

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 10/15/1992**



**State of Oregon
Department of
Environmental
Quality**

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State of Oregon
ENVIRONMENTAL QUALITY COMMISSION
A G E N D A

SPECIAL PUBLIC FORUM - October 15, 1992

Maritime Museum, Kern Room
1792 Marine Drive
Astoria, Oregon
7:30 p.m.

Topic: Lower Columbia River Water Quality

This special public forum will provide an opportunity for the public to learn about current water quality study and control activities affecting the Lower Columbia River, and to present their views on this subject to the Commission.

REGULAR MEETING - October 16, 1992

Maritime Museum, Kern Room
1792 Marine Drive
Astoria, Oregon
8:30 a.m.

Note: *Because of the uncertain length of time needed for each agenda item, the Commission may deal with any item at any time in the meeting. Times noted on the agenda are approximate. An effort will be made to consider items with a designated time as close to that time as possible. However, scheduled times may be modified if agreeable with participants. Anyone wishing to be heard or listen to the discussion on any item should arrive at the beginning of the meeting to avoid missing the item of interest.*

8:30 a.m.

- A. Approval of Minutes
- B. Approval of Tax Credit Applications

Note: *The EQC may hold an executive session to consider confidential written legal advice from counsel on the tax credit applications from Oregon Waste Systems. The executive session would be held pursuant to ORS 192.660(1)(f).*

Rule Adoptions

Hearings have already been held on the 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.

~~C. Rule Adoption: New Emission Statement Rule for Ozone Nonattainment Areas~~

D. Rule Adoption: Proposed Oxygenated Fuel Rule

E. Rule Adoption: (1) Hazardous Waste and (2) Toxic Use Reduction (TUR) Regulations

F. Proposed Adoption of Revision to the State of Oregon Clean Air Act Implementation Plan to Establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program

11:00 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 Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

Action Items

~~G. Authorization to sell Pollution Control Bonds to Provide for State Match for Federal Grant to Capitalize State Revolving Loan Fund for Sewerage Works Construction~~

H. Request by Unified Sewerage Agency for an Exception to the Receiving Stream Dilution Requirement [OAR 340-41-455(1)(f)] for the Forest Grove and Hillsboro Wastewater Treatment Facilities

I. Request for Approval of Mass Load Limitation Increase for the City of Ontario

J. Pollution Control Facilities Tax Credit Program Recommendations

Information Items

K. Commission Member Reports (Oral)

L. Director's Report (Oral)

The Commission will travel together to Astoria on October 15, 1992, and will visit the James River Corporation pulp mill at Wauna and a number of other sites en route.

The Commission has reserved December 10 and 11, 1992, for the next regular business meeting. The meeting is expected to be in Portland.

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.

September 30, 1992

ENVIRONMENTAL QUALITY COMMISSION
PUBLIC FORUM ON LOWER COLUMBIA RIVER WATER QUALITY

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY'S
STATUS REPORT ON
THE LOWER COLUMBIA RIVER BI-STATE WATER QUALITY PROGRAM PLAN

OCTOBER 15, 1992

BACKGROUND

The Lower Columbia River Bi-State Water Quality Program (Bi-State Program) was formed at the direction of the Governors of the states of Oregon and Washington in early 1990, with guidance from the two states' legislatures. The states entered into an Interstate Agreement that details the four-year water quality program (ending in March 1994) to characterize water quality in the lower Columbia River (from Bonneville Dam to the mouth of the river), identify water quality problems, determine whether beneficial uses are impaired and develop solutions to problems found in the study area.

The Interstate Agreement and the legislatures from both states directed the Oregon Department of Environmental Quality (DEQ) and the Washington Department of Ecology (Ecology) to form a Steering Committee representing diverse interests. The Steering Committee advises the two state agencies on designing and conducting studies. The Bi-State Program consists of this Steering Committee and the two states.

WATER QUALITY STUDIES

The Bi-State Program initiated a reconnaissance survey in 1991 to get a general sense of where problems might occur within the study area. Presented here is a review of the purpose of the reconnaissance survey and a brief summary of survey results. Sampling result highlights are also presented on the attached maps.

Purpose of the Reconnaissance Study

- o To collect reconnaissance-level data on water, sediment and fish tissue in the lower 146 miles of the Columbia River.
- o To flag potential contaminants and/or areas of concern that should be more completely sampled in order to characterize water quality in the lower Columbia River.

Summary of Reconnaissance Results

- o Sampling strategy: a single, low-flow sampling event; single composite samples per station. Results serve as indicators of potential problems.

- o Water

Metals: Forty-five water samples were analyzed for 17 metals. Six of the 17 metals exceeded water quality criteria: aluminum (Al), cadmium (Cd), copper (Cu), iron (Fe), lead (Pb), and zinc (Zn).

Bacteria: The Oregon Enterococcus criterion was exceeded at all 6 bacteria stations and the geometric mean for fecal coliform exceeded the Washington state marine criterion at one station.

AOX: AOX was detected in all but one of the 19 samples analyzed for AOX. Levels generally tended to increase down river.

Temperature met criteria (taken after temperatures typically begin to decline for the season). **Phytoplankton** did not indicate evidence of eutrophication.

- o Sediment

Metals: Fourteen of 17 metals were detected in sediment: aluminum (Al), arsenic (As), barium (Ba), beryllium (Be), cadmium (Cd), chromium (Cr), copper (Cu), iron (Fe), lead (Pb), mercury (Hg), nickel (Ni), selenium (Se), silver (Ag), and zinc (Zn). Ten of the 14 metals were detected in nearly all of the 54 samples analyzed: aluminum (Al), arsenic (As), barium (Ba), cadmium (Cd), chromium (Cr), copper (Cu), iron (Fe), lead (Pb), nickel (Ni), and zinc (Zn). In addition, organotins were detected in 7 of the 10 samples analyzed for these metals.

Organic compounds: Forty-nine of 108 organic compounds (including PAHs and pesticides) were detected in sediments, although the detection frequency was generally substantially lower than that for metals. One PCB was detected in one sediment sample.

Dioxins and furans: Dioxin and furan congeners were detected in all of the 20 samples for which they were analyzed. 2,3,7,8-TCDD was detected in 19 and 2,3,7,8-TCDF was detected in 20 samples.

Radionuclides: Six sediment samples were analyzed for six radionuclides: cobalt-60, cesium-137, europium-152, plutonium-238, plutonium-239/240 and americium-241. Maximum concentrations were at levels typically attributed to atmospheric deposition.

Twenty-three of the 54 sites sampled had a concentration of at least one contaminant that exceeded effects-based reference levels. Reference levels were available for approximately 24 of 108 organic chemicals and for 12 of 17 metals.

o Fish Tissue

Five species were analyzed (crayfish, carp, largescale sucker, peamouth chub and white sturgeon).

Contaminants most frequently detected in fish included **metals, pesticides, PCBs and dioxins and furans**. The contaminants appear to be widely distributed.

Comparing to NY State guidelines for picivorous birds, PCBs exceeded guidelines at 19 of 33 locations, DDE exceeded at 3 of 33 locations and **dioxins and furans** exceeded at 13 of 33 locations. **Metals** did not exceed any levels used for comparison.

o Benthos

Bottom dwelling (benthic) organisms were evaluated to determine if they might be used as indicators of contamination. Although benthic community taxa and abundance tended to be depressed, it is attributed more to the physical characteristics of the lower Columbia River than to contamination effects. Results indicate that benthic organisms did not appear to be good indicators for the lower Columbia River.

Next Steps

Two projects have been started and the Program is currently evaluating what other studies are most important to conduct over the next several months to follow-up on the reconnaissance results. Additional bacteria sampling was started in early September and will soon be completed. The second project will identify how data from the study should be stored and managed.

Areas of particular interest for future studies appear to be confirming selected results, sampling some additional areas that were not sampled during the reconnaissance survey, evaluating data from and possibly sampling above Bonneville Dam, and investigating potential human health risks. It is

anticipated that most sampling will focus on sediment and fish tissue.

CHANGES TO THE BI-STATE PROGRAM

When the Governors of Oregon and Washington were unable to agree on nominating the Lower Columbia River to the U.S. Environmental Protection Agency's National Estuary Program during the spring of 1992, they proposed a number of modifications to try to strengthen the Bi-State effort. We have started to implement a number of these changes, which are presented in Attachment 2. I will review the status of each of the requested changes.

Create a Policy Committee: Representatives of the Governors offices, DEQ's Director, Ecology's Deputy Director and one of the Steering Committee's co-chairs met on July 8, 1992. This meeting focused the Governors' proposed changes and providing clarifications for the Steering Committee. The next meeting of the policy committee is scheduled for October 27, 1992.

Revise the Bi-State Steering Committee Structure: Representatives from the U.S. Fish and Wildlife Service, U.S. Geological Survey, the Northwest Power Planning Council, Oregon DEQ and Washington Department of Ecology participated as members in the September 21, 1992 meeting of the Bi-State Steering Committee. The agencies have not yet appointed a chairperson for the Scientific Resource Panel (SRP).

Expand the Involvement and Role of the SRP: As noted above, the agencies have not yet appointed a chairperson for the SRP. We are currently reviewing the duties to be requested of the chair and evaluating staff support to the SRP. We felt it important to have clear understanding of these issues before requesting that one of the SRP members take on this role. We also are reviewing the possibility of and mechanism for funding this position.

Develop Options for Addressing the Long-Range Planning and Management Needs of the Lower Columbia River: Bill Young, from the Executive Department, has undertaken a project to evaluate options for developing a long-range plan for the lower Columbia River. This effort includes considering what mechanisms and organization might be most viable for developing such a plan.

Expand the Current Scope of Studies to Specifically Address Fish and Wildlife Issues in the Lower Columbia River: The Steering Committee and the agencies are specifically including consideration of these issues within the priorities for projects this year. The Program has not completed selection of projects for this year.

Expand the Scope to Allow Tracing of Pollutant Sources Upstream of Bonneville Dam: Steering Committee members are interested in exploring conditions above Bonneville Dam and evaluating the

contribution to the lower river. The agencies are discussing what types of work would best provide the needed information. This work will be discussed at the next Steering Committee meeting on October 20, 1992.

Identify Additional Technical Studies Needs, Cost Projections and Appropriate Funding Sources: This is intended to be an ongoing effort. The initial work is focused on reviewing recommendations made by the Program's consultant, SRP members and others who have reviewed the work to date.

CONCLUSIONS

The Bi-state Program is contributing to increased water quality information for the lower Columbia River. Additional samples will be collected over the next year, which we expect will improve our understanding of contamination in the lower Columbia -- what is there, where it is located and what needs to be done to determine its potential effect on the river and the fish, wildlife and humans who depend on the river. This is critical information for building support for efforts to protect the river.

The Program also continues to face significant challenges to address the high expectations of the public and conduct the studies needed to characterize the river's water quality under the existing budget.

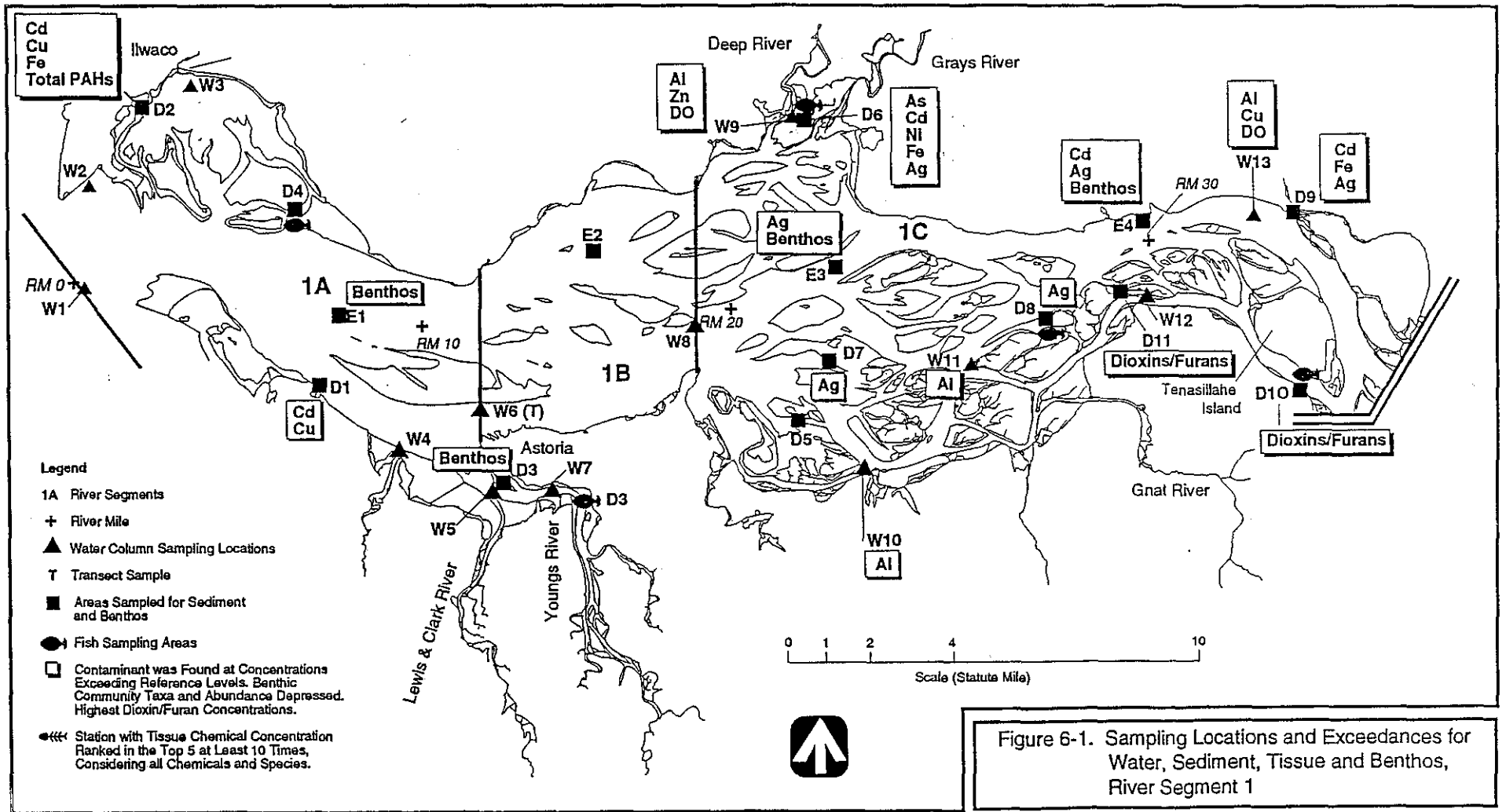
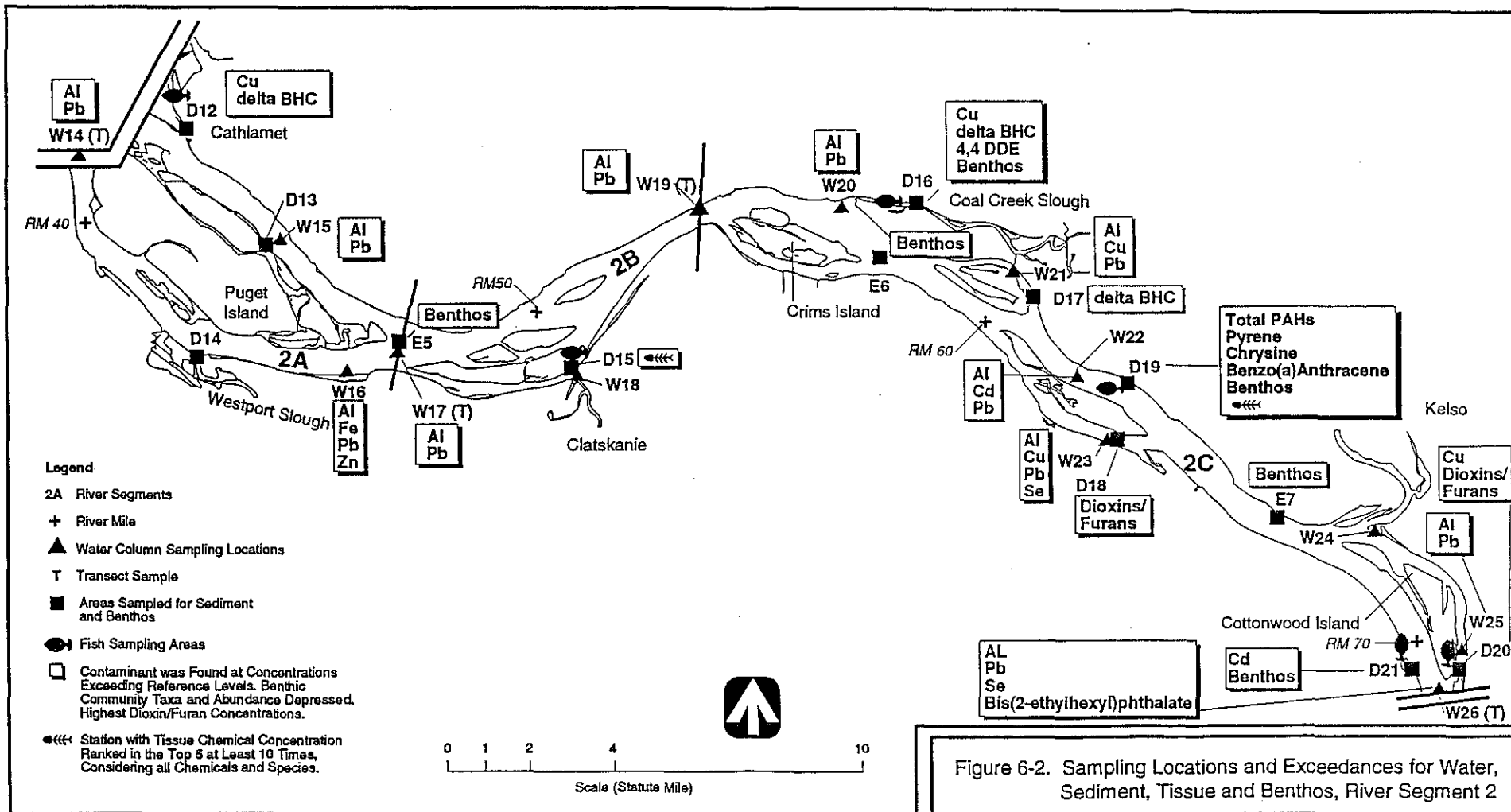


Figure 6-1. Sampling Locations and Exceedances for Water, Sediment, Tissue and Benthos, River Segment 1



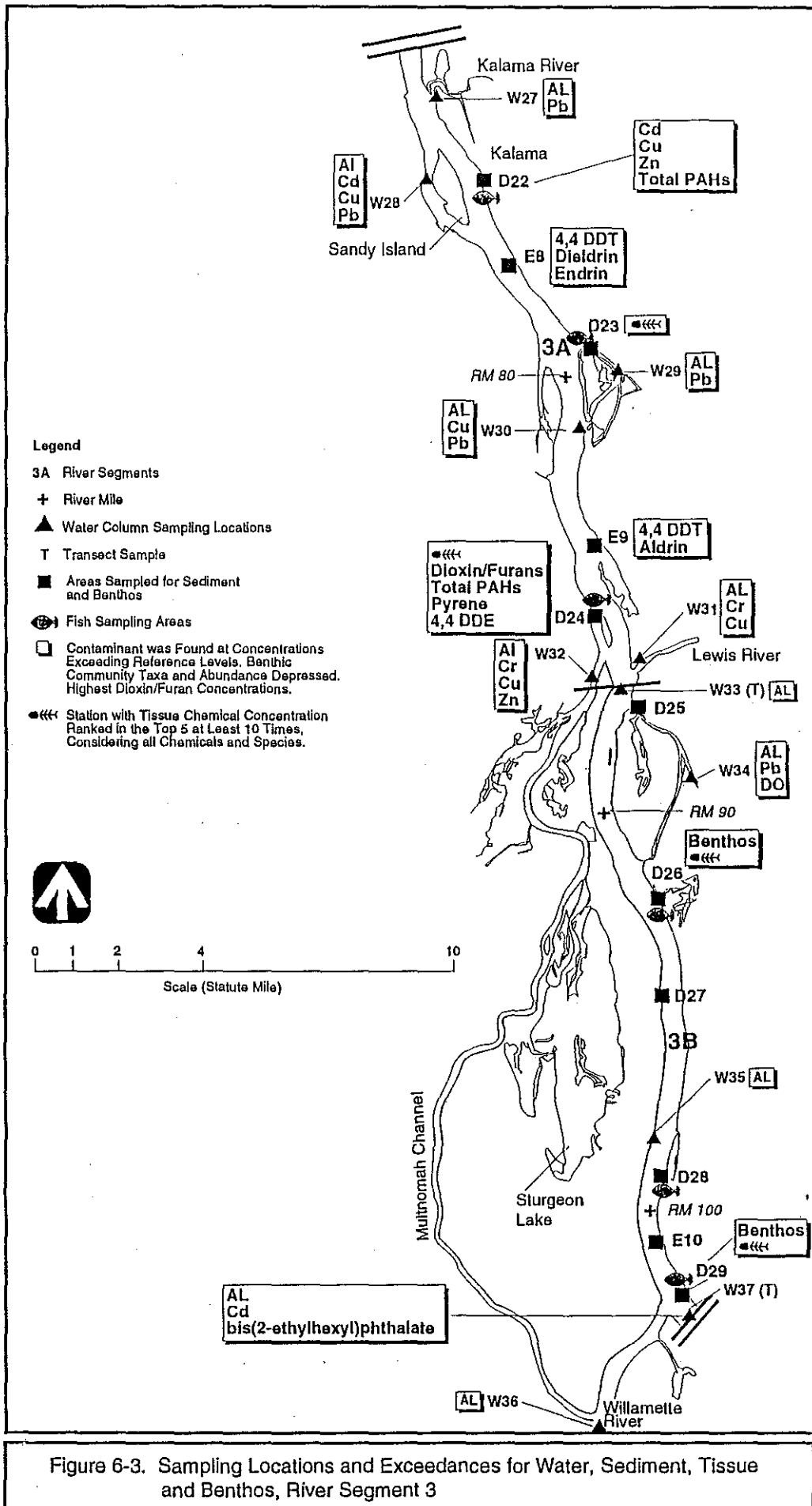
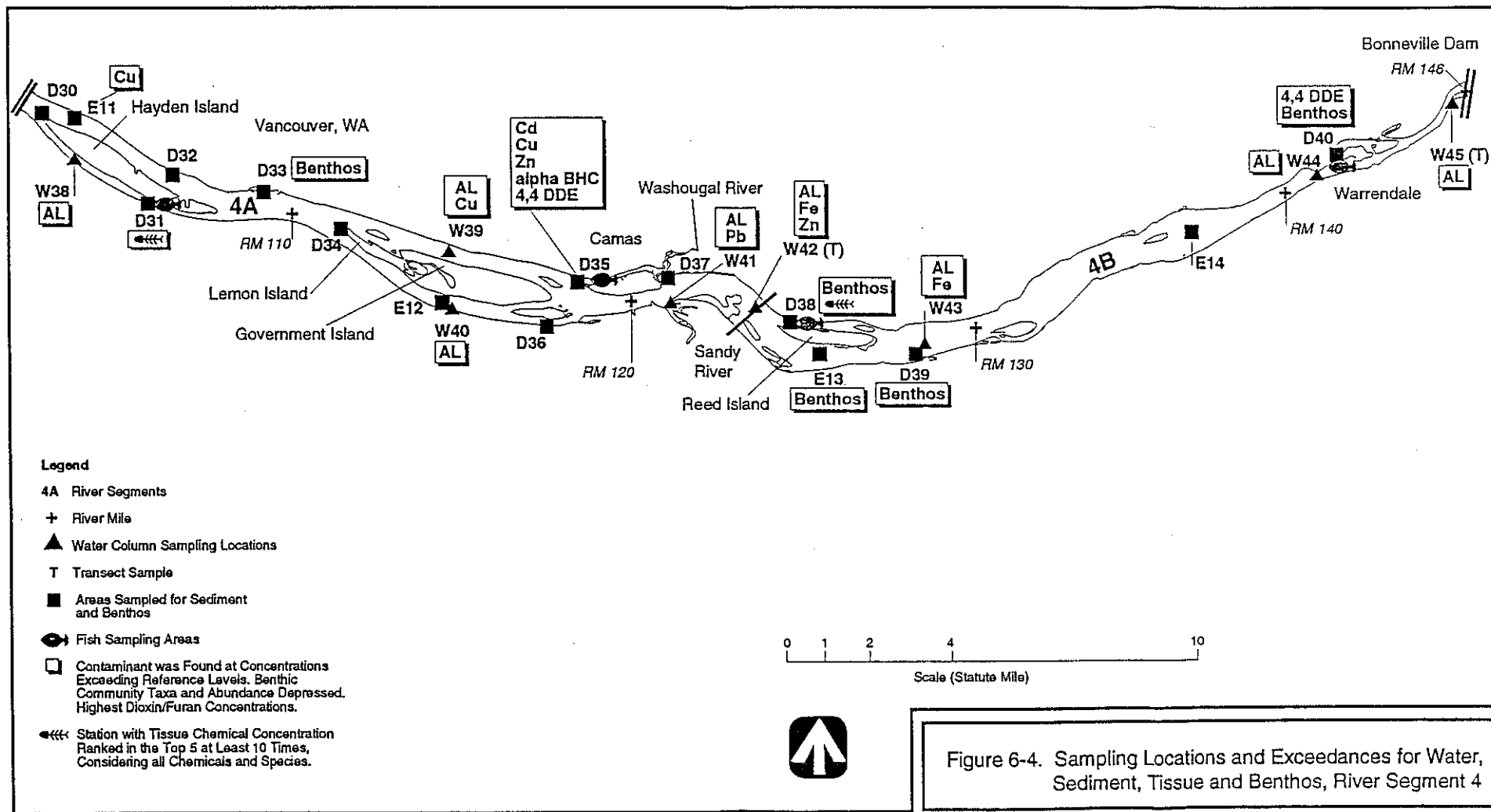


Figure 6-3. Sampling Locations and Exceedances for Water, Sediment, Tissue and Benthos, River Segment 3



July 17, 1992

CHANGES TO THE BI-STATE PROGRAM

BACKGROUND: Governor Gardner and Governor Roberts, when declining to pursue the nomination of the lower Columbia River to the National Estuary Program, agreed that it is crucial to evaluate what is needed for the future management of the lower Columbia River. As a first step, they jointly agreed on seven general directions designed to strengthen the structure and products of the Bi-State Steering Committee. This document provides further guidance on those directions.

These changes are intended to:

- Generate the maximum amount of information possible in the coming year;
- Allow both governors to be more involved in the Bi-State Program;
- Provide a mechanism to clarify roles of committees and agencies involved in the program;
- Add additional expertise to the Steering Committee;
- Make better use of the Scientific Resource Panel;
- Better identify and target resources for additional technical studies; and
- Address long-range management concerns of the lower Columbia River.

I. COMMITTEE STRUCTURE

A. Create a policy committee.

Discussion. The Governors believe they need to be more involved in the Bi-State Program, especially regarding policy and funding issues. A policy committee will be formed that consists of Steering Committee co-chairs, Ecology and DEQ directors or designees; and 1 member each from the Governors' offices. The policy committee will provide a mechanism for additional involvement by Ecology, DEQ and the Governors' offices, and will help clarify the roles of the Steering Committee and state and federal agencies. It will meet at least twice a year.

B. Revise the Bi-State Steering Committee structure.

Discussion. The Steering Committee will be expanded to bring in other technical expertise and experience gained from study of the lower Columbia River. The following

agencies will be asked to serve on the Steering Committee:

- US Fish and Wildlife Service;
- US Geological Survey; and
- Northwest Power Planning Council.

In addition, the following new members will be appointed:

- Departments of Ecology and Environmental Quality (as non-voting members); and
- The chair of the Scientific Resource Panel (see I (C) below)

It is anticipated that new members will be appointed in time to attend the September 1992 meeting of the Steering Committee. In addition to these new members, all current members will remain on the Steering Committee.

C. Expand the involvement and role of the Scientific Resource Panel (SRP).

Discussion. A greater level of involvement by the SRP is desired, especially in the development of studies and review of technical reports. The SRP has reviewed the sampling plan prepared by Tetra Tech, and some SRP members have been selectively asked to review products in their areas of expertise. To date, there have only been two meetings where the full SRP has been invited.

The directors of Ecology and DEQ will appoint a chair of the SRP. The primary responsibilities of the chair will be coordinating the SRP review and holding meetings of the SRP as needed. Among other duties, the chair will be asked to:

- Establish reasonable response times for SRP review and comment;
- Receive and circulate to the SRP members draft documents for comment and final studies for peer review;
- Schedule workshops necessary for appropriate review; and
- Gather, synthesize and forward SRP comments to staff.

The chair will be paid for the time spent administering this process; the source of the funding is currently being considered and should be resolved by the end of August, 1992. In addition, as noted in section B above, the chair would be added to the Steering Committee.

II. ADD NEW TASKS

A. Develop options for addressing the long-range planning and management needs of the lower Columbia River.

Discussion. A plan needs to be prepared for the long-range management of the lower Columbia River. State staff, tentatively from the Oregon Executive Department, will develop a paper presenting issues and options for developing a long-range plan in consultation with the Policy Committee. As the plan evolves, drafts will be presented to the Steering Committee for comment. The Steering Committee will review the final report and make recommendations in their interim report to the Governors by June 1, 1993.

B. Expand the current scope of studies to specifically address fish and wildlife issues in the lower Columbia River.

Discussion. The interstate agreement stipulates that studies will also address issues related to fish and wildlife concerns, including habitat. However, due to funding constraints, initial studies have been limited to water column, sediments and fish/animal tissue. In order to assess general environmental health, studies need to be expanded to include fish, wildlife, habitat and other issues.

Additional study needs are currently being identified. The Steering Committee should not condition study of fish and wildlife issues (e.g. habitat, fish populations) on additional funding. Rather, these studies should be considered as viable study items within the remaining \$1.4 million budget. Fish and wildlife issues will be prioritized along with water column, sediment, and fish tissue studies in developing the 1992-1993 study plan.

C. Expand the geographic scope to allow tracing of pollutant sources upstream of Bonneville Dam.

Discussion. The Steering Committee earlier decided not to trace pollution sources above Bonneville Dam unless additional funding is provided. The concern was to avoid stretching the available funding too thinly.

However, if results indicate sources of pollution may be upstream of Bonneville Dam, studies of these sources should not necessarily be contingent on additional funding. Rather, they should be considered as viable study items within the current \$1.4 million budget. Such studies should be reviewed and prioritized along with water column, sediment, fish tissue, and fish and wildlife issues in developing the 1992-1993 study plan.

Additional funding will be pursued by the Bi-State Program staff. Funding sources such as those available through the implementation of the Northwest Power Planning Council's recently adopted Salmon Recovery Plan should be pursued.

D. Identify additional technical studies needs, cost projections and appropriate funding sources.

Discussion. Further technical studies and increased levels of funding have been identified as a need. In order to pursue other sources of funding, the types of additional studies, cost estimates and funding sources must be identified.

Estimates for the studies beyond the scope of the current Steering Committee efforts will be prepared based on the follow-up study recommendations from the reconnaissance survey and based on staff/consultant/Steering Committee expertise. An initial product will be completed by Bi-State Program staff during September 1992 and will be presented to the Steering Committee for suggestions. It will be subject to ongoing changes as more information is available. The Steering Committee's role will be to respond and comment to staff as the studies proposal is brought before the Committee, and factor additional studies into the process as funding is identified. This will probably be an ongoing process.

Approved

Approved with Corrections

Minutes Are Not Final Until Approved by the EQC

ENVIRONMENTAL QUALITY COMMISSION

Special Meeting on Chemical Mining
August 7, 1992

The Environmental Quality Commission met at 9:30 a.m., Friday, August 7, 1992, to consider the independent contractor's report which responded to specific technical questions regarding selected provisions of the proposed rules on chemical mining. The Commission also considered Department recommendations for amendments to the December 13, 1991, draft rules and adoption of the amended rules. The following Commission members were present:

Chair William Wessinger
Vice Chair Emery Castle
Commissioners Whipple, Lorenzen and McMahan

Also present were Fred Hansen, Director, Department of Environmental Quality, Larry Knudsen, Assistant Attorney General, Oregon Department of Justice and other DEQ staff.

Chair Wessinger called the meeting to order. Director Hansen provided a brief description of the process leading up to this action and recommendation. Harold Sawyer, Director's Office, provided a chronology of the rule making process and Request for Proposal (RFP). Mr. Sawyer talked about issues arising from the report prepared by the RFP recipient, TRC Environmental Consultants, Inc. Mr. Sawyer referred to a table listing issues and identifying policy options and Department recommendations for each issue. The issues are listed below:

1. Adding the RFP policy statements to the rules.
2. Clarifying interpretation of the guideline sections and seeking approval of equivalent or better standards.
3. Modifying the description of liner requirements.

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4. Maintaining the requirement for removal of cyanide from tailings before disposal, and reuse of recovered cyanide.
5. Maintaining requirements for detoxification of heaps prior to closure.
6. Modifying requirements to eliminate potential redundancy resulting from cumulative effects of the rule provisions.
7. Expanding provisions for independent third-party contractors to provide inspection services during operations.
8. Adding clarification about land use compatibility determination.

Chair Wessinger indicated that he would allow the environmental and industry groups to make presentations to the Commission.

The environmental group consisted of **Larry Tuttle**, The Wilderness Society; **Jean Cameron**, Oregon Environmental Council (OEC); and **Gary Brown**, Concerned Citizens for Responsible Mining. Mr. Tuttle said the rule redundancies allowed flexibility and ensured protection for the future. In regard to liner systems, he said too much reliance has been placed on primary liners. Mr. Tuttle indicated that an error occurred on page 6 of the TRC report and in the staff report. He handed out a corrected version of page 6 and said that by mistakenly reversing the tabulations, TRC understated the value of the Oregon Administrative Rules (OAR) 340 triple liner lower components. Mr. Tuttle spoke about the liner systems, tailings treatment and closure of heap and tailings facilities.

Ms. Cameron indicated that the OEC generally supported the Department's proposed rules and additional language. She indicated that OEC disagreed with the Department on disposal of mill tailings. Ms. Cameron suggested that language about removing heavy metals be added back from the first draft rules, that cyanide levels be changed to below 20 parts per million (ppm), that cyanide standards be retained and that the Department's proposed rules were not redundant. She added that OEC had a disagreement with the staff's rules for open pit closure and indicated that options a and d of the proposed rules provided the most security. Ms. Cameron said the costs were not unfair and that land is worth more than gold. She said she believed the sites have the potential to become Superfund sites.

Commissioner Lorenzen asked about the operating history of open heap leaching.

Mr. Brown replied that spills and leaks had been documented and acid mine drainage had occurred.

The industry group spoke next. The group consisted of **Dave Barrows**, representing the Oregon Mining Council; **Jerry Fish**, attorney for the Oregon Mining Council; and **Bill Cobb**, CH₂M/Hill. Mr. Barrows said the rule redundancy was a critical issue and that it was not appropriate to include requirements that achieve little or no environmental benefit. He expressed concern that the Department did not see this as a critical issue. Mr. Barrows said economics are very important. He said that Mr. Tuttle's characterization of the mining industry during the legislative session was not accurate; Mr. Barrows said that the mining industry had been positive participants.

Mr. Fish said the rules should reflect mining as a system and not by component. He said extra expenditures are not necessary and urged the Commission to examine the technical issues. Mr. Fish indicated there were four changes he would like made to the Department's September proposed rules.

1. **Liners:** approve TRC's alternate system; not layer by layer. Commissioner Lorenzen asked about the definition of a leak. Mr. Cobb suggested the Department hire a contractor to monitor construction of the pad liner. Commissioner Lorenzen indicated he was bothered about the possibility of a leak and that little history existed about how well liners work. Mr. Cobb said that materials submitted to TRC from the mining industry in Nevada indicated no failures using a 12-inch clay liner. Commissioner Lorenzen asked how a leak would be detected. Mr. Cobb responded that using a series of piping networks, leak detection can show flaws in the top liner system. Commissioner Lorenzen said that leak detection parameters are important and asked if the industry can risk leakage in the top-level liner. Mr. Cobb indicated the industry would like to have the minimum bottom liner reduced to 12 inches, and the TRC proposal approved.
2. **Cyanide removal and reuse.** Mr. Fish said the Department's proposed requirement for reuse of cyanide should be deleted. He said this technology is new and expensive. Reuse of cyanide requires additional water and power in addition to the increased transportation of caustic and acid materials.
3. **Covers.** Mr. Fish suggested that if no hazardous waste was found and materials were not acid generating, hazardous waste covers should not be required.

Commissioner Lorenzen asked about heavy metals in the pad. Mr. Cobb said that heavy metals are in rocks already. He said that metals were not a problem unless acid was generated. Commissioner Lorenzen asked about heavy metals escaping into the groundwater. Mr. Cobb responded that the bottom liner of the pad would be designed to prevent this from occurring. Commissioner Lorenzen asked about heavy metals escaping in absence of acid-generating materials; Mr. Cobb responded that this would be unlikely.

4. Methods. Mr. Fish suggested that alternative facilities that satisfy Commission policy be described in the rules. Mr. Cobb said that in regard to mining areas becoming Superfund sites, practices used now are much more improved from past practices. He said that responsible waste management practices are used. Commissioner Lorenzen asked if Mr. Cobb was familiar with a magazine article written by Stephen M. Voynick, "The Gold Boom," *Rock Gem Magazine*, August, 1992, p. 37, about a heap leach mine in Colorado. Mr. Cobb responded that he was not familiar with the article.

Director Hansen introduced Dr. John Schanz, Jr. Dr. Schanz is an Adjunct Professor of Mineral Economics at the Colorado School of Mines and appeared at the request of the Department. Dr. Schanz indicated he had not been involved with the Department's staff report but did assist in reviewing the RFP. Commissioner Castle asked Dr. Schanz to comment on the environmental history of heap leach mining.

Dr. Schanz said he reviewed the consultant's report in regard to experience with heap leach mining. He particularly noted the heap leach technology is relatively new and long-term experience with environmental effects does not exist. Dr. Schanz said the Commission is setting a regulatory process for heap leach mining to meet health, safety and environmental protection concerns. If a failure occurred, a fail-safe system must be in place. He said a clear minimum threshold of safety should be established. Dr. Schanz indicated the Department's proposed rules are not a redundant set of procedures but a sequential set of rules to provide protection from the effects of chemical mining.

Dr. Schanz talked about containment, leakage detection with timing, volume and response, and containment of the entire system with a series of responses. He said that with ten years of design and operation, some leak detection was possible. Dr. Schanz added that current experiences did not address closure. Dr. Schanz indicated the proposed rules do not eliminate all risk nor present the least cost.

Commissioner Lorenzen asked about specific closure of heap leach mines. Dr. Schanz replied that in the five to ten years of mining operations, not many have gone the full cycle and that no historical experience exists.

The Commission then acted on the proposed options:

- Issue 1. Option a, including policy statements with editing to fit context of rules, was approved.
- Issue 2. Option a, amendments clarifying interpretation of guidelines sections and the ability to seek approval of equivalent or better alternatives, was approved.
- Issue 3. This issue (liners) was discussed after Issue Nos. 4, 5, 6, 7 and 8.
- Issue 4. After discussion about reuse and removal of cyanide, the Commission elected to modify the rules to eliminate the requirement for reuse and instead allow destruction of cyanide as an alternative to removal and reuse. The specific amendment to OAR 340-43-070(1) is as follows:

340-43-070

- (1) Mill tailings shall be treated by cyanide removal, ~~and~~ re-use, or destruction prior to disposal to reduce the amount of cyanide introduced into the tailings pond to the lowest practicable level. ~~[Chemical oxidation or other means shall be additionally used, if necessary, prior to disposal to reduce the WAD cyanide level in the liquid fraction of the tailings.]~~ The permittee shall conduct laboratory column tests on mill tailings to determine the lowest practicable concentration to which the WAD cyanide (weak-acid dissociable cyanide as measured by ASTM Method D2036-82 C) can be reduced. In no event, shall the permitted WAD cyanide concentration in the liquid fraction of the tailings be greater than 30 ppm.
- Issue 5.
 - a. Maintaining requirements for detoxification of heap prior to closure was approved.
 - b. Maintaining the requirements of the December 13, 1991, rules for cover of the heap as part of the closure requirements was approved.

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- Issue 6. The Commission approved retaining all requirements of the rules noting that the various requirements complimented each other and were not redundant.
- Issue 7. Expanded provisions for independent third-party contractor to provide inspection services during operations was approved.
- Issue 8.
- a. Added clarification regarding land use compatibility determination was approved.
 - b. Housekeeping changes to correct errors, references, numbering and to provide clarity were approved.

In regard to Issue No. 3 on liners, the Commission indicated they would like the Department to develop additional wording. The Commission suggested the wording clearly convey that alternative liner systems can be approved if the environmental protection by each liner system component specified in the rule (primary liner, leak detection system, secondary liner) is achieved, either within the component or on a cross-component basis.

Commissioner Castle moved approval of the Department's proposed chemical mining rules with modifications as noted above and with wording still to be developed on liners pursuant to the Commission's direction; Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

Mr. Knudsen noted the motion did not adopt the rules but established the Commission's decision and position on the issues. Director Hansen suggested a telephone conference call be scheduled so that the Commission could give final approval to the revised rule wording on liners and adopt final rules.

There was no further business, and the meeting adjourned at 3:45 p.m.

Approved _____

Approved with Corrections _____

Minutes Are Not Final Until Approved by the EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Special Telephone Conference Call Meeting
Chemical Mining

September 1, 1992

The Environmental Quality Commission special telephone conference call meeting was convened at about 8:30 a.m. on Tuesday, September 1, 1992. Participating in the conference call were Chair William Wessinger, Vice Chair Emery Castle, Commissioners Whipple, Lorenzen and McMahan, Fred Hansen, Mike Downs, Kent Ashbaker, Alan Hose and Michael Huston. The public could participate by speaker phone in Conference 3A of the Department of Environmental Quality Offices at 811 S. W. Sixth Avenue, Portland, Oregon.

Director Hansen summarized his August 19 memorandum to the Commission. At the August 7 special mining rules meeting, the Commission approved most of the Department's recommended wording for the proposed mining rules. Changes were accepted or requested in the following areas:

1. The wording proposed as Alternative 2 for both the heap leach pad liner [OAR 340-43-065(4) on pages 14-15] and processing chemical pond liner [OAR 340-45-065(5) on pages 15-16] was accepted to replace the December 13, 1991, draft wording labeled Alternative 1.
2. The Commission directed the Department to develop additional wording to clearly convey the intent that alternative liner systems can be approved provided that the level of environmental protection intended by each component of the liner system specified in the rule (primary liner, leak detection system, secondary liner) is achieved, either within the component or on a cross component basis. This new wording appears as OAR 340-43-065(4)(d) on page 15 and (5)(d) on pages 16-17.
3. The wording of the Purpose and Policies [OAR 340-43-006(2)(b) on page 3] and the Guidelines for Disposal of Mill Tailings [OAR 340-43-070(1) on page 18] was modified to allow "destruction" of cyanide in mill tailings as an alternative to removal and reuse.

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The Department recommended that the Commission adopt the proposed chemical mining rules as presented in the August 19, 1992, memorandum, Attachment A.

Item Number 1

The Commission concurred with the change which clarified the acceptance of the wording of Alternative 2 to replace wording previously labeled in Alternative 1.

Item Number 2

Commissioner Castle indicated that the staff's report captured what he wanted in Item Number 2 above; Commissioners Lorenzen, Whipple and McMahan agreed. Commissioner Castle moved that the changes made in Item Number 2 be approved; Commissioner Whipple seconded the motion. The motion was unanimously approved.

Item Number 3

Commissioner Castle commented that the new wording was an improvement from the August 7 staff report and rules. Commissioner Castle moved that the new wording be approved; Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

Pit Closure

The Commission and Director discussed how the proposed rules regarding open pit closure met environmental regulations other than threats to wildlife. Commissioner Lorenzen asked how the Department of Geology and Minerals Industries (DOGMI) and would implement these rules in regard to the Clean Water Act on federal lands.

Director Hansen said that an accumulation of water would be regulated by the Department including the filling of any water area. He said that DOGMI would be involved with mining reclamation issues.

John Beaulieu, Deputy State Geologist for DOGMI, told the Commission that DOGMI has a Memorandum of Agreement (MOU) with the U. S. Bureau of Land Management and Forest Service to work together in a cooperative effort to solve problems. Commissioner Lorenzen said he did not want the rules to allow the release of authority to backfill when the facility is on federal lands. Director Hansen indicated that the Department's regulations made no distinction of land ownership.

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Commissioner McMahan said she was concerned about protecting wildlife and indicated that this issue should be addressed in the closure requirements. Director Hansen replied that the Department could not include wildlife issues unless a threat exists relating to water quality. He said the Oregon Department of Fish and Wildlife would have to make determinations which could be included in the permit process. Director Hansen added that DOGMI could also include wildlife requirements.

In regard to closure of open pits, the Commission discussed changing the wording in ORS 340-43-095, subparagraph F to read as follows:

Backfilling of pit(s) to the level necessary to, in conjunction with other appropriate control measures, prevent oxidation of residual acid-generating materials.

Commissioner Lorenzen moved that ORS 340-43-095 with modifications be adopted; Commissioner Castle seconded the motion. The motion was unanimously approved.

Director Hansen told the Commission that they could communicate their concern about wildlife threat from open pits to DOGMI's governing board. The Commission indicated that they were not prepared at this time to prepare such a directive. Commissioner Whipple said she would like ODFW and DOGMI to be informed about the Commission's decision and that it was not arrived at lightly.

Commissioner Lorenzen indicated concern about bonding and financial liability. He said there could be instances when closure costs far exceed bonding. He asked that the Department and the Attorney General's office inquire about financial responsibility of parent operations.

Director Hansen responded that the Department would pursue this issue. He added that DOGMI requires financial assurances. Director Hansen said that state and federal Superfund programs could be used if a release occurred that a bond could not entirely cover; however, the owner/operator would be liable for any situation. Commissioner Lorenzen asked about instances where the site was less than a Superfund site. Assistant Attorney General Michael Huston responded there had been some success under the Superfund hazardous waste laws in securing parent company liability. Commissioner Wessinger asked if the parent company's liability could not be included in the permit. Mr. Huston indicated that he would look into this consideration. He added that chemical mining legislation had given DOGMI specific bonding authority.

Commissioner Wessinger asked for a recommendation from the Department. Director Hansen summarized the Commission's concern about bonding:

Environmental Quality Commission Minutes

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- Is the existing bond sufficient?
- Can the parent company be held liable for any closure or clean up costs?

Commissioner Lorenzen said he was focusing on the second issue. Director Hansen said that the language in DOGMI's rule requires the maximum credible accident must be bonded. He added that in regard to Superfund sites and liability laws, size and source is not a requirement.

Commissioner Castle moved approval of the chemical mining rules as amended; Commissioner Whipple seconded the motion. The motion was unanimously passed.

Director Hansen concluded with two points:

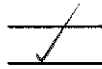
1. Develop a letter from the Environmental Quality Commission to DOGMI and ODFW to indicate their concern about wildlife threat from open pits.
2. Concern was raised that DEQ was reflecting bias on the mining rules; that the policy choice was the Commission's and that the Department carries out the Commission's recommendation.

Commissioner Castle said he did not think the Commission or Department needed to apologize about this matter. He added that staff recommendations are not always accepted. The outside consultant was asked to respond to technical questions but also touched on policy issues which was not required.

There was no further business, and the conference call ended at 9:10 a.m.

Approved

Approved with Corrections



Minutes are not final until approved by the EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Twenty Third Meeting
September 11, 1992

Regular Meeting

The Environmental Quality Commission regular meeting was convened at approximately 10:07 a.m. on Friday, September 11, 1992, in Harris Hall, Lane County Public Service Building, Lane County Courthouse, 125 E. 8th Avenue, Eugene, Oregon. The following commission members were present:

William Wessinger, Chair
Emery Castle, Vice Chair
Henry Lorenzen, Commissioner
Linda McMahan, Commissioner
Carol Whipple, Commissioner

Also present were Michael Huston, Assistant Attorney General, Oregon Department of Justice, Fred Hansen, Director, DEQ, and other DEQ staff.

Note: Staff reports presented at this meeting, which contain the Department's recommendations, are on file in the Office of the Director, DEQ, 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.

Chair Wessinger called the meeting to order.

A. Presentation by Local Governments.

- Jack Roberts, Lane County Commissioner.

Commissioner Roberts welcomed the Commission. He talked about the community's involvement, the role of local governments and the commitment shared by all. Commissioner Roberts said more active partnerships needed to

be continued and strengthened. He said that communities can no longer pass responsibilities onto the government and cited River Road/Santa Clara, Clear Lake and the McKenzie River as good examples of partnerships. Commissioner Roberts added that partnerships allow flexibility while maintaining compliance.

- **Chris Anderson**, Public Works Director, City of Eugene.

Ms. Anderson talked about air and water quality activities occurring in the Eugene area. She also stressed the need for partnerships. Ms. Anderson commented that the city did not receive any incentives for alternatives to woodstove heating. Additionally, though the city was aware of the Department's lack of resources for drug lab clean ups, Ms. Anderson said the city and DEQ need to work closer together in the underground storage tank (UST) program and that services need to be merged. She said DEQ's approach to orphan site clean up was unclear. Ms. Anderson concluded by saying that the city and DEQ's efforts have been focused on common goals.

- **Lee Byer**, Springfield City Council and State Representative.

Mr. Byer talked about four points that he'd like DEQ to pursue:

1. To continue conversations with local governments and visit areas of the state.
2. To be partners with Eugene as DEQ addresses Congress and the U. S. Environmental Protection Agency.
3. To appoint task force/advisory committee members from the Eugene/Springfield area.
4. To coordinate efforts for finding common new revenue sources.

Director Hansen responded that the Department needs to continue building upon the cooperative efforts already in place and commented that the Eugene/Springfield area should be complemented for accomplishing their mission.

- B. Public Forum.** No one wished to speak at the public forum.

C. Approval of Minutes.

Action: Commissioner Castle moved that the July 23 and 24 Regular EQC Meeting minutes be approved; Commissioner Whipple seconded the motion. The minutes were unanimously approved.

D. Approval of Tax Credit Applications.

Purpose: To approve the tax credit applications listed below, to approve the transfer of certificate number 1978 from Gregory Affiliates, Inc. to Klamath Veneer, Inc. and to deny issuance of Tax Credit application number 3385 to Wettstein Farms.

Action: Commissioner Whipple moved to approve, transfer and deny the tax credits above; Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

Application Number	Applicant	Description
TC-2916	Ostrander Resources Co.	Wellons W35 Multi-clone Collector.
TC-3385	Wettstein Farms	Straw mulching machine.
TC-3692	K-G's One-Stop Market, Keith and Glenda Cummings	Installation of three fiberglass tanks and piping, spill containment basins, tank monitor, line leak detectors and automatic shutoff valves.
TC-3712	Peter's Auto Works	Auto CFC recovery and recycling unit.
TC-3725	Bill Olinger, Lincoln Mercury, Inc.	Auto CFC recovery and recycling unit.
TC-3731	H & S Thompson Enterprises, Inc.	Installation of impressed current cathodic protection around four steel tank and piping systems, tank monitor, line leak detectors and spill containment basins.

Application Number	Applicant	Description
TC-3738	Gerald G. Stutzman, Jerry's Milwaukie BP	Installation of four fiberglass tanks and piping, spill containment basins, tank monitor, line leak detectors, overfill alarm, monitoring wells, sumps and automatic shutoff valves.
TC-3739	Sheldon Oil Company	Installation of tank monitoring system with overfill alarm.
TC-3740	Sheldon Oil Company	Installation of tank monitor with overfill alarm and spill containment basins.
TC-3741	Eurotech	Auto CFC recovery and recycling unit.
TC-3747	Truax Corporation	Installation of a tank monitor and overfill alarm.
TC-3753	Sam's Service, Samuel and Patricia Glerup	Installation of a secondary containment vault for two steel storage tanks and a tank monitor.
TC-3754	T & C Wash Systems, Inc.	New installation of three STI-P3 tanks and fiberglass piping, spill containment basins, tank monitor, turbine leak detectors, Stage I and II vapor recovery and automatic shutoff valves.
TC-3757	Courtesy Corner and Albany Heating Oils, Inc.	Installation of epoxy tank lining in six underground storage tanks, spill containment basins, line leak detectors and risers for a tank monitor system yet to be installed.
TC-3769	Lou Dobbins, Inc.	New installation of one STI-P3 tank, spill containment basins, line leak detectors, monitoring wells and automatic shutoff valves.
TC-3770	Broadmill Company	Auto CFC recovery and recycling unit.

Application Number	Applicant	Description
TC-3772	Western Stations Company	Installation of three composite tanks and double-wall fiberglass piping, spill containment basins, tank monitor, overfill alarm, monitoring wells, sumps, Stage II vapor recovery and automatic shutoff valves.
TC-3775	Siskiyou Import Services	Auto CFC recovery and recycling unit.
TC-3782	Z's Car Care, Inc.	Auto CFC recovery and recycling unit.
TC-3792	Oregon Metallurgical Corp.	Chlorine liquefaction system.
TC-3794	Stein Oil Company, Inc.	Stage II vapor recovery system.
TC-3796	K-Fall's Auto Service	Auto CFC recovery and recycling unit.
TC-3804	Old Fashion Body Works	Auto CFC recovery and recycling unit.
TC-3805	Hance Oil Company	Installation of impressed current cathodic protection on four steel tank and piping systems, spill containment basins, tank monitor, line and turbine leak detectors and automatic shutoff valves.
TC-3809	Langdon Implement Company	Auto CFC recovery and recycling unit.
TC-3812	Tuttle's Quality Auto Service	Auto CFC recovery and recycling unit.
TC-3813	Weyerhaeuser Company	Auto CFC recovery and recycling unit.
TC-3815	Texaco Refining and Marketing, Inc.	Installation of four double-wall fiberglass tanks and piping, overfill prevention, automatic tank gauges, automatic line leak detectors, monitoring wells, spill prevention and Stage I and II vapor recovery equipment.
TC-3816	Pro Auto Tech, Inc.	Auto CFC recovery and recycling unit.
TC-3818	Hall's Automotive	Auto CFC recovery and recycling unit.

Application Number	Applicant	Description
TC-3820	Beaverton Auto Rebuilders	Auto CFC recovery and recycling unit.
TC-3801	Tillamook County Creamery Association	Wastewater treatment plan improvements.

E. **Delayed until October.**

ACTION ITEMS

F. **Proposal to Revise Pollution Control Tax Credit Program.**

Purpose: To receive Commission review and consideration of Department recommendations to be used for finalizing program changes during the 1993 legislative session.

Discussion: Director Hansen provided background information about this item. He said the Department submitted legislative concepts to the Legislative Council. Director Hansen indicated the Department was under a tight timeline. He asked the Commission to consider the following issues:

1. Should an incentive/grant program be considered or would this program be better served within the Economic Development Department's existing programs?
2. The tax credit program will terminate in 1995 (sunset date). Should the program be extended another five years, how would the program be structured?
3. Should the tax credits be only 25 percent allocable instead of 50 percent? This could be changed by the legislature.
4. Some tax credit applications may or may not fit in the new structure suggested by the Department in this staff report as a result of reducing the administrative process.

John Fink and Mike Downs of the Department spoke to the Commission about the suggested changes. Chair Wessinger asked them to explain page 5 of the staff report. Messrs. Fink and Downs explained eligibility and the development of three application categories.

Commissioner Lorenzen said that the tax credit program for alternatives to open field burning required a great deal of time from people knowledgeable in specific areas beyond the Commission and Department's ability to administer. He suggested the program would be better served through the Oregon Department of Agriculture by grants and cost-sharing programs.

Commissioner Castle indicated the new proposal did not provide solutions for the non-point source pollution (NPS) problem. He said the NPS issue relating to agriculture was a problem, and he was concerned about which best management practices (BMP) would be used. Commissioner Castle added that field burning tax credits are a separate issue from NPS concerns.

Mr. Downs indicated that a subcommittee had been developed and had made recommendations presented in the staff report. He said alternatives to open field burning would still be eligible with the specific requirements that the credits would result in less fields being burned. Mr. Downs added that a specific link must be made to illustrate the reduction.

Commissioner Lorenzen said the following questions need to be asked about the tax credit program:

1. What benefit is to be achieved with installation of the facility?
2. Was the facility installation worth the cost?
3. Could facility installation have been achieved by some other method?

Additionally, Commissioner Lorenzen inquired about gold mining and tailings disposal tax credit eligibility. Mr. Downs responded that all solid waste disposal facilities would not be eligible. Chair Wessinger asked about the cross over that may occur between materials recovery and waste disposal. Mr. Downs said that distinction must be clearly defined. He added that material recovery processes and beneficial use would be eligible but that the disposal facility (landfill) would not be considered eligible. Commissioner Lorenzen expressed concern that the tax credit could exceed the investment.

John Charles, Oregon Environmental Council, told the Commission he knew about their frustration with the program. He said the tax credit program did not bring any environmental gain and that facility income was being transferred from one area to another. Mr. Charles stated that the existing tax program should not be changed because it should be ended. He said that the staff report did not contain new information and that no net improvement would not occur through the Department's proposal. He said that the tax credits cause the cost burden to be shifted to other facilities and citizens. Mr. Charles reiterated that the polluter should pay for the cost of clean up rather than the polluter gets paid. He indicated that the program had served its time and that the legislature should decide if a new program should be developed.

Les Ruark, Columbia Ridge Landfill Citizens' Advisory Committee, told the Commission that he agreed with Commissioner Lorenzen and that his feelings were confirmed by John Charles. He indicated he had concerns about the Department's proposal. He added that Director approval of tax credits would eliminate citizen input opportunities. Mr. Ruark said that the Oregon Department of Agriculture should implement a grant program which could be combined with the Agriculture and Center for Application Resources. He concluded by saying that he was glad to see this issue being considered.

Jim Whitty, Associated Oregon Industries (AOI), said that the Department's review process was good and that he was generally supportive of their work. He asked the Commission to consider whether the policy in the statute was being met and that the environment can be improved through the continued use of tax credits. Mr. Whitty read Oregon Revised Statutes (ORS) 468.160. He added the following points:

- The Commission should consider whether the policy is being met; if not, the policy should be changed. Elimination of this program could cause small businesses to close.
- No evidence exists that indicates the tax credit program harms the environment; evidence does exist that the program encourages beneficial activities.

Mr. Whitty concluded by saying the program fosters cooperation. He said the Department's recommendations were good and that AOI would be supportive of the proposal. Mr. Whitty said AOI would have comments on the reduction rate and believed the rates would need modification. He said that Commissioner Lorenzen's concerns would be addressed by the legislature and that the proposal should go forward. Mr. Whitty said that AOI was opposed to a grants program because it is more administratively complex. He said the tax credit program was less burdensome on the state than a grant program.

NOTE: The Commission took a lunch break at this time and said that they would resume discussion of Agenda Item F after lunch. After lunch, the Commission then considered agenda items G, J, F (continued), I, K and L.

INFORMATIONAL ITEMS

G. Information Report on Drought Status.

Purpose: To provide information about low stream flows and requiring treatment facilities to maintain summer discharge limits beyond October 31, 1992.

Discussion: Neil Mullane, Water Quality Division, and **Randy Selig**, Water Resources Department, provided the Commission a brief summary of Oregon's drought situation. Mr. Mullane said the Department is working with permittees to reduce the level of contaminants discharges to streams. He added, however, that due to the level of bacteria in the discharge, more chlorine is used. With reduced flows, additional chlorine creates toxicity problems. Conversely, reducing chlorine will allow the increase of bacteria in the waste stream.

J. Report from Chair of Recycling Markets Development Council.

Purpose: To provide an update on the Recycling Markets Development Council. The 1991 Oregon Recycling act created this 12-member body to foster development of markets for recycled materials.

Discussion: Cheryl Perrin, Chair of the Oregon's Recycling Markets Development Council, introduced Ron Sprague, a committee member of the council. Mr. Sprague spoke to the Commission about the council's progress and plans. He said that funding is needed to implement market development plans. Mr. Sprague indicated that investment tax credits were useful to the recycling markets and that Commission should consider not changing the tax credit program until a study could be undertaken.

Chair Wessinger asked about the recycling rate of plastics. Ms. Perrin responded that the council's plan shows future ideas. She said the plastics industry has been cooperative and helpful but that no recommendations for funding or assessments had been offered. Ms. Perrin concluded by saying that the recyclers indicate that plastics are their biggest problem.

F. Proposal to Revise Pollution Control Tax Credit Program (continued).

Discussion (continued): Director Hansen spoke about how the tax credit program had traditionally not been used to assist process changes required to reduce or prevent pollution problems. However, in the future, process changes would be more important than traditional add-on pollution control facilities. Should the tax credit program be structured to accommodate this? Chair Wessinger asked if the Department could start from scratch with the tax credit program and separate out industries and patterns. Director Hansen indicated the Department could do that by looking at the pollution problem types and determining new requirements. He said the issue seemed to be by eliminating the tax credit program, will tax relief come back to the facility in an overall comprehensive tax rate reduction. Director Hansen said that elimination of the tax credit program would have value if corporate taxes could be put back into state revenues and reduce the total tax burden. Chair Wessinger disagreed.

Commissioner Castle said he did not agree with Mr. Charles about the staff report. He said the Department's proposal would simplify the program and narrow program scope. Commissioner Lorenzen stated he did not like the tax credit program and believed the program may give the wrong market signals. He added that the program was broken and should be done away with. Commissioner Lorenzen said that assistance should be provided through incentives so that the public can see the improvements being made. He added that if there is a tax credit program, he would like to see a dollar limit on the amount of tax relief a facility could take in a year.

Commissioner Whipple commented that she had not seen environmental benefits in the tax credit applications for the money being spent. She said that the program was open ended. Commissioner Whipple indicated the tax credit program has problems even with the improvements made in the staff report. Commissioner McMahan agreed with Commissioner Whipple. She said the program did not help small businesses and the recycling industry. Commissioner McMahan indicated the program was not the proper form to be of assistance. Commissioner Castle said that from an environmental standpoint in regard to new regulations passed that specific help should be provided for compliance. He said that he cannot provide any rationale for the tax credit program and he was in favor of communicating that position to the legislature.

Commissioner Lorenzen suggested that tax credit applications be considered by the Commission and that a yearly cap be placed on each applicant. Commissioner Whipple said that she did not care about the cost of environmental regulation but that the current tax credit program was not working. She added that just eliminating the program would not be appropriate either. Commissioner Castle added that the Commission has a responsibility to provide guidance and not just a negative reaction to the proposal.

Director Hansen summarized the Commission's findings:

- The tax credit dollars have not be used well; and
- The current tax credit program does not make sense and the money allocated to this program should be used within broader areas.

He added that since this decision was a dramatic change from the Department's legislative proposal that has been approved, a conversation would be needed with the Governor.

Commissioner Whipple said the money could be better spent elsewhere, and Chair Wessinger said the program had not resulted in any environmental benefits. He suggested that the Department go back to the legislature with this message.

Action: Commissioner Castle made the following motion:

The Environmental Quality Commission (EQC) does not believe the environmental tax credit program has been effective, either with respect to bringing about improved environmental quality or as to who should bear the cost of complying with environmental regulation. In this period of fiscal stringency, the EQC recommends the discontinuance of the tax credit program for compliance with environmental regulations.

Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

Director Hansen said the Department would have more discussions and will develop a fall back tax credit program proposal in case the Governor or legislature does not want to entirely eliminate the program. He said the Department will return in October with such an option for the Commissioner's consideration.

H. Status Report on Field Burning.

Purpose: To provide an update on field burning fees and acreage limitations, the alternatives research program and other research projects.

Discussion: Steve Crane, Air Quality Division, **Chuck Craig**, Oregon Department of Agriculture, and Steve Greenwood, Air Quality Division Administrator, provided a brief summary about the field burning report. Mr. Greenwood said the Department was able to use limited resources more efficiently by Mr. Crane inspecting the fields being burned from an airplane. Mr. Crane could then notify inspectors in automobiles about where their efforts should be directed.

Mr. Crane spoke about the reduction in acres burned and field registration. He said that acreage reduction had resulted from grass seed growers using alternatives, the fee increase, lack of market for grass seed and the expense and complications from insurance coverage and strict liability. Mr. Greenwood added that the 1991 legislation reached a final compromise and solution. He said the cooperation and participation of all involved has made the reduction easier.

Mr. Craig said the grass seed growers were making progress and that they were determined to no longer be in the field burning business. He said the alternatives research program has been beneficial and is making progress.

I. Status Report on Budget Preparation.

Purpose: To provide information about processing DEQ's final 1993-95 budget request.

Discussion: Peter Dalke, Management Services Division Administrator, spoke to the Commission about the Department's proposed budget. He said that due to budget cuts, the Department is under pressure to seek increase fees to support program. Mr. Dalke said the Department would be losing dollars by receiving one-time only dollars for federal programs. He said 60 percent of the Department's funding would be received by fees. Mr. Dalke discussed the following goals of the Department:

- To focus on maintaining federally delegated programs.
- To pursue Oregon benchmarks which include air quality and threatened and endangered species.
- To develop new ways to streamline operation.
- To rely on other authorities to carry out programs.

Director Hansen said the key events to be occurring would be submittal of the agency's request, review and final recommendations from the Governor's Office, an examination by the futures committees, release of the budget by the Governor and the start of the 1993 legislative session.

K. Commission Member Reports. There were no Commission member reports

L. Director's Report.

Director Hansen told the Commission about the oxygenated fuels staff report being pulled from this agenda (Item E). He said that the gas and petroleum industry had asked that a different method for assessing be developed which would require additional time for public notice and hearing.

Director Hansen also indicated that an oil spill training exercise was scheduled for Thursday, September 23, to be held in Washington. He said the exercise was organized by the U. S. Coast Guard from Washington, D. C. The exercise will be a full simulation response to an oil spill.

There was no further business, and the meeting was adjourned at 4:00 p.m.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item B
October 16, 1992 Meeting

Title:

Approval of Tax Credit Applications

Summary:

Attachment A of the staff report presents the Department's evaluation and recommendation for certification of 11 tax credit applications with a total facility cost of \$2,989,702 as follows:


- 4 Air Quality facilities with a total facility cost of \$195,854.
- 1 Noise facility with a total facility cost of \$84,873.
- 1 Field Burning related application recommended by the Department of Agriculture with a total facility cost of \$437,244.
- 1 Solid Waste Recycling facility with a total facility cost of \$80,380.
- 3 Reclaimed Plastic facilities with a total facility cost of \$61,430.
- 1 Water Quality facility with a total facility cost of \$2,129,921.

Attachment A also includes the Department's evaluation of three Solid Waste Landfill tax credit applications previously presented at the July 24, 1992 EQC meeting. These three applications have a total facility cost \$9,411,350.

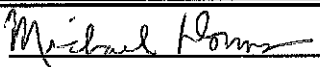
Five of the applications have facility costs exceeding \$250,000 (1 Field Burning, 1 Water Quality, and 3 Solid Waste Landfill) and have been reviewed by Contractors selected by the department. Contractor review statements are provided with the application review reports.

Department Recommendation:


- 1) Approve issuance of tax credit certificates for 11 applications as presented in Attachment A of the staff report.
- 2) Review Department's evaluation of the three Solid Waste Landfill applications in Executive Session.



Report Author



Division Administrator



Director

September 30, 1992

REQUEST FOR EQC ACTION

Meeting Date: October 16, 1992
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

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



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Tax Credit Application Review Reports:

TC-3231 Lane International Corp.	Molding die for reclaimed plastic product.
TC-3717 Roseburg Forest Products Co.	Noise abatement equipment.
TC-3728 Environmental Rubber Bonding Co.	1991 Freightliner truck; 1991 Fruehauf 28' trailer.
TC-3748 Willamette Industries, Inc.	Advanced Control Technologies Data Acquisition System.
TC-3790 Lane International Corp.	Molding die for reclaimed plastic product.
TC-3811 Lane International Corp.	Molding die for reclaimed plastic product.
TC-3824 Willamette Industries, Inc.	American air filter type R Roto Clone size 8 and support equipment.
TC-3825 Willamette Industries, Inc.	Macron Model 108 baghouse and support equipment.
TC-3826 Willamette Industries, Inc.	Donaldson Day 15 6RF10 bagfilter and support equipment.

Tax Credit Application Review Reports With Facility Costs Over \$250,000.00:

TC-2884 Oregon Waste Systems, Inc.	Landfill liner and leachate collection system.
TC-3420 Fujitsu Microelectronics, Inc.	Wastewater treatment system.
TC-3716 Golden Valley Farms	Forklift; 5 trailers, 4 trucks, straw loader; rake; 4 balers; roadrunner with hay clamp; 3 tractors.

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TC-3788
Oregon Waste Systems, Inc. Landfill liner and leachate collection system.
TC-3802
Oregon Waste Systems, Inc. Landfill liner and leachate collection system.

AUTHORITY/NEED FOR ACTION:

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:

None.

PROGRAM CONSIDERATIONS:

None.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

None.

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends the Environmental Quality Commission approve certification for the above identified tax credit applications, excluding the three Oregon Waste Systems, Inc. applications to be reviewed in Executive Session (TC-2884, TC-3788, and TC-3802).

Meeting Date: October 16, 1992
 Agenda Item: B
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CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

Yes.

Note - Pollution Tax Credit Totals:

Proposed October 16, 1992 Totals

<u>Certificates</u>	<u>Certified Costs*</u>	<u># of Certificates</u>
Air Quality	\$ 195,854	4
CFC	0	0
Field Burning	437,244	1
Hazardous Waste	0	0
Noise	84,873	1
Plastics	61,430	3
Solid Waste, Recycling	80,380	1
Water Quality	2,129,921	1
Underground Storage Tanks	0	0
Solid Waste Landfills	0	0
TOTAL	\$ 2,989,702	11

1992 Calendar Year Totals through September 1992

<u>Certificates</u>	<u>Certified Costs*</u>	<u># of Certificates</u>
Air Quality	\$ 1,102,653	7
CFC	180,457	68
Field Burning	666,411	16
Hazardous Waste	10,119,299	1
Noise	0	0
Plastics	24,648	2
Solid Waste, Recycling	95,041	3
Water Quality	1,212,873	12
Underground Storage Tanks	1,322,158	26
Solid Waste Landfills	0	0
TOTAL	\$14,723,540	135

* 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.

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Agenda Item: B
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The proposed tax credit total for October excludes the three Oregon Waste Systems, Inc. applications which were proposed at the July 24 Commission meeting. These applications are for liners, groundwater monitoring systems, and leachate collection systems installed by the applicant at the Columbia Ridge Landfill. The total claimed facility cost is \$9,411,350. In addition to the Oregon Waste Systems applications, the Department currently has four tax credit applications pending for pollution control facilities installed at other commercial landfills. Final eligibility and costs determinations for these four applications are not complete, but the Department expects that the total claimed facility cost will be approximately \$7.4 million. These applications will be presented to the Commission at future meetings. The Department also has one application pending for a landfill liner and leachate collection system installed at the applicant's mill site. This application will probably be presented to the Commission at the December meeting, and has a claimed facility cost of \$943,253.

INTENDED FOLLOWUP ACTIONS:

Notify applicants of Environmental Quality Commission actions.

Approved:

Section: John Fink

Division: Michael Down

Director: Lee Hansen

Report Prepared By: John Fink
Phone: 229-6149
Date Prepared: October 5, 1992

JF:y
MY104203
October 5, 1992

State of Oregon
Department of Environmental Quality

RECLAIMED PLASTIC TAX CREDIT
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Lane International Corp.
Lane T. Robertson
P.O. Box 925
Tualatin, OR 97062

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

Application was made for Reclaimed Plastic Tax Credit.

2. Description of Equipment, Machinery or Personal Property

Claimed Investment Cost: \$26,240.00
(Accountant's Certification was provided.)

The claimed equipment is utilized to manufacture a reclaimed plastic product. The equipment described in the application is a molding die used to produce manhole steps from 100% recycled polypropylene with a steel reinforcing bar.

3. Procedural Requirements

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

The investment met all statutory deadlines in that:

- a. The request for preliminary certification was filed August 6, 1990 and was approved on August 8, 1990.
- b. The investment was made on January 8, 1991, prior to June 30, 1995.
- c. The request for final certification was submitted on July 14, 1992.
- d. The application for final certification was found to be complete and filed on August 14, 1992.

4. Evaluation of Application

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

b. Allocable Cost Findings

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

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

This factor is applicable because the entire purpose of the manufacturing process is to produce manhole steps from 100% recycled plastic, which are marketed regionally.

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

The applicant indicated that they knew of no alternative method which could be utilized to produce the same product.

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

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

The actual cost of the investment properly allocable to reclaiming plastic materials as determined by using these factors is 100%.

5. Summation

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

- b. The investment is eligible for final tax credit certification in that the equipment is necessary to manufacture a reclaimed plastic product.
- c. The qualifying business complies with DEQ statutes and rules.
- d. The portion of the investment cost that is properly allocable to reclaiming and recycling plastic is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Reclaimed Plastic Tax Credit Certificate bearing the cost of \$26,240.00 with 100% allocated to reclaiming plastic material, be issued for the investment claimed in Tax Credit Application No. TC-3231.

WRB:b
RECY\RPT\YB11844T
(503) 229-5934
August 14, 1992

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Roseburg Forest Products Company
Coquille Plywood Plant #6
Cedar Point Road
Coquille, OR 97423

The applicant owns and operates a plywood production plant in Coquille, Oregon.

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

2. Description of Facility

The applicant installed noise abatement equipment for several noise sources on the roof of the plywood mill. The applicant also constructed a building entrance to allow traffic into the building without emitting noise from an open bay.

Building addition materials and labor:	\$57,099.76
Process exhaust noise abatement equipment and labor:	\$27,773.50
Total Claimed Facility Cost:	\$84,873.26

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 April 15, 1991 and placed into operation on April 15, 1991. The application for final certification was submitted to the Department on January 27, 1992, within two years of substantial completion of the facility. The application was found to be complete on September 4, 1992.

4. Evaluation of Application

a. Rationale For Eligibility

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). The plant was found to be in compliance with OAR 340-35-035 by an independent acoustical consultant.

The noise abatement measures are performed in response to a Notice of Non-Compliance issued by the Department on October 5, 1989. Noise measurements by the Department showed L50 noise levels, the noise level 50% of the time, to be 59 dBA at adjacent residential properties. The L50 DEQ noise standards is 55 dBA in the daytime hours and 50 dBA in the night hours. The noise attenuation efforts were compliance checked by an independent acoustical consultant on September 11, 1991. The acoustical consultant, Albert Duple P.E., determined the plant was in compliance with OAR 340-35-035.

The noise level from processes on the roof of the plant was reduced. The skoog blower ducting generated noise from scrap material and air forced through by the skoog blower. This duct was lined with fiberglass insulation with a thin aluminum backing. The skoog lines feeds the #3 cyclone. This cyclone is a noise source which was also treated by lining with fiberglass and aluminum backing. Ductwork was installed to divert noises from several fans away from noise sensitive properties. The ducts are curved hoods with openings pointing away from adjacent residential properties. The fan compressor air intake louvers were redesigned to absorb noise. A sound curtain was installed on the interior of the compressor room.

An addition was made to the main building entrance. This building addition shields the residential properties from noise generated by the lift truck activity and the veneer dryers in the building. It does this by allowing traffic to pass in and out of the building without having noise radiating from an open entrance.

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.

The applicant indicates in the application there is no income or savings from the facility, so there is no return on the investment.

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

The applicant submitted no alternative methods. Conical noise silencers could have been installed on the exhaust fans and the skoog blower ducting. This would have further lowered noise levels. The cost for these measures would have been significantly greater. In addition to silencers, structural support work would have been necessary. The applicant spent the minimum necessary to comply with OAR 340-35-035 (1)(a).

- 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 \$3,000.00 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 pollution.

There are no other factors to consider in establishing the actual cost of the facility properly allocable to reduction of noise pollution. The principal purpose of the facility is to reduce a substantial quantity of noise 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 final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce noise pollution.
- c. The facility complies with DEQ statutes and rules, and compliance schedule 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 \$84,873.26 with 100% allocated to noise pollution reduction be issued for the facility claimed in Tax Credit Application No. TC-3717.

BKF:a
RPT\AH60711
(503) 229-5365
September 17, 1992

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Environmental Rubber Bonding Company
Kenneth Williams and Roger Williams
6142 Crater Lake Highway
Central Point, OR 97502

The applicants own and operate a rubber recycling facility at Central Point, Oregon.

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

2. Description of Facility

The claimed facility is a 1991 Freightliner truck and 1991 Fruehauf 28 foot trailer to be utilized solely for picking up rubber shavings from retreaders, and transporting the rubber shavings to the applicants' manufacturing facility where it is used to manufacture recycled rubber products. There was \$10,000.00 salvage value for a vehicle removed from service.

The following items are included in the facility:

- o 1991 Freightliner truck #1FYNAZY96MP514303 - \$75,485
- o 1991 Fruehauf 28 foot trailer #1H4P02821MJ015301 - \$14,895

Claimed Facility Cost: \$80,380
(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:

Construction and installation of the facility was substantially completed on April 30, 1991, and placed into operation April 30, 1991. The application for final certification was found to be complete on August 20, 1992, 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 100% of the rubber utilized at this facility is bonded into rubber mats which are then sold for pick-up bed liners.

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 \$5,282. This results from the value of the recycled product less operating costs. Dividing the annual average cash flow into the cost of the facility gives a return on investment factor of 15.22. Using Table 1 of OAR 340-16-030, for an average useful life of 10 years, the percent allocable would be 100%.

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

The applicants considered purchasing a used truck and trailer. They decided a new truck and trailer better met their needs in that the reliability of the equipment was of key importance in assuring timely pickup of the rubber.

- 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 annual operating expense of \$162,143 and gross of \$167,425 were calculated by prorating the total business operating expenses and gross income. These numbers were used 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 purchased 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 \$80,380 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3728.

WRB:b
RECY\RPT\YB11856T
(503) 229-5934
August 20, 1992

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Willamette Industries, Inc.
Albany Paper Mill
3521 Old Salem Rd. NE
Albany, OR 97321

The applicant owns and operates a kraft paper mill in Albany, Oregon.

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

2. Description of Facility

The facility allows process control engineers to adjust plant operations to control opacity and total reduced sulfur emissions. The facility consists of an Advanced Control Technologies Data Acquisitions System.

Claimed Facility Cost: \$34,903.00

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: Installation of the facility was substantially completed on November 25, 1991 and placed into operation on November 25, 1991. The application for final certification was submitted to the Department on March 9, 1992, within two years of substantial completion of the facility. The application was found to be complete on September 8, 1992.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. This is in accordance with OAR Chapter

340 Division 25, sections 150 through 205. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The utilization of the data acquisition system, (DAS), allows the process control room engineers to receive immediate notification if emissions to the atmosphere are in excess of air contaminant discharge permit allowances and to make process adjustments to remedy the situation. The engineers are notified by an alarm panel which is connected to the data acquisition system. The opacity monitor and the total reduced sulfur, (TRS), monitors are the continuous emission monitors, (CEM), which feed data to the DAS. There are four separate total reduced sulfur monitors. The total reduced sulfur monitors reports the emission levels of the #3 and #4 recovery boilers and the two lime kilns. The opacity monitor reports the opacity of the main stack emissions. The main stack receives emissions from the two power boilers, the two recovery boilers, the two lime kilns, and the two smelt dissolving tanks.

If the opacity alarm were to sound there are several steps which would be taken to reduce the opacity emissions. The two main sources of opacity are the recovery boilers and the lime kilns. The first step would be to make sure the precipitator on the outlet of the recovery boilers is working correctly. This involves first increasing the speed of the rapper, (dust cleaner), of the precipitator collector plates. If this does not improve opacity then the currents and voltage of the precipitator would be checked to make sure they are in the correct range. The next step would be to adjust the water flow on the lime kiln scrubber. If the alarm for the TRS CEM sounded there are two steps which can be taken to reduce the TRS being emitted to the atmosphere. The first step would be adjusting the air flow of the recovery boilers. If that failed to help then the draft air flow through the lime kilns would be adjusted.

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.

The applicant indicates in the application there is no income or savings from the facility, so there is no return on the investment.

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

The applicant indicate in the application they know of no alternative.

- 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. The use of this facility does not increase production efficiency. Any increase in costs are due to electricity consumption of the DAS and are insignificant.

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

There are no other factors to consider in establishing the actual cost of the facility properly allocable to the prevention, control or reduction of pollution. The principal purpose of the facility is to control a substantial quantity of air 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 final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.
- 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 \$34,903.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3748.

BKF:a
RPT\AH60707
(503) 229-5365
September 8, 1992

State of Oregon
Department of Environmental Quality

RECLAIMED PLASTIC TAX CREDIT
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Lane International Corp.
Lane T. Robertson
P.O. Box 925
Tualatin, OR 97062

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

Application was made for Reclaimed Plastic Tax Credit.

2. Description of Equipment, Machinery or Personal Property

Claimed Investment Cost: \$15,140.29

The claimed equipment is utilized to manufacture a reclaimed plastic product. The equipment described in the application is a molding die used to produce manhole steps from 100% recycled polypropylene with a steel reinforcing bar.

3. Procedural Requirements

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

The investment met all statutory deadlines in that:

- a. The request for preliminary certification was filed May 8, 1992. The 30-day prior notice requirement was waived on May 8, 1992.
- b. The request for preliminary certification was approved on May 8, 1992, before application for final certification was made.
- c. The investment was made on May 12, 1992, prior to June 30, 1995.
- d. The application for final certification was submitted on July 14, 1992, was found to be complete on August 14, 1992.

4. Evaluation of Application

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

b. Allocable Cost Findings

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

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

This factor is applicable because the entire purpose of the manufacturing process is to produce manhole steps from 100% recycled plastic, which are marketed regionally.

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

The applicant indicated that they knew of no alternative method which could be utilized to produce the same product.

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

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

The actual cost of the investment properly allocable to reclaiming plastic materials as determined by using these factors is 100%.

5. Summation

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

- b. The investment is eligible for final tax credit certification in that the equipment is necessary to manufacture a reclaimed plastic product.
- c. The qualifying business complies with DEQ statutes and rules.
- d. The portion of the investment cost that is properly allocable to reclaiming and recycling plastic is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Reclaimed Plastic Tax Credit Certificate bearing the cost of \$15,140.29 with 100% allocated to reclaiming plastic material, be issued for the investment claimed in Tax Credit Application No. TC-3790.

WRB:b

RECY\RPT\YB11832.51

(503) 229-5934

August 14, 1992

State of Oregon
Department of Environmental Quality

RECLAIMED PLASTIC TAX CREDIT
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Lane International Corp.
Lane T. Robertson
P.O. Box 925
Tualatin, OR 97062

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

Application was made for Reclaimed Plastic Tax Credit.

2. Description of Equipment, Machinery or Personal Property

Claimed Investment Cost: \$20,000.00
(Accountant's Certification was provided.)

The claimed equipment is utilized to manufacture a reclaimed plastic product. The equipment described in the application is a molding die used to produce manhole steps from 100% recycled polypropylene with a steel reinforcing bar.

3. Procedural Requirements

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

The investment met all statutory deadlines in that:

- a. The request for preliminary certification was filed July 10, 1992, and was approved on July 10, 1992.
- b. The investment was made on August 25, 1992, prior to June 30, 1995.
- c. The request for final certification was submitted on August 26, 1992.
- d. The application for final certification was found to be complete and filed on September 1, 1992.

4. Evaluation of Application

- a. The investment is eligible because the equipment is necessary to manufacture a reclaimed plastic product.
- b. Allocable Cost Findings

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

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

This factor is applicable because the entire purpose of the manufacturing process is to produce manhole steps from 100% recycled plastic, which are marketed regionally.

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

The applicant indicated that they knew of no alternative method which could be utilized to produce the same product.

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

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

The actual cost of the investment properly allocable to reclaiming plastic materials as determined by using these factors is 100%.

5. Summation

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

- b. The investment is eligible for final tax credit certification in that the equipment is necessary to manufacture a reclaimed plastic product.
- c. The qualifying business complies with DEQ statutes and rules.
- d. The portion of the investment cost that is properly allocable to reclaiming and recycling plastic is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Reclaimed Plastic Tax Credit Certificate bearing the cost of \$20,000.00 with 100% allocated to reclaiming plastic material, be issued for the investment claimed in Tax Credit Application No. TC-3811.

WRB:k

RECY\RPT\YK4419T

(503) 229-5934

September 2, 1992

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Willamette Industries, Inc.
Duraflake Division
2250 Old Salem Road NE
Albany, OR

The applicant owns and operates a particle board manufacturing plant in Albany, Oregon.

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

2. Description of Facility

The facility controls emissions of condensable hydrocarbons from the No. 3 coarse particle board final dryer. The facility consists of an American Air Filter Type R Roto Clone, size 8, and support equipment.

Claimed Facility Cost: \$58,932.00

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: Installation of the facility was substantially completed on August 13, 1990 and placed into operation on August 13, 1990. The application for final certification was submitted to the Department on July 28, 1992 within two years of substantial completion of the facility. The application was found to be complete on September 8, 1992.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. This is in accordance with OAR Chapter

340-25-320. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The roto clone air filter controls the emission of condensible hydrocarbons through the use of water scrubbing and centrifugal force. The emissions from the No. 3 final dryer are vented to a cyclone which removes the particulates. Then the emissions are vented into a ducting system and are pulled through a fan which forces the exhaust stream to the roto clone. The dryer emissions enter the initial knockdown chamber of the roto clone and are sprayed with water. The water removes the remainder of the fine particulates. The water particulate slurry drains from the roto clone at this point. The roto clone utilizes eight inverted cones. The exhaust stream is forced into the cones through openings on the side. The air enters tangentially and the force of it's entry causes the cones to spin. A water spray is introduced to the cones cooling and condensing the hydrocarbons in the exhaust air stream. The centrifugal force resulting from the spin of the cones forces the water hydrocarbon slurry out of the exhaust stream to the sides of the cones. The slurry then falls to the bottom of the cones where it is drained from the roto clone. The slurry is treated by the plant water treatment system. The clean exhaust air leaves the side of the unit. The installation of the facility required installing ducting, a fan and motor, and a concrete foundation for the fan.

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.

The applicant indicates in the application there is no income or savings from the facility, so there is no return on the investment.

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

The applicant submitted no other alternative. The applicant has used roto clone scrubbers at this plant in the past and decided to use familiar technology.

- 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 \$36,608 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 pollution.

There are no other factors to consider in establishing the actual cost of the facility properly allocable to prevention, control or reduction of pollution. The principal purpose of the facility is to control substantial quantity of air 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 final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control 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 \$58,932.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3824.

BKF:a
RPT\AH60710
(503) 229-5365
September 7, 1992

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Willamette Industries
Duraflake Division
2250 Old Salem Road NE
Albany, OR

The applicant owns and operates a particleboard manufacturing plant in Albany, Oregon.

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

2. Description of Facility

The facility controls particulate emissions from the pneumatic conveyance systems of wood chips to the surge bin supplying the final dryers of particleboard. The facility consists of a Macron model 108 baghouse and support equipment.

Claimed Facility Cost: \$47,886.00

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: Installation of the facility was substantially completed on September 1, 1990 and placed into operation on September 1, 1990. The application for final certification was submitted to the Department on July 28, 1992 within two years of substantial completion of the facility. The application was found to be complete on September 8, 1992.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air

pollution. This is in accordance with OAR Chapter 340, Division 25, Section 320. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The Macron baghouse controls the particulate emissions from two cyclones, each of which feed fiber to a surge bin. The surge bins supply fiber to the particle board final dryers. The baghouse receives the emissions from the cyclones through a short section of ducting. The emissions are then pulled through the bagfilter and particulates are filtered out of the exhaust gas stream. The air then passes through a fan at the base of the baghouse into the atmosphere. The baghouse has an automatic cleaning system so the baghouse operation is not interrupted by manual cleaning. The baghouse consists of a Macron model 108 bagfilter, a Twin City BI 222 fan, a Macron cleaning system, a Seimens 10 horsepower and a 50 horsepower motor, and ducting.

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.

The applicant indicates in the application there is no income or savings from the facility, so there is no return on the investment.

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

The applicant submitted no other alternative.

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

The production process line is new. The applicant was unable to place a monetary value on retrieved wood fiber. The applicant does not feel it could equal the operating cost of \$24,834 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 pollution.

There are no other factors to consider in establishing the actual cost of the facility properly allocable to prevention, control or reduction of pollution. The principal purpose of the facility is to control substantial quantity of air 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 final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control 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 \$47,886.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3825.

BKF:a
RPT\AH60709
(503) 229-5365
September 8, 1992

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Willamette Industries, Inc.
Foster Plywood
611 East Highway 20
Sweet Home, OR

The applicant owns and operates a plywood manufacturing plant in Sweet Home, Oregon.

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

2. Description of Facility

The facility controls particulate emissions from the plywood manufacturing process. The facility consists of a Donaldson-Day 156RF10 bagfilter and support equipment.

Claimed Facility Cost: \$54,133.00

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:

Installation of the facility was substantially completed on January 15, 1992 and placed into operation on January 15, 1992. The application for final certification was submitted to the Department on June 28, 1992, within two years of substantial completion of the facility. The application was found to be complete on September 8, 1992.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. This is in accordance with OAR Chapter

340, Division 25, Sections 315. The Air Contaminant Discharge Permit for this source, 22-3010, items 2-4 require the permittee to control particulate emissions. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The bagfilter controls the particulate emissions from three sources in the dry end section of the plywood manufacturing plant. The sources of particulate are the plywood face sander, the plywood tongue and groove section, and the glue loft surge bin. The particulate emitted by these processes is pulled into vacuum hoods above the sources. The particulate is then pulled into the main duct trunk and drawn into the bagfilter. A fan at the end of the system pulls the emissions through the bagfilter, filtering out the particulate. The filtered exhaust air then passes through the fan and is emitted to the atmosphere. The facility consists of the bagfilter and containment structure, ducting and the concrete base for the fan. The cost of the fan and the motor are not claimed because Willamette Industries already owned them.

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.

A portion of the waste product is converted into a salable or usable commodity consisting of wood fiber.

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

The average annual cash flow is \$579.00 which results from the annual income from recovered wood fiber of \$15,804.00 less the facility operating cost of \$15,224.40. Dividing the average annual cash flow into the claimed facility cost, (\$54,133.00), gives a return on investment factor of 93. Using Table 1 of OAR 340-16-30 for a useful life of five years gives

an annual return on investment of 0% and the reference annual percent return of 17.0%. As a result, the percent allocable is 100%.

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

The applicant submitted no other 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 pollution.

There are no other factors to consider in establishing the actual cost of the facility properly allocable to control of pollution. The principal purpose of the facility is to control, a substantial quantity of air 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 final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.
- 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 \$54,133.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3826.

BKF:
RPT\AH60708
(503) 229-5365
September 8, 1992

STATE OF OREGON
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. **Applicant**

Oregon Waste Systems, Inc.
Columbia Ridge Landfill and Recycling Center
18177 Cedar Springs Road
Arlington, OR 97812

The applicant owns and operates a municipal solid waste landfill in Arlington, Oregon.
Application was made for tax credit for a water pollution control facility.

2. **Description of Facility**

The facility is the module one cell liner consisting of three feet of compacted soil, an 8 oz. geotextile layer, one foot of drainage material with piping, a 16 oz. geotextile cushion, 60-mil thick high density polyethylene liner, secondary collection and leak detection system, leachate evaporation basin with liner, a sedimentation basin without a liner and a groundwater monitoring system with seven wells.

Claimed Facility Cost: \$3,093,687 consisting of:

Leachate Pond Design	\$ 68,909.84
Ground Water Monitoring System	\$ 300,206.37
Ground Water Monitoring Pumps	\$ 27,171.20
Liner Installation	\$1,814,816.35
Liner Material	\$ 598,004.85
Liner QA/QC	\$ 284,578.32

(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 statutory deadlines in that construction of the facility was begun in March 1989, substantially completed on December 28, 1989 and placed into operation January 2, 1990. The application was submitted to the Department December 20, 1991, for certification and was found to be technically

complete on February 10, 1992, within 2 years of substantial completion of the facility. Preliminary Certification for Pollution Control Tax Credit was approved on May 17, 1989.

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 (DEQ) and the federal Environmental Protection Agency (EPA), to prevent water pollution. The requirement is to comply with OAR 340-61.

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 (leachate) 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 because the applicant claims there is no income derived from the liner, leachate pond, or leachate collection system.
- 3) The alternative methods, equipment and costs for achieving the same pollution control objective.
There are no known alternatives, the liner, leachate pond, and leachate collection system are specified requirements of DEQ Solid Waste Permit number 391.
- 4) Any related savings or increase in costs which occur or may occur as a result of the installation of the facilities.
There are no savings realized from the installation of the facilities.
- 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.
In accordance with the Commissions direction, the Department has contracted with a private accounting service to evaluate the facility

costs of the pollution control facilities with costs at or exceeding \$250,000. This evaluation has been provided on TC 2884 by Symonds, Evans & Larson certified public accountants (see attached report).

Through this evaluation, the contractor has identified the following issues.

1. It appears unclear as to whether the company may have return on facility costs if the fees to use the facilities are in part determined as the costs to construct the required pollution control facilities.

Department response: Craig Lewis, Senior Management Analyst at METRO, informed staff that Oregon Waste Systems based its bid on a unit price per ton disposal cost and fixed costs. Oregon Waste Systems is not a regulated utility and its rates are set competitively. The company may be able to recover its capital costs by passing these costs on to customers, however this is not dissimilar to other tax credit applications which are approved where the applicant is able to pass pollution control costs on to its customers.

2. Although the company did exclude the costs of excavation related to module 1, it is not clear as to whether such costs are allowable.

Department response: It was the Department's and Commissions' previous determination that excavation costs necessary to construct a landfill are not eligible costs.

The contractor has concluded that through its review, with the exception of #1 above, no irregularities were identified that indicates further adjustment of costs.

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 and the federal Environmental Protection Agency to prevent groundwater pollution.

- 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 \$3,093,687 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2884.

BRD:ks

SW\RPT\ASK4053 7-9-92

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Fujitsu Microelectronics, Inc.
Gresham Manufacturing
3545 North First Street
San Jose, CA 95134

The applicant owns and operates a microelectronics manufacturing plant at 21015 S.E. Stark Street in Gresham, 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 reduce fluoride content and adjust the pH of the plant's wastewater discharge to meet the pre-treatment requirements of the Gresham publicly-owned treatment works.

Claimed Facility Cost: \$2,129,921
(Accountant's certification was provided.)

The claimed costs are:

Effluent Collection System	\$ 118,578
Waste Equalization System	124,389
Neutralization System	199,861
Effluent Holding Tank	70,828
Caustic Storage Tank	85,882
Fluoride Treatment System	1,456,953
Wastewater Metering Flume	73,430
	=====
Total	\$2,129,921

The pre-treatment facility was installed during construction of the manufacturing plant in order to meet the wastewater discharge requirements of the Gresham sewage treatment plant. If the facility had not been installed, the wastewater would have been discharged at an uncontrolled, low pH (average 1.5-2.0), with large amounts of uncombined fluorides. The untreated wastewater would have severely impacted the integrity of the Gresham sewage treatment system.

Alan Johnston, pre-treatment coordinator for the City of Gresham, reports that the applicant's system has satisfactorily met Gresham's pre-treatment permit requirements since the system was put on line.

The applicant reports that pH is controlled within the range 6.0-9.0 and the average fluoride content is below state and EPA limits. The pre-treatment facility achieves a running average pH control of 99.99 percent and averages a 95 percent removal rate for fluoride.

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 April 1, 1989 and the application for final certification was filed on April 1, 1991, within 2 years of substantial completion of the facility. However, the application was incomplete because it lacked an accountant's certification. The Commission approved a one-year extension for filing the application, which expired on April 1, 1992. The facility submitted its up-dated costs and accountant's certification before April 1.

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 468B.005.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant evaluated alternative methods to remove fluoride but chose this method because the others would have been more expensive to operate and would have introduced phosphorous into the wastewater, thereby decreasing effluent quality.

No alternative process for pH neutralization was evaluated since the chosen process is the industry standard used in a majority of facilities and it minimizes capital and operating costs.

- 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.

In accordance with the Commission's directive, the Department has contracted with a private accounting service to evaluate the facility costs of pollution control facilities with costs at or exceeding \$250,000. The evaluation of this application has been provided by Symonds, Evans & Larson certified public accountants (see attached report). Through this evaluation, the contractor has concluded that no irregularities were identified that would necessitate adjustment of the cost allocation.

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 468B.005.

- 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 \$2,129,921 with 100% allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-3420.

JE Turnbaugh
(503) 229-5374
April 1, 1992
IW\WC9\WC9916

SYMONDS, EVANS & LARSON
CERTIFIED PUBLIC ACCOUNTANTS

DEPT. OF ENVIRONMENTAL QUALITY

RECEIVED :

SEP 24 1992

Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, Oregon 97204

ENVIRONMENTAL CLEANUP DIVISION

At your request, we have performed certain agreed-upon procedures with respect to Fujitsu Microelectronics, Inc.'s (the Company's) Pollution Control Tax Credit Application No. 3420 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ) for the Wastewater Pollution Control Facility (the Facility) at the Gresham, Oregon manufacturing plant. The Application has a claimed Facility cost of \$2,129,921. Our procedures, findings and conclusion are as follows:

Procedures:

1. We read the Application, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits – Sections 468.150 through 468.190 (the Statutes), and the Oregon Administrative Rules on Pollution Control Tax Credits – Sections 340-16-005 through 340-16-050 (OAR's).
2. We reviewed certain documents which supported the Application.
3. We discussed the Application, the Statutes and OAR's with certain DEQ personnel, including John Fink and Jerry Turnbaugh.
4. We also discussed certain components of the Application with the following individuals:
 - Doug Briggs of CRS Serrine Engineers, Inc. (CRSS)
 - Alan Johnston of the City of Gresham
 - Ron Fowler, John Munson and Dick Romano of the Company
5. We toured the Facility with Mr. Briggs.
6. We requested that Christensen Electric Company (a subcontractor to CRSS) confirm the accuracy of \$70,032 billed by them which was allocated to the Facility.

SYMONDS, EVANS & LARSON
CERTIFIED PUBLIC ACCOUNTANTS

7. We requested that JWP Advanced Technologies (a subcontractor to CRSS) confirm the accuracy of \$155,696 billed by them which was allocated to the Facility.
8. We requested that Mr. Briggs and certain representatives of the Company confirm the following:
 - a) There were no internal costs of the Company (or affiliates of the Company) that were included in the Application.
 - b) The 12% allocation of CRSS costs for labor and expenses is reasonable and does not include any significant costs that would not be properly allocable to the Facility.
 - c) The treated water from the Facility is not being directly reused by the Company.
 - d) The Company is not receiving discounted water rates from the City of Gresham as a result of the construction of the Facility.
 - e) The capacity of the Facility is adequate for the present manufacturing plant and does not include significant capacity for potential future operations.
 - f) The Facility costs included in the Application are exclusive of any costs incurred to dispose of human waste that is generated related to the Facility as noted in Section 468.155 (2)(b) of the Statutes.
 - g) The Facility costs included in the Application are exclusive of any costs related to "moving sewage to the collecting facilities" of the City of Gresham as noted in Section 468.155 (2)(c) of the Statutes.
 - h) The Facility costs included in the Application are exclusive of any costs related to landscaping, lighting, Company signs, etc., as noted in Section 468.155 (2)(d) of the Statutes.

Findings:

1. through 5.

No matters came to our attention that caused us to believe that the Application should be adjusted.

SYMONDS, EVANS & LARSON
CERTIFIED PUBLIC ACCOUNTANTS

6. A representative of Christensen Electric Company confirmed in writing the accuracy of the \$70,032 billed by them which was allocated to the Facility.
7. A representative of JWP Advanced Technologies confirmed in writing the accuracy of the \$155,696 billed by them which was allocated to the Facility.
8. Mr. Briggs and certain representatives of the Company confirmed in writing that such assertions were true and correct.

Conclusion:

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on any of the items referred to above. In connection with the procedures referred to above, no matters came to our attention that caused us to believe that the specified items should be adjusted. Had we performed additional procedures or had we conducted an audit of the financial statements of the Company in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report relates only to the items specified above and does not extend to any financial statements of the Company, taken as a whole.

This report is solely for the use of the State of Oregon Environmental Quality Commission and Department of Environmental Quality in evaluating the Company's Pollution Control Tax Credit Application with respect to its Wastewater Pollution Control Facility at the Gresham, Oregon manufacturing plant, and should not be used for any other purpose.

Symonds, Evans & Larson

September 21, 1992

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Golden Valley Farms
7385 Howell Prairie Road NE
Silverton, OR 97381

The applicant owns and operates a grass seed farm operation in Marion County, 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 11235 Portland Road NE, Brooks, Oregon. The equipment is owned by the applicant.

EQUIPMENT

<u>Equipment</u>	<u>Cost</u>	<u>Date Purchased</u>
2 Hyster H70XL Forklift	\$ 28,000	12/27/90
1974 Peerless 20' Trailer	4,000	3/2/90
4 1982 Coment 40' Trailers	19,300	2/20/90
2 1985 International Trucks	53,750	2/19/90
Hyster Straw Loader	20,000	7/3/90
2 1988 Kenworth Trucks	57,962	3/14/91
New Holland Rake	13,000	5/16/91
4 New Holland Balers	132,000	5/16/91
Oregon Roadrunner with hay clamp	73,032	5/14/91
J.D. 4440 tractor #025303R 135 hp	20,000	3/7/91
J.D. 2440 tractor #29279 70hp	7,200	6/26/90
J.D. 2440 tractor #363393 70hp	9,000	6/26/90

Claimed equipment cost: \$437,244
(Accountant's Certification was provided and
the applicant provided copies of cancelled checks.)

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

The applicant has 3,000 acres of perennial grass seed under cultivation. The applicant indicates that prior to 1988 and the company's awareness of straw as a marketable by-product, it was customary to register and open field burn up to one-half of the total grass seed acreage produced annually. The remaining acreage was baled off, propane flamed, and the stacks were open burned.

Application No. TC-3716

Page 2

With capital investment in storage sheds, straw compressors, straw rakes, balers, tractors, forklifts, hay squeezes, and trucks and trailers, the applicant is able to rake the grass straw in windrows, bale it, move it into storage sheds, compress and containerize the bales, and truck it to port for export to Asian markets.

The applicant has been heavily investing in this alternative to open field burning since 1987 and is able to remove the grass straw residue from all acreage without benefit of open field burning.

The applicant estimates that he removes an average of 3.33 tons of baled straw per acre or 10,000 tons. The gross income per ton is approximately \$80.00 and the annual operating costs are approximately \$68.00 per ton. These figures fall within the acceptable range of gross income and expenses for grass straw from field to port of export. Tom Hartung, Consultant to the Department of Agriculture, Research and Development, verifies the straw income and cost figures.

The applicant estimated the average useful life of all equipment at seven years because approximately half the equipment was purchased used and all equipment will be subject to unusual wear due to the rough terrain inherent to perennial grass seed fields.

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 between February 19, 1990 and May 16, 1991. The application was submitted on January 22, 1992 and the application for final certification was found to be complete on February 20, 1992. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

- a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; 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."

Application No. TC-3716
Page 3

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 all the necessary operations to remove the residue from the fields to the marketplace.

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

The applicant has determined the gross annual income projection for the baling and straw marketing business to be \$4,000,000 for the five years and \$3,400,000 projected annual operating expenses for the five years. Cash flow is \$600,000 with an average annual cash flow of \$120,000 for the baling and straw marketing business. The equipment considered for certification is .459 (\$437,244 divided by \$951,787) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$55,080 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$437,244) divided by the average annual cash flow (\$55,080) equals a return on investment factor of 7.938. Using Table I of OAR 340-16-030 for a life of 7 years, the annual percent return on investment is 0%. Using the annual percent return of 0% 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.

The costs and savings were considered in the return on investment calculation and no others were declared.

There is a potential annual savings to the applicant in that registration and burn fees are no longer required to treat the field. Subsequent to 1991 legislation, the savings could be \$10 per acre or \$30,000 for the 3,000 acre farm. Minimum added annual costs to the applicant would be

Application No. TC-3716

Page 4

approximately \$18.50 per acre for additional fertilizer (Phosphate and Potash) required because of the straw removal or \$55,500 for the 3,000 acres of grass seed straw baled and placed in storage. The cost figures are derived from a report prepared by Mark Mellbye, OSU District Extension Agent-Field Crops.

Some savings associated with curtailment of open field burning, propane flaming and stack burning are realized by the applicant, but are offset by replacement field treatment methods such as flail chopping, plowing, disking, and chemical control of weeds and pests.

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.

(A) The established average annual operating hours for tractors is set at 450 hours. To obtain a total percent allocable, the annual operating hours per tractor per implement used in reducing acreage open field burned are as follows:

John Deere tractor 2440 #29279 (70hp)

<u>Implement</u>	<u>Acres Worked</u>	<u>Acres/hr</u>	<u>Annual Operating Hours</u>
New Holland baler	750	4	188
Total annual operating hours			188

The total annual operating hours of 188 divided by the average annual operating hours of 450 produces a percent allocable of 42%.

John Deere tractor 2440 #363393 (70hp)

<u>Implement</u>	<u>Acres Worked</u>	<u>Acres/hr</u>	<u>Annual Operating Hours</u>
New Holland baler	750	4	188
Total annual operating hours			188

The total annual operating hours of 188 divided by the average annual operating hours of 450 produces a percent allocable of 42%.

Application No. TC-3716

Page 5

John Deere tractor 4440 #025303R (135hp)

<u>Implement</u>	<u>Acres Worked</u>	<u>Acres/hr</u>	<u>Annual Operating Hours</u>
New Holland baler	750	6	125
Total annual operating hours			125

The total annual operating hours of 125 divided by the average annual operating hours of 450 produces a percent allocable of 28%.

<u>Equipment</u>	<u>Claimed Cost</u>	<u>Cost Allocable</u>	<u>Percent Allocable</u>
2 Hyster H70XL forklifts	\$ 28,000	\$ 28,000	100%
1974 Peerless 20' trailer	4,000	4,000	100%
4 1982 Coment 40' trailers	19,300	19,300	100%
2 1985 International trucks	53,750	53,750	100%
Hyster Straw loader	20,000	20,000	100%
2 1988 Kenworth trucks	57,962	57,962	100%
New Holland rake	13,000	13,000	100%
4 New Holland balers	132,000	132,000	100%
Oregon Roadrunner with hay clamps	73,032	73,032	100%
J.D. 2440 tractor #29279	7,200	3,024	42%
J.D. 2440 tractor #363393	9,000	3,780	42%
J.D. 4440 tractor #025303R	20,000	5,600	28%
Total	\$437,244	\$413,448	95%

(B) In accordance with the Commission's directive, the Department has contracted with a private accounting service to evaluate the facility costs of pollution control facilities with costs at or exceeding \$250,000. The evaluation of this application has been provided by Coopers & Lybrand certified public accountants (see attached report). Through this evaluation, the contractor has concluded that no irregularities were identified that would necessitate adjustment of the cost allocation.

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 95%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.

Application No. TC-3716
Page 6

d. The portion of the equipment that is properly allocable to pollution control is 95%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$437,244, with 95% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3716.

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

jb:kcTC3716
September 18, 1992

SEP 28 1992

Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, Oregon 97204

ENVIRONMENTAL CLEANUP DIVISION

At your request, we have performed the following agreed-upon procedures with respect to Golden Valley Farms' (the Company) Pollution Control Tax Credit Application No. 3716 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ), for equipment related to straw utilization and disposal:

1. We read the Application, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits (Statutes) - Sections 468.150 through 468.190, and the Oregon Administrative Rules (OAR's) on Pollution Control Tax Credits - Sections 340-16-005 through 340-16-050.
2. We discussed the Application, Statutes and OAR's with Mr. John Fink of the DEQ.
3. We read the Tax Relief Application Review Report, dated June 23, 1992 prepared by Mr. Jim Britton, Manager, Smoke Management Program, Natural Resources Division, Department of Agriculture, State of Oregon.
4. We reviewed the details of the Tax Relief Application Review Report with Mr. Jim Britton.
5. We reviewed invoice and check copies supporting the \$437,244 of claimed equipment costs. Such costs represent amounts directly related to the purchase of equipment. There do not appear to be any indirect costs which were subject to allocation by the Company.
6. We visited the Company's straw compressing and storage site and observed most of the equipment claimed for tax credit. We noted that the equipment present at the site is consistent with the equipment detailed on the Application.
7. We confirmed with representatives of the Company, that all equipment which is allocated 100% to pollution control (representing \$401,044 of the total \$437,244 of equipment claimed for tax credit) is used only in that capacity.

8. We reviewed the methods used to determine the percentage used for equipment claimed for credit allocated at less than 100% and discussed such methods with Company personnel. We recalculated the allocation percentage for all equipment claimed at less than 100% (\$36,200 of the total \$437,244 of equipment claimed for tax credit).
9. We discussed with Company personnel the gross annual income projection and compared such amounts to the Tax Relief Application Review Report. We noted that such income projections had been reviewed by Tom Hartung, Consultant to the State of Oregon Department of Agriculture, Research and Development. Mr. Hartung indicated that such projections are within an acceptable range for the industry.
10. We recalculated the estimated annual percent return on the investment in the equipment by recalculating the average annual cash flow from the gross annual income projection discussed in number 9 above and dividing this amount by the actual cost of claimed equipment. We then compared this amount using Table 1 of OAR 340-16-030 for a life of seven years to determine that the annual percent return on investment is 0%. We compared this amount to the Tax Relief Application Review Report.

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on any of the items referred to above. In connection with the procedures referred to above, no matters came to our attention that caused us to believe that the amount claimed for tax credit by the Company should be adjusted. Had we performed additional procedures or had we conducted an audit of the financial statements of the Company in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report relates only to the items specified above and does not extend to any financial statements of the Company, taken as a whole.

This report is solely for the use of the State of Oregon Environmental Quality Commission and Department of Environmental Quality in evaluating the Company's Pollution Control Tax Credit Application, and should not be used for any other purpose.

Coopers & Lybrand

Portland, Oregon
September 14, 1992

STATE OF OREGON
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. **Applicant**

Oregon Waste Systems, Inc.
Columbia Ridge Landfill and Recycling Center
18177 Cedar Springs Lane
Arlington, OR 97812

The applicant owns and operates a municipal solid waste landfill in Arlington, Oregon.
Application was made for tax credit for a water pollution control facility.

2. **Description of Facility**

The facility is the module two cell liner consisting of two feet of compacted soil, an 8 oz. geotextile layer, one foot of drainage material with piping, a 16 oz. geotextile cushion, 60 millimeter thick high density polyethylene (HDPE) liner, one foot of protective soil, and a secondary collection and leak detection system including: an 8 oz. geotextile filter; a 60 mil HDPE geomembrane; a granular drainage layer; and a compacted subgrade.

Claimed Facility Cost: \$2,896,418 consisting of:

Clay Liner & Leachate Collection System	\$1,682,773.48
Synthetic Liner	\$ 915,558.66
Liner QA/QC	\$ 298,085.95

(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 statutory deadlines in that construction of the facility was begun on August 2, 1990, substantially completed by May 3, 1991, and placed into operation June 5, 1991. The application was submitted to the Department April 28, 1992, for certification and was found to be technically complete on May 4, 1992, within 2 years of substantial completion of the facility. Preliminary Certification for Tax Credit of a Pollution Control Facility was approved for module 1, TC-2884, but was not applied for module 2.

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 (DEQ) and the federal Environmental Protection Agency (EPA), to prevent ground water pollution. The requirement is to comply with OAR 340-61 and DEQ Solid Waste permit number 391.

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 (leachate) 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 because the applicant claims there is no income derived from the liner or leachate collection system.
- 3) The alternative methods, equipment and costs for achieving the same pollution control objective.
There are no alternatives, the liner and leachate collection system are specified requirement of DEQ Solid Waste Permit number 391.
- 4) Any related savings or decrease in costs which occur or may occur as a result of the installation of the facilities.
There are no savings realized from the installation of the facilities.
- 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.
In accordance with the Commissions direction, the Department has contracted with a private accounting service to evaluate the facility costs of the pollution control facilities with costs at or exceeding \$250,000. This evaluation has been provided on TC 3788 by Symonds, Evans & Larson certified public accountants (see attached report).
Through this evaluation, the contractor has identified the following issues.

1. It appears unclear as to whether the company may have return on facility costs if the fees to use the facilities are in part determined as the costs to construct the required pollution control facilities.
Department response: Craig Lewis, Senior Management Analyst at METRO, informed staff that Oregon Waste Systems based its bid on a unit price per ton disposal cost and fixed costs. Oregon Waste Systems is not a regulated utility and its rates are set competitively. The company may be able to recover its capital costs by passing these costs on to customers, however this is not dissimilar to other tax credit applications which are approved where the applicant is able to pass pollution control costs on to its customers.

2. Although the company did exclude the costs of excavation related to module 2, it is not clear as to whether such costs are allowable.
Department response: It was the Department's and Commissions' previous determination that excavation costs necessary to construct a landfill are not eligible costs.

The contractor has concluded that through its review, with the exception of #1 above, no irregularities were identified that indicates further adjustment of costs.

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 and the federal Environmental Protection Agency to prevent ground water pollution.
- 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 \$2,896,418 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3788.

BRD:ks

7-9-92

SYMONDS, EVANS & LARSON
CERTIFIED PUBLIC ACCOUNTANTS

Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, Oregon 97204

At your request, we have performed certain agreed-upon procedures with respect to Oregon Waste Systems, Inc.'s (the Company's) Pollution Control Tax Credit Applications (the Applications) filed with the State of Oregon, Department of Environmental Quality (DEQ) for Modules 1, 2 and 3 of the Columbia Ridge Landfill and Recycling Center (the Landfill). Our procedures, findings and conclusion are as follows:

Procedures:

1. We read the Applications, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits – Sections 468.150 through 468.190 (Statutes), and the Oregon Administrative Rules on Pollution Control Tax Credits - Sections 340-16-005 through 340-16-050 (OAR's).
2. We discussed the Applications, Statutes and OAR's with certain DEQ personnel, including Noam Stampfer, Roberta Young, Charles Donaldson and Bruce Dessellier.
3. We also discussed the Applications with Doug Coenen and Will Spears of Oregon Waste Systems, Inc.
4. We asked representatives of the Company to confirm in writing that all costs related to the excavation of the Landfill were excluded from the Applications.
5. We asked representatives of the Company to provide a listing of all related parties or affiliates of the Company which had billings which were included in the Applications.
6. We asked representatives of the Company to confirm in writing that there were no internal costs of the Company included in the Applications and that all costs included in the Applications related to subcontractors.

SYMONDS, EVANS & LARSON

CERTIFIED PUBLIC ACCOUNTANTS

7. We asked representatives of the Company to provide invoices to support the allocation of costs from the following vendors:

	<u>Module 1</u>	<u>Module 2</u>	<u>Module 3</u>
L & H Grading	\$ 1,814,816		
National Seal Company		\$ 915,559	\$ 1,109,581
Elting Inc.			1,859,727
WMI Corporate Environmental Engineering		59,310	68,028
Environmental Construction Services		298,086	

Findings:

1. & 2. We noted that Section V (1) (i) of the Applications stated that there was no return on investment related to the costs of pollution control and therefore 100% of the costs were allocated to pollution control. However, based on our review of the Applications, Statutes, and OAR's, and discussion with certain DEQ personnel, it is unclear whether the Company could potentially be receiving a return on its pollution control costs by charging customers a fee to use the facility, with such fees being determined based on the costs to construct the pollution control facilities.

In addition, although it appears that the Company excluded the costs of excavation related to Modules 1, 2 and 3, it is unclear whether such costs are generally allowed or disallowed in Pollution Control Tax Credit Applications for landfills.

3. Refer to the following findings.
4. Will Spears confirmed in writing that all costs related to the excavation of the Landfill were excluded from the Applications.
5. Will Spears informed us that both WMI Corporate Environmental Engineering and National Seal Company were related parties of the Company. Waste Management, Inc. (parent company of Oregon Waste Systems, Inc.), owns 100% of WMI Corporate Environmental Engineering and 51% of National Seal Company.
6. Will Spears confirmed in writing that there were no internal costs of the Company included in the Applications and that all costs included in the Applications related to subcontractors.

SYMONDS, EVANS & LARSON

CERTIFIED PUBLIC ACCOUNTANTS

7. Based on our review of invoice copies provided by the Company, such costs did appear to be properly allocated to the Company's pollution control facility. However, we make no comment as to the reasonableness of the costs billed by WMI Corporate Environmental and National Seal Company. The aggregate (per unit) costs billed by National Seal Company on Modules 2 and 3 for the material and installation of the liner did, however, appear to be less than those billed by the unrelated subcontractor on Module 1.

Conclusion:

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on any of the items referred to above. In connection with the procedures referred to above, no matters came to our attention that caused us to believe that the specified items should be adjusted, except for the potential reduction in allowable costs which would result if it were determined that there was a return on investment as discussed in Findings 1 & 2. Had we performed additional procedures or had we conducted an audit of the financial statements of the Company in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report relates only to the items specified above and does not extend to any financial statements of the Company, taken as a whole.

This report is solely for the use of the State of Oregon Environmental Quality Commission and Department of Environmental Quality in evaluating the Company's Modules 1, 2 and 3 Pollution Control Tax Credit Applications, and should not be used for any other purpose.

Symonds, Evans + Larson

June 15, 1992

STATE OF OREGON
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. **Applicant**

Oregon Waste Systems, Inc.
Columbia Ridge Landfill and Recycling Center
18177 Cedar Springs Lane
Arlington, OR 97812

The applicant owns and operates a municipal solid waste landfill in Arlington, Oregon.
Application was made for tax credit for a water pollution control facility.

2. **Description of Facility**

The facility is the module three cell liner consisting of two feet of compacted soil, an 8 oz. geotextile layer, one foot of drainage material with piping, a 16 oz. geotextile cushion, 60 millimeter thick high density polyethylene (HDPE) liner, one foot of protective soil, and a secondary collection and leak detection system including: an 8 oz. geotextile filter; a 60 mil HDPE geomembrane; a granular drainage layer; and a compacted subgrade.

Claimed Facility Cost: \$3,421,245 consisting of:

Clay Liner & Leachate Collection System	\$1,109,581.22
Synthetic Liner	\$2,040,196.71
Liner QA/QC	\$ 271,466.67

(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 statutory deadlines in that construction of the facility was begun on July 8, 1991, substantially completed by March 24, 1992, and placed into operation on March 25, 1992. The application was submitted to the Department on June 5, 1992, for certification and was found to be technically complete on June 9, 1992, within 2 years of substantial completion of the facility. Preliminary Certification for Tax Credit of a Pollution Control Facility was approved for module 1, TC-2884, but was not applied for module 3.

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 (DEQ) and the federal Environmental Protection Agency (EPA), to prevent ground water pollution. The requirement is to comply with OAR 340-61, 40 CFR 258.40, and DEQ Solid Waste permit number 391.

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 (leachate) 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 because the applicant claims there is no income derived from the liner, or leachate collection system.
- 3) The alternative methods, equipment and costs for achieving the same pollution control objective.
There are no alternatives, the liner and leachate collection system are specified requirement of DEQ Solid Waste Permit number 391.
- 4) Any related savings or decrease in costs which occur or may occur as a result of the installation of the facility.
There are no savings realized from the installation of the facilities.
- 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.
In accordance with the Commissions direction, the Department has contracted with a private accounting service to evaluate the facility costs of the pollution control facilities with costs at or exceeding \$250,000. This evaluation has been provided on TC 3802 by Symonds, Evans & Larson certified public accountants (see attached report).
Through this evaluation, the contractor has identified the following issues.

1. It appears unclear as to whether the company may have return on facility costs if the fees to use the facilities are in part determined as the costs to construct the required pollution control facilities.
Department response: Craig Lewis, Senior Management Analyst at METRO, informed staff that Oregon Waste Systems based its bid on a unit price per ton disposal cost and fixed costs. Oregon Waste Systems is not a regulated utility and its rates are set competitively. The company may be able to recover its capital costs by passing these costs on to customers, however this is not dissimilar to other tax credit applications which are approved where the applicant is able to pass pollution control costs on to its customers.

2. Although the company did exclude the costs of excavation related to module 3, it is not clear as to whether such costs are allowable.
Department response: It was the Department's and Commissions' previous determination that excavation costs necessary to construct a landfill are not eligible costs.

The contractor has concluded that through its review, with the exception of #1 above, no irregularities were identified that indicates further adjustment of costs.

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 and the federal Environmental Protection Agency to prevent ground water pollution.
- 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 \$3,421,245 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3802.

BRD:ks
7-9-92

SYMONDS, EVANS & LARSON
CERTIFIED PUBLIC ACCOUNTANTS

Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, Oregon 97204

At your request, we have performed certain agreed-upon procedures with respect to Oregon Waste Systems, Inc.'s (the Company's) Pollution Control Tax Credit Applications (the Applications) filed with the State of Oregon, Department of Environmental Quality (DEQ) for Modules 1, 2 and 3 of the Columbia Ridge Landfill and Recycling Center (the Landfill). Our procedures, findings and conclusion are as follows:

Procedures:

1. We read the Applications, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits – Sections 468.150 through 468.190 (Statutes), and the Oregon Administrative Rules on Pollution Control Tax Credits - Sections 340-16-005 through 340-16-050 (OAR's).
2. We discussed the Applications, Statutes and OAR's with certain DEQ personnel, including Noam Stampfer, Roberta Young, Charles Donaldson and Bruce Dessellier.
3. We also discussed the Applications with Doug Coenen and Will Spears of Oregon Waste Systems, Inc.
4. We asked representatives of the Company to confirm in writing that all costs related to the excavation of the Landfill were excluded from the Applications.
5. We asked representatives of the Company to provide a listing of all related parties or affiliates of the Company which had billings which were included in the Applications.
6. We asked representatives of the Company to confirm in writing that there were no internal costs of the Company included in the Applications and that all costs included in the Applications related to subcontractors.

SYMONDS, EVANS & LARSON
CERTIFIED PUBLIC ACCOUNTANTS

7. We asked representatives of the Company to provide invoices to support the allocation of costs from the following vendors:

	<u>Module 1</u>	<u>Module 2</u>	<u>Module 3</u>
L & H Grading	\$ 1,814,816		
National Seal Company		\$ 915,559	\$ 1,109,581
Elting Inc.			1,859,727
WMI Corporate Environmental Engineering		59,310	68,028
Environmental Construction Services		298,086	

Findings:

1. & 2. We noted that Section V (1) (i) of the Applications stated that there was no return on investment related to the costs of pollution control and therefore 100% of the costs were allocated to pollution control. However, based on our review of the Applications, Statutes, and OAR's, and discussion with certain DEQ personnel, it is unclear whether the Company could potentially be receiving a return on its pollution control costs by charging customers a fee to use the facility, with such fees being determined based on the costs to construct the pollution control facilities.

In addition, although it appears that the Company excluded the costs of excavation related to Modules 1, 2 and 3, it is unclear whether such costs are generally allowed or disallowed in Pollution Control Tax Credit Applications for landfills.

3. Refer to the following findings.
4. Will Spears confirmed in writing that all costs related to the excavation of the Landfill were excluded from the Applications.
5. Will Spears informed us that both WMI Corporate Environmental Engineering and National Seal Company were related parties of the Company. Waste Management, Inc. (parent company of Oregon Waste Systems, Inc.), owns 100% of WMI Corporate Environmental Engineering and 51% of National Seal Company.
6. Will Spears confirmed in writing that there were no internal costs of the Company included in the Applications and that all costs included in the Applications related to subcontractors.

SYMONDS, EVANS & LARSON
CERTIFIED PUBLIC ACCOUNTANTS

7. Based on our review of invoice copies provided by the Company, such costs did appear to be properly allocated to the Company's pollution control facility. However, we make no comment as to the reasonableness of the costs billed by WMI Corporate Environmental and National Seal Company. The aggregate (per unit) costs billed by National Seal Company on Modules 2 and 3 for the material and installation of the liner did, however, appear to be less than those billed by the unrelated subcontractor on Module 1.

Conclusion:

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on any of the items referred to above. In connection with the procedures referred to above, no matters came to our attention that caused us to believe that the specified items should be adjusted, except for the potential reduction in allowable costs which would result if it were determined that there was a return on investment as discussed in Findings 1 & 2. Had we performed additional procedures or had we conducted an audit of the financial statements of the Company in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report relates only to the items specified above and does not extend to any financial statements of the Company, taken as a whole.

This report is solely for the use of the State of Oregon Environmental Quality Commission and Department of Environmental Quality in evaluating the Company's Modules 1, 2 and 3 Pollution Control Tax Credit Applications, and should not be used for any other purpose.

Symonds, Evans + Larson

June 15, 1992

ITEM C WAS PULLED FROM THE AGENDA.

Environmental Quality Commission

Agenda Item D
October, 1992 Meeting

Rule Adoption Item

Title:

Adoption of Oxygenated Fuels Rules.

Summary:

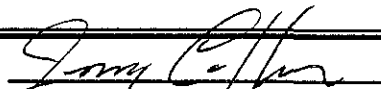
In accordance with the federal Clean Air Act Amendments of 1990, the Department is proposing to require the use of oxygenated gasoline from November through February in areas designated as nonattainment for carbon monoxide. The rule applies to: Clackamas, Jackson, Multnomah, Washington and Yamhill counties, and to an eleven by twelve mile area surrounding Klamath Falls and a nine mile by nine mile area surrounding Grants Pass. The federal requirement takes effect November 1, 1992.


The rules affect the full distribution chain of gasoline because fuel blending can occur at several points, and because annual fees to support the program will be shared: terminals \$5,700, distributors \$500, stations \$100. The Department's annual budget is \$220,000 and 1.7 FTE for the program.

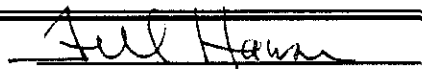
Extensive input to the rule was provided by an advisory committee. Forty-two people testified at six public hearings, and thirty-one people provided written comments. The Department is more stringent than the feds on the Klamath Falls and Grants Pass requirement, and less stringent by not requiring a materials audit in the EPA rule. Changes to the rules as a result of public comment related to: the Klamath Falls and Grants Pass areas, fees, and refiner violations.

Department Recommendation:

Adopt rules as proposed.


Report Author


Division
Administrator


Director

September 23, 1992
EQC\ZB11914

REQUEST FOR EQC ACTION

Meeting Date: October 16, 1992
Agenda Item: D
Division: Air Quality
Section: Vehicle Inspection
Program

SUBJECT:

Amendments to OAR 340 Chapter 22 to require oxygenated gasoline in carbon monoxide nonattainment areas in Oregon.

PURPOSE:

The use of oxygenated gasoline will help attain and maintain compliance with carbon monoxide air quality standards while accommodating growth and development in the affected counties.

ACTION REQUESTED:

<input checked="" type="checkbox"/> Adopt Rules	
Proposed Rules	Attachment <u>A</u>
Rulemaking Statements	Attachment <u>B</u>
Fiscal and Economic Impact Statement	Attachment <u>C</u>
Public Notice	Attachment <u>D</u>

DESCRIPTION OF REQUESTED ACTION:

Proposed regulations require the use of oxygenated gasoline in the wintertime months (November - February) in Clackamas, Jackson, Multnomah, Washington and Yamhill counties, and in the towns of Klamath Falls and Grants Pass. Oxygenated fuel increases the air-fuel ratio in internal combustion engines leading to reduced carbon monoxide emissions during vehicle operations, especially during vehicle warm-up periods. Oxygenated fuel is especially effective during the cold weather season when vehicle warm-up time is relatively long.

Section 211(m) of the federal Clean Air Act of 1990 requires that "each state in which there is located all or part of an area which is designated under title I as a nonattainment area for carbon monoxide, and which has a carbon monoxide

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design value of 9.5 parts per million (ppm) or above based on data for the 2-year period of 1988 and 1989 and calculated according to the most recent interpretation methodology issued by the Administrator (of EPA) prior to the enactment of the Clean Air Act Amendments of 1990 shall submit to the Administrator a State Implementation Plan revision ... for such area which shall contain the provision specified under this subsection regarding oxygenated gasoline."

The Department's Oxygenated Gasoline Program Advisory Committee (see Attachment G) anticipates that industry's choice of oxygenates will be predominately ethanol and methyl-tertiary-butyl-ether (MTBE), although other oxygenates have been approved for use by EPA. Both the Oregon and federal statutes require the oxygenated fuels program to begin "on or before November 1, 1992."

During the control period and in each control area, oxygenated gasoline blenders, called "control area responsible parties" or "CARs," must supply an average of at least 2.7 percent oxygen for each control area serviced. To achieve an average of 2.7 percent oxygen a blender will be allowed to supply a minimum of 2.0 percent oxygenate gasoline and a maximum of 3.7 percent. Each gallon of fuel pumped by the retailer must have a minimum of 2.0 percent oxygen.

The proposal requires that only oxygenated gasoline be used to fuel vehicles in the control areas and during the control period beginning November 1, 1992 and for each wintertime control period thereafter or until a control area is redesignated "in compliance" for carbon monoxide. Such redesignation could occur if there are no violations in the critical years 1994-95, and the area is able to demonstrate that attainment is expected to continue for at least 10 years. The oxygenated fuels program may still be required even if the 1994-95 ambient carbon monoxide standards are met, if the Department considers the program necessary to maintain compliance with carbon monoxide standards beyond 1995.

The proposal affects the full distribution chain of gasoline, including terminals (representing the output from gasoline refineries), bulk plants (temporary storage facilities for gasoline), and dispensing sites (service stations, etc. where the direct fueling of vehicles occurs). In general, fuel arrives first at the terminal via pipeline or by waterways. A distributor then delivers the fuel by tanker truck either directly to service stations or to a bulk plant where it is temporarily housed for subsequent delivery to vehicle fueling sites. The oxygenate could be added to gasoline at any stage

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in the process: at the refinery, at the terminal, in the bulk plant or in individual tanker trucks. The person who owns the fuel at the time of blending is considered the Control Area Responsible Party (CAR). The proposal requires the CAR to insure that the average content of fuel supplied to any one control area and control period is a minimum of 2.7 percent oxygen. The CAR can do this by tracking fuel mixtures and by laboratory tests for oxygen content.

Trading of oxygenated gasoline credits is allowed, so if a CAR fails to meet the 2.7 percent average for the control period, that CAR could purchase credits to meet Oregon requirements from another CAR who may have blended at a level higher than 2.7 percent within that particular control area. At the end of the control period, the CAR must report to the state the blending activities and will be liable for a penalty from the Department if the average (with credits) is less than 2.7 percent.

If a fuel dispenser (i.e. service station), for example, is found dispensing fuel of less than 2.0 percent oxygen in a control area during a control period, all parties that owned the fuel from the CAR to the station will be considered responsible parties, including the CAR itself. Violations of oxygenated fuels rules will be Class II as defined in OAR 340 Division 12. Penalties will range from a minimum of \$400 per day per violation to a maximum of \$10,000 per day per violation depending on the severity of the violation and violator's past record of compliance.

The Department estimates a total of 514 service stations in the Portland area and 213 in the southern Oregon area will be included in the required oxygenated fuels areas. In addition, a limited number of fleet fueling sites will be included in the oxygenated fuels program. Currently there are 195 gasoline distributors serving Oregon. Few of these distributors are expected to blend fuel for oxygenated fuels areas. Many will service only eastern Oregon. Others may decide not to continue to supply fuel in control areas. The bulk of these distributors are expected to purchase pre-blended gasoline and therefore will not be considered a blender or CAR. The Department expects the estimated 18 terminals that currently service the proposed control areas will nearly all be blenders. A terminal is a facility which has marine or pipeline access and is capable of loading gasoline into a tanker truck.

The Department estimates oxygenated fuel will reduce carbon monoxide emissions from vehicles by approximately 20,000 tons per year in the Portland air shed, 2,000 tons per year in

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Grants Pass, 3,000 tons per year in Medford and 2,300 tons per year in Klamath Falls. This is a 17 percent reduction in vehicle emissions of carbon monoxide in each of the nonattainment areas.

The bulk of the proposed Oregon rules are identical to the federal guidelines. However, several deviations from the federal guidelines have been made in the Oregon version to both be more protective of the environment and, at the same time, allow more flexibility to industry in areas which do not detract from the environmental benefit of the oxygenated fuels program.

Specifically, the proposed Oregon rules extend the control area for two of the southern Oregon nonattainment areas from the federal minimum boundaries to the more comprehensive 132 square mile boundary in Klamath Falls and 81 square mile boundary in Grants Pass.

At the same time, the proposed Oregon rules provide more flexibility for the industry. They allow blenders a report time frame of 30 days rather than the EPA's recommended 15 days. They allow pump labeling for oxygenated fuels to be on the upper one-half of the dispenser rather than the more limited one-third originally proposed by EPA. The Department also, in an attempt to reduce excessive paperwork, is not requiring an annual "attest engagement" as included in the EPA guidelines. (An "attest engagement is a non-financial audit (i.e. materials audit) of a company's records.) Instead, attest engagements will be used only for defense, at the option of the blender CAR.

AUTHORITY/NEED FOR ACTION:

X Required by Statute: ORS 468A.420 Attachment E
Enactment Date: November 1, 1992
X Pursuant to Federal Law/Rule: 1990 Clean Attachment F
Air Act Section 211 (m)

X Time Constraints:

The federal 1990 Clean Air Act mandates that the Oregon SIP be revised to include an oxygenated gasoline program in carbon monoxide nonattainment areas beginning November 1, 1992. Final rule approval by October 16, 1992 would allow adequate time to meet this deadline. Any delay in final approval of Oregon oxygenated fuels regulations would make it difficult to meet the federal statute.

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DEVELOPMENTAL BACKGROUND:

<u>X</u> Advisory Committee Report/Recommendation	Attachment <u>G</u>
<u>X</u> Hearing Officer's Report/Recommendations	Attachment <u>H</u>
<u>X</u> Other Related Reports/Rules/Statutes:	
<u>Oregon Department of Agriculture</u>	
<u>Pump Labeling Statute ORS 646.915</u>	Attachment <u>I</u>
<u>Letter to U.S. EPA dated March 5, 1992</u>	Attachment <u>J</u>
<u>Letter from Oregon AG's Office dated</u>	
<u>May 6, 1992</u>	Attachment <u>K</u>
<u>Public Hearing Information Packet May 15, 1992</u>	Attachment <u>L</u>

REGULATED/AFFECTED COMMUNITY CONSTRAINTS/CONSIDERATIONS:

The proposed regulations will require gasoline distributors to deliver oxygenated gasoline to the control areas during the months of November - February of each year. All persons in the distribution system including refineries, terminals, distributors and service stations will be required to maintain detailed records of oxygenated fuels transactions. All terminals, distributors and service stations which service control areas during the control period will be required to register with the Department. A fee will be assessed of the registrants to support the Department's efforts. Terminals will be assessed an annual fee of \$5,700, distributors an annual fee of \$500 and service stations an annual fee of \$100. These funds will support the Department's annual budget of \$220,000. They are expected to add less than 0.1 cent per gallon of gasoline sold in control areas during the oxygenated fuels control period.

It is unclear if the retail price of oxygenated fuels will be more than that of non-oxygenated fuel. Although industry estimated that the cost of oxygenated gasoline will increase retail prices by four to six cents per gallon, this cost should be reduced by federal and Oregon state tax credits for ethanol of about 10 cents per gallon. See Attachments C and G.

An Advisory Committee, consisting of industrial, retail and consumer representatives, was formed to assist the Department in developing the rules for the oxygenated fuel program. The Department has attempted to abide by the wishes of the Advisory Committee on as many issues as possible. One initial disagreement between the Department and the Advisory Committee was over the southern Oregon control period. A majority of the Committee did not support the Department's recommendations. However, this position was based partly on concern about availability of oxygenated fuel from a

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California terminal, and this concern has been addressed (see below). The federal guidelines stipulate the control period for oxygenated fuels should be at least four months, allowing less than that only if the state can demonstrate that a reduced control period will not result in carbon monoxide exceedances. The Department is recommending a November - February control period for all areas. Given the consequences of remaining a nonattainment area, the Department is concerned that adverse meteorological conditions could result in exceedance of the federal standards. Both the months of November and February have had ambient CO concentrations exceeding 80 percent of the standard in the last four years. The Department uses this 80 percent criteria to establish potential problem areas.

The Department held six public hearings on the proposed oxygenated fuels regulations. The hearings were held in Portland, Medford and Klamath Falls. The hearing officer's report is shown as Attachment H. A variety of issues were covered as outlined below.

Distribution of Gasoline to Southern Oregon. Gasoline distributors were not sure if they could use gasoline from Chico to supply southern Oregon during Oregon's November - February control period because California fuel will only be oxygenated to 1.8 - 2.2 percent oxygen while Oregon requires an average of 2.7 percent. Also, Oregon has a minimum requirement of 2.0 percent compared to California's minimum of 1.8 percent. Finally, since California's control period is October - January they were concerned that oxygenate would not be available at all from California during February.

Rob Kennedy with Santa Fe Pacific Pipeline, the controller of fuel to the Chico terminal, indicated MTBE fuel at 1.8 - 2.2 percent would be available at Chico during October - January and denatured ethanol would be available from the Chico terminal for blending during the period of October - February.

Control Period for Southern Oregon. With differing southern Oregon and California control periods, distributors worried that fuel would not be available from Chico, California for the southern Oregon market during times when the two oxygenated fuels control periods did not overlap. The concern that fuel supply from Chico, California may not be available for southern Oregon does not appear to be a problem. Santa Fe Pacific Pipeline has informed the Department that the Chico terminal will continue to supply

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ethanol oxygenated fuel at Oregon's required oxygenate content for the entire Oregon control period.

Southern Oregon Control Areas. The gasoline refineries, terminals and distributors preferred that control areas for Grants Pass and Klamath Falls be less than county-wide, preferring city, urban growth or other boundaries. They were concerned bigger boundaries would increase the cost of enforcement and put small outlying service stations under unnecessary enforcement liability.

Petroleum Retailers of Oregon (representing service stations) proposed larger boundaries to avoid price competition from outside the control area which could create a "significant negative fiscal impact (disaster) to stations located inside the boundary." The Oregon State Public Interest Research Group (OSPIRG) desires the larger county-wide boundaries to insure the effectiveness of the oxygenated fuels program in reducing CO emissions from vehicles.

The Department has proposed a compromise position similar to a suggestion made by the Oregon Petroleum Marketers Association. The Department has proposed a nine-by-nine mile square control area around the town of Grants Pass and an eleven by twelve mile rectangle around the town of Klamath Falls. Such boundaries are easily defined by township section grids. The proposed boundaries are wide enough to incorporate all the stations that might be used by frequent visitors to the two towns.

Less Paperwork. Many participants testified that the record keeping required by the proposed regulations was too complicated. Of particular concern was the federal EPA guideline requirement for all averaging blenders to do an attest engagement.

The Department's proposed regulations maintain the requirement for a paper trail following the fuel from the blender to the service stations. However, the Department has proposed not to require annual attest engagements as stipulated in the EPA guidelines, but instead allow industry to use attest engagements as a defense at industry's option. The combination of blender records review and the Oregon tax credit program should combine to ensure adequate compliance documentation. Oregon is unique in having an oxygenated gasoline tax credit of five cents per gallon for ethanol blends. This credit should provide incentive for the use of oxygenated fuels even in areas and during periods when oxygenated fuel is not required. Several gasoline

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distributors have been selling ethanol oxygenated gasoline in Oregon since the first of 1992 because of this incentive.

Limit blending capabilities. A few gasoline distributors suggested the Department not allow distributors the option of picking up gasoline at one location and ethanol at another site, thereby being a blender. They were concerned the truck driver would not be trained for this activity. The Department has decided to continue to allow this option, since it is currently practiced by Astro Western Companies in Oregon without any known problems.

Registration fees. At an oxygenated fuels Advisory Committee meeting on August 17, 1992, a compromise position was reached in which all parties (terminals, distributors and service stations) will be assessed a flat fee. The terminals will be assessed an annual fee of \$5,700 per terminal location. The distributors and service stations will be assessed annual fees of \$500 and \$100, respectively. These fees were calculated to generate the Department's annual budget of \$220,000. As a part of this compromise, there was a consensus of Committee members that the Department should explore the concept of abandoning the fees on the gasoline industry and employ instead a fee assessed directly on the owner of vehicles in the affected areas. This Department action should occur as soon as the constitutional challenge of HB 2175 has been resolved, assuming the court concludes that the Department has the authority to assess a vehicle emissions fee.

The Department finds that the current compromise assures that there is no conflict with Oregon constitutional provisions that require the use of fuels tax for road construction and maintenance.

Oxygenated fuels may damage vehicles. One distributor and one private citizen expressed concern that oxygenated gasoline, which is a solvent, may loosen built-up deposits in vehicle fuel supply lines and gasoline storage tanks and clog vehicle carburetion systems. The Department has discussed this issue with the states of Colorado and Arizona, which have operated oxygenated fuels programs for several years. They said they experienced no such impact.

Don't divide Vancouver, Washington from the Portland control area. A few gasoline distributors petitioned the Department not to divide Vancouver, Washington from Portland to make two control areas because this would make record keeping more complex for them.

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The Department has, however, decided to divide the two areas. First, the division eliminates the data exchange that would have been required between the Washington Department of Ecology and the DEQ, simplifying the efforts of both Washington and Oregon Departments. Second, the DOE has opted to divide the two areas. Finally, if the two areas were combined, the corrective action of oxygenated fuels in reducing vehicle CO emissions could be diluted, in that a minimum of two percent oxygen is all that is required at a particular service station, but the overall average must be 2.7 percent oxygen.

Fiscal impact of the program. Several distributors and a few representatives of refineries thought the Department's review of fiscal impact and estimated retail price of oxygenated fuel prepared for the public hearings was too low.

In the Department's fiscal impact (see Attachment C), the Department estimated a price range for oxygenated gasoline of plus six cents to minus five cents per gallon depending on the final interplay between the price of MTBE and ethanol oxygenated fuel. Gasoline industry representatives commonly indicate a price increase of four to six cents per gallon for MTBE oxygenated gasoline. After subtracting the five cents per gallon state tax reduction and the 5.4 cent per gallon federal tax reduction for ethanol oxygenated gasoline, the price per gallon for ethanol oxygenated gasoline would be about five cents below non-oxygenated gasoline prices as previously reported by the Department. The Department is in agreement with the Advisory Committee that a price level somewhere between the two extremes of MTBE and ethanol will likely be reached. The Department believes the details requested by those who commented are already built into industry's estimate for the four to six cent increase for MTBE oxygenated gasoline. The Department has merely taken the industry figures in this case and would be hard pressed to be more precise than industry estimates.

A word of caution. If the Oregon five cents tax credit exceeds one percent of the total state fuels tax income, the Motor Vehicles Division statute requires the legislature to seek a means to reduce it back to the one percent level. Legislative proposals to reduce the ethanol tax advantage are expected during the 1993 legislative session.

PROGRAM CONSIDERATIONS

The Department will be required to administer the oxygenated fuels program including:

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- o Registration of blenders
- o Laboratory analysis of gasoline samples
- o Coordination of public education efforts
- o Inspection and subsequent enforcement of blender and service station sites

The estimated annual budget is \$220,000 with a total of 1.7 FTE required. (See Attachment C)

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Control Areas for Grants Pass and Klamath Falls
 - A. County boundaries
 - B. Nine-by-nine mile square surrounding Grants Pass
Eleven-by-twelve mile rectangle surrounding Klamath Falls
 - C. Urban growth boundaries
- 2) Control Period for Southern Oregon Nonattainment Areas
 - A. November through January
 - B. November through February
- 3) Attest Engagement
 - A. Required annually
 - B. Industry option
- 4) Registration Fees
 - A. Assess a relatively large fee from bulk terminals with smaller fee from gasoline distributors (or haulers) and retail outlets (service stations)
 - B. Assess fees from terminals only

DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

Adopt rules as proposed.

- 1) Control Areas for Grants Pass and Klamath Falls.

The Department recommends the nine-by-nine mile area surrounding Grants Pass and the eleven-by-twelve mile area surrounding Klamath Falls. These areas include those stations that can contribute significantly to the carbon monoxide pollution in the non-attainment areas.

The county boundaries are approximately 70 times larger than the recommended control areas. The Department believes use

of county boundaries would impose an unnecessary burden of record keeping and liability on small service stations quite distant from the CO nonattainment areas. Sale of non-oxygenated fuel from these outlying stations is not expected to significantly impact ambient CO concentrations within the nonattainment areas.

On the other hand, the urban growth boundaries are of irregular shape and are difficult for the public to identify. They also exclude some close-in service stations that are inside the square and rectangular areas. This could produce undesirable competition between oxygenated fuels and non-oxygenated fuels stations and lead to an erosion of CO benefits if oxygenated fuels purchase is not considered desirable by the consumer.

2) Control Period for Southern Oregon Nonattainment Areas

The Department recommends a November through February control period for southern Oregon to provide better assurance against violation of the ambient CO standards. Any ambient CO standard exceedances could lead to undesirable EPA sanctions for the non-attainment areas. The ambient CO data indicate the worst months, and the months in which the CO standard has been exceeded in the last four years have been December and January. The Department believes a month buffer on either side of these months is a reasonable and necessary precaution. Both November and February have shown potential for standard violation within the last four years by exceeding 80 percent of the standard.

3) Attest Engagement

The Department recommends that because attest engagements are costly and would likely not contribute significantly to Oregon's enforcement program, they should remain optional to be used at industry's discretion. The Department plans on doing extensive annual review of gasoline blender records to insure compliance. Also, the Oregon Department of Transportation's unique five cent per gallon tax credit for ethanol oxygenated gasoline supplies incentive for industry to use oxygenated gasoline even without regulatory requirement. The Department believes that with this combined approach the attest engagement will be made redundant.

4) Registration Fees

The Department recommends that fees be assessed for terminals, distributors and retail outlets since this was the compromise agreement established by the Department's

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Oxygenated Fuels Advisory Committee. This compromise assures that there is no conflict with the Oregon constitution's restriction on the use of fuel taxes.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

The proposed rules are consistent with Goals 3 and 8 of the Strategic Plan:

3. Ensure that un-allocated assimilative capacity exists by applying "highest and best" technology in conjunction with pollution prevention methods.
8. Streamline agency programs and activities by identifying and implementing more efficient ways to accomplish essential actions and by eliminating low priority tasks.

The Department is not aware of any conflicts with agency or legislative policy.

ISSUES FOR COMMISSION TO RESOLVE:

None.

INTENDED FOLLOWUP ACTIONS:

1. Oxygenated fuels training sessions began in August 1992 for auto mechanics and gasoline industry distributors.
2. Coordinate with the Department laboratory to purchase a gas chromatograph and to establish a testing program to test gasoline samples for oxygen content as a part of the oxygenated fuel enforcement program.
3. Hire required staff to administer the oxygenated fuels program.
4. If the constitutionality of HB 2175 is upheld with regard to assessing an emissions fee on automobiles, the Department will thereafter return to the Commission to ask the Commission to consider changing the funding mechanism for the oxygenated fuels program. At that time the Department will propose to the Commission that the fees be assessed of the automobile owner rather than the current funding mechanism from the gasoline terminals, distributors and service stations. This is the unanimous position of the Department's Oxygenated Fuels Advisory Committee.

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Approved:

Section: _____

Division: State Government

Director: Jell Hansen

Report Prepared By: Jerry Coffey

Phone: 503-731-3049

Date Prepared: September 29, 1992

JC:jc
OXYEQC4
9/29/92

Attachment A

PROPOSED ADDITION TO OREGON ADMINISTRATIVE RULES. CHAPTER 340
MOTOR VEHICLE FUEL SPECIFICATIONS FOR OXYGENATED GASOLINE

Policy

340-22-440 The Environmental Quality Commission finds and determines that ~~{oxygenated gasoline blender CARs}~~ control area responsible parties, distributors and retail outlets are "Indirect Sources" as defined in OAR 340-20-110 (14).

Definitions

340-22-450 As used in OAR 340-22-460 through OAR 340-22-640:

- (1) "Attest engagement" means a review of nonfinancial records by a CPA.
- (2) "Averaging period" means the period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party must comply with the average oxygen content standard.
- (3) "Blend" means regular, unleaded, supreme or other trade names for gasoline products containing differing levels of octane.
- (4) "Blender control area responsible party (Blender CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending facility.
- (5) "Carrier" means any person who transports, stores, or causes the transportation or storage of gasoline at any point in the gasoline distribution network, without taking title to or otherwise having ownership of the gasoline and without altering the quality or quantity of the gasoline.
- (6) "Control area" means a geographic area listed in OAR 340-22-470 in which only gasoline that meets the requirements of OAR 340-22-460 through OAR 340-22-640 may be sold or dispensed.
- (7) "Control area oxygenate blending facility" means any facility or truck at which oxygenate is added to gasoline that is intended for use in any control area, and at which the quality and quantity of gasoline is not otherwise altered, except through the addition of deposit-control additives.
- (8) "Control area responsible party (CAR)" means a person who owns ~~{oxygenated}~~ gasoline and/or oxygenates that is sold or dispensed from a control area terminal.

- (9) "Control area terminal" means a terminal storage facility that is capable of receiving gasoline in bulk~~[, such as]~~ by pipeline~~[,]~~ or marine vessel~~[, truck or barge]~~, or at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives~~[+]~~. ~~[g]~~Gasoline that is intended for use in any control area is sold or dispensed into trucks at these control area terminals.
- (10) "Control period" means the period during which oxygenated gasoline must be sold or dispensed within the control area.
- (11) "Department" means the Department of Environmental Quality.
- (12) "Distributor" means a person who transports or stores or causes the transportation or storage of gasoline at any point between a gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.
- (13) "Effectively fully supplied service station" means the number of gasoline dispenser sites supplied either directly or indirectly by a CAR or blender CAR to control areas during a control period. The number is determined by dividing the estimated total quantity of oxygenated gasoline supplied by a CAR or blender CAR to control areas during a control period by the estimated average gasoline throughput during the complete control period of the dispenser (or service stations) serviced by the CAR or blender CAR.
- (14) "EPA" means the United States Environmental Protection Agency.
- (15) "EPA substantially similar ruling" means a fuel or fuel additive for general use in light-duty vehicles manufactured after the model year 1974, that is substantially similar to a fuel or fuel additive used to certify a model year 1975 or newer vehicle or engine under 42 U.S.C. 7525 (Clean Air Act, section 206), as amended through November 15, 1990 and any amendments or modifications thereto, and as specified in EPA's Interpretative Ruling at 56 Federal Register 5352--5356, revised through February 11, 1991, and that the EPA has ruled meets the following criteria:
- (a) The fuel contains carbon, hydrogen, and any or all of the elements of oxygen, nitrogen, or sulfur exclusively, with the exception of trace levels of impurities which produce gaseous combustion products, in the form of some combination of
- (A) hydrocarbons;
- (B) aliphatic ethers;

- (C) aliphatic alcohols other than methanol;
 - (D) up to 0.3 percent methanol by volume;
 - (E) up to 2.75 percent methanol by volume with an equal amount of butanol, or high molecular weight alcohol; or
 - (F) a fuel additive at a concentration of no more than 0.25 percent by weight which contributes no more than 15 ppm sulfur by weight to the fuel.
- (b) The fuel contains no more than 2.0 percent oxygen by weight, except that fuels containing aliphatic ethers and/or alcohols (except methanol) must contain no more than 2.7 percent oxygen by weight.
 - (c) The fuel possesses, at the time of manufacture, the physical and chemical characteristics of an unleaded gasoline as specified by ASTM Standard D4814-88 for at least one of the Seasonal and Geographical Volatility Classes specified in the standard; and
 - (d) the fuel contains only
 - (A) carbon;
 - (B) hydrogen; and
 - (C) any or all of the following elements: oxygen, nitrogen and sulfur.
- (16) "EPA waiver" means any current motor fuel waivers granted by the U. S. Environmental Protection Agency under authority of 42 U.S.C. 745(f)(4) (Clean Air Act, section 211), as amended through November 15, 1990 and any amendments or modifications thereto.
- (17) "Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines and commonly or commercially known or sold as gasoline.
- (18) "Nonoxygenated gasoline" means any gasoline which does not meet the definition of oxygenated gasoline.
- (19) "Oxygen content of gasoline blends" means the percentage of oxygen by weight contained in a gasoline blend, based upon its percentage oxygenate by volume, excluding denaturants and other non-oxygen-containing components. All measurements must be adjusted to 60 degrees Fahrenheit.
- (20) "Oxygenate" means any substance which, when added to

gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be "Substantially Similar" under section 211(f)(1) of the Clean Air Act (CAA), or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of section 211(f)(4) of the CAA.

- (21) "Oxygenate blender" means a person who owns, leases, operates, controls, or supervises a control area oxygenate blending facility.
- (22) "Oxygenated gasoline" means any gasoline which contains at least 2.0 percent oxygen by weight and has been included in the oxygenated gasoline program accounting by a control area responsible party and which is intended to be sold or dispensed for use in any control area during a control period.
- (23) "Refiner" means a person who owns, leases, operates, controls, or supervises a refinery that produces gasoline for use in a control area.
- (24) "Refinery" means a plant at which gasoline is produced.
- (25) "Reseller" means a person who purchases gasoline and resells or transfers it to a retailer or wholesale purchaser-consumer.
- (26) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.
- (27) "Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.
- (28) "Substantially similar" means EPA substantially similar ruling.
- (29) "Terminal" means a facility capable of receiving gasoline by pipeline or marine vessel at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities.
- (30) "Wholesale purchaser-consumer" means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550 gallon capacity substantially under the control of that organization.

Purpose and General Requirements

34-22-460

- (1) Pursuant to ORS 468A.420, OAR 340-22-450 through OAR 340-22-640 apply to a person who refines, distributes, blends, supplies, sells, offers for sale, or otherwise markets gasoline motor fuel.
- (2) Except as provided in OAR 340-22-640, the requirements of OAR 340-22-460 through OAR 340-22-640 apply only from November 1 to February 29, and only within a control area listed in OAR 340-22-470.
- (3) The labeling requirements of OAR 340-22-640 apply only within a control area during the control period.

NOTE: This applies only to the Department rules and a dispenser is still responsible for complying with the disclosure requirements of ORS 646.915.

- (4) To reduce carbon monoxide air pollution from motor vehicles in a control area, OAR 340-22-460 through OAR 340-22-640 requires
 - (a) the use in gasoline powered motor vehicles of an oxygenated gasoline with an oxygen content that meets the requirements of OAR 340-22-480 and OAR 340-22-510;
 - (b) that a dispenser where an oxygenated gasoline is dispensed be labeled as required by OAR 340-22-640;
 - (c) that oxygenated gasoline be blended as required by OAR 340-22-520; and
 - (d) a person who refines, distributes, blends, supplies, or sells an oxygenated gasoline to meet the recordkeeping and reporting requirements of OAR 340-22-460 through OAR 340-22-640.
- (5) Nothing in OAR 340-22-460 through OAR 340-22-640 precludes a person from using, refining, distributing, blending, supplying, selling, or otherwise marketing fuel that meets the requirements of OAR 340-22-460 through OAR 340-22-640
 - (a) between March 1 and October 31 in a control area; or
 - (b) at any time in any other location statewide.
- (6) Nothing in OAR 340-22-460 through OAR 340-22-640 precludes a person from using, refining, distributing, blending, supplying, selling, or otherwise marketing nonoxygenated fuel between November 1 and February 29 outside of control areas.

Control Areas

340-22-470 The following are considered control areas:

- (a) Clackamas, Multnomah, Washington and Yamhill counties;
- (b) Jackson county;
- (c) ~~{Josephine county;}~~ As used in this subsection, the Grants Pass control area means the area of the state beginning at the northeast corner of section 35, T35S, R5W; thence south to the southeast corner of section 11, T37S, R5W; thence west to the southwest corner of section 9, T37S, R6W; thence north to the northwest corner of section 33, T35S, R6W; thence east to the point of beginning.
- (d) ~~{Klamath county.}~~ As used in this subsection, the Klamath Falls control area means the area of the state beginning at the northeast corner of section 8, T38S, R10E; thence south to the southeast corner of section 5, T40S, R10E; thence west to the southwest corner of section 3, T40S, R8E; thence north to the northwest corner of section 10, T38S, R8E; thence east to the point of beginning.

Average Oxygen Content Standard

340-22-480

- (1) All gasoline sold or dispensed for use during the control period described in OAR 340-22-460(2), for use in each control area described in OAR 340-22-470, by each CAR or blender CAR, must be blended for each averaging period to contain an average oxygen content of not less than 2.7 percent by weight. Oxygen content calculations must be performed as required in OAR 340-22-490.
- (2) The averaging period for all gasoline sold or dispensed in a control area is the four-month control period established in OAR 340-22-460(b).

Sampling, Testing and Oxygen Content

340-22-490

- (1) To determine compliance with the requirements of OAR 340-22-460 through OAR 340-22-640, the oxygen content of gasoline must be determined by
 - (a) sampling, using the sampling methods specified in 40 C.F.R. 80, Appendix D, as amended through July 1, 1991, the provisions of which are incorporated by reference

in this rule, to obtain representative sample of the gasoline to be tested;

- (b) testing, using the test method specified in ASTM 4815-89 or other test methods determined by the Department and EPA as being equivalent, to determine the mass concentration of each oxygenate in the gasoline sampled; and
 - (c) oxygen content calculations that are made as follows: calculate the oxygen content of the gasoline sampled by multiplying the volume concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in section (2) of this rule, with volume measurements adjusted to 60 degrees Fahrenheit.
- (2) The oxygen molecular weight contributions of an oxygenate approved for use under OAR 340-22-460 through OAR 340-22-640 are set out in Table A of this rule.

TABLE A
COMPARISON OF SPECIFIC GRAVITIES AND
OXYGEN MASS FRACTIONS OF PURE OXYGENATES

	Specific Gravity 60/60 F	Oxygen Mass Fraction
Methyl Alcohol	0.7963	0.4993
Ethyl Alcohol	0.7939	0.3473
n-Propyl Alcohol	0.8080	0.2662
Isopropyl Alcohol	0.7899	0.2662
n-Butyl Alcohol	0.8137	0.2158
iso-Butyl Alcohol	0.8058	0.2158
sec-Butyl Alcohol	0.8114	0.2158
tertiary-Butyl Alcohol	0.7922	0.2158
Methyl tertiary-Butyl {Alcohol} <u>Ether</u>	0.7460	0.1815
Ethyl tertiary-Butyl {Alcohol} <u>Ether</u>	0.7452	0.1566
tertiary Amyl Methyl Ether	0.7752	0.1566

Alternative Compliance Options

340-22-500

- (1) Each CAR or blender CAR must comply with the standard set out in OAR 340-22-480 by means of the method established in section (2) or (3) of this rule.

(2) Compliance calculation on average basis:

- (a) To determine compliance with the standard in OAR 340-22-480, the CAR or blender CAR shall, for each averaging period and for each control area:
- (A) calculate the total volume of gasoline sold or dispensed for use in the control area which is the sum of:
 - (i) the volume of each separate batch or truck load of oxygenated gasoline that is sold or dispensed;
 - (ii) minus the volume of each separate batch or truck load of oxygenated gasoline that is sold or dispensed in a different control area;
 - (iii) minus the volume of each separate batch or truck load of oxygenated gasoline that is sold or dispensed in any non-control area;
 - (B) calculate the required total oxygen credit units. Multiply the total volume in gallons of oxygenated gasoline sold or dispensed into the control area (as determined by Section (2)(a)(A) above) by 2.7 percent;
 - (C) calculate the actual total oxygen units generated. The actual total oxygen credit units generated is the sum of the volume of each batch or truck load of oxygenated gasoline that was sold or dispensed in the control area (as determined by Section (2)(a)(A) above) multiplied by the actual oxygen content by weight associated with each batch or truck load.
 - (D) calculate the adjusted actual total oxygen credit units. The adjusted actual total oxygen content credit units is the sum of the actual total oxygen credit units generated (as determined in Section (2)(a)(C) above);
 - (i) plus the total oxygen credit units purchased or acquired through trade; and
 - (ii) minus the total oxygen credit units sold or given away through trade.
 - (E) compare the adjusted actual total oxygen credit units with the required total oxygen credit units. If the adjusted actual total content oxygen credit

units is greater than or equal to the required total oxygen credit units, then the standard in OAR 340-22-480 is met. If the adjusted actual total oxygen credit units is less than the required total oxygen credit units the purchase of oxygen credit units is required in order to achieve compliance.

- (F) in transferring oxygen credit units, the transferor shall provide the transferee with the volume and oxygen content by weight of the gasoline associated with the credits.
- (b) To determine the oxygen credit units associated with each batch or truck load of oxygenated gasoline sold or dispensed into the control area, use the running weighted oxygen content (RWOC) of the tank from which the batch or truck load was received at the time the batch or truck load was received. In the case of batches or truck loads of gasoline to which oxygenate is added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the oxygen content added as a result of the volume of the additional oxygenate added.
- (c) Running weighted oxygen content (RWOC). The RWOC accounts for the volume and oxygen content of all gasoline which enters or leaves the terminal storage tank, and all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:
 - (A) the volume and oxygen content of the gasoline in the storage tank at the beginning of the averaging period;
 - (B) the volume and oxygen content by weight of gasoline entering the storage tank;
 - (C) the volume and oxygen content by weight gasoline leaving the storage tank; and
 - (D) the volume, type and oxygen content by weight of the oxygenate added to the storage tank.
- (d) Credit transfers. Credit transfer may be used in the compliance calculations in OAR 340-22-500(2)(a), provided that:
 - (A) the credits are generated in the same control area in which they are used; no credits may be transferred between control areas;

- (B) the credits are generated in the same averaging period as they are used;
 - (C) the ownership of credits is transferred only between properly registered CARs or blender CARs;
 - (D) the credit transfer agreement is made no later than 30 days after the final day of the averaging period in which the credits are generated; and
 - (E) the credits are properly created.
- (e) Improperly created credits:
- (A) No party may transfer any credits to the extent that such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this subsection are improperly created credits.
 - (B) In the case of credits which were improperly created, the following paragraphs apply:
 - (i) improperly created credits may not be used, regardless of a credit transferee's good faith belief that it was receiving valid credits;
 - (ii) The transfer of credits in violation of paragraph (A) of this subsection constitutes a violation of the requirements of OAR 340-22-480~~[, for which the transferor will be deemed to be in violation]~~; and
 - (iii) where any credits are transferred in violation of paragraph (A) of this subsection, the transferor's properly-created credits will be applied first to any credit transfers before the transferor may apply any credits to achieve its own compliance.
 - (iv) Where any credits are transferred in violation of paragraph (A) of this subsection, the transferor shall be held legally and financially liable for any penalties or damages incurred by the transferee as a result of the invalid transaction.

- (3) Compliance calculation on a per-gallon basis:
- (a) Each gallon of gasoline sold or dispensed by a CAR or blender CAR for use within each control area during the averaging period defined in OAR 340-22-480 shall have an oxygen content of at least 2.7 percent by weight.
 - (b) In addition, the CAR or blender CAR is prohibited from selling or purchasing oxygen credits based on gasoline for which compliance is calculated under this alternative per-gallon method.

Minimum Oxygen Content

340-22-510

- (1) Any gasoline sold or dispensed by a CAR or a blender CAR for use within a control area during the control period, must contain not less than 2.0 percent oxygen by weight, unless it is sold or dispensed to another registered CAR or blender CAR. This requirement begins at least five working days before the control period and applies until the end of that period.
- (2) The requirements of this rule apply to all persons downstream of the CAR. Any gasoline offered for sale, sold or dispensed to an ultimate consumer within a control area must contain not less than 2.0 percent oxygen by weight. This requirement applies during the entire control period.
- (3) A refiner or importer shall determine the oxygen content of each gallon of gasoline produced by use of an applicable method described in OAR 340-22-500. This determination must include the percent oxygenate by weight, the type of oxygenate and percent by volume.

Oxygenated Gasoline Blending

340-22-520

- (1) In addition to the other applicable requirements of OAR 340-22-460 through OAR 340-22-640, no person may refine, distribute, blend, supply, sell, offer for sale or otherwise market any unleaded oxygenated gasoline for use in a motor vehicle unless that product
 - (a) has received a waiver from the U.S. Environmental Protection Agency (EPA) under 42 U.S.C. 7545(f)(4), as amended through November 15, 1990 and any amendments or modifications thereto; or
 - (b) meets EPA's "substantially similar" ruling for a fuel or

fuel additive used to certify a model year 1975 or newer vehicle or engine under 42 U.S.C. 7525 (Clean Air Act), as amended through November 15, 1990 and any amendments or modifications thereto.

- (2) Only an oxygenate that is found to be acceptable under EPA's "substantially similar" ruling may be used in gasoline containing lead to meet the oxygenate requirements of OAR 340-22-460 through OAR 340-22-640.
- (3) The requirements of this rule do not affect the blending into leaded gasoline of a compound that does not require an EPA waiver or an EPA "substantially similar" ruling.

Registration ~~{and Permit}~~

340-22-530

- (1) At least 30 days before the control period in which a person meets the definition of CAR or blender CAR, that person shall petition for registration ~~{and a permit to operate}~~ as a CAR or blender CAR. A person may petition for registration ~~{and a permit to operate}~~ as a CAR or blender CAR after the beginning of the control period but should also do so at least 30 days before conducting activities as a CAR or blender CAR. A petition for registration ~~{and permit}~~ must be on forms approved by, and available from the Department, and must include
 - (a) the name and business address of the control area responsible party;
 - (b) the address and physical location of each of the control area terminals from which the control area responsible party operates;
 - (c) the address and physical location of each control area oxygenate blender facility which is owned, leased, operated, controlled or supervised by a blender CAR; and
 - (d) the address and physical location where documents required to be retained by this rule will be kept by the control area responsible party.
- (2) Within 30 days after any occasion when the registration information previously supplied by a control area responsible party becomes incomplete or inaccurate, the CAR or blender CAR shall submit updated registration information to the Department.
- (3) The Department will issue each CAR or blender CAR ~~{a permit containing}~~ a unique identification number within 30 days

after submission of a registration application to the Department. No person may participate in the averaging program under OAR 340-22-480 as a CAR or blender CAR until the Department has issued notice that registration as a CAR or blender CAR has occurred, and a ~~{permit containing the}~~ unique CAR identification number. Registration is valid for the time period specified by the Department.

CAR, ~~{and Blender CAR}~~ Distributor and Retail Outlet {Fees} Operating Permits

~~340-22-540 {Each CAR or blender CAR shall be assessed a base fee of \$700.00 per year plus an annual incremental fee of \$220.00 for each service station effectively fully supplied by the CAR or blender CAR with oxygenated gasoline during the control period and in control areas.}~~ Each CAR, distributor and retail outlet supplying gasoline to a control area during a control period shall apply for and receive a permit as specified by OAR 340-20-136.

Recordkeeping

340-22-550

- (1) All persons in the gasoline distribution network shall maintain records containing the applicable compliance information described in this rule. The records must be kept by the regulated persons for at least ~~{five}~~ two years.
- (2) Refiners and importers shall, for each separate quantity of gasoline produced or imported for use in a control area during the control period, maintain records containing
 - (a) results of any tests needed to determine the types of oxygenates and percentage by volume;
 - (A) oxygenate type
 - (B) oxygenate content by volume;
 - (C) oxygen content by weight;
 - (D) total volume; and
 - (E) name and address of the party to whom each separate quantity of gasoline was sold or transferred.
- (3) A person who owns, leases, operates or controls a gasoline terminal that serves a control area shall maintain records containing
 - (a) the name and address of the owner of each batch of

- gasoline handled during the control period;
- (b) the volume of each batch or truck load of gasoline going into or out of the terminal;
 - (c) the RWOC of all batches or truck loads of gasoline leaving the terminal;
 - (d) the type of oxygenate, purity and percentage by volume if available;
 - (e) the oxygen content by weight of all batches or truck loads received at the terminal;
 - (f) information of each tank truck sale or batch of gasoline, as to whether it was designated for use within a control area or not;
 - (g) the name and address of the person to whom the gasoline was sold or transferred and the date of the sale or transfer; and
 - (h) results of the tests for oxygenates, if performed, of each sale or transfer and who performed the tests.
- (4) CARs and blender CARs must maintain records containing the information listed in section (3) of this rule, plus the following information:
- (a) CAR or blender CAR identification number:
 - (b) records supporting and demonstrating compliance with the averaging standard listed in OAR 340-22-480;
 - (A) for any credits bought, sold, traded or transferred, the date of each transaction, the name, address and CAR or blender CAR number of the CAR or blender CAR involved in each transaction, and the amount of credit units (oxygen content and volume of gasoline) transferred; credit units transferred must be accompanied by a demonstration of how those credits were calculated, including adequate documentation that both parties have agreed to all credit transactions;
 - (B) the name and address of the auditor, and the results of the attest engagement conducted under OAR 340-22-630;
 - (C) the name and address of the person from whom each shipment of gasoline was received, and the date when it was received;

- (D) data on each shipment of gasoline received, including
 - (i) the volume of each shipment;
 - (ii) the type of oxygenate, purity and percentage by volume; and
 - (iii) oxygen content by weight;
 - (E) the volume of each receipt of bulk oxygenates;
 - (F) the name and address of the persons from whom bulk oxygenates was received;
 - (G) the date and destination of each sale of gasoline, whether it was intended for use within a control area or not;
 - (H) data on each shipment of gasoline sold or dispensed including
 - (i) the volume of each shipment;
 - (ii) the type of oxygenate, purity and percentage by volume; and
 - (iii) oxygen content by weight;
 - (I) documentation of the results of all required tests done regarding the oxygen content of the gasoline; and
 - (J) the names, addresses and CAR or blender CAR identification numbers of the persons to whom any gasoline was sold or dispensed, and the dates of each transaction.
- (5) Retailers and wholesale purchaser-consumers within a control area shall maintain the following records:
- (a) the names, addresses and CAR or blender CAR identification number of each person from whom a shipment of gasoline was purchased or received, and the date when each shipment was received; and
 - (b) data on each shipment bought, sold or transported including
 - (A) the volume of each shipment;
 - (B) the type of oxygenate, purity and percentage by

volume;

(C) oxygen content by weight; and

Reporting

340-22-560

- (1) Each CAR or blender CAR shall submit a report for each averaging period defined in OAR 340-22-480, reflecting the compliance information detailed in OAR 340-22-500. Reports are due to the Department on the 30th day of the month following the close of the averaging period for which the information is required. Reports must be filed on forms provided by the Department.
- (2) Each time that physical custody or title of gasoline destined for a control area is transferred, except when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading or invoices, a transfer document containing information on the shipment. The transfer document must accompany every shipment of gasoline to a control area after it has been dispensed by a terminal, or the information must be included in the normal paperwork that accompanies each shipment of gasoline. The information must legibly and conspicuously contain the following information:
 - (a) the date of the transfer;
 - (b) the name, address and CAR or blender CAR identification number, if applicable of the transferor;
 - (c) the name, address and CAR or blender CAR identification number, if applicable, of the transferee;
 - (d) the volume of gasoline being transferred;
 - (e) the proper identification of the gasoline as non-oxygenated or oxygenated;
 - (f) the location of the gasoline at the time of the transfer;
 - (g) the type of oxygenate and purity;
 - (h) the percentage by volume, to the nearest 0.1 percent, of oxygenate in the fuel; and
 - (i) for gasoline in the gasoline distribution network

between the refinery or import facility and the covered area terminal, the oxygen content by weight and the oxygenate volume of the gasoline.

Prohibited Activities

340-22-570

- (1) During the control period, no refiner, importer, oxygenate blender, carrier, distributor or reseller may manufacturer, sell, offer for sale, dispense, supply, offer for supply, store, transport or cause the transportation of
 - (a) gasoline that contains less than 2.0 percent oxygen by weight, for use during the control period, in a control area; or
 - (b) gasoline represented as oxygenated which has an oxygen content that is improperly stated in the documents that accompany the gasoline.
- (2) No retailer or wholesale purchaser-consumer may dispense, offer for sale, sell, or store, for use during the control period, gasoline that contains less than 2.0 percent oxygen by weight in a control area.
- (3) No person may operate as, or claim to be a CAR or blender CAR unless that person is registered by the Department under OAR 340-22-530. No CAR or blender CAR may offer for sale, store, sell or dispense gasoline to any person who is not registered as a CAR for use in a control area, unless
 - (a) the average oxygen content of the gasoline during the averaging period meets the standard set in OAR 340-22-480; and
 - (b) the gasoline contains at least 2.0 percent oxygen by weight on a per-gallon basis.
- (4) For a terminal that sells or dispenses gasoline intended for use in a control area during the control period, the terminal owner or operator may not accept gasoline into the terminal unless
 - (a) transfer documentation accompanies it containing information required by OAR 340-22-560(3); and
 - (b) the terminal owner or operator conducts a quality assurance program to verify the accuracy of the information referred to in subsection (a) of this section.

- (5) No person may sell, store or dispense nonoxygenated gasoline in any control area during the control period unless
 - (a) the nonoxygenated gasoline is segregated from oxygenated gasoline;
 - (b) clearly marked documents accompany the nonoxygenated gasoline marking it as "nonoxygenated gasoline, not for sale to an ultimate consumer in a control area;" and
 - (c) the nonoxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period, in the control area.
- (6) No person subject to the requirements of OAR 340-22-460 through OAR 340-22-640 may fail to comply with the requirements of OAR 340-22-460 through OAR 340-22-640.
- (7) No person may sell, store, dispense, or transfer oxygenated gasoline, except for use by the ultimate consumer at a retail outlet or wholesale purchaser-consumer facility, without transfer documents that accurately contain the information required by OAR 340-22-560(3).

Inspection and Sampling

340-22-580 With consent of the owner or operator, the Department will, ~~[at its discretion,]~~ at any reasonable time, enter the premises of any person subject to the requirements of OAR 340-22-460 through OAR 340-22-640 to determine compliance. The Department will inspect all relevant records and equipment, and will, in its discretion, purchase gasoline samples for testing by the Department.

Liability For Violation Of A Prohibited Activity

340-22-590

- (1) Subject to OAR 340-22-600, if gasoline contained in a ~~storage~~ tank at a facility owned, leased, operated, controlled or supervised by a retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender is found to be in violation of OAR 340-22-570(1)(a) or (2), the following persons will be considered in violation:
 - (a) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender who owns, leases, operates, controls or supervises the facility where the violation is found; and
 - (b) each oxygenate blender, distributor, reseller and

carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported or caused the transportation of gasoline that is in the storage tank containing gasoline found to be in violation.

- (2) Subject to OAR 340-22-600, if gasoline contained in a storage tank at a facility owned, leased, operated, controlled or supervised by a retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender is found to be in violation of OAR 340-22-570(1)(b) or (2), the following persons will be considered in violation:
 - (a) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender who owns, leases, operates, controls or supervises the facility where the violation is found; and
 - (b) each refiner, importer, oxygenate blender, distributor, reseller and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported or caused the transportation of gasoline that is in the storage tank containing gasoline found to be in violation.

Defenses For Prohibited Activities

340-22-600

- (1) A refiner, importer, oxygenate blender, distributor, reseller or carrier is considered to be in violation of OAR 340-22-570(1) unless that person demonstrates that
 - (a) the violation was not caused by the regulated person or that person's employee or agent;
 - (b) the person possesses documents that should accompany the gasoline, and that contain the information required by OAR 340-22-560;
 - (c) the person conducts a quality assurance sampling and testing program as described in OAR 340-22-620; and
- (2) A refiner, importer, oxygenate blender, distributor, reseller or carrier is considered to be in violation of OAR 340-22-570(5) unless that person demonstrates that
 - (a) the product is clearly labeled as "blendstock/export/storage" and the evidence supports this classifications;

- (b) the accompanying documents clearly state that the product does not comply with the oxygenated gasoline requirements;
- (c) some aspect of the product's quality supports the party's claim that the product was intended to be further blended before being sold, supplied, etc. as a finished product;
- (d) the seller, supplier or transporter of the product has obtained a written certification or notice on shipping documents from the buyer/recipient of the product that the buyer/recipient understands that the product is not intended for sale or distribution as finished gasoline in a control area or until
 - (A) it is blended to meet the oxygenated gasoline requirements of OAR 340-22-460 through OAR 340-22-640 or
 - (B) the buyer/recipient receives equivalent certification from a subsequent buyer or obtains a written certification that the gasoline will not be sold or dispensed for use within a control area; and
- (e) the party has no knowledge or reason to believe that the product will not be further blended to comply with the standards of OAR 340-22-480 before being sold, supplied or transported as finished product, or that it would be sold or dispensed without further blending within a control area.

~~{2}3~~ A retailer or wholesale purchaser-consumer is considered to be in violation of OAR 340-22-570(2) unless that person demonstrates that

- (a) the violation was not caused by the regulated person or that person's employee or agent;
- (b) the person possesses documents that should accompany the gasoline, and that contain the information required by OAR 340-22-560.

~~{3} If a violation is found at a facility operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by section (1) of this rule, that the violation was caused by~~

- ~~(a) an act in violation of the law (other than OAR 340-22-460 through OAR 340-22-640), or an act of sabotage or~~

vandalism;

- ~~(b) the action of any reseller, distributor, oxygenate blender, carrier or a retailer or wholesale purchaser-consumer supplied by a person listed in section (1) of this rule, in violation of a contractual undertaking imposed by the refiner designed to prevent that action, and despite periodic sampling and testing by the refiner to ensure compliance with the contractual obligation; or~~
- ~~(c) the action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner or periodic sampling and testing which are reasonably calculated to prevent that action.]~~

- (4) For purposes of this rule, the term "was caused" means that the person must demonstrate by a preponderance of the evidence through reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person.

Inability to Produce Conforming Gasoline Due to Extraordinary Circumstances

340-22-610

- (1) The Department will allow a person to distribute fuel which does not meet the oxygenated gasoline requirements of OAR 340-22-460 through OAR 340-22-640 in appropriate extreme and unusual circumstances which are clearly outside the control of the blender CAR and which could not have been avoided by the exercise of prudence, diligence and due care if:
- (a) it is in the public interest to do so because distribution of the nonconforming fuel is necessary to meet projected shortfalls which cannot otherwise be compensated for;
 - (b) the blender CAR exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity;
 - (c) the blender CAR can show how the requirements for oxygenated gasoline will be expeditiously achieved; and
 - (d) the blender CAR agrees to make up the air quality detriment associated with the nonconforming gasoline, where practicable.

Quality Assurance Program

340-22-620 To demonstrate an acceptable quality assurance program under this rule, a person shall conduct periodic sampling and testing to determine if the oxygenated gasoline has oxygen content that is consistent with the product transfer documentation.

Attest Engagements Guidelines When Prohibited Activities Alleged

340-22-630

- (1) The Department will not require a CAR or blender CAR to submit attest engagement reports except as an optional defense for any alleged violations of OAR 340-22-460 through OAR 340-22-640.
- (2) The attest engagement shall consist of performing the agreed-upon procedures set forth in the guidelines in accordance with the Association of Independent Certified Public Accountants' (AICPA's) statements on standards for Attestation Engagements and using statistical sample design parameters provided by EPA.
- (3) In performing the attest engagement, the CPA shall determine the sample size for each population according to parameters set out in Table A of this rule.

TABLE A

<u>Number in Population (N)</u>	<u>Sample Size</u>
66 or larger	59
41 - 65	41
26 - 40	31
0 - 25	N or 24, whichever is smaller

- (4) The number of populations from which samples should be drawn will vary depending on the circumstances. Sample items should be selected in such a way that the sample can be expected to be representative of the population.
- (5) If the CPA agrees to use some other form of sample selection and some other method to determine the sample size, that agreement should be summarized in the CPA's report.
- (6) The attest engagement shall be conducted by an independent Certified Public Accountant (CPA).
- (7) The CPA is required to comply with the general code of

conduct and ethics as prescribed by the State of Oregon and by the AICPA.

- (8) The attest engagement shall include the following agreed-upon procedures, as appropriate, for the CAR's standardized reporting form(s):
- (a) Read the report completed by management and filed with the Department.
 - (b) Obtain from the CAR an inventory reconciliation summarizing receipts and deliveries of all gasoline, gasoline blendstocks, and oxygenates for CARs serving a control area.
 - (A) Test mathematical accuracy of inventory reconciliation.
 - (B) Agree beginning and ending inventory amounts to company's perpetual inventory records.
 - (C) Agree deliveries into the control area to Department report, if applicable.
 - (c) Obtain listing of all gasoline, gasoline blendstocks, and oxygenate receipts during the period.
 - (A) Test mathematical accuracy of listing.
 - (B) Agree amounts to inventory reconciliation.
 - (C) Select a representative sample of individual receipts of gasoline, gasoline blendstocks, and oxygenates and trace details back to source documents.
 - (d) Obtain listing of all gasoline, gasoline blendstocks, and oxygenates sold or dispensed during the period.
 - (A) Test mathematical accuracy of listing.
 - (B) Agree amounts to inventory reconciliation report.
 - (C) Select a representative sample of individual batches sold or dispensed both into and outside the control area.
 - (i) Agree volumes for the sample items to original bill of lading or other source documents.
 - (ii) For sales or deliveries into the control area, determine that oxygenate content is at least

two percent by examining bills of lading.

- (e) Using the volume of oxygenated gasoline sold or dispensed into the control area from the inventory reconciliation report, recalculate the number of oxygen content units required by multiplying by 2.7% and agree to Department report.
- (f) Recalculate the actual total oxygen credit units generated by adding the oxygen content of each batch or truck load of oxygenated gasoline that was sold or dispensed in the control area as determined in subsection (e) above multiplied by the actual oxygen content by weight associated with each batch or truck load.
- (g) Recalculate the adjusted actual total oxygen credit units as follows:
 - (A) The actual total oxygen credit units generated from subsection (f);
 - (B) plus the total oxygen credit units purchased or acquired through trade; and
 - (C) minus the total oxygen credit units sold or given away through trade.
- ~~(f)~~h) The following steps apply to the testing of the actual total oxygen content from subsection (f) and are applicable based on method of blending:
 - (A) For CARs using rack- and splash-blending, recompute oxygen content by weight for a representative sample of deliveries based on detailed meter readings of gasoline, blendstocks and oxygenate receipts.
 - (B) For CARs using in-tank blending of gasoline, blendstocks and oxygenates, obtain register of running weighted oxygen content by tank and:
 - (i) Using the individual sample items from subsections (c) and (d) above, test calculation of running totals.
 - (ii) Where laboratory analysis is used with the CARs weighted average calculation, select individual analysis reports of oxygenated gasoline receipts and deliveries during the period on a representative sample basis.

- (I) Review laboratory results for consistency with CAR's calculations noting oxygen volume and specific gravity.
 - (II) Recalculate oxygen by weight.
 - (III) Agree information on lab reports to underlying delivery and receiving documentation.
- (fji) Obtain register of oxygen credit unit purchases and sales and select separate representative samples of individual purchased credits and individual sales credits.
- (A) Agree selected credit unit transactions to the underlying contract and/or other supporting documentation noting specific volumes and oxygen content of the gasoline associated with the credits.
 - (B) Agree to the underlying contract and/or supporting documentation that the credits are generated in the same control areas as they are used. For example, no credits may be transferred between control areas.
 - (C) Agree to the underlying contract and/or supporting documentation that the credits are generated in the same averaging period as they are used.
 - (D) Agree to the underlying contract and/or supporting documentation that the ownership of credits is transferred only between CARs.
 - (E) Agree to the underlying contract and/or supporting documentation that the credit transfer agreement was made no later than 30 days after the final day of the averaging period in which the credits are generated.
- (fkj) Prepare a report to client in accordance with the report provisions of Statements on Standards for Attestation Engagements indicating results of performing the above procedures.
- (9) The attestation report must be in compliance with the AICPA's Statement on Standards for Attestation Engagements.

Dispenser Labeling

340-22-640

(1) A person who sells or markets oxygenated gasoline at retail, or who otherwise provides oxygenated gasoline for consumption by an ultimate consumer, shall place two labels on a dispenser used to dispense the gasoline to identify the oxygenate in the fuel, using the following criteria:

- (a) The first label must include the following statement:
"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."
- (b) The second label must contain the type of oxygenate(s) and the exact (plus or minus 0.5%) or maximum use concentration by volume. Only those oxygenates and concentrations listed below and any gasoline designated by EPA as substantially similar are allowed.

NOTE: This applies only to the Department rules and a dispenser is still responsible for complying with the disclosure requirements of ORS 646.915.

- (A) Blends of up to 10% by volume anhydrous ethanol (200 proof) (commonly referred to as the "gasohol" waiver).
- (B) Blends of methanol and gasoline grade tertiary butyl alcohol (GTBA) such that the total oxygen content does not exceed 3.5% by weight and the ratio of methanol to GTBA is less than or equal to one. It is also specified that this blended fuel must meet ASTM volatility specifications (commonly referred to as the "ARCO" waiver).
- (C) Blends of up to 5.0% by volume methanol with a minimum of 2.5% by volume cosolvent alcohols having a carbon number of 4 or less (i.e. ethanol, propanol, butanol and/or GTBA). The total oxygen must not exceed 3.7% by weight, and the blend must meet ASTM volatility specifications as well as phase separation and alcohol purity and inhibitor specifications (commonly referred to as the "DuPont" waiver).
- (D) Blends up to 5.0% by volume methanol with a minimum of 2.5% by volume cosolvent alcohols having a carbon number of 8 or less. The total oxygen must not exceed 3.7% by weight and the blend must meet ASTM volatility specifications as well as phase separation and alcohol purity and inhibitor specifications (commonly referred to as the "Octamix" waiver).

- (E) Blends up to 15.0% by volume methyl tertiary butyl ether (MTBE) which must meet the ASTM D4614 specifications. Blenders must take precautions that the blends are not used as base gasolines for other oxygenated blends (commonly referred to as the "Sun" waiver).
 - (F) Blends of aliphatic alcohols other than methanol and aliphatic ethers, provided the oxygen content does not exceed 2.7% by weight.
 - (G) Blends of methanol up to 0.3 percent by volume exclusive of other oxygenates.
 - (H) Blends up to 2.75% by volume methanol with an equal volume of butanol or alcohols of a higher molecular weight.
-
- (c) Lettering on the label must be legible and in block style of at least ~~36~~20 point bold type.
 - (d) The lettering on the label shall be in a color contrasting to the intended background.
 - (e) The label must be placed on each side of the dispenser from which the gasoline can be dispensed and shall be on the upper one half of the dispenser, in a position that will be clear and conspicuous to the consumer.

OXYGENATED FUELS RULE AMENDMENT TO THE
INDIRECT SOURCE RULE
9/29/92

340-20-110 (29) "Indirect Source Operating Permit"
means a written permit in letter form issued by the Department or
Regional Authority having jurisdiction, bearing the signature of
the Director or designee, which authorizes the permittee to
operate an indirect source.

Gasoline Terminals, Distributors and Retail Outlets Required to
Have Indirect Source Operating Permits

340-20-136

(6) The owner of the gasoline at any terminal, distributor or
retail outlet (defined in OAR 340-22-450(29), (12), (26)) shall not
supply gasoline to any oxygenated gasoline control area during
the control period (defined in OAR 340-22-450(6) and (10))
without an approved Indirect Source Operating Permit issued by
the Department or Regional Authority having jurisdiction.

(a) An Indirect Source Operating Permit must be renewed yearly,
prior to supplying any gasoline to an oxygenated gasoline control
area during the control period.

(b) Persons applying for an Indirect Source Operating Permit
shall at the time of application pay the following fees:

- (A) Gasoline Terminals \$5,700;
- (B) Gasoline Distributors \$500;
- (C) Gasoline Retailers \$100.

RULEMAKING STATEMENTS FOR
PROPOSED AMENDMENTS TO RULES TO REQUIRE OXYGENATED GASOLINE
IN CONTROL AREAS AND FOR WINTERTIME PERIODS

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the intended action to amend a rule.

(1) Legal Authority

This proposal amends Oregon Administrative Rules (OAR) 340, Division 22. It is proposed under authority of Oregon Revised Statutes (ORS) Chapter 468A.

(2) Need for These Rules

Automobile exhaust is a major contributor to carbon monoxide air pollution. Four areas in Oregon were found to be in nonattainment for ambient carbon monoxide levels: Portland, Grants Pass, Klamath Falls and Medford, based on 1988 and 1989 ambient air quality data. As such the federal Clean Air Act Amendments of 1990 Section 211(m) mandates that Oregon begin using oxygenated gasoline to fuel motor vehicles in these areas during the winter months. House Bill 2175 (codified as ORS 468A.420) was approved by the Oregon Legislature in 1991 and required the Department of Environmental Quality to follow federal guidelines in developing an Oregon Oxygenated gasoline program.

(3) Principal Documents Relied Upon

Section 211(m) of the Clean Air Act Amendments of 1990.

ORS 468A.420

Oxygenated Fuels Labeling Regulations; Guidance on Establishment of Control Periods; and Guidelines for Oxygenated Gasoline Credit; Proposed Rule and Notices. (Federal Register July 9, 1991)

Supplemental Notice of Proposed Guidance on Establishment of Control Periods Under Section 211(m) of the Clean Air Act as Amended. (Federal Register February 5, 1992)

All documents referenced may be inspected at the Department of Environmental Quality, 811 SW 6th Avenue, Portland, Oregon, during normal business hours.

LAND USE CONSISTENCY STATEMENT

The proposed rule changes appear to not affect land use as defined in the Department's coordination program with the Department of Land Conservation and Development.

Public comment on any land use issue involved is welcome and may be submitted in the same fashion as indicated for other testimony on these rules.

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

The Department of Environmental Quality intends to ask the DLCD to mediate any appropriate conflicts brought to our attention by local, state or federal authorities.

JC:jc
5/1/92

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR PROPOSED AMENDMENTS TO RULES
FOR OXYGENATED MOTOR VEHICLE FUELS

PROPOSAL SUMMARY

The proposed rules would require that all fuel dispensed during the months of November through February and within Clackamas, Jackson, Multnomah, Washington and Yamhill Counties, and 256 square mile areas around Grants Pass and Klamath Falls, contain an average of 2.7 percent oxygen and a minimum of 2.0 percent oxygen. This requirement will begin November 1, 1992.

COSTS TO GASOLINE SUPPLIERS

In the Department's proposal, terminals which supply gasoline to a control area during the control period would be assessed a \$5,700 annual permit fee. All distributors which supply fuel to control areas during the control period will be assessed an annual fee of \$500. In addition, all service stations within control areas that operate during control periods will be assessed an annual fee of \$100. The use of these fees will be limited to covering the Department's cost of administering and enforcing the state oxygenated fuels program. The estimated annual cost for oxygenated fuels program operations is \$220,000. The Department estimates there will be approximately 90 distributors, 18 terminals and 727 service stations in Oregon serving the oxygenated fuels areas. Some larger terminal operators such as Texaco and BP Oil operate more than one terminal in Oregon. They will be assessed the \$5,700 fee for each terminal location in Oregon that services control areas during the control period.

COSTS TO GASOLINE CONSUMERS

Gasoline suppliers will blend with either methyl-tertiary-butyl-ether (MTBE) or ethanol. Both are expected to be blended at 10 percent with gasoline. The resulting mix of MTBE will yield approximately 2.0 percent oxygen, while if ethanol is used as a blending agent the oxygen content will be approximately 3.5 percent.

For MTBE, which might be received in the southern Oregon control areas from Chico, California, the Department estimates the additional cost of the oxygenated fuel itself (not including capital expenditures for tanks and blending facilities) will be less than one cent per gallon wholesale based on California Air Resources Board estimate of \$1.17 per gallon for pure MTBE. BP Oil estimates the current wholesale price of ethanol at \$1.60 per

gallon for pure ethanol. Gasoline oxygenated with ethanol would theoretically cost approximately four cents more than non-oxygenated gasoline (including only the cost for ethanol, not including capital expenditures for tanks and blending facilities). Chevron U.S.A. estimates the overall cost of MTBE oxygenated gasoline at four to six cents per gallon retail. Considering capital costs and the logistics of blending oxygenates and additional record keeping required by oxygenated fuels regulations, this figure may be appropriate for the overall cost of the oxygenated fuel prior to tax credits.

There are no tax credits for MTBE. On the other hand, gasoline oxygenated with ethanol at 10 percent gets two separate tax breaks in Oregon. There is a federal oxygenated gasoline tax credit of 5.4 cents per gallon of oxygenated gasoline (or 54 cents per gallon of ethanol used), and a state tax credit of 5.0 cents per gallon of oxygenated gasoline. Gasoline oxygenated with ethanol will then have an approximately seven cent price advantage over MTBE oxygenated gasoline and an approximate two cent price advantage over current gasoline. However, since there is not expected to be adequate ethanol to supply the total U. S. demand for oxygenated gasoline, some MTBE will have to be used. As such, the market price is expected to land somewhere between the actual cost of ethanol and MTBE oxygenated fuel.

The cost to the public for Department operations budget is expected to be less than 0.1 cent per gallon of oxygenated fuel delivered, based on an annual Department budget of \$220,000.

In summary, the figures indicate an overall reduction in gasoline retail price of about two cents per gallon with the use of oxygenated gasoline if the ethanol oxygenate is used, but a potential price increase of four to six cents per gallon if MTBE is used. The Department expects ethanol will be the dominant oxidant, but since some MTBE will have to be used nationwide, the public will likely not be able to look forward to a reduction in fuel price during the control period.

COSTS TO SMALL BUSINESSES

Small terminal operators, distributors and service stations serving control areas will be required to keep records of oxygenated fuel use. This should be a minor inconvenience. These terminals, distributors and service stations will also be assessed annual fees of \$5,700, \$500 and \$100, respectively. For very small operations, these fees (especially for terminals) may somewhat injure their ability to compete with larger facilities.

COSTS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY

The Departments's proposal assesses a fee on the blenders of

oxygenated fuels to cover the Department costs. Costs to the Department would fall into seven categories:

- o Registration of blenders;
- o Review of blender oxygenated fuels documentation;
- o Collection of gasoline samples from blenders and service stations;
- o Laboratory analysis of gasoline samples;
- o Responding to questions from the public and regulated industry;
- o Coordination of training for auto mechanics and independent service stations;
- o Coordination of public education about the effects of oxygenated gasoline.

The estimated required Department effort would be 1.7 FTE.

The overall cost of the program is estimated at \$220,000 per year, with the costs relatively equally divided between personnel costs and equipment, supplies and travel costs.

JC:jc
8/20/92

WINTERTIME OXYGENATED GASOLINE PROGRAM
NOTICE OF PUBLIC HEARING

WHO IS AFFECTED: Gasoline terminals, bulk plants, distributors service stations, and consumers of gasoline in Clackamas, Jackson, Josephine, Klamath, Multnomah, Washington and Yamhill Counties.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340, Division 22.

WHAT ARE THE HIGHLIGHTS

- 1) Automobiles emit carbon monoxide, with larger quantities emitted in cold weather. The proposed rules require oxygenated fuel to be sold in the control areas in the months of November through February to reduce these auto emissions.
- 2) Gasoline distributors would be required to supply oxygenated fuel to control areas during control periods at an average oxygen content of 2.7 percent and a minimum content of 2.0 percent.
- 3) The oxygenated gasoline program would begin November 1, 1992.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from: Vehicle Inspection Program, Department of Environmental Quality, 1301 SE Morrison, Portland, OR 97214 or the regional office nearest you. For Further information contact Jerry Coffey at (503) 731-3049.

Public hearings will be held before a hearings officer at:

7:00 pm
June 17, 1992
Portland Building
Room A
1120 SW 5th
Portland, Oregon

7:00 pm
June 22, 1992
Jackson County Courthouse Auditorium
(Oakdale entrance)
10 South Oakdale
Medford, Oregon

1:00 pm
June 23, 1992
Courthouse Annex
Commissioner's Hearing Room
(2nd floor)
305 Main Street
Klamath Falls, Oregon

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 June 30, 1992.

**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 adopted rules will be submitted to the U.S. Environmental Protection Agency as part of the revision to the State Implementation Plan. The Commission's deliberation should come in September 1992 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.

JC:jc
5/1/92

A CHANCE TO COMMENT ON...

WINTERTIME OXYGENATED GASOLINE PROGRAM NOTICE OF PUBLIC HEARING CONTINUATION

**WHY A
CONTINUATION:**

The method of funding the oxygenated fuels program was significantly changed and the fiscal impact statement was altered after the initial public hearings in June 1992. Instead of assessing a fee on terminals and distributors only, the Department currently proposes to also assess a fee on service stations located in control areas. In addition, the oxygenated fuels control areas were reduced for the Grants Pass and Klamath Falls areas. The Department believes it is important to receive public comment on these changes.

**WHO IS
AFFECTED:**

Gasoline terminals, bulk plants, distributors service stations, and consumers of gasoline in Clackamas, Jackson, Multnomah, Washington and Yamhill Counties and in designated areas surrounding the towns of Klamath Falls and Grants Pass.

**WHAT IS
PROPOSED:**

The Department of Environmental Quality is proposing to amend OAR 340, Division 22.

**WHAT ARE THE
HIGHLIGHTS**

- 1) Automobiles emit carbon monoxide, with larger quantities emitted in cold weather. The proposed rules require oxygenated fuel to be sold in the control areas in the months of November through February to reduce these auto emissions.
- 2) Gasoline distributors would be required to supply oxygenated fuel to control areas during control periods at an average oxygen content of 2.7 percent and a minimum content of 2.0 percent.
- 3) The oxygenated gasoline program would begin November 1, 1992.



FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

HOW TO
COMMENT:

Copies of the complete proposed rule package may be obtained from: Vehicle Inspection Program, Department of Environmental Quality, 1301 SE Morrison, Portland, OR 97214 or the regional office nearest you. For further information contact Jerry Coffey at (503) 731-3049.

Public hearings will be held before a hearings officer at:

7:00 pm
September 22, 1992
Portland City Hall
Room 321
1220 SW 5th
Portland, Oregon

1:00 pm
September 23, 1992
Courthouse Annex
Commissioner's
Hearing Room
305 Main Street
Klamath Falls, Oregon

7:00 pm
September 23, 1992
Jackson County Courthouse Auditorium
10 South Oakdale
Medford, Oregon

Oral and written comments will be accepted at the public hearings. Written comments may be sent to the DEQ at the address above or faxed to the DEQ at 503-731-3269. Comments must be received by no later than September 28, 1992.

WHAT IS THE
NEXT STEP

After the public comment period, 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 adopted rules will be submitted to the U.S. Environmental Protection Agency as part of the revision to the State Implementation Plan. The Commission's deliberations are scheduled for the October 16, 1992 Commission meeting.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

JC:jc
8/20/92

- (f) The Economic Development Department;
- (g) Mass transit districts;
- (h) Public interest organizations;
- (i) Metropolitan and suburban business organizations;
- (j) The trucking industry;
- (k) Citizens groups that advocate the use of alternative motor vehicle fuels;
- (L) Automobile associations; and
- (m) Automobile manufacturer's associations.

(6) The Task Force shall coordinate its activities with air quality authorities in the State of Washington. [1991 c.752 §13a]

Sec. 27. Section 13a of this Act is repealed on June 30, 1993. [1991 c.752 §27]

468A.420 Oxygenated motor vehicle fuels; when required. (1) The Environmental Quality Commission shall adopt rules consistent with section 211 of the Clean Air Act to require oxygenated motor vehicle fuels to be used in any carbon monoxide nonattainment area in the state.

(2) The rules adopted under subsection (1) of this section shall require:

(a) Oxygenated fuels to be used during any portion of the year during which the nonattainment area is prone to high ambient concentrations of carbon monoxide.

(b) The use of oxygenated fuels in carbon monoxide nonattainment areas on or before November 1, 1992.

(3) An oxygenated fuel shall contain 2.7 percent or more oxygen by weight. Methods to achieve this requirement may include but need not be limited to the use of ethanol blends. [1991 c.752 §13b]

468A.425 Findings. The Legislative Assembly finds that:

(1) Extending additional controls on industrial sources of air pollution in Oregon is not sufficient to attain desired air quality;

(2) Measures involving other sources of air emissions, particularly motor vehicles, are essential to the attainment of air quality goals;

(3) Public transportation, development of alternative fuels for motor vehicles, carpools, vanpools and other measures can be used to ameliorate the effects of motor vehicle emissions on air quality;

(4) Federal regulations have required progressive changes in the emission control equipment of motor vehicles by model year, resulting in material reductions in the emissions from motor vehicles;

(5) Emission permit fees can finance measures to ameliorate the effects of emissions on air quality; and

(6) An emission fee based on the amount of pollutants emitted by motor vehicles is not

a tax or excise on the ownership, operation or use of motor vehicles. [1991 c.752 §14]

468A.430 Emission fee. (1) Except as provided in subsection (2) of this section, in addition to any other requirement or fee required for registration, on and after July 1, 1993, a motor vehicle registered under ORS 803.420 (1) shall be subject to the emission fee imposed under ORS 468A.435 for an emission permit as provided in ORS 468A.435 to 468A.450.

(2) The fee imposed under subsection (1) of this section shall not apply to an electrically powered vehicle.

(3) Payment of the emission fee shall not be a condition of the registration, ownership, operation or use of the vehicle. The Motor Vehicles Division shall not deny a registration solely on the basis that the emission fee required under this section has not been paid.

(4) Any person who is subject to the emission fee and fails to pay the emission fee when due shall be subject to the civil penalty imposed under ORS 468A.445. [1991 c.752 §14a]

468A.435 Annual emission permit fee. Consistent with the relative emissions from motor vehicles of different model years, the annual emission permit fee is imposed on vehicle emissions according to the following schedule:

(1) \$1 for vehicles manufactured in the 1981 model year or later.

(2) \$2 for vehicles manufactured in the 1980 model year or earlier. [1991 c.752 §14b]

468A.440 Collection of emission fee. (1) The Motor Vehicles Division shall collect the emission fee imposed in ORS 468A.430 in accordance with the schedule established in ORS 468A.435 on a biennial basis, consistent with the registration period.

(2) After payment of its collections expenses, the Motor Vehicles Division shall remit the proceeds of the emission permit fee to the Department of Transportation Public Transportation Development Fund established under ORS 184.733.

(3) The Motor Vehicles Division shall provide the Department of Environmental Quality with the information necessary to enforce the requirements of ORS 468A.430. [1991 c.752 §14c]

468A.445 Civil penalty for failure to pay emission fee. (1) Any person who fails to pay the emission permit fee imposed under ORS 468A.430 shall be subject to a civil penalty of up to \$50.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the

CLEAN AIR ACT

(E) Reformulated Gasoline.—The term 'reformulated gasoline' means any gasoline which is certified by the Administrator under this section as complying with this subsection.

(F) Conventional Gasoline.—The term 'conventional gasoline' means any gasoline which does not meet specifications set by a certification under this subsection.

(1) Detergents.—Effective beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems. Not later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate a rule establishing specifications for such additives.

(m) Oxygenated Fuels.—(1) Plan Revisions For CO Nonattainment Areas. (A) Each State in which there is located all or part of an area which is designated under title I as a nonattainment area for carbon monoxide and which has a carbon monoxide design value of 9.5 parts per million (ppm) or above based on data for the 2-year period of 1988 and 1989 and calculated according to the most recent interpretation methodology issued by the Administrator prior to the enactment of the Clean Air Act Amendments of 1990 shall submit to the Administrator a State implementation plan revision under section 110 and part D of title I for such area which shall contain the provisions specified under this subsection regarding oxygenated gasoline.

(B) A plan revision which contains such provisions shall also be submitted by each State in which there is located any area which, for any 2-year period after 1989 has a carbon monoxide design value of 9.5 ppm or above. The revision shall be submitted within 18 months after such 2-year period.

(2) Oxygenated Gasoline In CO Nonattainment Areas.—Each plan revision under this subsection shall contain provisions to require that any gasoline sold, or dispensed, to the ultimate consumer in the carbon monoxide nonattainment area or sold or dispensed directly or indirectly by

fuel refiners or marketers to persons who sell or dispense to ultimate consumers, in the larger of —

(A) the Consolidated Metropolitan Statistical Area (CMSA) in which the area is located, or

(B) if the area is not located in a CMSA, the Metropolitan Statistical Area in which the area is located.

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide to contain not less than 2.7 percent oxygen by weight (subject to a testing tolerance established by the Administrator). The portion of the year in which the area is prone to high ambient concentrations of carbon monoxide shall be as determined by the Administrator, but shall not be less than 4 months. At the request of a State with respect to any area designated as nonattainment for carbon monoxide, the Administrator may reduce the period specified in the preceding sentence if the State can demonstrate that because of meteorological conditions, a reduced period will assure that there will be no exceedances of the carbon monoxide standard outside of such reduced period. For areas with a carbon monoxide design value of 9.5 ppm or more of the date of enactment of the Clean Air Act Amendments of 1990, the revision shall provide that such requirement shall take effect no later than November 1, 1992, (or at such other date during 1992 as the Administrator establishes under the preceding provisions of this paragraph). For other areas, the revision shall provide that such requirement shall take effect no later than November 1 of the third year after the last year of the applicable 2-year period referred to in paragraph (1) (or at such other date during such third year as the Administrator establishes under the preceding provisions of this paragraph) and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

(3) Waivers.—(A) The Administrator shall waive, in whole or in part, the requirements of paragraph (2) upon a demonstration by the State to the satisfaction of the Administrator that the use of oxygenated gasoline would prevent or interfere with the attainment by the area of a national primary ambient air quality

standard (or a State or local ambient air quality standard) for any air pollutant other than carbon monoxide.

(B) The Administrator shall, upon demonstration by the State satisfactory to the Administrator, waive the requirement of paragraph (2) where the Administrator determines that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in an area.

(C)(i) Any person may petition the Administrator to make a finding that there is, or is likely to be, for any area, an inadequate domestic supply of, or distribution capacity for, oxygenated gasoline meeting the requirements of paragraph (2) or fuel additives (oxygenates) necessary to meet such requirements. The Administrator shall act on such petition within 6 months after receipt of the petition.

(ii) If the Administrator determines, in response to a petition under clause (i), that there is an inadequate supply or capacity described in clause (i), the Administrator shall delay the effective date of paragraph (2) for 1 year. Upon petition, the Administrator may extend such effective date for one additional year. No partial delay or lesser waiver may be granted under this clause.

(iii) In granting waivers under this subparagraph the Administrator shall consider distribution capacity separately from the adequacy of domestic supply and shall grant such waivers in such manner as will assure that, if supplies of oxygenated gasoline are limited, areas having the highest design value for carbon monoxide will have a priority in obtaining oxygenated gasoline which meets the requirements of paragraph (2).

(iv) As used in this subparagraph, the term distribution capacity includes capacity for transportation, storage, and blending.

(4) Fuel Dispensing Systems.—Any person selling oxygenated gasoline at retail pursuant to this subsection shall be required under regulations promulgated by the Administrator to label the fuel dispensing system with a notice that the gasoline is oxygenated and will reduce the carbon monoxide emissions from the motor vehicle.

(5) Guidelines for Credit.—The Administrator shall promulgate guidelines, within 9 months after the date of the enactment of the Clean Air Act Amendments

of 1990, allowing the use of marketable oxygen credits from gasolines during that portion of the year specified in paragraph (2) with higher oxygen content than required to offset the sale or use of gasoline with a lower oxygen content than required. No credits may be transferred between nonattainment areas.

(6) Attainment Areas.—Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is in attainment for carbon monoxide, except that in a carbon monoxide nonattainment area which is redesignated as attainment for carbon monoxide, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard thereafter in the area.

(7) Failure to Attain CO Standard.—If the Administrator determines under section 186(b)(2) that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that the minimum oxygen content of gasoline referred to in paragraph (2) shall be 3.1 percent by weight unless such requirement is waived in accordance with the provisions of this subsection.

LEAD PHASEDOWN

(n) Prohibition on Leaded Gasoline for Highway Use.—After December 31, 1995, it shall be unlawful for any person to sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into commerce, for use as fuel in any motor vehicle (as defined in section 219(2)) any gasoline which contains lead or lead additives.

[Sec. 211(n) added by PL 101-549]

FUEL AND FUEL ADDITIVE IMPORTERS

(o) Fuel and Fuel Additive Importers and Importation.—For the purposes of this section, the term 'manufacturer' includes an importer and the term 'manufacture' includes importation.

[Sec. 211(o) added by PL 101-549]

DEVELOPMENT OF LOW-EMISSION VEHICLES

[Editor's note: P.L. 96-209, March 14, 1980 provides: "The Low-Emission Vehicle Certification Board established by Act

of December 31, 1970 (84 Stat. 1700), 42 U.S.C. 1857f-(c), is hereby abolished."]

Sec. 212 [Repealed by P.L. 101-549]

NONROAD ENGINES AND VEHICLES

Sec. 213. (a) Emissions Standards.—

(1) The Administrator shall conduct a study of emissions from nonroad engines and nonroad vehicles (other than locomotives or engines used in locomotives) to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such study shall be completed within 12 months of the date of the enactment of the Clean Air Act Amendments of 1990.

(2) After notice and opportunity for public hearing, the Administrator shall determine within 12 months after completion of the study under paragraph (1), based upon the results of such study, whether emissions of carbon monoxide, oxides of nitrogen, and volatile organic compounds from new and existing nonroad engines or nonroad vehicles (other than locomotives or engines used in locomotives) are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide. Such determination shall be included in the regulations under paragraph (3).

(3) If the Administrator makes an affirmative determination under paragraph (2) the Administrator shall, within 12 months after completion of the study under paragraph (1), promulgate (and from time to time revise) regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with

the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 202, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(4) If the Administrator determines that any emissions not referred to in paragraph (2) from new nonroad engines or vehicles significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, the Administrator may promulgate (and from time to time revise) such regulations as the Administrator deems appropriate containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution, taking into account costs, noise, safety, and energy factors associated with the application of technology which the Administrator determines will be available for the engines and vehicles to which such standards apply. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(5) Within 5 years after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

(b) Effective Date.—Standards under this section shall take effect at the earliest

SUMMARY OF DISCUSSIONS OF THE OXYGENATED FUELS ADVISORY COMMITTEE
May 12, 1992

An Oxygenated Gasoline Program Advisory Committee was formed to assist the Department in writing rules for the oxygenated fuels program.

The Committee represented consumer, industrial and governmental concerns, the following participated in the meetings:

BP Oil
Santa Fe Pacific Pipe Line
UNOCAL
ARCO Products Co
Oregon Department of Energy
Oregon Gasoline Dealers Association
Pacific Auto Trades Association
Texaco
Northwest Ethanol Fuel Association
Oregon Petroleum Marketers Association
Western Stations
Oregon Department of Agriculture
TOSCO Refining
Motor Vehicle Manufacturer's Association
Federal Environmental Protection Agency
Oregon Department of Environmental Quality

All who expressed an interest in Committee actions were kept informed.

The advisory committee had several areas of concern as discussed below.

1) Oxygenated Fuels Program Boundaries

The federal Clean Air Act Amendments of 1990 (Attachment F) and associated EPA proposed guidelines mandate for Consolidated Metropolitan Statistical Areas and Metropolitan Statistical Areas, all counties within the CMSA or MSA must be included in the control area. For non-CMSA/MSA areas, the minimum boundaries allowed by EPA are the nonattainment boundaries.

For the Portland area which is a designated CMSA area, the advisory committee recommended county boundaries limited to Clackamas, Multnomah, and Washington Counties. The Department was in agreement with this request. However, because Yamhill County is included in the Portland CMSA, EPA proposed guidelines require Yamhill to be included in the Oregon oxygenated fuels program.

EPA reports that Duluth, Minnesota requested variance from this CMSA requirement and was rejected by EPA.

Of the three southern Oregon carbon monoxide nonattainment areas (Grants Pass, Medford and Klamath Falls), Medford is the only area designated as a CMSA or MSA. As such, all of Jackson County will be included in the oxygenated fuels program. Grants Pass and Klamath Falls are eligible for smaller boundaries.

The nonattainment area in Grants Pass is a ten block area in downtown Grants Pass. It was reported by one Committee member that there are only three service stations within this area which would be required to dispense oxygenated gasoline. Because of the small size of the non-attainment area, several potential boundaries which would be larger than the nonattainment area were suggested as options. The advisory committee was divided in its view of the Grants Pass area as shown in the Committee vote tally below:

Nonattainment area (10 city blocks)	- none
City of Grants Pass	- 5 members
Urban Growth Area	- 2 members
County Wide Area	- 5 members
Abstained	- 4 members

In Klamath Falls, the nonattainment area is the urban growth boundary which is approximately twenty percent larger than the city boundaries. As such, the options eligible to the Committee were narrowed to either the nonattainment area or county boundaries. Again the Committee was divided, but the majority of members preferred the nonattainment boundaries rather than the larger county boundaries.

Nonattainment area (UGB)	- 9 members
County Wide Area	- 5 members
Abstained	- 2 members

The main reason expressed by the Committee for preferring the smaller boundaries is oxygenated fuels will saturate the counties with or without county-wide boundaries, if it is required in the central town in the county. They argued if the oxygenated gasoline is going to be used there anyway, why mandate it? The Oregon Gasoline Dealers Association preferred the larger boundaries of the county because they feared that oxygenated gasoline prices may be elevated above non-oxygenated fuel. If a small boundary such as UGB is used, residents from anywhere within the boundary could readily drive to a fueling station just outside the boundary for fuel, providing an unfair advantage and a potential market imbalance dominated by stations just outside the control area.

The Department has two concerns with regard to use of smaller than county boundaries for the Grants Pass and Klamath Falls

areas. First, the non-county boundaries above, such as the urban growth boundaries (or even the city boundaries) are not readily discernable by the general public. The Department has suffered with such nondescript boundaries in Oregon's Vehicle Inspection Program, both in the Medford and Portland areas where the boundaries are the air quality maintenance area (AQMA) and the Metropolitan Service District (MSD), respectively. It has caused confusion for the public, who, when close to a boundary don't know if they are in or out.

The Department is also concerned that a small boundary would limit the benefit of the oxyfuel program. The concern is that vehicles fueled outside the control area will frequently be driven within the control area. For example, if the UGB was selected as the control area for Klamath Falls, fueling operations just outside the UGB may well become the dominant fueling for residents within the control area if the price for non-oxygenated fuels is less than oxygenated fuels or if consumers somehow believed oxygenated fuels were destructive to their vehicles. In addition, even if it is assumed fueling patterns will not change, a large share of the Klamath County population may enter the UGB on a routine basis because Klamath Falls is the County's business center. Many of these travelers would likely be fueled from outside the UGB. Klamath Falls is the largest town in Klamath County, with its UGB representing 36 percent of the county population. The next largest town in Klamath County is Merrill with a population less than 1/25th the size of Klamath Falls.

Similarly, the Grants Pass UGB population is only about 30 percent of the Josephine County population. Cave Junction is the next to the largest town in Josephine County and its population is only one fifteenth that of Grants Pass.

Because of these concerns, the Department proposes to use county boundaries, even though at least for Klamath Falls, the Advisory Committee clearly indicated they preferred the Klamath Falls UGB.

2) Oxygenated fuels Program Control Periods

The Clean Air Act Amendments of 1990 stipulates the oxygenated fuels control period should be "the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide ... as determined by the Administrator (EPA), but shall not be less than 4 months." The Act, however, does permit the EPA Administrator to allow a control period less than 4 months if "the state can demonstrate that because of meteorological conditions, a reduced period will assure that there will be no exceedances of carbon monoxide standard outside of such reduced period." The EPA Guidelines dated July 9, 1991 provide initial guidance for Oregon carbon monoxide nonattainment areas based on ambient monitoring data from 1988 and 1989. Two options were allowed:

OPTION 1.

OPTION 2

Grants Pass	Nov 1- Feb 29	Nov 1- Feb 29
Klamath Falls	Nov 1- Feb 29	Nov 1- Feb 29
Medford	Nov 1- Feb 29	Nov 1- Feb 29
Portland	Oct 1- Jan 31	Nov 1- Feb 29

On February 5, 1992 the EPA guidelines were revised so that for all states other than Oregon, Option 2 became the EPA proposal. The Oregon specific changes for the general use of Option 2 were "based on discussions during the regulatory negotiation process..." EPA changed the Option 2 control period for Grants Pass, Klamath Falls and Medford to October 1 - January 31. EPA argued "the ambient air data considered indicates high ambient concentrations for these counties in the months of December and January Based on current data alone, these counties are not prone to high ambient concentrations of CO in either October or February. Nevertheless, the Act requires a minimum control period of four months." As such, EPA considered the "other factor" of "gasoline supply logistics." EPA argued that "A reasonable supply point for the southern Oregon cities is Chico, California, which requires oxygenated gasoline from October through January as do all Northern California CO nonattainment areas.... Other potential supply points, Eugene and Coos Bay, Oregon do not require oxygenates." On the other hand, EPA acknowledged that "one commenter has stated a preference for a control period from November through February, based upon" delivery of oxygenated gasoline from Portland, OR or Seattle, WA.

In the first Advisory Committee meeting of February 26, 1992, the Department stated a desire to change the control period for southern Oregon back to November - February and indicated the Department would appeal the EPA October - January guidelines within the EPA guideline comment period ending March 6, 1992. This letter, dated March 5, 1992, requesting the change, is shown as Attachment H. The Department appeal argued that the southern Oregon period of November - February offered more security against carbon monoxide ambient air quality exceedances because it provides a buffer on either side of the recognized high carbon monoxide months, has higher measured carbon monoxide levels and corresponds more closely to wood heating season. It also argued that using Chico fuel may not be convenient since California oxygenated gasoline is limited to 1.8-2.2 percent oxygen and would require reblending to the 2.7 percent oxygen average, or assurance for the California blenders they would be able to purchase credits from other blenders supplying fuel for the southern Oregon control areas. Some Advisory Committee members, at that time, argued for the October - January control period to make the southern Oregon and California control periods the same and allow Chico fuel to be used throughout the whole southern Oregon Oxygenated fuels control period.

Just before the April 2 Advisory Committee meeting, the Department was notified that EPA had revised its guidelines for

the southern Oregon control areas to represent the wishes of Oregon.

At the April 2, 1992 Advisory Committee meeting, the UNOCAL representative, Dennis Lamb, presented their position for a three month control period of November - January. He stated that the economics and supply logistics indicate a three month period is more appropriate and that oxygenated fuels will still be available in February because of residual January supplies in service station and bulk plant storage tanks. He stated there have been no February exceedances of ambient carbon monoxide standards in southern Oregon since 1987. He stated that a "significant percentage of gasoline is supplied into southern Oregon from California. Mr. Lamb indicated the Clean Air Act uses a minimum 4 month control period guideline "as a result of the ethanol industry's effort to stimulate the use of ethanol and provide some planning basis for its production," not merely for environmental purposes. Mr. Lamb proposed a trigger mechanism. If the trigger was exceeded in February the Department would expand the control period to November - February. The Advisory Committee voted as follows:

3 month control period w/trigger	- 8 members
4 month control period	- 3 members
abstained	- 5 members

The Department remains concerned about the possibility of exceeding carbon monoxide air quality standards during February if a November - January control period is used. Although no ambient carbon monoxide standard exceedances occurred in February during the last three years in any of the three southern Oregon counties, the carbon monoxide measurements did exceed 80 percent of the standard in all three areas during that period. The 80 percent criteria has been used by EPA in the past to indicate potential for violation of ozone ambient air quality standards, and the Department believes such criteria would be applicable also for carbon monoxide pollution. Accumulation of high carbon monoxide levels is strongly dependent on the coincidence of low wind speed (calm day) and a high traffic day (such as a Christmas shopping day or special local event). A three year period is not considered adequate time to assure such coincidence has occurred. Therefore, not having exceeded ambient levels in the last three years is insufficient assurance that oxygenated fuels is not needed in the February period, particularly when the 80 percent criteria has already been exceeded.

The Department is also concerned about the consequences of exceeding carbon monoxide ambient standards in control areas during the month of February with a three month control period. A trigger to activate an oxygenated fuels program in February of the following year, does little to protect the southern Oregon air sheds from ambient carbon monoxide exceedances.

A control area could be redesignated "in compliance" for carbon monoxide if there are no violations in the critical years 1994-95 and the area is able to demonstrate that attainment is expected to continue for at least 10 years. If, however, ambient carbon monoxide standard violations during 1994-95 prevent the area from meeting the 1995 deadline of the Clean Air Act, the area is automatically bumped up to the more severe non-attainment category of "serious" which would require implementation of a longer list of prescriptive federal control measures. The longer list for serious areas includes:

- 1) Enhanced I/M (requiring longer testing procedure, resulting in longer time in testing station and waiting line, and more expensive testing equipment at the I/M station);
- 2) Clean fuels fleet program;
- 3) Transportation control measures to offset growth in vehicle-miles-traveled (for example, some serious CO non-attainment areas are evaluating potential programs with \$1/gallon or more price increases on gasoline to reduce motor vehicle use);
- 4) Increased industrial source off-set ratios.

The Department was unable to obtain a precise evaluation of the future supply channels for oxygenated gasoline for southern Oregon. The options appear to be 1) supply from Eugene where non-oxygenated gasoline arrives via pipeline and is blended with ethanol in bulk plants or tanker trucks, 2) supply from Portland where non-oxygenated gasoline arrives via pipeline and is blended with ethanol in bulk plants or tanker trucks, 3) supply from Coos Bay or Chico where it would arrive in Oregon already oxygenated with MTBE at 1.8 - 2.2 percent oxygen content. Any fuel above 2.0 percent oxygen could be used without further oxygenate added as long as the blender can purchase credits from other blenders who supplied fuels with oxygen content above 2.7 percent in the same control area. It also appears to be possible to blend fuel to 2.7 percent in California as long as the fuel is for use outside California. ARCO has indicated California Air Resources Board (CARB) approval of this technique. In addition, there appears to be no limit on shipping slightly under-loaded tanker trucks of non-oxygenated gasoline to Oregon to be splash blended in the tanker truck with oxygenate (probably ethanol) supplied in Oregon. It should be kept in mind that current practice allows MTBE oxygenated gasoline to be shipped via pipeline, but to date ethanol oxygenated gasoline cannot be shipped this way.

An October - January period provides somewhat more flexibility in oxygenated gasoline sources than does a November - February period. That flexibility is the ability to use 2.0 percent fuel directly from California with the use of credit trading. A November - February period does not mean that fuel cannot be shipped from California during the February period, it merely means that fuel cannot be taken from bulk California supplies and

used as is in Oregon during February. The Department does not know the financial impact of this restriction. However, the Department Committee members state that the changing of fuel source between Eugene and Chico is a common practice and will swing from one source to another if the fuel price difference changes by 3 cents per gallon. Therefore, if delivery is taken from Chico for November - January distributors could purchase fuel from other areas for the month of February.

Data from the Motor Vehicles Division for the month of January, 1992 indicate that approximately 24 percent of the southern Oregon fuel is currently arriving from Chico with the remaining 76 percent coming from Eugene. This 24 percent is reported by Committee members to be a low figure because Chico fuel is now relatively expensive. The quantity of fuel delivered from Chico was as high as 50 percent in the past when prices were lower.

Committee members have reported the cost of adding MTBE to fuel will be approximately 4-6 cents per gallon at the service station. On top of this price increase, suppliers of 2.0 percent fuel from California will have to pay for either ethanol to arrive at 2.7 percent average oxygen content, or for credits accumulated by ethanol distributors who will likely blend to 3.5 percent oxygen. This may result in a small increase in price. On the other hand, although the alternative oxygenate, ethanol, it is more expensive to produce than gasoline, will be allowed the Oregon tax credit of 5 cents per gallon of ethanol oxygenated gasoline, and 5.4 cents per gallon of gasoline federal tax credit (or, optionally, 54 cents per gallon of ethanol blender income tax reduction), which will reduce the wholesale price below that of non-oxygenated gasoline. This could produce an approximate 10 cent per gallon driving force for the use of ethanol when compared to MTBE gasoline. Also the ethanol blender may be able to sell credits to MTBE blenders, further reducing the ethanol blender's costs. With a relative 10 - 15 cent per gallon difference in price, the Department's initial assessment is that it is unlikely that any distributor will be purchasing MTBE oxygenated gasoline at 2.0 percent from California. This simplistic view of the pricing issue will be complicated by the fact that the U.S. supply of ethanol is not expected to be adequate to cover oxygenated fuels demand nationwide, and MTBE use will be required. Since the market will not allow a vendor selling MTBE to price fuel substantially different from the vendor using ethanol, a common price for fuel will likely be established, probably somewhere between the theoretical ethanol and MTBE prices. This argument does open the economic possibility for some MTBE use in Oregon, although it is expected to be relatively minor.

In summary, the Department continues to support a proposal for a November - February control period because the Department believes February has potential for exceedance of the carbon monoxide ambient air quality standard on still days with heavy traffic. The Department understands the fuel supplier concerns of adding an

additional degree of flexibility. However, the Department has received no information indicating that it would be impractical during February to import non-oxygenated California fuel with subsequent blending in Oregon, neither has the Department heard evidence of cost disadvantages of using Eugene pipeline gasoline during February. Instead, the facts seem to indicate little oxygenated fuel will come from California during the whole control period including the month of February because of the inability to take advantage of 15 cent ethanol Oregon and federal tax reductions. In addition, EPA has informed the Department that to date no other state will be using a control period less than 4 months, since federal statute requires a 4 month minimum control period unless the control period is specifically reduced by the EPA Administrator. On April 10, 1992 Meredith Miller of EPA informed the Department that EPA does not intend to give such a waiver to Oregon.

3) Dispenser Labeling Requirements

In part 80 of title 40 of the Code of Federal Regulations, EPA requires "each gasoline pump stand from which oxygenated gasoline is dispensed at a retail outlet in the control area shall be affixed during the control period with a legible and conspicuous label which contains the following statement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

This label must be affixed to the "upper one-third of the pump, clearly readable to the public."

In addition, Oregon Department of Agriculture Measurement and Standards Division's statute ORS Chapter 646 requires oxygenated gasoline dispensers to be labeled with the type of oxygenate used and the "percentage to the nearest one-half of one percent" of the oxygenate contained in the gasoline.

The Advisory Committee had serious concerns about the rigid dispenser signage requirements of ORS Chapter 646. They believe the requirement to label oxygenate content to the nearest 0.5 percent is not consistent with the oxygen averaging program proposed by the Department which would allow oxygen content anywhere in the range 2.0 - 3.5 percent. Committee members envisioned daily changes in dispenser signage as daily delivery of varying concentrations and types of oxygenated fuels occur.

The Department agreed there was a conflict, and asked the Oregon Attorney General's office to help resolve the issue. Specifically, the Department asked the AG if the Department's oxygenated fuels statute ORS 468A.420 could supersede ORS 646 requirements since the Department's statute is more recent. The response by Shelley McIntyre of the AG's office is shown as Attachment I. In general, Ms. McIntyre indicated more recent

statutes in conflict with older statutes can be found to supersede the older statute. However, she said the statutes do not appear to be in direct conflict since although it may not be practical to follow both statutes, it is possible. Ms. McIntyre originally suggested that the Committee develop a compromise that would reflect the consumer protection interests of ORS 646.915, although in her letter of advice she cautioned that the statute is very specific and may not lend itself to a more liberal interpretations.

Given this direction, the Committee devised a compromise in which the pumps would be labeled with the type of oxygenate used and the maximum concentration of that oxygenate. The Department would allow a series of optional signs one for each EPA approved oxygenate. The three most widely used signs are expected to be for ethanol, MTBE and a mix of ethanol and MTBE. The Committee unanimously agreed to use this compromise. Two members abstained.

Although Ken Simila, representing the Department of Agriculture, and representatives of the Motor Vehicle Manufacturer's Association suggested that this compromise might be consistent with the intent of ORS 646.915, DEQ understands that this is not a formal DOA policy statement. DEQ is not in the position to interpret legislation that is within DOA's jurisdiction. It is possible that DOA will require that distributors continue to comply with rules requiring less specific labelling.

The Committee also disagreed with the EPA's requirement that labels be placed in the upper 1/3rd of the dispenser and voted to have the Department petition EPA to allow signage in the upper 1/2 instead. The Committee believes certain dispenser designs do not have adequate space for upper 1/3rd labeling without covering required price and gallonage information. The Department will ask EPA for this variance although, since the EPA labeling requirements are adopted as regulations rather than as guidance, the Department will need to seek a change in this regulation.

4) Attest Engagements

An attest engagement is a review of nonfinancial records by an outside CPA. The federal oxygenated fuels proposed guidelines mandate attest engagements be submitted to the state by each blender CAR within 120 days after the end of each control period. The Oregon oxygenated fuels Advisory Committee by consensus objected to the use of an outside CPA, and in general believed the attest engagement should be required as a defense only and not be required on a routine annual basis. The Committee agreed to include an outside CPA if the use of the attest engagement was made optional for defense only. The Department agreed with this approach and has determined to deviate from EPA on this issue. If, in the future, enforcement is seen to be ineffective without mandated use of attest engagements, the Department will revisit this issue. The final EPA guidelines are currently being reviewed

by the Office of Management and Budget. It is possible that OMB will soften the attest engagement requirements prior to release of the final EPA oxygenated fuels guidelines. If so, DEQ may be able to come to an agreement with EPA prior to Oregon's rule adoption scheduled for September 1992.

5) Funding

The Department estimates the funding required to administer and do adequate enforcement in the Oxyfuel Program will require an annual budget of about \$220,000. This allotment will cover administration of the program and testing for oxygen content of both blenders and service stations. EPA guidelines stipulate a minimum Department audit rate of 20 percent of the service stations in the control areas. The Department intends also to audit each CAR once a year. The Department estimates approximately 800 stations will be in the control areas.

To supply funding for this program the Department proposes to assess a base fee of \$700 from each of the oxyfuel blenders or CARs and an incremental fee based on an estimate of the number of service stations the CAR supplies. This approach provides for the CAR to pay a fee which represents the Department's effort in administering the program to service stations supplied by the CAR. Because a particular CAR may supply fuel to one station one day and the next day a different CAR may supply the same station, the number of equivalent fully supplied stations will be used as the marker.

The number of stations fully supplied can be determined by dividing the estimated number of gallons of oxygenated gasoline to be sold in the control period, by the estimated average gasoline usage rate of the stations supplied by that CAR. It is important that the funding for the program be tied directly to the work imposed by the CAR. Also, the fee assessment should not be directly tied to the number of gallons blended, to avoid conflict with the Oregon constitutional prohibition against using gasoline taxes for other than road maintenance and construction work. The Attorney General's office believes the flat component of the CAR fee may adequately avoid the constitutional issue. However, the graduated fee based on the number of fully supplied stations may be in constitutional jeopardy. (See Attachment I.) The Department believes the graduated component of the fee is necessary to be equitable to all CARs, and has been unable to develop a graduated fee which avoids tying into (either directly or indirectly) the amount of fuel sold.

The Department proposes to use a permit process provided in ORS 468.065 and ORS 468A.040 with the blenders being treated as indirect emission sources, as parking lots were treated in OAR 340-20-115. The Attorney General's office (Attachment I) indicated although there is no express authority for issuing

permits to the oxyfuel blenders, the statutes can be read to create implied authority.

6) Self Inspection

The Department proposed to the Advisory Committee the possibility of reducing the Department's FTE requirements by reducing the sample gathering efforts of the Department. This would be achieved by allowing the bulk of the sample collection at service stations and blenders to be done by the CARS, with some limited auditing by the Department. EPA stipulated that under such an arrangement they would want the Department to sample at an annual 10 percent rate on top of a 20 percent rate by industry. The committee rejected this concept because the overall sample rate would be 30 percent which they thought was not economically efficient, and preferred to have the Department do all of the sampling at the EPA prescribed 20 percent rate.

7) Public Information

There is concern that oxygenates may have negative effects on the operation of certain vehicles, including the possibility of deteriorating in-line rubbers and plastics and clogging carburetor systems. Some auto mechanics may be quite ready to unfairly place the responsibility for such problems on oxyfuel. Therefore, it is important to educate mechanics, service station personnel and the general public to both precautions in using oxygenated fuels and the advantages of oxygenated fuels in reducing air pollution.

The Department believes the major gasoline suppliers will do a good job of educating their employees about the detriments and advantages of oxygenated fuels. However, education of auto mechanics, the general public and independent service station employees will be needed. The Pacific Auto Trades Association will help coordinate training for auto mechanics. The Northwest Ethanol Fuel Association has agreed to supply funding to sponsor a training organization called Downstream Alternatives to train mechanics and the independent service stations. The Committee suggested the use of public service spots on TV and radio and brochures to be handed out at service stations and through the Department's Vehicle Inspection Testing Centers in Portland and Medford. The Department intends to seek supplemental EPA grant funds to help with the general public education process. The Department has committed to work with Committee member organizations to help coordinate the public information process.

8) Detailed Versus General Oregon Regulations

EPA has informed the Department that a rule package, including the details spelled out in the EPA guidelines published in the July 9, 1991 and February 5, 1992 Federal Registers, must be submitted to EPA as a part of the revisions to the State Implementation Plan.

These details can be written as state regulations so that EPA will deal with regulations only, in the SIP review. Alternately, a state can submit general regulations with accompanying detailed policy to complete the information required by EPA. In this case both the regulation and the policies will become a part of the SIP.

The Department generally strives for some flexibility in its regulations to accommodate periodic changes in industrial operations. Commonly this flexibility is obtained by writing a general rule with specific detailed instructions for affected parties written as a Department policy, which can be more easily changed. Since EPA requires some policy-level detail to be included as a part of the SIP, and since the SIP is very difficult to change, the Department believes it is advantageous to write a detailed regulation with the more subtle details such as the specific layout of forms, reporting procedures, etc., as a policy document.

The Department has attempted to coordinate Oregon's requirements with Washington to simplify implementation for northwest industries. Washington has proposed a general style regulation with details in a policy document. However, since EPA guidelines rigidly specify the details it is expected that Oregon detailed rules will not conflict with Washington. The details in the Oregon policy is the low-level critical area where Washington and Oregon should strive for similar procedures. A Washington-Oregon implementation committee is expected to convene in April to discuss these fine points of the oxygenated fuels program. By apparent convoluted logic it now appears that Oregon's more rigid regulation will provide for a more flexible program than Washington's more general regulations, since EPA believes Washington will be required to make their full regulations and policy document a part of the SIP.

The advisory committee unanimously agreed Oregon should use the proposed detailed regulations.

JC:jc
5/12/92

STATE OF OREGON

ATTACHMENT H

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

DATE: September 25, 1992

TO: Environmental Quality Commission

FROM: Jerry Coffey, Hearings Officer
Ted Wacker, Hearings Officer

SUBJECT: Public Hearings: Portland June 17, 1992
Medford June 22, 1992
Klamath Falls June 23, 1992
Portland September 22, 1992
Medford September 23, 1992
Klamath Falls September 23, 1992

Wintertime Oxygenated Gasoline Program

Schedule and Procedures

The public hearings were held at:

7:00 pm
June 17, 1992
Portland Building
Room A
1120 SW 5th
Portland, Oregon

7:00 pm
June 22, 1992
Jackson City Courthouse Auditorium
10 South Oakdale
Medford, Oregon

1:00 pm
June 23, 1992
Courthouse Annex
Commissioner's Hearing Rm
305 Main Street
Klamath Falls, Oregon

7:00 pm
September 22, 1992
Portland City Hall
Room 321
1220 SW 5th
Portland Oregon

1:00 pm
September 23, 1992
Courthouse Annex
Commissioner's
Hearing Room
305 Main Street
Klamath Falls, Oregon

7:00 pm
September 23, 1992
Jackson County
Courthouse Auditorium
10 South Oakdale
Medford, Oregon

Public notices were published in the Oregonian, the Grants Pass Daily Courier, the Medford Mail Tribune and the Klamath Falls Herald News 32 days prior to both the June and September public hearings. Notice was published in the Secretary of State Bulletin 17 days prior to the hearings. Jerry Coffey was the hearings

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officer for the Portland hearing. Ted Wacker was the hearings officer for the Medford and Klamath Falls hearings.

A total of forty-two people provided testimony during the public hearing process. Verbal testimony was given by nineteen persons. Written testimony was submitted by thirty-one participants. All of the written materials have been photocopied and provided to each member of the Environmental Quality Commission.

Summary of Testimony

DISTRIBUTION OF GASOLINE TO SOUTHERN OREGON

Several people commented that the oxygen concentration of oxygenated gasoline for southern Oregon should be changed from the proposed average concentration of 2.7 percent to the 1.8 - 2.2 percent proposed to be used by California. Although Oregon will allow a minimum of 2.0 percent oxygen, the distributors are concerned that they may arbitrarily receive 1.8 percent fuel and be in violation of Oregon minimum standards. They are also concerned about being able to average to 2.7 percent if the only available fuel from Chico, California is 1.8 - 2.2 percent.

The Department understands that one option for distributors is to purchase gasoline at one location and ethanol at another. The distributors believe will be difficult when the gasoline is over a hundred miles away (Eugene-175mi, Chico-225mi, Portland-275mi), especially if they want to first add ethanol in southern Oregon. They don't know what they can do if Eugene is out of gasoline to mix with this ethanol. Normally, if the Eugene terminal is out of gasoline the distributor will fill with diesel, but with some ethanol in the truck this is not an option. It is rumored that a storage tank of ethanol will be available in Curtin, Oregon (31 miles south of Eugene) for purposes of splash blending.

Some distributors suggested the minimum oxygen content of fuel at southern Oregon service station should be reduced from 2.0 percent to 1.8 percent to coincide with California.

A couple people questioned just who the blender would be, asking if they need to make arrangements to purchase ethanol separate from their gasoline supply or will the oxygenate be blended at the gasoline terminal for them.

Terry Slade with May-Slade Oil Co in Klamath Falls said his supplier in Chico (Exxon) will not allow 2.0 percent California gasoline sold at the Chico terminal to be altered for use in Oregon. Oregon has a requirement for an average of 2.7 percent

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oxygen content with an allowable maximum ethanol blended oxygen content of 3.5 percent. Also, Mr. Slade's customers are almost all in Oregon, however, he has one California client. He is worried he will not be able to supply Oregon oxygenated fuel at 2.7+ oxygen content to this station since California limits oxygen content to a maximum of 2.2 percent. During February, Oregon will still require oxygenated fuel, while California's oxygenated fuel control period ends at the end of January, after which period California will not allow sale of oxygenated fuel.

The following people made comments on this issue: Howard Misner with Grange Coop, Central Point, Oregon; Robert Hays with R. W. Hays Co., Medford, Oregon; Michael Moran with Bi-Mor Stations, Inc. in Medford, Oregon; Oregon Senator Eugene Timms; R.L. Slade with May-Slade Oil Co in Klamath Falls, Oregon; Mike Hawkins with Hawk Oil Company in Medford, Oregon; and Jim Merrilees, a resident of Merrill, Oregon.

CONTROL PERIOD FOR SOUTHERN OREGON

Many of the distributors requested the southern Oregon control period be changed from the proposed November through February to the northern California control period of October through January so California oxygenated fuel would be available during the full southern Oregon control period. The following people made comments on this issue: Howard Misner with Grange Coop, Central Point, Oregon; and Oregon Senator Lenn Hannon.

Dennis Lamb with UNOCAL in Los Angeles, California suggested a three month control period of November through January for southern Oregon. He says other states "will be submitting plans for control periods shorter than what EPA guidelines call for."

Quincy Sugarman with the Oregon State Public Interest Research Group in Portland, Oregon requests the control period remain as proposed for southern Oregon (November through February) "to achieve maximum environmental benefit." She indicated this time period would be the same as Portland and would simplify state regulations.

Scott Reed with Colvin Oil Company in Grants Pass, Oregon said southern Oregon distributors purchase fuel in Chico and Eureka, California and if they can't purchase oxygenated fuel during the month of February they would find it difficult to locate a source of fuel in Oregon because of supply limitations. He urged adoption of a November through January control period.

Dell Isham with the Oregon Highway Users Conference in Portland suggests the Oregon control period be set the same as California to recognize the fact that California has major influence in the

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gasoline market and Oregon's control areas represent only one-half of one percent of the motor fuels market in the U.S.

George Abel, Chief of the Air and Radiation Branch of Region X EPA said EPA "agrees with the DEQ's justification and concurs with the rule as it is currently drafted" with regard to the control period for southern Oregon. He said the Federal Clean Air Act calls for control periods of "not less than 4 months." The CAA does allow for shorter periods if the state can demonstrate that there will be no exceedances outside of the reduced period. EPA shares DEQ's concern that adverse meteorological conditions could result in exceedance of the CO standard. "Therefore, we (EPA) will not support a period of less than four months."

SOUTHERN OREGON CONTROL AREAS

The public was divided on the size of the boundaries for Klamath Falls and Grants Pass. The other two control area boundaries (Portland and Medford) are required by federal EPA guidelines to be at least county-wide. Some wanted the boundaries county-wide as proposed or even larger boundaries including state-wide. Others thought the boundaries should be the Urban Growth Boundaries or the city boundaries.

John Alto with the Petroleum Retailers of Oregon (representing service stations) believes oxygenated fuels should be required in western Oregon with the exception of the coast. He believes price competition from outside the control area would create a "significant negative fiscal impact (disaster) to stations located inside the boundary."

Brian Boe of the Oregon Petroleum Marketers Association (representing distributors) thinks the boundaries should be limited to the city limits in both Grants Pass and Klamath Falls. He says the proposed county-wide boundaries would increase "the enforcement costs of the program, and secondly, it imposes marketers in outlying areas to an unnecessary enforcement liability." Mr. Boe suggested if we were concerned about competitive imbalance created by stations just outside the city limit boundary, "the Department should create boundaries of the city limits plus five miles rather than extending the boundaries all the way county-wide."

Michael Moran with Bi-Mor Stations, Inc. in Medford, Oregon recommends a five mile radius control area for Medford, Grants Pass and Klamath Falls.

Howard Misner, a gasoline distributor with Grange Coop in Central Point, suggested statewide boundaries because of the price disadvantage assumed for oxygenated fuels.

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Steven Crockett with BP Oil in Ferndale, Washington suggested EPA will probably not be willing to allow Oregon to maintain county boundaries for Klamath Falls and Grants Pass control areas if it is found that due to lack of enforcement the oxygen concentrations outside of town are less than required to meet a 2.7 percent average for the control area. Mr. Crockett suggests Oregon use the EPA designated non-attainment boundaries for control areas.

Dennis Lamb with UNOCAL in Los Angeles, California said "UNOCAL views expansion of non-attainment areas to cover full counties as a bad public policy." He says it will increase the cost of compliance and in Grants Pass the carbon monoxide (CO) accumulation problem may have already been resolved by building a new bridge.

Del Fogelquist with Western States Petroleum Association in Seattle, Washington said the boundaries for southern Oregon control areas should be smaller than the full counties. He said it would be expensive and would provide little benefit because of the low volume pumped by outlying stations.

Oregon Senator Lenn Hannon questioned the county boundaries for Grants Pass and Klamath counties and suggested using the smaller non-attainment boundaries.

Dale Andert with Texaco Refining and Marketing Inc in Portland objects to the proposed county boundaries for Grants Pass and Klamath Falls, suggesting smaller boundaries. He says small outlying stations will have difficulty complying because of the low tank fuel turnover rate.

Oregon Senator Eugene Timms thought the control area in Klamath Falls should be limited to a smaller than county boundary because of the financial impact on service stations in rural areas.

Glenn Zirkle with Astro Western Companies in Portland, Oregon suggests smaller than county boundaries for Grants Pass and Klamath Falls saying city limits should be used since they are easily discernable.

Quincy Sugarman with the Oregon State Public Interest Research Group in Portland, Oregon requests the use of county-wide control areas to insure ambient CO reductions in the non-attainment areas.

Del Isham with Oregon Highway Users Conference in Portland, Oregon suggested Oregon control areas should be limited to city boundaries, urban growth boundaries, or air sheds, instead of the proposed county boundaries.

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Scott Reed with Colvin Oil Company in Grants Pass, Oregon recommends the Department reduce the size of the Klamath Falls boundary to the Urban Growth Boundary. He feels "the majority of residents of that area know where the urban growth boundaries are." He urges the Department to drop Grants Pass as a control area all together. He says the air quality problem in Grants Pass has been due to the traffic congestion in the downtown area. All traffic was funneled down two one-way bridges which cross the Rogue River. Now that a third bridge has been built to relieve the congestion, the CO levels in downtown have subsided to where there is no longer a problem. This has been shown by air quality data collected by the Josephine County Environmental Health Department.

Gil Ernst, with Crescent Oil Company in Gilchrist, Oregon thought the Klamath Falls boundary should be the city limits.

George Abel, Chief of the Air and Radiation Branch of Region X EPA concurred with the Department that county boundaries for all four non-attainment areas would be both "convenient and justified" and supports DEQ's proposal for county boundaries.

Cynthia Cox, owner of a service station in Gold Hill, Oregon, thought the control area for Medford should be reduced to the current I/M boundaries which are the Air Quality Maintenance Area boundaries. Ms. Cox submitted a petition with 58 signatures of people in the Gold Hill area who oppose the oxygenated fuels program.

LESS PAPERWORK

Many participants testified the record keeping required by proposed regulations was too complicated. Of particular concern was the requirement for use of an outside CPA to perform annual attest engagements for blenders that average.

Dennis Lamb with UNOCAL in Los Angeles, California suggests the record retention period be changed from five years to two years. Steven Crockett with BP Oil in Ferndale, Washington also suggested two year retention. Del Fogelquist with Western States Petroleum Association suggested a 2 year record retention. He also opposed the use of outside auditors in determination of compliance via attest engagements.

David Williams with Chevron U.S.A. Inc. in San Francisco, California suggests the Department's proposed requirement for recording the "type of oxygenate, purity and percentage by volume if available" is extremely difficult. He suggests instead that purity not be required and the exact percentage of each oxygenate

not be reported. Instead, only the information that the gasoline contains 2.7 percent oxygen and the type of oxygenate should be required.

Dale Andert with Texaco Refining and Marketing Inc. in Portland agrees with the Department's treatment of attest engagement, in which attest engagement is to be used at the option of industry for defense purposes. However, he is concerned that "the DEQ, at the suggestion of the EPA and with no public input, will change this section to require attest engagements."

Glenn Zirkle with Astro Western Companies in Portland "strongly urges the DEQ to hold to the agreed upon position that provides the regulated industry to utilize the "attest engagement" provision at it's own discretion."

George Abel, Chief of the Air and Radiation Branch of Region X EPA takes a strong position against Oregon's proposed non-mandatory treatment of attest engagements. He said "the Agency strongly advises the inclusion of the attest engagement provision in Oregon's proposed rules as originally intended by the Agency." He says "attest engagements are required of every registered credit averaging party and are to be submitted to the state following each control period."

LIMIT BLENDING CAPABILITIES

Howard Misner of the Grange Coop in Central Point said blending of gasoline should only be done at the time of gasoline loading and only at the refineries of pipeline terminals. It should not be left up to the tanker driver to drive to a second location to pick-up ethanol and calculate the required quantities. Tanker drivers are not trained to do this.

Bill Terpening of Bill Terpening Co., a distributor in Medford, Oregon says his one tanker truck has six compartments each with different capacities ranging from 430 to 2760 gallons. He asks how his driver can be capable of accurately assigning ethanol amounts to each compartment using the splash blend technique.

ABOLISH CREDIT SELLING

Howard Misner of the Grange Coop in Central Point said credit trading should not be allowed. It won't help clean the air and eliminating credit trading will eliminate a lot of paper work.

OXYGENATED FUELS COSTS NOT CONSIDERED BY THE DEPARTMENT

Howard Misner of the Grange Coop in Central Point said underground storage tanks are equipped with monitoring probes that will not

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function properly with oxygenated gasoline. A new probe must be installed at a cost of over \$1,100 per tank. Robert Hays of R. W. Hays Co. indicates Southern Pacific Pipeline stated "it would cost one million dollars to install an ethanol injection system at the loading rack. Splash blend is cheapest blend, but it cannot be done in Chico or other California racks that we pull from." California requires Stage I vapor recovery when filling tanker trucks.

Bill Terpening of Bill Terpening Co., in Medford, Oregon questioned if splash blending, as is now done by Western Stations, is legal in Oregon. He has only one tanker truck and must make a certain number of loads per week or he loses money. He is worried the oxygenated fuels situation may limit availability of fuels and cost him some trips. He is also worried that service stations will have costs "to clean tanks for water and sediment."

Dale Andert with Texaco Refining and Marketing Inc. in Portland, Oregon said the Department's economic statement was incomplete. It should include the cost of industry providing additional tanks, injection equipment and record keeping. Texaco will spend in excess of 2 million dollars the first year to install the necessary equipment of the oxygenated fuels program. Texaco's annual testing costs will exceed \$25,000 and their annual permit fees will be in excess of \$35,000. In addition, every station will have a tank cleaning charge each oxygenate season of about \$300 per site or about \$600 per 55 gallons if the sludge tests higher than five parts per billion for benzene. "This means a small business could have an annual cost of about \$1,500 per site to clean the tanks."

FEES

Brian Boe, representing the Oregon Petroleum Marketers Association in Portland, Oregon, indicated there was no fiscal impact attached to the oxygenated fuel program when HB 2175 was discussed in the Oregon legislature. (HB 2175 contains the Oregon oxygenated fuels statute.) Mr. Boe believes the gasoline industry should have been given a chance to comment before the legislature on the fee issue. Second, Mr. Boe believes it is unfair to assess the blenders the entire fee. Instead, he suggests the blender continue to be assessed a flat \$700 fee with control area service stations paying an annual \$220 each.

Michael Moran with Bi-Mor Stations, Inc. in Medford, Oregon suggested the blender registration fee be reduced to a flat \$500 per year plus \$100 per service station served.

Dennis Lamb with UNOCAL in Los Angeles, California expressed concern that the proposed registration fee assessment method was

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in conflict with Article IX, Section 3a of the Oregon Constitution that does not allow assessments based on the volume of fuel supplied. Mr. Lamb suggests Oregon "drop the blender fee, and use vehicle emission fees as the appropriate funding mechanism."

Del Fogelquist with Western States Petroleum Association in Seattle, Washington objected to the proposed fee based on "effectively fully supplied service stations" as unworkable and also in conflict with Article IX, Section 3a of the Oregon constitution. He suggested a fee scheme based "directly on the number of retail outlets located in the control areas. For example, DEQ could require completion of a simple annual registration form for each retail outlet located in the control areas. This registration form would specify which CAR supplied the retail outlet on a certain date, and each CAR could then be assessed accordingly. Alternately, DEQ should coincide an additional tax or registration fee from vehicles, since they are the emission source."

David Williams with Chevron USA Inc. in San Francisco, California objects to the proposed fee structure based on effectively fully supplied service stations as "lacking precision and unworkable." He suggested DEQ abandon this concept and "devise another scheme to recover oxygenated gasoline program administrative costs." He also believes the current assessment would be in conflict with Article IX, Section 3a of Oregon's constitution.

Al Elkins with Oregon Gasoline Dealers Association in Beaverton, Oregon does not want additional fees placed directly on service stations, which is one of the funding options discussed but not proposed at this time. He said service stations "are already paying heavy fees with a \$25 registration fee on each underground storage tank, 1.1 cent per gallon assessment on gasoline for the underground storage tank program, and a pump license fee for each individual pump." In addition, DEQ is intending to increase the tank registration fee from \$25 to \$35 - \$55 per tank.

Ann Farner with Tosco Refining Company in Concord, California suggested the incremental \$220 per station fee be assessed not of the blender but of the individual service stations. She says the incremental fee would create inequities of certain blenders. She says Tosco is several steps removed from retail supply and will have no records on which stations are supplied.

Glenn Zirkle with Astro Western Companies in Portland, Oregon asks the Department to fund the oxygenated fuels program through a fee on the automobile directly instead of assessing blenders. He says it is a much broader and fairer source of funding since it places the burden on the direct pollution emitter instead of a source which is "not even an indirect source." Alternately he suggests

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assessing the \$220 service station fee directly of the service station rather than the blender.

Scott Redd with Colvin Oil Company in Grants Pass, Oregon suggests assessing a fee on vehicles directly and not on blenders, since vehicles are the source of the pollution.

Gil Ernst with the Crescent Oil Co. in Gilchrist, Oregon says the \$220 station fee would cost him \$1,100 per year total for his low volume stations and thought this was exorbitant. The five stations he services range between 10,000 and 30,000 gallons throughput per month. He will not blend his own fuel and only gets fuel from Eugene. He is a Texaco supplier.

COST TO CONSUMERS

Dennis Lamb with UNOCAL in Los Angeles, California is "not convinced that consumers will experience a reduction in gasoline price if ethanol is used. Instead, any temporary pricing advantages ethanol has will be eroded as ethanol producers strive to recover the blender's subsidies. MTBE is the competitive benchmark, and will dictate ethanol pricing." Mr. Lamb contends MTBE oxygenated gasoline will sell for four to six cents per gallon more than non-oxygenated fuel. In addition, he stated the consumer will "experience a loss of mileage per gallon of oxygenated gasoline."

Scott Redd with Colvin Oil Company in Grants Pass, Oregon thought the Department's cost analysis was inaccurate because of the use of outdated prices for ethanol. The Department used \$1.31 per gallon, an October, 1991 California figure. The price as of June 3, 1992 was \$1.60 per gallon. He feels this difference "materially affects the pricing discussion in the Department's public hearing information packet. He also said the Department did not account for the limit that ethanol tax credits not exceed 1% of the total gasoline tax collected. "As of April 30, 1992 the total ethanol credits taken had met this limit." He believes this credit will be "limited, reduced, or eliminated entirely in the near future." He believes oxygenated gasoline will sell at a retail price 5-10% higher than non-oxygenated gasoline by 1993.

David Goss, Executive Vice President of Klamath Falls Chamber of Commerce, was concerned about potentially higher cost of oxygenated gasoline. He thought some Klamath Falls residents would travel outside the control area to purchase non-oxygenated fuel and was also concerned about residents outside the control area driving into and polluting Klamath Falls.

Howard Misner with Grange Coop, Central Point, Oregon said service stations will have to purchase a station tank fluid level detector

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specially designed for ethanol at a cost of \$2,000 per tank. In addition, this detector will have to be exchanged for the original gasoline version at the end of the oxygenated fuels period.

Jerry Lausmann, Mayor of the city of Medford, submitted written testimony that Oregon's 5 cent per gallon gasoline tax reduction for ethanol oxygenated fuel exacerbates the lack of infrastructure by reducing road building and maintenance funds. Mayor Lausmann believes that oxygenated gasoline is a very short-term solution to the CO problem. He says the funds for this program should be invested instead in transportation infrastructure, "which has a real chance of reducing pollution".

OXYGENATED FUELS MAY DAMAGE VEHICLES AND SMALL ENGINE MACHINES

Bill Terpening of Bill Terpening Co. in Medford, Oregon says there is a possibility of "sludge damaging the pre-1984 vehicles.... Jackson and Josephine counties have a high percentage of these older vehicles." His storage tanks are 60 years old. "If oxygenated fuel removes sludge from these tanks ... could cause devastating lawsuits and make future insurance premiums prohibitive." He says "Major oil will not store the blended product in their own tanks at the terminals because of the dissolving characteristics of oxygenated fuel. They will only blend it as it goes into our trucks."

William Greene, a resident of Medford, Oregon says his vehicle owner's manual limits the content of oxygenate in gasoline for his vehicle to blends "containing no more than 10% ethanol by volume and methanol blends containing up to 5% methanol by volume." He thought EPA was proposing a 15% ethanol by volume requirement and was concerned that his vehicle would be harmed.

Joe Matthews, a resident of Klamath Falls, owns a fleet of classic automobiles. He is concerned that ethanol will swell and deteriorate neoprene gaskets in his vehicles. Also, he said ethanol causes excess water to collect in the fuel and adds to corrosion of fuel tanks.

L. A. Macomber, a resident of Klamath Falls, is concerned about the affect of ethanol on his older vehicles.

Harold Harkey, a member of the Klamath Falls Senior Citizen's Board, said some farm equipment manufacturer do not allow the use of ethanol fuel. He does not know what fuel he can use.

Jim Young, a resident of Jacksonville, Oregon, was concerned that ethanol should not be used for some farm equipment. He also felt that ethanol burns hotter than gasoline and can cause excessive

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engine wear in autos. He believes also that older vehicles will just not run on ethanol.

Howard Misner, with Grange Coop, Central Point, Oregon thought the DEQ, knowing ethanol has a bad reputation, named the new program the "oxygenated fuels program" to hide the fact that ethanol will be used.

Dan Worthington, owner of a service station in Wimer, Oregon, pumps just 3,000 - 4,000 gallons per month. He said 50 percent of the fuel sold at his station is regular leaded which is a fuel used for 1974 and older vehicles. He is worried than ethanol will destroy these old vehicles.

Mike Rainey, owner of a service station in Sams Valley, Oregon said he pumps 40 percent leaded regular. He said Sams Valley is a haven for vehicles that can't pass the Rogue Valley vehicle I/M test, and he thinks these older vehicles will have problems running on ethanol.

LOSS OF SERVICE STATIONS SERVING RURAL COMMUNITIES

Bill Terpening of Bill Terpening Co. in Medford, Oregon says if the oxygenated fuels requirement causes him to sell his business, then he believes the new owner would "debrand my small stations and use this gallonage in order to rebrand their stations. Their stations lost their brands with Mobil, Shell, Union, etc. which moved out of the area.... these new actions seem to be another nail in the coffin affecting our ability to serve small, remote, low gallonage stations."

BLENDING TOLERANCES

Dennis Lamb with UNOCAL in Los Angeles, California suggests Oregon should allow MTBE to be blended for Oregon up to 2.9 percent oxygen to allow for evaporative losses and beginning of oxygenated fuel control period aberrations.

PUMP LABELING

Dennis Lamb with UNOCAL in Los Angeles, California agrees with EPA that the pump label size should be changed to a 20 point size lettering and be placed on the upper half of the dispenser.

Del Fogelquist with Western States Petroleum Association says we should change subparagraph (b) of Oregon's proposed dispenser labeling regulations to indicate a 20-point type rather than the existing 36-point type since EPA has informally indicated that labeling guidelines will be revised to allow this.

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David Williams with Chevron U.S.A. Inc. in San Francisco, California believes the Department should require only 20-point type rather than the proposed 36-point type. He also objected to the pump label requirement that the specific oxygenate be identified in OAR 3140-22-640. He said "one or more ethers (TAME and ETBE) not included in the "are allowed" list is very likely to be used as an oxygenate in the future."

James White with ARCO Products Company in Los Angeles, California has petitioned EPA to allow placement of a sign on each island with the Clean Air Act Amendments' advisory rather than requiring a sign on each dispenser. He suggests DEQ "word their requirement for oxygenate advisory label to more closely parallel the CAAA advisory, but in a manner that would allow compliance with the USEPA regulations should they ultimately require the labeling of each dispenser." He recommends the proposed DEQ regulation requiring oxygenate content information be eliminated because it is in conflict with Oregon Department of Agriculture statute ORS 646.915. It would also prohibit the expected practice of blending ethanol with gasoline already containing MTBE.

George Abel, Chief of the Air and Radiation Branch of Region X EPA says the final federal labeling regulation will allow placement of the label on the upper one half of the dispenser, consistent with Oregon's proposal. Also, the lettering "should be 20 point in size, not 36 as originally proposed." Oregon should make this change.

DEFENSES

David Williams with Chevron U.S.A. Inc. does not believe refineries "...operating under the corporate, trade or brand name of a refiner..." should have special additional defense burdens as stipulated in DEQ's proposed regulations OAR 340-22-600.

DON'T DIVIDE VANCOUVER WASHINGTON FROM THE PORTLAND CONTROL AREA

Ann Farner with Tosco Refining Company in Concord, California says that "for ease of creating and trading oxygen credits, Portland and Vancouver be joined as a single control area." It would recognize that Portland and Vancouver are in the same air basin.

Glenn Zirkle with Astro Western Companies in Portland, Oregon wants to be able to trade credits between Vancouver and Portland and is concerned that the proposed Oregon regulations do not allow this.

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PENALTIES FOR VIOLATION

Glenn Zirkle with Astro Western Companies in Portland, Oregon is concerned that the proposed regulations do not contain a definition of penalties for regulation violation as to their amount and relation to each specific prohibited activity.

OREGON TAX CREDIT FOR OXYGENATED FUELS

Glenn Zirkle with Astro Western Companies in Portland, Oregon indicates that "a 1% cap on the total gas tax revenue will allow the tax credit to be suspended. This 1% ceiling is currently being met by marketers." He says if the five cent tax credit is suspended "much higher priced gasoline" will result.

DIESEL TRUCKS ARE THE REAL PROBLEM

Leo Denn, a resident of Klamath Falls, suggests diesel trucks are the real pollution problem and the Department should have a vehicle emissions test in Klamath falls to control these emissions, instead of an oxygenated fuels program.

NO NEED FOR OXYGENATED FUEL PROGRAM IN KLAMATH FALLS

Ed Clough with Clough Oil Company said because of the CO reductions resulting from the Klamath Falls wood stove program he did not think there was need for an oxygenated gasoline program.

Thomas Spender, the Health Services Administrator for the Klamath County Health Department said the Klamath Falls wood stove program removed 1.7 million tons of CO from the city. He said Klamath Falls is not expected to be in exceedance of CO ambient standards again. Therefore, oxygenated fuels should not be required.



BP OIL

Ferndale Refinery

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June 23, 1992

Jerry Coffey
State of Oregon
Department of Environmental Quality
Air Quality Division
1301 S.W. Morrison St.
Portland, OR 97214

Oregon State DEQ - Oxygenated
Gasoline Program

Dear Jerry,

The following (Attachment I) is a copy of my oral comments given at last weeks public hearing on oxygenated gasoline at Portland.

In addition to the oral comments, I would like to add a comment about the possible impact with the EPA.

As identified in my oral comments, the State intends to expand the Control areas into attainment areas, specifically the counties that contain Grants Pass and Klamath Falls. These expanded areas were not designated non-attainment by the EPA. They will probably not be willing to allow the State to then promote a oxygenated program with averaging and credits when the specific EPA designated non-attainment may not actually receive the necessary oxygen levels that would meet the requirements of the CAAA.

In order to meet the EPA CAAA guidelines (not final yet) would require an attest engagement which documents that at least 2.7 wt% oxygen was delivered to the EPA non-attainment areas. Areas outside of the EPA non-attainment areas will not be monitored for compliance by the EPA. The effort to maintain a program (for EPA non-attainment areas) within a Oregon's non-attainment areas would not justify the costs. Therefore, I recommend that only the EPA defined non-attainment areas be defined as the State Control Areas for monitoring, accounting and control.

Jerry please give me a call with any questions that you might have. You can call me at (206) 384-8439.

Steven G. Crockett
BP Oil - Ferndale Refinery

sgc/ORDEQ3
attachment

cc: Jim Burgoon - Cleveland
Paul Oves
John Shuhler

ATTACHMENT I

Oral testimony given for the Oregon State DEQ - Oxygenated Gasoline Program.

My name is Steven Crockett. I work for BP Oil, at the Ferndale Washington Refinery.

It is a pleasure to be here. BP Applauds the efforts of the Oregon Department of Environmental Quality to participate with the advisory committee to develop proposed rules to meet the requirements of the 1990 Clean Air Act Amendment in the State of Oregon. BP has been involved and will continue to participate to ensure compliance and the hopeful elimination of the EPA nonattainment status in the counties so designated.

BP recognizes the benefits of an oxygenated gasoline to reduce Carbon Monoxide within the State. However, CO is produced from many different sources and oxygenate gasoline should be considered a short term solution. This is due to two reasons: First, the turnover in the automobile population will accomplish about all of the reduction that is predicted by oxygenated gasoline, and second, the majority of the benefits of the oxygenated program come from pre 1987 vehicles that do not have adaptive learning control systems. This means that in the future whether the Counties come into attainment or not, the benefit from the oxygenated gasoline will be negligible and cannot justify to the public the cost of the program and should at that time be discontinued. We realize that that date is not presently definable but will require future study and analysis by the Department to provide the best program for the residents of the State of Oregon. We support the State's proposal this continued analysis be part of the SIP.

Finally, we do not support or agree with any proposed rule that would force oxygenated controls into EPA designated attainment areas. Specifically, DEQ has recommended that the entire counties of Josephine and Jackson be mandated oxygenated gasoline. This program's cost to the consumer cannot be justified either in cost or air quality benefits to the residents. We recommend that the State's rules only be for the EPA designated control areas within Grants Pass and Klamath Falls and not the entire counties.

I thank you for your time and recommend that you consider these proposals as the rules are finalized. I will submit a formal written copy within the suggested time frame. Thank you.



BP OIL

Ferndale Refinery

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June 26, 1992

Jerry Coffey
State of Oregon
Department of Environmental Quality
Air Quality Division
1301 S.W. Morrison St.
Portland, OR 97214

Oregon State DEQ - Oxygenated
Gasoline Program

Dear Jerry,

The following are additionally comments that I wish to make concerning the oxygenated gasoline rules.

The following comments relate to the information packet that was distributed before the public hearings and the comments are based upon that document:

Public Hearing Information Packet

page 2 paragraph 2, 10th line, replace dominately with predominantly

page 4, paragraph 3, 4th line; delete both as it is not necessary and reads awkwardly.

Attachment A

page 7 Table A; where is MTBE, I assume that where you say MTBA you really mean MTBE (an ether not an alcohol). This comment applies to ETBA (ETBE?) as well.

page 12, item 1d, 2nd line; insert the word be between to retained.

page 13, item 1, 2nd line; this should be two years, not five years for information retention.


page 14, item F, 2nd line; change was to were.

page 16, item 1, 2nd line; change manufacturer to manufacture.

Additionally, I have another comment. I don't see any reference to the penalties for noncompliance to the program. I

believe that they should be identified and indicated in the rules.
Jerry please give me a call with any questions that you might
have. You can call me at (206) 384-8439.

Respectfully,



Steven G. Crockett
BP Oil - Ferndale Refinery

sgc/ORDEQ4

cc: Jim Burgoon - Cleveland
Del Fogelquist - WSPA
Gary Goodman
Frank Piotrowski - Cleveland
Pat Presley - Rancho Cardova
John Shuhler



Western States Petroleum Association

Del J. Fogelquist
Northwest Regional Manager

June 29, 1992

Mr. Ron Householder
Oregon Department of Environmental Quality
811 S. W. 6th Avenue
Portland, Oregon 97204

Dear Mr. Householder:

The Western States Petroleum Association (WSPA) is a trade association whose members conduct much of the producing, refining, transporting and marketing of petroleum and petroleum products in the Western United States. Below are some comments for the Oxygenated Gasoline Program as included with the Public Hearing Information Packet dated May 15, 1992.

Several of our member companies had representatives serving on your Oxygenated Fuels Advisory Committee and have provided expertise to the process. In addition, we are attaching WSPA's formal position on State Wintertime Oxygenated Gasoline Programs. We shall appreciate your consideration of the points outlined in this statement.

Size of Control Areas

The staff recommendation expanded both areas to Grants Pass and Klamath Falls and the entire county for both areas. We believe that this is bad public policy, and as such, always has its eventual costs just as an expansion of the control periods increases costs of compliance, expansion of control areas will subject some number of additional consumers and service station operators to additional compliance efforts and costs. It will also increase enforcement costs for the state. In California, where environmental regulations are as aggressive as any in the nation, regulators are required to demonstrate cost effectiveness for their recommendations and any alternatives.

It will require small business owners to comply with a law that will provide little benefit. Due to the low volume of gasoline sold at these outlying stations they will have to start adding oxygenate much earlier than a large volume station and will consequently have oxygenated fuel much longer than the program requires. It is not fair to impose the additional liability, the tank cleaning costs, and the record keeping requirements on them simply to provide an easily discernable control boundary.

Mr. Ron Householder
June 25, 1992
Page Two

Dispenser Labeling

Subparagraph (b) proposes a "second" label which exceeds requirements proposed in Federal guidelines on the dispenser. EPA has recently informally indicated that labeling guidelines will be revised to allow 20-point type and more placement flexibility, since 36-point type and rigid placement requirements are not compatible with certain new dispensers. The DEQ may wish to discuss labeling requirements with EPA's Ms. Mary T. Smith, Director, Field Operations and Support Division, Offices and Mobile Sources, in Washington, D.C. Her telephone number is (202) 260-2633.

CAR and Blender CAR Fees

For each CAR and Blender CAR, DEQ proposes a base fee plus an "incremental fee" for each service station effectively fully supplied in a control area during a control period. Although we have no objection in principle to the proposed fee schedule, we believe that the definition of "effectively fully supplied service station" given at 340-22-450 (13) makes the current fee proposal unworkable. Given the restrictions apparently imposed by Article IX, Section 3a of Oregon's constitution, DEQ should probably devise a fee scheme based directly on the number of retail outlets located in the control areas. For example, DEQ could require completion of a simple annual registration form for each retail outlet located in the control areas. This registration form would specify which CAR supplied the retail outlet on a certain date, and each CAR could then be assessed accordingly. Alternately, DEQ should consider an additional tax or registration fee from vehicles, since they are the emission source, to fund the compliance and monitoring program.

Definitions

Definition (13), "Effectively fully supplied service stations", lacks precision and is essentially unworkable in its present form. We recognize that this definition is critical to the CAR and Blender CAR fee structure proposed at 340-22-540. From Attachment I to the information packet provided by the Department of Environment Quality (DEQ), we also understand DEQ's interest in avoiding any fee structure which has the appearance of a tax levied on the use, sale, distribution, etc., of motor vehicle fuel. Some specific comments on Definition (13) are:

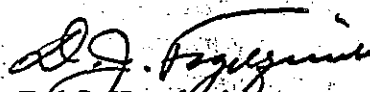
1. The words "service station" should be replaced with "retail outlet" which are defined in Definition (26). The words "dispenser (or service stations)" in the second sentence should also be replaced with "retail outlet".

Mr. Ron Householder
June 25, 1992
Page Three

2. The use of the word "estimated" in the second sentence invites misunderstanding and, possible fee evasion. Who is to "estimate" these gasoline volumes, and on what basis? The only practical definition would be based on gasoline volumes actually supplied during the most recent prior period which corresponds to the current control period or estimated base upon the 1991/92 winter time volumes.
3. Some retail outlets may be supplied by more than one CAR during a control period. The proposed definition does not address this complication.

WSPA recommends that DEQ delete Definition (13) from the proposed regulations and devise another scheme to recover oxygenated gasoline program administrative costs.

Sincerely,


Del J. Fogelquist
Northwest Regional Manager

DJF/vjc

Attachment

c: Northwest Operations Committee
Oregon State Petroleum Resource Group
Steve Crockett
Dale Andert
Denny Lamb

92457

WSPA POSITION ON STATE WINTERTIME OXYGENATED GASOLINE PROGRAMS

The Western States Petroleum Association supports the use of oxygenates in gasoline to reduce carbon monoxide emissions from motor vehicles during those periods that are prone to exceedences of the CO NAAQS. WSPA believes this method of CO control can be cost-effective. WSPA also supports uniformity of control periods for different control areas served by the same logistical system. WSPA supports simplicity and uniformity in enforcement.

WSPA opposes any state action that violates the broadly-supported "Reg-Neg" agreement on which the EPA guidelines are based.

WSPA also opposes supplying oxygenated gasoline in attainment areas or during periods not prone to CO exceedences for the following reasons:

1. Oxygenate use should be minimized to relieve pressure on an already tight supply.
2. Based on the market prices of oxygenates and the fact that oxygenates contain less energy than gasoline, fuel costs could significantly increase with no significant benefit in terms of achieving or maintaining attainment.
3. Oxygenate addition can increase emissions of nitrogen oxides (NO_x). If RVP increases accompany oxygenate addition, emissions of volatile organic compounds (VOC) also increase. Both NO_x and VOC increase ozone and PM₁₀ formation. One possible consequence of this is exceedence of other National Ambient Air Quality Standards.

Specifics follow:

Compliance Practices

WSPA Supports:

1. The use of ASTM specific gravities and oxygen contents in calculating oxygen content.
2. Use of ASTM D4815-92 (still in development) test method (D4815-89 in interim period) for oxygenate content determination.
3. Use of meter readings and records for demonstration of compliance.

4. Allowance of .2 wt % blending tolerance for all oxygenates limited in quantity by EPA's "substantially similar" rule where a state wishes to enforce this rule or any other limit on maximum oxygenate content. This allowance should be applicable at all points in the distribution system.
5. Use of ASTM test reproducibility values for an enforcement tolerance.
6. Averaging of oxygen content (including terminal based enforcement).
7. Two year record-keeping requirement.
8. Reg-Neg variance provisions.
9. Support EPA guidance on 2.0 wt % minimum retail enforcement where applicable.
10. Credits trading where records-keeping requirements are reasonable and where enforceability is assured.
11. "Reg-Neg" labeling of the fuel dispensing system with the language contained in the EPA oxygenated gasoline guidelines.

WSPA Opposes:

1. Documentation to be kept through the statute of limitations period should that period extend beyond two years.
2. Having to meet the oxygen specification prior to the beginning of the control period at any point in the distribution system.
3. Averaging periods of two months or any other period in violation of the "Reg Neg" agreement.
4. The requirement that outside auditors be used in determination of compliance (attest engagements).
5. Exclusive use of the EPA oxygenate test method (still under development).

Control Periods

WSPA Supports:

1. Use of most recent exceedence data to update control periods--which may be different than current EPA proposals.
2. Maintaining alignment among areas using the same supply system when possible.
3. Reduction of oxygenate quantities and control periods where ozone or PM₁₀ NAAQS overlap or where NAAQS is threatened with exceedence.

WSPA Opposes:

1. Control periods outside of months prone to CO exceedences.

Date: 4/23/92

COLVIN OIL COMPANY
2520 FOOTHILL BLVD
GRANTS PASS, OR 97526

JUNE 27, 1992

DEPT. OF ENVIRONMENTAL QUALITY
1301 SE MORRISON
PORTLAND, OR 97214
ATTN: JERRY COFFER

Dear Mr. Coffe.

Colvin Oil Company has been a gasoline marketer in Southern Oregon and Northern California since 1960, and we are currently a branded jobber for Arco, BP, Chevron, and Texaco, as well as an unbranded purchaser of product from Tosco, Ultramar, and Pacific Refining. We feel that our longevity and success in the industry should give some weight to our comments on the following SERIOUS problems with the proposed oxygenated gasoline program.

I. PROPOSED BOUNDARIES FOR SOUTHERN OREGON

We are a marketer in all areas of Southern Oregon affected in the proposed amendments. We are aware of the air quality problems in all areas, and have no problem with county boundaries being used in Jackson county. However, Klamath county is too large an area, and includes too many small towns within its boundaries, to be an appropriate control area. There is NO justification for including the entire county to address an air quality problem that exists in a relatively small (compared to the size of the country boundary) area. We feel that the majority of residents of that area know where the urban growth boundaries are, and that the oxygenated gasoline limits should coincide with the urban growth boundaries of Klamath Falls (as suggested by your Advisory Committee).

We STRONGLY urge you to drop Josephine County or Grants Pass as a control area entirely. The air quality problem in Grants Pass has been due to the traffic congestion in the downtown area. All traffic was funneled down two one-way bridges which cross the Rogue River. This WAS a problem for many years, and a portion of the formal justification used by the Oregon Dept. of Transportation for funding a third bridge across the river was the inevitable reduction of carbon monoxide in the Grants Pass downtown area. This theory was correct, as can be shown from air quality data collected by the Josephine County Environmental Health Department. We realize that the proposed rules are

based on 1988 and 1989 data, but this air quality problem has already been addressed, and solved, by the opening of a third bridge in October, 1991. The measurement of air quality in Grants Pass during the required months (Oct 1991 - Mar 1992) indicated one (1) yellow day and no red days. With the area population using the third bridge even more frequently, we believe the carbon monoxide problem has been solved. We urge you to acquire a waiver to EXCLUDE Grants Pass, or Josephine County, from any control area classification. Otherwise you are just throwing an agency mandated solution at a currently non-existent problem with no consideration given to what has already been accomplished through other methods.

II. DATES OF COMPLIANCE

As you were informed at your public meeting in Medford, Oregon on June 22nd, numerous marketers in Southern Oregon purchase fuel in Chico, CA and Eureka, CA. While it is true that some marketers buy product at Chico only because of the price, others have no choice in the matter due to supplier contracts. The only method to INSURE supply for service stations is to negotiate contracts with an appropriate supplier at a convenient supply terminal. Not all suppliers are willing to change contract volumes to another terminal because they already have problems insuring available product to the existing purchasers at a location. Some marketers in Southern Oregon currently purchase virtually all their product in California with little hope of getting their contracts changed to the Eugene, OR terminal or negotiating a contract with a new supplier prior to the implementation of these proposed amendments.

We therefore urge you to adopt a compliance period of Nov - Jan for the Southern Oregon area AS ORIGINALLY PROPOSED BY THE FEDERAL EPA. We do note that the proposed time period for Washington coincides with that of Oregon's proposed time period, but we see no logical reason why with two such separate geographical regions as Northern and Southern Oregon, that two separate time periods for the implementation of oxygenated fuels could not be used.

Furthermore, we find it absolutely unconscionable that an Oregon PUBLIC employee could have the audacity to request an amendment to the federal Environmental Protection Agency compliance dates for Southern Oregon (letter dated March 5, 1992, signed by Steve Greenwood, Administrator of Air Quality Division for the Oregon Dept. of Environmental Quality), without requesting any kind of input from the marketers affected by this request! This is a classic example of the indifferent attitude maintained by the PUBLIC employees of the Oregon Department of Environmental Quality, and shows a callous disregard for those effected by this action.

III. ECONOMIC CONSIDERATIONS

We feel that any consideration given to how the proposed amendments will affect the ultimate price of gasoline at a service station has been minimal, probably due to the obvious lack of understanding of our industry. Assuming that an adequate supply of ethanol will be available (which we believe is conjecture of the highest order) the price WILL go up from current levels. That is a basic fact of supply and demand, as is the availability of a product in high demand. The Fiscal and Economic Impact Statement you prepared refers to the estimated ethanol price of \$1.32 per gallon. The most recent price we were quoted on June 3, 1992 was \$1.60 per gallon. This difference materially affects the pricing discussion which follows on the statement. You have also seemingly accepted undated California Air Resources Board prices and accepted an ESTIMATE from ONE industry source which is not currently marketing oxygenated fuel. There seems to be no attempt to actually calculate a comparison of prices of oxygenated fuel vs gasoline using current price information as of a specific date. Your calculations also reflect both federal and state credits CURRENTLY available to compute price differentials. The Oregon Motor Vehicles Division is required to notify the legislature if the total yearly ethanol tax credits given exceed 1% of the total gasoline tax collected. As of April 30, 1992 the total ethanol credits taken had met this limit, and it is obvious that this limit will be met much sooner in the future with the oxygenated fuel requirements in your proposed amendments. Given the current rhetoric about budgetary problems coming from Salem, we believe that this credit will be limited, reduced, or eliminated entirely in the near future. Since the use of oxygenated fuel will be REQUIRED in areas of the state soon, we believe the "carrot" provided by the legislature to encourage the use of oxygenated fuels on a voluntary basis will be eliminated. The elimination of this credit alone will add \$.05 per gallon to the price differential.

Due to the above facts, we foresee oxygenated gasoline selling at a retail price 5% - 10% higher than non-oxygenated gasoline by 1993, and we believe that the ultimate consumer needs to be aware of this fact.

IV. OXYFUELS PROGRAM FUNDING

After spending much time reading and re-reading the May 6, 1992 letter from Shelley K. McIntyre, Assistant Attorney General with the Oregon Department of Justice to Jerry Coffey of the Oregon Department of Environmental Quality concerning funding methods, we had to laugh. This whole section is obviously a legal exercise - not to assess a fee based on what causes the carbon monoxide problem leading to oxygenated fuel requirements (motor vehicles), but to justify the imposition of a fee upon whomever you

desire. As stated on page 6 of Ms McIntyre's letter, the justification for this could even include amending Oregon Administrative Rules to suit YOUR needs. All this legal maneuvering still does not negate the FACT that the problem causing nonattainment of carbon monoxide air quality standards in all these affected areas of the state is due to MOTOR VEHICLES - not gasoline marketers. Any fee associated with this program should be levied on the source - MOTOR VEHICLES. Rather than consider amending existing OAR's we urge you to use your existing authority under ORS 468A.040(1) to require permits for AIR CONTAMINATION SOURCES i.e., motor vehicles. At least under this funding mechanism the Oregon residents in the nonattainment areas can see a portion of the costs of this program.

In closing, we would like to make two suggestions for any future (and we believe there will be many) proposals affecting our industry:

- 1) You make the rule changes - you pay for the rule changes. Not by levying fees on us, but by absorbing the costs in your own budget.

- 2) When advisory committees are formed, or public hearings are held, get all input from all sources before the draft rules are written. There is a wealth of information in the minds of medium and small sized marketers because they have to "wear all hats" in the day-to-day operations of their business. And keep in mind that these meetings and hearings are part of your job, but for a small gasoline marketer they are an added duty to an already overburdened day.

Thank You

Bill F. Redd, Controller
Colvin Oil Company



BI—MOR STATIONS, INC.
P.O. Box 1220 1890 S. Pacific Highway
Medford, Oregon 97501 (503) 772-2053

June 25, 1992

JERRY COFFER
Vehicle Inspection Program
1301 S. E. Morrison
Portland, OR 97214

Dear Jerry:

I was extremely discouraged when I left the Jackson County Court-house auditorium following your public hearing on the proposed regulations pertaining to Oregon's Oxygenated fuel mandate. What is most disturbing is that your advisory/fact finding group did not solicit input from the Southern Oregon Marketers prior to drawing up the regulations.

Logistics, ethanol supply, compliance months and the Chico terminal make the Southern Oregon area totally different from the Portland area. At this point, the only potential ethanol supply point is going to be in Curtin, Oregon (31 miles south of Eugene). As of today, there is no ethanol supply available. If Curtin becomes a supply point, we will have to direct our truck drivers to actually become our blenders. This is not a healthy situation. What happens when our truck loaded with ethanol arrives at the Eugene rack and the gasoline supply is depleted? Obviously, you can't load diesel on top of the ethanol!

What happens when the ethanol supply is depleted? It is my understanding that ethanol will be very short in supply. If ethanol is short in supply, why are you mandating the entire Jackson, Josephine and Klamath counties be in compliance? Wouldn't a 5-mile radius of Medford, Grants Pass and Klamath Falls be more logical?

The Chico terminal pickup point brings up an entirely new scope of problems. California compliance period is October through January. This leaves a 30-day period when Oxy fuels would not be available in Chico for Oregon distributors. Also, California's minimum oxygen content is 1.8%. Oregon is 2.0%. If we pick up gasoline in

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item E
October 16, 1992 Meeting

Title:

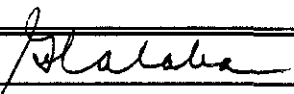
Proposed Adoption of Hazardous Waste and Toxics Use Reduction (TUR) Regulations

Summary:

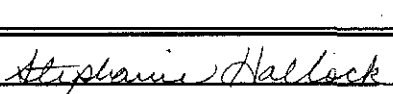
In order to maintain authorization and equivalency with the federal program, the Department proposes to adopt by reference federal hazardous waste regulations promulgated between June 30, 1990 and July 1, 1992. The significant rules being proposed for adoption pertain to burning hazardous waste in boilers and industrial furnaces, treating wood with preservation chemicals, and treating hazardous waste according to federal land disposal restrictions. The Department is not adopting a April 1993 sunset provision of the federal hazardous waste mixture and derived-from regulation. In addition, the Department is required to update annually the toxics use reduction and hazardous waste reduction regulations. Included in this rulemaking are updated lists of hazardous wastes and substances subject to the toxics use reduction planning requirements.

Department Recommendation:

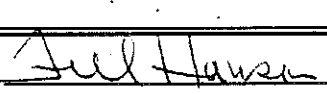
Adopt the hazardous waste and toxics use reduction and hazardous waste regulations as presented in Attachment A of the staff report.



Report Author



Division Administrator



Director

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 29, 1992

To: Environmental Quality Commission
From: Fred Hansen, Director *Ful*
Subject: Agenda Item E, October 16, 1992, EQC Meeting

Request to adopt federal hazardous waste regulations by reference and update the toxics use reduction and hazardous waste reduction regulations.

Background

On August 14, 1992, the Director authorized the Hazardous and Solid Waste Division to conduct a public hearing on proposed rules which would adopt federal hazardous waste regulations by reference and update the toxics use reduction and hazardous waste reduction regulations.

Hearing notice was published in the Secretary of State's Bulletin on September 1, 1992. On August 18, 1992, notice was mailed to the list of persons who have asked to be notified of rulemaking actions, and to persons potentially affected by or interested in the proposed rulemaking.

A public hearing was held on September 15, 1992, at 6:00 p.m. at the Oregon Convention Center in Portland, with Scott Latham serving as Hearings Officer. There was no oral testimony.

Written comments were received through 5:00 p.m., September 21, 1992. Three parties responded in writing and their comments are summarized and addressed in Attachment D. No modifications to the rulemaking proposal are being recommended by the Department as a result of the comments received.

The following sections summarize the issues that this rulemaking addresses; the authority to address the issues; the process for development of the rulemaking proposal, including alternatives considered; a summary of the rulemaking proposal presented for public hearing, a summary of written comments; a summary of how the rule will work and how it is proposed to be implemented; and a recommendation for Commission action.

Issues this Rulemaking Addresses

This is the latest in a series of annual rulemakings to adopt by reference federal hazardous waste regulations in order for the Department to retain authorization from the Environmental Protection Agency (EPA) to implement the Resource Conservation and Recovery Act (RCRA) program in lieu of EPA. States are required to adopt clusters of federal regulatory changes within one year of promulgation by EPA.

The Department has adopted federal hazardous waste regulations through July 1, 1990, and proposes to adopt new federal rules which make our program current with the federal program through July 1, 1992. Evaluation of those rules is summarized in Attachment E. In addition, the Department is required to update annually the list of toxic substances and hazardous wastes which must be considered in developing a toxics use reduction plan.

Authority to Address the Issue

Oregon Revised Statutes (ORS) 466.020, 465.003 through 465.037.

Summary of Rulemaking Proposal Presented for Public Hearing and Discussion of Significant Issues Involved.

Rules were developed through the Department's normal rulemaking process, which included the Hazardous Waste Advisory Committee. No significant changes were proposed by the advisory committee. The major rules being proposed for adoption concern woodtreaters, air emission standards for boilers and industrial furnaces burning hazardous wastes, and amendments to the Land Disposal Restriction standards. A summary of all the rules being proposed for adoption is in Attachment E.

1. Federal Regulations:

a. Woodtreaters:

Woodtreaters using chlorophenolic materials, such as pentachlorophenol or creosote, and inorganic arsenicals such as chromated-copper arsenate, and who generate virtually any wastes containing those materials, are required to manage them as listed hazardous wastes, install and operate drip pads according to certain criteria, and if the criteria are not met, obtain hazardous waste

permits. Woodtreaters generating other wastes containing materials not listed as hazardous by EPA, such as copper naphthenate or NP-1, two commonly used woodtreating materials, must still do a federal hazardous waste determination to see if the wastes fail other federal hazardous waste characteristics. (For example, some woodtreating wastes are mixed with highly flammable carriers which may cause them to fail the federal characteristic for ignitibility.)

On June 1, 1992, the EQC adopted rule changes to eliminate redundant testing requirements for pesticide wastes which are subject to both EPA and state-only regulations. Generators of pesticide waste containing only toxic characteristic (TC) constituents that do not fail any of the tests in the federal RCRA regulations (e.g., ignitable, TC tests, reactivity) are no longer subject to evaluation under Oregon's aquatic toxicity test. However, many woodtreating chemicals (e.g., copper naphthenate and NP-1) are not on the federal TC list and are still subject to the aquatic toxicity test. Woodtreating wastes failing the aquatic toxicity test are state-only hazardous waste and are subject to state hazardous waste management requirements. This makes the state more stringent than EPA on some woodtreating wastes. The Department intends to review this issue in the future, but it does not have any impact on adopting the federal rules by reference.

b. Boilers and Industrial Furnaces (BIFs):

The BIF regulations are designed to control air emissions at facilities that burn hazardous wastes. No boiler or industrial furnace in Oregon burns hazardous wastes, although three facilities have submitted preliminary permit applications. If the facilities are determined by EPA to need permits, they will be required to meet Oregon's the hazardous waste facility siting requirements before burning will be allowed.

c. Land Disposal Restrictions (LDR):

The Department is adopting federal amendments to the Land Disposal Restrictions (LDR) (40 CFR 268.3) which prohibit the dilution of hazardous wastes to meet LDR treatment standards. The Department is adding a comment to OAR 340-102-011 hazardous waste determination regulations that makes it clear that diluting wastes to meet any standard without a permit is prohibited.

The Department is not adopting the April 25, 1993 sunset provision of the "mixture" and "derived-from" rules. (57 FR 7628, March 3, 1992). The Department is currently authorized to implement these rules. Although EPA is developing a replacement rule (Hazardous Waste Identification Rule or HWIR), we do not expect a final version of the rule until late 1993. Because of this and the confusion surrounding the status of this rule, we do not believe the "mixture" and "derived-from" rules should sunset in April of 1993.

2. Adoption of revised list of toxic substances and hazardous wastes subject to the toxics use reduction planning requirements.

Oregon's Toxics Use Reduction and Hazardous Waste Reduction (TUR) rules, OAR Chapter 340, Division 135, specify that additions or deletions to the list of toxic substances and hazardous wastes contained in Appendix A shall be made by rulemaking at least annually. The list indicates which substances and wastes are subject to TUR planning requirements. The Department proposes to adopt changes to the existing list which mirror the federal list of hazardous wastes as incorporated into Oregon rules (40 CFR 261.20 -261.33), Oregon only wastes (OAR 340-101-033), and toxic chemicals listed under the Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III, Section 313, and the community right to know provisions (40 CFR 372). Other changes include correction of spelling and typographical errors. The Department also proposes that the update of this list be extended from an annual to a biennial requirement for the agency. This would allow the Department adequate time to evaluate and incorporate federal regulations relative to Appendix A.

Summary of Significant Public Comment and Changes Proposed in Response

The Department did not receive any comments which resulted in change to the proposed rules. See Attachments C and D for summary of specific comments and Department responses.

Summary of How the Proposed Rules Will be Implemented

The significant rules being proposed for adoption are already in effect in Oregon and are being implemented solely by the EPA, or by EPA with DEQ assistance. Therefore, the regulated community should be in compliance with the provisions of

the rules. Upon adoption, the Department intends to implement the rules by incorporating commitments into its annual hazardous waste workplan for the inspection of sources subject to the rules.

Recommendation for Commission Action

It is recommended that the Commission adopt the federal hazardous waste rules by reference and update the toxics use reduction list as presented in Attachment A.

Attachments

- A. Rule Proposed for Adoption
- B. Supporting Procedural Documentation:
 - Public Notice
 - Rulemaking Statements (Statement of Need)
 - Fiscal and Economic Impact Statement
 - Land Use Evaluation Statement
- C. Presiding Officer's Report on Public Hearing
- D. Summary of Written Comments Received and Department Responses
- E. Summary of Federal Rules Proposed for Adoption

Reference Documents (available upon request)

- F. Written Comments Received

Approved:

Section:

Division:

Ray W. Brown
Stephanie Hallock

Memo To: Environmental Quality Commission
Agenda Item E
October 16, 1992 Meeting
Page 6

Report Prepared By: Gary Calaba, HSW

Phone: 229-6534

Date Prepared: September 21, 1992

Calaba:GJC
EQC101692
September 21, 1992

**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON**

In the Matter of Amending and) Proposed Amendments and
Correcting OAR 340, Divisions) Corrections
100, 102, and 135)

Unless otherwise indicated, material enclosed in brackets [], or crossed out e.g.---, is proposed to be deleted and material that is underlined is proposed to be added.

1. Rule 340-100-002 is proposed to be amended as follows:

Adoption of United States Environmental Protection Agency Hazardous Waste Regulations.

340-100-002 (1) Except as otherwise modified or specified by OAR Chapter 340, Divisions 100 to 106, 109 and 120, the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Parts 260 to 266, 268, 270 and Subpart A of 124, and amendments thereto promulgated through July 1, 199[0]2, except for 57 FR 7628, March 3, 1992, are adopted by reference and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080, and 466.090 to 466.215.

(Rev. 3/8/91)

2. Rule 340-102-011 is proposed to be amended as follows:

Hazardous Waste Determination

340-102-011 (1) The provisions of this rule replace the requirements of **40 CFR 262.11**.

(2) A person who generates a residue as defined in rule 340-100-010 must determine if that residue is a hazardous waste using the following method:

(a) Persons should first determine if the waste is excluded from regulation under **40 CFR 261.4** or rule 340-101-004.

(b) Persons must then determine if the waste is listed as a hazardous waste in **Subpart D of 40 CFR Part 261**, excluding application of rule 340-101-033.

(Comment: Even if the waste is listed, the generator still has an opportunity under rule 340-100-022 to demonstrate to the Commission that the waste from his/her particular facility or operation is not a hazardous waste.)

(c) Regardless of whether a hazardous waste is listed in Subpart D of 40 CFR Part 261, persons must also determine whether the waste is hazardous under Subpart C of **40 CFR Part 261** by either:

(A) Testing the waste according to the methods set forth in **Subpart C of 40 CFR 261**, or according to an equivalent method approved by the Department under rule 340-100-021; or

(Comment: In most instances, the Department will not consider approving a test method until it has been approved by EPA.)

(B) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(d) If the waste is determined to be hazardous, the generator must refer to Divisions 100-106 and **40 CFR Part 264, 265 and 268** for possible exclusions or restrictions pertaining to management of his/her specific waste. (Comment: 40 CFR 268.3 prohibits dilution of a hazardous waste to meet Land Disposal Restriction treatment standards. Diluting waste without a permit to meet any hazardous waste standard is prohibited).

(e) If the waste is not identified as hazardous by application of subsection (2)(b) and/or (c) of this rule, persons must determine if the waste is listed under rule 340-101-033.

3. Rule 340-135-040 is proposed to be amended as follows:

Identification and Listing of Toxic Substances and Hazardous Waste

(1) Toxic Substances

The chemicals and chemical categories listed in Appendix A of OAR Chapter 340, Division 135 are hereby incorporated in and made a part of this section and shall be considered to be toxic substances subject to the requirements of OAR 340-135-000 through OAR 340-135-110 and ORS 465.003 through ORS 465.037.

(2) Hazardous Waste

Hazardous waste as described in Appendix A of OAR Chapter 340, Division 135 are hereby incorporated and made a part of this section and are subject to the requirements of OAR 340-135-000 through OAR 340-135-110 and ORS 465.003 through ORS 465.037.

(3) Identification

(a) The Environmental Quality Commission may add to or delete from the lists of hazardous wastes and toxic substances identified in sections 1 and 2 of this rule and listed in

Appendix A of OAR Chapter 340, Division 135. The Commission shall consider, at a minimum, the following conditions when adding to or deleting from the lists.

(A) Proportionate volume of toxic substance or hazardous waste unique to Oregon; or

(B) Amount of regional solid waste or hazardous waste off-site disposal or treatment capacity; or

(C) Impact on statewide or regional air quality, surface water quality, groundwater quality, or other environmental qualities; or

(D) A substance is added to or deleted from 40 CFR Part 372 Subpart D or a hazardous waste is added to or deleted from OAR 340-100-002 and OAR 340-101.

(b) Any additions or deletions to section 1 or 2 of this rule shall be made by rulemaking at least [annually] biennially and shall be so identified in Appendix A of OAR Chapter 340, Division 135 as appropriate. Any additions or deletions under this rule shall take effect for purposes of plan completion and annual progress report completion in the calendar year following the addition or deletion. Any additions or deletions are hereby incorporated in and made a part of this rule.

4. Rule 340-135 Appendix A is proposed to be amended as follows:

OAR 340-135 - APPENDIX A

LISTING OF TOXIC SUBSTANCES AND HAZARDOUS WASTES

The following list of toxic substances and hazardous wastes is subject to the requirements of OAR 340-135-000 through OAR 340-135-110 and ORS 465.003 through ORS 465.037.

1. Toxic Substances
(a) Alphabetical List of Chemicals

CAS Number	Chemical Name	De Minimis Concentration (percent)
75-07-0	Acetaldehyde.....	0.1
60-35-5	Acetamide.....	0.1
67-64-1	Acetone.....	1.0
75-05-8	Acetonitrile.....	1.0
53-96-3	2-Acetylaminofluorene.....	0.1
107-02-8	Acrolein.....	1.0
79-06-1	Acrylamide.....	0.1
79-10-7	Acrylic acid.....	1.0
107-13-1	Acrylonitrile.....	0.1
309-00-2	Aldrin [1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexochloro-1,4,4a,5,8,8a- hexahydro-(1.alpha.,4.alpha.,4a.beta., 5.alpha.,8.alpha.,8a.beta.)-]	1.0
107-18-6	Allyl Alcohol.....	1.0
107-05-1	Allyl chloride.....	1.0
7429-90-5	Aluminum (fume or dust).....	1.0
1344-28-1	Aluminum oxide (<u>fibrous form</u>).....	1.0 0.1
117-79-3	2-Aminoanthraquinone.....	0.1
60-09-3	4-Aminoazobenzene.....	0.1
92-67-1	4-Aminobiphenyl.....	0.1
82-28-0	1-Amino-2-methylanthraquinone.....	0.1
7664-41-7	Ammonia.....	1.0
6484-52-2	Ammonium nitrate (solution).....	1.0
7783-20-2	Ammonium sulfate (solution).....	1.0
62-53-3	Aniline.....	1.0
90-04-0	o-Anisidine.....	0.1
104-94-9	p-Anisidine.....	1.0
134-29-2	o-Anisidine hydrochloride.....	0.1
120-12-7	Anthracene.....	1.0
7440-36-0	Antimony.....	1.0
7440-38-2	Arsenic.....	0.1
1332-21-4	Asbestos (friable).....	0.1

CAS Number	Chemical Name	De Minimis Concentration (percent)
7440-39-3	Barium.....	1.0
98-87-3	Benzal chloride.....	1.0
55-21-0	Benzamide.....	1.0
71-43-2	Benzene.....	0.1
92-87-5	Benzidine.....	0.1
98-07-7	Benzoic trichloride (Benzotrichloride).....	0.1
98-88-4	Benzoyl chloride.....	1.0
94-36-0	Benzoyl peroxide.....	1.0
100-44-7	Benzyl chloride.....	1.0
7440-41-7	Beryllium.....	0.1
92-52-4	Biphenyl.....	1.0
111-44-4	Bis(2-chloroethyl)ether.....	1.0
542-88-1	Bis(chloromethyl)ether.....	0.1
108-60-1	Bis(2-chloro-1-methylethyl)ether.....	1.0
103-23-1	Bis(2-ethylhexyl)adipate.....	1.0
353-59-3	Bromochlorodifluoromethane (Halon 1211).....	1.0
75-25-2	Bromoform (Tribromomethane).....	1.0
74-83-9	Bromomethane (Methyl bromide).....	1.0
75-63-8	Bromotrifluoromethane (Halon 1301).....	1.0
106-99-0	1,3-Butadiene.....	0.1
141-32-2	Butyl acrylate.....	1.0
71-36-3	n-Butyl alcohol.....	1.0
78-92-2	sec-Butyl alcohol.....	1.0
75-65-0	tert-Butyl alcohol.....	1.0
85-68-7	Butyl benzyl phthalate.....	1.0
106-88-7	1,2-Butylene oxide.....	1.0
123-72-8	Butyraldehyde.....	1.0
4680-78-8	C.I. Acid Green 3.....	1.0
569-64-2	C.I. Basic Green 4.....	1.0
989-38-8	C.I. Basic Red 1.....	0.1
1937-37-7	C.I. Direct Black 38.....	0.1
2602-46-2	C.I. Direct Blue 6.....	0.1
16071-86-6	C.I. Direct Brown 95.....	0.1
2832-40-8	C.I. Disperse Yellow 3.....	1.0
3761-53-3	C.I. Food Red 5.....	0.1
81-88-9	C.I. Food Red 15.....	0.1
3118-97-6	C.I. Solvent Orange 7.....	1.0
97-56-3	C.I. Solvent Yellow 3.....	0.1
842-07-9	C.I. Solvent Yellow 14.....	0.1
492-80-8	C.I. Solvent Yellow 34 (Auramine).....	0.1
128-66-5	C.I. Vat Yellow 4.....	1.0
7440-43-9	Cadmium.....	0.1
156-62-7	Calcium cyanamide.....	1.0
133-06-2	Captan (1H-Isoindole-1,3(2H)-dione, 3a,4,7,7a-tetrahydro-2- [(trichloromethyl)thio]-]	1.0
63-25-2	Carbaryl [1-Naphthalenol, methylcarbamate]	1.0
75-15-0	Carbon disulfide.....	1.0
56-23-5	Carbon tetrachloride.....	0.1

CAS Number	Chemical Name	De Minimis Concentration (percent)
463-58-1	Carbonyl sulfide.....	1.0
120-80-9	Catechol.....	1.0
133-90-4	Chloramben [Benzoic acid,.....	1.0
	3-amino-2,5-dichloro-]	
57-74-9	Cheredane <u>Chlordane</u> [4,7-Methanoindan,.....	1.0
	1,2,4,5,6,7,8,8-octachloro-	
	2,3,3a,4,7,7a-hexahydro-]	
7782-50-5	Chlorine.....	1.0
10049-04--4	Chlorine dioxide.....	1.0
79-11-8	Chloroacetic acid.....	1.0
532-27-4	2-Chloroacetophenone.....	1.0
108-90-7	Chlorobenzene.....	1.0
510-15-6	Chlorobenzilate [Benzeneacetic acid,.....	1.0
	4-chloro-.alpha.-(4-chlorophenyl)-	
	.alpha.-hydroxy-,ethyl ester]	
75-00-3	Chloroethane (Ethyl chloride).....	1.0
67-66-3	Chloroform.....	0.1
74-87-3	Chloromethane (Methyl chloride):.....	1.0
107-30-2	Chloromethyl methyl ether.....	0.1
126-99-8	Chloroprene.....	1.0
1897-45-6	Chlorothalonil [1,3-.....	1.0
	Benzenedicarbonitrile, 2,4,5,6-	
	tetrachloro-]	
7440-47-3	Chromium.....	0.1
7440-48-4	Cobalt.....	1.0
7440-50-8	Copper.....	1.0
8001-58-9	Creosote.....	0.1
7440-50-8	Copper.....	1.0
120-71-8	p-Cresidine.....	0.1
1319-77-3	Cresol (mixed isomers).....	1.0
108-39-4	m-Cresol.....	1.0
95-48-7	o-Cresol.....	1.0
106-44-5	p-Cresol.....	1.0
98-82-8	Cumene.....	1.0
80-15-9	Cumene hydroperoxide.....	1.0
135-20-6	Cupferron.....	0.1
	[Benzeneamine, N-hydroxy-N-nitroso,	
	ammonium salt]	
110-82-7	Cyclohexane.....	1.0
94-75-7	2,4-D [Acetic acid,.....	1.0
	2,4-dichloro-phenoxy)-]	
1163-19-5	Decabromodiphenyl oxide.....	1.0
2303-16-4	Diallate [Carbamothioic acid,bis.....	1.0
	(1-methylethyl)-,	
	S-(2,3-dichloro-2-propenyl) ester]	
615-05-4	2,4-Diaminoanisole.....	0.1
39156-41-7	2,4-Diaminoanisole sulfate.....	0.1
101-80-4	4,4'-Diaminodiphenyl ether.....	0.1
25376-45-8	Diaminotoluene (mixed isomers).....	0.1
95-80-7	2,4-Diaminotoluene.....	0.1

CAS Number	Chemical Name	De Minimis Concentration (percent)
334-88-3	Diazomethane.....	1.0
132-64-9	Dibenzofuran.....	1.0
96-12-8	1,2-Dibromo-3-chloropropane (DBCP).....	0.1
106-93-4	1,2-Dibromoethane.....	0.1
	(Ethylene dibromide)	
124-73-2	Dibromotetrafluoroethane (Halon 2402).....	1.0
84-74-2	Dibutyl phthalate.....	1.0
25321-22-6	Dichlorobenzene (mixed isomers).....	0.1
95-50-1	1,2-Dichlorobenzene.....	1.0
541-73-1	1,3-Dichlorobenzene.....	1.0
106-46-7	1,4-Dichlorobenzene.....	0.1
91-94-1	3,3'-Dichlorobenzidine.....	0.1
75-27-4	Dichlorobromomethane.....	1.0
75-71-8	Dichlorodifluoromethane (CFC-12).....	1.0
107-06-2	1,2-Dichloroethane.....	0.1
	(Ethylene dichloride)	
540-59-0	1,2-Dichloroethylene.....	1.0
75-09-2	Dichloromethane (Methylene chloride).....	0.1
120-83-2	2,4-Dichlorophenol.....	1.0
78-87-5	1,2-Dichloropropane.....	1.0
78-88-6	2,3-Dichloropropene.....	1.0
542-75-6	1,3-Dichloropropylene.....	0.1
76-14-2	Dichlorotetrafluoroethane (CFC-114).....	1.0
62-73-7	Dichlorvos [Phosphoric acid, 2,2-dichloroethenyl dimethyl ester]	1.0
115-32-2	Dicofol [Benzenemethanol, 4-chloro- .alpha.-4-chlorophenyl)- -alpha .alpha. -(trichloromethyl)-]	1.0
1464-53-5	Diepoxybutane.....	0.1
111-42-2	Diethanolamine.....	1.0
117-81-7	Di-(2-ethylhexyl) phthalate (DEHP).....	0.1
84-66-2	Diethyl phthalate.....	1.0
64-67-5	Diethyl sulfate.....	0.1
119-90-4	3,3'-Dimethoxybenzidine.....	0.1
60-11-7	4-Dimethylaminoazobenzene.....	0.1
119-93-7	3,3'-Dimethylbenzidine (o-Tolidine).....	0.1
79-44-7	Dimethylcarbanyl chloride.....	0.1
57-14-7	1,1-Dimethyl hydrazine.....	0.1
105-67-9	2,4-Dimethylphenol.....	1.0
131-11-3	Dimethyl phthalate.....	1.0
77-78-1	Dimethyl sulfate.....	0.1
99-65-0	m-Dinitrobenzene.....	1.0
528-29-0	o-Dinitrobenzene.....	1.0
100-25-4	p-Dinitrobenzene.....	1.0
534-52-1	4,6--Dinitro-o-cresol.....	1.0
51-28-5	2,4-Dinitrophenol.....	1.0
121-14-2	2,4-Dinitrotoluene.....	1.0
606-20-2	2,6-Dinitrotoluene.....	1.0
25321-14-6	Dinitrotoluene.....	1.0
	(mixed isomers)	

CAS Number	Chemical Name	De Minimis Concentration (percent)
117-84-0	n-Diethyl Di(n-octyl phthalate.....	1.0
123-91-1	1,4-Dioxane.....	0.1
122-66-7	1,2-Diphenylhydrazine.....	0.1
	(Hydrazobenzene)	
106-89-8	Epichlorohydrin.....	0.1
110-80-5	2-Ethoxyethanol.....	1.0
140-88-5	Ethyl acrylate.....	0.1
100-41-4	Ethylbenzene.....	1.0
541-41-3	Ethyl chloroformate.....	1.0
74-85-1	Ethylene.....	1.0
107-21-1	Ethylene glycol.....	1.0
151-56-4	Ethyleneimine (Aziridine).....	0.1
75-21-8	Ethylene oxide.....	0.1
96-45-7	Ethylene thiourea.....	0.1
2164-17-2	Fluometuron [Urea, N,N-dimethyl-N'-.....	1.0
	[3-(trifluoromethyl)phenyl]-]	
50-00-0	Formaldehyde.....	0.1
76-13-1	Freon 113 [Ethane 1,1,2-trichloro-1,2,.....	1.0
	2-trifluoro-]	
76-44-8	Heptachlor [1,4,5,6,7,8,8-Heptachloro-.....	1.0
	3a,4,7,7a-tetrahydro-4,7-methano-1H-indene]	
118-74-1	Hexachlorobenzene.....	0.1
87-68-3	Hexachloro-1,3-butadiene.....	1.0
77-47-4	Hexachlorocyclopentadiene.....	1.0
67-72-1	Hexachloroethane.....	1.0
1335-87-1	Hexachloronaphthalene.....	1.0
680-31-9	Hexamethylphosphoramide.....	0.1
302-01-2	Hydrazine.....	0.1
10034-93-2	Hydrazine sulfate.....	0.1
7647-01-0	Hydrochloric acid.....	1.0
74-90-8	Hydrogen cyanide.....	1.0
7664-39-3	Hydrogen fluoride.....	1.0
123-31-9	Hydroquinone.....	1.0
78-84-2	Isobutyraldehyde.....	1.0
67-63-0	Isopropyl alcohol (manufacturing-.....	0.1
	strong acid process, no supplier notification)	
80-05-7	4,4'-Isopropylidenediphenol.....	1.0
120-58-1	Isosafrole.....	0.1 1.0
7439-92-1	Lead.....	0.1
58-89-9	Lindane.....	0.1
	[Cyclohexane 1,2,3,4,5,6-hexachloro-, (1.alpha., 2.alpha., 3.beta., 4.alpha., 5.alpha., 6.beta.)-]	
108-31-6	Maleic anhydride.....	1.0
12427-38-2	Maneb [Carbamodithioic acid, 1,2-.....	1.0
	ethanediybis-, manganese complex]	

CAS Number	Chemical Name	De Minimis Concentration (percent)
7439-96-5	Manganese.....	1.0
7439-97-6	Mercury.....	1.0
67-56-1	Methanol.....	1.0
72-43-5	Methoxychlor [Benzene, 1,1'-(2,2,2- trichloroethylidene)bis[4-methoxy-]	1.0
109-86-4	2-Methoxyethanol.....	1.0
96-33-3	Methyl acrylate.....	1.0
1634-04-4	Methyl tert-butyl ether.....	1.0
101-14-4	4,4'-Methylenebis(2-chloro aniline).....	1.0
	(MBOCA)	
101-61-1	4,4'-Methylenebis (N,N-dimethyl).....	0.1
	benzenamine	
101-68-8	Methylenebis(phenylisocyanate) (MBI).....	1.0
74-95-3	Methylene bromide.....	1.0
101-77-9	4,4'-Methylenedianiline.....	0.1
78-93-3	Methyl ethyl ketone.....	1.0
60-34-4	Methyl hydrazine.....	1.0
74-88-4	Methyl iodide.....	0.1
108-10-1	Methyl isobutyl ketone.....	1.0
624-83-9	Methyl isocyanate.....	1.0
80-62-6	Methyl methacrylate.....	1.0
90-94-8	Michler's ketone.....	0.1
1313-27-5	Molybdenum trioxide.....	1.0
76-15-3	Monochloropentafluoroethane (CFC-115).....	1.0
505-60-2	Mustard gas [Ethane, 1,1'-thiobis.....	0.1
	[2-chloro-]	
91-20-3	Naphthalene.....	1.0
134-32-7	alpha-Naphthylamine.....	0.1
9192-59-8	beta-Naphthylamine.....	0.1
7440-02-0	Nickel.....	0.1
7697-37-2	Nitric acid.....	1.0
139-13-9	Nitrilotriacetic acid.....	0.1
99-59-2	5-Nitro-o-anisidine.....	0.1
98-95-3	Nitrobenzene.....	1.0
92-93-3	4-Nitrobiphenyl.....	0.1
1836-75-5	Nitrofen [Benzene, 2,4-dichloro-.....	0.1
	1-(4-nitrophenoxy)-]	
51-75-2	Nitrogen mustard [2-Chloro-N-(2-.....	0.1
	chloroethyl)-N-methylethanamine]	
55-63-0	Nitroglycerin.....	1.0
88-75-5	2-Nitrophenol.....	1.0
100-02-7	4-Nitrophenol.....	1.0
79-46-9	2-Nitropropane.....	0.1
156-10-5	p-Nitrosodiphenylamine.....	0.1
121-69-7	N,N-Dimethylaniline.....	1.0
924-16-3	N-Nitrosodi-n-butylamine.....	0.1
55-18-5	N-Nitrosodiethylamine.....	0.1
62-75-9	N-Nitrosodimethylamine.....	0.1

CAS Number	Chemical Name	De Minimis Concentration (percent)
86-30-6	N-Nitrosodiphenylamine.....	1.0
621-64-7	N-Nitrosodi-n-propylamine.....	0.1
4549-40-0	N-Nitrosomethylvinylamine.....	0.1
59-89-2	N-Nitrosomorpholine.....	0.1
759-73-9	N-Nitroso-N-ethylurea.....	0.1
684-93-5	N-Nitroso-N-methylurea.....	0.1
16543-55-8	N-Nitrososornicotine.....	0.1
100-75-4	N-Nitrosopiperidine.....	0.1
2234-13-1	Octachloronaphthalene.....	1.0
20816-12-0	Osmium tetroxide.....	1.0
56-38-2	Parathion [Phosphorothioic acid, o, o-diethyl-o-(4-nitrophenyl) ester]	1.0
87-86-5	Pentachlorophenol (PCP).....	1.0
79-21-0	Peracetic acid.....	1.0
108-95-2	Phenol.....	1.0
106-50-3	p-Phenylenediamine.....	1.0
90-43-7	2-Phenylphenol.....	1.0
75-44-5	Phosgene.....	1.0
7664-38-2	Phosphoric acid.....	1.0
7723-14-0	Phosphorus (yellow or white).....	1.0
85-44-9	Phthalic anhydride.....	1.0
88-89-1	Picric acid.....	1.0
1336-36-3	Polychlorinated biphenyls (PCBs).....	0.1
1120-71-4	Propane sultone.....	0.1
57-57-8	beta-Propiolactone.....	0.1
123-38-6	Propionaldehyde.....	1.0
114-26-1	Propoxur [Phenol, 2-..... (1-methylethoxy)-, methylcarbamate]	1.0
115-07-1	Propylene (Propene).....	1.0
75-55-8	Propyleneimine.....	0.1
75-56-9	Propylene oxide.....	0.1
110-86-1	Pyridine.....	1.0
91-22-5	Quinoline.....	1.0
106-51-4	Quinone.....	1.0
82-68-8	Quintozene (Pentachloronitrobenzene).....	1.0
81-07-2	Saccharin (manufacturing, no supplier..... notification [1,2-Benzisothiazol -3(2H)-one,1,1-dioxide]	0.1
94-9559-7	Safrole.....	0.1
7782-49-2	Selenium.....	1.0
7440-22-4	Silver.....	1.0
100-42-5	Styrene.....	0.1
96-09-3	Styrene oxide.....	0.1
7664-93-9	Sulfuric acid.....	1.0
100-21-0	Terephthalic acid.....	1.0
79-34-5	1,1,2,2-Tetrachloroethane.....	0.1
127-18-4	Tetrachloroethylene..... (Perchloroethylene)	0.1

CAS Number	Chemical Name	De Minimis Concentration (percent)
961-11-5	Tetrachlorvinphos.....	1.0
	[Phosphoric acid, 2-chloro-1-(2,3,5-trichlorophenyl) ethenyl dimethyl ester]	
961-11-5	Tetrachlorvinphos.....	1.0
	{Phosphoric acid, 2-chloro-1-(2,3,5-trichlorophenyl) ethenyl dimethyl ester}	
7440-28-0	Thallium.....	1.0
62-55-5	Thioacetamide.....	0.1
139-65-1	4,4'-Thiodianiline.....	0.1
62-56-6	Thiourea.....	0.1
1314-20-1	Thorium dioxide.....	1.0
7550-45-0	Titanium tetrachloride.....	1.0
1314-20-1	Thorium dioxide.....	1.0
108-88-3	Toluene.....	1.0
584-84-9	Toluene-2,4-diisocyanate.....	0.1
91-08-7	Toluene-2,6-diisocyanate.....	0.1
26471-62-5	Toluenediisocyanate.....	1.0
<u>0.1</u>		
	(mixed isomers)	
95-53-4	o-Toluidine.....	0.1
636-21-5	o-Toluidine hydrochloride.....	0.1
8001-35-2	Toxaphene.....	0.1
68-76-8	Triaziquone [2,5-Cyclohexadiene-1,4-dione, 2,3,5-tris(1-aziridinyl)-]	0.1
52-68-6	Trichlorfon (Phosphonic acid, (2,2,2-trichloro-1-hydroxyethyl)-, dimethyl ester]	1.0
120-82-1	1,2,4-Trichlorobenzene.....	1.0
71-55-6	1,1,1-Trichloroethane.....	1.0
	(Methyl chloroform)	
79-00-5	1,1,2-Trichloroethane.....	1.0
79-01-6	Trichloroethylene.....	1.0
75-69-4	Trichlorofluoromethane (CFC-11).....	1.0
95-95-4	2,4,5-Trichlorophenol.....	1.0
88-06-2	2,4,6-Trichlorophenol.....	0.1
1582-09-8	Trifluralin (Benzeneamine, 2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-]	1.0
95-63-6	1,2,4-Trimethylbenzene.....	1.0
126-72-7	Tris(2,3-dibromopropyl) phosphate.....	0.1
51-79-6	Urethane (Ethyl carbamate).....	0.1
7440-62-2	Vanadium (fume or dust).....	1.0
108-05-4	Vinyl acetate.....	1.0
593-60-2	Vinyl bromide.....	0.1
75-01-4	Vinyl chloride.....	0.1
75-35-4	Vinylidene chloride.....	1.0
1330-20-7	Xylene (mixed isomers).....	1.0
108-38-3	m-Xylene.....	1.0
95-47-6	o-Xylene.....	1.0

CAS Number	Chemical Name	De Minimis Concentration (percent)
106-42-3	p-Xylene.....	1.0
87-62-7	2,6-Xylidine.....	1.0
7440-66-6	Zinc (fume or dust).....	1.0
12122-67-7	Zineb [Carbamodithioic acid, 1,2-ethanediybis-, zinc complex]	1.0

(b) List of Chemical Categories

The metal compounds listed below, unless otherwise specified, are defined as including any unique chemical substance that contains the named metal (i.e., antimony, ~~copper~~ nickel, etc.) as part of that chemical's structure.

~~Chemical categories are subject to the 1 percent de minimis concentration unless the substance involved meets the definition of a federal Occupational Safety and Health Act carcinogen.~~

Toxic chemical categories are subject to the 1 percent de minimis concentration unless the substance involved meets the definition of a federal Occupational Safety and Health Act carcinogen, in which case the 0.1 percent de minimis concentration applies.

- o Antimony Compounds
- o Arsenic Compounds
- o Barium Compounds
- o Beryllium Compounds
- o Cadmium Compounds
- o Chlorophenols
- o Chromium Compounds
- o Cobalt Compounds
- o Copper Compounds *
- o Cyanide Compounds - X⁺CN⁻ where X = H⁺ or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂
- o Glycol Ethers - includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol. Polymers are excluded from the glycol ether category.
- o Lead Compounds
- o Manganese Compounds
- o Mercury Compounds
- o Nickel Compounds

*Three substances were deleted from the Copper Compounds category and are not reportable beginning with calendar year 1991 (Form R reports due July 1992). They are C.I. Pigment Blue 15, CAS No. 147-14-8; C.I. Pigment Green 7, CAS No. 1328-53-6; and C.I. Pigment Green 36, CAS No. 14302-13-7.

- o Polybrominated Biphenyls (PBBs)
- o Selenium Compounds
- o Silver Compounds
- o Thallium Compounds
- o Zinc Compounds

2. Hazardous Waste

[Comment: The "Hazard Code" shown below indicates the basis used by the U.S. Environmental Protection Agency for listing the classes or types of wastes. The codes have the following meaning: I - ignitable; C - corrosive; R - reactive; E - EP toxic; H - acute hazardous waste; T - toxic.]

(a) Any characteristic hazardous waste meeting the criteria in 40 CFR Part 261 Subpart C and adopted by the state of Oregon under OAR Chapter 340, Divisions 100 and/or 101. [Note: The characteristics include ignitability, reactivity, corrosivity and toxicity.]

<u>CHARACTERISTIC HAZARDOUS WASTE:</u>			
<u>Hazardous Waste</u>	<u>Chemical Abstracts</u>	<u>Substance</u>	<u>Regulatory level: (PPM or mg/L)</u>
<u>No.</u>	<u>Service No.</u>	<u>Substance</u>	<u>or mg/L)</u>
D001	- - - - -	Ignitable waste	- - - - -
D002	- - - - -	Corrosive waste	- - - - -
D003	- - - - -	Reactive waste	- - - - -
D004	7440-38-2	Arsenic	5.0
D005	7440-39-3	Barium	100.0
D006	7440-43-9	Cadmium	1.0
D007	7440-47-3	Chromium	5.0
D008	7439-92-1	Lead	5.0
D009	7439-97-6	Mercury	0.2
D010	7782-49-2	Selenium	1.0
D011	7440-22-4	Silver	5.0
D012	72-20-8	Endrin	0.02
D013	58-89-9	Lindane	0.4
D014	72-43-5	Methoxychlor	10.0
D015	8001-35-2	Toxaphene	0.5
D016	94-75-7	2,4-D	10.0
D017	93-72-1	2,4,5-TP Silvex	1.0
D018	71-43-2	Benzene	0.5
D019	56-23-5	Carbon tetrachloride	0.5
D020	57-74-9	Chlordane	0.03
D021	108-90-7	Chlorobenzene	100.0
D022	67-66-3	Chloroform	6.0
D023	95-48-7	o-Cresol	* 200.0
D024	108-39-4	m-Cresol	* 200.0
D025	106-44-5	p-Cresol	* 200.0
D026	1319-77-3	Cresol	* 200.0
D027	106-46-7	1,4-Dichlorobenzene	7.5
D028	107-06-2	1,2-Dichloroethane	0.5
D029	75-35-4	1,1-Dichloroethylene	0.7

D030	121-14-2	2,4-Dinitrotoluene	**	0.13
D031	76-44-8\			
	1024-57-3/	Heptachlor (and its epoxide)		0.008
D032	118-74-1	Hexachlorobenzene	**	0.13
D033	87-68-3	Hexachlorobutadiene		0.5
D034	67-72-1	Hexachloroethane		3.0
D035	78-93-3	Methyl ethyl ketone (MEK)		200.0
D036	98-95-3	Nitrobenzene		2.0
D037	87-86-5	Pentachlorophenol		100.0
D038	110-86-1	Pyridine	**	5.0
D039	127-18-4	Tetrachloroethylene		0.7
D040	79-01-6	Trichloroethylene		0.5
D041	95-95-4	2,4,5-Trichlorophenol		400.0
D042	88-06-2	2,4,6-Trichlorophenol		2.0
D043	75-01-4	Vinyl chloride		0.2

* If o-, m-, and p-Cresol concentrations cannot be differentiated, the total Cresol (D026) concentration is used. The regulatory level of total Cresol is 200 mg/L.

** The quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

(b) Hazardous Waste from non-specific sources.

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
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Generic:

F001 The following spent halogenated solvents used (T) in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

Industry
and EPA
hazardous
waste No.

Hazardous Waste

Hazard
Code

- F002 The following spent halogenated solvents: (T)
Tetrachloroethylene, methylene chloride,
trichloroethylene, 1,1,1-trichloroethane,
chlorobenzene, 1,1,2-trichloro-1,2,2-
trifluoroethane, ortho-dichlorobenzene,
trichlorofluoromethane, and 1,1,2-
trichloroethane; all spent solvent
mixtures/blends containing, before use, a
total of ten percent or more (by volume) of
one or more of the above halogenated solvents
or those listed in F001, F004, or F005; and
still bottoms from the recovery of these
spent solvents and spent solvent mixtures.
- F003 The following spent non-halogenated solvents: (I)
Xylene, acetone, ethyl acetate, ethyl
benzene, ethyl ether, methyl isobutyl ketone,
n-butyl alcohol, cyclohexanone, and methanol;
all spent solvent mixtures/blends containing,
before use, only the above spent non-
halogenated solvents; and all spent solvent
mixtures/blends containing, before use, one
or more of the above non-halogenated
solvents, and, a total of ten percent or more
(by volume) of one or more of those solvents
listed in F001, F002, F004, and F005; and
still bottoms from the recovery of these
spent solvents and spent solvent mixtures.

*(I,T) Specifies mixtures containing ignitable and toxic
constituents.

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
F004	The following spent non-halogenated solvents: Cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F005	The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum.	(T)
<u>F019</u>	<u>Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing, when such phosphating is an exclusive conversion coating process.</u>	<u>(T)</u>
F007	Spent cyanide plating bath solutions from electroplating operations.	(R,T)

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R,T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R,T)
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	(R,T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	(R,T)
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process.	(T)
F024	<u>Process Wwastes</u> , including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of <u>certain chlorinated aliphatic hydrocarbons, by having carbon content from one to five, utilizing free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.</u> [This listing does not include light ends, spent filters and filter aids, spent dessicants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 261.32.].	(T)

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- F025 Condensed light ends, spent filters and filter aids, and spent desiccant waste from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (T)
- F020 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.) (H)
- F021 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used, to produce its derivatives. (H)
- F022 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions. (H)

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- F023 Wastes (except wastewater and spent carbon (H)
from hydrogen chloride purification) from the
production of materials on equipment
previously used for the production or
manufacturing use (as a reactant, chemical
intermediate, or component in a formulating
process) of tri- and tetrachlorophenols.
(This listing does not include wastes from
equipment used only for the production or use
of Hexachlorophene from highly purified
2,4,5-trichlorophenol.).
- F026 Wastes (except wastewater and spent carbon (H)
from hydrogen chloride purification) from the
production of materials on equipment
previously used for the manufacturing use (as
a reactant, chemical intermediate, or
component in a formulating process) of
tetra-, penta-, or hexachlorobenzene under
alkaline conditions.
- F027 Discarded unused formulations containing (H)
tri-, tetra-, or pentachlorophenol or
discarded unused formulations containing
compounds derived from these chlorophenols.
(This listing does not include fomulations
containing Hexachlorophene synthesized from
prepurified 2,4,5-trichlorophenol as the sole
component.).
- F028 Residues resulting from the incineration or (T)
thermal treatment of soil contaminated with
EPA Hazardous Waste Nos. F020, F021, F022,
F023, F026, and F027.

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Hazardous Waste

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F032

Wastewaters, process residuals, preservative
drippage, and spent formulations from wood
preserving processes generated at plants that
currently use or have previously used
chlorophenolic formulations (except
potentially cross-contaminated wastes that
have had the F032 waste code deleted in
accordance with §261.35 of this chapter and
where the generator does not resume or
initiate use of chlorophenolic formulations).
This listing does not include K001 bottom
sediment sludge from the treatment of
wastewater from wood preserving processes
that use creosote and/or pentachlorophenol.
(Note: The listing of wastewaters that have
not come into contact with process
contaminants is stayed administratively. The
listing for plants that have previously used
chlorophenolic formulations is
administratively stayed whenever these wastes
are covered by the F034 or F035 listings.
These stays will remain in effect until
further administrative action is taken).

(T)

Industry
and EPA
hazardous
waste No.

Hazardous Waste

Hazard
Code

F034

Wastewaters, process residuals, preservative
dripping, and spent formulations from wood
preserving process generated at plants that
use creosote formulations. This listing does
not include K001 bottom sediment sludge from
the treatment of wastewater from wood
preserving processes that use creosote and/or
pentachlorophenol. (Note: The listing of
wastewaters that have not come into contact
with process contaminants is stayed
administratively. The stay will remain in
effect until further administrative action is
taken.)

(T)

F035

Wastewaters, process residuals, preservative
dripping, and spent formulations from wood
preserving process generated at plants that
use inorganic preservatives containing
arsenic or chromium. This listing does not
include K001 bottom sediment sludge from the
treatment of wastewater from wood preserving
processes that use creosote and/or
pentachlorophenol. (Note: The listing of
wastewaters that have not come into contact
with process contaminants is stayed
administratively. The stay will remain in
effect until further administrative action is
taken.)

(T)

Industry
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hazardous
waste No.

Hazardous Waste

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F037

Petroleum refinery primary oil/water/solids separation sludge--Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.

(T)

Industry
and EPA
hazardous
waste No.

Hazardous Waste

Hazard
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F038

Petroleum refinery secondary (emulsified) oil/water/solids separation sludge--Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.

F039

Leachate resulting from the treatment, storage, or disposal of wastes classified by more than one waste code under Subpart D, or from a mixture of wastes classified under Subparts C and D of this part. (Leachate resulting from the management of one or more EPA Hazardous Wastes and no other hazardous wastes retains its hazardous waste code(s): F020, F021, F022, F023, F026, F027 and F028.)

(T)

(c) Hazardous wastes from specific sources.

<u>Industry and EPA hazardous waste No.</u>	<u>Hazardous Waste</u>	<u>Hazard Code</u>
Wood preservation:		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
Inorganic pigments:		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated)	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments	(T)
K008	Oven residue from the production of chrome oxide green pigments	(T)
Organic chemicals:		
K009	Distillation bottoms from the production of acetaldehyde from ethylene	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile	(R,T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile	(R,T)
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile	(T)

<u>Industry and EPA hazardous waste No.</u>	<u>Hazardous Waste</u>	<u>Hazard Code</u>
Organic chemicals:		
K015	Still bottoms from the distillation of benzyl chloride	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene	(T)
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene	(T)
K026	Stripping still tails from the production of methy ethyl pyridines	(T)

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
Organic chemicals:		
K027	Centrifuge and distillation residues from toluene diisocyanate production	(R,T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane	(T)
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane	(T)
K095	Distillation bottoms from the production of 1,1,1-trichloroethane	(T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene	(T)
K083	Distillation bottoms from aniline production	(T)
K103	Process residues from aniline extraction from the production of aniline	(T)
K104	Combined wastewater streams generated from nitrobenzene/aniline production	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes	(T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes	(T)
<u>K107</u>	<u>Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.</u>	<u>(C,T)</u>

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
Organic chemicals:		
K108	<u>Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.</u>	(I,T)
K109	<u>Spent filter cartridges from product purification from the production of 1, 1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.</u>	(T)
K110	<u>Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.</u>	(T)
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene	(C,T)
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine	(T)
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene	(T)

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
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Organic chemicals:

K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene	(T)
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene	(T)

Inorganic chemicals:

K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used	(T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production	(T)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production	(T)

Pesticides:

K031	By-product salts generated in the production of MSMA and cacodylic acid	(T)
K032	Wastewater treatment sludge from the production of chlordane	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane	(T)
K035	Wastewater treatment sludges generated in the production of creosote	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton	(T)

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
Pesticides:		
K037	Wastewater treatment sludges from the production of disulfoton	(T)
K038	Wastewater from the washing and stripping of phorate production	(T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate	(T)
K040	Wastewater treatment sludge from the production of phorate	(T)
K041	Wastewater treatment sludge from the production of toxaphene	(T)
K098	Untreated process wastewater from the production of toxaphene	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D	(T)
K099	Untreated wastewater from the production of 2,4-D	(T)
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salt	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts	(C,T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts	(T)

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
Pesticides:		
K-126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts	(T)
<u>K-131</u>	<u>Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.</u>	<u>(C,T)</u>
<u>K-132</u>	<u>Spent absorbent and wastewater separator solids from the production of methyl bromide.</u>	<u>(T)</u>
Explosives:		
K044	Wastewater treatment sludges from the manufacturing and processing of explosives	(R)
<u>K045</u>	Spent carbon from the treatment of wastewater containing explosives	(R)
		(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds	(T)
K047	Pink/red water from TNT operations	(R)
Petroleum refining:		
K048	Dissolved air flotation (DAF) float from the petroleum refining industry	(T)
K049	Slop oil emulsion solids from the petroleum refining industry	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry	(T)
K051	API separator sludge from the petroleum refining industry	(T)
K052	Tank bottoms (leaded) from the petroleum refining industry	(T)
Iron and steel:		
K061	Emission control dust/sludge from the primary production of steel in electric furnaces	(T)

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
Iron and steel:		
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(C,T)
Primary copper:		
K064	Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.	(T)
Primary lead:		
K065	Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities	(T)
Primary Zinc:		
K066 K066	Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production	(T)
Primary aluminum:		
K088	Spent potliners from primary aluminum reduction	(T)
Ferroalloys:		
K090	Emission control dust or sludge from ferrochromiumsilicon production	(T)
Ferroalloys:		
K091	Emission control dust or sludge from ferrochromium production	(T)
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting	(T)

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
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Secondary lead:

K069	Emission control dust/sludge from secondary lead smelting <u>(Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the Federal Register.)</u>	(T)
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K100	<u>Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting</u>	(T)
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Veterinary pharmaceuticals:

K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
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K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
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K102	Residue from the use or activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
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Ink formulation:

K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead	(T)
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Coking:

K060	Ammonia still lime sludge from coking operations	(T)
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~~Coking~~

K087	Decanter tank tar sludge from coking operations	(T)
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(d) Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof, ~~except those wastes that become subject to regulation solely as a result of remedial activities taken in response to environmental contamination.~~

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in 40 CFR 261.2(a)(2)i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

(A) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraph (E) or (F) of this section.

(B) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (E) or (F) of this section.

(C) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (E) or (F) of this section, unless the container is empty as defined in 40 CFR 261.7(b)(3).

[Comment: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, EPA considers the residue to be intended for discard, and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.]

(D) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (E) or (F) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (E) or (F) of this section.

[Comment: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name

listed in ..." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraph (E) or (F). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in paragraph (E) or (F), such waste will be listed in either 40 CFR 261.31 or 40 CFR 261.32 or will be identified as a hazardous waste by the characteristics set forth in OAR 340-135-040(2)(a).

(E) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (A) through (D) of this section, are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in 40 CFR 261.5(e). These wastes and their corresponding EPA Hazardous Waste Codes are:

Hazardous Waste No.	Chemical Abstracts No.	Substance
P023	107-20-0	Acetaldehyde, chloro-
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-
P057	640-19-7	Acetamide, 2-fluoro-
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P070	116-06-3	Aldicarb
P004	309-00-2	Aldrin
P005	107-18-6	Allyl alcohol
P006	20859-73-8	Aluminum phosphide (R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P008	504-24-5	4-Aminopyridine
P009	131-74-8	Ammonium picrate (R)

Hazardous Waste No.	Chemical Abstracts No.	Substance
P119	7803-55-6	Ammonium vanadate
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium
P010	7778-39-4	Arsenic acid H_3AsO_4
P012	1327-53-3	Arsenic oxide As_2O_3
P011	1303-28-2	Arsenic oxide As_2O_5
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic trioxide
P038	692-42-2	Arsine, diethyl-
P036	696-28-6	Arsonous dichloride, phenyl-
P054	151-56-4	Aziridine
P067	75-55-8	Aziridine, 2-methyl-
P013	542-62-1	Barium cyanide
P024	106-47-8	Benzenamine, 4-chloro-
P077	100-01-6	Benzenamine, 4-nitro-
P028	100-44-7	Benzene, (chloromethyl)-
P042	51-43-4	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)
P046	122-09-8	Benzeneethanamine, alpha, alpha-dimethyl-
P014	108-98-5	Benzenethiol
P001	81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%
P028	100-44-7	Benzyl chloride
P015	7440-41-7	Beryllium

Hazardous Waste No.	Chemical Abstracts No.	Substance
P017	598-31-2	Bromoacetone
P018	357-57-3	Brucine
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-,O-[(methylamino) carbonyl] oxime
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide $\text{Ca}(\text{CN})_2$
P022	75-15-0	Carbon disulfide
P095	75-44-5	Carbonic dichloride
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P027	542-76-7	3-Chloropropionitrile
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide $\text{Cu}(\text{CN})$
P030	----	Cyanides (soluble cyanide salts), not otherwise specified
P031	460-19-5	Cyanogen
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride $(\text{CN})\text{Cl}$
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol
P016	542-88-1	Dichloromethyl ether
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P038	692-42-2	Diethylarsine

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P040	297-97-2	O,O-Diethyl O-Pyrazinyl phosphorothioate
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P004	309-00-2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro- 1,4,4a,5,8,8a-hexahydro- , (1alpha,4alpha,4abeta, 5alpha, 8alpha, 8abeta)-
P060	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro- 1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha,4abeta,5beta,8beta,8abeta)-
P037	60-57-1	2,7:3,6-Dimethanonaphth[2,3- b]oxirene, 3,4,5,6,9,9-hexachloro- 1a,2,2a,3,6,6a,7,7a-octahydro-, (1alpha,2beta,2alpha,3beta,6beta, 6alpha,7beta,7alpha)-
P051	172-20-8	2,7:3,6-Dimethanonaphth[2,3-b]- oxirene,3,4,5,6,9,9-hexachloro- 1a,2,2a,3,6,6a,7,7a-octahydro-, (1alpha,2beta,2abeta,3alpha,6alpha, 6abeta,7beta,7aalpha)-, & metabolites
P044	60-51-5	Dimethoate
P046	122-09-8	alpha,alpha-Dimethylphenethylamine
P047	1534-52-1	4,6-Dinitro-o-cresol, & salts
P048	51-28-5	2,4-Dinitrophenol
P020	88-85-7	Dinoseb
P085	152-16-9	Diphosphoramidate, octamethyl-
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P039	298-04-4	Disulfoton

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
P049	541-53-7	Dithiobiuret
P050	115-29-7	Endosulfan
P088	145-73-3	Endothall
P051	72-20-8	Endrin
P051	72-20-8	Endrin, & metabolites
P042	51-43-4	Epinephrine
P031	460-19-5	Ethanedinitrile
P066	16752-77-5	Ethanimidothioic acid, N- [[(methylamino) carbonyl]oxy]-, methyl ester
P101	107-12-0	Ethyl cyanide
P054	151-56-4	Ethyleneimine
P097	52-85-7	Famphur
P056	7782-41-4	Fluorine
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Fluoroacetic acid, sodium salt
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P059	76-44-8	Heptachlor
P062	757-58-4	Hexaethyl tetraphosphate
P116	79-19-6	Hydrazinecarbothioamide
P068	60-34-4	Hydrazine, methyl-
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P096	7803-51-2	Hydrogen phosphide

Hazardous Waste No.	Chemical Abstracts No.	Substance
P060	465-73-6	Isodrin
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P092	62-38-4	Mercury, (acetato-O)phenyl-
P065	628-86-4	Mercury fulminate (R,T)
P082	62-75-9	Methanamine, N-methyl-N-nitroso-
P064	624-83-9	Methane, isocyanato-
P016	542-88-1	Methane, oxybis[chloro-
P112	509-14-8	Methane, tetranitro- (R)
P118	75-70-7	Methanethiol, trichloro-
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a- hexahydro-,3-oxide
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a- tetrahydro-
P066	16752-77-5	Methomyl
P068	60-34-4	Methyl hydrazine
P064	624-83-9	Methyl isocyanate
P069	75-86-5	2-Methylactonitrile
P071	298-00-0	Methyl parathion
P072	86-88-4	alpha-Naphthylthiourea <u>Naphthalenylthiourea</u>
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl (Ni(CO) ₄ , (T,4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide Ni(CN) ₂

Hazardous Waste No.	Chemical Abstracts No.	Substance
P075	¹ 54-11-5	Nicotine, & salts
P076	10102-43-9	Nitric oxide
<u>P076</u>	<u>10102-43-9</u>	<u>Nitrogen oxide NO</u>
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P076	10102-43-9	Nitrogen oxide NO
P078	10102-44-0	Nitrogen oxide NO ₂
P081	55-63-0	Nitroglycerine (R)
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P085	152-16-9	Octamethylpyrophosphoramidate
P087	20816-12-0	Osmium oxide OsO ₄ , (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
P089	56-38-2	Parathion
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P048	51-28-5	Phenol, 2,4,dinitro
P047	¹ 534-52-1	Phenol, 2-methyl-4,6-dinitro-, & salts
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea

Hazardous Waste No.	Chemical Abstracts No.	Substance
P094	298-02-2	Phorate
P095	75-44-5	Phosgene
P096	7803-51-2	Phosphine
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester
P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl]ester
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P097	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester
P071	298-00-0	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester
P110	78-00-2	Plumbane, tetraethyl-
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Potassium silver cyanide
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime
P101	107-12-0	Propanenitrile

Hazardous Waste No.	Chemical Abstracts No.	Substance
P027	542-76-7	Propanenitrile, 3-chloro-
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P017	598-31-2	2-Propanone, 1-bromo-
P102	107-19-7	Propargyl alcohol
P003	107-02-8	2-Propenal
P005	107-18-6	2-Propen-1-ol
P067	75-55-8	1,2-Propylenimine
P102	107-19-7	2-Propyn-1-ol
P008	504-24-5	4-Pyridinamine
P075	¹ 54-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts
P114	12039-52-0	Selenious acid, dithallium (1+) salt
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	¹ 57-24-9	Strychnidin-10-one, & salts
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P108	¹ 57-24-9	Strychnine, & salts
P115	7446-18-6	Sulfuric acid, dithallium(1+) salt
P109	3689-24-5	Tetraethyldithiopyrophosphate

Hazardous Waste No.	Chemical Abstracts No.	Substance
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Tetranitromethane (R)
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl_2O_3
P114	12039-52-0	Thallium(I) selenite
P115	7446-18-6	Thallium(I) sulfate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P045	39196-18-4	Thiofanox
P049	541-53-7	Thioimidodicarbonic diamide [$(H_2N)C(S)]_2NH$
P014	108-98-5	Thiophenol
P116	79-19-6	Thiosemicarbazide
P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P072	86-88-4	Thiourea, 1-naphthalenyl-
P093	103-85-5	Thiourea, phenyl-
P123	8001-35-2	Toxaphene
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V_2O_5
P120	1314-62-1	Vanadium pentoxide
P084	4549-40-0	Vinylamine, N-methyl-N-nitroso-

Hazardous Waste No.	Chemical Abstracts No.	Substance
P001	¹ 81-81-2	Warfarin, & salts, when present at concentrations greater than 0.3%
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide Zn(CN) ₂
P122	1314-84-7	Zinc phosphide Zn ₃ P ₂ , when present at concentrations greater than 10% (R,T)

¹CAS Number given for parent compound only.

(F) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (A) through (D) of this section, are identified as toxic wastes (T), unless otherwise designated and are subject to the small quantity generator exclusion defined in 40 CFR 261.5(a) and (g). These wastes and their corresponding EPA Hazardous Waste Codes are:

Hazardous Waste No.	Chemical Abstracts No.	Substance
U001	75-07-0	Acetaldehyde (I)
U034	75-87-6	Acetaldehyde, trichloro-
U187	62-44-2	Acetamide, N-(4-ethoxyphenyl)-
U005	53-96-3	Acetamide, N-9H-fluoren-2-yl-
U240	¹ 94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
U112	141-78-6	Acetic acid, ethyl ester (I)
U144	301-04-2	Acetic acid, lead (2+) salt
U214	563-68-8	Acetic acid, thallium (1+) salt
See F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U002	67-64-1	Acetone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U008	79-10-7	Acrylic acid (I)
U009	107-13-1	Acrylonitrile
U011	61-82-5	Amitrole
U012	62-53-3	Aniline (I,T)
U136	75-60-5	Arsinic acid, dimethyl-
U014	492-80-8	Auramine
U015	115-02-6	Azaserine
U010	50-07-7	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[(aminocar-bonyl)oxy]methyl]-1,1a,2,8,8a,8b, hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta, 8aalpha, 8balph)]-
U157	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
U016	225-51-4	Benz[c]acridine
U017	98-87-3	Benzal chloride
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl propynyl)-
U018	56-55-3	Benz[a]anthracene
U094	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
U012	62-53-3	Benzenamine (I,T)

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis [N,N-dimethyl-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl, hydrochloride
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
U328	95-53-4	Benzenamine, 2-methyl-
U353	106-49-0	Benzenamine, 4-methyl-
U158	101-14-4	Benzenamine, 4,4'-methylenebis [2-chloro-
U222	636-21-5	Benzenamine, 2-methyl-,hydrochloride
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U019	71-43-2	Benzene (I,T)
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy, ethyl ester
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U035	305-03-3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
U037	108-90-7	Benzene, chloro-
U221	25376-45-8	Benzenediamine, ar-methyl-
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethyl-hexyl) ester
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
U107	117-84-0	1,2-Benzenedicarboxylic acid dioctyl ester
U070	95-50-1	Benzene, 1,2-dichloro-
U071	541-73-1	Benzene, 1,3-dichloro-
U072	106-46-7	Benzene, 1,4-dichloro
U060	72-54-8	Benzene, 1,1'-(2,2-dichloro- ethylidene)bis[4-chloro-
U017	98-87-3	Benzene, (dichloromethyl)-
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U239	1330-20-7	Benzene, dimethyl- (I,T)
U201	108-46-3	1,3-Benzenediol
U127	118-74-1	Benzene, hexachloro-
U056	110-82-7	Benzene, hexahydro- (I)
U220	108-88-3	Benzene, methyl-
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U055	98-82-8	Benzene, (1-methylethyl)- (I)
U169	98-95-3	Benzene, nitro-
U183	608-93-5	Benzene, pentachloro-
U185	82-68-8	Benzene, pentachloronitro-
U020	98-09-9	Benzenesulfonic acid chloride (C,R)
U020	98-09-9	Benzenesulfonyl chloride (C,R)
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloro- ethylidene)bis[4-chloro-

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-
U023	98-07-7	Benzene, (trichloromethyl)-
U234	99-35-4	Benzene, 1,3,5-trinitro-
U021	92-87-5	Benzidine
U202	81-07-2	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U064	189-55-9	Benzo[rs]pentaphene
U248	81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations of 0.3% or less
U022	50-32-8	Benzo[a]pyrene
U197	106-51-4	p-Benzoquinone
U023	98-07-7	Benzotrichloride (C,R,T)
U085	1464-53-5	2,2'-Bioxirane
U021	92-87-5	[1,1'-Biphenyl]-4,4'-diamine
U073	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
U091	119-90-4	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-
U095	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
U225	75-25-2	Bromoform
U030	101-55-3	4-Bromophenyl phenyl ether

Hazardous Waste No.	Chemical Abstracts No.	Substance
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U031	71-36-3	1-Butanol (I)
U159	78-93-3	2-Butanone (I,T)
U160	1338-23-4	2-Butanone peroxide (R,T)
U053	4170-30-3	2-Butenal
U074	764-41-0	2-Butene, 1,4-dichloro- (I,T)
U143	303-34-4	2-Butenoic acid, 2-methyl-,7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-
U031	71-36-3	n-Butyl alcohol (I)
U136	75-60-5	Cacodylic acid
U032	13765-19-0	Calcium chromate
U238	51-79-6	Carbamic acid, ethyl ester
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U097	79-44-7	Carbamic chloride, dimethyl-
U114	111-54-6	Carbamodithioic acid, 1,2-ethanedithylbis-, salts & esters
U062	2303-16-4	Carbamothioic acid, bis(1-methyl-ethyl)-, S- (2,3-dichloro-2-propenyl) ester
U215	6533-73-9	Carbonic acid, dithallium (1+) salt
U033	353-50-4	Carbonic difluoride
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
U033	353-50-4	Carbon oxyfluoride (R,T)
U211	56-23-5	Carbon tetrachloride
U034	75-87-6	Chloral
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha & gamma isomers
U026	494-03-1	Chlornaphazin
U037	108-90-7	Chlorobenzene
U038	510-15-6	Chlorobenzilate
U039	59-50-7	p-Chloro-m-cresol
U042	110-75-8	2-Chloroethyl vinyl ether
U044	67-66-3	Chloroform
U046	107-30-2	Chloromethyl methyl ether
U047	91-58-7	beta-Chloronaphthalene
U048	95-57-8	o-Chlorophenol
U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U032	13765-19-0	Chromic acid H_2CrO_4 , calcium salt
U050	218-01-9	Chrysene
U051	----	Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Cumene (I)
U246	506-68-3	Cyanogen bromide (CN)Br
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U056	110-82-7	Cyclohexane (I)

Hazardous Waste No.	Chemical Abstracts No.	Substance
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-
U057	108-94-1	Cyclohexanone (I)
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexa-chloro-
U058	50-18-0	Cyclophosphamide
U240	194-75-7	2,4-D, salts & esters
U059	20830-81-3	Daunomycin
U060	72-54-8	DDD
U061	50-29-3	DDT
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz[a,h]anthracene
U064	189-55-9	Dibenzo[a,i]pyrene
U066	96-12-8	1,2-Dibromo-3-chloropropane
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	p-Dichlorobenzene
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	1,4-dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U078	75-35-4	1,1-Dichloroethylene
U079	156-60-5	1,2-Dichloroethylene
U025	111-44-4	Dichloroethyl ether

Hazardous Waste No.	Chemical Abstracts No.	Substance
U027	108-60-1	Dichloroisopropyl ether
U024	111-91-1	Dichloromethoxy ethane
U081	120-83-2	2,4-Dichlorophenol
U082	87-65-0	2,6-Dichlorophenol
U084	542-75-6	1,3-Dichloropropene
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U108	123-91-1	1,4-Diethyleneoxide
U028	117-81-7	Diethylhexyl phthalate
U086	1615-80-1	N,N'-Diethylhydrazine
U087	3288-58-2	O,O-Diethyl S-methyl dithiophosphate
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U090	94-58-6	Dihydrosafrole
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	7,12-Dimethylbenz[a]anthracene
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha, alpha-Dimethylbenzylhydroperoxide (R)
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine
U099	540-73-8	1,2-Dimethylhydrazine
U101	105-67-9	2,4-Dimethylphenol
U102	131-11-3	Dimethyl phthalate

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
U103	77-78-1	Dimethyl sulfate
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U110	142-84-7	Dipropylamine (I)
U111	621-64-7	Di-n-propylnitrosamine
U041	106-89-8	Epichlorohydrin
U001	75-07-0	Ethanal (I)
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'- 2-pyridinyl-N'-(2-thienylmethyl)-
U067	106-93-4	Ethane, 1,2-dibromo-
U076	75-34-3	Ethane, 1,1-dichloro-
U077	107-06-2	Ethane, 1,2-dichloro-
U131	67-72-1	Ethane, hexachloro-
U024	111-91-1	Ethane, 1,1'-[methylenebis(oxy)bis [2-chloro-
U117	60-29-7	Ethane, 1,1'-oxybis- (I)
U025	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
U184	76-01-7	Ethane, pentachloro-
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U218	62-55-5	Ethanethioamide

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
U226	71-55-6	Ethane, 1,1,1-trichloro-
U227	79-00-5	Ethane, 1,1,1-trichloro-
U359	110-80-5	Ethanol, 2-ethoxy-
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U004	98-86-2	Ethanone, 1-phenyl-
U043	75-01-4	Ethene, chloro-
U042	110-75-8	Ethene, (2-chloroethoxy)-
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U210	127-18-4	Ethene, tetrachloro-
U228	79-01-6	Ethene, trichloro
U112	141-78-6	Ethyl acetate (I)
U113	140-88-5	Ethyl acrylate (I)
U238	51-79-6	Ethyl carbamate (urethane)
U117	60-29-7	Ethyl ether (I)
U114	111-54-6	Ethylenebisdithiocarbamic acid, salts & esters
U067	106-93-4	Ethylene dibromide
U077	107-06-2	Ethylene dichloride
U359	110-80-5	Ethylene glycol monoethyl ether
U115	75-21-8	Ethylene oxide (I,T)
U116	96-45-7	Ethylenethiourea
U076	75-34-3	Ethylidene dichloride
U118	97-63-2	Ethyl methacrylate
U119	62-50-0	Ethyl methanesulfonate

Hazardous Waste No.	Chemical Abstracts No.	Substance
U120	206-44-0	Fluoranthene
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U147	108-31-6	2,5-Furandione
U213	109-99-9	Furan, tetrahydro- (I)
U125	98-01-1	Furfural (I)
U124	110-00-9	Furfuran (I)
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-[[(methyl-nitrosoamino)-carbonyl]amino]-
U126	765-34-4	Glycidylaldehyde
U163	70-25-7	Guanidine, N-methyl-N'-nitro-N-nitroso-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	Hexachlorobutadiene
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U243	1888-71-7	Hexachloropropene
U133	302-01-2	Hydrazine (R,T)
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	Hydrazine, 1,2-dimethyl-

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H ₂ S
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U116	96-45-7	2-Imidazolidinethione
U137	193-39-5	Indeno[1,2,3-cd]pyrene
U190	85-44-9	1,3-Isobenzofurandione
U140	78-83-1	Isobutyl alcohol (I,T)
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U143	303-34-4	Lasiocarpine
U144	301-04-2	Lead acetate
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U145	7446-27-7	Lead phosphate
U146	1335-32-6	Lead subacetate
U129	58-89-9	Lindane
U163	70-25-7	MNNG
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U149	109-77-3	Malononitrile
U150	148-82-3	Melphalan
U151	7439-97-6	Mercury

Hazardous Waste No.	Chemical Abstracts No.	Substance
U152	126-98-7	Methacrylonitrile (I,T)
U092	124-40-3	Methanamine, N-methyl- (I)
U029	74-83-9	Methane, bromo-
U045	74-87-3	Methane, chloro- (I,T)
U046	107-30-2	Methane, chloromethoxy-
U068	74-95-3	Methane, dibromo-
U080	75-09-2	Methane, dichloro-
U075	75-71-8	Methane, dichlorodifluoro-
U1338	74-88-4	Methane, iodo-
U119	62-50-0	Methanesulfonic acid, ethyl ester
U211	56-23-5	Methane, tetrachloro-
U153	74-93-1	Methanethiol (I,T)
U225	75-25-2	Methane, tribromo-
U044	67-66-3	Methane, trichloro-
U121	75-69-4	Methane, trichlorofluoro-
U036	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro- 2,3,3a,4,7,7a-hexahydro-
U154	67-56-1	Methanol (I)
U155	91-80-5	Methapyrilene
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd] pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6- decachlorooctahydro-
U247	72-43-5	Methoxychlor
U154	67-56-1	Methyl alcohol (I)
U029	74-83-9	Methyl bromide

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
U186	504-60-9	1-Methylbutadiene (I)
U045	74-87-3	Methyl chloride (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U226	71-55-6	Methyl chloroform
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U068	74-95-3	Methylene bromide
U080	75-09-2	Methylene Chloride
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U138	74-88-4	Methyl iodide
U161	108-10-1	Methyl isobutyl ketone (I)
U162	80-62-6	Methyl methacrylate (I,T)
U161	108-10-1	4-Methyl-2-pentanone (I)
U164	56-04-2	Methylthiouracil
U010	50-07-7	Mitomycin C
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U167	134-32-7	1-Naphthalenamine
U168	91-59-8	2-Naphthalenamine
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U165	91-20-3	Naphthalene
U047	91-58-7	Naphthalene, 2-chloro-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U166	130-15-4	1,4-Naphthalenedione
U236	75-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis[5-amino-4-hydroxy]-tetrasodium salt
U166	130-15-4	1,4-Naphthoquinone
U167	134-32-7	alpha-Naphthylamine
U168	91-59-8	beta-Naphthylamine
U217	10102-45-1	Nitric acid, thallium (1+) salt
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U171	79-46-9	2-Nitropropane (I,T)
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U177	684-93-5	N-Nitroso-N-methylurea
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U180	930-55-2	N-Nitrosopyrrolidine
U181	99-55-8	5-Nitro-o-toluidine
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl) tetrahydro-, 2-oxide
U115	75-21-8	Oxirane (I,T)
U126	765-34-4	Oxiranecarboxyaldehyde

Hazardous Waste No.	Chemical Abstracts No.	Substance
U041	106-89-8	Oxirane, (chloromethyl)-
U182	123-63-7	Paraldehyde
U183	608-93-5	Pentachlorobenzene
U184	74-01-7	Pentachloroethane
U185	82-68-8	Pentachloronitrobenzene (PCNB)
See F027	87-86-5	Pentachlorophenol
U161	108-10-1	Pentanol, 4-methyl-
U186	504-60-9	1,3-Pentadiene (I)
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U048	95-57-8	Phenol, 2-chloro-
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U081	120-83-2	Phenol, 2,4-dichloro-
U082	87-65-0	Phenol, 2,6-dichloro-
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U101	105-67-9	Phenol, 2,4-dimethyl-
U052	1319-77-3	Phenol, methyl-
U132	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
U170	100-02-7	Phenol, 4-nitro-
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U189	1314-80-3	Phosphorus sulfide (R)
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U179	100-75-4	Piperidine, 1-nitroso-
U192	23950-58-5	Pronamide
U194	107-10-8	1-Propanamine (I,T)
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U110	142-84-7	1-Propanamine, N-propyl- (I)
U066	96-12-8	Propane, 1,2-dibromo-3-chloro
U083	78-87-5	Propane, 1,2-dichloro-
U149	109-77-3	Propanedinitrile
U171	79-46-9	Propane, 2-nitro- (I,T)
U027	108-60-1	Propane, 2,2'-oxybis[2-chloro-
U193	1120-71-4	1,3-Propane sultone
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)

Hazardous Waste No.	Chemical Abstracts No.	Substance
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U002	67-64-1	2-Propanone (I)
U007	79-06-1	2-Propenamide
U084	542-75-6	1-Propene, 1,3-dichloro-
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U009	107-13-1	2-Propenenitrile
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U008	79-10-7	2-Propenoic acid (I)
U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U194	107-10-8	n-Propylamine (I,T)
U083	78-87-5	Propylene dichloride
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro
U198	110-86-1	Pyridine
U191	109-06-8	Pyridine, 2-methyl
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thio-
U180	930-55-2	Pyrrolidine, 1-nitroso-
U200	50-55-5	Reserpine
U201	108-46-3	Resorcinol
U202	181-07-2	Saccharin, & salts

**Proposed Adoption of Federal Hazardous Waste Regulations
and Updating the List of Toxic Substances and Hazardous Wastes**

Date: August 17, 1992

Hearing Date: September 15, 1992 Comments
Due: September 21, 1992

**WHO IS
AFFECTED:**

Persons who generate, store, treat, dispose, and recycle hazardous waste and persons required to develop Toxics Use Reduction and Hazardous Waste Reduction Plans.

**WHAT IS
PROPOSED:**

The Department of Environmental Quality (DEQ) proposes to amend Chapter 340, Divisions 100 and 102 to include federally promulgated regulations and corrections through July 1, 1992, and update Division 135 to include newly listed hazardous substances and wastes.

**WHAT ARE THE
HIGHLIGHTS:**

- o New federal regulations concerning woodtreaters and burners of hazardous wastes in boilers and industrial furnaces (BIFs).
- o New federal used oil regulations pertaining to managing spent oil filers.

- o New federal regulations exempting from regulation spent chlorofluorocarbons (CFCs) that are recycled.
- o Update the list of hazardous waste and substances subject to planning requirements under Oregon's Toxics Use Reduction law.

**HOW TO
COMMENT:**

Copies of the proposed rule package may be obtained from the Hazardous and Solid Waste Division, 811 S.W. Sixth Ave., Portland, Oregon 97204. Oral and written comments will be accepted at the public hearing:

6:00 P.M. until finished
Tuesday 15, 1992
Rm. 122
Oregon Convention Center
777 NE Martin Luther King Jr. Blvd.
Portland, Oregon
Phone 235-7575 (Convention Center)

Written comments should be sent to Scott Latham, DEQ Hazardous and Solid Waste Division, 811 S.W. Sixth Ave., Portland, Oregon 97204. Comments must be received by 5 P.M., September 21, 1992. For further information, contact Gary Calaba, (503) 229-6534, or toll-free within Oregon, 1-800-452-4011.

**WHAT IS THE
NEXT STEP:**

After the Public hearing, DEQ will evaluate the comments, prepare a response to the comments and make a recommendation to the Environmental Quality Commission on October 16, 1992. The Commission may adopt the amendments as proposed, adopt modified amendments as a result of the testimony received, or decline to adopt any amendments.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Proposed Adoption of Federal Hazardous Waste Regulations
by Reference and Updating the Toxics Use Reduction
and Hazardous Waste Reduction Regulations

Rulemaking Statements

Pursuant to ORS 183.335(7), this statement provides information about the Environmental Quality Commission's intended action to adopt a rule.

1. Legal Authority

ORS 466.020 requires the Commission to adopt rules to establish minimum requirements for the treatment, storage, disposal and recycling of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, storage and disposal sites, and requirements and procedures for selection of such sites.

ORS 466.020 classifies as hazardous wastes those residues resulting from any process of industry, manufacturing, trade, business or government or from the development or recovery of any natural resources, which may, because of their quantity, concentration, or physical, chemical or infectious characteristics:

- (a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- (b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

ORS 466.020 requires the Commission to adopt rules pertaining to hearings, filing

of reports, submission of plans and the issuance of licenses pertaining to generators, and to the transportation of hazardous waste by air and water.

ORS 465.009 requires the Commission to add or remove any toxic substance or hazardous waste from the provisions of ORS 465.003 to 465.034 which pertain to the guidelines for toxics use reduction plans, performance goals and progress reports.

2. Need for the Rule

The state of Oregon is currently authorized by the federal government to manage the hazardous waste management program mandated by Congress under the Resource Conservation and Recovery Act (RCRA). In order to maintain authorization, the state must adopt new federal rules and repeal any existing state rules which are less stringent, within specified time frames. Loss of authorization would result in both EPA and DEQ operating redundant programs within the state. The Oregon Legislature and Environmental Quality Commission have supported the state's pursuit of authorization. The Legislature requires the Department and the Commission to take any action necessary to maintain Oregon's authorization (ORS 466.086).

OAR 340-135-040 requires the Department to annually update the list of toxic substances and hazardous wastes subject to the toxics use reduction requirements in ORS 465.003 through 465.037. This list of substances and wastes are codified in Appendix A, Chapter 340, Division 135. Several new substances and hazardous wastes have been adopted by EPA and the Department since the initial promulgation of Appendix A. These new substances and wastes are being incorporated into Appendix A to maintain consistency with the federal programs already in place.

3. Principal Documents Relied Upon in this Rulemaking

New federal hazardous waste management rules published in the Federal Register (FR) and proposed for incorporation by reference (See Attachment B for regulations). OAR Chapter 340, Divisions 100, 101, 135, and 40 CFR, Part 372.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Proposed Adoption of Federal Hazardous Waste Regulations
by Reference and Updating Toxics Use Reduction
and Hazardous Waste Reduction Regulations

Fiscal and Economic Impact Statement

1. Proposed Adoption of Federal Regulations by Reference

The federal regulations being proposed for adoption are either currently in effect in Oregon, or substantially equivalent to existing Oregon regulations. Therefore, there will be no economic impact on (1) state agencies, (2) units of local governments or the (3) the public, including small and large businesses.

2. Proposed Addition of Toxic Substances and Hazardous Wastes to Planning Requirements

Generators and facilities are currently developing and submitting Toxics Use Reduction plans, and correcting and updating the list of substances and wastes subject to planning will not have any economic impact on them at this time. These proposed substances will, however, be subject to planning requirements during the next planning cycle (1993 plans). However, because generators and users are already tracking and reporting on these substances under federal requirements, the cost to (1) state agencies, (2) units of local governments, the (3) the public, including small and large businesses will be negligible. However, costs incurred will likely be offset by savings resulting from reduction in toxics use and hazardous waste generation and attendant cost.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Proposed Adoption of Federal Hazardous Waste Regulations
by Reference and Updating the Toxics Use Reduction
and Hazardous Waste Reduction Regulations

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The purposes of the proposed rules is to make the Department's hazardous waste regulations and implementation policy equivalent with and consistent to federal regulations that are already in effect in Oregon. In addition, the Department is required to maintain equivalency in order to remain authorized to implement the hazardous waste program in lieu of the Environmental Protection Agency (EPA).

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program? Yes No

a. If yes, identify existing program/rule/activity:

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes No (if no, explain):

c. If no, apply the following criteria to the proposed rules.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The major revisions to the hazardous waste regulations pertain to federal regulations that are already in effect in Oregon. Some of the regulations pertain to hazardous waste management facilities. The facility regulations are designed to control the impact of hazardous wastes on Oregon's environment. The rules apply to hazardous waste permits which require the submittal of land use compatibility statements acted upon by the affected local government.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

N/A


Stephanie Hallock
Division

[Signature]
Intergovernmental Coord.

9-30-92
Date

State of Oregon
Department of Environmental Quality Memorandum

Date: September 21, 1992

To: Environmental Quality Commission
From: Scott Latham, Hearings Officer 
Subject: Report of Public Hearing on Hazardous Waste Rules

On August 14, 1992, the Director authorized a public hearing on amending Oregon Administrative Rules (OAR) pertaining to the adoption of federal hazardous waste rules by reference and updating the toxics use reduction and hazardous waste reduction regulations. Notice was published in the September edition of the Bulletin and separately distributed to a Department mailing list of potentially interested parties.

On September 15, 1992, the Department held a public hearing at the Oregon Convention Center in Portland. Three members of the public and five staff attended the hearing, which was opened at 6:00 PM. None of the attendees wished to comment on the proposed amendments and the hearing was closed at 6:15 PM.

State of Oregon
Department of Environmental Quality Memorandum

Date: September 21, 1992

To: Environmental Quality Commission

From: Roy Brower, *R. Brower* Manager, Hazardous Waste Policy and Program
Development

Subject: Agenda Item E , October 16, 1992, EQC Meeting

Summary of Written Comments Received and Department Responses

The Department received three written comments and responds as follows:

1. Miller Paint Company, Inc., August 24, 1992.

Comment: Miller Paint Company asks why it is necessary to refer to 40 CFR 261.33(e) and (f) at OAR 340-135 Appendix A, paragraph 2(e), (page A-65), when the information contained in (e) and (f) is already part of OAR 340-135?

Department Response: OAR 340-135 Appendix A, paragraph 2(e) (page A-65) is the Department's "3 and 10 percent hazardous waste mixture rule". The rule states that wastes containing 3 percent or greater of a "P" listed chemical(s) (40 CFR 261.33(e)) or 10 percent or greater of a "U" listed chemical(s) (40 CFR 261.33(f)) are hazardous. Generators of such wastes are subject to the toxics use reduction planning requirements under OAR 340, Division 135. Although the chemicals listed in the federal regulations under (e) and (f) are the same as the chemicals listed in Appendix A, the

Department believes it is reasonable to list separately the chemicals and hazardous waste regulations that must be considered when doing a toxics use reduction (TUR) plan. The two sets of lists may not always coincide and it is convenient for TUR planners to be able to reference a specific list of chemicals and wastes subject to planning requirements.

2. Oregon Steel Mills, September 21, 1992.

Comment: Oregon Steel Mills supports the Department's adoption of the federal BIF regulation. The company desires that EPA delegate BIF implementation in Oregon to facilitate OSM's proposal to recycle K061 hazardous wastes. The company wants DEQ to be the regulatory authority that oversees the implementation of the project.

Department Response: The Department is requesting authorization from EPA to implement the BIF regulations.

3. Antifreeze Environmental Service Corp., September 21, 1992.

Comment: Antifreeze Environmental Service Corp. addresses used oil filters, coolant filters and fuel filters. Concerning the regulation of used oil filters, the company contends that the federal regulations are unclear about the disposal of used oil filters.

Department Response: The Department is limiting its comments to the federal regulation of used oil filters, since the Department is proposing to adopt those regulations in this rulemaking.

The Department believes that the federal regulation of used oil filters is reasonable and is protective of human health and the environment. The regulations require that automobile filters be either hot drained for twelve hours or crushed prior to disposal. EPA believes that such filters will generally not fail any hazardous waste characteristics and therefore exempts them from the hazardous waste regulations. The Department concurs. Terne-plated oil filters, generated by the trucking industry, contain lead and may be hazardous wastes because of the lead. Generators are required to make that determination and if the terne filters fail the test, then manage them as hazardous unless they are recycled for scrap metal. While the

Attachment D
Request for Rule Adoption
Agenda Item: E
Meeting Date: October 16, 1992

federal rule may raise some issues, DEQ will work with EPA to clarify these issues via policy or factsheets as necessary. The Department believes that the federal oil filter regulation is implementable in its current form.

**Federal Register Rules
Proposed for Adoption by Oregon
July 28, 1992**

This list of Environmental Protection Agency regulations is proposed for adoption at the October 16, 1992 EQC meeting. The regulations were promulgated by EPA between June 29, 1990 and July 1, 1992. The Department adopts the federal regulations annually in order to maintain authorization.

1. Exempting from the hazardous waste regulations groundwater that is generated from hydrocarbon recovery operations and then re-injected.

▶ **Federal Register (FR) 80**

Vol. 55 No. 194 Friday, October 5, 1990 p 40834

ACTION: Interim final rule with request for comments.

EFFECTIVE DATE: September 25, 1990.

AFFECTED REGULATIONS: 40 CFR Part 261

[EPA/OSW-FR-90-FFF; SWM-FRL-3836-8] RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Hydrocarbon Recovery Operations

SUMMARY: On March 29, 1990, the Environmental Protection Agency (EPA) promulgated revisions to the toxicity characteristic, one of the tests used to determine whether particular wastes are regulated as hazardous under subtitle C of the Resource Conservation and Recovery Act (RCRA). New information acquired by the Agency since the promulgation of the Toxicity Characteristic (TC) rule indicates that immediate application of the TC could prevent continued operation of hydrocarbon recovery and remediation activities currently being conducted at a number of petroleum refineries and marketing terminals or bulk plants handling crude petroleum and immediate products of

petroleum refining. The hydrocarbon recovery and remediation activities of concern are those that recover free-floating hydrocarbons from the contaminated aquifer, and include as part of the recovery, re-injection of contaminated ground water via underground injection wells or re-infiltration via an infiltration gallery into the same aquifer from which it was withdrawn.

The Agency believes that cessation of these activities may pose a substantially greater risk to human health and the environment than their continued operation under the existing regulatory authorities. As a result of this new information, the Agency is today promulgating an interim final rule which extends the compliance date of the TC rule for petroleum refining facilities, marketing terminals and bulk plants engaged in this specific recovery and remediation operation for 120 days. The period of the extension being promulgated today will allow the Agency to solicit public comment on issues related to these facilities, and to consider all available, pertinent information, and to develop the best solution to protect human health and the environment.

DISCUSSION: See FR 80B.

► **FR80A**

Vol. 56 No. 22 Friday, February 1, 1991 p 3978

ACTION: Interim final rule.

EFFECTIVE DATE: February 1, 1991.

AFFECTED REGULATIONS: 40 CFR Part 261

[EPA/OSW-FRL-3901-2] RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Hydrocarbon Recovery Operations

SUMMARY: On October 5, 1990 (55 FR 40834), the Agency promulgated an interim final rule extending the compliance date of the Toxicity Characteristic until January 25, 1991 for groundwater that is re-injected or re-infiltrated during existing hydrocarbon recovery operations at petroleum refineries, marketing terminals, and bulk plants. Today's action further extends this

compliance date until March 25, 1991, in order to allow the Agency sufficient time to fully evaluate comments received on this issue.

DISCUSSION: See FR 80B.

▶ **FR80B**

Vol. 56 No. 63 Tuesday, April 2, 1991 p 13406

ACTION: Final rule.

EFFECTIVE DATE: March 25, 1991.

AFFECTED REGULATIONS: 40 CFR Part 261

[EPA/OSW FR-91-015; FR-3914-2] RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Hydrocarbon Recovery Operations

SUMMARY: On November 7, 1990, the Agency proposed to extend the compliance date for the Toxicity Characteristic until January 25, 1993 for produced groundwater from free phase hydrocarbon recovery operations at certain petroleum industry sites-namely, refineries, marketing terminals, and bulk plants. Made aware of likely disruptions to cleanup operations at these facilities after the Toxicity Characteristic rulemaking process, the Agency concluded that an extension of the compliance date would ensure that these operations would not be interrupted and thereby avoid setbacks in their remediation activities.

The Agency is today making final this proposed extension. However, the scope of the extension has been expanded to include free hydrocarbon recovery operations at petroleum pipeline and transportation sector spill sites as well as petroleum refineries, marketing terminals, and bulk plants. Additionally, free phase hydrocarbon recovery operations involving infiltration galleries will not be included in the scope of the extension.

DISCUSSION: Federal Registers 80, 80A, and 80B, exclude from the Toxicity Characteristic regulations (40 CFR 261.24) until January 23, 1993,

groundwater that is being re-injected after treatment to recover hydrocarbons. This exclusion applies to petroleum refining facilities, marketing terminals, bulk plants, petroleum pipeline and transportation sector spill sites, that are engaged in hydrocarbon recovery and remediation operations. Facilities exercising the exclusion must complete a written agreement with the state and file the agreement with the EPA.

Currently, no facilities in Oregon are affected by this regulation.

2. Listing as hazardous waste oily sludges generated at oil refineries, bulk terminals and other facilities that separate oil from water, except for once through non-contact cooling waters.

▶ **FR81**

Vol. 55, No. 213 Friday, November 2, 1990 p 46354

ACTION: Final rule.

EFFECTIVE DATE: This final rule is effective May 2, 1991.

AFFECTED REGULATIONS: 40 CFR Parts 261, 271, and 302

[FRL-3807-1] RIN 2050-AB70

Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation-Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038)

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating regulations under the Resource Conservation and Recovery Act (RCRA) to add two wastes to the list of hazardous wastes under 40 CFR 261.31. These wastes, designated F037 and F038, are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters.

EPA is also amending Appendix VII of 40 CFR 261 to add the organic and inorganic constituents for which these wastes are listed. In addition, EPA is

adding these wastes to the list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and setting their reportable quantities at the statutory level of one pound.

EPA is taking this action because these wastes, when improperly treated, stored, transported, disposed of, or otherwise managed, are potentially capable of posing a substantial hazard to human health or the environment. Today's rulemaking will extend RCRA and CERCLA coverage to all oil/water/solids separation sludges and floats generated from wastewaters from petroleum refineries regardless of the type of device used to separate the wastes from the process wastewaters and oily cooling wastewaters and regardless of where treatment takes place.

The effect of listing these wastes will be to subject them to the hazardous waste regulations of 40 CFR 124, 262 through 266, 270, and 271 of this Chapter; the notification requirements of section 3010 under RCRA; and the notification requirements of section 103 under CERCLA.

DISCUSSION: See FR 89.

▶ **FR81A**

Vol. 55 No. 242 Monday, December 17, 1990 p 51707

ACTION: Final rule; correction.

EFFECTIVE DATE:

AFFECTED REGULATIONS: 40 CFR Parts 261 and 302

[FRL-3869-4]

Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings; Correction

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors in the preamble, and amendments to the regulations which appeared in the Federal Register on November 2, 1990 (55 FR 46354).

EPA has promulgated regulations under the Resource Conservation and Recovery Act (RCRA) to add two wastes to the list of hazardous wastes under 40 CFR 261.31. These wastes, designated F037 and F038, are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters. The regulation contained errors which are discussed briefly below and are corrected by this notice.

Table E incorrectly states the water solubility of benzene. The solubility of benzene in water is $1.75 \times 10^{+3}$ ppm.

The text of the amendments to title 40 of the Code of Federal Regulations were inadvertently printed from a previous draft of the regulation and were inconsistent with the final wordings given in the preamble on pages 46358-46359.

DISCUSSION: See FR 89.

► **FR89**

Vol. 56 No. 92 Monday, May 13, 1991 p 21955

ACTION: Interim final rule with request for comments.

EFFECTIVE DATE: This interim final rule is effective May 2, 1991.

COMMENT DATE: Comments on today's action and any additional data must be received on or before June 30, 1991.

AFFECTED REGULATIONS: 40 CFR Parts 261, 271, and 302

[FRL-FFFF-F; 3922-3] RIN 2050-AB70

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation-Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038)

SUMMARY: On November 2, 1990 the Environmental Protection Agency (EPA) promulgated regulations under the Resource Conservation and Recover Act (RCRA) to add two wastes to the list of hazardous wastes under 40 CFR

261.31. These wastes, designated as F037 and F038, are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters.

New information acquired by the Agency since the promulgation of the F037 and F038 listings indicates that inclusion of non-contact, once-through cooling waters in the definition of "oily cooling waters" has included within the scope of the listing separation sludges that are not similar in constituent concentration or oil/grease content to other sludges generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling waters. Based on the newly received information, the Agency is today promulgating an interim final rule revising the definition of wastes subject to the F037 and F038 listings to state that sludges from non-contact, once-through cooling waters are not included.

Further, the Agency is amending the definition of petroleum refinery secondary (emulsified) oil/water/solids separation sludge, F038, to clarify that floats generated in aggressive biological treatment units are not included in the listing description of that waste stream.

DISCUSSION: Federal Registers 81, 81A, and 89 add two listed wastes, F037 and F038, to the list of hazardous wastes from non-specific sources under 40 CFR 261.31. These wastes are generated in the separation of oil, water, and solids from petroleum refining process wastewaters and oily cooling wastewaters, except non-contact once-through cooling waters. The rule also amends Appendix VII of 40 CFR 261 by adding the organic and inorganic constituents for which the wastes are listed, and includes in the definition of aggressive biological treatment units activated sludge process, trickling filter, rotating biological contactor, and high-rate aeration. Sludge and floats from units using these methods are not affected by the rule.

Currently, no facilities in Oregon are affected by this regulation.

3. Listing as hazardous waste those pesticide residuals from woodtreating using pentachlorophenol, creosote and copper-chromated arsenate; and requiring drip pads to contain and collect residuals.

▶ **FR82**

Vol. 55 No. 235 Thursday, December 6, 1990 p 50450

ACTION: Final rule.

EFFECTIVE DATES: Today's final rule will become effective on June 6, 1991. For compliance deadlines, see section VIII of this preamble. The information collection requirements contained in the following paragraphs have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them: § 261.35(b)(1), (b)(3), (c); § 262.34(a)(2)(i), (a)(2)(ii); § 264.571(a), (b); § 264.572(i), (k), (m)(1)(i), (m)(1)(iv), (m)(3), (o); § 264.573(a); § 264.574(c)(1)(i), (c)(1)(ii); § 265.441(a); (b); § 265.443(g), (i), (k), (m)(1)(i), (m)(1)(iv), (m)(3), (n); § 265.444(a); § 265.445(c)(1)(i), (c)(1)(ii); § 270.22(a), (b), (c). A Federal Register Notice will be published in which the effective dates for these regulations will be established.

AFFECTED REGULATIONS: 40 CFR Parts 260, 261, 262, 264, 265, 270, 271, and 302.

[EPA/OSW-FR-91-008/FRL-3856-7] RIN 2050-AC43

Identification and Listing of Hazardous Waste; Wood Preserving

SUMMARY: The Environmental Protection Agency is today amending its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous three categories of wastes from wood preserving operations that use chlorophenolic, creosote, and/or inorganic (arsenical and chromium) preservatives. Today's rule finalizes portions of a proposed rule published by EPA on December 30, 1988 (53 FR 53282).

The listings finalized today include wastewaters, process residuals, preservative drippage, and spent preservatives from wood preserving processes at facilities that use or have previously used chlorophenolic formulations, facilities that use creosote formulations, and facilities that use inorganic preservatives containing arsenic or chromium. With respect to wastes from surface protection processes that use chlorophenolic formulations (proposed waste F033), EPA is deferring a final listing until more information can be collected on which to support a decision. These wastes may, however, exhibit the Toxicity Characteristic and consequently, may already be regulated as hazardous waste under subtitle C.

Today's rule includes permitting and interim status standards for drip pads used to assist in the collection of treated wood drippage. These standards include requirements for drip pad design and operation, inspections, and closure. Under today's rule, generators may be eligible for a 90-day generator exemption from permitting if their pads meet all of the technical standards for drip pads.

The effect of listing F032, F034, and F035 will be to subject them to the hazardous waste regulations of 40 CFR parts 124, 262 through 266, 268, 270, and 271; the notification requirements of section 3010 of RCRA; and the notification requirements under CERCLA section 103.

DISCUSSION: See FR 101.

► **FR91**

Vol. 56 No. 114 Thursday, June 13, 1991 p 27332

ACTION: Administrative stay.

EFFECTIVE DATE: June 5, 1991.

COMMENT DATE: For reporting deadlines, see section VI of the preamble.

AFFECTED REGULATIONS: 40 CFR Parts 261, 264, and 265

[FRL-3963-6]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

SUMMARY: The Environmental Protection Agency is today announcing an administrative stay of the hazardous waste listings F032, F034, and F035 in process areas at wood preserving plants. The primary effect of the stay is to conditionally extend the effective date of the drip pad management standards to February 6, 1992, for the upgrade of existing drip pads and to May 6, 1992, for the installation of new drip pads. Certain management standards for drip pads, the inclusion of past users of chlorophenolic formulations in the listing

description for certain F032 wastes, and the scope of wastewaters with respect to waters that do not come into contact with preservative are also being stayed:

DISCUSSION: See FR 101.

► **FR92**

Vol. 56 No. 126 Monday, July 1, 1991 p 30192

ACTION: Technical correction.

EFFECTIVE DATE: July 1, 1991.

AFFECTED REGULATIONS: 40 CFR parts 261, 262, 264, 265, and 270

[FRL-3968-8]

Identification and Listing of Hazardous Waste; Wood Preserving; Corrections

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors in the hazardous waste regulations that appeared in the Federal Register on December 6, 1990 (55 FR 50450). In that rule, EPA promulgated regulations under the Resource Conservation and Recovery Act (RCRA) to add three categories of wastes to the list of hazardous wastes from non-specific sources (40 CFR 261.31). These wastes, designated F032, F034, and F035, are generated from wood preserving processes that use or have previously used chlorophenolic formulations, facilities that use creosote formulations, and facilities that use inorganic preservatives containing arsenic or chromium, respectively. EPA also promulgated standards for permitting an interim status for drip pads used to assist in the collection of treated wood drippage. This notice corrects errors and clarifies language in the preamble and regulations of the December 6, 1990 final rule.

DISCUSSION: See FR 101.

► **FR101**

Vol. 57 No. 32 Tuesday, February 18, 1992 p 5859

ACTION: Administrative stay.

EFFECTIVE DATE: February 6, 1992.

AFFECTED REGULATIONS: 40 CFR Parts 264 and 265

[FRL 4103-4]

Wood Preserving; Standards and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

SUMMARY: The Environmental Protection Agency is today announcing an administrative stay of the requirements for drip pad coatings, sealers, or covers for existing drip pads at wood preserving plants. The effect of the stay is to extend the effective date of coating, sealer, or cover requirements for existing drip pads until October 30, 1992.

DISCUSSION: Federal Registers 82, 91, 92 and 101 regulate woodtreaters by listing hazardous wastes wastewaters, process residuals, preservative drippage as spent formulations of chlorophenolic compounds (pentachlorophenol), creosote and inorganic preservatives (arsenical and chromium) generated from dip tank and pressure treatment facilities. Surface treatment operations and chemicals are not included in the rulemaking. The regulations also address permitting and interim status standards for drip pads used to assist in the collection of treated wood drippage and requirements for drip pad design and operation, inspections and closure. EPA promulgated two administrative stays, one of which has expired, concerning compliance dates for installation of drip pads, or upgrading of existing pads, and drip pad permeability standards. The other stay (FR 101) postpones the coating, sealer or cover requirements for existing drip pads until October 31, 1992.

Prior to the promulgation of the woodtreater rule, woodtreaters using pentachlorophenol, creosote and CCA were regulated under the hazardous waste aquatic toxicity and the water quality regulations. Such wastes had to fail the aquatic toxicity test before being designated "hazardous". The federal "hazardous" listing of these wastes is based on the act of generating the wastes rather than failure of any test. Other woodtreating wastes not regulated under the federal program, such as copper naphenate, or NP-1, or some surface treatment wastes will continue to be subject to the aquatic

toxicity test to determine "hazard".

4. Regulating 20 mining wastes under Subtitle D, special mining wastes requirements rather than Subtitle C, hazardous waste regulations.

▶ **FR90**

Vol. 56 No. 114 Thursday, June 13, 1991 p 27300

ACTION: Final regulatory determination and final rule.

EFFECTIVE DATE: July 15, 1991.

AFFECTED REGULATIONS: 40 CFR Part 261

[EPA/OSW-FR-91-018; FRL-3956-1] RIN 2050-AC41

Final Regulatory Determination for Special Wastes From Mineral Processing (Mining Waste Exclusion)

SUMMARY: Today's action presents the Agency's final regulatory determination required by section 3001(b)(3)(C) of the Resource Conservation and Recovery Act (RCRA) for 20 special wastes from the processing of ores and minerals. EPA has concluded that regulation under Subtitle C of RCRA is inappropriate for all 20 of the special wastes that were studied. EPA plans to address 18 of the wastes under subtitle D, possibly in the program being developed for mining wastes. For the remaining two wastes (phosphogypsum and process waste water from phosphoric acid production), EPA plans to proceed with the development and promulgation of a program under the Toxic Substances Control Act (TSCA) that will address their management, including possible regulations concerning waste minimization/pollution prevention for these wastes. In addition, EPA plans to use existing authorities under either RCRA Section 7003 or CERCLA section 106 to address any site-specific ground-water contamination problems that are believed to pose substantial and imminent endangerment to human health or the environment. EPA has also decided to postpone consideration of a possible ban on the utilization of one of the special wastes, slag from elemental phosphorus production in construction and/or land reclamation.

DISCUSSION: EPA has determined that regulating 20 waste streams from processing certain minerals as hazardous wastes is not warranted because the wastes are low-risk or exhibit no or negligible hazardous characteristics. The Department does not exempt from hazardous waste evaluation wastes that are derived from processing minerals when processing involves means other than physical. This regulation exempts treated residue from roasting/leaching of chrome ore, coal gassification ash, slag from primary processing of copper, slag from primary production of phosphorus, iron blast furnace air pollution control dust/sludge, fluoroyypsum and process wastewater from hydrofluoric acid production, slag from primary processing of lead, slag from primary processing of zinc, chloride process waste solids from process titanium tetrachloride, and process wastewater from primary magnesium manufacturing. The processes that generate these wastes involve chemical leaching and high temperature treatment which are not "physical" mineral purification or extraction procedures. Therefore, the Department elects not to adopt these exemptions at this time. In addition, EPA intends to implement special mining waste disposal standards for Subtitle D facilities. The Department prefers to wait until the standards are finalized before final decision is made concerning these mining wastes.

5. Corrections to the preamble language in the third-third land disposal regulations.

▶ **FR83**

Vol. 56 No. 21 Thursday, January 31, 1991 p 3864

ACTION: Final rule; technical amendment.

EFFECTIVE DATE: This rule is effective on January 31, 1991.

AFFECTED REGULATIONS: 40 CFR Parts 148, 261, 268, and 270

[FRL-3866-4]

Land Disposal Restrictions for Third Scheduled Wastes

SUMMARY: On June 1, 1990, EPA published regulations promulgating congressionally-mandated prohibitions on land disposal of certain hazardous

wastes. This notice corrects errors and clarifies the language in the preamble and regulations of the June 1, 1990 final rule.

DISCUSSION: See FR 102.

► **FR102**

Vol. 57 No. 45 Friday, March 6, 1992 p 8086

ACTION: Technical amendments.

EFFECTIVE DATE: This rule is effective on March 6, 1992.

AFFECTED REGULATIONS: 40 CFR Parts 148, 264, 265, and 268

[FRL-4112-2]

Land Disposal Restrictions for Third Scheduled Wastes

SUMMARY: On June 1, 1990, EPA published regulations promulgating congressionally-mandated prohibitions on land disposal of certain hazardous wastes. This notice corrects errors and clarifies the language in the preamble and regulations of the June 1, 1990 final rule.

DISCUSSION: The Department has adopted the Third-Third land disposal restrictions. Federal Registers 83 and 102 are technical amendments and corrections to the preamble language and have no regulatory effect on Oregon generators.

6. Extension until May 8, 1993 of a variance from the hazardous wastes Land Disposal Restrictions for owners and operators of secondary lead smelters engaged in the reclamation of lead-bearing hazardous materials.

► **FR106**

Vol. 57 No. 124 Friday, June 26, 1992 p 28628

ACTION: Notice to approve storage of lead-bearing hazardous materials case-

by-case capacity variance.

EFFECTIVE DATE: This notice becomes effective on June 5, 1992.

AFFECTED REGULATIONS: 40 CFR Part 268

[FRL-4146-5]

Hazardous Waste Management System: Land Disposal Restrictions

SUMMARY: In the final rule establishing land disposal restrictions for Third hazardous wastes (55 FR 22520), EPA granted a two-year national capacity variance to allow the continued storage of lead-bearing hazardous materials in waste piles (considered a form of land disposal) prior to smelting. The variance has now expired and these untreated wastes became prohibited from land disposal on May 8, 1992. At the time it granted the national capacity variance, the Agency indicated its intent to address the concerns raised by the secondary lead smelting industry to allow the continued storage of these materials in piles prior to lead recovery. While the Agency has published a proposal that would address this problem, the Agency has not yet finalized such a rule. The Agency believes that the continued storage of these lead-bearing hazardous materials in piles at smelting facilities prior to recovery is preferable to any alternative management available and consistent with the Agency's goal of waste minimization. Although the Agency is developing a solution that would allow the continued management of these wastes prior to lead recovery, until final standards are issued, it would be infeasible as a practical matter for regulated parties to design and construct the capacity to store the materials properly. This results in an industry-wide, short term unavailability of non-land based storage capacity preceding treatment.

Therefore, EPA is taking regulatory action to approve an extension of the LDR effective date applicable to owners and operators of secondary lead smelters who are engaged in the reclamation of lead-bearing hazardous materials. This extension applies only to lead-bearing hazardous wastes placed in a staging area immediately prior to being introduced into a lead smelter. EPA believes that this extension to the LDR effective date is appropriate and consistent with the Agency's overall objective of encouraging recycling. No further applications will be required at this time from persons granted the extension of this action. However, EPA is requiring such persons to maintain certain record-keeping, and

to meet certain other requirements to qualify for the extension.

DISCUSSION: There are no secondary lead smelters operating in Oregon.

7. Exempting from the hazardous waste regulations chlorofluorocarbons (CFCs) when they are recycled.

▶ **FR84**

Vol. 56 No. 30 Wednesday, February 13, 1991 p 5910

ACTION: Interim final rule with request for comments.

EFFECTIVE DATE: February 5, 1991.

COMMENT DATE: Comments must be submitted on or before April 1, 1991.

AFFECTED REGULATIONS: 40 CFR Part 261

[SWH-FRL-3904-5/EPA/OSW-FR-91-005]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic

SUMMARY: On March 29, 1990, the Environmental Protection Agency (EPA) promulgated revisions to the toxicity characteristic, one of several characteristics used to identify waste regulated as hazardous under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Since the promulgation of the Toxicity Characteristic (TC), the Agency has received information that the rule's immediate application may cause certain used chlorofluorocarbon (CFC) refrigerants to be subject to hazardous waste regulations because they exhibit the TC. EPA is concerned that subjecting used CFC refrigerants to Subtitle C regulations will promote continued or increased venting, increasing the levels of ozone-depleting substances in the stratosphere. As a result of this new information and to allow time for gathering additional information and giving all relevant facts careful consideration, the Agency is promulgating today's interim final rule to suspend the TC rule for used refrigerants which exhibit the toxicity characteristic and which are recycled.

The exemption only applies if the refrigerants are reclaimed for reuse. At the same time, the Agency is seeking public comment on the merits of this suspension.

DISCUSSION: Chlorofluorocarbons (CFCs) are prohibited from release under Section 508 of the Clean Air Act. EPA has determined that spent CFCs could fail the Toxicity Characteristic test and be designated "hazardous". To encourage recycling, EPA is exempting CFCs from the TC regulation if they are recycled. The Department agrees with EPA's assessment.

8. Part B permitting standards for boilers and industrial furnaces (BIFs) and air emissions from burning hazardous wastes, except burning hazardous wastes from coke by-product recovery process.

► **FR85**

Vol: 56 No. 35 Thursday, February 21, 1991 p 7134

ACTION: Final Rule

EFFECTIVE DATE: This final rule is effective on August 21, 1991. Technical corrections to §270.73 are effective on publication.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 21, 1991.

AFFECTED REGULATIONS: 40 CFR 260, 261, 264, 265, 266, 279, and 271

(No summary of program elements provided)

SUMMARY: Under this final rule, the Environmental Protection Agency (EPA) is expanding controls on hazardous waste combustion to regulate air emissions from the burning of hazardous waste in boilers and industrial furnaces.

Currently, such burning is exempt from regulation. EPA is promulgating this final rule after considering public comment on rules proposed on May 6, 1987, plus the comments on EPA's supplemental notices of October 26, 1989 and April 27, 1990.

These rules control emissions of toxic organic compounds, toxic metals, hydrogen chloride, chlorine gas, and particulate matter from boilers and industrial furnaces burning hazardous waste. In addition the rules subject owners and operators of these devices to the general facility standards applicable to hazardous waste treatment, storage, and disposal facilities. Further, today's final rule subjects hazardous waste storage units at regulated burner facilities to part 264 permit standards. Burner storage operations at existing facilities are generally now subject only to interim status standards under part 265.

Finally, today's rule takes final action on two pending petitions for rulemaking: (1) based on a petition by Dow Chemical Company, EPA is designating halogen acid furnaces as industrial furnaces under §260.10; and (2) based on a petition by the American Iron and Steel Institute, EPA is classifying coke and coal tar fuels produced by recycling coal tar decanter sludge, EPA Hazardous Waste No. KO87, as products rather than solid waste. The rule also makes several technical corrections to regulations dealing with loss of interim status for facilities that achieved interim status as of November 7, 1984.

DISCUSSION: See FR 105.

► **FR94**

Vol. 56 No. 137 Wednesday, July 17, 1991 p 32688

ACTION: Final rule: corrections; technical amendments.

EFFECTIVE DATE: The effective date of the rule remains August 21, 1991.

AFFECTED REGULATIONS: 40 CFR Parts 260, 261, 264, 265, 266, 270, and 271

[EPA/OSW-FR-91- SWH-FRL-39689]

Burning of Hazardous Waste in Boilers and Industrial Furnaces

SUMMARY: On February 21, 1991, the Environmental Protection Agency (EPA) published a final rule to regulate air emissions from the burning of hazardous waste in boilers and industrial furnaces (56 FR 7134). Today's notice corrects typographical and editorial errors that appeared in the regulatory text, including corrections to appendices II and III, and adds two appendices, appendix IX and appendix X, to part 266. Appendices IX and X were not ready at the time of publication; therefore, a note was placed in the appropriate location in the rule to inform readers that these appendices were to be published at a later date. Copies of these appendices were, however, made available to the public through the RCRA Docket maintained at EPA and through the National Technical Information Service (NTIS).

DISCUSSION: See FR 105.

▶ **FR96**

Vol. 56 No. 166 Tuesday, August 27, 1991 p 42504

ACTION: Final rule; technical amendments.

EFFECTIVE DATE: August 21, 1991.

AFFECTED REGULATIONS: 40 CFR Parts 261, 265 and 266

[EPA/OWS-FR-91- ; SWH-FRL-3987-6]

Burning of Hazardous Waste in Boilers and Industrial Furnaces

SUMMARY: This notice makes several technical amendments to the final rule for boilers and industrial furnaces burning hazardous waste. See 56 FR 7134-7240 (February 21, 1991). These revisions provide clarification and correct unintended consequences of the rule.

DISCUSSION: See FR 105.

▶ **FR98**

Vol. 56 No. 172 Thursday, September 5, 1991 p 43874

ACTION: Administrative stay of applicability and amendment to final rule.

EFFECTIVE DATE: August 21, 1991.

AFFECTED REGULATIONS: 40 CFR Part 266

[FRL-3990-4]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Burning of Hazardous Waste in Boilers and Industrial Furnaces

SUMMARY: The Environmental Protection Agency is today announcing an administrative stay of the permitting standards for boilers and industrial furnaces adopted pursuant to the Resource Conservation and Recovery Act (56 FR 7206, Feb. 21, 1991) as they apply to coke ovens burning certain hazardous wastes from the coke by-products recovery process. The primary effect of the stay is to halt the application of industrial furnace standards to coke ovens when they reprocess these hazardous wastes while the Agency can evaluate comments on a pending regulatory proposal to exclude such wastes from subtitle C jurisdiction when recycled by reprocessing in coke ovens. Section 266.100(a) is amended by adding a note to reflect this administrative stay.

DISCUSSION: See FR 105.

► **FR105**

Vol. 57 No. 120 Monday, June 22, 1992 p 27880

ACTION: Final rule.

EFFECTIVE DATE: June 22, 1992.

AFFECTED REGULATIONS: 40 CFR Parts 261, 266, and 271

[FRL-4098-4]

RIN 2050-AC85

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Exclusions

SUMMARY: The Environmental Protection Agency (EPA) is amending the hazardous waste management regulations (40 CFR 261.4(a)) to exclude from the definition of solid waste those coke by-product residues that are recycled by being: (1) Returned to coke ovens as a feedstock to produce coke; (2) returned to the tar recovery process as a feedstock to produce coal tar; or (3) mixed with coal tar prior to coal tar refining or sale. These residues are hazardous because they exhibit the Toxicity Characteristic (TC) of 40 CFR 261.24. This exclusion was proposed on July 26, 1991 (56 FR 35758). The Agency is also excluding the similarly-situated hazardous waste K087 when recycled in this way. These exclusions are conditioned on there being no land disposal of the recycled material. EPA's July proposal also proposed to list as hazardous seven wastes from the production, recovery and refining of coke by-products. EPA will address these listings in a separate final rule to be issued at a later date.

DISCUSSION: Federal Registers 85, 94, 96, 98 and 105 regulate the burning of hazardous wastes in boilers and industrial furnaces. The EPA promulgated the final rule concerning Burning of Hazardous wastes in Boilers and Industrial Furnaces (BIF) on February 21, 1991 (FR 85). Except for the interim status requirements contained in 40 CFR 270.72 and 270.73, which the Department does not recognize (facilities are required to obtain permits and meet siting standards before they can operate) the Department will adopt the BIF regulations. Currently, three companies have registered as burners and may be subject to BIF; however, the Department does not expect them to pursue RCRA Part B permits.

9. Removing strontium sulfide from the list of hazardous waste in Appendix VIII.

▶ **FR86**

Vol. 56 No. 37 Monday, February 25, 1991 p 7567

ACTION: Technical amendment.

EFFECTIVE DATE: The regulations became effective on October 31, 1988. This document does not affect the effective date of the waste code removal.

AFFECTED REGULATIONS: 40 CFR Part 261

[FRL-3907-6]

Hazardous Waste Management System; Removal of Strontium Sulfide From the List of Hazardous Waste

SUMMARY: The Environmental Protection Agency is today correcting an amendment to regulations under the Resource Conservation and Recovery Act (RCRA) to remove strontium sulfide (CAS No. 1314-96-1) from 40 CFR 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove strontium sulfide from Appendix VIII of Part 261, the list of RCRA hazardous constituents. EPA took regulatory action to remove this chemical on October 31, 1988 (53 FR 43881), but the amendatory instruction to the Federal Register was incorrect and, as a result, this chemical was not removed from § 261.33 or part 261 appendix VIII in the Code of Federal Regulations. The Agency seeks to correct this error in today's document.

DISCUSSION: The Department removed strontium sulfide from the hazardous waste regulations during a previous rulemaking but a this rulemaking is necessary to remove strontium sulfide from Appendix VIII.

9. Correcting typographical errors in the regulatory text of standards limiting organic air emissions at Treatment, Storage or Disposal facilities.

▶ **FR87**

Vol. 56 No. 81 Friday, April 26, 1991 p 19290

ACTION: Final rule; technical amendment.

EFFECTIVE DATE: December 21, 1990.

AFFECTED REGULATIONS: 40 CFR Parts 264, 265, and 270

[FRL-3923-6]

Hazardous Waste Treatment, Storage, and Disposal Facilities-Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment

SUMMARY: This document corrects typographical errors in the regulatory text of the final standards that would limit organic air emissions as a class at hazardous waste treatment, storage, and disposal facilities (TSDF) that are subject to regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA). These standards appeared in the Federal Register on June 21, 1990 (55 FR 25454).

DISCUSSION: These corrections to the June 21, 1990 air emission standards for equipment that contains hazardous wastes with organic concentrations of at least 10 percent by weight. The rules require facility owner/operators to conduct compliance tests and to reduce total organic air emissions from all affected process vents to specified levels or by 95 percent. The rules also require facilities to identify all affected equipment in both heavy and light liquid service, and identify which valves are difficult or unsafe to monitor. Only Chemical Waste Management may be significantly affected by these standards.

10. Staying the K069 listing of slurries generated from air pollution control devices that capture acid gases and that are not dedicated to capturing particulate.

▶ **FR88**

Vol. 56 No. 84 Wednesday, May 1, 1991 p 19951

ACTION: Administrative stay.

EFFECTIVE DATE: May 1, 1991.

AFFECTED REGULATIONS: 40 CFR PART 261

[FRL-3951-1]

Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste

SUMMARY: The Environmental Protection Agency is today announcing an administrative stay of a portion of the hazardous waste listing K069 so that the listing does not apply to slurries generated from air pollution control devices that are intended to capture acid gases and are not dedicated chiefly to control of particulate air emissions.

DISCUSSION: No K069 waste is generated in Oregon.

11. Establishing land disposal restrictions for K061 electric arc furnace dust that are non-wastewaters that contain 15 percent or more zinc and conditional exclusion from the definition of solid waste of slag generated from high temperature recovery. of K061.

▶ **FR95**

Vol. 56 No. 160 Monday, August 19, 1991 p 41164

ACTION: Final rule.

EFFECTIVE DATE: This final rule is effective on August 8, 1991.

AFFECTED REGULATIONS: 40 CFR Parts 261, 268, and 271

[FRL-3973-8] RIN 2050-AD20

Land Disposal Restrictions for Electric Arc Furnace Dust (K061)

SUMMARY: The Environmental Protection Agency (EPA) is today finalizing treatment standards under the land disposal restrictions (LDR) program for a subcategory of the hazardous waste K061 (electric arc furnace dust) treatability group, namely nonwastewaters that contain equal to or greater than 15% total zinc (i.e., high zinc subcategory), determined at the point of initial generation. These treatment standards are based on the performance of high temperature metals recovery (HTMR) processes; specifically, the standards are based on analysis of slag from these processes. The Agency is also finalizing a generic

exclusion from the derived-from rule for HTMR nonwastewater slag residues generated from processing K061, provided that these slag residues meet designated concentration levels, are disposed of in subtitle D units, and exhibit no characteristics of hazardous waste. Furthermore, today's rule finalizes a conditional exclusion from classification as a solid waste for K061 HTMR splash condenser dross residue.

DISCUSSION: Oregon steel mills generate K061 electric arc furnace dust. Much of the dust is stabilized and disposed or recycled. This regulation will affect those dusts containing 15 percent or greater zinc by requiring high temperature recovery of the zinc to meet LDR standards. Oregon mills will now be required to ship off site for zinc recovery dusts containing 15 percent or more zinc since there are no facilities in Oregon that have HMTR capabilities.

12. Changing the name and address of the EPA office designated to receive hazardous waste export applications, and correcting dates in the toxicity characteristic regulation..

▶ **FR97**

Vol. 56 No. 171 Wednesday, September 4, 1991 p 43704
Vol. 55 No. 155 Friday, August 10, 1990 p 32733

ACTION: Final Rule; Technical correction to notification of intent to export and annual reports (September 4, 1991); corrections to dates in the toxicity characteristic amendments (August 10, 1990).

EFFECTIVE DATE: September 4, 1991
August 10, 1990.

AFFECTED REGULATIONS: 40 CFR Parts 262 through 271

[SW-FRL-3987-8, September 4, 1991]
[RIN 2050-AA78]

Hazardous Waste Management System; Exports of Hazardous Waste; Final Rule; changes to dates in the August 2, 1990 toxicity characteristic amendments.

SUMMARY: On August 8, 1986 (51 FR 28664), EPA promulgated a final rule that applies to exports of hazardous waste. Section 262.53 of these regulations requires, among other things, that exporters send to EPA's Office of International Activities advance written notification of their plans to export hazardous waste. In addition, a "note" at the conclusion of § 271.10(e)(2) designates the Office of International Activities as recipient of export notifications required under § 262.53. Section 262.56 of the regulations also requires exporters to send annual reports to the same EPA office. This technical correction provides that such notifications and annual reports must henceforth be sent to EPA's Office of Waste Programs Enforcement.

In rule document 90-18073 beginning on page 31387 in the issue of Thursday, August 2, 1990, dates were changed to correspond to legal requirements that facilities need to comply with when addressing the toxicity characteristic requirements. An implementation timetable contained a typographical error which extended the period of time within which affected small quantity generators must comply with notification requirements. The correction became effective August 2, 1990.

DISCUSSION: This is an address change and correction to dates in the implementation of the toxicity characteristic regulations for small quantity generators.

13. Applying flexibility in the location of down-gradient groundwater monitoring wells because of physical obstacles to regulatory location.

▶ **FR99**

Vol. 56 No. 246 Monday, December 23, 1991 p 66365

ACTION: Final rule.

EFFECTIVE DATE: These regulations become effective June 23, 1992.

AFFECTED REGULATIONS: 40 CFR PARTS 260 AND 265

[FRL-4083-9]

Hazardous Waste Management System: Amendments to Interim Status Standards for Down gradient Ground-Water Monitoring Well Locations at Hazardous Waste Facilities

SUMMARY: On January 18, 1991, the Environmental Protection Agency ("EPA" or "the Agency") proposed to amend 40 CFR § 265.91 to allow alternate placement of hydraulically downgradient monitoring wells at interim status facilities where existing physical obstacles prevent installations at the limit of the waste management area. EPA is today promulgating a final rule implementing amendments to §§ 260.10 and 265.91. Today's rule is necessary to allow facilities to install alternate ground-water monitoring wells in certain circumstances where they are unable to avoid existing physical obstacles. Today's rule provides that the owner or operator of an existing facility may demonstrate that an alternate hydraulically downgradient monitoring well location will meet several criteria. This demonstration must be certified by a qualified ground-water scientist. Today's rule also promulgates a definition of "qualified ground-water scientist."

DISCUSSION: This rule allows flexibility in the location of down-gradient groundwater monitoring wells when physical obstacles are present.

14. Modification of the regulations concerning liner and leachate collection and removal systems for surface impoundments, landfills, and waste piles, and requiring owners and operators to install leak detection and monitoring units at the time these facilities are modified.

▶ **FR100**

Vol. 57 No. 19 Wednesday, January 29, 1992 p 3462

ACTION: Notice of final rulemaking.

EFFECTIVE DATE: July 29, 1992.

AFFECTED REGULATIONS: 40 CFR Parts 260, 264, 265, 270, and 271

[FRL-4028-2] RIN 2050-AA76

Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units

SUMMARY: The Environmental Protection Agency (EPA) is today amending its current regulations under the Resource Conservation and Recovery Act (RCRA) concerning liner and leachate collection and removal systems for hazardous waste surface impoundments, landfills, and waste piles. EPA is also adding new regulations requiring owners and operators of hazardous waste surface impoundments, waste piles, and landfills to install and operate leak detection systems at such time as these units are added, laterally expanded, or replaced. EPA is promulgating most of these regulations in response to the requirements of the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA.

DISCUSSION: Oregon does not have any operating, permitted surface impoundments or wastes piles, and only the Chemical Waste Management landfills will be affected by this rulemaking.

15. Extension of the LDR exclusion for one year for certain hazardous debris.

▶ **FR103**

Vol. 57 No. 95 Friday, May 15, 1992 p 20766

ACTION: Notice to Approve Hazardous Debris Case-By-Case Capacity Variance.

EFFECTIVE DATE: This document becomes effective on May 8, 1992.

AFFECTED REGULATIONS: 40 CFR Part 268

[FRL-4133-5]

Hazardous Waste Management System: Land Disposal Restrictions

SUMMARY: In response to the January 9, 1992, Proposed Rule on Land Disposal Restrictions (LDR) for Newly Listed Wastes and Hazardous Debris (see 57 FR 958), EPA received numerous comments regarding the availability of treatment capacity for hazardous debris, including comments from owners and

operators of treatment, storage, and disposal facilities (TSDs), state regulatory agencies, Federal agencies, and industry trade associations. Most of the commenters indicated that owners and operators of TSDs will have an extremely difficult, if not impossible, task in obtaining treatment capacity that meets the proposed standards for hazardous debris, or that could meet the existing treatment standards, by May 8, 1992, when the national capacity variance for most debris expires. EPA agrees with these comments, which confirm its own independent study.

Under 40 CFR 268.5, EPA is therefore taking regulatory action to approve today a generic, one-year extension of the LDR effective date applicable to all persons managing hazardous debris. (This document explains more fully which hazardous debris is covered by the extension.) No further applications will be required from persons granted the extension by this action. However, EPA is requiring such persons to do certain record-keeping, and to meet certain other requirements to qualify for the extension.

DISCUSSION: This rule has the effect of exempting from the LDR standards certain debris, such as fill dirt, building debris etc. that is contaminated with hazardous wastes.

16. Revisions to the used oil management regulations, setting standards for managing used oil filters.

▶ **FR104**

Vol. 57 No. 98 Wednesday, May 20, 1992 p 21524

ACTION: Final rule.

EFFECTIVE DATE: June 19, 1992.

AFFECTED REGULATIONS: 40 CFR Part 261

[FRL-530-Z-92-006; 4118-4]

Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil

SUMMARY: EPA is today promulgating a final listing decision for used oils based upon the technical criteria provided in the Resource Conservation and Recovery Act (RCRA) sections 1004 and 3001 and in 40 CFR 261.11 (a)(1) and (a)(3). EPA has decided not to list used oils destined for disposal as hazardous waste based on the finding that all used oils do not typically and frequently meet the technical criteria for listing a waste as hazardous waste. This rule, therefore, preserves the status quo for used oil destined for disposal. EPA today is promulgating a modification to the current exclusions from the definition of hazardous waste in 40 CFR 261.4 to provide an exemption for certain types of used oil filters. The Agency today is also providing public notice of the EPA's deferral on a decision whether or not to list residuals from the reprocessing and re-refining of used oil at this time.

The Agency is not taking final action, at this time, on a listing determination and/or management standards for used oils that are recycled as proposed in 1985 and 1991. The Agency will, in the near future, make a final decision on listing of used oil destined for recycling and appropriate management standards for used oil handlers under the authority of RCRA section 3014. If EPA promulgates additional management standards, service station dealers may be eligible to qualify for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 114(c) liability exemption. The Agency also may propose standards controlling the burning of used oil in boilers and furnaces at a later date.

DISCUSSION: See FR 107.

▶ **FR107**

Vol. 57 No. 127 Wednesday, July 1, 1992 p 29220

ACTION: Final rule; correction.

EFFECTIVE DATE: July 1, 1992.

To: Jerry Coffey
Date: June 25, 1992
Page: Two

Chico, there is no legal way to add more ethanol. You cannot open your truck or trailer dome lids in California. Also, there is no anticipated ethanol supply in Southern Oregon.

And, funding - another beaurocratic move to fund your program. We are small marketers in Southern Oregon, not major oil companies. We buy from major oil companies and, in addition, we buy from the smaller, independant refiners. We, the small marketer, make up the distribution and marketing system in Southern Oregon.


We are small jobbers with small retail networks. We also supply the even smaller one-owner retailers. \$220.00 for a small retailer may seem small but this, added to pump licenses, underground tank registration for underground tank replacement program fee, super fund fee, etc., etc. just keeps adding up. Where will this all end? It means more small marketers going out of business, less competition and higher consumer prices.

In summary, the following changes in Oregon's Oxygenated fuel program should be made:

1. The compliance period should be changed from November through February to November through January to coincide with California.
2. The minimum oxygen percentage of 2.0% should be reduced to 1.8% to coincide with California.
3. A radius of approximately 5 miles around the affected cities of Grants Pass, Medford and Klamath Falls should be utilized to conserve on ethanol.
4. Fees be reduced to \$100.00 per retail location and \$500.00 for blenders.

Sincerely,

BI-MOR STATIONS, INC.

By 
Michael J. Moran

MJM:blw

cc: Brian Boe

EUGENE (GENE) D. TIMMS
HARNEY, LAKE, MALHEUR, GRANT, BAKER,
CROOK, MURROW COUNTIES
DISTRICT 30

REPLY TO ADDRESS INDICATED:

- Senate Chamber
Salem, Oregon 97310-1347
 1049 N Court
Burns, Oregon 97720



OREGON STATE SENATE
SALEM, OREGON
97310-1347

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
JUN 29 1992

OFFICE OF THE DIRECTOR

June 23, 1992

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

Dear Fred,

I was unable to attend a rulemaking hearing on Oregon Oxygenated Gasoline Program in Klamath Falls yesterday and want to let you know my thoughts on the issue.

As a Senator representing Eastern Oregon, I am no stranger to the problems of the gasoline industry and gasoline service, especially in outlying areas. My concerns are taking a different turn this time, and I would like to request some changes in your proposed rules for the Oregon Oxygenated Fuels Program.

I am very understanding of the need for Oregonians to comply with the Clean air Act, and our duty to help reach the goals outlined therein. However, I ask that the DEQ not burden those people outside the problem with supplying the solution.

Klamath County is a new area to my district, and one that is to be part of our new program. Klamath Falls has been told that it needs to lower its carbon monoxide levels by selling oxygenated fuels. In my opinion, the city will see an increase in the cost of fuel from November through February because of the special solution to be sold. I would have to argue with DEQ or anyone who stated that a different and more specific refinement of fuels would not end up being more expensive to distributors and consumers. Although you may argue that such is the price Klamath Falls must pay to meet Clean Air Act attainment levels, I do not think that argument can extend to the rest of Klamath County which did not fail attainment tests. In rural areas where gasoline dealers are hard pressed to stay in business, oxygenated fuels should not be required to be sold. Also, Klamath Falls has had no infraction this past year on air quality.

- more -




June 23, 1992
Fred Hansen
Page 2

Speaking with my colleagues, it has also come to my attention that Oregon gasoline distributors may have difficulty obtaining oxygenated fuel in the fourth month of the DEQ proposed program. Apparently, California only mixes such fuel for three months. Being as Oregon has no refineries and looks to California to supply fuels, I suggest that Oregon limit its program period to November through January to mirror the California program and its fuel-making schedules.

I thank you for your considerations of these thoughts.

Sincerely,


Gene Timms
State Senator
District 30

GT:mlz

cc: Commissioner Harry Fredricks
Commissioner Ed Kenter
Commissioner Wes Sine

OSPIRG

The Oregon State Public Interest Research Group

1536 SE 11th

Portland, Oregon 97214

(503) 231-4181, FAX: (503) 231-4007

Comments of Quincy Sugarman, Environmental Advocate
Oregon State Public Interest Research Group
in support of
Wintertime Oxygenated Gasoline Program
June 30, 1992

Thank you for the opportunity to comment on the proposed rule addition requiring oxygenated gasoline fuel in certain areas for certain times of the year. My name is Quincy Sugarman, and I am an environmental advocate for the Oregon State Public Interest Research Group. OSPIRG is a statewide consumer and environmental research and advocacy organization with 35,000 members. OSPIRG supports the proposed oxygenated fuels program to reduce emissions of carbon monoxide from automobiles.

Oxygenated fuels are gasoline fuels blended with ethanol or another oxygenant approved by the Environmental Protection Agency to contain a determined amount of oxygen. Oxygenated fuels burn more "cleanly" in vehicles, thereby putting less carbon monoxide into the atmosphere. Automobile exhaust is a major source of carbon monoxide air pollution, and four areas in Oregon are in nonattainment, exceeding allowable levels, for carbon monoxide. The federal Clean Air Act Amendments of 1990 require oxygenated fuels in nonattainment areas during winter months when carbon monoxide emissions are highest.

The proposed rule additions would require use of oxygenated fuels for motor fuels in four parts of the state during designated times. The four areas are the Portland area (Clackamas, Multnomah, Washington and Yamhill counties), Jackson county, Josephine county, and Klamath county. The designated times are from November 1 through February. The rules require sellers of fuel to provide oxygenated fuels to their customers during that time period.

There are a few issues where the DEQ proposal modifies the federal program. These are around the exact designated times, the total designated times, and the size of control areas. We support a program that is the most environmentally protective, including requiring oxygenated fuels during the times of most CO pollution and using the larger, countywide control areas.

Designated Times-- November through February

The proposed DEQ program requires oxygenated fuel use in a November-February time period. While it is a modification from federal guidelines (October to January), OSPIRG recommends supporting the staff proposal for the designated times. According



Oregon Highway Users Conference

affiliated with ... HIGHWAY USERS FEDERATION FOR SAFETY AND MOBILITY

P.O. Box 69051

Portland, OR 97201

June 29, 1992

Ron Householder
Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204

RE: Oxygenated Fuels Rules

Dear Mr. Householder:

Members of the Oregon Highways Users Conference are concerned that the oxygenated fuel rules proposed by the Department of Environmental Quality will result in higher motor fuel prices and shortages this autumn.

I understand that four cities are not in compliance with carbon monoxide levels established by House Bill 2175 (1991). They are Portland, Grants Pass, Klamath Falls, and Medford. Your response has been to include entire counties in the requirement for oxygenated fuels from November through February. The counties are Clackamas, Jackson, Josephine, Multnomah, Washington, and Yamhill.

Non-attainment is a local problem and not represented by the vast areas of the state contained within these seven counties. Since county boundaries are only accidents of history and irrelevant to local air quality problems, I would suggest more realistic area designations such as city boundaries, urban growth boundaries, or airsheds.

The California requirement for oxygenated fuels is from November through January, while Oregon's proposed requirement is for one month longer. There is no evidence that oil manufacturers will respond to an Oregon requirement that extends beyond the market leader, California. Lack of a legal supply of fuel in Oregon non-attainment areas may cause severe economic disruption. The non-attainment areas of Oregon make up less than one-half of one-percent of the motor fuels market in the United States and there is no oil refining in Oregon, therefore the Oregon DEQ should recognize economic reality and set the oxygenated fuel requirement to conform to the dates used by the State of California.



- 2: Expanding the areas in southern Oregon beyond the Grants Pass and Klamath Falls urban growth boundaries is not justified. It will require small business owners to comply with a law that will provide little benefit. Due to the low volume of gasoline sold at these outlying stations they will have to start adding oxygenate much earlier than a large volume station and will consequently have oxygenated fuel much longer than the program requires. It is not fair to impose the additional liability, the tank cleaning costs, and the record keeping requirements on them simply to provide a easily discernable control boundary.

3. Currently the attest engagement in OAR 340-22-640 is not required but may be used as an optional defense when prohibited activities are alleged. Our concern is that the DEQ ,at the suggestion of the EPA and with no public input, will change this section to require attest engagements. It is mentioned now so that we may be on record as strongly objecting to adopting the attest engagement as a requirement. Requiring an attest engagement will only increase record keeping costs and provide no additional benefit.

Texaco Refining and Marketing thanks the Department of Environmental Quality for their hard work and efforts to implement the oxygenated fuels program.

Sincerely,

Dale Andert
Environmental Analyst

cc: JHBingen, SHancock, JAPrice, FJSchlicher, NLStanley, DVWatson



Texaco Refining and Marketing Inc

1800 S W First Avenue
Suite 200
Portland OR 97201-5325

June 17, 1992

Department of Environmental Quality
Oxygenated Fuels Regulation Committee
Jerry W. Coffey
811 SW 6th Ave
Portland, Oregon 97204

Texaco Refining and Marketing Inc. believes that the majority of the Oregon proposed oxygenated fuels regulations reflect the intent of the EPA Clean Air Act while allowing some flexibility. However, there are several sections of the regulations and documents that deserve comment.

1. The Fiscal and Economic Impact Statement is incomplete and inaccurate. It suggests the cost of this program is primarily the DEQs proposed \$200,000 annual budget. The majority of the costs of this program were not mentioned. There is no estimate of the cost of providing the additional tanks, injection equipment, or the record keeping requirements for the gasoline suppliers in Oregon. Texaco Refining and Marketing Inc. will spend in excess of 2 million dollars the first year to install the necessary equipment for the oxygenated fuels program. Our annual testing costs will exceed 25,000 dollars and our annual permit fees will be in excess of 35,000 dollars. In addition to these costs every dealer large or small will have an additional tank cleaning charge each oxygenate season. This charge will be at least \$300 per site and considerably more if the dealer has to dispose of the sludge as hazardous waste. If the sludge tests higher than 5 parts per billion for benzene, which is a component of gasoline, then the cost is typically \$600 to dispose of 55 gallons. This means a small business could have an annual cost of about \$1,500 per site to clean the tanks. Due to these and other costs that were omitted from the economic impact statement, the statement is inaccurate and does not inform the Oregon gasoline consumer of the true costs of this program.



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U.S. OLYMPIC TEAM

Mr. Jerry Coffey
June 29, 1992
Page Two

The regulation could be amended to say the following:

Dispenser Labeling §340-22-640

(1.) *In addition to other labeling requirements, fuel dispensing systems delivering oxygenated gasoline shall be conspicuously labeled during the control periods and in the control areas stated in OAR 340-22-470 as follows:*

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

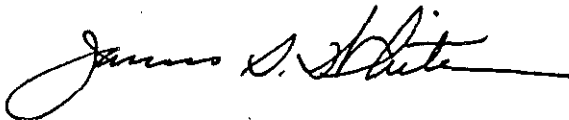
Unless the DEQ regulations can take precedence over ORS 646.915, ARCO recommends that the language dealing with the "second label" be left out of this rulemaking. The DEQ should work with the OR Department of Agriculture (DOA) and the OR Legislature to resolve the matter of conflicting statutes.

ARCO would like to offer some thoughts on this matter of the DOA labeling requirements. The DOA is the "protector of the consumer" and their labeling requirement is intended to notify the consumer of the presence of alcohol in the gasoline to the nearest 0.5 vol%. In the past, automobile manufacturers have expressed caution about the use of gasoline/alcohol blends in their vehicles. Given the USEPA controls regulating the addition of alcohol and ethers to gasoline, the DOA required information is of less significance to the consumer. This current regulation will severely restrict the use of ethanol (EtOH) under an oxygen credit program. It would also restrict or prohibit the blending of EtOH with gasoline already containing MTBE. This labeling requirement would have a pronounced and expensive impact on the consumers in OR relative to the cost of placing oxygenated gasoline in the marketplace during the winter months.

There is no apparent need for the posting of the alcohol content to the nearest 0.5 vol%. The need to inform the public can be adequately addressed with a label stating "Contains up to ___% [alcohol name]," to the nearest whole percent. This would provide the consumer with the information necessary to make an informed decision based on the language in their vehicle owner's manual.

Thank you for the opportunity to submit these comments. If you or your staff have any questions regarding these comments, please don't hesitate to contact my office. I would also like to know if there is anything we can do to resolve the matter of conflicting labeling requirements.

Sincerely yours,



James S. White

ARCO Products Company
1055 West Seventh Street
Post Office Box 2570
Los Angeles, California 90051-0570
Telephone 213 486 8258



James S. White
Manager
Environmental Legislation and Regulation

June 29, 1992

Mr. Jerry Coffey
Vehicle Inspection Program
Oregon Department of Environmental Quality
1301 SE Morrison
Portland, OR 97214

Re: OR Proposed Oxygenated Gasoline Program Regulations
[OAR §340-22-460 through §340-22-640]

Dear Mr. Coffey:

I am pleased to have this opportunity to offer comments and suggestions regarding your Oxygenated Gasoline Program. I have reviewed your proposed regulations and I am very concerned about the matter of gasoline dispenser labeling. This is a matter of great concern to the petroleum "marketing sector" of our industry. The dispenser is the "packaging" associated with our gasoline product and it presently has a variety of labels already required and desired for the purposes of informing the gasoline purchasing customer. There are presently many labels on our dispensers. To add any additional labels without substantial reason may cause some of the more important warnings, cautions and/or advisories on the dispenser to be overlooked or ignored.

For the State of Oregon, the matter of dispenser labeling is split into two separate concerns; (1.) the placement of the Clean Air Act Amendments (CAAA) advisory and (2.) the posting of the volumetric content of alcohol to the nearest 0.05 vol%. The first concern is a matter to be addressed in these comments and the second matter is regarding an existing Department of Agriculture (DOA), Weights & Measures (W&M) statute that needs to be amended. We will mention this latter concern with regard to how it impacts the program under this rulemaking.

We understand that the DEQ is anxious to have a regulatory program that parallels the federal regulations. The problem is that the federal regulations have not yet been promulgated so the DEQ is going by the language in the draft federal regulations and verbal advice from the USEPA. The DEQ is proposing that the CAAA advisory be placed on each individual dispenser. There is no added benefit to the environment by placing the CAAA advisory on each dispenser and the CAAA allows the placement of a sign (read label) on each "fuel dispensing system" or island. The key argument against dispenser labeling is for less "information noise" but there would also be greater ease of enforcement (thus more assured compliance) and reduced expense of continued maintenance of the required labels. A sign on each island would be more likely to be noticed by the public and would be more likely to be maintained by the station owner/operator. These arguments were also sent to the USEPA during the public comment period for their proposed regulations (08/90).

Pending the publication of the final USEPA regulations, ARCO is proposing that the OR DEQ word their requirement for oxygenate advisory labels to more closely parallel the CAAA advisory but in a manner that would allow compliance with the USEPA regulations should they ultimately require the labeling of each dispenser.

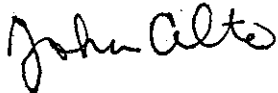
A more logical boundary would be drawn down the Coast and Cascade Ranges from Washington to California and any borderline facilities be considered outside the area and not be required to sell oxygenated fuel.

Using the above described boundaries would keep the playing field as level as possible and still implement oxygenated fuels by November 1, 1992. The "mountain" boundaries would address the future air quality problems throughout the Willamette Valley not just in isolated areas on a piecemeal basis.

The bottom line here is that oxygenated fuel boundaries must be drawn carefully so that fiscal and economical impacts are reduced to the lowest possible level for those gasoline stations that are still operating here in Oregon. The boundaries as proposed and existing rules are totally unacceptable to PETRO.

PETRO remains ready to assist.

Regards,

A handwritten signature in cursive script that reads "John Alto".

John Alto
President
625-6117

JA/mk



PETROLEUM RETAILERS OF OREGON

4504 S.W. Corbett Ave. #110
Post Office Box #12409
Portland, Oregon 97212

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Herb Thompson,
Director

Bill Tuininga,
Director

Harry Porter,
Executive Director

June 30, 1992

Mr. Jerry Coffey
1301 SE Morrison
Portland, OR 97214

Dear Jerry:

Petroleum Retailers of Oregon appreciates the opportunity to comment on the final rule changes relating to the oxygenated gasoline program in Oregon.

PETRO represents a significant number of gasoline dealers in the State of Oregon. You might recall that we hosted the Stage II "kickoff" meeting, which over 100 dealers attended; as well as yourself and other DEQ officials.

I am sorry we were not asked to participate from the outset in formulating rules for oxygenated fuels. Perhaps the door is not totally shut and we can still do some good. The issue that is most concerning my dealers is who will be required to sell oxygenated fuels. It is apparent to me that the draft rules do not recognize how competitive the gasoline business is at the retail level.

A \$.01 per gallon difference between unleaded regular at competing stations can swing 1000 gallons per day to the lower priced facility. I would hope that anyone could understand that if Chevron began charging me \$.06 per gallon more for oxygenated fuel and does not increase the price of fuel to an adjacent Chevron dealer, what would happen to the volume of my station. The same situations apply to other brands, areas and facilities.

The oxygenated fuels draft rules used the phrase "small independent service station." I'm not sure what that means, but I do know that if the boundaries are left as proposed, I do know that it would be a significant negative fiscal impact (disaster) to stations located inside the boundary described in the draft rules. Stations will close, jobs will be lost and vendors will lose business. Whole communities may lose access to gasoline that will effect other businesses in a negative fashion.

Mr. Jerry Coffey
July 7, 1992
Page Two

These fee increases have added substantially to the dealers' overhead costs and the retail cost of gasoline as well.

In addition to the outlandish fee structure that plagues dealers throughout this state, we are now confronted with the extra costs of implementing the Stage II Vapor Recovery System in selected areas of this state.

While start up costs are generally paid by the supplier of the gasoline dealer, additional costs are incurred in increased rents to the dealer by the major supplier to make up for this additional expense, plus the cost to maintain the new vapor recovery equipment, which is running somewhere in the range of \$500 to \$1,000 per nozzle per year.

While Stage II is only implemented in the tri-county of Portland, this is one site where the oxygenated fuels will also be distributed. This is therefore, a double hit to those dealers who happen to be in that control area. An additional fee for them will in some cases cause extreme hardship.

While we have always been supporters of clean air and tight tanks that do not leak, this already fragile industry would become even more so, if additional fees were assessed to those who are being required to sell oxygenated fuels.

Therefore we support the language as proposed. Any additional fees should be placed on the blender or CAR and the major brands that supply the dealers with fuel.

Sincerely,

Al Elkins
OGDA Executive Director

AE/dps



July 7, 1992

Mr. Jerry Coffey
Department of Environmental Quality
1301 SE Morrison
Portland, Oregon 97214

Dear Mr. Coffey:

I am responding to the proposed rules on Oxygenated Fuels. First of all, we really appreciate the opportunity to give input on these proposed rules.

Our comments center around the fee provisions of the rules, section 340-22-540 CAR and Blender Fees. We support the rule as written that specifies that:

"each CAR or blender CAR shall be assessed a base fee of \$700.00 per year plus an annual incremental fee of \$220.00 for each service station effectively fully supplied by the CAR or blender CAR with oxygenated gasoline during the control period and in control areas."

Our position is simply this: **that the gasoline dealers of Oregon cannot afford to be assessed any more fees.**

The service station industry of Oregon is already paying heavy fees with a \$25 registration fee on each underground storage tank, a 1.1 cent per gallon assessment on gasoline for the underground storage tank program, and a pump license fee for each individual pump.

In addition to the current level of fees already in existence, we have been approached by the Department of Environmental Quality to increase the \$25 tank registration fee to somewhere in the range of \$35 to \$55 per tank.

This is in addition to the pump license fee that was recently increased by the Department of Agriculture, Weights and Measures Division.

to the DEQ the most severe months for carbon monoxide in southern Oregon are December and January. To achieve maximum environmental benefit, the program should be in place during the most likely and most severe pollution problems. This time period would also match the control periods for the Portland area and simplify regulation at the state level.

One concern about the November-February control period is availability of the blended fuel in southern Oregon. These concerns are addressed by finding sources of blended fuel in Coos Bay, Eugene, Portland or Seattle. Expanding the sources of the fuel eliminates the need to coordinate exactly with California's designated time. OSPIRG supports the November through February time period as most protective of the air quality.

Designated Times -- Four Full Months

There was debate to shorten the total designated time to three months, if it could be shown that allowable carbon monoxide levels are not exceeded. These areas are already nonattainment areas. The suggested four month period covers the months of highest CO pollution with padding on either side to account for meteorological or other variations.

The DEQ proposal already includes provisions to eliminate the requirements of oxygenated fuels if an area comes into compliance and can demonstrate that that attainment will continue for 10 years. Because of this existing CO problem and the built-in opportunity to modify the system once environmental gains are achieved, there is no reason to shorten the designated time period. OSPIRG supports the full four month program.

Control Areas

The staff report recommends, and OSPIRG supports, use of the county boundaries to determine control areas. This is a more environmentally protective approach to determining the areas that need regulation. Airsheds have no physical or political boundaries, so the best control areas for regulatory purposes mimic airshed boundaries and account for movement pollutants in the air. The program should use county barriers as the designated control areas rather than parts of the counties that are in nonattainment.

The oxygenated fuels program will help protect Oregon's air quality by reducing pollution from vehicles using available technology. OSPIRG supports the proposed program.

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS_2 (R,T)
U015	115-02-6	L-Serine, diazoacetate (ester)
See F027	93-72-1	Silvex (2,4,5-TP)
U206	18883-66-4	Streptozotocin
U103	77-78-1	Sulfuric acid, dimethyl ester
U189	1314-80-3	Sulfur phosphide (R)
See F027	93-76-5	2,4,5-T
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Tetrachloroethylene
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	Thallium chloride TlCl
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Thioacetamide

<u>Hazardous Waste No.</u>	<u>Chemical Abstracts No.</u>	<u>Substance</u>
U153	74-93-1	Thiomethanol (I,T)
U244	137-26-8	Thioperoxydicarbonic diamide [(H ₂ N)C(S)] ₂ S ₂ , tetramethyl-
U219	62-56-6	Thiourea
U244	137-26-8	Thiram
U220	108-88-3	Toluene
U221	25376-45-8	Toluenediamine
U223	26471-62-5	Toluene diisocyanate (R,T)
U328	95-53-4	o-Toluidine
U353	106-49-0	p-Toluidine
U222	636-21-5	o-Toluidine hydrochloride
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U227	79-00-5	1,1,2-Trichloroethane
U228	79-01-6	Trichloroethylene
U121	75-69-4	Trichloromonofluoromethane
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U235	126-72-7	Tris(2,3-dibromopropyl) phosphate
U236	72-57-1	Trypan blue
U237	66-75-1	Uracil mustard
U176	759-73-9	Urea, N -ethyl-N-nitroso-
U177	684-93-5	Urea, N-methyl-N-nitroso-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U043	75-01-4	Vinyl chloride
U248	181-81-2	Warfarin, & salts, when present at concentrations of 0.3% or less
U239	1330-20-7	Xylene (I)
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[3,4,5-trimethoxybenzoyl]oxy]-,methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-
U249	1314-84-7	Zinc phosphide Zn_3P_2 , when present at concentrations of 10% or less

¹CAS Number given for parent compound only.

(e) Any residue, including but not limited to manufacturing process wastes and unused chemicals that has either:

(A) A 3% or greater concentration of any substance or mixture of substances listed in 40 CFR 261.33(e); or

(B) A 10% or greater concentration of any substance or mixture of substances listed in 40 CFR 261.33(f)-, except U075 (Dichlorodifluoromethane) and U121 (Trichloromonofluoromethane) when they are intended to be recycled.

(f) The wastes identified in subsections (e)(A) of this rule are identified as acutely hazardous wastes (H) and are subject to the small quantity exclusion defined in 40 CFR 261.5(e).

[Comment: Section (2)(e) of this rule shall be applied to a manufacturing process waste only in the event it is not identified elsewhere in OAR Chapter 340, Division 101, but prior to application of section (2)(g) of this rule.]

(g) A pesticide residue or pesticide manufacturing residue is a toxic hazardous waste if a representative sample of the residue exhibits a 96-hour aquatic LC_{50} equal to or less than 250 mg/l- , except for residues listed in Table 1 of 40 CFR 261.24 which pass the evaluation requirement of 40 CFR 261.24.

[Comment: A pesticide residue or pesticide manufacturing residue identified section (2)(g)(A) of this rule but not in 40 CFR 261.24 or listed elsewhere in Subpart D of 40 CFR Part 261, has the Hazardous Waste Number of X001 and is added to and made a part of the list of hazardous wastes in 40 CFR 261.31- , until a representative sample of the residue no longer exhibits an LC_{50} equal to or less than 250 mg/l.]

(h) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates listed as follows:

(A) P999. . . .Nerve agents (such as GB (Sarin) and VX).

To: Jerry Coffey
Date: June 25, 1992
Page: Two

We cannot let our trucks sit and wait for product to arrive at the terminal. You load what's available and return home. Availability of ethanol at Portland for Southern Oregon consumers is prohibitive. Transportation legalities and lag time cannot happen due to the distance and time. In order to keep product reasonable to the consumer it has to be transported from the closest and/or cheapest terminal. This is why Chico terminal becomes so popular at times for Southern Oregon.

The Portland area follows Washington which has refineries. Southern Oregon must be coordinated with California as well as Washington.

We are not qualified blenders. We are not chemists. We do not have any equipment for such. Yet, we are going to have to tell our truck drivers to blend. Your record keeping will require additional personnel which small business cannot afford.

We are all small businesses, also known as Jobbers, who operate in Southern Oregon. Major oils do not operate in our area. Major oil and unbranded product is sold in Southern Oregon through jobbers. These jobbers cannot afford your fee requirements or your fine system if an employee does not blend properly.

Southern Pacific Pipeline Co. stated to one of our suppliers that it would cost one million dollars to install an ethanol injection system at the loading rack. Splash blend is cheapest blend, but it cannot be done in Chico or other California racks that we pull from. There is a \$1,000 fine if a dome lid is opened in a vapor tight area. Splash blend is also the least accurate.

The squeeze that governmental agencies are putting on small business is having a negative effect on a business due to more rules and regulations. The economy is lagging nationwide because of this. Big business may be able to afford your large fines, but we CANNOT.

I would appreciate an easy solution to this problem. Errors are inevitable with your blend requirements. Make this program fool-proof and eliminate any possibility of unintentional error on our part - the small business.

Sincerely,

HAYS OIL CO.

By 

Robert W. Hays, President

RWH:blw

cc: Brian Boe

June 19, 1992

Mr. Ron Householder
Oxygenated Fuel Program
811 S.W. 6th Ave.
Portland, OR 97204

Dear Ron,

As a member of the Advisory Committee I would like to acknowledge the unprecedented manner the Oxyfuel Division worked with the regulated community to hammer out a workable set of rules which serve both the regulated community and the good of the public at large. Though much time and effort resulted in a great degree of progress and clarity there are still a number of areas that need to be given attention so as to clear away any ambiguity.



Under the heading of "Policy" (340-22-440) it is declared that oxygenated fuel blender CARs are "Indirect Sources" of pollution as defined in OAR 340-20-110 (14). These "indirect sources" are then addressed throughout the proposed regulation to be the funding mechanism for the administration of the entire program.

Steve Greenwood's letter to U.S. EPA reviewing agent dated March 5, 1992 declares the two primary and direct sources of air emission pollution to be transportation and wood burning stoves. Shelley K. McIntyre, assistant attorney general, in her letter dated May 6, 1992 to Jerry Coffey states that the blending process itself does not create CO emissions but that the exhaust from autos is the true source. She further states that "The current definition of indirect sources found at OAR 340-20-110 (14) does not seem to apply to the oxyfuel blenders".

We would strongly urge the DEQ to reconsider its proposed source of funding for the oxyfuel program. The "indirect source" as noted above should be replaced with the direct source of pollution -- the automobile. This is a much broader source of funding and a much fairer source as it places the burden on the direct pollution emitter instead of a source which by definition is not even an indirect source.

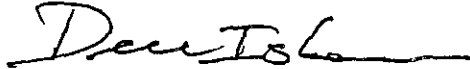
Astro Western
Companies

Western Stations Co.
Western Hyway Co.
Astro Management Co.

P.O. Box 5060 • 1466 N.W. Front Ave • Portland, Oregon 97228-5969 • (503) 243-7899 • Fax (503) 243-

In summary, the DEQ is requested to limit the oxygenated fuel requirement to the local areas effected and reduce the length of time for this requirement to November through January.

Sincerely,



Dell Isham
President

cc: Senator Lenn Hannon
Roger Martin
Mark Gibson
Doug Peeples

R. W. HAYS Co.

PETROLEUM PRODUCTS

P.O. BOX 458
1890 S. PACIFIC HWY.
MEDFORD, OREGON 97501
(503) 772-2053

June 25, 1992

JERRY COFFER
Vehicle Inspection Program
1301 S. E. Morrison
Portland, OR 97214

Dear Jerry:

The June 22, 1992 Oxy Fuel meeting in Medford, Oregon brought out several matters that your organization should be aware of.

Over a period of a year, 20% to 30% of our gasoline product comes out of California from the Chico terminal. Within that percentage, our product needs can be as high as 80% from California which is at 1.8 min. Oregon, with 2.0 min., should be 1.8 min. like California to eliminate blending error. Since Oregon has no refineries, it makes sense for the State of Oregon to coordinate its' Oxy requirements with the states that manufacture the product.

Oregon's Oxy months should also coincide with California to eliminate any blending error especially in the month of February. Blending error creates fines and no small business that's forced to blend can afford your fine system.

Your program was designed for the Portland area with major oil on board and terminals within a 10 mile radius. Southern Oregon has no close terminals and must deal with not only major oil but unbranded refineries. Southern Oregon is served by considerable unbranded manufactured product, those that do not make their own MTBE additive. Their only blend available is ethanol. Is there enough ethanol available? What happens to us if no ethanol is available or if supply is short or out? Do we face being fined if there is no ethanol-blend product available?

On the point of blending our own product, preloading ethanol is not logical. Distances to the terminals (Eugene-175, Chico-225, Portland-275 (one-way mileage)) cause problems if the terminal is out of gasoline. We would be forced to load diesel for the return load. There is no place to put the ethanol we preloaded.

Mr. Ron Householder
page 2
June 19, 1992

Under the heading of "Definitions" 340-22-450 (13) there is reference to the "effectively fully supplied service station". This is an ambiguous term and one which a blender CAR has no way of determining the true number thereof. This source defined for the purpose of being the vehicle for funding must be addressed at a flat rate fee and assessed to each service station if these non-indirect sources of pollution are going to remain the funding vehicle.

340-22-470 defines control areas and references all of Josephine and Klamath counties. The non-attainment zones in both counties are confined to small block areas within the towns of Grants Pass and Klamath Falls. Steve Greenwood's letter to the U.S. EPA reviewing agent makes it very clear that the Federal Register pg.4412 quotes as follows: The requirements of the program shall apply to every county or partial county which is located in the CMSA, MSA, or non-attainment area.

To include the entire counties referenced above is above and beyond the spirit and intent of the Federal EPA mandate. We would strongly urge the DEQ to adhere its program in both instances to the easily defined city limits rather than burden the towns and communities throughout the entire county. Some reference has been made to the difficulty in defining the city limits. This is totally absurd when it comes to determining if a service station is within or outside the city limits.

Under 340-22-500, (2)(d) titled Credit Transfers, it is clear that no credits may be Transferred between control areas. What is not clear is the determination of Portland-Vancouver as to whether or not it is considered one CMSA zone and therefore credit trading would be allowed. Please verify.

There are numerous references to violations for prohibited activities and resultant possible penalties. The regulated community requests that the penalties be defined as to their amount and relation to each specific prohibited activity.

We strongly urge the DEQ to hold to the agreed upon position that provides the regulated industry to utilize the "attest engagement" provision at it's own discretion. This is an unnecessary and onerous burden to bear by the industry and should not be incorporated into the Oregon rules from the EPA suggested guidelines.

Mr. Ron Householder
page 3
June 19, 1992

Under attachment C, Fiscal and Economic Impact Statement there is a misunderstanding as to how the state and federal tax credits effect the cost of gasoline to the consumer. Western Station has provided the attached cost benefit analysis (see attachment) to clarify the true impact of both tax credits on the cost of gasoline and to show that the impact statement is grossly understating the economic impact which will be born by the consumer. The benefit of rack price gasoline and ethanol are shown to be 1.816 cents today. Under a much higher demand period such as the non-attainment months, oxygenated products are sure to run short and cost will sky rocket.

The other key criteria of the economic impact statement is the failure to note, on the part of DEQ, that a 1% cap on the total gas tax revenue will allow the tax credit to be suspended. This 1% ceiling is currently being met by marketers using the ethanol oxygenate in order to produce cleaner burning, lower CO emission gasoline today. If the 5 cent state tax credit is suspended the economic impact on the consumer will result in much higher priced gasoline than anticipated under the current public information that has been provided.

We encourage the continuing productive dialogue on the part of the Oxyfuel Division with industry and hope that the testimony provided will assist in that end.

With regards,



Glenn Zirkle
Vice President

GZ:jd
Attachment

OREGON ETHANOL COST-BENEFIT ANALYSIS

Station: 201

Delivery Date: ~~9/11/72~~

WITH ETHANOL COST

-----Before Taxes-----

FUEL	GALLONS	COST PER GALLON	COST BEFORE TAXES
Regular	2,880	0.7585	2,184.48
No Lead	6,300	0.7585	4,778.55
Premium	0	0.0000	0.00
Ethanol	1,020	0.7585	1,649.85
Totals	10,200		\$8,612.88

-----Tax Calculations-----

FUEL	TOTAL GALLONS	TAX RATE	TAX
Gasoline	9,180	0.1410	1,294.38
Gasoline	10,200	0.2310	2,356.20
Gasoline	9,180	0.1410	(407.59)
Gasoline	10,200	0.2310	(510.00)
Total Tax			\$2,732.99

TOTAL WITH ETHANOL COST \$11,345.87
COST PER GALLON 1.11234

WITHOUT ETHANOL COST

-----Before Taxes-----

FUEL	GALLONS	COST per GAL	COST BEFORE TAXES
Regular	3,200	0.7585	2,427.20
No Lead	7,000	0.7585	5,309.50
Premium	0	0.0000	0.00
Totals	10,200		\$7,736.70
Tax		0.3720	3,794.40

TOTAL WITHOUT ETHANOL COST \$11,531.10
COST PER GALLON 1.13050

-----Delivered Cost-----

DESCRIPTION	COST
Total Cost	11,531.10
County/City Tax	306.00
100% Freight	134.03
Load Fee	10.00
TOTAL DELIVERED COST	\$11,981.13

-----Cost/Benefit Analysis-----

Gasoline cost per gallon:	1.13050
Ethanol cost per gallon:	1.11234
TOTAL SAVINGS	0.01816

~~Federal tax credit applies~~
~~to gasoline gallons only~~
~~state tax credit applies~~
~~to ethanol gallons only~~
~~state tax credit applies~~
~~to ethanol gallons only~~

WFO

GRANGE CO-OP

P.O. Box 3637 • Central Point, Oregon 97502
Phone (503) 664-1261 • Fax (503) 664-1246

June 25, 1992

Jerry Coffey
Dept. of Environmental Quality
1301 S. E. Morrison
Portland, OR 97214

Mr. Jerry Coffey:

I would like to thank you for the time you shared with us in Southern Oregon at the hearing. We discussed with you some of the problems that your proposed oxygenated fuel program would create. This program as proposed would cause a lot of hardship and extra expense to doing business in Southern Oregon as compared to the Portland area.

I feel strongly, as do the other jobber/distributors in Southern Oregon, that the D.E.Q.'s oxy gas program was designed around what was available in the Portland area. Then if it looks like the program would work in that area, you would force the rest of the counties to comply somehow. Little or no thought was given to how the program would be implemented in Southern Oregon.

I would like to offer some good, sound alternative proposals that are pretty much a general consensus of all jobber/distributors in Southern Oregon:

1. Instead of using the proposed 2.7% average, use the same standard that California is using, 1.8% minimum and 2.2% maximum. A large amount of the gas that comes into Southern Oregon comes from California. A lot of these California gallons are on contract and cannot be shifted to another terminal. Even if all these gallons would be switched to Eugene, it is most likely to create a real supply problem with more outages than we experience at present from the Eugene terminal.

2.. California will have oxy gas available from October through January and Oregon is proposing November through February, again leaving Southern Oregon without product for a month. To alleviate this problem, change the proposed months to November through January.

3. The D.E.Q. proposal that some counties have oxy gas and others not will force some locations into a real price disadvantage. That will bring instant complaints from the public and the ground work for some nasty court battles. To avoid this problem and to keep an even playing field for all in business and competition, have the whole state use oxy gas. If the oxy gas program is so good, wouldn't this just be better?

4. The amount of record keeping and accounting that is being proposed could add another whole staff member to each business. Plus extra people from D.E.Q. must review the papers. Our job is to sell product, not add cost to doing business! Now that we have the oxy gas program state wide, all the need for expensive record keeping has vanished and created a savings to the D.E.Q.

5. The blending of gas should only be done at the time of loading and only at the refineries or pipe line terminals. This task must be done by trained operators using accurate equipment. This is not something that a truck driver should be doing, adding "some" to each compartment of his truck along the way to the loading rack. Blending at the rack keeps all the records in one place.

6. Credits. This appears to be someone's idea of a bad joke. First off, the "sold credits" won't clean any air! After all, isn't clean air what this program is all about? Don't try to hide this costly program from the consumer by giving someone tax credits. The total cost of this must be sent down the pipe to the consumer! By eliminating the credit selling and swapping, we also can eliminate more paper work and record keeping .

7. Most underground tanks in Oregon are now equipped with monitoring probes. These probes are the main part of the tank monitoring equipment that is being mandated by the E.P.A and D.E.Q. In checking with our equipment supplier, I was told the existing probes would not function properly with a blended gas. A new special probe must be installed at a cost of over \$1,100.00 per tank. Who pays this cost?

By making the few changes in the oxy gas program as we have suggested in this letter, the program would be much more workable with less loop holes and pitfalls. One of the real benefits is in reduced cost to business and the D.E.Q. Now the exorbitant proposed fee must be reduced or dropped altogether.

Sincerely,



Howard C. Misner
Petroleum Manager
Grange Co-op

HCM:sv

OUR ECONOMIC ARGUMENTS WOULD POINT OUT THAT THE COST OF OXYGENATED GASOLINE WILL BE HIGHER. ALTHOUGH ETHANOL HAS AN ADVANTAGE BECAUSE OF FEDERAL AND STATE SUBSIDIES THAT TOTAL ONE DOLLAR AND FOUR CENTS PER GALLON, THE ETHANOL PRODUCERS DON'T GET THAT SUBSIDY DIRECTLY. BLENDERS GET THE SUBSIDIES. PRODUCERS GET IT FROM THE BLENDERS ONLY BY PROVIDING A COMPETITIVE MARKET PRICE THAT ENCOURAGES BLENDERS TO BUY ETHANOL RATHER THAN MTBE. AS THE ONLY OTHER READILY AVAILABLE OXYGENATE IN THE MARKET PLACE AND BEING MORE EXPENSIVE THAN GASOLINE WE EXPECT THE PRICE OF ETHANOL TO APPROACH MTBE WHILE MAINTAINING SOME SLIGHT ADVANTAGE. ONCE THE STATE OF OREGON FIGURES OUT THE IMPACT ON TAX REVENUES OF ITS FIFTY CENTS A GALLON SUBSIDY WE EXPECT A SHARP LEGISLATIVE ADJUSTMENT AND AN EROSION OF THE ETHANOL ADVANTAGE.

WE WOULD ALSO ARGUE THAT NONE OF THE INCREASED COSTS THAT WOULD BE EVENTUALLY BORNE BY OREGON CONSUMERS WILL STAY IN OREGON OR ADD TO THE GROWTH OF THE LOCAL ECONOMIES. IN FACT, THE EFFECT IS JUST THE OPPOSITE AS BOTH THE SUBSIDIES AND OTHER COSTS FLOW TO PRODUCERS IN OTHER STATES. THIS RESULTS IN YET LOWER CONSUMER BUYING POWER AND YET LOWER TAX REVENUE. IT IS NOT IN THE PUBLIC INTEREST TO PROVIDE UNNECESSARY AND EXPENSIVE INSURANCE POLICIES SUCH AS A FEBRUARY PROGRAM.

IN ADDITION TO THE LACK OF AIR QUALITY NECESSITY AND THE BAD PUBLIC ECONOMIC POLICY, SUPPLIERS IN SOUTHERN OREGON HAVE A

June 26, 1992

Jerry Coffey
Department of Environmental Quality
1301 S. E. Morrison
Portland, Or 97204

Dear Jerry:

I would like to thank you for the time you shared with us regarding our concerns about handling the oxygenated fuels program in Southern Oregon. This program is so foreign to us, and so filled with problems and hazards that we do not know how to approach the problems. We feel the situation in Southern Oregon is entirely different than the Portland area. I feel my problems as a small jobber with only one truck delivering to small dealers is entirely different than other larger distributors such as Hays Oil and Colvin Oil. Our small operation will not allow us to average the fixed cost with large volume sales.

1. We are a small distributor with one truck and trailer. We must obtain two loads of fuel per day from either Eugene or Chico terminals to meet our demand for hire a common carrier for \$580.00 per load that we cannot haul ourselves. The cost of a new truck is over \$190,000.00. If we experience delays that cut our 14 loads per week hauling ratio, we will experience a negative profit margin.

In 1989 we delivered to 15 small dealer stations.

In 1992 we delivered to 8 small dealer stations.

Three of these 8 remaining dealers pump an average of 8000 gallons per month of gasoline. Their projected increased costs are:

- a. \$220.00 per station per year equals .007 per gallon.
- b. Unknown costs to clean tank for water and sediment.
- c. The risk of sludge damaging the pre 1984 vehicles of their customers. Jackson and Josephine counties have a high percentage of these older vehicles.

I have been informed that Southern Pacific will not allow oxygenated fuel into their pipeline because of the problem with sludge removal characteristics of oxygenated fuel.

My three bulk fuel tanks are 60 years old. If oxygenated fuel removes sludge from these tanks, plus my dealers old tanks, then the high percentage of older vehicles could cause devastating lawsuits and make future insurance premiums prohibitive. I understand Major oil will not store the blended product in their own tanks at the terminals because of the dissolving characteristics of oxygenated fuel. They will only blend it as it goes into our trucks.

2. I have had requests to sell my business. Experts have advised me that small dealers will be unable to upgrade, so it would be best to debrand these stations and give the gallonage to larger units which have a better chance to survive the future.

Each company that has offered to buy my business would debrand my small stations and use this gallonage in order to rebrand their stations. Their stations lost their brands with Mobil, Shell, Union, etc, which moved out of the area. I feel it is immoral to take the gallonage away from the stations that have built a refinery allocation and then leave them. These new actions seem to be another nail in the coffin effecting our ability to serve small remote low gallonage stations.

3. You gave us the example of splash blending of ethanol as per Glenn Zirkle in Portland. During our Medford meeting we have the following problems:

- a. We must have facilities in the Eugene area to blend the oxygenated fuel. We cannot pre load ethanol in our truck prior to Eugene. This will not work because Eugene is often out of product, forcing us to bring back diesel. What would we do with the ethanol in our tanks?
- b. What are the health hazards of splash blending to my drivers?
- c. What are the DEQ environmental concerns if a bucket of ethanol is dropped and splashed on the pavement?
- d. How does Glenn Zirkle handle the opening of the truck and trailer tank domes which release all of the gasoline vapors. Local ordinances prevent such action in an area such as Portland or Medford.
- e. Chico Terminal - How do we splash blend at the Chico terminal? How many gallons of ethanol needs to be added to each compartment in Chico? My truck has the following compartments, we need a chart to give to our drivers so that they can load the correct gallons of ethanol.

4. Chico Blend - If the published blend in Chico is:

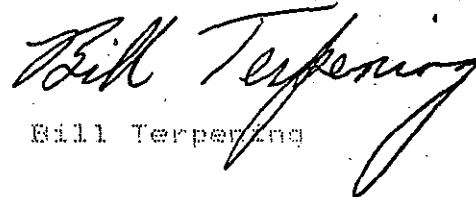
Compartment of our T & T:		
Comp.	Gal	Zero Blend 1.8, 1.9, 2.0, 2.1, 2.2, 2.3 2.4
#1	430	
#2	925	
#3	1125	
#4	1700	
#5	1515	
#6	2760	

Our ability to make mistakes at the Chico terminal can only be exceeded by the dangers of handling the product in such a primitive fashion as to insure the DEC ability to fine us for mistakes.

5. Brian Boe - During our meeting in Medford we covered many other problems. Rather than continue the list, I would like to dwell on one last item. You stated that, "no one had told the DEC about the problems in Southern Oregon." You asked us if we had discussed this with OPMA, because this had to convey these problems. We have discussed these problems. I am only question why Brian Boe did not represent the interests of Southern Oregon on these matters. The DEC should have been aware of these problems.

Again I appreciate your concern and candor about our problems. It is my hope that we can find solutions to these concerns. Remember the old saying, "The straw that broke the camels' back. I only hope that this is not another straw toward the demise of the small dealer in rural Southern Oregon.

Sincerely,


Bill Terpening

Unocal Refining & Marketing Division
Unocal Corporation
911 Wilshire Blvd., P.O. Box 7600
Los Angeles, California 90051
Telephone (213) 977-5974

UNOCAL 

June 26, 1992

Dennis W. Lamb
Manager of Planning
Planning and Services

Mr. Jerry Coffey
Vehicle Inspection Program
Department of Environmental
Quality
1301 SE Morrison Street
Portland, OR 97214

Dear Mr. Coffey:

The Union Oil Company of California (Unocal) offers the attached comments on Chapter 340, Motor Vehicle Fuel Specifications for Oxygenated Gasoline.

If you have any questions regarding the attached comments, please contact me at (213) 977-5974.

Sincerely yours,

Dennis Lamb by *J. Young*

Dennis W. Lamb
Manager of Planning

Attachment

UNION OIL COMPANY OF CALIFORNIA (UNOCAL) COMMENTS ON
OREGON STATE OXYGENATED FUELS REGULATIONS
JUNE 26, 1992

Unocal appreciates the opportunity to comment on the proposed oxygenated fuels regulations. We have participated in the Oregon Advisory Committee that drafted the oxygenated fuels proposal. There are several issues that we would like to comment on:

- The record retention period.
- Blending tolerances
- Pump label size
- Blender Fees
- Cost to consumers
- Control periods in southern Oregon
- Control areas in southern Oregon.

RECORD RETENTION PERIOD

Unocal suggests a two year record retention period. The cost of record retention has become an increasing burden for industry, plus the federal government and several state governments have implemented "paperwork reduction" requirements. There is no additional environmental benefit for a five year record retention period. A two year period is sufficient for compliance auditing.

BLENDING TOLERANCES

To compensate for the problems associated with dilution and density of some oxygenates during transport and storage, Unocal suggests that Oregon regulations provide the same flexibility as EPA regulations, which permit the blending of MTBE that is 0.2% oxygen by weight higher than allowable under the "substantially similar" rule. This rule allows gasoline producers, who are likely to blend gasoline upstream from terminals and subsequently transport it to the terminal, to compensate for the potential loss of oxygen during transportation and storage. Unocal further suggests that the 0.2% tolerance also apply at the service station level for the same reason. This allowance at the service station level is necessary to produce compliance gasoline during inventory turn over by using 2.9 MTBE to blend residual gasoline in storage up to a 2.7 max MTBE.

UNION OIL COMPANY OF CALIFORNIA (UNOCAL) COMMENTS ON
OREGON STATE OXYGENATED FUELS REGULATIONS
JUNE 26, 1992

PUMP LABEL SIZE

Unocal agrees with EPA that the label size should be changed to a 20 point size lettering, and be placed on the upper half of the dispenser. Unocal urges Oregon to follow this recommendation.

BLENDER FEES

To assess a blender incremental fee based on "effectively fully supplied service station", which is calculated by dividing the CAR's anticipated fuel volume supplied to control areas by the average throughput of the stations served by the CAR, seems to be in conflict with Article IX, Section 3a of the Oregon Constitution. The Constitution specifically states that any assessment on the basis of volume will not be held valid, and that the use of any revenue collected from storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel, or any other product used for the propulsion of motor vehicles, be exclusively used for the Highway Trust Fund.

Unocal suggests that Oregon drop the blender fee, and use vehicle emission fees as the appropriate funding mechanism.

COST TO CONSUMERS

The California Air Resources Board estimated the overall cost of 1.8 to 2.2% by weight oxygenated gasoline to be 3 cents per gallon. However, the Oregon Department of Environmental Quality estimated the overall cost of 2.7% by weight oxygenated gasoline at one cent per gallon if MTBE is used, or 2 cents per gallon (before tax credits) if ethanol is used. Unocal contends that a more reasonable estimate is 4 to 6 cents per gallon, as estimated by Chevron.

Ethanol requires subsidies to compete with MTBE. Unocal is not convinced that consumers will experience a reduction in gasoline price if ethanol is used. Instead, any temporary pricing advantages ethanol has will be eroded as ethanol producers strive to recover the blenders' subsidies. MTBE is the competitive benchmark, and will dictate ethanol pricing.

UNION OIL COMPANY OF CALIFORNIA (UNOCAL) COMMENTS ON
OREGON STATE OXYGENATED FUELS REGULATIONS
JUNE 26, 1992

The real cost increase for oxygenated gasoline must be recovered in the market place. In addition to the product costs of 4 to 6 cents per gallon, consumers will experience a loss of mileage per gallon of oxygenated gasoline. The lower energy content of such oxygenated fuels will increase fuel consumption, which will add to consumers costs.

Cost to consumers is an important factor in this rule making. Consumers have a right to a thoughtful presentation of the best estimates. Staff, admittedly, has given this little thought. An in depth analysis should be conducted.

Mr. Dennis W. Lamb, Manager of Planning for the Refining and Marketing Division of Unocal, has presented oral comments on June 17 regarding the last two issues. A copy of the comments is attached, and is briefly summarized below.

CONTROL PERIODS IN SOUTHERN OREGON

Section 211 (m) (2) of the Clean Air Act Amendments suggests a four month control period for CO non-attainment areas. It also allows the States to justify reduced periods. Other states have already announced that they will be submitting plans for a control periods shorter than what EPA guidelines call for.

There is no meteorological trends or conditions that indicates any exceedance of CO in February. Besides, the newer vehicles can control CO very effectively. The fact is that Grants Pass, Medford and Klamath Falls have not experienced any exceedance in CO in February since 1987.

Even EPA has decided to modify the control period for southern Oregon. The Supplemental Notice of Proposed Guidance on Establishment of Control Periods under Section 211 (m) of the Clean Air Act as Amended (57 FR 4408) states:

"... the control period for Grant's Pass, Medford and Klamath in the state of Oregon, and to propose guidance for the control periods of four months from October 1 to January 31.....Based on current data alone, these counties are not prone to high ambient concentrations of CO in either October or February."

UNION OIL COMPANY OF CALIFORNIA (UNOCAL) COMMENTS ON
OREGON STATE OXYGENATED FUELS REGULATIONS
JUNE 26, 1992

The Advisory Committee recommended a three month control period starting November through January in southern Oregon, after considering various issues including the supply points. If the control area is not in attainment in February, a trigger mechanism could extend the control period automatically to include the February in the subsequent year.

Oregon Department of Environmental Quality should consider the recommendations made by the Advisory Committee by not extending the control period through February.

CONTROL AREAS IN SOUTHERN OREGON

Unocal views expansion of non-attainment areas to cover full counties as a bad public policy. The expansion of control areas will increase the costs of compliance for operators and also the enforcement costs for the State. The Staff recommendations do not include a review of traffic patterns, number of stations included under this proposal, nor any air quality benefits.

To add extra burden to the consumers and operators in southern Oregon without demonstrating the cost effectiveness for the recommendations is unacceptable, especially when the Grants Pass non-attainment area seems to be caused by slow traffic over an old bridge. That bridge is now being replaced. This improvement is expected to bring the area into attainment even without an oxygen program.

MY NAME IS DENNIS LAMB. I AM THE MANAGER OF PLANNING FOR THE REFINING AND MARKETING DIVISION OF UNOCAL CORPORATION.

WE APPRECIATE THE OPPORTUNITY TO COMMENT ON THE PROPOSED OXYGENATED FUELS REGULATIONS. I PARTICIPATED IN THE REGULATORY NEGOTIATIONS LAST YEAR IN WASHINGTON D.C. THAT RESULTED IN THE PROPOSED FEDERAL GUIDELINES THAT ARE THE BASIS FOR THIS RULE. IT IS IMPORTANT TO NOTE THAT EPA IS MERELY PROVIDING GUIDELINES, NOT REGULATIONS AND THAT EPA HAS NOT FINALIZED THE GUIDELINES. THEY ARE HELD UP, AT LEAST IN PART, BECAUSE OF SOME OF THE SAME ISSUES I WISH TO DISCUSS TONIGHT.

I ALSO PARTICIPATED IN THE OREGON ADVISORY COMMITTEE THAT MET SEVERAL TIMES EARLIER THIS YEAR TO DRAFT THE PROPOSAL BEFORE US TONIGHT.

UNOCAL WILL BE SUBMITTING WRITTEN COMMENTS PRIOR TO THE JUNE 30 DEADLINE. WE WILL COMMENT ON SEVERAL ISSUES INCLUDING:

- o THE RECORD RETENTION PERIOD
- o BLENDING TOLERANCES
- o PUMP LABEL SIZE
- o BLENDER FEES
- o CONTROL PERIODS IN SOUTHERN OREGON, AND
- o CONTROL AREAS IN SOUTHERN OREGON

TONIGHT I WILL LIMIT MY COMMENTS TO THE LAST TWO ISSUES; THE LENGTH OF SOUTHERN OREGON CONTROL PERIODS AND THE SIZE OF THE CONTROL AREAS.

THE STAFF PROPOSAL BEFORE US THIS EVENING DISREGARDS THE ADVISORY COMMITTEE RECOMMENDATIONS ON THOSE TWO ISSUES. THE ADVISORY COMMITTEE SUGGESTED A THREE MONTH CONTROL PERIOD STARTING IN NOVEMBER FOR THE THREE SOUTHERN OREGON NON-ATTAINMENT AREAS. THE COMMITTEE ALSO RECOMMENDED THAT THE SIZE OF THE GRANTS PASS CONTROL AREA BE INCREASED TO INCLUDE THE ENTIRE CITY OF GRANTS PASS AND THAT THE CONTROL AREA BE CONSISTENT WITH THE NON-ATTAINMENT AREA FOR KLAMATH FALLS.

THE STAFF RECOMMENDATION EXPANDED BOTH AREAS TO THE ENTIRE COUNTY FOR BOTH AREAS.

I WOULD LIKE FIRST TO DISCUSS THE LENGTH OF THE CONTROL PERIOD FOR THE SOUTHERN OREGON NON-ATTAINMENT AREAS.

AT THE FIRST ADVISORY COMMITTEE MEETING, I ASKED THE STAFF FOR TIME ON THE AGENDA TO DISCUSS A THREE MONTH CONTROL PERIOD. I WAS TOLD THAT IT WOULD BE THE FIRST AGENDA ITEM FOR THE NEXT MEETING OF THE COMMITTEE. AT THE NEXT MEETING, IT WAS NOT FIRST ON THE AGENDA. IN FACT, IT WAS HELD UNTIL LAST. SOME PEOPLE HAD ALREADY LEFT AND I WAS ASKED IF I WANTED TO HOLD IT UNTIL THE SUBSEQUENT MEETING, BECAUSE THERE WOULD NOT BE TIME FOR

DISCUSSION. I WENT AHEAD WITH MY PRESENTATION, BUT DISCUSSION WAS POSTPONED UNTIL THE THIRD MEETING. BEFORE THE THIRD MEETING TOOK PLACE THE STAFF SENT A LETTER TO EPA REQUESTING A FOUR MONTH CONTROL PERIOD STARTING IN NOVEMBER. IT IS NOT CLEAR WHY THIS LETTER WAS NECESSARY, AS THE ACTUAL CONTROL PERIOD WILL BE DETERMINED ONLY WHEN THE OREGON STATE IMPLEMENTATION PLAN, OR SIP, IS SUBMITTED IN NOVEMBER OF THIS YEAR AND SUBSEQUENTLY APPROVED BY EPA. IT DID NOT APPEAR TO US THAT THE STAFF WAS INTERESTED IN WHAT THE ADVISORY COMMITTEE HAD TO SAY ON THAT ISSUE. IN SUBSEQUENT MEETINGS, THE COMMITTEE DID DISCUSS THE ISSUE AND RECOMMENDS A THREE MONTH CONTROL PERIOD STARTING IN NOVEMBER. IF A EXCEEDANCE DID OCCUR IN FEBRUARY, IT WAS ALSO RECOMMENDED THAT A TRIGGER MECHANISM EXPAND THE CONTROL PERIOD AUTOMATICALLY TO INCLUDE FEBRUARY IN SUBSEQUENT CONTROL PERIODS.

WE ARE TOLD BY STAFF THAT EPA HAS NOT APPROVED ANY PLANS WITH LESS THAN FOUR MONTHS. IN FACT NO PLANS HAVE YET BEEN SUBMITTED TO EPA AND WILL NOT BE SUBMITTED UNTIL SIPS ARE COMPLETED. WE ARE TOLD THAT EPA WILL FINALIZE ITS GUIDELINES FOR OREGON AND IDENTIFY A FOUR MONTH PERIOD STARTING IN NOVEMBER. IN FACT, EPA CAN DO NOTHING LESS THAN PROVIDE A FOUR MONTH "GUIDELINE", BECAUSE THAT IS REQUIRED BY THE LANGUAGE IN THE CLEAN AIR ACT AMENDMENTS. WE ARE FURTHER TOLD THAT EPA WILL NOT APPROVE ANYTHING LESS THAN FOUR MONTHS. IT IS CLEAR THAT THEY WILL NOT APPROVE A THREE MONTH SIP IF ONLY FOUR MONTH SIPS ARE SUBMITTED. OREGON SHOULD SUBMIT A THREE MONTH CONTROL PERIOD PLAN FOR GRANTS

PASS, MEDFORD, AND KLAMATH FALLS.

OTHER STATES HAVE ALREADY ANNOUNCED THAT THEY WILL BE SUBMITTING PLANS WITH CONTROL PERIODS THAT ARE SHORTER THAN WHAT THE EPA GUIDELINES CALL FOR.

THE EPA GUIDELINE FOR NEW YORK IS TWELVE MONTHS. WE UNDERSTAND NEW YORK WILL SUBMIT A SEVEN MONTH PLAN. THE GUIDELINES FOR CALIFORNIA IDENTIFY FIVE AND SIX MONTH PERIODS FOR NORTHERN AND SOUTHERN CALIFORNIA RESPECTIVELY. CALIFORNIA WILL SUBMIT A PLAN CUTTING ONE MONTH OFF EACH PERIOD.

THESE PARTICULAR PLANS DO NOT RESULT IN LESS THAN FOUR MONTH PERIODS. HOWEVER, BOSTON AND CLEVELAND NOW CLAIM TO BE IN ATTAINMENT, BASED ON THE MOST RECENT DATA, AND HAVE ADVISED EPA THAT THEY DO NOT INTEND TO PARTICIPATE IN THE OXYGEN PROGRAM. IN OTHER WORDS A ZERO MONTH CONTROL PERIOD. THOSE PLANS HAVE STRONG SUPPORT IN THE WHITE HOUSE.

EPA IS REQUIRED TO PROVIDE GUIDANCE FOR A MINIMUM FOUR MONTH PERIOD. (CAAA 211 (m) (2) SLIDE) JUST AS CLEARLY THE CAA AMENDMENTS ALLOW THE STATES TO JUSTIFY REDUCED PERIODS.

THE BEST EVIDENCE OF THE METEOROLOGICAL CONDITIONS IS THE EXISTENCE OR NON-EXISTENCE OF CO EXCEEDANCES.

EPA'S SUPPLEMENTAL NOTICE OF PROPOSED GUIDANCE IN DISCUSSING THE APPROPRIATE CONTROL PERIODS FOR SOUTHERN OREGON STATES:

"BASED ON CURRENT DATA ALONE, THESE COUNTIES ARE NOT PRONE TO HIGH AMBIENT CONCENTRATIONS OF CO IN EITHER OCTOBER OR FEBRUARY."

THE THREE AREAS HAVE NOT EXPERIENCED ANY EXCEEDANCES IN FEBRUARY SINCE 1987. BASED ON SIMILAR DATA FOR ALL MONTHS, BOSTON AND CLEVELAND WILL NOT PARTICIPATE IN THE PROGRAM.

IN JUSTIFYING THE INCLUSION OF FEBRUARY, THE STAFF HAS FAILED TO PROVIDE ANY ANALYSIS OF THE TRENDS OR CONDITIONS THAT INDICATE ANY REAL POTENTIAL FOR FEBRUARY EXCEEDANCES. IN FACT, THE NATIONAL TRENDS FOR CO ARE DROPPING FAST, LARGELY BECAUSE NEWER VEHICLES CONTROL CO VERY EFFECTIVELY. THE STAFF DOES IDENTIFY THE POTENTIAL FOR A VIOLATION UNDER WEATHER CONDITIONS THAT ARE RARE ENOUGH NOT TO HAVE OCCURRED IN AT LEAST THE LAST FIVE YEARS.

UNDER A THREE MONTH PROGRAM, EVEN FEBRUARY WILL BE LESS LIKELY THAN EVER BEFORE TO HAVE AN EXCEEDANCE. THE REASON STEMS FROM THE FACT THAT SUPPLIERS MUST BE IN COMPLIANCE WITH THE OXYGEN REQUIREMENTS RIGHT UP THROUGH THE LAST DAY OF JANUARY. FEBRUARY BEGINS WITH SERVICE STATION AND TERMINAL INVENTORIES OF

OXYGENATED GASOLINE. THOSE INVENTORIES WILL BE SOLD OFF DURING FEBRUARY PROVIDING ADDITIONAL INSURANCE AGAINST ALREADY NON-EXISTENT EXCEEDANCES.

MOREOVER, SUPPLIERS THAT BLEND WITH ETHANOL MAY CONTINUE TO USE THAT OXYGENATE YEAR AROUND REGARDLESS OF THE CONTROL PERIOD, AS LONG AS THERE IS A LEVEL OF ECONOMIC INCENTIVE TO DO SO. IT APPEARS AT THIS TIME THAT MOST SUPPLIERS IN OREGON WILL USE ETHANOL BECAUSE OF ECONOMIC INCENTIVES.

BECAUSE STAFF CONTINUED TO BE CONCERNED ABOUT FEBRUARY, WE SUGGESTED A "TRIGGER". WITH THE TRIGGER PROVISION ANY FEBRUARY EXCEEDANCE IN A SOUTHERN OREGON CONTROL AREA WOULD AUTOMATICALLY REQUIRE THAT FEBRUARY BE INCLUDED IN THE CONTROL PERIOD FOR SUBSEQUENT YEARS. FOR EXAMPLE, EXCEEDANCE IN FEBRUARY OF 1993 WOULD REQUIRE THAT AREA BE INCLUDED IN THE 1994 AND SUBSEQUENT PROGRAMS. EXCEEDANCES IN 1994 AND BEYOND ARE EVEN MORE UNLIKELY THAN 1993. THEREFORE, SINCE THERE HAVE NOT BEEN ANY EXCEEDANCES IN THE LAST FIVE YEARS, CO TRENDS ARE DECLINING, NEWER VEHICLES ARE GETTING EVEN CLEANER, AND OXYGEN WILL BE IN AT LEAST SOME OF THE GASOLINE SOLD IN FEBRUARY WE THINK THERE IS VERY LITTLE RISK.

WHY IS A THREE MONTH CONTROL PERIOD IMPORTANT TO SUPPLIERS? IF IT WAS JUST AN AIR QUALITY EXCEEDANCE OR ECONOMIC ISSUE WE WOULD ARGUE FOR AN EVEN SHORTER TWO MONTH PERIOD.

LOGISTICS PROBLEM THAT CAN FIND SOME RELIEF IN A THREE MONTH PROGRAM. IT IS THE LOGISTICS THAT MUST BE ADDRESSED.

AGAIN IN DISCUSSING THE SOUTHERN OREGON CONTROL PERIODS EPA SAID IN THE SNPG THAT:

"...SUPPLY LOGISTICS MAY BE A LEGITIMATE BASIS FOR SELECTION."

THE SUPPLY POINTS FOR SOUTHERN OREGON AREAS INCLUDE COOS BAY, EUGENE, AND CHICO CALIFORNIA.

NORTHERN CALIFORNIA'S CONTROL PERIOD HAS BEEN IDENTIFIED AS OCTOBER THROUGH JANUARY. EPA ORIGINALLY IDENTIFIED OREGON AS A NOVEMBER THROUGH FEBRUARY PERIOD. IT WAS POINTED OUT TO EPA THAT NEITHER COOS BAY NOR EUGENE WAS REQUIRED TO HAVE OXYGENATED FUELS BUT THAT CHICO WOULD. EPA REVIEWED THE CONDITIONS IN SOUTHERN OREGON AND CHANGED TO AN OCTOBER THROUGH JANUARY PERIOD.

THAT WOULD BE FINE IF ALL SUPPLIERS DELIVERED PRODUCT FROM CHICO AND OREGON STATE WAS IN AGREEMENT. OF COURSE, IT WAS NOT THAT SIMPLE. SOME SUPPLIERS DEPEND ON PRODUCT SUPPLY THAT COMES FROM THE NORTH, WHICH WILL HAVE OXYGEN IN NOVEMBER THROUGH FEBRUARY. MANY INDEPENDENT SUPPLIERS LIFT PRODUCT EITHER IN OREGON OR CALIFORNIA, DEPENDING ON THE PRICE. THAT FLEXIBILITY HAS MAINTAINED A COMPETITIVE MARKET IN SOUTHERN OREGON FOR MANY YEARS AND HAS BENEFITED THE CONSUMER.

THE PERFECT SOLUTION IS A NOVEMBER THROUGH JANUARY THREE MONTH PERIOD. OXYGENATES WILL BE AVAILABLE DURING THAT PERIOD FROM ALL SOURCES IN BOTH OREGON AND CALIFORNIA. THIS WOULD ALLOW SOUTHERN OREGON SUPPLIERS THE TRADITIONAL ALTERNATIVES OF SUPPLY POINTS AND ECONOMIC BALANCE.

IT WAS FOR THESE REASONS THAT THE ADVISORY COMMITTEE RECOMMENDED THE NOVEMBER THROUGH JANUARY CONTROL PERIOD THAT WE CONTINUE TO ENDORSE TONIGHT.

MY SECOND ISSUE INVOLVES THE SIZE OF THE CONTROL AREAS IN SOUTHERN OREGON. THE FEDERAL GUIDELINES DID NOT COVER ALL SITUATIONS. THE GUIDELINES ARE CLEAR FOR AREAS THAT ARE EITHER AN OFFICIAL MSA OR CMSA. IN THESE CASES THE BOUNDARIES ARE DEFINED BY THE MSA OR CMSA.

IN FACT I PERSONALLY POINTED OUT TO THE STAFF THAT YAMHILL COUNTY WAS PART OF PORTLAND'S CSMA WHEN IT WAS EXCLUDED FROM THEIR FIRST PROPOSAL. THE STAFF CHECKED WITH EPA AND WAS ADVISED THAT YAMHILL SHOULD BE INCLUDED. I ALSO POINTED OUT THAT GRANTS PASS AND KLAMATH FALLS WERE NOT IN EITHER A MSA OR CMSA. AGAIN, THE STAFF CHECKED WITH EPA AND WERE TOLD THAT THE CONTROL AREA SHOULD BE THE NON-ATTAINMENT AREAS IN SUCH CASES.

IT WAS AT THIS POINT MANY OF US LEARNED A VERY INTERESTING FACT ABOUT THE GRANTS PASS NON-ATTAINMENT AREA. IT IS ONLY THREE

BLOCKS WIDE AND TEN BLOCKS LONG. IT SEEMS TO HAVE BEEN CREATED BY SLOW TRAFFIC OVER AN OLD BRIDGE THAT IS NOW BEING REPLACED AND THAT IMPROVEMENT IS EXPECTED TO BRING THE AREA INTO ATTAINMENT EVEN WITHOUT AN OXYGEN PROGRAM.

WHILE THE ADVISORY COMMITTEE AGREED WITH THE EPA GUIDANCE FOR KLAMATH FALLS, THE GRANTS PASS SITUATION WAS AN ABSURDITY. WE ARE REQUIRED TO HAVE A PROGRAM, EVEN THOUGH A BRIDGE WAS SOLVING THE PROBLEM, AND NO ONE EVEN KNEW IF THE SMALL NON-ATTAINMENT AREA EVEN HAD A SERVICE STATION IN IT. SOMEONE GUESSED THAT THERE MIGHT BE AS MANY AS THREE STATIONS, BUT AS THERE HAS YET TO BE AN ACTUAL COUNT.

IN THE FACE OF THIS ABSURDITY, AS A COMMITTEE WE DECIDED TO RECOMMEND THE CITY LIMITS AS THE BOUNDARY. IF THERE HAD TO BE A PROGRAM, WE REASONED, IT SHOULD AT LEAST COVER MOST OF THE LIKELY GASOLINE SOLD IN THE AREA. THE NON-ATTAINMENT AREA FOR KLAMATH FALLS COVERS MORE THAN THE CITY, AND WE THOUGHT IT WAS APPROPRIATE.

THE STAFF RECOMMENDATIONS ARE FOR FULL COUNTIES IN BOTH CASES, THIS TIME SELECTIVELY IGNORING THE EPA GUIDANCE. THERE HAS BEEN NO REVIEW OF TRAFFIC PATTERNS, NUMBERS OF STATIONS INCLUDED UNDER ANY OF THE PROPOSALS, OR ANY AIR QUALITY OR OTHER EVIDENCE THAT ONE OPTION IS BETTER THAN THE OTHER. IN UNOCAL'S CASE, THE CITY LIMIT INCLUDES OUR GRANTS PASS STATION. WE VOTED FOR

THAT OPTION. WE WOULD BE LEFT OUT OF THE NON-ATTAINMENT AREA OPTION, AND ARE NOT IMPACTED DIRECTLY BY THE FULL COUNTY OPTION.

THIS IS AGAIN SIMPLY BAD PUBLIC POLICY, AND AS SUCH, ALWAYS HAS ITS EVENTUAL COSTS. JUST AS AN EXPANSION OF THE CONTROL PERIODS INCREASES COSTS OF COMPLIANCE, EXPANSION OF CONTROL AREAS WILL SUBJECT SOME NUMBER OF ADDITIONAL CONSUMERS AND SERVICE STATION OPERATORS TO ADDITIONAL COMPLIANCE EFFORTS AND COSTS. IT WILL ALSO INCREASE ENFORCEMENT COSTS FOR THE STATE. IN CALIFORNIA, WHERE ENVIRONMENTAL REGULATIONS ARE AS AGGRESSIVE AS ANY IN THE NATION, REGULATORS ARE REQUIRED TO DEMONSTRATE COST EFFECTIVENESS FOR THEIR RECOMMENDATIONS AND ANY ALTERNATIVES. THE STAFF PROPOSAL BEFORE US TONIGHT DOES NOT EVEN ATTEMPT TO PROVIDE COST OR BENEFITS FOR ANY OF THE OPTIONS.

PRESIDENT BUSH HAS REQUIRED ALL FEDERAL AGENCIES TO STOP UNNECESSARY REGULATORY BURDENS. EPA IS REVIEWING ALL OF ITS PROPOSALS. OREGON CAN TAKE RESPONSIBLE ACTION NOW AND ELIMINATE EXCESSIVE ASPECTS OF THIS PROPOSAL WITHOUT ANY AIR QUALITY COST AND WITH SOME ECONOMIC BENEFIT.

WE RECOMMEND THE SOUTHERN OREGON CONTROL PERIODS BE LIMITED TO THREE MONTHS STARTING IN NOVEMBER AND THAT THE CONTROL PERIODS BE THE CITY LIMITS FOR GRANTS PASS AND THE NON-ATTAINMENT AREA FOR KLAMATH FALLS.

THANK YOU. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

BOE ASSOCIATES, INC.

GOVERNMENTAL RELATIONS

319 SW WASHINGTON STREET
SPALDING BUILDING, SUITE 810
POST OFFICE BOX 157
PORTLAND, OR 97207

TELEPHONE 503.243-2489
TELECOPIER 503.243-2488

25 June, 1992

TO: Hearings Officer, DEQ
FROM: Brian Boe
Representing OPMA
RE: Proposed Oregon Administrative Rules

Below I will set out the general areas of concern that Oregon Petroleum Marketers Association (OPMA) have relating to the Department's proposed Oxygenated Fuel Regulations.

I. CONTROL AREAS

OPMA feels that the control areas in Oregon should be limited to the city limits in both Grants Pass and Klamath Falls. Expanding the controls beyond Grants Pass and Klamath Falls city limits to county-wide boundaries is detrimental in two respects. First it increases the enforcement costs of the program, and secondly, it imposes marketers in outlying areas to an unnecessary enforcement liability.

The primary reason that supports restricted boundaries is that fuel distribution and supply patterns will in all likelihood result in oxygenated fuel being dispensed from these outlying areas. If the Department's primary concern is the competitive imbalance created by stations just outside the city limit boundary, the Department should create boundaries of the city limits plus five miles rather than extending the boundaries all the way county-wide. The many other unanswered questions and potential problems posed by the oxygenated fuel program in Southern Oregon only serve to enforce OPMA's position on this point.

II. CONTROL PERIODS

On the issue of control periods, I will repeat the point made on behalf of OPMA during the advisory committee process. We feel strongly that designating control periods that do not conform to the Chico control periods is a major problem with Oregon's oxy-fuel program. We are troubled by the fact that the department wrote EPA and requested the change in the control period away from the Chico time-frame before receiving adequate input from the regulated community that operates in this region. This is a significant issue that is of much more than marginal impact on marketers in these areas. DEQ did not do sufficient homework before taking up this request with EPA. There are many unsolved questions surrounding the availability of oxygenates at alternate sites such as Eugene.

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Page Two

At the present time it does not look like there will be any definitive answers to these questions prior to the control period. With this lack of information we strongly urge DEQ to contact EPA and request that the control period be changed back to the control period for the Chico area. Without this change it is unclear as to the overall viability of the oxygenated fuel program in Southern Oregon during the month of February. It would be extremely unfair to place this enforcement liability on marketers in this area unless the Department has clear and convincing evidence that the goals of the program can be achieved by the regulated community without undo burdens being placed upon them.

III. OXYGENATED FUEL PROGRAM FEES

OPMA has several strong concerns and deep reservations about the fee proposed in the oxygenated fuel rules. Our first concern is that when this program was originally anticipated and discussed before the legislature in HB 2175, there was no fiscal impact attached to the oxygenated fuel program. It is OPMA's position that it is unfair to enact a program in statute that has a cost implication in the form of fees upon specific industries and not give that industry a chance to comment before the legislature. We feel it is very important that this point be included in the record of the proceedings surrounding the promulgation of this rule.

Secondly, it is our concern that the fee is not equally distributed over the regulated community. Under the proposed funding mechanism the fee is generated by blenders only, while the rules include retail service stations in the regulatory scheme. If a funding program is to be truly equitable it must spread the burden over the entire regulated community. Therefore, we propose that the \$700 be the only fee applied to blenders, and that all retail sites within a control area be assessed the \$220 fee. This is the only way that this funding mechanism can be made equitable.

Finally, we feel there are some serious constitutional and statutory questions surrounding the funding proposal. We are considering these issues and will continue to consider them as this process evolves.

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Page Three

IV. DISPENSER LABELING

OPMA acknowledges that there are conflicts between Oregon statute and federal law regarding the labeling of dispensers relating to the oxygenated fuel program. Notwithstanding what we feel is an excessive regulation regarding dispenser labeling, we concede that the Department is left with no other choice in this regard. OPMA is actively considering attempting to streamline these statutes and eliminate the conflicts in the next session of the Oregon legislature.

CONCLUSION

In summary, the Oregon Petroleum Marketers Association as expressed above has a number of very serious concerns over the scope and implementation of Oregon's proposed oxygenated fuel program. While we understand that the Department is in large part operating under a federal mandate, we do not feel it is sufficient for the Department to simply resign itself to these circumstances. In the issues mentioned above, we feel the Department should engage the EPA in an active dialogue grounded in the reality of Oregon's fuel distribution and marketing systems, and not in a "blue-sky", "best-of-all-regulatory-worlds", as envisioned by a federal bureaucracy. Given the stakes and the implications of this proposed program, in particular some of the issues regarding distributors and marketers in Southern Oregon, we expect the Department to take up these issues unique to Oregon and pursue a dialogue with EPA. Anything short of that would be an abdication of the Department's responsibility to the industry they are trying to regulate.

The Oxygenated Fuel Program is a new program and in that respect all parties involved are treading new ground. We must work together in a cooperating, logical and reasonable way to achieve the Department's and the petroleum industry's mutual goal of a cleaner environment and a strong working relationship.

If you have any questions or need clarification on any of the above issues, please feel free to contact me.

Respectfully submitted,


Brian Boe



MAY-SLADE OIL CO.
 953 So. Spring Street
 Klamath Falls, Oregon 97601-6295
 (503) 884-4117

State of Oregon
 DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
 JUL 08 1992

Steve Greenwood
W+V
AQ

State of Oregon
 DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
 JUL 07 1992

State of Oregon
 DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
 JUL 08 1992

OFFICE OF THE DIRECTOR

AIR QUALITY DIVISION

Jerry Coffey
 Vehicle Inspection Program
 Dept. of Environmental Quality
 1301 SE Morrison
 Portland, OR 97214

On 6/23/92, I attended the D.E.Q. hearing held at the Klamath County Courthouse for the purpose of reviewing the Wintertime Oxygenated Gasoline Program currently being proposed by the D.E.Q.. At that hearing, I was able to testify about some of the details of the Program. This letter is intended to serve as a written follow-up to all of the testimonies heard at subject hearing.

The parts of the Program of which I am most concerned are as follows:

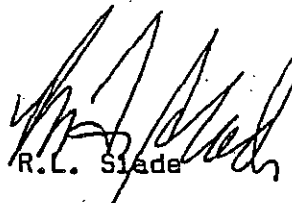
1- Local compliance area: All of Klamath County has been designated as the Control Area. With the record achieved in Klamath Falls last winter when there were no "Non-Attainment" days, one has to wonder why any part of this area needs to come under the program. At the hearing, the answer that we were given was that the Program was set up using '88-'89 as the reference years and that our progress and accomplishments by 1990 did'nt matter. That kind of rationale just does'nt make any sense. What we're doing now ought to be what's important instead of what we did three and four years ago. Our Director of Environmental Health made the point at the hearing that the County had invested 1.5 million dollars over the past several years getting rid of outdated wood stoves and that the results have spoken for themselves. Why can't this be considered in determining a Control Area? Secondly, only the south end of the Klamath Falls metro area has ever shown to be out of compliance, yet the entire County is included in the Control Area. We serve many customers in areas such as Chiloquin, Ft. Klamath, Sprague River, Beatty, Bly, Rocky Point, Worden, Bonanza, Dairy, Olene, and Diamond Lake Junction where the problem being addressed simply does'nt exist. Why should the people living in these areas have to pay the extra cost of oxygenated fuel when it is'nt necessary? Also, it does'nt make sense to have to have state inspectors out testing fuel for compliance in areas that don't even require the fuel. All at taxpayers expense.

2- Oregon and California Reg's: Since 1924, our distributing plant has served customers in Klamath County, Oregon and in Siskiyou County, California. There are a number of other similar situations in Southern Oregon where oil distributors are responsible for marketing and distribution in both states. It should also be noted that our source of supply is and has been for many years either from the Southern Pacific Pipeline Terminal in Eugene or the Southern Pacific Pipeline Terminal in Chico, California. Historically, our choice of terminal

to use has been based on product price and availability. The typical result has been that we draw product from Eugene about 70% of the time and from Chico about 30% of the time. Under this new Oxy Fuel Program we find that during the Control Period California gasoline, while oxygenated, will not be legal in Oregon. At the same time Oregon gasoline will not be legal in California due to not having a deposit control additive required in California but not in Oregon. One has to wonder as to why Oregon never has given any thought to having the same specifications as California. It would certainly have been in the best interests of the citizens of Southern Oregon and to distributors such as ourselves. Also, I must question why we have a different control period than California? By 1993 there will be a one month overlap at each end of the calendar between the two states. The solution to the problems outlined above is to allow a 1.8% minimum oxygen content in Southern Oregon and to allow an October through January Control Period for Southern Oregon. This would save a lot of grief for citizens, gasoline dealers and oil distributors in the Southern Oregon area.

3- Who will be the blender? With only four months until the new regulations go into effect, nobody seems to know who will be responsible for blending the Ethanol with the gasoline. This is very little time to put together a program of this magnitude even if all the participants knew who was going to do what. We don't know if we will be responsible for storing and blending the ethanol or if our major suppliers will provide that function. We have been given sketchy details concerning our paperwork and recordkeeping responsibilities but nothing definite. There are a great many questions to be answered in a very short period of time. If the major suppliers will be the blenders, what happens when we send a truck and trailer 180 miles to Eugene for a load of gasoline and we find the terminal out of ethanol? Will we be allowed to bring back non-oxygenated fuel or will we be faced with leaving our driver in Eugene on expenses while our station sits out of gasoline 180 miles away in Klamath Falls? As an example, last week alone, Texaco was out of Unleaded for two days. This is not unusual. If we were located within 50 miles of the terminal we might have some other alternatives under these circumstances, but at 180 miles out your options are limited. This is another case in point where Southern Oregon distributors and dealers need to be considered.

In summary, it would seem that the problems and needs in Southern Oregon have been largely overlooked when establishing the new Oxygenated Gasoline Program for Oregon. We have unique distribution and supply arrangements that are quite different than those in Multnomah County and the Willamette Valley. These differences apparently have not been addressed. In addition, our area has come along way since 1988-89 in becoming an "attainment" area but apparently that has not been considered either. At a time when our economics and unemployment are not in very good shape, we need all of the help we can get when new restrictive regulations are being heaped upon us. With a few small adjustments in this new Program, Southern Oregon would be able to comply and adjust to the new requirements without the major impacts from the program as it is at present.



R.L. Slade

cc Oregon Department of Environmental Quality
Fred Hansen, Director
811 S.W. Sixth Ave.
Portland, OR 97204
Ph. 1-800-452-4011



Hawk Oil Company

P.O. BOX 1388 • 1050 SO. RIVERSIDE
MEDFORD, OREGON 97501
PHONE 503/772-5275
FAX 503/772-1863



June 23, 1992

Mr. Jerry Coffey
Department of Environmental Quality
1301 S.E. Morrison
Portland, Oregon 97214

Dear Mr. Coffey:

The Southern Oregon Distributors really appreciated your visit to Medford last night, to review the oxygenated fuel program. As you could tell from the discussion period, the Southern Oregon markets do have far more complex problems than Portland, and some adjustments to the proposed amendments to OAR 340, Division 22, must be made to reasonably protect the supplies of gasoline to Southern Oregon.

At this time, it is still difficult to realize the full effect of all these regulations, for we don't even know what the terminals and most of the major suppliers are going to do. In addition, supply facilities for additional oxygenates are extremely limited or non-existent in some critical areas. Also, marketers have no prior experience with oxygenated fuels.

The first problem we face, is an already strained supply situation, and the long miles our transports must travel to truck fuel to the Southern Oregon markets. Our primary supply source is the Eugene terminal, which is a 350 mile round trip from Medford. Frequently, the Eugene terminal is out of one product or another, usually unleaded, and we must either change products, or divert the rig to the Portland terminal. Portland is a 560 mile round trip. Rarely are we aware of product outages until the transport is at the terminal and ready to load. These product outages primarily result from the limited Eugene tankage, and pipeline time.

The third source of fuel for Southern Oregon is the Chico, California rack, which is a 450 mile round trip. Our firm hauled 41% of our product from Chico, over the past 12 months. Chico supplied the majority of our gasoline last October, November, December and January. Chico also experiences outages fairly frequently. Not only does Chico provide better prices from time to time, they also relieve some of the supply pressures at Eugene.

Anyway, the reality is, Southern Oregon distributorships are already working very hard just to keep our customers and stations from running out of fuel. It is totally different than Portland where the terminal is just minutes away, and it rarely runs out of product.

The second major problem, is the total lack of additional oxygenate supplies. In Portland, ample amounts of ethanol are being stored just a few minutes from the Portland fuel terminal. No one is selling oxygenated gasoline in Southern Oregon, for we have no oxygenate supply. There may be some ethanol stored in Curtin by November, but there are no other plans that we know of. Even Curtin will force the Klamath Falls trucks some 50 miles out of their way.

There are no known existing facilities for adding ethanol in Northern California or Southern Oregon. Since the California requirements are universal, their product is pre-blended. Finally, it is highly unlikely that there will be any facility for adding MTBE anywhere.

DEQ must also remember that it is illegal to open our transport dome lids in California, and in Jackson County, due to Stage I vapor recovery laws.

The third major issue is the differing oxygen content requirements between Oregon and California. As you know, Oregon wants a minimum of 2.0%, and an average 2.7% oxygen content. California simply requires an oxygen content of 1.8% to 2.2%. Since we are unable to add oxygenates in Northern California or Southern Oregon, there is no way we can bring Chico product up to either Oregon standard.

Southern Oregon can not afford to lose their Chico supply. The only solution would be for Oregon to accept the 1.8% to 2.2% product from Chico, as provided.

The fourth major problem is Oregon requiring oxygenated fuels through February, when California requirements end January 31st. Obviously, Chico is not going to make special arrangements for Southern Oregon for the month of February. Chico is the end of a substantial pipeline system serving numerous terminals from the bay area refineries. None of these terminals will need oxygenated fuels in February, so they simply will not be available from Chico, once their January inventory is depleted.

As the DEQ's charts illustrate, the February Carbon Monoxide levels are lower in all three Southern Oregon markets in February, and they steadily decline during that month. We will have oxygenated fuel in Oregon in February. California has already banned leaded gasoline, so all regular for Southern Oregon will be oxygenated. We'll have all our existing inventories at month end, and even Chico will still have oxygenated gasoline in inventory for a few days anyway.

The only reasonable solution, is to allow non-oxygenated fuel into Southern Oregon during February, for any Chico deliveries.

The fifth problem area relates to blending and averaging.

Some majors will blend with MTBE, and others with ethanol. Exxon plans to provide MTBE blended fuel in Chico, and an ethanol blend in Eugene. Most marketers distribute more than one brand, so their problems are even further complicated.

The requirement that "CARs" must supply an average of at least 2.7% oxygen for each control area serviced, simply adds further hardship. I believe all Rogue Valley distributors serve both Jackson and Josephine Counties, yet we must account for each county separately.

Trading of oxygenated gasoline credits may sound nice, but few credits will be available for each control area. Portland will no doubt generate a huge surplus of credits, but Josephine County will have very few.

Then we get to the staggering record keeping demands and the ultimate liabilities assumed by a CAR. And these requirements are on top of all the other DEQ regulations regarding underground tanks, cleanups, etc., not to mention the other growing demands of OSHA, DOT, PUC and all the other agencies we deal with. We have added nearly two people to our office staff in the last couple years, and we are still buried. Most distributorships are still small family businesses, operating on a very small margin. How many stations have been built in the last few years? We simply can not afford the costs and time demanded by these rules governing blenders, not to mention such items as "Attest Engagements", etc..

Blending itself will be very difficult. We have excellent professional drivers who have been with us for many years. One or two may lack some math skills, yet we expect him to be a qualified blender? What if he is adding ethanol to an MTBE blend? What if he is adding to 1.8% California fuel, instead of 2.2%? He can't load ethanol before loading in Eugene. If the terminal is out of unleaded, he may end-up loading diesel.

The 30 day requirement to register for a CAR permit will be unfair to many marketers. Few distributors can make an intelligent decision prior to October 1st. Some distributors may invest substantial funds in all your permits, and set themselves up for tremendous record keeping, to secure some supply flexibility, and never blend a drop. Can a marketer request a permit quickly, after the control period begins?

As you know, some marketers are also quite upset by the expansion of the Grants Pass and Klamath Falls control areas, seeing substantial additional costs for them and DEQ.

After all the above, we are still left with a few questions.

Surely, your Quality Assurance Program (340-22-620) is not a requirement, other than DEQ's own testing. Marketers will already have considerable costs resulting from this program. We can not afford "periodic sampling and testing."

Dispenser labeling will also create difficulties. What if both ethanol and MTBE is being used? Normally, it takes quite a few weeks to get these labels ordered, designed and delivered to the stations. I assume the "upper half" will be the rule.

Public awareness will be another major problem. It would be a great help if DEQ would provide each station with pocket sized hand-outs, similar to the one currently being used by Western Astro Stations of Portland.

Obviously, the "Fiscal and Economic Impact Statement" substantially underestimates costs, for the blender and ultimate consumer. Our industry was unaware of any funding responsibilities. No mention is made of the payroll and truck costs related to blending, not to mention all the additional accounting and record keeping. What about all the preparation, training, monitoring, labeling, etc.? There will be many other additional costs.

The costs to the ultimate Southern Oregon consumer are probably also understated. The ethanol industry is now projecting increased costs during the control period, due to increased demand and limited supply. These increased prices are projected to at least equal any "tax credits." Limiting the availability to Chico product may well also cost the Southern Oregon consumer. Not only may supplies greatly tighten, but last year the laid-in cost of gasoline from Chico, was less than Eugene, for most of October, November and December.

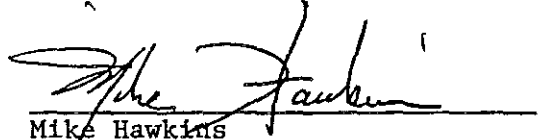
A great deal of the above problems could be resolved, and Southern Oregon fuel supplies secured, if distributors could continue to import unleaded gasolines at the existing California standards of 1.8 to 2.2% oxygen, and that those deliveries be considered as meeting Oregon's requirements. We would also need relief from February oxygen requirements for all California loads. DEQ could maintain it's proposed oxygen levels for Oregon based deliveries. If all the majors blend their gasolines at the Oregon terminals, only those distributors who must blend unbranded product from the independent refiners, would need to register as blenders. This would relieve many distributors, including most of the smaller ones, from all the responsibilities of being a CAR. Only those actually blending fuels, would need to follow the guidelines. Even they would need relief, if ethanol is unavailable near the Eugene terminal. DEQ could continue to inspect stations, only they would need to allow 1.8% oxygen content, if the station was supplied from California. Obviously, DEQ would have fewer blenders to inspect, resulting in further savings.

At this point, few distributors even know what type blends their suppliers will be using, and this program is only some 120 days away. Actually, the oxygenated requirements begin five working days prior to the control period. However, under 340-22-510 (2), to assure that no gasoline is sold to the ultimate consumer with less than 2.0% oxygen, by weight during the entire control period, deliveries of oxygenated fuels must begin well before the five day period. There is no way to get all the stations in compliance in only five days.

I regret the length and seemingly negative tone of this letter. We understand that this oxy fuel program can help our local environment, and we certainly want to do our part. We simply want to insure adequate gasoline supplies at reasonable prices, for our southern Oregon markets. Unfortunately, our situation is considerably more difficult than the Portland market.

I greatly appreciate your consideration of all these issues. If I can provide any further information, please call.

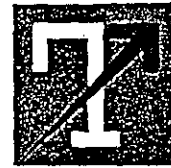
Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Hawkins", is written over a horizontal line.

Mike Hawkins
President

MH/lr

Ann Farner
Director
Government Relations



Tosco Refining Company
A Division of
Tosco Corporation
2300 Clayton Road
Suite 1100
Concord, CA 94520-2100
(510) 602-4110

June 29, 1992

Mr. Jerry Coffey
Vehicle Inspection Program
Department of Environmental Quality
1301 S.E. Morrison
Portland, Oregon 97214

Re: Comments on proposed oxygenated gasoline program regulations (Oregon Administrative Rules 340, Chapter 22)

Dear Mr. Coffey:

Tosco Refining Company (Tosco) appreciates the opportunity to submit the following comments on the proposed regulations for the oxygenated gasoline program in Oregon. Tosco is an independent petroleum refiner, which operates a single refinery in the San Francisco Bay Area. We market our gasoline at the wholesale level primarily to independent wholesale and retail distributors in five western states, including Oregon.

Tosco was pleased to be part of the Department of Environmental Quality's advisory committee which worked on the development of these regulations. While we generally approve of the effort made by DEQ to conform Oregon's rules to the U.S. Environmental Protection Agency's proposed oxygenated gasoline guidance, there are two comments we have on the proposed rule:

1. Revise proposed incremental fee. DEQ proposes that a fee be paid by each blender, based on a uniform \$700 per year per control area, and an incremental fee of \$220 "for each service station effectively fully supplied" by the blender. We recommend a change that would require each registered blender to pay a uniform fee of \$700, and that each service station within a control area be responsible for paying \$220, or some other amount determined by the Department to meet the administrative cost of the program.

According to the proposed rule, the fee amount to be paid by the blender is determined by the quantity of gasoline supplied within the control area, and the gasoline throughput of the average service station supplied. Despite the best effort to separate the fee from the volume of gasoline sold by a blender, the fee is still determined by the volume sold. Hence, we believe that the proposed fee formula still violates the constitutional prohibition against assessing a fee based upon the quantity of gasoline sold in the state.

Furthermore, the incremental fee would create inequities for certain blenders. Tosco, for example, is several steps removed from directly supplying retail service stations; we have no records and hence have no way of knowing how many stations we may be "effectively fully supplying." We sell to wholesale distributors, who in turn sell through their own retail stations, or to other retailers and commercial accounts. We do not know how many stations these wholesalers supply. Even if the number of stations supplied with our gasoline were known, we do not "effectively fully supply" any station. Since our gasoline is principally sold to independent dealers, those stations may be supplied by a number of gasoline distributors during the course of a control period. Additionally we believe that the proposed formula by which the incremental fee is calculated would disadvantage independent blenders in that they would be "effectively supplying" only a portion of smaller independent retail stations which have a low monthly throughput, resulting in independent blenders paying a relatively higher overall incremental fee under the proposed fee formula.

Service stations are part of the gasoline distribution system and are within the chain of responsibility for supplying complying gasoline during a control period and thus should help pay the costs of the program. Since DEQ's monitoring is going to be done primarily through sampling at retail stations, we propose that service stations within control areas each pay the \$220 (or whatever is necessary) to support the administration of the program. This would spread the cost of the program to a greater number of parties within the gasoline distribution network, would avoid an apparent conflict with the state constitution, and would greatly simplify the program's fee mechanism.

2. Combine Portland and Vancouver control areas for purposes of credit trading. In the proposed rule, the Portland area is designated as a control area, with Vancouver its own control area under proposed State of Washington regulations. We propose that, for ease of creating and trading oxygen credits, Portland and Vancouver be joined as a single control area, with administration of the program shared by Oregon and Washington.

The proposed EPA guidance designates the Portland-Vancouver CMSA as a single control area. EPA states in the preamble of the proposed guidance, "State-based oxygenated gasoline credit programs should be structured in a way that assures their successful implementation, to the greatest extent possible, cognizant of the limits of state authority over a nationwide production and marketing structure." (56 Federal Register 31153; July 9, 1991).

Leaving the Portland-Vancouver CMSA as a combined control area would add value to the oxygen credit trading program within the overall area, providing greater flexibility for blenders. It would also recognize that Portland and Vancouver are not only within the same gasoline market, but that they are also in the same air basin, and that the air quality of one city affects that of the other.

We recognize that there are reasons to divide certain program activities, such as enforcement and monitoring, between the two states. However, since Oregon and Washington have made an effort to follow the EPA guidance and have deliberately sought to draft complimentary regulations, shared administration for the credit program should not be difficult to devise.

An oxygen credit trading program has been deemed by both Oregon and Washington to be an integral part of a successful oxygenated gasoline program. Since placing the two cities into one control area would enhance the effectiveness of the credit trading program, thereby adding to the effectiveness of the entire CO control program for the general area, we suggest that the EPA's original control area for the Portland-Vancouver CMSA be retained, and that Oregon DEQ and Washington Ecology come up with a cooperative means of administering the credit program in this area.

Once again, we appreciate this opportunity to comment on the proposed Oregon rules. We hope our comments lead to a more workable and equitable oxygenated gasoline program.

Yours very truly,

A handwritten signature in cursive script, appearing to read "J. M. Turner". The signature is written in dark ink and is positioned below the typed text "Yours very truly,".

Wintertime Oxygenated
Gasoline Program.

I think you are on the wrong
Track.

When are you going to put
after burners on diesel rigs?
Why don't motor vehicles have
to take emission tests?

Klamath Falls stinks to high
heaven now in the summer
time. (No wood stoves are
in use),

Just come out to my house
and watch the stinking
diesel trucks go by. Compression
broken and raw diesel. Then
the black smoke when they go
west.

What about the oil stoves you
can smell them a mile away.

Leo E. Derr

3610 Hwy 140 W

Klamath Falls, Ore.

97601

2354 Gould Circle
Medford, OR 97504
July 8, 1992

Attn: Jerry Croffer
DEQ, Air Quality Div.
1301 S.E. Morrison
Portland, OR 97214

SUBJECT: WRITTEN COMMENTS-FOR OXYGENATED FUELS

Dear Sir:

My principal concern regarding your proposed required use of fuel oxygenated with alcohol in this area is that it has real potential for damaging the fuel and emissions systems on most gasoline-powered vehicles if the alcohol component is above certain levels.

I refer to the owner's manuals for my two Ford vehicles, one a 1986 light pickup truck and the other a 1988 automobile. The manuals state that these vehicles should operate satisfactorily on gasohol blends containing no more than 10% ethanol by volume and methanol blends containing up to 5% methanol by volume (and no more than this.) The mixtures must also have an anti-knock index of 87 or higher.

Several months ago on a newscast, we were told the EPA had decided to require the use of gasohol in metropolitan areas with a high level of air pollution. I got the impression they were proposing a gasohol mixture containing 15% ethanol by volume.

I don't recall any mention of a specific ethanol content for the gasohol proposed for this area, but if it is above 10% I would certainly be against it. Higher levels of alcohol would be likely to damage auto fuel and emissions systems and cause excessive problems for the consumers. Levels as high as 15% would, in my view, be disastrous for most users.

Sincerely

William B. Greene

William B. Greene

LENN L. HANNON
JACKSON COUNTY
DISTRICT 26

REPLY TO ADDRESS INDICATED:

- Senate Chamber
Salem, OR 97310-1347
- 240 Scenic Drive
Ashland, OR 97520



COMMITTEES

Member:
Rules
Health Insurance & Bio-Ethics
Ways and Means
Sub—Education
Sub—Public Safety

Assistant Republican Leader

OREGON STATE SENATE
SALEM, OREGON
97310-1347

June 29, 1992

Ron Householder
Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204

Dear Ron:

Unfortunately, I was unable to attend the DEQ rulemaking hearing recently held in Medford but want to express my concerns with the proposed new oxygenated gasoline mandates.

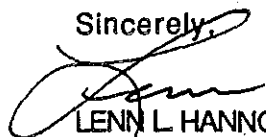
As you well know, Medford has reached a nonattainment status off and on for some time now, joining three other Oregon cities. Although the situation continues to improve mainly due to cleaner running and more efficient vehicles, carbon monoxide nonattainment days occur more often during the winter months when cloud cover does not permit the CO₂ from escaping into the atmosphere, than at other times of the year.

After reading the background information packet, I question why the proposed rules mandate the control period of four (4) months in duration regardless of whether the state can demonstrate an effective three (3) month program, especially in light of the advisory Committee recommendation of three months. I also question the boundary issue. Why county boundaries instead of nonattainment areas boundaries? Is there any rational?

Although I fully understand the federal requirements as decreed in the Clean Air Act Amendments of 1990, I detest unnecessary and illogical ultimatums that carry with them no common sense. The burden is always placed on the backbone of our nation—small businesses with additional costs being transferred down the line to Mr. Joe Lunchbucket. Government need only provide what is necessary, which would certainly help in an attempt to balance the nations budget.

Thank you for allowing me an opportunity to share my concerns. Please respond to me at your convenience.

Sincerely,


LENN L. HANNON
State Senator
District 26

LLH/dlh



JUN 17 1992

Reply To
Attn Of: AT-082

Steve Greenwood
Administrator
Air Quality Division
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Dear Mr. Greenwood:

This letter is to transmit the Environmental Protection Agency's (EPA's) comments on the Oregon Department of Environmental Quality (DEQ) proposal to amend OAR 340, Division 22, to include a wintertime oxygenated gasoline program. Our comments pertain to the public hearing information packet, dated May 15, 1992, as well as to the rules which were attached to the packet.

The rules are comprehensive and, for the most part, follow EPA's guidelines. Our office participated in the advisory committee process and most of EPA's comments have been addressed through revisions of previous drafts of the rule.

1) Section 34-22-460 designates the effective control season as November 1 to February 29. This proposal matches EPA's final guidance (yet to be published) and is therefore fully supported by the EPA. The published draft of the EPA guidance listed a control period of October through January for areas in southern Oregon. During the comment period on the federal draft guidance DEQ provided a number of reasons why the period should be November-February. EPA agrees with the DEQ's justification and concurs with the rule as it is currently drafted.

During the Oregon Advisory Committee process, many parties expressed a desire for a shortened three month control period. The Federal Clean Air Act (CAA) calls for control periods of "not less than 4 months." The CAA does allow for shorter periods if the state can demonstrate that there will be no exceedances outside of the reduced period. The EPA shares DEQ's concern that adverse meteorological conditions could result in exceedance of the carbon monoxide standard during any month of the four month period. Therefore, we will not support a period of less than four months.

2) Section 34-22-470 establishes the control areas within the state of Oregon. EPA supports Oregon's proposal to require oxygenated gasoline in the counties designated in this section. The federal CAA requires county boundaries for nonattainment areas located in Metropolitan Statistical Areas (such as Portland and Medford). For areas which are not in MSA's (such as Klamath Falls and Grants Pass), EPA guidance recommends that control areas be defined as no smaller than the area's nonattainment boundaries. County boundaries for all four of the Oregon nonattainment areas are both convenient and justified. County boundaries will assure the environmental benefits of the program since the vehicle population which contributes to the nonattainment problem will be captured. Additionally, the program based on county boundaries will ease compliance determinations for both state and the regulated parties since the boundaries are easily-defined.

3) Section 340-22-630 establishes the attest engagement guidelines. The section proposes that attest engagements be required only when prohibited activities are alleged. In the proposed federal guidelines, the attest engagements play an integral part in the self-reporting and recordkeeping structure of the oxygenated gasoline program. In the federal guidelines, the attest engagements are required of every registered credit averaging party and are to be submitted to the state following each control period. The attest reports provide support for the party's claims regarding compliance with the credit averaging rules.

It is the Agency's position that the Oregon attest engagement proposal as currently written is inadequate, and is potentially not approvable as part of the state's SIP revision as required by the CAA. The attest engagement provisions in the federal guidelines are the product of intense work and cooperation between EPA, industry, and the American Association of Independent Certified Public Accountants. They are intended to assist states in implementing their oxygenated gasoline rules by independently substantiating compliance on the part of regulated parties. The Agency strongly advises the inclusion of the attest engagement provision in Oregon's proposed rules as originally intended by the Agency.

4) Section 340-22-640 establishes the dispenser labeling requirements. Two changes have been made to the published EPA draft regulations. Final regulations will be published soon. One change is that the final labeling regulation will allow placement of the label on the upper one half of the dispenser, consistent with Oregon's proposal. The second change is that the lettering should be 20 point in size, not 36 as originally proposed. Oregon's rule should incorporate this letter size amendment.

5) The final comment is from page 3 of the public hearing information packet concerning redesignation procedures and discontinuation of an oxygenated fuels program. This paragraph was confusing and should be rewritten to reflect: 1) Any eight consecutive quarters of data can be used to show attainment, 2) existing programs must continue until a redesignation request is submitted to and approved by the EPA, and 3) the redesignation request must contain a maintenance plan which demonstrates continuous attainment of the standards for at least ten years. The paragraph correctly states that an oxygenated fuels program may continue as a maintenance measure.

We would like to take this opportunity to commend your staff for developing a comprehensive rule package of a complex new program. We also appreciate the invitation to participate on the advisory committee. We believe that both of our organizations benefit by having an early, ongoing dialogue while the program is being developed. We look forward to continuing to work with your staff to finalize the rule and to begin implementation. Please call me at (206) 553-4166 or Mike Lidgard of my staff at (206) 553-4233 if you have any questions regarding our comments.

Sincerely,



George Abel, Chief
Air and Radiation Branch

cc: Jerry Cofer, DEQ Hearings Officer-Oxygenated Gasoline
Paul Koprowski, EPA-000
Al Mannato, EPA-OMS
Carol Piening, Washington Department of Ecology



Chevron U.S.A. Inc.

575 Market Street, San Francisco, California
Mail Address: P.O. Box 7006, San Francisco, CA 94120-7006

June 24, 1992

Mr. Ron Householder
Oregon Department of Environmental Quality
811 Southwest Sixth Avenue
Portland, Oregon 97204

Dear Mr. Householder:

Below are some comments on Oregon's latest draft regulations for an oxygenated gasoline program, as included with the Public Hearing Information Packet dated May 15, 1992.

340-22-450 Definitions

Definition (13), "Effectively fully supplied service stations", lacks precision and is essentially unworkable in its present form. We recognize that this definition is critical to the CAR and Blender CAR fee structure proposed at 340-22-540. From Attachment I to the information packet provided by the Department of Environment Quality (DEQ), we also understand DEQ's interest in avoiding any fee structure which has the appearance of a tax levied on the use, sale, distribution, etc., of motor vehicle fuel. Some specific comments on Definition (13) are:

1. The words "service station" should be replaced with "retail outlet" which are defined in Definition (26). The words "dispenser (or service stations)" in the second sentence should also be replaced with "retail outlet".
2. The use of the word "estimated" in the second sentence invites misunderstanding and, possibly, fee evasion. Who is to "estimate" these gasoline volumes, and on what basis? The only practical definition would be based on gasoline volumes actually supplied during the most recent prior period which corresponds to the current control period.
3. Some retail outlets may be supplied by more than one CAR during a control period. The proposed definition does not address this complication.

Chevron recommends that DEQ delete Definition (13) from the proposed regulations and devise another scheme to recover oxygenated gasoline program administrative costs (see comment for 340-22-540, below).

340-22-510 Minimum Oxygen Content

Subparagraph (3) requires a refiner or importer to determine oxygen content by a method described in "OAR 340-22-500". We suspect that "OAR 340-22-500" should be replaced with "OAR 340-22-490", since the latter paragraph describes testing for oxygenates. A requirement for refiners and importers to test would be consistent with EPA's proposed guidelines to the states.

340-22-540 CAR and Blender CAR Fees

For each CAR and Blender CAR, DEQ proposes a base fee plus an "incremental fee" for each service station effectively fully supplied in a control area during a control period. Although we have no objection in principle to the proposed fee schedule, we believe that the definition of "effectively fully supplied service station" given at 340-22-450 (13) makes the current fee proposal unworkable. Given the restrictions apparently imposed by Article IX, Section 3a of Oregon's constitution, DEQ should probably devise a fee scheme based directly on the number of retail outlets located in the control areas. For example, DEQ could require completion of a simple annual registration form for each retail outlet located in the control areas. This registration form would specify which CAR supplied the retail outlet on a certain date, and each CAR could then be assessed accordingly.

340-22-550 Record Keeping

Subparagraph (3)(d) requires record keeping at the terminal level for the "type of oxygenate, purity and percentage by volume if available". Chevron urges DEQ to delete this requirement, which is apparently applicable to receipts of oxygenated gasoline at the terminal. Compliance with record keeping for "purity" and "percentage by volume" will be extremely difficult, if not impossible, if gasoline shipments to terminals are made on a fungible basis, as is the norm in many areas. For example, refiner X may produce and blend MTBE of very low purity, while refiner Y produces and blends TAME of very high purity. Both refiners blend their respective oxygenates to meet a 2.7% weight oxygen specification, and the production of both may be commingled in a pipeline or marine shipment to a terminal. The pipeline or marine carrier can furnish documents to the terminal certifying that the delivered gasoline contains 2.7% weight oxygen and further that the gasoline was oxygenated with MTBE and TAME, but can say nothing meaningful about the oxygenate volume contained in the gasoline and the purity of the oxygenate.

Subparagraphs (4)(b)(D)(ii), (4)(b)(H)(ii), and (5)(b)(B) essentially present the same problem described above with regard to oxygenate purity and percentage by volume. Oxygenate purity and percentage by volume will often be unknown in the distribution system past the importer, refiner, or blending terminal unless very frequent and expensive tests are performed.

Any location in the distribution system that is blending oxygenates with gasoline, on the other hand, should retain records which indicate the purity of oxygenates received for blending and the volume of oxygenates blended with gasoline.

340-22-600 Defenses for Prohibited Activities

Subparagraph (3) imposes additional defense burdens on a refiner if a violation is found at a facility "--- operating under the corporate, trade or brand name of a refiner ---". We see no reason for discriminating against such facilities with regard to defenses.

340-22-640 Dispenser Labeling

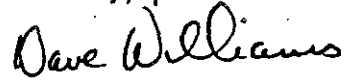
Subparagraph (b) proposes a "second" label which exceeds requirements proposed in Federal guidelines by requiring information on "the type of oxygenate(s) and the maximum use concentration by volume". The subparagraph also indicates that only listed oxygenates and concentrations "are allowed". The requirement for this information should be deleted, as it is burdensome when oxygenates change and in any case will not be understood by most consumers. One or more ethers (TAME and ETBE) not included in the "are allowed" list is very likely to be used as an oxygenate in the future. We note that both TAME and ETBE were included in Table A at 340-22-490 of DEQ's proposed regulations.

Subparagraphs (c) and (e) specify that labels must be in 36-point type and placed in a certain location

on the dispenser. EPA has recently informally indicated that labeling guidelines will be revised to allow 20-point type and more placement flexibility, since 36-point type and rigid placement requirements are not compatible with certain newer dispensers. The DEQ may wish to discuss labeling requirements with EPA's Ms. Mary T. Smith, Director, Field Operations and Support Division, Offices and Mobile Sources, in Washington, D.C. Her telephone number is (202) 260-2633.

We hope these comments are useful to the Oregon DEQ.

Sincerely,

A handwritten signature in cursive script that reads "Dave Williams".

David F. Williams
Senior Staff Planner
Telephone (415) 894-4738

AFFECTED REGULATIONS: 40 CFR Part 261

[FRL 4150-5]

Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil

SUMMARY: EPA is correcting errors in the hazardous waste regulations that appeared in the Federal Register on May 20, 1992 (57 FR 21524). In that Federal Register, EPA issued a final listing determination for used oil that is disposed and promulgated an exclusion from the definition of hazardous waste for certain used oil filters that have been drained. Today's notice corrects two typographical errors in that final rule, one in the preamble discussion and one in the regulatory language at 40 CFR 261.4(b)(15).

DISCUSSION: Federal Registers 104 and 107 concern the management of used oil. EPA decided not to list used oil as hazardous waste that is disposed and has deferred listing used oil that is recycled. In addition, EPA has established exemption criteria for used oil filters that are crushed or drained of oil and recycled.

17. Regulatory correction clarifying that wastes containing an Appendix VIII constituent are not necessarily "hazardous."

▶ **FR (Pending)**

Vol. 57 Vol. 1 Thursday, January 2, 1992 p. 12

ACTION: Final rule

EFFECTIVE DATE: January 13, 1992

AFFECTED REGULATIONS: 40 CFR 262.11(a)(3)

[FRL 4085-8]

Hazardous Waste Management System, Identification and listing of Hazardous Waste

SUMMARY: On May 19, 1980, as part of its regulations implementing section 3001 of the Resource Conservation and Recovery Act (RCRA), EPA promulgated a series of criteria for listing wastes as hazardous. On July 19, 1991, the Agency proposed to conform the language of the regulation to reflect the Agency's intent and consistent interpretation of that regulation. The Agency has revised the wording in 40 CFR 261.11(a)(3) to make it clear that wastes containing Appendix VIII constituents are not presumed to be hazardous.

DISCUSSION: The rule change makes it clear that a waste containing an Appendix VIII constituent is not automatically a "hazardous waste". This clarifying regulatory change is consistent with the Department's.

18. Re-promulgation of the "mixture" and "derived-from" rule and technical corrections to the rule.

▶ **FR (pending)**

Vol. 57 No. 105 Monday, June 1, 1992

ACTION: Interim final rule; technical corrections.

EFFECTIVE DATE: June 1, 1992

AFFECTED REGULATIONS: 40 CFR 261.3

[FRL 4136-8]

Hazardous Waste Management System; Definition of Hazardous Wastes, "Mixture" and Derived-from" Rules.

SUMMARY: On March 3, 1992 (57 FR 7628) the EPA announced the interim final repromulgation of 40 CFR 261.3 including the "mixture" and "derived-from" rules. The court had vacated the Agency's rules in *Shell Oil vs. EPA*. These rules are part of the definition of hazardous waste under Subtitle C of RCRA. The rules define "hazardous wastes" to include mixtures of hazardous waste with other solid waste and the residues from managing listed hazardous waste. This rulemaking restores language to 40 CFR 261.3 that the Agency

Environmental Quality Commission

Agenda Item F
October, 1992 Meeting

Title:

Clean Air Act Small Business Assistance Program (SBAP)

Summary:

The Department proposes amendments to the State Implementation Plan (SIP) to establish a Small Business Stationary Source Technical and Environmental Compliance Assistance program, as required by the Clean Air Act Amendments of 1990.

The projected cost of the program is \$205,000 annually and 2.35 FTE, funded by the per-ton emission fee. The program does not provide direct financial assistance to small business but does provide information about air quality regulations and technical assistance to help small business comply. The program also provides an ombudsperson within DEQ Regional Operations Division to represent the interests of small business in implementing air quality regulations.

The Department received comments regarding: location of the ombudsperson within rather than outside DEQ; scope of the program being too broad; lack of flexibility; need to integrate with other DEQ programs. EPA raised a concern that the program provides a shield against enforcement; a draft attorney general opinion concludes that it does not.

Extensive minor changes were made to the proposed SIP revision as a result of the comments, particularly with regard to flexibility to make changes in the SBAP without subsequent SIP revisions.

Department Recommendation:

Commission adopt the proposed amendments to the SIP to establish a Small Business Assistance Program.



Report Author



Division Administrator



Director

September 23, 1992

EQC/ZB11912

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 29, 1992

To: Environmental Quality Commission
From: Fred Hansen, Director *FH*
Subject: Agenda Item F, October 16, 1992 EQC Meeting

Proposed revision to the State of Oregon Clean Air Act Implementation Plan to establish a small business stationary source technical and environmental compliance assistance program

Background

On July 15, 1992, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed State Implementation Plan (SIP) amendments which would establish a program to help small business stationary sources understand and comply with air quality regulations. Such a program is required under state and federal law.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on August 1, 1992. Notice was mailed on July 17, 1992, to persons who have asked to be notified of rulemaking actions, and to persons known by the Department to be potentially affected by or interested in the proposed program.

Three public hearings were held as follows: August 18, 1992, 7:00 p.m., Central Oregon Community College, Bend; August 19, 1992, 7:00 p.m., Rogue Valley Medical Center, Medford; August 20, 1992, 3:30 p.m., DEQ Headquarters, Portland. Hearing notice was published in the Bend Bulletin on July 17, 1992, the Portland Oregonian on July 17, 1992, and the Medford Mail Tribune on July 19, 1992. Kevin Downing served as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearings. Written comment was received through August 31, 1992. Written comments received are included in Attachment D.

Department staff members have evaluated the comments received (Attachment E). Based upon that evaluation, changes have been incorporated into the proposed SIP revision (Attachment A). They are summarized below and explained in Attachment F.

The following sections summarize the proposed program, issues involved, policy alternatives considered, public comment received, changes proposed in response to comment, and how the

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program will be implemented. They are followed by a recommendation for Commission action.

Issues this proposed rulemaking action is intended to address

Rulemaking action is required because the proposed small business assistance program (SBAP) is submitted as a SIP revision. The program itself was required by the Clean Air Act Amendments of 1990 (the Act) because Congress anticipated the Act would have a far-reaching impact on small business. This impact is expected primarily from impending new regulations for hazardous air pollutants ("air toxics") and related permit requirements under Title V of the Act. Many small businesses will be brought into a more formal environmental regulatory process for the first time; they may lack the financial and technical resources to respond effectively. The purpose of the state SBAP is to provide regulatory guidance and technical assistance to facilitate their compliance.

Authority to address the issue

ORS 468A.330 establishes within the Department a small business stationary source technical and environmental compliance assistance program in accordance with section 507 of the Act. Each state is required to develop such a program and submit it to the Environmental Protection Agency (EPA) as a SIP revision by November 15, 1992.

Process for development of the proposed program

The proposed SIP revision is basically a narrative description of how the Department plans to develop and implement the small business assistance program. The proposed SBAP consists of program elements that are either required by the Act (items #1, #2, #3 and #4 in the next section) or required to be addressed by the EPA guidance for the development of state programs (item #5). Apart from those elements, states have flexibility in developing their individual SBAPs. These policy alternatives are discussed in the next section.

In addition to the formal public process required for a SIP revision, the Department outlined the proposed program to interested parties, soliciting input on its development.

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Formal presentations were made in May 1992 to the Air Quality Division Industrial Source Advisory Committee (which is advising the Department on implementation of Title V) and to participants in an Oregon State Bar Continuing Legal Education Program seminar on the Clean Air Act. Informal presentations were made in February 1992 to the Business Assistance Officers group sponsored by the state Economic Development Department (EDD); in May 1992 to The Environmental Hazard Committee, a Portland-based chemical awareness and emergency response group; in July 1992 to the EDD Small Business Program Advisory Committee; and in August 1992 to the Title V sub-committee of the Industrial Source Advisory Committee and to both the Oregon Dry Cleaners Association and the Korean Dry Cleaners Association of Oregon.

As it will be essential to coordinate the SBAP with other Department small business efforts, staff members in the Toxics Use Reduction and Hazardous Waste Reduction programs in the Hazardous and Solid Waste Division have been--and will continue to be--frequently consulted about SBAP development.

The Department will welcome comments on the SBAP, even after the program is submitted to EPA in November. The proposed program is designed to be flexible, so it can respond to suggestions for improvements.

Summary of the proposed program presented for public hearing and discussion of significant issues involved.

The proposed SBAP will provide information and technical assistance to help small business stationary sources understand the regulatory process and encourage compliance. The program won't provide direct financial assistance, but may help small businesses locate potential resources, such as Small Business Administration loans.

Under the Clean Air Act, primary funding for the SBAP is through emission fees collected from the new Title V permit program. Development of the Oregon SBAP reflects the efforts of state government to respond to the fiscal constraints of Measure 5 in a responsible and constructive manner. Projected costs for the Oregon SBAP (around \$205,000 annually for the 1993-95 biennium), will be a minor component of the per-ton emission fee. (The amount of the fee itself will be considered by the 1993 Legislature, based on recommendations developed by the Department and the Title V Advisory

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Committee.) Proposed SBAP staffing calls for 2.35 FTE, as follows: Small Business Assistance Coordinator (1 FTE, Program Technician 2); Small Business Compliance Assistance Specialist (1 FTE, Environmental Specialist 4); Section Manager (0.20 FTE, Program Manager E); Small Business Ombudsman (0.15 FTE, Environmental Specialist 4.) The two full-time SBAP positions were authorized in HB 2175 by the 1991 Legislature.

Here is an overview of each program element, including policy alternatives and significant issues involved:

- (1) Designation of an ombudsman to represent the interests of small business in implementing air quality regulations.

The ombudsman responsibilities are assigned to the Technical Assistance and Service Coordinator. This new position will be located effective January 1, 1993, in the Administration Section of the Department's Regional Operations Division. Ombudsman activities are allocated to 15% of the position's time.

The agency-wide technical assistance focus of this new position should complement the ombudsman role and help ensure that the SBAP is coordinated effectively with other Department outreach to small business. The ombudsman will have a defined relationship with other representatives of small business in state government and be authorized to serve as an advocate for small business.

EPA's guidance allows states to locate the ombudsman either within the environmental regulatory agency or elsewhere in state government. The ombudsman, wherever located, must have the independence and authority to act effectively on behalf of small business. The Department's decision to designate an in-house ombudsman was made in consultation with the Small Business Program of the state Economic Development Department (EDD).

- (2) Appointment of a Compliance Advisory Panel to oversee the effectiveness of the SBAP and the ombudsman.

By law, the panel must include at least (a) two members to represent the general public, appointed by the Governor's office; (b) four members who own, or who represent owners of, small business stationary sources (one each appointed by the state Senate President, Speaker of the House,

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Senate Minority Leader and House Minority Leader); and (c) one member from the Department.

The Department is proposing to create the panel as a sub-committee of EDD's existing Small Business Program Advisory Committee. This link with the small business community should enhance the panel's contributions. The panel is scheduled to be appointed before the end of 1992.

- (3) Procedures to provide information and assistance on (a) technical issues, including compliance options such as alternative technologies; (b) air pollution prevention methods and accidental release prevention and detection; (c) determining applicable regulatory requirements, including obtaining permits, if needed; (d) source rights and obligations under the Clean Air Act, including provisions for voluntary compliance assessments; and (e) requests for modifications of work practices, compliance methods and compliance schedules.

Each of the required elements is addressed in the SIP revision. They can be categorized into two basic components:

- o an Information Component to advise small business about air quality regulations that may affect them, through communications outreach, development of informational resources and operation of an information clearinghouse; and
- o a Technical Assistance Component to help small businesses comply with regulatory requirements, including permitting and reporting. This will be accomplished through information outreach, consultation and direct site visits (including voluntary compliance assessments).

The proposed SIP revision outlines a variety of communication techniques and technical assistance modes the SBAP may use. Some activities may be provided directly by Department staff, while others may involve outside resources (other government agencies, in-kind services from the private sector), or may be contracted out to private consultants. Specific regulatory situations and available resources will determine what approaches are used and how they are carried out.

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The Compliance Assessment Program is proposed as a specific kind of technical assistance to be conducted by qualified environmental professionals from outside the Department. This approach to voluntary compliance audits was recommended by EPA to avoid potential conflict between EPA's "no shield" policy and Oregon's statute establishing the SBAP. EPA's guidance says it "cannot approve a SBAP that grants immunity to sources for compliance problems." ORS 468A.330(4)(a) says on-site technical assistance "shall not result in inspections or enforcement actions." Using outside staff will necessitate the development of a list of qualified auditors and perhaps the coordination of qualified volunteers (e.g., retired engineers).

The proposed SBAP does not include the kind of large-scale technical assistance planned by some other states. Present circumstances neither favor nor necessitate such an approach for Oregon. Some states are just getting started in technical assistance. The Department already has active pollution prevention and waste reduction programs in the Hazardous and Solid Waste Division. Some of those activities coincide with the goals of the SBAP, since they focus on reducing the use of toxic chemicals that can result in hazardous air pollutant emissions.

The modest scale of the proposed Oregon SBAP also relates to current uncertainty about when the new regulations for air toxics will be implemented and to what extent they will affect small business. EPA allows states to defer federal operating permit requirements for most non-major sources "until the Agency has completed a rulemaking to consider whether a permanent exemption, continued deferral, or applicability of the permit program would be appropriate." Oregon plans to take this deferral option. EPA is also promoting the use of general permits where possible for small sources. A general permit is a single permitting document that covers a class of many similar sources, greatly simplifying the permit process.

(4) Methods for determining source eligibility.

The proposed SBAP would be available to all small business stationary sources, as defined in Section 507 of the Act. The program may also serve small businesses which need help to comply with state air quality regulations other than federal requirements. Priority, if necessary, would be given to sources affected by federal requirements.

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- (5) Authority to reduce or waive operating permit fees for small business stationary sources to take into account their financial resources.

The Department will consider, on a case-by-case basis, requests from small business stationary sources to reduce or waive operating permit fees required under the Act. This is consistent with EPA guidance on Congressional intent.

Summary of significant public comment and changes proposed in response

The Department received no comment disagreeing with the need for the program or its fundamental objectives. Significant comment was received, however, on these specific issues:

- (1) Location of the Small Business Ombudsman. Comment was received that the ombudsman should be located outside the Department.
- (2) Scope of the proposed program. Comment was received that the SBAP goes beyond the basic requirements of the Clean Air Act, that it should be scaled down to reduce the burden on Title V emission fees.
- (3) Flexibility of the proposed program. Comment was received that the proposed SBAP is overly detailed, restricting the Department's ability to modify the program without obtaining EPA approval of a SIP revision--typically an extended process.
- (4) Media-specific nature of the proposed program. Comment was received that the proposed SBAP is too specific to air quality, that it should be integrated into existing Hazardous and Solid Waste Division technical assistance programs for small business.

Several changes were made to the original proposal as a result of Item #3, which also reflected comments from within the Department. This was done to simplify the SIP revision and ensure program flexibility.

In addition to comments listed above, EPA has questioned Oregon's statutory constraints on enforcement in relation to providing on-site technical assistance for small business

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stationary sources [ORS 468A.330(4)(a)]. EPA believes the statute could permanently shield sources from inspections or enforcement actions. In contrast, the proposed SIP revision indicates the Department's position that the statute, while it offers protection when technical assistance is provided through the SBAP, does not preclude inspections or enforcement activity in other situations. The Department requested an Attorney General's opinion on this issue, which supports our position. It is included as Attachment G.

Discussion of the above issues and other comments received is included in Attachment E. Changes made to the original proposal as a result of comment received are indicated in Attachment F.

Summary of how the proposed program will be implemented

The proposed SIP revision outlining plans for the SBAP must be submitted to EPA for review by November 15, 1992, subject to prior approval by the Commission. The Clean Air Act requires the state programs to be fully operational by November 1994. Implementation milestones for the Oregon program include appointment of the Compliance Advisory Panel and designation of the Small Business Ombudsman by December 31, 1992.

The program should be operating on a pilot-program basis by early 1993. We will focus on source categories such as dry cleaners and auto-body shops which are likely to be affected first by the new regulations. Contact has already been made with trade associations and other industry representatives to help carry out this effort.

During the spring of 1993, the Compliance Assessment Program will be developed and implemented on a trial basis. Further program development phases are scheduled July through December of 1993 for the Information Component and January through October 1994 for the Technical Assistance Component.

Recommendation for Commission action

It is recommended that the Commission adopt the proposed amendments to the State Implementation Plan to establish a small business stationary source technical and environmental compliance assistance program, as presented in Attachment A of the Department Staff Report for Agenda Item F.

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If approved, the Department will submit the proposed plan as described in this report to the EPA as a revision to the SIP. If the state fails to submit a SBAP plan, the Clean Air Act requires the EPA to implement its own SBAP. The EPA may also apply statewide sanctions as specified in the Act, because of the state's failure to submit a required SIP revision. Sanctions may include the withholding of federal grants and federal assistance funding for certain types of highway improvements, and requiring certain stationary source project applicants to provide a greater amount of emission offsets.

Attachments

- A. Amendments to the SIP proposed for adoption
- B. Supporting procedural documentation:
 - Public notice
 - Rulemaking statements (Statement of Need)
 - Fiscal and economic impact statement
 - Land use evaluation statement
- C. Presiding Officer's report on public hearings
- D. Written comments received
- E. Department's evaluation of public comment
- F. Changes to original rulemaking proposal made in response to public comment
- G. Attorney General's opinion (enforcement authority)

Approved:

Section:

Sarah Ann Taylor

Division:

John Greenwood

Report Prepared By: John MacKellar

Phone: 229-6828

Date Prepared: September 15, 1992

JM: idm
9/16/92

Proposed
State Implementation Plan Revision
To Establish a
State Small Business Stationary Source
Technical and Environmental
Compliance Assistance Program

State of Oregon
Department of Environmental Quality
Air Quality Division

811 SW Sixth Avenue
Portland, Oregon 97204

November 1992

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CURRENT OREGON
STATUTE (EFF. 1985)

VEHICLE FUELS

646.905 Definitions for ORS 646.910 to 646.920. As used in ORS 646.910 to 646.920:

(1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH(2n+1)OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(3) "Ethanol" means ethyl alcohol, a flammable liquid having the formula C_2H_5OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(4) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

(5) "Methanol" means methyl alcohol, a flammable liquid having the formula CH_3OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(6) "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical contrivances that are propelled by internal combustion engines or motors.

(7) "Retail dealer" means any person who owns, operates, controls or supervises an establishment at which gasoline is sold or offered for sale to the public.

(8) "Wholesale dealer" means any person engaged in the sale of gasoline if the seller knows or has reasonable cause to believe the buyer intends to resell the gasoline in the same or an altered form to another. [1985 c.468 §1]

646.910 Sale of gasoline blended with alcohol prohibited unless mixture meets federal specifications or requirements. No wholesale or retail dealer may sell or offer to sell any gasoline blended or mixed with alcohol unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79. [1985 c.468 §2 (1)]

646.915 Retail sale; disclosure required; signs. (1) A retail dealer of gasoline who knowingly sells or offers for sale gasoline that is blended with ethanol, methanol, co-solvent or a combination thereof in quantities greater than one percent by volume, must disclose:

(a) That the gasoline contains ethanol, methanol or co-solvent; and

(b) The percentage to the nearest one-half of one percent of ethanol, methanol or co-solvent contained in the gasoline.

(2) The disclosure required by this section shall be made by affixing two signs, one to each side of each pump that dispenses gasoline blended with ethanol, methanol or co-solvent. The following apply to the signs required by this subsection:

(a) Each sign shall be at least one and three-fourths inches in height and two and three-fourths inches in width and shall have printed on the top in block letters at least one-fourth inch in height and one-sixteenth inch in stroke the words "contains alcohol."

(b) If the gasoline contains ethanol, the signs shall have printed below the words "contains alcohol" the word "ethanol" and the percentage disclosure required by subsection (1) of this section. The word "ethanol" and the numerals shall be in block letters not less than three-sixteenths of an inch in height and one-sixteenth of an inch in stroke.

(c) If the gasoline contains methanol and co-solvent, the signs shall have printed below the words "contains alcohol" the words "methanol" and "co-solvent" and the percentage disclosure required by subsection (1) of this section. The words "methanol" and "co-solvent" and the numerals shall be in block letters not less than three-sixteenths of an inch in height and one-sixteenth of an inch in stroke. [1985 c.468 §3 (1), (2)]

646.920 Wholesale dealer; notice of contents required. Before or at the time of transfer of possession of gasoline from a wholesale dealer to a retail dealer, the wholesale dealer must give the retail dealer written notice of the contents of the gasoline if the gasoline contains more than one percent by volume of ethanol, methanol, co-solvent or a combination thereof. Notice required by this section shall be contained in or affixed to a manifest, invoice or other instrument or document of sale of title and shall specify in capital letters the percentage by volume to the nearest one-half of one percent of any ethanol, methanol or co-solvent. [1985 c.468 §4 (1)]

646.925 Enforcement. The State Department of Agriculture shall enforce the provisions of ORS 646.910 to 646.920 and is authorized to make any rules necessary to carry out the provisions of ORS 646.910 to 646.920 in accordance with the applicable provisions of ORS 183.310 to 183.550. [1985 c.468 §5]

646.930 Motor vehicle fuel prices; requirements for display. (1) A person who operates a service station, business or other place

OregonDEPARTMENT OF
ENVIRONMENT
QUALITY

March 5, 1992

Air Docket Section (LE-131)
Docket A-91-04
U.S. Environmental Protection Agency
Room M-1500 Waterside Mall
401 M Street, SW.
Washington, DC 20460

Re: Comments on Section 211(m)
of the Clean Air Act
Amendments of 1990

Dear Reviewing Agent:

Thank you for the chance to comment on proposed oxygenated fuels regulations. The Department's primary concern is the proposed period in which oxygenated fuels are to be required in southern Oregon.

As reported in the July 9, 1991 Federal Register, under either of two approaches EPA determined the appropriate oxygenated fuels period for southern Oregon was November 1 - February 29. The Federal Register reports that "one party has suggested that the oxyfuel areas in southern Oregon should be changed to an October to January control period ... this would make their control periods compatible with those in Northern California, which is the most likely source of oxygenated gasoline for those areas."

The February 5, 1992 Supplemental Notice of Proposed Guidance on Establishment of Control Periods Under Section 211(m) of the Clean Air Act indicates the control period for southern Oregon was changed to October-January based on the fact that neither October or February were "prone to high ambient concentrations of CO" and the selection of one over the other was somewhat arbitrary. Therefore, the deciding factor should be "supply logistics." EPA suggests the most likely source of fuel for southern Oregon is Chico, California which has an October-January oxygenated fuel period. EPA states that alternate fuel supplies from Eugene and



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DEQ-1

Coos Bay, Oregon are not expected to be usable because these areas do not require oxygenated fuel. On the other hand, EPA believes it is possible that fuel blended in Portland or Seattle could be trucked to southern Oregon.

The Department believes EPA should provide for some flexibility in their recommendations for the oxygenated fuel control period for southern Oregon. More specifically, there appears to be more justification for a November-February control period than October-January, and the Department would like to pursue the November-February option for the following reasons:

- 1) November-February has the highest overall CO days in the southern Oregon nonattainment areas. See Figures 1-4.
- 2) December-January are clearly the two worst months and November-February would provide a month on either side of the critical two-month period. See Figures 1-4.
- 3) November-February is the colder four-month period (compared to October-January) and thus, the peak woodheating season. (Woodburning is the second largest CO source category, second only to transportation, in the southern Oregon CO nonattainment areas.) See Figure 5.
- 4) Nov-Feb is the EPA-recommended oxyfuel period for the Portland area and having the same period in southern Oregon would offer a simpler, less confusing regulation.
- 5) Supply options for southern Oregon other than Chico appear practical. Also fuel delivered from Chico is expected to be available at only two percent oxygen content (California waiver) and would have to be further oxygenated to 2.7 percent prior to use in Oregon.

The question of fuel supply options will weigh heavily in the Department's selection of control period and is currently under review. The Department believes the fuel could be blended on a partial basis at the existing terminals in Eugene and Coos Bay and trucked to southern Oregon. It could also be trucked from oxygenated fuel supplies in Portland or Seattle. Although Chico is certainly a potential supply point, the Department does not believe it is the only practical option.

In addition, the Department needs clarification about the size of the control boundaries. Specifically, must the county boundary be used in all control areas? The February 5, 1992 Federal Register p. 4412 appears to say this with the statement "The requirements of the program shall apply to every county or partial county which is located in the CMSA (Consolidated Metropolitan Statistical Area), MSA (Metropolitan Statistical Area) or nonattainment areas." However, it is still not absolutely clear if the minimum recommended subsection is the full county boundary.

Air Docket Section
March 5, 1992
Page 3

Please let us know as soon as possible if EPA will be able to amend their recommendations to provide for a November-February control period for the three southern Oregon nonattainment areas. Also please clarify if EPA is indeed recommending county boundaries.

Sincerely,



Steve Greenwood
Administrator
Air Quality Division

SG:RH:e
LTR\AH40876
Enclosures: Figures 1-5
cc: Mike Lidgard, US EPA Seattle
John Kowalczyk, DEQ
Merlyn Hough, DEQ
Alfonse Mannato, EPA
Ron Householder, DEQ

FIGURE 1

Medford Peak CO Days During 1988-91 Central & Main Monitoring Site

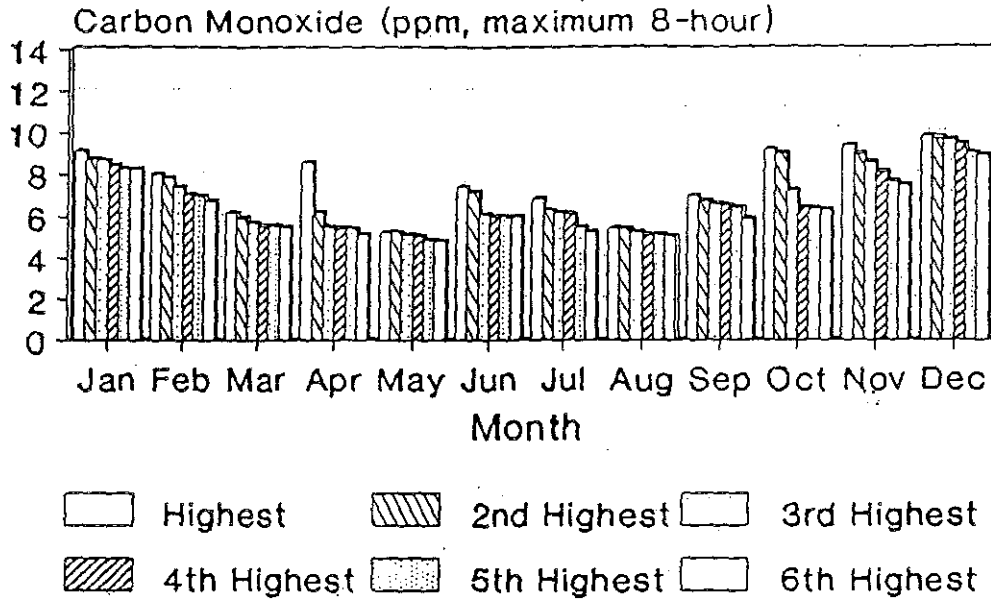


FIGURE 2

Medford Peak CO Days During 1988-91 Rogue Valley Mall Monitoring Site

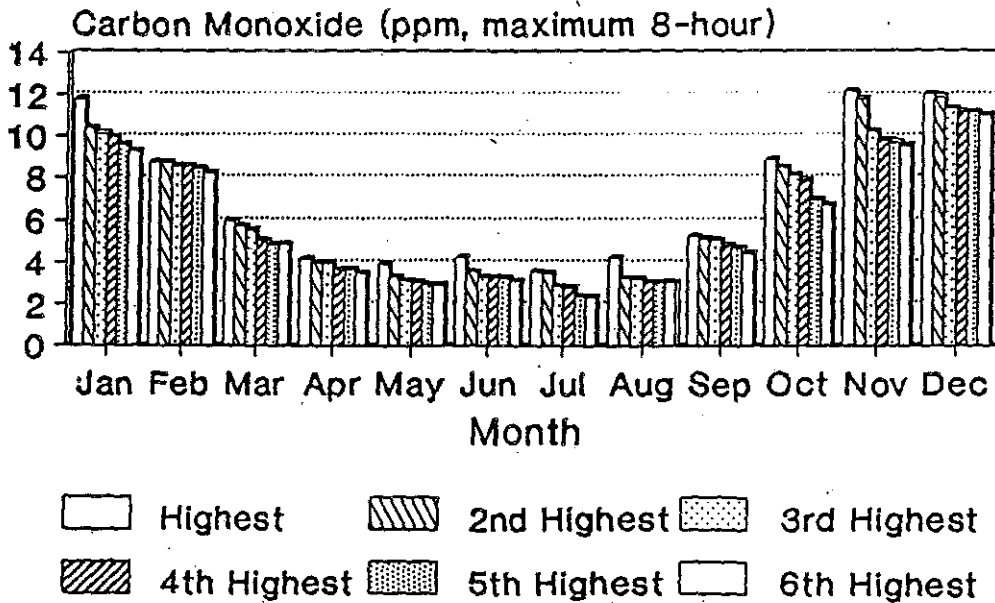


FIGURE 3

Grants Pass Peak CO Days During 1988-91

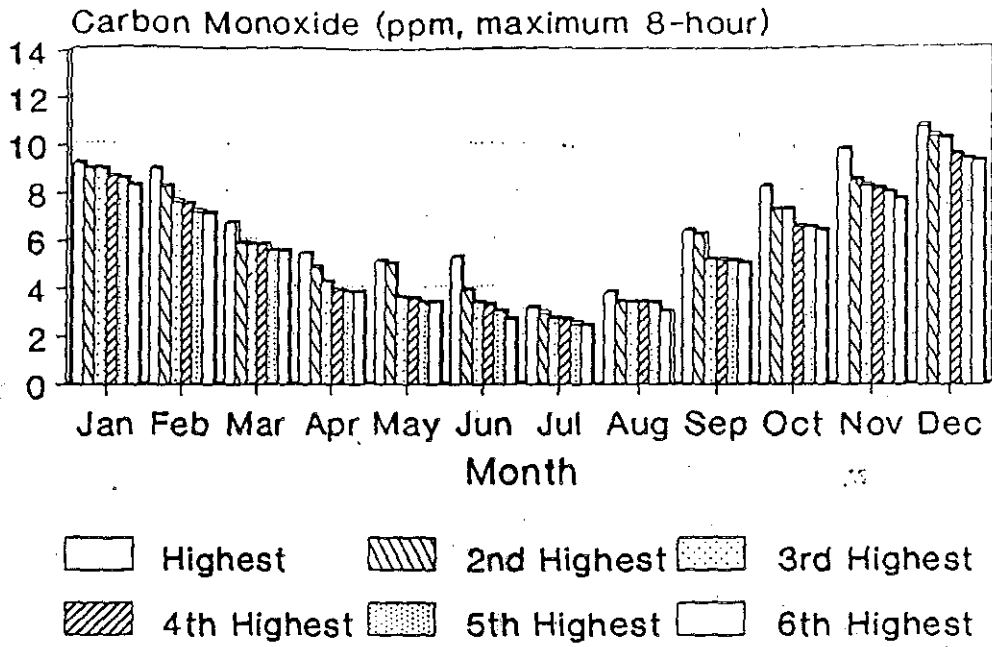
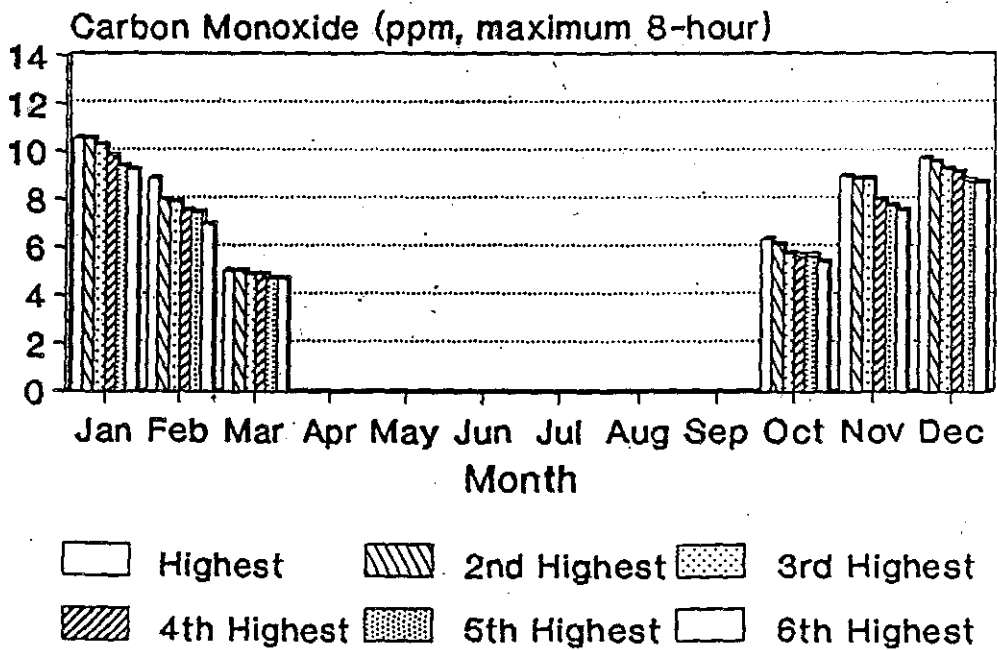
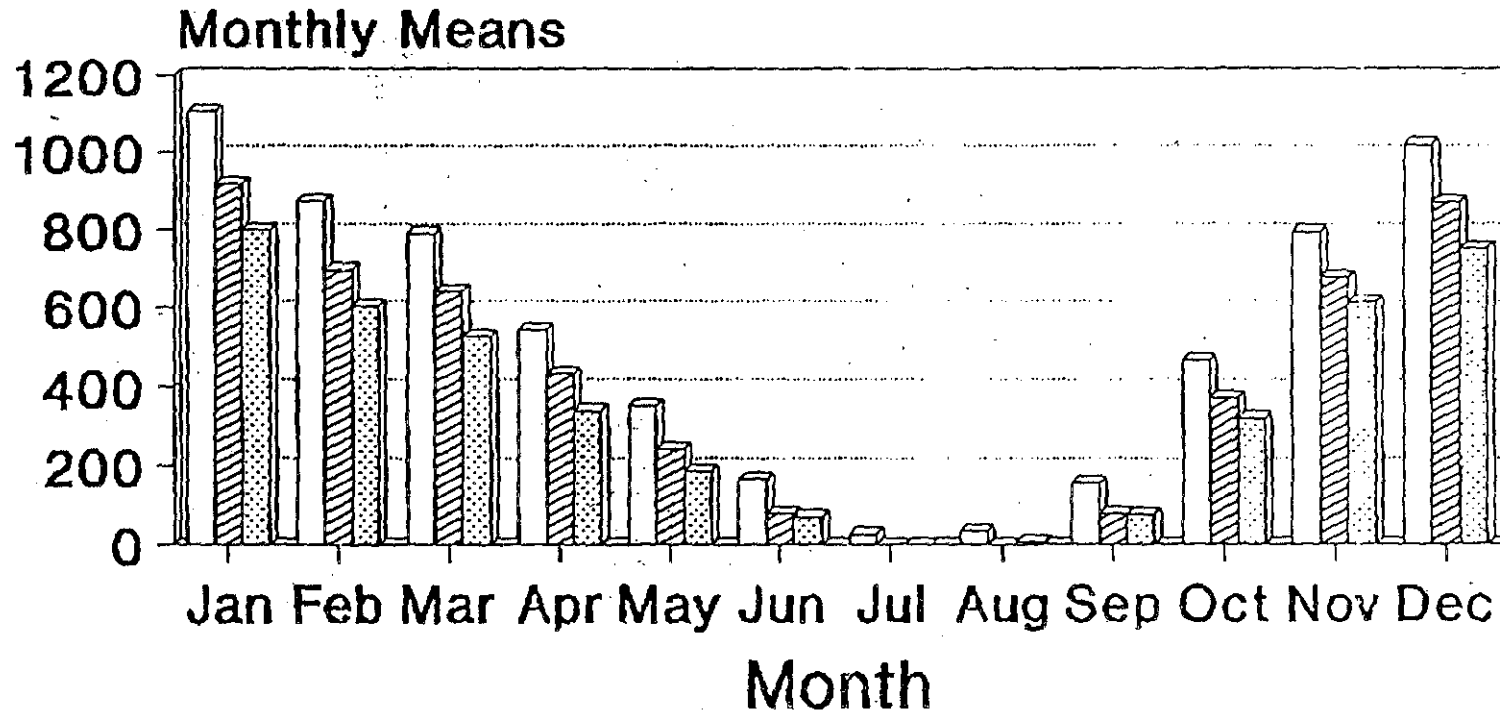


FIGURE 4

Klamath Falls Peak CO Days in 1988-91



Heating Degree Days



□ Klamath Falls

▨ Medford

▤ Grants Pass

FIGURE 5

65F Base, 1931-1960 Period



DEPARTMENT OF JUSTICE

PORTLAND OFFICE
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May 6, 1992

Jerry Coffey
Department of Environmental Quality
Vehicle Inspection Program
1301 SE Morrison
Portland, OR 97214

Re: Proposed Oregon Oxyfuels Regulations

Dear Jerry:

By memorandum dated March 19, 1992, you asked a number of questions regarding the draft rules for Oregon's oxygenated gasoline (oxyfuels) regulations. You identified two general issues. The first concerns an apparent conflict between ORS 646.915, which requires the posting of the concentration of any additives to gasoline to the nearest one-half percent if the additive exceeds one percent by volume, and ORS 468A.420, which states, among other things, that the Environmental Quality Commission shall adopt rules consistent with section 211 of the Clean Air Act. You stated that DEQ's proposed rules will allow an averaging of oxyfuels to meet the minimum 2.7 percent required by ORS 468A.420(3) and section 211(m) of the federal Act. Apparently the Oxyfuels Advisory Committee believes that the disclosure requirement makes implementation of the averaging so impracticable as to be nearly impossible. You ask whether ORS 468A.420 takes precedence over ORS 646.915 because it was enacted later.

The second issue is whether the permitting provisions of ORS Chapter 468 and 468A authorize or require the EQC to require permits and assess fees on oxyfuels blenders. The third question is whether assessing such a fee based on the blended fuel sold per year is in conflict with the Oregon Constitutional Provision limiting the use of gasoline tax to Highway Trust Fund purposes. Pursuant to your request, I prepared two draft letters, which were circulated for review and discussion. I also have discussed these issues with other assistant attorneys general. In the meantime, some other

Jerry Coffey
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questions and issues evolved as well. In this final letter I will present some background information and then discuss the issues in order.

BACKGROUND

Title II of the federal Clean Air Act Amendments of 1990 requires states with carbon monoxide (CO) nonattainment areas to submit SIP revisions that provide for a winter season oxygenated fuel program. An oxygenate is a substance which, when added to gasoline, increases the amount of oxygen in that gasoline blend. The extra oxygen reduces carbon monoxide emissions from motor vehicles by enhancing fuel combustion and helping to offset fuel-rich operation conditions (particularly during vehicle starting) that are more prevalent in the winter.

Section 211(m)(2) of the Clean Air Act as amended requires that all gasoline sold in CO nonattainment areas during the winter must be blended with oxygen to contain not less than 2.7 percent oxygen by weight. 42 U.S.C. § 7545(m)(2). I understand that this typically will be achieved by adding alcohol (including ethanol or methanol) or methyltertiary butyl ether (MTBE) at the blending facility.

Section 211(m)(5) also authorizes EPA to promulgate guidelines allowing the use of "marketable oxygen credits" that would allow the retailer to offset the sale of low oxygen content gas with the sale of higher than required oxygen content gas. EPA issued such guidelines on February 5, 1992. 57 Fed. Reg. 4413.

The guidelines require that all gasoline sold or dispensed by a "Control Area Responsible Party" (CAR) (the blender) during the control period shall be blended to contain an average oxygen content of not less than 2.7 percent by weight. This apparently is because a standard blend of ethanol is 10 percent, resulting in 3.5 percent oxygen, but the use of MTBE would result in 2.0 percent oxygen. At the end of the averaging period, the average oxygen content for all gasoline which the CAR distributed is calculated. If the average oxygen content is greater than or equal to the minimum requirements, the CAR has demonstrated compliance. If the average is greater than the requirements, marketable oxygen credits are created.

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ISSUE NO. 1: Oxyfuels Averaging

Although you did not ask this in your original memorandum, a threshold question is whether DEQ is authorized to allow averaging as proposed. In 1991, pursuant to the requirements of the 1990 Clean Air Act amendments, the Oregon legislature adopted the oxygenated fuel requirements discussed above. ORS 468A.420(1) requires the Environmental Quality Commission to adopt rules "consistent with section 211 of the Clean Air Act to require oxygenated motor vehicle fuels to be used in any carbon monoxide nonattainment area in the state." The statute states that "an oxygenated fuel shall contain 2.7 percent or more oxygen by weight. Methods to achieve this requirement may include but need not be limited to the use of ethanol blends." ORS 468A.420(3).

DEQ proposes adopting the averaging approach outlined by EPA in its guidelines. Although the state oxyfuels statute does not address the averaging concept, it does state that the EQC rules be consistent with section 211 of the federal act. As stated above, EPA has construed this section in its totality to allow averaging. Accordingly, it is reasonable for the EQC to adopt a similar program for Oregon.

ISSUE NO. 2: The Disclosure Requirement

In 1985 the Oregon legislature enacted ORS 646.915, which requires that gasoline dealers selling gasoline that has been blended with ethanol, methanol, or a co-solvent in quantities greater than one percent by volume must disclose that the gasoline contains these substances, and also the percentage to the nearest one-half of one percent of the additive contained in the gasoline. The disclosure requirements include affixing signs on each gasoline pump stating that the gasoline "contains alcohol," specifying whether it contains ethanol, methanol or other "co-solvent," and stating the above percentage.

Ken Simila from the Oregon Department of Agriculture explains that this is a consumer protection statute. It is based on warranty provisions in various automobile owners' manuals requiring the use of certain blended fuels because they cause deterioration of certain auto parts. In other words, if an owner uses gasoline blended with a percentage of oxygen

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higher than the manufacturer allows in its warranty, the warranty may not be honored. Thus, consumers need to know at least the highest content of the additive.¹

Assuming that averaging the oxyfuels is permissible under and therefore "consistent with" section 211 of the federal Clean Air Act, you state that this may create a conflict with the requirements of ORS 646.915 as a practical matter because any one service station may receive a shipment of gasoline blended with ethanol one day and blended with MTBE the next day. This would make it essentially impossible to keep up with the requirement that the percentage of the additive to the nearest one-half of one percent be disclosed. The retailer would have to calculate the percentages with each new shipment of blended gas and change his sign. This could be a daily or at least weekly exercise, depending on the most recent shipment of blended fuel. You asked if ORS 468A.420 takes precedence over ORS 646.915 because it is the more recent law.

As a general rule, in the case of irreconcilable conflicts, the statute that is more recent prevails. See Sutherland Statutory Construction, 51.02 (5th Ed. 1992). However, courts are loathe to find an implied repeal of an earlier statute, hence they will try to find consistency and compatibility. Likewise, DEQ and the Oxyfuels Advisory Committee should work to try to find a solution that will comply with the objectives of the disclosure law while at the same time meeting the requirements of the Clean Air Act.

In this case, we can add the issue of federal preemption. That is, where there is a conflict between a state law and a federal law, generally the federal law will prevail. Here, the direction for the state legislation came from the federal Clean Air Act and is specific in its requirements. If the disclosure law truly makes implementation of the federal requirements impossible, then the federal law must prevail.

¹ I admit to being puzzled over what car owners will do if their manufacturer requires a lower percentage of blended oxygen than the Clean Air Act requires in CO nonattainment areas.

Jerry Coffey
May 6, 1992
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However, it appears to me that these statutes are not directly in conflict or create an implied repeal but, rather, the latter statute makes implementation of the former statute clumsy and difficult. I originally suggested that the most responsible role for DEQ is to develop rules, if possible, that satisfy the objectives of each statute.

The Advisory Committee subsequently supported a compromise in which the gasoline dealers would be required only to affix signs on the gasoline pump stating the maximum content of the oxygenate. This solution seemed to satisfy the consumer protection concerns as expressed by the vehicles manufacturers representatives and Ken Simila from the Oregon Department of Agriculture. The remaining question was whether ORS 646.915 permitted this.

Because this is not a DEQ statute, I asked Steve Sanders, the attorney who represents the Department of Agriculture, to review the provision and offer his opinion. I also discussed the question with the Department's opinion coordinator, Amy Veranth. Amy's initial, preliminary response is that ORS 646.915 is very specific and does not lend itself to such an interpretation. Although the Department of Agriculture may choose as a policy matter not to enforce the statute, Amy doubts that the agency would be authorized to officially endorse the proposed compromise as an accurate interpretation of that provision.

ISSUE NO. 3: Funding for the oxyfuels program

The legislature did not create a mechanism for funding the oxygenated fuels program. Accordingly, you have asked whether there is any authority under the general statutes governing the EQC and DEQ for permitting and assessing fees to insure compliance with the program. You said that the permit would be for the privilege of blending and selling the oxyfuels in the denominated CO nonattainment areas in Oregon as required by the federal Clean Air Act Amendments and ORS 468A.420.

ORS 468.065 states that applications for all permits authorized under ORS chapter 468A shall be made in a form prescribed by the Department and provides further instructions. It then states that by rule and after hearing, the Commission

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may establish a schedule of fees for the permits issued pursuant to ORS 468A.040, 468A.045, 468A.155 and 468B.050. The latter two references are not relevant to this discussion.

The threshold question is whether the relevant statutes authorize or require the issuing of permits. There is no express authority for issuing permits to the oxyfuel blenders. However, I conclude that the statutes can be read to create implied authority. ORS 468A.040(1) states that "by rule the Commission may require permits for air contamination sources classified by type of air contaminants, by type of air contamination source or by area of the state. The permits shall be issued as provided in ORS 468.065" (emphasis added). Thus, the question is whether the blenders of oxyfuels are "air contamination sources" for purposes of this statute.

Although the blending process itself does not create CO emissions, the blended fuel results in CO emissions when exhausted by autos. ORS 468A.005(4) defines the term "air contamination source" as "any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant * * *" (emphasis added). Arguably, then, a blender could be considered to be an air contamination source because its product ultimately results in air contaminant emissions.

You propose that blenders be considered an "indirect source" of emissions and placed in a category similar to parking lots as provided in OAR 340-20-115. OAR 340-20-100 includes indirect sources as air contamination sources. The current definition of "indirect source" found at OAR 340-20-110(14) does not seem to apply to the oxyfuel blenders. However, one solution is to find and declare in the new rules that a blender is an indirect source. Alternatively you could amend 340-20-110(14) to include blenders, referring to the new rules. Either approach appears to be consistent with the statutory definition.

ISSUE NO. 4: Assessing fees

Assuming that the oxyfuels blenders may be permitted, you have asked whether the Commission may assess a fee on the blenders under ORS 468A.040 and 468.065. If that is permissible, you ask whether such a fee is in conflict with the Oregon Constitutional provision limiting the use of gas taxes to the Highway Trust Fund.

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ORS 468.065(2) states that the Commission may establish a schedule of fees for permits, such fees to be based upon "the anticipated cost of filing and investigating the application, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompliance with the permit." You stated that the greater the volume of blended fuel produced and sold, the greater the cost of determining compliance. Therefore, it seems reasonable to assess fees according to volume produced. However, after discussing this with other attorneys in the Department, I conclude that any such assessment is likely to run afoul of the constitutional limits.

The most recent list of proposed alternatives are summarized as follows:

1. A sliding fee based on the annual quantity of oxygenate added to meet the 2.7 percent requirement, but calculated according to the volume of blended fuel sold or offered for sale.
2. A fee based on the number of service stations served but calculated by using the number of gallons blended divided by the average amount of gasoline dispensed by the stations served.
3. A combined flat fee plus a sliding fee based on the number of stations supplied, using the formula from number 2.
4. A fee based solely on the amount of oxygenate used by the blender, e.g., the gallons of ethanol blended with the refined gasoline.

The problem we encounter is the requirement in Article IX, Section 3a of Oregon's Constitution that any revenue from the following sources must be used exclusively for the highway purposes specified in that section:

Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles * * * .

Jerry Coffey
May 6, 1992
Page Eight

This language essentially eliminates all four proposals. The first three are "measured by" to some extent the sale or distribution of motor vehicle fuel. I understand from you that ethanol and the other oxygenates are combusted in the engine (as opposed to detergents or other additives) and, therefore, could be considered "any other product used for the propulsion of motor vehicles." Therefore, the fourth proposal is not an option.

The only remaining options that I have heard discussed are (1) a fee related directly to the number of stations served, not measured by the sale or distribution of fuel, (2) a flat fee on the blenders, unrelated to the volume sold or distributed, or (3) a fee assessed against the service stations, again, not measured by the receipt or sale of fuel. I do not think that any of those options conflicts with Article IX, section 3a.

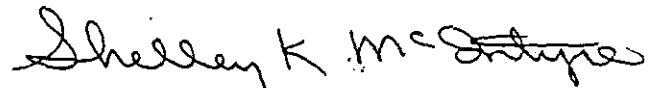
You asked about the ramifications of a challenge to a variation on number 3 above. In other words, what if the fee were a combination of a valid fee and an invalid fee? You asked whether a challenge to the fee would immediately halt all fee collection. First, there is no provision that automatically halts fee collection when a fee structure is challenged. The UST fee collection was stayed by a provision in SB 1215. There is no comparable provision in the oxyfuels statute. Thus, if a party wants to stop an oxyfuel fee assessment, the party would have to request a preliminary injunction. To prevail, the party would have to show that it is likely to prevail on the merits and that the party would suffer injury if made to wait until the decision on the merits is issued. I think it is unlikely that a court would issue a preliminary injunction halting the fee collection because if a party prevails under Article IX, section 3a, the remedy is that the money collected must be paid into the Highway Trust Fund.

You also asked if a party challenges the fee under Article IX, section 3a, whether the entire rule would be struck down or only the part that conflicts with Article IX. If the Commission adopts a fee that is valid in part and invalid in part, the valid part survives even if the invalid part is struck down.

Jerry Coffey
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As you know, we should be getting the Oregon Supreme Court decision on the UST assessment and motor vehicle emission fees soon. That opinion may shed some light on this problem.

Sincerely,



Shelley K. McIntyre
Assistant Attorney General

SKM:dld 1110N

PUBLIC HEARING INFORMATION PACKET

Date: May 15, 1992
Division: Air Quality
Section: Vehicle Inspection
Program

SUBJECT:

Amendments to OAR 340 Chapter 22 to require oxygenated gasoline in carbon monoxide nonattainment areas in Oregon.

PURPOSE:

The use of oxygenated gasoline will help attain and maintain compliance with carbon monoxide air quality standards while accommodating growth and development in the affected counties.

DESCRIPTION OF ACTION:

Proposed regulations require the use of Oxygenated Gasoline in the wintertime months (November - February) in Clackamas, Jackson, Josephine, Klamath, Multnomah, Washington and Yamhill Counties.

AUTHORITY/NEED FOR ACTION:

Statutory Authority: ORS 468A.420
 Pursuant to Federal Law: 1990 Clean Air Act Section 211(m)

Time Constraints:

The federal 1990 Clean Air Act mandates that the Oregon SIP be revised to include an oxygenated gasoline program in carbon monoxide nonattainment areas beginning November 1, 1992. Final rule approval by September 9, 1992 would allow adequate time to meet this deadline. Any delay in final approval of Oregon oxygenated fuels regulations would make it difficult to meet this federal timeline statute.

BACKGROUND:

Section 211(m) of the federal Clean Air Act of 1990 requires that "each state in which there is located all or part of an area which is designated under title I as a nonattainment area for carbon monoxide, and which has a carbon monoxide design value of 9.5 parts per million (ppm) or above based on data for the 2-year period of 1988 and 1989 and calculated according to the most recent interpretation methodology issued by the Administrator (of EPA) prior to the enactment of the Clean Air Act Amendments of 1990 shall submit to the Administrator a State implementation plan revision ... for such area which shall contain the provision specified under this subsection regarding oxygenated gasoline."

In 1991 the Oregon Legislature enacted HB 2175 (codified as ORS 468A.420) requiring the Environmental Quality Commission to adopt rules "consistent with section 211 of the Clean Air Act to require oxygenated motor vehicle fuels to be used in any carbon monoxide nonattainment area in the state." This statute also states that oxygenated fuels "may include but need not be limited to the use of ethanol blends." The Department's Oxygenated Gasoline Program Advisory Committee (see Attachment J) anticipates industry's choice of oxygenates will be dominately ethanol and methyl-tertiary-butyl-ether (MTBE), although other oxygenates have been approved for use by EPA. The Oregon statute, as does the federal, requires the oxygenated fuels program to begin "on or before November 1, 1992."

DISCUSSION:

The proposed rules require the use of oxygenated fuels in the areas of Oregon that are in non-attainment for carbon monoxide. Oxygenated fuel increases the air fuel ratio in internal combustion engines leading to reduced carbon monoxide emissions during vehicle operations, especially during vehicle warm-up periods. Oxygenated fuel is especially effective during the cold weather season when vehicle warm-up time is relatively long.

The program would require oxygenated fuels in four counties in the Portland area (Clackamas, Multnomah, Washington and Yamhill) and in three counties in southern Oregon (Jackson, Josephine, and Klamath) during the months of November through February.

During the control period and in each control area, oxygenated gasoline blenders called "control area responsible parties" or "CARs" must supply an average of at least 2.7

percent oxygen for each control area serviced. To achieve an average of 2.7 percent oxygen a blender will be allowed to supply a minimum of 2.0 percent oxygenate gasoline and a maximum of 3.7 percent. Each gallon of fuel pumped by the retailer must have a minimum of 2.0 percent oxygen.

The proposal requires that only oxygenated gasoline be used to fuel vehicles in the control areas and during the control period beginning November 1, 1992 and for each wintertime control period thereafter or until a control area is redesignated "in compliance" for carbon monoxide. Such redesignation could occur if there are no violations in the critical years 1994-95, and the area is able to demonstrate that attainment is expected to continue for at least 10 years. The oxygenated fuels program may still be required even if the 1994-95 ambient carbon monoxide standards are met, if the Department considers the program necessary to maintain compliance with carbon monoxide standards beyond 1995.

The proposal affects the full distribution chain of gasoline including terminals (representing the output from gasoline refineries), bulk plants (temporary storage facilities for gasoline) and dispensing sites (service stations, etc. where the direct fueling of vehicles occurs). The oxygenate could be added to gasoline at many stages in the process: at the terminal, in the bulk plant or in individual tanker trucks. The person who owns the fuel at the time of blending is considered the Control Area Responsible Party or CAR. The proposal requires the CAR to insure the average content of the fuel supplied to any one control area and control period is a minimum of 2.7 percent oxygen. The CAR can do this by tracking fuel mixtures and by laboratory tests for oxygen content.

Trading of oxygenated gasoline credits is allowed, so if a CAR fails to meet the 2.7 percent average for the control period, that CAR could purchase credits to meet Oregon requirements from another blender who may have blended at a level higher than 2.7 percent. At the end of the control period, the CAR must report to the state the blending activities and will be liable for penalty from the Department if the average (with credits) is less than 2.7 percent.

If a fuel dispenser (e.g. service station) is found dispensing fuel of less than 2.0 percent oxygen in a control area during a control period, all parties that owned the fuel from the CAR to the station will be considered responsible parties, including the CAR itself.

The Department estimates a total of 514 service stations in the Portland area and 294 in the southern Oregon area will be included in the required oxygenated fuels areas. In addition a limited number of fleet fueling sites will be included in the oxygenated fuels program. Currently there are 195 gasoline distributors serving Oregon. Not all of these distributors are expected to blend fuel for oxygenated fuels areas. Many will service only eastern Oregon. Others may decide not to continue to supply fuel in control areas or may purchase pre-blended gasoline and therefore not be considered a blender or CAR. The Department expects there will be approximately 90 blenders or CARS servicing the Oregon control areas.

The Department estimates oxygenated fuel will reduce carbon monoxide emissions from vehicles by approximately 20,000 tons per year in the Portland air shed, 2,000 tons per year in Grants Pass, 3,000 tons per year in Medford and 2,300 tons per year in Klamath Falls. This is an 17 percent reduction in the vehicle emissions of carbon monoxide in each of the nonattainment areas.

The bulk of the proposed Oregon rules are identical to the federal guidelines. However, several deviations from the federal guidelines have been made in the Oregon version to both be more protective of the environment and at the same time, allow more flexibility to industry in areas which did not detract from the environmental benefit of the oxygenated fuels program.

Specifically, the proposed Oregon rules select a more environmentally sound control period of November through February instead of the initially proposed federal guideline of October through January. The proposed Oregon rules also extend the control area for southern Oregon nonattainment areas from the federal minimum boundaries to the more comprehensive county boundaries.

At the same time the proposed Oregon rules are more lenient in a variety of ways. They allow blenders a report time frame of 30 days rather than the EPA's 15 days. They allow pump labeling for oxygenated fuels to be on the upper 1/2 of the dispenser rather than the more limited 1/3 required by EPA.

IMPACT ON REGULATED/AFFECTED COMMUNITY:

The proposed regulations will require gasoline distributors to deliver oxygenated fuels to the control areas during the months of November - February of each year. All persons in

the distribution system including refiners, bulk plants, distributors and service stations will be required to maintain detailed records of oxygenated fuels transactions. It is expected that many of the existing distributors will decide to also blend the gasoline with oxygenate and be designated as blender Control Area Responsible Parties or CARs. Each CAR will be assessed a base annual fee of \$700 plus an incremental fee of \$220 per "effectively fully supplied service station." The number of "effectively fully supplied service stations" is calculated by dividing the CAR's anticipated fuel supplied to control areas by the average throughput of the stations served by the CAR. These funds will support the Department's annual budget of \$220,000 and are expected to add less than 0.1 cents per gallon of gasoline sold in control areas during the oxygenated fuels control period.

Service stations will be required to keep records of oxygenated fuel deliveries, but otherwise should not be significantly affected by this rule.

It is unclear if the retail price of oxygenated fuels will be more than that of non-oxygenated fuel. Although industry estimates the cost of oxygenating gasoline will increase retail prices by 4 - 6 cents per gallon, this cost should be reduced by federal and state tax credits for ethanol of about 10 cents per gallon. (See Attachments C and J)

An advisory Committee was formed to assist the Department in developing the rules for the oxygenated fuel program, consisting of industrial, retail, and consumer representatives. Although there was no consensus reached among the Committee members, a majority of the Committee did not support the Department's recommendations on several key issues:

- 1) Oxygenated Fuels Program Boundaries. Although the minimum federal requirement is for nonattainment area boundaries, the Department has recommended with support by the Gasoline Dealers Association, that county boundaries be used for Grants Pass and Klamath Falls. A majority of Advisory Committee members, particularly oil companies and fuel distributors, supported smaller boundaries.
- 2) Control Periods. The federal guidelines stipulate the control period for oxygenated fuels should be at least 4 months, allowing less than that only if the state can demonstrate that a reduced control period will not result in carbon monoxide exceedances. The Department is recommending a

November - February control period for all areas. A majority of Advisory Committee members voted for a 3-month period, with a contingency of moving to a 4-month period if the ambient CO readings exceed a specific CO trigger point in February. On this issue, given the consequences of remaining a nonattainment area, the Department is concerned that adverse meteorological conditions could result in exceedance of the federal standards.

- 3) Funding. The Department estimates that an annual budget of \$220,000 will be required to implement an EPA-approvable program, which includes annual compliance checks on 20 percent of the service stations involved. The Department has developed with the Advisory Committee an annual fee on each blender of \$700 plus \$220 for each service station served. The fuel blenders and distributors would like the fee to be charged directly to service stations. The Department's recommendation is based upon the efficiencies of collecting from 90 blenders, as opposed to 800 stations. (See Attachment J for more details on the Advisory Committee deliberations.)

IMPACT ON THE DEPARTMENT/OTHER AGENCIES:

The Department will be required to administer the oxygenated fuels program including:

- o Registration of blenders
- o Laboratory analysis of gasoline samples
- o Coordination of public education efforts
- o Inspection of blender and service station sites

The estimated annual budget is \$220,000 with a total of 1.7 FTE required. (See Attachment C)

ATTACHMENTS:

Proposed Rules	Attachment <u>A</u>
Rulemaking Statements	Attachment <u>B</u>
Fiscal and Economic Impact Statement	Attachment <u>C</u>
Public Notice	Attachment <u>D</u>
ORS 468A.420	Attachment <u>E</u>
1990 Clean Air Act Section 211(m)	Attachment <u>F</u>
Letter to U.S. EPA dated March 5, 1992	Attachment <u>G</u>
Oregon Department of Agriculture	

PUBLIC HEARING INFORMATION PACKET
Page 7

Pump Labeling Statute
Letter from Oregon AG's Office dated
May 6, 1992
Summary of Discussions of Oxygenated
Fuels Advisory Committee

Attachment H

Attachment I

Attachment J

INTENDED FOLLOWUP ACTIONS:

The rules will be revised based on comments received at the public hearings, and be presented to the Environmental Quality Commission for final rule approval at the September Commission meeting.

Report Prepared By: Jerry Coffey
Phone: 731-3049
Date Prepared: May 11, 1992

JC:jc
(5/11/92)

ARCO Products Company
Cherry Point Refinery
4519 Grandview Road
Mailing Address: Box 8100
Blaine, Washington 98230
Telephone 206 371 1500



September 28, 1992

Jerry Coffey
State of Oregon
Department of Environmental Quality
Air Quality Division
1301 S.W. Morrison
Portland, Oregon 97214

Dear Jerry:

Thank you for the opportunity to offer some final comments on Oregon's Oxygenated Gasoline Program. I would like to offer one comment reference funding and have included several additional comments as an attachment to this letter. Please feel free to contact me at 206-371-1304 if you have any questions.

Funding

DEQ should proceed with securing permanent funding for the program through fees or taxes on the direct emission sources, in this case motor vehicles. If the outcome of the constitutional challenge of HB 2175 is favorable to vehicle emission fees then DEQ should be prepared to introduce legislation at the earliest possible time to convert funding of the Oxygenated Gasoline Program from the proposed "Indirect Source Operating Permit" to a fee or tax on the direct source, automobiles.

The proposed funding scheme, although workable this first year, is a regulatory and paperwork burden that can only add significantly to the cost of managing the Program. Two registration processes for CAR's and Blender CAR's should not be necessary. Greater compliance will be obtained through a simple, single, well thought out registration process and DEQ should move in this direction for future oxygenated fuel seasons.

Sincerely,

Steven A. Fite
ARCO Products Company
Cherry Point Refinery

cc: Dave Smith - PAC 1047

ARCO COMMENTS
OREGON WINTER OXYGENATE PROGRAM

Section 340-22-510 Minimum Oxygen Content:

"(3) refiner or importer shall determine the oxygen content of each gallon of gasoline produced by use of an applicable....."

Suggest deleting "...each gallon of .." in the above sentence. As currently drafted it appears that each gallon of gasoline needs to be analyzed. Refiners and distributors use sampling methods to obtain representative samples from tanks and trucks, but each gallon of gasoline is not sampled, nor is it practical to do so.

Section 340-22-530 Registration and Permit:

"(1) At least 30 days before the control period ...CAR or blender CAR, that person shall petition for registration and a permit to operate as a CAR or blender CAR.....must be on forms approved by and available from the Department...."

Does Oregon intend to make the above forms available before October 1, 1992? If not, how does the State expect CARs and blender CARs to comply with the above requirement?

Suggest revising this section to require CARs or blender CARs to submit a registration application by October 1, 1992, or 20 working days after the wintertime oxygenate rule is adopted whichever is later. Additional changes will be needed to allow CARs to operate during the control period without an identification number until the State can process their applications.

Section 340-22-540 Distributor and Retail Outlet Fees:

When will the fees need to be paid? (e.g. With submission of the registration forms required by 340-22-530.)

Section 340-22-550 Record keeping:

(3)(c) Requires records of the RWOC of all hatches or truck loads of gasoline leaving the terminal to be kept. For those CARs or blender CARs complying by blending EtOH while loading their trucks(e.g. splash blending, sequential blending, etc.) the concept of RWOC doesn't apply. Suggest (3)(c) be revised to apply to only those terminals whose CARs or blender CARs are blending their oxygenate in their terminal storage tanks.

(4)(b) Lists records that must be kept by CARs or blender CARs that intend to average. What records do CARs or blender CARs who intend to comply on a per-gallon basis need to keep?

(4)(b)(J) Requires CARs and blender CARs to maintain records of the name, address and CAR/blender CAR identification numbers of persons to whom any gasoline was sold or dispensed, and the dates of each transaction. Section 340-22-530 does not appear to require resellers and distributors to obtain an identification number. Therefore, when selling to resellers and distributors, CARs and blender CARs will not be able to record their identification numbers. If the word "person" was replaced in (4)(b)(J) with "CARs and blender CARs" the problem would be eliminated as CARs are required to have an identification number.

Section 340-22-560 Reporting:

Suggest (2)(i) could be clarified. For gasoline between the refinery and a control area terminal, does one only need to meet (2)(i) requirements and not 2(a)-(h)? Plus, does the state want to know the "oxygenated volume of the gasoline", or the "volume of oxygenated gasoline? We suggest the later.

Unocal Refining & Marketing Division
Unocal Corporation
911 Wilshire Blvd., P.O. Box 7600
Los Angeles, California 90051
Telephone (213) 977-5974

UNOCAL 

Dennis W. Lamb
Manager of Planning
Planning and Services

September 21, 1992

Mr. Jerry Coffey
Vehicle Inspection Program
Department of Environmental
Quality
1301 SE Morrison Street
Portland, OR 97214

Dear Mr. Coffey:

The Union Oil Company of California (UNOCAL) would like to reiterate some comments that we feel are important to the Oxygenated Gasoline program.

If you have any questions regarding the attached comments, please call me at (213) 977-5974.

Sincerely yours,



Dennis W. Lamb
Manager of Planning

Attachment

UNION OIL COMPANY OF CALIFORNIA (UNOCAL) COMMENTS ON
OREGON STATE OXYGENATED FUELS REGULATIONS

Unocal has previously submitted comments regarding Oregon's proposed oxygenated fuels regulations. We are pleased that some of those comments have been incorporated into the proposed language.

At this time we would like to point out that one important item has continued to fall through the cracks - BLENDING TOLERANCE. The proposed regulations make no mention of the 0.2 wt. % blending tolerance that EPA recognizes for MTBE. Although this was pointed out in our written comments, the DEQ did not address this vitally important issue. Unocal recently provided the DEQ with a copy of a letter from the EPA confirming that this allowance applies to the distribution system through the retail station. This item is not opposed by any party as far as we know, and is supported by the American Petroleum Institute. Unocal strongly urges the DEQ to include the 0.2 wt. % blending tolerance for MTBE in the final rule.

We also previously commented on the fee structure and would now offer the following:

The imposition of fees on facilities, and in particular, an effective fee on out-of-state facilities, is entirely inappropriate unless the amount is insignificant. That is not yet the case with the Oregon fees in the latest proposal. The fee structure will cause certain suppliers including Unocal, to limit product availability at certain terminals in order to avoid fees. Generally, that will cause secondary points of delivery to be eliminated. The elimination of such back up supply points could cause higher costs and less competition among suppliers. We are concerned that southern Oregon may fall victim to that situation, due to both the fee structure and DEQ's refusal to propose a flexible control period in those non-attainment areas.

Unocal continues to recommend that fees be levied on vehicles registered in control areas, if fees are required at all.

The DEQ has proposed new control area boundaries.

Unocal will not debate this issue any further. This proposal lacks any real justification, and requires a map to delineate compliance boundaries, unlike a more simplified city limit boundary. However, we are not impacted by any of the suggested plans.

We the undersigned do not want
this to happen - !!

8-31-92

The Oxygenated gasoline program.

Submitted
9/23/92 by
Cynthia Cox
of Central
Point, OR

	NAME	ADDRESS	PHONE
1	J. Cagle	1333 SARDINIA RD CP	855-17927
2	DeMaack	8401 Old Stage Rd CP	855-1702
3	Don Hayward	9401 Old Stage Rd CP	855-7514
4	Boyer Richard	2184 Old Stage Rd CP	855-9066
5	L. D.	PO BOX 207 Galt Hill OR	855-1662
6	Bob Dofson	25 Hodson Rd G.H.	855-187
7	Dean Tucker	9300 Carolina Dr Central Point	855-9329
8	Jinda Budge	4732 Old Stage Rd	664-2871
9		#8 Old Stage Rd	
10	Emmie Hammar	8401 Old Stage Rd. Central Pt	855-9605
11	Betsy Bailey	9606 Old Stage Rd. C.P.	855-7070
12	Sara Matthews	9566 Old Stage Rd #5-	855-785
13	Brian Ditt	5499 Kane Blvd C.P.	855-1085
14	Mark Mitty	10815 Old Stage Rd G.H.	855 7200
15	Lorne Sturm	10462 Williams Hwy	862 2871
16	LARRY MARSHALL	6350 CASTLE TERRACE CENTRAL POINT	855-9364
17	Kathy Copeland	6770 Cyprus Dr. C.P.	855-7856
18	M. Cheng		
19	Zolot Avram	1800 Crater Lake Ave #29 Med.	734-5446
20	Ronald R. Harringe	8641 OLD STAGE RD CP	855-1875
21	Taya Hudson	1500 Sardinia Ch. Rd. G.H.	855-9336
22	Cynthia Cox	9625 Old Stage Rd. C.P.	855 1570
23	Jinda Budge	324 GARDEN ROW GH	855 6973
24	Bre S. Harris	2017 WEST 9TH ST THE DALLES	296-3137
25	Jinda Cox	2768 RR G.H. Oregon	855-9100
26	Patricia Griff	1458 Galls Ch Rd G.H. OR	855-7697
27	Al Stenberg	850 N. River Rd G.H. B.	855-1144
28	Al Stenberg	7238 Delta Waters Med	7728452
29	Jonny R. Bailey	9006 Old Stage Rd CP,	855-707
30	Greg Engen	2098 Galls Creek Road	855-9274
31	Robert Bertlett	6100 Cattle Terrace	855-7644
32	Alan Tupper	396 Hodson Rd. G. Hill	855-7836

	name	Address	Phone
33	Cindy R. Povich	9566 Old Stage Rd #33	855-1228
34	Cindy R. Povich	9566 Old Stage Rd #33	855-1228
35	Jim Bailey	9600 Old Stage Rd	888-7070
36	Jerry Davis	1719 Lampman rd	855-1620
37	Brenda Fair	6011 Ventura Lane C.P.	855-1620
38	Steve Caywood	8221 Colonial Way C.P.	855-9633
39	Elvis Jones	4618 Kamea Crk C.P.	855-1384
40	Ronald A. Inoué	404 2nd Ave Gold Hill	855-7709
41	Ken Motes	11401 Old Stage Rd #4	855-1559
42	Shauna Bourne	2018 Lampman Rd. #8 Gold Hill	855-9065
43	Judith Buech	8101 Old Stage Rd #29 Central Point	855-7876
44	Helen Mearns	1195 Galls Crk Rd Gold Hill	855-1675
45	John Schum	6749 Cypress Dr.	855-7011
46	Jeff Chis	6671 Cypress Dr C.P.	855-9835
47	Khoyd DINGWALL	4895 GLEN Echo way C.P.	664-2003
48	John B. Rals	Rt 12028 Rosa Rd. Bandon	None
49	William O. Lane	Box 98 Haledale, Ore.	855-1257
50	Patty Clement	1378 Galls Crk Rd	855-1365
51	Mahreen Sown	662 Galls Crk Rd.	855-7401
52	Matthew P. Hobst	12070 Old Stage Rd	855-9390
53	Mark Abola	1703 Galls Crk Rd	855-1306
54	Pat Wetmore	821 E. Jackson Medford	776-5178
55	Jimmy Bailey	9606 Old Stage Rd.	855-7070
56	Jan Jensen	1585 Frank Medford 97501	772-5573
57	Steve Perrett	3695 Galls Crk	855-7879
58	Dave Smith	12297 A Blackwell	855-9056
59			
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63			
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Hi D&Q,

Attached is letter I sent
to our Commissioner. Please
keep an eye on this area and
help us clean up the air.

Thank you?

ABaynes

September 23, 1992

Chairman, County Commissioners
403 Pine Street, Suite 300
Klamath Falls, OR 97601

Dear Mr. Chairman,

As I look around our neighborhood I see several burn barrels loaded, ready to burn the minute the "okay to burn" signal is given. This antiquated means of disposal of trash is ridiculous and should be stopped immediately. There is absolutely no reason why these neighbors cannot take their trash to the county disposal as any concerned citizen would do.

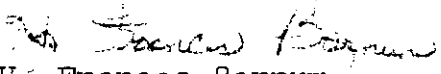
For years our health has suffered due to smoke from wood stoves and burn barrels and we feel certain there are many others in this area who have similarly been affected. Isn't it time to really be serious about cleaning up the air we breathe?

The "powers that be" want this community to be like a big metropolis, with humongous buses running around empty most of the time, and yet burn barrels are permitted just as if we were back in the 1800's.

Wood stoves and outside burning are the main contributors to our polluted air, not the automobile as some would have you believe. For more than ten years we lived in a residence above the city and throughout each winter we could observe the smoke drifting around the basin, almost entirely from individual homes. Smoke from communities such as Keno and Chiloquin also contributed to this problem.

Also, the use of oxygenated gasoline should be reconsidered for use in automobiles due to the possibility of engine damage. Please consider this and the implementation of more stringent woodburning controls. Thank you very much.

Sincerely,


H. Frances Barnum
2179 Ogden Street
Klamath Falls, OR 97603

cc: Department of Environmental Quality
1301 S.E. Morrison
Portland, OR 97214

**CITY OF MEDFORD**411 WEST 8TH STREET
MEDFORD, OREGON 97501OFFICE OF THE MAYOR
TELEPHONE (503) 770-4432MEDFORD'S SISTER CITY:
ALBA, ITALY

September 25, 1992

**Department of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204**

Reference: Written Comments Concerning the Winter Time Oxygenated Gasoline Program

The Mayor and City Council of Medford have serious concerns about the effectiveness and cost of the proposed program. While we agree that something needs to be done to reduce carbon monoxide pollution, we are not altogether sure that a winter time oxygenated gasoline program is the most reasonable means to reduce carbon monoxide. It is our feeling that the cost of the program could be better spent on developing longer term answers to the traffic increase.

During the last winter time period, the city of Medford experienced three days in which we were in violation of carbon monoxide limits and during the previous year, 1990, there were none. We feel that the proposed program invests too many resources for too little return and these resources could be better used.

In addition to the estimated annual costs of \$220,000 for the program's operation, substantial amounts of gasoline taxes, both state and federal, will be lost due to tax exemptions for oxygenated gasoline. It is estimated that during this 4-month period, 25% of the state of Oregon will be using oxygenated gasoline. This represents a substantial loss in gasoline tax revenue, which Medford can ill afford to lose.

In the Medford area, one of the largest problems that contributes to carbon monoxide pollution is lack of adequate transportation infrastructure. This program will exacerbate this lack of infrastructure by reducing the amount of gasoline tax funds available to deal with it.

Another problem we've identified is that of supply. In the case of MTBE, supply must come from Chico, California. In the case of ethanol, supply must come from Eugene. I'm sure the logistical problems caused by these remoteness of sources have been carefully explained to you by gasoline distributors. Furthermore, even though the information distributed by DEQ indicates that there should be a lower price for ethanol-blended gasoline, and a slight

DEQ - Oxygenated Gasoline Proposal Comments
9/25/92 - page 2

increase for MTBE, our experience in the Rogue Valley is that gasoline will cost the consumers much more, partly because of these supply factors. This is further expense not accounted for in DEQ's cost estimate.

Another problem that concerns us is the use of ethanol and MTBE additives increases hydrocarbon pollution. In some areas of the county the EPA and environmental groups have joined forces to reduce the use of oxygenated gasoline because of the increased hydrocarbon emissions. Therefore, we are concerned that while this program may reduce carbon monoxide pollution, the gains from this reduction will be lost by increases in hydrocarbon pollution.

It is our considered opinion that the oxygenated gasoline proposal is a very short-term solution that will (1) be much more expensive than originally contemplated, and (2) exacerbates the real problem which is the lack of infrastructure. We feel that if funds are to be invested, they should be invested in transportation infrastructure, which has a real chance of reducing pollution.

We realize the infrastructure solution is much more expensive than this short-term, 4-month program. However, it is a long-term solution. We respectfully request that the Department of Environmental Quality look very carefully at the expense of the proposed program and consider our suggestion to invest in a real, long-term solution - transportation infrastructure construction.

In summary, we appreciate the opportunity to comment. In the past, we have worked very closely with DEQ officials to reduce particulate emission and are very much committed to pollution reduction in our area.

Thank you very much for your attention to our concerns.

Sincerely,


Jerry Lausmann
Mayor

Porter Public Relations

Al Elkins

6700 S.W. 105th - Suite 309

Beaverton, OR 97005

Telephone (503) 646-5360

Fax (503) 646-9536

September 28, 1992

Mr. Jerry Coffey
Vehicle Inspection Program
Department of Environmental Quality
1301 SE Morrison
Portland, Oregon 97214

Dear Mr. Coffey,

I am writing in response to the proposed rules on the wintertime oxygenated fuels program, the amendments to OAR 340, Division, 22. As you know, these rules will require oxygenated fuels in carbon monoxide nonattainment areas in some part of Oregon.

When these rules were first published, we sent to DEQ our comments in a July 7, 1992 letter that outlined our concerns about the section of the rules that dealt with Blender Fees. At that time the proposed rule stated that each CAR or blender CAR would be assessed a base fee of \$700 per year plus an annual incremental fee of \$220 for each service station supplied by the CAR blender.

We went on to state our position on this portion of the rule: simply put; the gasoline dealers of Oregon cannot afford to be assessed any more fees.

We also outlined in our July response to the rules the fact the gasoline dealers are currently paying these fees at their stations:

a \$25 registration fee on each tank;

a 1.1 cent per gallon assessment on gasoline for the underground storage tank program;

a pump license fee for each individual pump.

We also pointed out that in addition to the current level of fees already in existence, we have been approached by Department of Environmental Quality to increase the \$25 tank registration fee to somewhere in the range of \$35 to \$55 per tank.

We also explained that the pump license fee was recently increased by the Department of Agriculture, their Weights and Measures Division.

We were quick to point out as well that in addition to this outlandish fee structure we are now confronted with the extra costs of implementing the Stage II Vapor Recovery System in selected areas of this state. While start up costs are generally paid by the supplier of the gasoline dealer, additional costs are incurred

in increased rents to the dealer by the major supplier to make up for this additional expense, plus the cost to maintain the new vapor recovery equipment, which is running somewhere in the range of \$500 to \$1,000 per nozzle per year.

We know that Stage 11 is only implemented in the tri - county area of Portland, however, this is one site where the oxygenated fuels program will also be implemented. This is then, a double hit to those dealers who happen to be in that control area. An additional fee for them will in most cases cause extreme hardship.

After we sent this letter to DEQ outlining our concerns about additional fees, we attended the August 17, 1992 meeting of the Oregon Oxygenated Gasoline Advisory Committee. At that meeting we listened to the presentation by Sarah Armitage, Of DEQ, who spoke at the beginning of the meeting.

Sarah spoke about program funding proposals. In her discussion to the board Sarah outlined in her presentation under DEQ's Obstacles and Concerns, what DEQ must avoid. She stated:

"The Department would like to avoid issuing permits to service stations because their numbers will increase the program's administrative costs. Also, the Department would rather not additionally burden these small businesses that are already struggling with multiple regulatory requirements."

We agree with the statement made by Sarah regarding the burden our businesses are already struggling with in relation to multiple regulatory requirements. Gasoline dealers of Oregon cannot afford to be burdened with one more fee.

At that meeting of the advisory committee of August 17, a proposal was made that an annual fee structure for funding the oxygenated fuel program be included:

Terminals	\$5,700 per terminal location
Distributors	\$500
Service Stations	\$100

At our August Board Meeting, the OGD Board of Directors voted to not approve the proposed fee structure.

The reasoning for this vote was that in addition to the another fee that the gasoline dealer would be burdened with, the dealer would in effect have to pay twice for this program.

The first would be from the "trickle down" effect. Since refiners and distributors will be paying this additional fee, it will in effect be passed on to the dealer by way of paying more for his or

APPENDICES

APPENDIX A	Section 507 of the 1990 Clean Air Act Amendments	37
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EXECUTIVE SUMMARY

The Oregon Department of Environmental Quality (DEQ) has completed a State Implementation Plan (SIP) revision for the development of a state "small business stationary source technical and environmental compliance assistance program," as required by Section 507 of the Clean Air Act Amendments of 1990 (CAA) and by ORS 468A.330. This plan is an addition to other SIP revisions which have been adopted by Oregon and approved by the U.S. Environmental Protection Agency (EPA). Once a SIP is adopted by the state and approved by EPA, all provisions of the document are legally enforceable.

Many Oregon small businesses will encounter air quality regulations for the first time as CAA regulations are implemented for hazardous air pollutants (HAPs, also known as "air toxics") by the year 2,000. The regulations are expected to have a far-reaching impact on small businesses such as auto-body shops, printers, wood finishers, dry cleaners, bakeries, wineries, medical clinics, pest control operators, photo equipment manufacturers, and many others. Many smaller enterprises may lack the technical and financial resources to respond effectively. The Oregon Small Business Assistance Program (SBAP) will provide timely information and useful technical assistance to help small businesses understand the regulatory process and encourage compliance. The ultimate goal is to reduce air emissions and meet ambient air quality standards.

The SBAP has two basic components:

- (1) an Information Component to advise small businesses about air quality regulations that may affect them, through communications outreach (e.g., workshops, newsletters, working with trade groups) and information resources with toll-free telephone access.
- (2) a Technical Assistance Component to help small businesses comply with regulatory requirements, through consultation and site visits. This may include general engineering assistance (e.g., use of alternative technology, process changes, emission reduction plans).

Program services will be available to all small business stationary sources, as defined in Section 507 of the CAA. The program may also serve small businesses which need help to comply with state air quality regulations other than federal CAA requirements. Priority, if necessary, will be given to sources affected by federal requirements. There are provisions,

including public comment opportunity, for including otherwise non-qualifying sources or for excluding sources that are determined to have sufficient financial and technical resources.

As required by state and federal law, the SBAP will provide the following kinds of assistance:

- (1) Information on air pollution laws, rules, compliance methods and technologies, including compliance options.
- (2) Information on air pollution prevention methods, and prevention and detection of accidental releases.
- (3) Help small businesses determine applicable regulatory requirements and obtain permits, if needed.
- (4) Timely notification to small businesses of their rights and obligations under the CAA, including provisions for obtaining voluntary compliance assessments.
- (5) Consider requests to modify work practices, compliance methods or compliance schedules.
- (6) Designate an ombudsman to represent small business interests in implementing air quality regulations.

As required by the CAA and ORS 468A.330, a Compliance Advisory Panel will be appointed to oversee the effectiveness of the SBAP and the Small Business Ombudsman.

The responsibilities of the Small Business Ombudsman are assigned to a new position within the Department, the Technical Assistance and Service Coordinator. This position will be located in the Regional Operations Division.

No direct funds will be available for small businesses through the SBAP, but the program may help sources locate financial resources to help meet regulatory requirements, such as U.S. Small Business Administration (SBA) loans and EPA small business assistance grants. The SBAP will also consider, on a case-by-case basis, financial hardship requests from small business stationary sources to reduce or waive operating permit fees required under the CAA.

Activities carried out by the SBAP will have no direct inspection or enforcement ramifications, except that, as specified by ORS 468A.330, the DEQ may initiate compliance and enforcement actions immediately if, during on-site visits, situations are encountered which present "a clear and immediate danger to the public health and safety or to the environment." On-site visits for the specific purpose of conducting voluntary compliance audits will be carried out by qualified experts from

outside DEQ, through the Compliance Assessment Program.

Coordination of the SBAP with related activities and programs is essential. This will include other governmental agencies, such as the Oregon Economic Development Department and the U.S. Small Business Administration; trade associations and industry groups; and DEQ technical assistance activities such as the Toxics Use/Hazardous Waste Reduction programs in the Hazardous and Solid Waste Division.

The SIP revision is basically a narrative description of how the Department plans to develop and implement the SBAP. Program Milestones are included to show significant developmental stages. The sections that outline proposed procedures, methods of communication and modes of providing technical assistance are intended to demonstrate how DEQ plans to approach these program elements. The Department may modify these procedures and methods as the SBAP evolves, based on experience, available resources, and a determination of what will work best in specific situations.

The goal of the program is to work with individual small business owners and organizations that represent small business interests to develop cost-effective solutions to improve air quality. This cooperative partnership will help provide a healthful environment for all Oregonians without causing unnecessary hardship for small business.

2.6 State Implementation Plan Revision to Establish a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program

2.6.1 Purpose of the SIP Revision

Under Section 507 of the federal Clean Air Act Amendments of 1990 (CAA)¹, the State of Oregon must develop a "small business stationary source technical and environmental compliance assistance program" and submit it to the Environmental Protection Agency (EPA) as a State Implementation Plan (SIP) revision by November 15, 1992. State programs are to be fully implemented no later than November 15, 1994. In accordance with Section 507, ORS 468A.330 authorizes the establishment of the state program.² The designated state agency for development of this program under ORS 468.035 is the Oregon Department of Environmental Quality (DEQ).

The SIP revision outlines Oregon's plan for establishing a Small Business Assistance Program (SBAP). The Oregon program is consistent with federal and state requirements. It demonstrates the state's commitment to a viable program of assistance for the many small businesses that will be affected by new air quality regulations. This is a commitment to address not only the distinctive needs of small business, but to further the air quality goals expressed in the CAA and state environmental laws.

Program Milestones are indicated to show significant stages in development of the SBAP. They are also shown collectively in Appendix C. Because the SBAP will be developed over a period of approximately two years, some of the program elements take the form of proposed activities and implementation dates.

2.6.2 Program Objectives

In implementing the CAA, the state is committed to providing a healthful environment for all Oregonians without causing unnecessary hardship for small business. The SBAP will be an important factor in achieving this balance. Many small businesses will need special help to offset their lack of technical and financial resources to comply with air quality regulations. The SBAP will provide timely regulatory information and useful technical assistance to help these small, but collectively significant, air pollution sources meet environmental goals for healthful air quality.

¹ Complete text of Section 507 is included as Appendix A.

² Complete text of ORS 468A.330 is included as Appendix B.

Program Milestone: Begin implementation of the SBAP by January 1993.

2.6.3 Oregon Small Business and Air Quality Regulations

Oregon is the number-one small business state in the nation, with more small businesses per capita than any other. Ninety-seven percent of all Oregon businesses have fewer than 100 employees--one of the CAA criteria for defining a small business stationary source. The actual percentage of businesses needing SBAP assistance will be considerably lower, but this statistic underscores the importance to Oregon of assisting the many small businesses that will be affected by new air quality regulations.

Existing Programs

In 1951, Oregon became the first state in the nation to establish a statewide permitting program to control industrial air pollution. The existing air contaminant discharge permit program includes many small business stationary sources of criteria pollutants regulated under the CAA. In addition, Oregon has adopted specific air pollution controls that focus on small business (e.g., Stage I and II vapor recovery systems in the Portland metropolitan area; recovery and recycling requirements for air-conditioning coolant at automotive service shops throughout the state). This experience with small business provides a constructive guide for the Oregon SBAP.

Impact of New CAA Regulations on Small Business

Impending emission standards for air toxics and Title V permit requirements for non-major ("area") sources of HAPs will have a greater impact on small business than the Department's existing programs. In addition, the costs of meeting the new requirements may be substantially higher for some source categories. The Independent Business Association (IBA), using projections based on its analysis of CAA regulations and the most recent state data available, estimates that about 17,000 existing Oregon small businesses are likely to be affected. This estimate may be high. During 1992 and 1993, the Department will conduct a thorough survey of sources subject to CAA regulations for air toxics, including small business stationary sources.

2.6.4 Program Development and Implementation

This section of the SIP revision, and the others that follow through Section 2.6.13, outline plans for developing the SBAP, based on available information regarding implementation of CAA regulations. Included, where applicable, are implementation milestones, identification of regulatory and procedural

authority, resource commitments and other specifics. In developing the SBAP, priority will be given to maximizing the existing resources of both public and private organizations.

Pilot Programs

To evaluate the best methods of organizing and providing information and technical assistance to small business, staff will focus its initial efforts on pilot programs that will test various methods, with emphasis on information materials and workshops. These programs which will begin early in 1993. They will be aimed at business categories that will be affected by proposed or soon-to-be proposed emission standards for HAPs. Dry cleaners, auto-body shops, chromium electroplaters and users of ethylene oxide sterilizers are likely candidates.

Program Milestone: Conduct pilot programs focused on small business target groups (January-July 1993).

Staff plans to focus on two small business groups for the pilot programs. If possible, one will be selected that is represented by a trade association and another that has no such affiliation. This will help staff learn the most effective ways to provide assistance to both kinds of businesses. The pilot programs will run through June 1993, and perhaps beyond that date. Their duration will depend on the specific needs of the target groups, as well as on requirements for providing assistance to other small businesses.

Further Program Development

Plans for further program development include these milestones:

Program Milestone: Implement Program Developmental Phase I, focused on development of Information Component (July-December 1993)

Program Milestone: Implement Program Developmental Phase II, focused on development of Technical Assistance Component (January 1994-October 1994).

2.6.5 Source Eligibility

Assistance through the SBAP will be available to all small business stationary sources, as defined in Section 507 of the Clean Air Act. (See Table I on page 12.) No source defined as eligible under the CAA will be excluded from the program without prior consultation with EPA. The CAA defines a small business stationary source as follows:

- (1) owned and operated by a person (or persons) employing 100 or fewer individuals³; and
- (2) a small business concern as defined in the Small Business Act (i.e., independently owned and operated and not dominant in its field); and
- (3) not a major stationary source as defined in Title I and Title III of the CAA⁴; and
- (4) emits less than 50 tons per year of any regulated pollutant⁵; and

³ Under Oregon law, a "small business" has 50 or fewer employees [ORS 183.310(9)]. For purposes of the Small Business Assistance Program, the "100 or fewer" criteria in Section 507(c) of the CAA will be used.

⁴ The major-source threshold for air toxics is the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs. (The threshold may be based on a lesser quantity of a given pollutant if so established under EPA regulations.) As applied to Oregon for permitting purposes, the major-source threshold for criteria pollutants (e.g., carbon monoxide, fine particulate) is 100 tons per year or more of a single pollutant. For purposes of determining SBAP source eligibility, see subparagraphs (4) and (5) on pages 11 and 12 for further restrictions relating to emissions levels.

⁵ The term "regulated air pollutant" encompasses the broad range of pollutants currently regulated under the CAA, as well as pollutants for which regulations will be promulgated under the CAA Amendments. This includes:

- (a) Nitrogen oxides or any volatile organic compound.
- (b) Any pollutant for which a NAAQS has been promulgated (e.g., carbon monoxide, fine particulate, sulfur dioxide).
- (c) Any pollutant subject to any standard promulgated under Section 111 of the CAA (standards of performance for new stationary source).
- (d) Any Class I or II substance listed pursuant to Section 602 of the Act (chlorofluorocarbons, hydrochlorofluorocarbons, halons and other substances associated with stratospheric ozone protection).
- (e) Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the CAA, including Section 112(r) [e.g., the 189 HAPs identified in Section 112(b)(1); the initial list

- (5) emits less than 75 tons per year of any combination of regulated pollutants.

The SBAP will also be available to small businesses which need help to comply with state air quality regulations other than federal CAA requirements. This will extend the ability of the program to provide assistance to small business, utilizing existing resources. If resource limitations dictate, priority will be given to sources affected by new federal requirements, since they are specifically targeted for assistance by the CAA and related Oregon legislation. Otherwise, program staff will respond to requests for assistance on a first-come, first-served basis; priority may be assigned to situations which involve proximity of compliance deadlines and/or hardship circumstances.

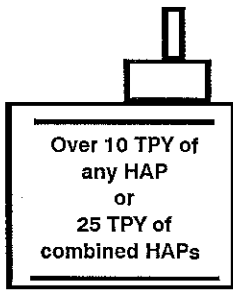
Including Other Sources

As allowed under Section 507(c)(2) of the CAA, the program may, under specific conditions, include as a small business stationary source for purposes of receiving assistance a source that does not meet the criteria of subparagraphs (3), (4), or (5) above. These conditions shall apply:

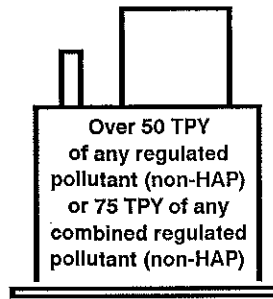
- (1) The source must submit a request in writing for assistance under the program; and
- (2) The source cannot emit more than 100 tons per year of any combination of regulated pollutants; and
- (3) As required by Section 507(2) of the CAA, there will be public notice and opportunity for public comment on the request. This will be accomplished through the Department's established public notice procedures.

-
- of 100 hazardous substances associated with accidental releases in Section 112(r).]
- (f) Any pollutant subject to requirements under Section 112(j) of the CAA (Equivalent Emission Limitation by Permit). If the EPA does not promulgate a standard by the date established pursuant to Section 112(e) of the CAA, such pollutant shall be considered to be regulated as of that date.
 - (g) Any pollutant for which the requirements of Section 112(g) of the CAA have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

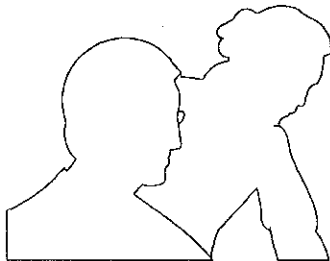
Table I
Source Eligibility for the Small Business Assistance Program (SBAP)



- OR -

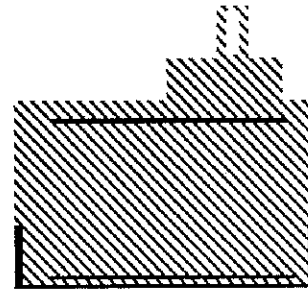


NOT ELIGIBLE FOR SBAP

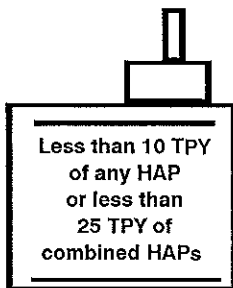


Employs more than 100 people.

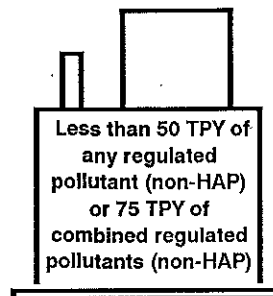
- OR -



Dominates its field or is not independently owned/operated.



- OR -



ELIGIBLE FOR SBAP



Employs 100 people or less.

- and -



Not dominant in its field and independently owned/operated.

Excluding Sources

As allowed under Section 507(c)(3)(B) of the CAA, the program may, under specific conditions, seek to exclude from assistance any category or subcategory of small business stationary sources which have been determined to have sufficient financial and technical resources to meet their regulatory obligations under the Act. These conditions shall apply:

- (1) The proposed exclusion must be reviewed and approved by the Department Director.
- (2) The proposed exclusion must be submitted in writing, with appropriate documentation, for review by representatives of the EPA Administrator and the U.S. Small Business Administration Administrator.
- (3) As required under Section 507(3)(B) of the CAA, there will be public notice and opportunity for public hearing on the proposed exclusion. This will be accomplished through the Department's established public notice procedures.

Determining Source Eligibility

The Department will develop procedures to help determine, if needed, whether sources are eligible to receive assistance under the program. Although it may not be necessary to make this determination for every source receiving SBAP services, the program will have the ability to do so if necessary. This will involve gathering information to verify that the source is a small business stationary source as defined under Section 507 of the CAA. In addition to obtaining such information directly from sources, relevant data may also be available from:

- (1) Permit Applications. Program staff will coordinate with the DEQ Air Quality Program Operations Section to ensure that information necessary to make a SBAP source eligibility determination is submitted with the permit application. This could include identity of the owner/operator, number of employees and estimated air pollutant emissions.
- (2) Compliance Registrations. For sources not subject to permitting requirements, some other method of registration may be required for compliance purposes. Steps will be taken to ensure that information necessary to determine SBAP source eligibility determination is submitted through any such process.

2.6.6 Designation of the Small Business Ombudsman

As required by Section 507(a)(3) of the Act, a state Small Business Ombudsman will be appointed to represent the interests of small business as they relate to implementation of the CAA. The ombudsman will serve as an advocate for small business stationary sources in investigating and resolving complaints and disputes involving air quality regulations. Other activities may include:

- o Reviewing SBAP services with trade associations and small business representatives, as well as conducting independent evaluations.
- o Helping disseminate information to small businesses.
- o Encouraging small businesses to participate in the development of regulations that affect them.
- o Participating in and sponsoring meetings with state and local regulatory officials, business and industry groups, and small business representatives.
- o Reviewing SBAP informational materials for clarity and effectiveness.
- o Providing free, confidential help to small businesses on individual problems and grievances relating to air quality regulations, via the Department's statewide toll-free telephone line.

The Small Business Ombudsman responsibilities will be assigned to a new technical assistance coordinator position located in the administration section of the Department's Regional Operations Division. This will be the Department's central position for organizing technical assistance. The ombudsman role should complement this broader responsibility, since much of DEQ's technical assistance focuses on small businesses. The ombudsman responsibilities will initially be allocated to 15% of the position.

The technical assistance coordinator, as a primary source of expertise about small business needs, will be an important decision-making resource for proposing administrative action and developing legislative proposals which affect small business. This person will have frequent contact with department heads and program managers in other state agencies, and with business leaders and industry group representatives. The position will also have ongoing contact with DEQ program managers, division administrators and the Department Director. This level of communication will provide a solid framework of knowledge and authority for the ombudsman activities.

The ombudsman will have a defined relationship with small business representatives in both the public and private sectors. The ombudsman will also be the key contact person for referrals of complaints and problems from the Governor's office.

The Department consulted the Economic Development Department (EDD) about locating the Small Business Ombudsman. Within Oregon government, EDD's Small Business Program is the principal advocate for small business. The EDD Small Business Program Manager recommended placing the ombudsman within DEQ in a staff position that would serve as a primary contact for referral of small business problems and have the access and authority to effect reasonable adjustments in the regulatory process.

The ombudsman activities are scheduled to begin in January 1993. Support services will be available through both the DEQ Regional Operations Division and the Air Quality Division.

Program Milestone: Designate a state Small Business Ombudsman for air quality as a key staff function for the Technical Assistance and Service Coordinator in the DEQ Regional Operations Division (January 1993).

2.6.7 Appointment of the Compliance Advisory Panel

A Compliance Advisory Panel will be established, as required by Section 507(e) of the CAA, to provide oversight for the SBAP and the Small Business Ombudsman. The panel is authorized to:

- (1) Evaluate the effectiveness of the SBAP and the Small Business Ombudsman, and issue advisory opinions to the Department and the EPA.
- (2) Prepare periodic reports as required to EPA regarding the SBAP's compliance with the Paperwork Reduction Act, the Regulatory Flexibility Act and the Equal Access to Justice Act.
- (3) Review program informational materials to ensure they are understandable to the layperson.

SBAP staff will serve as the administrative staff for the panel. Recommendations from the panel for significant changes to the SBAP shall be reviewed and approved by the DEQ Air Quality Division Administrator and, if needed, by EPA.

To maximize existing advisory resources in state government, the Department plans to create the panel as a sub-committee of

the existing Small Business Program Advisory Committee in the Economic Development Department. Appointments will be in accordance with the legislative provisions in Section 507(e) of the CAA and ORS 468A.330: (a) two members appointed by the Governor to represent the general public; (b) four members who are owners, or who represent owners of, small business stationary sources (one each appointed by the President of the State Senate, the Senate Minority Leader, the Speaker of the House, and the House Minority Leader); and one member to represent DEQ. In addition, the panel will include two members from the EDD Small Business Program Advisory Committee, for a total of nine members.

The Department is proposing that panel members be appointed for two years, with provisions for re-appointment for an additional two years. It is anticipated that the panel will meet quarterly, at least during the developmental phase of the SBAP. Appointments are scheduled to be completed by December 1992.

Program Milestone: Appoint a SBAP Compliance Advisory Panel (December 1992).

2.6.8 Small Business Assistance Program (SBAP)

This section outlines plans for establishing a state SBAP as required by Section 507(a) of the CAA and ORS 468A.030. The program will provide two basic services:

- (1) an Information Component of communications outreach and information resources to advise small business about air quality regulations that may affect them, and
- (2) a Technical Assistance Component to help small businesses comply with regulatory requirements, including permitting and reporting.

Information Component

Communications Outreach: The SBAP will coordinate with Air Quality Division permitting and compliance programs to prioritize development and dissemination of materials to small business stationary sources, trade associations and other interested parties. The communication techniques used will depend on specific needs and available resources. Here are examples of methods that may be employed:

- Produce and distribute fact sheets and information packets.
- Work directly with trade groups (e.g. Oregon Dry Cleaners Association) to disseminate information.
- Conduct seminars, workshops, conferences.
- Disseminate information materials through state and

local agencies that administer industry-specific licensing, registration or certification programs (e.g., Oregon Building Codes Agency).

- Develop newsletters or periodic bulletins for industry-specific mailing lists.
- Write and disseminate news media articles, including material for trade association publications.
- Develop videotapes to convey regulatory information.
- Develop broadcast media public service announcements.
- Work directly with suppliers of materials that create air toxic emissions (e.g., work with a major paint supplier to sponsor a workshop on regulations that affect painters, surface coaters, etc).
- Develop model facilities for demonstration purposes, typically in cooperation with trade groups.

Responsive Techniques: Since effective outreach should stimulate wider interest, the SBAP will develop resources to respond to questions from small businesses. The response methods used will depend on specific needs and available resources. Here are examples of methods that may be employed:

- Provide statewide toll-free telephone access to the SBAP.
- Develop information materials to respond to inquiries.
- Develop a library (including index system) of reference materials.
- Organize and publicize an information clearinghouse to refer questions to technical experts.
- Develop procedures to track the type and volume of inquiries, to identify problem areas which may need special attention.
- Utilize existing electronic bulletin board services to receive and communicate regulatory information (e.g., EPA, Oregon Small Business Development Center Network).
- Work with trade groups to provide outreach follow-up through newsletter articles, local meetings and visits to small businesses.
- Visit small businesses directly.

Developmental Phase I of the SBAP (July through December 1993), will focus on the Information Component. Experience gained through the pilot programs will help refine and strengthen the SBAP's information services as regulatory activity increases and the program expands to serve a broader range of businesses.

Technical Assistance Component

The Technical Assistance Component will provide advice and technical expertise directly to individual businesses. As part of this component, a Compliance Assessment Program will be established to provide voluntary compliance audits. Many of the

communication techniques described under "Information Component" may also be appropriate for providing technical assistance (e.g., site visits, model facilities, workshops). In general, the Technical Assistance Component will differ from the Information Component in that SBAP staff will spend more time working directly with individual sources. Many activities will involve on-site visits, but technical assistance may also be provided through telephone contacts and source visits to DEQ offices.

Coordination of this component with other DEQ technical assistance efforts will be essential, particularly with toxics use and hazardous waste reduction programs in the Hazardous and Solid Waste Division. The Department is laying the groundwork for an agency-wide technical assistance plan and coordination of pollution prevention programs. The SBAP will be closely involved in this effort.

The Technical Assistance Component will be developed to furnish the following services as needed:

- Provide regulatory guidance to small businesses, including permit assistance if needed and general engineering assistance on compliance options such as alternative technologies and material substitution.
- Notify sources of their obligations and rights under the CAA, including provisions for obtaining voluntary compliance assessments from outside the Department.
- Consider requests from sources to modify work practices, compliance methods or compliance schedules relating to implementation of air quality regulations.
- Provide sources with technical information and assistance on air pollution prevention, including general engineering assistance on process changes, methods of operation that help reduce air pollution, and emission reduction plans.
- Help sources develop plans for accidental release prevention and detection. This will be coordinated with the appropriate local, state and federal programs. Priority for providing assistance with such plans will be given to small business stationary sources required to develop accidental release prevention plans under Section 112(r) of the CAA.

Developmental Phase II of the program (January through October 1994) will focus on the Technical Assistance Component. The SBAP's approach to the above activities may be refined as the result of experience gained through the pilot programs and the developmental phase.

Potential Program Resources

A number of potential resources have been identified for the SBAP. The following list indicates resources with which initial contacts or working relationships have been established. The list is not inclusive, and does not represent commitments on the part of the resources listed.

- o The Small Business Program of the Oregon Economic Development Department (EDD) is an advocate for small business with state agencies and the Legislature, coordinates state-funded small business programs and serves as an information center with its Small Business Hotline. The program sponsors the Business Assistance Officers (BAO) group to encourage cooperation among state agencies whose activities affect small business. The BAO also includes small business representatives. Resource potential: Coordination with EDD will facilitate communication with small business. EDD can provide useful guidance for the SBAP, which will participate in the BAO group.
- o The Oregon Small Business Development Center Network provides assistance to small businesses throughout the state, through centers at all 16 Oregon community colleges and three state colleges. The network links resources of federal, state and local governments with the private sector, community colleges and other educational organizations. Resource potential: Centers could be used for small business seminars and workshops. The network could serve as an information resource, repository and referral agency. Resources include electronic bulletin boards.
- o Oregon ED-NET is a statewide telecommunications network that provides live, interactive communication services using satellite-delivered video, voice and data. It also provides two-way video, audio and data services and is developing a "dial-up" computer data network. Resource potential: Network could be used for statewide teleconferences and teleworkshops. ED-NET will soon have electronic bulletin board capabilities.
- o Many trade associations and industry groups serve specific business categories in Oregon. The Department has successfully worked with such groups in the past. Resource potential: Trade groups are an excellent resource for disseminating information. They could also facilitate SBAP technical assistance efforts, through their communications networks and working knowledge of specific industry needs.

- o National Federation of Independent Business/Oregon (NFIB) is the state's largest small-business advocacy organization, with a diverse membership of 15,000, a broad-based communications network and active lobbying efforts. Resource potential: Could be a constructive sounding board for SBAP activities and help disseminate information. Membership may be a resource for a "talent pool" of loaned business people willing to share their expertise.
- o The Association of Oregon Industries (AOI) represents a broad base of business and industrial interests, including many small businesses. Resource potential: AOI's in-depth understanding of business issues and relationship with the industrial community could provide useful guidance. AOI members may also be a resource for a "talent pool" of technical expertise.
- o Local Chambers of Commerce offer an effective way to reach small business. Resource potential: Chamber meetings could be utilized for presentations on the SBAP or regulations for specific industry groups.
- o The State Fire Marshal is the state clearinghouse for information on toxic chemicals filed by Oregon companies and other organizations under state and federal requirements of the Emergency Planning and Community Right-to-Know Act of 1986 or SARA Title III. Information is maintained on 28,000 Oregon companies which use hazardous chemicals that could generate toxic air emissions. Resource potential: Data could help the SBAP identify existing sources subject to air toxics regulations and provide information for development of accidental release detection and prevention/emission reduction plans.
- o CAER (Chemical Awareness and Emergency Response) groups are comprised primarily of representatives from companies, large and small, that have a common interest in sharing information about activities and regulatory developments relating to hazardous materials and hazard response. There are presently 17 CAER groups, covering most Oregon urban areas. Other Department programs participate in CAER group meetings, as do representatives from Oregon-OSHA, the State Fire Marshal, the Public Utility Commission and many local agencies. Resource potential: Participation in CAER groups could help communicate information about the SBAP and air quality regulations.
- o Toxics use/hazardous waste reduction programs already operating in the DEQ Hazardous and Solid Waste Division

(HSW) were developed as the result of Oregon's 1989 Toxics Use Reduction and Hazardous Waste Reduction Act. The programs were expanded in 1991 by legislative action that increased technical assistance to small businesses. Much of the technical assistance focuses on small businesses that generate hazardous waste or use hazardous chemicals, and includes pollution prevention, accidental release detection and prevention, process changes, materials substitution and toxics use reduction plans. Resource potential: These DEQ programs should be an ongoing resource for the SBAP, since there is a close relationship between the use of hazardous chemicals and emissions of air toxics. Activities should be closely coordinated, to prevent cross-media transfer of pollution problems, as well as to improve the delivery of services to the regulated community. This may include joint outreach efforts, including workshops and site visits. The SBAP will draw on HSW experience for program guidance and as an information resource. HSW also maintains a resource library of current information on industry-specific pollution prevention methods.

- o A DEQ pollution prevention and technical assistance plan and field manual will be developed during late 1992 and early 1993. The project is funded by the Department's Hazardous and Solid Waste Division. A contractor has been hired to work with DEQ staff in three major policy areas:
 - (a) Assess the current extent of pollution prevention activities being implemented at DEQ and determine the extent of cross-media overlap within DEQ.
 - (b) Develop an agency-wide technical assistance plan to improve coordination and delivery of technical assistance and other service efforts within all DEQ programs; and
 - (c) Prepare a field manual to develop policy and procedures for conducting multi-media pollution control activities, including hazardous waste inspections and site visits for the purpose of compliance assistance, technical assistance and toxics use reduction.

Resource potential: Results of the study, which will include the SBAP, should have positive cross-media impact that will facilitate coordination of the SBAP with other DEQ programs, particularly in the areas of technical assistance and pollution prevention.

- o The Program Operations Section of the DEQ Air Quality Division is responsible for the CAA Title V permitting program and development of air toxics rulemaking under Title III. Resource potential: The section's expertise can be utilized by the SBAP to set priorities for developing and disseminating information materials and for providing technical assistance. Coordination will be necessary to provide permit assistance for small business stationary sources, as well as to consider small-source requests for compliance modifications.

- o EPA Technical Support Services are being developed that will help provide a technical foundation for the SBAP. These technical support centers can provide the state programs with up-to-date information on new methods, control techniques and upcoming regulations. The services include:
 - The Control Technology Center (CTC) provides no-cost, technical assistance service for all state and local air pollution control agencies and EPA regional offices.

 - The Emissions Measurement Technical Information Center (EMTIC) is an information exchange network that promotes consistent, uniform application of stationary source emission test methods.

 - The Emergency Planning and Community Right-to-Know Hotline of the Chemical Emergency Response Preparedness and Prevention Office (CEPPO) is a resource for programs to prevent accidental releases of hazardous chemical substances.

 - The Pollution Prevention Information Clearinghouse (PPIC) provides information services on pollution prevention programs through a hard-copy reference library, an electronic database, a toll-free hotline, and other information outreach efforts.

 - The Small Business Ombudsman Hotline provides assistance on environmental issues directly to small businesses through EPA's Office of Small and Disadvantaged Business Utilization. Information is also available on small business pollution prevention grants.

Resource potential: These services could be an important resource for the information clearinghouse and direct technical assistance, and for developing industry-specific programs on compliance technology, pollution prevention, emission reduction plans, and

accidental release detection and prevention.

- o The U.S. Small Business Administration (SBA), operates a district office in Portland. Its activities include small business loans, including a small business pollution control financing guarantee program. Resource potential: The SBA will be the chief SBAP resource for information about financing opportunities for pollution control technology. Through the SBA, contacts may be arranged with SCORE (Service Corps of Retired Executives) and ACE (Active Corps of Executives). These contacts may be useful for providing externally based technical assistance.
- o Tax credit programs available through federal and state agencies may provide a mechanism for purchasers of approved pollution control and pollution prevention equipment to obtain tax credits. Resource potential: Could provide financial incentive for compliance and help offset the costs to small business of obtaining pollution control and prevention technology.
- o Liaison with similar programs in nearby states should be useful. Existing resources include the Pacific Northwest Pollution Prevention Roundtable sponsored by EPA Region 10, which covers Alaska, Idaho, Oregon, Washington and British Columbia. Another is the Pacific Northwest Pollution Prevention Research Center in Seattle, created by an advisory council representing regulatory agencies, industry and environmental groups. In addition, SBAP coordinators in Region 10 have expressed an interest in an annual one-day meeting to discuss topics of mutual interest. Oregon also plans to exchange information on an ongoing basis with SBAP staff in Region 10 and several other states. Resource potential: Ongoing communication with SBAPs and related activities in other states should promote effective program development and stimulate new ideas.

Program Elements

The Oregon SBAP will contain all of the program elements required by Section 507 of the CAA. These activities will draw from the communication and responsive techniques described under the "Information Component." Each required program element is listed below, with a summary of key factors, developmental plans and applicable policies and/or procedures.

- (1) Develop, collect and disseminate information on compliance methods and control technologies for small business stationary sources.

- SBAP information materials will be available on request. Potential resources include a technical library and an information clearinghouse to refer questions to technical experts.
 - Toll-free telephone access will be available statewide to SBAP information and services.
 - Program staff will make presentations to key target groups and conduct workshops for potentially affected small businesses.
 - Information outreach will be coordinated with the Economic Development Department Small Business Program and appropriate trade associations or industry groups. Resources of the Small Business Development Center Network may be utilized.
 - SBAP informational materials and dissemination procedures will be reviewed by the Small Business Ombudsman and the Compliance Advisory Panel.
- (2) Provide assistance to small businesses on methods of pollution prevention and accidental release prevention and detection, including information about alternative technologies, process changes, products and methods of operation that help reduce air pollution.
- SBAP will work with small businesses to provide general engineering assistance in a "problem-solving" vein. This may include recommendations regarding the use of alternative technologies, process changes, materials substitution, recycling programs, operating methods that reduce air pollution, and the development of emission reduction plans.
 - Pollution prevention efforts will be coordinated with DEQ toxics use and waste reduction programs. Procedures developed as a result of the DEQ pollution prevention and technical assistance study will be followed, to minimize potential for cross-media transfer of pollution.
 - Program staff may identify situations where pollution prevention could reduce source emissions below regulatory thresholds (e.g., annual use of less than 220/300 gallons of perchloroethylene under proposed EPA dry cleaner regulations). For such situations, staff may develop incentive-based pollution prevention/emission reduction plans that enable a source to become exempt from permitting or other regulatory requirements. This corresponds in concept

to the HSW Division Conditionally Exempt Generator Program.

- The EPA Pollution Prevention Information Clearinghouse will be utilized to obtain current information on pollution prevention technologies. The EPA Chemical Emergency Preparedness and Prevention Office (CEPPO) and its Emergency Planning and Community Right-to-Know Hotline will be a primary resource for information about detecting and preventing accidental releases.
 - The SBAP will coordinate accidental release prevention/detection efforts as appropriate with the State Fire Marshal, Oregon's lead agency for chemical process safety management; Oregon-OSHA, regarding related requirements for process safety standards in the workplace; local emergency response programs; and ongoing Chemical Awareness and Emergency Response (CAER) group activities.
 - The SBAP will work with trade associations and industry groups to promote awareness of pollution prevention techniques and related issues.
- (3) Assist small business stationary sources in determining the applicable requirements under the CAA and state air quality legislation, including receiving permits in a timely and efficient manner.
- Program staff must fully understand regulatory and permitting requirements, so that accurate and timely determinations of applicability can be made for individual small business stationary sources.
 - The SBAP will help develop easily understood information materials explaining regulatory and permit requirements for small business stationary sources. This will include: how to fill out permit forms; fees; when and where to apply; how long it takes to obtain a permit; the consequences of operating without a permit or in violation of permit conditions, including penalties; and how to appeal Department decisions.
 - The availability of compliance assistance through the SBAP should be effectively publicized, so that small business stationary sources know assistance is available, and are encouraged to seek it.
 - Program staff will identify alternative methods and technologies for compliance with specific regulations. These steps (which relate to Program Element #2 above) will involve coordination with other DEQ programs (to

draw on their experience and to assess the potential cross-media impact of compliance alternatives); other state and federal agencies; trade associations; and professional/ technical societies.

-- Program staff will make information available to sources about alternative compliance methods and technologies. Technical assistance may involve recommendations regarding compliance alternatives.

(4) Provide adequate mechanisms for notifying small business stationary sources of their rights under the CAA, ensuring reasonably adequate time for sources to evaluate compliance methods and options.

-- Program staff will ensure that small business rights under the CAA are included in information materials and in other communications activities such as trade association presentations and small business workshops. Staff will also ensure that sources are aware of those rights when individual technical assistance is provided. This covers such information as rights to receive sufficient time to comply with regulatory requirements; to request regulatory flexibility in the form of modifications to work practices or technological methods of compliance; and to seek legal recourse in the event of enforcement action.

-- Program staff will ensure that small business stationary sources receive sufficient advance notice of their rights (as well as their obligations, as discussed below), to review options open to them before the applicable regulations take effect. The SBAP will follow applicable Department rules. Program policy will be to provide as much notice as is reasonable and practicable, but never less than 30 calendar days.

(5) Provide adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring sources to qualified auditors to determine compliance with the CAA and related state requirements.

-- Program staff will ensure that small business stationary sources receive sufficient advance notice of their obligations (as well as their rights, as discussed above), to review options open to them before the applicable regulations take effect. Program policy will be to provide as much notice as possible, but never less than 30 calendar days.

-- Staff will develop a program for qualified outside

auditors to provide compliance assessments for small business stationary sources, upon request. The Compliance Assessment Program will provide a source with an on-site determination of whether its facility complies with the applicable air quality regulations. Groundwork for this program will be laid early in 1993, with additional refinements expected as the result of experience with the pilot programs and other developmental phases of the SBAP.

Program Milestone: A Compliance Assessment Program to be conducted by qualified outside auditors will be developed on a trial basis during the SBAP pilot programs in 1993, with further refinement of the program during the Developmental Phase II of the Technical Assistance Component in 1994 (April 1993-August 1994).

-- Significant considerations in development of the Compliance Assessment Program may include:

- o Developing procedures for providing sources with a list of qualified auditors from outside DEQ. This may include such resources as retired engineers, private consultants or the donated services of "loaned" technical staff from the private or public sectors.
- o Determining to what extent the SBAP can, or should, help fund compliance assessments.
- o Developing appropriate procedures to guide the compliance assessment process.
- o Developing appropriate policies to guide the Compliance Assessment Program. For example, opinions rendered by outside auditors should not be regarded by sources as a guarantee of compliance status, nor should they be binding on the Department. Another example: Compliance assessments should be arranged for and carried out between the source and the outside auditor. They have no DEQ inspection or enforcement implications, except as provided under ORS 468A.330(4)(a) for situations that present "a clear and immediate danger to the public health and safety or to the environment..."
- o Clarifying that on-site visits by SBAP staff or other DEQ staff representing the SBAP will may provide technical assistance relating to

compliance, but will not be conducted for purposes of determining compliance or initiating enforcement action.

- (6) Establish procedures, based on the technical and financial capabilities of the source, for considering requests from small business stationary sources for modifications of work practices, compliance methods or compliance schedules.

- The SBAP, in coordination with other Department staff, will develop standardized criteria and administrative procedures for considering such requests, including provisions to ensure that granting such requests will not affect the status of the federally approved SIP and is consistent with the applicable requirements of the CAA. These procedures will be developed and refined based on experience gained through the SBAP pilot programs and other early phases of the program.

Program Milestone: Administrative procedures and policies will be developed and refined during the pilot program phase of the SBAP to consider requests from small business stationary sources for modifications of compliance practices, methods and schedules (February-October 1993).

- Significant considerations in developing criteria and procedures for considering requests for modifications of procedures will include:
- o Determining what information is needed to consider such a request, including documentation of reasons for the request.
 - o Development of forms to process such requests. (A draft example of the kind of form envisioned is included as Appendix D.)
 - o Determining a reasonable time frame for considering and responding to such requests.
 - o Determining appeal procedures the source may pursue if a request is denied.
 - o Determining when such requests should be coordinated with EPA or go through a public participation process.

2.6.9 Requests for Fee Reductions or Waivers

Fee Reduction Authority. Operating permit fees or other fees required under the CAA may be reduced or waived to take into account the financial resources of small business stationary sources.⁶ This does not apply to any fees not specifically required under the CAA. Any fee reduction or waiver granted shall not detract from the implementation of applicable air quality laws.

Specific procedures will be developed for considering requests for fee reductions or waivers. Significant considerations will include:

- Determining what information is needed to consider such a request, i.e., that the fee in question places a burden on the applicant to the extent that the financial health of the business is in jeopardy.
- Determining a reasonable time frame for considering and responding to such requests.
- Determining appeal procedures the source may pursue if a request is denied.
- Determining the desirability of recommending a "payment plan" in lieu of reducing or waiving the fee.

Program Milestone: Procedures will be developed to consider requests from small business stationary sources to reduce or waive permit fees or other fees required under the Clean Air Act (January-October 1993).

2.6.10 Enforcement Authority

Generally, SBAP staff involved in providing technical assistance to small business stationary sources will have no enforcement authority (except as specified by ORS468A.330(4)(a), discussed below), nor will any persons from outside the Department who provide technical assistance through the SBAP.

⁶ Oregon may elect to defer Title V permitting requirements for non-major sources as outlined in the EPA Draft Final Preamble to a new Part 70 of Chapter I of Title 40 of the Code of Federal Regulations (CFR). The deferral would continue for such categories of non-major sources until EPA "has completed a rulemaking to consider whether a permanent exemption, continued deferral, or applicability of the permit program would be appropriate."

On-site consultation visits by program staff are not inspections or investigations. During the course of such visits, any SBAP staff member or representative who provides consultation to sources and who observes or becomes aware of any evidence of violations of Department rules shall immediately inform the owner or operator of the source verbally of such evidence of violations. The owner or operator shall also be informed of what would be considered a reasonable time to correct the problem, had the evidence of violations been discovered during an actual Department inspection.

Under ORS 468A.330(4)(a), the Department may initiate compliance and enforcement actions immediately if during on-site consultation visits, or as the result of such visits, "there is reasonable cause to believe a clear and immediate danger to the public health and safety or to the environment exists."

The purpose of the SBAP is to help small business stationary sources comply with the applicable state and federal air quality regulations. Since compliance is the ultimate objective, sources receiving technical assistance from the program are not granted permanent immunity from inspection or enforcement activity, even though on-site visits to provide technical assistance shall not result in such activity (except in the "clear and immediate danger" circumstances described above). On-site assistance from the SBAP will be provided independently of the Department's compliance assurance program. Sources that receive technical assistance through the SBAP may be subsequently inspected in the course of the Department's regular inspection schedule or follow-up on complaints; enforcement action may be initiated if evidence of violations is discovered during those inspections.

2.6.11 Program Coordination

A number of existing programs operated by other state, local and federal agencies offer assistance to small business. There are also various programs that enforce federal, state and local regulations. It makes good environmental and economic sense to coordinate these programs, to ensure that the needs of small business stationary sources, as well as compliance objectives, are fully addressed. The SBAP will also be coordinated with trade associations, industry groups, equipment suppliers and other groups and individuals that represent, or have frequent contact with, small businesses.

Before providing technical assistance to a source, SBAP staff will, to the extent practical, familiarize themselves with the specific facility. This may include contacting other governmental agencies about the business to determine areas of mutual interest or potential conflict. Such coordination may also be helpful in referring the business to the appropriate

resource for additional information.

LRAPA

The Lane Regional Air Pollution Authority (LRAPA) does not plan to implement a formal small business assistance program, but will continue its policy of working closely with all sources within its jurisdiction (Lane County). LRAPA, the only local air pollution authority in Oregon, plans to be cooperatively involved with any SBAP activities for small business stationary sources in Lane County. This is consistent with provisions of the CAA, which does not require local air pollution authorities to implement SBAPs, but encourages participation in state programs.

LRAPA does not plan to assist funding of the Oregon SBAP from its Title V permit revenues. SBAP services will be available to small business stationary sources within Lane County. The Department acknowledges that it will receive no Title V funding for providing SBAP services to LRAPA sources, but reserves the right to revisit this arrangement, should there be a significant demand for individual source assistance through the SBAP in the future. The Department anticipates that provisions may be made for LRAPA to share the costs of providing specific information outreach programs, such as workshops and seminars, for small business stationary sources in Lane County.

LRAPA responsibilities:

- Provide ongoing regulatory information and technical assistance to small business stationary sources within its jurisdiction.
- Coordinate efforts with DEQ to ensure that small business stationary sources receive timely and accurate regulatory information.
- Provide small business stationary sources with information, as required, about resources available to them through the Department's SBAP, including the availability of the Small Business Ombudsman for dispute resolution.
- Assess ongoing information needs of small business stationary sources within its jurisdiction, and, if appropriate, work with DEQ to develop outreach programs to meet those needs.

DEQ responsibilities:

- Ensure that LRAPA receives timely and accurate information about new regulatory requirements that

affect small business stationary sources.

- Ensure that LRAPA and small business stationary sources within its jurisdiction have access to services of the state SBAP, such as the information clearinghouse and the Small Business Ombudsman.
- Coordinate with LRAPA any information outreach programs directed primarily at small business stationary sources in Lane County.
- Develop a mechanism to track requests for assistance from small business stationary sources in Lane County, to provide information to LRAPA about requests received and assistance provided.

2.6.12 Program Evaluation

As required by the CAA, the SBAP will be formally reviewed by the Small Business Ombudsman, the Compliance Advisory Panel and EPA. This oversight will include periodic review reports, as required by EPA. The panel and EPA will also review the effectiveness of the ombudsman. Independent evaluations of the SBAP may occur at any time. The ombudsman will have regular contact with program staff and will inform them of programmatic issues as necessary. Review of the SBAP from the Compliance Advisory Panel and EPA is expected to occur less frequently.

In addition to those independent evaluations, the program will seek feedback from trade groups and business that receive SBAP services. Program effectiveness that can be measured will also be accounted for by SBAP staff. For example, it will be possible to count the number of businesses and trade groups served. It may also be possible to estimate the reductions in emissions that result from the program's activities. Those performance measures would serve as benchmarks to let staff and others know what kind of impact the SBAP is having.

A formal evaluation of the program will be conducted by SBAP staff at least once a year. The review may consider any input given to program staff from any interested individual, agency or organization. Staff shall consider the overall effectiveness and the need for development and improvement of program initiatives. The ultimate authority for alteration of the program shall rest with the Air Quality Division Administrator.

Formal evaluations and any subsequent plans for program developments and improvements shall be detailed in a report. This report shall be transmitted to individuals and organizations with an interest in the SBAP.

2.6.13 Program Budgeting and Staffing Resources

This section outlines projected staffing development and budgeting resources for the SBAP. The basic full-time staff will consist of a Small Business Compliance Specialist and the Small Business Assistance Coordinator. Although the compliance specialist will focus on the Technical Assistance Component and the coordinator on the Information Component, their activities will overlap. Other program staff will include the Small Business Ombudsman, at 15% FTE; management functions at 20% FTE; and clerical support at 15% FTE.

The table on the next page indicates the proposed budget for the 1993-95 biennium. The "services and supplies" portion of the budget includes developmental costs of the Information Clearinghouse; implementing information outreach and technical assistance programs; and expenses involved in providing outside technical assistance for the Compliance Assessment Program.

The SBAP will not operate in a vacuum. The organizational chart included as Appendix E shows the placement of the SBAP within the Air Quality Division and related internal resources. The SBAP will also benefit from, and draw on, the activities of DEQ staff in other programs, including the following:

- o Air Quality (AQ) Division Program Operations Section, which added three FTE during 1992 for regulatory work on air toxics. This will include identification of HAP sources, including non-major sources, and development of state regulations to implement emission standards for HAPs and permitting of HAP sources.
- o AQ Technical Services Section, whose activities include development of the Oregon emission inventory and information systems support for the AQ Division.
- o AQ Planning Section, which is involved in research projects which may relate to small-source regulation.
- o DEQ Public Affairs Section, which provides public information services to all air quality programs.
- o Hazardous and Solid Waste Division toxics use and hazardous waste reduction programs, which have existing programs to provide information and technical assistance to small business.
- o Technical Assistance Services Coordinator, who will oversee and coordinate DEQ technical assistance activities, in addition to serving as the Small Business Ombudsman.

Table II

Small Business Assistance Program Projected Program Costs for 1993-95 Biennium

PERSONAL SERVICES **\$ 249,937**

Costs based on basic SBAP staff including:

- Small Business Assistance Coordinator
(1 FTE Program Tech 2)
- Small Business Compliance Assistance Specialist
(1 FTE Env Spec 4)
- Small Business Ombudsman
(0.15 FTE Env Spec 4)
- Section Manager
(0.20 FTE Program Mgr E)
- Office Specialist
(0.15 FTE Office Spec 2)

SERVICES AND SUPPLIES **\$ 103,571**

Major items include costs of implementing outreach program and information clearinghouse, telecommunications, professional services/contracts, travel in-state.

INDIRECT COSTS **\$ 50,987**

CAPITAL OUTLAY **\$ 5,000**

TOTAL BIENNIUM COST ESTIMATE **\$ 409,495**

2.6.14 Program Review and Public Involvement

The CAA Amendments require the DEQ to submit plans for a small business assistance program to the EPA as a SIP revision by November 15, 1992. Prior to the submission, the proposed program went through a review process that included:

- (1) Department internal staff review (April through September 1992). This included coordinated review with an intra-agency work group in connection with a Department project to incorporate cross-media analysis into agency programs. The proposed SBAP served as a pilot program for the project, which is funded by an EPA grant. Internal review also included coordination with the DEQ Industrial Source Advisory Committee, a group representing business, industry and environmental interests that was formed for implementation of Title V of the CAA. Development of the SBAP was also coordinated with staff members in the Hazardous and Solid Waste Division toxics use/hazardous waste reduction programs who work with small business.
- (2) Coordinated reviews with other interested agencies and organizations (May through October 1992). Agencies involved included the Oregon Economic Development Department, the Lane Regional Air Pollution Authority and EPA Region 10. A presentation on the proposed SBAP was given in May as part of a Clean Air Act Seminar sponsored by the Continuing Legal Education Program of the Oregon Bar Association. Presentations were also given to the Oregon Dry Cleaners Association and the Korean Dry Cleaners Association of Oregon.
- (4) Public comment period (July 17 through August 31, 1992). This included distribution of a public notice and related materials to a mailing list of more than 400 interested persons. Copies of the complete proposed SIP revision were mailed to a list of 30 persons who expressed an interest in the SBAP. In addition, an additional 12 requests were received for copies of the draft SIP and other information about the program. The deadline for receiving written comments was extended from August 21 to August 31 to accommodate a requests for additional time.
- (5) Public hearings (August 1992). Public hearings were held in Bend on August 18, Medford on August 19 and Portland on August 20.
- (5) Consideration by the Environmental Quality Commission (October 1992). Approval of the SIP revision by the Commission was required prior to submission to EPA.

APPENDIX A

1990 CLEAN AIR ACT AMENDMENTS

SMALL BUSINESS STATIONARY SOURCE
TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM

Sec. 507.(a) Plan Revisions.--Consistent with sections 110 and 112, each state shall, after reasonable notice and public hearings, adopt and submit to the Administrator as part of the State implementation plan for such State or as a revision to such State implementation plan under section 110, plans for establishing a small business stationary source technical and environmental compliance assistance program. Such submission shall be made within 24 months after the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall approve such program if it includes each of the following:

(1) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this Act.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

(3) A designated State office within the relevant State agency to serve as ombudsman for small business stationary sources in connection with the implementation of this Act.

(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this Act in a timely and efficient manner.

(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this Act.

(6) Adequate mechanisms for informing small business stationary sources of their obligations under this Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with this Act.

(7) Procedures for consideration of requests from a small business stationary source for modification of--
(A) any work practice or technological method of compliance, or

(B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of this Act, including the requirements of the applicable implementation plan. Where such applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

(b) Program.--The Administrator shall establish within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990 a small business stationary source technical and environmental compliance assistance program. Such program shall--

(1) assist the States in the development of the program required under subsection (a) (relating to assistance for small business stationary sources);

(2) issue guidance for the use of the States in the implementation of these programs that includes alternative control technologies and pollution prevention methods applicable to small business stationary sources; and

(3) provide for implementation of the program provisions required under subsection (a)(4) in any State that falls to submit such a program under that subsection.

(c) Eligibility.--(1) Except as provided in paragraphs (2) and (3), for purposes of this section, the term "small business stationary source" means a stationary source that--

(A) is owned and operated by a person that employs 100 or fewer individuals;
(B) is a small business concern as defined in the Small Business Act;
(C) is not a major stationary source;
(D) does not emit 50 tons or more per year of any regulated pollutant; and
(E) emits less than 75 tons per year of all regulated pollutants.

(2) Upon petition by a source, the State may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subparagraphs (C), (D), or (E) of paragraph (1) but which does

not emit more than 100 tons per year of all regulated pollutants.

(3) (A) The Administrator, in consultation with the Administrator of the Small Business Administration and after providing notice and opportunity for public comment, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the Administrator determines to have sufficient technical and financial capabilities to meet the requirements of this Act without the application of this subsection.

(B) The State, in consultation with the Administrator and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of this Act without the application of this subsection.

(d) Monitoring.--The Administrator shall direct the Agency's Office of Small and Disadvantaged Business Utilization through the Small Business Ombudsman (hereinafter in this section referred to as the "Ombudsman") to monitor the small business stationary source technical and environmental compliance assistance program under this section. In carrying out such monitoring activities, the Ombudsman shall--

(1) render advisory opinions on the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

(2) make periodic reports to the Congress on the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act;

(3) review information to be issued by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program for small business stationary sources to ensure that the information is understandable by the layperson; and

(4) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(e) Compliance Advisory Panel.--(1) There shall be created a Compliance Advisory Panel (hereinafter referred to as the

"Panel") on the State level of not less than 7 individuals. This Panel shall--

(A) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement.

(B) make periodic reports to the Administrator concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act.

(C) review information for small business stationary sources to assure such information is understandable by the layperson; and

(D) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(2) The Panel shall consist of--

(A) 2 members, who are not owners, or representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

(B) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the lower house, or in the case of a unicameral State legislature, 2 members each shall be selected by the majority leadership and the minority leadership, respectively, of such legislature, and subparagraph (C) shall not apply);

(C) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the upper house, or the equivalent State entity); and

(D) 1 member selected by the head of the department or agency of the State responsible for air pollution permit programs to represent that agency.

(f) Fees.--The State (or the Administrator) may reduce any fee required under this Act to take into account the financial resources of small business stationary sources.

(g) Continuous Emission Monitors.--In developing regulations and CTGs under this Act that contain continuous emission monitoring requirements, the Administrator, consistent with the requirements of this Act, before applying such requirements to small business stationary sources, shall consider the necessity and appropriateness of such requirements for such sources. Nothing in this subsection shall affect the applicability of title IV provisions relating to continuous emissions monitoring.

(h) Control Technique Guidelines.--The Administrator shall consider, consistent with the requirements of this Act, the size, type, and technical capabilities of small business stationary sources (and sources which are eligible under subsection (c)(2) to be treated as small business stationary sources) in developing CTGs applicable to such sources under this Act.

APPENDIX B

OREGON REVISED STATUTES
CHAPTER 468A.330

SMALL BUSINESS STATIONARY SOURCE
TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM

468A.330 Small Business Stationary Source Technical and Environmental Compliance Assistance Program. (1) Because of the extraordinary effect that the federal operating permit program may have on small business, there is hereby established within the department a Small Business Stationary Source Technical and Environmental Compliance Assistance Program in accordance with section 507 of the Clean Air Act. This program shall include each element specified in section 507(a) of the Clean Air Act.

(2) A Compliance Advisory Panel is established to:

(a) Advise the department on the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program;

(b) Report to the administrator as required by federal law;

(c) Review the information to be issued by the program for small businesses to assure the information is understandable by a layperson; and

(d) Perform any other function required by the Clean Air Act.

(3) The Compliance Advisory Panel shall consist of not less than seven members:

(a) Two members appointed by the Governor, who are not owners, or representatives of owners, of small business stationary sources, to represent the general public;

(b) Four members who are owners, or who represent owners, of small business stationary sources as follows:

(A) One member appointed by the President of the Senate;

(B) One member appointed by the Speaker of the House;

(C) One member appointed by the Senate Minority Leader;

(D) One member appointed by the House Minority Leader; and

(c) One member appointed by the director of the department.

(4) (a) Onsite technical assistance for the development and implementation of the Small Business Stationary source Technical and Environmental Compliance Assistance Program shall not result in inspections or enforcement actions, except that the department may initiate compliance and enforcement actions immediately if, during onsite technical assistance, there is reasonable cause to believe a clear and immediate danger to the public health and safety or to the environment exists.

(b) As used in this subsection:

(A) "Clear" means plain, evident, free from doubt.

(B) "Immediate danger" means a situation in which there is substantial likelihood that serious harm may be experienced within the time frame necessary for the department to pursue an enforcement action.

APPENDIX C

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
SMALL BUSINESS ASSISTANCE PROGRAM

PROGRAM MILESTONES

<u>December 1992</u>	Appoint a Small Business Assistance Program Compliance Advisory Panel.
<u>January 1993</u>	Begin implementation of the Small Business Assistance Program.
<u>January 1993</u>	Designate a state Small Business Ombudsman for air quality as a key staff function for the Technical Assistance and Service Coordinator in the DEQ Regional Operations Division.
<u>January-July 1993</u>	Conduct pilot programs focused on target groups of small businesses.
<u>February-October 1993</u>	Develop procedures to consider requests from small business stationary sources for reductions or waivers of fees required under the Clean Air Act.
<u>February-October 1993</u>	Develop procedures to consider requests from small business stationary sources for modifications of compliance practices, methods and schedules.
<u>April 1993-August 1994</u>	Implement Compliance Assessment Program on a trial basis during the 1993 pilot programs, with further refinement during the developmental phase of the Technical Assistance Component in 1994.
<u>July-December 1993</u>	Implement Program Developmental Phase I, focused on development of Information Component.
<u>January-October 1994</u>	Implement Program Developmental Phase II, focused on development of Technical Assistance Component.



NOTICE OF REQUEST FOR MODIFICATION OF PROCEDURES

For DEQ use only	
Date received	_____
Request number	_____
Date action completed	_____
Request approved?	Yes <input type="checkbox"/> No <input type="checkbox"/>

- Small Business Stationary Sources should use this form to request that the Department of Environmental Quality (DEQ) consider modifications of compliance methods, compliance schedules, or work practices for meeting air quality regulations.
- Requests must be received by the DEQ Small Business Assistance Program (SBAP) **at least 90 calendar days before any related compliance deadline** that your business is required to meet. If you are not sure what those deadlines are, or if you have any other questions about submitting your request or filling out this form, please call the DEQ Small Business Assistance Program at 229-6828 in Portland or toll-free 1-800-452-4011 elsewhere in Oregon.
- Please complete all sections of this form that apply to your request. If you are submitting more than one request (if, for example, you are requesting both a modification in compliance methods and a modification of the compliance schedule), please use a **separate** form for each request.

Name of business: _____

Address: _____
Street City County ZIP

Number of employees your business employs: _____ Daytime phone: _____

Check type of modification requested: Compliance Method Compliance Schedule Work Practice

Describe the modification you are requesting: (Continue on another sheet of paper and attach to this form if you need more space.) _____

DRAFT

Explain why you are requesting this modification: (Attach any documentation that will help DEQ consider your request; for example, financial statements or records, letter from equipment supplier regarding delivery dates for pollution control equipment, etc.) _____

Name of owner/operator of business: _____

Address: _____
Street City ZIP

**Sign below and send this form to: Small Business Assistance Program,
 DEQ Air Quality Division, 811 SW Sixth Avenue, Portland, OR 97204**

Signature of owner/operator of business: _____ Date: _____

If the information received with this form is complete and sufficient to make a determination, DEQ will respond within 30 calendar days from the date your request is received. Should the decision be delayed by need for further consideration, or by state or federal requirements for public notice and/or public hearing, you will be notified of the reason for the delay within 30 calendar days from the date your request is received. Decisions made by the DEQ Air Quality Division Administrator regarding a Request for Modification of Procedures may be appealed to the Small Business Ombudsman.

BACK OF SAMPLE FORM

FOR DEQ USE ONLY

**Checklist/comments on
Request for Modification of Procedures
Request Number _____**

SBAP: Recommend ___ Approval ___ Disapproval By: _____

Comments: _____

PROG OPNS: Recommend ___ Approval ___ Disapproval By: _____

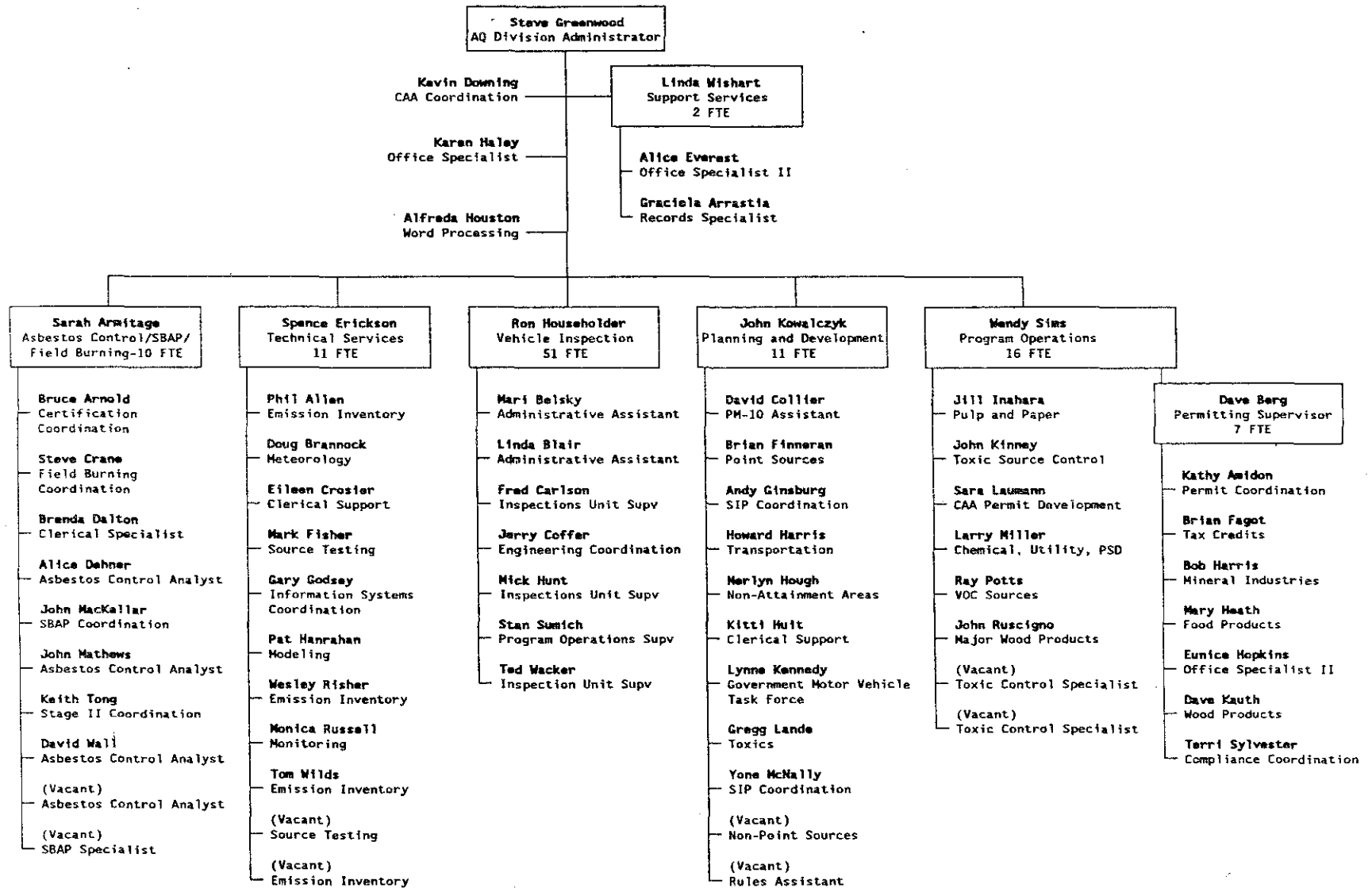
Comments: _____

AQ ADMIN: ___ Approved: ___ Disapproved: By: _____

Comments: _____

DRAFT

DEPARTMENT OF ENVIRONMENTAL QUALITY
 AIR QUALITY DIVISION
 JUNE 26, 1992



APPENDIX E: DEQ AIR QUALITY DIVISION ORGANIZATION CHART SHOWING
 RELATIONSHIP OF SBAP TO DIVISION INTERNAL RESOURCES

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

NOTICE OF PUBLIC HEARING

PROPOSAL TO ESTABLISH A SMALL BUSINESS ASSISTANCE PROGRAM FOR AIR QUALITY REGULATIONS

Hearing Dates: Bend, August 18, 1992
 Medford, August 19, 1992
 Portland, August 20, 1992

Comments Due: August 21, 1992

WHO IS AFFECTED?

Small business stationary sources of air pollution, especially small businesses that will be brought into a more formal environmental regulation process for the first time because of new Clean Air Act requirements.

WHAT IS PROPOSED?

The Department of Environmental Quality (DEQ) is proposing to amend OAR 340-20-047, the State of Oregon Clean Air Act Implementation Plan, to establish a program to help small business stationary sources comply with air quality regulations. The program is required under state law (ORS 468A.330) and under Section 507 of the Clean Air Act Amendments of 1990.

WHAT ARE THE HIGHLIGHTS?

The 1990 amendments to the federal Clean Air Act will have far-reaching impact on small businesses, primarily because of new regulations for hazardous air pollutant emissions ("air toxics") that will take effect during the 1990's. Many small businesses will be brought into the environmental regulatory process for the first time, and may lack the technical and financial resources to respond effectively. Because of concerns about the impact of the Clean Air Act on small business, Congress required each state to develop a "small business stationary source technical and environmental compliance assistance program." Similar concerns prompted Oregon to provide for small business assistance as part of the 1991 Oregon "Clean Air Bill."



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.

The proposed Oregon program outlines a variety of methods to provide small businesses with: (1) readily understandable information about federal and state air quality regulations, and (2) technical assistance to help them comply with the applicable requirements. The program would include:

- o Information on air pollution regulations and technical issues, including compliance options such as use of alternative technologies.
- o Information on air pollution prevention and accidental release prevention and detection.
- o Help for small businesses to determine what regulations apply to them and how to obtain any required permits.
- o Timely notification to small businesses of their rights and obligations under the Clean Air Act, including provisions for obtaining compliance assessments.
- o Procedures for considering requests for modifications of work practices, compliance methods or schedules of compliance.
- o Designation of an Ombudsman to represent small business interests in implementing air quality regulations.

Also included are provisions for the appointment of a Compliance Advisory Panel to oversee the effectiveness of the program and the Ombudsman; methods for determining source eligibility for program services; and procedures for requesting permit fee reductions or waivers for sources with financial hardships.

HOW TO COMMENT:

Copies of the complete proposed program as a revision to the State Implementation Plan may be obtained from the DEQ Air Quality Division, 811 S.W. Sixth Ave., Portland, OR 97204, or from any DEQ regional office. For further information, contact John MacKellar at (503) 229-6828, toll-free in Oregon 1-800-452-4011.

Public hearings will be held before a hearings officer on:

Tuesday, August 18, 1992
Bend, Oregon

7:00 p.m.
Room 155, Boyle Center
Central Oregon Community College
2600 N.W. College Way

Wednesday, August 19, 1992 7:00 p.m.,
Medford, Oregon Smullin Center Auditorium
Rogue Valley Medical Center
2825 Barnett Road

Thursday, August 20, 1992 3:30 p.m., Room 3-A
Portland, Oregon DEQ Headquarters Offices
811 S.W. Sixth Ave.

Note: The public hearings will be preceded at 6:00 p.m. in Bend and Medford and at 2:30 p.m. in Portland by a public information forum on Oregon's implementation of the federal Clean Air Act Amendments of 1990.

Oral and written comments will be accepted at the public hearings. Written comments may also be sent directly to the DEQ, but must be received by no later than 5 p.m. on August 21, 1992. Send comments to: John MacKellar, DEQ Air Quality Division, 811 S.W. Sixth Ave., Portland, OR 97204.

WHAT IS THE NEXT STEP?

After the public hearings, the Oregon Environmental Quality Commission may adopt the SIP revision containing the proposed program, adopt a modified revision with changes to the proposed program, or decline to act. If adopted, the program will be submitted to the U.S. Environmental Protection Agency as a revision to the State Clean Air Act Implementation Plan. The Commission's deliberation should come on October 16, 1992, as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need for Rulemaking, Fiscal and Economic Impact, and Land Use Consistency Statement are attached to this notice.

JM:MISCAH60115
7/17/92

RULEMAKING STATEMENTS FOR
PROPOSED AIR QUALITY SMALL BUSINESS ASSISTANCE PROGRAM
AS A REVISION TO THE OREGON STATE IMPLEMENTATION PLAN

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the intended action to amend a rule.

(1) Legal Authority

This proposal amends Oregon Administrative Rules (OAR) 340-20-047. It is proposed under authority of Oregon Revised Statutes (ORS) Chapter 468.

(2) Need for this Rulemaking

Section 507 of the federal Clean Air Act (CAA) and ORS 468.330 require implementation of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program as a revision to the State Clean Act Act Implementation Plan (SIP). Requirements for each state to develop such a program were based on the perceived need to help small business stationary sources understand and comply with new CAA requirements that affect them. Without such a program, many small businesses may not have the financial and technical resources to respond to regulatory requirements.

(3) Principal Documents Relied Upon

The Clean Air Act Amendments of 1990, Title V, Section 507. 42 U.S.C. 7401 et seq., as amended. November 15, 1990.

Oregon Revised Statutes 468A.330, Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

Guidelines for Implementation of Section 507 of the 1990 Clean Air Act Amendments, Final Guidelines, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C., January 1992.

SIP Revision Approval Checklist for Section 507 Small Business Assistance Program, U.S. Environmental Protection

Agency, Regional Operations Branch, Air Quality Management
Division, Research Triangle Park, N.C., May 19, 1992.

All documents referenced may be inspected at the Department of
Environmental Quality, Air Quality Division, 811 S.W. Sixth
Avenue., Portland, Oregon, during normal business hours.

JM:jm
7/7/92

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR PROPOSED AIR QUALITY SMALL BUSINESS ASSISTANCE PROGRAM

PROPOSAL SUMMARY

As required by the federal Clean Air Act Amendments of 1990 (CAA) and ORS 468A.330, the Department has proposed the development of a Small Business Assistance Program (SBAP) for implementation of air quality regulations. The program is designed to help small businesses that may lack the technical and financial resources to comply readily with new air quality regulations, particularly new CAA requirements for regulation of hazardous air pollutants that will be implemented during the present decade. The CAA requires that state SBAPs be funded solely through Title V emission-based permit fees. Annual budget for the proposed Oregon SBAP would be \$236,379.

The proposed SBAP will be submitted to the Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP). The proposed SIP revision will be considered by the Environmental Quality Commission at its October 16, 1992 meeting, prior to submission to the EPA by November 15, 1992.

COSTS TO SMALL BUSINESSES

Non-major sources subject to Title V permit requirements will help pay for the SBAP through their permit fees. Small businesses not subject to Title V are eligible to receive assistance from the program, but will not pay for the cost of its operation. The CAA requires Title V permitting for all non-major sources of hazardous air pollutants ("air toxics"). However, EPA has exercised its exemption authority granted under the CAA to allow any state to defer Title V permitting for non-major sources for up to five years from the time the state implements its Title V program. The Department plans to defer such permitting for the maximum period allowed. This means that any small business share of the SBAP costs will also be deferred for that period.

The SBAP is designed to have an overall positive economic impact on the regulated small business community. The program will give small businesses specific information about what they need to do to comply with air quality regulations and help them figure out cost-effective ways to achieve compliance, including the potential use of alternative compliance technologies and

pollution prevention plans. As required by the CAA, the program also includes provisions for regulatory flexibility, i.e., considering requests from small business stationary sources for modifications in technological methods of compliance, work practices and compliance schedules. In addition, procedures have been established to consider small business requests for Title V permit fee reductions or waivers, based on financial hardship.

COSTS TO MAJOR SOURCES

Because the CAA requires that the SBAP be funded through Title V permit fees and because most of the anticipated Title V permit revenue will come from major sources, the SBAP will be funded primarily from those sources. The small-source Title V deferral scenario outlined above means that the major Title V sources will bear all SBAP costs during the deferral period. Air Quality Division staff project that approximately 300 major sources will be subject to Title V requirements for emission-based permit fees. SBAP costs, at about \$236,000 annually, are expected to be a minor component of the per-ton emission fee.

COSTS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY

As required by the CAA and ORS468A.330, Department costs for the proposed SBAP will be covered by Title V permit fees.

The estimated required Department SBAP staffing effort for the proposed 93-95 biennium would be 3.0 FTE, including 0.50 FTE to provide two limited duration Technical Assistance Specialists.

Overall cost of the program is estimated at \$236,379 per year. Aside from personnel services, which account for 62% of the program costs, major expenses include conducting communications outreach, operating an information clearinghouse and providing technical assistance.

JM:jm
6/22/92

DEQ LAND USE EVALUATION STATEMENT FOR RULEMAKING
PROPOSED AIR QUALITY SMALL BUSINESS ASSISTANCE PROGRAM
AS A REVISION TO THE OREGON STATE IMPLEMENTATION PLAN

1. Explain the purpose of the proposed rules:

The proposed revision to the State Implementation Plan (SIP) implements a Small Business Stationary Source Technical and Environmental Compliance Assistance Program, as required by Section 507 of the Clean Air Act Amendments of 1990 and ORS 468A.330. The program will provide information and technical assistance to help small businesses understand and comply with applicable air quality regulations.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program? Yes___ No x

2a. If yes, identify existing program/rule/activity.
(Not applicable)

2b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules? Yes___ No___ (If no, explain.) (Not applicable).

2c. 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 rules. In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The Air Quality Small Business Assistance Program supports Statewide Land Use Planning Goal #6, (To maintain and improve the quality of the air, water and land resources of the state), in that an effective program will facilitate compliance with air quality regulations.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility. (Not applicable)

Division

Robert C. Jones
Intergovernmental Coord.

7-13-92
Date

JM:jm
(7/7/92)

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
EVALUATION STATEMENT FORM FOR
DETERMINATION OF RULES AFFECTING LAND USE

ORS 197.180 requires that state agencies maintain a program of coordination to assure agency actions that affect land use are in compliance with the statewide goals and compatible with city and county comprehensive plans. DEQ's State Agency Coordination Program(SAC) was approved by the EQC 8/10/90 and certified by the Land Conservation and Development Commission on 12/13/90.

A land use evaluation is required of all new/revised rules (except temporary rules). OAR 340 Division 18 and the SAC document contains the criteria for conducting a land use evaluation.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2. above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involves more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.


The evaluation form must be included in the notice to the Secretary of State's office, and mailed to the Special Asst. for Coordination at the Department of Land Conservation and Development within 45 days of final EQC action.

State of Oregon
Department of Environmental Quality

Attachment C

Memorandum

Date: September 28, 1992

To: Environmental Quality Commission
From: Kevin  Downing, Hearings Officer
Subject: Report on Public Hearings for SIP Revision to Establish
an Air Quality Small Business Assistance Program

Three public hearings to receive testimony on proposed amendments to the State Implementation Plan (SIP) to establish a small business stationary source technical and environmental compliance assistance program, as required by the federal Clean Air Act Amendments of 1990 and ORS 468A.330. The hearings were authorized by the Department Director on July 15, 1992.

For purposes of consistency and expediency, two of the three hearings (in Medford and Portland) were conducted concurrently with hearings on amendments to the Department's New Source Review regulations and the adoption of an emission statement regulation for ozone nonattainment areas. Those proposals are also required by the Clean Air Act and must meet the same EPA submission deadlines. All three hearings were preceded by a Department presentation on Oregon's implementation of the Clean Air Act.

On August 18, 1992, a public hearing on the proposed small business assistance program (SBAP) was held at 7:00 p.m. in Room 155 of the Boyle Center at Central Oregon Community College, Bend, Oregon. The hearing was attended by seven persons. No oral or written testimony was submitted.

On August 19, 1992, a public hearing on the proposed SBAP and the other proposals mentioned above was held at 7:00 p.m. in the Smullin Center Auditorium of the Rogue Valley Medical Center, Medford, Oregon. The hearings was attended by five persons. No oral or written testimony was submitted on the proposed SBAP.

On August 20, 1992, a public hearing on the proposed SBAP and the other proposals mentioned above was held at 3:30 p.m. in Room 3-A of DEQ Headquarters, Portland, Oregon. The hearing was attended by four persons. No oral or written testimony was received on the proposed SBAP.

The Department extended the deadline for receiving written testimony on the proposed SBAP from August 21, 1992, to August 31, 1992. Copies of written comments received are included as Attachment D. Attachment E provides the Department's evaluation of those comments.

**The Society of the
Plastics Industry, Inc.**



1275 K Street, N.W., Suite 400
Washington, D.C. 20005-4006
(202) 371-5200
FAX (202) 371-1022

RECEIVED
AUG 24 1992

August 18, 1992

AIR QUALITY DIVISION
Dept. Environmental Quality

Mr. John MacKellar
Small Business Assistance Coordinator
Air Quality Division
Oregon Department of Environmental
Quality
811 SW Sixth Avenue
Portland, OR 97204-1390

Dear Mr. MacKellar:

Please accept these comments on behalf of the Society of the Plastics Industry in response to your request for input regarding proposed rules for a Small Business Assistance Program as required by the Clean Air Act Amendments of 1990.

The Society of the Plastics Industry Inc. (SPI) is the major national trade association for the plastics industry, comprised of more than 2,000 members (some 20 in Oregon), representing approximately 75% of the dollar volume of the sales of plastics in the United States. SPI's operating units and committees include resin manufacturers, distributors, machinery manufacturers, plastics processors, moldmakers and other industry-related companies and individuals. Founded in 1937, SPI serves as the "voice" of the plastics industry.

A. Small Business Assistance Program/Confidentiality

Some sixty percent of SPI's processor members employ less than 100 people and many of these employ less than fifty. Provisions to set up a small business compliance assistance program, as well as a pledge of confidentiality, are appreciated by SPI members. State small business programs can benefit, however, from input from panels of representatives that include industry. Advance input from panels such as Oregon's Compliance Advisory Panel would help guide the establishment of the programs and exercise oversight functions.

A pledge of confidentiality to potential participants in this program will help its success. We would suggest the following language, which is under consideration in Ohio:

"No knowledge, information, data, documentation or other matter obtained directly or indirectly by the director in carrying out the small business stationary source technical and environmental compliance assistance program shall be used by the director or by the attorney general or by any other person in any administrative, civil or criminal enforcement action against any person."

B. Small Business Ombudsman

SPI supports the following description of the proper role of the Ombudsman as expressed by U.S. EPA in an April 6 review of a proposed program in Arkansas:

"The Small Business Ombudsman 'Office' should be located in the state's Attorney General's Office, as an 'independent office' under the Head of the Department of Pollution Control and Ecology, or in the Office of the Governor. The Office should be adequately funded and staffed to investigate complaints, provide advice and assistance, make reports to higher authority, disseminate information, conduct independent studies, and participate in and sponsor small business meetings and conferences."

This would seem to conflict with Oregon's proposal to house the Ombudsman within the Department of Environmental Quality. The description of the proposed role of the ombudsman, however, seems very consistent with EPA guidelines.

C. Permit Thresholds/ Minor Source Enforcement

In proposed rules in Virginia, the following increases in current levels of exemptions for operating permits are being offered and may be useful in Oregon if the thresholds do not compromise the clean air goals in its state implementation plan:

"1. From 350,000 to 1,000,000 Btu per hour for fuel burning equipment using solid fuel.

2. For new sources with uncontrolled emissions rates, from 10 to 40 tons per year for emissions of nitrogen dioxide and sulfur dioxide, from 1 to 15 tons per year for emissions of particulate matter, and from 7 to 25 tons per year for emissions of volatile organic compounds.

3. For modified sources with uncontrolled emission rates, from 1 to 10 tons per year from emissions of particulate matter, and from 7 to 10 tons per year for emissions of volatile organic compounds."

These changes are being offered for the dual purpose of lessening the impact of the new clean air permit program on small business and to maximize the use of state staff time.

The Texas Air Pollution Control Board will soon consider the attached amendment to its enforcement rules entitled "Agreed Board Orders Without Penalty." The U.S. EPA's guidelines to the states on establishing small business technical advisory programs indicate that it will not approve a program that grants across-the-board amnesty to sources. This, however, is only in the context of violations discovered by program staff during voluntary audits. Under the Texas Air Control Board's new program, the Board would grant limited enforcement forgiveness with no audits involved and apply only to past minor violations of state law, not the new federal permit requirements. It not only allows small business to approach the new permit program with a "clean slate" and more positive attitude, it also frees up the time of state enforcement personnel for truly grievous violations of state environmental law. Both of these proposals would serve to maximize the use of the small business proposal resources and promote the acceptability of the program within the small business community.

D. Permit Fees

SPI also would like to suggest an administrative appeal procedure for disputes about permit and emissions fees. Because the amount charged under the new Title V permit program will be higher than most other permit fees in Oregon, the number of disputes about the fees will increase. The disputes, therefore, should be made eligible for an administrative appeal under state rules.

SPI hopes that these comments will be of assistance to your Agency. Please do not hesitate to contact me at (202) 371-5306 to clarify any of SPI's comments or for additional information.

Sincerely,



Joseph M. Pattok
Director, State Government Affairs

Enclosure

cc: Scott Ashcom, Hughes & Associates

JP/mdj

Principles for State Implementation of the 1990 Federal Clean Air Act Amendments

SPI believes that states should act promptly to meet the Act's requirements and deadlines. States also should move expeditiously to obtain U.S. Environmental Protection Agency (EPA) approval of state CAA implementation plans to avoid federal sanctions and encourage swift industry compliance.

State clean air programs should contain all of the Act's provisions that assist compliance by industry. The state programs should not impose any additional burdens or requirements on industry unless there is a proven need for additional cost effective actions that provide public health and/or environmental benefits.

To insure that CAA compliance costs are as uniform as possible without regard to geographic location:

- * Permit fees and enforcement provisions of the state programs should not exceed CAA requirements, and fees should be limited to the cost of implementing the permit portion of the Act.
- * Fees should be based on uniformly calculated emissions, not potential or maximum emissions allowed under permits.
- * State definitions of key terms should be consistent with definitions in the Act.
- * The economic impact of various approaches to permitting and methods of controlling emissions should be considered and special attention should be given to economic impact on smaller businesses, especially when setting emission thresholds for regulations and determining methods of calculating emissions.

In general, states should adopt regulations based on principles that are consistent with the federal regulatory scheme. For example, some current state fence-line air quality restrictions on hazardous air pollutants are inconsistent with technology-based controls under the Act and should be avoided.

The use of lifetime exposures should not be combined with conservative chronic disease factors. This combination can result in exposure limits for some compounds that are even lower than levels found in nature. States should follow the U.S. EPA hierarchy of acceptable techniques for calculating volatile organic compounds and hazardous air pollutant emissions.

The permitting program must provide for operational flexibility and should facilitate efficient and timely permit processing and minimize duplicative requirements. Permits should be based only on regulations and guidelines that are legally promulgated and should not include requirements that interfere with a permittee's choice of raw materials and scheduling of batch processing.

State programs should allow excess emission reductions to be saved for future plant expansions or sold to other companies seeking to locate or expand in the state.

State Implementation Plans (SIPs) should include a quantitative inventory for all sources (e.g. mobile, stationary, etc.), to assure equitable regulation of all emission types.

States should encourage cooperation between regulators and industry in developing regulations for implementation of CAA requirements.

States should offer flexible permitting and licensing provisions for research and development operations-including pilot plants-to account for ever changing formulations and equipment. This also would help reduce various permitting and licensing preparation costs.

Classifications, lists, data bases, exposure limits and other published information not developed for the purpose of air quality assessment should not be used for that purpose. Examples of such lists and information are the monographs of the International Agency for Research on Cancer, EPA's Health Effects Assessment Summary Table, the Integrated Risk Information System listing and the emissions source estimates of the State and Territorial Air Pollution Program Administrators.

3/5/92

AGREED BOARD ORDERS WITHOUT PENALTY

If circumstances are such that a violation subject to formal action qualifies under the "Minor Source" policy described below, an Agreed Board Order may be recommended and entered that does not assess an administrative penalty (one-time only). If the situation does not meet the preliminary conditions for a "Minor Source" Order, recommendation for an Order with a penalty should be made. These preliminary conditions are:

- (a) The facility must have ¹⁰⁰~~50~~ or fewer employees in Texas;
- (b) The facility is not a "Major Source" as defined by the Federal Clean Air Act;
- (c) There are no concurrent nuisance violations resulting from operation of the unit in violation;
- (d) Interim controls are installed if there is a nuisance potential; and
- (e) The Small Business Assistance Program is contacted within 15 days of the Notice of Violation.

The following additional conditions must be met if the facility is in violation of Rule 116.1 violations:

- (a) Emissions from the facility are thought to be below levels that will require substantial additional controls; and
- (b) The facility does not process, handle, store, or emit any of the compounds listed in Appendix F, "Substances of Concern."

If each of the above conditions are met, the Regional Director shall complete an "Administrative Penalty Worksheet, Minor Source Violations" (Appendix F of the Guidelines on Compliance and Enforcement Matters) and forward it with appropriate documentation to the Compliance Division Director. At the same time, the case is forwarded to the Compliance Division and the Regional Director will advise the company by letter that this recommendation is being forwarded to the central office in Austin.

Tektronix

RECEIVED
SEP 02 1992

AIR QUALITY DIVISION
Dept. Environmental Quality

August 31, 1992

John MacKellar
Oregon Department of Environmental Quality
Air Quality Division
811 S.W. Sixth Ave.
Portland, OR 97204

Dear Mr. MacKellar:

Thank you for the opportunity to comment on the proposal to establish a Small Business Assistance Program for Air Quality Regulations.

1. Why is small business assistance fragmented on media specific grounds? "One stop shopping" is the most helpful approach for business. Administrative efficiencies can be realized.

My primary concern lies with the general policy of separating the small business technical assistance program within various media specific portions of the Department of Environmental Quality. While the Clean Air Act Amendments of 1990 require certain types of small business assistance be provided on air quality regulations, it is not clear why this cannot be provided under the existing multi-media technical assistance program created under the Oregon Toxic Use Reduction and Hazardous Waste Reduction Act.

Combining all small business technical assistance programs into one, provides a central point for the business community to contact and receive assistance from the Department. Many businesses are not aware of the organization structure within the Department and experience overwhelming difficulty in obtaining the right person to answer their question. As a guideline, no small business should have to talk to more than two people to get an complete answer to their question. Technical assistance personnel should act as "account managers" and not force the "client" to rummage around in the Department for a complete response.

Likewise, combining media to offer a single answer to a business question, will assist in ensuring that all the applicable regulations have been covered, the solution is workable, and the solution has considered the total environment. Cross media pollution can then be minimized. Any conflicting regulations

2 page
August 31, 1992

will come to the attention of the "account manager" and can be used to improve the regulations. This change in focus from "the regulation says" to a total solution to a business situation is a major change and one that separates assistance programs from regulatory programs. The Department would be most efficient in providing assistance from a single multi-media program.

2. Cost is an issue and must be minimized even though it will be paid by the Title V program.

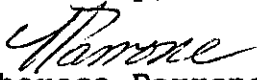
The program outlined pays little attention to the value received or the total cost of the program. The Title V program is only required to bear certain minimal costs specified in the Clean Air Act. Any additional or excessive expenses should be funded through an alternate means. Given the economic situation and the state funding situation, the program should weigh value for every activity proposed.

While many program aspects would be very nice to have, they should not be part of the basic program unless they are absolutely required by the Clean Air Act. HB 2175 clearly limits the authority of DEQ to impose programs that are larger than required by the Clean Air Act unless they are scientifically defensible. As proposed, this program could not pass that test.

3. Since it is next to impossible to alter a SIP in any timely fashion, the Department should allow itself sufficient latitude to alter the program in response to changing needs.

The program proposal is quite detailed and as written would leave the Department little latitude to adapt to changing market conditions without the prior approval of the Environmental Protection Agency. Since there is no motivation for the EPA to move quickly, they have historically taken years to approve SIP revisions. A successful assistance program must be continually evaluating its performance and when necessary changing to remain responsive to market conditions. We suggest that the Department make the SIP submittal more generic and reserve the right to modify aspects of the program to improve its usefulness.

Sincerely,


Theresa Parrone
Air & Water Quality Programs Manager

cc: file

TAP892\REGCOMSMBUSDEQ

State of Oregon
Department of Environmental Quality

Attachment E

Memorandum

Date: September 19, 1992

To: Environmental Quality Commission

From: John MacKellar, Small Business Assistance Program
Coordinator

Subject: Evaluation of comment received on proposed SIP revision to establish an Air Quality Small Business Assistance Program

The Department received no oral or written testimony at the three public hearings on the proposed Small Business Assistance Program (SBAP). The deadline for receiving written comment was extended from August 21, 1992, to August 31, 1992. Two letters were received presenting comments on the proposed SBAP:

1. Letter dated August 18, 1992, from Joseph M. Pattok, director, State Government Affairs, The Society of the Plastics Industry, Inc., Washington, D.C.
2. Letter dated August 31, 1992, from Theresa Parrone, Air & Water Quality Programs Manager, Tektronix, Inc., Beaverton, Oregon. (Ms. Parrone is a member of the Department's Title V Industrial Source Advisory Committee and the sub-committee appointed to consider appropriate development of the Title V emission fee.)

Copies of both letters are included as Attachment D. Following is the Department's evaluation of the comments received.

Issue #1: Location of the Small Business Ombudsman

Comment was received that the ombudsman should be located in a state agency outside of DEQ, and cites EPA comments that appear to conflict with the Department's "in-house" ombudsman.

Response: Draft guidance from EPA issued in August 1991 for development of the state SBAPs strongly encouraged locating the ombudsman outside the environmental regulatory agency, to ensure sufficient independence and authority to represent small business interests. Final EPA guidance issued in January 1992 modified this position. We were told by EPA that designating an "in-house" ombudsman was acceptable, as long as the activity is separate from the Air Quality Division.

Memo To: Environmental Quality Commission
September 19, 1992
Page 2

The Department consulted the Oregon Economic Development Department (EDD) about locating the ombudsman. The EDD Small Business Program is the principal advocate for small business interests in state government. The program manager recommended locating the ombudsman within DEQ. In his view, the "in-house" location has the advantage of offering the ombudsman the perspective, access and authority to bring about reasonable adjustments in the regulatory process.

Issue #2: Scope of the proposed SBAP

Comment was received that the proposed program exceeds the requirements of the Clean Air Act and the limits placed by ORS 468A.330 on DEQ's authority to impose programs that exceed the Act's requirements. As such, the proposed SBAP goes beyond the basic requirements for Title V program (emission fee) funding.

Response: The Department believes the limitations of ORS 468A.330 are intended to apply to regulatory requirements, not to a program such as the SBAP that offers regulatory guidance and technical assistance (hence the language that programs which go beyond federal requirements must be "scientifically defensible"). Section 502, Title V, of the Clean Air Act uses the language "sufficient to cover all reasonable (direct and indirect) costs" in referring to programs, including the SBAP, to be funded through the Title V emission fee. This implies something more than the contention that the Title V fee is only required to bear "certain minimal costs" specified in the Act.

The comments do not specify what elements of the proposed program exceed basic requirements. It may be that the comments are in reaction to the extensive lists of communication techniques and technical assistance methods that may be used by the SBAP. These are intended as demonstrative examples only, and do not commit the program to carrying out all of these activities. We have inserted language in the SIP revision to clarify this point.

In developing the proposed program, the Department was guided by the constraints of present state budget conditions and the SBAP elements required in the Clean Air Act and EPA's guidance to the states. We have proposed a cost-effective program that will serve small business needs and encourage compliance. Costs are important, as is value received; one of the anticipated benefits of the proposed SBAP is that small businesses should be able to comply with air quality regulations

more promptly, and at lower cost, than they would without the program. At 2.35 FTE, the proposed SBAP is very much a "basic program" that will rely on the availability of outside program resources beyond Title V fees to meet those requirements (such outside resources as activities directed at small business in the DEQ toxics use and hazardous waste reduction programs; "in-kind" services from the private sector; the possibility of technical assistance from retired engineers; EPA grant funding). For contrast, compare the proposed Oregon SBAP with Washington State's proposed Business Assistance Program, which envisions adding 18 FTE by 1998.

Issue #3: Flexibility of the proposed program

Comment was received that level of detail in the proposed SBAP may restrict the Department's flexibility to make necessary changes in the program without obtaining EPA approval of a SIP revision--typically an extended process.

Response: The Department appreciates this observation, which reflects similar comments received from internal review. We have made several changes to make the proposed SIP revision more generic and more conditional. These are discussed, along with other changes made in response to comments, in Attachment F.

We must note, however, that a certain level of detail is sought by EPA, whose SIP revision approval checklist asks such questions as "Are adequate mechanisms defined to...?" and "Have provisions been made to...?" and "Have procedures been established to...?" Where appropriate, we have included such particulars in conditional fashion that should not lock us into a SIP revision process should changes be necessary. The need for ongoing flexibility to make program changes is recognized in the basic structure of the SBAP, through such required feedback mechanisms as the Compliance Advisory Panel and the Ombudsman.

Issue #4: Media-specific focus of the proposed SBAP

Comment was received that the proposed SBAP, by being specifically tied to air quality regulations and the Air Quality Division, fails to respond to the need for multi-media technical assistance and cross-media perspective. Centralization of assistance activities would facilitate "one-stop shopping" for business. Why can't SBAP air quality assistance be provided under the existing multi-media technical assistance program under

the Toxics Use Reduction and Hazardous Waste Reduction Act?

Response: There are several related issues here. First, the Toxics Use/Hazardous Waste Reduction programs in the Hazardous and Solid Waste (HSW) Division are not "multi-media" programs as such, since they are based on hazardous waste regulations. Their activities have multi-media implications, which is why the proposed SBAP underscores the ongoing need for close coordination with these HSW programs, including, when appropriate, joint information and technical assistance efforts.

The Department is closely studying the important issue of technical assistance and the need for cross-media perspective. As noted in the SIP revision, a contractor has been hired by HSW to work with DEQ staff on major policy areas related to this issue. The project will assess current pollution prevention activities at DEQ and where these activities overlap; it will also result in the development of an agency-wide technical assistance plan to improve the coordination and delivery of technical assistance and other service efforts within all DEQ programs. The proposed SBAP will be included in this project.

Administratively, it would be possible to integrate the air quality SBAP directly into the existing HSW programs. (This does not mean, however, that SBAP activities could be assumed by existing HSW staff, which is already working at capacity with a backlog of technical assistance requests; staff and program resources would have to be added to carry out the air quality responsibilities.) The Department has explored the desirability of organizing a technical assistance work unit that would cut across traditional media-specific lines. The consensus so far is that technical assistance staff need to retain their ties to the technical programs, but that technical assistance activities should be actively coordinated. One result is the creation of the new Technical Assistance and Service Coordinator position in the Regional Operations Division. This person will also serve as the SBAP ombudsman.

"One-stop shopping" is a desirable, if somewhat elusive, objective--one that the proposed SBAP endorses in its emphasis on coordinating information with other programs and other agencies which deal with small businesses. The hitch is that, in many situations, it may not be technically possible to respond to all the environmental regulatory needs of a business through a single phone call, or even through a single point of contact. What the SBAP, and other assistance programs, can do is carry out the internal research necessary to make sure the "client" gets the

information they need, or gets in touch with someone who can help them. Positive coordination of the Department's technical assistance activities may head us in this direction more readily than combining all DEQ technical assistance activities into a single program.

Issue #5: Small Business Assistance Program/Confidentiality

Comment was received that the proposed SBAP should establish a "pledge of confidentiality" to ensure that no information gained by the Department through the program can be used in an enforcement action.

Response: The comment seems to be asking for two things-- one, assurance that participants in the program such as Compliance Advisory Panel members or industry representatives would take a "pledge of confidentiality" as a condition of their participation; two, more broadly, that no information gained through the program could be subsequently used for enforcement purposes. The confidentiality issue for program participants can be approached as needed, without being specifically addressed in the SIP in general terms that may not anticipate specific needs. The suggested language relating to enforcement would result in a very broad shield from enforcement action; based on EPA's comments on the more limited protection offered in ORS468A.330 for the Oregon SBAP (Issue #9, below), the suggested language would not be acceptable

Issue #6: Permit Thresholds

Comment was received that the proposed SBAP should consider increasing the level of small-source exemptions for operating permits, by increasing permit thresholds for certain types of sources and emissions.

Response: This is not an issue that can be addressed by the proposed SBAP. The comments have been forwarded to the Air Quality Program Operations Section, which is responsible for implementing Title V permit requirements.

Issue #7: Minor Source Enforcement

Comment was received that the proposed SBAP should consider an approach proposed in Texas which would essentially forgive

small business stationary sources for "minor violations of state law," allowing them to start the new Title V permit program with "a clean slate."

Response: The proposal appears to grant small sources an unwarranted degree of enforcement immunity, i.e., at least one free violation (and maybe more) of any state regulations other than new federal air quality laws. That reservations aside, this does not appear to be an issue that is appropriately addressed in the proposed SBAP.

Issue #8: Permit Fees

Comment was received that the proposed SBAP should consider an administrative appeal procedure for disputes about permit fees, since the new Title V fees will be higher and subject to more disagreements.

Response: This is also more a more appropriate issue for air quality permitting staff rather than for the development of the proposed SBAP. The Department has procedures through which permitted sources may contest the conditions of their permits, and they could apply as well to the fees involved. In Oregon, the permitting process itself is a negotiated process, based on DEQ analysis and information submitted by the source.

Issue #9: Enforcement Immunity

Comment was received from EPA Region 10 that ORS468A.330 implementing the proposed SBAP inappropriately guarantees broad immunity to small business stationary sources for violations discovered during on-site technical assistance visits and voluntary compliance audits.

Response: An Attorney General's opinion was requested on this issue. The opinion, included as Attachment H, supports our position that the statute does not grant "permanent protection" from inspections or enforcement activity.

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 19, 1992

To: Environmental Quality Commission

From: John MacKellar, Small Business Assistance Program
Coordinator

Subject: Changes made in response to comment on the original SIP revision to Establish an Air Quality Small Business Assistance Program

Extensive minor changes were made to the original SIP revision as the result of comment received during the public involvement phase. They also reflect comments received from within the Department during the same period.

The thrust of all of the changes was to simplify and clarify the document, which proposes the structure for establishing a Small Business Assistance Program (SBAP) as required by the Clean Air Act Amendments and related state law. The proposed program is submitted in the form of a SIP revision, but the nature of the program requires considerable flexibility to make changes as it goes through its developmental phases over the next two years. Because of this, we made several changes to the SIP revision which were designed to allow us this flexibility without the mechanism of a required SIP revision. For example, in the original SIP revision, procedures for requesting compliance modifications were presented in such a way that they could be considered rules adopted through the SIP. Now, they are presented as procedures we are proposing to develop during the program's implementation, along with a list significant issues involved which will need further experience with the program before they can be fully considered.

Other examples of changes include:

- Clarifying that services of the proposed SBAP will be available to all small businesses affected by air quality regulations. Priority will to those affected by new Clean Air Act requirements.
- Eliminating summaries of the applicable federal and state laws. (The complete laws are included as a SIP appendix.)
- Deleting unnecessary repetition of proposed SBAP elements.
- Clarifying that the lists of communication techniques and technical assistance methods are intended as examples of the

Memo To: Environmental Quality Commission
September 19, 1992
Page 2

kinds of things the program may do. The program may use other approaches, depending on specific needs and available resources.

- Allowing more time for development of some elements of the proposed SBAP, e.g., the Compliance Assessment Program to be conducted by qualified outside auditors.

ATTORNEY GENERAL'S OPINION
ON ENFORCEMENT AUTHORITY ISSUE
RELATING TO SMALL BUSINESS ASSISTANCE PROGRAM

An opinion was requested from the Attorney General's office to clarify the limitations placed on enforcement authority by ORS 468A.330(4)(a). This statute authorizes implementation of the small business assistance program required by Section 507 of the Clean Air Act Amendments of 1990.

This opinion was requested following receipt of a letter dated August 6, 1992, from Jim McCormick, Director, Air and Toxics Division, EPA Region 10, to Steve Greenwood, Administrator, DEQ Air Quality Division. The letter conveyed findings and observations resulting from an EPA Region 10 staff review of Oregon statutory authorities for implementation of Title V of the Clean Air Act.

The portion of Mr. McCormick's letter addressed in the following legal opinion is this:

"15. ORS 468A.330 Small Business Stationary Source Technical and Environmental Compliance Assistance Program. Subparagraph (4) is contrary to the enforcement requirements of (subsection) 113 of the federal Clean Air Act and 40CFR Part 70.11. This provision would grant permanent protection for any inspections or enforcement actions for any violations, including continuing violations, observed during or after onsite technical assistance. This section needs to be restructured so that it does not provide protection for violations which occurred before, or occur after, onsite technical assistance."

ORS 468A.330 is included as Appendix B to the proposed SIP revision establishing the small business assistance program (Attachment A). Subparagraph (4)(a) reads:

"Onsite technical assistance for the development and implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall not result in inspections or enforcement actions, except that the department may initiate compliance and enforcement actions immediately if, during onsite technical assistance, there is reasonable cause to believe a clear and immediate danger to the public health and safety or to the environment exists."



DEPARTMENT OF JUSTICE

PORTLAND OFFICE
1515 SW 5th Avenue
Suite 410
Portland, Oregon 97201
Telephone: (503) 229-5725
FAX: (503) 229-5120

September 17, 1992

RECEIVED
SEP 21 1992
AIR QUALITY DIVISION
Dept. Environmental Quality

John MacKellar
Air Quality Division
Department of Environmental Quality
811 SW Sixth Avenue
Portland OR 97204

Re: Small Business Assistance Program

Dear John:

This is in response to your request for an opinion regarding the scope of enforcement authority under the small business assistance program in light of the limiting language contained in ORS 468A.330(4)(a). In short, I conclude that this language does not grant permanent immunity to sources if a violation is discovered during the course of activities related to onsite technical assistance.

BACKGROUND

Section 507 of the Clean Air Act Amendments of 1990 require states to adopt and submit to EPA SIP revisions containing plans for establishing a small business stationary source technical and environmental compliance assistance program (SBAP). Subsection 507(a) contains a number of specific program elements and also states that EPA "shall approve such program" if it includes the listed elements. Subsection 507(b) directs EPA to establish a SBAP program that will assist the states in developing their programs and issue guidance for the states to use in implementing the programs.

As a result of this federal requirement, the Oregon legislature enacted a SBAP during the 1991 session. ORS 468A.330 establishes a SBAP within DEQ and specifies that the program shall include each element of section 507(a) of the federal act. In addition, subsection (4)(a) reads as follows:

Onsite technical assistance for the development and implementation of the [SBAP] shall not

John MacKellar
September 17, 1992
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result in inspections or enforcement actions, except that the department may initiate enforcement actions immediately if, during onsite technical assistance, there is reasonable cause to believe a clear and immediate danger to the public health and safety or to the environment exists.

In an attachment to a letter from Jim McCormick, Air and Toxics Division, EPA Region 10, dated August 6, 1992, that agency has suggested that subsection (4) is contrary to the enforcement requirements of section 113 of the federal Clean Air Act and 40 CFR Part 70.11, the new regulations governing Title V of the federal act. EPA asserts that subsection (4)

would grant permanent protection for any inspections or enforcement actions for any violations, including continuing violations, observed during or after onsite technical assistance. This section needs to be restructured so that it does not provide protection for violations which occurred before, or occur after, onsite technical assistance.

This opinion apparently is based in part on the EPA guidance for the states. Section 3.2.5 states as follows:

The EPA recognizes that a voluntary audit may discover that a source is not in compliance with applicable State regulations. The EPA cannot approve an SBAP that grants immunity to sources for compliance problems discovered during such audits. The EPA recognizes the statutory intent, however, that voluntary audits be a major component of the SBAP. As such, the voluntary audits are designed to assist small businesses in complying with the applicable regulations. Should a compliance problem be uncovered during a voluntary audit, the State should determine appropriate action in the first instant. If EPA decides to take any action in response to such a compliance problem, the Agency will consider how the information was obtained in determining appropriate action.

DISCUSSION

First, I do not believe that ORS 468A.330(4) on its face grants permanent protection for violations or immunity to sources. Our law clerk, Roger Wynne, discussed EPA's concerns with David Bray in Region 10 and conveyed to me that EPA fears that subsection (4) could enable a source to raise an "audit-as-a-shield" defense against any enforcement action initiated after the source goes through a voluntary SBAP audit.

For example, Bray said to imagine a source that requests such an audit. Upon conducting the audit, auditors determine that the source is actually a major source and is therefore not entitled to treatment as a small business. Yet because of ORS 468A.330(4)(a), the auditors do not initiate enforcement actions against the source. A year later, other staff within DEQ discover the discrepancy and bring an enforcement action against the newly-deemed major source. Bray is worried that ORS 468A.330(4)(a) will enable the source to claim that DEQ, because of the previous audit, is bound to treat it as a small source.

This concern seems unwarranted. It is difficult to read the plain language of ORS 468A.330(4)(a) as granting any sort of "immunity" from enforcement for any violation. It maintains simply that the voluntary audit will not result in inspections or enforcement actions. It neither states nor implies that other DEQ activities will not result in inspections or enforcement actions. See ORS 468.090-468.150 (DEQ's enforcement authority).

DEQ's interpretation of subsection (4) in its proposed SIP revision echoes this plain language. DEQ proposes to implement a compliance assessment program through which qualified, non-DEQ auditors can provide sources with on-site determinations of compliance with air quality regulations, and DEQ staff may come on site to offer technical assistance "relating to" compliance. As outlined by DEQ, some of the key elements of this program are:

- ° Opinions rendered by the [non-DEQ] auditors shall not be regarded by sources as a guarantee of compliance, nor are they binding on the Department . . .

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- ° Compliance assessments [conducted by non-DEQ auditors] will be conducted in confidence and without DEQ inspection or enforcement implications, except [for situations which present a clear and immediate danger].
- ° On-site visits by SBAP or other DEQ program staff will be for the purpose of providing technical assistance relating to compliance, but will not be conducted for purposes of determining compliance or initiating enforcement action.

Proposed SIP Revision at A-36. DEQ leaves no doubt that its own staff will not be determining compliance through SBAP onsite visits, and that it will not be bound by any opinion of compliance issued by non-DEQ auditors. Just like the source is in no danger of exposing itself to enforcement actions by requesting a voluntary audit (assuming that it is not posing a clear and immediate danger), DEQ is in no danger of foregoing enforcement activities unconnected with the audit.

Furthermore, the proposed SIP revision clearly states at page A-41 that "sources receiving technical assistance from the program are not granted permanent immunity from inspection or enforcement activity even though on-site visits for the purposes of providing technical assistance will not result in such activity." It also states that "[s]ources that receive technical assistance through the SBAP may be subsequently inspected in the course of the Department's regular inspection schedule or follow-up on complaints; enforcement action may be initiated if evidence of violations is discovered during those inspections."

If a source wanted to raise an audit-as-shield defense to an enforcement proceeding, under the Oregon Administrative Procedures Act the source would have the burden of showing that the on-site technical assistance "resulted in" the inspections or enforcement actions. ORS 183.450(2). (The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.) Thus, a source cannot defeat an enforcement action merely by asserting that it resulted from a voluntary audit.

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I think DEQ could produce records (either a copy of the complaint, a schedule of staff's planned inspections or some other documents and oral testimony) that would defeat any such affirmative defense. Knowing now that this is a concern will help DEQ create and maintain the necessary supporting documents.

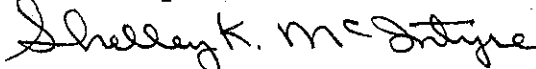
In addition to the above points, I would like to return to EPA's statement about subsection (4)'s inadequacy. EPA stated that subsection (4) is contrary to the enforcement requirements of section 113 of the federal act and 40 CFR § 70.11. I am puzzled by the reference to section 113 because that concerns federal enforcement procedures. It grants to EPA authority to take a number of enforcement actions against violators. Without further articulation by EPA, I do not understand what enforcement requirements are blocked by section (4).

As for the Title V operating permit rules, 40 CFR § 70.11 requires that all programs to be approved by EPA must have certain enforcement authority. Under a very narrow interpretation of this section, I can see a potential conflict because it requires permitting agencies to have authority to take enforcement actions against basically any violation. Thus, the rule does not permit categorical exemptions. However, DEQ can only take an enforcement action about a violation that either it has discovered or has been reported. There is no affirmative duty for individuals such as the non-DEQ technical assistance personnel to report noted violations.

CONCLUSION

While I understand that EPA will not permit a permanent grant of immunity to past, present and future violations, I do not think that is what ORS 468A.330(4) does. I think the proposed SIP clearly states how the statute will be implemented and that it is consistent with both the Clean Air Act and EPA's guidance.

Sincerely,



Shelley K. McIntyre
Assistant Attorney General

SKM:dld 1708N
cc: Sara Armitage, DEQ
Wendy Sims, DEQ
Jerry Lidz, DOJ
Michael Huston, DOJ

ITEM G WAS PULLED FROM THE AGENDA.

REQUEST FOR EQC ACTION

Meeting Date: October 16, 1992
Agenda Item: H
Division: Water Quality
Section: Municipal Wastewater

SUBJECT:

Request by Unified Sewerage Agency (USA) of Washington County for an exception to the receiving stream dilution requirement, for the Forest Grove and Hillsboro wastewater treatment facilities, as specified in the Willamette Basin Minimum Design Criteria for Treatment and Control of Wastes (OAR 340-41-455(1)(f)).

PURPOSE:

An exception to the dilution requirement would enable the Forest Grove and Hillsboro wastewater treatment facilities to continue to discharge treated municipal wastewater to the Tualatin River during the wet weather season, even on days when the dilution requirement would not be met. The Department has determined that water quality will not be adversely affected by an exception to the dilution requirement. Without the exception, USA may be required to provide non-discharge alternatives, at a substantial cost, when flows do not meet the dilution requirement. As the population increases in Washington County, violations of the dilution requirement may occur.

ACTION REQUESTED:

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



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Meeting Date: October 16, 1992
Agenda Item: H
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- Authorize Rulemaking Hearing
- Adopt Rules
 - Proposed Rules Attachment
 - Rulemaking Statements Attachment
 - Fiscal and Economic Impact Statement Attachment
 - Public Notice Attachment
- Issue a Contested Case Order
- Approve a Stipulated Order
- Enter an Order
 - Proposed Order Attachment
- Approve Department Recommendation
 - Variance Request Attachment
 - Exception to Rule Attachment
 - Informational Report Attachment
 - Other: (specify) Attachment

DESCRIPTION OF REQUESTED ACTION:

National Pollutant Discharge Elimination System (NPDES) permits were issued to USA on June 28, 1991, for the Forest Grove and the Hillsboro facilities. Both permits included the dilution ratio requirement as a waste discharge limitation parameter.

Each set of basin standards includes a section on minimum design criteria for domestic wastewater dischargers. Included is a requirement that a minimum amount of dilution be available in the receiving stream, based on the degree of treatment for the discharge. For example, if the effluent has a Biochemical Oxygen Demand (BOD) of 30 mg/l, then the flow in the receiving stream must be a least 30 times the effluent flow. If the effluent has a BOD of 10 mg/l, then the flow in the receiving stream must be at least 10 times the effluent flow.

The purpose of the dilution rule is to prevent violations of water quality instream standards due to lack of dilution or assimilative capacity. It is a rough tool which, nevertheless, has helped to prevent many streams from becoming polluted or water quality limited. The dilution rule pre-dated the detailed water quality analyses the Department now conducts.

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The Tualatin River has been designated as water quality limited. Total Maximum Daily Loads (TMDLs) for total phosphorus and ammonia-nitrogen have been established, and Waste Load Allocations (WLAs) have been determined for these parameters. The establishment of TMDLs in the Tualatin River provides an assessment of effluent limits needed to achieve limits at different stream flows. These standards were established by the Commission to limit pollutants that could potentially cause dissolved oxygen depletion in the Tualatin River and to limit excessive algal growth through nutrient control. The TMDLs only apply from May 1 to October 31; during the rest of the year, the temperatures are too cold and there is not enough sunlight to promote excessive algal growth.

USA has developed a wastewater reuse program for the Forest Grove and Hillsboro facilities, which allows for the diversion of reclaimed effluent to agricultural areas during the dry weather period (May 1 to October 31). However, during most of the wet weather period it is not possible to irrigate without causing runoff or potential groundwater contamination. The Department believes that the dilution rule can safely be waived for the wet weather season without jeopardizing water quality standards.

If USA were required to meet the dilution rule, they would have to construct additional storage basins. The Department believes that this additional expense is not warranted.

The Department is requesting the Commission grant an exception to the dilution ratio for the Forest Grove and Hillsboro facilities.

AUTHORITY/NEED FOR ACTION:

<input type="checkbox"/> Required by Statute: _____	Attachment _____
Enactment Date: _____	
<input type="checkbox"/> Statutory Authority: _____	Attachment _____
<input checked="" type="checkbox"/> Pursuant to Rule: <u>OAR 340-41-455(1)(f)</u>	Attachment <u>A</u>
<input type="checkbox"/> Pursuant to Federal Law/Rule: _____	Attachment _____
<input type="checkbox"/> Other: _____	Attachment _____
<input type="checkbox"/> Time Constraints: (explain)	

Meeting Date: October 16, 1992
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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:

Strict adherence to the dilution rule in this case is not required to assure that the receiving stream complies with water quality standards. During the dry weather season, wastewater is used for irrigation purposes and is not discharged to the Tualatin River. The additional expense of complying with the dilution rule, is not warranted based on the water quality impact.

PROGRAM CONSIDERATIONS:

The rationale behind the dilution requirement, is to assure that water quality standards are not violated. This concern is being addressed now through the TMDL process. In this circumstance, the dilution rule is not needed.

ALTERNATIVES CONSIDERED BY THE DEPARTMENT:

1. Approval of the exception to the dilution rule would enable the Forest Grove and Hillsboro facilities to discharge to the Tualatin River during the wet weather season when stream flows are low and the dilution requirement would not be met, and not incur additional costs.
2. Denial of the exception to the dilution rule would require that USA provide expanded non-discharge alternatives for the Forest Grove and Hillsboro facilities.

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DEPARTMENT RECOMMENDATION FOR ACTION, WITH RATIONALE:

The Department recommends that the Commission grant the exception to the dilution rule to USA for the Forest Grove and Hillsboro facilities. The Department will continue to issue water quality based permits for facilities that discharge to streams that have been designated as water quality limited.

CONSISTENCY WITH STRATEGIC PLAN, AGENCY POLICY, LEGISLATIVE POLICY:

This recommendation is consistent with agency policy which allows the Commission to grant an exception to the dilution requirement as specified in OAR 340-41-455(1)(f). The Department has determined the assimilative capacity of the Tualatin River, and the exception to the dilution rule would not violate the Waste Load Allocations. An exception to the dilution requirement would not exempt USA from meeting other waste discharge limitations specified in the Forest Grove and Hillsboro NPDES permits.

ISSUES FOR COMMISSION TO RESOLVE:

Should the Commission grant an exception to the dilution rule, where such an exception can be granted without causing violations of water quality standards?

INTENDED FOLLOWUP ACTIONS:

When the NPDES permits were issued on June 28, 1991, USA appealed several permit conditions, one of which is the dilution parameter stated under Schedule A as a Waste Discharge Limitation. Other permit conditions that were appealed were settled upon determination of Commission action with proposed rule changes. The settlement of the appealed permit conditions will be effective as soon as Commission action is taken.

Meeting Date: October 16, 1992
Agenda Item: H
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Approved:

Section: Barbara A. Burton
Division: Lynnea Taylor
Director: Jul Haus

Report Prepared By: Judy K. Johndohl

Phone: 229-6896

Date Prepared: September 23, 1992

Judy Johndohl:crw
MW\WC10\WC10734
September 23, 1992

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 41 — DEPARTMENT OF ENVIRONMENTAL QUALITY

chlorine only when it is demonstrated on a case-by-case basis that immediate dilution of the effluent within the mixing zone reduces toxicity below lethal concentrations. The Department may on a case-by-case basis establish a zone of immediate dilution if appropriate for other parameters.

(ii) Materials that will settle to form objectionable deposits;

(iii) Floating debris, oil, scum, or other materials that cause nuisance conditions;

(iv) Substances in concentrations that produce deleterious amounts of fungal or bacterial growths.

(B) The water outside the boundary of the mixing zone shall:

(i) Be free of materials in concentrations that will cause chronic (sublethal) toxicity. Chronic toxicity is measured as the concentration that causes long-term sublethal effects, such as significantly impaired growth or reproduction in aquatic organisms, during a testing period based on test species life cycle. Procedures and end points will be specified by the Department in wastewater discharge permits;

(ii) Meet all other water quality standards under normal annual low flow conditions.

(c) The limits of the mixing zone shall be described in the wastewater discharge permit. In determining the location, surface area, and volume of a mixing zone area, the Department may use appropriate mixing zone guidelines to assess the biological, physical, and chemical character of receiving waters, and effluent, and the most appropriate placement of the outfall, to protect instream water quality, public health, and other beneficial uses. Based on receiving water and effluent characteristics, the Department shall define a mixing zone in the immediate area of a wastewater discharge to:

(A) Be as small as feasible;

(B) Avoid overlap with any other mixing zones to the extent possible and be less than the total stream width as necessary to allow passage of fish and other aquatic organisms;

(C) Minimize adverse effects on the indigenous biological community especially when species are present that warrant special protection for their economic importance, tribal significance, ecological uniqueness, or for other similar reasons as determined by the Department and does not block the free passage of aquatic life;

(D) Not threaten public health;

(E) Minimize adverse effects on other designated beneficial uses-outside the mixing zone.

(d) The Department may request the applicant of a permitted discharge for which a mixing zone is required, to submit all information necessary to define a mixing zone, such as:

(A) Type of operation to be conducted;

(B) Characteristics of effluent flow rates and composition;

(C) Characteristics of low flows of receiving waters;

(D) Description of potential environmental effects;

(E) Proposed design for outfall structures.

(e) The Department may, as necessary, require mixing zone monitoring studies and/or bioassays to be conducted to evaluate water quality or biological status within and outside the mixing zone boundary;

(f) The Department may change mixing zone limits or require the relocation of an outfall if it determines that the water quality within the mixing zone adversely affects any existing beneficial uses in the receiving waters.

(5) Testing methods: The analytical testing methods for determining compliance with the water quality standards contained in this rule shall be in accordance with the most recent edition of Standard Methods for the Examination of Water and Waste Water published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation, unless the Department has published an applicable superseding method, in which case testing shall be in accordance with the superseding method; provided, however, that testing in accordance with an alternative method shall comply with this rule if the Department has published the method or has approved the method in writing.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality.]

Stat. Auth.: ORS Ch. 468.735

Hist.: DEQ 128, f. & ef. 1-21-77; DEQ 1-1980, f. & ef. 1-9-80; DEQ 18-1987, f. & ef. 9-4-87; DEQ 14-1991, f. & cert. ef. 8-13-91

Minimum Design Criteria for Treatment and Control of Wastes

340-41-455 Subject to the implementation program set forth in OAR 340-41-120, prior to discharge of any wastes from any new or modified facility to any waters of the Willamette River Basin, such wastes shall be treated and controlled in facilities designed in accordance with the following minimum criteria. (In designing treatment facilities, average conditions and a normal range of variability are generally used in establishing design criteria. A facility once completed and placed in operation should operate at or near the design limit most of the time but may operate below the design criteria limit at times due to variables which are unpredictable or uncontrollable. This is particularly true for biological treatment facilities. The actual operating limits are intended to be established by permit pursuant to ORS 468.740 and recognize that the actual performance level may at times be less than the design criteria).

(1) Sewage wastes:

(a) Willamette River and tributaries except Tualatin River Subbasin:

(A) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control;

(B) During the period of high stream flows (approximately November 1 to April 30): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practical efficiency and effectiveness so as to minimize waste discharges to public waters.

(b) Main stem Tualatin River from mouth to

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 41 — DEPARTMENT OF ENVIRONMENTAL QUALITY

Gaston (river mile 0 to 65):

(A) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control;

(B) During the period of high stream flows (approximately November 1 to April 30): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control.

(c) Main stem Tualatin River above Gaston (river mile 65) and all tributaries to the Tualatin River: Treatment resulting in monthly average effluent concentrations not to exceed 5 mg/l of BOD and 5 mg/l of SS or equivalent control;

(d) Tualatin River Subbasin: The dissolved oxygen level in the discharged effluents shall not be less than 6 mg/l;

(e) Main stem Columbia River:

(A) During summer (May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control;

(B) During winter (November 1 to April 30): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

(f) Effluent BOD concentrations in mg/l, divided by the dilution factor (ratio of receiving stream flow to effluent flow) shall not exceed one (1) unless otherwise specifically approved by the Environmental Quality Commission;

(g) Sewage wastes shall be disinfected, after treatment, equivalent to thorough mixing with sufficient chlorine to provide a residual of at least 1 part per million after 60 minutes of contact time unless otherwise specifically authorized by permit;

(h) Positive protection shall be provided to prevent bypassing raw or inadequately treated sewage to public waters unless otherwise approved by the Department where elimination of inflow and infiltration would be necessary but not presently practicable;

(i) More stringent waste treatment and control requirements may be imposed where special conditions may require.

(2) Industrial wastes:

(a) After maximum practicable inplant control, a minimum of secondary treatment or equivalent control (reduction of suspended solids and organic material where present in significant quantities, effective disinfection where bacterial organisms of public health significance are present, and control of toxic or other deleterious substances);

(b) Specific industrial waste treatment requirements shall be determined on an individual basis in accordance with the provisions of this plan, applicable federal requirements, and the following:

(A) The uses which are or may likely be made of the receiving stream;

(B) The size and nature of flow of the receiving stream;

(C) The quantity and quality of wastes to be treated; and

(D) The presence or absence of other sources of pollution on the same watershed.

(c) Where industrial, commercial, or agricultural effluents contain significant quantities of potentially toxic elements, treatment requirements shall be determined utilizing appropriate bioassays;

(d) Industrial cooling waters containing significant heat loads shall be subjected to offstream cooling or heat recovery prior to discharge to public waters;

(e) Positive protection shall be provided to prevent bypassing of raw or inadequately treated industrial wastes to any public waters;

(f) Facilities shall be provided to prevent and contain spills of potentially toxic or hazardous materials and a positive program for containment and cleanup of such spills should they occur shall be developed and maintained.

(3) Nonpoint source pollution control in the Tualatin River subbasin and lands draining to Oswego Lake:

(a) Subsections (3)(b) of this section shall apply to any new land development within the Tualatin River and Oswego Lake subbasins, except those developments with application dates prior to January 1, 1990. The application date shall be the date on which a complete application for development approval is received by the local jurisdiction in accordance with the regulations of the local jurisdiction;

(b) For land development, no preliminary plat, site plan, permit or public works project shall be approved by any jurisdiction in these subbasins unless the conditions of the plat permit or plan approval includes an erosion control plan containing methods and/or interim facilities to be constructed or used concurrently with land development and to be operated during construction to control the discharge of sediment in the stormwater runoff. The erosion control plan shall utilize:

(A) Protection techniques to control soil erosion and sediment transport to less than one (1) ton per acre per year, as calculated using the Soil Conservation Service Universal Soil Loss Equation or other equivalent methods. See Figures 1 to 6 in Appendix I for examples. The erosion control plan shall include temporary sedimentation basins or other sediment control devices when, because of steep slopes or other site specific considerations, other on-site sediment control methods will not likely keep the sediment transport to less than one (1) ton per acre per year. The local jurisdictions may establish additional requirements for meeting an equivalent degree of control. Any sediment basins constructed shall be sized using 1.5 feet minimum sediment storage depth plus 2.0 feet storage depth above for a settlement zone. The storage capacity of the basin shall be sized to store all of the sediment that is likely to be transported and collected during construction while the erosion potential exists. When the erosion potential has been removed, the sediment basin, or other sediment control facilities, can be removed and the site restored as per the final site plan. All sediment basins shall be constructed with an emergency overflow to prevent erosion or failure of the containment dike; or

(B) A soil erosion control matrix derived from and consistent with the universal soil equation approved by the jurisdiction or the Department.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item I
October 16, 1992 Meeting

Title:

Request by the City of Ontario for an increase in permitted mass load limitations pursuant to OAR 340-41-026.

Summary:

The sewage treatment plant serving the City of Ontario is overloaded and unable to consistently meet its waste discharge permit limits. The Department and City have entered into a Stipulation and Final Order that includes a schedule to upgrade the facility by January 1, 1995.

The City has prepared a facilities plan that recommends that the capacity of the existing lagoon facility be expanded. Treated effluent would be irrigated on agricultural land during the summer months and discharged into the Snake River during the winter months. Waste stabilization lagoons as proposed by the City would meet both minimum federal secondary treatment standards and, because discharge is limited to the winter period, the Department's minimum design criteria for sewage treatment plants.

The City is requesting an increase in its mass load limitations which would require an exception to OAR 340-41-026(2), the Environmental Quality Commission policy that growth and development be accommodated within existing permitted loads.

The Department has determined that the proposed increased mass load to the Snake River will not cause a measurable effect on the water quality of the river, and that the City's proposal meets the criteria specified in OAR 340-41-026(3) for granting an exception.

Department Recommendation:

The Department recommends the Commission make the findings presented in Attachment I to the staff report and grant the requested mass load increase for the City of Ontario.

R. Santner for R.J. Nichols
Report Author

Judicia Taylor
Division Administrator

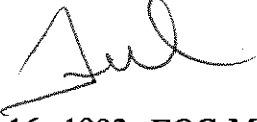
Jul Hansen
Director

September 25, 1992
MW\WC10\WC10770.5

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 25, 1992

To: Environmental Quality Commission
From: Fred Hansen, Director 
Subject: Agenda Item I, October 16, 1992, EQC Meeting

Request by the City of Ontario For an Increase in Permitted Mass Load Limitations Pursuant to OAR 340-41-026.

Statement of the Issue

Request for an increase of permitted, mass load limitations for the City of Ontario. This request is for an exception to OAR 340-41-026 (2) (an EQC Policy Requiring Growth and Development be Accommodated within Existing Permitted Loads Unless Otherwise Approved by the Commission). If approved, the increase would be incorporated into a new NPDES Waste Discharge Permit.

Background

1. The sewage treatment plant serving the City of Ontario is overloaded and unable to consistently meet its waste discharge permit limits. The Department and the City have entered into a Stipulation and Final Order that includes a schedule to upgrade the facility by January 1, 1995.
2. The current sewerage facility, a waste stabilization lagoon system, discharges into the Malheur River about two miles upstream from its confluence with the Snake River. The Malheur River is listed in the Department's Section 305(b) report as water quality limited.
3. The City has prepared a facilities plan report that recommends that the capacity of the existing lagoon facility be expanded. Treated effluent would be irrigated on agricultural land during the summer months and discharged into the Snake River during the winter months. Waste stabilization lagoons as proposed by the City would meet both minimum federal secondary treatment standards and, because discharge is limited to the winter period, the Department's minimum design criteria for sewage treatment plants.

4. The dry weather monthly average design flow for the existing sewage treatment plant is 2.0 MGD. (Actual present average flows are approximately 1.97 MGD). The City proposes to expand the capacity of the facilities to accommodate a dry weather design flow of 3.06 MGD. This flow is what the City projects will be reached in about 10 years. The requested permitted mass load increase results from the need to expand the design flow, and the desire of the City to avoid the higher costs that would be incurred to keep the increased flows within the existing mass loads.
5. There are three hydro-electric dams downstream from Ontario on the Snake River. The first one downstream is Brownlee Dam (River Mile 285), followed by Oxbow Dam (RM 270) and Hells Canyon Dam (RM 248). Brownlee Dam creates an impoundment that stretches upriver about 43 miles to about RM 338. The proposed outfall for the City would be at about RM 370.
6. The Snake River is not listed as water quality limited at this time by either Oregon or Idaho. Fish kills during the summer months have been observed in the Brownlee Reservoir downstream from Ontario. Water quality problems are believed to have caused the kills. Because of this, Idaho is considering listing the Snake River as water quality limited subject to completion of necessary studies to determine the extent, nature, and causes of the water quality problems. Although studies are needed for verification, both Idaho and Oregon believe that pollutant loads in the Snake River are predominantly from nonpoint sources.
7. The ability of a river to assimilate wastewater depends upon its size and nature. Large, rapidly-flowing rivers are better able to assimilate wastes and maintain water quality standards than are small, sluggish rivers. A river's ability to assimilate waste can be radically reduced when it is impounded. In addition, the impact of nutrients on water quality becomes much more significant because nutrients then have sufficient residence time to induce algal growth.
8. The discharge proposed by the City of Ontario will not measurably increase pollutant concentrations in the Snake River. This is because, during the period of allowable discharge, minimum river flows are about 7000 CFS which would provide substantial dilution of the City's wastewater.

9. A strategy for improving water quality in the Snake River will depend on the cause of the problem. If the problem is the result of excessive oxygen demand, the solution may involve reducing or eliminating discharges during the summer months when biological activity increases dissolved oxygen uptake. If the problem is the result of excessive nutrients, then discharges may have to be reduced year-round to improve water quality.
10. The wastewater lagoon treatment system proposed by the City of Ontario can be expanded and modified to further reduce discharges as easily as other alternatives. For example, a more advanced mechanical plant may become a wasted resource, particularly if it includes nutrient removal, if the City is required at some future time to eliminate discharges altogether through holding and irrigation.
11. The Northwest Power Planning Council is developing plans to modify flow management in the Snake and Columbia River systems. The primary purpose is to increase flow velocities by drawing down the reservoirs and increasing flow volumes in the lower Snake River during the period between April 15 and August 15. Increased flow volumes will likely be made up by reduced flows in the winter period. Since these plans are in the developmental stage, there are no firm flow figures upon which to evaluate the resulting impacts on water quality. The Department believes, however, that wintertime flows would have to be substantially reduced before the proposed Ontario waste load would be a major factor impacting water quality.

Authority to Address the Issue

Authority to grant an exception to OAR 340-41-026 (2) and approve a mass load increase is codified in OAR 340-41-026 (3). The Rule specifically outlines criteria the City must satisfy before the increase can be granted. The Department believes that the criteria have been met. A memo summarizing the criteria and the Department's findings pursuant to that criteria is included as Attachment I.

Alternatives and Evaluation

There are a number of wastewater treatment alternatives that the City could implement with regard to upgrading its wastewater treatment facilities. Associated capital construction cost, present worth values, and projected single family dwelling sewer use fees are included in a table that follows a description of the alternatives. The alternatives are:

1. The City's proposal would involve an expansion of the existing waste stabilization lagoons (WSLs), summer-time irrigation, and winter-time discharge to the Snake River. Waste stabilization lagoons are comparatively inexpensive to operate and maintain and consume little energy. Effluent quality meets state and federal minimum requirements and is acceptable for reuse as irrigation water. Even with a permitted mass load increase as contemplated with this proposal, the increase in BOD-5 and TSS in the river will be only about 0.02 mg/l and 0.06 mg/l, respectively. If future water quality requirements later dictate further reduction of waste discharges, this system can be further expanded to increase its holding and irrigation capacity. Other types of sewage treatment plants can produce much better effluent than WSLs, but at the expense of additional energy consumption and more intensive operation and maintenance.
2. One alternative to the City's proposal that would not require a mass load increase would be to expand the holding and irrigation capacity such that the quantity of wastes discharged remains within the current permit limits. The advantage that this alternative has over alternative 1 is that a mass load increase would not be necessary. There would be no significant improvement of water quality in the Snake River as a result, however, because the Ontario discharge constitutes a small fraction of the pollutant load in the Snake River. In addition, this would add to the cost.
3. Build a mechanical sewage treatment plant that would discharge year-round to the Snake River. This option could likely be implemented without the need for an increase in permitted mass loads. There would be a discharge during the summer months when dissolved oxygen problems in the Snake River have been observed.
4. Build a mechanical plant and irrigate in the summer, discharge in the winter. This would eliminate summer discharge when water quality problems have been observed. It adds substantially to the cost, but would produce no significant improvement of water quality in the Snake River over that provided by alternative number 1.
5. Expand the existing waste stabilization lagoons sufficiently to hold and irrigate year round. This would eliminate discharge to public waters completely, but would produce no significant improvement of water quality in the Snake River over that provided by alternative number 1.

ALTERNATIVE	PROJECTED CAPITAL COSTS	PROJECTED PRESENT WORTH	SINGLE FAMILY DWELLING SEWER USE FEE PER MONTH
1	\$8,576,000	\$12,101,000	\$19.45
2	\$10,321,000	\$14,277,000	\$21.76
3	\$9,416,000	\$12,277,000	\$20.56
4	\$11,642,000	\$15,271,000	\$24.21
5	\$14,688,000	\$18,195,000	\$28.80

Note: The City proposes to build its facility in two stages. The first stage is intended to serve the community for the first 10 years. The projected capital costs are for the first stage. The projected present worth is for both stages. The sewer use fee is that necessary to cover the first stage of the project.

Summary of Any Prior Public Input Opportunity

A public hearing on the proposed new NPDES permit was held in Ontario on September 10, 1992. There was no formal, oral testimony received at the hearing. Three members of the public attended the hearing and discussed concerns about their property and how it might be affected by the City's wastewater irrigation plans. The Department received a letter from the State of Idaho requesting that the permit include requirements for nutrient monitoring. The Department will include nutrient monitoring in the permit. The Department also received a letter from the City of Ontario's consultant concerning effluent limitations for the effluent to be irrigated.

On the same day as the hearing, the Department met with State of Idaho officials to discuss Idaho's concerns and plans for the Snake River. The conclusions of the meeting can be summarized as follows:

1. Dissolved oxygen problems have been observed in the Snake River in the Brownlee Reservoir downstream from Ontario. Although studies are necessary to verify this, Idaho believes the problems are the result of excessive nutrients entering the Snake River from irrigation return flows via the Boise, Weiser, Payette, and Malheur Rivers. Point sources (i.e. sewage treatment plants and industrial wastewater dischargers) are not thought to be significant contributors.

2. Idaho will be requesting funds from its legislature to conduct water quality studies of the Snake River. They plan to provide Oregon DEQ a copy of its study plan by December, 1992.
3. Concurrently with its water quality study activities, Idaho will be developing a nutrient management plan for this portion of the Snake River to begin reducing nutrient discharges into the river system.
4. Idaho does not object to the proposed permit as drafted although it has requested that nutrient monitoring be included in the permit when it is issued. The Department proposes to comply with this request.

Conclusions

- The Malheur River is believed to be water quality limited. Ontario's proposal to discontinue discharging to the Malheur River would eliminate any impact the treatment plant discharge may have on instream water quality in the Malheur River.
- Snake River has not been formally listed as water quality limited by either Idaho or Oregon, but Idaho does intend to list it as potentially water quality limited and in need of further study to characterize the extent, nature, and cause of dissolved oxygen problems.
- The City's effluent with the mass load increase, practicably speaking, will have no measurable impact upon water quality conditions in the Snake River. Current water quality problems in the Snake River will not be significantly affected by the proposed mass load increase.
- Staying within current permitted mass loads would add about \$0.84 million to a projected capital cost of about \$8.6 million. This would increase the average monthly sewer use fee for a single family dwelling from about \$19.45 for the proposed facility to \$20.56. (Note: current monthly sewer use fee for a single family dwelling is about \$7.00). This alternative would entail year-round discharge, however. To totally eliminate the discharge year-round, the monthly fee would increase to \$28.80.
- The Department believes the request meets the criteria adopted by the Commission for granting a permitted mass load increase because:

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- a. The increase does not significantly affect the assimilative capacity of the Snake River nor does the proposed Ontario discharge have a measurable impact on water quality,
- b. The cost of staying within permitted mass loads is excessive considering the projected impact on water quality, and
- c. The Snake River has not been designated at this time as water quality limited.

Proposed Findings

See Attachment I.

Recommendation for Commission Action

The Department recommends the Commission grant the requested permitted mass load increase for the City of Ontario as presented for Agenda Item I together with the supporting findings presented in Attachment I.

Attachments

Mass Load Increase Request Memo

Reference Documents (available upon request)

1. Statutory Authority - ORS Chapter 468
2. Applicable Rule(s) - OAR 340-41-026 (1-10)
3. Proposed Permit and Permit Review Report

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Approved:

Section: Richard Smith for Richard J. Nichols

Division: Lydia Taylor

Report Prepared By: Richard J. Nichols

Phone: 229-5323

Date Prepared: September 15, 1992

Dick Nichols: crw
MW\WC10\WC10768.5
September 25, 1992

State of Oregon
Department of Environmental Quality

Attachment I
Memorandum

Date: June 3, 1992

To: File
From: Dick Nichols
Subject: Ontario Mass Load Increase Request

The City of Ontario has requested an increase in permitted mass loads limitations for BOD-5 and TSS. The City's current permit allows (on a monthly average) 500 #/day of BOD-5 and 1400 #/day of TSS to be discharged on a year-round basis. The City has requested the mass load limits be increased such that BOD-5 and TSS mass load limits would be 770 #/day and 2200 #/day, respectively, during the winter-time period only. During the summer period, the City proposes no discharge to public waters. Effluent would be irrigated on farm land.

Oregon Administrative Rule 340-41-026(3) requires that, for a major discharger such as the City of Ontario, the Commission make specific findings before granting an increase in permitted mass loads. The following is a listing of the criteria for these findings and the Department's proposed response to the criteria.

FINDINGS:

A. The increased discharged load will not cause water quality standards to be violated.

Conclusion: Discharges to the Snake River will be confined to the winter-time period. The relatively high flows in the Snake River during the winter period (minimum dilution factor of about 1,500:1) will provide ample dilution of the discharged effluent. The monthly average mass load discharge of BOD-5 from the proposed sewage treatment plant (with the requested increase) would elevate BOD-5 concentrations in the Snake River by about 0.02 mg/l. The entire, proposed total suspended solids (TSS) load would increase TSS concentrations by about 0.06 mg/l over background.

The Department's water quality analysis indicates that the Department's water quality standard for dissolved oxygen could be violated during the winter-time period downstream

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from the Ontario discharge point. The standard violation is likely due to existing background pollutant loads in the river and would occur even if the load from Ontario were not allowed. If background pollutant loads were adequately controlled so as to not violate the standard, the proposed load from Ontario would not cause a water quality standard violation. The results of the Department's water quality analysis do not vary whether Ontario's entire discharge is included in the analysis or is omitted completely.

In addition, water quality data appears to indicate water quality standards violations in Brownlee Reservoir downstream from Ontario during the summer period. The State of Idaho and the Department believe these violations are primarily the result of excessive nutrient discharges into the Snake River from nonpoint sources, i.e. irrigation return water. The nature, extent, and causes of the standards violations will be the subject of future water quality studies by the State of Idaho. Idaho is planning to request funds from its legislature to conduct these studies next year. The Department will review and comment on the proposed study work plan.

Water quality problems in reservoirs may be attributed to annual loads of nutrients and, consequently, may not necessarily be attenuated by limiting nutrient discharges to winter-time periods as is proposed by Ontario. Ontario's contribution to the nutrient load in the reservoir is insignificant, however, compared to background levels. There would be no measurable improvement in water quality in the reservoir if the Ontario discharge were eliminated entirely.

B. The increased discharged load will not unacceptably threaten or impair any recognized beneficial uses. In making this determination, the Department may rely upon the presumption that if the numeric criteria established to protect specific uses are met the beneficial uses they were designed to protect are protected. In making this determination the Department may also evaluate other state and federal agency data that would provide information on potential impacts to beneficial uses for which the numeric criteria have not been set.

Conclusion: Based upon evaluation of potential water quality impacts, the Department does not believe that beneficial uses will be impaired or threatened by the proposed Ontario discharge.

C. The new or increased discharged load shall not be granted if the receiving stream is classified as being water quality limited under OAR 340-41-006(30) (a) unless:

(i) The pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to violate water quality standards and being designated water quality limited; or

(ii) Total maximum daily loads (TMDLs), waste load allocations (WLAs), load allocations (LAs), and the reserve capacity have been established for the water quality limited receiving stream; and compliance plans under which enforcement action can be taken have been established; and there will be sufficient reserve capacity to assimilate the increased load under the established TMDL at the time of discharge; or

(iii) Under extraordinary circumstances to solve an existing, immediate, and critical environmental problem that the Commission or Department may consider a waste load increase for an existing source on a receiving stream designated water quality limited under OAR 340-41-006(30) (a) during the period between the establishment of TMDLs, WLAs and LAs and their achievement based on the following conditions:

(I) That TMDLs, WLAs, and LAs have been set; and

(II) That a compliance plan under which enforcement actions can be taken has been established and is being implemented on schedule; and

(III) That an evaluation of the requested increased load shows that this increment of load will not have an unacceptable temporary or permanent adverse effect on beneficial uses; and

(IV) That any waste load increase granted under subsection (iii) of this rule is temporary and does not extend beyond the TMDL compliance deadline established for the waterbody. If this action will result in a permanent load increase, the action has to comply with subsections (i) or (ii) of the rule.

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Conclusion: Currently, the City of Ontario's existing sewerage facility discharges year-round to the Malheur River. The Malheur River has been determined to be a water quality sensitive stream. Removing the City's discharge point from Malheur River will eliminate any impact the sewage treatment plant has on the river's water quality. The Snake River has not been designated water quality limited at this time by either Oregon or Idaho. Idaho is considering listing it as potentially water quality limited and intends to conduct studies to determine the extent, nature and causes of suspected water quality problems.

At this time, a mass load increase is not prohibited by the criteria listed herein. Further, Idaho would not object to issuance of the permit with the mass load increase.

D. The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.

Conclusion: The Department has received a Statement of Land Use Compatibility from the City of Ontario and Malheur County.

CONSIDERATIONS OF ENVIRONMENTAL EFFECTS CRITERIA:

Criteria 1: Adverse Out-of-Stream Effects. There may be instances where the non-discharge or limited discharge alternatives may cause greater adverse environmental effects than the increased discharge alternative.

Conclusion: The proposed facility utilizes existing facilities and provides for reuse of treated effluent through irrigation of crops during the summer growing season. In lieu of the system as proposed, the City could abandon the existing facility and replace it with a mechanical facility that would likely be capable of staying within mass load limits. In order to be cost effective, however, this system would also have to discharge during the summer. The Department believes that summer time reuse of effluent is a better way to dispose of the effluent.

Winter-time irrigation is not considered a viable option because crops are dormant and effluent will not be utilized. Instead, the effluent will migrate to groundwater with little or no uptake of nutrients occurring.

Criteria 2: Instream Effects. Total stream loading may be reduced through elimination or reduction of other source discharges or through a reduction in seasonal discharge. A source that replaces other sources, accepts additional waste from less efficient treatment units or systems, or reduces discharge loading during periods of low stream flow may be permitted an increased discharge load year-round or during seasons of high flow, as appropriate.

Conclusion: The facility currently discharges to Malheur River year-round. During the summer, low flow season, there is likely insufficient flows in this river to adequately assimilate the treated effluent discharged to it, and thus, water quality standards are probably violated. Moving the discharge point to the Snake River will eliminate water quality violations in the Malheur River caused by the sewage treatment plant. Although the Snake River has some water quality problems, the City of Ontario's proposed discharge is not believed to be a significant factor with regard to those problems.

Criteria 3: Beneficial Effects. Land application, upland wetlands application, or other non-discharge alternatives for appropriately treated wastewater may replenish groundwater levels and increase stream flow and assimilative capacity during otherwise low stream flow periods.

Conclusion: Land application during the summer will eliminate discharging wastewater into Malheur River during low flows. Applying the effluent at agronomic rates will prevent wastewater constituents from migrating down to the groundwater.

CONSIDERATIONS OF ECONOMIC EFFECTS CRITERIA:

Criteria 1: Value of Assimilative Capacity. The assimilative capacity of Oregon's streams are finite, but the potential uses of this capacity are virtually unlimited. Thus, it is important that priority be given to those beneficial uses that promise the greatest return (beneficial use) relative to the unused assimilative capacity that might be utilized. Instream uses that will benefit from reserve assimilative capacity, as well as potential future beneficial use, will be weighed against the economic benefit associated with increase loading.

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Conclusion: The Department's analysis indicates that, because the discharge will occur only during the winter period, the amount of assimilative capacity consumed by the added discharge of wastewater to the Snake River will be negligible.

Criteria 2: Cost of Treatment Technology. The cost of improved treatment technology, nondischarge, and limited discharge alternatives shall be evaluated.

Conclusion: The City could construct a mechanical sewage treatment plant which could likely stay within the existing permitted mass load limits, but which would increase construction costs from \$8.576 million to \$9.416 million. Projected sewer user fees for a single family dwelling would increase from about \$19.45 to \$20.56. This alternative would not produce a measurable improvement in water quality, however, and would entail year-round discharge.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item J
October 16, 1992 Meeting

Title:

Pollution Control Facilities Tax Credit Program Recommendations

Summary:

The Department presented a proposal for changes to the pollution control facilities tax credit program to the Commission at the September 11 meeting. After considering this proposal, the Commission voted to recommend to the Legislature termination of the tax credit program. The Commission also directed the Department to develop an alternate Legislative Proposal, and this report suggests alternatives that could be included in this secondary recommendation.

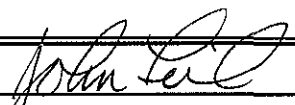
The Department's goals in developing these proposals were to identify facilities that the Department believes are important to retain as incentives for pollution control, reduction, and prevention, and to simplify program administration. These goals are reflected in the Department's recommendations. The Commission's review and consideration of these proposals will be used to finalize an alternate recommendation for consideration in the upcoming Legislative session.

Department Recommendation:


The Department recommends that an alternative recommendation to the Executive Department and Legislature incorporate the following proposals as discussed in this report:

1. Retain a pollution control facilities tax credit program for a limited set of eligible facilities. Initially, these would include tax credits for recycling facilities, underground storage tank upgrades, and approved alternatives to field burning. Administration of the recycling facilities aspect of the tax credit program would be transferred to the Oregon Department of Energy.
2. Pursue general statutory changes to simplify tax credit program administration, and allow the Commission to revoke tax credit certificates for certificate holders not in compliance.

This report also includes a suggested framework for a small business tax credit program and if the Commission desires, this suggestion could be included in a Legislative Proposal. Finally, the Department has outlined the structure for a possible future tax credit program.


Report Author


Division Administrator



Director

October 5, 1992

State of Oregon
Department of Environmental Quality

Memorandum

Date: October 5, 1992

To: Environmental Quality Commission
From: Fred Hansen, Director 
Subject: Agenda Item J, October 16, 1992 EQC Meeting
Pollution Control Facilities Tax Credit Program Recommendations

Background

At both the April 23 and September 11 EQC meetings, the Commission had extensive discussions regarding the pollution control facilities tax credit program that culminated in a unanimous decision by the Commission to recommend to the Legislature termination of the tax credit program. The Commission also directed the Department to prepare an alternate recommendation to be used in the event that the Governor or Legislature chooses to retain a pollution control facilities tax credit program. In response to this directive, this staff report was developed to provide the Commission with the Department's recommendations and suggestions for possible alternatives.

The timing for developing a legislative proposal for tax credit program changes is clearly tight. In order to meet the December 15 deadline for pre-session filing, proposed legislation must be drafted by Legislative Counsel and submitted to the Executive Department by November 15 for review and approval. It will be imperative for the Department to finalize a legislative proposal as quickly as possible to allow Legislative Counsel adequate time to draft proposed legislation. This will require us to develop a consensus on proposed changes during this work session, or shortly thereafter. The previously submitted legislative proposal has been placed on hold pending submission of a new proposal.

Alternatives and Evaluation

In the discussions that have been held on this topic, the Commission has expressed the concern that the tax credit program no longer serves a useful purpose. Specifically, the Commission has noted that certifying tax credits for businesses to install pollution control equipment simply to comply with environmental regulations does not generate environmental benefit beyond what would have occurred in the absence of a tax credit program. With this in mind, the Department has considered types of facilities for which tax credits may provide a defined environmental benefit, or where state and federal regulations have the potential to create inequities for certain categories of applicants.

Two of the recommendations included in this staff report were also recommended in the Department staff report prepared for the September 11 meeting. Assuming that the Department continues to administer a tax credit program, we believe that it is important to retain these prior recommendations (numbers 3a and 3b below). In some instances, the Department believes that the nature of the incentive lends itself to administration by an agency other than the DEQ and we have noted this in the recommendations.

At a minimum, and within the context of a dramatically scaled back tax credit program, the Department proposes the following:

- 1) Definition of a limited set of tax credit eligible facilities that the Department believes are important to retain as incentives for pollution control, reduction, and prevention.**

The Commission has indicated that it would be agreeable to retaining tax credit eligibility for a limited set of purposes. The existing purposes for which the Department recommends keeping tax credits are: recycling; underground storage tank (UST) upgrades; and, approved alternatives to open field burning. An analysis of our rationale for retaining these facilities follows:

Recycling Facilities--For recycling enterprises, tax credits do not function as compensation for regulation, but rather as financial incentives. The Department believes that it is appropriate to retain tax credits for solid waste and plastics recycling, and automobile CFC recycling facilities as a state priority. Retaining tax credits for recycling is also consistent with comments the Commission received at the September 11 EQC meeting from the Recycling Markets Development Council that stressed the importance of tax credits as a financial incentive for recyclers.

The Oregon Department of Energy's (ODOE) Business Energy Tax Credit program certifies tax credits for recycling facilities, provided that the facility is not required by state or federal statute (CFC recycling equipment is therefore excluded from the ODOE program). Approximately one-third of ODOE's annual tax credit program cap of \$40 million was used in 1992 for recycling projects. Since overlap exists between these programs, it is conceivable that these programs could be combined and administration could be delegated to the Department of Energy. ODOE may, however, object to administering additional recycling tax credits, including CFC recycling facilities, within their existing program cap.

Alternatively, a recycling tax credit program could be administered by the Economic Development Department or other entity identified by the Recycling Markets Development Council.

Underground Storage Tank Upgrades--Tax credits for UST upgrades are clearly compensation for imposed regulations. Frequently, these regulations have fallen disproportionately on owners of smaller stations with limited ability to sustain operations in the face of large investments that do not enhance their business operations. Though the Department has other financial programs to assist these businesses, we view the tax credit program as an integral component of a "package" of financial assistance programs to compensate for regulation. Because of this, the Department believes that it is appropriate to retain tax credits for UST upgrades, and that this program continue to be administered by the Department. It would also be appropriate to phase out tax credit eligibility for UST upgrades in conjunction with the sunset of the other UST financial assistance programs.

Approved Alternatives to Open Field Burning--Tax credits for these types of facilities are compensation for statutory limitations which have been imposed to reduce the number of acres burned. In general, the Department supports the use of tax credits for alternatives to open field burning, however, the Department only supports the use of tax credits where it can be demonstrated that there are actual and permanent net reductions in burned acreage. Additionally, the Department supports the use of fixed rate tax credits for these facilities (Recommendation 3b below). Administration of this program should remain with the Department.

In addition, the Department believes that it would be appropriate to allow the Commission the discretion to add to, or delete from, this list.

2) Provide incentives to small businesses to comply with environmental regulations.

Several Commissioners have expressed the concern that small businesses may suffer adverse financial impacts from new state and federal environmental regulations. For this work session discussion, the Department has developed a possible framework for a tax credit program designed to assist small businesses in preventing, controlling, or reducing air, water, noise, solid and hazardous waste pollution. Examples of environmental regulations having the potential to impact small businesses in the future are the Clean Air Act and new storm water discharge regulations.

Small businesses face a myriad of other regulations that have the potential to adversely affect them, and it may be appropriate for the State to provide tax credits or other forms of financial incentives to mitigate these impacts. An incentive program for this purpose may best be developed and administered by an agency such as the Economic Development Department, however, we suggest the following:

- a) **Allow tax credits only for compliance with newly imposed requirements.**

When existing businesses in compliance with existing regulations are faced with newly imposed regulations, this has the potential to create an economic hardship. In this instance, the Department believes that it may be appropriate to offer an incentive as compensation for these newly imposed requirements. We would make no distinction between state and federal regulations. Retention of this feature of the program also conveys to small businesses in the state that the Commission and Department are concerned about the cost of complying with new regulations and the impact this can have on the cost of doing business.

- b) **Structure tax credit benefits to provide an incentive for early compliance with new requirements.**

By encouraging compliance in advance of the compliance date for new requirements, a definite environmental benefit can be realized. Since various regulations have different compliance schedules, the specific approach to achieve the goal of this suggestion would need to be developed and adopted by rule. This would be structured such that no tax credits would be available beyond the compliance date for new requirements.

- c) **Cap the amount of tax credit available to any one applicant.**

The current program allows unlimited tax credits with neither a program cap nor a per facility cap. This leads to an unknown and unlimited potential negative impact on the State's general fund. By capping the amount of tax credit claimable by an applicant, the Department believes that the impact on the general fund can be reduced. An eligible tax credit cap of \$100,000 per applicant spread over a ten year life would generally be adequate to meet the needs of most small businesses. For larger cost facilities, this will also effectively make this a "one time only" tax credit.

A per applicant tax credit cap may present additional monitoring requirements for the Department and this aspect of the program would need to be structured to minimize these requirements. In addition, a decision would need to be made regarding how this would apply to applicants that have already received tax credits, i.e., does the fact that an applicant has received the newly-established maximum tax credit in the past, disqualify them from future tax credits?

3) General recommendations to apply to all eligible facilities.

In the event that a limited tax credit program is retained, the Department recommends that steps be taken to simplify program administration. This will allow the Department to administer the program more effectively and with a reduction in resources devoted to the program. The Department is also concerned that the existing statutes do not give the Commission adequate authority to revoke tax credit certificates for certificate holders that are not in compliance, and we have suggested a general program change to address this concern.

a) Eliminate the return on investment and percent allocable requirements.

There is general agreement that the return on investment and percent allocable requirements are burdensome for applicants and complicate Department staff review of applications. It is also felt that these procedures place a larger burden on small businesses and limit their access to the program. In addition, the existing reference return on investment is based on an annual average return for all manufacturing industries. Since the rates of return in many industries may diverge from this reference, the calculation may overstate the percent allocable to pollution control.

The types of facilities to be retained in the program lend themselves to the development of flat rate tax credits. The establishment of these flat rates will allow the Department to effectively factor out economic benefits without resorting to a percent allocable determination.

b) Allow the Commission to establish by rule a schedule of flat rate tax credits for tax credit facilities that are retained for administration by the Department.

Under the existing statutes, the Department does not have the ability to reduce the certified cost of facilities which have less costly alternatives. The Department believes that adoption of a schedule of fixed tax credit rates would allow us to do this and also simplify application processing. As an example, for alternatives to field burning tax credits, the Commission could set a fixed per acre tax credit and the applicant would decide which approved alternative to use. With only a limited number of facility types retained, it would be relatively easy for the Department, or other administering agency, to develop a set of recommended rates for adoption by rule by the Commission. The Commission has already approved as guidance a similar set of rates for underground storage tank upgrades.

c) Revoke tax credits for non-compliance by the certificate holder.

Under the existing tax credit program statutes and rules, the Commission can only revoke a tax credit certificate in the event that the certification was obtained by fraud or misrepresentation, if the certificate holder fails to operate the facility as specified, or if the facility is operated out of compliance. A certificate holder could conceivably violate other compliance requirements, yet retain tax credits simply because these particular facilities are in compliance. The Department proposes that the Commission be given the authority to revoke tax credit certificates for certificate holders that have failed to comply with any Department or Commission statutes, rules, orders or permit conditions, and are subject to enforcement actions.

4) Other considerations in structuring a future tax credit program.

The Department also believes that tax credits for certain activities are justified based on the potential for significant environmental benefit, and if the Commission concurs, a tax credit program could be developed to provide an incentive for these activities. These activities extend beyond what is currently considered to be a pollution control "facility" and may include:

- o Changes in land uses which result in pollution reduction, including non-point source reduction.
- o Toxic use reduction.
- o Process changes in lieu of pollutant emissions.
- o Encouraging behavior changes by individuals by providing tax credits for activities such as:

- Using mass transit or other non-polluting commuting alternatives such as bicycles.
- Household recycling.
- Use of non-polluting lawn mowers or conversion of lawns to low water consumption landscaping.

Each of the above activities has major administrative issues that would need to be addressed before a concrete proposal could be developed.

Conclusions

If these recommendations are adopted, the following are the probable effects:

- o The tax credit program would be dramatically scaled back, and the Department would transfer administration of some aspects of the program to other agencies.
- o The tax credit program would no longer be an entitlement program.
- o For aspects of the program that remain in the Department, administration would be simplified.
- o If the Commission desires, a proposal could be developed such that small businesses would retain much of their existing ability to use the tax credit program.
- o The impact of the pollution control facilities tax credit program on the state's general fund would be significantly reduced.
- o With the reduction in benefits and limited eligibility, it is likely that this proposal (and the Commission's primary recommendation to the Legislature) will be opposed by businesses.

Recommendation for Commission Action

The Department recommends that the Commission concur with this alternative proposal to be used in the event that the Legislature chooses to retain a pollution control facilities tax credit program. Based on the direction received from the Commission, the Department will submit a legislative proposal incorporating the Commission's desired alternatives.

Memo To: Environmental Quality Commission
Agenda Item J
October 16, 1992 Meeting
Page 8

Reference Documents (available upon request)

1. Existing Pollution Control Facilities Tax Credit Statutes, ORS 468.150 to 468.190.
2. Existing Pollution Control Facilities Tax Credit Administrative Rules, OAR 340-16-005 to 340-16-050.
3. April 23, 1992 and September 11, 1992 staff reports (including attachments) to the Environmental Quality Commission.

Approved:

Section: _____

Division: _____

Report Prepared By: John Fink

Phone: 229-6149

Date Prepared: October 1, 1992

Itinerary

Thursday, October 15, 1992

12:30 p.m. Leave Portland in Van. (assumes everyone has lunch before hand.)

Drive by Gould Battery Site in St. Helens en route to Wauna

2:30 p.m. Arrive Wauna (James River Pulp Mill)

Presentation/tour (Chlorine Dioxide Generator, Preliminary Performance Data on chlorine dioxide substitution, review of relationship to Halsey recycle plant, and summary of Halsey treatment facility performance)

4:00 p.m. Leave Wauna Mill

Drive by James River Cottonwood Plantations, Beaver Cogeneration Facility, Tongue Point Facility en route to Astoria.

5:15 p.m. Arrive Astoria.

Check in to Motel, Dinner

7:30 p.m. SPECIAL PUBLIC FORUM

9:00 p.m. Adjourn meeting (target time)

Friday, October 16, 1992

8:30 a.m. Convene Regular Meeting at Maritime Museum

11:00 a.m. Public Forum (scheduled time)

(BOX Lunches for EQC) (allows meeting to be recessed for lunch if necessary or completed with lunch following the meeting or on the way out of town.)

Complete agenda and return to Portland.

Date: 10-1-92 1:38pm
From: Michael Huston:AG:DEQ
To: Tina Olson:OD
cc: Fred Hansen:OD; Mike Downs:ECD; Pete Dalke:MSD
Subj: Notice of Executive Session

In discussing the Oregon Waste Systems tax credits with Mike, I recalled that there are some procedural steps that we should take to preserve the EQC's option to go into executive session on this subject.

(1) If time and logistics permit, I would suggest that you add the following statement to the agenda, presumably after the item on tax credits:

"The EQC may hold an executive session to consider confidential written legal advice from counsel on the tax credit applications from Oregon Waste Systems. The executive session would be held pursuant to ORS 192.660(1)(f)."

(2) The following script should be given to Chairman Wessinger to read at the time that he convenes the executive session:

"The EQC will now convene in executive session to consider confidential written legal advice from counsel on the tax credit applications from Oregon Waste Systems. The executive session is held pursuant to ORS 192.660(1)(f).

Representatives of the news media are allowed to attend, but all other members of the public are asked to leave the meeting room until the commission returns to open session. The news media are allowed to report the subject of the executive session as stated on the agenda but otherwise are specifically directed not to report any deliberations during the executive session."

Of course, I assume that you will clear these suggestions with Fred. Thanks.

3884, 3788, 3802

RECOMMENDATIONS OF THE STATE'S MOTOR VEHICLE EMISSIONS TASK FORCE*

Strategy to Maintain Compliance with federal Air Quality Standards in the Portland area through 2007

Objective: Maintain healthful air quality and remove Clean Air Act impediments to industrial growth while accommodating up to a 31% increase in population and associated 47% in vehicle miles travelled over the next 15 years.

Base Strategy		Date Implemented	Emission Reduction (%VOC / % NO _x)
1.	California 1994 Emission Standards for sale of new gasoline powered lawn and garden equipment.	1994	6.1 / 0
2.	High Option (Enhanced) Vehicle Emission Inspection.	TBD**	17.5 / 9.0
3.	Expansion of Vehicle Inspection Boundaries from Metro to Tri-County area.	TBD**	1.0 / 0.5
4.	Require 1974 and later vehicle models to be permanently subject to Vehicle Inspection.	TBD**	2.4 / 0.8
5.	Phased in Vehicle Emission Fee*** based on actual emissions and mileage driven. -Starting 1994 at \$50 average (\$5 to \$125 range). -Reaching a \$200 average (\$20 to \$500 range) by 2000.	1994 - 2000	5.0 / 5.5
6.	Pedestrian, Bike, Transit friendly Land Use for new construction.	1995 - 1996	5.2 / 4.4
7.	Mandatory Employer Trip Reduction Program (50 or more employees).	TBD**	1.2 / 1.1
8.	Congestion Pricing Demonstration Project.	TBD**	0 / 0
TOTAL EMISSION REDUCTION**** (Need 35.6% VOC / 20.2% NO_x by 2007)			37.1 / 20.6
NET COST/BENEFITS: \$119 million/year savings, 8% traffic reduction, 11% energy savings			

Safety Factor Strategy

1.	Adequately Funded Public Education Program (\$1/vehicle/year).	1994
2.	Continue and improve public request for voluntary reductions in emissions on bad ventilation days.	1993
3.	Incident Management Program (rapid removal of accidents to minimize congestion).	TBD**
4.	Emission Standards for new outboard motors if and when California or EPA adopts such standards.	--

Contingency Plan Strategy

(To be implemented if base strategies fail to achieve expected results or if other unexpected factors threaten compliance with air quality standards.)

1.	Reformulated gasoline (to be implemented no sooner than 2005).	20.6 / 5.6
2.	Congestion Pricing.	8.6 / 7.8

* Established by the 1991 Oregon Legislature and appointed by the Governor.
 ** TBD - To Be Determined, but expected sometime in 1995-2000 period.
 *** Revenue dedicated to provide better private/public transit service, selective free transit, mitigation of fee impact on low income households, and other incentive measures to provide lower polluting and less costly transportation.
 **** Total adjusted for strategy overlaps.

Capital Press
9/18/92

Voluntary cleanup program not working in the Tualatin

By MITCHELL TREBON

Capital Press Staff Writer

PENDLETON, Ore. — It won't get any easier for Tualatin River basin farmers if they don't get their animal waste collection systems in order soon.

If they don't make efforts to comply with the voluntary cleanup program overseen by the Oregon Department of Agriculture, they could face the wrath of the Department of Environmental Quality, according to ODA officials.

The DEQ has made it clear that the ODA's voluntary cleanup program for confined animal feeding operations is not getting the job done in the Tualatin basin. The DEQ, which has enforcement authority over nonpoint source pollution remedies, has given ODA an extension until next July 1 to get farms in compliance.

Out of fear that DEQ will act heavy-handedly, the state Board of Agriculture advised ODA to seek enforcement authority and funding, during a retreat held in Pendleton recently.

It looks like a significant number of CAFOS are not in compliance, Phil Ward, ODA assistant director, told the state Board of Agriculture. "Our voluntary program is not going to get there by July 1 of 1993. During this year we have to fish or cut bait. We're asking if we should take ourselves out of this business."

Without dissent, board members said they would prefer ODA seek control over the animal waste storage pollution program. As it sits, ODA can only encourage compliance. Board opinion on keeping control out of the hands of DEQ was clear.

"I would rather have someone with an interest in our survival," said new board member Rod Park, "versus someone who flat out said 'We don't care if you stay in business or not — you are not going to pollute.'"

Board member Eric Lindauer was just as emphatic. "That (DEQ) is a slash and burn agency," he said. "They don't take any prisoners. That's the last group you want to deal with."

The Tualatin is one of 11 water-quality-limited river

basins in Oregon, and the first in the nation to have a total maximum daily pollution load set. Ward said ODA was the lead agency for the state nonpoint source pollution program, but legal action forced DEQ to get basins in compliance. With most point pollution sources identified and regulated, the nonpoint sources are coming under fire, he added.

A voluntary program to get the container nursery industry in compliance was successful because the industry took it upon itself to clean up its operations, Ward said. Cooperation from Tualatin dairy and feedlot operations is imperative, too.

Ward said the fight to take control of the program will launch ODA in a new direction on natural resource management. "This is an issue we do not take lightly," he said. "It is a new responsibility to take on. What we are asking is 'How do you want us to position ourselves in the next 20 years.'"

Board member Robert Lazinka said enforcement power could change the rapport the department has with farmers. ODA Director Bruce Andrews agreed.

"It does change the dynamics of our relationship with the industry," he said. "With the dairy industry it has caused some strain, because when we come on the scene it means a lot of bucks."

Lorna Youngs, ODA assistant director, said enforcement authority forces certain behavior on an agency. "The DEQ is back in the command and control approach," she said. "There is going to be tremendous pressure to go back to that command and control approach because it is the model."

Park said farmers solve problems best when left to their own wits, citing some innovative drip irrigation systems and recycling ponds designed in the nursery business. He suggested a voluntary program with clear goals.

"Command and control for agriculture doesn't work," Park said. "The land is so diverse, production methods are so diverse. People seem to have the concept of the dumb farmer and we know that is just not the case. Give them the freedom to be creative."

Andrews said the ODA's method of working reasonably won't likely sit well with a public that can be insensitive to farming.

Board members agreed that voluntary compliance is the only solution. "In my mind there is no way you can ever go into strictly enforcement," said board member Robert Elder. "You have to give them some time. We've been working on this about 10 years and that is not a lot of time when you consider the money. You have an educational program to work through."

Ward said enforcement authority would speed compliance. "A voluntary approach works better when there is the potential for a hammer in the background," he said.

The program is at a critical juncture, Ward said. "In the Tualatin we are running out of time," he said. "We have to help our industry get into compliance. Otherwise, there is going to be more severe regulatory action than we would like to see."



DEPARTMENT OF JUSTICE

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February 11, 1992

Environmental Quality Commission
811 SW Sixth Avenue
Portland, OR 97204

Re: Legal Issues Relating to the Pollution Control Tax Credit Program

This letter provides advice on a number of legal issues relating to the pollution control tax credit program. Each question is set out separately below along with a brief answer and the supporting analysis.

1. Are facilities erected, constructed or installed by a new business to comply with existing regulations eligible for tax credit certification under the "principal purpose" provisions of ORS 468.155 and 468.170 and the rules adopted by the Commission? If so, does the Commission have authority to exclude such businesses from eligibility?

Brief Answer

Facilities developed by new businesses to comply with new or existing rules are eligible for certification under the statutes. We conclude that the Commission does not have authority to adopt rules excluding such facilities from eligibility.

Analysis

A. Background

Historically, the Commission has found both new and existing businesses to be eligible for tax credits under the principal purpose test. Similarly, the Commission has certified facilities that were necessary to comply with pre-existing rules. These certifications were consistent with advice from the Attorney General's office.¹

¹ This advice generally has been oral and no formal opinions have been written on these issues.

This interpretation of eligibility is consistent with the literal language of the tax credit statutes. Under ORS 468.165(1), "any person" may apply for certification if (1) the facility in question meets the definition of "pollution control facility" in ORS 468.155 and (2) the facility was constructed or installed within the time period specified in ORS 468.165.² If these requirements are satisfied and proper application is made, then the facility is eligible, so long as the facility "is necessary to satisfy the intents and purposes" of the state statutes relating to treatment works, sewage disposal and treatment, solid waste, recycling, hazardous waste, noise control, used oil recycling, air quality, and water quality. ORS 468.170(4)(a).³

We have located no provisions in the statutes that show an intent to limit tax credit eligibility to existing businesses or to limit eligibility under the principal purpose test to facilities necessary to comply with requirements imposed after a business began operation.

B. Legislative History

The tax credit statutes were enacted in 1967 and they have been amended in almost every subsequent legislative session.⁴ The legislative record provides clear evidence that new businesses were intended to be eligible for certification. Further, the legislature considered and then rejected statutory language that would have limited the ability of new businesses to use the tax benefits available for a certified facility. The various amendments in subsequent years do not indicate a change of legislative intent.

² There are certain other requirements relating to solid waste, hazardous waste, and used oil facilities that are not at issue here.

³ As discussed in the response to question 3, the Commission does exercise discretion with respect to the costs properly allocated to the facility.

⁴ Attachment A to this letter provides a brief history of the tax credit statutes.

During the 1967 legislative session, three pollution control tax credit bills were introduced in Oregon. One measure (SB 272) apparently was sponsored on behalf of industry and another (SB 471) was sponsored on behalf of the Sanitary Authority (the Commission's predecessor). Eventually a compromise bill, SB 546, was drafted and, after numerous debates and amendments, enacted. Or Laws 1967, ch 592.

Each of the three bills shared the purpose of accelerating the installation of air and water pollution control equipment. "General Explanation of Tax Incentive Measure Based on SB 272 and SB 471," Exhibit (unnumbered), Senate Committee on Air and Water Quality Control, April 11, 1967. Tax benefits were intended to be available to both new and existing businesses. See, e.g., Testimony of Herb Hardy,⁵ Senate Committee on Air and Water Quality Control, April 11, 1967. The bills varied, however, in their tax treatment of existing businesses that had already installed equipment or that might be required to retrofit existing plants. Id.

Under the compromise provisions in SB 546, the Sanitary Authority was required to issue a certificate if the principal purpose of the facility was the prevention, reduction or control of air or water pollution and if the facility would be effective to that end. A taxpayer with a certified facility could elect to take an income or corporate excise tax credit or, alternatively, to have the facility removed from the ad valorem property tax rolls.

Under the original version of the bill, a taxpayer could have taken a tax credit (as opposed to the exemption from ad valorem taxation) only in two circumstances. First, a taxpayer could have taken the credit if the certified facility was constructed within five years of the effective date of the act. (Sections 8(2)(a) and 11(2)(a).) The objective of this requirement was to create the incentive for accelerated installation of any new pollution control equipment and the credit was intended to be available to new or existing business ventures. Second, a taxpayer could have taken the credit if

⁵ Mr. Hardy, a lobbyist for the canneries, was a principal figure in the drafting of the legislation.

the certified facility was constructed after December 31, 1957⁶ and was used "in connection with a trade or business conducted by the taxpayer on the effective date of [the] Act. (Id. at Sections 8(2)(b) and 11(2)(b).) The objective of this provision was retroactive relief to existing businesses that had already installed equipment and relief for the costs of retrofitting existing plants.

The conditions in SB 546 for qualifying to use a certified facility for tax credit purposes were amended several times prior to enactment. First, the qualification period for any new facilities was enlarged to include the period from January 1, 1967 to December 31, 1978. Then, the provisions authorizing tax credits for facilities constructed between 1958 and 1967 and for retrofitting of existing businesses were deleted. Finally, tax credits were made available for new facilities. The intent and the effect of these amendments was to remove any distinction in the tax treatment of certified facilities operated by new or existing businesses.

This legislative history points out that the Legislature did not intend to distinguish between new and existing businesses when certifying a facility and that it considered and then rejected language that would have distinguished between new and existing business with respect to the type of tax benefits available from a certified facility.

C. Commission Authority

Agency rulemaking authority is generally divided into two categories: completion of an incompletely expressed legislative policy or the interpretation and application of an expressed legislative policy. See Springfield Education Ass'n. v. Springfield School District No. 19, 290 Or 217 (1980). The Commission's authority to define the standards for eligibility for tax credit certification generally falls in the latter category, because the statutes set out both the general policy

⁶ Apparently, 1957 was the effective date of the first statute requiring pollution control equipment. See Testimony of Herb Hardy, supra.

and specific requirements that must be satisfied.⁷ ORS 468.155 to 468.170. In defining statutory terms, an agency must try to give effect to the legislature's intent. Fifth Avenue Corp. v. Washington County, 282 Or 591 (1978). Generally, the Commission's interpretation will be upheld if the definitions are reasonable and consistent with the statutory provisions and legislative purpose. In our opinion, a Commission rule excluding facilities constructed by new business ventures would be inconsistent with legislative intent.⁸

D. Conclusion

In light of the broadly stated eligibility provisions, past Commission interpretation, lack of any express or implied exclusion for new business and the relevant legislative history, we conclude that the Commission does not have the authority to limit eligibility for tax credits to existing business enterprises.

2. Could the Commission determine that certain facilities that otherwise meet the statutory requirements are not eligible for certification because they are integral components of a waste disposal business or other environmental service enterprise?

⁷ This conclusion does not apply to provisions relating to alternative methods of field sanitation (ORS 468.150) and exclusion of portions of facilities that make insignificant contributions (ORS 468.155(2)(d)).

⁸ This conclusion is bolstered by the fact that the legislature has delegated the Commission significant substantive authority with respect to other aspects of the tax credit program. As discussed below, ORS 468.190(1) sets out an incomplete expression of legislative policy with respect to allocation of costs. There are four specific factors that the Commission must consider when determining cost allocation. The statute goes on to allow consideration of "any other factors which are relevant" to establishing the cost properly allocated to pollution control. The Commission is then given express authority to adopt rules establishing methods to be used to determine the portion of costs properly allocable." ORS 468.190(3).

Brief Answer

Probably not.

Analysis

The tax credit statutes do not include any express provisions that would allow the Commission to determine eligibility based upon whether the facility is a component of a business producing traditional goods or services as opposed to one providing waste disposal or other environmental services. This issue has been before the legislature. It was debated during the 1983 legislative session with respect to the eligibility of waste incinerators. Later, in 1989, the legislature amended the statutes to exclude waste-to-energy incinerators from the definition of eligible solid waste facilities, but it has not excluded otherwise eligible pollution control facilities merely because they are components of a waste disposal business. Or Laws 1989, ch 802.

This does not mean, of course, that all components of a waste disposal business are eligible for certification. Facilities must still satisfy the principal or sole purpose test. As early as 1967, the record indicates legislators were told that facilities necessary for the operation of the business per se would be treated differently from those that are necessary for the purpose of pollution control. See, e.g., Discussion between Rep. Jim Redden and Herb Hardy, House Taxation Committee, May 11, 1967, at 1159.⁹

Following the same reasoning used in question 1 above, we believe it is likely that a court would find that the Commission does not have authority to exclude facilities from eligibility merely because they are components of a waste disposal or other environmental service business.

⁹ In the case of a landfill, it would seem that the land and excavation would be necessary for the operation of the business per se, while liners and leachate collection and treatment systems ordinarily would not be required in the absence of environmental concerns.

3. If the answer to question 2 is no, what is the Commission's authority with respect to the determination of the portion of the facility allocable to pollution control?

Brief Answer

The Commission could determine that some portion of the cost of facilities integral to a waste disposal or similar environmental service business is not properly allocable to pollution control. However, if the determination is not based on the methodologies established by existing Commission rules, then the determination should be based on carefully articulated reasoning and supported by findings. There is some risk that such a determination would not be upheld by the courts.

Analysis

The Commission is responsible for determining the actual cost of a facility and the portion of such costs that is properly allocated to the pollution control or waste facility. ORS 468.190. In making this determination the Commission is required to consider four specific factors (recovery of usable commodities, return on investment, alternative methods or equipment, and increased or decreased costs). The Commission also must consider "any other factors which are relevant in establishing the portion of actual cost of the facility properly allocable" to pollution control. Id. These "other factors" must have the same general characteristics as those expressly stated by the legislature. See, e.g., Employment Div. v. Pelchat, 108 Or App 395 (1991).

In previous cases, the Commission has rejected the notion that disposal businesses should be treated differently for purposes of cost allocation. See, e.g., Minutes of Special Meeting of the Oregon Environmental Quality Commission, December 19, 1986 (Ogden-Marten waste incinerator). The Commission can change its position, of course, but if it does, it will need to explain its reasoning and make findings explaining how it will calculate the allocable costs for such components. ORS 468.170(3).¹⁰

¹⁰ It might be tempting to conclude that all pollution control facilities are integral to a landfill business or other environmental service industry and that no costs of facilities are properly allocable. The result would be the same as concluding that such facilities are ineligible for certification. As previously discussed, this interpretation appears to be contrary to legislative intent.

For example, the Commission might determine that some disposal businesses are essentially marketing compliance with environmental laws and that the pollution control facilities, in some sense, are of greater value to these businesses than it is to other businesses where a pollution control facility is merely incidental to production. Such a factor might be considered a factor similar to return on investment.

If the Commission were to determine that there is a reasonable basis for allocating costs differently for some pollution control facilities that are integral to waste disposal businesses, it would also need to develop a methodology for calculating the allocation costs. For example, the Commission has adopted a methodology for determining return on investment. OAR 340-16-030(5), but this rule does not treat facilities differently based upon the nature of relationship between the facility and the applicant for certification.

The likelihood that the courts would uphold an allocation determination based upon an "other factor" depends upon the persuasiveness of the reasoning supporting the distinction, the extent to which this "other factor" is similar to one of the four specific factors, and the logical nexus between the factor identified and the methodology used to reduce the cost allocation.

4. May the Commission defer action on the pending Chemical Waste Management application until after the Commission has amended the rules for the pollution control tax credit program and then apply the amended rules to the application?

Brief Answer

In theory, yes. However, the application is supposed to be approved or denied within 120 days. This time frame will make it difficult to complete amendments to the rule prior to taking action on the application.

Analysis

There is no general legal prohibition against retroactive application of an administrative rule. See Gooderham v. AFSD, 64 Or App 104, 108 (1983).¹¹ Retroactive application is not allowed, however, if it would be "unreasonable." The courts determine reasonability by applying a balancing test to determine whether retroactive application would be contrary to statutory design or recognized legal principles. Gooderham, supra. In performing this balancing test, the courts often look to whether the matter is a case of first impression and the rule merely attempts to fill a void or, to the contrary, whether the new rule represents an abrupt departure from well established practice. Id. at 109. The courts also will consider the extent to which an applicant has relied on the former rule and whether there is a statutory interest in applying the new rule despite reliance by the applicant. Id.

Thus, whether the Commission may retroactively apply an amendment to the tax credit rules will depend largely upon the nature of the amendment and the extent, if any, to which Chemical Waste Management has relied on the existing rules or past practice.

It should be noted, however, that ORS 468.170(2) requires the Commission to reach a decision within 120 days of the filing of the application. The Chemical Waste Management application was found to be complete on November 13, 1991. As a result, the 120 day deadline appears to be March 22, 1992.¹² It would be difficult to adopt a regular rule amendment by that date. Similarly, it might be difficult to justify the adoption of a temporary rule with an immediate effective date.

¹¹ The intent to apply a provision retroactively should be expressed in the rule. See Guerrero v. AFSD, 67 Or App 119 (1984).

¹² Failure to certify within 120 days does not result in automatic certification. An applicant could seek a court order, though, requiring the Commission to act.

5. What is the Commission's authority to further define the term "requirement" as used in the principal purpose test in ORS 468.155?

Brief Answer

The Commission has relatively broad authority to define the term "requirement" so long as the definition is consistent with ordinary usage of the term and legislative intent. The Commission could limit the term to requirements specifically imposed by rules or permits and enforceable by actions for permit revocation, civil penalties or court order.

Analysis

The term "requirement" is not defined in the statute. It was added to the statutes as a part of the reformulation of the principal purpose test in 1983. Or Laws 1983, ch 637. There was very little discussion of the new language during the legislative committee hearings. (The discussion in 1983 centered around solid waste incinerators.)

When a word in a statute is not defined, the courts will usually give the term its ordinary and common meaning so long as that meaning is consistent with legislative intent. ORS 174.020; Fletcher v. SAIF, 48 Or App 777, 781 (1980). While not controlling, dictionary definitions can provide some guidance. Webster's defines "requirement" as something required, wanted, or needed or as an essential requisite or condition. See also City of Portland v. State Bank of Portland, 107 Or 267 (1923) (definition of "required by law"); Beakey v. Knutson, 90 Or 574 (1919) ("direct" means mandatory and synonymous with "require").

As discussed in the answer to question 1 above, the Commission has authority to define statutory provisions as part of its implementation of the tax credit program. So long as an interpretation is reasonable and is consistent with legislative intent, it will generally be upheld. Accordingly, we believe that the Commission could define the term "requirement" narrowly to include only those agency directives that are mandatory and that are enforceable against the taxpayer by virtue of a specific regulation or permit condition. Ordinarily, such enforcement authority would include civil penalties, permit revocation, or court order.

The Commission could also adopt a somewhat broader construction of the term that includes requirements imposed under areawide management plans even though such requirements are enforceable by another government entity. An example would be mandatory management practices imposed by the designated management agency in a basin in which TMDLs are in place. There is a risk that the courts would reject a Commission's definition of "requirement" that includes directives that are not enforceable by any means.

6. What is the Commission's authority to further define the phrase "sole purpose" as used in ORS 468.155?

Brief Answer

The Commission has authority to further define the phrase "sole purpose."

Analysis

The "sole purpose" test was also added by the 1983 legislation. As with the term "requirement," it is not defined in the statute and there is very little helpful legislative history. Again, we conclude that the Commission has authority to define the term, so long as the definition is consistent with the statutory scheme.

The present "principal purpose" and "sole purpose" tests replaced the "substantial purpose" test and the legislative history does indicate an intent to restrict eligibility for certification. See Testimony of Bill Young, Director of DEQ, (SB 112) Senate Committee on Energy and Environment, March 2, 1983 at 383. Accordingly, we assume that the phrase "sole purpose" should not be defined so broadly that it essentially duplicates the previous substantial purpose test.

The Commission presently defines the term narrowly as the "exclusive purpose." OAR 340-16-010(9). This definition is clearly consistent with the statutory scheme. A somewhat broader interpretation that overlooked incidental or de minimis purposes would probably be upheld as well.

7. What is the Commission's authority to adopt rules governing approval of "alternative methods" to open field burning under ORS 468.150 and could such rules limit approval of some or all alternative methods to those used in the Willamette Valley?

Brief Answer

The Commission has broad authority to approve or to refuse to approve alternative methods. So long as there is a rational basis for the classification, the Commission could limit approval of some or all alternative methods to the Willamette Valley. Similarly, the Commission could base approval on its estimation of whether the use of the alternative method would result in an actual decrease in acreage burned or increased air quality.

Analysis

In 1975, the legislature added "approved alternative methods for field sanitation" to list of facilities eligible for certification. ORS 468.150. Or Laws 1977, ch 559, section 15. We previously advised that "approved alternative methods" are eligible for certification. However, the legislature has delegated significant authority to the Commission¹³ to approve or disapprove such methods in the first place.

The legislature has not provided express standards for approval. Accordingly, it falls upon the Commission to

¹³ ORS 468.150 actually gives the authority to approve alternative methods to the department and to "the committee." The Commission, however, has general authority to adopt rules directing the Department's decisions with respect to approval of methods. ORS 468.015, 468.020. The exercise of this supervisory authority would not appear to be inconsistent with ORS 468.150.

The committee referred to in the statute is the Oregon Field Sanitation Committee. This committee was abolished and its duties transferred to the Department. Or Laws 1977, ch 650, section 6. See also Or Laws 1991, ch 920, section 24 (abolishing the 1977 advisory committee established to assist the Department).

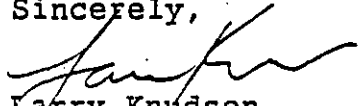
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complete the expression of legislative policy. See Springfield Education Assn., supra. Rules that are reasonable and consistent with the underlying statutes will ordinarily be upheld. (See discussion at page 5, supra.)

The record of the proceedings leading to the enactment of ORS 468.150, shows that the legislature wanted to create an incentive to develop practices and equipment that would reduce the need for open field burning in the Willamette Valley. See Comments of Sen. Betty Roberts, (SB 311) Senate Committee on Agriculture, March 18, 1975. Thus, rules that limit approval of some or all alternative methods to the Willamette Valley would be consistent with the statute. See also ORS 468A.005(6); 468A.025; 468A.035 (authorizing different air quality regulations for different areas of the state).¹⁴

Similarly, rules limiting approval to alternative methods that the Commission determines are likely to result in an overall reduction of air pollutants or the actual removal of acreage from open burning are consistent with legislative intent. These were objectives of the 1975 package of field burning statutes that included ORS 468.155. Or Laws 1975, ch 559.

Sincerely,


Larry Knudsen
Assistant Attorney General


Arnold B. Silver
Assistant Attorney General

LK:dld 0938N
cc: Fred Hansen
Peter Dalke
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¹⁴ Although we believe that approval could be limited to the Willamette Valley, such a limitation is not required. The statute itself contains no provision limiting eligibility to the Willamette Valley.

ATTACHMENT A

History of Pollution Control Tax Credit Statutes

Following is a brief history of the more important eligibility and cost allocation provisions of the tax credit statutes. Provisions relating to tax treatment of the certificate, fees and required dates for construction and application are not discussed.

The pollution control tax credit program was established by statute in 1967. Or Laws 1967, ch 592. Apparently, 23 states and the federal government already had pollution control tax credit programs at that time and Oregon may have borrowed some of its original provisions from these other jurisdictions. Testimony of Herby Hardy on SB 546, House Taxation Committee, May 11, 1967, at 1147, 1168. Always controversial, the tax credit statutes have been significantly amended during nearly every legislative session since 1967.

The original version of the statute was remarkably similar to the present law. There were a number of important differences, however. Facilities (defined essentially as they are today) were eligible for certification if the "principal purpose" of the facility was preventing, controlling, or reducing air or water pollution. The pollution control had to be by means of waste disposal, air pollutant disposal, elimination of air contaminant sources, or use of air-cleaning devices. There was no general mandate that the principal purpose be compliance with requirements imposed by the Sanitary Authority (the Commission's and department's predecessor) or Environmental Protection Agency. Similarly, there was no "sole purpose" provision. The Sanitary Authority was not given express authority to determine the allocation of costs.

In 1969, the legislature replaced the "principal purpose test" with a "substantial purpose test." Or Laws 1969, ch 340, section 4. The 1969 amendments also gave the Sanitary Authority the ability to determine the portion of cost properly allocable to pollution control. Id. at section 5. Allocation of costs was limited to increments of 20 percent, however. In addition, the Sanitary Authority was given express authority to adopt procedural rules for administering the tax credit program. Id. at section 8. A bill enacted later in 1969 transferred the responsibilities of the Sanitary Authority to the Commission and department. Or Laws 1969, ch 593.

Amendments in 1973 authorized a tax credit for certain solid waste facilities. Or Laws 1973, ch 831, section 4. The legislature also adopted standards for allocating actual cost

of the facility. Id. at section 6. See also Or Laws 1973, ch 835 (a different bill with several of the same provisions); Or Laws 1974 special session, ch 37 (resolving conflicts between the two 1973 bills).

In 1975, the tax credit statutes were recodified and placed in ORS chapter 468 and new provisions relating to solid waste were added. Or Laws 1975, ch 496. Provisions were adopted requiring preliminary certification by the department. Id. at section 5. The legislature also enacted ORS 468.150, which provides that approved alternative methods to open field burning are eligible for pollution control tax credits. Or Laws 1975, ch 559, section 15.

Amendments in 1977 made noise pollution control facilities eligible for tax credits and further refined the requirements for solid waste control facilities. Or Laws 1977, ch 795. Similar amendments in 1979 made hazardous waste and used oil facilities eligible. Or Laws 1979, ch 802. The 1979 amendments also excluded from eligibility of solid or hazardous waste facilities a list of items found to make an "insignificant contribution" (e.g., office buildings, cars and parking lots). Id. at section 1.

The next major revision in eligibility requirements occurred in 1983. Or Laws 1983, ch 637. The legislature repealed the substantial purpose test and reinstated the principal purpose test. Id. at section 1. Rather than readopt the specific list of purposes, however, the amendment stated that the principal purpose must be "to comply with a requirement imposed by the department, the federal Environmental Protection Agency, or regional air pollution authority. The legislature also added the sole purpose test. Id. In addition, recycling facilities were made eligible for certification.

The legislature also addressed the issue of replacement or reconstruction of facilities. Id. The legislature limited eligibility to replacements due to regulatory requirements and to costs greater than the "like for like" costs of replacement.

The legislature also replaced the Commission's authority to allocate costs based on 20 percent increments with authority to allocate costs from 1 to 100 percent. Id. at section 4. The Commission was given express authority to adopt rules establishing methods to be used for calculating such costs.

In 1987, the legislature excluded "property installed, constructed or used for clean up of emergency spills or unauthorized releases" from eligibility. Or Laws 1987, ch 596,

section 4. The legislature gave the Commission express authority to adopt rules further defining this particular exclusion. Id.

The 1989 legislature extended the exclusion for portions of facilities making "insignificant contribution" (office buildings, fences, parking lots, etc.) from solid waste and hazardous waste facilities to all facilities. Or Laws 1989, ch 802, section 4. Asbestos abatement facilities and solid waste incinerators were excluded. Id. In addition, the legislature continued to fine tune the provisions on cost allocation, this time by limiting actual cost of the taxpayer's own cash investment in the facility. Id. at section 6. The provisions for preliminary certification by the department were repealed. Id. at section 8.

**LEGAL REQUIREMENTS FOR POLLUTION CONTROL FACILITY TAX CREDIT
FOR LINER SYSTEM FOR OWS LANDFILL MODULES 1, 2 AND 3**

The Law

● ORS 468.170 (4)(a) -- the EQC "shall certify" for tax credit purposes a pollution control facility if the EQC finds that the facility was constructed in accordance with ORS 468.165 (1); is designed for and will operate in accordance with ORS 468.155 (1) and (2); and is necessary to satisfy ORS chapter 459 (establishing permitting requirements for solid waste management facilities).

● ORS 468.165(1) -- a person may apply to the EQC for tax credit certification under ORS 468.170 for air or water pollution control facility if the facility was constructed after January 1, 1967.

● ORS 468.155 (1) -- a pollution control facility is any structure, equipment or device constructed or installed by any person if:

"(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the department, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil."

● ORS 468.165 (6) -- an application for a pollution facility control tax credit must be submitted within two years of substantial completion of construction of the facility.

Application of the Law

● The liner system was necessary to satisfy permitting requirements of ORS chapter 459 for solid waste management facilities.

● The liner system was constructed after 1/1/67.

● The liner system is designed to control and to remove liquid from the landfill and to prevent release of the liquid into the environment including to groundwater.

● The liner system was installed to meet EQC/DEQ requirements.

● Landfill, a constructed excavation in the ground, holds the waste; liner does not hold waste but collects leachate and prevents leachate from escaping to environment.

● The application for a tax credit for the liner system was submitted within two years after completion of the liner system.

● EQC must approve within 120 days of completion of application.

● The 120 days are up for Applications Nos. T-2884, T-3788 and T-3802 on June 20, 1992, September 1, 1992 and October 7, 1992 respectively.

RETURN ON INVESTMENT

The Law

- ORS 468.190 (1) -- In establishing amount of cost allocable to pollution control, EQC allowed to consider "[t]he estimated annual percent return on the investment in the facility."
- OAR 340-16-030(5)(a) -- To compute return on investment, determine claimed facility cost, average annual cost flow and useful life of facility.
- OAR 340-16-030(1)(b) -- The annual average cash flow is "[t]he estimated average annual cash flow from the claimed facility for the first five full years of operation calculated as follows:

 "(A) Calculate the annual cash flow for each of the first five full years of operation by subtracting the annual operating expenses from the gross annual income for each year; and

 "(B) Sum the five annual cash flows and divide the total by five."
- OAR 340-16-030 (1)(d) -- Gross annual income is "the estimated total annual income from the claimed facility derived from sale or reuse of recovered materials or energy or any other means including savings that may occur as a result of the facility."

Application of the Law

- Statute and rules focus on the actual pollution control facility -- the liner system, not the landfill or any other part of the OWS solid waste management facility.
- Liner recovers a material, leachate, with no value; leachate poses an expense because it must be properly disposed.
- Liner is a pollution control requirement, not a process or operational requirement.

Environmental Quality Commission Precedents

Examples of Liner Systems

<u>App. #</u>	<u>Applicant</u>	<u>Description</u>	<u>Cost</u>
T-1415	Teledyne	Clarifier sludge dewatering facility including four 2 1/2 acre clay-lined ponds.	\$697,719 (80% or more allocated)

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T-1473	PGE	Synthetic lined and unlined evaporation ponds, sumps and settling ponds.	\$3,567,692 (80% or more allocated)
T-1598	Boeing	Lagoon with double synthetic liner with lysimeters between and underneath the liners to detect leakage.	\$1,002,536 (80% or more allocated)
T-1774	Stayton Canning	Two bentonite-sealed earthen ponds.	\$475,493 (100% allocated)
T-2310	Boise Cascade	Bentonite clay liner placed in the bottom of landfill to prevent landfill leachate from entering the groundwater.	\$166,428 (100% allocated)
T-2576	Boise Cascade	Leachate conveyance system to transport leachate from landfill to treatment plant.	\$461,910 (100% allocated)

Examples of Environmental Service Organizations

T-1375	Sanitary Services	Newsprint and cardboard shredder and baler.	\$204,407 (100% allocated)
T-1548	Bergsoe Metal	Facility to reclaim lead and sulfuric acid from old batteries.	\$23,771,898 (100% allocated)
T-1564	McFarlane's Bark	Shredding and composting facility.	\$174,720 (100% allocated)
T-1673	Smith & Hill Recycling	Facility to process and to granulate used plastic.	\$101,435 (100% allocated)
T-1841	Ogden-Martin	Solid waste incinerator facility. (Law has since been changed to exclude such facilities.)	\$52,335,027 (75% allocated)
T-3255	Environmental Rubber	Pole barn and fork lift for rubber recycling facility to be used for storage and	\$36,617 (69% allocated)

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handling of recycled rubber.

Examples of ROI Calculations Based on Sale or Reuse of Material Recovered

T-1893	Evanite Battery	Stainless steel sumps and tanks, air stripper and other equipment to collect wastes containing trichloroethylene; collected TCE reused at facility.	\$140,650 (100% allocated)
T-2215	EMARK	Facility to collect trichloroethylene vapors; TCE recaptured and reused in plant in plastics manufacturing.	\$2,102,951 (100% allocated)
T-2411	Dow Corning	Modifications to air pollution control devices to collect emissions; silica fume sold as concrete additive or high temperature insulator.	\$644,868 (100% allocated)
T-3360	Willamette Industries	Bag filter to collect particulate emissions; collected particulate used for fuel in plant.	\$49,682 (100% allocated)
T-3488	Gregory Forest Products	Secondary containment for lumber diptank operation; containment results in less sapstain being used.	\$49,454 (86% allocated)
T-3599	Lee's Shell Service	Machine to remove and clean coolant from auto air conditioners; produced coolant reused.	\$2,972 (100% allocated)