorization by the Emergency Board of the requested increase in expenditure limitation for orphan sites will trigger initiation of the established orphan site account fees as provided in ORS 465.380(2)(c). These fees include a solid waste tipping fee, petroleum load fee, and hazardous substance

possession fee. Each of the fees was established to raise equal amounts of revenue for orphan site activities up to $1,000,000 per fee per year. Given the current request for expenditure limitation, it is estimated that each fee will need to generate approximately $400,000 per year.

The 1989 Legislature directed that all three fees be assessed even if the identified orphan sites do not include a solid waste site. If this request is approved by the Emergency Board, the Environmental Quality Commission, after public hearings, would need to authorize a solid waste tipping fee of 15 cents per ton, which will raise an estimated $400,000 per year for this purpose.

The petroleum load fee is presently collected at its statutory maximum rate of $10 per load. A transfer of that revenue will be coordinated with the Department of Revenue (ORS 465.101 to 465.131).

The State Fire Marshal is responsible for establishing the hazardous substance fee. A report will be submitted to you by that office outlining the necessary fee increase for funding a proportionate share of orphan site account activities.

FINANCIAL STATUS

Revenue for orphan site activities, including the requested limited duration positions, is to be provided by proceeds derived from the sale of approximately $7,500,000 in Pollution Control Bonds. The bonds will be repaid from the established fees, with no impact on the State General Fund. The Department is working with the Office of the State Treasurer to complete steps necessary for issuance of Pollution Control Bonds in November 1991.

In the event the State Treasurer's moratorium on issuance of bonds is not lifted, the Department proposes to use orphan site account fee revenue (approximately $1,600,000 during the current biennium) directly to complete a portion of the required investigation and cleanup activities.

ACTION REQUESTED

The Department respectfully requests the following Emergency Board actions:

1. Authorize an increase of $7,347,265 in the Other Funds expenditure limitation established by Chapter 646, Section 2, 1991 Oregon Law, with revenue for the expenditure limitation provided by proceeds from the sale of Pollution Control Bonds for the Orphan Site Account.

2. Authorize the Department to create 7 full time limited duration positions (5.81 FTE), and direct the Executive Department to not release those positions to the Department until the State Treasurer authorizes a sale of Pollution Control Bonds for orphan sites.

3. Accept the report for the increase in the solid waste tipping fee.

4. Confirm that the Department of Revenue is to distribute funds from the Petroleum Load Fee (ORS 465.101 to 465.131) to the Department to be deposited in the Orphan Site Account.

5. Authorize the Department to receive $2,400,000 in revenue from the three fees designated to fund the Orphan Site Account and to expend up to $1,600,000 of that revenue as debt service on Pollution Control Bonds or directly on orphan sites, as the Department determines is appropriate.

Sincerely,

Fred Hansen
Director

JC:m
PPD\SM35\SM3789

Attachment A

1991 - 1993 Biennium

Orphan Site Account Activities

Department of Environmental Quality

Personal Services		Other Funds
(0.83 FTE, 20 months)	Environmental Specialist 4	$ 59,000
(0.83 FTE, 20 months)	Hydrogeologist 2	53,580
(0.83 FTE, 20 months)	Environmental Specialist 3	53,580
(0.83 FTE, 20 months)	Environmental Specialist 2	48,780
(0.83 FTE, 20 months)	Office Specialist 2	31,020
(0.83 FTE, 20 months)	Programmer Analyst	46,520
(0.83 FTE, 20 months)	Chemist 3	53,580
	OPE @ 35%	$ 121,121
	Subtotal	$ 467,181

Service and Supplies	
In-state travel	$ 10,800
Out-of-state travel	3,850
Regional travel	6,225
Office expenses	11,212
Telecommunications	14,483
Attorney General	46,080
Employee recruitment and development	6,073
Facility rental	49,751
Professional Services/Contracts	6,532,493
Publicity and Publications	3,500
Program related supplies and services	2,803
Other supplies and services	6,074
Subtotal	$ 6,693,344
Capital Outlay	186,740
TOTAL	$ 7,347,265
Indirect costs	$ 107,919

Attachment B

Orphan Sites
Planned Activities and Projected Costs

To move forward with the investigation and cleanup of orphan sites, the following tasks are proposed to be implemented during the next year:

McCORMICK & BAXTER

The McCormick & Baxter site is ready to move into the second phase of investigation to determine the most effective and safe permanent cleanup for the site. In addition, design and construction of interim treatment systems will be initiated during the next year. The proposed interim treatments are a recovery system to capture creosote from beneath the site for recycling and a storm water treatment system to clean or reuse surface water runoff before discharge to the river.

PROJECTED COST	
Remedial Investigation, Phase II:	$1,625,000.
Interim Treatment:	
Creosote Recovery System (design and construction):	$315,000.
Storm Water Treatment System (pre-construction tests/design only):	$450,000.
TOTAL:	$2,390,000.

EAST MULTNOMAH COUNTY GROUNDWATER STUDY

Continued area-wide investigation of the extent of groundwater contamination and confirmation of sources is proposed for the next year. The investigation will help the state determine responsible parties who will be required to participate in the financing of the investigation and cleanup activities. To protect drinking water resources, other proposed activities include development of guidelines for preventive measures to protect against future contamination and a well field management plan.

PROJECTED COST	
Remedial Investigation (includes groundwater contamination database):	$1,339,430.
Well Field Management Plan:	$110,000.
TOTAL:	$1,449,430.

MILWAUKIE AREA GROUNDWATER CONTAMINATION STUDY

Further investigation of the Milwaukie Area Groundwater Contamination will proceed over the next year to identify the extent of contamination and suspected sources. At each suspected source, preliminary assessments must be conducted to identify potentially responsible parties. Identified responsible parties will be required to participate in the investigation and cleanup.

PROJECTED COST	
Remedial Investigation:	$185,000.
Preliminary Assessments:	$100,000.
TOTAL:	$285,000.

NU-WAY OIL COMPANY

Field work, sampling and analysis for the remedial investigation at Nu-Way Oil Company has been scheduled for the next year. The remedial investigation will provide data to determine if site security is required and whether interim cleanup is necessary and feasible. Results of the investigation will contribute towards the selection of a safe and effective permanent cleanup method.

PROJECTED COST	
Remedial Investigation:	$948,097.
Site Security (fencing):	$10,000.
TOTAL:	$958,097.

LAKEWOOD ESTATES

Initial site assessment, sampling and analysis work is underway at the site. Further investigation is proposed to identify contamination sources and potentially responsible parties. Responsible parties will be required to participate in the financing of the investigation and cleanup. DEQ has decided to design and implement an interim treatment system for the Lakewood Estates main water supply well. Sufficient information is not currently available to design a permanent remedy for the contamination. Data collected from the investigation and the interim treatment system will be used to assist with the design of a permanent system.

PROJECTED COST	
Remedial Investigation: (includes initial site assessment and field work):	$612,266.
Interim Treatment System:	$165,000.
TOTAL:	$777,266.

NORTHWEST PIPE & CASING, CLACKAMAS

The initial phase of remedial investigation to determine the full extent of the contamination is proposed for Northwest Pipe & Casing. As the investigation progresses, additional site security may be necessary. An evaluation to confirm the suspicion of buried drums is also scheduled. If confirmed, the drums will be removed.

PROJECTED COST	
Remedial Investigation, Phase I:	$200,000.
Additional Site Security:	$20,000.
Removal Evaluation:	$50,000.
Drum Removal:	$500,000.
TOTAL:	$770,000.

SUMMARY

Orphan site total projected cost for site-specific services and capital equipment for July 1991-June 1992 is $6,629,793.

Attachment C

Orphan Sites Background

The Environmental Cleanup Division is overseeing the investigation and cleanup of six orphan sites as described below.

McCORMICK & BAXTER

McCormick & Baxter Creosoting is a wood treating operation located on the banks of the Willamette River in North Portland. Results of an extensive, ongoing investigation have found soil, groundwater, and surface water to be contaminated with pentachlorophenol, creoste, heavy metals, dioxins and furans. These chemicals in specific concentrations create human health hazards. There is also concern that contaminants will migrate to the Willamette River and off-site, potentially impacting the surrounding environment and specifically fish and wildlife in the area.

Laboratory tests of soil, sediment, surface and groundwater are being evaluated to determine potential risks. This information has been used to determine the types of interim cleanup measures to be implemented and to eventually define final cleanup measures. Meteorological instrument towers have been installed both on the site and in the residential neighborhood on the bluff directly above the site. These instruments measure wind speed and direction which will determine whether air-borne contamination is likely to be carried off site. DEQ has secured the site with fences and no trespassing signs. With the support of the State Department of Fish and Wildlife and the Health Division, signs warning the public about site hazards have been posted on and around the site and a moratorium has been instigated on fishing near the site.

EAST MULTNOMAH COUNTY

East Multnomah County Groundwater Project is a study of area-wide groundwater contamination affecting the City of Portland's backup drinking water supply, private wells, 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 industrial solvents, primarily chlorinated organic compounds one of which is trichloroethylene (TCE). These chemicals are classified as probable human carcinogens. The state must proceed with the cleanup to protect area groundwater for present and future drinking water supplies.

A considerable amount of effort and resources are required to identify contamination sources, to develop the necessary technical and legal facts needed to apportion responsibility and to require responsible

parties to clean up. DEQ has identified three sources of contamination in the area and has required these industries to begin cleanup. The ongoing investigation is expected to identify more contamination sources and their responsible parties.

MILWAUKIE

Milwaukie Area Groundwater Project is another area-wide groundwater contamination problem. The contamination affects the City of Milwaukie's drinking water supply. As in East Multnomah County, the principal contaminants are industrial solvents (chlorinated organic compounds, including trichloroethylene). DEQ has targeted 200 potential sources of groundwater contamination in the Milwaukie area. DEQ's investigation will help to identify the sources of contamination and their responsible parties who will be required to participate in the investigation and cleanup.

NU-WAY OIL COMPANY

Nu-Way Oil is a former waste oil recycler located on the Columbia Slough in northeast Portland. At the site soil, groundwater and surface water are heavily contaminated with petroleum waste, oil sludges, PCBs, metals including arsenic and lead, and volatile organic compounds. DEQ is preparing to conduct an investigation to determine the full extent of the contamination and the most effective way to clean up the site. Development of a work plan to conduct the remedial investigation has been completed by a state contractor and approved by DEQ.

LAKEWOOD ESTATES

Lakewood Estates is a rural community located near Aurora, whose sole drinking water supply has been contaminated with industrial solvents including dichloroethylene and trichloroethane. The source of the contamination is unknown. DEQ is conducting an investigation to locate the source of the contamination and to evaluate the short and long term cleanup options for a safe community water supply. Also, the results of the investigation may identify potentially responsible parties who will be required to participate in the investigation and cleanup.

NORTHWEST PIPE & CASING, CLACKAMAS SITE

Northwest Pipe & Casing is a former pipe manufacturing and coating company located in Clackamas County near Milwaukie. The operation shut down in approximately 1985. The site was left heavily contaminated with pipe coating wastes, organic solvents, heavy metals, and PCBs. Wastes are buried on site and buried drums of waste solvents and coal tar residues are suspected. It is also suspected contamination may be impacting local groundwater including the Milwaukie City water supply. DEQ has implemented security measures (fencing) for the site. Further investigation is needed to determine the extent of the contamination and select the most effective permanent cleanup method.

ATTACHMENT H

FACT SHEET

SOLID WASTE COMPLIANCE AND PER-TON FEES
August 1, 1991

As a result of actions by the 1991 Legislature, both the annual disposal site permit compliance fee and in-state per-ton solid waste disposal fee are changing. The following outline shows fees before July 1, 1991 and coming changes:

Permit Fees:	"Current" (FY 92) (due 7/1/91)	Add'l FY 92 Assessment (due 1/1/92)	FY 93 and Beyond (due 7/1/92)
Annual permit compliance fees:	$50 to $60,000	$60 to $73,440	(to be determined in in rulemaking, winter 91-92)[1]
Annual recycling program fees:	$50 to $20,000	NA	(" " " ")
Supplementary per-ton permit fee:	NA	NA	(" " " ") (sufficient to generate $287,500 in FY 93)[2]

Per-ton Fees ("tipping fees"):	Prior to July 1, 1991	July 1, 1991	January 1, 1992	January 1, 1994
In-state solid waste disposal fee	$0.50/ton	$0.50/ton	$0.85/ton	$0.81/ton
Out-of-state solid waste " "	($2.25/ton)[3]	$0.50/ton[4] (or $2.25)	$0.85 " (or $2.25)	$0.81 " (or $2.25)
"Orphan site" account fee (in-state & out-of-state domestic solid waste)	NA	NA	Proposed to be $0.15/ton. Established by the Env. Qual. Com. after public hearing (10/91)	

NA = not applicable

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[1] Amount to be raised will be equal to the sum of columns 1 & 2; increases or decreases in various permit categories will be determined by rulemaking.

[2] This amount applies only to the supplementary per-ton permit fee.

[3] Effective January 1, 1991. Constitutionality of fee is being questioned; current court injunction against collection by DEQ until matter is resolved.

[4] Unless $2.25/ton surcharge is eventually held to be constitutional; in that case, the $0.50/ton disposal fees for out-of-state waste paid by permittees beginning July 1, 1991 will be credited to the amount due DEQ from the permittee.

DEQ LAND USE EVALUATION STATEMENT

1. **Explain the purpose of the proposed program/rules.**
To implement changes in the per-ton solid waste disposal fee made by the 1991 Oregon Legislature (by SB66) and to partially finance the orphan site account established by the 1989 Legislature.

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____ no XX

If yes, identify existing program/rule/activity_____

If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed program/rule? yes____ 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. The regulations increase fees for solid waste. They do not directly impact land use or land use programs. The regulations do not impact section III, subsection 2 of the SAC, including actions 7-10 which pertain to the Environmental Cleanup Division and the Hazardous and Solid Waste Division.

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.**

Jeffrey J. Christian — Policy and Program, ECD — 8/12/91

DEQ staff signature | Section, Division | Date

Oregon

ENVIRONMENTAL
QUALITY
COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: September 19, 1991
Agenda Item: E
Division: Air Quality
Section: Asbestos Program

SUBJECT:

Rule Adoption: Asbestos Abatement Program Rule Amendments and Rule Additions

PURPOSE:

Adoption of Asbestos amendments to incorporate changes from the Nation Emission Standard for Hazardous Air Pollutants (NESHAP) as required by Federal Environmental Protection Agency (EPA) delegation.

The Department has also made rule refinements that will streamline and clarify certain areas of the existing regulations.

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
Rules Explanation	Attachment B
Rulemaking Statements	Attachment C
Fiscal and Economic Impact Statement	Attachment D
Public Notice	Attachment E

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

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

DESCRIPTION OF REQUESTED ACTION:

The Department requests adoption of amendments and changes to the asbestos rules. These amendments and changes will:

- Create and amend notification requirements to incorporate NESHAP and Department rule changes into the Department's existing rules, OAR 340-25-467. Many of the changes help clarify or make minor additions to existing rules. Other changes add two new fee categories and require refiling notifications on projects lasting more than one year.

- Create and amend work practice regulations to incorporate NESHAP and Department rule changes into the Department's existing rules, OAR 340-25-468(1) through (10). NESHAP changes recognize intentional burning as demolition while the Department has clarified procedures for handling asbestos contaminated demolition debris.

- Create and amend work practice regulations for storage, transport, disposal, and tracking of asbestos-containing waste material to incorporate NESHAP and Department rule changes into the Department's existing rules, OAR 340-25-469. NESHAP changes create a waste shipment tracking system using tags and forms to follow the waste from generation to disposal. Landfill operators are required to participate in the tracking system by inspecting waste loads.

- Create a new requirement in the general provisions section of the asbestos certification regulations to insure that Department inspectors are provided access to all projects including secure sites, OAR 340-33 -030(11). This rule formalizes Department policy based on the contractor license requirement.

- Incorporate NESHAP and Department definition changes into the Department's existing definitions in OAR 340-25-455 and OAR 340-33-020; add the use of rule numbers 466 through 469, renumbering the asbestos rules to clarify division 25; amend certification requirements to accommodate Department rule changes.

For more information on these changes see attachments "A" and "B"

AUTHORITY/NEED FOR ACTION:

___	Required by Statute: _____ Enactment Date: _____	Attachment ___
X	Statutory Authority: ORS 468.893, 468.020	Attachment ___
___	Pursuant to Rule: _____	Attachment ___
X	Pursuant to Federal Law/Rule: 40 CFR 61.141 through 61.156	Attachment ___
___	Other:	Attachment ___
___	Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

1. Most of the proposed notification rule changes are minor and would not place a burden on asbestos contractors because the Department has been requiring most of the new NESHAP notification procedures for approximately three years. The Department believes these changes would serve to clarify existing notification regulations. However, the Department does propose a change in the notification procedures for large-scale projects that are scheduled longer than one year. This would require contractors to re-file notifications and re-submit fees annually on large-scale projects that continue for more than one year. The Department also

proposes two new project size categories for the largest projects. The Oregon Asbestos Advisory Board (OAAB) supported these changes, and no opposing comments were received.

2. Changes to the work practice section of the asbestos regulations are intended to clarify certain methods and procedures to be used for the discovery of unsafe materials and during removal of certain building components.

3. Changes to the disposal section of the asbestos rules required re-writing of the existing rules.

The NESHAP rule includes the following changes: Separate requirements for active and inactive disposal sites; adding requirements for signs during loading and unloading of asbestos waste transport vehicles; adding requirements for tracking asbestos from job site to final disposal; adding requirements for record keeping for disposal tracking; and adding specific reporting requirements for disposal of loads where a discrepancy exists with the amount of material documented for disposal.

The Department received several comments on the new reporting requirements. These new requirements would place an additional burden on both waste generators and waste disposal operators. Smaller contractors and disposal sites will have a significant increase in duties involving waste tracking. The Department will continue to work with generators and disposal operators on technical issues.

The new NESHAP regulation defines specific responsibilities for the waste generator, waste hauler, and waste disposal site owners for handling asbestos-containing waste. The Department proposes to separate these disposal regulations into three parts because of their length and complexity. The Department believes that separating the NESHAP rule into three parts and then incorporating it into the Department's existing asbestos regulations will facilitate better understanding and would clarify the roles of the generator, transporter, and disposal site operator when handling asbestos-containing waste.

4. In accordance with Section 15, Chapter 744, Oregon Laws 1987, Department Staff met with and received comments from the Asbestos Advisory Board on the proposed rules. Board members agreed with the way the Department incorporated the NESHAP changes but suggested many minor language changes. The board did advise the asbestos staff that landfill owners will have difficulty in implementing the new disposal requirements. These comments are located in Attachment "F".

PROGRAM CONSIDERATIONS:

Many of the new NESHAP regulations have been present in the Department's asbestos rules since 1988. The proposed changes will only have a moderate effect on the Asbestos Program's resources and personnel. New and amended forms would result in receipt of increased information. This additional work could be handled by existing staff.

Some rule changes may require Asbestos Program Inspectors to spend more time at project sites during inspections. The rule changes would increase the protection of the environment by specifying work practices and disposal requirements.

The Department expects better compliance from asbestos abatement projects, because these rule changes would further clarify Department requirements for handling asbestos during all phases of asbestos abatement.

The Department does not propose adoption of the new federal NESHAP regulation for category I and category II non-friable material. The new rule would be less stringent than existing Department requirements primarily because it would allow all but the most deteriorated asbestos containing resilient floor coverings to remain in place during demolition. OAR 340-25-468(10) requires that all asbestos abatement projects that encompass 260 linear or 160 square feet of asbestos-containing material within a containment be cleared to 0.01 fibers per cubic centimeter (f/cc) or less prior to removing the containment. Because of studies that show fiber release above the established clearance level of .01 fibers per cubic centimeter during resilient floor covering removal (see attachment "I"), the Department is particularly concerned when these materials are subject to the greater mechanical forces of demolition.

In addition, EPA based its new non-friable definition on a literature survey which yielded admittedly "uncertain" findings that these materials appear to have a lower potential for fiber release. (Fed. Reg. Vol. 55, No. 224 Tuesday Nov. 20, 1990 page 48409)

The Department's review of literature has revealed that high concentrations of asbestos fibers can be released during removal of two forms of resilient floor covering: asbestos-containing tile and asbestos-backed sheet vinyl. During building demolition, most materials are reduced to small pieces by intense mechanical force, and there are no precautions, other than possible wetting, to control potential fiber releases. Allowing asbestos-containing resilient floor coverings to remain in place during demolition would increase the likelihood of public and environmental exposure to asbestos fibers.

The new NESHAP rule re-defines the meaning of non-friable materials by separating the definition into two categories: category I and category II non-friable materials. These categories were intended to clarify which non-friable materials are regulated, and specify which materials could remain in a structure during demolition. Category I materials (asbestos-containing packing, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos) may remain in place during demolition unless their binding material is "losing its integrity as indicated by peeling, cracking or crumbling" or they are friable.

The Environmental Protection Agency based its new demolition requirements for category I non-friable materials on a consultant's report which states that fiber releases appeared minimal and substantially lower than for friable materials. The Department has reviewed the consultants report, EPA literature survey, and performed its own literature survey. In these materials, the Department has identified fiber release levels that are not consistent with protection of public health.

Category II materials (any non-friable material not included in Category I) may remain in place during demolition if there is a low probability that they "will become crumbled, pulverized, or reduced to powder during demolition".

The Department's rules require removal of asbestos-containing materials (ACM) prior to demolition, but exempt non-friable asbestos-containing materials that will not be "shattered, crumbled, pulverized or reduced to dust until

disposed of in an authorized disposal site" and do not become friable and release asbestos fibers into the environment. The Department has interpreted this rule to require removal of asbestos-containing resilient floor covering, and any other non-friable materials that would likely shatter and become pulverized during demolition. The Department allows asbestos-containing roofing materials in good condition and non-friable ACM in the form of gaskets or packing encased in concrete or similar material to remain in place during demolition. These interpretations have been communicated widely to the regulated community in the form of bulletins, news letters and presentations.

The Department is also concerned that, because of its complexity, the new NESHAP definition of non-friable materials would cause confusion and misapplication of asbestos regulations. In addition, waste generated from demolition of a structure containing vinyl asbestos tile or asbestos backed sheet vinyl would be contaminated with asbestos debris, and require special handling and disposal.

A construction or demolition contractor may incur less initial cost demolishing a structure where asbestos-containing resilient floor covering remained in place. However, other costs may be incurred because of Oregon OSHA regulations requiring a contractor to monitor worker asbestos exposure and provide adequate respiratory protection. Increased cost may also be incurred due to Department requirements that they treat demolition debris as asbestos-containing waste material because of asbestos contamination in the debris.

For a summary of information on fiber releases from resilient floor covering removal, see attachment "G". The Department has responded to comments on this issue in attachment "H".

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. The alternative preferred by the Department is to incorporate relevant sections of the new NESHAP rule into the existing Department asbestos regulations.

2. The second alternative would be to adopt NESHAP rules as promulgated by the EPA.

3. A third alternative considered by the Department was to incorporate the new NESHAP non-friable materials definition as promulgated by the EPA, rather than retain the existing State non-friable materials rule.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department's delegation agreement with the Environmental Protection Agency (EPA) requires that all NESHAP regulations that are more stringent than the Department's existing asbestos regulations be incorporated into the Department's regulations. The NESHAP rules as written are lengthy and complex, the Department has made the rules more relevant and less complex by incorporating comments made during public hearings.

During the hearings one commenter wanted the Department to adopt the NESHAP demolition rules regarding non-friable materials. These new NESHAP regulations are less stringent than current Department rules. The Department has evaluated the same information EPA used to develop the regulations plus additional test information. The Department favors keeping the existing standard which is more protective of public health. The Department's responses to this commenter are in attachment "H".

The Department has accumulated several suggested housekeeping rule revisions since the last rule change. These changes are necessary to further clarify existing rules. The Department met with the Oregon Asbestos Advisory Board (OAAB) on May 3, and again on July 23, 1991, to discuss these rule changes. The rule changes made by the asbestos staff are consistent with comments received by the OAAB.

The Department recommends that the Commission adopt the final revised amendments.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

These rule changes are consistent with Department strategic goals to aggressively identify threats to public health or the environment and take steps to prevent problems which may be created.

ISSUES FOR COMMISSION TO RESOLVE:

1. Should the Department adopt the new NESHAP regulation as promulgated or incorporate the NESHAP rule into existing Department asbestos regulations?

2. Should the Department adopt the new NESHAP definition for non-friable materials and relax this standard or should the Department keep the existing regulation that is more stringent?

INTENDED FOLLOWUP ACTIONS:

September 30, 1991	File the Rules with the Secretary of State.
October 10, 1991	Print new rules. Use the Program's mailing list to notify concerned parties.

Approved:

Section: Sarah V. Armitage

Division: Don Haskins

Director: Fred Hansen

Report Prepared By: John F. Mathews
Phone: (503) 229-5656
Date Prepared: August 10, 1991

JFM:a
RPT\AH16044
August 23, 1991

OREGON ADMINISTRATIVE RULES
DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 340 DIVISION 25

DRAFT RULES AUGUST 14, 1991

POLICY

340-25-450 The Commission finds and declares that certain air contaminants for which there is no ambient air standard may cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness, and are therefore considered to be hazardous air contaminants. Air contaminants currently considered to be in this category are asbestos, beryllium, and mercury. Additional air contaminants may be added to this category provided that no ambient air standard exists for the contaminant, and evidence is presented which demonstrates that the particular contaminant may be considered as hazardous. It is hereby declared the policy of the Department that the standards contained herein and applicable to operators are to be minimum standards, and as technology advances, conditions warrant, and Department or regional authority rules require or permit, more stringent standards shall be applied.

Stat. Auth.: ORS Ch.
Hist: DEQ 96, f. 9-2-75, ef. 9-25-75

DEFINITIONS

340-25-455 As used in this rule, and unless otherwise required by context:

(1) "Adequately wet" means to sufficiently mix or penetrate asbestos-containing material with liquid to prevent the release of particulate asbestos materials. The absence of visible emissions is not sufficient evidence of being adequately wet.

~~[(1)]~~(2) "Asbestos" means ~~[...]~~the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite."

~~[(2)]~~(3) "Asbestos-containing waste material" means any waste which contains mill tailings or any commercial asbestos and is generated by a source subject to the provisions of this subpart, or friable asbestos material including, but not limited to, asbestos mill tailings, control device asbestos waste, friable asbestos waste material, asbestos abatement project waste, and bags or containers that previously contained commercial asbestos.

~~[(3)]~~(4) "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any

material with the potential of releasing asbestos fibers from asbestos-containing material into the air."

NOTE: An asbestos abatement project is not considered to be a source under OAR 340-25-460(2) through (6). Emergency fire fighting is not an asbestos abatement project.

~~[(4)]~~(5) "Asbestos manufacturing operation" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos with any other material(s) including commercial asbestos, and the processing of this combination into a product as specified in rule OAR 340-25-465(3).

~~[(5)]~~(6) "Asbestos-containing material" means asbestos or any material containing more than one percent (1%) asbestos by weight, including particulate asbestos material.

~~[(6)]~~(7) "Asbestos mill" means any facility engaged in the conversion or any intermediate step in the conversion of asbestos ore into commercial asbestos.

~~[(7)]~~(8) "Asbestos tailings" mean~~[s]~~ any solid waste product of asbestos mining or milling operations which contains asbestos.

~~[(8)]~~(9) "Beryllium" means the element beryllium. Where weight or concentrations are specified in these rules, such weights or concentrations apply to beryllium only, excluding any associated elements.

~~[(9)]~~(10) "Beryllium alloy" means any metal to which beryllium has been added in order to increase its beryllium content, and which contains more than 0.1 percent beryllium by weight.

~~[(10)]~~(11) "Beryllium containing waste" means any material contaminated with beryllium and/or beryllium compounds used or generated during any process or operation performed by a source subject to these rules.

~~[(11)]~~(12) "Beryllium ore" means any naturally occurring material mined or gathered for its beryllium content.

~~[(12)]~~(13) "Commercial asbestos" means any variety of asbestos which is produced by extracting asbestos from asbestos ore.

~~[(13)]~~(14) "Commission" means the Environmental Quality Commission.

~~[(14)]~~(15) "Demolition" means the wrecking or removal of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

~~[(15)]~~(16) "Department" means the Department of Environmental Quality.

~~[(16)]~~(17) "Director" means the Director of the Department or regional authority and authorized deputies or officers.

~~[(17)]~~(18) "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating

includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.

(19) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

[(18)](20) "Friable asbestos material" means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.

(21) "Fugitive emissions" means any emissions which escape from a point or area that is not identifiable as a stack, vent, duct or equivalent opening.

[(19)](22) "Hazardous air contaminant" means any air contaminant considered by the Department or Commission to cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness and for which no ambient air standard exists.

[(20)](23) "HEPA filter" means a high efficiency particulate air filter capable of filtering 0.3 micron particles with 99.97 percent efficiency.

(24) "Inactive waste disposal site" means any disposal site where the operator has allowed the Department's solid waste permit to lapse, has gone out of business, or no longer receives asbestos-containing waste.

[(21)](25) "Interim storage of asbestos containing material" means the storage of asbestos-containing waste material which has been placed in a container outside a regulated area until transported to an authorized landfill.

[(22)](26) "Mercury" means the element mercury, excluding any associated elements and includes mercury in particulates, vapors, aerosols, and compounds.

[(23)](27) "Mercury ore" means any mineral mined specifically for its mercury content.

[(24)](28) "Mercury ore processing facility" means a facility processing mercury ore to obtain mercury.

[(25)](29) "Mercury chlor-alkali cell" means a device which is basically composed of an electrolyzer section and a denuder (decomposer) section, and utilizes mercury to produce chlorine gas, hydrogen gas, and alkali metal hydroxide.

(30) "Nonfriable asbestos-containing material" means any material containing more than one percent (1%) asbestos as determined by weight that when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

[(26)](31) "Particulate asbestos material" means any finely divided particles of asbestos material.

[(27)](32) "Person" means any individual, corporation, association, firm, partnership, joint stock company, public and municipal corporation, political sub-division, the state and any agency thereof, and the federal government and any agency thereof.

[(28)](33) "Propellant" means a fuel and oxidizer physically or chemically combined, containing beryllium or beryllium

compounds, which undergoes combustion to provide rocket propulsion.

~~[(29)]~~(34) "Propellant plant" means any facility engaged in the mixing, casting, or machining of propellant.

~~[(30)]~~(35) "Regional authority" means any regional air quality control authority established under the provisions of ORS 468.505.

~~[(31)]~~(36) "Renovation" means altering in any way one or more facility components. Operations in which load-supporting structural members are wrecked or removed are excluded.

(37) "Roadways" mean surfaces on which vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

~~[(32)]~~(38) "Small-scale asbestos abatement project" means any asbestos abatement project which meets the definition given in OAR 340-33-020(17).

~~[(33)]~~(39) "Small scale, short duration renovating and maintenance activity" means an activity which meets the definition given in OAR 340-33-020(18).

~~[(34)]~~(40) "Startup" means commencement of operation of a new or modified source resulting in release of contaminants to the ambient air.

~~[(35)]~~(41) "Structural member" means any load-supporting member of a facility, such as beams and load-supporting walls; or any non-supporting member, such as ceilings and non-load-supporting walls.

(42) "Waste generator" means any person performing an asbestos abatement project or any owner or operator of a source covered by this section whose act or process generates asbestos-containing waste material.

(43) "Waste shipment record" means the shipment document, required to be originated and signed by the waste generator; used to track and substantiate the disposition of asbestos-containing waste material.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 96, f.9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82

GENERAL PROVISIONS

340-25-460 (1) Applicability. The provisions of these rules shall apply to any source which emits air contaminants for which a hazardous air contaminant standard is prescribed. Compliance with the provisions of these rules shall not relieve the source from compliance with other applicable rules of the Oregon Administrative Rules, Chapter 340, or with applicable provisions of the Oregon Clean Air Implementation Plan.

(2) Prohibited activities:

(a) No person shall construct, install, establish, develop or operate any source of emissions subject to these rules without

first obtaining an Air Contaminant Discharge Permit in accordance with OAR 340-20-140 through 340-20-185.

(b) ~~[After the effective date of these rules,]~~No person shall modify any existing source such that emissions of contaminants subject to these rules are significantly increased without first applying for and obtaining a modified permit.

(c) No person subject to the provisions of these emission standards shall fail to provide reports or report revisions as required in these rules.

(3) Application for approval of construction or modification. All applications for construction or modification shall comply with the requirements of OAR 340-20-140 through OAR 340-20-185 and the requirements of the standards set forth in these rules.

(4) Notification of startup. Notwithstanding the requirements of rules OAR 340-20-140 through OAR 340-20-185, any person owning or operating a new source of emissions subject to these emission standards shall furnish the Department written notification as follows:

(a) Notification of the anticipated date of startup of the source not more than ~~[sixty]~~ [60] days nor less than ~~[thirty]~~ [30] days prior to the anticipated date.

(b) Notification of the actual startup date of the source within ~~[fifteen]~~ [15] days after the actual date.

(5) Source reporting and approval request. Any person operating any existing source, or any new source for which a standard is prescribed in these rules which had an initial startup which preceded the effective date of these rules shall provide the following information to the Department within ~~[ninety]~~ [90] days of the effective date of these rules:

(a) Name and address of the owner or operator.

(b) Location of the source.

(c) A brief description of the source, including nature, size, design, method of operations, design capacity, and identification of emission points of hazardous contaminants.

(d) The average weight per month of materials being processed by the source and percentage by weight of hazardous contaminants contained in the processed materials, including yearly information as available.

(e) A description of existing control equipment for each emission point, including primary and secondary control devices and estimated control efficiency of each control device.

(6) Source emission tests and ambient air monitoring:

(a) Emission tests and monitoring shall be conducted using methods set forth in 40 CFR, Part 61, Appendix B~~[, as published in the Code of Federal Regulations last amended by the Federal Register, June 1, 1987, at 52 FR 20398]~~. The methods described in 40 CFR, Part 61, Appendix B, are adopted by reference and made a part of these rules. Copies of these methods are on file at the Department of Environmental Quality.

(b) At the request of the Department, any source subject to

standards set forth in these rules may be required to provide emission testing facilities as follows:

(A) Sampling ports, safe sampling platforms, and access to sampling platforms adequate for test methods applicable to such source.

(B) Utilities for sampling and testing equipment.

(c) Emission tests may be deferred if the Department determines that the source is meeting the standard as proposed in these rules. If such a deferral of emission tests is requested, information supporting the request shall be submitted with the request for written approval of operation. Approval of a deferral of emission tests shall not in any way prohibit the Department from canceling the deferral if further information indicates that such testing may be necessary to insure compliance with these rules.

(7) Delegation of authority. The Commission may, when any regional authority requests and provides evidence demonstrating its capability to carry out the provisions of these rules relating to hazardous contaminants, authorize and confer jurisdiction within its boundary until such authority and jurisdiction shall be withdrawn for cause by the Commission.

Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality in Portland.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82

EMISSION STANDARDS AND PROCEDURAL REQUIREMENTS FOR ASBESTOS

340-25-465 (1) Emission standard for asbestos mills. No person shall cause to be discharged into the atmosphere any visible emissions from any asbestos milling operation, including fugitive emissions, except as provided under OAR 340-25-468(14) Air Cleaning~~[section (10) of this rule]~~. For purposes of these rules, the presence of uncombined water in the emission plume shall not be cause for failure to meet the visible emission requirement. Outside storage of asbestos materials is not considered a part of an asbestos mill. Each owner or operator of an asbestos mill shall meet the following requirements:

(a) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operations. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.

(b) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction including, to the maximum extent possible without

dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, the following:

(A) Maintenance schedule.

(B) Recordkeeping plan.

(c) Maintain records of the results of visible emissions monitoring and air cleaning device inspections using a format approved by the Department which includes the following:

(A) Date and time of each inspection.

(B) Presence or absence of visible emissions.

(C) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(D) Presence of dust deposits on clean side of fabric filters.

(E) Brief description of corrective actions taken, including date and time.

(F) Daily hours of operation for each air cleaning device.

(d) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.

(e) Retain a copy of all monitoring and inspection records for at least two years.

(f) Submit a copy of visible emission monitoring records to the Department quarterly. The quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

(g) Asbestos waste produced by any asbestos milling operation will be disposed of according to OAR 340-25-469.

(2) Roadways and Parking Lots. ~~[The surfacing of roadways, parking lots or any other surface covering on which vehicle traffic might reasonably be expected to occur, with asbestos tailings or asbestos material is prohibited, except for temporary roadways on an area of asbestos ore deposits. For purposes of these rules, the deposition of asbestos tailings on roadways covered by snow or ice is considered surfacing.]~~

No person may construct or maintain a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless (for asbestos tailings):

(a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine); or

(b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at a minimum frequency of once per year to prevent dust emissions; or

(c) It is encapsulated in asphalt concrete meeting the specifications contained in section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-85, 1985, or their equivalent.

(3) Manufacturing. No person shall cause to be discharged into the atmosphere any visible emissions, except as provided in OAR 340-25-468(14) Air Cleaning ~~[section (10) of this rule]~~, from any building or structure in which manufacturing operations utilizing commercial asbestos are conducted, or directly from any such manufacturing operations if they are conducted outside buildings or structures, or from any other fugitive emissions. All asbestos waste produced by any manufacturing operation shall be disposed of according to OAR 340-25-469. Visible emissions from boilers or other points not producing emissions directly from the manufacturing operation; and having no possible asbestos material in the exhaust gases, shall not be considered for purposes of this rule. The presence of uncombined water in the exhaust plume shall not be cause for failure to meet the visible emission requirements.

(a) Applicability. Manufacturing operations considered for purposes of these rules are as follows:

~~[(a)]~~(A) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.

~~[(b)]~~(B) The manufacture of cement products.

~~[(c)]~~(C) The manufacture of fire proofing and insulating materials.

~~[(d)]~~(D) The manufacture of friction products.

~~[(e)]~~(E) The manufacture of paper, millboard, and felt.

~~[(f)]~~(F) The manufacture of floor tile.

~~[(g)]~~(G) The manufacture of paints, coatings, caulks, adhesives, or sealants.

~~[(h)]~~(H) The manufacture of plastics and rubber materials.

~~[(i)]~~(I) The manufacture of chlorine, using asbestos diaphragm technology.

~~[(j)]~~(J) The manufacture of shotgun shell ~~[s]~~ wads.

~~[(k)]~~(K) The manufacture of asphalt concrete.

~~[(l)]~~(L) Any other manufacturing operation which results or may result in the release of asbestos material to the ambient air.

(b) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be visual observation of at least 15 seconds.

(c) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, the following:

(A) Maintenance schedule.
(B) Recordkeeping plan.
(d) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department which includes the following:
(A) Date and time of each inspection.
(B) Presence or absence of visible emissions.
(C) Condition of fabric filters, including presence of any tears, holes and abrasions.
(D) Presence of dust deposits on clean side of fabric filters.
(E) Brief description of corrective actions taken, including date and time.
(F) Daily hours of operation for each air cleaning device.
(e) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.
(f) Retain a copy of all monitoring and inspection records for at least two years.
(g) Submit quarterly a copy of the visible emission monitoring records to the Department if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.
(h) Asbestos waste produced by any asbestos milling operation shall be disposed of according to OAR 340-25-469.

ASBESTOS ABATEMENT PROJECTS

340-35-466 (1) ~~[(4) Asbestos abatement projects.]~~ Any person who conducts an asbestos abatement project shall comply with OAR 340-25-~~[465(5), (6), and (7)]~~467 and OAR 340-25-468(1) through (11). The following asbestos abatement projects are exempt from these requirements:

(a) Asbestos abatement conducted in a private residence which is occupied by the owner and the owner-occupant performs the asbestos abatement.

(b) Removal of nonfriable asbestos-containing materials that are not shattered, crumbled, pulverized or reduced to dust until disposed of in an authorized disposal site. This exemption shall end whenever the asbestos-containing material becomes friable ~~[and]~~ or releases asbestos fibers into the environment.

(c) Removal of less than three ~~[(3)]~~ square feet or three ~~[(3)]~~ linear feet of asbestos-containing material provided that the removal of asbestos is not the primary objective and methods of removal are in compliance with OAR 437 Division 3 "Construction" (29 CFR 1926.58 Appendix G). ~~[to 1926.58]~~. An asbestos abatement project shall not be subdivided into smaller sized units in order to qualify for this exemption.

(d) Removal of asbestos-containing materials which are sealed from the atmosphere by a rigid casing, provided that the casing is not broken or otherwise altered such that asbestos fibers could be

released during removal, handling, and transport to an authorized disposal site.

(2) Open storage of friable asbestos-containing material or asbestos-containing waste material is prohibited.

(3) Open accumulation of friable asbestos-containing material or asbestos-containing waste material is prohibited.

NOTE: The requirements and jurisdiction of the Department of Insurance and Finance, Oregon Occupational Safety and Health Division and any other state agency are not affected by these rules.

NOTIFICATIONS REQUIREMENTS

340-25-467 ~~[(5) Notification Requirements.]~~ Written notification of any asbestos abatement project shall be provided to the Department on a Department form. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in ~~[sub]~~section ~~[(a) or (b)]~~(1) or (2), below except as provided in ~~[sub]~~sections ~~[(c), (d) and (f)]~~(3), (4) and (6) below.

~~[(a)]~~(1) Submit the notifications as specified in subsection (c) below and the project notification fee to the Department at least ten days before beginning any asbestos abatement project.

~~[(A)]~~(a) The project notification fee shall be:

~~[(i)]~~(A) $25 for each small-scale asbestos abatement project except for small-scale projects in residential buildings described in OAR 340-25-46~~[5(5)(d)]~~7(4).

~~[(ii)]~~(B) $50 for each project greater than a small-scale asbestos abatement project and less than 260 linear feet or 160 square feet.

~~[(iii)]~~(C) $200 for each project greater than 260 linear feet or 160 square feet, and less than 2600 linear feet or 1600 square feet.

~~[(iv)]~~(D) $500 for each project greater than 2600 linear feet or 1600 square feet, and less than 26000 linear feet or 16000 square feet.

(E) $750 for each project greater than 26000 linear feet or 16000 square feet, and less than 260000 linear feet or 160000 square feet.

(F) $1000 for each project greater than 260000 linear feet or 160000 square feet.

~~[(B)]~~(b) Project notification fees shall be payable with the completed project notification form. No notification will be considered to have occurred until the notification fee is submitted.

~~[(c) Notification of less than ten days (10) is permitted in case of an emergency involving protection of life, health or property or, after providing the Department verbal or written notification, where an unscheduled or unexpected event creates the opportunity to conduct an asbestos abatement project. Notification shall include the information contained in subsection (c) below, and the date of the contract if applicable. If original notification is provided by phone, written notification and the~~

~~project notification fee shall be submitted within three (3) days after the start of such abatement projects.]~~

(c) The ten day notification requirement in (1) above may be temporarily waived in emergencies which directly affect human life, health, and property. This includes:

(A) Emergencies where there is an imminent threat of loss of life or severe injury; or

(B) Emergencies where the public is exposed to air-borne asbestos fibers; or

(C) Emergencies where significant property damage will occur if repairs are not made.

~~[(D) The Department must be notified prior to any changes in the scheduled starting or completion dates or other substantial changes or the notification will be void.]~~

(d) The ten day notification requirement in (1) above may be temporarily waived for asbestos abatement projects which were not planned, resulted from unexpected events, and which if not immediately performed will cause damage to equipment or impose unreasonable financial burden. This includes the non-routine failure of equipment.

(e) In either (c) or (d) above persons responsible for such asbestos abatement projects shall notify the Department by telephone prior to commencing work, or by 9am of the next working day if the work was performed on a weekend or holiday. In any case notification as specified in (3) below and the appropriate fee shall be submitted to the Department within three days of commencing emergency or unexpected event asbestos abatement projects.

(f) The Department shall be notified prior to any changes in the scheduled starting or completion dates or other substantial changes or the notification will be void.

(g) If an asbestos project, equal to or greater than 2600 linear feet or 1600 square feet continues for more than one year, a new notification and fee shall be submitted annually thereafter until the project is complete.

~~[(b)]~~(2) For small-scale asbestos abatement projects conducted at one or more facilities by a single contractor or a single facility owner with centrally controlled asbestos operations and maintenance the notification may be submitted as follows:

~~[(A)]~~(a) Establish eligibility for use of this notification procedure with the Department prior to use;

~~[(B)]~~(b) Maintain on file with the Department a general asbestos abatement plan. The plan shall contain the information specified in subsections ~~[(c)(A) through (c)(I)]~~ (3)(a) through (3)(i) below, to the extent possible;

~~[(C)]~~(c) Provide to the Department a summary report of all small-scale asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report shall include the information specified in subsections ~~[(c)(J) through (c)(M)]~~

(3)(i) through (3)(m) below for each project, a description of any significant variations from the general asbestos abatement plan; and a description of asbestos abatement projects anticipated for the next quarter;

~~[(D)]~~(d) Provide to the Department, upon request, a list of asbestos abatement projects which are scheduled or are being conducted at the time of the request~~[.]~~;

~~[(E)]~~(e) Submit a project notification fee of $200 per year prior to use of this notification procedure and annually thereafter while this procedure is in use~~[.]~~;

~~[(F)]~~(f) Failure to provide payment for use of this notification procedure shall void the general asbestos abatement plan and each subsequent abatement project shall be individually assessed a project notification fee.

~~[(c)]~~(3) The following information shall be provided for each notification:

~~[(A)]~~(a) Name and address of person conducting asbestos abatement.

~~[(B)]~~(b) Contractor's Oregon asbestos abatement license number, if applicable, and certification number of the supervisor for full-scale asbestos abatement or certification number of the trained worker for a project which does not have a certified supervisor.

~~[(C)]~~(c) Method of asbestos abatement to be employed.

~~[(D)]~~(d) Procedures to be employed to insure compliance with OAR 340-25-46~~[5]~~8 and -469.

~~[(E)]~~(e) Names, addresses, and phone numbers of waste transporters.

~~[(F)]~~(f) Name and address or location of the waste disposal site where the asbestos-containing waste material will be deposited.

~~[(G)]~~(g) Description of asbestos disposal procedure.

~~[(H)]~~(h) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including:

(A) The age, present and prior use of the facility;

(B) Address or location where the asbestos abatement project is to be accomplished.

~~[(I)]~~(i) Facility owner's or operator's name, address and phone number.

~~[(J)]~~(j) Scheduled starting and completion dates of asbestos abatement work.

~~[(K)]~~(k) Description of the asbestos type, approximate asbestos content (percent), and location of the asbestos-containing material.

~~[(L)]~~(l) Amount of asbestos to be abated: linear feet, square feet, thickness.

~~[(M) Any other information requested on the Department form.]~~

(m) For facilities described in OAR 340-25-468(5) provide the name, title and authority of the State or local government

official who ordered the demolition, date the order was issued, and the date demolition is to begin.

(n) Any other information requested on the Department form.

[~~(d)~~](4) No project notification fee shall be assessed for asbestos abatement projects conducted in the following residential buildings: site-built homes, modular homes constructed off site, condominium units, mobile homes, and duplexes or other multi-unit residential buildings consisting of four units or less. Project notification for a full-scale asbestos abatement project, as defined in OAR 340-33-020(14), in any of these residential buildings shall otherwise be in accordance with [~~sub~~]section [~~(5)(a)~~](1) of this [~~section~~]rule. Project notification for a small-scale asbestos abatement project, as defined in OAR 340-33-020(17), in any of these residential buildings is not required.

[~~(e)~~](5) The project notification fees specified in this section shall be increased by 50% when an asbestos abatement project is commenced without filing of a project notification and/or submittal of a notification fee or when notification of less than ten days[~~(10)~~] is provided under subsection [~~(5)(a)(C)~~](1)(c) of this [~~section~~]rule.

[~~(f)~~](6) The Director may waive part or all of a project notification fee. Requests for waiver of fees shall be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship.

[~~(g)~~](7) Pursuant to ORS 468.535, a regional authority may adopt project notification fees for asbestos abatement projects in different amounts than are set forth in this rule. The fees shall be based upon the costs of the regional authority in carrying out the delegated asbestos program. The regional authority may collect, retain, and expend such project notification fees for asbestos abatement projects within its jurisdiction.

WORK PRACTICES AND PROCEDURES

340-25-468[~~(6) Work practices and procedures.~~] The following procedures shall be employed during an asbestos abatement project to prevent emissions of particulate asbestos material into the ambient air:

[~~(a)~~](1) Remove asbestos-containing materials before any wrecking or dismantling that would break up the materials or preclude access to the materials for subsequent removal. However, asbestos-containing materials need not be removed before demolition if:

[~~(A)~~](a) They are on a facility component that is encased in concrete or other similar material; [~~and~~]

(b) They were not discovered before demolition and cannot be removed because of unsafe conditions as a result of the demolition. Upon discovery the owner or operator performing the demolition shall:

(A) Stop demolition work immediately.

(B) Notify the Department immediately of the occurrence.

(C) Keep the exposed asbestos-containing materials and any asbestos-contaminated waste material adequately wet at all times until a licensed asbestos abatement contractor begins removal activities.

(D) Have the licensed asbestos abatement contractor remove and dispose of the asbestos-containing waste material.

[~~(B)~~](c) These materials are adequately wetted whenever exposed during demolition.

[~~(b) Adequately wet~~](2) Asbestos-containing materials shall be adequately wetted when they are being removed. In renovation, maintenance, repair, and construction operations, where wetting [~~that~~] would unavoidably damage equipment or is incompatible with specialized work practices, or presents a safety hazard, adequate wetting is not required if the owner or operator:

[~~(A) Demonstrates to the Department that wetting would unavoidably damage equipment;~~](a) Obtains prior written approval from the Department for dry removal of asbestos-containing material;

(b) Keeps a copy of the Department's written approval available for inspection at the work site;

[~~(B)~~](c) Adequately wraps or encloses any asbestos-containing material during handling to avoid releasing fibers[~~.~~];

[~~(c)~~](d) Uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the asbestos abatement project.

[~~(c)~~](3) When a facility component covered or coated with asbestos-containing materials is being taken out of the facility as units or in sections:

[~~(A)~~](a) Adequately wet any asbestos-containing materials exposed during cutting or disjointing operation; [~~and~~]

[~~(B)~~](b) Carefully lower the units or sections to ground level, not dropping them or throwing them[~~.~~];

(c) Asbestos-containing materials do not need to be removed from large facility components such as reactor vessels, large tanks, steam generators, but excluding beams if the following requirements are met:

(A) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the regulated asbestos-containing material; and

(B) The component is encased in leak-tight wrapping; and

(C) The leak-tight wrapping is labeled according to OAR 340-25-469(2)(b) during all loading and unloading operations and during storage.

[~~(d)~~](4) For asbestos-containing materials being removed or stripped:

[~~(A)~~](a) Adequately wet the materials to ensure that they remain wet until they are disposed of in accordance with OAR 340-25-46[~~5(13);~~]9;

[~~(B)~~](b) Carefully lower the materials to the floor, not dropping or throwing them; [~~and~~]

[~~(c)~~](c) Transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped above ground level and were not removed as units or in sections.

[~~(e)~~](5) If a facility is being demolished under an order of the State or a local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse, the requirements of [~~subsections (a), (b), (c), (d), and (f) of this section~~]section (1), (2), (3), (4), and (6) of this rule shall not apply, provided that the portion of the facility that contains asbestos-containing materials is adequately wetted during the wrecking operation.

[~~(f)~~](6) Before a facility is demolished by intentional burning, all asbestos-containing material shall be removed and disposed of in accordance with OAR 340-25-466 through -469.

[~~(f)~~](7) None of the operations in [~~subsections (a) through (d) of this section~~]sections (1) through (4) of this rule shall cause any visible emissions. Any local exhaust ventilation and collection system or other vacuuming equipment used during an asbestos abatement project, shall be equipped with a HEPA filter or other filter of equal or greater collection efficiency.

[~~(g)~~](8) Contractors licensed and workers certified to conduct only small-scale asbestos abatement projects under OAR 340-33-040 and 340-33-050 respectively may use only those work practices and engineering controls specified by OAR 437 Division 3 "Construction" (29 CFR 1926.58 Appendix G[~~1926.58) unless the Department authorizes other methods on a case-by-case basis. Small-scale short-duration renovating or maintenance activities meeting the definition OAR 340-33-020(18) and complying with work practices and engineering controls specified in Appendix G above may be exempted from OAR 437 Division 3 "Construction" (29 CFR 1926 to 1926.58) paragraphs (e)(6), (j)(1)(i) and (j)(2)(i)~~]

[~~(h)~~](9) The Director may approve, on a case-by-case basis, requests to use an alternative to a[~~specific worker or~~] public health protection requirement as provided by these rules for an asbestos abatement project. The contractor or facility owner or operator must submit in advance a written description of the alternative procedure which demonstrates to the Director's satisfaction that the proposed alternative procedure provides[~~worker and~~] public health protection equivalent to the protection that would be provided by the specific provision, or that such level of protection cannot be obtained for the asbestos abatement project.

[~~(i)~~](10) Final Air Clearance Sampling Requirements apply to projects involving more than 160 square feet or 260 linear feet of asbestos-containing material. Before a containment around such an area is removed, the person(s), contractor or facility owner/operator performing the abatement[~~must~~] shall document that the air inside the containment has no more than 0.01 fibers per cubic centimeter of air. The air sample(s) collected[~~must~~] shall not exceed 0.01 fibers per cubic centimeter of air. The

Department may grant a waiver to this section or exceptions to the following requirements upon written request.

~~[A.]~~(a) The air clearance samples shall be performed and analyzed by a party who is National Institute of Occupational Safety and Health (NIOSH) 582 certified and financially independent from the person(s) conducting the asbestos abatement project.

~~[B.]~~(b) Before final air clearance sampling is performed the following shall be completed:

~~[(i)]~~(A) All visible asbestos-containing debris shall be removed according to the requirements of this section~~[.]~~;

~~[(ii)]~~(B) The air and surfaces within the containment shall be sprayed with an encapsulant~~[.]~~;

~~[(iii)]~~(C) Air sampling may commence when the encapsulant has settled sufficiently so that the filter of the sample is not clogged by airborne encapsulant~~[.]~~;

~~[(iv)]~~(D) Air filtration units shall remain on during the air monitoring period.

~~[C.]~~(c) Air clearance sampling inside containment areas shall be aggressive and comply with the following procedures:

~~[(i)]~~(A) Immediately prior to starting the sampling pumps, direct exhaust from a minimum one horse power forced air blower against all walls, ceilings, floors, ledges, and other surfaces in the containment.

~~[(ii)]~~(B) Then place stationary fans in locations which will not interfere with air monitoring equipment and directed toward the ceiling. Use one fan per 10,000 cubic feet of room space.

~~[(iii)]~~(C) Start sampling pumps and sample an adequate volume of air to detect concentrations of 0.01 fibers of asbestos per cubic centimeter according to the U.S. National Institute of Occupational Safety and Health, (NIOSH) 7400 method.

~~[(iv)]~~(D) When sampling is completed turn off the pump and then the fan(s).

~~[(v)]~~(E) As an alternative to meeting the requirements of ~~[(i)]~~(A) through ~~[(iv)]~~(D) of this subsection, air clearance sample analysis may be performed according to Transmission Electron Microscopy Analytical Methods prescribed by 40 CFR 763.99, Appendix A to Subpart E.

~~[D.]~~(d) The person(s) performing asbestos abatement projects requiring air clearance sampling ~~[will]~~shall ~~[insure that]~~submit to the Department, ~~[receives a copy of the]~~ clearance results within ~~[thirty-(]~~30~~[)]~~ days after the monitoring procedures were performed.

~~[(7)]~~(11) Related Work Practices and Controls Work practices and engineering controls employed for asbestos abatement projects by contractors and/or workers who are not otherwise subject to the requirements of the Oregon Department of Insurance and Finance, Oregon Occupational Safety and Health Division shall comply with the subsections of OAR 437 Division 3 "Construction" (29 CFR 1926.58 Appendix G~~[to 1926.58]~~) which limit the release of asbestos-containing material or exposure of other persons. As

used in this subsection the term employer shall mean the operator of the asbestos abatement project and the term employee shall mean any other person.

~~[(8)]~~(12) Spraying:

(a) No person shall cause to be discharged into the atmosphere any visible emissions from any spray-on application of materials containing more than one (1%) percent asbestos on a dry weight basis used to insulate or fireproof equipment or machinery, except as provided in Air Cleaning section (1~~[0]~~4) of this rule. Spray-on materials used to insulate or fireproof buildings, structures, pipes, and conduits shall contain less than one (1%) percent asbestos on a dry weight basis. In the case of any city or area of local jurisdiction having ordinances or regulations for spray application materials more stringent than those in this section, the provisions of such ordinances or regulations shall apply.

(b) Twenty days before any person ~~[intending to]~~ sprays asbestos materials to insulate or fireproof buildings, structures, pipes, conduits, equipment, or machinery shall ~~[report]~~ notify ~~[such intention to]~~ the Department in writing before ~~[prior to the commencement of]~~ the spraying operation begins. ~~[Such report]~~ The notification shall contain the following: ~~[information:]~~

(A) Name and address of person intending to conduct the spraying operation.

(B) Address or location of the spraying operation.

(C) The name and address of the owner of the facility being sprayed.

(c) The spray-on application of materials in which the asbestos fibers are encapsulated with a bituminous or resinous binder during spraying and which are not friable after drying is exempted from the requirements of subsections (8)(a) and (b) of this rule.

~~[(9)]~~(13) Options for air cleaning. Rather than meet the no visible emissions requirements of ~~[sections]~~OAR 340-25-465(1) and (3) ~~[of this rule]~~, owners and operators may elect to use methods specified in section (1~~[0]~~4) of this rule, below.

(1~~[0]~~4) Air cleaning. All persons electing to use air cleaning methods rather than comply with the no visible emission requirements must meet ~~[all provisions of this section:]~~one of the provisions of (a) through (d) and all of the requirements specified sections (e), (f) and (g) below:

(a) Fabric filter collection devices must be used, except as provided in subsections (b) and (c) of this section. Such devices must be operated at a pressure drop of no more than four~~[(4)]~~ inches (10.16 cm) water gauge as measured across the filter fabric. The air flow permeability, as determined by ASTM Method D737-~~[69]~~75, must not exceed 30 $ft.^3/min./ft.^2$ (9~~[.144]~~ $m^3/min./m^2$) for woven fabrics or 35 $ft.^3/min.ft.^2$ (~~[10.67]~~11 $m^3/min./m^2$) for felted fabrics with the exception that airflow permeability ~~[for]~~of 40 $ft.^3/min./ft.^2$ (12~~[.19]~~ $m^3/min./m^2$) for woven and 45 $ft.^3/min./ft.^2$ (~~[13.72]~~14 $m^3/min./m^2$) for felted

fabrics shall be allowed for filtering air emissions from asbestos ore dryers. Each square yard~~[(square meter)]~~ of felted fabric must weigh at least 14 ounces~~[(396.9 grams)]~~ (475 grams per square meter) and be at least one-sixteenth (1/16) inch ~~[(1.50 mm)]~~(1.6mm) thick throughout. Any synthetic fabrics used must not contain fill yarn other than that which is spun.

(b) If the use of fabric filters creates a fire or explosion hazard, the Department may authorize the use of wet collectors designed to operate with a unit contacting energy of at least ~~[forty]~~ ~~[(]~~40~~[)]~~ inches (101.6 cm) of water gauge pressure.

(c) If High Efficiency Particulate Air (HEPA) filters are used to control emissions the certified efficiency shall be at least 99.97 percent for particles 0.3 microns or greater.

~~[(c)]~~(d) The Department may authorize the use of filtering equipment other than that described in subsections (1~~[0]~~4)(a), (b) ~~[and]~~, or (c) of this rule if such filtering equipment is satisfactorily demonstrated to provide filtering of asbestos material equivalent to that of the described equipment.

~~[(d)]~~ (e) All air cleaning devices authorized by this section must be properly installed, operated, and maintained. Devices to bypass the air cleaning equipment may be used only during upset and emergency conditions, and then only for such time as is necessary to shut down the operation generating the particulate asbestos material.

~~[(e)]~~ (f) All persons operating any existing source using air cleaning devices shall, within ~~[ninety]~~ ~~[(]~~90~~[)]~~ days of the effective date of these rules, provide the following information to the Department:

(A) A description of the emission control equipment used for each process.

(B) If a fabric is utilized, the following information shall be reported:

(i) The pressure drop across the fabric filter in inches, water gauge and the airflow permeability in ft.^{3}/min./ft.^{2} ($m^3/min./m^2$).

(ii) For woven fabrics, indicate whether the fill yarn is spun or not spun.

(iii) For felted fabrics, the density in ounces/yard^3 (gms/m^3) and the minimum thickness in inches (centimeters).

(C) If a wet collector is used the unit contact energy shall be reported in inches of pressure, water gauge.

~~[(D) All reported information shall accompany the information required in paragraph 340-25-460(8)(a)(E).]~~

(g) For fabric filters collection devices installed after January 10, 1989, provide for easy inspection for faulty bags.

(1~~[1]~~5) Fabricating. No person shall cause to be discharged into the atmosphere any visible emissions including fugitive emissions, except as provided in Air Cleaning section (1~~[0]~~4) of this rule, from any fabricating operations including the following: ~~[if they use commercial asbestos or, from any building or structure in which such operations are conducted.]~~

(a) Applicability. This section applies to the following fabricating operations using commercial asbestos:

~~(a)~~ (A) The fabrication of cement building products.

~~(b)~~ (B) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.

~~(c)~~ (C) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.

(b) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices, process equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.

(c) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, the following:

(A) Maintenance schedule.

(B) Recordkeeping plan.

(d) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department which includes the following:

(A) Date and time of each inspection

(B) Presence or absence of visible emissions.

(C) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(D) Presence of dust deposits on clean side of fabric filters.

(E) Brief description of corrective actions taken, including date and time.

(F) Daily hours of operation for each air cleaning device.

(e) Furnish upon request and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.

(f) Retain a copy of all monitoring and inspection records for at least two years.

(g) Submit a copy of the visible emission monitoring records to the Department quarterly. The quarterly report shall be postmarked by the 30th day following the end of the calendar quarter.

(1~~2~~6) Insulation: Molded insulating materials which are friable and wet-applied insulating materials which are friable

after drying, installed after the effective date of these regulations, shall contain no commercial asbestos. The provisions of this section do not apply to insulating materials which are spray applied; such materials are regulated under section ~~[(3)]~~(12) of this rule.

ASBESTOS DISPOSAL REQUIREMENTS

340-25-469 ~~[(13)]~~ Work practices and procedures for packaging, storage, transport, and disposal of asbestos-containing waste material: The owner or operator of any source covered under the provisions of ~~[sections (3), (4), (8) or (11)]~~OAR 340-25-465(3), -466(1), or -468(12) and (15) of this rule or any other source of friable asbestos-containing waste material shall meet the following standards: ~~[.]~~

~~[(a)]~~(1) There shall be no visible emissions to the ~~[outside air]~~ atmosphere, except as provided in ~~[subsection (13)(f)]~~section (12) of this section, during the collection; processing, including incineration; packaging; transporting; or deposition of any asbestos-containing waste material which is generated by such source.

~~[(b) The interim storage of asbestos containing waste material shall protect the waste from dispersal into the environment and provide physical security from tampering by unauthorized persons. The interim storage of asbestos containing waste material is the sole responsibility of the contractor, owner or operator performing the asbestos abatement project.~~

~~(c)]~~(2) All asbestos-containing waste materials shall be adequately wetted ~~[and stored and transported to an authorized disposal site in leak tight containers such as two plastic bags each with a minimum of a thickness of 6 mil., or fiber or metal drums.]~~ to ensure that they remain wet until disposed of, then:

(a) Processed into nonfriable pellets or other shapes; or

(b) Packaged in leak-tight containers such as two plastic bags each with a minimum thickness of 6 mil., or fiber or metal drum. Containers are to be labeled as follows:

(A) The name of the waste generator and the location at which the waste was generated; and

(B) A warning label that states:

DANGER
Contains Asbestos Fibers
Avoid Creating Dust
Cancer and Lung Disease Hazard
Avoid Breathing Airborne
Asbestos Fibers

Alternatively, warning labels specified by 29 CFR 1910.1001 (7/1/88) may be used.

~~[(d) All asbestos containing waste material shall be disposed of at a disposal site authorized by the Department.~~

~~(A) Persons intending to dispose of asbestos-containing waste material shall notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator prior to bringing the waste to the disposal site.~~

~~(B) The waste transporter shall immediately notify the landfill operator upon arrival of the waste at the disposal site. Off-loading of asbestos-containing waste material shall be done under the direction and supervision of the landfill operator.~~

~~(C) Off-loading of asbestos-containing waste material shall occur at the immediate location where the waste is to be buried. The waste burial site shall be selected in an area of minimal work activity that is not subject to future excavation.~~

~~(D) Off-loading of asbestos-containing waste material shall be accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents visible emissions to the air.~~

~~(E) Asbestos-containing waste material deposited at a disposal site shall be covered with at least two (2) feet of soil or one (1) foot of soil plus one (1) foot of other waste before compacting equipment runs over it but not later than the end of the operating day.~~

~~(F) Records of disposal at an authorized landfill shall be maintained by the source for a minimum of three (3) years and shall be made available upon request to the Department. For an asbestos abatement project conducted by a contractor licensed under OAR 340-33-040, the records shall be retained by the licensed contractor. For any other asbestos abatement project, the records shall be retained by the facility owner.]~~

(c) Where the asbestos-containing materials are not removed from a facility prior to demolition as described in OAR 340-25-468(15), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Such asbestos-containing waste materials, shall be transported in lined and covered containers for bulk disposal.

~~[(e) All asbestos-containing waste material shall be sealed into containers labeled with a warning label that states:~~

~~DANGER~~
~~Contains Asbestos Fibers~~
~~Avoid Creating Dust~~
~~Cancer and Lung Disease Hazard~~
~~Avoid Breathing Airborne~~
~~Asbestos Fibers~~

~~Alternatively, warning labels specified by the U.S. Environmental Protection Agency under 40 CFR 61.152(b)(1)(iv) (3/10/86) may be used.]~~

(4) The interim storage of asbestos-containing waste material shall protect the waste from dispersal into the environment and provide physical security from tampering by unauthorized persons.

The interim storage of asbestos-containing waste material is the sole responsibility of the contractor, owner or operator performing the asbestos abatement project.

~~[(f) Rather than meet the requirements of this section, an owner or operator may elect to use an alternative storage, transport, or disposal method which has received prior written approval by the Department.]~~

(5) All asbestos-containing waste material shall be deposited as soon as possible by the waste generator at:

(a) A waste disposal site authorized by the Department and operated in accordance with the provisions of this rule; or

(b) A Department approved site that converts asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of 40 CFR 61.155 Standard for Operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

(6) Persons disposing of asbestos-containing waste material shall notify the landfill operator of the type and volume of the waste material and obtain the approval of the landfill operator prior to bringing the waste to the disposal site.

(7) For each waste shipment the following information shall be recorded on a Department form:

(a) Waste Generation

(A) The name, address, and telephone number of the waste generator.

(B) The number and type of asbestos-containing waste material containers and volume in cubic yards.

(C) A certification that the contents of this consignment are carefully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highways according to applicable regulations.

(b) Waste Transportation

(A) The date transported.

(B) The name, address, and telephone number of the transporter(s).

(c) Waste Disposal

(A) The name and telephone number of the disposal site operator.

(B) The name and address or location of the waste disposal site.

(C) The quantity of the asbestos-containing waste material in cubic yards.

(D) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers.

(E) The date asbestos-containing waste is received at disposal site.

(8) For the transportation of asbestos-containing waste material:

(a) The waste generator shall:

(A) Maintain the waste shipment records and ensure that all the information requested on the Department form regarding waste generation and transportation has been supplied.

(B) Limit access into loading and unloading area to authorized personnel.

(C) Mark vehicles, while loading and unloading asbestos-containing waste, with signs (20 in. x 14 in.) that state:

DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
Authorized Personnel Only

Alternatively, language that conforms to the requirements of 29 CFR 1910.1001 (7/1/88) may be used.

(b) The waste transporter shall:

(A) Immediately notify the landfill operator upon arrival of the waste at the disposal site.

(B) Provide a copy of the waste shipment record to the disposal site owners or operators when the asbestos-containing waste material is delivered to the disposal site.

(a) After initial transport of asbestos-containing waste material the waste generator shall:

(a) Receive a copy of the completed waste shipment record within 35 days, or determine the status of the waste shipment. A completed waste shipment record will include the signature of the owner or operator of the designated disposal site.

(b) Have a copy of the completed waste shipment record within 45 days, or submit to the Department a written report including:

(A) A copy of the waste shipment record for which a confirmation of delivery was not received; and

(B) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(c) Keep waste shipment records, including a copy signed by the owner or operator of the designated waste disposal site, for at least three years. Make all disposal records available upon request to the Department. For an asbestos abatement project conducted by a contractor licensed under OAR 340-33-040, the records shall be retained by the licensed contractor. For any other asbestos abatement project, the records shall be retained by the facility owner.

~~[(14) Any waste which contains nonfriable asbestos containing material and which is not subject to subsection (13) of this rule shall be handled and disposed of using methods that will prevent the release of airborne asbestos containing material.]~~

(10) Each owner or operator of an active asbestos-containing waste disposal site shall meet the following standards:

(a) For all asbestos-containing waste material received:

(A) Ensure that off-loading of asbestos-containing waste material is done under the direction and supervision of the landfill operator or their authorized agent and accomplished in a manner that prevents the leak-tight transfer containers from rupturing and prevents visible emissions to the air.

(B) Ensure that off-loading of asbestos-containing waste material occurs at the immediate location where the waste is to be buried and restrict public access to off-loading area until waste is covered in accordance with (I), below.

(C) Maintain waste shipment records and ensure that all information requested on the Department form regarding waste disposal has been supplied.

(D) Retain a copy of waste shipment records for at least three years.

(E) Immediately notify the Department by telephone, followed by a written report to the Department the following working day, of the presence of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.

(F) As soon as possible and no longer than 30 days after receipt of the waste send a copy of the signed waste shipment record to the waste generator.

(G) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. Report in writing to the Department within the 15th day after receiving the waste any discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received which cannot be reconciled between the waste generator and the waste disposal site. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report. Identify the Department assigned asbestos project number in the discrepancy report.

(H) Select the waste burial site in an area of minimal work activity that is not subject to future excavation.

(I) Cover all asbestos-containing waste material deposited at the disposal site with at least 12 inches of soil or six inches of soil plus 12 inches of other waste before compacting equipment runs over it but not later than the end of the operating day.

(b) Maintain, until closure, record of the location, depth and area, and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(c) Excavation or disturbance of asbestos-containing waste material, that has been deposited at a waste disposal site and is covered, shall be considered an asbestos abatement project. The notification for any such project shall be submitted as specified in OAR 340-25-467 but modified as follows:

(A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any

excavation or disturbance of asbestos-containing waste disposal site.

(B) Reason for disturbing the waste.

(C) Procedures to be used to control emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Department may require changes in the emission control procedures to be used.

(D) Location of any temporary storage site and the final disposal site.

(d) Upon closure of an active asbestos-containing waste disposal site each owner or operator shall:

(A) Comply with all the provisions for inactive asbestos-containing waste disposal sites.

(B) Submit to the department a copy of records of asbestos waste disposal locations and quantities.

(C) Furnish upon request, and make available during normal business hours for inspection by the Department, all records required under this section.

~~[(15) Open storage or accumulation of friable asbestos material or asbestos containing waste material is prohibited.]~~

(11) The owner or operator of an inactive asbestos-containing waste disposal site shall meet the following standards:

(a) Insure that a cover of at least two feet of soil or one foot of soil plus one foot of other waste be maintained.

(b) Grow and maintain a cover of vegetation on the area to prevent erosion of the non asbestos-containing cover of soil or other waste materials or in desert areas where vegetation would be difficult to maintain a, layer of at least three inches of well-graded, nonasbestos crushed rock may be placed and maintained on top of the final cover instead of vegetation.

(c) For inactive waste disposal sites for asbestos-containing tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used and maintained to achieve the requirements of (a) and (b) of this section, provided prior written approval of the Department is obtained.

(d) Excavation or disturbance at any inactive asbestos-containing waste disposal site shall be considered an asbestos abatement project. The notification for any such project shall be submitted as specified in OAR 340-25-467, but modified as follows:

(A) Submit the project notification and project notification fee to the Department at least 45 days before beginning any excavation or disturbance of asbestos-containing waste disposal site.

(B) Reason for disturbing the waste.

(C) Procedures to be used to control emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. If deemed

necessary, the Department may require changes in the emission control procedures to be used.

(D) Location of any temporary storage site and the final disposal site.

(e) Within 60 days of a site becoming inactive, request in writing that the Commission issue an environmental hazard notice for the site. This environmental hazard notice will in perpetuity notify any potential purchaser of the property that:

(A) The land has been used for the disposal of asbestos-containing waste material; and

(B) That the survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required for active asbestos disposal sites have been filed with the Department; and

(C) The site is subject to OAR 340-25-465 through OAR 340-25-469.

(12) Any waste which contains nonfriable asbestos-containing material not subject to this rule shall be handled and disposed of using methods that will prevent the release of airborne asbestos-containing material.

(13) Rather than meet the requirements of this rule, an owner or operator may elect to use an alternative storage, transport, or disposal method which has received prior written approval by the Department.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 96, f. 9-2-75; DEQ 22-1982, f. & ef. 10-21-82

OREGON ADMINISTRATIVE RULES
DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 340 DIVISION 33
ASBESTOS CERTIFICATION REQUIREMENTS

ASBESTOS REQUIREMENTS

340-33-010 AUTHORITY, PURPOSE, & SCOPE (1) Authority. These rules are promulgated in accordance with and under the authority of ORS 468.893.

(2) Purpose. The purpose of these rules is to provide reasonable standards for:

(a) training and licensing of asbestos abatement project contractors,

(b) training and certification of asbestos abatement project supervisors and workers,

(c) accreditation of providers of training of asbestos contractors, supervisors, and workers,

(d) administration and enforcement of these rules by the Department.

(3) Scope

(a) OAR 340-33-000 through -100 is applicable to all work, including demolition, renovation, repair, construction, or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling, or disposal of any material which could potentially release asbestos fibers into the air; except as provided in (b) and (c) below.

(b) OAR 340-33-000 through -100 do not apply to an asbestos abatement project which is exempt from OAR 340-25-~~[465(4).]~~ 466(1).

(c) OAR 340-33-010 through -100 do not apply to persons performing vehicle brake and clutch maintenance or repair.

(d) Full-scale asbestos abatement projects are differentiated from smaller projects. Small-scale asbestos abatement projects as defined by OAR 340-33-020(17)

(A) where the primary intent is to disturb the asbestos-containing material and prescribed work practices are used, and

(B) where the primary intent is not to disturb the asbestos-containing material.

(e) OAR 340-33-000 through -100 provide training, licensing, and certification standards for implementation of OAR 340-25-465 through -496, Emission Standards and Procedural Requirements for Asbestos.

DEFINITIONS

340-33-020 As used in these rules, (1) "Accredited" means a provider of asbestos abatement training courses is authorized by

the Department to offer training courses that satisfy requirements for contractor licensing and worker training.

(2) "Agent" means an individual who works on an asbestos abatement project for a contractor but is not an employe of the contractor.

(3) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.

(4) "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any asbestos-containing material with the potential of releasing asbestos fibers from asbestos containing material into the air.

Note: Emergency fire fighting is not an asbestos abatement project.

(5) "Asbestos-containing material" means any material containing more than one percent asbestos by weight, including particulate asbestos material.

(6) "Certified" means a worker has met the Department's training, experience, and/or quality control requirements and has a current certification card.

(7) "Contractor" means a person that undertakes for compensation an asbestos abatement project for another person. As used in this subsection, "compensation" means wages, salaries, commissions and any other form of remuneration paid to a person for personal services.

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

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

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

(11) "EPA" means the United States Environmental Protection Agency.

(12) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

(13) "Friable asbestos material" means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.

(14) "Full-scale asbestos abatement project" means any removal, renovation, encapsulation, repair or maintenance of any asbestos-containing material which could potentially release asbestos fibers into the air, and which is not classified as a small-scale project as defined by (17) below.

(15) "Licensed" means a contracting entity has met the Department's training, experience, and/or quality control requirements to offer and perform asbestos abatement projects and has a current asbestos abatement contractor license. <u>For purposes of this definition, a license is not a permit subject to Chapter 340 Division 14.</u>

(16) "Persons" means an individual, public or private corporation, nonprofit corporation, association, firm, partnership, joint venture, business trust, joint stock company, municipal corporation, political subdivision, the state and any agency of the state or any other entity, public or private, however organized.

(17) "Small-scale asbestos abatement project" means small-scale, short-duration projects as defined by (18) below, and/or removal, renovation, encapsulation, repair, or maintenance procedures intended to prevent asbestos containing material from releasing fibers into the air and which:

(a) Remove, encapsulate, repair or maintain less than 40 linear feet or 80 square feet of asbestos-containing material;

(b) Do not subdivide an otherwise full-scale asbestos abatement project into smaller sized units in order to avoid the requirements of these rules;

(c) Utilize all practical worker isolation techniques and other control measures; and

(d) Do not result in worker exposure to an airborne concentration of asbestos in excess of 0.1 fibers per cubic centimeter of air calculated as an eight (8) hour time weighted average.

(18) "Small-scale, short-duration renovating and maintenance activity" means a task for which the removal of asbestos is not the primary objective of the job, including, but not limited to:

(a) Removal of small quantities of asbestos-containing insulation on pipes;

(b) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(c) Replacement of an asbestos-containing gasket on a valve;

(d) Installation or removal of a small section of drywall; or

(e) Installation of electrical conduits through or proximate to asbestos-containing materials.

Small-scale, activities shall be limited to no more than 40 linear feet or 80 square feet of asbestos containing material. An asbestos abatement activity that would otherwise qualify as a full-scale abatement project shall not be subdivided into smaller units in order to avoid the requirements of these rules.

(f) No such activity described above shall result in airborne asbestos concentrations above 0.1 fibers per cubic centimeter of air (calculated as an eight (8) hour time weighted average).

(19) "Trained worker" means a person who has successfully completed specified training and can demonstrate knowledge of the health and safety aspects of working with asbestos.

(20) "Worker" means an employe or agent of a contractor or facility owner or operator.

GENERAL PROVISIONS

340-33-030 (1) Persons engaged in the removal, encapsulation, repair, or enclosure of any asbestos-containing material which has

the potential of releasing asbestos fibers into the air must be licensed or certified, unless exempted by OAR 340-33-010(3).

(2) An owner or operator of a facility shall not allow any persons other than those employees of the facility owner or operator who are appropriately certified or a licensed asbestos abatement contractor to perform an asbestos abatement project in or on that facility. Facility owners and operators are not required to be licensed to perform asbestos abatement projects in or on their own facilities.

(3) Any contractor engaged in a full-scale asbestos abatement project must be licensed by the Department under the provisions of OAR 340-33-040.

(4) Any person acting as the supervisor of any full-scale asbestos abatement project must be certified by the Department as a Supervisor for Full-Scale Asbestos Abatement under the provisions of OAR 340-33-050.

(5) Any worker engaged in or working on any full-scale asbestos abatement project must be certified by the Department as a Worker for Full-Scale Asbestos Abatement under the provisions of OAR 340-33-050, or as a Supervisor for Full-Scale Asbestos Abatement.

(6) Any contractor or worker engaged in any small-scale asbestos abatement project but not licensed or certified to perform full-scale asbestos abatement projects, must be licensed or certified by the Department as a Small-Scale Asbestos Abatement Contractor or a Worker for Small-Scale Asbestos Abatement, respectively under the provisions of OAR 340-33-040 and -050.

(7) Any provider of training which is intended to satisfy the licensing and certification training requirements of these rules must be accredited by the Department under the provisions of OAR 340-33-060.

(8) Any person licensed, certified, or accredited by the Department under the provisions of these rules shall comply with the appropriate provisions of OAR 340-25-465 through -469 and OAR 340-33-000 through -100 and maintain a current address on file with the Department, or be subject to suspension or revocation of license, or certification, or accreditation.

(9) The Department may accept evidence of violations of these rules from representatives of other federal, state, or local agencies.

(10) A regional air pollution authority which has been delegated authority under OAR 340-25-460(7) may inspect for and enforce against violations of licensing and certification regulations. A regional air pollution authority may not approve, deny, suspend or revoke a training provider accreditation, contractor license, or worker certification, but may refer violations to the Department and recommend denials, suspensions, or revocations.

(11) Any person who conducts an asbestos abatement project shall insure accessibility for the Department to perform inspections.

CONTRACTOR LICENSING

340-33-040 (1) Contractors may be licensed to perform either of the following categories of asbestos abatement projects:

(a) Full-Scale Asbestos Abatement Contractors: All asbestos abatement projects, regardless of project size or duration, or

(b) Small-Scale Asbestos Abatement Contractor: Small-scale asbestos abatement projects.

(2) Application for licenses shall be submitted on forms prescribed by the Department and shall be accompanied by:

(a) Documentation that the contractor, or contractor's employee representative, is certified at the appropriate level by the Department:

(A) Full-scale Asbestos Abatement Contractor license: Certified Supervisor for Full-Scale Asbestos Abatement.

(B) Small-Scale Asbestos Abatement Contractor: Certified Worker for Small-Scale Asbestos Abatement.

(b) Certification that the contractor has read and understands the applicable Oregon and federal rules and regulations on asbestos abatement and agrees to comply with the rules and regulations.

(c) A list of all certificates or licenses, issued to the contractor by any other jurisdiction, that have been suspended or revoked during the past one (1) year, and a list of any asbestos-related enforcement actions taken against the contractor during the past one (1) year.

(d) List any additional project supervisors for full-scale projects and their certification numbers as Supervisors for Full-3Scale Asbestos Abatement.

(e) Summary of asbestos abatement projects conducted by the contractor during the past 12 months.

(f) A license application fee.

(3) The Department will review the application for completeness. If the application is incomplete, the Department shall notify the applicant in writing of the deficiencies.

(4) The Department shall deny, in writing, a license to a contractor who has not satisfied the license application requirements.

(5) The Department shall issue a license to the applicant after the license is approved.

(6) The Department shall grant a license for a period of 12 months. Licenses may be extended during Department review of a renewal application.

(7) Renewals:

(a) License renewals must be applied for in the same manner as is required for an initial license.

(b) For renewal, the contractor or employee representative must have completed at least the appropriate annual refresher course.

(c) The complete renewal application shall be submitted no later than 60 days prior to the expiration date.

(8) The Department may suspend or revoke a license if the licensee:

(a) Fraudulently obtains or attempts to obtain a license.

(b) Fails at any time to satisfy the qualifications for a license or comply with the rules adopted by the Commission.

(c) Fails to meet any applicable state or federal standard relating to asbestos abatement.

(d) Permits an untrained or uncertified worker to work on an asbestos abatement project.

(e) Employs a worker who fails to comply with applicable state or federal rules or regulations relating to asbestos abatement.

(9) A contractor who has a license revoked may reapply for a license after demonstrating to the Department that the cause of the revocation has been resolved.

CERTIFICATION

340-33-050 (1) Workers on asbestos abatement projects shall be certified at one or more of the following levels:

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

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

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

(2) Application for Certification-General Requirements.

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

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

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

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

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

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

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

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

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

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

(7) Renewals

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

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

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

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

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

(10) A current worker certification card shall be <u>readily</u> available for inspection <u>by the Department</u> at each asbestos abatement project site for each worker conducting asbestos abatement activities on the site.

TRAINING PROVIDER ACCREDITATION

340-33-060 (1) General

(a) Asbestos training courses required for licensing or certification under these rules may be provided by any person.

(b) Any training provider offering training in Oregon to satisfy these certification and licensing requirements must be accredited by the Department.

(c) Each of the different training courses which are to be used to fulfill training requirements shall be individually accredited by the Department.

(d) The training provider must satisfactorily demonstrate through application and submission of course agenda, faculty resumes, training manuals, examination materials, equipment inventory, and performance during on-site course audits by Department representatives that the provider meets the minimum requirements established by the Department.

(e) The training course sponsor shall limit each class to a maximum of thirty participants unless granted an exception in writing by the Department. The student to instructor ratio for hands-on training shall be equal to or less than ten to one (10:1). To apply for an exception allowing class size to exceed 30, the course sponsor must submit the following information in writing to the Department for evaluation and approval prior to expanding the class size.

(A) The new class size limit,

(B) The teaching methods and techniques for training the proposed larger class,

(C) The protocol for conducting the written examination, and

(D) Justification for a larger class size.

(f) Course instructors must have academic credentials, demonstrated knowledge, prior training, or field experience in their respective training roles.

(g) The Department may require any accredited training provider to use examinations developed by the Department in lieu of the examinations offered by the training provider.

(h) The Department may require accredited training providers to pay a fee equivalent to reasonable travel expenses for one Department representative to audit any accredited course which is not offered in the State of Oregon for compliance with these regulations. This condition shall be an addition to the standard accreditation application fee.

(2) Application for Accreditation.

(a) Application for accreditation shall be submitted to the Department in writing on forms provided by the Department and attachments. Such applications shall, as a minimum, contain the following information:

(A) Name, address, telephone number of the firm, individual(s), or sponsors conducting the course, including the name under which the training provider intends to conduct the training.

(B) The type of course(s) for which approval is requested.

(C) A detailed course outline showing topics covered and the amount of time given to each topic, including the hands-on skill training.

(D) A copy of the course manual, including all printed material to be distributed in the course.

(E) A description of teaching methods to be employed, including description of audio-visual materials to be used. The Department may, at its discretion, request that copies of the materials be provided for review. Any audio-visual materials provided to the Department will be returned to the applicant.

(F) A description of the hands-on facility to be utilized including protocol for instruction, number of students to be accommodated, the number of instructors, and the amount of time for hands-on skill training.

(G) A description of the equipment that will be used during both classroom lectures and hands-on training.

(H) A list of all personnel involved in course preparation and presentation and a description of the background, special training and qualification of each, as well as the subject matter covered by each.

(I) A copy of each written examination to be given including the scoring methodology to be used in grading the examination; and a detailed statement about the development and validation of the examination.

(J) A list of the tuition or other fees required.

(K) A sample of the certificate of completion and certification card label.

(L) A description of the procedures and policies for re-examination of students who do not successfully complete the training course examination.

(M) A list of any states or accrediting systems that approve the training course.

(N) A description of student evaluation methods (other than written examination to be used) associated with the hands-on skill training, as applicable.

(O) A description of course evaluation methods used by students.

(P) Any restriction on attendance such as class size, language, affiliation, and/or target audience of class.

(Q) A description of the procedure for issuing replacement certification cards to workers who were issued a certification card or certification card label by the training provider within the previous 12 months and whose cards have been lost or destroyed.

(R) Any additional information or documentation as may be required by the Department to evaluate the adequacy of the application.

(S) Accreditation application fee.

(b) Application for initial training course accreditation and course materials shall be submitted to the Department at least 45 days prior to the requested approval date.

(c) Upon approval of an initial or refresher asbestos training course, the Department will issue a certificate of

accreditation. The certificate is valid for one (1) year from the date of issuance.

(d) Application for renewal of accreditation must follow the procedures described for the initial accreditation. In addition, course instructors must demonstrate that they have maintained proficiency in their instructional specialty and adult training methods during the 12 months prior to renewal.

(3) Denial, Suspension or Revocation of Certificate of Accreditation. The Director may deny, revoke or suspend an application or current accreditation upon finding of sufficient cause. Applicants and certificate holders shall also be advised of the duration of suspension or revocation and any conditions that must be met before certificate reinstatement. Applicants shall have the right to appeal the Director's determination through an administrative hearing in accordance with the provisions of OAR Chapter 340 Division 11. The following may be considered grounds for denial, revocation or suspension:

(a) False statements in the application, omission of required documentation or the omission of information.

(b) Failure to provide or maintain the standards of training required by these regulations.

(c) Failure to provide minimum instruction required by these regulations.

(d) Failure to report to the Department any change in staff or program which substantially deviates from the information contained in the application.

(e) Failure to comply with the administrative tasks and any other requirement of these regulations.

(4) Training Provider Administrative Tasks. Accredited training providers shall perform the following as a condition of accreditation:

(a) Administer the training course examination only to those students who successfully complete the training course.

(b) Issue a numbered certificate to each students who successfully passes the training course examination. Each certificate shall include the name of the student, name of the course completed, the dates of the course and the examination, name of the training provider, a unique certificate number, and a statement that the student passed the examination.

(c) Issue a photo identification card to each student seeking initial or renewal certification who successfully completes the training course examination and meets all other requirements for certification. The photo identification card shall meet the Department specifications.

(d) Place a label on the back of the photo identification card of each student who successfully completes a refresher training course and examination as required to maintain certification. The label shall meet Department specifications.

(e) Provide to the Department within ten (10) calendar days of the conclusion of each course offering the name, address, telephone number, Social Security Number, course title and dates

given, attendance record, exam scores, and course evaluation form of each student attending the course and the certification number, certification fee, and a photograph for each student certified. Record of the information shall be retained by the training provider for a period of three (3) years.

(f) Obtain advance approval from the Department for any changes in the course instructional staff, content, training aids used, facility utilized or other matters which would alter the instruction from that described in the approval application.

(g) Utilize and distribute as part of the course information or training aides furnished by the Department.

(h) Provide the Department with a monthly class schedule at least one week before the schedule begins. Notification shall include time and location of each course. Training providers shall notify the Department within three days whenever any unscheduled class is given.

(i) Establish and maintain course records and documents relating to course accreditation application. Accredited training providers shall make records and documents available to the Department upon request. Training providers whose principle place of business is outside of the State of Oregon shall provide a copy of such records or documents within ten (10) business days of receipt of such a written request from the Department.

(h) Notify the Department prior to issuing a replacement certification card.

(i) Accredited training providers must have their current accreditation certificates at the location where they are conducting training.

GENERAL TRAINING STANDARDS

340-33-070 (1) Courses of instruction required for certification shall be specific for each of the certificate categories and shall be in accordance with Department guidelines. The topics or subjects of instruction which a person must receive to meet the training requirements must be presented through a combination of lectures, demonstrations, and hands-on practice.

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

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

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

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

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

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

PRIOR TRAINING

340-33-080 Successful completion of an initial training course accredited by a governmental agency other than the Department may be used to satisfy the training and examination requirements of OAR 340-33-050 and OAR 340-33-060 provided that all of the following conditions are met.

(1) The Department determines that the course and examination requirements are equivalent to or exceed the requirements of OAR 340-33-050 and 340-33-060 and the asbestos training guidance document, for the level of certification sought. State and local requirements may vary.

(2) For an applicant to qualify for a refresher course and certification, prior training must have occurred within two years of the application to the Department. Applicants must be in good standing in all states where they are certified.

(3) The applicant who has received recognition from the Department for alternate initial training successfully completes

an Oregon accredited refresher course and refresher course examination for the level of certification sought.

RECIPROCITY

340-33-090 The Department may develop agreements with other jurisdictions for the purposes of establishing reciprocity in training, licensing, and/or certification if the Department finds that the training, licensing and/or certification standards of the other jurisdiction are at least as stringent as those required by these rules.

FEES

340-33-100 (1) Fees shall be assessed to provide revenues to operate the asbestos control program. Fees are assessed for the following:

(a) Contractor Licenses
(b) Worker Certifications
(c) Training Provider Accreditation
(d) Asbestos Abatement Project Notifications

(2) Contractors shall pay a non-refundable license application fee of:

(a) $300 for a one year Full-Scale Asbestos Abatement Contractor license.

(b) $200 for a one year Small-Scale Asbestos Abatement Contractor license.

(3) Workers shall pay a non-refundable certification fee of:

(a) $100 for a two year certification as a certified Supervisor for Full-Scale Asbestos Abatement.

(b) $80 for a two year certification as a Certified Worker for Full-Scale Asbestos Abatement.

(c) $50 for a two year certification as a Certified Worker for Small-Scale Asbestos Abatement.

(4) Training Providers shall pay a non-refundable accreditation application fee of:

(a) $1000 for a one year accreditation to provide a course for training supervisors on Full-Scale projects.

(b) $800 for a one year accreditation to provide a course for training workers on Full-Scale projects.

(c) $500 for a one year accreditation to provide a course for training workers on Small-Scale projects.

(d) $250 for a one year accreditation to provide a course for refresher training for any level of certification.

(5) Requests for waiver of fees shall be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

Note: The requirements and jurisdiction of the Department of Insurance and Finance, ~~[Accident Prevention]~~ Oregon Occupational

Safety and Health Division and any other state agency are not affected by these rules.

(Adopted May 17, 1987; effective January 1, 1989)

NESHAP AND DEPARTMENT HOUSEKEEPING CHANGES

The EPA has delegated authority to the Department for the implementation of Federal asbestos regulations in Oregon. This agreement requires the Department regulations be at least as stringent as the existing EPA asbestos regulations. These proposed rule changes are necessary in order to maintain the Department's agreement with the EPA.

The Department is also proposing housekeeping changes to the existing rules for clarification. Part of the housekeeping changes included adding rule numbers 466 through 467 and renumbering accordingly. The proposed NESHAP and Department housekeeping rule changes are discussed below:

Definitions

OAR 340-25-455(1): "Adequately wet". This is a new NESHAP definition that would provide more objective criteria to determine how wet asbestos material must be to prevent asbestos fiber release.

OAR 340-25-455(3): "Asbestos-containing waste material". The Department has added the words <u>mill tailings</u> to this definition to make it as stringent as the NESHAP definition.

OAR 340-25-455(15): "Demolition". The Department has added the words <u>load-supporting</u> and <u>the intentional burning of any facility</u> to make this definition as stringent as the NESHAP definition.

OAR 340-25-455(18): "Fabricating". This is a new NESHAP definition that describes the processing of commercial asbestos used to manufacture an asbestos-containing product. This process includes cutting, sawing, drilling; bonding and de-bonding of friction products, but not temporary sites used for field fabrication.

OAR 340-25-455(21): "Fugitive emissions". This is a new NESHAP definition that describes emissions that escape from a point that is not identifiable as a stack, vent duct or equivalent opening.

OAR 340-25-455(24): "Inactive asbestos waste disposal site".This is a new NESHAP definition that would describe what qualifies as an inactive asbestos waste disposal site.

OAR 340-25-455(30): "Non-friable asbestos-containing material". This is a new NESHAP definition that describes what non-friable asbestos is.

OAR 340-25-455(37): "Roadways". This is a new NESHAP definition that describes roadways as any public and private highway, road, street, parking area, or driveway.

OAR 340-25-455(42): "Waste generator". This is a new NESHAP definition that is necessary to new regulations on transportation, storage, and disposal of asbestos.

OAR 340-35-455(43): "Waste shipment record". This is a new NESHAP definition that is necessary to new regulations on transportation, storage, and disposal of asbestos.

Emission standards for asbestos mills

OAR 340-25-465(1): An addition to this rule would include the words, "including fugitive emissions," "OAR 340-25-468(14) Air Cleaning, and " Each owner or operator of an asbestos mill shall meet the following requirements:. This will help clarify what may not be discharged into the atmosphere and give instructions for the owner or operator of a mill site for monitoring. This rule would also require that any asbestos waste produced by an asbestos milling operation is disposed of according to OAR 340-25-469.

OAR 340-25-465(1)(a) through (g) and their subsections: This is a new NESHAP addition to the "Applicability" section that describes the requirements to be met by the owner or operator of an asbestos mill for monitoring each potential source of asbestos emissions. This requirement includes documentation of the condition of air cleaning devices, processing equipment, and buildings that house equipment for asbestos materials processing and handling. This regulation also would require weekly inspections of air cleaning devices and a description of the type of information to be documented from these inspections. The documentation must be available for inspection by the Department and retained for at least 2 years. The rule also would require the owner to submit a quarterly report of any visible emissions that occur during the reporting period.

Standard for Roadways

OAR 340-25-465(2): This addition replaces the existing language for "standards for roadways and parking lots" with new NESHAP language for this standard. The new language clarifies what is a roadway and when it may be maintained using asbestos tailings.

Manufacturing

OAR 340-25-465(3): An addition to this regulation would require all asbestos waste produced by any manufacturing operation to be disposed of according to OAR 340-25-469.

Further, the addition of the words, "or from any other fugitive emissions", would help clarify what emissions are prohibited.

OAR 340-25-465(3)(a): This rule change adds, "(a) Applicability. Manufacturing operations considered for purposes of these rules are as follows:", then goes on to describe what the section applies to.

OAR 340-25-465(3)(b) through (h): These changes incorporate a system for monitoring and documentation of the condition of air cleaning devices and other equipment used to clean air from an asbestos manufacturing operation. This system requires specific record-keeping procedures and requirements to retain these records for at least 2 years. A manufacturer would also be required to submit a copy of any recorded visible emission to the Department during a quarterly reporting period. There are several other changes that the Department considers necessary for housekeeping purposes and are intended to clarify this rule.

Open storage and Open accumulation of asbestos-containing material

OAR 340-25-466(2) and (3): This change relocates the Department's regulation for open storage and accumulation of asbestos-containing material and waste. The previous regulation was a combined regulation and was located in OAR 340-25-469(13). By separating this rule into section (2) and section (3) the Department hopes to clarify its intent and purpose.

Notification procedures

OAR 340-25-467(1)(a)(E) & (F): The asbestos regulations require asbestos abatement contractors to supply notifications in four categories of projects that describe the scope of material to be removed. The scope of each project is indicated in the original notification. Revisions to the original notification can accommodate some changes in project size; however, the rules do not contemplate indefinite increases in the amount of asbestos-containing material to be removed. The proposed rule additions would create two new notification size categories. This would provide better control and tracking for larger projects, and better cover Department costs of inspecting them.

OAR 340-25-467(1)(c): This rule allows notification of less than ten (10) days in case of emergency to life, health, or property or where an unexpected event occurs. The Department requires approval prior to commencing such emergencies. The proposed change would add language to the existing rule that requires prior approval by the Department before granting

Further, the addition of the words, "or from any other fugitive emissions", would help clarify what emissions are prohibited.

OAR 340-25-465(3)(a): This rule change adds, "(a) Applicability. Manufacturing operations considered for purposes of these rules are as follows:", then goes on to describe what the section applies to.

OAR 340-25-465(3)(b) through (h): These changes incorporate a system for monitoring and documentation of the condition of air cleaning devices and other equipment used to clean air from an asbestos manufacturing operation. This system requires specific record-keeping procedures and requirements to retain these records for at least 2 years. A manufacturer would also be required to submit a copy of any recorded visible emission to the Department during a quarterly reporting period. There are several other changes that the Department considers necessary for housekeeping purposes and are intended to clarify this rule.

Open storage and Open accumulation of asbestos-containing material

OAR 340-25-466(2) and (3): This change relocates the Department's regulation for open storage and accumulation of asbestos-containing material and waste. The previous regulation was a combined regulation and was located in OAR 340-25-469(13). By separating this rule into section (2) and section (3) the Department hopes to clarify its intent and purpose.

Notification procedures

OAR 340-25-467(1)(a)(E) & (F): The asbestos regulations require asbestos abatement contractors to supply notifications in four categories of projects that describe the scope of material to be removed. The scope of each project is indicated in the original notification. Revisions to the original notification can accommodate some changes in project size; however, the rules do not contemplate indefinite increases in the amount of asbestos-containing material to be removed. The proposed rule additions would create two new notification size categories. This would provide better control and tracking for larger projects, and better cover Department costs of inspecting them.

OAR 340-25-467(1)(c): This rule allows notification of less than ten (10) days in case of emergency to life, health, or property or where an unexpected event occurs. The Department requires approval prior to commencing such emergencies. The proposed change would add language to the existing rule that requires prior approval by the Department before granting

waiver of the ten (10) day notification period. The proposed rule is also restructured to help clarify its intent.

OAR 340-25-467(1)(a)(G): This proposed rule is intended to cover costs associated with processing multiple revisions and inspections associated with asbestos projects that last more than one year. This proposal will not change the current fee schedule, but would require a new notification fee each year for projects that continue for more than one year. Approximately 15% of Department asbestos inspections since June 1, 1988, have been devoted to asbestos abatement projects that continue for more than one year. These projects have required an average of 10 or more extra inspections per job.

OAR 340-25-467(3)(h): Adding the words, "the age, present and prior use of the facility;", would allow the Department to better determine if hazards other than asbestos exist in a facility. This would help inspectors determine the proper safety equipment to use.

OAR 340-25-467(3)(m): This is a new NESHAP change that would require that the name, title, and authority of the State or local government official who ordered a demolition for safety reasons be provided to the Department. This would include the date the order was issued and the date the demolition was to begin.

Work practice regulations

OAR 340-25-468(1)(b)(A) through (D): This regulation would provide specific procedures for handling asbestos materials that were not discovered before demolition and can not be removed because of unsafe conditions as a result of the demolition. The Department would be notified immediately in the event of such an occurrence.

OAR 340-25-468(2): This change removes the words, "Adequately wet," and inserts the words, "shall be adequately wetted", for clarification. Also added are the words, "or is incompatible with specialized work practices, or presents a safety hazard, adequate wetting", to further clarify when wetting may not be required.

OAR 340-25-468(2)(a): In this change we have removed the words, "Demonstrates to the Department that wetting would unavoidably damage equipment", and have inserted the words,"obtains prior written approval from the Department for dry removal of asbestos-containing material", this would clarify that a person would be required to get permission for a dry removal and that this shall be done prior to doing work.

OAR 340-25-468(2)(b): This new NESHAP rule addition would require that a copy of any approval for dry removal be kept at the job site for inspection.

OAR 340-25-468(3)(c) with (A), (B), and (C): This NESHAP rule addition, along with its subsections, would allow certain facility components such and reactor vessels, large tanks, and steam generators to be removed whole as long as they are wrapped and labelled and reused or disposed of without disturbing the asbestos materials on them. This rule specifically excludes structural beams.

OAR 340-25-468(6): This NESHAP change requires all asbestos to be removed from a building or structure prior to intentional burning.

Spraying operations

OAR 340-25-468(12)(b): The changes in this rule were inserted to clarify that if asbestos is to be sprayed for fire proofing that the Department shall be notified in writing twenty days before the spraying operation is to commence. This rule change is used for the purpose of controlling those spraying operations that use less than 1% asbestos. The spraying of more than 1% asbestos is such operations is prohibited.

Air Cleaning requirements

OAR 340-25-468(14)(a): The changes in this rule would clarify the proper method to be used for determining airflow permeability. Other changes in this rule serve to simplify the explanation of this method.

OAR 340-25-468(14(c): This rule addition describes the type of filters to be used for filtering asbestos emissions. The rule also has a requirement for certification of the efficiency of these filters.

Disposal requirements

OAR 340-25-469: With the addition of the words, "and procedures", and the word, "packaging", the Department intends to separate the disposal section into three categories; generation, transport, and disposal. This with other changes required by the NESHAP should make the disposal section of the asbestos rules easier to understand.

OAR 340-25-469(2): The Department has removed the interim storage regulation from this section and moved it to OAR 340-25-469(4).

OAR 340-25-469(2)(a): This new NESHAP change allow asbestos materials to be processed into non-friable pellets or other shapes.

OAR 340-25-469(2)(b) with (A) and (B): This new section would contain language previously removed from -469(3) requiring packaging in leak-tight containers. New NESHAP changes would be incorporated into subsection (A) describing requirements for placing the name of the waste generator, the facility owner, and the location where the waste was generated with the bags and subsection (B) is an example of the type of warning label required.

OAR 340-25-469(3): This rule would become -469(2). Removing the words, "and stored and transported to an authorized disposal site in leak-tight containers such as two plastic bags each with a minimum of a thickness of 6 mil., or fiber or metal drums", and then adding the word, "adequately", to precede wetted and the words, " to ensure that they remain wet until disposed of, then:", would help clarify that asbestos material must remain wet during all phases of removal and disposal.

OAR 340-25-469(3): This regulations would specify requirements for handling material, including disposal, that was not removed from a structure prior to demolition.

OAR 340-25-469(4): This section would now contain the Department's interim storage regulations.

OAR 340-25-469(5) with subsections (a) and (b): This new NESHAP change would require a waste generator to deposit asbestos-containing waste as soon as possible at a Department authorized asbestos disposal site or a Department approved site that converts asbestos waste into non-asbestos (asbestos-free) material.

OAR 340-25-469(6): This change moves the requirement for notifying the landfill operator of the type and volume of material to be disposed of prior to deposit at an authorized landfill to a new section of the waste disposal rules.

OAR 340-25-469(7) including all its subsections: This section describes the required information on the asbestos waste disposal form for the generator, transporter, and the disposal site.

OAR 340-25-469(8) including all its subsections: This new NESHAP change describes the requirement for the generator to maintain shipment records, limit access to loading and unloading areas, and place required warning signs on vehicles during the loading and unloading process. This section also describes the requirement for the transporter to

immediately notify the landfill operator upon arrival and provide a copy of the waste shipment record to the disposal site owners or operators at time of disposal.

OAR 340-25-469(9) and its subsections: This new NESHAP change describes procedures to be used when a copy of the completed waste shipment record is not received by the waste generator within 35 days. This section also describes procedures for reporting to the Department if this information has not been received by 45 days of the initial disposal.

Active waste disposal site

OAR 340-25-469(10): This rule formerly described procedures to be used to request an alternate method of disposal of asbestos-containing waste material. The rule and its subsections now contains "Each owner or operator of an active asbestos-containing waste disposal site shall meet the following standards:" as a preliminary to section 10.

OAR 340-25-469(10)(a) and its subsections: This new NESHAP regulation would require each owner or operator of an active asbestos waste disposal site to:

1. supervise off-loading of asbestos waste;
2. maintain waste shipment records and insure that the information on these records is accurate;
3. immediately inform the Department of improperly enclosed or uncovered waste transported to the landfill;
4. send a copy of the waste shipment record to the waste generator as soon as possible, but no later that 30 days after receipt of the waste;
5. describe procedures to be used when a discrepancy between the quantity of waste designated on the waste shipment record and the quantity of waste received by the disposal site exists;
6. bury all asbestos waste in an area of minimal activity;
7. cover all asbestos waste with at least six inches of soil plus 12 inches of other waste.

OAR 340-25-469(10)(b): This new NESHAP regulation would require each owner or operator of an active asbestos waste disposal site to maintain, until closure, a record of the

location, depth, area, and quantity in cubic yards of any asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

OAR 340-25-469(10)(c) and its subsections: This new NESHAP regulation would require that excavation or disturbance of asbestos-containing waste material that has been deposited and buried at a waste disposal site be considered an asbestos abatement project. Subsections (A) through (D) describe requirements for notification 45 days in advance of such activity and information needed on the notification form.

OAR 340-25-469(10)(d) and its subsections: This new NESHAP change would describe the procedures used by the owner or operator of a waste disposal site to follow when closing the disposal facility.

Inactive waste disposal sites.

OAR 340-25-469(11) and its subsections: This new NESHAP regulation would provide procedures for the owner or operator of an asbestos landfill to use when the site becomes inactive. These procedures include requirements for placing a notation on the comprehensive plan that asbestos is buried on the site, requirements for future excavation, and requirements for maintaining a cover at the site.

Non-friable material disposal

OAR 340-25-469(12): This change relocates the Department's rule describing requirements for disposal of non-friable asbestos-containing material.

Licensing and certification requirements definitions

OAR 340-33-020(15): "Licensed". The Department believes this change to be necessary so there will be no confusion between its license procedure and the requirements for permitting under Division 14.

General provisions

OAR 340-33-030(11): This change would require contractors to insure that Department inspectors are provided access to all asbestos abatement projects including those in secure facilities.

Certification

OAR 340-33-050(10): The Department proposes to add the word "readily" to this rule to clarify that asbestos worker certification cards must be easily accessible during an inspection. A policy statement will be issued to all contractors to help clarify the intent of this rule change.

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STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(2), this statement provides information on the intended action to amend rules.

Legal Authority

1. Oregon Revised Statute 468.020 requires the Commission to adopt rules and standards as necessary to perform its vested functions.

2. Oregon Revised Statute 468.893 allows the Commission to establish standards and procedures for asbestos abatement.

Need for the Rule

The proposed amendments are a result of a delegation agreement with the EPA giving the Department authority to administer the Federal NESHAP rules. The Department is also proposing amendments that would fine-tune its existing asbestos regulations.

Principal Documents Relied Upon

1. ORS 468.020, and ORS 468.893

2. OAR 340-25-455 through -479, Hazardous Air Contaminant Rules for Asbestos

3. OAR 340-33-010 et seq., Asbestos Licensing and Certification requirements

Land Use Compatibility Statement

The proposed rule changes do not appear to affect land use, and will be consistent with Statewide Planning Goals and Guidelines.

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FISCAL AND ECONOMIC IMPACT STATEMENT

PROPOSAL SUMMARY

FISCAL AND ECONOMIC IMPACT

The proposed rules would:

Incorporate new EPA NESHAP changes into existing Department asbestos regulations.

1. These changes include adding new definitions for "adequately wet"; "fabricating"; "fugitive emission"; "inactive disposal site"; "nonfriable asbestos-containing material"; "roadways"; "waste generator"; and "waste shipment record".

   In addition to the new definitions there are two existing definitions that would involve new language. The "Asbestos-containing waste material" definition would include "mill tailings". The "Demolition" definition would include "load-supporting" and "the intentional burning of any facility".

   The Department believes that these changes would help clarify our existing and proposed rules. These new definition additions and changes themselves should have no fiscal or economic impact.

2. An addition to OAR 340-25-468 would require all asbestos-containing waste produced by any manufacturing operation to be disposed of according to OAR 340-25-469. This change in the disposal requirements may cause a minor to moderate impact on the cost of disposal for these sources if these sources have not already been disposing of asbestos-containing waste material at a Department authorized landfill. This cost could be $30 to $50 per yard of material depending on the disposal site chosen.

3. OAR 340-25-467(1)(E),(F) would create two new project size categories for projects that increase beyond 26,000 linear feet or 16,000 square feet. The fees for the new categories 'E' and 'F' are $750 and $1000 respectively.

   As the size of a project increases, the Department's costs for tracking notifications and performing inspections also increase. Based on previous notifications, the new fees will increase cost to the regulated community $5000 to $10,000 annually.

4. OAR 340-25-467(1)(g) would require submission of a new fee if a project that is 2600 linear feet or 1600 square feet or

greater is to last longer than one year. A new notification and fee would be required each year until the project is complete. The Department has performed over 528 inspections since June 1988 when it first began assessing a fee for notifications. Eighty two of these inspections were conducted on projects that lasted one or more years. This amounts to approximately 15% of inspections performed since 1988. Inspection costs are approximately $60 to $75 per hour with an average inspection lasting 1½ to 2 hours. The proposed rule amendment would better cover inspection costs and simplify tracking of projects that last more than one year.

5. OAR 340-25-467(3)(h) would require submission of the age and present and prior use of a facility to the Department on a Department form as part of the project notification. This may cause a minor increase in the cost for an owner or operator due to time and resources required to determine new information.

6. OAR 340-25-467(3)(n) would require that State or Local government ordered demolition documents be sent to the Department. This could cause a minor increase in costs to building owners or operators for making a copy of these demolition orders and sending them to the Department.

7. OAR 340-25-468(6) would require that all asbestos-containing material be removed prior to intentionally burning a facility. This could cause a major cost increase to burn a building. Asbestos removal can cost from $2 to $15 per square foot and higher. The Department requires notification and fees for all asbestos abatement projects. Depending on the size of the project, fees range between $25 and $500. This will affect Fire Departments throughout the State and those people intending to utilize burning as an alternative to demolition. The Department may incur a minor cost for the tracking of notifications and increased inspections for these projects.

8. 340-25-469(2)(b)(A) would require all asbestos waste bags to be labeled with the name of the waste generator and the location at which the waste was generated. Employee time spent labeling bags could be about one hour at $10 to $15 an hour depending on the size of the project. Cost of labels on a project would be approximately $1 to $3 per blank label.

9. 340-25-469(7) would require the waste generator to track the asbestos-containing waste until it is disposed of. A waste shipment form will be provided by the Department. Added administrative costs to waste generators would be approximately $10 to $20 for each project.

10. 340-25-469(7)(a)(C) would require the waste generator to post signs on the vehicles used to transport asbestos-containing waste material while loading and unloading vehicles. Cost of a new sign would be $5 to $15 per sign with 2 to 4 signs needed for each vehicle being loaded. Since waste generators are required by OR-OSHA to use similar signs, some waste generators may experience no cost of compliance.

11. 340-25-469(9) would require the waste generator to track waste shipment records and take action when any are missing or lost. This rule would also require the waste generator to maintain the waste shipment records for three years. There could be added administrative costs to the waste generator of $75 to $100 for tracking down missing records. Their may be an increase cost to the Department if on-site inspections are necessary.

12. OAR 340-25-469(10)(a)(C) would require owners or operators of active asbestos-containing waste material disposal sites to maintain and insure accuracy of waste shipment records. A chain of custody form currently covers this requirement and would not be an economic burden, but checking the completeness of information would cause an increase in cost to disposal site operators. Increased cost could be approximately $20 per shipment to maintain these records.

13. OAR 340-25-469(10)(a)(D) would require owners or operators of active asbestos waste disposal sites to keep waste shipment records for three years. This rule would increase document storage and personnel costs.

14. OAR 340-25-469(10)(a)(E) would require the Department to be notified immediately if an improperly enclosed or uncovered load came in. Disposal sites reject these loads now, but are not required to report them to the Department. This would cause a minor increase in mailing and clerical costs for reporting such incidents. The Department may incur costs when responding to these reports in the form of increased inspections.

15. OAR 340-25-469(10)(a)(F) would require waste sites to send a copy of the waste shipment record to the waste generator. Presently a receipt is given only to the waste hauler. This new regulation would create a minor increase for waste site costs for mailing and clerical work.

16. OAR 340-25-469(10)(a)(G) would require waste sites to reconcile discrepancies between waste shipment records and waste received. Reporting unreconcilable discrepancies to the Department and checking for discrepancies would significantly increase of clerical and mailing costs for waste sites. The average 30 yard dump box load may cost $75 to $100 if a problem exists that requires reconciliation.

The Department would experience increased costs for responding to these reports by performing additional inspections. However, the Department does not expect the to occur regularly.

17. OAR 340-25-469(10)(a)(I) would decrease the amount of cover required daily for waste disposed at waste sites and relieve pressure on soil stockpiles at disposal sites. This could reduce cover and disposal costs at disposal sites.

18. OAR 340-25-469(10)(b) would require maintenance of specific records be kept for the location, depth and area, and quantity of waste within the disposal site on a map or diagram of the disposal area. This may increase clerical and engineering costs at waste sites. The cost could be $300 to $400 per year per area used for disposal.

19. OAR 340-25-469(10)(c)(A through D) requires notification to the Department 45 days in advance of excavating or disturbing buried asbestos-containing waste at disposal sites. This may influence disposal site costs due to delays caused by the increased notification period for asbestos projects at waste sites where excavation is to occur. There could also be an increased cost due notification fees for such projects. The notification fees would range from $25 to $500 per project.

20. OAR 340-25-469(10)(d)(A through C) would require active asbestos disposal sites to submit asbestos disposal records to the Department upon closure. This may cause a minor increase in the cost for closing waste sites.

21. OAR 340-25-469(11)(c) would allow the use of resinous or petroleum-based dust suppression agents at inactive waste disposal sites for asbestos-containing tailings. This may reduce the cost of providing cover in arid areas or where cover soil is at a premium for these types of disposal.

22. OAR 340-25-469(11)(d)(A through D) would require notification to the Department 45 days in advance of excavating or disturbing buried asbestos-containing waste at inactive asbestos disposal sites. This could increase the cost of maintaining disposal sites after closure due to delays caused by the increased notification period for asbestos projects at waste sites. The notification fees for such projects could range from $25 to $500 per project.

24. OAR 340-25-469(11)(e)(A through C) would require inactive disposal sites to record a notation on the State Comprehensive Land Use Plan that asbestos-containing waste was disposed of at the site. Persons closing a disposal site would also be required to add a survey plot and record of location and quantity, and a notation that the site is

subject to OAR 340-25-465 through -469. Expenses to accomplish these requirements may include legal, engineering, and clerical costs.

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CORRECTED COPY

Oregon Department of Environmental Quality

Attachment E

A CHANCE TO COMMENT ON...

Amendments to Asbestos Regulations
NOTICE OF PUBLIC HEARING

Hearing Date: July 16, 1991
July 17, 1991

Comments Due: July 18, 1991

WHO IS AFFECTED: All persons removing, transporting, and disposing of asbestos-containing material. All milling and manufacturing sources using asbestos-containing material.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340-25-455; OAR 340-25-460; OAR 340-25-465; and OAR 340-33-010 through -100, the Department's asbestos removal, disposal, and training regulations.

WHAT ARE THE HIGHLIGHTS: Proposed amendments would:

- add new definitions from new NESHAP regulations and Department housekeeping requirements;
- add new NESHAP requirements to the regulations for milling operations, spraying operations, and for air cleaning equipment;
- add new NESHAP and Department changes to the work practice regulations;
- add new NESHAP and Department changes to the disposal regulations;
- add Department changes to the sections for, definitions, general provisions, and certification.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Air Quality Division 811 SW Sixth Avenue, Portland, Oregon, 97204, or the regional office nearest you. For further information contact David E. Wall at 229-5364.

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.

A public hearing will be held before a hearings officer at:

Blue Mountain Community College
2411 NW Carden, Room P148
Pendleton, Oregon
July 16, 1991, from 9:00 a.m. until testimony is complete.

Central Oregon Community College
Boil Education Center
1345 NW Wall, Room 155
Bend, Oregon
July 16, 1991, from 6:00 p.m. until testimony is complete.

Jackson County Administration Office
105 Oakdale, Room 310
Medford, Oregon
July 17, 1991, from 9:30 a.m. until testimony is complete.

Two World Trade Center
International Conference Center
25 SW Salmon, Plaza Room
Portland, Oregon
July 17, 1991, from 3:00 p.m. until testimony is complete.

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 July 18, 1991.

WHAT IS THE NEXT STEP:

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation should come September 13, 1991, as part of the agenda of a regularly scheduled commission meeting.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

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(6/91)

OREGON ASBESTOS ADVISORY BOARD SUMMARY OF COMMENTS

In accordance with Section 15, Chapter 744, Oregon Laws 1987, the Oregon Department of Environmental Quality asbestos staff met with and received comments from the Oregon Asbestos Advisory Board (OAAB) on May 3, 1991, on the proposed asbestos rule changes. After receiving public comments on proposed rule changes, the Department will meet with the OAAB to seek recommendations for adoption. The Advisory Board comments are discussed below.

The comments from the Advisory Board are listed below in the order that they were received:

1. The definition for "inactive waste disposal site" has a clause that states a waste disposal site becomes inactive when asbestos waste has not been accepted for a year or more. The Board suggested that this clause be removed and that it be replaced with a statement that declares an asbestos disposal site to be inactive when its waste disposal permit has ended.

2. The definition for "non-friable asbestos-containing material" states that it must contain 1% or more asbestos by weight. There was discussion that the NESHAP may have changed this to 1% asbestos by area. Department staff will look into this with the EPA. Ken McDonald from the DEQ lab did not feel that 1% by area to be accurate method of determining the percentage of asbestos in a material.

3. The Advisory Board did not feel it necessary to have a definition for "outside air" if it was not going to be used.

4. The definition for "waste generator" describes a person conducting an asbestos abatement project. The Advisory Board suggested that we remove the word, "conducting", and replace it with the word, "performing", for clarification.

5. OAR 340-25-467(1)(c) deals with notification for emergencies that are a threat to life, health, or property. (1)(d) discusses an unexpected event. The Advisory Board suggested that we keep these two areas separate to prevent confusion between the two.

   The Board feels we should be more specific about the 10 day waiver. They also feel we should incorporate language from the NESHAP for emergency renovation operation. The Board suggested the use examples to define what an emergency is and what is an unexpected event.

6. The Board suggested adding a phrase to OAR 340-25-468 (1)(b) that describes this activity as an asbestos abatement project. The rule now exempts pre-demolition removal of encased asbestos-containing materials as long as these materials are adequately wetted when they are discovered.

7. The Board suggested a change in OAR 340-25-468(2) that would replace the phrase "unavoidably damage" with "be incompatible with".

8. Marilyn Schuster, Board member from Oregon OSHA, suggested that the Department pass on any copies of asbestos spraying operation notices that are received in relation to OAR 340-25-469(12).

9. The Board suggested that OAR 340-25-469(2)(b)(A) include the name of the building or facility owner. There was general approval for this rule. The Board discussed different types of labelling methods. Bill Candee, an asbestos abatement contractor, said that tagging or labelling would not be a problem as long as the label was not expected to be permanent.

   The Department may have some problems with landfill owners on their requirements from the new NESHAP rule. We may be able to combine forms and have a manifest serve as their permit documentation.

10. Dave Butts, Board chairman, brought up the NESHAP change that put non-friable materials into two categories. The Board in general agreed with the Department that the change to two categories of non-friable materials could be confusing to industry. However, Mr. Butts pointed out the possibility that our existing rule may not be as stringent as the new NESHAP rule. Mr. Butts believes that by making a small change to OAR 340-25-466(1)(b) we can bring the existing regulation in line with the NESHAP. The change would remove the word "and" from the second sentence and replace it with "or".

On July 23, 1991 the asbestos staff again met with and received comments from the OAAB. The Advisory Board comments are discussed below.

1. OAR 340-25-468(1)(b) provides specific procedures for handling asbestos materials that are unexpectedly found during demolition. One member of the board was concerned that remodeling activities may be confused with demolition. The board member also pointed out that finding asbestos-containing material during remodeling did not mean it was disturbed. The staff explained that the definition for demolition excludes remodeling. The decision to call in an

abatement contractor is not based on the activity but whether the activity disturbs asbestos.

2. OAR 340-25-469 covers the disposal of asbestos-containing waste from the project site to the landfill. Board members suggested requiring landfills to restrict public access to the asbestos waste unloading site. They also pointed out that a significant educational program would be needed for some of the smaller landfill operators. The staff agrees that there is a potential for exposure when the public visits a landfill and will add appropriate language to the rules.

3. The new NESHAP allows certain non-friable materials to be left in place during demolition. The asbestos staff presented its reasons for maintaining the current policy requiring removal prior to demolition. There was some discussion of the issues involved but, the board agreed that they need more time to study the data before commenting further. The staff has requested background material from EPA and will study the issue further.

4. The board member from the Oregon Occupational Safety and Health Division suggested we modify language in OAR 340-25-468(8),(9) which references their rules. Asbestos staff has reviewed the rules and has removed language directed specifically at worker protection without weakening protection of public health and the environment.

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Attachment G

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: August 1, 1991

TO: Environmental Quality Commission

FROM: John Mathews

SUBJECT: Hearings Summary

The Department of Environmental Quality held hearings in Pendleton, Bend, Medford, and Portland on July 16 and 17. Public notice had been made in the East Oregonian, Bend Bulletin, Medford Mail Tribune, and the Oregonian. Hearings Officers were Dave Wall and Alice Dehner of the Air Quality Division. Written testimony was received through July 18.

There was no formal testimony given at the hearings in Pendleton, Bend, or Medford but there was significant informal discussion which has been included with testimony. The only person to testify in Portland was Michael Otchet of Armstrong World Industries.

The Armstrong representative focused on the new NESHAP regulations and the Department's current demolition rules regarding non-friable asbestos-containing materials. The commenter would like the Department to change the current rules allowing additional non-friable asbestos-containing materials to be left in place during demolition.

The commenter disagreed with the Department's view that the new NESHAP category I, category II system for non-friable material was too complex, stating that the system was "user friendly". He said that if the Department adopted the "less complex NESHAP" then a large pool of asbestos experts would seek reciprocity to do work in Oregon.

The commenter disagrees completely with the Department's current requirement to remove asbestos-containing flooring materials prior to demolition. He said the Department should reevaluate the available air monitoring test data because the Environmental Protection Agency (EPA) concluded that the data showed no significant release during demolition. He said the OSHA permissible exposure limit of .2 f/cc was more appropriate for evaluating health risks than .01 f/cc which is the final air clearance standard in Department regulations and the Asbestos Hazard Emergency Response Act.

The commenter also pointed out a problem with the grammar in one of the proposed changes.

There were several comments made during informal discussions at the hearings. One person discussed the landfill regulations and the new intentional burning rule. The commenter said the new rules gave landfills too much control over waste generators. His other concern was that small volunteer fire departments would lack structures to train on if asbestos-containing materials had to be removed prior to burning.

The Department received eight written comments from people involved in asbestos abatement in various ways. Those people are listed below:

Don Arkell, Lane Regional Air Pollution Authority,
Russ Batzer, Western States Environmental Services, Inc.,
Leo Denn, representing himself,
John Mayer, Lake Oswego Insulation Co.,
Michael I. Otchet, Armstrong World Industries, Inc.,
John A. Pompei, Oregon Occupational Safety & Health Division,
Donald D. Trautman, Trautman Associates, Inc.,
Daniel Wilson, Riverbend Landfill Co., Inc.

The most comments received by the Department concerned disposal and landfill requirements. The one landfill operator who testified was opposed to checking loads for improperly packaged waste and tracking the waste shipment form. The same operator thought the regulations for off-loading waste and the requirements for fill material were too restrictive. An abatement contractor recommended that the landfills set up regulated areas where asbestos waste is unloaded and the public cannot enter.

The Department received written testimony on the new intentional burning rule. The commenter pointed out that the rule appeared to be in conflict with the statute exempting public agencies from the State's air pollution laws when they conduct training fires.

One abatement contractor wrote that the new definition of waste generator would increase a contractor's liability.

A comment was received on the proposed work practices rule regarding asbestos discovered during demolition. The commenter made specific suggestions that would make the rule clearer.

The Oregon Occupational Safety and Health Division pointed out that two of the current regulations referred to worker protection and were in conflict with their rules.

One commenter said the Department placed too much emphasis on asbestos and wood stoves.

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RESPONSE TO COMMENTS RECEIVED ON PROPOSED AMENDMENTS TO THE ASBESTOS REGULATIONS

340-25-455(42) Provides a definition of waste generator which includes building owners and asbestos abatement contractors.

COMMENTS:

One abatement contractor was opposed to being defined as the waste generator. The abatement contractor said this would now make them a potentially responsible person should the landfill become a Superfund site. The contractor suggested that this could make it difficult for them to get insurance.

RESPONSE:

The Department's definition for waste generator is no more stringent than the NESHAP definition. While the phrase, waste generator, is used throughout the rule changes, the new definition alone does not increase the responsibilities of the contractor. The very nature of the asbestos abatement business makes contractors potentially responsible persons.

340-25-466(1)(b) Exemption for non-friable asbestos-containing materials ends when material becomes friable or the removal causes fiber release.

COMMENTS:

A commenter pointed out that the way the rule has been rephrased, it now treats non-friable materials the same as friable.

RESPONSE:

The change in the rule was based on our advisory board's suggestion to tighten-up the language. It was not the intention of the Department to remove the exemptions for non-friable asbestos-containing materials. The rule will be changed back to its previous language.

340-25-466(1)(b) Requires specific action during demolition when previously undiscovered asbestos is found and the building is structurally unsafe for normal abatement procedures.

COMMENTS:

A consultant wanted the rule reorganized into a strict step-by-step sequence of events. Informal comments from the program's advisory board suggested the activities be called an asbestos abatement project.

RESPONSE:

The Department agrees with the comments and will change the rule accordingly.

340-25-455(15) Includes intentional burning in the definition of demolition.

340-25-468(6) Requires all asbestos to be removed from a building or structure prior to burning.

COMMENTS:

The two comments made on this definition and rule involve training fires conducted by fire departments or other public agencies. Written testimony pointed out that this rule may be in conflict with Oregon Revised Statute (ORS) 468.290. This statute exempts training fires conducted by public agencies from the State's air pollution laws.

During an informal discussion period at a hearing one commenter said this rule would decrease the number of structures that become available for training fires.

RESPONSE:

Prior to the NESHAP update, it has been Department policy to define intentional burning as demolition and require removal of all asbestos-containing material. In demolition projects of the wrecking ball type, certain petroleum based non-friable asbestos-containing materials may be left in place. However, when fire is the method of demolition the petroleum binders are consumed and the asbestos fibers are released.

The Department has contacted the Oregon Attorney General's office for a preliminary opinion on this matter. Because of the risk to public health and the environment, a literal interpretation of ORS 468.290 would not be appropriate. In addition, the removal must occur prior to burning and is not a specific prohibition on training fires set by public agencies. The Department intends to apply this rule to all situations involving the intentional burning of structures.

340-25-469(8)(a)(C) Requires warning signs on the transport vehicle during the loading and unloading of asbestos-containing waste.

COMMENTS:

One respondent said the signs would only attract curiosity seekers and that a better solution would be to have regulated areas at the landfill.

RESPONSE:

The Department feels that posting signs is an important part of restricting access to the loading and unloading area. The rules require additional control measures in establishing a regulated area preventing access by the public. The Department agrees that it is important to prevent accidental asbestos exposure to the public at landfills and will recommend appropriate changes.

340-25-469(10)(a)(B) Requires asbestos-containing waste to be off loaded where it will be buried.

COMMENTS:

A landfill operator was concerned that it may not always be physically possible to unload the waste at the disposal site.

RESPONSE:

The intent of the this rule is to protect the integrity of the waste container. It is also a specific requirement of the NESHAP. However, the Department has the ability to authorized alternative methods of disposal on a case-by-case basis. For example, the Department has authorized the use of conveyor belts to move waste bags from the unloading area to the burial site.

340-25-469(10)(a)(E) Requires landfill operators to notify the Department of improperly packaged asbestos-containing waste.

COMMENTS:

A landfill operator objected to giving the Department a written description of the improperly packaged waste.

A representative of a facility, which performs much of its own asbestos abatement, was concerned that landfill operators were being given too much responsibility.

RESPONSE:

Improperly packaged waste creates the potential for public and environmental exposure to asbestos fibers. A written description

of the waste could be an important piece of evidence in potential enforcement actions. This is a specific NESHAP requirement.

The new NESHAP requirements do increase the responsibilities of the landfill operators, but the duties are not impossible. The Department recognizes it's obligation to educate the regulated community on the new rules and will take appropriate action.

340-25-469(10)(a)(F) Requires landfill operators to return a signed copy of the waste shipment record to the waste shipment generator.

COMMENTS:

One landfill operator preferred to supply a copy of the signed waste shipment record upon request only.

RESPONSE:

The waste generator is required to use the waste shipment record to track the movement of the waste shipment. This rule allows the waste generator to verify that the asbestos waste shipment reached the landfill. This requirement is an integral part of the NESHAP waste shipment tracking system and no change can be made to it.

340-25-469(10)(a)(G) Requires the landfill operator to look for and help reconcile differences between the amount of waste received at the disposal site and the amount entered on the waste shipment form. When differences cannot be reconciled the operator must notify the Department.

COMMENTS:

One operator said the landfill should only be concerned with how much waste arrives at the disposal site and the Department should verify that the records are correct.

RESPONSE:

The NESHAP specifically requires the landfill operator to perform this duty. The logistics of having a state inspector on site as waste shipments arrive at the landfill are seemingly impossible. The landfill operator is the most appropriate person to check the accuracy of the waste shipment record.

340-25-469(10)(a)(I) Requires asbestos-containing waste to be buried the same day it arrives at the landfill and specifies how much fill material must be used.

COMMENTS:

An operator pointed out that it will be hard for some landfills to find enough soil to use as fill material. Also, an abatement contractor suggested that the waste generator was responsible for monitoring the burial.

RESPONSE:

The Department has the authority to consider alternative methods of disposal on a case-by-case basis.

While it may be advisable for a contractor to verify the burial of their waste, they are not required to do this.

340-25-469(10)(b) Requires the disposal site operator to keep a record of the location and amount of asbestos-containing waste buried in the landfill.

COMMENTS:

A landfill operator said it would be cost prohibitive for them to survey and plot each burial.

RESPONSE:

It is a specific requirement of the NESHAP regulations to show the location of the buried waste on a map. The Department anticipates the need for a survey crew only when the landfill permit is renewed.

OTHER COMMENTS:

One commenter gave extensive testimony regarding flooring materials. His testimony focused on the new NESHAP regulations concerning non-friable asbestos-containing materials that may be left in place during demolition projects. The written testimony provides more detail than comments presented at the Portland hearing. Only the written testimony is addressed below:

Comment:

EAP's revised NESHAP is not a less stringent regulation but rather an enhancement of enforcement, to promote compliance with the current standard without altering the stringency of existing controls.

Response:

The Department agrees that the changes to the NESHAP make it more stringent than the previous NESHAP which articulated no clear standards for regulation of non-friable asbestos containing materials (ACM). However, as explained on pages 4

and 5 of the Request for EQC Action, adoption of the new NESHAPs on non-friable ACM would eliminate the Department's existing requirement for removal of non-friables such as asbestos containing floor coverings prior to demolition when they would be " shattered, crumbled, pulverized or reduced to dust". Compared to existing Department regulations, the new NESHAP results in less stringent regulation of non-friable ACM.

Comment:

The notice of proposed rule does not comply with rule making procedures in that it is not accompanied by an adequate statement of need. There is no explanation given for a unique rule that contradicts the existing NESHAP rule, which exempts demolition of buildings with non-friable asbestos-containing resilient floor covering.

Response:

ORS 183.335 requires the Department to prepare a statement of need for rule making prior to "adoption, amendment or repeal of any rule". The rule the commenter is referring to has been in place since 1988. Because this rule is to remain unchanged, a statement of need for rule making is not required. Contrary to this commenter's assertions, the Department is under no obligation to adopt federal NESHAPs verbatim, as long as corresponding stringency is maintained.

Comment:

The fiscal and economic impact statement accompanying the proposed rule fail to address the economic impact of the proposed change to OAR 340-25-465 (4) (b).

Response:

The Department has withdrawn the proposed change to OAR 340-25-465(4)(b), making a fiscal impact statement unnecessary.

Comment:

DEQ should not have disregarded the EPA's conclusions regarding the resilient floor covering demolition issue.

Response:

In making its decision not to adopt sections of the new NESHAPS that would allow asbestos containing floor coverings to remain in place during demolition, the Department made efforts to evaluate EPA's conclusions and justifications.

In response to comments at public hearing, the Department obtained the studies and consultant's report upon which EPA relied. The Department finds the following:

1) EPA did not review all available data on fiber release from asbestos containing flooring.

2) EPA's conclusion that asbestos containing flooring is "not expected to release significant amounts of asbestos fibers to the outside air during demolition" (Federal Register vol. 55, no. 224, p 48409) is based on studies of flooring removal operations only.

3) Many of the studies upon which EPA relied showed fiber releases which, under the Department's regulations, would be deemed significant because they exceeded the clearance level of .01 fibers per cubic centimeter. Compliance with levels set for the purposes of worker protection is not relevant to the protection of public health.

Comment:

Maintenance and/or removal test data are not appropriate predictors of demolitions exposures.

Response:

The Department agrees that data generated under conditions other than actual or simulated demolition are not adequate predictors of public exposure. This is one reason why flooring removal studies cited by EPA have not persuaded the Department to make rule changes that would be less protective of public health.

Comment:

The DEQ has disregarded certain of the limitations that its cited authors have applied to their own studies while adopting the authors' conclusions of significant exposure which is the opposite of EPA's conclusions based upon the agency's literature review supporting its non-friable demolition exemption policy.

Response:

The Department believes it reasonable to assume that if fiber releases are of concern during floor covering maintenance and removal operations, that the more intense forces of demolition would likely cause greater releases. A demolition simulation study conducted by Hall Kimbrell supports this assumption.

Comment:

According to a recent newspaper article, actual demolition experience contradicts DEQ's assumptions.

Response:

The newspaper article to which the commenter referred described the asbestos-free analysis of six samples taken in the vicinity of a dynamite demolition of a building containing asbestos floor tiles. The Department believes that reliance upon this article would be premature. Two thirds of the samples from the site had yet to be analyzed, and there was no description of the final condition of floor tile in the demolition debris.

Comment:

The results of the Hall Kimbrell study support an exemption for demolition of buildings with non-friable asbestos-containing resilient floor covering materials from the requirements of the asbestos control program.

Response:

The commenter was concerned that because the Hall Kimbrell demolition simulation was performed dry, and most demolitions involve some water for dust suppression, that sample results would not accurately predict fiber releases. The Department has noted that the Hall Kimbrell study may represent a worst case scenario. However, the quantities of water used in demolition vary, and are often inadequate to suppress dust. The commenter was also concerned about the reliability of Transmission Electron Microscopic (TEM) analysis of air samples. Both EPA and the Department currently recognize TEM analysis as the most accurate method of asbestos measurement and identification. As noted above, worker protection standards are not applicable to the Department's goal of public safety.

Comment:

Data cited by DEQ is flawed in that it does not represent actual exposures. The TEM preparation techniques are incapable of producing direct results when applied to certain matrix rich materials like resilient floor coverings.

Response:

Even assuming that TEM studies are flawed, there exists enough conventional microscopic data (Phase Contrast Microscopy) in both EPA and DEQ's literature survey to support the Department's rule concerning non-friable asbestos.

Comment:

Applying the DEQ's fiber release standard for small-scale, short-duration activities to exempt demolition activities would be a less burdensome way to achieve DEQ's purpose.

Response:

The standard to which the commenter refers applies only to disturbance of small quantities of asbestos during short term activities such as maintenance and repair. It is not appropriate to larger quantities of asbestos involved with demolition projects.

JFM:a
RPT\AH16031

FIBER RELEASES FROM TWO TYPES OF NON-FRIABLE ASBESTOS-CONTAINING MATERIALS: VINYL ASBESTOS TILE AND SHEET VINYL FLOORING

The Department proposes not to incorporate the new NESHAP definition for category I and category II non-friable materials into its existing rule. The new NESHAP rule exempts certain non-friable asbestos-containing materials (ACM) from removal prior to demolition. These materials would include commonly found vinyl asbestos tile and sheet vinyl flooring. The Department believes it necessary to be more restrictive as to the types of non-friable ACM that may remain in buildings during demolition.

The normal process of demolition is to break up building debris into small portions so they may be hauled away to a landfill. Demolition equipment, usually heavy caterpillars or backhoes, continually run over the debris in order to break it up into small enough pieces for hauling. Department asbestos inspectors have witnessed tile and sheet vinyl being pulverized during the demolition process. Many asbestos-containing flooring materials are in poor condition at the time of demolition, and the process of demolition could cause significant amounts of asbestos fibers to be released into the environment.

The Department's position on non-friable asbestos-containing material is based on the following information:

1. High asbestos fiber counts have been documented during routine floor stripping operations on older worn floors. The floor stripping was done dry and using wet hand stripping methods. This information is significant because it shows that old worn tile will release asbestos fibers during routine maintenance and therefore, would likely release higher concentrations of asbestos during the demolition process where no engineering controls to limit the release of asbestos fibers are used.

A recent report on floor stripping states " Airborne concentrations of asbestos can vary depending on abrasiveness of the buffing pad and surface condition of floor tile. Asbestos concentrations as high as 1.5 f/cc were observed during mechanical stripping and 0.30 f/cc during manual wax stripping operations."[1] The mechanical stripping was done dry using abrasive pads under a buffer. The manual wax stripping was done using a stripping solution.

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[1]Excerpted from: "Effects of floor maintenance activities on vinyl asbestos floor tile (VAT)" session 19. NAC Summaries Book, New Orleans. By Tim Marxhausen and Stephen Shaffer.

2. High asbestos fiber counts have been detected in asbestos tile removals:

A study was done to evaluate the fiber release potential for vinyl asbestos tile (VAT) removal methods, compare the accuracy of sample analysis techniques for the specific abatement activity of floor tile removal, and to compare the cost of various removal methods.[2]

The materials tested during the study were nine-inch by nine-inch VAT that contained 20% to 25% chrysotile asbestos. There were five test areas each containing 180 square feet of floor tile.

Analysis for the study consisted of side by side samples using Phase Contrast Microscopy (PCM) and Transmission Electron Microscopy (TEM). Background analysis for each of the test areas showed negligible fiber counts prior to the start of removal activities.

Removal was done in five areas using different methods; dry ice, water-flooding, heating, mechanical chipper, and hand scraping.

The method that was anticipated to create the least amount of asbestos fiber release was dry ice removal. Analysis showed 0.050 f/cc using PCM and 1.29 f/cc using TEM methods.

Review of other removal methods indicate that the mechanical chipper and hand scraping methods produced extremely high fiber counts and broke the material into very small pieces.

Based on the results of this study, the authors offered several recommendations. They suggest that VAT removal projects require at least two workers, full type C personal protective equipment, and a separate technique for removing asbestos-containing mastic or glue. The authors further stated that although VAT is described as non-friable, the amount of fibers generated indicate that a negative-pressure containment area should be used and that great care should be taken in using PCM analytical results for VAT removal.

3. A 1989 study documenting asbestos fiber emissions during floor tile removal lend additional support to the Department's decision to require removal of asbestos-containing floor covering.

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[2]Excerpted from: "Five Methods for Removing Floor Tiles of Vinyl Asbestos Yield Diverse Data" a study on asbestos floor tile removal from "Occupational Health and Safety", Vol. 58, No. 10, Pages 31, 32 through 35, and 36. September 1989 issue.

..."Studies are available showing elevated fiber levels during VAT removal, and contractors now consider this data when making decisions concerning methods and procedures."

..."During most tile and mastic removal projects, contractors seem to be very efficient in keeping fiber counts for personal and area samples at or below 0.1 fibers per cubic centimeters of air (f/cc). However, experience and reported data show that it is often difficult to get transmission electron microscopy (TEM) results below the typical clearance level of 0.01 f/cc, especially when the samples were collected under aggressive clearance techniques. Such TEM clearance sample results are often found as high as 0.1 f/cc. In one case, 3.0 f/cc was reported."

..."John M. Jenkins, an architect with Comprehensive Technical Consultants, Inc., in Atlanta, presented the following conclusions after conducting research on air counts associated with tile removal:

1. A significant amount of asbestos fiber is released during removal of vinyl asbestos tile using conventional tile removal methods.

2. Fiber control methods such as damp removal or isolation of areas by plasticizing, and use of appropriate respirators, should be utilized for tile removal.

3. Areas subjected to contamination by tile removal using uncontrolled methods should be thoroughly cleaned and tested prior to being returned to use."

..." Airborne fiber counts in tile and mastic removal areas are usually below the OSHA excursion level (1.0 f/cc for 30 minutes), the permissible exposure limit (0.2 f/cc for 8 hours), and the action level (0.1 f/cc for 8 hours). However, levels do become elevated above background and clearance concentrations during routine removal and may even exceed one or more of the OSHA limits while using severe removal techniques."[3]

Information from the recent studies described above shows that high asbestos fiber counts occur during removal of vinyl asbestos tile. Contractors rely heavily on the air sampling data gathered during these types of removal projects to determine what type of safety measures should be used for the protection of their workers. These results indicate that even under well controlled projects, high asbestos fiber releases may occur.

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[3]Excerpted from: "Asbestos Floor Tile Removal" written by William H. Spain, CSP, Nickolas P. Wickware, CSM, and William M. Ewing, Jr., CIH. Asbestos Issues, September 1989.

The following study performed by an asbestos consulting firm further demonstrates that asbestos fibers are released from asbestos-containing tile and vinyl sheeting during demolition:

Hall-Kimbrell Services was retained by a hospital to determine the potential fiber release from vinyl asbestos tile and vinyl sheeting with asbestos paper backing under simulated demolition conditions. The report was prepared to determine the feasibility of leaving certain asbestos-containing materials in place during demolition of the hospital facility.

For this experiment, 3 areas each approximately 5-10 square feet were tested. Each area was isolated in a separate room. The vinyl asbestos tile and sheeting were analyzed for asbestos content utilizing polarized light microscopy (PLM) with dispersion staining techniques, and were found to contain 10% chrysotile and 40% chrysotile asbestos respectively.

> ..."Analysis was performed using Transmission Electron Microscopy (TEM) according to procedures specified in the AHERA regulations (Federal Register 10, 30, 87; 40 CFR Part 763; EPA "Asbestos Containing Materials in Schools", "Final Rule and Notice.")."
>
> ..."Sampling during test demolition of vinyl-asbestos tile resulted in airborne asbestos fiber counts approximately 30 times higher than background levels."
>
> ..."Sampling during test demolition of vinyl-asbestos sheeting resulted in airborne asbestos fiber counts 150 times higher than background levels."[4]

The results presented in this summary are from two test rooms, 313D and 308, at the facility. All removal was done dry without the aid of water or surfactants.

The test results for removal of vinyl sheeting that contained 40% chrysotile asbestos in the paper backing from room 313D showed .603 f/cc during the 20 minutes that demolition took place. Background results in the same area during a 145 minute sample were <.004 f/cc. A 1500+ liter 160 minute sample taken after demolition showed .084 f/cc.

The test results for removal of vinyl tile that contained 10% chrysotile asbestos from room 308 showed .141 f/cc during the 20 minutes that the demolition took place. Background results in the same room during a 130 minute sample were <.005 f/cc. A 1500+

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[4]Excerpted from: "Air Monitoring and Sample Demolition Tests"; "Executive Summary". Hall-Kimbrell Environmental Services. August 31, 1988.

liter 160 minute sample taken after demolition stopped showed .030 f/cc. This test was done at the anticipated level of destruction for demolition.[5]

Conclusions:

The new NESHAP rule would allow certain types of non-friable ACM to remain in structures during demolition operations. The most common type of non-friable ACM that would remain during demolitions is asbestos-containing resilient floor covering. Contrary to EPA's finding that "these ACM's are not expected to release fibers to the outside air during demolition"[6], the Department has documented several instances of asbestos fiber release during flooring removal, demolition, and maintenance projects. Because the forces involved with demolition would be at least as great as those employed in the studies relied upon, the Department has chosen to maintain more stringent requirements for demolition. These requirements are more protective of both the health or workers and the public.

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[5]IBID

[6]Federal Register, Vol. 55, No.224, November 20, 1990, Page 48409.

Oregon

ENVIRONMENTAL
QUALITY
COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: September 13, 1991
Agenda Item: F
Division: Regional Operations
Section: Enforcement

SUBJECT:

Request Rule Adoption to Authorize the Enforcement Section Staff to Represent the Department in Contested Case Hearings.

PURPOSE:

EQC authorization is necessary before the Enforcement Section staff can represent DEQ in contested case hearings involving civil penalties and/or Department Orders.

ACTION REQUESTED:

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

__ Authorize Rulemaking Hearing
_X_ Adopt Rules
Proposed Rules — Attachment A
Rulemaking Statements — Attachment B
Fiscal and Economic Impact Statement — Attachment C
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:

Rule adoption.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Enactment Date: _____	Attachment ___
X Statutory Authority: ORS 183.450(7)	Attachment E
___ Pursuant to Rule: _____	Attachment ___
___ Pursuant to Federal Law/Rule: _____	Attachment ___
___ Other:	Attachment ___
___ Time Constraints: (explain)	

DEVELOPMENTAL BACKGROUND:

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

This proposal for lay representation should have no effect on the regulated community.

PROGRAM CONSIDERATIONS:

The Agency is currently fully represented by the Attorney General's Office in all contested case hearings. 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 authorizes the practice through rulemaking.

The Attorney General has consented to Agency lay representation through a letter dated April 29, 1991.

Based upon the experience level and academic background of current staff, the Enforcement Section will be able to handle lay representation. No additional staff will be needed to effect this change in procedure.

Pursuant to the proposed rule and the governing statutes, the Enforcement Section staff will not be authorized to present legal argument. "Legal argument" is narrowly defined such that only in cases where the jurisdiction of the Department is in question; or where constitutional issues are raised; or where the application of court precedent to the facts of the hearing is necessary, will the participation of the Attorney General's Office be required.

The Enforcement Section staff will be authorized to present evidence, examine and cross-examine witnesses and present argument based on facts, prior Department actions, the literal meaning of statutes or rules and the admissibility of evidence.

In those contested case hearings where the assistance of the Attorney General's Office is neither sought nor required, the Department will not have the benefit of an independent review of its actions. To ensure consistency, the Department will develop guidelines for the contested case hearing process and will not begin lay representation until these guidelines are in place.

A public hearing was held on July 24, 1991. No one from the public attended. The Department has not received any written comments on the proposed rules.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The Department could maintain the current mode of representation which requires the Attorney General's Office to represent the Department in every contested case hearing, including the simplest of cases such as an open burning violation.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the EQC adopt rules which would allow the Department's Enforcement Section staff to represent the Department in contested case hearings involving civil penalties and/or Department Orders. The proposed change will streamline the enforcement process and lower legal fees for contested case hearings while still maintaining proper representation.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

This proposal is consistent with both agency and legislative enforcement policy and furthers goal #8 of the stategic plan which seeks to "(s)treamline agency programs and activities by identifying and implementing more efficient ways to accomplish essential actions...."

ISSUES FOR COMMISSION TO RESOLVE:

Should the Department be represented by its Enforcement Section (lay representation) in contested case hearings involving civil penalties and/or Department Orders?

INTENDED FOLLOWUP ACTIONS:

1. File the approved rules with the Secretary of State's office.

2. Develop guidelines for the implementation of lay representation.

Approved:

Section: Dan A. Kollias

Division: Tom Burham

Director: Jeff Haven

Report Prepared By: Blair Bobier

Phone: 229-5151

Date Prepared: August 27, 1991

bb:b2
layrep.3
8/27/91

Attachment A
Agenda Item F
9/13/91 EQC Meeting

AGENCY REPRESENTATION BY ENFORCEMENT SECTION

340-11-103 (1) The Enforcement Section staff is authorized to appear on behalf of the Department in contested case hearings involving civil penalties and/or Department Orders.

(2) The Enforcement Section staff shall not present legal argument on behalf of the Department in contested case hearings.

(3) "Legal argument" as used in this rule includes argument on:

(a) The jurisdiction of the Department to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(c) The application of court precedent to the facts of the particular contested case proceeding.

(4) "Legal argument" as used in this rule does not include presentation of evidence, examination or cross-examination of witnesses, factual argument or argument on:

(a) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(b) Comparisons of prior actions of the Department in handling similar situations;

(c) The literal meaning of the statute or rules directly applicable to the issues in the contested case; or

(d) The admissibility of evidence or the correctness of procedures being followed.

(5) When the Enforcement Section staff is representing the Department in a contested case hearing, the hearings officer shall advise the Department representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objections. Where such objections involve legal argument, the hearings officer shall provide a reasonable opportunity for the Department representative to consult legal counsel and shall permit legal counsel to file written legal argument within a reasonable time after conclusion of the hearing but before final disposition.

Blair Bobier
229-5151
eqc.atA

Attachment B
Agenda Item F
9/13/91 EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(1), this statement provides information on the Environmental Quality Commission's action to adopt a rule.

(1) Legal Authority:

ORS 183.450(7)(b) allows the Commission to adopt rules authorizing Agency lay representation.

(2) Need for Rule:

Pursuant to ORS 183.450(7)(b), rule adoption is a prerequisite to lay representation.

(3) Principal Documents Relied Upon:

ORS Chapters 183 and 468. These documents are available for review at the Department of Environmental Quality, Regional Operations, 10th floor, 811 S.W. Sixth Avenue, Portland, OR 97204.

LAND USE CONSISTENCY STATEMENT

The proposed rules do not affect land use as defined in the Department's coordination program approved by the Land Conservation and Development Commission.

Blair Bobier
229-5151
August 27, 1991
eqc.atB

Attachment C
Agenda Item F
9/13/91 EQC Meeting

FISCAL AND ECONOMIC IMPACT STATEMENT

The proposed rules will have no direct, adverse fiscal or economic impact on individuals, public entities or on small or large businesses. The adoption of these rules will neither require the expenditure of funds nor place any additional duties on any group within the regulated community.

By eliminating duplicative and unnecessay efforts by the Attorney General's Office and the Department's Enforcement Section, the proposed rule changes will lower the Departments's legal fees for contested case hearings.

Blair Bobier
229-5151
August 27, 1991
eqc.atC

Attachment D
Agenda Item F
9/13/91 EQC Meeting

PROPOSED REVISION OF OREGON ADMINISTRATIVE RULES CHAPTER 340, DIVISION 11, RULES OF PRACTICE AND PROCEDURE

NOTICE OF PUBLIC HEARING

Date Prepared: May 28, 1991
Hearing Date: July 24, 1991
Comments Due: August 12, 1991

WHO IS AFFECTED: The Department of Environmental Quality and the Department of Justice.

WHAT ARE THE HIGHLIGHTS:

1. Proposed State Rule Revisions:

The Department's Enforcement Section will be able to represent the Department in contested case hearings involving civil penalties and/or Department Orders. The Department is currently fully represented by the Attorney General's Office in these proceedings.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Enforcement Section, Regional Operations Division, in Portland (811 S.W. Sixth Avenue, 10th floor) or at any regional office. For further information contact Blair Bobier at 229-5151.

A public hearing will be held before a hearings officer at:

2:00 p.m.
Wednesday, July 24, 1991
DEQ Offices, Tenth Floor, Room 10A
811 S.W. Sixth Avenue, Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Enforcement Section, 811 S.W. Sixth Avenue, 10th Floor, Portland, OR 97204. Written comments must be received no later than 5:00 p.m., August 12, 1991.

Attachment D
Agenda Item F
9/13/91 EQC Meeting

WHAT IS THE NEXT STEP: After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation may come on September 13, 1991, as part of the agenda of the regularly scheduled EQC meeting. A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

Blair Bobier
229-5151
August 27, 1991
eqc.atD

Attachment E
Agenda Item: F
9/13/91 EQC Meeting

appearance of the witness before such officer.

(2) An agency may, by rule, prescribe other methods of discovery which may be used in proceedings before the agency. [1971 c.734 §14; 1975 c.759 §11; 1979 c.593 §19]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by ORS 183.310 to 183.550 before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by ORS 183.310 to 183.550 confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 §8 (3), (4); 1965 c.212 §1; 1971 c.734 §11]

183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing. [Formerly 670.285]

183.440 Subpoenas in contested cases. (1) The agency shall issue subpoenas to any party to a contested case upon request upon a showing of general relevance and reasonable scope of the evidence sought. A party, other than the agency, entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the agency, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the agency or of a designated representative of the agency or of the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1957 c.717 §8 (2); 1971 c.734 §12; 1979 c.593 §20; 1981 c.174 §4; 1989 c.980 §10a]

183.445 Subpoena by attorney of record of party when agency not subject to ORS 183.440. In any proceeding before an agency not subject to ORS 183.440 in which a party, other than the agency, is entitled to have subpoenas issued by the agency for the appearance of witnesses on behalf of the party, a subpoena may be issued by an attorney of record of the party, subscribed by the signature of the attorney. A subpoena issued by an attorney of record may be enforced in the same manner as a subpoena issued by the agency. [1981 c.174 §6]

183.450 Evidence; representation of state agency; representation when public assistance involved. In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

Attachment F
Agenda Item: F
9/13/91 EQC Meeting

MEMORANDUM

To: Environmental Quality Commission

From: Nancy L. Hogan, NH. Hearings Officer

Subject: Agenda Item F, September 13, 1991, EQC Meeting

Hearings Officer's Report on Proposed Revisions to Oregon Administrative Rules, Chapter 340, Division 11, Rules of Practice and Procedure.

A public hearing was held at 2:00 p.m. on Wednesday, July 24, 1991, to receive testimony concerning proposed revisions which will allow the Department's Enforcement staff to represent the Department in contested case hearings involving civil penalties and/or Department Orders. No one appeared at the public hearing and no testimony was offered. The public hearing was closed at 2:35 p.m. The record was left open to receive written comments until 5 p.m., August 12, 1991.

Attachment G
Agenda Item: F
9/13/91 EQC Meeting

DAVE FROHNMAYER
ATTORNEY GENERAL

JACK L. LANDAU
DEPUTY ATTORNEY GENERAL

RO

FYI

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

April 29, 1991

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390

Re: Lay Representation in Contested Case Hearings

Dear Mr. Hansen:

The Attorney General has delegated me the authority to consent to lay representation under ORS 183.450(7)(a). Consent is hereby given to your request of April 16, 1991, for officers or employees of your agency to represent the agency in contested case hearings for the assessment of civil penalties under ORS 468.125 to 468.140. Based on your request as I understand it, this consent is limited to your Enforcement Section.

I've been working with the lay representation program for over four years. It has been my experience that some attorneys are puzzled by the statutory and suggested model rule requirements. A brief description of the legislative history usually solves such problems. I'd be pleased to answer any questions you or your staff might have. We currently have asked each of the agencies who have previously been granted consent to use their own representatives in contested case hearings to comment on their experience and give us any suggested changes. Please feel free to do the same if in preparation of making your request you or your staff had some concerns or suggestions.

Oregon

ENVIRONMENTAL
QUALITY
COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: September 18, 1991
Agenda Item: G
Division: Water Quality
Section: Standards & Assessment

SUBJECT:

Proposed Adoption of Amendments to the Water Quality Standards OAR 340, Chapter 41 (026(9)): Antidegradation Policy

PURPOSE:

The purpose of this agenda item is to propose adoption of final rule language (Attachment A) for the Antidegradation Policy. The Commission reviewed proposed language and a draft implementation plan at the July 24, 1991 meeting (Agenda Item F: Proposed Adoption of Amendments to the Water Quality Standards OAR 340, Chapter 41). The Commission requested additional clarification on the implementation of the proposed policy. This staff report provides additional information to address issues raised by the Commission for their consideration in the adoption of final rule language.

ACTION REQUESTED:

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

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

___ Authorize Rulemaking Hearing
_X_ Adopt Rules
Proposed Rules — Attachment A
Rulemaking Statements — Attachment ___

Fiscal and Economic Impact Statement — Attachment B
Public Notice — Attachment C

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

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

DESCRIPTION OF REQUESTED ACTION:

This is a formal action to adopt water quality standards in OAR 340-41-026(a) Antidegradation Policy. The Department has completed its triennial review of water quality standards required by federal regulations and recommended rule language for adoption. At the July 24, 1991 meeting, the Commission adopted rule amendments for standards related to Bacteria, Mixing Zones, Toxic Substances, Biological Criteria, and Turbidity. However, the Commission requested deferring adoption of rule language for the Antidegradation Policy until the September 18, 1991, meeting so that the Department could provide additional information for the Commission to consider before adopting the proposed amendments.

The triennial review process included extensive public review and comment related to revisions of the Antidegradation Policy. The policy needed to be revised and updated to be consistent with the federal Antidegradation Policy. Revision of the Antidegradation Policy was initiated during the 1987 Triennial Review, but was carried over through the 1990 Triennial Review in order to allow for more public involvement and comment on designating outstanding resource waters for Oregon. At the November 2, 1990 meeting, the Commission authorized proposed amendments to the Antidegradation Policy to be taken to rulemaking hearing. This action followed a series of steps including:

1. DEQ request for public review of the rules to solicit suggestions for revisions in 1987 and 1990.

2. Preparation of an issue paper on antidegradation discussing concerns with the policy and proposed rule revision concepts.

3. Public notice and distribution of the issue paper, followed by statewide workshops to explain the rules and proposed rule revisions, and to solicit additional comments for development of proposed final rule language.

4. Development of final rule language and a draft implementation plan for review by the public through the hearings process.

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 to be held open beyond January 25, 1991. This request was granted and notice extending the public 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 raised during the public hearing process for an Antidegradation Policy rule revisions. At this time, the Department is bringing the proposed Antidegradation Policy revisions to the Commission for adoption as a final rule. The next sections include the principle public comments received on the proposed revisions, and issues raised by the Commission during the July 24, 1991 meeting.

As part of the staff review of the testimony, key policy issues have been identified and the following will highlight some of these issues.

Public Comment on the Proposed 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.

- **Concerns that if the Commission does not designate federal wild and scenic rivers as ORWs that the Commission was superceding the Congressional intent of protecting those rivers.**

- **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.

Commission Concerns Raised During the July 24, 1991 Meeting:

The concerns expressed by the Commission about adoption and implementation of the proposed revisions to the Antidegradation Policy include staff workload to review nomination applications for waterbodies to be designated as Outstanding Resource Waters (ORW), timing of the submission

of the applications by the public to the Department, and the extent of the restriction on activities that may occur upstream of an ORW. The Commission was also concerned about the process for nominating and designating waterbodies so that it would not jeopardize the current priorities of the Department for water quality protection. The Commission pointed out that it was important to consider the ORW category as a tool for additional water quality protection and not sacrifice resources and change priorities that would lead to less overall gain of water quality in waterbodies that need water quality improvement.

To address these concerns, therefore, the Commission requested additional detail on:

(a) Current Oregon administrative rules regarding Wilderness Areas and State Scenic Waterways,

(b) The intent of the Congressional designation of Wild and Scenic Rivers with respect to protection of water quality,

(c) The Department's nomination process and timing of public's request for designation,

(d) Department's resources for reviewing applications and forwarding nominations to the Commission, and

(e) More specific information about approaches for how ORW's could be effectively managed to protect existing water quality without a moratorium on all human activities in an ORW.

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 D
X	Response to Testimony/Comments	Attachment E
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.

Item F: Proposed Adoption of Amendments to the Water Quality Standards OAR 340, Chapter 41, July 24, 1991.

		Attachment ___
___	Other Related Reports/Rules/Statutes:	
		Attachment ___
X	Supplemental Background Information	
	Proposed Rule Language	Attachment A
	Summary of Comments	Attachment F
	Draft Implementation Plan	Attachment G
	Antidegradation Issue Paper	Attachment H

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 Response to Testimony is contained in Attachment D and E, respectively.

PROGRAM CONSIDERATIONS

Department's Response to Commission Concerns

At the July 24, 1991 meeting, the Commission requested more information regarding current statutes and rules for State Scenic Waterways and Wilderness Areas, 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 for ORW's and the associated staff workload, and more specific approaches to protecting water quality in ORW's without a moratorium on all human activities in an ORW.

(a) Current Rules

Wilderness Areas: Under Chapter 340, Division 13, Section-005, Wilderness, Recreational, and Scenic Area Rules, the policy states that "wilderness areas represent a natural resource of unique importance." It further states that "the environment of wilderness areas is deserving of the highest level of protection and safeguarding by the state in order to preserve Oregon's unique primitive and natural land areas".

Finally it states that "it is declared to be policy and purpose of the Department of Environmental Quality to maintain the environment of wilderness areas essentially in a pristine state and as free from air, water, and noise pollution as is practically possible and to permit its alteration only in a manner compatible with recreational use and the enjoyment of the scenic beauty and splendor of these lands by the citizens of Oregon and of the United States". Protecting water quality in waterbodies within wilderness areas from any degradation and designating them as ORW's would be consistent with the existing rules.

State Scenic Waterways: Under ORS 390.815 Scenic Waterways Policy, it establishes the scenic waterways and states that "the people of Oregon find that many of the free-flowing rivers of Oregon and Waldo Lake, and lands adjacent to such lake and rivers possess outstanding scenic, fish, wildlife, geological, botanical, historic, archaeologic, and outdoor recreation values of present and future benefit to the public." It further states that "the policy of permitting construction of dams and other impoundment facilities at appropriate section of the rivers of Oregon and Waldo Lake needs to be complemented by a policy that would preserve Waldo Lake and selected rivers or sections thereof in a free-flowing condition and would protect and preserve the natural setting and water quality of the lake and rivers to fulfill other conservation purposes." Protecting water quality in

waterbodies within state scenic waterways from degradation and designating them as ORW's would be consistent with the existing statutes. However, some waterbodies may not have been designated as Scenic Waterways because of the outstanding water quality values. Inherent in the designation, though, would be to protect water quality in order to protect the other outstandingly remarkable values of the waterbody.

(b) Federal Wild and Scenic Rivers: Under the National Wild and Scenic Rivers Act, it states "that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in their free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect water quality of such rivers and to fulfill other vital national conservation purposes."

Although the National Wild and Scenic Rivers Act does not provide specific guidance on water quality, other than the general "preserve water quality" statement, the interpretation of the Act according to the Federal Register V.47 No.173 September 7, 1982, is that the policy for Wild and Scenic Rivers is for nondegradation and enhancement for all designated river areas, regardless of whether they are classified as Wild, Scenic or Recreational Rivers. All uses of those rivers can not adversely impact or degrade those values for which the river was designated. It further states that river managers within the designated areas will work with local authorities to abate activities which are degrading or would degrade water quality.

It was the intent of the National Wild and Scenic Rivers Act to protect water quality at the highest level. Designating those waters as ORW's would be consistent with both the Antidegradation Policy and the Act.

(c) Nomination Process

The Department proposes to evaluate the waters within wilderness areas, wild and scenic rivers, and state scenic waterways as a priority to determine what data exists for those waters, and to identify generally which waterbodies need additional level of protection as ORW's based on staff review and recommendations. However, the Department can only accomplish this with additional staff resources. The Department will assemble readily available information in the 1992 305(b) Biennial Status Assessment Report, which will be completed by April 1992.

Nominations for additional waterbodies to be considered from the public could be timed with the triennial standards review process so that nominations could be considered concurrently with subsequent administrative rule amendments to the water quality standards and policies. Gathering of supporting information, public workshops and hearings would follow before the Commission would consider the designation of special waterbodies. At this time, it is difficult to determine how many additional nomination applications would be received by the Department, and therefore the staff workload to review those nominations. However, following the completion of the 1992 305(b) Report, the Department will have a better sense of the complexity and time required for reviewing the nomination applications and supporting information. At this time, it is estimated that a full time staff position would be needed to review data, applications and prepare designation reports for the Commission. The Department estimates that it may receive many applications based on all the waterbodies already designated by other agencies. If nomination applications are complete when submitted, the Department may be able to prepare three to four designation reports per year.

(d) Tradeoffs

The Commission was concerned that the time involved in reviewing the nomination applications, would take away from existing priorities to improve water quality in waterbodies that are not currently in compliance with water quality standards. The Department believes that the commitment to the existing program priorities will remain the same. The additional work involved with the

nomination and designation of ORW's will be accomplished only as additional staff resources become available, or there is a shift in current priorities.

(e) Protecting Water Quality Within ORW's

Designation of waterbodies as ORW's does not mean a moratorium on all activities or development upstream or within that waterbody. The purpose is to manage land or water uses so that the existing water quality and special, or sensitive, water quality values are protected for the future. Within the management plan for a designated waterbody, those special values will be identified and recommendations made to protect those values. Certain uses can still occur but greater attention needs to be paid to assure that permit limits in urban areas upstream of ORW's or BMP's are appropriate and implemented. An applicant proposing an activity that may affect water quality that requires Department approval will need to demonstrate how the special resource values or parameters will be protected in ORW's.

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 three alternatives considered for the Antidegradation Policy:

1. Do not adopt the proposed amendments and maintain the current policy.

2. Adopt amendments to the policy as described in Alternative 2.

3. Adopt amendments to the policy as described in Alternative 3.

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, retaining the current rules 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 recommends that Alternative 1 be rejected.

Alternative 2 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 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. It also recognizes other state and federal designations for waterbodies such as Wild and Scenic Rivers, and automatically includes them as ORWs where existing water quality must be maintained and protected.

An implementation plan for the Department's recommended alternative is included in Attachment G.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the adoption of Alternative 2, the proposed Antidegradation Policy (Attachment A). This new language would be in compliance with the federal requirements and establish a process for designating Outstanding Resource Waters. The Department will immediately establish a schedule to review currently available data, develop criteria, evaluate priorities and needs, and identify the waterbodies which are currently either State Scenic Waterways, or Federal Wild and Scenic Rivers to determine which waterbodies should be considered for nomination as Outstanding Resource Waters. Designation reports for the Commission consideration will be developed as staff resources allow. This alternative provides the Department with a process to review and evaluate the waterbodies that clearly need additional protection, over and above that already provided by the high quality policy.

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 proposed Antidegradation Policy.

1. Is the High Quality Waters Policy strong enough to provide adequate protection for water quality and ecological integrity?

2. Given the staff limitations, existing priorities 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?

INTENDED FOLLOWUP ACTIONS:

The Department will identify and review the river segments or waterbodies currently included in Wilderness Areas, 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 as staff resources allow. Based on the number of waterbodies, and priorities and critical nature for designation, the Department will establish a schedule for developing the designation reports 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.

Approved:

Section: Eugene Foster for NSM

Division: Kyra Taylor

Director: Kyra Taylor

Report Prepared By: Krystyna Wolniakowski

Date Prepared: July 25, 1991

SW\WC5thru8\WC8738
July 1, 1991

Attachment A

PROPOSED RULE LANGUAGE

Attachment A

ALTERNATIVE 2: PROPOSED RULE LANGUAGE FOR ANTIDEGRADATION POLICY

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 values to be protected and 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 except on a short term basis to respond to emergencies or to otherwise protect human health and welfare.

ALTERNATIVE 3: (Same as Option 1 but add Section E to rule)

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.

Attachment B

FISCAL AND ECONOMIC IMPACT STATEMENT

FISCAL AND ECONOMIC IMPACT

Adoption and implementation of the proposed revisions to the Antidegradation Policy could result in increased costs to local governments, small businesses, and individuals for treatment and control of point and nonpoint source wastes. Specifically, increased costs for wastewater treatment could be incurred by municipalities, private utilities, and industries to reduce toxic substances loading to surface waters, or to provide specific outfall designs to minimize impacts on beneficial uses. These costs could break down into two categories: (1) capital construction costs for advanced wastewater treatment facilities to improve toxic substance removal, or build or extend outfalls into areas of minimal impact, and (2) increased operating costs.

In addition, increased costs could be incurred by a wide range of individuals and governmental entities for the improvement of management practices. These costs would relate to improving management practices to better control nonpoint sources to prevent degradation of water quality and maintain and protect all designated beneficial uses in agricultural, forest harvest, and urban areas.

However, it is predicted that the fiscal and economic impacts will be minimal, with no significant increase over the implementation of the current rules.

Attachment C

PUBLIC NOTICE

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

A CHANCE TO COMMENT ON WATER QUALITY STANDARDS

Hearing Dates: Noted below
Comments Due: 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.

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.

2. Antidegradation Policy: The Department proposes including protection for all waters of the state, criteria for lowering water quality, and establishing a category for Outstanding Resource Waters for those waters needing additional protection.

3. Dissolved Oxygen: The Department proposes two options for statistically based dissolved oxygen criteria, to fully protect sensitive life stages of all aquatic life.

4. Bacteria: The Department proposes using Enterococcus as the indicator organism to protect for public water contact recreation rather than the fecal coliform bacteria that is currently used as an indicator organism. However, the fecal coliform standard will remain the same for shellfish growing waters.

5. Toxic Substances: The Department proposes adding standards for ammonia, chlorides and aluminum, adding a provision for wildlife protection, and adding a water quality standard for 2,3,7,8-TCDD to protect aquatic life. Use of contamination levels in fish tissue as an indicator of water quality standard violations is also proposed.

6. Mixing Zones: The Department proposes to remove reference to a specific test length for acute toxicity bioassays to provide flexibility in testing procedures, and to add a zone of immediate dilution within the mixing zone.

7. Biological Criteria: The Department proposes language to assure the protection of indigenous aquatic life communities and ecological integrity.

8. Particulate Matter and Turbidity: The Department proposes to change reference from Jackson Turbidity Units to Nephelometric Turbidity Units.

HOW TO COMMENT:

PUBLIC HEARING SCHEDULE

City	Location	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
Water Quality Division Attn: Mary Halliburton
811 Southwest Sixth Avenue
Portland, Oregon 97204

The comment period will end January 25, 1991 at 5:00 PM

For more information or copies of the Department's issue papers or proposed rules, contact Mary Halliburton at 229-6978 or toll free at 1-800-452-4011

WHAT IS THE NEXT STEP:

After the public testimony has been received and evaluated, the proposed rule amendments will be revised as appropriate, and will be presented to the Environmental Quality Commission in early 1991 for their consideration. The Commission may adopt rule amendments as proposed, adopt modified rule amendments, or decline to adopt rule amendments and take no further action.

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

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.

Attachment D

HEARING OFFICERS REPORT

Attachment D

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
FOR ANTIDEGRADATION POLICY

The following written and oral summaries refer only to comments related to the proposed Antidegradation Policy. They are exerpted from the comprehensive Hearing Record for all the water quality standards presented to the Commission on July 24, 1991, Attachment B. The summaries are numbered as they appeared in the previous EQC staff report.

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.

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.

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.

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.

17. R. J. Hess, Portland General Electric (PGE) letter date 1/23/91.

PGE provides testimony on the standards proposals as follows:

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.

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.

23. William Sherlock, Headwaters, letter dated 2/25/91.

Comments on the Antidegradation Policy revisions proposed as follows:

Antidegradation

The policy requiring re-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.

28. Kenneth H. Patterson, Corps of Engineers (COE), letter dated 2/27/91.

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.

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 not 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.

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.

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.

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.

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.

36. Bruce Apple, National Wildlife Federation, letters dated 3/1/91 and 3/6/91.

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.

41. Bill Gaffi, Association of Oregon Sewerage Agencies (AOSA), letter and materials dated 3/1/91.

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.

Portland Hearing - 1/14/91

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 Hearing - 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 agency, writing permits to allow others to pollute and then enforcing limits on the pollution. She questions the provision for economic justification which allows it to prevail and used as an excuse to degrade waters.

Ms. O'Brien also stated that TMDLs allow the waters to be degraded down to standards. In the case of pulp mills who want to pollute the waters with dioxin she commented that the DEQ has established a dioxin limit on false assumptions, figured out how much dioxin the mills will need to add to the water, and then given the rest of the allocation to others such as wood treaters, water and wastewater treatment plants, etc. The process for describing that no other alternatives exists has not been followed. The environmental impact statement should be laid out to the public with an evaluation of alternatives demonstrating no other reasonable one exists.

The Antidegradation Policy suggests that some waters are less outstanding than others. All waters are outstanding resource to the organisms that depend on it. All waters should be considered outstanding.

Regarding dioxin, 2,3,7,8 TCDD, the acute and chronic levels are based on studies where fish died. The level does not include what is toxic to wildlife. The limits should be completely redone on the basis of current science about bioaccumulation and effects on fish and their predators, and taking in consideration there are other dioxins in the water, that all add cumulatively. The limits for dioxin are not defensible.

The proposals are built around under what conditions you can pollute, and what hurdles do you have to jump if you are a polluter to get the right to pollute waters.

The biological criteria on the other hand are refreshingly built around real life and what is happening in the water. The biological criteria if implemented and enforced offer redress from the unrealistic paper exercise of some of the standards such as dioxin.

Medford Hearing - 1/15/91

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 Hearing - 1/16/91

No oral testimony received.

Pendleton Hearing - 1/17/91

No oral testimony received.

Baker Hearing - 1/17/91

No oral testimony received.

Salem Hearing - 1/22/91

No oral testimony received on Antidegradation Policy.

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.

Attendees - Portland - 1/14/91

(Please Print) Name	Address	Zip Code	Specific Interest (if any)
Lolita Carter	PGE 121 SW Salmon St PDX	97204	
Bonnie Gariepy	Intel Corp. 5200 NE Elam Young Pkwy, Hillsboro, OR	97124	
Walt Meyer	P.O. Box 11680 Eugene OR	97440	
Diane J. Stockton	OCS Div of Blount 4909 International Way, Mil. OR	97222	
Jim Brown	Bogle Center 222 SW Columbia, Suite 1400 Portland	97201	
Carol Whitaker	James River 904 NW Drake St, Camas WA	98607	
Brooke Young	DEQ ECD		
Douglas Morrison	1300 114th Ave SE #110 Bellevue WA	98004	
Steve Hudson	P.O. Box 1414 Portland OR	97201	Boise Cascade
Robert Finnstad	1120 SW 5th Room 400 Portland OR	97204	City of Portland
C. K. Yee	MS PV-11	98504	WDOE (Washington DOE)
Clemison Correia	CH2M Hill 2020 SW 4th, 2nd Floor Portland OR	97201	Comments on water quality issues

Eugene Hearing – [illegible]

(Please Print)

Name	Address	Zip Code	Specific Interest (if any)
Doug Norlen	Waldo Wilderness Council	Box 337	Eugene 97440 water
DAVID BAYLES	OREGON RIVERS COUNCIL	BOX 309	Eugene 97440
RICHARD RAYMOND	P.O. BOX 428, CORVALLIS, OR	97339	
RICHARD MILLER	2911 NW HAYES CORVALLIS	97330	Biological Criteria O_2 "
Ron Garton	1420 NW Kibree Place, Corvallis	97330	Bio Criteria, O_2 Turbidity
Please do not call before 8pm → Mary O'Brien	Environmental Law Alliance Worldwide; 1877 Garden Ave; Eugene	97403	water
HARRY DENNIS	2189 ELYSIUM AV. EUGENE	97401	WASTEWATER
Chuck Huntington	18400 Courtney Road Sherwood	97140	Biological Criteria O_2

PLEASE SIGN IN

Medford 1/15/91

(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	97526-1229	Water Quality & Water Policy
Marvin L. Kennedy	2416 Edgemont Dr., Medford Oregon	97504	City of Medford WWTP, 1100 Kirtland Rd, Central Point, Or.
Wayne Weaver	3915 S. Pac. Hwy	97501	B.C.V.S.A.
David D. Wilson	P.O. Box 9, Klamath Falls,	97601	Weyerhaeuser Co.
Mel Winkelman	2957 Eldorado Dr Medford	97504	City of Medford
Ted DeVore	P.O. Box 9, Klamath Falls	97601	Weyerhaeuser Co.
Liam Sherlock	P.O. Box 729 Ashland	97520	Beneficial uses, W/Q
Robert Noelle	411 W 8th St. Medford OR	97501	City of Medford —
Dave Smith	3139 Merriman Rd. Medford	97501	R.R.V.I.D.
Jon Brazier	P.O. Box 520 Medford	97501	U.S. FS
Debbie Whitall	" "	"	"
Laurie Lindell	3040 Biddle Rd, Medford	97504	BLM
Eric Dittmer	P.O. 3275 Central Point	97502	RVCOG
Brian Lanning	1119 Ellen Ave Medford	97501	SCS
Tonia L Mora	244 S. Grape, Medford	97501	personal
[illegible signature]	190 Vista St, Ashland	97520	Engineering Geologic

(Please Print) Name	Address	Zip Code	Specific Interest (if any)
Bill Johnston	4624 S. Pac. Hwy #5 Phoenix OR	97535	Sirs club

Please sign in — Bend 1/16

(Please Print) Name	Address	Zip Code	Specific Interest (if any)
Roger Brownell	334 nw Hunter Pl. - Bend	97701	Drinking water
SHERNA FISCHER	CTC 1644 NW COLLEGE	97701	
Dave Leslie	Deschutes County 1130 NW Harriman	97701	
Jane Poor	415 N.W. Newport, Bend	97701	
Tom Sloan	Deschutes County Environmental Health	97701	

Please Sign in - Pendleton

1/17

(Please Print)

Name	Address	Zip Code	Specific Interest (if any)
GERALD CARLSON	P.O.BOX 369 STANFIELD, ORE.	97875	City Administrator Stanfield

PLEASE SIGN IN — BAKER

1/17

(Please Print) Name	Address	Zip Code	Specific Interest (if any)
Kay Markgraf	HCR 88 Box 36 Baker 97814	97814	
George Chandler	Rt.1 Box 192 Baker	97814	
Jasper Coombes	RT 1 Box 75-B Richland	97870	
Nico Hopman	550 King Ave Ontario	97914	
Kit Kamo	381 N Oregon, Suite 2, Ontario	97914	
Malheur County Farm Bureau (SP)	SW 4TH Ave., Ontario	97914	
Chris Childs	211 Emisson Ave, Nyssa	97913	
Tom Brock	Rt 1, Box 9C Haines	97833	

Sign up Sheet — Salem

1/22/91

(Please Print)

Name	Address	Zip Code	Specific Interest (if any)
Marvin L. Daniels	City of Woodburn POTW 2855 Molalla Rd OREGON	97071	
EILEEN CRAWLEY	P.O Box 95 AMITY OR	97101	
DON FETTIG - City of Amity	P.O. Box 126 Amity, Or.	97101	
Gary R. Brumbaugh	TUCAT. P.O. Box 460 Albany, Oregon 97321	97321	
DENNIS SHELTON	CH2M HILL 2300 NW WALNUT BL. CORVALLIS OR	97330	
Tom Imchube	USA 3125 SE River Rd Hillsboro		
Donna Heppell	USA 16580 SW 85 Tigard	97223	
Jeff Bickford	Marion County Solid Waste 308 State St., Suite 735, Salem	97301	
Bill Gaffi	155 N 1ST ST Hillsboro OR ~~97124~~	97124	
~~U.S. FOREST SERVICE~~ DAN HELMICK	~~902 Abernethy Rd~~ Oregon City Bureau of ~~Environmental~~ Services 1120 SW 5th Suite 400	97045	
Linda Macpherson		97201	
DARIA WIGHTMAN	2020 SW 4TH AVE, 2nd fl. PORTLAND, OR 97201	97201	
Floyd Collins	555 Liberty St S.E Salem, Ore	97301	

Sign up sheet - Newport

1/22/91

(Please Print) Name	Address	Zip Code	Specific Interest (if any)
Kenneth Shaner	614 Evergreen Reedsport	97467	
Lynne Krasnow	HMSC Newport	97365	
Don Rice	79114 Collins Rd. Clatskanie Or.	97016	Wetlands
Dan Dority	11228 S.W. Capitol Hwy. Portland	97219	wetlands
Dan & Thea Dority	5939 Champoeg Rd. NE. St. Paul Or.	97137	wetlands
Gail Staton	255 S.W. Coast Hwy, Newport	97365	Estuaries.
TOM GRAHAM	POBOX 1427 Newport	97365	TOXIC substances

Attachment E

RESPONSE TO TESTIMONY:

ANTIDEGRADATION POLICY

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.

Attachment F

SUMMARY OF COMMENTS FOR ANTIDEGRADATION POLICY

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.. wrt 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)

Attachment G

DRAFT IMPLEMENTATION PLAN

ANTIDEGRADATION POLICY

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 where water quality violates standards, 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.

Attachment H

ANTIDEGRADATION ISSUE PAPER

May 1990

Issue Paper #2
Antidegradation Policy
Discussion Draft

I. Definitions and Background

A. Definitions

Degradation

"Degradation" can be defined as a permanent measurable change in the existing chemical, physical, or biological parameters of water that results in the statistically significant lowering of water quality.

Nondegradation

"Nondegradation" means that existing water quality must be maintained and protected and that no permanent water quality degradation will be allowed under any circumstances. Nondegradation could be applied to waters that are water quality limited (do not meet standards), in order to eventually improve water quality to meet standards. It could also be applied to outstanding state and federal resource waters where it may be desired to maintain water quality at its highest level to protect exceptional resource values.

"Antidegradation" means that limited water quality degradation would be allowed under certain circumstances. It is usually applied to high quality waters (those that meet or exceed standards), and assumes that high quality waters should not be allowed to degrade to the standard without a conscious decision. Currently, lowering of water quality would only be allowed if highest and best practicable control of wastes is provided, if beneficial uses are still fully protected and water quality standards are met, and only after extensive public review and Commission approval. The goal is to prevent unnecessary degradation of water quality.

B. Background

On July 19, 1985, The Environmental Quality Commission directed the Department to review water quality standards for the antidegradation, mixing zones, and toxic substances, develop issue papers, and prepare amendments to the rules. The Department prepared an issue papers on the rules and received approval from the Commission to conduct public hearings on July 13, 1986. The hearings were held July 21-24, 1986. Oral and written testimony was reviewed and evaluated by staff.

Final rule language was drafted to address public testimony concerns and to incorporate staff recommendations.

On August 28, 1987, the Commission adopted final rule language for toxic substances and mixing zones. However, the Department decided to postpone proposing final rule language for the antidegradation policy to the Commission until an implementation plan could be developed concurrently with policy language. Development of an implementation plan for antidegradation has been controversial, and has required more staff time for analysis than was originally estimated.

This discussion draft will present the federal requirements for antidegradation, state interpretation of the requirements, proposed amendments to the rule language, a discussion of some of the issues concerning implementation, and an outline for a possible implementation plan.

C. General Purpose of the Antidegradation Policy

The purpose of an antidegradation policy is to limit activities or discharges to those that will not significantly affect water quality and not threaten or impair beneficial uses of all waters of the state. The policy should allow for some water quality degradation to accommodate necessary growth and development in high quality waters, with the provision that beneficial uses must always be protected. Special protection should be provided for water quality limited and outstanding resource waters to improve, maintain and protect water quality at the highest level possible and to preserve the value of the resources. Water quality limited waters are those waters that do not currently meet standards. High quality waters are defined as those waters that meet or exceed water quality standards. Outstanding resource waters are specially designated state or federal waters which are recognized for their exceptional resources values regardless of whether they meet or exceed water quality standards.

D. Federal Requirements

Section 101(a) of the Clean Water Act defines the national goal of restoring and maintaining the chemical, physical and biological integrity of the Nation's waters. Section 303(a)(4) explicitly refers to satisfaction of the antidegradation requirements of 40 CFR 131.12 (Water Quality Standards Regulations) prior to taking various actions that may lower water quality. 40 CFR 131.12 requires that all states must have antidegradation policy language that is consistent with and at least as stringent as the federal policy language and adopted as part of the state water quality standards. In addition, the federal regulation requires that each state should develop appropriate implementation procedures.

The federal antidegradation policy represents a three tiered approach to maintaining and protecting various levels of water quality and uses:

- The first tier protects all existing uses and the level of water quality necessary to protect those uses must be maintained and protected. thus, any actions that would lower water quality below that necessary to protect uses, especially where water quality is already limited, are prohibited.

- The second tier provides protection for high quality waters that exceed standards. Limited water quality degradation is allowed in high quality waters, but only if beneficial uses are still protected fully, and only after extensive public involvement.

- The third tier provides special protection for outstanding resource waters, such as Wild and Scenic Rivers, National and State Parks, wildlife Refuges, and other waters of exceptional recreational or ecological significant. Although limited activities that may cause temporary or short-term water quality disturbance are allowed, any actions that would permanently lower water quality in these waters are prohibited.

E. Oregon State Statutes

ORS 468.710 states that:

Whereas pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial,

recreational and other legitimate beneficial uses of the water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be public policy of the state: (1) To conserve the waters of the state; (2) To protect, maintain and improve the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life for domestic, agricultural, industrial municipal, recreational, and other legitimate beneficial uses; (3) To provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate uses of such waters; (4) To provide for the prevention, abatement and control of new or existing water pollution; and (5) To cooperate with other agencies of the state and Federal Government in carrying out these objectives.

II. Current Rule

The water quality standards contained in Oregon Administrative Rule Chapter 340, Division 41 were created to fulfill the requirements of this statute. However, the current antidegradation policy in Section 340-41-026(1)(a) was adopted in 1979, and is not consistent with the 1983 revision of the federal antidegradation policy (CFR 131.12). The Environmental Protection Agency, several state agencies, and several members of the public requested that the Department revise the policy and provide better consistency with the federal language.

III. Concerns With the Rule

The current antidegradation policy (OAR 340-41-026(a) shown in Attachment A attempts to protect high quality waters (water quality better than standards) from unnecessary degradation in order to protect beneficial uses. Lowering of water quality can only occur if the Commission approves the action after extensive public review, and after finding that lowering of water quality is necessary and justifiable. However, the current rule revision in order to address several problems.

The application of the policy to high quality waters has often been confusing for several reasons:

- No clear guidelines exist to assist with deciding when water quality degradation is necessary and justifiable. Decisions have been made on a case-by-case basis, primarily for point source discharges.

- o No definition exists to determine how much water quality can be lowered before it becomes significant degradation.

- o No method is described that assists with predicting or measuring water quality degradation in high quality waters, especially degradation that may occur from nonpoint sources.

- o No recognition exists for protection of other quality waters of the state such as water quality limited waters, and outstanding resource waters.

The current numeric and narrative water quality standards are intended to protect beneficial uses of all quality waters of the state. However, many waterbodies have water quality that is better than the standards, or have unique characteristics that need recognition or protection beyond the existing standards. Since the beneficial uses are broadly defined for nineteen river basins, and not for specific stream segments, the existing water quality standards may not adequately protect some of the more sensitive, less defined beneficial uses (i.e., recreation, aesthetics), or the biological integrity of unique waters of the state.

With the absence of water quality standards specific for high quality waters, activities that may lower water quality in high quality waters have been regulated through application of the current antidegradation policy. However, the current antidegradation policy is not consistent with federal water quality regulations, does not protect all waters of the state, only high quality waters, does not include a clear decision-making mechanism to lower water quality, and does not recognize special protection for outstanding resource waters.

IV. Application of Antidegradation Policy

To date, the Department has utilized the antidegradation policy as a guide for setting water quality standards for protection of beneficial uses, and for controlling activities that may cause degradation. The antidegradation policy should be implemented through the enforcement of numerical and narrative water quality standards in permits for point sources, and best management practices for nonpoint sources. Any actions which would result in lowering water quality is subject to antidegradation policy implementation.

Actions covered by antidegradation provisions include, but are not limited to, the following:

A. Permit Actions

1. Issuance/re-issuance/modification of NPDES permits
2. Issuance of variance (e.g., 301(h), etc)
3. Issuance of permits for urban runoff
4. Adoption or alteration of mixing zones
5. Relocation of a discharge
6. New discharge source
7. Increases in the discharge of pollutants from point sources due to:

    a. Industrial production increases
    b. Municipal growth
    c. New sources

B. Standards/Load Allocation Actions

1. Water quality standards revision
2. Revision of wasteload allocation
3. Reallocation of abandoned loads
4. Section 410 certifications
5. Section 208 or 303(e) approvals
6. Water Quality Management Plan approvals

C. Nonpoint Source Actions

1. Changes in regulated agricultural activities
2. Changes in regulated silvicultural activities
3. Changes in regulated mining activities
4. Changes in best management practices
5. Resource management plan approvals
6. Land management (e.g., Forest) plan adoptions, certifications or approvals
7. Discharge of dredged and fill material
8. Construction and operation of roads, dams, etc.
9. RCRA/CERCLA actions
10. Construction grant activities
11. Water quantity/water rights actions which affect water quality
12. Development of water quality management plans for specially designated waterbodies (Wild and Scenic Waterways, State Scenic Waterways)

V. Key Issues

In attempting to apply the Antidegradation Policy to many different activities, several key issues and concerns emerge that need to be resolved with clearer policy language.

A. Point vs Nonpoint Sources:

Point sources of pollution can be evaluated for compliance with the antidegradation policy through the permit process. Essentially no extra work is involved in fulfilling the antidegradation public participation requirements since they are met as part of the NPDES permitting process. In addition, pollutant loadings are easier to calculate, and waste load allocations assigned, since the permittee must supply most of the data that is needed for the Department to issue the permit.

There is no analogous framework for nonpoint source activities. It is unrealistic that antidegradation could be considered for each silvicultural or agricultural activity that may contribute nonpoint sources of pollutants, since these activities do not require individual permits from the Department. Nonpoint sources have been controlled to some degree by implementing Best Management Practices, but predicting or quantifying water quality degradation from nonpoint sources has been hampered by lack of routine baseline monitoring data collected on a regular basis.

The Department has recently completed an update of its Statewide Nonpoint Source Assessment to identify problem areas, and will be evaluating the effectiveness of BMP's in protecting water quality. A monitoring strategy is being developed to quantify existing habitat and water quality conditions in key areas. An implementation plan for nonpoint sources will most likely develop in conjunction with the NPS assessment process. The plan will also address the development of a public notification process for nonpoint source activities that would lower water quality but which do not currently have public notification requirements.

Most recently, the Department was involved in applying the antidegradation policy to a nonpoint source project, the logging of the Silver Complex Fire. The Department examined all the management alternatives to determine if any long-term water quality degradation might occur from increased turbidities and temperatures due to the proposed logging and road building activities. The extent, duration, and impact of turbidity and temperature on fisheries were calculated, and it was determined that if all practicable measures were incorporated to minimize the effects, then beneficial uses should be protected. However, to ensure that water quality standards are not violated, the Department has

required extensive monitoring during the project, and the development of a cumulative effects model that describes the uncertainties involved. A high level of effort was required for this project review, which is not feasible for every nonpoint source project. However, this project can serve as a model for how to approach other nonpoint source assessments and consistency with antidegradation provisions.

The EPA recognizes that implementation for NPS is still in the planning stages, and is encouraging, but not requiring the development of implementation plans at this time.

B. Designation of Outstanding Resource Waters:

The designation of outstanding resource waters can be done in several ways. The Department can recognize and list these waters that are state or federally designated for their special value. Such waters would include : National Wild and Scenic Rivers, National Parks, National Wildlife Refuges, State Parks and State Scenic Waterways. Other specially protected waters should include those waters designated by state or federal agencies as exceptional waters of ecological or recreational significance. These waters could be special because of the presence of unique, threatened or endangered aquatic life. Unique rangelands, estuarine sanctuaries, tribal fishing grounds, or Research Natural Areas, are administered under a federal program, whereas "wild trout" sanctuaries streams would be administered by state, federal or tribal agencies. The Department would review proposed activities that were under our jurisdiction that could cause permanent water quality degradation with those unique resource values in mind. To apply the rule to these waters, however, formal recognition and action would be needed by the Environmental Quality Commission to recognize the waters as "outstanding resource waters" and resolve any conflicts between development and preservation based on that designation.

C. Measuring cumulative impacts:

Although temporary degradation of water quality is permitted to accommodate short-term activity, cumulative impacts need to be considered. Several methodologies are published to determine how to calculate cumulative effects from a series of proposed actions. This has to be done on a site-specific basis. Since cumulative effects occur from a gradual nibbling away of the resources, reference sites with a baseline of information are vital to judge and predict where impacts

are, or may become, a threat to beneficial uses and habitat integrity. An analysis of the structure and function of the biological system, and an understanding of its ability to recover from the disturbance is necessary. The scale and types of proposed disturbance are important to consider. The scale of an effect might range from a localized stream, up to the size of a watershed. The type of cumulative impact expected will be the result of several activities occurring in time without enough time for the waterbody to recover. This may cause direct or indirect, additive or synergistic effects. Just how much impact is acceptable, must be determined on a site specific basis.

VI. Amending the Antidegradation Policy

Before appropriate amendments to the antidegradation policy can be designed to protect water quality and beneficial uses in all waters of the state, a framework for an implementation plan needs to be developed. The framework needs to recognize the different levels of water quality for waterbodies of the state, establish standards to protect those levels, and develop a clear decision-making mechanism address activities that may lower water quality.

In order to assess the level that water quality is better than standards in the waterbodies of the state, to recognize special resource values in those waters, and to identify the effects of activities that may temporarily or permanently lower water quality, a waterbody classification system is proposed. The classification system would clearly define which waterbodies need special protection, which values need to be preserved, and which waterbodies may be degraded as long as applicable standards are not violated.

The Department could develop a waterbody classification system with general standards that would apply to those classes of waters. This system would provide additional protection for high quality and outstanding resource waters. It would involve the following steps:

a. Identify special values of characteristics of high quality waters and outstanding quality waters.

b. Identify general standards that would assist in preserving the special values or characteristics of these waters.

c. Develop a waterbody classification system for waters of the state that would clearly define levels of water quality protection needed and the general standards that would be applied. The classification system proposes five classes of water, with standards to be set specifically for each class, with categories as follows:

Class A1: OUTSTANDING RESOURCE WATERS

Waters that have a special resources quality which needs to be protected in its existing condition. Specific standards would have to be established to protect the unique qualities. Short-term or temporary disturbance would be allowed, but standards set for this class could not be violated.

A2. HIGH QUALITY WATERS

Waters where existing water quality is higher than the standards (< 50% load capacity), and water quality should be maintained as close to background levels as possible. Specific background conditions need to be established, and specific procedures for lowering water quality need to be defined.

B1: GOOD QUALITY WATERS

Water that are between 50-90% of their loading capacity. These are the "work-horse" or managed rivers that meet existing water quality standards, and can assimilate additional loads under certain circumstances.

B2: MAXIMUM POTENTIAL WATERS

Waters that are within 10% of their loading capacity and cannot have an increase in loads. These waters need estimated TMDLs and may occasionally violate standards. A nonpoint source management plan may need to be developed and implemented.

C1: WATER QUALITY LIMITED WATERS

Waters that are over their loading capacity. These waters routinely violate water quality standards and TMDLs, WLAs, and LAs need to be established.

d. Amend the antidegradation policy to include a decision-making mechanism to protect or lower water quality in all waters of the state, and incorporate reference to the water body classification system.

VII. Departments Proposed Changes

Based on public review and testimony from earlier hearings and workshops, and the Department's review, the Department proposes to modify the current Antidegradation Policy as follows:

- Extend water quality protection to all waters of the state, not just the high quality waters;
- Revise language so that lowering water quality had to be important and justifiable for economic or social reasons;
- Recognize State Scenic Waterways and areas of special ecological or recreational significant as waters where the highest level of protection of water quality is needed to protect beneficial uses and special values of those waters; and
- Include a provision to prevent cumulative impacts from a series of water quality disturbances within the same stream system.
- Include an Implementation Plan for point and nonpoint sources, including public comment notification procedures for nonpoint source activities that may lower water quality, and criteria for determining economic and social impact analyses;
- Include a designation process for outstanding resources waters; and
- Identify methods for measurement of cumulative impacts.

VIII. Possible Implementation Procedures

Four basic steps should be included in implementing the antidegradation policy:

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.

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.

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 exceeded (A2-B2 waters). If the waterbody is water quality limited or an outstanding resource water (Tier C1 or A1), 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 a A2-B2 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 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 cause by nutrients or 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 Tier A1 and C1 waters is also important. If a proposed action lowers water quality in a waterbody that is upstream of a Tier A1 or C1 waterbody, 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.

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

IV. Policy Considerations of Options

The current antidegradation policy in the water quality standards protects high quality waters of the state. The proposed classification system, and a policy that incorporates the system would provide a clearer definition of the waters that need appropriate levels of protection. It is not anticipated that additional restrictions on activities will result. However, if it is found that current permits or best management practices are determined to be insufficient to protect the beneficial uses and values of outstanding resource waters, improved or additional best management practices may be required, or activities more strictly regulated in portions of an upstream area.

X. Program Considerations

The proposed waterbody classification system would require additional staff time to complete, and would require additional reviews of permits and best management practices to assure compliance with the standards. However, the development of an antidegradation policy and implementation plan is part of the regular triennial standards review process.

The development of specific water quality standards for designated waters would be very resource intensive. It would require considerable staff time to develop the necessary information to designate a waterbody and set the standards.

XI. Alternatives Considered by the Department

In order to meet the federal antidegradation policy requirements of the Water Quality Act (1987) as amended, and to address protection of water quality in all waters of the state, the Department is evaluating three options. The options are as summarized as follows:

The alternatives considered by the Department include the following:

A. Amend the antidegradation policy language to be consistent with federal regulations, and implement the policy for high quality waters on a case-by-case basis within existing program functions. This alternative would meet the federal requirements for amending the policy, but would not provide clear guidance for implementation.

B. Classify waters of the state into categories according the quality, and develop standards for the high quality and outstanding quality waters category. Amend the antidegradation policy to incorporate reference to these standards. This alternative would require an additional amount of work in classifying the waters of the state, but would more clearly define applicable standards to the different waterbody types, and would recognize special resource values.

C. Develop a specific process for designating high quality and outstanding resource waters and setting standards for these designated waterbodies. Instead of a waterbody classification system, each designated high quality waterbody, or outstanding resource waterbody would have specific standards to protect the unique values of that waterbody. The antidegradation policy would be amended to include reference to protection of specifically designated waterbodies. This alternative would require an extensive amount of staff work to develop the specific standards for each designated waterbody.

Attachment A

CURRENT ANTIDEGRADATION POLICY Section 340-41-026(1)(a) under "Policies and Guidelines Generally Applicable to All Basins" states the policy as follows:

"Existing high quality waters which exceed those levels necessary to support the propagation of fish, shellfish, and wildlife, and recreation in and on the water shall be maintained and protected unless the Environmental Quality Commission chooses, after the full satisfaction of the intergovernmental coordination and public participation provisions of the continued planning process, to lower water quality for necessary and justifiable economic or social development. The Director or his designee may allow lower water quality on a short-term basis in order to respond to emergencies or to otherwise protect public health and welfare. In no event, however, may degradation of water quality interfere with or become injurious to beneficial uses of water within surface waters of the following areas: (A) National Parks; (B) National Wild and Scenic Rivers; (C) National Wildlife Refuges; (D) State Parks.

Oregon

ENVIRONMENTAL
QUALITY
COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: September 19, 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 ___

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 ___
___ 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 routine changes are 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&G

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

Funds are allocated based upon the proportion of sewer connections scheduled to be made during the biennium for households with incomes of less than 200% of the poverty level. However, 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 programs are incomplete at this time.

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 Sub-committee 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 approval for the Department to make fund allocation and program changes during the biennium 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 (as soon as the Treasurer lifts his moratorium on the sale of State general obligation bonds). 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.

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 October 31, 1991.

b. Work with new programs on loan agreements to be signed by October 1991, or as soon thereafter as the community is ready to disburse funds.

c. Issue Pollution Control Bonds to fund the program during October 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: _____

Division: _____

Director: _____

Report Prepared By: Peggy Halferty

Phone: 229-6412

Date Prepared: June 17, 1991
Revised August 8, 1991

PKH:crw
CG\WC8880
August 28, 1991

ASSESSMENT DEFERRAL LOAN PROGRAM
REVIEW OF 1991-93 SEWER SAFETY NET PROGRAM APPLICATIONS

I. PORTLAND

Portland continues to meet the basic eligibility requirements for the Assessment Deferral Loan Program. They have made loans totaling over $800,000 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 $1999. 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 $7500) 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 defer 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 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.

The Department recommends that the Portland Assessment Deferral Loan Program be approved by the Commission as meeting the intent of the program to provide financial assistance to those who would experience extreme financial hardship from payment of sewer assessments.

II. GRESHAM

Gresham meets the eligibility criteria for the Assessment Deferral Loan Program. About $300,000 was needed for deferrals from August 1990 through June 1991. However, only $168,000 was provided in funding.

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. Housing costs including mortgage payments, property insurance, property taxes, average utility costs (excluding telephone), assessment bond costs, and payments for private plumbing connection 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 ($7500) 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.

The Department has reviewed 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.

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 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 $5200 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 program described above and on the Summary is the program which was approved by the Commission for 1989-91. However, at the Legislative Ways and Means committee meetings, Eugene represented their program to include the "Assessment Affordability" deferrals which extend the program to those in higher income ranges whose annualized costs of the assessment is greater than 4 to 5% of their annual income.

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.

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 the summer of 1991, 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 developed, 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 also 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 has not yet assessed property owners. Statistics on the total project are on the Summary. While the average assessment is only $3286 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.

In the program submitted by Oregon City, owner-occupied homes would be eligible for deferred loans 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

EQC Meeting: September 19,1991
Agenda Item: H

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

EQC Meeting Date: September 19, 1991
Agenda Item: H

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

ASSESSMENT DEFERRAL LOAN PROGRAM
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

To be eligible to participate in the Assessment Deferral Loan Program, a public agency must meet 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.

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 fully finances agreements in place as of July 1, 1991. The Subcommittee expects that those in place will not be amended, increasing 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 in use by the City of 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. For homeowners above 200% of the poverty level, partial deferrals would be possible to the extent that debt service on the assessment contract would exceed a specified percentage of income.

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 had 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 Sewer 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 each biennium.

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/amendment will cover procedural items 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 the proposed procedural changes 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.

ASSESSMENT DEFERRAL LOAN PROGRAM
FOLLOW UP ACTIONS SINCE JULY 25, 1991 EQC MEETING

ISSUE

This item is carried over from the July 25th EQC meeting where it was tabled pending resolution of an issue with respect to one part of the City of Eugene's program. Based upon the information available to the Commission, it could not be determined whether or not the "Assessment Affordability" component Eugene developed to assist owners of large lots is part of the City's "approved program" or a change which is beyond the scope of what would be allowed by the Ways and Means Budget Note.

The original staff report took the position that "approved program" meant one approved by the EQC in its biennial review of city applications. Eugene's position was that since the City told DEQ about their intent to make the change and since the City advertised the availability of the "Assessment Affordability" component to the public, it is part of their "approved program".

FOLLOW-UP

Since the EQC meeting, the Department has worked to obtain clarification as to what exactly the Budget Note requires. Copies of the tapes of the Ways and Means Subcommittee meetings (where funding for the Assessment Deferral Loan Program was discussed) were obtained and reviewed. The Department has also spoken with Kay Hutchison, the Legislative Fiscal Officer who drafted the Budget Note. She was contacted by one member of the Subcommittee who feels that this element was part of the approved plan. Unfortunately, the record is unclear.

CONCLUSION

Given the lack of clarity in the record, extensive discussion on the record about the importance of providing local governments with flexibility, and the strong belief of Eugene that the "Assessment Affordability" component was part of their approved plan when Decision Package 125 (and the Budget Note) were approved by the Subcommittee, it is reasonable to approve the "Assessment Affordability" component of Eugene's program. The Legislative Fiscal Office concurs with the findings made by the Department in reaching the revised recommendation.

Commission support is respectfully requested of all seven Assessment Deferral Loan Program applicants as submitted by the applicant communities (including Eugene).

Oregon

ENVIRONMENTAL
QUALITY
COMMISSION

REQUEST FOR EQC ACTION

Meeting Date: September 18, 1991
Agenda Item: I
Division: MSD
Section: Finance

SUBJECT:

Pollution Control Bonds: Authorization to Issue State of Oregon Pollution Control Bonds.

PURPOSE:

Authorization to issue Pollution Control Bonds in the amount of $35,350,000 is sought for three purposes: (1) sewer construction in mid-Multnomah County, (2) the Assessment Deferral Loan Program, and (3) orphan site cleanup.

1. At its June 29, 1990 meeting, the Environmental Quality Commission (EQC) approved an Intergovernmental Agreement between the Department of Environmental Quality (DEQ or Department) and the City of Portland (City). This agreement is part of the implementation plan for the protection of drinking water in mid-Multnomah County. The agreement establishes a mechanism for financing sewer construction. The basic structure calls for DEQ to purchase special assessment improvement bonds (SABs) issued by the City with the proceeds of simultaneously issued State of Oregon Pollution Control Bonds.

   The Intergovernmental Agreement is a master agreement that will control a series of bond purchases over about fourteen years. This bond purchase is the second of that series. The City of Gresham entered into a similar Intergovernmental Agreement but has chosen not to participate in this second round of financing. Total: $25,000,000.

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2. The Assessment Deferral Loan Program, commonly known as the sewer safety net program, provides sewer assessment financing assistance to low income properties. This program has, in the past, been financed with both bond proceeds and General Fund dollars. The current budget provides for the program to be funded with Pollution Control Bond proceeds, with debt service funded by General Fund appropriations. Total: $3,000,000.

3. The Department of Environmental Quality (Department or DEQ) is charged with the responsibility to investigate and cleanup sites where hazardous substances have been released to the environment and where the responsible parties are unknown, unwilling or unable to complete the cleanup activities. Pollution Control Bonds issued to fund these activities are repaid by a bulk petroleum loading fee, the hazardous substance possession fee, and a solid waste tipping fee. Total: $7,350,000.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
___ Adopt Rules

Proposed Rules	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Public Notice	Attachment ___

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

Proposed Order	Attachment ___

_X_ Approve Department Recommendation

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

Authorize sale of State of Oregon Pollution Control Bonds. Attachment A is the Bond Issuance Resolution.

DESCRIPTION OF REQUESTED ACTION:

EQC authorization of the sale of State of Oregon Pollution Control Bonds for the purposes of purchasing special assessment sewer bonds in mid-Multnomah County, funding the Assessment Deferral Loan Program, and orphan site cleanup.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 468.195 - .220 Attachment ___
_X_ Pursuant to Rule: OAR 340-81-005 -100 Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints: (explain)
An atypical time constraint exists in the form of the State Treasurer's moratorium on the issuance of general obligation debt by the state. Until that moratorium is lifted with respect to Pollution Control Bonds in particular or state general obligation bonds in general, the Department will not be able to exercise the attached bond issuance resolution. If the resolution is authorized, the Department would be able to issue the bonds as soon as the moratorium ends, significantly shortening the process of issuing debt.

DEVELOPMENTAL BACKGROUND:

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

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

Agenda Item O, June 29, 1990. Pollution Control Bonds: Review of Agreement Provisions and Authorization of Bond Sales for Mid-Multnomah County Sewers.

Agenda Item M2, August 10, 1990. Pollution Control Bonds: Authorization to issue State of Oregon Pollution Control Bonds, review of Bond Purchase Agreements, and authorization of special assessment improvement bond purchases for Mid-Multnomah County sewers.

Agenda Item H, July 25, 1991. Approval of individual community Sewer Safety Net (Assessment Deferral Loan) Programs and overall Funding Allocation Plan for the 1991-93 Biennium.

Agenda Item L, July 24, 1991. Information Report: Initiation of the Orphan Site Account.

___ Other Related Reports/Rules/Statutes: Attachment ___

___ Supplemental Background Information Attachment ___

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The issuance of Pollution Control Bonds is the primary financing tool for the three affected programs. Should the bonds not be issued, the regulated/affected community would suffer a number of consequences.

First, the risk sharing mid-Multnomah County sewering program would come to a complete halt. The withdrawal by the state would create a major disruption in that construction program and would delay efforts to remove the threat to drinking water in the affected area.

Second, the Assessment Deferral Loan Program would cease to function and local governments would be confronted with the prospect of initiating foreclosure actions against low income properties because of sewer assessments.

Third, orphan site investigations and cleanup would be severely curtailed, yielding mothballed projects and sharply higher cleanup costs.

PROGRAM CONSIDERATIONS:

This is the first round of bond financing for orphan site cleanups, which involves the triggering of three new revenue sources designated for debt service. It is also the first time that the Department will issue bonds that are solely supported by General Fund appropriation (for the Assessment Deferral Loan Program). The variety of both the purposes for the bonds and the sources of debt service will require a higher level of accounting control than in the past.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

The Department did not consider alternatives; the sale of State of Oregon Pollution Control Bonds is the only mechanism now available to effectively implement the three affected programs which have each been approved by the EQC.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Authorize the sale of State of Oregon Pollution Control Bonds for the three purposes described above.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Authorization of the bond sales by the EQC is consistent with prior Commission actions concerning the protection of drinking water in the mid-Multnomah County area, the lowering of financial barriers for the replacement of failing on-site sewage treatment systems with sewers, and with the cleanup of orphan sites. The bond sale is also consistent with agency policies and with legislative intent.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

Proceed with the sale of Pollution Control Bonds.

Approved:

Section: _____

Division: _____

Director: Lydia R. Taylor

Report Prepared By: Noam R. Stampfer
Phone: 229-5355
Date Prepared: August 9, 1991

NRS:nrs
EQCBONDS.918
August 9, 1991

RESOLUTION AUTHORIZING AND REQUESTING ISSUANCE OF BONDS

The Environmental Quality Commission of the State of Oregon finds:

A. The Department of Environmental Quality (the "Department") has entered into an Intergovernmental Agreement with the City of Portland (the "City"). The agreement contemplates that the State of Oregon will issue General Obligation Pollution Control Bonds to finance the purchase of special assessment improvement bonds of the City (the "Assessment Bonds"). The City will issue the Assessment Bonds to finance sewer system improvements in mid-Multnomah County pursuant to the Mid-County Sewer Implementation Plan.

B. It is now desirable to issue approximately $25,000,000 of State of Oregon General Obligation Pollution Control Bonds to finance the purchase of the Assessment Bonds which the City proposes to issue this calendar year in accordance with the Intergovernmental Agreement.

C. At its 1991 regular session, the Oregon Legislature authorized and directed the Department to fund the State's assessment deferral loan program through the issuance of General Obligation Pollution Control Bonds; the Department estimates that $3,000,000 of such bonds should be issued for that program at the current time.

D. At its 1991 regular session, the Oregon Legislature authorized and directed the Department to fund the Department's orphan site program through the issuance of General Obligation Pollution Control Bonds; the Department estimates that $7,350,000 of such bonds should be issued for that program at the current time.

E. Oregon Revised Statutes, Section 286.031, provides that all bonds of the State of Oregon shall be issued by the State Treasurer.

The Environmental Quality Commission of the State of Oregon hereby resolves:

Section 1. Issue. The State Treasurer of the State of Oregon is hereby authorized and requested to issue State of Oregon General Obligation Pollution Control Bonds ("Pollution Control Bonds") in amounts which the State Treasurer determines, after consultation with the Director of the Department or the Director's designee, will be sufficient to purchase the Assessment Bonds to be issued by the City this calendar year, to fund the assessment deferral loan program, to fund the orphan site program, and to pay costs associated with issuing the Pollution Control Bonds. The Pollution Control Bonds shall mature, bear interest, be subject to redemption, be in such series, and otherwise be issued and sold upon the terms established by the State Treasurer after consultation with the Director of the Department or the Director's designee.

Section 2. Tax Exempt Status. The Department shall comply with all provisions of the Internal Revenue Code of 1986, as amended (the "Code") which are

required for interest on the Pollution Control Bonds to be excludable from gross income under the Code. The Department shall take all steps required so that the Pollution Control Bonds will not be "private activity bonds" under Section 141 of the Code, and will not be "arbitrage bonds" under Section 148 of the Code. The Department shall pay any rebates or penalties which may be due to the United States in connection with the Pollution Control Bonds under Section 148 of the Code. The Director of the Department or the Director's designee may enter into covenants, on behalf of the Department, regarding the maintenance of the tax-exempt status of the Pollution Control Bonds.

Section 3. Other Action. The Director of the Department or the Director's designee may, on behalf of the Department, execute any agreements or certificates, and take any other action the Director or the Director's designee reasonably deems necessary or desirable to issue and sell the Pollution Control Bonds, to purchase the City's Assessment Bonds, and to fund the assessment deferral loan program and the orphan site program, in accordance with this resolution.

[Insert signature block which conforms to EQC style]

Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

REQUEST FOR EQC ACTION

Meeting Date: September 18, 1991
Agenda Item: J
Division: MSD
Section: Finance

SUBJECT:

Pollution Control Bonds: Review and Approval of Amendments to the Intergovernmental Agreement with the City of Portland, Review of a Bond Purchase Agreement, and Authorization of Special Assessment Improvement Bond Purchases from Portland.

PURPOSE:

At its June 29, 1990 meeting, the Environmental Quality Commission (EQC) approved an Intergovernmental Agreement between the Department of Environmental Quality (Department or DEQ) and the City of Portland (City). This agreement establishes a mechanism for financing sewer construction in mid-Multnomah County. The basic structure calls for DEQ to purchase Special Assessment Bonds (SABs) issued by the City with the proceeds of simultaneously issued State of Oregon Pollution Control Bonds.

As part of the risk sharing arrangement between the parties, the Intergovernmental Agreement contained a provision that required the City to provide $30 million of general obligation Bancroft financing for the affected area. Ballot Measure 5 has made that requirement virtually impossible to fulfill. The Department and the City negotiated amendments to the Intergovernmental Agreement that temporarily relieves the City from that obligation. These amendments have been approved by the City Council and now require EQC approval to become effective.

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The Intergovernmental Agreement is a master agreement that is designed to manage a fourteen year series of bond purchases. This bond purchase of $25,000,000 in Special Assessment Bond is the second of that series.

ACTION REQUESTED:

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

___ Authorize Rulemaking Hearing
___ Adopt Rules

Proposed Rules	Attachment ___
Rulemaking Statements	Attachment ___
Fiscal and Economic Impact Statement	Attachment ___
Public Notice	Attachment ___

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

Proposed Order	Attachment ___

_X_ Approve Department Recommendation

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

Approve amendments to the Intergovernmental Agreement with the City of Portland (Attachment A1). Approve Bond Purchase Agreement with the City of Portland (Attachment A2)

DESCRIPTION OF REQUESTED ACTION:

Two actions are requested. Approval of amendments to the Intergovernmental Agreement between the Department and the City of Portland and EQC approval of the Bond Purchase Agreement with the City of Portland. The Bond Purchase Agreement specifies the purchase, by DEQ, and the sale, by the City, of Special Assessment Bonds issued for the purpose of sewering portions of mid-Multnomah County.

AUTHORITY/NEED FOR ACTION:

___ Required by Statute: _____ Attachment ___
Enactment Date: _____
_X_ Statutory Authority: ORS 468.195 - .220 Attachment ___
_X_ Pursuant to Rule: OAR 340-81-005 -100 Attachment ___
___ Pursuant to Federal Law/Rule: _____ Attachment ___

___ Other: Attachment ___

_X_ Time Constraints: (explain)
An atypical time constraint exists in the form of the State Treasurer's moratorium on the issuance of general obligation debt by the state. Until that moratorium is lifted the Department will not be able to sell bonds for the purchase of the City's Special Assessment Bonds. If the Intergovernmental Agreement is amended and the Bond Purchase Agreement is authorized at this time, the Department would be positioned to issue the bonds for the mid-Multnomah County project as soon as the moratorium ends. This will expedite the process of issuing debt.

DEVELOPMENTAL BACKGROUND:

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

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

Agenda Item O, June 29, 1990. Pollution Control Bonds: Review of Agreement Provisions and Authorization of Bond Sales for Mid-Multnomah County Sewers.

Agenda Item M2, August 10, 1990. Pollution Control Bonds: Authorization to issue State of Oregon Pollution Control Bonds, review of Bond Purchase Agreements, and authorization of special assessment improvement bond purchases for Mid-Multnomah County sewers.

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

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The amendment to the Intergovernmental Agreement and the approval of the Bond Purchase Agreement represent a continuation and an extension of the risk sharing partnership between the State of Oregon and the City of Portland. The amendment extends the agreement to include that portion of the financing that the City originally agreed to undertake. The Bond Purchase Agreement represents the second installment of the multi-year financing structure approved by the EQC on June 29, 1990.

PROGRAM CONSIDERATIONS:

None.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Amendment the Intergovernmental Agreement, extending the Department's financing role to that portion of the project that the City originally agreed to finance with general obligation Bancroft debt.

2. Retain the existing language in the Intergovernmental Agreement. The effect of this alternative would be to force the City to sell Special Assessment Bonds on the open market. This alternative has been estimated to add as much as 2.5% to the interest rate charged to the assessed property owner. An interest rate increase of that magnitude could seriously impact the affordability of the program. The Department is not legally required to amend the agreement to remove the City's bancrofting requirement but this action is the only way to maintain the progress that is being made to protect the drinking water in the affected area.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Approve the amendments to the Intergovernmental Agreement and approve the Bond Purchase Agreement between the Department and the City of Portland.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Approval of the amendments and the BPAs by the EQC is consistent with prior Commission actions concerning the

protection of drinking water in the mid-Multnomah County area and with goal 9 of the strategic plan.

This request is consistent with agency policy and with state statutes for Department's purchase of local government bonds.

ISSUES FOR COMMISSION TO RESOLVE:

Is the amendment an appropriate response to a fundamental change in the City's ability to finance sewer construction.

INTENDED FOLLOWUP ACTIONS:

Purchase the City's Special Assessment Bonds with Pollution Control Bond proceeds.

Approved:

Section: _____

Division: _____

Director: Lydia K. Taylor

Report Prepared By: Noam R. Stampfer

Phone: 229-5355

Date Prepared: August 12, 1991

NRS:nrs
PDXBONDS.918
August 12, 1991

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

This agreement is between the City of Portland, Oregon, a municipal corporation, hereinafter called "Portland", and the Department of Environmental Quality of the State of Oregon, hereinafter called "DEQ", and is dated August __, 1991.

I. Recitals: The parties recite:

A. The voters of the State of Oregon have amended the Constitution of the State of Oregon to add Article XI, Section 11b (the "Limitation"), which limits property taxes. The Limitation has disrupted the ability of Portland to issue general obligation Bancroft Bonds.

B. The parties have entered into an Intergovernmental Agreement Between City of Portland, Oregon and Oregon Department of Environmental Quality which is dated _____, 1990 (the "Agreement"). The Agreement acknowledges that the City of Portland is obligated to issue general obligation Bancroft Bonds to finance assessment and connection charges resulting from the construction of the Mid-County sewer project. Portland is obligated to issue these general obligation bonds before selling special assessment bonds to the DEQ under the Agreement. However, the Agreement provides that Portland may limit its use of these general obligation bonds to $30 million outstanding at any time, and that all such general obligation bonds shall be used only to finance property owner assessments and charges within Portland's corporate boundaries. Portland's share of property owner financing in excess of this amount is to be provided through the issuance of special assessment improvement bonds which will be purchased by the DEQ pursuant to the Agreement, regardless of whether the properties for which financing is provided are located inside or outside Portland's corporate boundaries.

C. Because the Limitation has disrupted the issuance of Bancroft Bonds, and because the parties desire to proceed diligently with the Mid-County sewer project, and to provide financing for that project at the lowest cost, the parties have agreed to amend the Agreement as provided below.

II. The parties agree:

A. The DEQ shall purchase special assessment bonds which provide long term financing for the portion of the Mid-County sewer project which receives interim financing with Portland's Special Assessment Bond Anticipation Notes, as those notes are described in the preliminary official statement which is dated May 30, 1991 (the "Notes").

B. The obligation of Portland to provide general obligation Bancroft Bond financing for the Mid-County sewer project is deferred to the first portion of the Mid-County sewer project which Portland undertakes, for which interim financing is not provided by the Notes.

C. The parties agree to negotiate expeditiously to determine whether and how Portland's obligation to provide general obligation Bancroft Bond financing should be modified because of the enactment of the Limitation.

IN WITNESS WHEREOF, the City of Portland, acting by and through its Director of the Office of Finance and Administration pursuant to City Ordinance No. 164292, and the Department of Environmental Quality of the State of Oregon, acting by and through its Director, have caused this agreement to be executed.

Department of Environmental Quality of the State of Oregon

Fred Hansen, Director

Date:_____

APPROVED AS TO FORM:

Deputy Attorney General

City of Portland, Oregon

Stephen C. Bauer, Director,
Office of Finance and Administration

Date:_____

APPROVED AS TO FORM:

Deputy City Attorney

CITY OF
PORTLAND, OREGON
OFFICE OF FINANCE AND ADMINISTRATION

J.E. Bud Clark, Mayor
Stephen C. Bauer, Director
1120 S.W. Fifth, Room 1250
Portland, Oregon 97204
(503) 796-5288
FAX (503) 796-5384

June 12, 1991

MEMORANDUM

TO: Mayor Bud Clark
Commissioner Earl Blumenauer
Commissioner Dick Bogle
Commissioner Gretchen Kafoury
Commissioner Mike Lindberg
City Auditor Barbara Clark

FROM: Steve Bauer

RE: Ordinance Authorizing Amendment to Agreement with the DEQ for Mid-Multnomah County Sewer Financing

The attached Ordinance, filed for Council consideration on June 19, 1991, authorizes an amendment to the Agreement between the City and DEQ for financing of sewer assessments in Mid-County.

The original Agreement, authorized by Ordinance 163231 on July 5, 1990, provided that the DEQ would purchase City Special Assessment Bonds for Mid-County sewer projects inside the City limits only after the City had first financed $30 million of such projects with Bancroft Bonds. Ballot Measure 5, passed by the voters in November, precludes the City from issuing Bancroft Bonds without specific voter approval. The City has negotiated with DEQ to temporarily waive the $30 million requirement until a replacement LID financing mechanism is developed over the next year. The attached Ordinance authorizes the Director of Finance and Administration to execute an appropriate Amendment to the Agreement.

If you have any questions please call Richard Hofland, Acting Debt Manager, 796-6955.

SCB:RH
Attachment

OFFICE OF

AUDITOR OF THE CITY OF PORTLAND

Room 202 City Hall
Portland, Oregon 97204

COPY CERTIFICATE

STATE OF OREGON,
County of Multnomah,
CITY OF PORTLAND, } ss

I, **BARBARA CLARK**, Auditor of the City of Portland, do hereby certify that I have compared the following copy of Ordinance No. 164292, passed by the Portland City Council on June 19, 1991, authorizing an amendment to an intergovernmental agreement with the Department of Environmental Quality for financing sewer construction in mid-Multnomah County with the original thereof, and that the same is a full, true and correct copy of such original Ordinance No. 164292 and of the whole thereof as the same appears on file and of record in my office, and in my care and custody.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the City of Portland affixed this 20th day of June, 1991.

BARBARA CLARK

Auditor of the City of Portland

By Britta Olson Deputy

ORDINANCE No. 164292

* Authorize an amendment to an intergovernmental agreement with the Department of Environmental Quality for financing sewer construction in mid-Multnomah County. (Ordinance)

THE CITY OF PORTLAND ORDAINS:

Section 1. The Council finds:

1. The voters of the State of Oregon have amended the Constitution of the State of Oregon to add Article XI, Section 11b (the "Limitation"), which limits property taxes.

2. The Limitation has disrupted the City's ability to issue general obligation Bancroft Bonds ("Bancroft Bonds).

3. The City and the State of Oregon Department of Environmental Quality (the "DEQ") entered into an Agreement authorized by Ordinance 163231 on July 5, 1990 (the "Agreement"). The Agreement acknowledges that the City is obligated to issue and have outstanding up to $30 million in Bancroft Bonds to finance property assessments and connection charges resulting from construction of sewers in mid-Multnomah County (the "Project") within the City's corporate boundaries.

4. The Agreement further provides that if the City has issued and has outstanding at least $30 million in Bancroft Bonds for the Project within the City's corporate boundaries, then the DEQ will purchase City special assessment bonds under terms of the Agreement, regardless of whether the property assessments and connection charges are for properties located inside or outside the City's corporate boundaries.

5. The City has sold its 1991 Series A Special Assessment Bond Anticipation Notes (the "Notes") which include projects for which the City would, under terms of the Agreement, be obligated to issue Bancroft Bonds.

6. The City and the DEQ desire to proceed diligently with the Project at the lowest possible cost to property owners.

7. The DEQ has agreed to amend the Agreement to allow a temporary delay in the City's obligation to issue Bancroft Bonds under terms of the Agreement.

NOW, THEREFORE, the Council directs:

a. The Director of the Office of Finance and Administration is authorized to sign an amendment to the Agreement wherein the City's obligation to issue Bancroft Bonds to finance property owner assessments and connection charges relating to the Project is deferred to the first portion of the Project which the City undertakes for which interim financing is not provided by the Notes.

b. The City shall negotiate expeditiously to determine whether and how the City's obligation to provide Bancroft Bond financing under terms of the Agreement should be modified because of enactment of the Limitation.

Section 2. The Council declares that an emergency exists because delay in amending the Agreement would prevent the City from continuing the Project, and would impair the City's ability to continue the Project at the lowest possible cost to property owners; therefore this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, JUN 19 1991

BARBARA CLARK
Auditor of the City of Portland
By Britta Olson Deputy

Mayor Clark
SCB:RH
June 12, 1991

BOND PURCHASE AGREEMENT

This Bond Purchase Agreement is entered into by the parties to establish the terms and conditions under which the City of Portland, Oregon shall sell a series of special assessment improvement bonds to the Department of Environmental Quality of the State of Oregon, and that Department shall purchase those bonds.

1. DEFINITIONS

Capitalized terms which are used in this agreement and are defined below shall have the following meanings:

"Bonds" means the City's Special Assessment Improvement Bonds, Series 1991, which are described in Section 2 of this Agreement.

"Bond Documents" means this Purchase Agreement, the Financing Agreement, the Master Ordinance, the Bonds and those documents described in Section 7 of this Purchase Agreement.

"City" means the City of Portland, Oregon.

"Closing" means the date on which the Bonds are delivered to the DEQ in exchange for payment.

"DEQ" means the Department of Environmental Quality of the State of Oregon.

"Financing Agreement" means the Intergovernmental Agreement Between the City of Portland and the Oregon Department of Environmental Quality which relates to the purchase of special assessment improvement bonds issued by the City in connection with the Mid-County Sewer Implementation Plan.

"Master Ordinance" means the ordinance adopted by the City pursuant to the Financing Agreement, which provides the basic terms under which the City will issue all special assessment improvement bonds to be purchased by the DEQ under the Financing Agreement, and which authorizes issuance of the Bonds.

"Purchase Agreement" means this Bond Purchase Agreement.

"State" means the State of Oregon, acting through its State Treasurer.

"State Bonds" means general obligation pollution control bonds issued by the State of Oregon to finance the acquisition of the Bonds.

2. AGREEMENT TO PURCHASE AND SELL; TERMS.

(a) Subject to the terms and conditions of this agreement, the DEQ agrees to purchase the Bonds from the City, and the City agrees to sell the Bonds to the DEQ. The Bonds shall be in the aggregate principal amount, be dated, pay interest, mature on the dates and in the amounts, be subject to redemption and otherwise be issued on the terms provided in Appendix A, which by this reference is made part of this Purchase Agreement.

(b) Each maturity of Bonds shall bear interest at a rate equal to the interest rate borne by the comparable maturity of State Bonds, plus fifteen basis points (0.0015%).

(c) DEQ shall purchase the Bonds for a price equal to the principal amount of the Bonds, plus accrued interest. At closing, the City shall transfer to the order of the DEQ immediately available funds in an amount equal to the City's allocable share of the DEQ's issuance and administrative costs for the State Bonds.

(d) Unless the DEQ consents in writing to a later date or time, the Closing shall occur on the date and at the time the State Bonds are delivered to their purchasers in exchange for payment.

3. REPRESENTATIONS AND WARRANTIES OF THE CITY.

The City represents, warrants and covenants to the DEQ that:

(a) The City has enacted the Master Ordinance and the Master Ordinance conforms to the requirements of the Financing Agreement, is in full force and effect, and has not been changed from the form which has been reviewed and approved by the DEQ;

(b) The City has at the time of executing this Agreement and will have at the time of the Closing the power and authority to enter into and perform its obligations under the Bond Documents and to authorize, issue, sell and deliver the Bonds to the DEQ;

(c) To the best of the City's knowledge, the Bond Documents do not and will not conflict with, constitute or create a breach or default under any applicable existing law, charter provision, regulation, ordinance, order or agreement to which City is subject;

(d) To the best of City's knowledge, no governmental approvals or authorizations are necessary in connection with the authorization, execution and delivery of this Agreement, or the execution, sale and delivery of the Bonds to the DEQ which have not been obtained, or will not be obtained prior to the time of Closing;

(e) The Bonds will be issued under and in accordance with the Master Ordinance, will comply with all provisions of the Financing Agreement (which by this reference is made part of this Purchase Agreement), will be valid and legally binding obligations of the City in accordance with their terms, and will pay interest which is excludable from gross income under federal income tax laws.

4. DEQ'S RIGHT TO CANCEL.

(a) The DEQ, acting in good faith, shall have the right to cancel its commitment to purchase the Bonds by notifying the City of its election to do so if, after the execution of this Agreement and prior to the Closing:

(i) The State fails or is unable to sell, issue or deliver the State Bonds in amounts sufficient to permit the DEQ to purchase the Bonds for any reason, including the State Treasurer, acting pursuant to ORS 286.031 through 286.036 or other lawful authority declining to approve or withdrawing approval of the issuance of the State Bonds; or

(ii) The United States becoming engaged in hostilities which have resulted in a declaration of war or national emergency, or other national or international calamity or other event shall have occurred or accelerated to such an extent as, in the reasonable opinion of the DEQ, to have a materially adverse effect on the marketability of the State Bonds; or

(iii) There shall have occurred a general suspension of trading on the New York Stock Exchange; or

(iv) A general banking moratorium shall have been declared by United States, New York State or Oregon State authorities; or

(v) Legislation shall hereafter be enacted, or actively considered for enactment, with an effective date prior to the date of the delivery of the State Bonds, or a decision by a court of the United States shall hereafter be rendered, or a ruling or regulation by the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall hereafter be made, the effect of which is that the State Bonds are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and then in effect, or

(vi) A stop order, ruling or regulation by the Securities and Exchange Commission shall hereafter be issued or made, the effect of which is that the issuance, offering or sale of the State Bonds is in violation of any provision of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect and which, in the

States's reasonable judgment, adversely affects the marketability of the State Bonds or the market price thereof.

(vii) Litigation or other proceedings are pending or threatened against the State, its agencies, officers or employees, in any way adversely affecting the authorization, validity, execution or delivery of the State Bonds or the levy and collection of any taxes or other amounts which may or are to be used to pay the State Bonds;

(viii) Litigation or other proceedings are pending or threatened against the City in any way adversely affecting the authorization, validity, execution or delivery of the Bond Documents or the levy and collection of the assessments or sewer revenues which are to be used to pay the Bonds;

(ix) Bond Counsel to the DEQ determines in good faith that the Bonds are not valid and legally binding obligations of the City in accordance with their terms, or that interest on the Bonds is not excludable from gross income under federal income tax laws;

(x) The City fails to provide the DEQ with any of the documents described in section 7, below, by the date and time specified in that section;

(xi) The DEQ determines in good faith that one or more of the City's representations or warranties in the Bond Documents are untrue or incorrect; or,

(xii) The DEQ reasonably determines that the estimated or final cash flows described in Sections 6 or 7 hereof do not conform to the requirements of the Financing Agreement.

(b) If the DEQ cancels this Purchase Agreement for a reason listed in Section 4(a)(i) through 4(a)(vii): (i)the DEQ shall be obligated only to pay those costs described in Section 8(a)(ii) of this Purchase Agreement, and shall not be liable to the City or its agents for any of the City's costs, expenses or damages (which shall be paid by the City); and, (ii) the City shall not be liable to pay any costs or expenses of the DEQ or the State in connection with the issuance of the State Bonds or the purchase of the Bonds.

(c) If the DEQ cancels this Purchase Agreement for a reason listed in Section 4(a)(viii) through 4(a)(xii): (i) the City shall be liable for all its costs and expenses and all costs and expenses of the DEQ and the State which have been incurred in connection with the proposed purchase by the DEQ of the Bonds and the proposed issuance of the State Bonds, including the reasonable charges of the DEQ and the State for the time of their officers, employees, agents and consultants who have performed services in connection with the State Bonds and the purchase of the Bonds. Neither DEQ nor the State shall be obligated to pay any such costs.

5. CITY'S RIGHT TO CANCEL.

(a) The City may cancel this Purchase Agreement and terminate its obligation to sell the Bonds to the DEQ if the City delivers a written notice of cancellation to the DEQ and the State Treasurer of the State of Oregon in sufficient time to reasonably permit the DEQ and the State: (i) (for a competitive sale of the State Bonds) to prevent publication of the notice of sale for the State Bonds; or, (ii) (for a negotiated sale of the State Bonds) to prevent the State and its underwriter from pricing the State Bonds. The City may not otherwise cancel this Purchase Agreement without the written consent of the DEQ.

(b) If the City cancels this Purchase Agreement in accordance with this section, the City shall be liable for all its costs and expenses and all costs and expenses of the DEQ and the State which have been incurred in connection with the proposed purchase by the DEQ of the Bonds and the proposed issuance of the State Bonds, including the reasonable charges of the DEQ and the State for the time of their officers, employees, agents and consultants who have performed services in connection with the State Bonds and the purchase of the Bonds.

6. ATTACHED DOCUMENTS.

Attached hereto are:

(a) Certified copies of the Master Ordinance and the minutes of the meetings at which the Master Ordinance was considered and adopted (or an excerpt of the minutes);

(b) A preliminary cash flow statement certified by the City's financial advisor demonstrating that the estimated cashflows from the assessment contracts which are financed with the Bonds will be sufficient to pay the estimated debt service on the Bonds.

The City represents and warrants that the Master Ordinance and the preliminary cash flow comply with the requirements of the Financing Agreement.

7. DOCUMENTS REQUIRED BEFORE CLOSING OF STATE BONDS.

At least two business days before Closing, the City shall deliver to the DEQ the following executed documents, which shall be in form and substance satisfactory to the DEQ, and which shall be held in escrow by the DEQ pending Closing:

(a) The Bonds, with the terms set forth in Appendix A hereof, in typewritten, installment form, duly executed by the City.

(b) A certificate dated the Closing date from an authorized officer of City, stating that, to the knowledge and belief of such officer, after due review: the Bonds comply with all provisions of the Financing Agreement and the Master Ordinance; the Master Ordinance has been duly adopted by the City in the form which has been reviewed by the DEQ, and has not been amended, revoked or rescinded; the representations of the City contained in the Bond Documents were true and correct when made and are true and correct as of the Closing; and, the Bond Documents do not contain a material misstatement of a fact, or omit to state a material fact which the City should have disclosed to the DEQ in connection with the purchase by the DEQ of the City's Bonds.

(c) A cash flow statement certified by the City's financial advisor demonstrating that the scheduled cashflows from the assessment contracts which are financed with the Bonds will be sufficient to pay the scheduled debt service on the Bonds, as required by the Financing Agreement.

(d) An opinion of the City Attorney dated the Closing date establishing the legal authority of the City to enter into this Purchase Agreement to the effect that no litigation or other proceedings are pending or threatened in any way adversely affecting the authorization, validity, execution or delivery of the Bond Documents or the levy and collection of the assessments or sewer revenues which are to be used to pay the Bonds, and that the Master Ordinance was duly enacted and are in full force and effect;

(e) A certificate, prepared by the DEQ's Bond Counsel and signed by the City, setting forth the facts, estimates and circumstances in existence on the date of Closing which establish that it is not expected that the proceeds of the Bonds will be used in a manner that could cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and any applicable regulations thereunder;

(f) Such additional documents, certificates, opinions or other evidence as the DEQ may deem reasonably necessary or desirable to evidence the due authorization, execution, authentication and delivery of the Bonds, the truth and accuracy as of the time of the Closing of the representations and warranties contained in this Purchase Agreement and such other matters as DEQ or its Bond Counsel may reasonably request.

8. PAYMENT OF COSTS; BREACH.

(a) If the State Bonds are issued and the DEQ purchases the Bonds in accordance with this Purchase Agreement:

(i) The City will pay the cost of preparing and executing the Bonds, the fees and disbursements of its financial advisor, any registration and paying

agent fees, and any and all expenses of City employees and other representatives in connection with the Bonds.

(ii) DEQ will pay the fees and disbursements of DEQ's counsel, if any, Bond Counsel, and the costs of issuing, selling and delivering the State Bonds, but nevertheless shall be entitled to reimbursement of those expenses as provided in Section 2(c) of this Purchase Agreement.

(b) If this Purchase Agreement is cancelled by the DEQ pursuant to Section 4 hereof, the parties shall pay costs and expenses as provided in Section 4.

(c) If this Purchase Agreement is cancelled by the City pursuant to Section 5 hereof, the parties shall pay costs and expenses as provided in Section 5.

(d) If either the DEQ or the City fails to comply with their obligations hereunder, the aggrieved party shall be entitled to exercise any remedy available at law or in equity.

9. INDEMNITY.

(a) To the fullest extent permitted by law, the City agrees to indemnify and hold harmless the State, the DEQ and its officers, agents and employees against any and all losses, claims, damages liabilities and expenses (i) arising out of any material misrepresentation in the Bond Documents, (ii) to the extent of the aggregate amount paid in settlement of any such litigation if such settlement is effected with the written consent of the City. In case any claim shall be made or action brought against the State, the DEQ or its officers, agents or employees for which indemnity may be sought against the City as provided above, the State or the DEQ shall promptly notify the City in writing setting forth the particulars of such claim or action and the City shall assume the defense thereof, and the payment of all expenses. The State, the DEQ or its officers agents or employee shall have the right to retain separate counsel in any such action but shall bear the fees and expenses of such counsel, at its own expense and liability. The indemnification which may be claimed against the City shall not exceed the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300), and shall be subject to the restrictions set forth in the Act, unless the provisions and limitations of that Act are, with respect to the indemnification agreed to in this subsection, preempted by federal law, including, but not limited to, the federal securities laws.

(b) To the fullest extent permitted by law, the DEQ agrees to indemnify and hold harmless the City and its officers, agents and employees against any and all losses, claims, damages liabilities and expenses (i) arising out of any material misrepresentation or omission in the State's official statements or other disclosure documents which are prepared and distributed in connection with the offer and sale of the State of Oregon bonds which are to be issued to finance the purchase of the Bonds, (ii) to the extent of the aggregate amount paid in settlement of any such litigation if such settlement is effected with the written consent of the DEQ. In case any claim shall

be made or action brought against the City or its officers, agents or employees for which indemnity may be sought against the DEQ as provided above, the City shall promptly notify the DEQ in writing setting forth the particulars of such claim or action and the DEQ shall assume the defense thereof, and the payment of all expenses. The City or its officers agents or employee shall have the right to retain separate counsel in any such action but shall bear the fees and expenses of such counsel, at its own expense and liability. The indemnification which may be claimed against the DEQ shall not exceed the limits of the Oregon Tort Claims Act (ORS 30.260 through 30.300), and shall be subject to the restrictions set forth in the Act, unless the provisions and limitations of that Act are, with respect to the indemnification agreed to in this subsection, preempted by federal law, including, but not limited to, the federal securities laws.

10. MISCELLANEOUS.

(a) Any notice required to be given under this Agreement to an entity listed below shall be given to the entity at the address shown below, unless the entity has provided a different address:

If to the DEQ:

Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204
Attention: Finance Section Manager

If to the City:

Office of Finance and Administration
City of Portland
1250 Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204

with a copy to:

City of Portland
Auditor's Office
City Hall, Room 203
1220 S.W. Fifth Avenue
Portland, OR 97204

and

Bureau of Environmental Services
City of Portland
400 Portland Building

1120 S.W. Fifth Avenue
Portland, Oregon 97204
Attention Financial Operations Manager

(b) This Agreement is made solely for the benefit of the City, the DEQ and the State, and no other party or person shall acquire or have any right hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect and shall survive the delivery of the Bonds.

(c) This Agreement may be executed in any number of counterparts, all of which, taken together, shall be one and the same instrument, and any parties hereto may execute this Agreement by signing any such counterpart.

DATED as of this __ day of _____, 1991.

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON	CITY OF PORTLAND, OREGON
_____	_____
Fred Hansen, Director	Director, Office of Finance and Administration
Date:_____	Date:_____

The Office of the State Treasurer has reviewed and approved this Purchase Agreement as being consistent with the applicable provisions of ORS Chapter 286.

_____
Authorized Officer
Date:_____

APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____	_____
Assistant Attorney General	City Attorney

APPENDIX A

DESCRIPTION OF THE BONDS

The Bonds shall be in the aggregate principal amount of _____ Dollars ($_____), shall be dated _____, and shall bear interest payable semiannually on _____ and _____, commencing _____.

Maturity Schedule for Serial Bonds

Maturity Years (_____1)	Principal Amount

{insert years and dates}

Mandatory Redemption Schedule

The Bonds maturing on _____ are subject to mandatory redemption in order of maturity and by lot within a maturity on _____ and on any interest payment date thereafter, at a price of par plus accrued interest, in a principal amount equal to the largest integral multiple of $5,000 which the City reasonably expects to be available in the Sinking Fund on the redemption date after the payment of scheduled debt service on the Bonds. The City may elect to redeem an equal principal amount of special assessment bonds of other series issued under the Master Ordinance on the same date, instead of the Bonds.

Optional Redemption Provisions

The City reserves the right to redeem all or any portion of the Bonds then outstanding in any order of maturity and by lot within a maturity on _____, and any interest payment date thereafter, at a price of par, plus interest accrued to the date fixed for redemption.

Required Notice of Redemption

The City shall give the DEQ and the State written notice of proposed redemption of Bonds which must be received by the DEQ and the State at the addresses indicated in this Purchase Agreement not more than 60 days or less than 30 days prior to the proposed redemption date. The notice shall identify the Bonds, and the amounts and maturity dates of the Bonds to be redeemed, and shall state the redemption price and redemption date.

K

September 15, 1991
(replaces ERRATA dated September 12, 1991)

ERRATA to the EQC Background Discussion paper on:

"Risk Analysis in Environmental Programs"

Please note the following correction to p. 21, line 9:

I. "...have a pre-existing 1 in 4 (25%) or **2.5** x 10^{-1} chance of getting cancer in their..."

The original copy of the paper had a typo: 4 x 10^{-1}.

II. On p. 33, add "...**jurisdiction. The results show:**" to the end of the sentence at the bottom of the page.

WORK SESSION
REQUEST FOR EQC DISCUSSION

Meeting Date: September 18, 1991

Agenda Item: K: Background Discussion: Risk Analysis in Environmental Programs

Division: ECD/Department-Wide

SUBJECT(S):

Risk Analysis in Environmental Programs: Risk Assessment; Risk Management; Risk Communication; Public Perception of Risks; Acceptable Risk; Comparative Risk Analysis and Risk-Based Strategic Planning

PURPOSE:

- **to provide background information to the Environmental Quality Commission (EQC) on the current use of environmental risk analysis in implementing and managing Department of Environmental Quality (DEQ) programs;**
- **to identify upcoming risk-related, regulatory and policy decisions; and**
- **review the results of several recent Comparative Risk/Relative Risk analyses that have been undertaken pertaining to environmental programs in the Pacific Northwest.**

PROGRAM CONSIDERATIONS:

Each DEQ program has different policies and statutory authorities which govern the way in which health and ecological risks can be addressed, controlled and prevented. Some DEQ programs have more experience than others in using risk analysis to implement their programs. While the federal Environmental Protection Agency (EPA) addresses cancer risks, non-cancer risks, ecological risks and welfare risks associated with environmental problems, DEQ has generally employed the results of federal health risk assessments

and ecological risk assessment guidelines in implementing state air quality, water quality, waste management and environmental cleanup programs. For example, DEQ's Air Quality program and Environmental Cleanup program have experience in using risk assessments to tailor control strategies and protection programs to current and future Oregonians exposures to air, water and waste related risks.

DEQ's Water Quality program starts with a "no-discharge" goal for regulating discharges to state surface waters. When a source must discharge wastewater to state surface waters, the Water Quality program uses state water quality standards to control the levels of pollution that are allowed by the state Clean Water Act. Risk assessments performed by the federal Environmental Protection Agency are used in setting state water quality standards to control the levels of pollutants allowed under Oregon's water quality permit and water quality management programs.

Some DEQ program managers (e.g., water quality, environmental cleanup, air quality) must wrestle with the complexities of trying to define "acceptable risk" levels related to the concentrations of pollutants that are allowed to remain in Oregon's environment. In state regulatory programs, pollutant concentration levels are translated into the numerical standards that are used in carrying out state regulations and issuing permits. This background paper examines the concept of "acceptable risk" particularly as it relates to regulating health risks in Oregon, and describes the different "acceptable risk" levels that DEQ is using to regulate exposures to potentially carcinogenic air, water and land pollutants.

Not all of DEQ's programs (such as recycling and waste minimization) focus on human health or ecological risks in making decisions or adopting new policy. This paper describes several examples of how risk analysis is being employed in DEQ's current programs and identifies upcoming opportunities to consider using risk analysis in DEQ's efforts to set standards, review clean-up level goals and standards, weigh pollution prevention options, analyze cross-media risks and continue Department-wide strategic planning.

This paper provides background information for the Environmental Quality Commission's work session on **environmental risk analysis.** It is intended to be introductory and is the first in a potential series of background discussions on the use of Risk Analysis in DEQ's Environmental Programs.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

DEQ's Strategic Plan: The first goal of DEQ's Strategic Plan is to, "increase the use of risk reduction principles and methodologies in the development, analysis, and selection of environmental quality control strategies and programs".

DEQ Policy: Many, but not all, of DEQ's programs offer opportunities to reduce environmental (health and ecological) risks in Oregon. Risk analysis is an analytical and decision making tool that can be used in setting standards and developing DEQ policy. The EQC must often consider when, where and how it is appropriate for DEQ to use risk analysis.

DEQ Legislative Policy: Environmental risk analysis can be used to identify environmental sources of statewide, high human and ecological risks that are not now being addressed by either DEQ or other state natural resource agencies. Once these risks are identified, legislative authorities may be needed to address them.

Legislation may be needed in some areas to improve state agencies' ability to coordinate their risk reduction efforts in new ways. Oregon state agencies are required to coordinate their efforts to meet statewide policy goals (under the State Agency Coordination Act). Environmental risk analysis can identify ways to reduce current health and environmental risks to Oregonians through improved state agency coordination. State agencies with authority to control the same environmental health or ecological risks can use risk analysis to explore ways to coordinate their risk reduction efforts more effectively.

For example, the Oregon Health Division under the Department of Human Resources has authority to reduce health risks from drinking water contamination statewide. DEQ has authority to reduce the risks posed to drinking water supplies by ground-water, surface water and other toxic pollution. The two Departments have initiated a series of cooperative efforts to reduce drinking water health risks by sharing databases, identifying sources of pollutants that exceed state drinking water standards, providing alternate water supplies, developing "health consultations" for communities concerned about drinking water risks, etc.

Environmental risk analysis can also be used to identify high-risk Oregon ecosystems (e.g., wetlands with heavy metal loadings) that require coordinated state agency response (e.g., wetlands protection and coastal zone management programs at State Lands Division and DEQ working cooperatively to address risks to sensitive or high-risk wetlands across the state).

SUPPLEMENTAL BACKGROUND INFORMATION:

The following is the Executive Summary from Attachment A: "Risk Analysis in Environmental Programs", a background paper developed for the September EQC work session. The Executive Summary concludes with a list of policy questions for the Environmental Quality Commission to review.

RISK ANALYSIS IN ENVIRONMENTAL PROGRAMS

EXECUTIVE SUMMARY

Introduction

The Environmental Quality Commission (EQC) and the Department of Environmental Quality (DEQ) are often presented with questions related to the potential harm or damage to human health and the environment posed by pollution. Questions such as:

> *"Is it safe to swim in the river?";*
>
> *"What concentration of air pollutant XYZ will not produce health effects (or pose an unreasonable risk to health)?";*
>
> *"How clean should the groundwater be when cleaning up dumpsites?",*

are being asked more and more. While considering pollution prevention opportunities, EQC and DEQ may want to ask:

> *"Are the environmental risks associated with substituting another chemical or changing a manufacturing process more or less risky than the risks being posed by the pollution being prevented?".*

Even though these questions deal with issues involving different environmental problems and opportunities, they have at least one dimension in common: risk.

What is Environmental Risk Analysis?

Environmental risk analysis provides a framework and analytical tool for measuring the dimensions of an environmental problem by assessing the degree of harm, injury or damage to human health or ecosystems that is occurring or could occur from a particular activity. In responding to the question about water quality in the river, the public wants to know if there is any "health risk"

associated with coming into contact with pollutants in the water either by skin contact, drinking it or breathing the air over the water. In a more ecological context, the public also wants to know whether aquatic organisms (fish and plants) can thrive in the water or are there risks to these organisms due to a lack of dissolved oxygen, the presence of toxins or other biological, physical, thermal or chemical impacts. Furthermore, people with fish-based diets and fishermen want to know whether the fish they catch are edible or whether they are loaded with harmful contaminants.

Environmental risk analysis can be used to quantitatively and qualitatively describe and measure the degree of potential harm to human health and other organisms caused by pollution or other biological, chemical or physical impacts. Those who have been employing risk analysis (and particularly risk assessment) in environmental programs over the past twenty years caution that it is still an emerging and imperfect science. Many of the numerical risk estimates that are generated using risk analysis are based on multitudes of assumptions (often prompting decision-makers to question whether basic assumptions are reasonable). Along with the use of many assumptions about whether low, long term doses of a toxin are harmful and what potential exposures might be, there are statistical uncertainties surrounding quantitative estimates of risk such as "the average lifetime individual risk of cancer at 1×10^{-6}" or "one-in-a-million" (1:1,000,000) (plus or minus 50%) that are often difficult to communicate to a concerned public that wants to know whether it's safe to swim in the river.

Several risk communication experts say that trying to communicate cancer risk estimates as absolute numbers can be frustrating and not as useful as trying to communicate that risk estimates are best presented as a range of values (e.g., "the risks are between 2.3×10^{-5} and 4×10^{-6}") or by comparing risk estimates with one another. Dr. Roseanne Lorenzana, Oregon Health Division toxicologist, often uses this illustration: "When we want to buy a sleeping bag, we know that a bag rated at -20°F will keep us warmer than a bag rated at +32°F. The ratings are good to compare one bag to another. However, the temperature rating does not precisely tell us that in fact we will be warm when the outside temperature is -20°F or +32°F. This is because of the many individual variables involved with how we actually use the sleeping bag. There is useful information in the temperature ratings, there is also an element of uncertainty."

Dr. Lorenzana continues, "Numerical risk estimates can be likened to sleeping bag temperature ratings. The estimates can be used to differentiate high and low risks when comparing one to another. However, the risk estimate is not precise, and is best described as an order of magnitude, such as 10^{-5} or 10^{-6}. This is because of unavoidable uncertainties associated with the individual variables in the assessment process."

The public too, has a hard time understanding that risk assessors measure probabilities or chance and not actual numbers of deaths or accidents. "The public needs to understand that a 10^{-6} (or one-in-a-million) cancer risk estimate can have a zero outcome -- that is sometimes people may get cancer, other times they may not", says Dr. Rommel Rivera, DEQ's toxicologist. "Think of estimating risks as an exercise in picking ping-pong balls out of a box. You have 1,000,000 ping-pong balls in the box; 999,999 are white and 1 is green. You have a 1 in one-million chance that the first time you pick a ball out of the box, you will get the green one. Most of the time however, chances are, you will pick out a white ball. The public needs to know that risks at 10^{-6} can also be zero risk--that is, sometimes people may get cancer; other times they may not."

Risk communication experts advise environmental program managers to communicate health and ecological risks to the public by comparing them to other similar risks (e.g., comparing indoor radon levels with smoking a certain number of cigarettes per day. Both risks have been proven to lead to human lung cancers). Then it becomes necessary to distinguish a cancer risk assessment from a non-cancer risk assessment; an ecological risk assessment from a human health risk assessment. Risk assessors caution however, that there are numerous subtleties associated with comparing similar risks, not to mention trying to compare unrelated risks. However, the majority of those writing about environmental risk analysis today, agree that it can be used carefully as a **comparative or relative measure** or analytical tool for comparing similar types of health (cancer or non-cancer), ecological, or welfare risks, particularly in strategic planning for environmental programs.

Because the sciences of toxicology, epidemiology, systems ecology and information sciences are accelerating and new risk analysis information is being introduced all the time, risk estimates can be expected to change over time. For example, senior federal health officials are continuously evaluating the risks posed by dioxins. The risk-based management goals either implicitly or explicitly addressed by DEQ programs today, will probably change as better data on actual exposures become available, risks are

reduced, more pollution is cleaned-up and pollution prevention programs take effect.

Risk estimates can also be strongly influenced by changes in monitoring and analytical capabilities and the effectiveness of new control technology. DEQ's Hazardous and Solid Waste Division and Environmental Cleanup Division can attest to how rapidly monitoring techniques, laboratory analysis and control technology keep changing state programs' ability to find, control and manage health and ecological risks.

Throughout this paper, **environmental risk analysis** is defined as comprising: risk assessment; risk management; risk communication; determining "acceptable risk" levels; comparative risk analysis and risk-based strategic planning (Cohrrson and Covello 1989)[1]. Definitions of all of these topics are provided in the following background paper.

Environmental Risk Analysis at DEQ Today

By managing environmental quality in Oregon, DEQ is managing environmental risks: risk to human health and risk to the environment. Risk analysis provides DEQ with an analytical framework, rationale and measure of the Department's ability to meet its statutory responsibility to "...restore and preserve the quality and purity of the air and waters of the state ..." (ORS 468.035). That is to say that DEQ identifies, manages and reduces unacceptable risks to Oregonians health and environment when it restores and preserves the quality of the Oregon environment. DEQ may not think of its role in environmental management as a risk management or risk reducing function. Public concern about pollution, control technology requirements, data reporting deadlines, and enforcement often drive Departmental actions and dominate regulatory decision-making. Many program managers fear that having to do risk analysis before making a decision will lead to regulatory paralysis. Often, regulatory decisions are made on the basis of control technology alone. In fact, many DEQ decisions are carried out appropriately without any need to consider the risks involved. Moreover, risk analysis is a relatively new construct for thinking about environmental problems and is often viewed as something only the federal government has the resources to employ.

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[1] *Cohrrson, J. and Vincent Covello, 1989. Risk Analysis: A Guide to Principles and Methods for Analyzing Risks US Council on Environmental Quality, Executive Office of the President, Washington, DC.*

However, **environmental risk analysis** is coming into play more and more at DEQ in standard setting; program implementation; and strategic planning. For example:

- DEQ incorporates federal Environmental Protection Agency risk assessments in setting and administering standards for state air quality, water quality, solid and hazardous waste management, ground water protection and environmental health programs (e.g., worker protection). DEQ's air quality program addresses primarily health risks associated with air pollutants. DEQ's water quality program addresses risks to aquatic species of plants and fish (in addition to human health risks of eating aquatic species (fish) from contaminated rivers and streams).

- Environmental risk assessments are being carried out by DEQ's Environmental Cleanup Division in determining site remediation strategies and setting standards for voluntary site cleanups.

- DEQ's Hazardous and Solid Waste Division's role in siting waste treatment, storage and disposal facilities is heavily influenced by public perception of and opinions about health risks and potential environmental damages to nearby rivers, streams and wetlands.

- Department-wide, DEQ managers have prepared a strategic plan with a first goal to: "increase the use of risk reduction principles and methodologies in the development, analysis, and selection of environmental quality control strategies and programs."

Upcoming Uses of Environmental Risk Analysis at DEQ

Many DEQ staff who have discussed environmental risk analysis and "acceptable risk" during the preparation of this paper agree that risk assessment and risk management concepts will be applied more at DEQ in the future.

- During the next year, EQC will be considering how risk assessments and other risk management factors are to be used in defining "acceptable risk" levels in setting soil clean-up and ground-water protection standards for projects in the Environmental Cleanup Division and the Hazardous and Solid Waste Division.

- DEQ's Air Quality Division will be seeking EQC review of the risks from air toxins being considered in the Department's interim air toxics policy. The Air Quality

Division will also be looking for scientifically-valid support for adopting state air quality standards that are more protective of Oregonian's health and environment than federal clean air standards.

- DEQ's Water Quality Division will be developing ecological risk assessment guidelines requiring EQC to address "acceptable risks" to wildlife that may ingest contaminated surface or ground water.

- DEQ's Water Quality Division, Hazardous and Solid Waste Division, the Environmental Cleanup Division and Oregon Health Division (OHD) are contributing to the development of statewide ground-water protection programs to reduce health risks in contaminated Oregon drinking water supplies. OHD's state drinking water program administers the federal Safe Drinking Water Act and state regulatory requirements throughout Oregon. DEQ's Water Quality Division is developing well-head protection programs for public water supplies to protect drinking water from unacceptable levels of ground-water pollution. The Solid and Hazardous Waste Division may need to adopt new EPA, risk-based standards under the RCRA Subtitle D program to control ground water quality. The ECD also requires that state Superfund sites, voluntary cleanups and other soil remedial actions prevent future surface and ground water degradation.

- DEQ's Laboratory Division recently received a grant from EPA to develop methods for assessing cross-media risks. The assessment methods will examine whether the risks at one entire facility, that are reduced in one environmental media are being transferred to another environmental media. For example, a drinking water treatment plant that removes volatile organic compounds from intake water may use an "air stripper" which removes volatile organic compounds from the water and converts them to air emissions. Cross-media risk assessment looks at the health risks of ingesting or coming into contact with the contaminant in the drinking water and the health risks posed by breathing air emissions of the same pollutant. It tells program managers when risks are being reduced and when they are simply being transferred to another media.

- DEQ's senior managers have been considering various aspects of undertaking a comparative risk analysis of DEQ's environmental health and environmental protection programs. Comparative risk analysis could be used to guide DEQ's strategic planning in the future.

This background paper reviews how DEQ is currently using risk analysis and considering risk management decision making, now and in the near future. It describes how EPA and DEQ human health risk assessments are carried out and provides some cautions on how they can be applied. Various risk analysis concepts such as "eco-risk assessment" and "acceptable risk" are discussed.

This paper is intended to provide the Environmental Quality Commission with background information on the role of environmental risk analysis in DEQ's environmental programs. It is not intended to be an official statement of either federal EPA or DEQ policy. It was prepared by consulting various published and unpublished sources of technical information on risk analysis; senior EPA, DEQ and Oregon Health Division (OHD) management and EPA, DEQ and OHD staff representing air quality, water quality, solid and hazardous waste, underground storage tank, drinking water protection, environmental toxicology and occupational health and safety programs.

The background paper concludes with a list of risk management topics which the EQC and DEQ may wish to explore and discuss while deliberating on the role of **environmental risk analysis** in future DEQ decision making and policy developments:

--What is EQC/DEQ policy on how considering health and ecological risks compares to other factors in the current decision making process?

--Does EQC want to determine specific "acceptable risk" levels for DEQ programs such as, "All carcinogens are to be regulated to a 1:1,000,000 (10^{-6}) level?" Is it "OK" to have different "acceptable risk" levels depending on the program and the nature of the health or environmental risk being managed? Would EQC like to review current DEQ statutes to assess the extent to which state program managers could consider cost, technical feasibility, detection limits or other issues in meeting EQC "acceptable risk" levels?

--What are the resource implications of DEQ exercising its authority to prepare statewide risk assessments, cost-benefit or other risk-based policy analyses? Should DEQ continue to employ the results of federally-prepared risk assessments in programs or prepare its own risk assessments?

--When is it appropriate for DEQ to undertake its own state-level risk assessments (e.g., providing scientifically-valid support for air quality standards that are more stringent or protective than federal standards? In looking at pollution prevention options?)

--Would EQC like to have a matrix or checklist of risk assessment/risk management principles and criteria that should be considered when screening or reviewing DEQ program activities and issues in the future?

--Does EQC want to undertake a Comparative Risk Study in Oregon?

--Does EQC want to explore how risk analysis could be used in carrying out DEQ's Strategic Plan?

--Does EQC want to continue background discussions on environmental risk analysis topics (e.g., risk assessment; risk management; risk communication; acceptable risk; ecological risk assessment)?

Approved:

Division: Michael Downs

Director: Tom Bispham for Fred Hansen

Report Prepared By: Brendan Doyle
Phone: 229-6053
Date prepared: September 4, 1991

ATTACHMENT A:

RISK ANALYSIS IN ENVIRONMENTAL PROGRAMS

EXECUTIVE SUMMARY

The Executive Summary of this background paper is included in the Staff Report.

Environmental Risk Analysis and Decision Making at DEQ

A wide array of factors are usually weighed in making regulatory and policy decisions at DEQ: the nature and extent of the problem being addressed; the science that is available to understand the problem; the "risks" being posed to health or the environment; statutory mandates; control technology requirements; detection limits; costs; benefits; political concerns; public perception; ability to obtain compliance with regulations; and past precedents to name a few. Rarely, are all of these factors weighed. Sometimes "human health and environmental risks" are explicitly addressed, other times they are not. In programs where DEQ uses the Environmental Protection Agency's (EPA) statutory authorities and standards promulgated under those statutes [e.g., air quality standards, corrective action standards, water quality criteria, and drinking water maximum contaminant levels (MCLs)], DEQ is applying the results of nationwide risk assessments and risk management precedents that were incorporated by EPA in setting the standard(s) or federal guidelines.

Increasingly, "risks" are an issue at DEQ, particularly when managers are trying to decide what level of "risk" is acceptable, when Oregonian's exposures to particular problems are different than those considered in the federal risk assessments, or in thinking about new ways to measure DEQ's results in protecting the environment (i.e. measure risk reductions along with the number of permits issued, penalties collected). The following section reviews several examples of how risks are being addressed in various DEQ programs and highlights where risk analysis will come into play in upcoming decisions and policy debates

DEQ's AIR QUALITY PROGRAMS

Air quality standards: DEQ administers the federal air quality program in Oregon, which includes both National Ambient Air Quality Standards (NAAQS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). The Environmental Protection Agency (EPA) used health and welfare risk assessments in establishing the primary NAAQS (controlling particulates, carbon monoxide, sulfur oxides, nitrogen oxides, ozone, and lead) and the secondary NAAQS [to control for welfare and environmental

effects (such as materials damages)] under the legal authority provided in the Clean Air Act [42 USC 7401 et seq.]. The Act requires EPA and DEQ to regulate air pollutants which "...affect the stratosphere, especially ozone in the stratosphere, if such effect...may reasonably be anticipated to endanger public health or welfare [42 USC 7457(b)] and hazardous air pollutants which may yield "..increases in mortality or serious irreversible, or incapacitating, reversible illness" [42 USC 7412 (a)(1)]. When DEQ adopted the federal Clean Air standards in the state program, DEQ inherited the results of EPA's risk assessments in setting state air quality standards.

One of the Air Quality Division's major roles in managing air quality involves the State Implementation Plan (SIP) which defines how sources of regulated pollutants will be regulated. The Oregon SIP sets forth control strategies to attain and maintain state air quality standards. Most control strategies rely on having a source operator install control technology to reduce regulated emissions to a level that can be achieved using the control technology; the level may or may not correspond to some known or quantifiable "risk" level. The control technology based ("Maximum Achievable Control Technology" -- MACT) standards under the 1990 federal Clean Air Act amendments (for example) seek emission reductions based on installing control technology. Program managers are encouraged to then study whether there is any residual health risks associated with regulated emissions once control technology have been applied.

With respect to regulating exposures to air toxics, the EQC and DEQ have yet to decide whether state-based risk assessments will be used in implementing Oregon's interim air toxics policy or whether requiring control technology will suffice to reduce emissions to acceptable levels. DEQ air quality staff, developing the interim policy are working from a list of 700 potentially harmful air toxics. DEQ and EPA's NESHAPS cover only a dozen or so air toxics. Air toxic risks are assessed by estimating exposures and risks to the Maximum Exposed Individual (MEI), the distribution of risks (how many people are at what risk at designated distances from point sources of emissions) and the estimated annual incidence of cancers (for known air carcinogens). Non-carcinogenic air risks are evaluated relative to occupational health standards. EQC's upcoming review of DEQ's interim air toxics policy will provide an opportunity to compare what may be achievable under a "control technology-based" program versus a program which examines risks before and after regulation.

In DEQ's asbestos abatement program, eliminating exposures to asbestos particles is the primary regulatory control; a "no exposure--no risk" standard prevails. Program managers seek to first cap and seal away sources of asbestos fibers and when that's not possible, find ways of having the asbestos removed and disposed of properly.

Stage II vapor recovery at gasoline stations is a control technology-based program to reduce hydrocarbon and other ozone-precursor emissions from the gasoline that is used to fill motor vehicles. Controlling the amount of these emissions reduces violations of the state ozone standards (a risk-based standard). Controlling vapor recovery emissions also protects gasoline station attendants because it reduces health risks by eliminating workplace exposures to potentially harmful emissions.

DEQ's air quality program is also responsible for addressing the threats or risks to visibility in federal Class I, Prevention of Significant Deterioration areas within Oregon (OAR 340-20-047, Section 5.2). Protecting visibility in national parks and other designated Class I areas is a primary goal of the Clean Air Act. DEQ's air quality program must consider the aesthetic as well as the human health or ecological risks posed by aerosols that can impair visibility in these areas.

The air quality program anticipates that several "risk management" issues will soon need to be addressed by the EQC: 1) continuation of the interim air toxics policy; 2) adoption of "acceptable risk" levels for regulating air carcinogens; 3) the extent to which risk analysis can be used to set Oregon air quality standards that are more stringent than those called for under the 1990 Clean Air Act amendments; and possibly 4) long-term consideration of the health and environmental risks attributable to greenhouse gas emissions (e.g., carbon dioxide, nitrogen oxide and methane) from Oregon sources and their role in global climate change.

DEQ's WATER QUALITY PROGRAMS

Ambient Water Quality Criteria: DEQ's Water Quality Division addresses a range of health and ecological risks posed by pollutants that may pose, "...Imminent and substantial danger to the public health or welfare, including but not limited to, fish, shellfish, wildlife, shorelines, and beaches." [33 USC 1321(b)(2)(A)] or "...alteration of the physical, chemical or biological properties of any waters of the state, ... which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare (ORS 468.700). Ambient water quality criteria developed by EPA pursuant to Section 304 (a) of the Clean Water Act and state law and rules are based on controlling average individual lifetime risks from water pollutants. Separate criteria are developed for human health and aquatic species.

EPA does not set water quality standards for national adoption like EPA sets air quality standards. EPA researches what concentrations of water pollutants have documented impacts on

human health and selected indicator species of aquatic organisms (and does a risk assessment) to show what "risk-level" would be related to the risk or chance of an individual developing cancer or other health effects at a 10^{-5}, 10^{-6}, or 10^{-7} level. Federal water quality criteria for carcinogens are computed for average lifetime individual cancer risk levels of 10^{-5}, 10^{-6}, and 10^{-7}. In setting state water quality policy, the EQC then selects which federal (risk-based) criteria it would like to use in setting state water quality standards. The federal criteria that DEQ starts with are published as scientific guidance and do not incorporate economic, technical feasibility or other implementation considerations. In setting state water quality standards, DEQ starts its water quality risk assessment with 10^{-6} average individual lifetime risk values. Implementing the standards to maintain water quality can include requirements to install best available control technology and other control measures to meet the "total maximum daily load" of pollutants allowed in state receiving waters.

The water quality standards that have been adopted by DEQ are designed to protect both aquatic life and human health. Aquatic life standards are designed to protect from both acute and chronic exposures to contaminant concentrations in "indicator fish" species (different levels are set for freshwater and marine species). Human health standards are designed to protect the public for the "safe" consumption of fish and water and are generally considered to be protective of public health (from cancer risks) at the 10^{-6} level.

The state has not yet adopted sediment standards. Draft guidelines have been developed for determining the carrying capacity for and suitability of disposing of dredged sediment in surface water. These guidelines are based on a tiered approach of examining the physical, chemical, and biological attributes of dredged materials. These guidelines are directed toward protecting aquatic species from acute and chronic exposures to contaminants. The guidelines can/have been modified at times to address threats to human health by evaluating the potential for the bioaccumulation of sediment pollutants in aquatic species.

DEQ is in the process of developing fish tissue guidelines for determining when the beneficial use of receiving waters that support fish habitat is being impaired. These guidelines will closely follow the reference toxicant concentrations derived from the state water quality standards. DEQ's Water Quality Division is in the process of developing methods to assess the ecological risks associated with sludge disposal and the impacts of other regulated activities such as landfills and Superfund sites on aquatic ecosystems. The Division is rapidly developing an expanded data base on Oregonians exposures to ground-water contaminants. The Water Quality Division's health and eco-risk

assessment methods may be used in other program areas after further development.

Risk-related water quality issues expected to come before the EQC during the next two years include the on-going review of the dioxin standard (via EPA studies on the human health toxicity of dioxins and the results of EPA risk assessments on fish consumption of dioxins by sensitive subpopulations) and the development of "eco-risk" assessment guidelines.

Sewage Sludge Program: Another program which assesses risk to the Maximum Exposed Individual pertain to the use and disposal of sewage sludge. These regulations, promulgated under Section 405(d) of the Clean Water Act, require EPA (and DEQ) to establish standards that are adequate to protect human health and the environment from any reasonably anticipated adverse effects. Economic impacts cannot be considered in establishing the standards. "Reasonable worst-case" assumptions and parameter values are used in models to calculate individual pollutant exposures to the MEI for land application of sludge to agricultural lands. For non-agricultural land application and surface disposal, risk assessments focus on estimated population risks as well as risks to the MEI.

Use of Drinking Water Standards for Ground Water Protection: DEQ employs federal, risk-based drinking water standards in several programs aimed at protecting ground and surface, drinking water supplies in Oregon. Regulating contaminants under the 1986 Safe Drinking Water Act (SDWA) (administered by the Oregon Health Division, not DEQ), involves the establishment of Maximum Contaminant Level Goals (MCLGs) (health goals that are non-enforceable) and Maximum Contaminant Levels (MCLs) (enforceable standards) at a level "...at which no known or anticipated adverse effects on the health of persons occur" [42 USC 300f(1)(b)]. The SDWA directs EPA to set MCLs as close to the MCLGs as feasible. Legislative history requires EPA to set MCLGs for carcinogens at zero. In the risk management process, "feasible" has been interpreted to mean with the use of best available treatment technology, treatment techniques, and other means which the Administrator (of EPA) finds available (taking cost into consideration) after examination of the control technology efficacy under field conditions. Standard 70-year lifetime exposures to a 70 kg adult drinking 2 liters per day are used in the exposure assessments for drinking water regulations. The establishment of the MCL is based on assessing risk to the "maximum exposed individual" where exposure to the MEI is determined by monitoring and modeling and conservative exposure assumptions such as a 20% contribution from drinking water to total individual exposure to a contaminant. MCLs for carcinogens are set in the 10^{-4} to 10^{-6} range. This range is considered by EPA to be safe and protective of public health.

DEQ employs drinking water standards in the ground-water protection and solid/hazardous waste and underground storage tank control programs. The applicability of these standards was recently debated in EQC's review of Maximum Measurable Levels as pollution prevention standards set under the state Groundwater Protection Act. EPA recently announced that the Agency was going to employ a risk-based approach to promulgating additional drinking water standards in the future, once data on exposures to contaminants in public water supplies were more available. EQC can expect to see revised Maximum Contaminant Levels and Maximum Contaminant Level Goals for drinking water contaminants and ground-water protection in the near future.

DEQ's ENVIRONMENTAL CLEANUPS

Superfund/Environmental Cleanups: the Environmental Cleanup Division (ECD) has a statutory mandate to protect human health and the environment derived from the federal Comprehensive Environmental Response, Compensation and Liability Act. DEQ is required to control hazardous substances and pollutants which pose health, welfare or environmental risks. A wide range of adverse effects on health and the environment are to be avoided both now and in the future. ECD rules say that cleanups shall "assure protection of present and future public health, safety, and welfare and the environment. Such protection shall prevent, eliminate, or minimize potential and actual adverse impacts from hazardous substances to (a) biological receptors; (b) present and future uses of the environment; (c) ecosystems and natural resources; and (d) aesthetic characteristics of the environment." OAR 340-122-040. DEQ's Environmental Cleanup staff have the most experience in using risk analysis and trying to communicate expert analyses into language local citizens can understand.

Because ECD must protect human health and the environment, but since there are well-established data and models only for estimating human health risks, ECD tends to judge environmental risks qualitatively (although water quality criteria are used to control site impacts on receiving waters) and human health risks quantitatively through site specific risk assessments. Site-specific studies of the effects of contaminants on selected species in the environment may be performed as needed. These site-specific risk assessments examine how different control strategies will reduce individual lifetime cancer risks to the 10^{-6} level based on "Reasonable Maximum Exposure levels to current and future populations living at the site. Human health risks are classified as carcinogenic or non-carcinogenic. Usually threats to public health from carcinogens are expressed as a probability of excess cancer risk such as a one-in-a-million or 1×10^{-6} additional chance of developing cancer. Non-carcinogens or systemic toxins are usually expressed in terms of a "hazard

index" where a value of less than one would indicate "no observed adverse effects (with safety factors incorporated)".

ECD screens qualitatively for "sensitive environments" and may look at sensitive sub-populations in the site-specific "feasibility" analysis. For the soil cleanup standards being developed (not yet introduced to EQC), ECD is using EPA default exposures (termed Reasonable Maximum Exposures or RMEs) and using EPA slope factors (carcinogenic potency factors) and reference doses (RfDs) for non-carcinogens which already account for sensitive sub-populations and statistical uncertainty. The ECD world of risk analysis is enormous as it looks at <u>all</u> contaminants, <u>all</u> exposure pathways and <u>all</u> receptors.

In the proposed soil cleanup standards (not yet introduced to EQC), ECD limited the medium affected, the contaminants, and the exposure pathways. Only soil concentration levels (not groundwater, surface water or air) are being developed. The contaminants are limited to those where toxicological data are available. (Approximately 80-100 compounds that are either EPA "A" or "B" carcinogens or where EPA has "medium" or "high" degrees of confidence in the systemic toxicant data.) Five exposure pathways (leaching to groundwater, ingestion, particulate inhalation, volatile inhalation, and dermal contact) were considered. Note that the soil cleanup standards are a small part of the ECD universe (ORS 465.200(9)) that defines "hazardous substance" - all RCRA wastes, CERCLA substances, oil, and whatever the EQC may add.

Under the current ECD rules there are two main risk assessments: (1) the endangerment assessment (or baseline risk assessment (OAR 340-122-080(2)(c)) where the risk from the release is assessed and some preliminary "scoping" numbers for cleanup are created; and, (2) the "selection of the remedial action" risk assessment where the level of protection and remedial technology are selected (OAR 340-122-090(5)). ECD's risk assessment is based on EPA Superfund risk assessment guidance, <u>BUT</u> EPA's "acceptable level of risk" range (10^{-4} to 10^{-6} for carcinogens) for protecting water quality is not adopted nor are federal standards (such as drinking water Maximum Contaminant Levels (MCLs)) assumed to be at DEQ "acceptable" levels until DEQ has ascertained that a value as close to a human health risk level of 10^{-6} can be employed (ie. ECD does not use an EPA MCL, if the MCL has been determined to pose a 10^{-4} individual lifetime cancer risk because technical feasibility or detection limits have been taken into account.) Rather ECD has calculated a 10^{-6} level for carcinogens using EPA RME default parameters and other data in EPA's Integrated Risk Information System (IRIS).

(Authors note: Not to belabor a point, but it is important to note that not all 10^{-6} risk levels are equal: a drinking water

risk of 10^{-6} level is based on a 70-year exposure period; a CERCLA 10^{-6} is based on a 30 year exposure, so a SDWA level may be twice as "protective" depending on how it is applied.)

These are a few examples of how DEQ's environmental cleanups address health and ecological risks. In the next couple of months, ECD will be seeking EQC review of the proposed, risk-based, soil cleanup standards and risk-based, ground water clean-up standards.

DEQ's SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAMS

Solid and Hazardous Waste Management: Most of the regulatory actions taken by the Hazardous and Solid Waste program (under the authority provided in the federal Resource Conservation and Recovery Act and state waste management laws) are driven by control technology requirements and performance and engineering design standards to minimize ground water quality and other environmental impacts from waste disposal. Numerous other (non-risk) requirements control the generation, storage, treatment and transport of hazardous wastes from "cradle to grave". The standards used for RCRA corrective actions stem from EPA risk assessments which focus on health risks to the Maximum Exposed Individual. EPA's risk assessments assume hypothetical exposures to an individual based on mathematical modeling of contaminant fate and transport (assuming generic soil characteristics) to an imaginary "receptor" (a person drinking water) at the facility boundary. As such, these standards assess hypothetical health risks and may be more protective of long-term, future ground-water quality goals than would be warranted by setting levels or pursuing strategies to protect against current exposures to site contaminants posing health risks.

In the hazardous waste programs, human health risk can be measured in managing for toxics risk reductions and traditional hazards such as explosions, landslides and particulate generation. The "eco-risks" managed by solid and hazardous waste management protect surface water quality, ground-water quality, wetlands, and wildlife exposures to other physical (e.g., six-pack rings) and biological risks (e.g., reductions in reproductive capability). Closure and post-closure requirements for hazardous waste disposal facilities are based mostly on ground water resource protection measures. Hazardous waste listing and de-listing criteria emphasize "hazard identification" (ie. is the substance ignitable, corrosive, reactive, leachable, etc.) more than risk assessment per se. The waste minimization programs and recycling initiatives are based more on reducing the volume of wastes produced and not the risks that they may pose to

health or the environment (although having fewer landfills due to recycling may be indirectly tied to reducing ecological risks in some settings).

The Hazardous and Solid Waste Division's process for siting hazardous waste treatment, storage or disposal facilities draws heavily on risk assessment, often because of the need to explain what is known about the human health and ecological risks that nearby populations often fear.

Hazardous and Solid Waste Division anticipates that facility siting and closure requirements will continue to warrant EQC review. Once EPA has promulgated the Subtitle D solid waste disposal regulations, DEQ/HSW will need to decide whether or not to incorporate EPA's risk-based standards, performance based standards or strictly control technology based standards in the state program.

DEQ's CROSS MEDIA RISK ASSESSMENT PROJECT

Cross-media risk assessment: DEQ's Laboratory Division recently received a grant from EPA to develop methods for assessing cross-media risks. The assessment methods will examine whether the risks at one entire facility, that are reduced in one environmental media are being transferred to another environmental media. For example, a drinking water treatment plant that removes volatile organic compounds from intake water may use an "air stripper" which removes volatile organic compounds from the water and converts them to air emissions. Cross-media risk assessment looks at the health risks of ingesting or coming into contact with the contaminant in the drinking water and the health risks posed by breathing air emissions of the same pollutant. It tells program managers when risks are being reduced and when they are simply being transferred to another media.

Each of these program descriptions illustrates how **environmental risk analysis** can be employed at the individual program level (e.g., to set standards, target programs on significant risks, and evaluate the progress that has been made in a program). Risk analysis has also been used in strategic planning to guide the implementation of programs across an entire agency (e.g., EPA's Unfinished Business and Risk Reduction reports); an entire state (e.g., Washington state's 2010 report); or region (EPA Region X's Comparative Risk report). These strategic planning efforts are described later in this paper. The next section defines risk and risk assessment.

WHAT IS RISK?

Before tackling the technicalities of risk assessment, a

general review of the concept of risk may be helpful.

Risk is the chance of harm, injury or damage. When people take risks, they put themselves in situations which might be dangerous to themselves or their property. Everyone is a risk-taker. Each daily activity involves some element of risk. Consciously or unconsciously, we weigh the benefits of each activity against the risks we perceive, and we make informed choices. The underlying thesis of this paper is that the Environmental Quality Commission (EQC) and DEQ are charged with defining, measuring and analyzing the risks associated with environmental problems so that informed decisions can be made about reducing risks to an "acceptable level" to protect public health and natural resources either through regulations or other initiatives such as pollution prevention. Part II discusses how different environmental statutes allow risk managers to consider the costs of control technology, analytical constraints and the "balancing" of risks and benefits in deriving "acceptable risks".

How "acceptable" a risk is often has to do with whether the risk is voluntary or involuntary. For example, cigarette smoking has been proven to cause lung cancer, emphysema, and heart disease. Yet many people choose to smoke in spite of these documented health risks. Smoking is a voluntary risk which smokers have judged to be acceptable. The same individuals who accept the risk of smoking might be outraged if their drinking water contained small amounts of a chemical which caused cancer in some species of lab animals. Drinking contaminated water would constitute an involuntary risk over which they have no control, making that risk "unacceptable." Non-smokers more and more object to being "passive smokers" by being involuntarily exposed to cigarette smoke. They consider the risks associated with passive smoking to be "unacceptable." In response, public health officials in recent years have restricted non-smokers exposure to cigarette smoke and thereby reduced the level of "unacceptable risk". Other public perceptions of environmental risks will be discussed later in this paper.

Decisions about "acceptable risk" are frequently complicated by the presence of competing risks, which require that tradeoffs be made. For example, drinking water supplies are chlorinated to protect the public from waterborne infectious diseases. But the chlorination process can introduce small amounts of potential carcinogens into the water supply. Control of waterborne disease is clearly important, but questions are now being raised regarding the possible health effects of the chlorination process and whether these potential carcinogens should be removed. The answer to this question is complex and depends in part, on the size and severity of the potential health risks associated with the presence of these chemicals in the water. Risk assessment provides a way of estimating the risks posed by these chemicals. As an input to risk-based decision-making (or risk management),

it can provide a crude measure for comparing alternative methods of reducing the health risks of the contaminated water.

What is risk assessment?

Risk assessment is a process that uses scientific facts, inferences and assumptions to calculate the probability of adverse human health or environmental effects from exposure to toxic substances. Most frequently, it provides information which can be used to estimate the potential impact from exposure to a particular chemical or pollutant. Two basic methods are being developed: health risk (cancer and non-cancer) assessment and eco-risk assessment.

Health Risk Assessment: A National Research Council (NRC) committee attempting to look across federal agency use of health risk assessments defined health risk assessment as, "...the characterization of the potential adverse health effects of human exposures to environmental hazards. Risk assessments include several elements: description of the potential adverse health effects based on an evaluation of results of epidemiologic, clinical, toxicologic, and environmental research; extrapolation from those results to predict the type and estimate the extent of health effects in humans under given conditions of exposure; judgments as to the number and characteristics of persons exposed at various intensities and durations; and summary judgments on the existence and overall magnitude of the public-health problem. Risk assessment also includes characterization of the uncertainties inherent in the process of inferring risk." (NAS 1983).

The Council committee also recognized that their definition is often given narrower and broader interpretations. Some agencies follow the NRC definition emphasizing reliance on quantitative results and may distinguish between quantitative risk assessment and qualitative risk assessment. Quantitative estimates of risk are not always feasible, and they may be eschewed by decision-makers for policy reasons. Both quantitative and qualitative risk assessments have emerged as a result. Qualitative risk assessments may include analyses of perceived risks, comparisons of risks associated with different regulatory strategies, or best professional judgments with rankings such as "low, medium and/or high" risks.

The NRC committee and other authors clearly distinguish between risk assessment and risk management. The committee used the term "risk management" to describe the process of evaluating alternative regulatory actions and selecting among them. Often

spelled out differently among environmental statutes, it is an agency decision-making process that entails consideration of legal, political, social, economic, and engineering information with risk-assessment information to select the appropriate response to a potential health or environmental hazard. As such, the selection process necessarily requires the use of value judgments on issues such as the acceptability of risk and the reasonableness of the costs of control, among others.

Risk assessments are carried out by many federal and state agencies including: the US Environmental Protection Agency, the Food and Drug Administration, Consumer Product Safety Commission, Nuclear Regulatory Commission, Occupational Safety and Health Administration, Oregon Department of Environmental Quality, Oregon Health Division, and others. Because most of the public concern has been on toxic chemicals and their impacts on human health, health risk assessment techniques have been evolving quickly over the past ten years.

From the public's point of view, the most difficult number to interpret from a health risk assessment is the cancer risk estimate. It is important to realize that cancer risk estimates derived for environmental chemicals:

- are imprecise, often presented in ranges of values (ie. the average individual lifetime risk is between 1×10^{-4} and 1×10^{-6});
- frequently depend on a number of unproven assumptions in the absence of data;
- can change over time in response to new information on the occurrence of a pollutant or contaminant, new experimental data and scientific models used to estimate exposure or toxicity;
- are extremely cautious in a number of ways;
- may not be unanimously supported by the scientific or regulatory community.

Risk assessment of human health effects, by virtue of its complexity and technical jargon, seems to assign a real number to a real risk. In reality it does not. Risk estimates are educated guesses, which blend science, experience, and judgement to produce a hypothetical prediction of potential risk. Risk estimates derived in this manner are conservative, which means that the risk numbers may be overestimates of the actual risk. Depending on the assumptions and the data employed, risk assessments can underestimate risks as well.

Estimates of human health risks of developing cancer are probabilistic values often expressed as "one in ten, or one in a million" (1×10^{-1} or 1×10^{-6}). This means that each individual or member of a population for which the risk estimate is calculated have an equal probability of experiencing the health effect being assessed. It is easy to conclude, but incorrect to say that if a risk is one in a million (and there are 2.7 million people in Oregon being exposed to the pollutant) then 2.7 Oregonians will get cancer or experience the health effect being described. Risk assessments yield probabilities, that is each person exposed (to the same level of pollutant for the same period of time) has an equal probability of "1 in ten or 1 in a million" of developing the effect. They also have a chance that the risk is zero.

The public has a hard time understanding that risk assessors measure probabilities or chance and not actual cancers, numbers of deaths or accidents. "The public needs to understand that a 10^{-6} (or one-in-a-million) cancer risk estimate can have a zero outcome -- that is sometimes people may get cancer, other times they may not", says Dr. Rommel Rivera, DEQ's toxicologist. "Think of estimating risks as an exercise in picking ping-pong balls out of a box. You have 1,000,000 ping-pong balls in the box; 999,999 are white and 1 is green. You have a 1 in one-million chance that the first time you pick a ball out of the box, you will get the green one. Most of the time however, chances are, you will pick out a white ball. The public needs to know that risks at 10^{-6} can also be zero risk--that is, sometimes people may get cancer; other times they may not."

Ecological risk assessment

Ecological risk (eco-risk) assessment techniques are newer and not as well developed. In several respects, eco-risk assessment is more complex and more uncertain than human health risk assessment. Eco-risk assessors are primarily concerned with the adverse effects of risk agents on populations of particular animal, plant, or microbial species and on the structure and function of ecosystems. Evaluating population-level risks to a species are analogous to those used for human populations. Endpoints of concern include changes in mortality rates, reproductive rates, growth rates of individuals, physiological or behavioral abnormalities, and susceptibility to environmental stresses.

Ecosystem-level risks include changes in species diversity, species location, productivity and biomass accumulation, connectivity among living and nonliving elements of the ecosystem, resistance to disruptive events and resilience, species interactions, taxonomic variability, energy and nutrient cycling, and the composition of functional groups such as

decomposers. Various techniques are employed to assess the impacts of risks on species and ecosystems. For example, water quality programs have long used species tests to determine at what concentration of a pollutant, 50% or 90% of an indicator species population die, as an indication of chemical risk or toxicity. These tests become the basis for establishing aquatic life criteria.

If risk assessment is an imperfect science, why bother?

Despite these shortcomings, risk assessments can be useful because they provide estimates of how likely an effect may occur given a set of defined circumstances and assumptions. These circumstances and assumptions must be clearly defined and articulated in order to make the estimates useful and comparable to one another. With these provisos, the risk assessment information can become one of many analytical tools for deciding how to control pollutants, reduce exposures to pollutants and/or regulate a particular problem.

Specific applications of risk assessments include:

-- defining the risks attributable to an environmental problem before the problem is regulated or prevented (sometimes referred to as "baseline risk estimate");

-- estimating the risks after the problem has been regulated or prevented;

-- establishing priorities for setting standards or cleanup activities (ie. reduce high risks first);

-- choosing among and evaluating cleanup alternatives;

-- comparing risks across different programs (to target programs capable of reducing high risks);

-- evaluating substitutes for risky chemicals;

-- educating the public about cancer risk and the nature and degree of harm that could potentially result from a particular environmental problem.

The following section describes the risk assessment process generally employed in assessing human health risks.

The Risk Assessment Process

The following is a simplified description of the risk assessment process intended to illustrate the basic steps involved in estimating human health risks. Basically, there are four parts to a risk assessment:

--Hazard identification
--Dose Response assessment
--Exposure Assessment
--Risk Characterization

Hazard Identification: the first step in conducting a risk assessment is to determine whether or not a chemical is capable of causing adverse health effects. Hazard identification attempts to answer the questions: Is chemical XYZ bad stuff? Does it make people sick? Is it a carcinogen? Is it a pathogen or virus? Will it cause birth defects? Does the chemical limit children's ability to develop into adults? Should we worry about it?

One way this is accomplished is by studying information on human exposure to chemical XYZ. This kind of information is often only available on occupational or accidental exposures. This means we may know that workers who manufacture chemical XYZ or workers who are exposed to pollutants ABC when a product is made, exhibit certain symptoms after being exposed for 20 years. Or we may know an accidental spill of this chemical from a train derailment was fatal for people who tried to clean it up without protective equipment or clothing. Usually though, the information does not tell us what would happen to someone who was exposed to Chemical XYZ for a long period of time in very small amounts.

Scientific literature and research on animal studies are also reviewed. DEQ has access to EPA's Integrated Risk Information System (IRIS) which contains references to studies on thousands of chemicals and pollutants. In animal studies, several species of animals are exposed to a varying amount of a chemical or pollutant for specific time periods. Chemicals and pollutants are tested at very high doses to maximize the potential to detect all sorts of adverse health effects, including cancer, birth defects, changes in enzyme activity, neurotoxicity, reproductive toxicity, and damage to specific organs (e.g., lung, kidney, or liver tissues); toxicologists refer to these effects as toxicological endpoints. In addition, the structure of the chemical is studied and compared to the structure of chemicals which are known to cause adverse health effects to see if similarities exist.

If the chemical or pollutant is suspected of producing cancer, the various studies under consideration, are carefully weighed by expert committees of scientists following EPA's Cancer Assessment

Guidelines (or other federal agency guidelines). They will then assign one of five classifications (designated as Group A for a Human Carcinogen when there is sufficient evidence in epidemiologic or occupational studies to support causal association between exposure and cancer in humans, through Group E: No evidence of carcinogenicity for humans).

EPA CLASSIFICATION OF CARCINOGENS

Group	Evidence of Carcinogenicity
A	Human carcinogen (sufficient evidence from epidemiological studies)
B	Probable human carcinogen
B_1	At least limited evidence of carcinogenicity to humans
B_2	Usually a combination of sufficient evidence in animals and inadequate data in humans
C	Possible human carcinogen (limited evidence of carcinogenicity in animals in the absence of human data)
D	Not classified (inadequate animal evidence of carcinogenicity)
E	No evidence of carcinogenicity for humans (no evidence of carcinogenicity in at least two adequate animal species or in both epidemiological and animal studies)

For **non-carcinogens**, the hazard identification step will produce information on what is known about the various health effects (e.g., sore throats, birth defects, growth deficiencies, etc.) that may result from exposures to a chemical or pollutant.

During the hazard identification step it is important to know which "pathways of exposure" have been studied in the animal or epidemiological studies that are available. EPA will often assume that if a chemical or pollutant produces a toxic health effect from ingestion, it is also going to produce effects from inhalation exposures as well. Another facet of the hazard identification is to understand which biological organs or tissues are affected in animals and whether the same organs, tissues and/or biological mechanisms are present in humans.

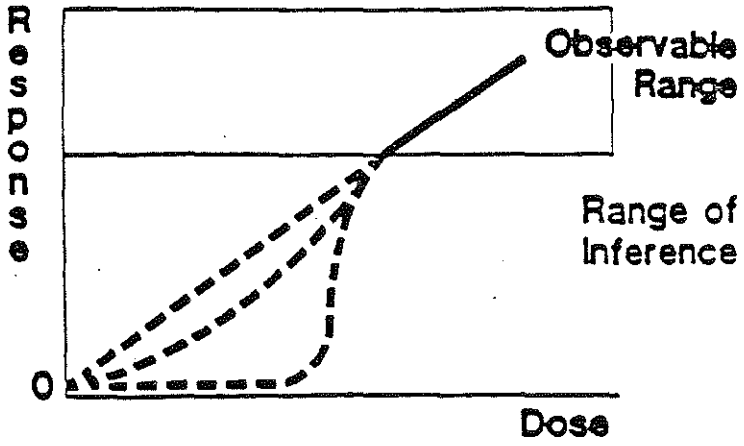
Dose Response Assessment: This is the next step in risk assessment. The information developed in this step seeks to answer the question, "How toxic is the chemical?". Nearly all chemicals are toxic to some degree at very high doses, even chemicals like oxygen and water, which are essential to life. ("The right Dose distinguishes between a poison and a remedy" -- Paracelsus 1493-1541 AD.) Arsenic for example, is generally believed to be an essential nutrient in the human diet at low doses, but is considered to be a carcinogen at high doses. To evaluate the health risks of a particular chemical XYZ and to be able to compare those risks to other chemicals or other risks, the potency of the Chemical XYZ must be determined. This information is obtained by constructing a dose-response curve from either animal or human toxicology data, which simply relates the dose (or concentration) of Chemical XYZ required to produce a particular toxic effect, such as kidney damage or lung tumors. Dose-response information addresses questions such as: At what concentration level can we observe no adverse health effects? What is the lowest concentration level at which a health effect occurred? Is a small concentration level harmful, if so what happens at larger doses?

Risk assessors are often interested in doses to which humans might be exposed, and such doses usually are much lower than those administered in animal studies. Therefore, dose-response assessment often requires extrapolating an expected response curve over a wide range of doses from a limited number of data points. Differences in size and metabolism between humans and animals must also be accounted for. In conducting risk assessments, EPA generally reviews several dose-response curves.

These curves (see next page) are generated by extrapolating values mathematically. Much debate has surrounded the issue of whether or not certain toxic chemicals produce cancers or other health effects starting at a "threshold" concentration. In the absence of data on threshold effects, EPA relies on a "linearized multi-stage" extrapolation model which implies that there are potential effects at very low concentrations, even those approaching zero. One of the issues in the current dioxin debate is whether or not a threshold concentration exists for the effects attributable to exposures to dioxin compounds. EPA is currently sponsoring additional research in this area.

A "reference dose" is derived for non-carcinogens by examining the available literature and deriving values that represent a "No-observed-adverse effects level" (NOAEL) or the "Lowest-observed-adverse-effect level" (LOAEL) occurs (sometimes both are factored in; sometimes different levels are derived for different types of health effects). The critical endpoint used in the dose-response assessment is the effect exhibiting the lowest NOAEL. The National Academy of Sciences and EPA have developed guidelines for then applying "uncertainty factors" to account for

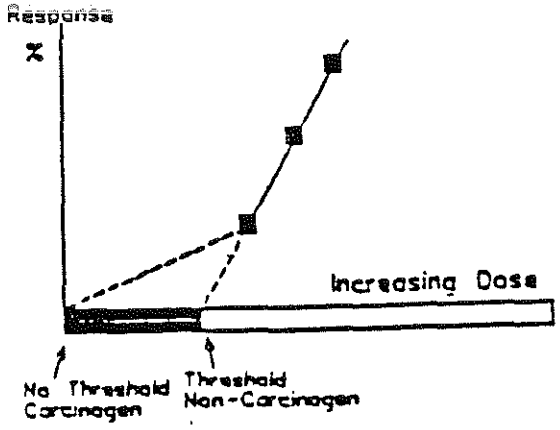
DOSE-RESPONSE CURVE



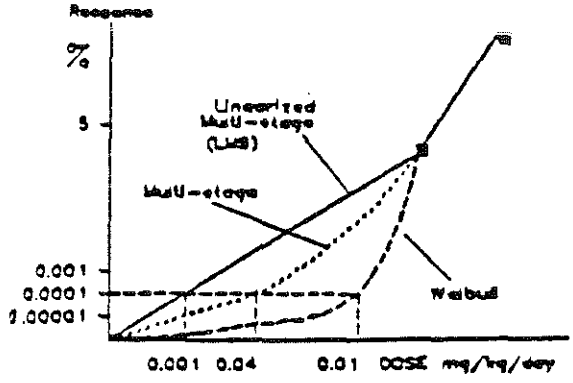
QUANTIFICATION OF CARCINOGENIC EFFECTS

- Excess Cancer Risk Estimates
  - Multistage Model
  - One-Hit Model
  - Weibull Model
  - Logit Model
  - Multi-Hit Model
  - Probit Model

THRESHOLD vs NO THRESHOLD



CANCER MODELS



extrapolations from animal studies to humans; high dose to low dose extrapolations. Other factors may be applied depending on the quality of the studies that were examined, how much of the chemical or pollutant concentration is derived from say drinking water, air or dermal contact, given all pathways of exposure. These "uncertainty factors" are usually orders of magnitude (i.e. the reference dose is multiplied times 100 or 1000. In general, the RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. The RfD is often expressed in units of milligrams per kilogram of bodyweight per day (mg/kg/day).

The reference dose (RfD) is useful as a reference point for gauging the potential effects of other doses. Usually, doses less than the RFD are not likely to be associated with any health risks and are therefore less likely to be of regulatory concern. However, as the frequency of exposures exceeding the RfD increases and as the size of the excess increases, the probability that adverse effects may be observed in a human population increases. Nonetheless, a clear conclusion cannot be categorically drawn that all doses below the RfD are "acceptable" and that all doses in excess of the RfD are "unacceptable".

At the conclusion of a dose-response assessment, risk assessors will provide a "slope factor" or Q* (pronounced Q-star) for carcinogens to describe what is known about the potency or toxicity of the chemical or pollutant under study.

Each of the models used to estimate dose-response relationships yields different estimates of risk. The risk assessor must then choose which is most appropriate. EPA has a policy of relying on the multi-stage linearized model for calculating slope factors for carcinogens because it assumes that there is no threshold for carcinogens.

Exposure Assessment: This step attempts to measure intensity, frequency and length of human exposure to a particular chemical or pollutant. Accurate and actual exposure data are frequently very limited, and exposure assessments must be based on extrapolations from past situations or estimates based on a set of assumptions.

Exposure assessment answers questions such as:

- Who is exposed to Chemical XYZ?
- What is the route of that exposure--do people breath it, ingest it, absorb it through their skin?
- How much of it are they exposed to?
- How long does the exposure last?
- What happens to the chemical once it enters the body?

- Do Oregonians' exposures differ from national population exposures?
- How do exposures to the chemical or pollutant from controllable sources differ from exposures to the pollutant from naturally occurring or other background sources?

Exposure assessments are carried out differently, depending on the environmental media (air, water or waste) that is being studied and the assumptions that are used in the calculations. (This also accounts for large differences in the ways that different EPA and DEQ programs assess exposures). A mathematical model describing transport of a chemical through the atmosphere is necessarily quite different from a model describing transport through water or soil. Different risk estimates will be produced depending on whether the risk assessor uses "average" concentration values or "maximum" or "upper-bound" estimates of the concentration of a chemical that occurs. Furthermore, the data used in an exposure assessment may not have been collected at the same point that actual exposures take place. In this case there may be an additional factor used in some programs to estimate what the concentration of a pollutant might be at any given point of exposure. Risk assessors often differentiate between exposures to current populations (e.g., air quality risk assessments), while other programs (such as Superfund and RCRA) also estimate exposures to future populations who may not now be exposed.

Sensitive or target populations who are exposed to higher concentrations or to a particular concentration more frequently may or may not be considered. For example, in considering the risks posed by dioxin in surface waters, sub-populations who rely on eating fish more often than the general population may be exposed to higher concentrations of a pollutant more frequently and therefore subject to more risk. EPA's Risk Assessment Forum (comprised of staff scientists and program analysts) are currently developing new guidelines on exposure assessment to improve the ways in which the uncertainties introduced during exposure assessments can be accounted for. Each program may also issue separate guidance on how uncertainties are to be addressed and what standardized assumptions should be incorporated in the risk assessment. The Superfund program is proposing the use of standardized default exposure values for calculating "reasonable maximum exposures".

Risk Characterizations: During the final step, risk assessors estimate the magnitude of the risks. In this step, the exposure and dose response assessments are used to describe the probable incidence of an adverse health effect, such as getting cancer in humans under various conditions. Specifically for cancer risks, a risk estimate might appear as follows:

"The upper bound on the excess lifetime cancer risk associated with Contaminant XYZ in drinking water at a level of 200 ug/l is 1 x 10^{-6}."

This means that lifetime (or 70 year) exposure to Contaminant XYZ at a particular level (200 ug/l) in drinking water has been calculated to increase the cancer risk to each person who drink the water by 1 x 10^{-6}. In order to put this risk estimate in perspective, it is important to know that the general population have a 1 in 4 (25%) or 4 x 10^{-1} chance of getting cancer in their lifetimes. So this risk estimate means that each person who drinks the water has an additional 1 in 1,000,000 chance of getting cancer.

Risk characterization also includes a description of the uncertainties involved and an analysis which indicates how the risk estimate would change if certain assumptions are changed. This is an important step that is frequently glossed over when decision-makers are faced with crises demanding immediate attention and the risk assessor is told to "Give me a number...". For example, in describing the uncertainties involved, risk assessors may provide information on what factors may cause the estimate to under or over estimate real or actual risks. He or she may be able to characterize the data supporting the classification of a Class A carcinogen and compare it with the lack of information for a Class D carcinogen. This is an important step because programs differ in the way they assess the risks (and set regulatory levels) for different classes of carcinogens:

Carcinogens treated equally	Carcinogens treated differently
Superfund baseline risk assessment: A/B/C carcinogens are treated equally	**Superfund reportable quantities** Carcinogens ranked by class and potency
RCRA Toxicity Characteristic Rule: A/B/C carcinogens at 10^{-5}	**RCRA Delisting, Corrective Action:** A/B carcinogens @ 10^{-6}; C Carcinogens at 10^{-5}
Ambient Water Quality Criteria: A/B/C carcinogens treated equally levels	**Drinking Water Maximum Contaminant Levels:** A/B: set within a risk range of 10^{-4} to 10^{-6}. C carcinogens: RfD (based on systematic effects), with an additional safety factor of 10.

Air Quality National Emission Standards for Hazardous Air Pollutants (NESHAPS):
A/B carcinogens treated equally;
C carcinogens are not regulated.

When considering the risks associated with non-carcinogens, the risk assessor should articulate which uncertainty factors were applied in deriving the Reference Dose. In many cases, people will be exposed to various concentrations of a pollutant or chemical. The risk assessor might provide a range of estimates based on "average" concentration levels and "upper-bound" or maximum-level concentrations. If sub-populations who are particularly at risk have been identified, the risk assessor may provide separate risk estimates based on characteristics unique to that sub-population. It is often important to know whether or not there is sound scientific evidence for route to route extrapolations for example, in assessing the risks from ingesting a contaminant as opposed to inhaling it.

Describing the underlying uncertainties and quality of the data supporting a risk estimate is an important step in carrying out risk assessments for Oregon DEQ and OHD programs. During the risk characterization step, there are opportunities to incorporate factors (such as data on exposures to sub-populations or monitoring data which are representative of local or statewide importance that were not considered or appropriately considered in national risk assessments.

Once the risk assessor has presented his or her estimates, it's then up to risk managers to consider all of the other factors (costs of reducing risks, limitations in measuring low-level concentrations of the pollutant, the nature of the risk, what control technologies are available, whether other chemical substitutes are more or less risky, etc.) that contribute to defining "acceptable risk".

How did the Risk Assessor get that number?

The risk assessor's basic formula is:

RISK = EXPOSURE x POTENCY (or TOXICITY)

In the example above, the risk assessor may have looked up Contaminant XYZ in IRIS or other data bases and reviewed the various animal and/or human studies that had been done. He or she may have found that it was already classified as an A, B, or C class carcinogen. Assuming that it was an A-class carcinogen and that the Contaminant in question was in drinking water (i.e. exposures via ingestion) he or she looked at the potency term (or

slope factor) and multiplied it times 200 ug/l. He or she also assumed that the exposures would occur over a lifetime (assumed to be 70 years) to an individual who weighed 70 kilograms (about 154 pounds) and that individual would drink 2 liters of the same water per day.

(Line A) Risk = (Exposure) x (Toxicity) OR

(Line B) Risk = (Intake) x (Slope Factor) OR

(Line C) Risk = (C x IR x EF x ED) / (BW x AT) x (Slope Factor)

C= chemical concentration = mg/kg (soil) or mg/liter (water) (e.g. 200 ug/l or .2 mg/l)
IR= intake rate = 2 liters/day (water)
EF= exposure frequency = e.g. 365 days/year
ED= exposure duration = e.g. 70 years
BW= body weight = 70 kg
AT= averaging time = e.g. 365 days/year x 70 years

OR

1×10^{-6} = (2 liters/day) x (.2 mg/liter x .00016/mg/kg/day)/70kg

Generally speaking, as exposure levels (ie. concentrations of the chemical or pollutant) increase the individual risk level increases (e.g., if you increase the dose from .2 mg/liter to 2 mg/liter; the risk increases by an order of magnitude to 1×10^{-5} or one in 100,000). If the duration of exposure decreases and risk level (such as 1:1,000,000) are held constant, concentration levels may be increased (up to a point). During very short exposures, the toxicity variable may change in that acute or sub-chronic effects may be observed instead of the chronic effects that were originally included in the risk estimate.

When considering the risks associated with non-carcinogens, risk assessors will often discuss a "margin of exposure" which quantitates the relationship between measured human exposure levels and the NOAEL for the critical effect under study. Alternatively, the Superfund program expresses the "risk" associated with developing a health effect from exposures to a non-carcinogen as a Hazard Quotient where:

Hazard Quotient = Intake Rate/RfD; where a Hazard Quotient greater than one warrants additional control or clean-up actions.

The general formula on line (A) above is a convenient way to think about expressing risks qualitatively as well. For example, if large numbers of Oregon residents are constantly exposed to a known carcinogen, the risks can be expressed as "high" when compared with lower numbers of people exposed to a pollutant that can yield the same health effects but is generally less toxic. The latter pollutant may be considered to pose "low or medium" risks in relation to the first.

Are risk characterizations all the same?

No; risk characterizations among EPA and DEQ programs differ significantly. Recently, EPA's Office of Research and Development (EPA-ORD) reviewed the approaches that different program offices use in characterizing health risks. DEQ's risk characterizations differ from one another to the extent that they use EPA's program-by-program characterizations. EPA-ORD found a wide variety of approaches. This is not inherently inappropriate, nor, given some thought, unexpected since risk characterizations are both the last step in risk assessment and the first step in risk management. In addition, different programs have different risk management mandates. However, these differences can be confusing and cause difficulties in trying to communicate risks. For example, Superfund sets cleanup levels for sites on based on "Reasonable Maximum Exposure" values which assess the risk to the Maximum Exposed Individual (MEI) for both current and future exposures.

EPA's and DEQ's Water Quality programs base regulatory decisions on average exposed individual risk, which is assumed to be applicable to the entire national population. In setting National Emission Standards for Hazardous Air Pollutants, EPA's and DEQ's Air Quality programs characterize risks to the maximum individual risk, aggregate population risk, the distribution of risk and estimated incidence of cancer within a specified population. **Simply characterizing all environmental risks as being "acceptable" at "a risk of 1 x 10^{-6}" may be misleading.**

To further this point, consider the following example: in establishing the basis for regulating benzene with a National Emission Standard for benzene, EPA's Office of Air and Radiation calculated cancer risks (before regulation) in terms of Maximum Exposed Individual Risk (MIR) and estimated annual incidence of cancers across the US population:

Source Category	MIR	Cases/year
Ethylbenzene/styrene process vents	$2x10^{-5}$	0.003
Benzene storage vessels	$4x10^{-5}$ to $4x10^{-4}$	0.05 to 0.1
Equipment leaks NESHAP	$6x10^{-4}$	0.2
Coke by-product recovery plants	$6x10^{-3}$	3

Total annual incidence = .003+0.1+0.2+3 = 3.303 cases/year

Maximum individual lifetime risk = 6 x 10^{-3}.

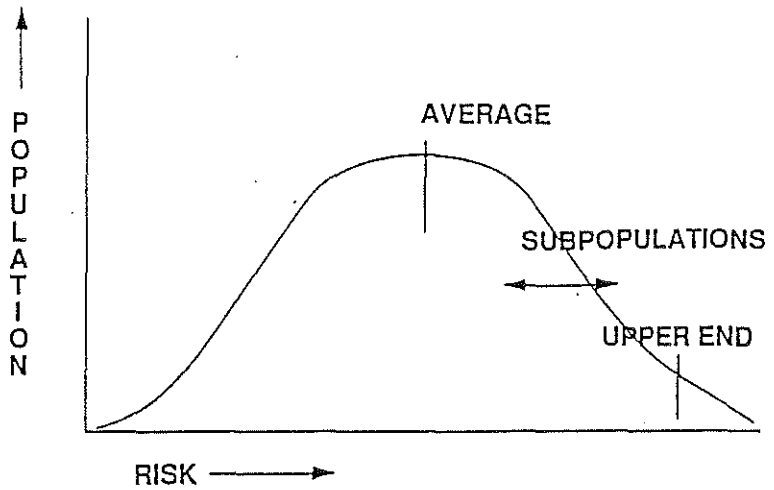
(This approach is similar to what DEQ's air program does in assessing risks for Oregon's exposed population). However, if the assumptions that are used by EPA's Office of Water and DEQ water quality program were used, and an incidence of 3.3 cancer cases/year were converted to an average individual lifetime risk estimate:

(3.3 cases/year) x (70 years)/(240 million people) = **1 x 10^{-6} average individual lifetime risk.**

Risk estimates can differ by orders of magnitude depending on whether "worst-case", "maximum exposed individual risks" or "average" exposure levels or individual risks are considered.

Estimated risks may actually span a "distribution" across the population being protected. The figure on the next page, illustrates how these different indications of risk might be conveyed. Correspondingly, risk managers need to consider the differences between "average" and "upper bound or upper end" before deciding to regulate a particular chemical or pollutant and in defining "acceptable risk" levels as either regulatory goals or standards; especially if they are presented with estimates that appear to be the same order of magnitude.

FREQUENCY DISTRIBUTIONS OF CARCINOGENIC RISKS



In the figure above, the horizontal axis represents estimated risk levels ranging from low (1×10^{-10}) to high (1×10^{-1}). The vertical axis represents numbers of people being exposed (population). Setting an "acceptable risk" level at the "average" point with an "average individual lifetime risk of 1×10^{-6}" would represent a decision to have one-half the exposed population at a higher risk level and one-half of the population below that risk level. Controlling risks at the "average" risk level may not be "as protective of public health" as setting the acceptable risk level (1×10^{-6}) at the point labeled "upper end" where the "maximum individual lifetime risk" point lies. If the "acceptable risk" level is set at the "upper end" of the estimated risk range (e.g., the 95% or maximum exposure concentration) then the majority of the population being exposed will be at less risk than the "maximum" level. The two-way arrow points to the range in risks that a subpopulation who are exposed to risks greater than the average, but less than the "maximum" or "upper end" would be subjected to.

What about the risks from multiple exposures or multiple pollutants?

EPA has issued separate guidance on multiple chemical exposures (EPA, 1986) which advises risk assessors to distinguish among the different target organs and tissues affected by a pollutant as well as consider what is known about whether there are synergistic effects (e.g,. asbestos exposures to smokers have proved to increase lung cancer risks more than either exposure alone); antagonistic effects (where one dose counteracts or negates another); or potentiation (where one dose has no effect but enhances the dose of another pollutant).

Absent information about any of these effects, EPA and DEQ staff concur that it is prudent public policy to assume:

-- that the risk from carcinogenic chemicals is additive;
-- that the risk from non-carcinogens having similar

potential to produce adverse health effects is additive;

-- that the risks from multiple exposure pathways (to the same exposed individual) are additive.

EPA's Office of Research and Development has suggested that more consistency is needed in the way risk assessment information is presented to risk managers. DEQ may want to consider how the following characterizations could improve the presentation of risk assessment information in the DEQ programs that assess risks:

--the hazard posed by the chemical or pollutant (if it is a known or suspected carcinogen, indicate what classification it is);

--the distribution of exposures to it (ie. do Oregonians exposures conform to national exposures?);

--the distribution of risks that can be estimated (e.g. average individual lifetime risks v. maximum individual lifetime risks);

--the risk to the people at the high end of the distribution (eg., maximum population risk or the upper 95% exposed population)

--the risks to identifiable subgroups that are highly exposed and therefore at high risk;

--population risk estimates (may not be practical for Superfund or HSW site-specific assessments);

--what is known about exposures to the same chemical or pollutant from sources other than those under consideration in a specific program area;

--the extent to which empirical data or modeled data are used, the quality of data, and the "degree of confidence" the risk assessor has in the data that were used;

--consider how the uncertainties used in the risk assessment influence the estimate.

Acceptable Risk

After considering the risk assessment information that is available about a particular pollutant or environmental problem, risk managers will then have a broader base of understanding to examine how public perception of the risks under review AND other risk management factors can influence the final determination of

an "acceptable risk" level. Two general concepts are used to define acceptable risk: 1) a quantitative expression of risk such as "1 x 10^{-4}" or "1 x 10^{-6}" where agencies stop regulating; or 2) a more qualitative expression (such as clean-up to natural background levels, or below known measurement levels) indicating that a certain level of risk is "adequately protective of public health" or "protective of the environment". Risk assessment and risk management principles guide environmental managers decisions in adopting either definition.

Except in cases where DEQ programs carry out their own risk assessments, DEQ applies the results of EPA's or other agency risk assessments to environmental problems in Oregon. This means that DEQ is buying into the same assumptions that EPA uses in assessing and managing these risks. Using the quantitative expression this means that DEQ stops regulating at the following levels:

Environmental Cleanups	
Baseline risk assessment:	Cumulative risk must fall within risk range of 10^{-4} to 10^{-7}
Solid Waste Program	Acceptable risk generally within range of 10^{-4} to 10^{-7}
Water Program	
Maximum Contaminant Levels:	Target risk range of 10^{-4} to 10^{-6}
Ambient Water Quality Criteria:	EQC has selected concentrations corresponding to average individual cancer risk of 10^{-6}
Air Program	Acceptable risk at
Section 112, Clean Air Act:	approx. 10^{-4} individual risk, approximately 10^{-6} population risk.

II. Environmental Risks and Risk Management

Introduction

The second half of this issue paper briefly describes the risk management process and how considering statutory authority, control technology requirements, the costs of reducing risks, the benefits of alternative risk reduction strategies, technical feasibility issues, politics, public opinion, equity and other decision-making factors can influence the determination of "acceptable risk" levels and guide risk-based decision making. Some anecdotal data on how environmental risks compare with other risks that Oregonians are likely to encounter are presented. Several examples are described: the results of EPA's Unfinished Business analysis (EPA/OPPE 1987); the summary findings of EPA's Risk Reduction Committee (EPA/SAB 1990); EPA Region X's comparative risk analysis (1988); Washington State's 2010 strategy (Washington DOE 1990); and a comparative risk analysis prepared by a panel of Northwest risk analysis experts (1988).

An example of EPA's cost-benefit analysis of alternative regulatory levels for controlling radon in drinking water (under the authority provided by the 1986 Safe Drinking Water Act) is presented as an example of how technical feasibility, detection limits, costs, benefits, equity considerations, background radon levels and other factors were considered in determining the federal government's definition of "acceptable risk".

Public Perception of Risks

People perceive risks differently, depending upon the nature of the risk and their individual experiences. Researchers from the fields of psychology, social psychology, decision analysis and other disciplines have identified several attributes or dimensions of risk that influence public perception.

Some people judge the riskiness of a hazard based solely on the likelihood of its having adverse effects, while others are primarily concerned about the hazard's effects; whom it affects; and how widespread, familiar, and dreaded the effects are. Furthermore, risk perceptions are influenced strongly by issues of choice and control. Risks often seem riskier to people if they have not voluntarily agreed to bear them and if they have no control over the source and management of the risks.

Perceptions of risk also are influenced by the benefits derived from accepting the risks [e.g., people may be willing to accept the risk of dying in an automobile crash in return for the benefit of mobility; Oregonians implicitly accepted the risks of being one of 614 motor vehicle deaths statewide last year (OHD 1990), but they have expressed very low tolerance for the risks

of coming into contact with potential carcinogens in Oregon rivers and streams] and by fairness, equity, and the distribution of risks and benefits.

Trying to reconcile public opinions about risks and the perception of risk and with the advice and counsel of toxicologists, systems ecologists and other experts who conduct risk assessments for DEQ is a complex task. EPA, DEQ and other state environmental agencies often have difficulty in trying to communicate the concept that "risk targets of 1×10^{-6} have been met" while citizens want to know whether the river is safe to swim in or how many jobs will be lost due to pollution control or efforts to (for example) "reduce risks to Oregon wetlands". Oregonians opinions about environmental risks have and will have significant impact on how the EQC and the DEQ assess, manage, and communicate risks. The risks estimated in a risk assessment of an Oregon environmental problem may not be consistent with the perceptions or concerns of those individuals most directly affected (from Cohrssen and Covello, 1989).

Peter Sandman of Rutgers University and other researchers, in exploring public reactions to site clean-ups and other naturally occurring problems developed the following list:

Acceptable	Not Acceptable
voluntary	imposed/involuntary
individually controlled	government controlled
fair	unfair
info. from trusted source	info. from strangers
morally right	from unethical practice
natural	artificial
familiar	unfamiliar
associated with catastrophe	associated with daily life

As EQC and DEQ managers consider taking regulatory action or adopting a pollution prevention strategy to control an environmental risk, they may wish to consider these various attributes. In alleviating the public's concern with "not acceptable risks", risk managers may consider what actions will influence the public's perception of the risks being managed.

The Risk Management Process

Each federal and state environmental statute, its legislative history and regulatory precedent govern the extent to which risk assessments can be modified by cost-benefit, cost effectiveness analyses, detection limits (PQLs), and other control technology limitations. The table on the following page provides an example of how the full range of these "risk management" considerations

SUMMARY OF DECISION PARAMETERS

Radon MCL Options

Decision Parameters	200 pCi/L	500 pCi/L	1000 pCi/L or higher
Legal Risk	• None. Based on as close to MCLG as feasible	• Some. Based on the feasibility of achieving lower levels with BAT	• Significant.
Best Available Technology	• Available & Feasible	• Available & Feasible	• Available & Feasible
Analytical Methods	• May not be constrictive.	• Probably not constrictive	• Not constrictive
Regulatory Impacts [ESTIMATES]			
Benefits	• 230 Deaths avoided/yr	• 100 Deaths avoided/ yr	• 30 or fewer avoided/yr
National Costs	• $250 million/yr	• $88 million/yr	• Less than $ 18 million/yr
Consumer Impacts	• $6 - $100 /family/yr	• $6-$100/family/yr	• $6-$100/family/yr
Incremental Cost/death	• $1.2 million/death	• $1.0 million/death	• Below $600,000/death
Uncertainty of analysis	• ±50% of estimates	• ±50% of estimates	• ±50% of estimates
Implementation Impacts	• 23,000 systems affected	• 12,000 systems affected	• Less than 6,000 systems
Lifetime Risk Range	• About 1 E-04	• About 2.5 E-04	• Over 5 E-04
Lab Availability	• May have to expand	• Now available	• Now available
Public Reaction	• Variable	• Variable	• Variable
Consistency w/ OAR	• 30 times more benefit at lower risk level than as NESHAPS. Well below indoor action level	• 10 times more benefit at about the same risk level as NESHAPS. Well below indoor action level	• Twice benefit at higher than NESHAPS risks. Well below indoor action level.

influence the promulgation of a Maximum Contaminant Level for Radon in drinking water at the federal level (EPA 1989).

For instance, the analysis describes "legal risk" qualitatively. EPA officials were concerned with whether they would be legally vulnerable to a challenge the farther from the MCLG (of zero) the MCL departed. Incremental cost-benefit and risk benefit analyses were conducted to ascertain the economic aspects of the decision package. The Practical Quantitation Limit (PQL) (the detection limit achievable by at least 80% of EPA certified laboratories using standard laboratory practices and prescribed sampling and analytical protocols) was between 200 and 300 pCi/liter at the time the decision package was presented to senior EPA management. In this case, EPA elected to propose two alternative levels and take public comment on them before finalizing the rulemaking. The average lifetime risk estimate (after regulation) for all options was 10^{-4}. The drinking water risk level and standards under review were all below naturally occurring ambient air (and NESHAPS) levels. EPA generally selects risk levels with "incremental cost/death" values in the range of $4-7 million. According to the estimates provided, the health benefits that were monetized were positive.

Additional information not presented in this table was made available to EPA risk managers. DEQ does not use cost-benefit analysis as formally as EPA does. However, detection limits and cost may be considered in the context of deciding when a given risk level is "acceptable" under several DEQ statutes. When allowed, considering these additional "risk-management" criteria may influence the "acceptable risk" level adopted by EQC.

How do environmental risks compare with other risks?

Some analysts have argued for a comparative and precedent-based approach to acceptable-risk decisions. Acceptable-risk decisions, under this principle, would be guided by comparison with other risks that people have already chosen to accept. One way to determine an acceptable level of risk would be to identify the level of risk accepted implicitly or explicitly in prior societal decisions and use that as an acceptable level. Another way would be to use the risks of natural hazards as a basis for making risk decisions. Each of these approaches has been criticized, because many of the attributes or dimensions of risks described earlier in this paper strongly influence "acceptability".

Compare for instance:

Risk	No.deaths/year	Lifetime risks
Motor vehicle accidents	46,000	1/65
Home accidents	25,000	1/130
Lung cancer deaths/smoking	80,000	1/12

Lung cancer deaths from smoking may not be directly compared with lung cancers attributable to exposures to toxic air pollutants because of the involuntary nature of exposure to the air pollutant versus the "voluntary" aspect of smoking. Deaths to children from home accidents may not be comparable with the risks associated with their ingesting lead from soil or dust. EPA's Comparative Risk studies compare similar types of risks grouped into four categories: cancer risk (e.g., lung cancer, stomach cancer); non-cancer risk (e.g., changes in liver function; reproductive capacity; onset of diarrhea or itchy eyes and throat); ecological risks (e.g., at the ecosystem level: loss of habitats or at the population level: threats to endangered species); and welfare risks (e.g., material damages, impairment of aesthetic values).

Recent Comparative Risk Studies

The results of EPA's Unfinished Business analysis (EPA/OPPE 1987); the summary findings of EPA's Risk Reduction Committee (EPA/SAB 1990); EPA Region X's comparative risk analysis (1988); Washington State's 2010 strategy (Washington DOE 1990); and a comparative risk analysis prepared by a panel of Northwest risk analysis experts (1988) are presented here to compare and contrast the various types of risks being addressed via EPA and DEQ environmental programs. The rankings provided in each of these studies were produced by sampling public opinion and consulting toxicologists and other risk analysis professionals. The results of these studies are presented here to stimulate discussion as to where EQC and DEQ feel that risk analysis can help focus state environmental programs on reducing health and ecological risks in Oregon. The EPA studies are now being used to shape the Agency's strategic plan. Washington State's study is being used in strategic planning and as a means to coordinate a "statewide risk reduction agenda". Agency staff involved in these efforts have commented that their comparative risk studies have usefully highlighted high risks that need to be addressed; new programs that are needed beyond those already in place; and ways of thinking about setting agency budget priorities in the future. EPA risk reduction staff cautiously report that the relative risk studies will not be used to re-program funding away from existing programs. EPA Headquarters professional staff and the Roper organization conducted a series of comparative risk studies in 1986 and 1987 across all of the programs that EPA and other federal resource management agencies had under their

ENVIRONMENTAL RISK

COMPARING RISKS ACROSS PROGRAMS

Public	*EPA Experts*
1. Hazardous waste sites	Medium-to-low
2. Exposure to work-site chemicals	High
3. Industrial pollution of waterways	Low
4. Nuclear accident radiation	Not ranked
5. Radioactive waste	Not ranked
6. Chemical leaks from underground storage tanks	Medium-to-low
7. Pesticides	High
8. Pollution from industrial accidents	Medium-to-low
9. Water pollution from farm run-off	Medium
10. Tap-water contamination	High
11. Industrial air pollution	High
12. Ozone-layer destruction	High
13. Coastal-water contamination	Low
14. Sewage-plant water pollution	Medium-to-low
15. Vehicle exhaust	High
16. Oil spills	Medium-to-low
17. Acid rain	High
18. Water pollution from urban run-off	Medium
19. Damaged wetlands	Low
20. Genetic alteration	Low
21. Non-hazardous waste sites	Medium-to-low
22. Greenhouse effect	Low
23. Indoor air pollution	High
24. X-ray radiation	Not ranked
25. Indoor radon	High
26. Microwave oven radiation	Not ranked

Source: Frederick Allen U S EPA based on EPA report Unfinished Business A Comparative Assessment of Environmental Problems 1987 and national public opinion polls by the Roper Organization in 12/87 and 1/88

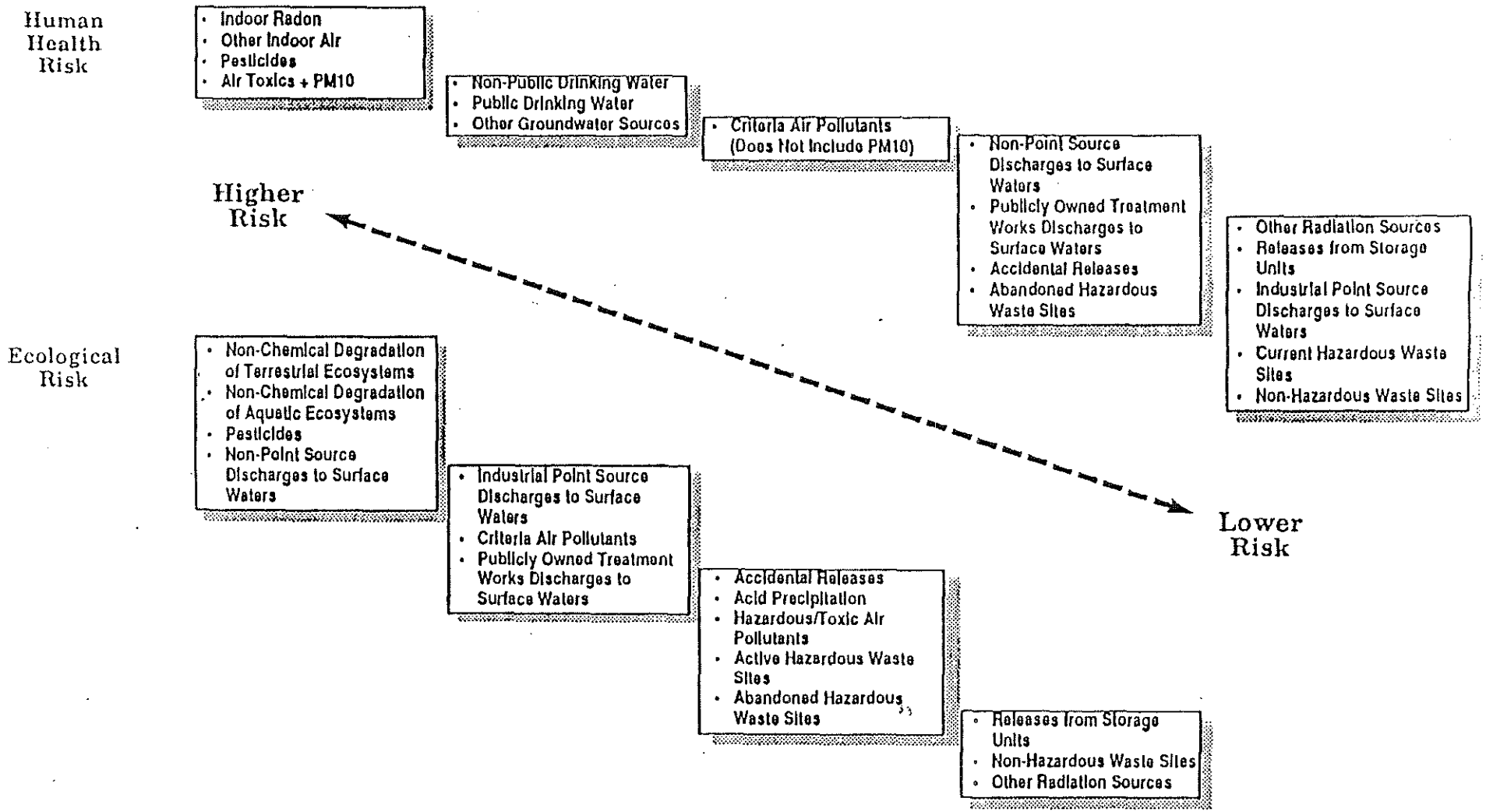
RELATIVE RANKINGS OF SAMPLE ENVIRONMENTAL PROBLEMS

Problem	Experts	Public
Stratospheric Ozone Depletion	Ecology & Welfare - H Human Health - M/H	H
Global Warming	Ecology & Welfare - H	M/L
Outdoor (Ambient) Air Pollution	Human Health - H Ecology & Welfare - M	M/H
Indoor Air Pollution (Including Radon)	Human Health - H	L
Worker Exposure to Chemicals	Human Health - H	H
Hazardous Waste	Ecology & Welfare - M/L Human Health - M/L	H
Industrial Accidents Releasing Pollution	Human Health - M/L	H
Accidental Oil Spills	Ecology & Welfare - L	H

H= Relatively High, M = Relatively Medium, L = Relatively Low
Sources: Science Advisory Board and EPA staff; Roper Organization

These national comparative risk studies are interesting when compared with earlier and continuing analyses of environmental programs in EPA's Region X states (Alaska, Idaho, Washington and Oregon) and the State of Washington (in its recently completed "Environment 2010" report.

U.S. Environmental Protection Agency Region 10
Comparative Ranking of Environmental Problems
In Terms of Human Health and Ecological Risk



The Washington Department of Ecology and other state resource and environmental health agencies undertook a statewide comparative risk analysis (with EPA) and used it in conjunction with public hearings to develop "Environment 2010" . They ranked "threats" to Washington's environment as:

PRIORITY LEVEL I:
Ambient Air Pollution
Point Source Discharges to Water
Nonpoint Source Discharges to Water

PRIORITY LEVEL II:
Drinking water contamination
Uncontrolled hazardous waste sites
Wetlands loss/degradation
Nonchemical Impacts on Forest Lands
Nonchemical Impacts on Agricultural Lands

PRIORITY LEVEL III:
Indoor Air Pollution
Hydrologic Disruptions
Global Warming and Ozone Depletion
Regulated Hazardous Waste Sites
Nonhazardous Waste Sites
Nonchemical Impacts on Recreational Lands
Pesticides (ie. Not Covered Elsewhere)

PRIORITY LEVEL IV:
Indoor radon
Radioactive releases
Acid deposition
Sudden and Accidental Releases
Nonchemical Impacts on Range Lands

PRIORITY LEVEL V:
Nonionizing radiation
Materials storage
Litter

Note: All threats at each priority level are considered a higher risk management priority than the threats included on the next level. Although the different priority levels are considered distinguishable, the degree of difference in priority was not determined. Threats are not ranked within each priority level.

In mid-1988, a panel of Northwest risk analysis experts (Dana Davioli, an EPA toxicologist; Samuel Milham, MD, Washington state epidemiologist; David Eaton, an associate professor of toxicology at the University of Washington and Gilbert Omenn, an MD geneticist and dean of the Washington State University School of Public Health) published the following ranking of relative health, environmental and lifestyle risks in the Seattle Post Intelligencer (July, 1988). The panel ranked the following

health hazards, ranking them from the riskiest (smoking) down to almost risk-free (e.g., eating irradiated food). They did not distinguish between those risks that imposed on people involuntarily from those risks that are imposed on people voluntary. The exposure assumptions that they used varied depending on the risk that they were analyzing. Nonetheless, the comparison is interesting:

1. *Smoking one pack of filtered cigarettes per day.*

2. *Driving in congested traffic every day (such as in downtown Bellevue, Washington or along I-5);*

3. *Removing asbestos containing plaster from a home ceiling without protection;*

4. *Indoor air pollution;*

5. *Drinking two glasses of wine per day*

6. *Using a woodstove regularly for heat in a home or living in a valley where woodstoves are used by others.*

7. *Getting sunburned during a two-week vacation every year to Mexico.*

8. *(TIE) Getting a full-mouth dental X-ray every two years.*
   Using ordinary garden pesticides in a home vegetable garden.

10. *Eating a charcoal-broiled steak once a week.*

11. *Eating a half-pound per week of bottom fish caught in Elliot Bay.*

12. *Flying an average of three hours per month on a regular commercial airplane.*

13. *(TIE) Eating 2 peanut butter sandwiches per week*
    Living within one mile of a Superfund site.

15. *Drinking diet soda sweetened with saccharine twice a day.*

16. *(TIE) Living within one mile of a garbage incineration plant.*
    Living downwind, within 25 miles, of a nuclear power plant.

18. *Eating food that has been treated using irradiation.*

Applying Comparative Risk Studies Results:

Following EPA's staff level effort in describing the Agency's Unfinished Business, EPA Administrator William Reilly asked EPA's Science Advisory Board to review Unfinished Business and provide him with a critical review as to its applications in EPA strategic planning. The SAB convened a "Relative Risk Reduction Strategies Committee" (RRRSC) to respond to Administrator Reilly's request. Fred Hansen, DEQ Director, was a member of the RRRSC. Their recommendations are presented here:

1. EPA should target its environmental protection efforts on the basis of opportunities for the greatest risk reduction;

2. EPA should attach as much importance to reducing ecological risk as it does to reducing human health risk;

3. EPA should improve the data and analytical methodologies that support the assessment, comparison, and reduction of different environmental risks;

4. EPA should reflect risk-based priorities in its strategic planning processes;

5. EPA should reflect risk-based priorities in its budget process;

6. EPA--and the nation as a whole--should make greater use of all the tools available to reduce risk;

7. EPA should emphasize pollution prevention as the preferred option for reducing risk;

8. EPA should increase its efforts to integrate environmental considerations into broader aspects of public policy in as fundamental a manner as are economic concerns;

9. EPA should work to improve public understanding of environmental risks and train a professional workforce to help reduce them;

10. EPA should develop improved analytical methods to value natural resources and to account for long-term environmental effects in its economic analyses.

(USEPA/SAB 1990, Reducing Risk: Setting Priorities and Strategies for Environmental Protection, Washington DC)

Conclusion

This issue paper was prepared to provide the EQC and DEQ with background for discussing the use and role of environmental risk analysis at DEQ. Several different topics for future discussion have been identified: risk assessment, risk management, determining "acceptable risk"; risk communication; comparative risk analyses; risk-based strategic planning; using risk management in enforcement actions.

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State of Oregon
Department of Environmental Quality Memorandum

Date: September 9, 1991

To: Environmental Quality Commission

From: Fred Hansen

Subject: Agenda Item L., September 18, 1991, EQC Meeting

Background Discussion: Eligibility of Agricultural Practices for Pollution Control Tax Credit Certification

This memorandum provides background information on the eligibility of certain agricultural capital investments for Pollution Control Tax Credits. The Department requests EQC input and guidance on how to proceed with the issue.

OVERVIEW OF TAX CREDIT ELIGIBILITY

Since the program began in 1968, the Commission (EQC) has approved pollution control tax credit certification of facilities that prevent, reduce or control a substantial quantity of air, water or noise pollution. Tax credit is also available for solid wastes, hazardous wastes and used oil recycling; the treatment, reduction or elimination of hazardous wastes; or, to provide for the appropriate disposal of used oil.

Under current law, a facility must serve a "principal purpose" or "sole purpose" of pollution control to be considered eligible for certification. A principal purpose applies if the primary purpose is to comply with an EPA or DEQ regulatory requirement. A sole purpose applies if the exclusive function is for pollution control. (Prior to enactment of the principal purpose/sole purpose eligibility test, the statute used the term "substantial purpose".)

The majority of certified facilities fall under the "principal purpose" criterion. The "sole purpose" criteria has applied to investments such as material recovery/recycling facilities and noise control investments. Also, equipment such as a baghouse or wet scrubber may meet a sole purpose if installed as a non-requirement pollution control measure if there are no production benefits.

THE ISSUE WITH AGRICULTURAL PRACTICES AND TAX CREDITS

With some exceptions, most agricultural activities are or have been specifically exempted from regulation under Oregon's air pollution control, noise, or solid waste statutes. Agricultural operations are <u>not</u> exempt from regulation under the water quality statutes. However, specific rules to regulate agricultural activities (with the exception of Confined Animal Feeding Operations) have not been enacted by the Commission.

Since most agricultural activities have not been subject to environmental regulation, capital investments that would reduce pollutant discharges have historically not been considered to qualify for tax credit certification under the "principal purpose" criteria. Further, few agricultural capital investments that reduce pollutant discharges are likely to be "solely" for pollution control in that they provide other economic benefits for the agricultural operation (at least as the term "sole purpose" has been historically interpreted).

Current and Past Eligible Activities

The following agricultural activities are, or at one time were, eligible for pollution control tax credits:

Field Burning

In 1975, the Legislature granted specific eligibility to grass seed growers for employing "alternative methods" to open field burning. The capital investment in the "alternative methods" can also be considered to qualify for certification under the "principal purpose" criteria of the tax credit statutes. This is because there is specific statutory regulation of field burning in the Willamette Valley for the purpose of reducing the amount of open field burning.

Open field burning also occurs in other parts of the state. Alternative methods in all unregulated areas would have to meet the "sole purpose" criterion to qualify under the current program. The Department has applied the alternative method authority only to the Willamette Valley. However, the statute is silent on the applicability of alternative methods to other regions or areas of the state.

Orchard Frost Control

Prior to enactment of the principal purpose/sole purpose criteria, the EQC certified a number of alternatives to "smudge pots" for frost control in orchards. These alternatives included fans, propane heaters, and sprinkler systems. The alternatives also provided other benefits to the growers. The Commission chose to certify the facilities under the earlier "substantial purpose" criteria, even though it was possible to argue that the alternatives were not eligible because smudging could not legally be regulated as an air pollution source. Conversion to these alternatives reduced a substantial amount of "real" air pollution and the EQC considered it good public policy to encourage the voluntary control of "real pollution". Since the principal purpose/sole purpose criteria was enacted, alternatives to smudging have not been certified because they do not meet either the principal purpose or sole purpose criteria.

Animal Waste Control

Capital investments associated with control of animal waste to prevent water pollution have

been certified for tax credit since the beginning of the program. Facilities have been certified under the earlier "substantial purpose" criteria, and the current sole purpose criterion in that the investment was made exclusively for pollution control purposes. Any other possible benefits have been determined insignificant. Now that the water quality general discharge permit prohibits direct discharge of wastes into water bodies, this activity could be considered as meeting a principal purpose as well.

Current Issues

Efforts to regulate air and water pollution resulting from agricultural activities are increasing, but have not yet reached the level of regulation that is imposed on the typical industrial sources. Public pressures, local ordinances, and new DEQ control strategies are placing pressure on the agriculture community. As investments are made to reduce agriculture's contribution to pollution, questions on the availability of tax credits have been raised. Under current law and rules, few investments by agriculture to control pollution qualify under historic interpretations of principal purpose and sole purpose. Issues may also rise as we consider the range of pollution controls potentially required to deal with nonpoint pollution from a variety of sources.

The Department's practice of generally applying the principal purpose criterion to requirements associated with point sources poses a policy issue: How should nonpoint regulated activities be treated under the statutory term "requirements".

PROPOSED COURSE OF ACTION

It is the Department's view that an examination and definition of federal and state requirements, as applied to the "principal purpose" criterion, is necessary at this time.

Legal Counsel has advised that the pollution control tax credit statutes and rules do not prohibit certification of agricultural practices if the eligibility criteria are met. In consideration of increased regulation of nonpoint sources, the Department believes a clearer definition of "principal purpose" is necessary in determining whether agricultural practices may in fact qualify.

A review of the "principal purpose" criterion should consider:

1. Management planning for water quality restricted waterways: Management planning is required for designated waterways and may involve restrictions on certain practices and the use of BMP's to meet assigned load allocations. Examples of facility investments necessary for meeting management planning objectives may include equipment for erosion control, tillage practices and storm water controls.

2. Management planning for groundwater Areas of Concern and Groundwater Management Areas: Groundwater management plans are required for designated

areas and may be voluntarily implemented or mandated. Management strategies may also involve the use of BMP's such as fertilizer management or tillage practices.

3. City, county or special district requirements for addressing EPA/DEQ directives. The responsibility for meeting EPA/State requirements such as wastewater discharge standards may be passed on to local government. Consequently, sources may be subject to additional requirements at the local level. The argument can be made that these requirements meet the tax credit's definition of "EPA/DEQ requirement".

4. Entering into a cooperative agreement with the USDA Soil Conservation Service to assure that a comprehensive farm planning approach is applied as an eligibility condition for agricultural practices relating to groundwater pollution.

The second eligibility criterion, "sole purpose" should also be explored to determine its applicability to agriculture and other nonpoint source pollution control practices. As earlier stated, this criterion has mostly applied to recycling and noise activities. Recycling has been applied under the sole purpose criterion in that the activity clearly meets a specific statutory eligibility directive. Recycling businesses do have economic benefits in that the entire recycling facility may be a business, rather than a pollution control device necessary for production purposes. These benefits are not considered to conflict with the sole purpose definition. The amount of credit is primarily based on a determination of the return on investment calculation. Noise facilities are more straightforward in constituting a sole purpose in that there generally are no other benefits.

Agriculture practices should be examined under the sole purpose criterion in the same vein as recycling and animal waste facilities. If it is possible to conclude a practice is employed solely for pollution control, the credit amount would consider any significant unrelated benefits through the return on investment requirement.

The Department is currently processing an application for certification of straw mulching equipment to reduce water pollution in Malheur County. The requirement for meeting a principal or sole purpose will be examined based on the Commission's discussion of this issue.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE: September 13, 1991

TO: The Environmental Quality Commission

FROM: Sarah Armitage
Manager, Asbestos Control Program

SUBJECT: Letter from Duane Bosworth regarding Agenda Item E, September 18th, 1991 EQC Meeting

This memorandum responds briefly to the letter Commission members received from Duane Bosworth, local counsel for Armstrong World Industries, requesting a delay in action on agenda item E. The Department wishes to assist the Commission in its decision by addressing the factual issues raised by Mr. Bosworth's letter.

Contrary to Mr. Bosworth's assertions, the asbestos rules have not been substantially amended following public hearings held in July, 1991. There should be no "confusion" over what is proposed. Attachment H to Agenda Item E clearly describes rule changes to be made in response to public testimony. Three have been proposed. One is semantic, one organizational, and one restricts public access to asbestos waste at the landfill. The Department has also renumbered the rules for clarity.

It is correct, however, that the Department's intended semantic amendment to OAR 340-25-466(1)(b), changing the word "or" back to "and", mistakenly did not appear in attachment A. In a telephone conversation on September 10th, Mr. Bosworth brought this oversight to the Department's attention. In response, the Department will submit the corrected rule into the record at the September 18th EQC meeting. This change was proposed in accordance with Armstrong's comments during the public hearing period. It is the only rule change that the Department has committed to make "orally and in its written comments" that does not appear in the latest draft of the rules. The Department has proposed no other changes that relate to Armstrong's comments, or to their stated interest, asbestos containing floor covering.

At the July 23, 1991 Oregon Asbestos Advisory Board Meeting described in attachment F, the Board did not "vote" on any issues pertaining to proposed asbestos regulations. At this meeting, staff presented and discussed comments received on the proposed rules. The Board declined to make recommendations on nonfriable asbestos rules because of lack of information, and deferred to the Department to obtain EPA studies and proceed to

a decision. It was agreed that Board members would be informed of the Department's decision, and contact staff with any concerns or disagreements. Advisory Board members were mailed copies of Agenda Item E, and the Department has received no objections to its proposed final action from the members.

Mr. Bosworth mischaracterizes the Department's response when he states the staff's position as: no statement of need is required because "no amendment is being made to any rule". This is simply not what appears on page 6 of attachment H. In this section, the Department explains that a statement of need for rulemaking is not required for a rule that does not change. The rule which Armstrong argued should be accompanied by a statement of need has been in existence since 1988. The rulemaking statement of need that covered all other proposed NESHAPs changes is adequate.

Postponing action on Agenda item E will result in delayed compliance with NESHAPs requirements that are more stringent than existing Department asbestos rules.

In summary:

1) the Department has proposed only one rule change related to Armstrong's interests since public hearing, and that change is in accordance with their recommendation ("or" to "and");

2) the Asbestos Advisory Board made no decisions inconsistent with proposed rules;

3) the statement of need for rulemaking submitted for asbestos rules was adequate;

3) Mr. Otchet, on behalf of his client Armstrong World Industries has fully participated in public hearings for proposed asbestos rule changes.

340-25-266(1)(b) Removal of nonfriable asbestos-containing materials that are not shattered, crumbled, pulverized or reduced to dust until disposed of in an authorized disposal site. This exemption shall end whenever the asbestos-containing material becomes friable and releases asbestos fibers into the environment.