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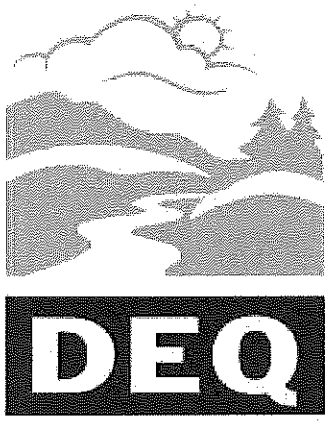
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 12/11/1992



State of Oregon
Department of Environmental Quality

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item F
December 11, 1992 Meeting

Title:

Proposed Amendments to Definitions and to Permit Fee Schedule for Wastewater Disposal Permits.

Summary:

The Department is seeking to change the definition of "Disposal System" to clarify the intent of the rule. The current language, OAR 340-45-010(5), appears to exclude on-site sewage disposal systems with a capacity of 5,000 gallons per day or less. This rule amendment clarifies the intent to only exclude on-site sewage disposal systems regulated through OAR 340-71 (On-Site Sewage Disposal), and not to exclude systems regulated through a WPCF permit. New definitions for Septage and Septage Alkaline Stabilization Facility are also added by this amendment.

Upon review by the Department, it was concluded that fees for small on-site sewage disposal systems operating under a WPCF permit were excessive. This amendment establishes new reduced fees for small on-site systems treating 1,200 gallons of domestic sewage per day or less (OAR 340-45-075). Public testimony supported this amendment. Additionally, a new fee category for Septage Alkaline Stabilization Facilities which will be regulated by a WPCF permit is added by this amendment. The addition of this new category is supported by septage haulers.

Department Recommendation:

The Department recommends that the Commission adopt the rule amendments regarding the revisions and additions to definitions and the addition of new fee categories for small on-site sewage disposal systems and for septage alkaline stabilization facilities as presented in Attachment A of the Department Staff Report for Agenda Item F.

Report Author	Division Administrator	Director
Thomas J. Lucas	Lydia Taylor	Fred Hansen

November 20, 1992

State of Oregon
Department of Environmental Quality **Memorandum**

Date: November 20, 1992

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item F, December 11, 1992 EQC Meeting

Proposed Amendments to Definitions and to Permit Fee Schedule for Wastewater Disposal Permits.

Background

On September 14, 1992, the Director authorized the Water Quality Division to proceed to a rulemaking hearing on proposed rules which would add new domestic waste source permit fee categories for small on-site sewage disposal systems designed to treat 1,200 gallons of domestic sewage per day or less, and for septage alkaline stabilization facilities. The proposed rules also included revisions and additions to definitions of "disposal system," "septage," and "septage alkaline stabilization facility."

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on October 1, 1992. Notice was mailed on October 1, 1992, to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action.

A Public Hearing was held November 2, 1992, at 9:00 a.m., in Conference Room 3A, Department of Environmental Quality Headquarters, with Thomas J. Lucas serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through 5:00 p.m., November 2, 1992. Written comments received are listed in the Presiding Officer's Report (Attachment C). Department staff have evaluated the comment received (Attachment D). Based upon that evaluation, there are no modifications to the initial rulemaking proposal.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public 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 Proposed Rulemaking Action Are Intended To Address

Small Treatment and Disposal Systems. In Spring 1992 the Water Quality Division staff proposed new fee schedules for domestic waste source permits. The proposal was based on an evaluation of regulatory costs for permit processing, annual compliance determination, and technical activities such as review of engineering plans. The Environmental Quality Commission adopted the new fee schedules in June 1992.

Fees were established for several permit categories. The fees for category G apply to treatment systems with a capacity of 20,000 gallons or less. The fee amounts were based on water quality program costs in regulating commercial activities such as mobile home parks and recreational vehicle parks.

In early summer 1992, concern was expressed that the fees associated with category G were too high for very small systems operating under a Water Pollution Control Facilities (WPCF) permit. Examples include individual residences or a small business establishment. The Water Quality Division staff reviewed regulatory costs for small systems and concluded that the fees were excessive. The proposed rule amendments reduce the fees for systems with a capacity of 1,200 gallons per day or less.

Septage Alkaline Stabilization Facilities. A federal court order requires EPA to promulgate comprehensive standards for the disposal of sewage sludge. These rules are expected to become effective in late January, 1993. One of the regulations expected in the package will require pathogen reduction in all septage prior to land application.

Currently, Oregon allows land application of septage (pumped from residential septic tanks) without treatment at remote sites where human contact is unlikely. Under the new federal sludge regulations, however, this practice will no longer be permitted.

Some of the companies currently spreading septage informed the Department that they will construct facilities to meet the new federal rules. The facilities will use alkaline stabilization treatment to achieve pathogen reduction.

The existing permit fee structure lists domestic sewage treatment and disposal facilities, but not septage treatment facilities. These new treatment facilities will be regulated through WPCF permits and inspections. To help pay for these services, the Department is proposing to add a fee category for permit processing, technical activities and annual compliance determination, and establish regulations for requiring alkaline stabilization of septage before remote site land application. Regulations have been written and are expected to be effective in January 1993. The intent of the federal regulations is to facilitate septage application at beneficial use rates. New septage alkaline stabilization facilities will need to be constructed and operated. The Water Quality Division will regulate the facilities through a WPCF permit and compliance inspections. To help pay the cost of regulating these facilities, the Department is proposing to add a fee category for permit processing, technical activities and annual compliance determination.

Definitions. OAR 340-45-010(5) "disposal system" excludes on-site disposal systems with a capacity of 5,000 gallons or less. The intent of the rule is to only exclude systems regulated through Division 71, On-Site Sewage disposal, but not to exclude systems regulated through a WPCF permit. The proposed rule amendments clarify the intent of this definition. New definitions are added for "septage" and "septage alkaline stabilization facility."

Authority to Address the Issue

Oregon revised Statutes 468.065 Issuance of Permits; content; fees; use.

Oregon Administrative Rules 340-45-010, Definitions.

Oregon Administrative Rules 340-45-075, Permit Fee Schedule.

Oregon Administrative Rules 340-50, Land Application and Disposal of Sewage Treatment Plant Sludge and Sludge Derived Products Including Septage.

Draft 40 Code of Federal Regulations, Part 503.

Process for Development of the Rulemaking Proposal (including alternatives considered)

The rule amendments taken to public hearing were based on Water Quality Division staff evaluation of concerns expressed by the affected public. The Department did not form an advisory committee or hold formal workshops.

The proposed addition of a fee category for septage alkaline stabilization facilities was prepared in response to concerns expressed by several septage pumpers. These parties want the Department to initiate permitting and compliance procedures as soon as possible to ensure that there is a regulatory mechanism in place which will be in compliance with federal regulations.

The proposed addition of a fee category for on-site sewage disposal systems of 1,200 gallons per day or less was prepared in response to several concerns expressed by potential suppliers and consultants. These parties believed the fees for small systems was excessive relative to commercial systems such as mobile home parks.

The Department considered two alternative courses of action: 1) do not change the fee schedules, and 2) change the fee schedules to as accurately as possible reflect water quality programs costs to regulate these activities. The Department choose the latter alternative. The fees for the small on-site systems are proposed to be comparable to fees for on-site systems now regulated under Division 71, "On Site Sewage Disposal". The proposed fees for regulating septage alkaline stabilization facilities are based on projected costs for compliance determination and for processing WPCF permit applications.

Summary of Rulemaking Proposal Presented for Public Hearing and Discussion of Significant Issues Involved.

The rule amendments presented for public hearing clarified the definition of a "disposal system" to only exclude on-site sewage disposal systems regulated through OAR 340-71. Systems regulated by WPCF permits are not excluded regardless of the size of the facility. New definitions were proposed for "septage" and "septage alkaline stabilization facility."

The proposed rule amendments added a fee category for septage alkaline stabilization facilities. These facilities would be regulated by WPCF permits, and subject to annual compliance determination fees, permit processing fees and technical activities fees. The proposed fees were based on water quality program staff estimates of staff costs necessary to regulate these facilities.

The proposed rule amendments added a fee category for on-site sewage disposal systems of 1,200 gallons per day or less which dispose of treated effluent via sub-surface means only. The proposed fees were based on current fees for comparably sized systems regulated under OAR 340-71, "On-Site Sewage Disposal."

The current category for systems less than 20,000 gallons per day which disposal of treatment effluent via sub-surface means only was revised to state "systems less than 20,000 gallons per day but more than 1,200 gallons per day...".

Summary of Significant Public Comment and Changes Proposed in Response

There were no changes proposed to the rule amendments based on public comment. There were no oral or written comments regarding establishment of a proposed fee category for septage alkaline stabilization facilities. Oral testimony supported the proposed fee category for on-site sewage disposal systems of 1,200 gallons per day or less which disposal of treated effluent via sub-surface means only. There was written testimony pertaining to definitions of a "disposal system" and supporting the establishment of a separate fee category for the small systems. This testimony, however, was identical to written correspondence submitted several months ago. The proposed rule amendments distributed for public hearing had already addressed the concerns expressed in the written correspondence.

Summary of How the Proposed Rule Will Work and How it Will be Implemented

The proposed rule amendments will affect existing domestic waste source permittees and new permit applicants with small on-site sewage disposal systems of 1,200 gallons per day or less which are subject to WPCF permits. The proposed amendments will also affect septage haulers who currently utilize remote site land application for disposal. Copies of the new rule amendments will be mailed to affected parties and to new permit applicants.

To comply with the proposed amendments affected parties will be required to pay the appropriate fee beginning about January 1, 1993.

The Water Quality Division now has a process for establishing an appropriate fee and for collecting fees for all domestic waste source permittees and for new applicants. All fees are based on applicable rules and calculated by the Water Quality Division staff. In June and July of every year invoices are distributed to the permittees for the annual compliance determination fee. Permit processing fees must be paid when the application is submitted or the application is not considered complete for processing. Technical activities fees must be paid before engineering plan approval letters can be issued. The procedure for collecting fees associated with the two new fee categories will be the same as currently used for all the domestic waste source permit fees.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments regarding revisions and additions to definitions, and the addition of new fee categories for on-site sewage disposal systems of 1,200 gallons per day or less which disposal of treated effluent via sub-surface means only and for septage alkaline stabilization facilities, as presented in Attachment A of the Department Staff Report for Agenda Item F.

Attachments

A. Rule Amendments 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. Department's Evaluation of Public Comment
E. Rule Implementation Plan

Approved:

Section: Barbara A. Burton

Division: Lydia Taylor

Report Prepared By: Thomas J. Lucas

Phone: 229-5065

Date Prepared: November 10, 1992

Thomas J. Lucas:crw
MW\WC10\WC10941.5
November 10, 1992

NOTE:

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

The ~~[bracketed]~~ portions of the text represent proposed deletions made to the rules

DEFINITIONS

340-45-010

As used in these rules unless otherwise required by context.

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

(2) "Department" means Department of Environmental Quality.

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

(4) "Discharge or disposal" means the placement of wastes into public waters, on land or otherwise into the environment in a manner that does or may tend to affect the quality of public waters.

(5) "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells and other systems but excludes on-site sewage disposal systems ~~[of 5000 gallons per day or less]~~ regulated through the requirements of OAR 340-71-160 and ORS 454.655, and systems which recirculate without discharge.

(6) "Federal Act" means Public Law 92-500, known as the Federal Water Pollution Control Act Amendments of 1972 and acts amendatory thereof or supplemental thereto.

(7) "General permit" means a permit issued to a category of qualifying sources pursuant to rule 340-45-033, in lieu of individual permits being issued to each source.

(8) "Industrial waste" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

(9) "NPDES permit" means a waste discharge permit issued in accordance with requirements and procedures of the National Pollutant Discharge Elimination System authorized by the Federal Act and of OAR Chapter 340, rules 340-45-005 through 340-45-065.

(10) "Navigable waters" means all navigable waters of the United States and their tributaries; interstate waters; intrastate

lakes, rivers, and streams which are used by interstate travelers for recreation or other purposes or from which fish or shellfish are taken and sold in interstate commerce or which are utilized for industrial purposes by industries in interstate commerce.

(11) "Person" means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate, or any other legal entity whatever.

(12) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

(14) "Pretreatment" means the waste treatment which might take place prior to discharging to a sewerage system including, but not limited to, pH adjustment, oil and grease removal, screening, and detoxification.

(15) "Process waste water" means waste water contaminated by industrial processes but not including non-contact cooling water or storm runoff.

(16) "Public waters" or "waters of the state" include lakes, bays, ponds, impounding reservoirs, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland, or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters) which are wholly or partially within or bordering the state or within its jurisdiction.

(17) "Regional Administrator" means the Regional Administrator of Region X of the U.S. Environmental Protection Agency.

(18) "Septage" means the liquid and solid material pumped from a septic tank, holding tank, cesspool, or similar domestic sewage treatment system.

(19) "Septage Alkaline Stabilization Facility" means a facility which actively mixes alkaline material with raw septage to increase and maintain pH at 12 in the resultant mixture for sufficient time to achieve chemical stabilization.

~~((18))~~(20) "Sewage" means the water-carried human or animal waste from residences, building, industrial establishments, or other places, together with such groundwater infiltration and surface water as may be present. The mixture of sewage as above defined with wastes or industrial wastes, as defined in sections (8) and (23) of this rule, shall also be considered "sewage" within the meaning of these rules.

~~((19))~~(21) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

~~((20))~~(22) "State" means the State of Oregon.

~~((21))~~(23) "Toxic waste" means any waste which will cause or can reasonably be expected to cause a hazard to fish or other aquatic life or to human or animal life in the environment.

~~((22))~~(24) "Treatment" or "waste treatment" means the alteration of the quality of waste waters by physical, chemical, or biological means or a combination thereof such that tendency of said wastes to cause any degradation in water quality or other environmental conditions is reduced.

~~((23))~~(25) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.

~~((24))~~(26) "WPCF permit" means a Water Pollution Control Facilities permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued by the Department in accordance with the procedures of OAR Chapter 340, rules 340-14-005 through 340-14-050.

NOTE:

The <u>underlined</u> portions of text represent proposed additions made to the rules.

The ~~[bracketed]~~ portions of the text represent proposed deletions made to the rules

PERMIT FEE SCHEDULE

WASTEWATER DISPOSAL PERMITS

340-45-075

(1) **Filing Fee.** Unless waived by this rule, a filing fee of $50 shall accompany any application for issuance, renewal, modification, or transfer of an NPDES permit or WPCF permit, including registration for a General Permit pursuant to OAR 340-45-033 and request for a Special Permit pursuant to OAR 340-14-050. This fee is non-refundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed. The following filing fees are waived:

(a) Small gold mining suction dredges with an intake hose diameter of 4 inches or less.

(b) Small gold mining operations which qualify for General Permit 600, and which can process no more than 5 cubic yards of material per day.

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

(a) New Applications:

(A)	Major industries[1]	$20,000
(B)	Minor industries	$ 4,000
(C)	Major domestic[2]	$20,000
(D)	Minor domestic:[3]	
	(i) Categories Da, Db	$ 4,000
	(ii) Categories E, F, G	$ 2,000
	<u>**(iii) Category H . . . . . **</u>	<u>**$ 400**</u>
	<u>**(iv) Category I . . . . . **</u>	<u>**$ 500**</u>

(b) Permit Renewals (including request for effluent limit modification):

(A)	Major industries[1]	$10,000
(B)	Minor industries	$ 2,000
(C)	Major domestic[2]	$10,000
(D)	Minor domestic:[3]	
	(i) Categories Da, Db	$ 2,000
	(ii) Categories E, F, G	$ 1,000
	(iii) Category H	**$ 200**
(E)	Agricultural	$ 2,000

(c) Permit Renewals (without request for effluent limit modification):

(A)	Major industries[1]	$ 5,000
(B)	Minor industries	$ 750
(C)	Major domestic[2]	$ 5,000
(D)	Minor domestic:[3]	
	(i) Categories Da, Db	$ 750
	(ii) Categories E, F, G	$ 500
	(iii) Category H	**$ 100**
	(iv) Category I	**$ 200**
(E)	Agricultural	$ 750

(d) Permit Modifications (involving increase in effluent limitations):

(A)	Major industries[1]	$10,000
(B)	Minor industries	$ 2,000
(C)	Major domestic[2]	$10,000
(D)	Minor domestic:3	
	(i) Categories Da, Db.	$ 2,000
	(ii) Categories E, F, G	$ 1,000
	(iii) Category H	**$ 150**
(E)	Agricultural	$ 2,000

(e) Permit Modifications (not involving an increase in effluent limits): All categories . . . . . $ 500

(f) Special Permits issued pursuant to OAR 340-14-050 . . . . . $ 250

(g) Modifications of septage alkaline stabilization facilities permits . . . . . $ 200

~~(g)~~(h) New General Permits, by permit number:

(A)	100, 400, 500, 600 (over 1500 cubic yards per year), 900, 1000	$ 50

(B) 200, 300, 1300, 1400, 1500, 1600. . . . . $ 100

(C) 1200 . . . . . $ 150

(D) Others not elsewhere specified . . . . . $ 150

(E) In addition, the following fees shall be added to categories (A) through (D) when the listed activities are a required part of the application review process:

(i) Disposal system plan review . . . . . $ 200

(ii) Site inspection and evaluation . . . . . $ 500

(3) **Technical Activities Fee.**[4] All permittees shall pay a fee for NPDES and WPCF permit-related technical activities, as follows:

(a) New or substantially modified sewage treatment facility . . . . . $ 4,600

(b) Minor sewage treatment facility modifications and pump stations . . . . . $ 500

(c) Pressure sewer system, or major sewer collection system expansion . . . . . $ 350

(d) Minor sewer collection system expansion or modification . . . . . $ 100

(e) New or substantially modified water pollution control facilities **greater than 1,200 gallons per day** utilizing on-site wastewater treatment and disposal . . . . . $ 500

(f) New or substantially modified water pollution control facilities 1,200 gallons per day or less utilizing on-site wastewater treatment and disposal . . . . . $ 100

(g) New or substantially modified water pollution control facilities utilizing alkaline agents to stabilize septage . . . . . $ 500

(4) **Annual Compliance Determination Fee Schedule:**

(a) Domestic Waste Sources -- Initial and Annual Fee is based on Dry Weather Design Flow, Population Served by Facility, Type of Facility and Applicable Special Fees as follows:

Category		Fees
(A_1)	Sewage Disposal - 50 MGD or more	$42,410
(A_2)	Sewage Disposal - At least 25 MGD but less than 50 MGD	$24,510
(A_3)	Sewage Disposal - At least 10 MGD but less than 50 MGD	$11,020
(B_a)	Sewage Disposal - At least 5 MGD but less than 10 MGD	$ 6,700
(B_b)	Sewage Disposal - At least 5 MGD but less than 10 MGD - Systems where treatment occurs in lagoons that discharge to surface waters	$ 3,070
(C_{1a})	Sewage Disposal - At least 2 MGD but less than 5 MGD	$ 4,175
($C1_b$)	Sewage Disposal - At least 2 MGD but less than 5 MGD - Systems where treatment occurs in lagoons that discharge to surface waters	$ 1,825
(C_{2a})	Sewage Disposal - At least 1 MGD but less than 2 MGD	$ 2,510
(C_{2b})	Sewage Disposal - At least 1 MGD but less than 2 MGD - Systems where treatment occurs in lagoons that discharge to surface waters	$ 1,060
(D_a)	Sewage Disposal - Less than 1 MGD, and not otherwise categorized under Categories E, F, or G	$ 955
(D_b)	Sewage Disposal - Less than 1 MGD - Systems where treatment occurs in lagoons that discharge to surface waters which are not otherwise categorized under Categories E, F, or G	$ 625
(E)	Sewage Disposal - Systems where treatment is limited to lagoons which do not discharge to surface waters	$ 600
(F)	Sewage Disposal - Systems larger than 20,000 gallons per day which dispose of treated effluent via subsurface means only	$ 465

(G) Sewage Disposal - Systems less than 20,000 gallons per day **but more than 1,200 gallons per day** which dispose of treated effluent via sub-surface means only. ~~[and other systems required by OAR 340, Division 71 to have a Water Pollution Control Facilities (WPCF) permit]~~ . . . $ 440

(H) Systems of 1,200 gallons per day or less which dispose of treated effluent via sub-surface means only . . . $ 150

(I) Septage alkaline stabilization facilities . . . . $ 200

~~[(H)]~~**(J)** Sources determined by the Department to administer a pretreatment program pursuant to federal pretreatment program regulations (40 CFR, Part 403; January 28, 1981) shall pay an additional $1,000 per year plus $335 for each significant industrial user specified in their annual report for the previous year.

~~[(I)]~~**(K)** Population Based Fee - All permittees shall pay an annual fee computed as follows: population served by the facility multiplied by a rate of 0.08038.

~~[(J)]~~**(L)** In addition to applicable fees specified above, special Annual Compliance Fees for Tualatin Basin Pollution Abatement Activities will be applied to the following permittees until Fiscal Year 1998:

Unified Sewerage Agency - Durham	$26,720
Unified Sewerage Agency - Rock Creek	$22,995
Unified Sewerage Agency - Forest Grove	$ 5,450
Unified Sewerage Agency - Hillsboro	$ 4,240
Unified Sewerage Agency - Banks	$ 185
City of Portland - Tryon Creek	$ 910

(b) Industrial, Commercial and Agricultural Sources (Source and Initial and Annual Fee):

(For multiple sources on one application select only the one with highest fee)

(A) Major pulp, paper, paperboard, hardboard, and other fiber pulping industry . . . . . $ 6,000

(B) Major sugar beet processing, potato and other vegetable processing, and fruit processing industry . . . . . $ 6,000

(C) Seafood Processing Industry:

(i) Bottom fish, crab, and/or oyster processing . . . . . $ 675

(ii) Shrimp processing . . . . . $ 675

(iii) Salmon and/or tuna processing . . . . . $ 1,200

(D) Electroplating industry (excludes facilities which do anodizing only):

(i) Rectifier output capacity of 15,000 Amps or more . . . . . $ 6,000

(ii) Rectifier output capacity of less than 15,000 Amps but more than 5000 Amps . . . . . $ 3,000

(E) Primary Aluminum Smelting . . . . . $ 6,000

(F) Primary smelting and/or refining of non-ferrous metals utilizing sand chlorination separation facilities . . . . . $ 6,000

(G) Primary smelting and/or refining of ferrous and non-ferrous metals not elsewhere classified above . . . . . $ 3,000

(H) Alkalies, chlorine, pesticide, or fertilizer manufacturing with discharge of process waste waters . . . . . $ 6,000

(I) Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process waste water . . . . . $ 6,000

(J) Cooling water discharges in excess of 20,000 BTU/sec . . . . . $ 3,000

(K) Milk products processing industry which processes in excess of 250,000 pounds of milk per day . . . . . $ 6,000

(L) Major mining operations (over 500,000 cubic yards per year) . . . . . $ 6,000

(M) Minor mining and/or processing operations:

(i) Medium (100,000 to 500,000 cubic yards per year) mechanical processing . . . . . $ 2,000

(ii) Medium using froth flotation . . . . . $ 3,000

	(iii) Medium using chemical leaching	$ 4,000
	(iv) Small (less than 100,000 cubic yards per year) mechanical processing	$ 500
	(v) Small using froth flotation	$ 1,000
	(vi) Small using chemical leaching	$ 2,000
(N)	All facilities not elsewhere classified with disposal of process waste water	$ 1,200
(O)	All facilities not elsewhere classified which dispose of non-process waste waters (i.e., small cooling water discharges, boiler blowdown, filter backwash, log ponds, etc.)	$ 750
(P)	Dairies and other confined feeding operations on individual permits	$ 450
(Q)	All facilities which dispose of waste waters only by evaporation from watertight ponds or basins	$ 450
(R)	General permits	$ 100

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[1] *Major Industries Qualifying Factors:*

-1- Discharges large BOD loads; or
-2- Is a large metals facility; or
-3- Has significant toxic discharges; or
-4- Has a treatment system which, if not operated properly, will have a significant adverse impact on the receiving stream; or
-5- Any other industry which the Department determines needs special regulatory control.

[2] *Major Domestic Qualifying Factors:*

-1- Serving more than 10,000 people; or
-2- Serving industries which can have a significant impact on the treatment system.

[3] *Minor Domestic Qualifying Factors:*

-1- Do not meet major domestic qualifying factors;
-2- Categories Da, Db discharge to surface waters;
-3- Categories E, F, G**, H and I** do not discharge to surface waters, and are under Water Pollution Control Facilities (WPCF) Permit.

4 *Technical Activities Fee Qualifying Factors:*

-1- Fee charged for initial submittal of engineering plans and specifications;

-2- Fee not charged for revisions and resubmittals of engineering plans and specifications;

-3- Fee not charged for facilities plans, design studies, reports change orders or inspections.

Attachment B

Supporting Procedural Documentation

Public Notice
Rulemaking Statements
Fiscal and Economic Impact Statement
Land Use Evaluation Statement

MW\WC10\WC10933.5

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

REVISION OF WATER QUALITY PERMIT FEE SCHEDULE FOR DOMESTIC WASTEWATER FACILITIES PERMITTEES

Notice Issued: October 2, 1992
Comments Due: November 2, 1992

WHO IS AFFECTED:

All domestic sewage treatment facilities regulated under National Pollutant Elimination System (NPDES) or Water Pollution Control Facilities (WPCF) permits issued by the Department of Environmental Quality.

WHAT IS PROPOSED:

The Department proposes to amend OAR 340-45-075, Permit Fee Schedule, to establish separate fees for small on-site systems regulated by Water Pollution Control Facility (WPCF) permits. The Department also proposes to amend OAR 340-45-010(5) to exclude from municipal permit fees on-site sewage systems which are regulated through the requirements of OAR 340-71-160.

WHAT ARE THE HIGHLIGHTS:

In June 1992, the Environmental Quality Commission accepted DEQ staff recommendations and adopted a new fee schedule for domestic wastewater facilities permittees. Since adoption of the new schedule, concern has been expressed that fees for very small on-site systems are too high relative to the permit issuance and compliance effort required to regulate them. The Department believes that these concerns have merit, and is proposing to establish a new fee category for systems of 1,200 gallons per day or less. The proposed fees for this category are substantially less than fees for other WPCF permits.

HOW TO COMMENT:

Copies of the complete proposed rule package may be obtained from the Water Quality Division in Portland (811 SW Sixth Avenue) or the regional office nearest you. For further information contact Tom Lucas at 229-5065.

811 S.W. 6th Avenue
Portland, OR 97204

FOR FURTHER INFORMATION:

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

11/1/86

A public hearing will be held before a hearings officer at the following time and location:

November 2, 1992
9:00 am
Department of Environmental Quality
Conference Room 3A
811 SW Sixth Avenue
Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ, Water Quality Division, 811 SW Sixth Avenue, Portland, Oregon 97204, but must be received by no later than 5:00 pm, November 2, 1992

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt rule amendments identical to the ones proposed, adopt modified rules as a result of testimony received, or may decline to adopt rules. The Commission will consider the proposed rule amendments at its December 1992 meeting. December 10 and 11 have been set aside for the Commission meeting. Final meeting arrangements have not been completed at this time.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Amend the Domestic Waste Treatment Permit Fee Schedule

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

Oregon Revised Statutes (ORS) 468.065 authorizes the Department to adopt permit fees by rule. The fees are 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.

2. Need for the Rule

The current domestic permit fee schedule, which was adopted pursuant to ORS 468.065, includes a fee category for systems of less than 20,000 gallons per day which dispose of treated effluent via subsurface means only. The Department believes that the fees for very small systems (1,200 gallons per or less) are too high and do not reflect the Department's activities in evaluating and processing permit applications and in performing compliance determination activities. The Department proposes to modify the fee schedule to require a lower fee for these small systems. The Department also proposes to amend the definition of "disposal system" (OAR 340-45-070(5) to exclude on-site sewage disposal systems of less than 5,000 gallons per day, which are regulated through the requirements of OAR 340-71-160.

New federal regulations will require septage pumpers to chemically stabilize domestic with alkaline agents prior to land application. Currently, no rule exists in Oregon to facilitate the regulation of this product. Several Oregon septic tank pumpers have expressed an interest in developing septage alkaline stabilization and land application operations to accommodate the treatment and beneficial recycling of sludge. There exists a need for such operations throughout the State to help prevent sewage treatment plants from being overloaded by septage solids.

3. Principal Documents Relied Upon in this Rulemaking

Oregon Revised Statutes 468.065 Issuance of permits; content; fees; use.

Oregon Administrative Rules 340-45-010, Definitions.

Oregon Administrative Rules 340-45-075, Permit Fee Schedule.

Oregon Administrative Rules OAR 340, Division 50, Land Application and Disposal of Sewage Treatment Plant Sludge and Sludge Derived Products Including Septage.

Draft 40 CFR Part 503.

These documents are available for review during normal business hours at the Department's office, 811 SW Sixth Avenue, Portland, Oregon.

FISCAL AND ECONOMIC IMPACT

1. **Municipalities such as cities, service districts and sanitary districts.**

The addition of new fee categories for small on-site treatment and disposal systems and for septage alkaline stabilization facilities will not have any financial impact on cities, service districts and sanitary districts. Fees now charged to these municipalities will not change.

The addition of fees for septage alkaline stabilization facilities will decrease the solids loading burden to wastewater treatment facilities that currently receive septage. This will increase the treatment efficiency and potentially increase the life of their facility.

2. **Small Business.**

The addition of a new fee category for small on-site systems will be neutral or slightly positive to small businesses:

a. Most small businesses will not be impacted--these businesses either discharge to a municipal treatment facility or are permitted to treat domestic wastes and directly discharge. The fees for these permitted activities will not change.

b. Small business producing and/or selling specialized domestic treatment systems may benefit from the proposed rule change. The proposed fee for systems 1,200 gallons per day or less is much lower than the current fee. For example the permit application processing fee is now $2,000; the proposed fee would be $400. Those businesses producing or selling these systems will benefit because it is difficult to sell a small treatment system if $2,000 is added to the cost of the system.

c. Small businesses and individuals may benefit from the proposed rule change. Small systems 1,200 gallons per day or less will usually be for small businesses or individual residences. The proposed fee of $400 (compared to the current fee of $2,000) will substantially lower the cost to the homeowners and small enterprises.

The addition of a new fee category for septage alkaline stabilization operations will be positive. Small businesses that elect to pursue the practice will do so because this approach is cost effective compared to the discharge of septage to municipal wastewater treatment facilities or solid waste permitted landfills, pits, and lagoons. Further, many municipal treatment facilities have reached or are near their solids handling capacity. For this reason they have either stopped accepting septage or have reduced the quantity of septage that they will accept. Similarly, landfills and other solid waste permitted facilities in many locations throughout Oregon have either stopped accepting septage or have curtailed the amount of septage that they will accept. Alternative means of septage handling, such as alkaline stabilization and land application are necessary to facilitate the safe handling and use of septage statewide.

3. **Large Business.**

Large businesses either discharge to a municipal sewerage system or are covered by an industrial waste permit. The addition of new fee categories for small on-site systems and for septage alkaline stabilization facilities should not have any fiscal impact on large businesses.

4. **Other State Agencies.**

The addition of the new fee categories will not have any fiscal impact on other state agencies.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for
Proposed Amendments to Domestic Waste Treatment Permit Fee Schedule

Land Use Evaluation Statement

1. **Explain the purpose of the proposed rules.** The Department proposes to modify the domestic treatment permit fee schedule to add new fee categories for small on-site sewage disposal systems and septage alkaline stabilization facilities subject to WPCF permit requirements. The new fee schedule will apply to on-site sewage disposal systems of 1200 gallons per day or less and facilities that would use alkaline agents to chemically stabilize septage prior to solids land spreading. The proposed rules also clarify the definition of disposal systems to exclude on-site sewage disposal systems regulated through the requirements of OAR 340-71-160, and include new definitions for "septage" and "septage alkaline stabilization facility."

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 X No___

   a. **If yes, identify existing program/rule/activity:** Fee modifications may affect land use insofar as the fee is required for WPCF permits--the WPCF permits require a land use compatibility statement. There will be no direct affect on land use programs, rules or activities. The proposed rule modification will change the cost for installation of on-site sewage disposal systems regulated under WPCF permits and with a capacity of 1200 gallons per day or less. Existing septage rules require any pumper who will land apply septage to receive advance written authorization from the Department. Future authorization to land apply septage will require that solids first undergo lime stabilization.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes X No_____ (if no, explain):

Division Intergovernmental Coord. Date

Attachment C

TO: Environmental Quality Commission

FROM: Thomas J. Lucas, Presiding Officer

SUBJ: Presiding Officers Report on Public Hearing

A public hearing was held November 2, 1992, beginning at 9:00 a.m., in Conference Room 3A, at the Department of Environmental Quality Headquarters, 811 S.W. Sixth Avenue, Portland, Oregon. The hearing purpose was to receive public testimony regarding proposed rule amendments to add two categories to the domestic waste source permit fee schedule in OAR 340-45-075 and to revise the definitions section in OAR 340-45-010.

Hearing attenders included the following:

Diana Godwin	900 S.W. 5th Av.,	Portland,	OR 97204
Nick Zorich	3321 S.E. 20th Av.,	Portland,	OR 97202
Bob Robbins	3321 S.E. 20th Av.,	Portland,	OR 97202

The Presiding Officer opened the hearing and provided introductory comments. The comments covered hearing procedure, hearing purpose, and a summary of the proposed rule amendments. Specific applicability of the proposed new fee categories to wastewater disposal permits were discussed along with proposed fee charges.

Oral testimony was offered at the hearing by Diana Godwin, an attorney representing Clearwater Ecological Systems. She testified in support of the proposed rule amendments pertaining to small on-site waste treatment and disposal systems. She noted that the proposed rule amendments satisfied earlier concerns expressed by her clients regarding fee amounts for these small systems.

Written comments submitted at the hearing and by mail include the following:

Diana Godwin, attorney for Clearwater Ecological Systems, November 2, 1992, copy of letter mailed to Department June 8, 1992.

Chuck Root, Manager, Bear Creek Valley Sanitary Authority, September 28, 1992, letter.

The public record closed at 5:00 p.m., November 2, 1992.

MW\WC10\WC10935.5

Attachment D

DEPARTMENT'S EVALUATION OF PUBLIC COMMENT

Comment: The proposed rule amendments should not require that permits be issued to small systems such as small diameter effluent sewers which are connected to municipal collection and treatment systems.

Response: The proposed rule amendments will not change permitting requirements.

Comment: Recent fee increases have substantially increased costs for very small on-site systems. Fees should be reduced for these systems to be equivalent to fees charged in the on-site program.

Response: The proposed rule amendments create a new fee category for small systems regulated by a Water Pollution Control Facilities (WPCF) permit. The category applies to systems utilizing on-site wastewater treatment and disposal with capacity limited to 1200 gallons per day or less. The proposed fees are comparable to fees now charged to systems regulated through Division 71, On-site Sewage Disposal.

Comment: The definition of a "disposal system" (340-45-010(5) excludes systems less than 5000 gallons per day capacity. For this reason fees cannot be charged for these systems.

Response: The intent of the definition is to only exclude disposal systems regulated through Division 71, On-Site Sewage Disposal, but not to exclude systems regulated through a Water Pollution Control Facilities (WPCF) Permit. The proposed rule amendments clarify the intent of this definition.

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed Amendments to Definitions and to Permit Fee Schedule
for Wastewater Disposal Permits

Rule Implementation Plan

Summary of the Proposed Rule Amendments

The proposed rule amendments clarify the definition of a "disposal system" to exclude on-site sewage systems regulated through the On Site Sewage Disposal Program (OAR 340-71). Definitions are added for "septage" and for "Septage Alkaline Stabilization Facility."

The proposed amendments establish a new few category and associated fees for domestic waste source systems of 1,200 gallons per day or less which dispose of treated effluent via sub-surface means only. The current category for systems less than 20,000 gallons per day which dispose of treated effluent via sub-surface means only is revised to state "systems less than 20,000 gallons per day but more than 1,200 gallons per day ...". The proposed fees for systems of 1,200 gallons per day are comparable to fees now charged to systems regulated through Division 71, On Site Sewage Disposal.

The proposed amendments establish a new fee category and associated fees for septage alkaline stabilization facilities. These facilities will be charged permit processing fees, technical activities fees, and annual compliance determination fees.

The proposed rule amendments will affect domestic waste source permittees and new permit applicants with small on-site sewage disposal systems of 1,200 gallons per day or less and which are subject to Water Pollution Control Facility permits. The proposed amendments will also affect septage haulers who currently utilize remote site land application for disposal. Fees must be paid for regulation of septage alkaline stabilization facilities and the facilities will be issued WPCF permits.

Proposed Effective Date of the Rule

January 1, 1993.

Proposal for Notification of Affected Persons

Copies of the rule amendments will be mailed to all domestic waste source permittees with on-site sewage disposal systems of 1,200 gallons or less which are subject to Water Pollution Control Facility permits, and to all septage haulers.

Proposed Implementing Actions

The Water Quality Division now has a process for establishing an appropriate fee and for collecting fees for all domestic waste source permittees and for new applicants, following existing fee rules. In June and July of every year invoices are distributed to the permittees and bills are paid. A process has also been established for securing late payments. Permit processing fees and technical activities fees are also determined following existing fee rules by Water Quality Division staff. The permittee or new applicant must pay their fee when the application is submitted or the application is not complete for processing. Technical activities fees must be paid before engineering plan approval letters can be issued. The procedure for collecting fees associated with the two new fee categories will be the same as currently used for all the domestic waste source permit fees.

Proposed Training/Assistance Actions

Training will not be necessary. Domestic waste source permit fees are now implemented by the Water Quality Division staff. The two new fee categories and the associated fees will be incorporated into the existing billing and accounting process.

Technical assistance for the regulated community will not be necessary. The permit fee schedule for wastewater disposal permits shows the fee category and the fee for all possible permit actions. If there are questions the Water Quality Division staff will respond orally and in writing. This procedure is used for implementing the current fee schedule and it works well.

Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item G
December 11, 1992 Meeting

Title:

Rule Adoption: Proposed Amendments to the State Revolving Fund (SRF) Rules

Summary:

These rule amendments serve two major purposes: to make more money available in the long run for SRF loans, and to assure that long run funding is available for program administrative costs. A concurrent goal was to maintain the relative low cost of SRF financing. A task force comprised largely of SRF borrowers was involved with staff in developing these rules.

The amendments will increase interest rates on SRF loans to 2% for facility planning loans and 2/3 of the prevailing municipal bond rate for other loans. (The current rates are 0% for loans repaid in five years or less and 3% for loans repaid in more than five years.) The higher interest payments will be paid into the SRF to provide capital for future loans. All borrowers will be charged a 1.5% loan processing fee on the amount borrowed, and a 0.5% annual service fee on the unpaid balance to pay for program administration. This implements statutory authority to charge loan fees sufficient to pay the necessary and reasonable cost of administering this program. It is estimated that the administrative fees allowed to be paid from the Federal SRF capitalization grants will only fund operating expenses until 1996. These fees will begin to assure the long-term viability of operating the SRF for future wastewater financing needs across the State. The proposed rates and charges will go into effect for all loan agreements signed after December 31, 1992.

These rules also change several other operational parameters of the SRF. The criteria used to assign project funding priorities will be amended to provide comparability in terms of weighted points assigned to ocean dischargers and permittees discharging to the Columbia and Snake Rivers. Very small wastewater treatment projects will no longer need to provide facility plans in order to qualify for loans. Provisions are made for more flexible cash management to allow for short term lending to lower priority projects when that lending arrangement will not adversely affect higher priority long term loans. Additional minor housekeeping changes are included in the amended rules.

Department Recommendation:

Adopt the rules regarding the State Revolving Fund as presented in Attachment A of the staff report.

Report Author | Division Administrator | Director

11/18/92

Item G: Public forum
Comment cards received as public comment

The Oregon Environmental Quality Commission received 135 comment cards, an example of which is shown below with the commenter's name redacted, as part of Item G, public forum, at this meeting.

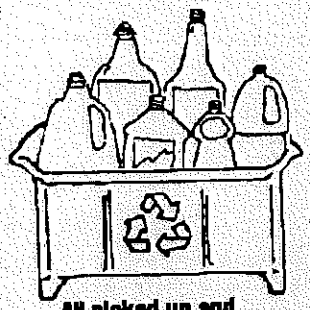
The cards were all submitted by people who lived in Oregon and all cards contained the same standard comment as seen below.

Dear Environmental Quality Commission,

Plastics recycling programs in Oregon are failing because the plastics industry has not committed to making plastics recycling work.

In 1991 the plastics industry agreed to Senate Bill 66, which requires plastic packaging to be recycled at 25% by 1995. Industry is now trying to back out of the law.

I want to recycle plastic packaging. **I urge you to support Senate Bill 66 and oppose any proposals that would weaken the law.**



All picked up and nowhere to go...

Sincerely,

Name [redacted]

Address 4727 NO WILLIS ST.

City Portland Zip 97203 Phone _____

printed on recycled paper with non-toxic ink

State of Oregon
Department of Environmental Quality Memorandum

Date: November 24, 1992

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item G, December 11, 1992 EQC Meeting

Rule Adoption: Proposed Amendments to the Water Pollution Control Revolving Fund Program (State Revolving Fund -- SRF) Rules

Background

On September 15, 1992, the Director authorized the Water Quality Division to proceed to a rulemaking hearing on proposed rules which would increase interest rates, impose loan fees on borrowers and make needed "housekeeping" changes to the rules governing operation of the State Revolving Fund Loan Program.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on October 1, 1992. Notice was mailed to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action. Over 600 copies of the notice and related material were mailed.

A Public Hearing was held November 2, 1992 with Martin W. Loring serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comments were received through 5:00 PM, November 6, 1992. The two written comments received are from the Kemper Securities Group, Inc. and The Oregon Association of Clean Water Agencies. They are included as Attachments D(1) and D(2), respectively.

Department staff have evaluated the comments received (Attachment E). Based upon that evaluation, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment F.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking

proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

Issue this Proposed Rulemaking Action is Intended to Address

Rulemaking is necessary to better assure that the statutory purposes of the State Revolving Fund are met and that sufficient capital is maintained in the Fund to meet future water quality improvement needs. The rule changes incorporate prior year's implementation experience as well as the recommendations of users to make the Fund more effective as a tool for helping local governments solve water quality problems. Increasing the amount of funding available in the long run is the first issue addressed by this rulemaking.

Another major issue addressed is the need to establish a permanent source from which to pay the necessary and reasonable costs of administering the Fund. To accomplish this, the proposal implements statutory authority to charge loans fees.

A third issue is also addressed. This is a perception of representatives of communities located along the Columbia and Snake Rivers that the existing priority ranking system (for receiving waterbody sensitivity) treats them unfairly with respect to communities discharging into the ocean.

Finally, the need to make substantive changes provides an opportunity to edit the Rule to improve clarity, eliminate redundancies, and improve readability. Many changes of this type have been made throughout the Rule.

Authority to Address the Issue

Authority for the Environmental Quality Commission (EQC) to adopt rules is found in Division 11 of Chapter 340 of Oregon Administrative Rules. Authority for the EQC to adopt specific rules governing the operation of the Water Pollution Control Revolving Fund (what the State Revolving Fund is called in the Oregon Revised Statutes) is found in the statute that created the fund, ORS 468.423 through ORS 468.440. ORS 468.440(1) reads as follows:

The Environmental Quality Commission shall establish by rule policies for establishing loan terms and interest rates for loans made from the Water Pollution Control Revolving Fund that assure that the objectives of ORS 468.423 to 468.440 are met and that adequate funds are maintained in the Water Pollution Control Revolving Fund to meet future needs.

Process for Development of the Rulemaking Proposal (including alternatives considered)

The federal government has played a major role in assisting local governments to meet their wastewater treatment financing needs. Since 1956, over $65 billion in grants have been made nationally, including some $58 billion in direct construction grants to localities and over $7 billion in grants to states to create 50 state revolving funds. Oregon's share of this federal largesse is about $500 million in construction grants and $71 million in grants to establish Oregon's State Revolving Fund. The Water Quality Act of 1987 established the SRF program to replace a system of direct federal grants to localities with 50 individual state loan programs providing a permanent source of low cost debt financing tailored to meeting the needs of each state.

A task force of potential users of the SRF was empaneled to recommend the design and structure of the SRF. Their work resulted in the initial set of SRF program rules adopted by the EQC in 1989. After about a year, as loans began to be made under these rules, users identified the need for a number of changes to make the SRF more effective as a tool for helping local governments solve water quality problems.

The original task force was empaneled a second time. Over the course of five meetings, the rules were reviewed and a number of recommendations for change were made. These changes were incorporated in a rule amendment proposal which was adopted by the EQC in 1990.

To date, some $85 million of preliminary SRF applications from local governments have been approved in Oregon. Of these, the Department has signed loan agreements for over $25 million of these water quality improvements projects which are being implemented. Experience in the four annual preliminary application cycles completed to date suggests the need for additional "fine tuning" of SRF program rules to more effectively address statutory purposes. The original SRF Task Force was empaneled again and expanded to include representatives from

local governments critical of the program or which had suggested the need for rule changes.

This group was asked to review implementation experience to date and recommend rule changes needed to increase programmatic effectiveness. The Task Force was also asked to review interest rates to determine if they continued to represent an appropriate balance between affordability and future water quality funding needs. That is, one of the central policy issues for the SRF program is the need to maintain an appropriate balance between the level of subsidy provided any one borrower and the overall volume of water quality improvements that can be purchased. Given construction cost inflation, subsidies reduce the long run capacity of the Fund to address water quality needs.

Over the course of five, four hour meetings this 11 person Task Force identified a dozen policy issues for consideration and recommended the changes that comprise these proposed rule amendments to better achieve the statutory purposes of the program. The Task Force made decisions by consensus. The issues considered and recommendations on each are summarized in Table A which is attached. In this recommendation the Task Force was in unanimous agreement. Departmental staff concur.

Since the final Task Force meeting, informal notification of the Department's intent to seek an interest rate increase and the imposition of fees on loan agreements signed after January 1, 1993 was mailed to all present and prior SRF applicants. No negative comments or objections have been received. So far, people with whom this has been discussed seem to understand the need for change and conclude that the SRF program still will provide the best financing deal available to local governments.

Alternatives to the proposed set of amendments were considered. The first alternative was to do nothing. Analysis of the cash flow impact of doing nothing suggests that it would impose significant programmatic costs on the department. Retaining current interest rates would reduce the amount of money available to solve water quality problems over the next five years by several million dollars. Further, without the imposition of loan fees, funds now used to pay the Department's necessary and reasonable cost of program administration would be exhausted by F.Y. 1996.

Alternate sources to pay for program administration were considered. These included an examination of the feasibility of using General Funds or Other Funds from permit fee revenues. Because of limited resources and the budgetary needs of other,

higher priority water quality needs, neither was considered to be a practical alternative by the Task Force or Departmental staff. The use of loan fees to pay for program staff has the additional advantage of imposing the cost on the entities receiving program benefits.

Another alternative considered was to delay implementation of proposed rule changes (to allow time for related statutory changes to be considered by the Legislature). This was rejected because of program timing. That is, local governments submit preliminary applications for SRF financing each January. A list of the preliminary applications, ranked in priority order, comprises the most important part of the application the Department submits to EPA each year to receive the state's capitalization grant.

To maximize the beneficial effect on the amount of money in the SRF, any increase in interest rates should be made in time to affect F.Y. 1993 applications. Only two federal grants remain to be received under current federal legislation, and the F.Y. 93 grant is the last large grant authorized. In order to be able to inform local governments about the terms and conditions under which F.Y. 1993 loans would be made, it is important to make any rule changes effective by January 1, 1993. To delay one year would mean a loss to the fund of about $1.4 million.

Finally, a full range of alternatives was considered, discussed and reviewed for each substantive and editorial change identified. The draft now proposed for adoption represents the best compromise Departmental staff could reach on each point considered.

Summary of Rulemaking Proposal Presented for Public Hearing and Discussion of Significant Issues Involved.

This rule amendment accomplishes two purposes. The first is to make more money available in the Water Pollution Control Revolving Fund to help local governments solve water quality problems by increasing interest rates from the current level of 0% for loans repaid in five years and 3% for loans repaid in more than five years to 2% for facility planning or discretionary loans and 2/3 of the prevailing municipal bond rate for all other loans. The second purpose is to implement statutory authority to charge loan fees sufficient to pay the necessary and reasonable costs of administering this program. These fees are needed because the existing source of federal funds to pay these costs is being eliminated. This rule has also been heavily edited to

improve clarity and readability.

Summary of Significant Public Comment and Changes Proposed in Response

No one attended the public hearing that was held November 2, 1992. Three written comments were received by 5 pm, Friday, November 6, 1992. Proposals for change were also discussed with other staff within the Department, sister state agencies and the Environmental Protection Agency.

Additionally, the rule amendment proposal was developed in conjunction with a task force representative of fund users throughout the state. Many of the changes incorporated in the rule amendments were requested by fund users. Examples of such changes include the following:

1) An exception to the requirement for preparation of a Section 201 facilities plan was made for minor construction projects,

2) Flexibility was provided to relieve borrowers building simple gravity sewers from the requirement to prepare a comprehensive operations and maintenance manual,

3) Project priority rating points were made comparable between ocean dischargers and permittees discharging into the Columbia or Snake Rivers,

4) A new category of short term (construction period) loan was created (subject to availability of cash flow) for qualified projects that do not rank high enough in priority to receive long term financing.

Summary of How the Proposed Rule Will Work and How it Will be Implemented

The Department commits funds to water pollution control projects by signing loan agreements. Each loan agreement starts with a term sheet specifying the terms and conditions under which financial assistance is being provided. For loan agreements signed after December 31, 1992 rates will be increased and loan fees will be charged. Agreements signed on or before December 31, 1992 will be at either 0% or 3% interest (depending upon the repayment period) and no fees will be charged. Other changes affect which communities will receive financial assistance and

what they have to do to qualify for this help.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments regarding the Water Pollution Control Fund Loan Program as presented in Attachment A of the Department Staff Report for this Agenda Item.

Attachments

A. Amended 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. Written Comments Received
   - Kemper Securities Group, Inc.
   - Oregon Association of CLEAN WATER Agencies
E. Department's Evaluation of Public Comment
F. Changes to original rulemaking proposal made in response to public comment
G. Advisory Committee Report
H. Rule Implementation Plan

Approved:

Section:

Division:

Report Prepared By: Martin W. Loring

Phone: (503) 229-5415

Date Prepared: November 10, 1992

(E:\WP51\SRFRULE.EQC)

OREGON ADMINISTRATIVE RULES

NOTE:

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

The ~~[bracketed]~~ portions of text represent proposed deletions made to the rules.

DIVISION 54

STATE REVOLVING FUND PROGRAM

OAR 340-54-005	Purpose
OAR 340-54-010	Definitions
OAR 340-54-015	Project Eligibility
OAR 340-54-020	Uses of the Fund
OAR 340-54-025	SRF Project Priority List and Intended Use Plan
OAR 340-54-035	Final Application Process for SRF Financing for Facility Planning for Water Pollution Control Facilities, Nonpoint Source Control Projects, Estuary Management Projects and Stormwater ~~Water~~ Control Projects
OAR 340-54-040	Final Application Process for SRF Financing for Design or ~~[and]~~ Construction of Water Pollution Control Facilities
~~[OAR 340-54-045~~	~~Final Application Process for SRF Financing for Construction of Water Pollution Control Facilities]~~
OAR 340-54-050	Environmental Review
OAR 340-54-055	Loan Approval and Review Criteria
OAR 340-54-060	Loan Agreement and Conditions
OAR 340-54-065	Loan Terms and Interest Rates
OAR 340-54-070	Special Reserves
OAR 340-54-075	~~[Maximum Loan Amount]~~ Loan Limitations

PURPOSE

340-54-005

These rules are intended to implement (ORS 468.423 - 468.440) under which financial assistance is made available to and utilized by Oregon municipalities to plan, design and construct water pollution control facilities.

DEFINITIONS

340-54-010

(1) "Alternative treatment technology" means any proven wastewater treatment process or technique which provides for the reclaiming and reuse of water, productive recycling of wastewater constituents, other elimination of the discharge of pollutants, or the recovery of energy.

(2) "Available SRF" means the SRF minus monies for SRF administration.

(3) "Categorical exclusion" means an exemption from environmental review requirements for a category of actions which do not individually, cumulatively over time, or in conjunction with other actions, have a significant effect on the quality of the environment. Environmental impact statements, environmental assessments and environmental information documents are not required for categorical exclusions.

(4) "Change order" means a written order and supporting information from the borrower to the contractor authorizing an addition, deletion, or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.

(5) "Clean Water Act" means Title VI of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4 and any subsequent amendments. ~~[the Federal Water Pollution Control Act, as amended, 33 USC 1251 et. seq.]~~

(6) "Collector sewer" means that ~~[the]~~ portion of the public sewerage system which is primarily installed to receive wastewater directly from individual residences and other individual public or private structures.

(7) "Combined sewer" means a sewer that is designed as both a sanitary and a stormwater water sewer.

(8) "Construction" means the erection, installation, expansion or improvement of a water pollution control facility.

(9) "Default" means nonpayment of SRF repayment by a Borrower when due, failure to comply with SRF loan covenants, a formal bankruptcy filing, or other written admission of inability to pay ~~{its}~~ SRF obligations.

(10) "Department" means the Oregon Department of Environmental Quality.

(11) "Director" means the Director of the Oregon Department of Environmental Quality.

(12) "Documented health hazard" means areawide failure of on-site sewage disposal systems or other sewage disposal practices resulting in discharge of inadequately treated wastes to the environment demonstrated by sanitary surveys or other data collection methods and confirmed by the Department and Health Division as posing a risk to public health. This includes a mandatory health hazard annexation required pursuant to ORS 222.850 to 222.915 or ORS 431.705 to 431.760.

(13) "Documented water quality problem" means water pollution resulting in violations of water quality statutes, rules or permit conditions demonstrated by data and confirmed by the Department as causing a water quality problem.

(14) "Environmental assessment" means an evaluation prepared by the applicant to determine whether a proposed project may have a significant impact on the environment and, therefore, require the preparation of an environmental impact statement (EIS) or a Finding of No Significant Impact (FNSI). The assessment shall include a brief discussion of the need for a project, the alternatives, the environmental impacts of the proposed action and alternatives and a listing of persons or agencies consulted.

(15) "Environmental impact statement (EIS)" means a report required by the Department analyzing the impacts of the proposed project and discussing

project alternatives. An EIS is prepared when the environmental assessment indicates that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project.

(16) "EPA" means the U.S. Environmental Protection Agency.

(17) "Estuary management" means development and implementation of a plan for the management of an estuary of national significance as described in §320 of the Clean Water Act.

(18) "Excessive infiltration/inflow" means the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost effective analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow from sanitary sewers.

(19) "Facility plan" means a systematic evaluation of environmental factors and engineering alternatives considering demographic, topographic, hydrologic, and institutional characteristics of a project area that demonstrates that the selected alternative is cost effective and environmentally acceptable.

(20) "Federal capitalization grant" means federal dollars allocated to the State of Oregon for a federal fiscal year from funds appropriated by Congress for the State Revolving Fund under Title VI of the Clean Water Act. This does not include state matching monies.

(21) "Groundwater management area" means an area in which contaminants in the groundwater have exceeded the levels established under ORS 468.694, and the affected area is subject to a declaration under ORS 468.698.

(22) "Highly controversial" means public opposition based on a substantial dispute over the environmental impacts of the project. The disputed impacts must bear a close causal relationship to the proposed project.

~~[(22)]~~(23) "Infiltration" means the intrusion of groundwater into a sewer system through defective pipes, pipe

joints, connections, or manholes in the sanitary sewer system.

~~[(23)]~~(24) "Inflow" means a direct flow of water other than wastewater that enters a sewer system from sources such as, but not limited to, roof gutters, drains, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface runoff, or street wash waters.

~~[(24)]~~(25) "Initiation of operation" means the date on which the facility is substantially complete and ready for the purposes for which it was planned, designed, and built.

~~[(25)]~~(26) "Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state-of-the-art in terms of significant reduction in life cycle cost of the project or environmental benefits when compared to an appropriate conventional technology.

~~[(26)]~~(27) "Intended Use Plan" means a report which must be submitted annually by the Department to EPA identifying proposed uses of the SRF including, but not limited to a list of public agencies ready to enter into a loan agreement for SRF funding within one year and a schedule of grant payments.

~~[(27)]~~(28) "Interceptor sewer" means a sewer which is primarily intended to receive wastewater from a collector sewer, another interceptor sewer, an existing major discharge of raw or inadequately treated wastewater, or a water pollution control facility.

~~[(28)]~~(29) "Interim loan" means funds borrowed for the construction/project period or three years, whichever is less. At the discretion of the Department, a longer period loan may be considered an interim loan under extraordinary circumstances.

~~[(29) "Highly controversial" means public opposition based on a substantial dispute over the environmental impacts of the project. The disputed impacts must bear a close causal relationship to the proposed project.]~~

(30) "Long-term loan" means any loan not considered an interim loan.

(31) "Maintenance" means work performed to make repairs, make minor replacements or prevent or correct failure or malfunctioning of the water pollution control facility in order to preserve the functional integrity and efficiency of the facility, equipment and structures.

(32) "Major sewer replacement and rehabilitation" means the repair and/or replacement of interceptor or collector sewers, including replacement of limited segments.

(33) "Nonpoint source control" means implementation of a plan for managing nonpoint source pollution as described in §319 of the Clean Water Act.

(34) "Operation" means control of the unit processes and equipment which make up the treatment system and process, including financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.

(35) "Operation and maintenance manual" means a guide used by an operator for operation and maintenance of the water pollution control facility.

(36) "Project" means facility planning, design ~~[and construction]~~, or construction activities or tasks identified in the loan agreement for which the borrower may expend, obligate, or commit funds to address a water pollution problem or a documented health hazard.

(37) "Public agency" means any state agency, incorporated city, county sanitary authority, county service district, sanitary sewer service district, metropolitan service district, or other district authorized or required to construct water pollution control facilities.

(38) "Replacement" means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the design or useful life, whichever is longer, of the water pollution control facility to maintain the facility for the purpose for which it was designed and constructed.

(39) "Reserve capacity" means that portion of the water

pollution control facility that is designed and incorporated in the constructed facilities to handle future increases in sewage flows and loadings from existing or future development consistent with local comprehensive land use plans acknowledged by the Land Conservation and Development Commission.

~~(40) "Self-generated funds" means public agency monies which come from revenue. This does not include proceeds of bond sales.~~

~~[(41)]~~(40) "Sewage collection system" means pipelines or conduits, pumping stations, force mains, and any other related structures, devices, or applications used to convey wastewater to a sewage treatment facility.

~~[(42)]~~(41) "Sewage treatment facility" means any device, structure, or equipment used to treat, neutralize, stabilize, or dispose of wastewater and residuals.

~~[(43)]~~(42) "Significant industrial dischargers" means water pollution control facility users as defined in the Department's Pretreatment Guidance Handbook.

~~[(44)]~~(43) "Small community" means a public agency with a population of 5,000 or less.

~~[(45)]~~(44) "SRF" means State Revolving Fund and includes funds from state match, federal capitalization grants, SRF loan repayments, interest earnings, and ~~[or]~~ any additional funds provided by the state. ORS 468.427 uses the phrase, "water pollution control revolving fund". This is the SRF, and the two phrases are synonymous.

~~[(46)]~~(45) "Surface water" means streams, lakes, reservoirs, and estuaries.

~~[(47)]~~(46) "Wastewater" means water carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

~~[(48)]~~(47) "Water pollution control facility" means a sewage disposal, treatment and/or collection system.

(48) "Water Pollution Control Revolving Fund" -- See "SRF".

(49) "Wellhead protection area" means a state designated surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass and eventually reach the well or well field.

(50) "Value engineering" means a specialized cost control technique which uses a systematic approach to identify cost savings which may be made without sacrificing the reliability or efficiency of the project.

PROJECT ELIGIBILITY

340-54-015

(1) A public agency may apply for a loan for up to 100% of the cost of the following types of projects and project related costs (including financing costs, construction period ~~[capitalized]~~ interest, and loan reserves):

(a) Facility plans, including supplements, are limited to one complete facility plan financed by the SRF per project;

(b) Secondary treatment facilities;

(c) Advanced waste treatment facilities if required to comply with Department water quality statutes and rules;

(d) Reserve capacity for a sewage treatment or disposal facility receiving SRF funding which will serve a population not to exceed a twenty-year population projection and for a sewage collection system or any portion thereof not to exceed a fifty-year population projection;

(e) Sludge disposal and management;

(f) Interceptors and associated force mains and pumping stations;

(g) Infiltration/inflow correction;

(h) Major sewer replacement and rehabilitation if components are a part of an approved infiltration/inflow correction project;

(i) Combined sewer overflow correction if required to protect sensitive estuarine waters, if required to comply with Department water quality statutes and rules, or if required by Department permit, and if the project is the cost effective alternative for the next 20 years;

(j) Collector sewers if required to alleviate documented water quality problems or to serve an area with a documented health hazard;

(k) Stormwater ~~[water]~~ control if project is a cost effective solution for infiltration/inflow correction to sanitary sewer lines;

(l) Estuary management if needed to protect sensitive estuarine waters and if the project is publicly owned; and

(m) Nonpoint source control if required to comply with Department water quality statutes and rules and if the project is publicly owned.

(2) Funding for projects listed under (1) above may be limited by Section 201(g)(1) of the Clean Water Act.

(3) Loans will not be made to cover the non-federal matching share of an EPA grant.

(4) Plans funded in whole or in part from the SRF must be consistent with plans developed under Sections 208, 303(e), 319, and 320 of the Clean Water Act.

(5) Loans shall be available only for projects on the SRF Project Priority List, described in OAR 340-54-025.

(6) A project may receive SRF allocations from more than one year's funding if the allocation in the first year is less than the total project cost. ~~[be phased if the total project cost is in excess of that established in OAR 340-54-075(1).]~~

(7) SRF loans will not be available to refinance long-term loans. SRF loans will, however, be available to communities which have paid project costs with an interim loan or self-generated funds and want to provide long-term financing of these costs with an SRF loan and comply with the following conditions:

(a) Prior to project commencement, the public agency must provide notice of their intent to proceed with a project which is financed with interim loans or self-generated funds,

(b) The public agency must agree to proceed at its own risk without regard to whether SRF financing will ultimately be available to provide the long-term financing, and

(c) The public agency agrees to comply with project review and approval requirements established in OAR Chapter 340, Division 52, DEQ permit requirements as established in OAR Chapter 340, Division 45, and requirements of Title VI of the Clean Water Act.

USES OF THE FUND

340-54-020

The SRF may only be used for the following project purposes:

(1) To make loans, fund reserves for SRF loans, purchase bonds, or acquire other debt obligations;

(2) To pay SRF program administration costs (not to exceed 4% of the federal capitalization grant or as otherwise allowed by federal law);

(3) To earn interest on fund accounts.

SRF <u>PROJECT</u> PRIORITY LIST <u>AND INTENDED USE PLAN</u>

340-54-025

(1) General. The Department will develop an annual Intended Use Plan which includes an SRF <u>Project</u> Priority List numerically ranking eligible preliminary SRF applications submitted by public agencies. Only projects on the SRF <u>Project</u> Priority List will be eligible for SRF financing. This list will be part of the Intended Use Plan which the Department prepares and submits to EPA annually indicating how SRF funds will be spent.

(2) SRF <u>Project</u> Priority List Development.

(a) The Department will notify interested parties

of the opportunity to submit a preliminary SRF application. Interested parties include but are not limited to public agencies on the SRF mailing list.

(b) In order for a project to be considered for inclusion on the SRF Project Priority List, the Department must receive a completed preliminary SRF application for a project which ~~{corrects}~~ addresses a documented water quality problem or a documented health hazard. The project must also be eligible under OAR 340-54-015(1).

(3) Draft SRF Project Priority List and Intended Use Plan Public Notice and Review.

(a) The Department will publish a public notice and distribute the proposed SRF Project Priority List ~~{and Intended Use Plan}~~ to all public agencies that submitted preliminary applications.

(b) The Department will allow at least thirty (30) days after issuing of the draft SRF Project Priority List for review and for public comments to be submitted.

(A) During the comment period, any pubic agency may request the Department to reevaluate a project's rank on the proposed SRF Project Priority List or to make other changes to the Intended Use Plan.

(B) The Department shall consider all requests submitted during the comment period before establishing the Final SRF Project Priority List and Intended Use Plan.

(C) The Department will distribute the Final SRF Project Priority List ~~{and Intended Use Plan}~~ to all public agencies with projects on the Final SRF Project Priority List.

(4) SRF Project Priority List Ranking Criteria. The numerical ranking of water quality pollution ~~{problems}~~ control projects will be based on points assigned from the following three (3) criteria:

(a) Enforcement/Water Quality Violation Points.

(A) 50 points will be assigned for:

(i) Environmental Quality Commission orders pertaining to water quality problems;

(ii) Stipulated consent orders and agreements pertaining to water quality problems;

(iii) Court orders pertaining to water quality problems;

(iv) Department orders pertaining to water quality problems;

(v) EQC rules requiring elimination of an existing water quality problem related to inadequate water pollution control facilities;

(vi) Documented health hazards with associated documented water quality problems; or

(vii) Streams or stream segments where the Environmental Quality Commission has established Total Maximum Daily Loads.

(B) 40 points will be assigned for non-compliance with the Department's statutes, rules or permit requirements resulting from inadequate water pollution control facilities.

(C) 30 points will be assigned for documented health hazards without documented water quality problems.

(D) 10 points will be assigned for existing potential, but undocumented, water quality problems noted by the Department.

(b) Population Points.

(A) Points shall be assigned based on the current population the project will serve as follows:

$$\text{Points} = (\text{Population})^{2 \log 10}$$

(c) Receiving Waterbody Sensitivity Points.

(A) Surface Water.

(i) If a discharge is to surface water, water quality points will be assigned based on total water quality points from Oregon's Clean Water Strategy statewide ranking report. CWS points range from 0 to 90.

(ii) If a discharge is to a stream segment not listed in the report, then the points assigned to the next downstream segment will be assigned to that discharge.

(iii) If discharge is to the ocean, 10 points will be assigned.

(iv) If discharge is to any other surface waterbody not referenced above ~~[one]~~ 10 points will be assigned.

(B) Groundwater.

(i) 90 points will be assigned to discharges to an EPA designated sole source aquifer;

(ii) 70 points will be assigned to:

(I) Discharges to groundwater where the discharge has been documented to have increased the concentration of a contaminant above both the groundwater background level and an adopted state standard for groundwater quality; or

(II) A wellhead protection area.

(iii) 50 points will be assigned to:

(I) Discharges to groundwater where the discharge has been demonstrated to have increased the concentration of a contaminant above the

groundwater background level but the contamination level is below an adopted state standard for groundwater quality; or

(II) The groundwater is within a designated groundwater management area; or

(iv) 30 points will be assigned to discharges to groundwater where the discharge is suspected of causing a groundwater contamination problem but there is not direct evidence to substantiate the problem.

(v) 10 points will be assigned to suspected discharges to groundwater where a discharge could cause a contamination problem.

(5) SRF Point Tabulation Method. Point scores will be accumulated as follows:

(a) Points will be assigned based on the most significant documented water quality pollution problem within each point category.

(b) The score used in ranking a water quality problem will consist of the sum of the points received in each of the point categories.

(6) Project Priority List Categories.

(a) The SRF Project Priority List will consist of three parts:~~{,}~~ the Fundable Category, the Planning Category, and the Supplementary Category. The Fundable Category will include projects which are ready to receive funding and for which there are available SRF funds. The Planning Category includes projects which are ready to receive funding but for which SRF funds are not currently available. The Supplementary Category consists of prior years' fundable category ~~{lists which include}~~ projects for which loan agreements ~~{are}~~ have not been completed.

(b) The ordering of projects within the Fundable Category will be established ~~{prepared}~~ in the following manner:

(A) Loan increases: First, loan increases will be awarded to previously funded projects to the extent necessary and permitted by this rule ~~{and the SRF loan agreement}~~.

(B) Small Community Reserve:

(i) Next, small community projects are selected from the SRF Project Priority List in rank order not to exceed fifteen ~~{15}~~ percent (15%) of the available SRF funds.

(ii) Communities receiving small community reserve funding for facility planning will count toward filling both the small community reserve and the facility planning reserve.

(C) Facility Planning Reserve:

(i) After funds are awarded for loan increases, and after fifteen ~~{15}~~ percent (15%) of the available SRF funds are awarded to small communities or after all small community loan requests are funded (whichever occurs first) facility planning projects are selected from the SRF Project Priority List in rank order, not to exceed ten ~~{10}~~ percent (10%) of the available SRF funds.

(ii) Small communities will continue to be eligible for the facility planning reserve if their project is next in rank order.

(D) General Fund: The remaining projects, including facility planning and small community projects, will be awarded loans in rank order to the extent of available SRF funds.

(c) The ordering of projects within the Planning Category will be established ~~{prepared}~~ in the following manner:

(A) After all available funds are allocated to projects in the Fundable Category, any remaining projects will be arranged in rank order of priority and comprise the Planning Category of the SRF Project Priority List.

(B) This Planning Category will be maintained until the next year's SRF Project P[p]riority L[l]ist is prepared. It is the source from which to obtain additional projects for the current year's Fundable Category should projects be removed pursuant to OAR 340-54-025(7).

(d) The ordering of projects within the Supplementary Category will be established [prepared] in the following manner:

(A) The Supplementary Category consists of projects from the Fundable Category of prior years' SRF Project Priority Lists.

(B) After the first year a project is listed in the Fundable Category, it will be moved to the Supplementary Category until a loan agreement for the project is completed.

(C) Projects in the Supplementary Category will not be ranked with projects in the current year's Fundable and Planning Categories discussed in subsection (6)[(5)](b) and (c) of this section, except to the extent necessary to provide loan increases to projects in the Supplementary Category.

(D) Funding for projects on the Supplementary list is limited to the loan amount allocated on the original Fundable List [in the SRF loan agreement] plus DEQ approved loan increases.

(7) SRF Project Priority List Modification.

(a) The Department may remove a project from the SRF Project Priority List if the Department determines that the project is not ready to proceed according to the schedule in the preliminary application or if the applicant requests removal.

(b) When the Department removes a project which is not ready to proceed, it will give written notice to the applicant whose project is proposed for removal and allow the applicant thirty (30) days after the notice to demonstrate to the Department its readiness and ability to immediately complete a SRF loan agreement or to withdraw the applicant's request to be removed from the Project ~~priority L[l]~~ist.

(c) When a project is removed from the SRF Project Priority List, the Department will:

(A) First, allocate funds to loan amendments for projects with approved SRF loans; ~~[and]~~

(B) Second, allocated additional funds to projects which have received allocations for loans but for which loan agreements have not yet been signed; and

(C) Third, move projects from the SRF Project Priority List Planning Category in rank order to the Fundable Category to the extent that there are adequate SRF funds available.

(d) The Department may add projects to the SRF Project Priority List only if there is an inadequate number of projects in the Fundable Category and Planning Category ready to receive funding. To add projects to the SRF Project Priority List, the Department will follow the process outlined in 340-54-025(2).

(8) Short Term, Construction Financing Exception. Not withstanding other provisions of OAR 340-54-025, short term, construction period financing may be provided to otherwise qualified projects in the Planning Category of the Intended Use Plan if all of the following conditions can be met.

(a) Liquidity of the Fund is sufficient to provide the financing without adversely affecting the amount and timing of financing needed by projects in the Fundable Category of the Intended Use Plan, and

(b) The borrower has a legally enforceable

obligation for long term, take out financing of the project satisfactory to the Department.

FINAL APPLICATION PROCESS FOR SRF FINANCING FOR FACILITY PLANNING FOR WATER POLLUTION CONTROL FACILITIES, NONPOINT SOURCE CONTROL PROJECTS, ESTUARY MANAGEMENT PROJECTS AND STORMWATER CONTROL PROJECTS

340-54-035

Applicants for SRF loans for nonpoint source control projects, estuary management projects, stormwater control projects, and facility planning for water pollution control facilities must submit:

(1) A final application on forms provided by the Department;

(2) Evidence that the public agency has authorized development of nonpoint source control project, estuary management project, stormwater control projects or water pollution control facility plan;

(3) A demonstration that applicant complies with the requirements of OAR 340-54-055(2) and 340-54-065(1); and

(4) Any other information requested by the Department.

FINAL APPLICATION PROCESS FOR SRF FINANCING FOR DESIGN ~~[AND]~~ OR CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES

340-54-040

Applicants for SRF loans for design ~~and~~ or construction of water pollution control facilities must submit:

(1) A final SRF loan application on forms provided by the Department (See also Section 340-54-055(2), Loan Approval and Review Criteria).

(2) A facilities plan which includes the following:

(a) A demonstration that the project will apply best practicable waste treatment technology as defined in 40 CFR 35.2005(b)(7).

(b) A cost effective analysis of the alternatives

available to comply with applicable Department water quality statutes and rules over the design life of the facility and a demonstration that the selected alternative is the most cost effective.

(c) A demonstration that excessive inflow and infiltration (I/I) in the sewer system does not exist or if it does exist, how it will be eliminated.

(d) An analysis of alternative and innovative technologies. This must include:

(A) An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(B) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to building new facilities;

(C) A consideration of systems with revenue generating applications;

(D) An evaluation of the opportunity to reduce the use of energy or to recover energy; and

(E) An evaluation of the opportunities to reduce the amount of wastewater by water use conservation measures and programs.

(e) An analysis of the potential open space and recreational opportunities associated with the project.

(f) An evaluation of the environmental impacts of alternatives as discussed in OAR 340-54-050.

(g) Documentation of the existing water quality problems which the facility plan must correct.

(h) Documentation and analysis of public comments and of testimony received at a public hearing held before completion of the facility plan.

(3) Adopted sewer use ordinance(s).

(a) Sewer use ordinances adopted by all municipalities and service districts discharging effluent to the water pollution control facility must be included with the application.

(b) The sewer use ordinance(s) shall prohibit any new connections from inflow sources into the water pollution control facility, without the approval of the Department.

(c) The ordinance(s) shall require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety and adversely affecting the treatment works or precluding the selection of the most cost-effective alternative for wastewater treatment sludge disposal.

(4) Documentation of pretreatment surveys and commitments:

(a) A survey of nonresidential users must be conducted and submitted to the Department, as part of the final SRF application which identifies significant industrial discharges as defined in the Department's Pretreatment Guidance Handbook. If the Department determines that the need for a pretreatment program exists, the borrower must develop and adopt a program approved by the Department before initiation of operation of the facility.

(b) The borrower must document to the satisfaction of the Department that necessary pretreatment facilities have been constructed and that a legally binding commitment or permit exists with the borrower and any significant industrial discharger(s), being served by the borrower's proposed sewage treatment facilities. The legally binding commitment or permit must ensure that pretreatment discharge limits will be achieved on or before the date of completion of the proposed wastewater treatment facilities or that a Department approved compliance schedule is established.

(5) Adoption of a user charge system.

(a) General. The borrower must develop and obtain the Department's approval of its user charge system. If the borrower has a user charge system in effect, the borrower shall demonstrate that it meets the provisions of this section or amend it as required by these provisions.

(b) Scope of the user charge system.

(A) The user charge system must, at a minimum, be designed to produce adequate revenues to provide for operation and maintenance (including replacement expenses);

(B) Unless SRF debt retirement is reduced by other dedicated sources of revenue discussed in OAR 340-54-065, the user charge system must be designed to produce adequate revenues to provide for SRF debt retirement.

(c) Actual use. A user charge system shall be based on actual use, or estimated use, of sewage treatment and collection services. Each user or user class must pay its proportionate share of the costs incurred in the borrower's service area.

(d) Notification. Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill or other means acceptable to the Department, of the rate and that portion of the user charge that is attributable to wastewater treatment services.

(e) Financial management. Each borrower must demonstrate compliance with state and federal audit requirements. If the borrower is not subject to state or federal audit requirements, the borrower must provide a report reviewing the account system prepared by a municipal auditor. A systematic method must be provided to resolve material audit findings and recommendations.

(f) Adoption of system. The user charge system must be legislatively enacted before loan approval and implemented before initiation of operation of the facility. If the project will

serve two or more municipalities, the borrower shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works.

(6) A financial capability assessment for the proposed project which demonstrates the applicant's ability to repay the loan and to provide for operation and maintenance costs (including replacement) for the wastewater treatment facility.

(7) Land use compatibility statement from the appropriate local government(s) demonstrating compliance with the LCDC acknowledged comprehensive land use plan(s) and statewide land use planning goals.

(8) Department approved plans and specifications for the project, if the project is for construction only;

(9) A value engineering study, satisfactory to the Department, if the total project cost will exceed $10 million, and if the project is for construction only.

~~[(8)]~~ (10) Any other information requested by the Department.

(11) Exception for minor projects in unusual circumstances. The Department may waive the requirement for preparation of a facilities plan as set out in OAR 340-54-040(2), as well as other requirements not mandated by Oregon Revised Statutes, interagency agreement, or the federal Water Quality Act of 1987 when it can be demonstrated to the Department's satisfaction that compliance is not cost effective and the waiver will not be detrimental to the interests of the borrower or the state. Requests for such an exemption will only be considered from projects that would be eligible for a categorical exclusion under provisions of OAR 340-54-050(3).

~~**[FINAL APPLICATION PROCESS FOR SRF FINANCING FOR CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES**~~

~~**340-54-045**~~

~~Applicants for SRF loans for construction of water pollution~~

~~control facilities must:~~

~~(1) Comply with the application requirements in OAR 340-54-040 for design and construction of water pollution control projects;~~

~~(2) Submit Department approved plans and specifications for the project; and~~

~~(3) Submit a value engineering study, satisfactory to the Department, if the total project cost will exceed $10 million.]~~

ENVIRONMENTAL REVIEW

340-54-050

(1) General. For as long as the State of Oregon is subject to federal equivalency and Title II requirements of the Water Quality Act of 1987, ~~[A]~~an environmental review is required prior to approval of a loan for design and construction or construction when:

(a) No environmental review has previously been prepared;

(b) A significant change has occurred in project scope and possible environmental impact since a prior environmental review; or

(c) A prior environmental review determination is more than five years old.

(2) Environmental Review Determinations. The Department will notify the applicant during facility planning of the type of environmental documentation which will be required. Based upon the Department's determination:

(a) The applicant may apply for a categorical exclusion; or

(b) The applicant will prepare an environmental assessment in a format specified by the Department. After the Department has reviewed and approved the environmental assessment, it will:

(A) Prepare a Finding of No Significant

Impact; or

(B) Issue a Notice of Intent to Prepare an Environmental Impact Statement; require the applicant to prepare an environmental impact statement; and prepare a record of decision.

(3) Categorical Exclusions. The categorical exclusions may be made by the Department for projects that have been demonstrated to not have significant impacts on the quality of the human environment.

(a) Eligibility.

(A) If an applicant requests a categorical exclusion, the Department shall review the request and based upon project documentation submitted by the applicant, the Department shall:

(i) Notify the applicant of categorical exclusion and publish notice of categorical exclusion in a newspaper of state-wide and community-wide circulation;

(ii) Notify the applicant to prepare an environmental assessment, or

(iii) Require the applicant to issue a Notice of Intent to Prepare an Environmental Impact Statement.

(B) A project is eligible for a categorical exclusion if it meets the following criteria:

(i) The project is directed solely toward minor rehabilitation of existing facilities, toward replacement of equipment, or toward the construction of related facilities that do not affect the degree of treatment or the capacity of the facility. Examples include infiltration and inflow correction, replacement of existing equipment and structures, and the construction of small structures on existing sites; or

(ii) The project will serve less than 10,000 people and is for minor expansions or upgrading of existing water pollution control facilities.

(C) Categorical exclusions will not be granted for projects that entail any of the following activities:

(i) The construction of new collection lines;

(ii) A new discharge or relocation of an existing discharge;

(iii) A substantial increase in the volume or loading of pollutants;

(iv) Providing capacity for a population 30 percent or greater than the existing population;

(v) Known or expected impacts to cultural resources, historical and archaeological resources, threatened or endangered species, or environmentally sensitive areas; or

(vi) The construction of facilities that are known or expected to not be cost-effective or to be highly controversial.

(b) Documentation. Applicants seeking a categorical exclusion must provide the following documentation to the Department:

(A) A brief, complete description of the proposed project and its costs;

(B) A statement indicating the project is cost-effective and that the applicant is financially capable of constructing,

operating, and maintaining the facilities; and

(C) Plan map(s) of the proposed project showing:

(i) Location of all construction areas;

(ii) Planning area boundaries; and

(iii) Any known environmentally sensitive areas.

(D) Evidence that all affected governmental agencies have been contacted and their concerns addressed.

(c) Proceeding with Financial Assistance. Once the issued categorical exclusion becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the categorical exclusion will be revoked.

(4) Environmental Assessment.

(a) General. If a project is not eligible for a categorical exclusion, the applicant must prepare an environmental assessment.

(b) An environmental assessment must include:

(A) A description of the proposed project and why it is needed;

(B) The potential environmental impacts of the project as proposed;

(C) The alternatives to the project and their potential environmental impacts;

(D) A description of public participation activities conducted and issues raised; and

(E) Documentation of coordination with affected federal and state government agencies and tribal agencies.

(c) The Department will review and approve or reject the environmental assessment. If the environmental assessment is rejected, the applicant must make any revisions required by the Department. If the environmental assessment is approved, the Department will:

(A) Issue a Finding of No Significant Impact documenting any mitigative measures required of the applicant. The Finding of No Significant Impact will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the Finding of No Significant Impact may be submitted for consideration by the board; or

(B) Require the applicant to issue a Notice of Intent to Prepare an Environmental Impact Statement.

(d) If the Department issues a Finding of No Significant Impact:

(A) The Department will distribute the Finding of No Significant Impact to those parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding the provision of financial assistance will be taken by the Department for at least 30 days after the issuance of the Finding of No Significant Impact;

(B) The Department will reassess the project to determine whether the environmental assessment will be supplemented or whether an environmental impact statement will be required if substantive comments are received during the public comment period that challenge the Finding of No Significant Impact; and

(C) The Finding of No Significant Impact will become effective if no new information is received during the public comment period which would require a reassessment or if after reviewing public comments and

reassessing the project, an environmental impact statement was not found to be necessary.

(e) Proceeding with Financial Assistance. Once the issued Finding of No Significant Impact becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the Finding of No Significant Impact will be revoked.

(5) Environmental Impact Statement.

(a) General. An environmental impact statement will be required when the Department determines that any of the following conditions exist:

(A) The project will significantly affect the pattern and type of land use or growth and distribution of the population;

(B) The effects of the project's construction or operation will conflict with local or state laws or policies;

(C) The project may have significant adverse impacts upon:

(i) Wetlands,

(ii) Floodplains,

(iii) Threatened and endangered species or their habitats,

(iv) Sensitive environmental areas, including park lands, preserves, other public lands or areas of recognized scenic, recreational, agricultural, archeological or historic value;

(D) The project will displace population or significantly alter the characteristics of existing residential areas;

(E) The project may directly or indirectly~~[, through induced development,]~~ have significant adverse effect upon local

ambient air quality, local noise levels, surface or groundwater quality, fish, shellfish, wildlife or their natural habitats <u>through induced development</u>;

(F) The project is highly controversial; or

(G) The treated effluent will be discharged into a body of water where beneficial uses and associated special values of the receiving stream are not adequately protected by water quality standards or the effluent will not be of sufficient quality to meet these standards.

(b) Environmental Impact Statement Contents. At a minimum, the contents of an environmental impact statement will include:

(A) The purpose and need for the project;

(B) The environmental setting of the project and the future of the environment without the project;

(C) The alternatives to the project as proposed and their potential environmental impacts;

(D) A description of the proposed project;

(E) The potential environmental impact of the project as proposed including those which cannot be avoided;

(F) The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(G) Any irreversible and irretrievable commitments of resources to the proposed project;

(c) Procedures.

(A) If an environmental impact statement is required, the applicant shall publish a Notice of Intent to Prepare an Environmental Impact Statement in newspapers of state-wide and community-

wide circulation.

(B) After the Notice of Intent has been published, the applicant will contact all affected local, state and federal agencies, tribes or other interested parties to determine the scope required of the document. Comments shall be requested regarding:

(i) Significance and scope of issues to be analyzed, in depth, in the environmental impact statement;

(ii) Preliminary range of alternatives to be considered;

(iii) Potential cooperating agencies and the information or analyses that may be needed from them;

(iv) Method for environmental impact statement preparation and the public participation strategy;

(v) Consultation requirements of other environmental laws; and

(vi) Relationship between the environmental impact statement and the completion of the facility plan and any necessary arrangements for coordination of preparation of both documents.

(C) The applicant shall prepare and submit the draft environmental impact statement to the Department for Department approval. The Department may require any changes necessary to comply with the requirements of OAR 340-54-050.

(D) The applicant shall submit the DEQ approved draft environmental impact statement to all affected agencies or parties for review and comment.

(E) Following publication of a public notice in a newspaper of community-wide and state-wide circulation, the applicant shall allow a 30-day comment period, and

conduct a public hearing on the draft environmental impact statement.

(F) The applicant shall prepare and submit a final environmental impact statement (FEIS) addressing all agency and public input to the Department for Department approval. The Department may require any change necessary to comply with the requirements of OAR 340-54-050.

(G) The applicant shall provide a 30-day comment period on the DEQ approved FEIS.

(H) Upon completion of a FEIS, the Department will issue a Record of Decision (ROD) documenting the mitigative measures which will be required of the applicant. The loan agreement will be conditioned upon such mitigative measures. The Department will allow a 30-day comment period for the ROD.

(I) Material incorporated into an environmental impact statement by reference will be organized to the extent possible into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons.

(d) Proceeding with Financial Assistance. Once the issued Record of Decision becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the Record of Decision will be revoked.

(e) Environmental Assessment and Environmental Impact Statement Costs. The cost of preparing an environment assessment and an environmental impact statement must be paid by the applicant. At the request of the applicant, costs for preparation of an environmental assessment or an environmental impact statement may be included as eligible project costs for a SRF loan for facility planning, ~~[design and~~

~~construction,~~ or construction.

(6) Previous Environmental Reviews. If a federal environmental review for the project has been conducted, the Department may, at its discretion, adopt all or part of the federal agency's documentation.

(7) Validity of Environmental Review. Environmental determinations under this section are valid for five years. If a financial assistance application is received for a project with an environmental determination which is more than five years old, or if conditions or project scope have changed significantly since the last determination, the Department will reevaluate the project, environmental conditions, and public comments and will either:

(a) Reaffirm the earlier decision;

(b) Require supplemental information to the earlier Environmental Impact Statement, Environmental Assessment, or Request for Categorical Exclusion. Based upon a review of the updated document, the Department will issue and distribute a revised notice of categorical exclusion, Finding of No Significant Impact, or Record of Decision; or

(c) Require a revision to the earlier Environmental Impact Statement, Environmental Assessment, or Request for Categorical Exclusion. If a revision is required, the applicant must repeat all requirements outlined in this section.

(8) Appeal. An affected party may appeal a notice of categorical exclusion, a Finding of No Significant Impact, or a Record of Decision pursuant to procedures pursuant to the Oregon Administrative Procedures Act, ORS 183.484.

LOAN APPROVAL AND REVIEW CRITERIA

340-54-055

(1) Loan Approval. ~~[The final]~~ SRF loan approval takes place when, after Departmental review of a final SRF loan application, a loan agreement is signed by a legally authorized representative of the borrower and

~~[must be reviewed and approved by]~~ the Director or his designated representative.

(2) Loan Review Criteria. In order to get approval of a final SRF loan application, the criteria listed below must be met. In addition, the Department may establish other loan criteria as appropriate, including but not limited to an opinion of bond counsel.

(a) The applicant must submit a completed final loan application including all information required under OAR 340-54-035, 340-54-040, or 340-54-045 whichever is applicable;

(b) There must be available SRF funds to finance the loan;

(c) The project must be eligible for funds under this chapter;

(d) The applicant must demonstrate to the Director's satisfaction its ability to repay a loan and, where applicable, its ability to ensure ongoing operation and maintenance (including replacement) of the proposed water pollution control facility. In addition, for revenue secured loans described under OAR 340-54-065(2), the Department may require the following criteria to be met:

(A) Where applicable, the existing water pollution control facilities are free from operational and maintenance problems which would materially impede the proposed system's function or the public agency's ability to repay the loan from user fees as demonstrated by the opinion of a registered engineer or other expert acceptable to the Department;

(B) Historical and projected system rates and charges, when considered with any consistently supplied external support, must be sufficient to fully fund operation, maintenance, and replacement costs, any existing indebtedness and the debt service expense of the proposed borrowing;

(C) To the extent that projected system income is materially greater than historical system income, the basis for the projected increase must be reasonable and documented as to

source;

(D) The public agency's income and budget data must be computationally accurate and must include three years' historical financial statements, the current budget and one years' projected financial statements of consolidated sewer system revenues, expenses, assets and liabilities;

(E) The budget of the project including proposed capital costs, site work costs, engineering costs, administrative costs and any other costs which will be supported by the proposed revenue secured loan must be reflected in the public agency's data;

(F) Audits during the last three years are free from adverse opinions or disclosures which cast significant doubt on the borrower's ability to repay the Revenue Secured Loan in a timely manner;

(G) The proposed borrowing's integrity is not at risk from undue dependence upon a limited portion of the system's customer base and a pattern of delinquency on the part of that portion of the customer base;

(H) The public agency must have the ability to bring effective sanctions to bear on non-paying customers; and

(I) The opinion of the pubic agency's legal counsel or a certificate from the public agency which states that no litigation exists or has been threatened which would cast doubt on the enforceability of the borrower's obligations under the loan.

LOAN AGREEMENT AND CONDITIONS

340-54-060

The loan agreement shall contain conditions including, but not limited to, the following, where applicable to the type of project being financed:

(1) Accounting.

(a) Applicant shall use accounting, audit and fiscal procedures which conform to generally accepted government accounting standards.

(b) Project files and records must be retained by the borrower for at least three (3) years after performance certification. Financial files and records must be retained until the loan is fully amortized.

(c) Project accounts must be maintained as separate accounts.

(2) Wage Rates. Applicant shall ensure compliance with federal wage rates established under the Davis-Bacon Act.

(3) Operation and Maintenance Manual. If the SRF loan is for design and construction or construction only, the borrower shall submit a draft and final facility operation and maintenance manual which meets Department approval. The draft must be submitted before the project is ~~{75%}~~ 50 percent (50%) complete~~{.}~~, and the final must be submitted before the project is 90 percent (90%) complete. This requirement may be waived for projects which only involve simple gravity sewers.

(4) Value Engineering. A value engineering study satisfactory to the Department must be performed for design and construction projects prior to commencement of construction if the total project cost will exceed $10 million.

(5) Plans and Specifications. Applicant must submit and receive Departmental approval of project plans and specifications prior to commencement of construction, in conformance with OAR Chapter 340, Division 52.

(6) Inspections and Progress Reports. During the building of the project, the borrower shall provide inspections in sufficient number to ensure the project complies with approved plans and specifications. These inspections shall be conducted by qualified inspectors under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. The Department or its representatives may conduct interim inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with the loan agreement.

(7) Loan Amendments.

(a) Changes in the project work that are consistent with the objectives of the project and that are within the scope and funding level of the loan do not require the execution of a formal loan amendment. However, if additional loan funds are needed, a loan amendment shall be required.

(b) ~~If the total of all loan amendments will not exceed 10% of the total amount approved in the original loan agreement,~~ L[~~l~~]oan amendments increasing the originally approved loan amount may be requested at any time during the project. The Department may approve these loan amendments if the borrower demonstrates the legal authority to borrow and the financial capability to repay the increased loan amount.

~~[(c) If the total of all loan amendments will exceed 10% of the total amount approved in the original loan agreement, loan amendments increasing the originally approved loan amount must be requested prior to implementation of changes in project work. The Department may approve these loan amendments if the borrower demonstrates the legal authority to borrow and the financial capability to repay the increased loan amount.]~~

~~[(d)]~~ (c) The borrower must amend the loan agreement after bids for the project are received if the bids indicate that the project costs will be less than projected. Other loan amendments decreasing the loan amount must be requested no later than the date of completion of a positive performance certification when the final cost of the project is less than the total amount approved in the original loan agreement or when the total loan proceeds disbursed are less than the approved loan amount.

(8) Change Orders. Upon execution, the borrower must submit change orders to the Department. The Department shall review the change orders to determine the eligibility of the project change.

(9) Project Performance Certification.

(a) Draft p[~~P~~]roject performance standards must be submitted by the borrower and approved by the Department before the project is fifty [~~50~~]

percent (50%) complete~~[.]~~, and final project performance standards must be submitted by the borrower and approved by the Department before the project is 90 percent (90%) complete.

(b) The borrower shall notify the Department within thirty (30) days of the actual date of initiation of operation.

(c) One year after initiation of operation, the borrower shall certify whether the facility meets Department approved project performance standards.

(d) If the project is completed, or is completed except for minor items, and the facility is operable, but the borrower has not sent its notice of initiation of operation, the Department may assign an initiation of operation date.

(e) The borrower shall, pursuant to a Department approved corrective action plan, correct any factor that does not meet the Department approved project performance standards.

(10) Eligible Construction Costs. Payments for construction costs shall be limited to work that complies with plans and specifications approved by the Department.

(11) Adjustments. The Department may at any time review and audit requests for payment and make adjustments for, but not limited to, math errors, items not built or bought, and unacceptable construction.

(12) Contract and Bid Documents. The borrower shall submit a copy of the awarded contract and bid documents to the Department.

(13) Audit. Federal enabling legislation and rules require an audit of each SRF loan. Borrowers may satisfy this requirement in one of the following two ways:

(a) An audit consistent with generally accepted accounting procedures of project expenditures ~~[will]~~ may be conducted by the borrower within one year after performance certification. This audit shall be paid for by the borrower and shall be conducted by a ~~[financial]~~ certified municipal auditor, ~~[approved by the Department]~~ or

(b) Borrower may submit a full and complete (internally prepared) accounting of project costs incurred by the Borrower, including base documentation to support each cost element; as well as one copy of the Borrower's annual municipal audit report to the Department by December 31st of each year until the Outstanding Loan Amount is repaid with interest as provided herein.

(14) Operation and Maintenance. The borrower shall provide for adequate operation and maintenance (including replacement) of the facility and shall retain sufficient operating personnel to operate the facility.

(15) Default Remedies. Upon default by a borrower, the Department shall have the right to pursue any remedy available at law or in equity and may appoint a receiver at the expense of the public agency to operate the utility which produces pledged revenues and set and collect utility rates and charges. The Department may also withhold any amounts otherwise due to the public agency from the State of Oregon and direct that such funds be applied to the debt service due on the SRF loan and deposited in the fund. If the Department finds that the loan to the public agency is otherwise adequately secured, the Department may waive this right to withhold state shared revenue in the loan agreement or other loan documentation.

(16) Release. The borrower shall release and discharge the Department, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the loan, subject only to exceptions previously contractually arrived at and specified in writing between the Department and the borrower.

(17) Effect of Approval or Certification of Documents. Review and approval of facilities plans, design drawings and specifications or other documents by or for the Department does not relieve the borrower of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works as required by law, regulations, permits and good management practices. The Department is not responsible for any project costs or any losses or damages resulting from defects in the plans, design drawings and specifications or other subagreement documents.

(18) Reservation of Rights.

(a) Nothing in this rule prohibits a borrower from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; and

(b) Nothing in the rule affects the Department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under this chapter.

(19) Other provisions. SRF loans shall contain such other provisions as the Director may reasonably require to meet the goals of the Clean Water Act and ORS 468.423 to 468.440.

LOAN TERMS AND INTEREST RATES

340-54-065

As required by ORS 468.440, the following loan terms and interest rates are established in order to provide loans to projects which enhance or protect water quality; to provide loans to public agencies capable of repaying the loan; to establish an interest rate below market rate so that the loans will be affordable; to provide loans to all sizes of communities which need to finance projects; to provide loans <u>for</u> ~~[to]~~ the types of projects described in these rules which address water pollution control problems; and to provide loans to all public agencies, including <u>both</u> those which can and <u>those which</u> cannot borrow elsewhere.

(1) Types of Loans. An SRF loan must be one of the following types of loans:

(a) The loan must be a general obligation bond, or other full faith and credit obligation of the borrower, which is supported by the public agency's unlimited ad valorem taxing power; or

(b) The loan must be a bond or other obligation of the public agency which is not subject to appropriation, and which has been rated investment grade by Moody's Investor Services, Standard and Poor's Corporation, or another national rating service acceptable to the Director; or

(c) The loan must be a Revenue Secured Loan which complies with section (2) of this rule; or

(d) The loan must be an Alternative Loan which complies with section (3) of this rule; or

(e) The loan must be a Discretionary Loan which complies with section (4) of this rule.

(2) Revenue Secured Loans. These loans shall:

(a) Be bonds, loan agreements, or other unconditional obligations to pay from specified revenues which are pledged to pay to the borrower; the obligation to pay may not be subject to the appropriation of funds;

(b) Contain a rate covenant which requires the borrower to impose and collect each year revenues which are sufficient to pay all expenses of operation and maintenance (including replacement) of the facilities which are financed with the loan and the facilities which produce the revenues, all debt service and other financial obligations (such as contributions to reserve accounts) imposed in connection with prior lien obligations, plus an amount equal to the product of the coverage factor shown in subsection (d) of this section times the debt service due in that year on the SRF loan. The coverage factor selected from subsection (d) of this section shall correspond to the reserve percentage selected for the SRF loan. If the public agency may incur, or has outstanding, prior lien obligations which, in the judgment of the Department, are ~~[have]~~ inadequately secured ~~[reserves]~~ or otherwise may adversely affect the ability of the public agency to pay the SRF loan, the Department may require that the public agency agree in its rate covenant to impose and collect additional revenues to provide coverage on such prior lien obligations, in amounts determined by the Department.

(c) Contain a reserve covenant ~~[(A)]~~ ~~[R]~~requir~~[e]~~ing the public agency to maintain in each year that the SRF loan is outstanding, a pledged reserve which is dedicated to the payment of the SRF loan and which meets the following requirements:~~[.]~~

~~[(B)]~~ (A) Loan reserves must be ~~[M]~~maintained in an ~~[a~~

~~reserve~~] amount which is at least equal to the product of the reserve percentage shown in subsection (d) of this section times the average annual debt service during the repayment period, based on the repayment schedule in the loan agreement. ~~[The average annual debt service shall be based on the debt service due between the project completion date as estimated in the loan agreement and the estimated date of the final SRF loan payment.]~~ The reserve percentage selected from subsection (d) of this section shall correspond to the coverage factor selected for the SRF loan.

~~[(C)]~~ (B) Loan reserves may be ~~[F]~~funded ~~[the reserves]~~ with cash of the public agency (other than SRF loan proceeds), a letter of credit, repayment guaranty, or other third party commitment to advance funds which is satisfactory to the Department~~[, or cash of the public agency (other than SRF loan proceeds)]~~. If it is determined by the Department that funding of the reserve as described above imposes an undue hardship on the public agency, and an Alternative Loan as described in OAR 340-54-065(3) is not feasible, then the Department may allow reserves to be funded with SRF loan proceeds. ~~[In cases where the Department allows reserves to be funded with SRF loan proceeds, such reserves shall be held by the Department on behalf of the public agency, and all interest earned on the reserves over and above the interest rate on the SRF loan will be kept by the Department in the SRF.]~~

(d) Comply with the one of the following set of coverage factors and reserve percentages:

	Coverage Factor (Net Income to Debt Service)		**Reserve Percentage of Average Annual Debt Service**
Option 1:	1.05:1	and	100%
Option 2:	1.15:1	and	75%
Option 3:	1.25:1	and	50%
Option 4:	1.35:1	and	25%

(e) Contain a covenant to review rates periodically, and to adjust rates, if necessary, so that

estimated revenues in subsequent years will be sufficient to comply with the rate covenant;

(f) Contain a covenant that, if revenues fail to achieve the level required by the rate covenant, the public agency will promptly adjust rates and charges to assure future compliance with the rate covenant. However, failure to adjust rates shall not constitute a default if the public agency transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system which produces the revenues;

(g) Follow the payment schedule in the loan agreement ~~[which shall require monthly SRF loan payments to the Department. If the Department determines that monthly loan payments are not practicable for the borrower, the payment schedule shall require periodic loan payments as frequently as possible, with monthly deposits to a dedicated loan payment account whenever practicable]~~;

(h) Contain a covenant that, if the reserve account is depleted for any reason, the public agency will take prompt action to restore the reserve to the required minimum amount;

(i) Contain a covenant restricting additional debt appropriate to the financial condition of the borrower;

(j) Contain a covenant that the borrower will not sell, transfer or encumber any financial or fixed asset of the utility system which produces the pledged revenues, if the public agency is in violation of any SRF loan covenant, or if such sale, transfer or encumbrance would cause a violation of any SRF loan covenant.

(3) Alternative Loan<u>s</u>. Alternative Loans ~~[are to be used if the public agency would incur unnecessary costs or excessive burdens by entering into a Revenue Secured Loan or if the public agency offers an alternative method of financing which is reasonable. The Director may authorize an Alternative Loan]~~ <u>may be authorized for reasonable alternative methods of financing</u> ~~[to a public agency,]~~ if the public agency demonstrates to the satisfaction of the Director that:

(a) It would be unduly burdensome or costly to the

public agency to borrow money from the SRF through general obligation bonds, revenue bonds, or a revenue-secured loan, as described in ~~[under]~~ subsections (a), (b), or (c) of Section 340-54-065(1); and,

(b) The Alternative Loan has a credit quality which is substantially equal to, or better than, the credit quality of a Revenue Secured Loan to that public agency.

In determining whether an Alternative Loan meets the requirements of subsection (3)(b) of this section, the Director may consult with the Department's financial advisor, and may charge the public agency applying for an Alternative Loan the reasonable costs of such consultation.

(4) Discretionary Loan. A Discretionary Loan shall be made only to a small community which, in the judgment of the Director, cannot practicably comply with the requirements of OAR 340-54-065(1)(a), (b), (c), or (d). Discretionary Loans shall comply with OAR 340-54-065(5) of this section, and otherwise be on terms approved by the Director. The total principal amount of Discretionary Loans made in any fiscal year shall not exceed five percent of the money available to be loaned from the SRF in that fiscal year.

(5) Interest Rates.

~~[(a) Zero percent interest rate. SRF loans which are fully amortized within five years after project completion, as estimated in the loan agreement, shall bear no interest; at least three percent of the original principal amount of the loan shall be repaid each year.~~

~~(b) Three percent interest rate.~~

~~(A) All SRF loans, other than Discretionary Loans, in which the final principal payment is due more than five years after project completion, as estimated in the loan agreement, shall bear interest at a rate of three percent per annum, compounded annually; shall have approximately level annual debt service during the period which begins with the first principal repayment and ends with the final principal repayment; and, shall~~

~~require all principal and interest to be repaid within twenty years after project completion, as estimated in the loan agreement.~~

~~(B) A Discretionary Loan shall bear the interest rate of three percent per annum, compounded annually; shall schedule principal and interest repayments as rapidly as is consistent with estimated revenues (but no more rapidly than would be required to produce level debt service during the period of principal repayment); and, shall require all principal and interest to be repaid within twenty years after project completion, as estimated in the loan agreement.~~

~~(c) Review of interest rate. The interest rates on SRF loans described in OAR 340-54-065(5)(a) and (b) shall be in effect for loans made by September 30, 1991. Thereafter, interest rates may be adjusted by the EQC, if necessary, to assure compliance with ORS 468.440.]~~

(a) Facility Planning Loans. Loans to finance wastewater treatment facility planning will be made at an interest rate of two percent per year, inclusive of the servicing fee described in OAR 340-54-065(7)(b).

(b) Discretionary Loans. Loans funded under the discretionary loan provisions of OAR 340-54-065(4) may be made at an interest rate of two percent per year, inclusive of the servicing fee described in OAR 340-54-065(7)(b).

(c) All other SRF Loans will be made at a fixed rate of interest equal to two thirds of the weekly average state and local government bond interest rate prevailing for the last week of the immediately preceding quarter. The source of this rate will be the Bond Buyer Index, general obligation, 20 years to maturity, mixed quality as reported in the "Federal Reserve Statistical Release, H.15".

(6) Interest Accrual and Compounding Periods. Interest accrual begins at the time of each loan disbursement from the SRF to the Borrower. Compounding of interest will be done at least annually and as

frequently as the repayment periods.

(7) Loan Fees. The borrowers receiving benefits from the SRF program will pay the necessary and reasonable costs of administering the Fund through the following two fees:

(a) Loan Processing Fee. A one time fee of one and one half percent of the amount borrowed will be charged each loan. This fee may be included in the amount of the SRF loan and repaid over the term of the loan. It is due and payable to the Department at the time of the first disbursement of each loan.

(b) Loan Servicing Fee. An annual fee of one half of one percent of the unpaid balance will be charged on each loan during the repayment period.

(8) Review of interest rates and fees. The interest rates on SRF loans described in OAR 340-54-065(5)(a), (b), and (c); and fees described in OAR 340-54-065(7)(a) and (b) shall be effective for all loan agreements signed after December 31, 1992. Thereafter, interest rates and fees may be adjusted by the EQC, if necessary, to assure compliance with ORS 468.440.

~~[(7)]~~ (9) Commencement of Loan Repayment.

(a) ~~[Except as provided in OAR 340-54-065(5)(a)]~~, P~~[p]~~rincipal and interest repayments on loans shall begin within one year after the date of project completion as estimated in the loan agreement.

(b) In the event that the actual project completion date is prior to the estimated project completion date in the loan agreement, the loan repayment must begin within one year after the actual completion date.

(10) Loan Term. All loans must be fully repaid within 20 years of the project completion date. Generally, the loan repayment term will match the useful life of the assets financed or what the borrower can afford. For facility planning loans, this is five years. Pre-payments will be allowed at any time without penalty.

~~[(8)]~~ (11) Minor Variations in Loan Terms. The Department may permit insubstantial variations in the financial terms of loans described in this section, in order to facilitate administration and repayment of loans.

SPECIAL RESERVES

340-54-070

(1) Facility Planning Reserve. Each fiscal year, ten ~~[10]~~ percent (10%) of the total available SRF will be set aside for loans for facility planning. However, if preliminary applications for facility planning representing ten ~~[10]~~ percent (10%) of the available SRF are not approved, these funds may be allocated to other projects.

(2) Small Community Reserve.

(a) Each fiscal year, fifteen ~~[15]~~ percent (15%) of the total available SRF will be set aside for loans to small communities. However, if preliminary applications from small communities representing fifteen ~~[15]~~ percent (15%) of the available SRF are not received, these funds may be allocated to other public agencies.

(b) In order to be eligible for small communities reserve funds, the small community must receive a SRF Project Priority List ~~[R]~~ranking with at least thirty (30) Enforcement Water Quality Violation points (see OAR 340-54-025(4)(a)).

LOAN LIMITATIONS

340-54-075

(1) Maximum Loan Amount. In any fiscal year, no public agency on the SRF Project Priority List may receive more than fifteen ~~[15]~~ percent (15%) of the total available SRF. However, if the SRF funds are not otherwise allocated, a public agency may apply for more than fifteen ~~[15]~~ percent (15%) of the available SRF, not to exceed the funds available in the SRF.

(2) Minimum Loan Amount. No SRF loan shall be approved if the total amount of the SRF loan is less than $20,000.

Attachment B: Supporting Procedural Documentation

NOTICE OF PROPOSED RULEMAKING HEARING

(Rulemaking Statements and Statement of Fiscal Impact **must** accompany this form.)

AGENCY: Department of Environmental Quality, Water Quality Division

The above named agency gives notice of hearing.

HEARING TO BE HELD:

DATE:	**TIME:**	**LOCATION:**
November 2, 1992	10:00 A.M	Department of Environmental Quality 811 S.W. Sixth, Portland, OR Conference Room 3B

Hearings Officer: Martin W. Loring

Pursuant to the Statutory Authority of ORS 468.423 - 468.440, the following action is proposed:

AMEND: OAR 340-54-005 to OAR 340-54-075

☐ Prior Notice Given; Hearing Requested by Interested persons ☒ No Prior Notice Given

SUMMARY:

This rule amendment would accomplish two purposes. The first is to make more money available in the State Revolving Fund to help local governments solve water quality problems by increasing interest rates from the current level of 0% for loans repaid in five years and 3% for loans repaid in more than five years to 2% for facility planning loans and 2/3 of the prevailing municipal bond rate for all other loans. The second purpose is to implement statutory authority to charge loan fees sufficient to pay the necessary and reasonable costs of administering this program. These fees are needed because the existing source of federal funds to pay these costs is being eliminated.

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by 5:00 PM on November 2, 1992, will be considered. Written comments should be sent to and copies of the proposed rulemaking may be obtained from:

AGENCY: Department of Environmental Quality
ADDRESS: 811 S.W. Sixth Avenue, Portland, OR 97204
ATTN: Martin W. Loring
PHONE: (503)229-5415 or Toll Free 1-800-452-4011

Signature September 15, 1992
Date

State of Oregon
Department of Environmental Quality Memorandum

Date: October 1, 1992

To: Interested and Affected Public

Subject: Rulemaking Proposal - Modification of Rules for State Revolving Fund

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt rule amendments regarding the State Revolving Fund. This proposal would increase interest rates from 0% for loans repaid in five years or less and 3% for loans repaid in more than five years to 2% for facility planning loans and 2/3 of the prevailing municipal bond rate for other loans. It would also implement existing statutory authority to charge loan fees sufficient to pay the necessary and reasonable costs of administering this program.

What's in this Package?

Attachments to this memorandum provide details on the proposal as follows:

Attachment A	The actual language of the proposed rule (amendments).
Attachment B	The official Public Notice of the Rulemaking Hearing. (required by ORS 183.335)
Attachment C	The official Rulemaking Statements for the proposed rulemaking action. (required by ORS 183.335)
Attachment D	The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
Attachment E	A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.

Hearing Process Details

You are invited to review these materials and present written or oral comment in accordance with the following:

Date: November 2, 1992
Time: 10:00 A.M.
Place: Department of Environmental Quality
811 S.W. Sixth Avenue, Portland, OR 97204
Conference Room 3B

Deadline for submittal of Written Comments: 5:00 P.M. 11/06/92

Martin Loring will be the Presiding Officer at this hearing. Following close of the public comment period, the Presiding Officer will prepare a report which summarizes the oral testimony presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officer's report and all written comments submitted. The public hearing will be tape recorded, but the tape will not be transcribed.

If you wish to be kept advised of this proceeding and receive a copy of the recommendation that is presented to the EQC for adoption, you should request that your name be placed on the mailing list for this rulemaking proposal.

What Happens After the Public Comment Period Closes

The Department will review and evaluate comments received, and prepare responses. Final recommendations will then be prepared, and scheduled for consideration by the Environmental Quality Commission (EQC).

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is December 11, 1992. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be placed on the mailing list for this rulemaking proposal.

How does this proposed rule help solve the problem

It substantially increases the amount of money that will be available in the long run to meet local government needs while maintaining an affordable price more attractive than they could obtain on their own. It also imposes fees that will fund the necessary and reasonable costs of the program while still being affordable to the local governments receiving the benefits of the programs low interest rates.

How was the rule developed

This rule proposal was developed by a technical advisory committee called the SRF Task Force. Over five, four hour meetings, this 11 person group representative of communities using SRF loans around the state reviewed the history of the program and what was needed to improve the efficiency and effectiveness of this resource. This recommendation also responds to federal criticisms of Oregon's SRF program (received in their Annual Program Review) that interest rates are too low to ensure the perpetuity of the fund.

How does it affect the public, regulated community, other agencies

Local governments using the State Revolving Fund Program to solve water quality problems will find the level of subsidy each receives to be reduced. However, the cost will still be below the cost of other financing options, and for most communities, this cost will be remain affordable.

How will the rule be implemented

The term sheet of each loan agreement signed after January 1, 1993 will include an interest rate of either 2% per year (for facility planning loans) or 2/3 of the prevailing municipal bond rate (for other loans). A one time loan origination fee of 1 and 1/2% of the loan amount will be paid out of loan proceeds and an ongoing servicing fee of 50 basis points will be paid as part of the interest rate.

Are there time constraints

Loan applications are processed in an annual cycle. It is desirable to have these changes in effect before people next

apply for SRF funds rather than changing interest rates and fees after the fact.

Contact for more information

If you would like more information on this rulemaking proposal, or would like to be added to the mailing list, please contact:

Martin Loring
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt a rule.

(1) Legal Authority

Oregon Revised Statutes (ORS) 468.440 mandates that the Environmental Quality Commission establish by rule policies for establishing loan terms and interest rates...that assure the (statutory) purposes are met and that adequate funds are maintained in the Water Pollution Control Revolving Fund to meet future needs.

(2) Need for the Rule

Working with a task force representative of the communities using the State Revolving Fund to solve water quality problems, the Department of Environmental Quality has concluded that the interest rates currently established by rule are too low to meet the requirements of ORS 468.440. Further, federal funds currently available to pay the necessary and reasonable costs of administering this program are scheduled to end in 1994. As such, loan fees are needed to pay for needed program staffing and other costs needed to deliver this program to local governments.

(3) Principal Documents Relied Upon in this Rulemaking

Oregon Revised Statutes 468.423 to 468.440.

This document is available for review during normal business hours at the Department's office, 811 S.W. Sixth Avenue, Portland, Oregon.

FISCAL AND ECONOMIC IMPACT

1. Municipalities such as cities, service districts, and sanitary districts.

The proposed rule changes the terms and conditions under which these entities will borrow funds to solve water quality problems. An increase in interest rates and the imposition of loan fees will make assisted projects more expensive for borrowers. However, in comparison with other governmental and private sector borrowing alternatives, the State Revolving Fund Program would remain less expensive than other available borrowing alternatives. The task force of local officials that worked with the Department in reviewing current program rules concluded that the long term increase in the amount of money that would be available in the fund to make loans is well worth the small increase in cost that is proposed.

Based upon current funding levels authorized in the federal Clean Water Act, a total of $21 million is projected to be available for loans to municipal corporations in Oregon through the State Revolving Fund program during the 1993-1995 biennium. At this level, the proposed loan fee of 1.5% of the loan amount would impose a cost increase of $315,000 on borrowers (and this would be financed at a below market interest rate). The increase in interest rates from a current maximum of 3% to 2/3 of the municipal bond rate would add a maximum annual cost to this borrowing of $210,000 based upon rates prevailing during the week ending August 10, 1992. (2/3 of 6.06% = 4.04%, or 4%.). A servicing fee of 1/2 of one percent per year on the unpaid balance would increase annual costs on this loan volume by a maximum of $105,000 a year.

Since most communities chose to pay the cost of solving water quality problems through sewer utility rate revenues, increases in cost may be passed through to users of the systems in the form of higher sewer rates. However, the magnitude of the proposed cost increase is so small, that the rate impact will be negligible. Further, over the years, this interest rate increase will allow the Department to spread the benefit of below market interest rate financing to more communities than we would otherwise be able to help. As such, all users of the fund would pay a little bit more so that a few would be able to pay a lot less than would be the case if they had to borrow funds in the private credit markets.

2. Small Business

Since the State Revolving Fund only lends to municipal corporations, this rule proposal will have no direct effect on small business. However, as users of municipal sewer services, they will feel whatever indirect effects occur in terms of increased sewer rates. This impact should be negligible, and, indeed, much less than normally occurs due to fluctuations in market interest rates.

3. Large Business

Since the State Revolving Fund only lends to municipal corporations, this rule proposal will have no direct effect on large business. However, as users of municipal sewer services, they will feel whatever indirect effects occur in terms of increased sewer rates. This impact should be negligible, and, indeed, much less than normally occurs due to fluctuations in market interest rates.

4. Other State Agencies

This rule proposal will have no impact on other state agencies, other than the negligible, indirect effect they may experience as users of municipal sewer services.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed Amendments to Water Pollution Control Revolving Fund Program Rules

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

This rule amendment would accomplish two purposes. The first is to make more money available in the Water Pollution Control Revolving Fund to help local governments solve water quality problems by increasing interest rates from the current level of 0% for loans repaid in five years and 3% for loans repaid in more than five years to 2% for facility planning loans and 2/3 of the prevailing municipal bond rate for all other loans. The second purpose is to implement statutory authority to charge loan fees sufficient to pay the necessary and reasonable costs of administering this program. These fees are needed because the existing source of federal funds to pay these costs is being eliminated.

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 XX No____

a. If yes, identify existing program/rule/activity:

The rules govern administration of the State Revolving Fund Loan Program. Approval of such a loan to a municipal corporation is defined as a "program affecting land use" in the DLCD/DEQ State Agency Agreement, OAR 340-18-030 (5) (c).

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes XX No_____ (if no, explain):

The proposed rule amendments make minor technical changes to a program affecting land use. State Revolving Fund loans reduce costs for local governments building sewage treatment works pursuant to Statewide Goal Number 11 - Public Facilities and Services. The key part of this program that affects land use is which loan applications receive approval for financing. The decision as to which loans are approved is not affected by the proposed amendments. What is affected are the terms and conditions under which those approvals are made.

Land use compatibility for this program is assured by requiring each applicant for financial assistance to provide a land use compatibility statement for the project prior to loan approval. This requirement will continue under the amended rule. As such, the amendments, themselves, do not constitute a program affecting land use.

c. If no, apply the following criteria to the proposed rules.

Not applicable.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

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. The SRF program is subject to existing land use compliance and compatibility procedures.

Division	Intergovernmental Coord.	Date

Attachment C: Presiding Officers Report on Public Hearing

State of Oregon
Department of Environmental Quality Memorandum

Date: November 10, 1992

To: Environmental Quality Commission

From: Martin W. Loring, Manager
Wastewater Finance Section
Water Quality Division

Subject: Report on Public Hearing held on Proposed Amendments to the State Revolving Fund (SRF) Rules

After publication of a proper notice, and with appropriate signing to identify the meeting location, I served as presiding officer at a public hearing on Proposed Amendments to the State Revolving Fund (SRF) Rules. The hearing was held at 10:00 AM, Monday, November 2, 1992 in Room 3B of the DEQ Headquarters Building located at 811 S.W. Sixth Avenue, Portland, Oregon. No member of the public or representative of any agency or group appeared. After 30 minutes, the hearing was declared closed.

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Attachment D: Index and Listing of Written Comments Received

Two letters were received commenting on the Proposed Amendments to the State Revolving Fund (SRF) Rules. The first is from Jesse Smith, Vice President/Public Finance of Kemper Securities Group, Inc. It is enclosed as Attachment D(1).

The second is from John Lang, Chair of the Oregon Association of Clean Water Agencies. It is enclosed as Attachment D(2).

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Attachment E: Department's Evaluation of Public Comment Received on Proposed Amendments to the State Revolving Fund (SRF) Rules

Two letters were received commenting on the Proposed Amendments to the State Revolving Fund (SRF) Rules. The first is from Jesse Smith, Vice President/Public Finance of Kemper Securities Group, Inc. Mr. Smith asks that the Department provide some sort of opportunity for interim financing based upon readiness to proceed.

Projects selected to receive long term financing also are provided with the option to receive interim financing. Further, a new Rule provision is proposed [340-54-025(8)] to expand this to provide an interim (construction) financing option for some projects not receiving long term financing. This language is found on page 15 of the Amended Rule (Attachment A), and was part of the rule proposal sent out for public review.

The second comment considered is from John Lang, Chair of the Oregon Association of Clean Water Agencies (ACWA). He expresses "one major reservation..." of the group he Chairs (which represents 70 Oregon community wastewater treatment agencies) that..."SRF loan security provisions...(are) inflexible...not taking into account the range of borrowing experience and credit-worthiness of potential borrowers...(not) reflect(ing) the policy orientation of the Federal law that created the SRF...as a reasonable balance between good stewardship and actively encouraging local governments to pursue SRF financings... (and which is)...inconsistent with the goals of the program and could interfere with other pollution control facility financings."

The Department respectfully disagrees with Mr. Lang's characterization of the SRF program. Neither the present or proposed rules, nor their implementation has been inflexible. The original rules were drafted by a group of potential users of the fund (including Dave Gooley, the person who drafted the ORACWA letter). Each time the Department has received feedback that some aspect of the rules was unreasonable or caused a problem for agencies trying to solve water quality projects, the comments were considered, and (in most cases) changes were made to accommodate the concern.

Finally, Mr. Gooley was asked to serve on the the most recent SRF Task Force that developed the current rule amendment proposal. He declined to serve, but Terry Smith agreed to serve (as he has on each Task Force that has looked at the SRF Rules). While he was serving on the Task Force that developed this Rule Amendment Proposal, he was Chair of ACWA.

We do take very seriously the Department's responsibility to be a a good steward of these public funds, having agreed as a condition of their receipt to manage them so as to be able to

solve water quality problems in perpetuity. We believe that the best indicator of what constitutes "good stewardship" is found in the private credit market standards for municipal finance that strongly influence the terms and conditions under which SRF credit is provided.

Has the Department's concern about security requirements discouraged demand? Program experience suggests otherwise. In each year the Department has requested preliminary loan applications (F.Y. 1989, 1990, 1991 and 1992) many more applications have been received than could be accommodated with available funds. To date 81 preliminary funding commitments have been made for $77.5 million, but preliminary applications have been received for 261 projects totalling $435 million.

Of the 81 approved preliminary applications, final application processing and negotiation of a loan agreement has been completed for 30 projects totalling $31 million. Every agreement has been crafted to fit the circumstances of each individual borrower, and only once has staff been unable to negotiate loan security arrangements mutually satisfactory to the borrower and the Department. (In that case the applicant requested that the disbursed loan proceeds of $1 million be held by the borrower in an account -- which would be pledged as the Department's only security -- for five years after which the corpus would be returned to the Department and during which the interest earnings would transferred to the borrower's general fund.)

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Attachment F: Changes to Original Rulemaking Proposal Made in Response to Public Comment Received on Proposed Amendments to the State Revolving Fund (SRF) Rules

As was mentioned in Attachment C, the Presiding Officer's Report on Public Hearing, no one testified at the public hearing. As such, no changes in the rulemaking have been made as a result of public comments made at the hearing. However, two letters on the Proposed Amendments to the State Revolving Fund (SRF) Rules were received prior to the end of the public comment period.

The first letter from Jesse Smith, Vice President/Public Finance of Kemper Securities Group, Inc. requested a rule change to expand opportunities for interim financing based upon a community's readiness to proceed. This change is part of the proposed amendments that were sent out for public review.

While critical of the Department's implementation of the SRF program, the second letter (from the Oregon Association of Clean Water Agencies) did not make any specific requests for changes in the proposed rulemaking. It did, however, appear to request that amendment of the rule be delayed until, "early next year". Staff consulted with the author of the letter and learned that this was not his intent. As such no changes have been made in this rule amendment proposal.

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Attachment G: Advisory Committee Report

No advisory committee report has been prepared, as such. However, an SRF Task Force did review the original SRF Program Rules and make recommendations at to what should be retained and what should be changed. The Proposed set of Rule Amendments for the State Revolving Fund Program represent a consensus of Department staff and the SRF Task Force further refined by comments from other program staff and the public. Attachment G(1) is a list of the people who participated in the work of the SRF Task Force.

Enclosed as Attachment G(2) is a matrix that summarizes the results of the Task Force process. It lists the 12 issues identified by the Task Force and the consensus recommendation for each. The proposed amendments implement the consensus recommendation for all substantive issues. Agendas and minutes for the five meetings held are also available.

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Attachment G(1): 1992 STATE REVOLVING FUND TASK FORCE

Steve C. Anderson, P.E.
Anderson, Perry & Associates
La Grande, OR

Dennis W. Cluff
City Administrator
City of Brookings

Ann Culbertson
Grant Coordinator
Unified Sewerage Agency
of Washington County

Greg DiLoreto
City Engineer
City of Gresham

Kelly Fish
Community Activist
North Albany

Dan Helmick
Fiscal Services Director
Clackamas County

Michael Jordan
City Administrator
City of Canby

George Lewis
City Administrator
City of Cascade Locks

Brian Little
Planner
City of St. Helens

Kathy Schacht
Director
Metropolitan Wastewater
Management Commission

B.J. Smith
Staff Associate
League of Oregon
Cities

Terry Smith
Deputy Public Works Dir.
City of Eugene

Also asked to participate:

Jana Doerr
Administrative Aide
Congressman DeFazio

David Gooley
Finance Director
Bureau of Environmental
Services, Portland

Jonathan Jalali
Finance Director
City of Medford

Joe Wendell
City Manager
City of Lebanon

DEPARTMENT OF ENVIRONMENTAL QUALITY: SRF TASK FORCE -- SUMMARY OF CONCENSUS POSITIONS ON ISSUES DISCUSSED

#	ISSUE	CURRENT SITUATION	CONSENSUS	COMMENTS
1	Should facility plans continue to be required for all SRF assisted projects?	now required for all design and construction loans	Waive facility planning and other Title II requirements for projects that would be eligible for a NEPA categ. exclusion	
2	Should the enforcement/problem severity prioritization criterion change?	Up to 50 points for EQC order or health hazard with water quality problem	Retain as is.	
3	Should the receiving water body prioritization criterion change?	Up to 90 pts. from Clean Water Strategy or GW, 1 for oceans and interstate water	Retain, but modify to increase points for dischargers into ocean and interstate water bodies to 10.	
4	Should the population prioritization criterion change?	Log of benefitted population squared (Produces a range of from 1 to 12.)	Retain as is.	
5	Should readiness to proceed be added as a prioritization criterion?	Must be ready to proceed to apply, but no prioritization points awarded.	No.	
6	Should a prioritization criterion be added to benefit continuing projects?	Not now considered.	No.	
7	Should allowable uses of fund be amended to include payment on match bonds?	Principal and interest on debt not now an eligible use of SRF funds.	Yes, but Department, cities and counties should pursue Lottery funds for match if general funds are not available.	
8	Should current interest rates be retained?	0% on loans of 5 years or less; and 3% on loans of >5 years and <20 years.	Raise rates, but retain incentive value 2/3 bond rate on direct loans after12/31 retain 0% loans for facility planning.	2/3 of bond rate works for direct loans, but 150 BP is better for leveraging. For fac.plan. 2% covers admin + match debt
9	How should program administrative costs be paid after EPA allowance spent?	EPA allows 4% of each cap grant and requires state to fund when that spent	Impose fees on loan agreements signed after 12/31/92 to cover minimum admin. costs (1.5% loan fee & 0.5% servicing)	
10	Should provision be made to "leverage" the SRF to increase dollar volume?	Option not available under current SRF rules.	Make rule & statutory changes necessary to gain flexibility of this option, but weigh cost of benefits against costs.	Include provisions to meet local needs e.g. using state bonds to finance nonSRF portions of project.
11	Should existing reserves, setasides, maximum project amount be changed?	15% for communities <5,000; 10% for facility planning and <15% for any one applicant community per year	Retain as is.	
12	Should another use of SRF funds be allowed to enable construction financing to lower priority projects til cash needed?	No provision exists allowing any funding of projects out of priority order.	Provide narrow exception to better manage cash by short term lending to otherwise qualified borrowers.	These cash management activities must be done in a way that does not adversely affect higher priority long term loans.

Attachment G(2)

Attachment H: Rule Implementation Plan

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Rule Adoption: Proposed Amendments to the Water Pollution Control Revolving Fund (State Revolving Fund -- SRF) Rules

Rule Implementation Plan

Summary of the Proposed Rule

This rule amendment will accomplish four purposes. The first is to make more money available in the State Revolving Fund to help local governments solve water quality problems by increasing interest rates from the current level of 0% for loans repaid in five years and 3% for loans repaid in more than five years to 2% for facility planning loans and 2/3 of the prevailing municipal bond rate for other loans.

The second purpose is to implement statutory authority to charge loan fees sufficient to pay the necessary and reasonable costs of administering this program. These fees are needed because the existing source of federal funds to pay these costs is being eliminated.

The third purpose is to revise minor substantive aspects of the rules in response to criticism from users of the SRF from around the state. The project prioritization criteria have been changed to achieve parity in terms of receiving water body sensitivity between ocean dischargers and communities discharging into interstate water bodies. This responds to criticism from communities along the Columbia and Snake Rivers that the rules dealt with their needs unfairly when compared with coastal communities. Provision has also been made to use SRF to provide construction financing to communities not high enough in priority for long term financing (if it can be done without compromising long term commitments).

The fourth purpose is to improve clarity and readability through selective editing. Extensive editing of a nonsubstantive nature has been done for this purpose. All of these changes will affect local governments planning to use SRF financial assistance to solve their water quality problems. The major substantive changes have the effect of increasing the local cost of using SRF funds. However, for most localities, they still appear to be the most affordable source of help.

Proposed Effective Date of the Rule

The rule amendments will be legally effective as soon (after EQC approval) as they can be filed with the Secretary of State. EQC consideration of these amendments will be December 11, 1992. However, the amendment calls for the new interest rates and loan fees to be effective for new SRF loan agreements signed on or after January 1, 1993.

Proposal for Notification of Affected Persons

Potential applicants were notified of the Department's intent to seek rule changes as part of the amendment development process. In January or February of 1993 all potential applicants for SRF financing will be requested to submit F.Y. 1993 preliminary applications for consideration. This solicitation will explain changes made to the SRF rules. Departmental brochures summarizing the SRF program will also be updated to reflect the rule changes.

Proposed Implementing Actions

Starting on January 1, 1993 the term sheets for all loan agreements negotiated and signed will reference the new interest rates and loan fees. Additionally, the F.Y. 1993 (and any subsequent) Intended Use Plan will rank project priorities by the revised criteria. Applicants for financing from the 1993 Intended Use Plan will apply with prior knowledge of the affects of these changes.

Proposed Training/Assistance Actions

All staff of the Wastewater Finance and Municipal Projects Sections of the Water Quality Division will be provided with copies of the revised rules and implementation guidance. The SRF Procedures Manual will also be revised to reflect the changes and distributed to all staff. Training on the SRF rules will be offered to Water Quality Division and Regional staff. A briefing has been scheduled for the next annual EPA Region 10 all states meeting. Finally, training material on the new rules will be presented at Quarterly Interagency Briefings with other agencies, the Rural Development Commission, semiannual Public Infrastructure Financing workshops sponsored by the Oregon Rural Community Assistance Program and Departmental workshops as necessary.

Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item H
December 11, 1992 Meeting

Title:

Proposal to Amend the EQC Bond Resolution Adopted in September 1991 to Include Approval for Use of Bond Proceeds for State Revolving Fund Match

Summary:

In September 1991, the Commission approved the sale of Pollution Control Bonds to fund the Sewer Assessment Deferral Loan program (SADL), Orphan Site cleanups and the purchase of special assessment sewer bonds from Portland and Gresham. The Department sold bonds in 1992 for each of these purposes, and doesn't anticipate the need for another bond sale until Spring 1993. However, the Department will need $1,520,000 to provide state match for the State Revolving Fund (SRF) during the first six months of 1993.

It appears that not all of the money from the bond sale for the SADL program will be needed before the next bond sale is planned in Spring 1993. It would be more cost effective to use this money for the SRF match than to schedule another bond sale before Spring 1993.

Department Recommendation:

The Department recommends the Commission amend its September 18, 1991 bond issuance resolution to authorize the transfer of funds from the Pollution Control Bond Fund to the State Revolving Fund.

Report Author	Division Administrator	Director

November 16, 1992

State of Oregon
Department of Environmental Quality **Memorandum**

Date: November 24, 1992

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item H, December 11, 1992, EQC Meeting
Proposal to Amend the EQC Bond Resolution Adopted in September 1991 to Include Approval for Use of Bond Proceeds for State Revolving Fund Match.

Statement of the Issue

The Department is recommending that the Commission amend its September 18, 1991, bond issuance resolution to authorize the transfer of funds from the Pollution Control Bond Fund to the Water Pollution Control Revolving Fund (State Revolving Fund or SRF.)

In September 1991, the Commission approved the sale of Pollution Control Bonds to fund the Sewer Assessment Deferral Loan program (SADL), Orphan Site cleanups and the purchase of special assessment sewer bonds from Portland and Gresham. The Department is now seeking Commission approval to use the bond proceeds for the additional purpose of providing the State match portion of the SRF.

Background

The Commission has specifically authorized the use of Pollution Control Bonds to: 1) Purchase Portland and Gresham special assessment bonds to finance the sewering of mid-Multnomah County; 2) Fund the sewer assessment deferral loan program (sewer safety net); and 3) Fund the Department's orphan site program. The Department has sold bonds in 1992 for each of these purposes ($13,935,000 in February to purchase Portland sewer bonds and fund the sewer assessment deferral program; $8,745,000 in July to purchase Gresham sewer bonds and fund the orphan site cleanup program).

The Department sold $3,000,000 in Series 1992 B bonds for the (SADL) program. It appears that not all of this money will be needed for assessment deferral prior to the end of March, 1993. In the interim, the Department will need $800,000 to provide the State match portion of the SRF for the first quarter of calendar 1993 and $720,000 for the second quarter. It will be more cost effective to utilize the $3 million in proceeds currently in the Bond Fund for this purpose.

The Department anticipates the need for a bond sale in the spring of 1993. At that time, new funds to fulfill SADL commitments and any additional funds required for the SRF match can be provided from the proceeds of that bond sale.

(In addition, the City of Portland has indicated a need for $30 to $40 million in the second quarter of 1993). The most economic approach is to combine all current bond financings into a single spring issue.

Authority to Address the Issue

The Commission has the authority to authorize the issuance of bonds and the uses to which the proceeds may be put under ORS 468.195 - .260, ORS 468.427(2). In addition the use of bond proceeds to provide State match for the SRF was requested in the Governor's budget and approved by the 1991 Legislature.

Alternatives and Evaluation

The alternative is the issuance of a separate series of bonds specifically to fund the State match for the SRF. This alternative would be considerably more expensive than the recommended transfer as the fixed costs of bond issuance are relatively high in relation to the dollars needed.

Summary of Any Prior Public Input Opportunity

The use of bond proceeds was discussed in the Governor's Recommended Budget for the 1991/93 biennium and with the Joint Legislative Committee on Ways and Means during the budget review and approval process. There was also opportunity for public input at the September 18, 1991 Commission meeting at which the bond issuance was approved.

Conclusions

- The Commission has the authority to authorize the use of bond proceeds as recommended.
- The recommended transfer of funds from the Pollution Control Bond Fund to the SRF is the most effective use of these funds at this time.
- The Department will seek to amend the Pollution Control Bond statutes during the 1993 legislative session to specifically identify SRF match as an authorized use for Pollution Control Bond Fund proceeds. (Reference Attachment B, Advice Letter from the Department of Justice).

Recommendation for Commission Action

It is recommended that the Commission amend its RESOLUTION AUTHORIZING AND REQUESTING ISSUANCE OF BONDS as presented in Attachment A of the Department Staff Report for Agenda Item H, together with the supporting findings presented above and in Attachment B.

Attachments

A. New Resolution.
B. Advice Letter from Department of Justice

Reference Documents (available upon request)

1. ORS 468.195 to 468.260, ORS 468.427(2).
2. OAR 340-81-005-100

Approved:

Section: bmacdougall

Division:

Report Prepared By: Barrett MacDougall

Phone: 229-5355

Date Prepared: November 18, 1992

ATTACHMENT A

RESOLUTION AUTHORIZING ADDITIONAL
USE OF BOND PROCEEDS

The Environmental Quality Commission of the State of Oregon finds:

A. The Environmental Quality Commission of the State of Oregon (the "Commission") has previously authorized the issuance of General Obligation Pollution Control Bonds in the amount of $3,000,000 to fund the Sewer Assessment Deferral Loan (SADL) Program.

B. The State Treasurer of the State of Oregon, after consultation with the Director of the State of Oregon Department of Environmental Quality (the "Department") or the Director's designee, has issued such bonds, designated as 1992 Series B Bonds.

C. There are proceeds from the sale of these bonds that are surplus to the immediate needs of the SADL Program.

D. Additional funds are currently needed for the State match share of the Water Pollution Control Revolving Fund (State Revolving Fund or SRF).

E. Oregon Revised Statutes, Section 468.215, provides that proceeds from the sale of pollution control bonds shall be credited to the Pollution Control Fund for the purposes of carrying out the provisions of ORS 468.195 to 468.260; ORS 468.250 provides that the Commission may participate in any grant program funded in part by a federal agency if the implementation of the program requires matching funds.

The Environmental Quality Commission of the State of Oregon hereby resolves:

Section 1. Use. Proceeds of the 1992 Series B bonds may be used by the Department to fund the State match portion of the SRF.

Section 2. Other Action. The Director of the Department or the Director's designee may, on behalf of the Department, make any interfund transfers, execute any agreements or certificates, and take any other action the Director or the Director's designee reasonably deems necessary or desirable to provide the State match portion of the State Revolving Fund, in accordance with this resolution.

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4620
FAX: (503) 378-3784

October 22, 1992

Peter Dalke, Administrator
Management Services Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Re: DEQ 1992 Series B (Governmental Purpose) Pollution Control Bond Proceeds - State Revolving Fund
DOJ File No. 340-980-FG002-92

Dear Mr. Dalke:

This letter answers in the affirmative your question whether the Department of Environmental Quality may use unexpended proceeds from the sale and issuance of the Department of Environmental Quality General Obligation Pollution Control Bonds, 1992 Series B (the "Bonds"), to provide matching funds for certain purposes of the Water Pollution Control Revolving Fund (the "Revolving Fund") established by ORS 468.427. However, the department must be careful to ensure that the proceeds of the Bonds, and the moneys derived through the "matching" of the proceeds, are restricted to uses of the Pollution Control Fund that are authorized by ORS 468.220.

A. Statutory Governance of Pollution Control Bond Proceeds.

The moneys realized from the issuance of Pollution Control Bonds, authorized by Article XI-H of the Oregon Constitution,[1/] must be credited to the Pollution Control Fund. ORS 468.215. ORS 468.220 prescribes the purposes for which moneys in the Pollution Control Fund may be used.

ORS 468.220 lists, among the purposes for which Pollution Control Fund moneys may be disbursed or expended, various forms of funding for sewage treatment facilities. See ORS 468.220(1)(a)-(c), (e) and (g). These uses overlap with certain of the uses that ORS 468.429(1) prescribes for moneys in the Revolving Fund.

For example, ORS 468.429(1)(a) authorizes the use of Revolving Fund moneys to provide financial assistance for "the construction or replacement of treatment works." The definition of "treatment works" in ORS 468.423(6), for which Revolving Fund moneys may be used, does not precisely match the range of treatment works for which Pollution Control Fund moneys may be advanced or granted under ORS 468.220.

Pollution Control Fund moneys may be used for, among other facilities, "eligible projects as defined in ORS 454.505." ORS 468.220(1)(a). That statute, in addition to the several qualifications in ORS 454.505(2), defines "sewage treatment works" as:

> any facility for the purpose of treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping station integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

ORS 454.505(5).

The definition that applies to the Revolving Fund is very similar, but includes qualifications that differ from the foregoing definition. For example, ORS 468.423(6)(a) contains the additional requirement that treatment works that are fundable from the Revolving Fund operate "at the most economical cost over the estimated life of the works":

> The devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works. "treatment works" includes: * * *.

Of course, a particular treatment works project, as a practical matter, could satisfy both the requirements of ORS 454.505 for use of Pollution Control Fund moneys, and the requirements of ORS 468.423(6) that defines projects that may be funded with moneys from the Revolving Fund.

The crucial point is that any use of moneys that are transferred from the Pollution Control Fund to the Revolving Fund must satisfy a prescribed use of moneys under **both** ORS 468.220 and ORS 468.429. Therefore, the moneys transferred to the Revolving Fund from the Pollution Control Fund should be accounted for separately, and the Department of Environmental Quality must be extremely careful to ensure that the transferred moneys are used exclusively for projects that satisfy both statutes. If this is accomplished, the transfer will be lawful under the statutes that govern the uses of those funds.

Aside from the foregoing requirement that Pollution Control Bonds proceeds which are transferred from the Pollution Control Fund to the Revolving Fund be used for projects that satisfy the conditions of both ORS 468.220 and 468.429, the legislature has stated its intent to authorize the employment of proceeds from the sale of Pollution Control Bonds to match available federal funds. ORS 468.250(1), as you pointed out, states:

> The commission may participate on behalf of the State of Oregon in any grant program funded in part by an agency of the Federal Government if the implementation of the program requires matching funds of the state or its participation in administering the program. However, any grant advanced by the commission to an otherwise eligible applicant shall not exceed 30 percent of the total eligible costs of the project applied for, and further provided that the project shall not be less than 70 percent self-liquidating from those sources prescribed by Article XI-H of the Constitution of Oregon.

(Emphasis added.)

See also, ORS 468.245 (authorizing acceptance of federal grants for purposes contemplated by Article XI-H of the Oregon Constitution).

If the Legislative Assembly did not intend that proceeds from Pollution Control Bonds would be used for federal matching purposes, then there would be no practical need to restrict, in ORS 468.250(1), the eligible projects to those which, under Article XI-H, §2 of the Oregon Constitution, are "not less than 70 percent self-supporting and self-liquidating".

B. Compliance with the 1992 Bond Documents.

I have very little trouble also concluding that the proposed transfer will not conflict with any requirements imposed under the bond documents associated with the 1992 Series B Bonds, and that at least the transfer to the Revolving Fund would not be material to the holders of the bonds. I presume that there are practical reasons for the department not expending the proceeds from the 1992 Series B bonds in the primary manner envisioned by the department (for use in the sewer assessment deferral loan program) when the bonds were issued. It makes no economic or practical sense to require those funds to be held fallow, particularly at today's interest rates, where the need or demand for their use in the sewer assessment deferral loan program has evaporated.

Page 9 of the Official Statement concerning the bonds (attached) indeed suggested that the proceeds of the Series B bonds would be used in the assessment deferral loan program. However, page 8 also outlined the other uses for which Pollution Control Bond proceeds could be expended, and quoted in part from ORS 468.220(1), discussed above. The Pollution Control Fund was designed as a pool of funds to permit shifts in the uses of its moneys as conditions require, and no reasonable bondholder would expect, where the demand for a particular use has abated, that the Pollution Control Fund would be forced to administer the unexpended moneys in a non-productive or uneconomical manner.

Moreover, in addition to the fact that payment of principal and interest to the bondholders is backed by the full faith and credit of the state, these particular bonds have additional security:

> Because of the uncertainty as to the timing of repayment for each contract, the Legislature also appropriated general funds within the Department's budget to meet 100% of the debt service obligation on the 1992 Series B Bonds. 1992 Official Statement at 10.

For these reasons, subject to the department's observation of the statutory restrictions on the use of moneys from both the Pollution Control Fund and from the Revolving Fund, the department may transfer proceeds from the 1992 Series B bonds to the Revolving Fund.

To eliminate all doubt concerning the authorized uses of proceeds from future issues of Pollution Control Bonds, the department should consider adding an express reservation, in any bond authorization's, indenture's or official statement's description of the use of the proceeds, of the right to expend the proceeds in any manner authorized by ORS chapter 468:

> The department reserves the prerogative to use proceeds of the bonds that are not used for the purposes described above for any purpose authorized under Article XI-H of the Oregon Constitution and ORS chapter 468 for Pollution Control Bond proceeds.

Of course, the addition of this type of reservation in any future bond sale should first be approved by Bond Counsel.

The advice in this letter applies exclusively to the proceeds of the 1992 Series B Pollution Control Bonds. I have confirmed through discussions with the department's staff that no bond indenture or other document otherwise restricts the purposes for which the proceeds from the 1992 Series B bonds may be used. Different documents and contractual commitments may restrict the uses of proceeds from other series of Pollution Control Bonds.

Sincerely,

William F. Nessly, Jr.
Assistant Attorney General
Finance and Government Section

WFN:wfn:cfs/JGG048F1

c (w/attach):
Judy Hatton, Fiscal Manager
Business Office
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Robert W. Muir, Attorney-in-Charge
Finance and Government Section
Oregon Department of Justice

Harvey Rogers, Attorney at Law
Preston Thorgrimson Shidler Gates & Ellis
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[1/] Article XI-H, §1(1) of the Oregon Constitution permits the issuance of Pollution Control Bonds to fund "facilities for or activities related to" the treatment of all forms of waste. Section 6 of that article empowers the Legislative Assembly to enact statutes to carry out the provisions of the constitutional article.

ORS 468.215 and 468.220 constitute legislation authorized by Article XI-H, §6 of the Oregon Constitution.

The financing plan described in the Plan was incorporated into the Intergovernmental Agreement (the "Agreement") between the Department and the Cities. The agreement was adopted by the EQC on June 29, 1990, by the City of Gresham on June 19, 1990, and by the City of Portland on June 27, 1990. The Agreement envisions the purchase by the Department of Special Assessment Bonds (the "SABs") from the Cities in order to provide affordable financing to the property owners in the Affected Areas.

The repayment of the SABs is secured in three ways:

1. Property owners in the Affected Area are obligated to repay the costs of special assessments pursuant to the terms of each City's local improvement district assessment contracts.

2. The special assessments are secured by a first lien against the benefitted property. The Cities have the obligation to foreclose if payments are not made, or to opt to make all due assessment payments to the Department in lieu of foreclosure if foreclosure actions are not pursued.

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

The revenues provided to the Department from debt service payments on the SABs will be used to make debt service payments on the Bonds, as available.

All references to the bonds, the bond indenture, and the Agreement are qualified by reference to the actual documents in their entirety. The complete documents are available for inspection at the offices of the Department of Environmental Quality in Portland, Oregon.

Series B: Assessment Deferral Loan Program

Chapter 695, Oregon Laws 1987, (ORS 468.970) established a loan program to assist property owners who are required to pay assessments for the construction of sewage treatment works mandated by a state agency or federal grant agreement. Qualifying owners are those who would experience extreme financial hardship if they had to make the payments required by traditional assessment financing mechanisms.

Loans are made to cities required to connect households to sewers by an order of the Environmental Quality Commission, the State Health Division, or a federal grant agreement. Seven municipal corporations have been approved for participation in this program during the 1991-93 biennium. These are: the Cities of Portland and Gresham (for the Mid-Multnomah County Threat to Drinking Water Area), the City of Eugene (for the River Road Santa Clara area of Lane County), the City of Oregon City (for the Holcomb, Outlook, Park Place Health Hazard Annexation Area of Clackamas County), the City of Albany (for the North Albany Health Hazard Area of Benton County), Marion County (for the Brooks Health Hazard Area), and the City of Corvallis (for the West Philomath Boulevard Health Hazard Annexation Area, Skyline West, and West Hills areas of Benton County).

These jurisdictions, in turn, will use the loan proceeds to pay qualifying homeowners' share of the assessed costs of required treatment works. Participating homeowners will sign a contract agreeing to repay the loan (with accrued interest) when the homeowner no longer qualifies for the program, sells the home, or dies.

Qualifying jurisdictions sign loan agreements with the Department. Major provisions of these agreements are as follows:

1. Property owners in the Affected Area are obligated to repay the deferred assessment plus accrued interest pursuant to the terms of the municipal corporation's assessment deferral loan agreement.

PRESTON
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HARVEY W. ROGERS

October 7, 1992

Mr. Peter Dalke, Administrator
Management Services Division
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue, 4th Floor
Portland, Oregon 97204

Subject: Oregon Department of Environmental Quality 1992 Series B (Governmental Purpose) Pollution Control Bond Proceeds - State Revolving Fund

Dear Pete:

This letter will confirm that I have reviewed a draft opinion of Mr. William F. Nessly, Jr., dated October 1, 1992, in which Mr. Nessly concludes that the DEQ may transfer money borrowed to fund the assessment deferral loan program from the Pollution Control Fund to the State Revolving Fund.

We concur on Mr. Nessly's analysis.

Cordially,

PRESTON THORGRIMSON SHIDLER GATES & ELLIS

Harvey Rogers

cc: Mr. William F. Nessly, Jr.
Mr. Barrett MacDougall
Mr. Martin Loring

Environmental Quality Commission

☐ Rule Adoption Item
☒ Action Item
☐ Information Item

Agenda Item I
December 11, 1992 Meeting

Title:

Request by the City of McMinnville for approval of an alternative design criterion to that specified by the dilution rule, for approval of a permitted mass load increase during the winter period, and for an extension of the required date for meeting the phosphorus TMDL for the Yamhill River.

Summary:

The City of McMinnville proposes to build a new and larger sewage treatment plant that will meet the phosphorus TMDL for the Yamhill River, not violate any water quality standards for the Yamhill River, and serve the projected growth of the community for the next 20 years. In lieu of meeting the dilution design criterion specifed by rule, the proposed treatment facility will be designed to remove ammonia. Ammonia-removal will assure that in-stream dissolved oxygen standards are met. There will be a very minor reduction of assimilative capacity of the river resulting from the permitted mass load increase. To stay within permitted mass loads would add about $6 million to a $40 million project. The Commission's criteria for granting an increase in permitted mass loads have been met. The extension of the date for meeting the TMDL is necessary, in part, because of delays by DEQ in reviewing submittals from the City and, in part, because of additional studies needed to assure that in-stream water quality standards unrelated to the phosphorus TMDL would also be met. The extension would add about 2.5 years to the deadline which currently is June 30, 1994.

Department Recommendation:

The Department recommends that the Commission approve the three requests made by the City of McMinnville together with the supporting findings as described in the Department Staff Report for Agenda Item I.

Report Author | Division Administrator | Director

November 24, 1992
MW\WH5339.5

State of Oregon
Department of Environmental Quality Memorandum

Date: November 25, 1992

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item I, December 11, 1992, EQC Meeting

Request by the City of McMinnville for:

1. Approval of an alternative design criterion to that specified by the dilution rule [OAR 340-41-455(1)(f)].

2. Permitted Mass Load Increase during the winter period pursuant to OAR 340-41-026.

3. Extension of the date for upgrading sewerage facilities to meet the total maximum daily load (TMDL) for the Yamhill River [OAR 340-41-470(4)].

Statement of the Issue

The City of McMinnville has requested approval of an alternative sewage treatment plant design criterion to that specified in the minimum design criteria, an extension of the date for meeting the phosphorus TMDL for the Yamhill River and an increase in permitted mass load limits for CBOD and TSS during the winter period. If granted, these requests will be incorporated into a proposed NPDES Waste Discharge Permit for a new sewage treatment plant that the City proposes to build.

Background

1. In June, 1989, the Environmental Quality Commission adopted a TMDL by rule for total phosphorus for the Yamhill River. The rule requires that no wastewater be discharged to the Yamhill River or its tributaries after June 30, 1994, that causes the monthly median concentration of total phosphorus to exceed 0.07 mg/l. The TMDL for total phosphorus is necessary to control algal growth in the river. Algal growth causes in-stream water quality standards for pH to be exceeded.

2. Pursuant to the Yamhill River TMDL rule, the City submitted its program plan within 90 days of the adoption of the

rule. The Department did not review nor did the Commission approve the program plan for over a year after its submittal.

3. The City submitted a draft facilities plan in June, 1991. The selected alternative consists of a new sewage treatment plant that would discharge very high quality effluent year-round to the South Yamhill River. The proposed facility will be capable of producing an effluent containing less than 0.07 mg/l of total phosphorus, less than 0.5 mg/l of ammonia-nitrogen, and less than 5 mg/l of CBOD-5 and total suspended solids during the critical, low flow period of the year. The facility plan also addresses elimination of raw sewage overflows that are caused, in part, by combined sanitary/storm sewers.

4. During the analysis of the facilities plan, the Department evaluated the potential impact of oxygen demanding pollutants on the Yamhill River system. This analysis found that the dissolved oxygen standard for the Yamhill River would likely be violated if McMinnville were to discharge at the level allowed in its current permit. To address this problem, the Department, with help from the City, conducted a water quality study of the Yamhill River to determine the necessary mass load limitations to assure that the dissolved oxygen standard would not be violated. The study included stream measurements and sample collection and the development of a water quality model to analyze various discharge scenarios. This study took about six months to complete.

5. The Department evaluated the potential water quality impacts associated with the City's proposed sewage treatment plant:

   a. The proposed facility will produce CBOD-5/TSS and ammonia-nitrogen concentrations of 5 mg/l and 0.5 mg/l, respectively, during the summer, low flow conditions. At the ten year, low flow river condition of about 10 cfs, these effluent concentrations will be such that in-stream dissolved oxygen levels will not drop below 6.5 mg/l. The dissolved oxygen standard is 6.0 mg/l for the Yamhill River.

   b. During the winter period, at the low flow condition of 107 cfs, dissolved oxygen concentration should be about 9 mg/l with the requested mass load increase.

Without the increase, it would be projected to be about 9.1 mg/l. Again, the standard is 6.0 mg/l.

Authority to Address the Issue

1. OAR 340-41-455(1)(f) is a minimum design criterion which requires that new sewage treatment plants be designed so that effluent biochemical oxygen demand (BOD) concentration in mg/l, divided by the dilution factor (ratio of receiving stream flow to effluent flow) shall not exceed one (1) unless otherwise approved by the Environmental Quality Commission (EQC).

2. OAR 340-41-026(2) and (3) require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future waste loads from existing sources do not exceed presently allowed discharge loads except as may be granted by the Commission pursuant to specific criteria.

3. OAR 340-41-470(4)(a) states that, after June 30, 1994, no activities shall be allowed and no wastewater shall be discharged to the Yamhill River or its tributaries, without the authorization of the Commission, that cause the monthly median concentration of total phosphorus to exceed 0.07 mg/l as measured during the low flow period (approximately May 1 to October 31).

Alternatives and Evaluation

Relative to the minimum design criterion for dilution, the one in ten year low flow for the South Yamhill River is about 10 cfs, which is about 6.5 MGD. During the winter period, the ten year low flow is about 107 cfs or 69 MGD. In order to achieve the dilution criterion at the projected dry weather design flow of 5.6 MGD, the City would have the following options:

a. For the summer period, design and build a plant that would produce a BOD-5 effluent of about 1 mg/l. DEQ knows of no sewage treatment plants in operation that can reliably achieve this level of effluent quality. For the winter period, the City would have to design and operate a treatment plant that can achieve about 12 mg/l of BOD-5. The City could likely meet the dilution rule under these conditions if filtration of

winter influent flows was provided. For this latter case, the City's consultant estimates an additional capital cost of about $6 million to provide filtration for winter flow levels. In addition, there would also be an increase of $220,000 in operation and maintenance costs. Total projected cost of this project without winter filtration is about $40 million. Projected monthly user fee for a single family dwelling without winter filtration is about $43 per month.

b. Design and build a plant that would discharge only a portion of its effluent while storing the remaining portion until river flows increase sufficiently to meet the dilution rule. In this case, the City would have to provide storage for a least 500 acre feet of effluent. A ten foot deep pond would require about 50 acres. Projected costs would be over $6 million to construct this pond. Another option available during the summer period would be to irrigate excess effluent. Under this option, the City would have to have about 1400 acres of land upon which to irrigate.

Relative to the request for a mass load increase during the winter period, the City could provide filtration of its effluent during the winter period. As stated above, the City's consultant estimates an additional capital cost of about $6 million to provide filtration for winter flow levels. In addition, there would also be an increase of $220,000 in annual operation and maintenance costs.

Relative to the City's request for an extension, the Department does not believe there is an alternative to such an extension. The Department believes, however, this extension is necessary and justified for the following reasons:

a. Although the City prepared and submitted its program plan within the 90 days required by the TMDL rule, the Department, due to inadequate resources, did not complete its action on the plan and submit it to the Commission for approval until September, 1990. This resulted in a delay of about one year before the City could begin its facility planning process.

b. The City's existing sewage treatment plant is located in a place where it is being surrounded by urban development. Sewage treatment plants are not desirable neighbors of residential or commercial develop-

ment and, in addition, space for future expansion is very much limited by the existing treatment plant site. For these reasons, the City is proposing to relocate the treatment plant entirely. This will require additional construction time because existing treatment plant components cannot be used. A large pump station and force main must also be constructed to transport sewage to the new plant location.

c. In arriving at a cost-effective, environmentally sound alternative, the City and the Department have spent considerable time evaluating potential water quality impacts on the river from a new sewage treatment plant. These analyses have helped assure that the new plant will meet all water quality requirements, but this has taken additional time to accomplish. Normally, a facilities plan can be completed within about a year and, in fact, the City submitted the first draft within about 9 months of the date the program plan was approved. As the Department and the City have further evaluated water quality issues, however, the facilities plan has needed further revisions. It should be recognized that the TMDL established for the Yamhill River was only for phosphorus. It did not include a TMDL for oxygen-demanding parameters. As the review has proceeded, it is clear that if all dischargers were discharging at allowable permit limits, the Yamhill River would be water quality limited for dissolved oxygen during the summer period. Consequently, the work on the McMinnville project has essentially evolved into the development of a second TMDL; this time for oxygen demand (CBOD and NH3). Like all TMDL development processes, this has been very time consuming and has resulted in delays in issuing the permit and approving the facilities plan.

Summary of Any Prior Public Input Opportunity

A public hearing was held in McMinnville on the evening of October 28, 1992. The Department received one letter which was from Oregon Department of Fish and Wildlife (ODFW). This letter indicated that the Yamhill River should be considered a salmonid-producing water which would require a more stringent dissolved oxygen standard than was used in the Department's analysis. Discussions with ODFW about this matter, however,

resolved their concern and a follow-up letter from them indicated that they were satisfied with the Department's approach.

Conclusions

The Department concludes that it is overly burdensome for the City to meet the minimum criteria for dilution and to maintain the currently permitted mass load limits. This conclusion is based upon:

a. A water quality analysis that shows that water quality standards for dissolved oxygen will not be violated during the summer even during low flow.

b. A water quality analysis that shows that very little assimilative capacity will be consumed during the winter period and that water quality standards for dissolved oxygen will be easily maintained.

c. The additional costs and other burdens associated with meeting the dilution criterion and with staying within currently permitted mass load limits are excessive considering the impact upon water quality.

The Department also concludes that the City cannot practicably meet the June 30, 1994 date specified by the Yamhill River TMDL rule and that four years following issuance of the NPDES permit (Permit issuance is equivalent to approval of the facilities plan) is a reasonable amount of time to design and construct a new sewage treatment plant. Four years would add about 2.5 years to the June 30, 1994, deadline. Such an extension would be consistent with the general practice of the Department which allows 5 years to meet a TMDL once it is adopted with the first year being allowed for development of the facilities plan. Much of the past delay with this project has been caused by the one year taken by DEQ to review the program plan and by the need to conduct a water quality analysis to determine appropriate limitations for oxygen-demanding pollutants.

Proposed Findings

The Department believes that the criteria established by the Commission (OAR 340-41-026(3) for approving an increase in permitted mass load limits has been met. A copy of the criteria and findings are attached as Attachment A.

Recommendation for Commission Action

It is recommended that the Commission approve the three requests made by the City of McMinnville as described in the Department Staff Report for Agenda Item I together with the supporting findings presented in Attachment A.

Attachments

A. Supporting Findings

Reference Documents (available upon request)

1. OAR 340-41-455(f)
2. OAR 340-41-026(3)
3. OAR 340-41-270(4)

Approved:

Section:

Division:

Report Prepared By: Dick Nichols

Phone: 229-5323

Date Prepared: November 24, 1992

DN:hs
MW\WH5338.5
November 24, 1992

STATE OF OREGON **ATTACHMENT A**

DEPARTMENT OF ENVIRONMENTAL QUALITY **INTEROFFICE MEMORANDUM**

DATE: June 14, 1992

TO: File

FROM: Dick Nichols

SUBJECT: McMinnville Winter Mass Load Increase Request

Currently, the City of McMinnville NPDES permit contains mass load limitations for the winter period as follows:

Parameter	Monthly Avg.		Weekly Average		Daily Maximum	
	mg/l	lb/day	mg/l	lb/day	mg/l	lb/day
BOD_5	30	1000	45	1500	-	2000
TSS	30	1000	45	1500	-	2000

As required by rule adopted by the Environmental Quality Commission, the City of McMinnville is required to upgrade its sewerage facility to meet a Total Maximum Daily Load for phosphorus during the summer months. The City has completed a facilities plan for the next 20 year period. This plan indicates that the treatment plant will have to be substantially expanded to accommodate expected growth. Although limits for the summer period will require reduced loadings in order to maintain water quality standards, the City has determined that a mass load increase for BOD_5 and TSS will be needed for the winter period.

The Department has evaluated the City's request, and has determined that the following mass load limitations are achievable and reasonable for the winter period, November 1 through April 30:

When monthly average flow into the facility is 8.4 MGD or less:

Parameter	Monthly Avg.		Weekly Average		Daily Maximum	
	mg/l	lb/day	mg/l	lb/day	mg/l	lb/day
$CBOD_5$	25	1200	40	1800	-	2300
TSS	30	1400	45	2100	-	2800

When monthly average flow into the facility exceeds 8.4 MGD:

Parameter	Monthly Avg.		Weekly Average		Daily Maximum	
	mg/l	lb/day	mg/l	lb/day	mg/l	lb/day
$CBOD_5$	25	3000	30	4500		6000
TSS	30	3600	30	5400		7200

In order to approve a mass load increase, the Department is obligated to review the request in relation to the Department's rules for allowing increased loads [OAR 340-41-026(3)]. In the case of the proposed new facility for the City of McMinnville, the Environmental Quality Commission must make certain findings and consider certain issues before allowing a mass load increase. Below is a listing of the required findings and considerations followed by the Department's recommended conclusions:

FINDINGS:

A. The increased discharged load will not cause water quality standards to be violated.

Conclusion: Calculations show that dilution and reaeration in the river to be sufficient such that no violations of water quality standards would occur as a result of the discharge limitations of the proposed permit. The Department evaluated the proposed increased wastewater discharges during low flow conditions in the winter-time period.

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 the evaluation of potential water quality impacts, the Department does not believe that beneficial uses will be impaired or threatened.

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.

Conclusion: According to the 1990 Section 305(b) Water Quality Status Assessment Report, the part of the South Yamhill River affected by this proposal and the Yamhill River are not water quality limited during the winter period.

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 compatibility statement for this project.

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: Non-discharging alternatives were evaluated in the facilities planning process. These facilities, however, were not evaluated for land application during the winter, high flow months. Irrigation of effluent during the winter period is not viable. This is because crops are dormant and the nutrients in the effluent will not be utilized by conversion into biomass. The McMinnville area is generally fairly wet in the winter time and irrigated water would most likely just runoff.

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 increase in mass load is not the result of the elimination or reduction of summer-time discharge. The City's summer discharge is being radically reduced, however, in order to assure that the water quality standard for dissolved oxygen will be met.

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: The requested mass load increase is only for the winter period. At this time, the Department expects the

Yamhill River system to have sufficient winter flow.

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 increased loading.

Conclusion: The Department has determined that the 7Q10 low flow in the Yamhill River would occur in November and would result in a river flow of 107 CFS. Because of these higher flows and lower temperatures, the Department does not believe there will be a significant impact upon water quality. As a result, the Department does not believe there will be any significant reduction in assimilative capacity of the river.

Criteria 2: Cost of Treatment Technology. The cost of improved treatment technology, nondischarge, and limited discharge alternatives shall be evaluated.

Conclusion: The City could likely stay within current mass load limits if filtration of winter influent flows was provided. The City's consultant estimates an additional capital cost of about $6 million to provide filtration for winter flow levels. In addition, there would also be an increase of $220,000 in annual operation and maintenance costs. Considering the negligible additional projected impact on water quality, the additional cost is believed to be unreasonable.

Environmental Quality Commission

☐ Rule Adoption Item
☒ Action Item
☐ Information Item

Agenda Item J
Dec. 11, 1992 Meeting

Title:

Anodizing Inc. request for a New Source Review rule variance

Summary:

New Source Review rules for new major sources in the Portland ozone nonattainment area require use of the best possible air pollution controls. Emissions remaining after control equipment application must be offset by reductions from other sources. Anodizing, Inc. obtained a new permit in 1988, but did not go through New Source Review because they opted to limit the operations of the new facility so that emissions would not reach the trigger level. They are now requesting a variance from New Source Review. The variance would allow the company to increase production and emit up to ten tons above the trigger level for five years, without meeting any of the New Source Review requirements. Anodizing, Inc. proposes to provide an offset for the increased, uncontrolled emissions.

Department Recommendation:

Deny the request for a variance.

Report Author | Division Administrator | Director

Nov. 23, 1992

- only 10 tons -
- Need to make a point about (b) - special circumstances render compliance burdensome.
- Delay
- Small request

Table:

- Relevance of other permit
- Burdensome - yes
- small request

State of Oregon
Department of Environmental Quality Memorandum

Date: November 24, 1992

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item J, December 11, 1992 EQC Meeting

Anodizing Inc. request for a New Source Review rule variance

Statement of the Issue

Anodizing, Inc. has requested an exemption from the Oregon New Source Review rules to accommodate increased emissions from its facility in northeast Portland (Air Contaminant Discharge Permit 26-3241). The request contains the following elements:

- Temporary relief through March 1, 1997,
- Authorization to increase emissions by 10 tons per year to 49.9 tons per year,
- Offsetting of increased emissions with 66.4 tons per year of emissions permitted for another facility that was disassembled in 1992, known as Pacific Coating Inc. (PCI),
- Release of the entire 66.4 tons per year of permitted emissions to the Department at the end of the variance period,
- Reduction in Anodizing, Inc. emissions to under 40 tons per year by the end of the variance period.

The New Source Review rules require that this facility's emissions be limited to less than 40 tons per year unless Lowest Achievable Emission Rate (LAER) technology is installed, offsets are obtained for emissions remaining after LAER application, a Net Air Quality Benefit is achieved, and an alternatives analysis demonstrates the social and environmental benefit of locating in the ozone nonattainment area. The Commission may grant specific variances only if it finds that strict compliance is inappropriate for reasons stated in Oregon Revised Statute (ORS) 468A.075.

Background

The New Source Review program is a delegated federal program. It is a key element of control strategies for nonattainment areas, allowing economic development without major increases in industrial contributions to the problem. The threshold for becoming major is

40 tons per year of VOC (100 tons per year under the federal program). The rules require that a major new source seeking a permit to construct first provide the best possible emissions control, or "LAER," to reduce emissions. Since not all emissions can be eliminated, the rules then require the source to provide an offset, or reduction in emissions from other sources, for all remaining emissions. A source may avoid these burdensome requirements by requesting conditions on its operations that limit its potential to emit to less than 40 tons per year. The exemption is dependent on the source remaining below 40 tons per year.

Anodizing, Inc. does contract coating of exterior aluminum panels and extrusions for commercial buildings. The facility was originally permitted by DEQ on September 29, 1988. The permit authorized construction of the facility and limited VOC emissions to 39.9 tons per year and 912 pounds per day. The company was aware that the Portland metropolitan area was a designated nonattainment area for ozone and requested the maximum allowable emission limit that avoided New Source Review. At the time, they stated that they would install emission control equipment if necessary to handle production levels that would cause an exceedance of the permit limit. The facility was required to be built to accommodate later installation of control equipment, through a permit requirement that 85% of the VOC-laden exhaust gases be discharged through exhaust stacks.

Anodizing, Inc. also holds the permit for the Pacific Coatings Inc. facility that was shut down earlier this year. The facility was allowed to emit up to 66.4 tons per year of VOC. PCI's emission credits can be used for a New Source Review offset under certain conditions.

Since it is permitted at less than 40 tons per year, Anodizing, Inc. is currently a minor source of VOC. The direct impact of this request on the airshed is very small. Industrial source emissions of VOC in the nonattainment airshed are about 6% of daily VOC emissions from all sources during the ozone season and total over 5000 tons per year.

Authority to Address the Issue

The Commission's authority to grant variances is in ORS 468A.075.
The New Source Review rules are OAR 340-20-220 through -276.

Alternatives and Evaluation

The alternatives that have been evaluated are (1) Deny the variance request and (2) Grant the variance request. These alternatives are discussed in detail in Attachment B and summarized below.

Alternative 1: Deny the variance request. This alternative would require the company to continue meeting the terms of its Air Contaminant Discharge Permit unless and until an application to increase emissions in accordance with New Source Review was approved. This is the recommended alternative.

This alternative is recommended because the Department is not satisfied that the applicant has met the criteria for obtaining a variance. Numerous additional policy considerations support this alternative, including the preconstruction nature of the New Source Review rules, the offset requirements of the New Source Review rules, and the integrity of the Department's ozone control program.

One potentially confusing aspect of this request is the company's offer to provide an offset of the emissions increase. It should be stressed that going over 40 tons per year by itself subjects the company to New Source Review. The Department must ensure that sources subject to these rules install state of the art controls. Offsets are not designed as a tool for sources to avoid the applicability of New Source Review, but as a means for the agency to protect the airshed from major industrial source growth.

Alternative 2: Grant the variance request. This alternative would allow the company to operate in violation of the New Source Review requirements until 1997. The company could increase production without the increased operating costs associated with the requisite emissions control.

This alternative would require the Commission to find that strict compliance with the New Source Review rules is inappropriate. Anodizing, Inc. has requested that the Commission base such a finding on ORS468A.075(1):

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

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

Anodizing Inc.'s request for a variance from the New Source Review rules is based upon circumstances which they view as meeting the above criteria:

- Current market conditions warrant an <u>increase</u> in production. This would result in emissions over the 40-ton limit which triggers New Source Review requirements.

- However, in 5 years, market demand and production may decrease to below current levels. Even if it doesn't, new low emission coatings may be available at that time.

- Therefore, it does not make sense to install expensive control equipment for what may be a temporary (5-year) increase in emissions.

- If the EQC agrees, Anodizing, Inc. will commit to "returning" the 66.9 tons from the shutdown of another facility (PCI) to the airshed.

- If the EQC doesn't allow the variance, the airshed will not benefit, because someone else will construct or expand to meet market demand, resulting in the same level of emissions.

The Department does not believe that any of these circumstances satisfy the requirements of ORS 468A.075(1). Changing market demand, or speculation on development of future control technology are not "special circumstances", as they are not unique to this facility. Cost is explicitly not to be a factor in determining LAER under New Source Review rules, and offsets are a requirement of New Source Review rules, not an option for avoiding them.

If it grants a variance, the Commission should require that the five conditions listed under Statement of the Issue be imposed. The Department would then modify the air permit accordingly. A public comment period held in accordance with the public notice rules would be required before the Department could issue a permit addendum allowing increased emissions.

Summary of Any Prior Public Input Opportunity

No input from the general public has been sought or received.

Conclusions

• Anodizing, Inc. has not provided adequate information on which to make a finding that a variance should be granted.
• Numerous policy issues related to implementation of the ozone SIP make the requested variance undesirable.
• Anodizing, Inc. committed as recently as 1988 to constructing and operating this facility in accordance with the New Source Review rules.

Recommendation for Commission Action

It is recommended that the Commission deny the request for a New Source Review variance for Anodizing, Inc.

Attachments

A. Anodizing, Inc. variance request
B. Analysis of Alternatives
C. Anodizing, Inc. statement

Reference Documents (available upon request)

1. Statutory Authority
2. Applicable Rule(s)
3. DEQ/LRAPA Guidance to Applicants for Air Quality Control Variances (Approved by the Environmental Quality Commission on May 20, 1983)

Approved:

Section: SRG for Wendy Sims

Division: Stan Greenwood

Report Prepared By: Wendy L. Sims

Phone: 229-6414

Date Prepared: Nov. 24, 1992

WLS:e
RPT\AH70169
Nov. 24, 1992

ANODIZING INC.
EXTRUDING & ANODIZING
P.O. Box 11263 • Portland, Oregon 97211

ANODIZING, INC.

COATINGS DIVISION

Request for new source review (LAER) variance for modification of existing Air Contaminant Discharge Permit No: 26-3241

Submitted To: OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION
811 S.W. SIXTH AVENUE

Architectural Division
7933 N.E. 21st Avenue
Portland, Oregon 97211
(503) 285-0404

Parts Division
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PURPOSE

This report is for the purpose of documenting to the Oregon Department of Environmental Quality (DEQ) Anodizing, Inc./Coatings Division's request for a new source review (LAER) variance. The request is specifically for a modification to the existing Air contaminant Discharge Permit No: 26-3241, to increase emission level of 49.9 tons per year and an extended expiration date to March 1, 1997. Anodizing, Inc.'s basis for this request pursuant to ORS468.435 is: A) Conditions exist that are beyond our control and B) Special circumstances render strict compliance is burdensome to do special causes.

I. GENERAL

Background of Anodizing, Inc./Coatings Division

Anodizing, Inc. employs over 500 people, with annual sales of 50 million dollars. Anodizing, Inc. is the region's largest producer of aluminum extrusions with annual production in excess of 30 million pounds, of which 30% is painted. The extruded aluminum products are marketed in Oregon, Washington, Northern California, Idaho, Utah, Colorado, and Western Canada.

Anodizing, Inc. recently completed construction on a 1.5 million dollar aluminum extrusion coatings facility to support and expand its current market position in this region. This enabled Anodizing, Inc. to provide its customers with full service extrusion capabilities; extruded aluminum, tool and die service, engineering, fabrication, anodizing, thermal improving, and a painted product.

The decision to proceed with this investment was twofold. The first being a defensive move to prevent full service extrusion competitors from outside the region from gaining market share. These competitors being both domestic and foreign. The Korean extruders are extremely aggressive in the highrise commercial building industry. They have provided painted a aluminum products for three of the last six highrise buildings in Seattle, and the most recent addition to the Portland Skyline, Pioneer Place. The second decision to proceed with this investment was the growth potential being afforded to Anodizing, Inc. in the Western Canada market. With the impending changes in the trade laws and the strong economic building climate in Western Canada, Anodizing, Inc.'s full service capabilities would allow us to expand into this under serviced painted aluminum extrusion market.

Anodizing, Inc. was granted our Air Contaminant Discharge Permit No: 26-3241 in March, 1988. In March, 1989 construction began on a new state of the art 25' vertical paint line. The new paint line was completed and commissioned in August of 1989. By early 1990 this line was operating close to permit capacity, but at only about 40% of the equipment's physical capacity.

In July, 1990 Anodizing, Inc. purchased Pacific Coatings Inc. (P.C.I.) an aluminum extrusion coatings business with an under utilized air contamination discharge permit for 66.9 of annual emissions. The purchase allowed us to enhance our existing contaminant discharge levels by immediately transferring business to the newly purchased Pacific Coatings and not exceed emission levels of our existing facility.

At the time, Pacific Coatings Inc. (P.C.I.) was purchased, their primary customer was Vancouver Extrusion Company supporting 80% of their gross sales.

In June, 1991, Vancouver Extrusion Company closed down their business and ceased all operations. This closing was brought about due to the increasing market share gains of vinyl extrusions forced by more stringent energy codes. This closing directly impacted Pacific Coatings by the loss and the gradual demise of their largest customer. This loss of business rendered Pacific Coatings economically unfeasible to remain in operation. Anodizing, Inc. incurred continuous losses from January, 1991 through July, 1991 at the Pacific Coatings Division.

The purchase of P.C.I. to increase our discharge level was a costly solution that got more costly over a very short time. In late 1990 it became obvious that running two facilities at 25-30% capacity each just to have enough air emission capacity was an excellent way to lose money.

Anodizing, Inc. could not sustain these losses and the current market will not support two paint lines with the production capabilities of Pacific Coatings and Anodizing, Inc./Coatings Division. Consequently, Pacific Coatings was shut down and the equipment was cannibalized or scrapped resulting in a significant write-off.

II. BASIS FOR REQUEST

Offset of Closing an Existing Facility

In early 1991, Anodizing, Inc. petitioned the Department of Environmental Quality for mutually beneficial solution to our problem. Specifically, we requested a modest increase to our tonnage allowance at Anodizing, Inc. (where the best and newest equipment was located) in exchange for shutting down P.C.I. and returning their tonnage allowance to the air shed. Since this request had the effect of returning a net 56.9 tons to the air shed and the elimination of an existing "nuisance" source, we had hoped for immediate approval. However, over the next several months a number of administrative questions had to be resolved with the E.P.A. and D.E.Q. before the enclosed filings could be made. During that interim period the economics of keeping P.C.I. open became such that we were forced to close the facility, pending processing of our request.

Since it is unfeasible to move site specific permits, we are requesting that the ten (10) ton variance to modify Anodizing, Inc.'s existing air contaminant discharge could be made available by the gain of 66.9 tons returned to the air shed by deactivation of Pacific Coatings. The net gain would then be 56.9 tons returned to the air shed and the elimination of an existing source with an odor nuisance history.

Our request carries with it the assurance that we only want the five year window and at the end of the five years, we will return to the 40 ton and in all probability, we will have built enough demand for our products that it will be feasible to install what will then be available and affordable technology for a higher destruction rate of VOC's that will result in a lower emission rate.

We believe that our request and ongoing commitment to improving the air quality in the Portland-Vancouver air shed is reasonable, sensible and represents a defensible compromise between business and government that should be given consideration and ultimately support by the Environmental Quality Commission.

Changing Market Conditions

The more stringent energy codes that have contributed to the market share gains of vinyl windows very much affects our business in the same sense as it forced the closing of Vancouver Extrusion Company.

Each year we see increasing gains in the vinyl window market share fueled by the more stringent energy codes. It is conceivable that in the next two to five years that our market share could erode to the point that we will have an emission surplus. It is that rationale that prompted Anodizing, Inc.'s request for a modified permit of only a five year period.

Emissions Abatement Equipment Investment Concerns

Anodizing, Inc. has pursued both the capital and operating cost of abatement equipment (regenerative thermoxiders) in order to maintain our sales production volume and satisfy LAER. We have found the capital expense to purchase and install this equipment to be $937,000.00.

We believe that this investment could be obsolete by powder coating technology and or water based coatings technology before it could be fully depreciated.

It is also concern that if vinyl extrusions continue to gain market share that our painted extrusion volume will decline, so that the additional 10 tons we require today could be considerably less in five (5) years.

III. EMISSIONS ABATEMENT EQUIPMENT COST

Anodizing, Inc. has pursued the feasibility of add on abatement equipment and is of the opinion that based on theoretical destruction efficiency and operating cost, that Regenative Thermo Oxidizers are the best emissions abatement equipment technology available at this time.

The capital expense to add on this equipment is $887,000.00. This does not include finance or operating cost.

A) Emission Abate Equipment Installation Cost

Thermo Oxidizer Cost (Cost of unit and installation)	$887,000.00
Permits, utility hook-up, additional equipment, licenses, building modifications, etc.	$ 50,000.00
Total Installation Cost	$937,000.00

B) Emission Abate Depreciation, Finance & Operating Cost

Equipment Amortization Cost
$887,000.00 ÷ 5 = $177,400.00

5 year amortization period because of new technology equipment could be obsolete in 5 year period

Finance Cost (5 year period)
246,000 ÷ 5 = $ 49,200.00
(Finance cost based on current interest rate averaged over 5 years)

Estimated Operating Cost
13.6 therms hour x $0.50 therms = 6.80 hr.
6.80 hr. x 173 hrs./mo. x 12 months $ 14,116.80

Total Annual Operating Cost 240,766.80

Operating Cost/Month $ 20,064.00

C) Cost Per Ton of VOC Destruction on VOC's Above Current Permitted Level

In analyzing the total cost associated with adding on a therm oxidizer ie: financial cost, depreciation and operating, the cost to Anodizing, Inc. to destruct the additional 10 tons it is requesting to comply to LAER would be 24,076.60 per ton for what constitutes 0.83 tons a month beyond our current permitted annual emissions.

IV. SUMMARY

While our request may appear to be unique and unorthodox, we sincerely believe it to be a reasonable request. Given current market conditions, end changing technology in compliance coatings, we believe that extra ordinary conditions exist that make it burdensome and economically impractical at this time to purchase and install abate equipment.

Due to the time frames involved in administratively resolving questions with DEQ and the EPA and the processing of our initial proposal in early 1991, the economic constraints of operating two paint facilities forced the closing of Pacific Coatings Inc. So, public welfare has already reaped the benefits of our proposal.

Anodizing, Inc. has pledged that if our request is granted that we would relinquish any claims to P.C.I.'s permitted emission tonnage giving a net gain to the air shed of 56.9 tons.

We will further agree that at the end of the new five (5) year permit period, we will reapply for a permit not to exceed 39.9 tons and that it will be our intent to be positioned to install a pollution abatement device that would require an even smaller VOC allowance.

Sincerely,

Michael W. Davis, Manager
ANODIZING, INC./COATINGS DIVISION

ANALYSIS OF ALTERNATIVES

ADDITIONAL BACKGROUND INFORMATION

Pacific Coating Inc.

After Anodizing Inc. received its air permit, the company purchased Pacific Coating Inc. (PCI). This company operated a competing coating line. It was permitted to emit up to 66.4 tons of VOC per year. This facility also had uncontrolled emissions. Compliance with New Source Review rules was not required because this was an existing facility when those rules were adopted in 1981.

Anodizing Inc. has closed the PCI facility. The production equipment was removed in 1992.

Requirements for Using Source Shutdown Credits

OAR 340-20-265(4) allows the "banking" of the PCI emission credits by the source only if the credits are used within one year of shutdown for contemporaneous offsets to satisfy the net air quality benefits requirement of New Source Review. The shutdown date is considered, by rule, to be the date when a permit is modified, revoked, or expires without renewal. The PCI permit is scheduled to expire on April 1, 1994. The Department has deferred action to modify or revoke the PCI permit until the variance request is addressed.

The rules do not provide any other avenue for transferring emission credits from a facility that is shut down.

ALTERNATIVE 1: DENY THE VARIANCE REQUEST

The Department recommends this alternative because the requirements for obtaining a variance have not been met. ORS 468A.075 states that:

> "The commission may grant specific variances ... upon such conditions as it may consider necessary to protect the public health and welfare. The commission shall grant such specific variance only if it finds that strict compliance with the rule or standard is inappropriate because:
>
> (a) Conditions exist that are beyond the control of the persons granted such variance; or
>
> (b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or
>
> (c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

(d) No other alternative facility or method of handling is yet available."
Anodizing, Inc. bases their request for a variance on conditions (a) and (b). As detailed in Attachment A, they find conditions (a) and (b) suitable for the reasons that follow.

Offset of closing an existing facility. The variance request includes the forfeiture of 66.4 tons per year of emission credits from the former Pacific Coatings Inc. facility.

Changing market conditions. A portion of Anodizing, Inc.'s coated product is used for window manufacturing. As a result of energy code requirements in some areas, vinyl windows are capturing an increasing share of the window market.

Cost of control equipment. The company has stated that the cost of control equipment is "clearly outside our capability." Based on their submitted estimates, the capital cost of control equipment would be approximately $930,000. They estimated depreciation, finance, and operating costs using a 5 year amortization and finance period, a natural gas cost of $0.50 per therm, and 2076 operating hours per year. The company estimated the monthly cost of control equipment at $20,064.

Facilities subject to New Source Review in nonattainment areas must install "LAER." Under both the federal and state regulations, LAER is established based on the availability of controls rather than the cost. In other situations, the Department generally analyzes control equipment costs on a cost per ton of pollution controlled basis. Using the company's 49.9 ton per year requested emission rate, the 85% capture efficiency required by the permit, and a destruction efficiency of 99%, the cost of control is $5,734 per ton. (This is significantly less than the cost per ton presented by the company, since their analysis only considered control of the pollution generated above the 39.9 ton per year limit for avoiding New Source Review.) Resultant emissions would be under 8 tons per year. The cost per ton would decrease if production was increased further.

This control cost can be compared with other sources required to use LAER controls. DEQ has not had recent permit applications that required the use of LAER for VOC. In other states, LAER costs between $2000 and $20,000 per ton, depending on the type of source.

Statutory provisions
The company's position regarding offset of closing an existing facility, changing market conditions, and cost of control equipment must be compared to ORS 468A.075(a) and (b). The Department agrees that there are conditions beyond the company's control, including the development of alternative coatings and the market share of vinyl windows. However, these considerations do not override the company's decision to locate this facility in the ozone nonattainment area. This siting, which resulted in applicability of the stringent New Source Review rules, was <u>not</u> beyond the control of the company (condition (a)).

Physical conditions or cause (condition (b)) proposed by the company include the closure of the PCI facility and the need to install pollution control equipment to increase production without exceeding the emission limit. The Department considers the purchase and subsequent closure of the PCI facility to be business decisions, not relevant physical factors. The Department finds pollution control equipment to be readily available and has already required the facility to be constructed to accommodate such equipment. Because of this existing permit requirement, there should not be physical limitations at the facility that make installing control equipment inappropriate.

While not requested by the company, ORS468A.075(c) allows for consideration of the economic impact of compliance. Adequate economic grounds for a variance have not been submitted, although the Department informed the company of the need to provide explicit information on the company's financial status to be considered for a variance on economic grounds (DEQ/LRAPA Guidance to Applicants for Air Quality Control Variances, approved by the Commission on May 20, 1983). The Department does not consider the control costs to be relevant to the variance request since New Source Review requires that LAER be determined based on the availability of controls, not on the costs of controls. Even so, the costs are within normal ranges for LAER, as noted above.

Finally ORS468A.075(d) is inappropriate because there are means readily available to comply with the rules.

Additional considerations
In addition to finding that the request does not meet the requirements for obtaining a variance, the Department believes there are policy considerations that support denial of the variance request. Some of these considerations address rule provisions, while others are more subjectively concerned with the potential repercussions among the regulated community and the public of a variance approval.

Timing of New Source Review Requirements. These rules are designed to ensure that no source constructs without the required review and controls. This particular source has already been constructed. The company is not proposing additional construction that would cause the emissions to increase; it is proposing increased use of the existing facility. Allowing a source to increase emissions now because future production levels might make control equipment more economically feasible or because new coatings with lower emissions might be developed in the future is entirely inconsistent with the state and federal basis of these preconstruction requirements.

Offset conflicts with the New Source Review rules. As mentioned above, the rules explicitly limit the means by which a source shutdown credit can be transferred to another facility. The proposal does not satisfy the requirement for a contemporaneous change, since the Anodizing Inc. facility was constructed more than one year prior to the PCI shutdown.

More importantly, the rules require the use of an offset to remediate the remaining emissions after a facility has installed LAER, not as a means of avoiding LAER and the other requirements of New Source Review.

Integrity of the State Implementation Plan (SIP). The Portland Ozone SIP sets 40 tons per year as the size at which a new source of VOC is "major" and must comply with New Source Review. Anodizing Inc. has argued that this is an arbitrary size threshold. It is not.

The SIP is designed to accommodate new, small VOC sources. This provides flexibility for economic development in the area. The design values allow for the emissions from such sources to increase in proportion to metropolitan population growth. The SIP defines a small source as one emitting less than 40 tons per year. This is equivalent to the Significant Emission Rate set in federal law. This value was deliberately chosen to limit the amount of growth in industrial emissions that would have to be factored into the SIP. Under federal law, the Commission could have chosen to set the limit as high as 100 tons per year. However, controls on other VOC producing sources would have had to be tighter to make up for the additional emissions growth that would be allowed in sources larger than 40 tons per year.

Anodizing, Inc. points out that overall emissions would increase if they kept their facility as is and another minor facility was built in the nonattainment area to handle additional business. The Department is not swayed by this reasoning. The hypothetical situation is distinct from the variance request in that it would not violate New Source Review and it is accounted for in the SIP.

Prior consideration of this issue. The company deliberately permitted the facility to avoid the need to go through New Source Review. The company understood from the beginning that an afterburner or other control device would have to be installed prior to emissions increasing to the point where they would exceed the permit limit if left uncontrolled.

Equitable treatment of all sources. Creating an exemption for one source would be inequitable for other sources which have altered production, processes, or controls to comply with the rules.

Potential development of new coatings. The company has stated that new coatings with lower VOC content (such as powder coatings) could be developed by the coating manufacturers prior to the end of the requested variance period. Such coatings would allow the company to remain within the 39.9 ton per year limit without the expense of installing and operating control equipment. Anodizing, Inc. can provide no assurance that such coatings will be developed.

Resource impacts. Approval of a variance would directly add to the Department's workload preparation and issuance of a permit addendum, public notice and comment unless OAR 340-11-007 is waived by the Commission, and additional compliance assurance work to ensure that the source returned to rule compliance at the end of the variance period. Indirect impacts would result if other sources attempted to obtain similar relief from the New Source Review rules because of this precedent.

ALTERNATIVE 2: APPROVE THE VARIANCE REQUEST

This is not the recommended alternative. In order to grant a variance, the Commission must find that one of the four conditions listed above is satisfied and must describe the basis of this finding. The Commission could determine that one of these four conditions is satisfied for reasons listed in the preceding discussion. The Commission could find that condition (b) is satisfied if it believes that the physical conditions referenced in the statute may include conditions at other facilities (the PCI offset) and that these conditions make compliance unreasonable, burdensome, or impractical.

VOC RULE RELAXATION

In a separate issue not addressed in this request to the Commission, Anodizing, Inc. and another unaffiliated company have each requested a source specific SIP revision. The VOC rules adopted by the EQC in 1991 set a maximum VOC content of 3.5 lbs VOC per gallon of "Extreme Performance Coatings." About one third of the coating volumes at both companies do not meet this limit.

The noncomplying coatings are used when an architect has specified that the coating meet the American Architectural Manufacturing Association (AAMA) specification 605.2. This specification is for a high performance organic coating with high durability qualities. These coatings have a maximum VOC content of 6.25 lbs per gallon. Coatings that meet the VOC rule and comply with the architectural specifications are not available.

The Department's initial review supports the request for a SIP revision. Accordingly, the Department intends to initiate the necessary proceedings. The adoption process for source specific SIP revisions is the same as for SIP rules, including public hearing, EQC adoption, and EPA approval.

SOURCE OF ATTACHMENT C

This statement was submitted by Anodizing, Inc. after learning that the Department would not be supporting the request for a New Source Review variance.

DEQ WRITE UP
ENVIRONMENTAL QUALITY COMMISSION

Anodizing Inc. respectfully objects to the Department's failure to support their (Anodizing Inc.'s) request for the following reasons and asks that the following reasons be considered by the Environmental Quality Commission:

1. Anodizing Inc., as owners of Pacific Coatings Inc., still controls a 66.9 ton permit and could reactivate Pacific Coatings to service the demands in this market region.

2. Anodizing Inc. can also establish another coatings facility, apply for a 39.9 ton permit and service the market area through a new source.

Both Item 1 and 2 above could result in the air shed receiving more VOC's while allowing Anodizing Inc. to comply with the Department's rules and regulations. Still, a third alternative exists.

3. Should Anodizing Inc. be unable to service the market due to our VOC tonnage limit, it is quite likely that the market will be served by an existing competitor who has available VOC tonnage or a new competitor who can get a limited permit similar to the one we have today.

While our request may appear to be unique and unorthodox, it is a sensible request to limit the VOC's to a level that will otherwise not be achieved through any of the three alternatives above. Our request carries with it the assurance that we only want the five year window and at the end of the five years, we will return to the 40 ton and in all probability, we will have built enough demand for our products that it will be feasible to install what will then be available and affordable technology for a higher destruction rate of VOC's that will result in a lower emission rate.

We believe that our request and ongoing commitment to improving the air quality in the Portland-Vancouver air shed is reasonable, sensible and represents a defensible compromise between business and government that should be given consideration and ultimately support by the Environmental Quality Commission.

Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☑ Information Item

Agenda Item k
December 10, 1992 Meeting

Title:

Recommendations of the State's Task Force on Motor Vehicle Emission Reductions in the Portland Area

Summary:

Under the Clean Air Act (CAA) Amendments of 1990, the Portland area has been classified as a marginal non-attainment area for ozone and a moderate non-attainment area for carbon monoxide. The EPA compliance dates are late 1993 for ozone and late 1995 for carbon monoxide.

House Bill 2175, enacted by the 1991 legislature, required the Governor to appoint a task force to study alternatives to reduce motor vehicle emissions and to make recommendations to DEQ, METRO, and the legislature. Task Force recommendations include: Lawn and garden equipment emission standards, improvements in the Portland vehicle inspection program, credit for DLCD vehicle travel reduction rule, and an employer trip reduction program.

The Task Force also recommended a phased-in vehicle emission fee based on actual emissions and miles driven, however, after the Task Force completed its work, the Oregon Supreme Court ruled that the vehicle emission fee enacted by HB 2175 was constitutionally invalid.

Department Recommendation:

Accept report, discuss the recommendations and the Supreme Court decision, and provide advice and guidance to the Department.

Report Author	Division Administrator	Director

November 19, 1992

State of Oregon
Department of Environmental Quality Memorandum

Date: November 19, 1992

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item K, December 10, 1992 EQC Meeting

Recommendations of the State's Task Force on Motor Vehicle Emission Reductions in the Portland Area

Statement of Purpose

This informational item is being provided to: 1. acquaint the Commission with the recommendations of the State's Motor Vehicle Task Force, 2. seek the Commissions support for the recommendations and pursuit of implementing legislation and 3. alert the Commission to issues and to future rule making that will be necessary to implement these recommendations.

Background

Under the Clean Air Act Amendments of 1990 the Portland-Vancouver Metropolitan area has been classified as a marginal non-attainment area for ozone and a moderate non-attainment area for carbon monoxide. As such, this area is given until late 1993 to attain compliance with the national ozone air quality standard and late 1995 to attain compliance with the national carbon monoxide standard. In general, it is anticipated that the region will attain compliance with these air quality standards as required. However, forecasts, at least for ozone, indicate that the region will be in danger of falling out of compliance in the subsequent years because of projected growth and associated emission increases, especially from motor vehicles. Detailed analysis of future carbon monoxide levels is still being conducted; however, it is anticipated that there will be little, if any, threat of falling back into non-attainment with the carbon monoxide standard.

House Bill 2175, enacted by the 1991 legislature, required the Governor to appoint a Task Force to study alternatives to reduce motor vehicle emissions. This Task Force was also charged with making recommendations to the Department of Environmental Quality (DEQ) and the Metropolitan Service District (METRO) for inclusion in the federally required state implementation plan for maintaining air quality and with

submitting any recommendations (with DEQ and METRO) relating to imposition of motor vehicle emission fees to the '93 Legislature.

The Task Force completed it's recommendations on September 22, 1992. These recommendations were presented in a report (attachment A) to the appropriate Legislative Interim Committee by Oct 1, 1992 as required by House Bill 2175. These recommendations were conceptual in nature with expectations that implementing organizations will develop the necessary detail and make adjustments as may be appropriate.

In summary, the Task Force found that Volatile Organic Compounds and Oxides of Nitrogen from motorized vehicles which are ozone precursors needed to be reduced by 35% and 20% respectively by the year 2007 in order to counter expected emission increases from a 31% growth in population and 47% increase in vehicle miles travelled.

The specific Task Force recommendations (summarized in attachment 7 of the Task Force's legislative report - attachment A) include a base strategy which contains emission standards for the sale of new gasoline powered lawn and garden equipment, several improvements in the Portland area vehicle inspection program, a phased-in vehicle emission fee based on actual emissions and miles driven, credit for Department of Land Conservation and Development's vehicle travel reduction rule, and a mandatory employer trip reductions program. Several non-quantifiable emission reduction strategies, including an adequately funded public education program, were recommended for inclusion as a safety factor. Contingency strategies are required by the Clean Air Act Amendments and the Task Force selected reformulated fuels and congestion pricing to meet this requirement.

Implementation of Task Force recommendations will require authorization from the legislature for four major strategy components related to vehicle inspection, vehicle emission fees, public education and congestion pricing as identified on page 3 of the Task Force legislative report. Implementation of other Task Force recommendations will require rulemaking action by the Commission for three major strategy components in addition to rulemaking resulting from legislation. These rules would relate to new gasoline powered lawn and garden equipment, employer trip reduction programs and vehicle inspection program changes as identified on page 3 of the Task Force legislative report. In addition, the Department will need to follow up on other strategy implementation items related to opting into the federal reformulated fuels program, and submission of an overall ozone air quality maintenance plan to the EPA as a revision to the State Implementation Plan. METRO must also undertake several important actions to insure implementation of all Task Force recommendations as outlined on page 3 of the Task Force legislative report.

Authority to Address the Issue

The Clean Air Act amendments require states to submit approvable plans to the Environmental Protection Agency (EPA) that demonstrate how, with enforceable strategies, an area can maintain compliance with federal air quality standards for at least a 10 year period. This requirement, along with air quality data that demonstrate attainment, are conditions that must be met in order for EPA to reclassify any area from non-attainment to attainment.

Oregon statutes allow the Commission to establish emission standards in different areas of the state and require the Department to prepare and develop a general and comprehensive plan to control or prevent new air pollution in any area of the state in which air pollution is found already existing or in danger of existing.

Alternatives and Evaluation

The Director of the Department served as a member of the Task Force and supported the overall recommendations. The Commission could concur with the Task Force recommendations and support efforts to pursue related legislation or remain neutral until the legislature acts and specific rule proposals are brought to the Commission for adoption. The Commission could also propose modifications to the recommendations as long as they provide equivalent emission reductions, or add additional recommendations if the Commission feels they are necessary.

With respect to the vehicle emission fee proposal for the Portland area, the Supreme Court recently ruled that a state-wide vehicle emission fee enacted by HB 2175 was invalid with respect to Constitutional limitations on the use of revenue for anything other than highways. This action occurred after the Task Force completed its recommendations. About half of the emission reductions expected to come from the Portland vehicle emission fee were calculated to come from use of the revenue to expand public and private transit and provide targeted transit subsidies. This leaves the viability of the emission reductions associated with the proposed Portland area vehicle emission fee in doubt as well as the associated emission reductions from the land use strategy which can only be credited if a companion market based strategy is implemented. Approaches to deal with this issue are being considered and they will be brought before the Task Force. These include proposing a ballot measure to allow use of revenue for transit and other non-highway related air quality improvement projects. Waiting for a vote, and a no vote with a subsequent need to go back to the legislature for enactment of a substitute program would delay getting the Portland area redesignated to attainment by up to two years. The business community has urged rapid submittal of a maintenance plan in order to remove Clean Air Act impediments to industrial growth which may cost the region new jobs. In order to avoid this risk of losing new jobs, the Commission at some point may need to invoke contingency strategies. The decision point for such action would be most appropriate after considering the action the '93 legislature takes on the issue.

Summary of Public Input Opportunity

The 25 member Task Force represented a wide range of government, public and private interests. Over 5000 brochures on Task Force deliberations were distributed to citizens, a narrated slide show was developed and shown to several public interest groups, several public interest groups addressed the Task Force directly at meetings and results of several public opinion surveys were reviewed which contained some useful related information to the Task Force deliberations.

Conclusions

- The recommendations of the State's Motor Vehicle Task Force represent a balanced strategy package that should enable the Portland area to maintain compliance with ozone air quality standards through the year 2007.

- The strategy package will have a net savings in dollars, and it will result in reducing traffic congestions and energy use - two factors that compliment other state policy goals.

- Developing a complete and enforceable implementation plan for submittal to EPA as soon as possible will provide additional benefits to the economic vitality of the region.

- Dealing effectively with the highway constitutional limitation issue presents the greatest barrier in implementing the Task Force recommendations.

- Implementing all the Task Force recommendations will take a substantial amount of work, including garnering legislative and citizen support.

Intended Future Actions

Major actions to be pursued to implement the Task Force recommendations include:

- Begin public education program as soon as possible with available Federal Highway Funds.

- Completion of the final detailed report of the Task Force recommendations with review and sign off by the Task Force.

- Development of a detailed work plan for the ozone maintenance plan.

- Resolution of an approach to address the recent Supreme Court ruling related to vehicle emission fees.

- Pursuit of other related legislation.

- Preparation of rules for EQC adoption.

- Work with METRO to complete their maintenance plan components.

- Preparation and submittal of an Ozone Air Quality Maintenance Plan to EPA with a request for redesignation to attainment.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.

Attachments

"A" September 29 Report to the Senate Committee on Agriculture and Natural Resources regarding recommendations of the State's Motor Vehicle Task Force.

Reference Documents (available upon request)

Approved:

Section: John Kowalczyk

Division: Stan Greenwood

Report Prepared By: John Kowalczyk

Phone: 229-6459

Date Prepared: November 19, 1992

JFK:kh
E:\WP\JOHN\EQCDEC
11/19/92

STATE MOTOR VEHICLE EMISSION TASK FORCE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

METROPOLITAN SERVICE DISTRICT

TESTIMONY BEFORE THE SENATE COMMITTEE ON

AGRICULTURE AND NATURAL RESOURCES

September 29, 1992

Introductions

Mike Hollern, Chairman of Task Force on Motor Vehicle Emission Reductions in the Portland Area (Task Force Membership - Attachment 1)

Fred Hansen, Director of the Oregon Department of Environmental Quality

Andy Cotugno, Director of the Metropolitan Service District Planning Division

Purpose

Report recommendations resulting from the efforts of the State Motor Vehicle Emissions Task Force as required by House Bill 2175 enacted by the 1991 Oregon Legislature

Task Force Findings

o Needs to reduce motorized vehicle emissions:

- Continue to provide healthful air quality in the Portland area despite an expected growth in population of 31% and growth in vehicle miles travelled of 47% in the next 15 years

- Remove impediments to industrial growth (jobs) imposed by the federal Clean Air Act by submitting an approvable air quality maintenance plan extending to the year 2007 to the EPA as soon as possible. (see Oregonian article written by James Whitty, attachment 2)

- Reduce volatile organic compound emissions (VOC's) 35% and oxides of nitrogen emissions (NOx) by 20% from

motorized vehicles in the Portland area by the year 2007 in order to assure attainment of air quality standards. (see attachment 3)

Task Force Deliberations Process

o Examined all reasonable market based and regulatory based motor vehicle emission reductions strategies including emission reduction potential, and costs and benefits. (see attachment 4)

o Public Involvement

-Brochure developed and distributed to over 5000 individuals. (see attachment 5)

- TV/Newspaper coverage of Task Force deliberations. (see Oregonian article, attachment 6)

- Narrated slide show developed and presented to several public interest groups.

- Several public interest groups spoke at Task Force meetings

- Reviewed results of several public opinion surveys.

Task Force Recommendations

o Strong consensus support for recommendations

o Recommendations complementary with:

- Oregon Benchmarks for Air Quality and Transportation

- Oregon Transportation Plan

- Department of Land Conservation and Development Transportation Goal and Rule

- Legislature's Global Warming Goal

o Full Report being prepared and will be available in October

o Actual Recommendations summarized in attachment 7.

o Costs and Benefits of recommended strategy package summarized in attachment 8

o Legislation needed:

- Revisions to DEQ Vehicle Inspection Program*

- Authorization for Vehicle Emission Fee*

- Funding for Public Education Program*

- Authorization for Congestion Pricing Program**

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* Need authorization from 1993 legislature.
** Need authorization from legislature if and when contingency plan is triggered.

DEQ Recommendations

o Support Task Force Recommendations but Environmental Quality Commission has not review recommendations as yet.

o Pledge to follow up with necessary administrative actions:

- Lawn and Garden equipment emission standards.

- Employer Trip Reduction Rules.

- Vehicle Inspection Rule revisions and program changes.

- Develop request from Governor to the Environmental Protection Agency to opt into federal reformulated fuels as contingency measure.

- Establish and coordinate new Public Education Program.

- Rapid adoption and submittal to EPA of an Air Quality Maintenance Plan for the Portland area.

Metro Recommendations

o Staff support Task Force Recommendations but Metro Council has not reviewed recommendations as yet.

o Pledge to follow up with necessary administrative actions:

- Modifications to the Regional Transportation Plan (RTP) to reflect Task Force recommendations on emissions and Vehicle Miles Travelled reductions.

- Administer available federal Interstate Transportation Efficiency Act funds (ISTEA) to help implement Task Force recommendations.

- Support development of Incident Management Strategy

- Pursue development of Congestion Pricing strategy (Note that region has not as yet made a decision to implement either the demonstration project strategy or a full scale project as a contingency plan component.

- Participate in the Public Education Program.

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New DEQ plan needed for business vitality

By JAMES M. WHITTY

IN MY OPINION

The Portland metropolitan area has an air-pollution dilemma that could seriously affect future economic growth.

The federal Clean Air Act restricts growth in areas where air pollution exceeds or is likely to exceed federal air-quality standards. Portland fits the bill.

In assessing blame, the average Portlander may point the finger at industry. Wrong answer, says Oregon's Department of Environmental Quality.

According to DEQ, industry emits only a small amount of problem air pollutants in the Portland metropolitan area. Industry contributes only 13 percent to Portland's carbon monoxide problem and 7 percent for ozone pollution.

The real culprit is automobiles, says the DEQ. Motor vehicles in Multnomah, Washington, Clackamas and Clark counties cause 75 percent of carbon monoxide pollution and 50 percent of ozone pollution. With as many as a half-million more people expected to move into the metropolitan area during the next 20 years, the air pollution problem is expected to worsen.

Although Portland's air-pollution problem is largely attributable to cars, the Clean Air Act places the strongest restrictions on industry and economic growth. If growth restrictions are necessary for clean air, some Oregonians may say it's worth it. Growth restrictions alone, however, cannot achieve clean air in the Portland area.

James M. Whitty is general counsel for Associated Oregon Industries and is involved with public affairs and government relations for environmental issues.

The Clean Air Act's industrial-growth restrictions are painful and will get worse with time. Business expansion is allowed only if the new air emissions are more than offset by air-pollution reductions at the site or elsewhere in the area. If Portland is simply one of several locations under consideration for expansion, a company or business may well choose an area without growth restrictions.

Other industrial restrictions include a requirement for expensive new emissions-control equipment to be added to smaller and smaller businesses the longer growth restrictions are in effect. In today's weak economic climate, many businesses will fail under the weight of such restrictions.

It is possible to avoid growth restrictions in Portland and still be assured of clean air. If the state adopts an Environmental Protection Agency-approved maintenance plan to control air pollution caused by automobile travel, the growth restrictions will be eliminated.

Working with a governor's task force of industry representatives, environmental advocates, transportation experts and citizens, the DEQ is identifying ways to control growth in automobile pollutants over the next 20 years.

Today Portland's top air polluter, the automobile, is subject to few pollution-control requirements. Tri-county drivers must have their cars inspected by DEQ every two years. Less polluting but more expensive fuels are required this fall and next winter. Vapor-recovery nozzles are required for gasoline pumps.

DEQ says these steps are not enough to maintain federal air-quality standards. Portland can no longer rely on cleaner cars and fuels to solve its air-pollution problems. People are simply driving more. Miles traveled per car is growing four times as fast as the metropolitan area's population.

Automobile air-pollution-control plans include stricter DEQ inspection and maintenance, electronically controlled toll fees during rush hour, parking fees, air-pollution charges, cleaner gasolines and cleaner new car standards.

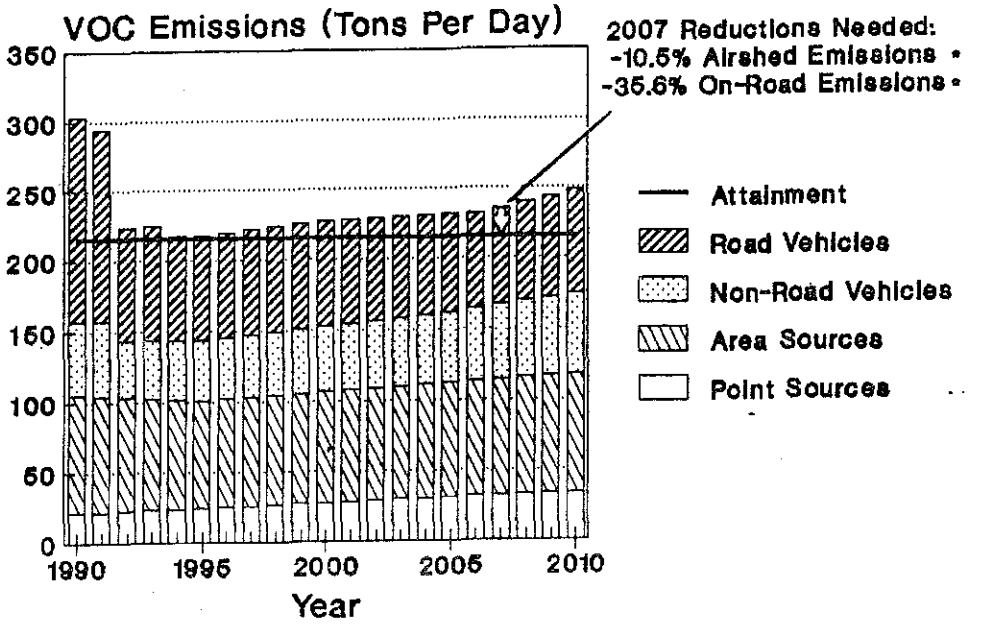
Portland should not stop with automobile strategies. If residents must drive less, there must be transportation alternatives. The metropolitan area has a good transit system, but suburban routes are not always convenient and bus frequency often unsatisfactory. Max light-rail lines are expanding to Hillsboro, but other routes should get scrutiny as well.

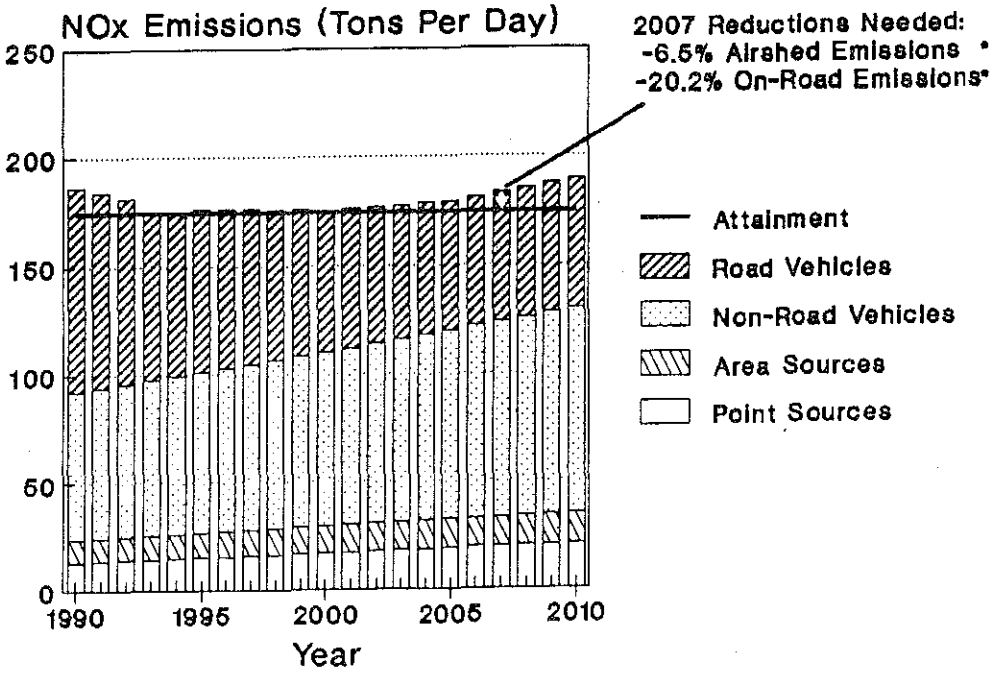
Land-use planning should be updated for transportation needs. Oregon's land-use planning has been a national model for two decades, but local planning does not adequately take into account an efficient transportation system. Current travel routes in the metropolitan area require longer driving time than would be the case with a well-considered transportation component to the local land-use plan. These land-use planning amendments are long overdue.

Portlanders and their neighbors must support some combination of new ideas of controlling automobile pollutants as well as better mass transit and transportation planning if the region is to have clean air and economic viability in the 21st century.

OREGONIAN SEPT. 23, 1992

Portland-Vancouver Ozone Precursors
Human-Caused Emissions: 1990 to 2010





Base Case Projection

MOTOR VEHICLE EMISSION REDUCTION STRATEGY ANALYSIS FOR THE PORTLAND AREA: PERCENT CHANGE FROM 2010 BASE CASE ^1
SCENARIO: 2.2%/YR VMT GROWTH, COMMITTED NETWORK 15-Sep-92
INDIVIDUAL STRATEGY ANALYSIS RESULTS SORT ORDER: HYDROCARBON EMISSION REDUCTION POTENTIAL

	STRATEGY	FREQ	TRIP PURPOSE	WHO PAYS	COST/ FEE LEVEL	REVENUE/ INCENTIVES ^2	EMISSIONS HC	EMISSIONS NOx	EMISSIONS CO	VMT	AUTO TRIPS	NON-AUTO SHARE ^3	ENERGY	
	REFORMULATED GASOLINE, CA PHASE II	ONGOING	ALL	USER	$0.14-0.28/GAL	NA	-23.1%	-15.4%	-19.5%	-1.5%	-1.7%	0.7%	? ^4	
	REFORMULATED GASOLINE, FED PHASE II	ONGOING	ALL	USER	$0.08-0.20/GAL	NA	-20.8%	-5.0%	-10.1%	-1.1%	-1.2%	0.5%	? ^4	
XXX	ENHANCED I/M PURGE & TRANSIENT	ONGOING	ALL	USER	TEST/REPAIR COST	NA	-17.5%	-8.0%	-8.0%	0.0%	0.0%	0.0%	-0.8%	
XXX	VMT/SMOG TAX	ONGOING	ALL	USER	$0.07/MILE AVG	USED/UNUSED ^5	-14.6/-4.6%	-14.5/-5.3%	-17.3/-5.0%	-9.6/-1.0%	-8.4/-1.3%	7.0/0.5%	-11.4/-3.0%	
	REFORMULATED GASOLINE, FED PHASE I	ONGOING	ALL	USER	$0.04-0.11/GAL	NA	-10.4%	-0.7%	-3.7%	-0.8%	-0.7%	0.3%	? ^4	
XXX	PARKING FEE	ONGOING	NONWORK	USER	$0.60/SPACE/HR	USED/UNUSED	-9.9/-6.4%	-8.3/-5.7%	-9.0/-5.9%	-8.0/-5.7%	-13.3/-8.0%	9.5/1.4%	-8.0/-5.7%	
XXX	CALIFORNIA LEV PROGRAM	ONGOING	ALL	USER	VEHICLE COST	NA	-8.8%	-22.0%	-8.2%	0.0%	0.0%	0.0%	? ^4	***
XXX	PARKING FEE	ONGOING	WORK	USER	$8/SPACE/DAY	USED/UNUSED	-9.2/-4.3%	-8.3/-3.8%	-10.9/-5.0%	-7.7/-3.5%	-6.1/-2.0%	4.4/1.2%	-7.5/-3.6%	
XXX	CONGESTION PRICING	ONGOING	ALL	USER	$0.30/MILE	USED/UNUSED	-8.6/-5.8%	-7.8/-5.1%	-10.2/-6.8%	-7.1/-4.7%	-5.7/-3.7%	3.9/1.9%	-7.1/-4.7%	
XXX	ENHANCED I/M PRESSURE TEST	ONGOING	ALL	USER	TEST/REPAIR COST	NA	-6.2%	0.0%	0.0%	0.0%	0.0%	0.0%	-0.3%	
XXX	ADD-ON TO FUEL TAX	ONGOING	ALL	USER	$1.50/GALLON	UNUSABLE	-6.1%	-7.5%	-6.3%	-7.4%	-6.3%	3.1%	-44.8%	
	OFF-ROAD VEHICLE EMISSION STDS ^6	ONGOING	ALL	USER	VEHICLE COST	NA	-7.5%	0.0%	-6.4%	0.0%	0.0%	0.0%	? ^4	***
	OFF-ROAD VEHICLE TAX CREDIT ^6	ONGOING	ALL	TAX-PAYER	LOST TAXES	NA	-7.5%	0.0%	-6.4%	0.0%	0.0%	0.0%	? ^4	***
XXX	DEVELOPMENT IMPACT FEE	ONE TIME	ALL	DEVELOPER	SERVICE COST	USED	-6.4%	-5.4%	-6.6%	-5.0%	-6.6%	5.0%	-5.0%	***
	LAND USE ^7	ONE TIME	ALL	DEVELOPER	SERVICE COST	USED	-6.4%	-5.4%	-6.6%	-5.0%	-6.6%	5.0%	-5.0%	***
XXX	PARKING FEE	ONGOING	NONWORK	PROVIDER	$700/SPACE/YR	USED/UNUSED	-6.0/0%	-4.9/0%	-5.4/0%	-4.7/0%	-6.2/0%	7.7/0%	-4.7/0%	
XXX	PARKING FEE	ONGOING	WORK	PROVIDER	$700/SPACE/YR	USED/UNUSED	-5.9/0%	-5.0/0%	-6.7/0%	-4.5/0%	-3.7/0%	3.3/0%	-4.5/0%	
XXX	VMT/SMOG TAX	ONGOING	ALL	USER	$0.02/MILE AVG	USED/UNUSED ^5	-5.0/-2.2%	-5.5/-3.0%	-6.0/-2.6%	-2.9/-0.6%	-2.7/-0.6%	2.1/0.4%	-4.8/-2.6%	
XXX	PARKING FEE	ONE TIME	NONWORK	PROVIDER	$13,000/SPACE	USED/UNUSED	-4.3/0%	-3.5/0%	-3.9/0%	-3.3/0%	-6.0/0%	5.5/0%	-3.3/0%	
XXX	PAY-AS-YOU-DRIVE INSURANCE	ONGOING	ALL	USER	$0.45/GALLON	UNUSABLE	-3.3%	-3.1%	-3.4%	-3.0%	-3.4%	1.3%	-19.3%	
XXX	EXPANDED I/M BOUNDARY W/ENHANCED	ONGOING	ALL	USER	TEST/REPAIR COST	NA	-3.0%	-1.0%	-0.7%	0.0%	0.0%	0.0%	-0.1%	
	PARKING RATIO	ONE TIME	NONWORK	NA	NA	NA	-2.7%	-2.4%	-2.5%	-2.4%	-3.4%	0.8%	-2.4%	***
XXX	PARKING FEE	ONE TIME	WORK	PROVIDER	$13,000/SPACE	USED/UNUSED	-1.5/0%	-1.4/0%	-1.6/0%	-1.2/0%	-1.0/0%	0.9/0%	-1.2/0%	
	PARKING RATIO	ONE TIME	WORK	NA	NA	NA	-1.3%	-1.2%	-1.5%	-1.1%	-0.9%	0.4%	-1.1%	***
	EMPLOYER TRIP REDUCTION PROGRAM	ONGOING	WORK	EMPLOYER	PROGRAM COST	NA	-1.2%	-1.1%	-1.4%	-1.0%	-8.0%	0.4%	-1.0%	
XXX	EMPLOYEE TRAVEL ALLOWANCE	ONGOING	WORK	EMPLOYER	PARKING COST	NA	-1.1%	-1.0%	-1.3%	-0.9%	-0.8%	0.2%	-0.9%	
	RTP ROAD AND TRANSIT NETWORK ^8	NA	ALL	NA	NETWORK COST	NA	-0.8%	0.0%	-1.6%	0.8%	-0.3%	0.1%	0.6%	
XXX	EDUCATION ^9	ONGOING	ALL	NA	PROGRAM COST	NA	–	–	–	–	–	–	–	

NOTES:

1. ANALYSIS BASED ON THE BEST AVAILABLE INFORMATION ON THE PREDICTED IMPACTS OF THE STRATEGIES. THE RESULTS FOR THE INDIVIDUAL STRATEGIES ARE NOT ALWAYS ADDITIVE. FOR STRATEGIES WITH A RANGE OF FEES, ONLY THE HIGH FEE LEVEL WAS ANALYSED. THE TABLE SHOWS THE EFFECT OF STRATEGIES APPLIED TO THE 2010 BASE SCENARIO.

2. FOR STRATEGIES THAT GENERATE REVENUE, THE TABLE INDICATES PERCENT CHANGES WITH AND WITHOUT USE OF THE REVENUE FOR TRANSPORTATION INCENTIVE PROGRAMS.

3. NON-AUTO SHARE INCLUDES TRANSIT, WALK AND BICYCLE. IT IS EXPRESSED AS AN ABSOLUTE CHANGE FROM THE 10.1% SHARE IN THE 2010 BASE CASE. TRANSIT ACCOUNTS FOR 2.8% OF THE 10.1% NON-AUTO SHARE IN THE 2010 BASE CASE. TRI-MET'S STRATEGIC PLAN WOULD INCREASE THIS TO 8.4% TRANSIT SHARE. THUS, A 5.5% ABSOLUTE INCREASE IN NON-AUTO SHARE (EQUAL TO 15.6% TOTAL NON-AUTO SHARE) WOULD ACHIEVE TRI-MET'S STRATEGIC PLAN, ASSUMING WALK AND BICYCLE TRIPS DO NOT INCREASE.

4. ENERGY USE IMPACT IS UNCLEAR DUE TO POSSIBLE HIGHER ENERGY USE AT THE REFINERY FOR REFORMULATED FUELS AND POSSIBLE FUEL ECONOMY LOSS FOR THE LEV AND OFF-ROAD PROGRAMS.

5. REVENUE FROM THIS FEE MAY BE UNUSABLE FOR TRANSIT PENDING AN OREGON SUPREME COURT DECISION. $0.07/MILE FEE ASSUMES $1000 CAP; $0.02/MILE FEE ASSUMES $500 CAP.

6. EMISSION REDUCTIONS ARE EXPRESSED AS AN EQUIVALENT REDUCTION OF ON-ROAD VEHICLE EMISSIONS.

7. ONLY APPLICABLE IF A PRICING STRATEGY SUCH AS THE IMPACT FEE OR PARKING FEE IS IMPLEMENTED.

8. THE REGIONAL TRANSPORTATION PLAN (RTP) WAS NOT DESIGNED AS AN AIR QUALITY STRATEGY, BUT AS A COMPREHENSIVE TRANSPORTATION PLAN TO ACHIEVE MOBILITY AND ACCESSIBILITY. THE RTP WILL NEED TO BE REVISED TO INCORPORATE THE MAINTENANCE PLAN, SIP CONFORMITY, THE LCDC TRANSPORTATION PLANNING RULE AND REGION 2040.

9. EMISSION AND TRAVEL REDUCTIONS NOT QUANTIFIABLE, BUT EDUCATION COULD BE HIGHLY IMPORTANT IN ENSURING FULL SUCCESS OF OTHER STRATEGIES.

XXX STRATEGIES WHICH WOULD REQUIRE STATE AUTHORIZING LEGISLATION.

*** STRATEGIES THAT HAVE LINEAR INCREASE IN EFFECTIVENESS FROM DATE OF IMPLEMENTATION. ASSUME ALL OTHERS ARE FULLY EFFECTIVE UPON YEAR OF IMPLEMENTATION.

What's Wrong with Portland's Air?

PORTLAND AIR QUALITY

The Portland area currently does not meet federal health standards for two forms of air pollution: carbon monoxide and ground-level ozone. The reason? According to the Oregon Department of Environmental Quality, motorized vehicle emissions are the number one source of both of these pollutants. Car exhaust is the main problem, but emissions from off-road sources (such as power-boats and lawnmowers) are also of growing concern. As Portland's population grows, so does the risk of air pollution becoming a significant future health issue.

CARBON MONOXIDE

Carbon monoxide (CO) is the product of combustion that comes almost entirely from motor vehicles. Breathed into the body, carbon monoxide replaces oxygen in red blood cells, reducing vital oxygen. The elderly, young children and individuals with chronic respiratory disease are at risk from low-level exposure, according to the Environmental Protection Agency (EPA).

GROUND LEVEL OZONE

Ground-level ozone (O3) forms in the air when hydrocarbons and nitrogen oxides react in sunlight and high temperatures, producing "smog". Ozone targets the lungs, posing its worst threat to those who already suffer from respiratory diseases, such as asthma, emphysema and chronic bronchitis. But ozone hurts healthy people, too. It makes breathing more difficult during work and exercise, and can cause general respiratory irritation.

HEALTH RISK

While air pollution can affect all of us, carbon monoxide and ozone are especially harmful for young children and the elderly. The American Lung Association estimates that nearly a third of Portland's population falls into these two categories. The EPA has also expressed concern that children may be at higher risk because, for their body size, they inhale several times more air than adults.

Portland Air Quality

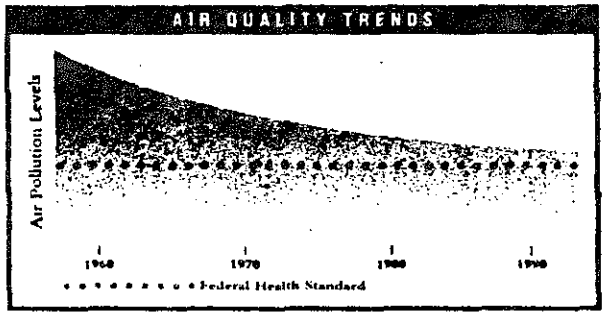
PAST

During the early 1970's, Portland violated the carbon monoxide standard as much as one out of every three days. Ozone levels often exceeded the federal health standard by as much as 100 percent.

PRESENT

Cleaner burning fuels, more efficient cars and an effective vehicle inspection program have reduced air pollution levels. Gas vapor recovery systems are now used at several service stations, and our air is also cleaner due to mass transit use, downtown traffic improvements, and parking limits.

Can we prevent air pollution from becoming a significant health risk in our future?



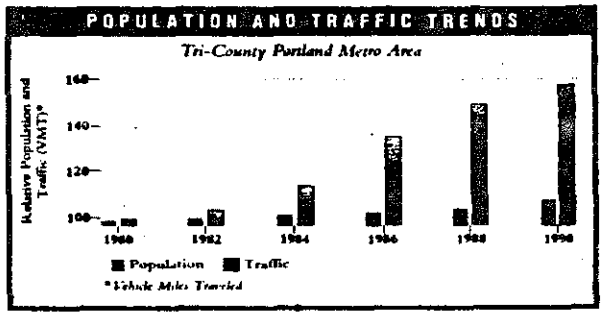
Clean Air Options

Governor Barbara Roberts has appointed a 25-member task force to study methods of reducing motor vehicle emissions in the Portland area. A list of recommendations will be presented to the Oregon Legislature, DEQ and Metro by October of this year.

The task force is focusing on automobile use and off-road vehicle emissions. It's estimated that the Portland/Vancouver area's population could increase by as much as 500,000 over the next twenty years, possibly doubling current traffic volumes. In light of these projections, the task force is looking at ways to reduce emissions and keep our air quality within federal health standards.

The task force is looking at strategies that will lower the cost of the transportation system by promoting more efficient, low-cost travel options. The primary goal is to encourage use of mass transit, car-pooling, biking, walking and other forms of transportation as an alternative to single occupancy motor vehicle use.

It's important to keep in mind that the task force report is only a beginning. Preserving our air quality is a goal we, as residents of Portland, all share. Please join us in developing an effective approach to this serious issue.



If you'd like more information on the Governor's Task Force or would like to learn more about air quality in the Portland area, contact Mike Rich, DEQ Public Affairs, 229-6488. Address your comments to: The Governor's Task Force on Motor Vehicle Emissions 811 SW 6th, Portland OR 97204.

What's Being Considered

CAR-POOL/BUS LANES

Designation of special car-pool and bus lanes on congested Portland-area streets and highways.

PARKING

Charging the true cost of parking and using revenues to provide lower cost travel options throughout the metropolitan area.

SMOG FEES

Charging for the amount of air pollution emitted and gasoline consumed as either a fuel or mileage fee. Resulting revenue will be used to provide cleaner, more efficient transportation options.

PAY AS YOU DRIVE INSURANCE

Provides basic liability automobile insurance through an increase in the fuel tax.

TRIPS

Incentives for employers to establish commuter programs for their employees, encouraging the use of mass transit, car-pooling and various other transportation alternatives.

VEHICLE EMISSION CONTROLS

Includes enhanced vehicle inspection and maintenance, new vehicle standards designed to lower emissions, and the use of reformulated gasoline and alternative fuels.

LAND USE

New developments to be designed "transit friendly", with attractive and efficient facilities for bikes and pedestrians.

CONGESTION PRICING

Charging motorists for use of highly congested transportation routes during peak commuting hours.

TRANSIT

More convenient service to handle greater transit demand.

OFF-ROAD SOURCES

Incentives encouraging the use of cleaner-burning powerboats, lawnmowers and other sources of off-road emissions.

Printed on recycled paper July 1992

Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390

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Reducing Motor Vehic Emissions in the Portland Ar

Task force endorses 'smog tax' for urban motorists

■ A phased-in emissions tax on tri-county drivers that could go up to $500 is proposed

By KATHIE DURBIN
of The Oregonian staff

Portland-area drivers would pay plenty for the pollutants their vehicles pump into the airshed under a plan blessed Tuesday by a state task force.

The "smog tax," phased in over six years beginning in 1994, would be a key element of an overall strategy that would assure Oregon's compliance with strict air quality standards adopted by Congress in the 1990 Clean Air Act.

Under the proposal, which the 1993 Legislature will consider, motorists in Multnomah, Washington and Clackamas counties would be assessed the new fee every two years based on emissions and odometer readings measured as part of required vehicle emissions tests.

The average motorist would pay an annual fee of $50 in 1994, climbing to $200 by the year 2000. Actual fees in 1994 would range from $20 to $500, depending on miles driven and pollutants emitted.

All fees generated would go to promote and expand mass transit, carpooling and other alternatives to single-car commuting.

The existing vehicle emissions inspection program would be expanded to include the entire tri-county area.

If the Legislature approves it, Oregon will be the first state to enact a tax on smog-producing tailpipe emissions.

The Governor's Task Force on Motor Vehicle Emission Reduction, appointed by the 1991 Legislature, met all day in Portland to craft a long-term air quality maintenance plan that could pass federal review.

Members of the task force, chaired by Mike Hollern, chairman of the Oregon Transportation Commission, backed off on recommending new taxes to limit parking.

But they agreed to recommend that local governments apply for federal money to mount a demonstration project testing the concept of "congestion pricing."

The concept seeks to discourage rush-hour car commuting by installing signals in each vehicle, which would activate electronic laser readers that could send a monthly bill to drivers.

Other elements of the strategy include:

- Requiring new lawnmowers, rototillers and other gasoline-powered garden equipment to meet emission standards.
- Requiring stricter and more thorough vehicle inspections every two years.
- Requiring inspections for all vehicles manufactured since 1974. The current program includes a "rolling" standard that exempts all vehicles older than 20 years.
- Requiring employers to set goals for reducing trips by their employees.

Although the Environmental Protection Agency rates the Portland area just "marginal" in its failure to meet federal ozone standards, traffic volume — especially during rush hours — is outpacing population growth by a ratio of at least 4-to-1.

Although industry contributes only 7 percent of the emissions in the Portland-area airshed, it bears the brunt of sanctions under the 1990 Clean Air Act amendments.

If Portland's air quality status is downgraded, said James Whitty, attorney for Associated Oregon Industries, it is industries that will be forced to meet more stringent standards for obtaining permits to pollute and for installing state-of-the art pollution control equipment. Existing industries that can't expand or new industries that can't obtain permits to pollute may move, taking jobs with them.

"One of the reasons Los Angeles's economy is so stagnant is they can't grow under the Clean Air Act," he told the task force.

For that reason, he said, AOI will work actively to get the 1993 Legislature to approve an air quality maintenance plan acceptable to the EPA.

John Charles, executive director of the Oregon Environmental Council, said his group agreed with AOI. "I don't want their clients to have to pay outrageous charges" because motorists have failed to curb auto emissions, he said.

Actually, this range is for the year 2000. The range in 1994 would be $5-$125. LK

Page 11

ATTACHMENT 6

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
	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. (Regional full scale application)*****	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. Will need constitutional amendment.

**** Total adjusted for strategy overlaps.

***** The Task Force also recommended immediate pursuit of a congestion pricing demonstration program.

Costs and Benefits of Strategy Recommended by the States Motor Vehicle EmissIons Task Force

Costs - $ 421 million/year

Increased costs of lawn and garden equipment, and vehicle inspection and new vehicle emission fee.

Benefits - $ 540 million/year

Saving in fuel and other costs of reduced operation of motor vehicles caused by emission fee, employer trip reduction programs and land use strategy

Net Cost - $ 119 million/year savings

Net $/Ton - $9302/ton Savings

Compares to about a $5000 to $10,000/ton of VOC/NOx emission reduction COST for typical industrial controls.

Vehicle Miles Travelled - 8% regional reduction in 2007 projections

Energy - 11.4% regional reduction in 2007 projections

OREGON
NEWSPRINT RECYCLING TASK FORCE

Annual Report to the Legislature

January, 1993

Oregon Newsprint Recycling Task Force

REPLY TO

Leonard W. Lanfranco
Executive Director
Oregon Newspapers Publishers Association
7180 SW Hampton, Ste. 111
Portland, OR 97223
503 • 624-NEWS
FAX: 503 • 639-9009

Linda L. Hayes
Recycling Specialist
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204
503 • 229-6823
FAX: 503 • 229-6977

January 11, 1993

Dear Members of the Legislature:

On behalf of the Oregon Newsprint Recycling Task Force, I am pleased to present to you our annual report, as required by ORS 459A. I think you will be pleased with the level of commitment from Oregon publishers and printers to use recycled-content newsprint. This report indicates high participation and cooperation from newsprint consumers in the first year since the minimum content law was passed.

I would like to thank the members of the Task Force for their devotion and efforts over the past year. The Task Force began a process of self-education on all aspects of newsprint, such as touring the facilities of a newsprint manufacturer in Newberg and visiting a recycling center and landfill in Bend. The Task Force will continue examining the availability of recycled-content newsprint in Oregon and look for ways to improve the recycling rate of old newsprint.

If you should have any questions regarding this report, please contact either myself at 776-4402 or Linda Hayes, DEQ staff to the Task Force, at 229-6823.

Sincerely,

James J. Osborn
Chair

OREGON NEWSPRINT RECYCLING TASK FORCE'S ANNUAL REPORT TO THE LEGISLATURE

Part 1: The Oregon Newsprint Recycling Task Force

Legislative History - The 1991 Recycling Act

The Oregon Newsprint Recycling Task Force was created under SB66 - The 1991 Recycling Act. This Act passed unanimously out of both the Senate and House. The overall purpose of this Act is to increase the recovery of materials from Oregon's waste stream and to stimulate markets for recycled materials. Increased material recovery is to be achieved through improved recycling programs. Recycling markets are to be stimulated by requiring the utilization of recycled material in new products. The materials targeted to meet the recycled content requirement are glass containers, rigid plastic containers, telephone directories and newsprint. This report deals only with the requirements for newsprint and the activities of the Oregon Newsprint Recycling Task Force.

The Oregon Newsprint Recycling Task Force

The Oregon Newsprint Recycling Task Force was created under Chapter 385 Section 30(1). Section 30(2) states that the Task Force shall:

(a) Assess the availability of recycled newsprint in Oregon;
(b) Determine the actions the state could take to increase the availability of recycled-content newsprint; and,
(c) Assess the need for statewide voluntary guidelines and enter into voluntary agreements on behalf of the state that commit the parties to a program for the use of recycled content newsprint that meets the criteria set forth in section 27 of the 1991 Act [459A.505]. The agreements under this paragraph shall comply with the criteria set forth in subsection (4) of this section.

The Task Force is comprised of 8 individuals:

(1) Richard S. Springer	(State Senator)
(2) Peter Courtney	(State Representative)
(3) Ronald E. Daly	(RR Donnelley Norwest, Inc. - Commercial Printing)
(4) James J. Osborn, Chair	(Mail Tribune - Daily Newspaper)
(5) Richard W. Swart	(Wallowa County Chieftain - Weekly Newspaper)
(6) Suzanne E. Johannsen	(Bend Recycling Team - Environmental Community)
(7) James R. Tisdale	(Smurfit Newsprint Corp. - Newsprint Manufacturer)
(8) Mary Sue Smith, Vice Chair	(Far West Fibers, Inc. - Recycling Industry)

Additionally, Leonard Lanfranco, Executive Director of the Oregon Newspapers Publishers Association and Linda Hayes, Department of Environmental Quality Recycling Specialist provide staff support to the Task Force.

During 1991, the Task Force met four times:

1) Salem - for the swearing-in ceremonies and to review tasks;
2) Salem - to develop 1991 newsprint consumption survey and newsprint manufacturers survey;
3) Newberg - to discuss survey results, availability of newsprint in Oregon, the northwest region and nationally, develop voluntary

agreement language, and tour Smurfit's newsprint recycling\manufacturing facility;

4) Bend - to modify newsprint survey for 1992, review national newsprint recycling issues, review voluntary agreements, discuss use of old newsprint in a variety of products and tour Bend Recycling Team facilities.

Task Force Findings

In brief, the Task Force makes no recommended changes to the law to increase the use of recycled-content newsprint by Oregon consumers at this time. Based on preliminary data from newsprint manufacturers who supply Oregon, the Task Force feels that there is sufficient recycled-content newsprint in Oregon to meet and surpass the goals of ORS 459A.505 by January 1, 1995. However, the Task Force recommends the following: keeping abreast of national minimum recycled- content laws which may affect regional or national recycled-content newsprint supplies; encouraging joint education programs between newspaper associations, newsprint consumers, recyclers, and solid waste collectors; and pursuing voluntary agreements between the state and printing and publishing associations to increase the use of recycled-content newsprint and to improve newspaper recycling. The following paragraphs describe the Task Force's findings as required under Chapter 385 Section 30(2).

Assessing the availability of recycled-content newsprint in Oregon. Based on the results of the 1991 Newsprint Consumption Survey, the aggregate percentage of recycled-content newsprint used in the state was nearly 22%. The law allows for voluntary agreements to be made between the state and associations or firms if the agreement includes a commitment by the members collectively or a firm individually to meet a goal of 25% recycled content of the annual aggregate fiber content by 1995 and every year thereafter. The majority of newsprint consumers in Oregon fall under an already signed voluntary agreement to use an aggregate of 25% recycled-content newsprint (more detail on page 3). Firms not covered under voluntary agreements are required under the law to meet a minimum annual aggregate consumption of 7.5% recycled-content newsprint.

Based on a separate survey of newsprint manufacturers who ship newsprint to Oregon, an estimated 32% of the newsprint shipped to Oregon during 1992 would contain recycled-content newsprint. While this indicates a rise in recycled content use, this percentage is based on first quarter estimates and the Task Force will have a better idea of the trend in recycled-content newsprint consumption once the 1992 Newsprint Consumers Survey has been conducted.

Despite the apparent increasing trend in the use of recycled-content newsprint in Oregon, the Task Force is aware of a concern voiced by some consumers about the future supply of fiber for newsprint. There is some fear that a national recycled-content law for newsprint may significantly increase demand for recycled-content newsprint elsewhere in the country and subsequently draw a significant portion of the available recycled-content newsprint out of the northwest. In addition to assessing the availability of recycled-content newsprint for Oregon consumers, the Task Force will continue to examine national and regional trends in the manufacture and use of recycled-content newsprint.

Actions to increase the availability of recycled-content newsprint. Reasonable calculations indicate a 70% recycling rate for newsprint in the state of Oregon. Not all of the remaining 30% will end up in landfills. The DEQ is currently conducting a statewide waste composition study to determine volumes of all materials, including newsprint, going into Oregon's municipal

landfills. Next year's report from the Task Force will include this information. One of the primary goals of the 1991 Recycling Act is to increase recovery of recyclable materials from the waste stream. The Task Force believes education is an important activity for both reducing the amount of old newsprint which reaches Oregon's landfills and for ensuring a continually increasing supply of old newsprint fiber.

For example, the general public should continue to receive information about ***why*** they should recycle their old papers (e.g., newspaper, office paper, grocery bags, cardboard, etc) and ***how*** and ***where*** to recycle them. This will help ensure a constant supply of fiber for the newsprint manufacturing process. The Task Force believes joint educational programs with printing and publishing trade associations, newspapers, recycling organizations and solid waste collectors are an ideal way to target and educate the general public about newspaper recycling. The Task Force plans to examine and encourage joint education programs between these industries in the coming year.

While demand on manufacturers by printers and publishers for recycled-content newsprint is increasing, consumers of newsprint still need to be educated about the availability of quality recycled-content newsprint. Ideally, the Task Force believes consumers should request volumes of recycled-content newsprint beyond the minimum requirements of ORS 459A.505 from their suppliers. The letters written to newsprint consumers explaining the minimum recycled content law and the related surveys they receive should contribute to their awareness of the goals of using recycled-content newsprint. The Task Force plans to keep the consumers of newsprint updated with post-survey summaries.

Voluntary Agreements. The Task Force believes voluntary agreements are practical for associations and individual firms and are an ideal way to maintain leadership in the use of recycled content newsprint. The voluntary agreements enable the signers of the agreements to make additional non-regulated commitments to improve their in-house recovery of waste paper, to form recycling committees, to work with other members of the community to improve recycling, and to request their suppliers to provide them with higher volumes of recycled content newsprint.

The Task Force has aggressively pursued the signing of voluntary agreements with two of Oregon's largest newsprint consumer associations. The Oregon Newspapers Publishers Association has signed a voluntary agreement (see Attachment A, pages 1 and 2). The Task Force is awaiting board approval of a similar voluntary agreement with the Pacific Printing Industries, an association of commercial printers. The Task Force has developed a voluntary agreement for companies that are not members of a trade association but who still wish to enter into a voluntary agreement with the state (see sample voluntary agreements, Attachment A, pages 3 and 4).

The Task Force, in conjunction with the DEQ, has developed a confidential and optional question for the 1992 Newsprint Consumption Survey which asks for the names of additional printing or publishing associations which may be suitable for voluntary agreements with the state. If any such associations exist, the Task Force will contact the associations and propose a voluntary agreement.

Part 2: 1991 Calendar Year Newsprint Consumption Survey

1991 Calendar Year Newsprint Consumption Survey Results

All fortysix (46)* of the identified Oregon consumers of newsprint reported their newsprint consumption for calendar year 1991. Twentyfour (24) of those consumers are already meeting or surpassing the 7.5% annual individual aggregate post-consumer recycled content goal required by ORS 459A.505 for 1995. Consumers reported a total of 177,031.36 short tons newsprint consumed in Oregon with 38,741.46 of those short tons being post-consumer recycled fiber. This constitutes an aggregate post-consumer recycled content usage of 21.88% for calendar year 1991 (see figure 2). **Many publications are printed at central printing plants which produce more than one newspaper or publication. Therefore, not all publications in the state are identified as "consumers of newsprint" because their newsprint consumption is represented by one of the central printing plants, i.e., consumers of newsprint.*

Legislative Requirements

All Oregon individual consumers of newsprint are required by ORS 459A.505 to ensure that at least 7.5 percent of their annual aggregate newsprint consumption is post-consumer recycled content fiber by the year 1995 (unless a voluntary agreement exists for that consumers association, then the association is to meet an aggregate 25% recycled-content rate by 1995). Beginning with calendar year 1991, ORS 459A.515 requires each consumer of newsprint to report annually to the Oregon Department of Environmental Quality the following information:

a) the amount of newsprint used in short tons;
b) the amount of recycled-content newsprint used in short tons; and
c) the aggregate recycled-content of the newsprint used as a percent.

Survey Development

DEQ staff developed the survey and routed it to the Oregon Newsprint Recycling Task Force and the Oregon Newspaper Publishers Association who reviewed it for its appropriateness. The Oregon Attorney General's office reviewed it for its legal soundness. Changes were made as suggested.

Process for Identifying the Businesses to Survey

A list of potential survey participants was compiled from business, newspaper and printing industry directories and the yellow pages. This list was supplemented with DEQ's media contacts mailing list from its Public Affairs section. The completed list was sent to the Oregon Newspaper Publishers Association and Pacific Printing Industries for review on completeness. Additions, deletions and changes were made as suggested.

Survey Procedure

Surveys were mailed out to targeted newspapers and printers on March 31, 1992 and were due back to the Department by April 30, 1992. One week after the due date had passed, "thank you" letters were mailed to those who returned their surveys on time. Letters were also sent at this time notifying those who were delinquent in returning their surveys. During the second week of May, telephone calls were made to those businesses who were still delinquent on

returning their survey or who had not responded in some fashion to the DEQ. When possible, information was taken over the phone for those businesses which did not have newsprint publications or products and for those newspapers which did not print their own publications on site.

Survey Participation

215 surveys were distributed with 183 companies participating. 137 surveys were returned via mail or fax to the Department and 46 surveys were conducted over the phone (mostly companies which did not print their own publications). All of the fortysix (46) Oregon consumers of newsprint identified for the survey participated in the survey for a 100% newsprint consumer participation rate. Not counting the 10 undeliverable surveys, the overall participation rate for the survey was 89%. See figure 1 for composition of the survey participants.

46 consumers of newsprint (consume newsprint on-site)
109 newspapers (printed off-site by another business)
32 not applicable (do not consume newsprint)
10 undeliverable (out of business or no forwarding address)
18 unreturned or a parent company returned one survey for all its newspapers

215 copies

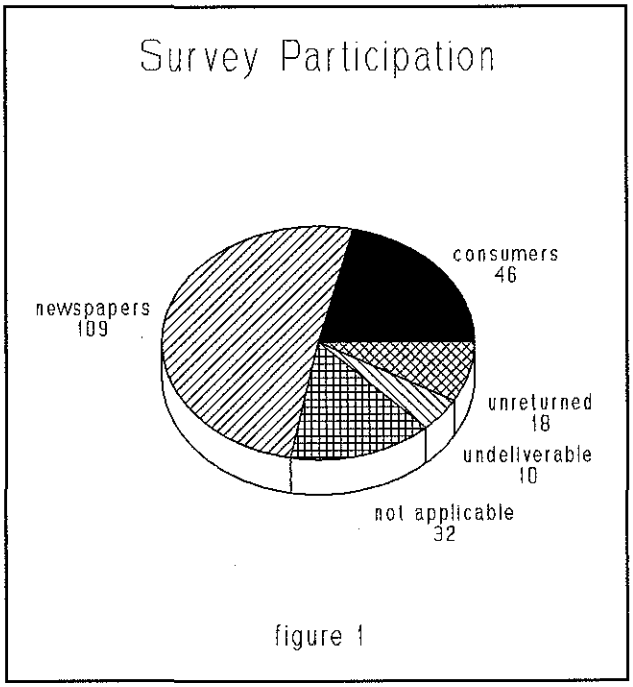

figure 1

Total Newsprint Consumed

ORS 459A.510 requires suppliers of newsprint to report to the consumer of newsprint the amounts of post-consumer waste **shipped** to the consumer. ORS 459A.515 requires each consumer of newsprint to report the amount of post-consumer newsprint **consumed**. It is possible that some consumers of newsprint reported volumes received and not actually consumed. While this may affect the total figure reported for post-consumer newsprint consumed, it is felt that the amount reported in error is not large enough to render a false impression of the total recycled-content newsprint consumed in Oregon. To address this point, the Task Force is improving the worksheet and sample problem which will be supplied with the 1992 calendar year survey.

Survey participants reported consuming 177,031.36 short tons (160,601.79 metric tons) of newsprint in 1991. This figure is within 3.7% of the amount reported shipped to Oregon by the American Paper Institute for the same period.

Recycled-Content Newsprint Consumed

Survey participants reported consuming an aggregate of 38,741.46 short tons (35,146.02 metric tons) of post-consumer recycled content newsprint in 1991. This constitutes an aggregate post-consumer recycled content usage of 21.88% for 1991. See figure 2.

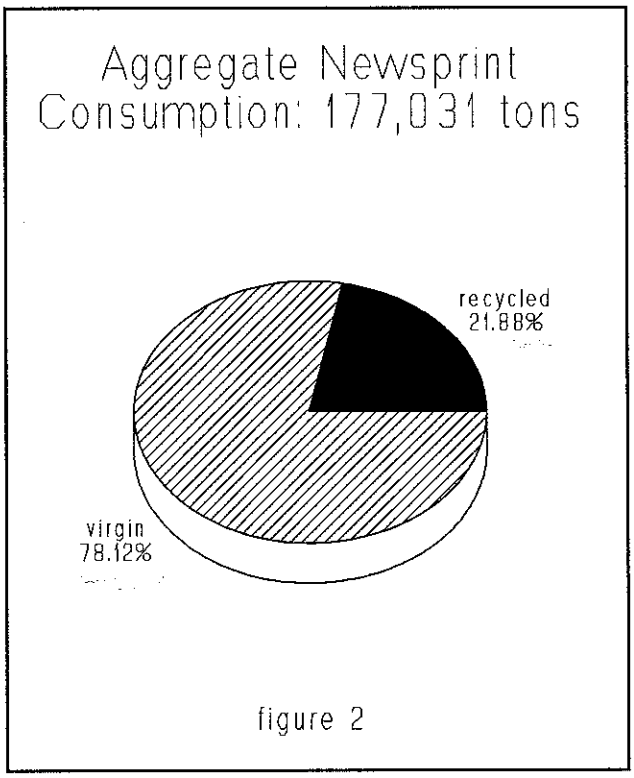

figure 2

1995 Minimum 7.5% Recycled-Content Requirement

Twentyfour (24) of the fortysix (46) consumers of newsprint reporting already meet or exceed the 1995 minimum recycled content percentage as required by ORS 459A.505 for individual consumers. Observations: those consumers not using any recycled-content fiber tend to be smaller printers and also tend to be located in distant regions of the state.

Newsprint Consumed Containing Recycled and Virgin Fibers

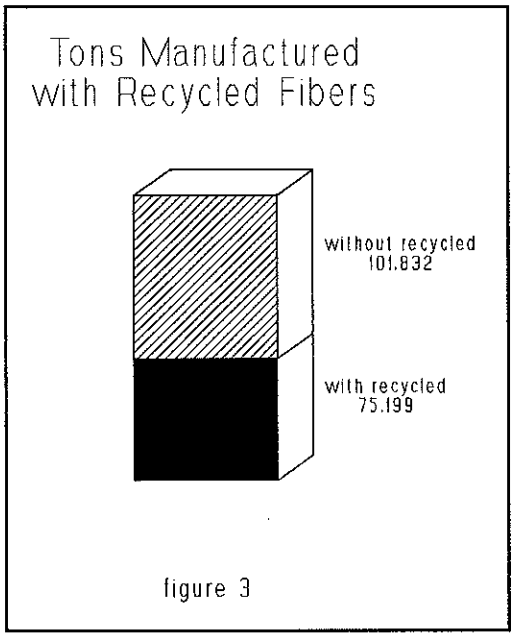

figure 3

Of the 177,031.36 short tons of newsprint consumed in 1991, 75,199.05 of those tons were manufactured with some portion of post-consumer recycled-content fiber. Of those 75,199.05 short tons containing some portion of post-consumer recycled fibers, the aggregate post-consumer recycled fiber volume amounted to 38,741.46 short tons. A total of 101,832.31 short tons consumed contained no recycled fibers. See figure 3 for the tons of newsprint manufactured with and without recycled content that were used by Oregon consumers.

Commercial and Newspaper Printers in Comparison

Commercial printers, while comprising 25% of the survey participants, used over 31% of the total newsprint reported consumed in the state. Commercial printers reported using over 27% of the post-consumer recycled fiber reported consumed in the state. Other printers (newspapers) comprised 75% of survey participants and reported using 69% of the total newsprint and 73% of the total post-consumer recycled content fiber consumed in the state (see below).

Commercial Compared to Newspaper Printers

	total	virgin	recycled	% recycled
Commercial	55,082.24 (31%)	44,559.53 (32%)	10,549.54 (27%)	19.15%
Newspapers	121,949.12 (69%)	93,730.37 (68%)	28,191.92 (73%)	23.12%
Total	177,031.36	138,289.90	38,741.46	21.88%

Attachment A

Voluntary Agreements

OREGON NEWSPAPERS

Oregon Newspaper Publishers Association • Oregon Newspaper Advertising Corp. • Oregon Newspapers Foundation

7150 S.W. Hampton St. • Suite 111 • Portland OR 97223-8398 • (503) 624-NEWS • FAX (503) 639-9009

September 25, 1992

The Oregon Newsprint Recycling Task Force (ONRTF) considers the recovery and recycling of old newsprint to be critical in easing the societal problem of solid waste management in Oregon.

Oregon Newspapers Publishers Association pledges to continue its strong commitment to encouraging recovery and recycling of waste materials by all Oregonians. We pledge to continue our ongoing educational efforts among members intended to support recovery and recycling programs and the purchase of recycled newsprint by members.

After considerable study regarding the supply, cost and quality of recycled newsprint, the ONRTF believes that by taking the following steps the Association will maintain its leadership role in the use of recycled content newsprint by:

1. Adopting a resolution urging the increased voluntary recovery and recycling of waste paper by members.

2. Adopting a resolution urging voluntary increased purchases of recycled content newsprint by members that meets the standards set in ORS 459A.505.

3. Supporting the collective use by members of at least 25 percent aggregate recycled fiber content by January 1, 1995, in accordance with Oregon law, Chapter 385 (30)(4).

4. Establishing a Recycling Committee and to provide leadership to the industry in this field.

5. Maintaining a clearing house of information regarding recovery, recycling and recycled content usage for its members and other interested parties. Further, it will continue its on-going continuing education efforts with its members.

6. Encouraging members and their customers to participate in local recovery and recycling programs and activities.

7. Encouraging suppliers to increase the use of recovered papers as a source of fiber for the production of recycled content newsprint.

8. Encouraging its members to work with local government on this issue. Further, it pledges to maintain close cooperation with the Oregon Legislature.

John Buchner
President

SAMPLE AGREEMENT (For A Firm)

The Oregon Newsprint Recycling Task Force (ONRTF) considers the recovery and recycling of old newsprint to be critical in easing the societal problem of solid waste management in Oregon.

(_____) pledges to continue its strong commitment to encouraging recovery and recycling of waste materials by all Oregonians. We pledge to continue our ongoing efforts to support waste recovery programs and the purchase of available recycled content newsprint.

After considerable study regarding the supply, cost and quality of newsprint, the ONRTF believes that by taking the following steps, this company will maintain its leadership role in the use of recycled content newsprint by:

1. Adopting a policy to increase the voluntary recovery and recycling of waste paper.

2. Encouraging suppliers to increase the use of recovered papers as a source of fiber for the production of recycled content newsprint.

3. Adopting a voluntary policy to increase purchases of available recycled content newsprint that meets the standards set in ORS 459A.505.

4. Meeting the minimum of at least 25 percent recycled content newsprint consumption by January 1, 1995, in accordance with Oregon law, chapter 385 (30)(4).

5. Participating in local waste recovery and recycling programs and activities and encourage the public to do the same.

6. Pledging to work with local governments on this issue.

_____ _____ _____

(Signed) (Title) (Date)

_____

(Association)

_____

(Address)

SAMPLE AGREEMENT (For An Association)

The Oregon Newsprint Recycling Task Force (ONRTF) considers the recovery and recycling of old newsprint to be critical in easing the societal problem of solid waste management in Oregon.

(_____) pledges to continue its strong commitment to encouraging recovery and recycling of waste materials by all Oregonians. We pledge to continue our ongoing education efforts among members intended to support recovery and recycling programs and the purchase of recycled content newsprint by members.

After considerable study regarding the supply, cost and quality of newsprint, the ONRTF believes that by taking the following steps the Association will maintain its leadership role in the use of recycled content newsprint by:

1. Adopting a resolution urging the increased voluntary recovery and recycling of waste paper by its members.

2. Adopting a resolution urging voluntary increased purchases of recycled content newsprint by members that meets the standards set in ORS 459A.505.

3. Supporting the collective use by members of at least 25 percent aggregate recycled fiber content by January 1, 1995, in accordance with Oregon law, Chapter 385 (30)(4).

4. Establishing a Recycling Committee and to provide leadership to the industry in this field.

5. Maintaining a clearing house of information regarding recover, recycling and recycled content usage for its members and other interested parties. Further, it will continue its ongoing continuing education efforts with its members.

6. Encouraging members and their customers to participate in local recovery and recycling programs and activities.

7. Encouraging suppliers to increase the use of recovered papers as a source of fiber for the production of recycled content newsprint.

8. Encouraging its members to work with local government on this issue. Further, it pledges to maintain close cooperation with the Oregon Legislature.

_____ _____ _____

(Signed) (Title) (Date)

_____

(Association)

_____

(Address)

Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☑ Information Item

Agenda Item L
December 11, 1992 Meeting

Title:

REPORT TO LEGISLATURE ON RIGID PLASTIC CONTAINER EXEMPTION

Summary:

The 1991 State Recycling Act required that all rigid plastic containers sold in the State of Oregon meet at least one of three criteria:

* contain 25% recycled content by January 1, 1995
* be made of plastic that is being recycled in Oregon at a rate of 25% by January 1, 1995
* be a reusable container.

In addition, there is a statutory exemption for containers that are reduced 10% by weight. Compliance with at least one of the three criteria would aid in achieving the overall goal of increasing the recovery of plastic materials from Oregon's wastestream while stimulating plastics recycling markets.

The Act also required DEQ to report back to the legislature on whether to grant an exemption from these criteria for those rigid plastic containers that cannot meet the recycled content criteria and, at the same time, remain in compliance with FDA regulations. Currently, the majority of rigid plastic containers which hold FDA-regulated products, cannot utilize the 25% minimum recycled content in the container and remain in compliance with FDA regulations. The Department estimates that between one-half to two-thirds of all rigid plastic containers are federally regulated.

DEQ suggests that none of the "exemption scenarios" considered would result in improved plastics recycling in Oregon or increase the possibility for overall compliance. Instead, the DEQ recommends several basic changes to the law.

DEQ recommends that the law be changed to a 25% minimum recycled content law with credit given for reusable containers. Any container manufacturer or product packager whose rigid plastic containers do not have a minimum of 25% recycled content or are not reusable by January 1, 1995, must obtain an annual license until those containers reach the minimum 25% recycled content or are reusable. Annual licensing fees collected under this proposed program should be used for improving plastics recycling and recycled plastics markets in Oregon.

Department Recommendation:

Adopt report.

Linda L. Hayes	Stephanie Hallock	Fred Hansen
Report Author	Division Administrator	Director

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

RIGID PLASTIC CONTAINER EXEMPTION REPORT

REPORT TO THE LEGISLATURE

December, 1992

EXECUTIVE SUMMARY
RIGID PLASTIC CONTAINER EXEMPTION REPORT

This report fulfills the requirements of Oregon Laws, Chapter 385, Section 34(e)(1) which states:

> "On or before January 1, 1993, the department shall report to the Legislative Assembly on whether to grant an exemption from the *criteria* established by section 34b of this 1991 Act [ORS 459A.655] for rigid plastic containers that cannot meet the *recycled content criterion* and remain in compliance with United States Food and Drug Administration regulations." (emphasis added)

This requirement is part of Senate Bill 66, referred to as the 1991 Recycling Act. The overall purpose of this Act is to increase the recovery of materials from Oregon's waste stream and to stimulate markets for recycled materials. Increased material recovery is to be achieved through improved recycling programs. Recycling markets are to be stimulated by requiring the utilization of recycled material in new products. The materials targeted to meet the recycled content requirement are newsprint, telephone directories, glass containers, and rigid plastic containers. This report deals only with the requirements for rigid plastic containers, and whether or not rigid plastic containers which hold products that are regulated by the US Food and Drug Administration (FDA) should be exempt from ORS 459A.655.

The Department submitted two draft reports for public comment during the Summer and Fall of 1992. Based on public comment and the Department's analysis, two points are very clear. First, Oregonians want increased plastics recycling opportunities and improved recycled plastics markets. Second, most of the industries which fall under FDA regulation (food, drug, cosmetic) say they cannot meet the recycled content criterion by the January 1, 1995 compliance date and remain in compliance with FDA or other federal regulations governing packaging; and, many affected parties claim they cannot meet the other criteria (options) for compliance: reuse, 25% recycling rate, or the statutory exemption if a 10% reduction in container weight is made.

The Department initially tried to address the relatively straightforward issue of whether to recommend an exemption; or if not an outright exemption then an extension of the January 1, 1995, compliance date.

From the volume of testimony received, it soon became clear that the issue is not straightforward and that basic changes are needed to this part of the law - changes which acknowledge the difficulty in obtaining FDA approvals but which also move the plastics industry toward achieving the SB66 recycling rates.

The Department recommends replacing the options in ORS 459A.655 with the requirement that all rigid plastic containers sold in Oregon contain 25% recycled content or be reusable by January 1, 1995. Any container manufacturer or product packager whose rigid plastic containers

are not reusable or do not meet the minimum content requirement by January 1, 1995 would be required to pay an annual licensing fee as of that date. Revenue from that fee would be used to improve plastics recycling in Oregon. The Department recommends setting the fee high enough to encourage manufacturers to aggressively attempt to gain FDA approval.

Some containers are exempt from meeting the options in ORS 459A.655. The Department recommends that the exemptions in ORS 459A.660(3)(a)(b)(c) be retained: (a) containers for prescribed medications; (b) containers for shipment outside the state; and (c) tamper resistant packaging. The Department recommends modifying ORS 459A.660(a) "the packages are used for medication prescribed by physicians" to "the packages are used for medication prescribed by licensed prescribing entities." The Department also recommends that containers for medical devices, infant formula and medical food be exempted to match the exemptions in the California law which is similar to this Oregon law.

The law currently requires manufacturers of rigid plastic containers to meet at least one of the criteria of ORS 459A.655 (25% recycled content, 25% recycling rate, or be reusable) by January 1, 1995. Unless the Legislature takes action and grants an exemption or, as recommended in the Department's report, makes basic changes to the law, the standards set forth in ORS 459A.655 will remain in place.

TABLE OF CONTENTS

** *This 283 page document is available upon request. Contact Linda Hayes at (503) 229-6823 or toll free within Oregon (800) 452-4011 for more information.*

A. LEGISLATIVE HISTORY

The 1991 Recycling Act (SB66) passed unanimously out of both the Oregon Senate and House. The overall purpose of this Act is to increase the recovery of materials from Oregon's waste stream and to stimulate recycled material markets. The Act has been codified under Chapter 459A in the Solid Waste Recovery section of the Oregon Revised Statutes. The following is a summary of the statutory language for ORS 459A.655-660 (for the complete, current statutory language, please refer to Attachment B).

ORS 459A.655 states that all rigid plastic containers sold in the state of Oregon must meet one of three criteria: (a) contain 25% recycled content by January 1, 1995; (b) be made of plastic that is being recycled in Oregon at a rate of 25% by January 1, 1995; or (c) be a reusable container. Additionally, a rigid plastic container may meet the recycling rate option if a 25% recycling rate is met by plastic containers in the aggregate, by a resin type, by a specified type of container (milk jug or soda bottle, for example), or by a particular product-associated package (e.g., a name brand shampoo or detergent).

Each manufacturer is required to submit a certification to the Department on or before March 1, 1995, and annually thereafter. The manufacturer must certify that their containers have complied with one or more of criteria of ORS 459A.655(1), or that their containers are exempt under the provisions of ORS 459A.655(3). Containers are exempt if they hold medications prescribed by physicians, the containers are produced in the state or are brought into the state and are destined for shipment outside the state, the packaging is necessary to provide tamper resistant seals, the containers are reduced by 10% of their weight when compared with the container used for the same product 5 years earlier, or there has been substantial investment by the manufacturer to achieve the recycling goal and the material is within five percent of the recycling goal and projections show the material will meet the goal within two years.

This report fulfills the requirements of Oregon Laws, Chapter 385, Section 34(e)(1) which states:

> "On or before January 1, 1993, the department shall report to the Legislative Assembly on whether to grant an exemption from the *criteria* established by section 34b of this 1991 Act [ORS 459A.655] for rigid plastic containers that cannot meet the *recycled content criterion* and remain in compliance with United States Food and Drug Administration regulations." (emphasis added)

B. DEQ'S APPROACH TO ANSWERING THE EXEMPTION QUESTION

Process for Soliciting Public Comment: The public has been given several opportunities to comment throughout the development of this report. The Department submitted two draft reports for public comment. Prior to developing the first draft report, staff met with numerous groups and individuals and received "position" letters from nine different interested parties. Draft reports were submitted to the public for comment on August 17 and September 30, 1992.

In addition, a public meeting was held on October 8 to discuss the second draft report. Since the second draft report comment period closed, the Department has received numerous letters and telephone calls from concerned citizens. To date, the Department has received comment in person at the public meeting or in writing from 114 different interested parties (Attachment C contains a summary of all written and oral testimony and the Department's response to those comments, Attachment D contains copies of all written comments and a summary of oral comments from the October 8, 1992 meeting).

Oregon Citizens' Concerns: Oregonians demand increased plastic recycling opportunities and improved recycled plastic markets. There is a common sentiment among citizens contacting the Department that the plastics industry and industries which use plastic packaging have not been responsive to the need for recycling. Hence, a weak market and few recycling opportunities exist for the public. Indeed, plastic recycling opportunities have been reduced in recent months as several recyclers have been forced to stop collecting most plastics except milk jugs. Another strong, consistent message has been voiced by Oregonians: a lot of hard work and compromising went into the development of this law. Plastic and other industry groups agreed to this law, and exempting such a large portion of rigid plastic containers from the criteria in this law would signal a retreat from the intent of SB66. Citizens point out that this is not a "recycled content" only law, there are other options for compliance. They want to give the law a chance to work and indicate that the law should encourage industry to act now to improve plastics recycling opportunities and recycled plastics markets.

Container Manufacturers' and Product Packagers' Concerns: Top priority is to maintain product safety and purity. Strict FDA and other federal regulations limit their ability to use recycled content, reuse their containers, or reduce the weight of their containers. The FDA is concerned that chemical contaminants (such as petroleum products and pesticides) in post-consumer plastic materials intended for recycling may remain in the recycled material and migrate into the product packaged in the recycled plastic container. The general regulations under Part 177 of Title 21 of the Code of Federal Regulations (Indirect Food Additives: Polymers) and the requirements specified in Section 174.5 relating to good manufacturing practice are the pertinent regulations for this report. In particular, Section 174.5(a)(2) states, "Any substance used as a component of articles that contact food shall be of a purity suitable for its intended use." Unknowns in technology, the costly and lengthy testing and approval procedures for recycled content use, and uncertainty about the January 1, 1995 recycling rate make it difficult for many of these companies to plan for compliance.

Many manufacturers and packagers are concerned that the "options" for compliance are limited. Achieving compliance by meeting the recycling rate is not realistic for resins #3-#7. The "reuse" option cannot be used by most companies as only certain polymers are approved for repeated use with food products. Product packagers in general are not willing to compromise the safety of their products by placing them in containers whose past history may include contact with a deleterious substance (e.g., a pesticide). Most rigid plastic containers are already reduced as far as possible, since this is a logical materials and shipping cost-saver. In addition, some products in rigid plastic containers have federally regulated container thicknesses and cannot

reduce weight beyond a certain point (e.g., containers holding products regulated under the Federal Insecticide, Fungicide and Rodenticide Act).

The Department's Overview: The goals of ORS 459A.655 are to stimulate both the collection of recyclable plastic products and the use of these resources as manufacturing feedstock. An outright exemption for food and other FDA-regulated products from all the criteria of ORS 459A.655 signals a retreat from these goals, since the containers holding these products amount to over one-half, and possibly as much as two-thirds of the rigid plastic container waste stream in Oregon. Glass and newsprint consumers are changing their business practices and making enormous progress towards meeting their mandated goals. The same should be and is expected of rigid plastic container manufacturers. However, the permeability of plastic, and the ability for contaminants to migrate into a product packaged with plastic, is what distinguishes plastic from other packaging materials. Product safety is a legitimate concern and should not be jeopardized.

After much public comment and internal analysis, the Department concludes that there are two ways to approach this complex issue: (1) narrowly address the specific statutory question of whether to grant an exemption; or (2) recommend more basic changes to this part of the law to help achieve the overall purpose of the Act.

The next section of this report summarizes the exemption scenarios which were examined by the Department and the public through the two draft reports. A more detailed discussion of the exemption scenarios is contained in Attachment A, pages A1 through A6. However, for reasons explained below, the Department rejects the exemption scenarios and recommends basic changes to the law as outlined on pages 8 through 12.

C. DISCUSSION OF EXEMPTION SCENARIOS

A Narrow Look at Exemptions: A "narrow" look at exemptions simply means addressing only the question put forth in the statute: should an exemption from all the recycling/reuse/recycled content *criteria* in the law be granted for rigid plastic containers that cannot meet the *recycled content criterion* and remain in compliance with United States Food and Drug Administration regulations.

The Department examined three exemption scenarios: (1) no exemption from the criteria; (2) exemption from the criteria; and (3) a one-time, two-year extension for those companies committing to the recycled content method for compliance but require more time for testing and approval of the containers.

Currently, the majority of rigid plastic containers which hold FDA-regulated products, or hold products whose packaging is affected by other federal regulations, cannot utilize 25% minimum recycled content in the container and remain in compliance with FDA or other federal regulations. The process for gaining FDA authority to use any level of recycled content requires

extensive testing and considerable time. The Department estimates that between one-half to two-thirds of all rigid plastic containers are federally regulated. Therefore, any exemption could have a detrimental effect on overall plastic recycling.

A "no exemption" recommendation does not acknowledge that while progress can and is being made on utilizing recycled content in FDA-regulated packaging, progress is very slow and may not be achieved by the January 1, 1995 compliance date. "No exemption" also implies that the other compliance mechanisms in the law are implementable. The industry makes compelling arguments that reduction has already been maximized, reuse is regulated by the same strict federal standards, and that the recycling rate is not realistic because resin #3 through #7 are generally not recyclable in Oregon at this time. Individual plastic packaging companies feel that recycling rates are beyond their control and are a joint responsibility of industry, garbage collectors, and state and local governments. A "no exemption" recommendation also implies that substitute packaging (glass, paper) would have to be utilized, and the Department doubts that was the legislative intent, nor are these materials feasible for some of the food products. Overall, a "no exemption" recommendation would likely result in massive non-compliance on January 1, 1995.

A "yes exemption" recommendation recognizes the time and cost involved in gaining FDA approval. It should be noted however, that even if FDA approval is sought, there is no guarantee it will be granted. A "yes exemption" recommendation fails to motivate industry toward the use of recycled content and more recycling opportunities. The public is ready and willing to recycle now. What is most important at this time is to develop a market for recycled materials. An exemption recommendation may delay recycling for several years. Since plastics recycling lags behind its counterparts, the need is for immediate, lasting solutions. The fear of many is that if an exemption is granted for a limited period, another extension will be sought by industry, and no progress towards more recycling will made.

Any exemption should require mechanisms to ensure a good faith effort by industry to move toward use of recycled content, but an administrative process to assess "good faith" could be burdensome on companies, staff-intensive for the Department, and potentially highly subjective. In addition, there is no guarantee that plastics recycling and markets development would be stimulated. Finally, with or without an exemption, and with current staffing levels at the Department, massive non-compliance could not be dealt with.

A Broader Look at the Law: The Department analyzed the issues and decided to take a broader, more realistic look at the intent of the law and industry's ability to comply by the end of 1994. A broader, more realistic look at the law reveals that it is very difficult, if not impossible to implement as written:

a) The "options" for compliance for rigid plastic containers holding FDA-regulated products are limited. As stated above, achieving compliance by meeting the recycling rate for resin types is not realistic for resins #3-#7. The current success of the aggregate rigid

plastic container recycling is due largely to the Bottle Bill. If the aggregate 25% recycling rate option is met, it will be carried by the success of the Bottle Bill. This is not a step forward in improving plastic recycling opportunities for the citizens of Oregon, since the Bottle Bill has been on the books since 1971. Recycled content, as mentioned above, is a possibility for FDA-regulated containers, but the process to obtain approval is slow. The "reuse" option cannot be used by most companies as only certain polymers are approved for repeated use with food products. Product manufacturers in general are not willing to compromise the safety of their products by placing them in containers whose past history may include contact with a deleterious substance (e.g., a pesticide). Most rigid plastic containers are already reduced as far as possible, since this is a logical materials and shipping cost-saver. In addition, some products in rigid plastic containers have federally regulated container thicknesses and cannot reduce weight beyond a certain point.

b) The determination of compliance is difficult and burdensome on industry and Department staff alike. In the national plastics arena, there are at least one hundred large manufacturers and hundreds of smaller ones that make rigid plastic containers. There are over one thousand companies who make a product which is placed in rigid plastic containers. At the retail level (grocery, bakery and delicatessen) there may be several thousand companies that may utilize rigid plastic containers. All would require certification.

c) The public is anxious for plastic recycling; however, until markets exist plastics will not be collected on a dependable, broad scale basis throughout Oregon. The need for market development, which was recognized by the 1991 Legislature in creating the Recycling Markets Development Council, is critical to all recycling. So far, there is little evidence of a team approach by the industry to stimulate markets for recycled products, and there are no major new programs on the horizon at this time.

D. DEPARTMENT RECOMMENDATION - Modify Existing Law

The Department recommends that the law be modified. This is the best way to achieve measurable results in overall plastics recycling.

Recycled content/reusable criteria: Change the law to a 25% minimum recycled content law. Allow credit for containers which are reused, but otherwise remove any other options for compliance. The effective date is unchanged - January 1, 1995. The requirement applies to all rigid plastic containers sold in Oregon which have a capacity between eight ounces and five gallons. A few recommended exemptions are listed on page 9. Any containers sold in the state must be accompanied by paperwork that indicates the containers contain 25% recycled content or that they are reusable. A container manufacturer OR product packager must be licensed to sell rigid plastic containers in Oregon which do not meet the minimum 25% recycled content or reuse criteria by January 1, 1995.

Licensing: A container manufacturer OR product packager must be licensed to sell rigid plastic containers in Oregon which do not meet the minimum 25% recycled content or reuse criteria by January 1, 1995. *Only one license need be associated with a container.* For example, if a container manufacturer is licensed in Oregon, then all containers made by that manufacturer are licensed in Oregon. The packager need not obtain a license if they use containers produced by the container manufacturer which holds the license. In-state container manufacturers and product packagers who ship products out-of-state will not require a license.

A licensing example: An Oregon manufacturer of many rigid plastic containers and products who ships all of those containers and products out-of-state, will not be required to obtain a license. However, the container manufacturer or the product packager must obtain a license if any portion of those containers or products return to Oregon for sale in Oregon. The license can be obtained by the container manufacturer and cover all containers made by that manufacturer, OR by the product packager cover all products packaged by the packager. This recommendation allows industry to determine which entity should obtain the license.

The license, and the associated annual fee, are an important part of this recommendation. The fee must be high enough to encourage the container manufacturer or product packager to apply to the FDA for approved status (to use recycled content). The license fee is not intended to be calculated on an item-by-item basis, but rather should be based on broad categories and on the estimated number of containers sold in Oregon.

Exemptions: The Department recommends maintaining three of the current exemptions under ORS 459A.660(3)(a)(b)(c) for prescribed medications, tamper resistant containers, and containers destined for shipment outside the state of Oregon. The Department also recommends modifying the existing language in ORS 459A.660(a) from "the packages are used for medication prescribed by physicians" to "the packages are used for medication prescribed by licensed prescribing entities." The Department recommends adding exemptions for packages used for medical devices, medical food, and infant formula because these products are currently exempt from a similar law in California and they account for a small portion of Oregon's rigid plastic container waste stream.

Recommended Licensing Procedures

Who Obtains the License (and pays the fee)?

- Any rigid plastic container that does not have 25% recycled content or that is not reusable cannot be purchased for sale or be sold in Oregon unless the container manufacturer or product packager has been licensed.
- The license can be obtained by the container manufacturer and cover all containers made by that manufacturer; OR by the product packager and cover all products packaged by the packager which are sold in Oregon. License shall accompany container type and/or product type to Oregon distributors or retailers.

How Is the Licensing Fee Assessed?

- Fee should be high enough to encourage licensee to pursue FDA approval for the use of recycled content.
- Fee should be broad based and may be graduated by sales (numbers of containers) in Oregon; may be a minimum fee, a flat fee, or have an option for calculating a fee up to a flat fee.
- Fees may be assessed by the DEQ or by Economic Development Department and are to be used for developing plastics recycling and recycled plastics markets.

How Long Is the Licensing Fee Paid?

- Annually, beginning January 1, 1995, until container is made from a minimum of 25% recycled plastic or is reused.

What is the Licensing Fee Used For?

- Stimulating plastics recycling and recycled plastics markets (i.e., technology development, increasing processing capacity).
- Administering the licensing program.

How is Licensing Verified?

- Distributors/retailers cannot purchase for sale or sell container unless the container/product is licensed.
- Do annual survey of small percent to verify license.

Limitations on Licensing

- Intent is not to let container manufacturers or products packagers buy their way out of using 25% minimum recycled content.
- Allow the Environmental Quality Commission to eliminate licensing option for those manufacturers whose containers can clearly use recycled content due to changes in federal laws or technology improvements.

(see a summary table on page 11)

PROPOSED RIGID PLASTIC CONTAINER REQUIREMENTS

MINIMUM CONTENT	LICENSE (fee)	EXEMPT
What: All rigid plastic containers, whether federally regulated or not, must meet 25% recycled content, or be reused, by January 1, 1995.	*What:* The container manufacturer or product packager must be licensed in order for their containers/ products to be sold in Oregon IF the containers have not achieved 25% recycled content or are not reusable by January 1, 1995.	*What:* prescribed medicine containers tamper resistant containers shipments destined outside Oregon *medical device containers *infant formula containers *medical food containers
Why: Already the law.	*Why:* Establishes a funding mechanism for improving plastics recycling and market development. Provides a stimulus for utilizing recycled content.	*Why:* Uniformity with California's SB235 exemptions. Small portion of waste stream. * proposed additions to currently exempted rigid plastic containers under ORS 459A.660(3)

E. ADDITIONAL CONSIDERATION FOR THE LEGISLATURE

The Department recommends an additional, related item be considered by the 1993 Legislature. The definition of "manufacturer of rigid plastic container" needs further clarification. The current definition of "manufacturer" in ORS 459A.650(2) (see below) is not consistent with the use of "manufacturer" in ORS 459A.655(1) and 660(1). There remains disagreement over the legislative intent of this section of state law. The Department recommends that the 1993 Legislature clarify what is meant by "manufacturer" so the law can be implemented as intended. The definition must be clear for all parties involved, including the container manufacturers, the product packagers, and the Department.

Current definition under ORS 459A.650(2):

> "Manufacturer" means the producer or generator of a packaged product which is sold or offered for sale in Oregon in a rigid plastic container.

Inconsistent use of the term "manufacturer" in the law's language.

> 459A.655(1) ".... every *manufacturer of rigid plastic containers* sold, offered for sale or used in association with the sale or offer for sale of products in Oregon shall insure that the container meets one of the following criteria:..."
>
> 459A.660(1) ".... each *manufacturer of rigid plastic containers* shall submit a certification to the department."

These sentences are phrased inconsistently, i.e., spelling out "manufacturer of rigid plastic containers," instead of using just the word "manufacturer." "Manufacturer" in both instances could be the actual maker of the container or the "producer or generator of a packaged product."

Comments from interested parties indicate why the "manufacturer" should or should not be the product packager or the container manufacturer. Arguments are convincing on both sides. Manufacturers of rigid plastic containers cannot track the shipments of their containers to Oregon. In many cases, the containers may change hands as many as four or five times before finally reaching the shelves in Oregon. Product packagers are close enough to the final shipments to determine what and how many containers are sold in Oregon. If product packagers were required to submit certifications, however, the Department would be handling well over 1,000 - maybe as many as 4,000 - certifications. Product packagers could be one or all of a number of different entities ranging from the entity which produces a product, to the entity which packages the product, to the entity which distributes the product, or to the entity whose name appears on the product's label. On the other hand, the number of rigid plastic container manufacturers whose containers are sold in Oregon is significantly lower, somewhere between 150 to 200 entities.

Certification and reporting are highly sensitive issues, and for this reason the Associated Oregon Industries has organized a Rigid Plastic Container Certification Work Group to work on a system for certification and reporting. The work group is comprised of representatives from national and local companies and trade associations that make or use rigid plastic containers to sell products in Oregon. The Department commends this work group for tackling the certification/reporting issue and recommends that the work group's recommendation be considered by the 1993 Legislature.

ATTACHMENT A
EXAMINING THE THREE EXEMPTION SCENARIOS

The following exemption scenarios were examined by the Department and submitted for public comment during the development of this report. Please note that the following are ***not*** being recommended by the Department.

Scenario A No exemption from criteria in ORS 459A.655 for containers holding FDA-regulated products.

Scenario B Grant exemptions from criteria in ORS 459A.655 for containers holding FDA-regulated products. January 1, 1995 effective date for exemptions.

Scenario C No exemption from requirements in ORS 459A.655 with the exception of a one-time, two-year extension of the effective date for the recycled-content criterion only. This extends the compliance date from January 1, 1995 to January 1, 1997 and only applies to those rigid plastic containers holding FDA-regulated products for which there is currently no FDA-approved (non-objected) process for utilizing recycled resins in those containers. The certification date for ALL rigid plastic containers, including those with extensions, remains March 1, 1995.

Scenario A Discussion

Scenario A No exemption from criteria in ORS 459A.655 for containers holding FDA-regulated products.

Arguments For No Exemption:

- Law provides several choices other than recycled content for compliance
- Technology is changing rapidly and there is a good chance that new FDA non-objected processes for recycled content will be available before the 1995 effective date
- FDA has guidelines for chemistry consideration for use of recycled plastics in food packaging (non have been released for drugs and cosmetic divisions)
- National studies are being conducted for recycled content use with food products

Arguments Against No Exemption:

- Over half of the rigid plastic containers in Oregon are under federal regulations and must undergo lengthy and costly testing in every case for approval to use recycled material in the packaging.

Many of the comments received by the Department stress that this is an "industry choice" law. It offers four choices for the plastics industry or an individual manufacturer to meet the requirements of ORS 459A.655:

a. Use 25% recycled content, or

b. Meet 25% recycling rate, or
c. Use reusable container, or
d. Use reduced container (exemption provision under ORS 459A.660(3)(d)).

Additional flexibility was built into this law; under the recycling rate option, 25% recycling can be met by rigid plastic containers as a whole, by a certain type of container, by a certain resin type, or by an individual company. Thus, if an industry cannot achieve the rate, a company or industry sector can (e.g., milk jugs or soft drink bottles).

In addition, the manufacturer of any rigid plastic container not certified under the above requirements can show investment, progress and a trend to improvement in meeting its goals within two years, is allowed an exemption.

Although most FDA-regulated products cannot currently utilize recycled content in their containers, plastic recycling technologies are rapidly changing. The FDA has developed informal guidelines to help food packaging manufacturers evaluate the use of post-consumer recycled plastic *(Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations, May, 1992)*. There are currently three FDA-approved recycling processes for polyethylene terephthalate (PETE). Two processes are tertiary recycling involving a chemical change: glycolysis and methanolysis. The third process is secondary recycling (physical regind) involving a core layer of reground post-consumer PETE with a layer of virgin PETE on either side (see page A-7 for a current listing of "no-objection" letters from the FDA). These processes were submitted to and were not objected by the FDA for specific uses by the companies submitting the application.

According to the FDA's Center for Food Safety & Applied Nutrition, several plastic recycling processes are currently being researched for no-objection (approval) status. However, this report cannot specify which processes and polymers are under consideration for approval because FDA policy does not allow disclosure of such information.

In addition, The National Food Processors Association is in the process of conducting research for the use of recycled content in high density polyethylene (HDPE) food packaging. The researchers caution, though, that thorough research will take several years and that there are many unknowns and no guarantees in the end.

The Drug Division of the FDA has not released, nor is it certain whether they ever will release, guidelines for use of recycled content with drugs, over the counter drugs, cosmetics which are under their purview. Testing of these products must include the product and the container together as a unit, whereas food packaging testing is conducted on the packaging alone.

In addition to FDA regulations, there are other state and federal regulations governing packaging of hazardous materials and agricultural products such as dairy products, poultry and meats. These regulations are as demanding as FDA regulations and therefore the products falling under these categories should be considered in the scope of this report.

Minimum content is the most direct route for the majority of manufactures to comply with the law. Several companies, including some large resins producers, have approval for use of recycled PETE for food packaging. These processes are specific to the companies who received the non-objection letters. According to the FDA, until they have some mechanism in place to consider comparable uses as a class, it will remain necessary for each company, on a case-by-case basis, to request FDA to consider each specific situation and proposed use.

Despite the commercial availability of approved recycled-content PETE, PETE cannot be substituted across the board in the place of other plastic resins (e.g., HDPE). Over half of the rigid plastic containers sold in Oregon contain state or federally regulated products. Each plastic resin exhibits different properties, some not suitable for use with different food products. Users of rigid plastic containers also point to the "relative" commercial availability of approved recycled content PETE, citing cost and inadequate supply as obstacles to use of the resin.

Because a significant volume of regulated containers sold in Oregon cannot currently use recycled content plastic and remain in compliance with those regulations, the Department believes that Option A does not allow sufficient time between now (1993) and 1995 (the compliance date) for FDA approval of new recycling processes followed by the production of recycled content containers. Many large companies may be able to convert some product lines as technology becomes available, however, most medium to small-sized businesses may not be able to fund testing for recycled content plastic for direct contact with FDA-regulated products or other federally regulated products. Until national testing, which is underway, is completed and federal agencies are approving the use of recycled content, recycled content is not a "true" option for most companies with regulated products.

Scenario B Discussion

Scenario B Grant exemptions from criteria of ORS 459A.655 for containers holding FDA-regulated products. January 1, 1995 effective date for exemptions.

Arguments For Exemption From Criteria:

- Alleviates lengthy and costly testing for over half of Oregon's rigid plastic containers to meet the 25% minimum recycled content requirement.
- Many believe this is not an "options law": recycled content is restricted under federal regulations; reuse is restricted under federal regulations; recycling rate is not under manufacturers' control; and most packages are already reduced as far as possible

Arguments Against Exemption From Criteria:

- Over half of the rigid plastic containers in Oregon would be exempted from complying with ANY of the options: recycled content, recycling rate, or reuse.
- May negatively impact the ability of the 25% recycling rate to be met and thus limit the ability of others trying to comply via the 25% recycling rate option.

- Would be a premature move in that recycling technologies are rapidly changing and an exemption from the recycled content requirement may not be necessary for all FDA-regulated containers.
- Could result in exempted manufacturers delaying pursuits towards seeking approval for new recycling processes from FDA or utilizing new processes as they become approved and commercially available.

A majority of the comment from industry indicates that this is not an "options" law.

"Recycled content" issues were addressed under discussion of Option A.

"Recycling rate" is not an option for most containers. Many companies have stated that they cannot plan on the aggregate recycling rate meeting 25%. Marketing plans need to be implemented approximately two years ahead of scheduled product delivery to the shelves. Many interested parties commented that companies have no control over the recycling rate in Oregon. The Department has just been given statutory and budgetary ability to calculate current plastic recycling rates, but 1992 recycling rate information will not be available until May or June of 1993. Based on a 1989 Department study and discussions with recycling industry professionals, the Department estimates a rough 10% aggregate recycling rate for rigid plastic containers. This recycling rate is largely due to the success of the Bottle Bill and subsequent returns of plastic PETE liter soda bottles. Plastic milk jug recycling enjoys modest success in many areas of the state as well.

Meeting a 25% recycling rate by resin type is guaranteed for PETE, again, due to the Bottle Bill. Recycling opportunities for other PETE containers do not currently exist in Oregon. Although it is not likely, given the current status of plastic recycling markets in Oregon, there is a chance that HDPE may reach a 25% recycling rate by 1995. All other resins have recycling rates below 2% and are not expected to reach a 25% recycling rate by January 1, 1995.

"Reuse" is not an option for most containers. Federal regulations do not allow repeated contact with food for most polymers. Many companies are not willing to take the risk that a consumer may place a deleterious substance (e.g., pesticides or used motor oil) in an empty container for use around the home before they return it for reuse. With regards to "refillable" containers, some companies claim that despite advertising and the availability of reusable containers, consumers do not always refill or reuse a container. The companies state they have no way of guaranteeing that a consumer will reuse a container one time or five times.

"Reduction" is also not an option for most containers. Many interested parties commented that the provision in the statute for an exemption based on a 10% weight reduction is worthless. Most containers are already lightweighted to reduce material and shipping costs. Additionally, companies claim this exemption is unfairly biased, punishing those with already reduced packages while benefitting those whose current packaging are not fully lightweighted.

The Department also points out the statutory exemption under ORS 459A.660(3)(e) allows for

an exemption from the requirements if "[t]here has been substantial investment achieving the recycling goal, viable markets for the material, if collected, can be demonstrated, the material is within five percent of the goal, there is substantial evidence of recycling rates and reasonable projections show that the material will meet the goal within two years."

The Department believes that an exemption (from all criteria) would be premature because more plastic recycling technologies for direct contact with FDA-regulated products are being developed and may be approved in the near future. An exemption could result in the exempted manufacturers delaying or "relaxing" their pursuit towards applying for FDA approval of a new plastic recycling process, or not pursuing the production of a recycled-content container if and when approved plastic recycling processes are developed.

Also, these containers comprise over half of Oregon's rigid plastic container waste stream. If these containers are exempted from all criteria, then this could significantly impact the ability of the other half of the rigid plastic waste stream from meeting the 25% recycling rate. In other words, many of the manufacturers will not take measures to increase recycling.

The Department considered granting an exemption from only the recycled content criterion, but this only reduces the options for rigid plastic container manufacturers. Granting an exemption from ALL of the criteria under ORS 459A.655 is not under consideration. This law was passed so that rigid plastic container manufacturers would have to take action, one way or another, to get their products recycled, reused, source reduced or to contain recycled materials.

Scenario C Discussion

> **Scenario C** No exemption from content requirements in ORS 459A.655 with the exception of a one-time, two year extension of the effective date for the recycled-content criterion only. This extends the compliance date from January 1, 1995 to January 1, 1997 and only applies to those rigid plastic containers holding FDA-regulated products for which there is currently no FDA-approved (non-objected) process for utilizing recycled resins in those containers. The certification date for ALL rigid plastic containers, including those with extensions, remains March 1, 1995.

Arguments For Limited Extension:

- Gives manufacturers of containers which hold FDA-regulated products additional time to *complete* research and apply for FDA non-objection of recycled polymers in their containers.

Arguments Against Limited Extension:

- The one time two-year extension of the compliance effective date for over half of the rigid plastic containers in Oregon could be costly, in terms of inaction, for the rest of the rigid plastic containers, especially if manufacturers are depending on

reaching a 25% recycling rate.

The Department strongly considered this "compromise" scenario to the exemption question. We felt is was a logical approach to the dilemmas presented in the statute. Thus, this was the option presented as the Department's recommendation in the second draft report. Basically, this option consisted of a one-time, two-year extension to allow manufacturers of containers holding FDA-regulated products time to do the research and complete the application necessary for FDA non-objection of recycled content polymers. In no way did the Department want this option to be misconstrued as allowing these container manufacturers additional time for inaction or to seek exemptions. Products held in containers for which there is approved recycled content processes would not receive the extension.

Citizens were concerned with this compromise. They feared most manufacturers would commit to the recycled content option in order to get the extension and not even consider the other options required by 1995. Concern was also expressed that manufacturers would continue to request "extensions," thus effectively exempting themselves from any action towards compliance. On the other hand, concerned companies stated that two year's extension time was simply not enough time to complete research, and that the two years extension appeared to be an arbitrary length of time - certainly not based on science and the ability for technology to be properly developed. On the one hand consumers demand purity and safety of food and products, on the other hand they are demanding recycled content on a time table that is not consistent with technology's ability to assure that purity and safety.

The Department wanted to recommend to the Legislature an option which, despite allowing some flexibility for manufacturers of containers holding FDA-regulated products, would ultimately result in a higher compliance rate with ORS 459A.655. We also wanted to avoid an annual request for extension, which could effectively result in a "rolling exemption." To encourage manufacturers of rigid plastic containers which hold regulated products to explore all options under ORS 459A.655, the Department suggested that manufacturers report all efforts taken to comply with the recycling rate and reuse options and reasons why these efforts were or were not successful.

The only way this option could be implemented is to have an annual review process requiring manufacturers to describe their efforts in trying to comply with the recycling rate, reuse, and reduction portions of the law and any efforts made toward pursuing recycled content containers.

Continued internal analysis and public comment has led us to discount this option. The Department does not want to be in the position of judging a company's actions towards either compliance or pursuit of recycled content. This process could prove to be too burdensome and subjective.

"NO OBJECTION" LETTERS ISSUED BY FDA FOR PACKAGING MADE FROM RECYCLED RESINS:

PS	- thermoformed egg carton to: Dolco Packaging Corp.
PS	- thermoformed egg carton to: Landfill Alternatives
PETE	- resins produced by methanolysis processing of beverage bottles to: Hoechst-Celanese and to Eastman Chemical
PETE	- resins produced by glycolysis processing of beverage bottles to: Goodyear
PETE	- pint and quart sized containers for packaging fresh fruits and vegetables to: Frank I. Harvey, attorney for UltraPac Inc.
PETE	- PETE regrind as inner core of a triple layer, coextruded sandwich laminate limited to short term storage (less than two weeks) of food at refrigerated and room temperature (prepared bakery and deli products) to: Frank I. Harvey, attorney for UltraPac Inc.
PETE	- PETE regrind tri-laminate clamshell for food contact, (same temperature & time conditions as above). Also, fresh fruit and vegetable baskets to: Bullwinkel Partners, LTD.
PP & PE	- for harvesting crates for transport of fruits and vegetables from field to processing plant, to: Lewisystems
PETE	- methanolysis from post-consumer PETE to: E.I. du Pont de NeMours & Co.

(source: FDA letters of no-objection)

ATTACHMENT B
CURRENT STATUTORY LANGUAGE
ORS 459A.650-660

459A.650 Definitions for ORS 459A.650 to 459A.665. As used in ORS 459A.650 to 459A.665:

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

(2) "Manufacturer" means the producer or generator of a packaged product which is sold or offered for sale in Oregon in a rigid plastic container.

(3) "Package" means any container used to protect, store, contain, transport, display or sell products.

(4) "Product-associated package" means a brand-specific rigid plastic container line, which may have one or more sizes, shapes or designs and which is used in conjunction with a particular, generic product line.

(5) "Recycled content" means the portion of a package's weight that is composed of recycled material, as determined by a material balance approach that calculates total recycled material input as a percentage of total material input in the manufacture of the package.

(6) "Recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use or product life cycle. Recycled material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

(7) "Reusable package" means a package that is used five or more times for the same or substantially similar use.

(8) "Rigid plastic container" means any package composed predominantly of plastic resin which has a relatively inflexible finite shape or form with a minimum capacity of eight ounces and a maximum capacity of 5 gallons, and that is capable of maintaining its shape while holding other products.

(1) ORS 459A.655 Minimum recycled content for rigid plastic containers. (1) Except as provided in ORS 459A.660(3), every manufacturer of rigid plastic containers sold, offered for sale or used in association with the sale or offer for sale of products in Oregon shall insure that the container meets one of the following criteria:

(a) Contains 25 percent recycled content by January 1, 1995;

(b) Is made of plastic that is being recycled in Oregon at a rate of 25 percent by January 1, 1995; or,

(c) Is a reusable package.

(2) A manufacturer's rigid plastic container shall meet the requirements in paragraph (b) of subsection (1) of this section if the container meets one of the following criteria:

(a) It is a rigid plastic container and rigid plastic containers, in the aggregate, are being recycled in the state at a rate of 25 percent by January 1, 1995.

(b) It is a specified type of rigid plastic container and that type of rigid plastic container, in the aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995; or

(c) It is a particular product-associated package and that type of package, in the aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995.

2) ORS 459A.660 Certification; records; exempt containers. (1) On or before March 1, 1995, and annually on or before March 1 thereafter, each manufacturer of rigid plastic containers shall submit a certification to the department. The certification shall include the total tons of rigid plastic containers the manufacturer produced or sold for sale or distribution in the state by resin type, the tons of recycled materials used in manufacturing those rigid plastic containers and other information the department may require to administer the requirements of ORS 459A.650 to 459A.655. Proprietary information included in a report or certification submitted to the department under this section shall not be made available to the general public. Manufacturers shall keep records documenting the certification for presentation to the department upon its request. Each manufacturer required to make a certification under this section may be audited by the department.

(2) Each manufacturer shall certify that the manufacturer has complied with one or more of the requirements of ORS 459A.655 during the preceding calendar year for all of the manufacturers rigid plastic containers subject to section (3) of this section.

(3) For any rigid plastic containers not certified under subsection (2) of this section, each manufacturer shall certify that such containers are exempt from the requirements or ORS 459A.655 for one of the following reasons:

(a) The packages are used for medication prescribed by physicians.

(b) The packages are associated with products produced in or brought into the state that are destined for shipment to other destinations outside the state, and which remain with such products upon such shipment.

(c) The packaging is necessary to provide tamper-resistant seals for public health purposes.

(d) The packages are reduced packages. A package shall qualify as reduced when the ratio of package weight per unit of product has been reduced by at least 10 percent when compared with the packaging used for the same product by the same packager five years earlier. In no case may packaging reduction be achieved, for purposes of this paragraph, by substituting a different material category for a material that constituted a substantial part of the packaging in question, or by packaging changes that adversely impact the potential for the package to be recycled or be made of recycled content. Exemptions under this paragraph shall be limited to five years, shall not be renewable and shall not be applicable to packages for which the ratio of package weight per unit of product increased after January 1, 1990.

(e) There has been substantial investment in achieving the recycling goal, viable markets for the material, if collected, can be demonstrated, the material is within five percent of the goal, there is substantial evidence of accelerating recycling rates and reasonable projections show that the material will meet the goal within two years.

3) Oregon Laws, Chapter 385, Section 34(e)(1): On or before January 1, 1993, the department shall report to the Legislative Assembly on whether to grant an exemption from the criteria established by section 34b of this 1991 Act [ORS 459A.655] for rigid plastic containers

that cannot meet the recycled content criterion and remain in compliance with United States Food and Drug Administration regulations.

ATTACHMENT C

PUBLIC COMMENT AND DEPARTMENT RESPONSE
to drafts of the
RIGID PLASTIC CONTAINER EXEMPTION
Report to the Legislature

Statutory Requirement

The Department is required under Oregon Laws, Chapter 385, Section 34(e)(1) to report by January 1, 1993, on whether to grant an exemption from the criteria established by ORS 459A.655 for rigid plastic containers that cannot meet the recycled content criterion and remain in compliance with the United States Food and Drug Administration regulations.

Schedule of the Draft Reports

The Department submitted two draft reports for public comment, requested written comment on both drafts, and invited oral testimony for the second draft at a public meeting. Thirty-seven different interested parties commented within the comment period. Since the comment period began, the Department has received dozens of letters and phone calls from Oregonians concerned about the plastic container exemption report. To date (November 23, 1992), 139 different interested persons have contacted the Department (114 written and 25 via telephone). Below is the schedule of the draft reports and comment periods:

	mailed to interested persons	written comments due to the Dept.	oral comments at public meeting
1st Draft	August 17, 1992	September 8, 1992	
2nd Draft	September 30, 1992	October 22, 1992	October 8, 1992

Summary of Comments

Comments received have been categorized under general topic headings. Individuals or organizations who made the stated or similar comments are listed by number after each general comment. A numerical listing of the commenters can be found on pages C-24 through C-27. The following are not to be interpreted as direct quotes from any of the identified entities. It is possible that a listed individual or organization may not agree with the comment in its entirety. It is also possible that some one may agree with the comment but was not listed as such. However, every effort was made to be as inclusive as possible.

A. Recycled Content and Federal Regulations

Comment 1: report should address more than just food containers & FDA regulations (1,9,15,16,20)

The Department's report appears to place an emphasis on food containers. FDA regulations cover more than just food. They also govern drugs, nonprescription drugs, and cosmetics. Containers and devices used in the medical field also come under purview of the FDA. There are other federal regulations guiding product packaging, which may conflict with ORS 459A.655. For example, the United States Dept. of Agriculture (USDA) has regulations governing dairy, poultry and meat products. Under the Environmental Protection Agency (EPA) is the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which places specific limitations on container thickness and forbids reuse of containers.

Department Response:

The Department agrees that previous drafts appear to emphasize food packaging and recognizes that the FDA regulates products other than food. This was addressed by using the term "regulated products." Thus, all containers whose products come under federal or state regulations are included.

Comment 2: safety and purity of product is primary concern (1,2,9,10,13,15,16,17,19,20,22,23,24,25,27,28)

Safety and purity of the food and product supply is tantamount to any other consideration. Food and product purity must not be jeopardized by the use of recycled material in packaging.

Department Response:

The Department recognizes the importance of food and product safety and purity and has emphasized it in the report. The report recommends a compliance method which does not unnecessarily jeopardize public health.

Comment 3: technology is limited and may not be broadly applied (1,2,3,9,15,22,24,25,30,32)

Current FDA-approved technology is limited. Technology does not currently exist by which a product manufacturer can guarantee that recycled plastic

packaging will have virgin properties and thereby meet safety standards the public has come to expect. Additionally, a recycled resin may only be used in the manner for which it received approval from the FDA. For example, recycled PETE made from physical regrinding of recycled plastic containers can be used only as indicated on the application: for contact with bakery and deli products at ambient temperatures (room temperature or cooler), for no longer than 2 weeks' time. Even if the recycled PETE becomes more widely available, this material is suitable only for use with certain types of foods. For other foods, based on their fill temperature, water or oxygen barrier requirements, chemical composition or storage state, other types of materials (such as HDPE, LDPE, polystyrene or polypropylene) are required. There is not yet satisfactory technology that will allow the use of recycled resins other than PETE, that will ensure safety and provide adequate protection to the food. Plastic packaging may not be switched in all cases from one resin to another.

Department Response:

The Department's recommendation maintains the January 1, 1995, compliance date for containers which can utilize recycled content. However, because technology is limited and may not be broadly applied, the recommendation establishes a method which allows time for technological advancement while promoting plastics recycling research and development.

Comment 4: FDA reviews food applications on case-by-case basis (32)

Until the FDA has a mechanism in place to consider comparable uses as a class, it will remain necessary for each company to request FDA consideration of each specific situation and proposed use.

Department Response:

The Department understands that the FDA is considering the possibility of developing a mechanism to identify comparable uses as a class for recycled resins. Until such time, case-by-case review by FDA will continue. By licensing products without minimum content, the Department has made allowance for this potential delay while at the same time providing funding to encourage increased plastics recycling.

B. It's An Options Law - There are Other Possibilities for Compliance

Comment 5: the law is an options law with maximum flexibility for compliance (4,5,6,7,8,13,26,29,31,33,34,38,41,43,46,49,54,55,59,62,68,71,78,79, 81,84,86,87,89,92,97,101,110,113)

This is not a "recycled content only" law. There are other options available for compliance. For example, manufacturers will be in compliance if a 25% recycling rate is met via four different possibilities: plastic containers in the aggregate, plastic containers by resin type, plastic containers by specific use (e.g., soda bottles or milk jugs), or by product-associated containers (e.g., a brand line of shampoo or cleaning products). Compliance can also be met if the containers are reusable. Containers may be exempt for five years if the containers have been reduced by 10% of their weight. Even substantial investment in plastics recycling and a recycling rate within 5% of the 25% goal, and with the trend indicating reaching the goal within 2 years, will enable a manufacturer to exempt its containers.

Department Response:

The Department received comment from industries using rigid plastic packaging stating that the options for compliance were problematic and that the only way to control one's "compliance destiny" was via recycled content. The caveat, however, is that more research time is needed to utilize recycled content. The overwhelming testimony on this issue led the Department to recommend removal of the options and changing the law to a recycled content law with licensing for those currently unable to use recycled content.

Comment 6: food packaging can be recycled into other durable products (4,8,13,29,36,39,40,104,106)

Food packaging does not need to be recycled back into food packaging. There are numerous durable products being manufactured out of recycled food packaging: PETE soda bottles are being used to make carpet. Polypropylene packaging is being used to fill sleeping bags and jackets and vest. HDPE is being used to make all sorts of household and industrial containers such as motor oil and detergent and shampoo bottles. PVC packaging is being recycled into pipe. Even resin #7, "other" or "multi-resin" plastic is being reground and used for plastic lumber and fence posts. Collection and processing capabilities should grow in the short term, with the material going into durable products other than packaging, while parallel efforts are being made to increase the ability to utilize recycled resin in food containers.

Department Response:

Durable items are a good market for recycled resins. The licensing fees are recommended as a funding source to develop recycled plastics markets.

Comment 7: companies can stimulate recycling and the use of recycled content (4,5,13,30)

There are many ways to stimulate recycling and the use of recycled content products. Companies themselves have the power to stimulate recycled-content containers by requesting that companies from which they purchase products place their products in recycled-content packaging. Another way to stimulate plastics recycling is to develop a collection and recycling program for your own packaging. Examples of this in the Northwest are Tetra-Pak and Procter & Gamble.

Department Response:

The public in general is placing demands on product companies to use recycled content and progress is being made, albeit not as fast as some would like to see. The fees generated by licensing (as recommended in the Department's report) could be used to develop recycled plastic markets with the goal of stimulating the collection and use of more recycled plastic.

Comment 8: California law waives FDA-regulated packages from recycled content only (4)

California's law, SB235, was developed after Oregon's law and grants a waiver from the recycled-content criterion to FDA-regulated packaging. There is no more reason to exempt FDA-regulated packaging from all criteria today than there was in 1991. California's law makes clear that FDA regulated packaging may be eligible for a waiver "from the post-consumer material content requirement .... but not from any other requirement" if certain conditions are met.

Department Response:

The Department recommendation is consistent with California Law in that there are no exemptions from the minimum content requirement. The licensing program is similar to California's waiver program.

C. Not An Options Law

Comment 9: options limited if not infeasible
(1,3,9,16,24,27)

The options for compliance are not realistically obtainable by 1995. Recycled content for FDA-regulated products is very slow due to research and the federal approval process. Reuse is limited to very few applications due to state and federal regulations. Weight reduction is limited, as most containers are naturally lightweight due to the economic benefits in material acquisition and shipping costs. Companies have no control over the recycling rate in Oregon.

Department Response:

The Department acknowledges these difficulties. Different viewpoints are strongly held on this issue. The Department has recommended removing the options altogether and licensing containers so that these companies can comply with the law, while at the same time generating monies from the licensing fees which can be used to improve plastics recycling and recycled plastic markets in Oregon.

Comment 10: recycled content: significant testing, time, expense for approval
(1,9,15,22,23,25,27,28,30)

Safety and purity for food, drug and cosmetic products is a top priority and caution must be used when making packaging with recycled plastic. There are many unknowns and possibilities for contamination for which protocols must be developed and tested. This requires testing, time and expense. When the testing and research is complete, there is no guarantee that FDA approval will be granted.

Department Response:

The Department acknowledges the lengthy and costly process required for using recycled content with these products and that product safety and integrity is important. This is one of the reasons the Department is recommending a change to the law.

the approval process at the end of such an extension period. Recognizing this, the Department's recommendation for "recycled content or licensing" enables companies to comply by 1995, while also giving those obtaining an annual license the incentive to move to recycled content packaging. Extensions or exemptions are no longer an issue in the Department's final recommendation.

Comment 24: plastic packaging bearing recycling symbol tells public it's recyclable (18,40)

Plastic packaging bearing a recycling symbol indicates to the public that it is recyclable. Publicity from the plastic industry is telling the public that plastics are recyclable. Let the industry prove its claim.

Department Response:

There are two possible symbols the commenters are referring to: the symbol required by Oregon state law ORS 459A.680 on or near the bottom of a rigid plastic container or bottle (a chasing-arrows triangle around the Society of Plastics Industry [SPI] resin code numbers #1 through #7, with the resin's abbreviation letters below the triangle), but which companies are uniformly using across the country; or, some other type of chasing arrows symbol placed on the packaging. The SPI resin code was designed for ease of sorting plastics for recycling, but is commonly understood by the public to mean the packaging is recyclable, when in fact, that is not the meaning of the label. Recycling opportunities do not generally exist for all plastic resins. The Department recommendation for market development funding is intended to enhance recycling opportunities for all plastic resins.

E. Exemption

Comment 25: full exemption for all FDA-regulated containers (1,3,9,15,22,25,27)(12-food exemption)

Rigid plastic containers holding FDA-regulated products cannot use recycled content and stay in compliance with FDA regulations. The other methods for compliance are not realistically achievable. Therefore, these containers should receive full exemption.

Department Response:

Because a full exemption does not get the state to the goal of improved plastics

Comment 11: commercial availability of recycled resins: cost, quantity, quality at issue (2,10,25)

The Department refers to the commercial availability of FDA-approved recycled resins yet does not mention the relative cost of these resins compared to virgin resins. In order to use recycled content, should a company be expected to purchase the more expensive recycled resins and raise their prices, thus losing a competitive advantage? In addition, there is no recognition that both quantity and quality recycled resins are easy to come by. Running an Oregon-only container line is not practical and large companies must obtain large amounts of dependable plastic to make 25% recycled content containers.

Department Response:

Under the recommendation in the Department's final report, companies not able to obtain sufficient quantities of quality recycled resins can license their containers in Oregon until they are able to acquire the quality and volumes needed for their business.

Comment 12: reuse is not an option for most (1,3,9,15,22,23,25,27)

There are health and safety concerns about contamination in the container migrating to the product. Containers may be used by the consumer to hold a deleterious substance such as a pesticide or used motor oil, and companies may not be able to guarantee that those containers will be effectively cleaned or removed from reuse. Even if the container were designed and marketed for refill or reuse by the consumer without ever having to come back to the original product manufacturer, companies have no control over consumers' behavior. Companies cannot guarantee that the containers will be refilled.

Department Response:

Department investigation reveals examples of reuse with milk and water bottles. While the report's primary recommendation emphasizes recycled content, reuse is possible and important and therefore the Department recommends that credit be given to reusable containers.

Comment 13: most containers are already reduced as much as possible (1,2,3,9,15,22,23,24,25,27)

Most containers are already lightweight to the maximum extent possible

because it makes economic sense when it comes to material acquisition and shipping costs.

Department Response:

This is one of many arguments that led the Department to recommend abandoning the options for compliance and relying on a recycled content and licensing approach.

Comment 14: no control over Oregon's recycling rate
(1,2,3,9,25,27)

Companies have no control over Oregon's recycling rate. A company can advertise recycling all it wants, but it is the Oregon consumer who must ultimately recycle the container. Companies usually require a two year advance for marketing plans and cannot put all their eggs in one basket and rely on the 25% recycling rate (which the Department will not have calculated and published until after the January 1, 1995 compliance date).

Department Response:

An association working with polystyrene has been successful in recycling its members' packaging in Oregon. Companies may not control Oregon's recycling rate, but they can contribute to it. The Department's recommendation eliminates the 25% recycling rate exemption option.

Comment 15: how can a company with #7 plastic comply?
(10,23)

If a company's product must be packaged with a #7 resin due to the performance requirements placed on the container for the product, how can a company comply? Due to current technology and federal regulations, recycled content is not possible within the statutory time frame. The best bet would be a 25% aggregate recycling rate but companies cannot plan on this happening. The container will not meet the "by resin," "product-specific," or "product-associated" recycling rates. The containers cannot be reused because of federal regulations and the container is already reduced as far as possible to maintain package stability and product safety. These products will be forced off the shelves in Oregon. It is doubtful that the legislature intended to ban these products. These containers should be exempt because there is no method for compliance.

Department Response:

The Department recognizes the limitations on certain classes of containers for compliance, and notes that there has been some success with #7 being recycled back into plastic lumber and fence posts. The Department's recommendation for licensing would make compliance possible for companies which cannot comply via current options in the law.

Comment 16: ability to comply should be available to all impacted by law (9)

Many small and medium-sized companies do not have the same ability to comply with this law as do some of the larger companies. Standards should not be based on the success of one or two companies. Such requirements should be imposed only when they become technologically feasible and attainable by any company making a good faith effort to comply.

Department Response:

The Department feels that its recommendation for licensing can withstand the "fairness" test for compliance. Some sort of scale, based on ability to pay, size of company, sale of products in Oregon (not by monetary sales, but by units or products sold), or some other equitable measuring stick, can be developed.

Comment 17: companies may have to pull products from Oregon shelves (9,10,23,28)

Compliance with this law is not possible for many companies. These companies may have to remove their products from Oregon shelves.

Department Response:

It is not the intent of the law or this recommendation to remove products from Oregon shelves. The concept of a license fee is that it is fairly administered and contributes to Oregon's recycling goals.

D. No Exemption

Comment 18: this law was agreed to by the plastics industry: do not weaken by exemption or delay
(4,8,18,29,37,40 and generally 34 through 114)

This law was passed after much compromise and agreement. The plastics industry agreed to this law because they felt the options for compliance were achievable. Now many of them say they cannot meet any of the options and are trying to weaken the law. Do not recommend exemptions or delays.

Department Response:

Numerous industries use rigid plastic packaging: toys, cleaning products, automotive products, healthcare, personal care, cosmetics, foods, nonprescription drugs, garden products, etc. While it is true that the Department has received comments from many affected companies stating that they cannot meet one and/or all of the options for compliance by the 1995 date, some indicate they are searching for new, creative ways to comply. Our recommendation reflects their concerns about realistically complying with the options in the law and provides licensing for those not able to use recycled content by 1995.

Comment 19: endorse no exemption
(4,5,6,7,8,13,18,26,29,31,33 through 114)

Do not recommend an exemption from the criteria. Any exemption would weaken this law. Stand firm with the agreements made in SB66.

Department Response:

The Department received written comments very similar in nature to the above statement from over 70 different interested parties and also received 25 telephone calls requesting the same. This is a very polarized issue with many interested parties on either side seeking opposite recommendations in this report: either "no exemption" or "full exemption." Oregonians want plastics recycling now. The recommended licensing fees for those companies whose containers do not meet the 25% recycled content requirement by 1995 could be used to develop plastics recycling infrastructure and recycled plastics markets in Oregon.

Comment 20: granting an exemption is premature and removes incentive for research
(4,7,8,26,29,33)

Given the rapid changes in recycling technology that are occurring, an exemption would be premature at this time. The law does not become effective until 1995. Rapid changes in technology are continually being made, and by 1995 there could be many technological advances that would make recycled content use in plastic food packaging commonplace. If companies are exempted from recycled content requirements, then a major incentive for conducting research and applying for FDA non-objection is removed.

Department Response:

The Department recognizes that technology is rapidly changing but also understands that not all technological problems in using recycled plastic may be solved by 1995. The Department also believes that if companies are exempted from recycled content criterion, a major incentive for research and the use of recycled resins is removed. This is one of the reasons the Department is recommending changing the law - to a straight recycled content requirement with an annual licensing fee until a minimum of 25% recycled content is manufactured into the container. The fee is not intended as a way for companies to buy their way out of recycled content; rather, the fee should provide incentive to move toward the use of recycled content.

Comment 21: exempting FDA-regulated products from all criteria could be detrimental to Oregon's plastic recycling rates and markets
(4,5,6,8,29)

If over half of Oregon's rigid plastic containers are exempt from all criteria simply because they cannot use recycled content at this time, this could seriously impact the ability of the 25% recycling rate to be met. Companies which might otherwise place efforts on improving the recycling rate instead of utilizing recycled content, probably and realistically would not make that effort, if an exemption were granted.

Department Response:

The question posed by the Legislature, should FDA-regulated containers be exempted from all criteria if they cannot meet the recycled content criterion?, places this concern in the middle of the debate. The Department's recommendation of recycled content or licensing enables all companies with regulated rigid plastic containers to comply with the law, without having to exempt a major portion of the rigid plastic containers sold in the state.

Comment 22: packaging trends moving toward non-recyclable materials (5,7,8,68)

By recommending an exemption the state would be creating an unlevel, unfair playing field. One consequence is that some companies are finding it easier to switch from packaging that has to meet more rigorous recycling standards, such as glass bottles, to plastics packaging with its less demanding requirements. For example, in the past few years a number of food products, such as peanut butter, have switched packaging from clear glass containers to PETE or PVC rigid plastic containers. This switch includes national brands as well as house brands. The market for clear glass is very strong in Oregon, and elsewhere, while it is impossible to find an adequate market, if any, for PVC and non-soft drink PETE in Portland, let alone the rest of the state. Glass containers have no options under Oregon law, and would be at a further disadvantage to plastic food and beverage containers if plastic food and beverage containers were given an even bigger advantage of two years to comply.

Department Response:

The Department does not believe that the minimum recycled content sections of SB66 (specifically glass and plastic) were designed to stimulate the movement of packaging from one material category to another. Creating a level playing field is one of the reasons behind the Department's recommendation to move to a straight recycled content law - similar to the glass, newsprint and telephone directory 25% minimum recycled content requirements. The Department does believe, however, that there are technological differences when using recycled content plastic with food and other products which in some cases may take longer than 1995 to solve. Therefore, the recommendation includes the availability of a license until the 25% recycled content is achievable.

Comment 23: DEQ cannot base a decision on possible action/inaction of FDA (8)

The Department's argument for two more years' extension is flawed because it relies on action or inaction of the FDA. If we wait two years for the FDA to act, and it does not act or provides no definitive answers, then must we wait another two years after that? How long will the ultimate delay be?

Department Response:

Even though the Department suggested in the second draft report that this two year extension be limited to one time, there may be no significant changes in

recycling and recycled plastics markets, the Department does not consider exemptions acceptable.

Comment 26: if FDA-regulated containers are exempted, remove these containers from recycling rate computations
(4,8,29)

Currently the majority of the plastic being recycled in Oregon are food containers - PETE bottles and HDPE milk jugs. An exemption from all of the criteria does not make sense when the exemption would apply to the same materials which are being recycled at the highest rate. If an exemption is going to be granted, the Department should consider changing the wording regarding the 25% recycling rate so that rigid plastic food containers could not count toward that recycling rate.

Department Response:

The Department is not recommending exemptions. However, if the Legislature were to amend the law as it now stands to allow for exemptions, it may be difficult, if not impossible, for recyclers to separate FDA-regulated packaging from other non-regulated packaging. With the exceptions of milk jugs and soda bottles, recyclers do not typically track the recycled containers via categories such as food or non-food containers. Overall, calculating the recycling rates for rigid (versus all) plastic containers and their various resins could prove to be too cumbersome.

Comment 27: exempting food (or drugs or cosmetics) packaging would not affect Oregon's solid waste
(15,16,25)

Exemption of food (or drug or cosmetic) packaging would not signal a retreat from the general commitment to further plastic recycling. Plastic food (or drug or cosmetic) packaging represents a very small amount of the solid waste stream; even if that entire amount were converted to 25% recycled-content materials, there would hardly be a noticeable reduction in the solid waste stream in Oregon.

Department Response:

The Department believes it would be a retreat from the commitment to further plastic recycling if an exemption from the criteria were granted to all containers holding FDA regulated products. Therefore, the Department's

recommendation of offering a license for compliance recognizes the inability of all regulated containers to use recycled content packaging at this time.

Comment 28: Oregon regulations should be consistent with California regulations (21)

Oregon regulation should be consistent with California's SB235 regulations (SB235 is a law similar in nature to Oregon's SB66). Uniformity with regulations and reporting would help avoid costly inefficiencies in trying to meet varying state requirements.

Department Response:

The Department believes the recommendation is consistent with California law. Oregon's Department of Environmental Quality and the California Integrated Waste Management Board have been sharing information about activities and have been exchanging staff-generated documents. We will continue to keep in touch with each other and when possible will make every effort to keep regulations and reporting procedures consistent.

F. Extension

Comment 29: two-year extension not enough time: need provision for review (1,2,3,9,22,23,27,28)

There are many unanswered questions for industry, researchers, and state and federal regulators. The recommendation for a two-year deadline is totally unrealistic. These commenters urge DEQ to develop a recommendation which is sensitive to the higher priority for food and product safety, and which allows flexible scheduling in view of technical achievements.

Department Response:

The Department recognizes that not all technological questions can be answered within two years time. This law was passed in 1991, and a two-year extension would give those needing an extension a total of 6-1/2 years to do research. If a steadfast compliance date is not provided, the incentive for compliance is weakened. The Department's recommendation reflects the recognition that not all containers can safely use recycled plastic by 1995 and offers a license for those containers. The Department believes its recommendation is sensitive to the needs of industry and the environment.

Comment 30: extension should be a minimum
(33)

If DEQ feels that some modification of the current deadline is absolutely necessary, it should be the very minimum extension of time which would allow this issue to be considered again after industry has made a good faith effort to comply with current requirements. This argues for a six-month extension from January 1 to July 1, 1995 so that the issue can be considered again by the 1995 Legislature.

Department Response:

This minimum extension was considered by the Department but it was felt that this simply does not allow enough time for analysis of the "good faith" efforts or the recycling rate surveys. Certification/reporting is required by March 1, 1995. The task of determining "good faith" efforts could be staff intensive and potentially highly subjective. The recommendation made by the Department eliminates the need for constant renegotiation of a deadline.

Comment 31: what happens at end of extension period?
(10)

The idea of a two-year extension rate is interesting, but the wording of "one time" (in the second draft report) may put the state statute in conflict with the FDA requirements. What would happen on January 1, 1997 if the FDA has not sent letters on non-objection.

Department Response:

The current recommendation does not include an extension. If a container cannot use recycled content by January 1, 1995, then the container can be licensed.

Comment 32: two-year extension does not create markets or increase plastics recycling
(4,7,8)

In the absence of any other state action, a delay in implementing the standards incorporated in SB66 will cause severe harm to the existing and future plastics recycling industry in Oregon. We need improvement now.

Department Response:

The Department agrees. Therefore, the Department's recommendation reflects the concerns of both the regulated community and the recycling community by offering a license to those companies whose containers cannot currently use recycled content. The fees generated by those licenses would be used for improving plastics recycling and recycled plastics markets in Oregon.

G. Special Consideration Exemptions

Comment 33: nonprescription drugs, cosmetic-drugs, medical devices, infant formula, medical food deserve same exemption as "prescribed by physician" (9,16,19,28,30)

For many of the same health and safety reasons that "medications prescribed by physicians" are exempt under this law, nonprescription drugs, cosmetics, cosmetic-drugs, and personal care products should be exempt. While the regulations and testing for these products differ from food, in each case the Agency and the manufacturer must consider the possibility that contaminants may migrate from packaging that comes in contact with the product. If the FDA were to determine the product to be adulterated due to contaminants from packaging, the Agency would have the same regulatory authority as for food, prescription drugs and devices top seize or enjoin sale of the product and to prosecute the manufacturer. Many of these products are ingested or placed on the skin and around the eyes and mouth.

Department Response:

The Department recognizes that product safety and public health are important, and that testing for new packaging can be costly and time consuming. The Department's recommendation reflects this and allows licensing for companies whose containers cannot use recycled content by 1995.

Comment 34: products regulated by the Federal Insecticide, Fungicide and Rodenticide Act should be exempt
(16)

The Environmental Protection Agency regulates pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). In addition, the transportation of these materials in commerce is regulated by the Department of Transportation under the Hazardous Materials Transportation Act. Stringent manufacturing and performance standards have been promulgated by

the federal government with respect to the containers for these products. All of these standards cannot be assured if recycled content is required to be used in FIFRA-regulated product containers. FIFRA products are already exempt from recycled content requirement under the California law and we suggest that FIFRA products be exempted from the Oregon recycled plastic content requirements. At a minimum these products should be treated in the same manner as the FDA-regulated products addressed in your report.

Department Response:

The Department's recommendation allows for FIFRA products to be licensed until these containers can safely use recycled plastic.

Comment 35: expand "prescribed by physician" to include all licensed prescribing entities
(17)

Present language only exempts "medications prescribed by physicians." The commenter believes the intention of the legislature was to also exempt prescription drugs before they are actually prescribed, as well as medications prescribed by any health care professional (not just physicians) licensed by the state of Oregon to prescribe medications.

Department Response:

The Department agrees and is making this recommendation.

Comment 36: give permanent exemption to source reduced containers
(3,24,25)

The exemption for source reduced packages has a built-in bias against companies that have already reduced their package weight per volume as much as possible. ORS 459A.660(3)(d) states that packages in which the ratio of package weight per volume has been reduced by at least 10% as compared to the same package five years earlier are exempt from the certification requirements of ORS 459A.655. The inequity of this exemption is clear. If a company which has used excessive packaging for years then reduces the excess plastic that shouldn't have been there in the first place, it receives an exemption from the requirements of ORS 459A.655. Another company, which has always used the minimum amount of plastic possible in its containers, cannot receive the exemption. This company must therefore take additional steps to comply with the law and is thus penalized for its

proactivity. If a company could certify that its packages were already at a minimum weight per volume, it should also be exempted from the requirements of the law.

Department Response:

The Department has heard from many interested parties that their containers are already reduced as much as possible because a light-weighted package reduces costs for material acquisition and shipping. If containers in general are already source reduced as far as possible, then exempting all these containers from all of the criteria would not serve to improve plastics recycling in Oregon. As a result, the recommendation does not include maintaining the "10% reduction in weight" exemption option.

H. Reporting Entity

Comment 37: responsibility for options falls on different entities (3,4,14)

The problem with reporting is that responsibilities for the different options in the law are most easily assumed by different sectors. Some of the compliance options are based on the product in a container, not just on the container itself. Recycled content can best be verified by the container manufacturer. Product manufacturers have the better ability to report on recycling rates, reuse of containers and reduction of containers. Rather than have a two-party reporting system, the law has one, with the product manufacturer responsible for obtaining recycled content information from the container producer.

Department Response:

Any reporting system will likely require cooperation on behalf of both the container manufacturer and product manufacturer. The Department's recommendation allows for these entities to decide between themselves which company is in the better position to identify the recycled content of the container, OR to obtain the license.

Comment 38: product manufacturer specifies packaging (3,4,8,10,14,21,29,30)

There is a public policy reason for keeping responsibility on product manufacturers. Companies that manufacture or package products have a wide variety of containers to choose from. A company can choose from seven types

of plastic resins, glass, aluminum, steel, or paperboard. The law now puts responsibility on the company that chooses the type of packaging it will use. Since these companies have the ability to determine how their products will be packaged, keeping them responsible will promote informed decision-making and lead to more environmentally sound packaging choices, such as switching from a generally non-recyclable plastic #7 to a more recyclable plastic #2.

Department Response:

In most cases, product manufacturers specify the containers used for their products and are in a position to make environmentally sound packaging choices. The Department's recommendation keeps all parties involved and interested in working towards a full-circle recycling solution.

Comment 39: near impossible for container manufacturer to track containers to Oregon shelves
(3,10,14,21,30)

Container manufacturers usually have no knowledge or direct control over what products are packaged and sold in Oregon. For a manufacturer of containers to certify its own containers in Oregon, it would have to receive information from customers, from the product manufacturers and their customers, from the distributors and their customers, and from the retailers as to what products are sold in Oregon. The name on the product label on the shelf in Oregon is the only logical place to start the certification process. In most cases, plastic bottles and containers do not have producer names on them.

Department Response:

The Department's recommendation allows information and licensing to come from either the container manufacturer or the product manufacturer (company with the label on the container). As recommended, paperwork shall accompany the containers to Oregon indicating the containers have recycled content or that a license to sell the containers has been obtained.

Comment 40: packagers have no way to certify recycled content
(1,15,22,23)

Certification of compliance with the recycled content criteria must come from the packaging manufacturer, since the product manufacturer has no knowledge of or means to verify the recycled content of the package. Certification of the

recycled content by the product packager could potentially impose liability on product companies for activities of upstream suppliers over which they have no control.

Department Response:

The concept is that paperwork identifying the recycled content of containers should accompany the rigid plastic containers into the state and to the point of sale.

I. Considerations for the Reporting Process

Comment 41: reporting complex and sensitive: need confidentiality measures (2,3)

The issue of reporting is both complex and sensitive. Special measures should be taken to ensure the confidentiality of any information submitted by reporting requirements.

Department Response:

ORS 459A.660(1) states "Proprietary information included in a report or certification submitted to the Department under this section shall not be made available to the general public." The Department takes very seriously all claims of confidentiality and proprietary information and has established procedures for document security, including limited staff access to locked file rooms and locking file cabinets.

Comment 42: certifications of compliance should be modeled after CONEG's Toxics Restriction Legislation (3,9,10,14,21)

Requiring certification dealing with the total tons of rigid plastic containers produced or sold in the state by resin type and the tons of recycled materials used in manufacturing the rigid plastic containers will result in an avalanche of documentation submitted to the Department, despite the fact that the manufacturer will retain more detailed documents on file. A workable, realistic approach to ensure compliance is to establish a certificate of compliance system similar to that in the 14 states with laws prohibiting metals in packaging. The Coalition of Northeast Governors (CONEG) Model Toxics Legislation law states: "The certificate of compliance shall be signed by an authorized official of the manufacturing or supplying company.... The

purchaser shall retain the certificate of compliance for as long as the package or packaging component is in use. A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component. Certificates of compliance, or copies thereof, shall be furnished to the [state administrative agency] upon its request and to members of the public..."

Department Response:

The CONEG toxics packaging restrictions certification process is a possibility for reducing paperwork demands on the state from its rigid plastic container certification. If the Legislature does not adopt the changes to the law as recommended in this report, then this type of process should be taken into consideration as a possible model for certification.

Comment 43: review on good faith appears too subjective
(9)

The Department's second draft report proposes that starting in 1995, companies must approach the Department on a case-by-case basis for any extension. The likelihood of obtaining an extension from DEQ appears to be so subjective and uncertain that packagers trying to make packaging for 1995 won't find out until then if they are eligible. Marketers need to know their choices in packaging much in advance of that time.

Department Response:

This is one of the reasons the Department's recommendation does not include a process to determine steps taken to use recycled content.

Comment 44: consolidate reporting through associations
(4,8)

Extra handling of information can be eliminated by consolidating reporting through trade associations.

Department Response:

This process for reporting would eliminate handling of paperwork by the state. It is also possible that companies would be more willing to submit information through their trade association than directly to the Department, despite the law's provision for the handling of proprietary information. If the Legislature does not move to adopt the changes to the law as recommended in this report,

this type of certification process should be considered for streamlining reporting.

Comment 45: latitude with recycled content calculation
(21)

Companies could be given latitude to comply with the 25% recycled content requirements either on a product line average basis or ideally on a company-wide average basis. For example, if a product containing several flavors or sizes uses a total of 100 lbs. of packaging, the requirement would be that 25 lbs. of the total be recycled material. That 25 lbs. could be distributed uniformly across all flavors or sizes or could be used exclusively for one or two flavors or sizes at the discretion of the manufacturer. This option would not in any way reduce the amount of material being removed from the waste stream. It would allow manufacturers to more efficiently comply with the law.

Department Response:

The Department agrees this would allow manufactures to comply with the law more efficiently. This recommendation, and other methods for calculating recycled content compliance, should be taken into consideration with any changes the Legislature makes with the law.

Comment 46: only those seeking exemption should have to report
(29)

An annual certification process is too complicated and should be simplified. Any annual certification process will generate excessive paperwork and costs by both industry and the state. To reduce this cost, the certification process could be done by exemption. Only those products desiring exemption should need to submit documentation. A random audit procedure could still be used to assure compliance.

Department Response:

The recommendation reduces annual paperwork submitted to the Department. Documentation must accompany the container into Oregon. The recommendation intends that the regulatory agency assigned review of this documentation will perform spot checks at retail establishments to certify recycled content, reusability or container license.

Summary of Commenting Interested Parties

The following interested parties submitted position letters to the Department *before* the report was developed. The interested parties are listed in the order that their letters were received and are given a reference number. These numbers are used to identify the party with a comment.

		Received by Department
1.	Northwest Food Processors Association	April 1, 1992
2.	Grocery Manufacturers of America	May 8, 1992
3.	The Procter & Gamble Company	May 12, 1992
4.	Oregon St. Public Interest Research Group	May 18, 1992
5.	Recycling Advocates	May 22, 1992
6.	Oregon Environmental Council	May 26, 1992
7.	Resource Recycling	May 29, 1992
(1).	Northwest Food Processors Association	June 11, 1992
8.	Association of Oregon Recyclers	July 1, 1992
9.	Cosmetic, Toiletry and Fragrance Assn.	July 29, 1992
(4).	Oregon St. Public Interest Research Group	July 31, 1992

The following is a list of interested parties who submitted written or oral comment on the first and second draft reports *within* the comment period established by the Department:

No.	Individual or Organization	Written Comment 1st Draft	Written Comment 2nd Draft	Oral Comment 2nd Draft
10.	Molded Container Corporation	X	X	X
11.	Nature's Fresh Northwest	X		
12.	Union Carbide Chemicals & Plastics Co.	X		
13.	Metro	X	X	
(9).	Cosmetic, Toiletry, Fragrance Association	X	X	X
(4).	Oregon St. Public Interest Research Group	X	X	X
(6).	Oregon Environmental Council	X		
(5).	Recycling Advocates	X		
14.	Continental Plastic Containers, Inc.	X		
15.	Kraft General Foods, Inc.	X	X	
16.	Abbott Laboratories	X	X	X
17.	Pharmaceutical Manufactures Association			X
(8).	Association of Oregon Recyclers	X		X
18.	Becker Projects	X		
19.	Health Industry Manufacturers Association	X	X	
(2).	Grocery Manufacturers of America	X	X	X
(1).	Northwest Food Processors Association	X	X	

No.	Individual or Organization	Written Comment 1st Draft	Written Comment 2nd Draft	Oral Comment 2nd Draft
(3).	The Procter and Gamble Company	X	X	X
20.	Baxter Healthcare Corporation	X		
21.	The Clorox Company	X	X	
22.	National Food Processors Association	X		X
23.	Truitt Brothers, Inc.		X	X
24.	General Mills, Inc.		X	
25.	Helene Curtis, Inc.		X	
26.	City of Eugene		X	
27.	Chesebrough-Pond's USA Company		X	
28.	Nonprescription Drug Manufacturers Assn.		X	X
29.	City of Portland		X	
30.	Owens-Brockway, Plastics & Closures Unit		X	
31.	Clackamas County		X	
32.	U.S. Food and Drug Administration		X	
33.	Lane County		X	

The following is a list of citizens and organizations who, in general, wrote the Department letters encouraging no exemption or delays in the criteria:

		Received by Department
(5).	Jeanne Roy (Recycling Advocates)	September 4, 1992
34.	Campus Recycling, University of Oregon	October 15, 1992
35.	Suzanne Johannsen	October 16, 1992
36.	Oregon Sanitary Service Institute	October 16, 1992
37.	Sharon R. Tremble	October 22, 1992
38.	Catherine Collins	October 26, 1992
39.	Tom Throop, Deschutes Co. Commissioner	October 26, 1992
40.	Bend Recycling Team Board Members	October 26, 1992
41.	Tina Springer	October 29, 1992
42.	Elven & Geraldine Sinnard	October 30, 1992
43.	June Fleming	November 2, 1992
44.	Bob Carleton	November 3, 1992
45.	Jan Bisermics	November 3, 1992
46.	Kim McDonnell	November 3, 1992
47.	Loen A. Dozono	November 4, 1992
48.	Theresa A. Kempenich	November 4, 1992
49.	Debra C. Jones	November 4, 1992
50.	Sharon Conroy	November 5, 1992

		Received by Department
51.	Kathleen Gow	November 5, 1992
52.	Ann S. Holznagel	November 5, 1992
53.	Suzanne E. Adams	November 5, 1992
54.	Catherine B. Nollenberger	November 5, 1992
(7).	Jerry Powell (Resource Recycling)	November 5, 1992
55.	Randy & Jill Hack	November 5, 1992
56.	Patti Rouse	November 5, 1992
57.	Liza & Gerald Maness	November 5, 1992
58.	Kathy Luiten & Carl Goodwin	November 5, 1992
59.	Mary E. Kleiner	November 6, 1992
60.	Pat Wolter	November 6, 1992
61.	Jerry Porter	November 6, 1992
62.	Christine Farrington	November 6, 1992
63.	Jon J. Kart	November 6, 1992
64.	Sharon Bobbe	November 6, 1992
65.	Nancy L. Tracy	November 9, 1992
66.	Deja, Inc.	November 9, 1992
67.	Victor Damgaar & Victor Nielsen	November 9, 1992
68.	Steve Apotheker	November 9, 1992
69.	Rick Craycraft	November 9, 1992
70.	Jeremey V. Sarant	November 9, 1992
71.	Susan Denning	November 9, 1992
72.	Florence Fleskes	November 9, 1992
73.	Lou Stagnitto	November 9, 1992
74.	Holly P. Goldsmith	November 9, 1992
75.	Mary Preston	November 9, 1992
76.	Susan Brenner	November 9, 1992
77.	Dr. & Mrs. Raymond E. Balcomb	November 9, 1992
78.	Mary S. Coats	November 9, 1992
79.	Jeanette R. Egger	November 9, 1992
80.	Charlie Blank	November 9, 1992
81.	Louise Tippens	November 9, 1992
82.	Kate Kent	November 9, 1992
83.	Hazel S. Balcomb	November 9, 1992
84.	Mary Blankevoort	November 10, 1992
85.	Ginger Babin	November 10, 1992
86.	Margaret & Steven Bismarck	November 10, 1992
87.	David A. & Karen Force	November 10, 1992
88.	Northwest Women in Recycling	November 12, 1992
89.	Shiela Carlson	November 13, 1992
90.	Joanne Weiss	November 13, 1992
91.	Renee Sessler	November 13, 1992
92.	Dena Turner	November 13, 1992

		Received by Department
93.	Nancy Chaney	November 13, 1992
94.	Teresa Giacomini	November 16, 1992
95.	Doug Frank	November 16, 1992
96.	Diane Conradi	November 17, 1992
97.	Scott Turner	November 17, 1992
98.	Barbara McGaa	November 18, 1992
99.	Joseph Walker	November 18, 1992
100.	Diane L. Coaser	November 18, 1992
101.	Quinton Carlson	November 18, 1992
102.	Charmian Mass	November 20, 1992
103.	William K. Harris	November 23, 1992
104.	Lee Jolyk	November 23, 1992
105.	James Vincent Soyers, Jr.	November 23, 1992
106.	Dave Bradley	November 23, 1992
107.	Gretchen Stolte	November 23, 1992
108.	S.A. Brown	November 23, 1992
109.	Columbia Co. Land Development Services	November 23, 1992
110.	Robert Van Newkirk	November 23, 1992
111.	Pamela Strong	November 23, 1992
112.	Kevin Lucas	November 23, 1992
113.	Davis E. & Virginia L. Gaines	November 23, 1992
114.	K.J.H.	November 23, 1992

The Department continues to receive telephone calls encouraging it to not recommend any exemptions or delays in the recycling criteria. A total of 25 telephone calls have been received to date (November 23, 1992).

ATTACHMENT D

RECORD OF PUBLIC COMMENT

Including: - October 8, 1992 Meeting Summary
- Written Comments from the Public

SUMMARY OF MEETING COMMENTS

from

DEPARTMENT OF ENVIRONMENTAL QUALITY

PUBLIC MEETING ON PLASTICS EXEMPTIONS

October 8, 1992

Report Produced by
CONFLUENCE NORTHWEST
Mary C. Forst
October 15, 1992

D-2

DEPARTMENT OF ENVIRONMENTAL QUALITY
PLASTICS EXEMPTION PUBLIC MEETING

OCTOBER 8, 1992

Summary of Meeting Comments

Speaker:
Dr. Henry Chin (Food)
National Food Processors Association
6363 Clark Avenue
Dublin, California 94546

Written comments attached.

Dr. Chin is the Senior Director of the Chemistry Division, Western Research Laboratory, which conducts food science research. Dr. Chin described the technical challenges facing the food industry in attempting to create food packaging using recycled materials without compromising the safety and wholesomeness of the food contained therein. He described studies addressing the feasibility of a reclamation process, stressing the large number of questions still unanswered, and perhaps not yet asked. He noted the irony of consumer and environmental groups demanding a negligible risk standard for situations such as pesticide residues in foods, while apparently being willing to accept an unknown level of risk from potentially unsafe food packaging as long as an arbitrary deadline is met. He recommended an additional Option D for DEQ's recommendations; this option would be a full exemption for food. He noted that FDA's process is very slow, taking years to complete action even on simple petitions.

Dr. Chin closed with an offer to talk with DEQ about his research and results as they become available, and to have DEQ representatives visit his lab. At the close of the meeting, Dr. Chin recommended that there be a day long workshop with representatives of industry, recyclers, and DEQ, so that the fruitful problem solving discussion which began after testimony was completed could be continued.

Speaker
Chuck Farris (food)
Truitt Brothers, Inc.
PO Box 309
Salem, OR 97308

Mr. Ferris explained that their food is sold in a microwavable package which can be eaten out of. It is shelf stable; no freezing or refrigeration is required before opening. It is multi-layered and has a recycling code of 7 - "other", and is difficult to separate. It is not reusable, because it is heat sealed, and the same container cannot be re-sealed. When the cover is removed, it leaves a residue which prevents re-sealing. It cannot be source reduced, as they are already using the lowest content they can: the product needs an oxygen barrier to assure safe shelf life; and it needs to withstand high temperature and pressure in processing to be shelf stable. He is concerned about being able to meet the recycled rate; the other alternatives are not available. They are currently investigating various options, but have nothing definite now.

Mr. Ferris wanted people to understand the effect there would be on his company if they were not able to continue to use this container: it is not their only product, but it is such an important part of their business that losing it would have a serious financial impact on the company and on their 75 FTE employees. He recommended that DEQ eliminate the one-time restriction on the extension, and he supports the current provisions on certification.

Speaker:
John Normandin (container manufacturing)
8823 SE 13th
Portland, Oregon 97202

Mr. Normandin stated that customers specify the packaging requirements; virgin materials are specified because that is what FDA requires. He is concerned with the one-time-only exemption in DEQ's second draft: what will happen at the end of it? Our statute could be in conflict with FDA rules. If FDA approves a material, but it costs twice as much, the state may force companies to use it, thereby causing the company to become non-competitive with other businesses up and down the coast.

Petitioning the FDA is not an option for them. They cannot keep up with R & D; they don't even talk to the FDA. Their suppliers do. Companies take their specifications to the companies who supply businesses like Mr.

Normandin's with their materials. Unless customers push them (Mr. Normandin) to do research, they don't do it.

Mr. Normandin recommended a full food exemption, and taking off the one-time-only limitation.

On the issue of definition of manufacturer, he explained that although changing from food manufacturer to container manufacturer might seem simpler because there were only 4 or 5 of the latter in Oregon, in fact it is impossible for them to track where their packages go and track which of them come back to Oregon. He recommended that manufacturer be defined as the product manufacturer, and that they be required to keep on file certification from their container supplier. He mentioned as an example that his company currently certifies to customers that their product contains no heavy metal.

Speaker
Kimberly Vollbracht (cosmetic, OTC, general)
Procter & Gamble
PO Box 599
Cincinnati, OR 45201

Ms. Vollbracht stated that Procter & Gamble supports the bill and wants to see it work for everyone, including DEQ. The company has chosen recycled content as the only viable way for them to comply. They can specify content to container manufacturer, and thus have control over that aspect. It is crucial that they be able to plan ahead and know they willbe able to sell their products in Oregon, so control is essential. They have already source reduced; options there are limited, and that option expires after 5 years. They recommend that DEQ change that limitation, and they would work with DEQ to do that. They cannot control the recycling rate. Therefore, content is the only practical choice for them.

She recommended that DEQ not close the door after 1997. Neither the technology nor FDA can be predicted. DEQ willbe getting good information in the reports, and should leave itself room to deal with what it learns. She recommended that DEQ request information in a usable format, and then see what it has. Build in a review process which would take place toward the end of the two years. She thought DEQ might want to look at a 2 1/2 year time period. She offered to work with DEQ, and said that technical people would be available on the telephone, or could come out to meet ifthat would be helpful.

On the manufacturer definition, she believes that the product manufacturer

is best able to tell DEQ whether a container complies. They make the specifications, and are in the best position to know. They want to see a certification process that works. She suggested considering the CONEG process, which does not produce a flood of paperwork because manufacturers keep the paperwork available on file. She recommended that DEQ make no recommendation in this report, because it is not clear how it solves the problem; it might be better to have another process to deal with the certification process when more time can be spent.

Speaker
Cathy Beckley (personal care products and OTC drugs)
Cosmetic, Toiletry & Fragrance Assn.
(and Nonprescription Drug Manufacturers Assn.)
1101 17th Street NW, Suite 300
Washington, DC 20036

Written comments attached.

Ms. Beckley pointed out that DEQ's second draft was geared to food, and should be changed to include cosmetics and OTC drugs, whose safety is also of great concern. These products are also regulated by FDA, and although methods of regulation are different from food, the requirements for safety are the same. They currently have no guidance from FDA on how to meet Oregon's requirements.

Her industry is responding to consumer demands for less packaging, and more recycling. She explained some constraints on the reduction alternative: packages must pass drop testing and pressure testing, especially those products containing alcohol or which are flammable. Most shampoo bottles are already as thin as possible because this is a cost savings.

She recommended that the exemption apply to all alternatives, as it did in the first draft report, as many manufacturers don't have a real choice among the alternatives. For example, using 25% recycled option: what you can do for one product, you can't do for another. The rationale for 1997 is unclear and it is not clear that it is feasible, or that FDA will give industry guidance for cosmetic and OTC drug companies. Absent such guidelines, they need time to do R&D on their own.

The likelihood of exemptions being granted on a case by case basis by DEQ are unpredictable. This means a manufacturer will not know in advance if a container will be usable in 1995. Success needs to be attained by all companies, not just a few big, sophisticated ones. The northeastern states are exempting cosmetics and OTC drugs from similar legislation, and DEQ should do the same, or at least grant them an extension.

Speaker
Dan Colegrove (grocery manufacturer; general)
980 9th Street, #1600
Sacramento, CA 95814

Mr. Colegrove explained that his products are both food and non-food; 85% of their products are distributed nationwide. He supports recycling. He believes it is not in anyone's best interests to limit yourselves to only one two year extension. He recommends that it be made a two year extension, which would then be revisited and evaluated.

Certification is an extremely complicated issue; he would like to see DEQ continue to work closely with all aspects of industry on this. He recommended an industry working group involved in an active ongoing process with regulators in California and Oregon to work on this. DEQ should make it clear that any information supplied to DEQ for certification purposes is for internal DEQ use only; it is proprietary information.

Speaker
Lynda Gardner (health care)
PMA & Abbott Labs
121 SW Salmon, Suite 1400
Portland, Oregon 97204

Ms. Gardner explained that the report doesn't make enough distinctions for different products at FDA level, for example medical devices and infant food. FDA has different requirements and timelines for different products. She pointed out that California exempts more of this type of product than does this report. She recommended that DEQ expand or clarify that medications are dispensed by other licensed health professionals (besides doctors), and are also dispensed at hospitals without prescriptions. These products also need to be exempted when they come into the state, before they are prescribed. If this will not be covered in DEQ's rulemaking, then add medical devices, medical food, and infant formula to the exemption for prescription drugs in the recommendations to the legislature. Reason: the same public policy process applies to these products. In some cases, the package is part of the product. If a packaging component is changed, the manufacturer has to apply to FDA for approval of a new product. The timetable is:

- testing period: 1 year and $250,000
- FDA answer in 3-4 years at best.

Only then would the manufacturer know if they had complied with regulations.

Ms. Gardner also recommended exemption for FIRFA regulated products (pesticides).

Speaker
Lauri Aunan, OSPIRG (recycler)
1536 SE 11th
Portland, Oregon 97214

Ms. Aunan recommended that there be no exemptions and no delay. She suggested that if companies find they cannot use other alternatives, they should ask: How do I get my container recycled? (e.g., make it into plastic lumber - #7). Most important is to get all users and manufacturers to be creative and get the goals of this legislation accomplished.

Companies are treating this as a recycled content law because that alternative is most in their control. Perhaps it should be changed to a straight recycled content law.

Speaker
Rob Guthridge
Bob Guthridge, AOR (recycler)
815 Washington Street
Oregon City, OR 97045

Mr. Guthridge noted that the plastics industry is asking special treatment, unlike the paper, steel and glass industries. Other industries made substantial investments to re-use their materials.

What we recycle are predominantly food containers: milk jugs and soft drink bottles. These two are the most recycled. Food containers are most in demand by other users because of their purity.

Mr. Guthridge stated that action is needed faster than two years, then another two years, and so on. He recommended option A, no exemption, so that recycling programs would be put in place.

He understands that recycled content is the best option because it is value added. There needs to be a market for post consumer plastic, other than into food packaging, such as plastic lumber.

Questions and Discussion

1. What is the goal of the legislation?

There are at least two: to reduce the amount going to landfills, and to create and drive markets in recycled plastic. It is necessary to create an impetus to get manufacturers involved in the process, and to get plastics recycling on track. It is very low compared to other materials. The ultimate goal is to serve the long term community welfare by conserving resources.

It is founded on the industry goal of 25% recycling rate for plastic. We are moving slowly on FDA regulated packaging. The intent is to get people involved in the issue. There wasn't time to resolve all the technical issues, so DEQ was asked to develop a process and get broader input.

2. Can Oregon recyclers handle 25% or more? Do they have a market? Is there a collection system for people to get them to the recyclers?

Mr. Guthrie indicated that recyclers could handle 25% or more. The markets are very limited. This is related to the price of oil vs. the price of resins. He wants manufacturers and grocery associations to own part of the problem.

Plastic milk jugs have been added to Portland's recycling program. Plastics are 1% by weight of recycled materials now.

It was noted that national manufacturers have a distribution network which covers the whole country; it is difficult to make a state by state division. The issue is not whether the containers can be recycled into other products, such as plastic lumber, but whether they can be used for food packaging.

Plastic packaging needs to be designed for recycling. Creative options for post consumer use were discussed, such as highway signs, or floor pads or other products which could be used in the plastics manufacturers' plants. The plants could create a demand for these products by using them themselves.

Kimberly Vollbracht, Procter & Gamble, explained that manufacturers have to look at least one year down the road. They research state and national laws to do this. They really do want to meet the 25% recycled rate. They look at 1995 and can't predict that they will achieve that rate by then without a doubt. Therefore, they must look at other options in order to be able to sell in Oregon. Manufacturers would like to continue to explore getting everyone to work on recycling together in a joint and mutual effort. They have an obligation to shareholders and consumers that their products will be legal in

Oregon. At the time this legislation was passed, they believed they would meet the 25 % rate. Then resin prices dropped, and that made a huge difference in the recycling growth in plastics.

Rigid plastic food containers are a small part of solid waste streams.

A number of people expressed interest in continuing the discussion, and felt that the mutual exchange of ideas with industry, recycling, and DEQ representatives was helpful and sparked interesting ideas. As noted above, Dr. Chin suggested a daylong workshop as a format where this could occur.

March 31, 1992

NORTHWEST FOOD PROCESSORS ASSOCIATION

ıt Vernon
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-5696

Ms. Vernon:

At the request of your staff person, Linda Hayes, I am providing you with information which should be helpful in preparation of DEQ's report to the 1993 Oregon Legislature regarding safety considerations in the use of recycled materials in food packaging.

Northwest Food Processors Association Position

Food processors cannot comply with the provisions of ORS 459A.650 to 459A.660 and be assured of providing a safe, wholesome and quality food supply to the public. For this reason, we advise the department to recommend that food processors be granted exemption from the recycled content criteria in the legislative report mandated by Section 34E of the Act.

Food And Drug Administration Policy

The Food and Drug Administration has only recently responded to requests from the industry for deliberation on policy regarding the use of recycled materials in food packaging. It was not until last week that Commissioner David Kessler gave the first definitive policy indicators heard on the subject.[1]

Glass, steel and aluminum have a history of recyclability into food packaging within the existing regulatory guidelines of FDA. However, FDA is concerned with plastics recycling into food containers. This is because plastics are more likely to absorb chemical contaminants than other materials. In addition, the reprocessing of plastic does not guarantee the elimination of pathogenic organisms or their toxins.

The following points of FDA policy are relevant to Oregon's rigid plastics recycling law:

1. Food packaging falls under FDA regulations concerning food additives (21 CFR Part 170, 174). As such, all packaging, including that packaging containing recycled materials or that packaging intended for reuse, may only be marketed with assurances that the packaging material does not contaminate or adulterate the food in any way. In granting approval, FDA must be convinced that any food additive will not jeopardize the safety of the food.

2. Plastic packaging has inherent properties which generate concern on the part of FDA in the following ways:

   a. that contaminants from the post-consumer use material (including microorganisms or their chemical toxins) may appear in the final food-contact product made from recycled material;
   b. that recycled post-consumer use material not approved for food-contact use in food packaging material will be incorporated into such material;
   c. that substances used in the recycling process (e.g., wash solutions and detergents) which are not approved for food-contact use will be present in the final recycled product;
   d. that quantities of certain additives will exceed the levels approved for food-contact use; and,
   e. that the package integrity may be affected by incorporation of recycled materials.

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[1]Dr. David Kessler, Commissioner, U.S. Food and Drug Administration, March 10, 1992, *Statement For The Record* before the Subcommittee on Hazardous Materials and Transportation, Committee on Energy and Commerce, U.S. House of Representatives. (text provided).

3. FDA has allowed only three specific uses for physically reprocessed polymers. These uses apply only to a company's specific process and do not have general applicability. They include:

   a. post-consumer polystyrene in cartons intended only for shell eggs;

   b. recycled food-contact polyethylene or polypropylene for transporting fruits and vegetables for short periods of time; and,

   c. the use of baskets and produce trays constructed from recycled polyethylene terephthalate (PET) soda bottles for packaging fresh fruits and vegetables.

   In addition, FDA has approved the use of reprocessed post-consumer PET for food-contact purposes. A specific process was found acceptable because it breaks down the polymer to its starting material and is, thus, considered equivalent to virgin material in purity.

4. The Food, Drug & Cosmetic Act requires that processed foods be reasonably protected from adulteration throughout the usable life of the food. Packaging functions to protect the food against undesirable elements and to protect the integrity of the food by preventing the loss of desirable qualities. The characteristics of packaging which allow it to perform its required functions must take into account all of the phases of processing, storage, distribution and handling at the retail and consumer level. Some of these stages may include rigorous techniques such as retorting or microwaving. Therefore, FDA concludes that reduction of packaging for foods necessarily must reach a lower limit beyond which the quality and safety of the food are jeopardized.

How Will Food Packaging Comply?

Food processors selling product in rigid plastic containers in the State of Oregon cannot comply with the provisions of ORS 459A.655 and remain in compliance with Food and Drug Administration regulations.

Twenty-five percent recycled content is one criteria for complying with the Act. Rigid plastic containers with recycled content have not, except for specific applications, been shown to be safe for food-contact use. Even where a layer of virgin plastic is applied to the food-contact surface covering the recycled-content layers, manufacturers have not established that migration of contaminants through the virgin layer will not occur.

The primary exception is for PET containers. A process for recycling this material safely into food containers has been approved by FDA.[2] These containers are presently being test marketed for use as soda bottles. However, conversion to this type of plastic is not possible or practical for many food packaging applications. In some cases, conversion to PET would actually increase the package weight.

Another mechanism for compliance is the use of a reusable plastic container. However, here again the potential for contamination is a problem. The surface of the plastic container is susceptible to harboring bacteria which grow on the residue of the food previously stored in the container. Contamination may also occur from known and unknown chemicals that may have been stored in the container. Cleaning of these porous, absorbent surfaces may not be physically possible and existing food-grade cleaners are not designed to handle the variety of hazardous chemical materials that must be anticipated.

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[2]For more information on FDA's position in approving this process, see *FDA Approves Hoechst Regeneration Process For PET Bottles*, Food Chemical News, Jan. 14, 1991.

ORS 459A.660 (3) (d) provides for exemption when a package has been reduced by at least ten percent over the previous five years. As stated earlier, food packaging must be sufficient to adequately protect the integrity of the product from processing through storage and distribution to the store and ultimately the consumer. Because of the relatively low profit margin that the sale of food products generally enjoys, all costs of production, storage and transportation are rigorously scrutinized. Further, competition among packaging materials and suppliers increases the pressure to use less packaging. In the interest of both manufacturer and consumer, food packaging is already at or near its minimum level of weight and volume. Few packages would qualify for this exemption. Those few that did qualify would soon reach the non-renewable expiration of their exemption.

The only remaining option for food processors in complying with this law is to package products in plastics that are recycled at the rate of 25 percent within the state by 1995. Since processors have no control over or knowledge of whether particular materials are being recycled at the required rates, they are in the untenable position of having to make unplanned and sporadic changes in packaging when these recycling levels are finally known. More importantly, the plastics available for use under this provision may not provide the characteristics necessary to adequately protect the product under FDA regulations.

Current Research On Recycled Plastics For Food-Contact Packaging

The main thrust of research in plastics recycling is to solve the problems created through potential cross-contamination by incidental contaminants in the post-consumer waste stream. With over five billion known chemical combinations, seven million industrial formulations, 60,000 hazardous substances with MSDS documentation, 2,100 chemicals requiring Department of Transportation labeling and 800 hazardous waste substances[3], developing test methodology is an expensive and time-consuming proposition. Three groups are currently actively researching the use of recycled plastics for food-contact packaging.[4]

1. The National Center for Food Safety and Technology, located in Chicago, is a joint venture between industry, higher education and FDA. They are proposing to investigate methods for effectively washing plastic flakes to remove all possible contaminants.
2. The Analytical Methods for Plastics Committee of the American Society for Testing and Materials met for the first time in November, 1991. This group proposes to develop methodology for detection of nonvolatile contaminants in all types of plastics.
3. The Plastics Recycling Task Force is a joint effort of the Society of the Plastics Industries and the National Food Processors Association, with advisory participation by the Food and Drug Administration. This group is developing guidelines for the safe use of recycled plastics, spiking methods for surrogate contaminants and criteria for risk analysis of dietary consumption. The goal of the project is to develop a protocol for use by resin manufacturers in certifying that the plastic materials with recycled content are safe for food-contact applications before distribution to the package manufacturer. The first plastic to be challenged is high density polyethylene (HDPE). A completion date for this research has not been set.[5]

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[3]Dr. Kurt Keikkila at Pack Alimentaire on April 24, 1991 in New Orleans, LA.

[4]Dr. George W. Arndt, Jr., National Food Processors Association, February, 1992, *Recycled Plastics For Food Packaging.*

[5]Dr. Henry Chin, Project Leader, National Food Processors Association, in private conversation, March 27, 1992.

Recommendations

Regulations promulgated in Oregon affect all the nation's food companies and set the tone for packaging legislation across the country. Oregon's lawmakers have an obligation to carry a responsible message to all those who look to this state for leadership. Safety and wholesomeness of the food supply should not be subordinated to reduction of solid waste. Food packaging should be exempt from standards relating to recycled content, recyclability, reusability or source reduction. This exemption should remain in effect until it can be demonstrated that:

1. the standards will not prevent the food from being safely packaged;
2. the standards will not cause the packaging to render the food unfit; and,
3. the standards will not impair the performance characteristics of the packaging during storage, distribution and use by the consumer.

Adoption of these criteria will communicate Oregon's reasoned approach to solid waste management and make this law the model for the nation to emulate.

NWFPA will continue to provide information to DEQ on FDA policy and research developments as they arise. In turn, please advise me of your recommendations to the Legislature at the earliest possible time.

As always, if I can be of any further assistance to you or your staff, please let me know.

Sincerely,

Connie Kirby
Manager, Scientific & Technical Affairs

Enclosures

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STATEMENT FOR THE RECORD

U.S. FOOD AND DRUG ADMINISTRATION

PUBLIC HEALTH SERVICE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCOMMITTEE ON HAZARDOUS MATERIALS AND TRANSPORTATION

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

MARCH 10, 1992

D-15

Mr. Chairman:

The Food and Drug Administration (FDA) appreciates the opportunity to submit its views for the record of the hearing on the specific provisions of H.R. 3865 as they affect the Agency's activities.

FDA's Support for Recycling

FDA supports cost-effective efforts to divert materials from the solid waste stream where such efforts are consistent with the Agency's statutory responsibilities to protect public health. FDA has supported recent efforts to recycle polymeric (plastic) food-contact materials, in addition to the traditionally recycled materials such as metal, paper, and glass. Indeed, under Section 101(b)(6) of the National Environmental Policy Act (NEPA), all Federal agencies, including FDA, have a statutory responsibility to help the Nation "approach the maximum attainable recycling of depletable resources."

However, I believe that many of the approaches taken in H.R. 3865 relating to recycling and food safety are not the most efficient means to achieve our national goals of cost effective and safe waste management. As I will highlight below, many of the means used in the bill establish "command and control" regulatory approaches that are in some cases technically infeasible, inefficient or administratively unworkable. In addition, portions of the proposed legislation undermine in several respects the FDA's

statutory mandate.

FDA's Legal Responsibility

Under FDA's principal statute, the Federal Food, Drug, and Cosmetic Act (FD&C Act), FDA is charged with ensuring that the products it regulates are wholesome, safe, and effective.

Enactment of the Food Additives Amendment of 1958 expanded FDA's authority and responsibility to the regulation of materials that come into contact with food. These materials are regulated under the FD&C Act's food additive provisions, which govern not only the packaging material itself (e.g., paper and paperboard, plastic, etc.) but also the coatings, adhesives, production aids, and other compounds used in the production or as a component of the food package. Under the FD&C Act, "food additive" is defined as: "any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, preparing, treating, packaging, transporting, or holding food; . . . if such substance is not generally recognized among experts . . . as having been adequately shown . . . to be safe under the conditions of its intended use; . . ." Under the FD&C Act, a food additive, including food contact materials, may not be marketed without prior FDA approval.

In response to food additive petitions, FDA has promulgated numerous regulations authorizing the use of various materials and chemicals as (or as a component of) food packaging. To approve a food package or component for marketing, the Agency must conclude that it is "safe." Safety is defined as presenting a reasonable certainty of no harm. In the case of food packaging materials, this means assuring that the components of the package that may migrate into food meet the statutory safety standard. Any food package that is not in compliance with food additive regulations causes the food that it contacts to be adulterated as a matter of law. In addition, all food-contact materials must adhere to FDA's regulations relating to good manufacturing practice (21 CFR 174.5), which require that any substance used as a component of a food-contact article be of suitable purity for its intended use. Recycled food-contact materials must conform to this general provision. Thus, although, in general, FDA supports the recycling and reuse of food packaging materials, it must ensure that recycled materials satisfy these basic legal and safety requirements.

As noted, FDA issues food additive regulations under the FD&C Act authorizing the use of specific chemicals in the production of packaging. These regulations establish specifications and safe conditions of use for food-contact materials. It is the food packaging manufacturer's responsibility to assure that the packaging complies with relevant FDA regulations.

The Role of Food Packaging in Food Safety

Food packaging serves many functions in the maintenance of food safety and quality. Overall, the purpose of packaging is to prolong the usable life of food. It does so by acting as a barrier to undesirable elements, including microbes (both pathogenic and spoilage-inducing); insects; volatile substances that cause off-odors and flavors; light, which may cause adverse chemical reactions such as oxidation of fats; moisture; and other contaminants, such as refrigerants, that could enter the food during transportation, distribution, and storage. Packaging also protects the integrity of the food by preventing the loss of desirable qualities such as the proper gas ratio in controlled atmospheres (e.g., in modified atmosphere packaging), flavors and aromas, and moisture. These functions are performed successfully when the packaging materials are suited to the type of food and the food processing techniques. The food also is protected successfully when package integrity is maintained during food processing stages, including rigorous techniques, such as retorting (extreme heating), microwaving, and irradiation; storage; distribution; and normal handling at the retail level and in the home. If a food package fails to perform its protective function, the safety of the food inside may be jeopardized, and the food could become adulterated within the meaning of the FD&C Act.

Food Safety Considerations

FDA's primary regulatory interest in all food-contact materials, including recycled materials, is the potential effect of migrating components of the package on the safety of the food itself. FDA's food additive regulations for packaging materials describe the conditions under which FDA considers any potential migration to be safe. For recycled materials, there is an additional concern about the presence in the recycled packages of chemical or microbial contaminants introduced by the prior use of the material by the consumer or other user. These contaminants, if present in the package, can be expected to migrate to the food and raise a safety question. Such interests need not hinder initiatives to recycle food packaging materials.

For example, glass, steel, and aluminum are already being recycled to some extent for food-contact use. Chemical and microbial contamination have not been a concern with these materials. They generally are impervious to contaminants and are readily cleaned in the recycling process. In addition, current FDA regulations permit the use of pulp from reclaimed fiber (21 CFR 176.260) in paper and paperboard intended for food-contact articles. However, inks, optical brighteners, and other contaminants may be difficult to remove from post-consumer paper. The recycled food-contact paper must, therefore, meet the specifications for virgin paper. Furthermore, under the regulations, post-consumer paper that

contains any poisonous or deleterious substance which is retained in the recycled paper and can migrate to food cannot be recycled for use in contact with food.

A significant percentage of food packaging is manufactured from polymers (plastics), and there is increasing interest in using post-consumer recycled plastics for food-contact articles. FDA has not received formal petitions to provide for specific regulations pertaining to the use of recycled polymers in food-contact situations. The Agency has, however, evaluated on a case-by-case basis and through correspondence industry requests for specific uses of recycled polymers.

As mentioned above, a plastic material is a complex chemical containing a number of additives and thus, is more likely than glass or metal to retain contaminants through the recycling process. FDA's main safety concerns with the use of recycled plastic materials in food-contact articles are: 1) that contaminants from the post-consumer use material (including microorganisms or their chemical toxins) may appear in the final food-contact product made from recycled material; 2) that recycled post-consumer use material not approved for food-contact use into food packaging material will incorporated into such material; 3) that substances used in the recycling process (e.g., wash solutions and detergents) which are not approved for food-contact use will be present in the final recycled product; 4) that quantities of

certain additives will exceed the levels approved for food-contact use; and 5) that the package integrity may be affected by incorporation of recycled materials.

Although there are significant food safety considerations to be addressed, it may well be that not all recycled plastics will have to be subject to a new food additive regulation. Moreover, FDA has pointed out that, among other instances, recycled plastic resins containing new additives or amounts of additives greater than those currently covered by FDA regulations will have to be regulated for food-contact use.

FDA's Activity Regarding Recycled Plastics

FDA recently has evaluated several food-contact uses of recycled plastics. As part of these evaluations, the Agency: 1) examined the ability of a particular recycling process to remove potential contaminants that might cause food to become adulterated; 2) determined whether temperatures used to produce the recycled polymers were of sufficient intensity and duration to assure destruction of harmful microorganisms and their toxins; 3) considered whether any additional additives were present from the recycled polymer and whether additional additives were being used; 4) considered the intended food-contact uses of the recycled plastics; and 5) in some cases, reviewed the proposed collection and sorting processes for the post-consumer plastics. FDA has

authorized several uses of recycled plastics.

For example, FDA determined that recycled polymers used in the fabrication of grocery bags would not come into significant contact with food and/or become components of food, and therefore, were not food additives. FDA's Center for Food Safety and Applied Nutrition also has no objection to three specific uses of physically reprocessed polymers (where the polymer is ground up, washed, melted, and reformed into new packaging). These include: 1) post-consumer polystyrene in cartons intended only for shell eggs; 2) recycled food-contact polyethylene or polypropylene for transporting fruits and vegetables for short periods of time; and 3) the use of baskets and produce trays constructed from recycled polyethylene terephthalate (PET) soda bottles for packaging fresh fruits and vegetables. These cases are specific to each company's process and do not have general applicability.

Several companies are reprocessing post-consumer PET using chemical methods in which the polymer is broken down to starting materials and then reformed into a new polymer. A review of the test results submitted by three companies convinced FDA that these regenerated polymeric materials met the specifications of the regulations for the virgin material.

FDA has not found rulemaking to be necessary to cover these situations. The Agency believes, however, that in at least some

cases, the use of recycled materials will constitute a new use of the additive and that some regulations may be required to ensure the safe and lawful use of the recycled polymer.

FDA has created a recycling work group within the Agency to determine how best to ensure the safety and integrity of recycled food packaging materials. The Agency intends to publish an Advance Notice of Proposed Rulemaking (ANPR) to gather additional information on the recycling of plastics and to outline FDA's concerns about the use of post-consumer material for food contact. FDA will work to facilitate resolution of safety issues by working with sponsors and by developing a flexible approach to recycling that takes into account the rapid evolution of recycling.

Finally, FDA is participating in research on recycled plastics at the National Center for Food Safety and Technology. This research is designed to explore the types and levels of contaminants that may be found in recycled plastics.

H.R. 3865

FDA would like to note a few concerns specific to food packaging and FDA's mandate, but we defer to EPA on H.R. 3865 as a whole. FDA is concerned that the proposed legislation does not recognize FDA's statutory role in regulating food packaging. In particular, Section 301 of the bill would mandate compliance with one of

several packaging requirements designed to reduce source materials by certain deadlines. Such inflexible requirements could create a conflict between adherence to these provisions, should they become law, and the FD&C Act. Specifically, one packaging option under Section 301 would require that packaging contain a minimum percentage of post-consumer material. Any packaging that contacts food, including packaging that contains recycled materials, also must comply with the FD&C Act and regulations promulgated thereunder. The exemption in Section 301 for "Packages required by any Federal law or regulation related to health or safety" is vague and not helpful on this point.

Another packaging option of the bill would require the volume reduction of materials used in packaging by at least 15% or 20%. There are questions that will have to be addressed about the feasibility of this requirement with respect to food packaging materials. Packages that undergo strenuous processing, such as metal cans, flexible and rigid plastic cans, bowls, and other containers, must contain sufficient material to withstand the processing and remain stable and able to protect the food during transportation and shelf storage. The quantity of metal used in aluminum and other metal cans is already near the lower limit of durability for conventional types of processing. Development of new processing technologies may permit the use of lower amounts of material in the can. For plastic containers, lower amounts of material may withstand the processing technique but not be stable

during shelf storage. In such instances, auxiliary packaging may be required, such as use of a paperboard box around a plastic retorted container, exacerbating the solid waste situation.

In addition, Section 302 of H.R. 3865 would establish maximum concentration levels for certain heavy metals in packaging. This provision would require the Environmental Protection Agency (EPA) to promulgate regulations to implement these requirements. Again, this portion of the proposed legislation does not recognize FDA's regulatory responsibility related to heavy metals and other contaminants in food packaging. Furthermore, the levels of some heavy metals that would be permitted by H.R. 3865 are higher than levels in guidelines currently established by the Agency.

Again, H.R. 3865 does not acknowledge that food packaging procured by other agencies, including the Department of Defense, also must meet the requirements of the FD&C Act.

Finally, it is essential that Agency policies, guidelines, and regulations be based firmly on scientific information. To meet the use levels mandated by H.R. 3865, additional data must be obtained and scientific evaluations must be conducted to assess any potential health hazards associated with the new and increased uses of recycled materials.

Conclusion

FDA supports cost effective recycling efforts and will continue to work with the Congress, the states, industry, universities, and consumer groups to maximize cooperation, to encourage more efficient use of our natural resources, and to take advantage of expertise available from outside organizations. As FDA develops its recycling strategy, we hope to establish a balanced regulatory scheme that will ensure public health protection as well as contribute to solid waste reduction in the environment.

NORTHWEST FOOD PROCESSORS ASSOCIATION

Proposal for DEQ/NWFPA Meeting

Proposal delivered June 11, 1992 meeting

NWFPA/DEQ Meeting Outline

Purpose:

Food processors throughout the Northwest providing food products to Oregon's citizens are concerned that the state's new recycling law will force compromise with FDA regulations and jeopardize the safety of food packaging. Northwest Food Processors Association seeks a top level management policy meeting of DEQ and food industry officials between now and July 15. Discussion topics for this meeting will include the following points:

1) DEQ's plans for participatory involvement of food safety and food packaging experts to advise the agency in their recommendations to the 1993 Legislature;
2) DEQ's intentions to work to properly priortize food packaging safety and solid waste issues; and,
3) DEQ's intentions to recommend exemptions from recycling criteria for plastic food packaging.

Participants:

Fred Hansen	Director, Oregon Department of Environmental Quality
David Jensen	V.P., Finance and Operations, Smith Frozen Foods Member, Oregon Food Processors Council Member, NWFPA Solid Waste Task Force
Patrick D. Lindenbach	President, Nalley's Fine Foods Chairman, Associated Washington Business's Packaging Task Force Executive Committee, Washington Food Processors Council Member, NWFPA Board of Directors
David A. Pahl	President, Northwest Food Processors Association
Peter Truitt	President, Truitt Bros., Inc. Chairman, Oregon Food Processors Political Action Committee Member, NWFPA Board of Directors Ex Officio, Oregon Food Processors Council

NWFPA Concerns

To our knowledge, DEQ does not have the expertise in food safety, food packaging or FDA regulations to adequately assess the importance of exemptions from recycling criteria for food contact packaging. The agency has not sought active participation by local or national food trade associations, food regulatory agencies or other groups or individuals who do have expertise in this area.

Food processors have attempted to participate, but have not received serious consideration of their concerns from DEQ. Meanwhile, OSPIRG, a group which also does not have expertise in this area but is influential with DEQ staff, has taken a position opposing food packaging exemptions.

DEQ has a mandate to reduce solid waste in Oregon. That is an important mission and one which food processors support. However, we cannot condone subordination of the essential public health priorities of safety in food packaging and compliance with Federal regulations.

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September 8, 1992

NORTHWEST FOOD PROCESSORS ASSOCIATION

Ms. Linda Hayes
Hazardous and Solid Waste Division
Department of Environmental Quality
811 S.W. 6th Ave.
Portland, OR 97204-1390

Re: Comments On Draft Rigid Plastic Report To The 1993 Legislature

Northwest Food Processors Association is comprised of 83 food processors with operations in Idaho, Oregon and Washington, including 63 plants within the state of Oregon. Many of our members use rigid plastic packages for their products and market them in the state of Oregon. They are very concerned about the impact of ORS 459A.655 and 459A.660 on their businesses.

The Oregon Department of Environmental Quality has drafted recommendations to the 1993 legislature regarding recycled content criteria for rigid plastic packages which contain product regulated by the U.S. Food and Drug Administration. These recommendations for amending the law go a long way towards making this law workable, in the short term, for food processors. NWFPA appreciates the opportunity to provide comment on this preliminary draft.

DEQ has made two recommendations to the 1993 legislature which NWFPA supports:

1) DEQ proposes to delay the effective date for requirements until January 1, 1997 for those FDA-regulated containers for which there is currently no FDA-approved process for utilizing recycled resins, and
2) DEQ proposes to change the definition of manufacturer. The new definition would mean the producer or generator of a rigid plastic container which is sold or offered for sale in Oregon.

Discussion of Exemption Recommendation Options A, B & C

Option A

If no exemptions are granted for food contact rigid plastic packaging and the law becomes effective on January 1, 1995, only one unacceptable alternative for compliance is available to food processors to obey this law and remain in compliance with federal food and drug regulations.

In March, 1992, the Food and Drug Administration justified why recycled content and reuse of rigid plastic food contact packaging are not adequate safe food practices. The agency also stressed the food safety importance of minimum integrity standards in food packaging which make source reduction of food packaging largely infeasible.

For rigid plastic food packages where source reduction has been fully exercised, only the state recycled rate criteria remains an option for food processors to comply with the Oregon law. Food processors, which have no control over achievement of this rate, would be forced to make major, costly, last-minute changes to packaging. In some cases, alternative packaging would not be available which has the

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necessary characteristics for the application. Through these regulations, the state would effectively ban those products from sale.

DEQ has correctly stated that the technology of recycled content in rigid plastic packaging is changing fast. The food industry has been and will continue to be a driving force in development of new methods for incorporating recycled plastics into food contact packaging.

However, we are not aware of any forecasts that this technology will be available within the timeframe of the Oregon law. In fact, principal researchers in this area cannot predict a firm date when research will be completed. Currently, industry-based research has progressed only to the point of establishing a protocol on which to base the development of this technology. This criteria was informally adopted by the FDA and published in it's May, 1992, document *Points To Consider For The Use Of Recycled Plastics In Food Packaging: Chemical Considerations*. This is a draft publication, subject to comments and revision. In it's final form, it will not take precedence over current FDA regulations requiring purity suitable for food packaging materials.

Once the technology is developed, FDA must indicate approval or no-objection of the process under consideration. One executive of a local firm told us that FDA approval for a retortable plastic container took his company more than ten years to attain. This process may be expected to be expedited in today's climate. However, it is impropable that applications for this technology will be available to processors by January 1, 1995.

Also, some mention has been made of the use of recycled plastics for the non-contact layers in multi-layer food packaging. FDA has indicated that this process must undergo the same scrutiny as if the recycled content layer were next to the food. The concern is that contaminants may migrate through the virgin layer and into the food product. Evaluation and approval for these uses can be expected to take as long as other food contact applications.

Option B
This option, which delays the effective date for all requirements until January 1, 1997, provides time for industry to research new processes using recycled plastics for food packaging. Container manufacturers are to submit annual reports tracking progress towards meeting the requirements. DEQ will submit a status report to the 1995 Legislature on approved food packaging uses for recycled resins. Food processors support this delay option as a compromise position for the Department.

Food processors recognize the public demand for recycled containers in the products consumers buy. Market forces will continue to aggressively drive the development of technology and the approval processes necessary to allow for use of these materials. However, the food industry has a more important responsibility to assure its customers of an unquestionably safe food supply. For the reasons outlined above, processors cannot predict with certainty when or if these steps can be completed.

Northwest Food Processors Association supports the granting of exemptions from Oregon's recycling criteria to food processors, as necessary, to assure a safe and readily available supply of food products to Oregonians. Continued support for exemptions may be necessary when DEQ's status report is delivered to the 1995 Legislature.

DEQ has said that the additional two year delay for food products could be costly to manufacturers who are dependent on reaching the 25% recycling rate. We ask the department to consider the broader perspective of the cost to consumers and the food industry if food products are packaged in inadequately tested containers. The cost is then counted in dollars, as well as substantial public health risk, for which the Department and the industry will be held accountable.

We agree with the Department that the recommended delay will result in a higher compliance rate with the Oregon recycling criteria. Processors will be better equipped to make planned, balanced changes to packaging strategies based on sound scientific evidence and public health awareness when the technology is available.

Option C

The position of Northwest Food Processors Association regarding compliance aspects of Oregon's package recycling legislation has been stated previously: food processors cannot comply with the criteria listed in ORS 459A.655 and be assured of providing a safe, wholesome and quality food supply to the public. Exemptions must be provided where the alternatives of recycled content, reuse or source reduction of food contact packaging are not possible.

We support option B as an interim measure recognizing that ultimately exemptions may become necessary.

Discussion of Manufacturer Definition Change

Northwest Food Processors supports DEQ's recommended change to the definition of manufacturer in the law.

The present definition, which names the manufacturer as the producer of the packaged product, is inconsistent with the language and the intent of the law. As DEQ points out, the language indicates that the manufacturer of the rigid plastic container shall ensure and certify that the package meets the state's criteria. This is consistent with our understanding of the intent as participants in the workgroup which developed the law.

The law was structured for certification of compliance by the package manufacturer to ease administration for the following reasons:

1) Certification of compliance with the requirements of the law by the package manufacturer is the least cumbersome way of handling the paperwork. This system eliminates an extra step of information handling by the product manufacturer and results in fewer reports handled by DEQ.
2) Certification of compliance with the recycled content criteria must come from the packaging manufacturer, since the product manufacturer has no knowledge of or means to verify the recycled content of packaging.

Conclusion

DEQ has carefully evaluated the positions of all interested parties to the issues of food safety exemptions and manufacturer certification. They have proposed a reasonable compromise plan. We support the Department's efforts and we urge other organizations to do the same. We will use our resources to encourage adoption of this plan.

Sincerely,

David A. Pahl

David A. Pahl
President

October 22, 1992

NORTHWEST FOOD PROCESSORS ASSOCIATION

Linda Hayes - HSW
Oregon Department of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204-1390

Re: Second Draft Report To The 1993 Legislature Concerning Exemptions For FDA-Regulated Rigid Plastic Containers

Linda:

Northwest Food Processors Association has worked actively with Oregon's Department of Environmental Quality to find a compromise solution to the problem of recycled content, reuse and source reduction of food contact packaging. We supported DEQ's extension recommendation in its first draft report, even though our position has always been in support of full exemptions for FDA-regulated packages to allow for research and federal approval processes. Our willingness to compromise stemmed from our appreciation that a defined exemption period allowed the Department an opportunity to review industry's progress towards meeting the State's recycling goals.

However, food processors cannot support a one-time exemption which simplistically assumes that recycled rigid plastics can be safely used for food packaging by 1997.

NWFPA, national trade associations, many private industry representatives and others have been forthright advisors to DEQ staff on industry's extensive commitments to solving the problems of recycled content, reuse and source reduction of rigid plastic food contact packaging. Yet, DEQ is recommending a one-time, two year extension for FDA-regulated packages in its second draft report to the legislature. This proposal is arbitrary and unsubstantiated by science.

Consumers have become accustomed to recycled content in metal and glass containers. They appreciate the features of plastic packaging, but expect recycled materials to be incorporated in plastics just as easily. It is those market forces that are motivating the food industry's intensive research on safe ways to use recycled plastics.

A critical step is establishing the scientific protocol for evaluating the food safety attributes of plastics. This must be completed before recycled material can be tested. National Food Processors Association, in cooperation with the Food and Drug Administration, is in the first stage of its study of recycled content in high density polyethylene (HDPE), described as follows:

Phase I	Identify surrogate chemicals and analysis methods for all possible contaminants.
Phase II	Pilot challenge testing
Phase III	Company-by-company validation testing
	FDA approval

Phase II is expected to take at least six months, assuming no delays. Phase III would require another six months. Following testing, FDA approval must be obtained. This takes a minimum of 18 months for routine matters; a more complex process could take several years.

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The most optimistic forecast for completion of recycled content technology for one resin is more than two years!

> **DEQ's proposed two year extension applies to all resin types; is too short under the most optimistic schedule; and ignores the possibility that initial research efforts may not succeed.** The Department's recommendation is highly subjective, inadequately substantiated and is a disservice to Oregon legislators who are expecting knowledgeable advice.

The Department has recognized that package reuse and source reduction are as much a safety issue in food packaging as recycled content. In its recommended extension process, DEQ apparently expects that package manufacturers will declare in advance their intent to use recycled content as their option for compliance.

> How can package manufacturers limit their packaging options to recycled content without knowing the outcome of research?
>
> Suppose technology cannot produce a recycled content plastic package that meets FDA's requirements by the end of the two year extension? Does DEQ plan to impose restrictions on Oregon food packaging which conflict with FDA regulations?
>
> Do DEQ's exemptions apply only to packages regulated by FDA? What about packages for dairy, meat or poultry which are regulated by the U.S. Department of Agriculture?

There are many unanswered questions for industry, researchers, and state and federal regulators. The recommendation for a two year deadline is totally unrealistic. We urge DEQ to develop a recommendation which is sensitive to the higher priority for food safety, and which allows flexible scheduling in view of technical achievements.

Food processors suggest the following:

> **Grant a two year extension of the effective date for the requirements of ORS 459A.655 for rigid plastic food packaging which cannot concurrently comply with federal and state food safety laws. The Department shall report to the 1995 Legislature on the status of recycled plastic research and approvals, and the feasibility of using recycled plastics in food contact packaging.**

In 1991, the Legislature charged Oregon's Department of Environmental Quality with a responsibility which exceeds its usual scope. Recognizing DEQ's commitment to environmental quality, food processors urge the Department to apply the same high standards to the safety and availability of Oregon's packaged foods. The Legislature and the public deserve the best when dealing with food safety.

Sincerely,

David A. Pahl
President

db

2

DAN COLEGROVE
Manager, State Affairs
Western Region

G★M★A
GROCERY MANUFACTURERS OF AMERICA

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Linda

May 8, 1992

RECEIVED
MAY 11 1992
Hazardous & Solid Waste Division
Department of Environmental Quality

Ms. Pat Vernon
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-5696

Dear Ms. Vernon:

On behalf of the Grocery Manufacturers of America, I am pleased to offer comments that may assist the Department of Environmental Quality (DEQ) in preparing its report to the legislature on food safety issues related to the mandated use of recycled materials.

GMA is the trade association representing the manufacturers of food and non-food grocery products sold primarily in retail grocery stores and supermarkets throughout the U.S. GMA members produce approximately 85 percent of the grocery products sold in this country and we generate nearly $360 billion annually. Because packaging is so vital to our industry's interests, we are very concerned about this report.

It is our understanding that ORS 459A.655 requires all rigid plastic containers sold in the state by 1995 to meet one of the following requirements: (a) made with 25 percent recycled content, or (b) made with plastic that has achieved a 25 percent statewide recycling rate, or (c) is reusable. In addition, ORS 459.660(3)(d) allows an exemption for packaging reduced by at least 10 percent over the previous five years.

It is essential that we provide some critical information concerning these requirements. First, although GMA and its members actively support recycling efforts, the industry does not control Oregon's recycling rate. We understand that accurate data regarding the current recycling rate may not be available until 1994. Without accurate recycling data the industry cannot predict Oregon's recycling rate in 1995 for any of the materials used in its packaging.

Exemptions for source reduced products also present concerns to the industry. In response to consumer preferences, grocery manufacturers have been taking steps during the past few years to reduce the amount of packaging that enters the municipal solid waste stream. Various source reduction techniques have proven particularly effective in achieving that objective. Manufacturers are using lighter weight materials, less material where safe, offering larger product sizes, and are making wider use of concentrates in laundry products, to cite just a few examples.

However, manufacturers are at or are close to the limit of package reduction. Further reductions in some packages could jeopardize the package's effectiveness in protecting the product. Moreover, ORS 459.660(3) offers no allowance to those companies that have already reduced their packaging. Therefore, few items would qualify for this exemption. Ironically, manufacturers would be penalized for having already reduced their packaging.

GMA also has concerns regarding the reusable requirement. The use of reusable containers has increased significantly in recent years. Downey's fabric softener container is but one example of this type of packaging. However, safety concerns limit their use to the packaging of beverages and certain non-food items.

Regarding the recycled content standard, grocery manufacturers have achieved significant advances in this area as well. Lever Brothers Company for example, is already using plastic bottles that contain 25% to 35% recycled content in over 50% of all their non-food containers. We use tens of billions of packages made from recycled glass, aluminum, recycled paperboard, steel and PETE (polyethylene terapthalate), for a variety of food applications. However, these are the only kinds of recycled packaging that have been approved for safe use by the U.S. Food and Drug Administration. The chemical properties of most plastics preclude the use of recycled resins in most plastic food containers. Again, only recycled PETE has been approved for safe use by U.S. FDA in food contact packaging. Enclosed is a copy of recent FDA testimony to Congress concerning proposed mandatory recycled content requirements and the implications to food safety and food contact packaging.

Because the grocery industry believes that protection of the food supply is of paramount importance, we respectfully request the DEQ to exempt packaging and packaging components made from plastic which directly hold or contact food, drug, or cosmetic products from the requirements of ORS 459.650, 459.660. A similar exemption was incorporated in model packaging standards legislation developed recently by the Coalition of Northeastern Governors. Enclosed is a copy for your information.

GMA appreciates the opportunity to offer these comments and we look forward to working with you in implementing the provisions of SB 66. Please feel free to contact me should you have questions about these comments or you require more information about grocery product packaging.

Sincerely,

Dan Colegrove
Manager, State Affairs

DAN COLEGROVE
Manager, State Affairs
Western Region

G•M•A
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September 8, 1992

Ms. Linda Hayes
Hazardous and Solid Waste Division
Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204-1390

Dear Ms. Hayes:

This letter is in response to the Department of Environmental Quality's (DEQ) draft report to the Legislature regarding changes to Senate Bill 66 of 1991, a comprehensive solid waste management law. The Grocery Manufacturers of America (GMA) appreciates the opportunity to comment on this important report.

GMA is the trade association of the manufacturers of food and non-food grocery products sold primarily in retail grocery stores and supermarkets throughout the U.S. GMA members produce approximately 85 percent of the grocery products sold in this country and we generate nearly $360 billion annually. Because packaging is so vital to our industry's interests, we are very concerned about this report.

The draft report includes two DEQ recommendations for major legislative changes in the law as it relates to rigid plastic containers. First, it recommends delaying the effective compliance date until 1997 for plastic food containers that have not been approved by the U.S. Food and Drug Administration for recycled content. Effective 1995, container manufacturers must submit annual "progress reports" to the DEQ describing progress achieved toward meeting the law's requirements.

GMA has previously submitted comments to the DEQ concerning this issue. As you know, the grocery manufacturing industry has consistently and aggressively stated to Oregon legislators and regulatory officials that the safety and integrity of food products cannot be compromised. Industry is continuing to look for ways to use recycled resins in plastic food packaging. However, it is uncertain whether the technology will develop to the point that all recycled resins can be used as safely as virgin plastics. We appreciate DEQ's understanding and sensitivity to our concerns and, therefore, strongly endorse DEQ's recommendation for a two-year postponement of SB 66's recycled content requirements. The delay will enable all concerned parties to develop comprehensive solid waste disposal technologies.

We must emphasize, however, our concerns about the commercial availability of recovered plastics. Although grocery manufacturers are cooperating with the plastics industry and communities to develop and implement recovery programs for plastic containers and packaging, these programs are still in the development stages in some areas and are not at all available in many others. Please be aware that FDA approval of a recycled content plastic container or a process for making containers with recycled resins does not ensure that the resin will be available in sufficient quantities to meet manufacturers' production requirements.

The report also recommends that the Legislature change the definition of "manufacturer" to read, "the producer or generator of a rigid plastic container which is sold or offered for sale in Oregon." This change imposes the responsibility for certifying compliance with the law solely upon the manufacturer of the rigid plastic container.

We have supported this position in the past because product manufacturers cannot accurately determine the amount of recycled material contained in the packaging they purchase. We respectfully submit, however, that imposing the certification responsibility on the container manufacturer may not solve the problem as container manufacturers cannot control how and for what products their packaging is used.

The certification issue is a vital one for GMA and its members because plastic containers, particularly those used in food contact applications, are so vital to the industry's interests. Because most plastic food packaging cannot be made with recycled resins, we cannot endorse any certification process which is biased against rigid plastic food containers. Although we understand that certification is an important component of the plastic container requirements in SB 66, if that requirement is unworkable, then other options for achieving the same objectives must be sought.

Clearly, the issues surrounding the certification of recycled content in rigid plastic containers are highly complex from both technological and logistical perspectives. Therefore, we respectfully suggest that DEQ open discussion of these issues with members of our industry, the plastic packaging manufacturing industry, product distributors and wholesalers, retailers, and other public entities with experience in implementing similar programs. We believe that you and your staff would also greatly benefit from the experience of those who are expert in package design and manufacture, product distribution, transportation, and marketing. GMA and its staff would be happy to assist with the planning and organization of this forum.

GMA commends the Department for its diligence in attempting to make a very complicated law workable for all concerned parties. We look forward to working with you in this effort and if you should have any questions about our position, please do not hesitate to call me.

Sincerely,

Dan Colegrove
Manager, State Affairs

DAN COLEGROVE
Manager, State Affairs
Western Region

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GROCERY MANUFACTURERS OF AMERICA

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FAX: 916/ 446-7104

October 20, 1992

Ms. Linda Hayes
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

Dear Ms. Hayes:

I enjoyed seeing you in Portland at the October 8 meeting regarding the implementation of SB 66 and I appreciate the DEQ giving me the opportunity to speak on behalf of GMA.

In lieu of further written comments on the second draft report to the Legislature, I am submitting a written version of the testimony I gave at that meeting. Please feel free to contact me if I can be of assistance to you and I look forward to talking to you soon.

Sincerely,

Dan Colegrove
Manager, State Affairs

Statement of Dan Colegrove

Manager of State Affairs, The Grocery Manufacturers of America

October 8, 1992

Thank you for this opportunity to appear before you today. My name is Dan Colegrove and I am Western Regional Manager for the Grocery Manufacturers of America. GMA is the trade association representing the manufacturers of food and non-food products sold in this country. Our 140 member companies collectively produce over 80% of the items found on grocery store shelves nationwide. As you can imagine, our membership is very broad-based.

Because packaging is so vital to our industry's interests, we were actively involved with SB 66 last year and have remained involved in the implementation process. Our desire at this point is to see this law function in a sensible, practical way that will work for everyone.

Let me begin by saying that the grocery industry enthusiastically supports and encourages recycling as one part of an overall approach to waste management. Indeed, our companies have made great strides in recent years in utilizing recycled materials in our products, as well as in source reduction. We have responded in this way primarily for two reasons; 1) more and more of our customers are asking us to use recycled materials and 2) it just makes economic sense for us to reduce and reuse materials where possible

However, our packaging must be designed to meet a variety of competing demands, including health and safety, product protection, durability, environmental impact, consumer value, merchandising appeal and federal regulations. This is especially true for food products where consumers must be protected from spoilage, from potentially deadly food-borne disease and from product tampering. Of all packaging applications, GMA believes that protection of the food supply is by far the most important.

The draft report from the DEQ suggests three potential changes that the Legislature might want to make to the law regarding the issue of food safety. Of these three, GMA feels that the two-year extension as described in Option B designed to allow time for industry to develop methods of safely utilizing recycled polymers in food containers is a step in the right direction. However, we don't feel that this should be a one-time only extension. Rather the DEQ should have the option to review what progress has been made to that point before deciding the next course of action.

In addition, in recognition of the uncertainties involved in utilizing recycled resins and the importance of food safety, total exemptions may ultimately be necessary for food containers. Such a proposal was recently adopted by the Coalition of Northeastern Governors in their model packaging law.

The DEQ draft report also recommends that the definition of manufacturer be changed in the law so that it only applies to container manufacturers for purposes of certification and compliance. GMA appreciates the fact that the DEQ is attempting to find a way to make this process as simple as possible.

Because of the smaller number of container manufacturers compared to the number of consumer product manufacturers, this may in fact be the most practical solution.

However, we would caution the DEQ that the issues surrounding certification are highly complex. We would urge you to continue to examine these issues carefully in consultation with all segments of industry. GMA has made an offer to assist the DEQ in working with representatives of consumer products manufacturers, resin suppliers, container manufacturers and others to devise a sensible and practical way of ensuring compliance. Several months ago, representatives of these industries formed an inter-industry working group to develop practical ways of implementing both the Oregon law and the similar California law.

The working-group is chaired by GMA and includes members of the plastics industry as well as representatives of the consumer products and food industries both here in Oregon and nationally. The working group is meeting again here in Portland soon and we would be more than happy to meet with the DEQ to assist you in your work.

In conclusion, let me state that the grocery industry and GMA will continue to work for responsible approaches to the challenges of solid waste disposal. This includes a commitment to the state of Oregon to assist in the implementation of SB 66. I have enjoyed working with your fine staff, in particular Linda Hayes, and I look forward to continuing to assist you.

THE PROCTER & GAMBLE COMPANY
STATE & LOCAL GOVERNMENT RELATIONS
1 PROCTER & GAMBLE PLAZA, CINCINNATI, OHIO 45202-3315

May 6, 1992

Ms. Linda Hayes, HSW
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97203

Dear Linda:

I appreciate the opportunity to provide input into the Department of Environmental Quality's recommendations concerning exemptions from the requirements of SB 66, section 34b, for rigid plastic packaging which cannot use recycled content and remain in compliance with FDA regulations. After careful review of the technical considerations, Procter & Gamble concludes that an exemption from the section 34b criteria for food, drug, cosmetic and device rigid plastic containers is warranted.

Plastic packaging materials currently used for FDA-regulated products (with one specific exception) would not comply with the federal Food, Drug, & Cosmetic Act and Food Additive regulations if 25% recycled content were incorporated. The sole exception to this is the use of "regenerated" PET, developed by the soft drink packaging industry for two-liter bottles. To date, this process has had limited applicability, and additionally has not proved viable for other resins. HDPE resin, for example, cannot be processed in this way; additional concerns about migration of odors and contaminants generally prevent the use of layered HDPE (recycled resin "sandwiched" by virgin resin) for FDA-regulated packaging. It is likewise not generally feasible, for reasons of product protection and quality, to switch to a material that does contain recycled content. For example, orange juice could not be packaged in regenerated PET, as an alternative to virgin HDPE, because the PET resin does not meet performance standards for blocking adverse effects of oxygen and light.

Clearly, until FDA approval or regulations are issued, as appropriate, along with the necessary technology advances, it is premature to mandate recycled content in plastic packaging under FDA authority. The attached copy of FDA testimony during the recent RCRA reauthorization hearings provides very good background on how the agency views this issue.

Further, while some of these products might meet one of the other criteria listed in section 34b, we believe a full exemption is still warranted for the FDA-regulated products referenced above. This is based on the following points:

(1) plastic recycled in Oregon at 25%: plastic recycling rates are not under the control of packaging users, nor are markets for recycled materials. While we have invested substantial resources in working to ensure that all of our rigid plastic packaging can be recycled, the extent to which it is recovered is not under our control.

(2) 5-times reusable: this is not an option for FDA-regulated plastic packaging due to the compliance and safety issues addressed above.

(3) 10% source reduction (5-year exemption): packagers in general have continuously sought opportunities for source reduction, in order to reduce costs, by reducing material thicknesses, using lighter weight materials, optimizing package geometry and eliminating unnecessary package components. These advances have occurred to the extent practical while continuing to assure the quality and safety of the products contained. Procter & Gamble has been a leader in innovations that achieve significant source reductions; our concentrated and two-in-one laundry products are good examples of these advances, and we strongly support the source reduction exemption in SB 66 (indeed, we would like to see it made permanent). However, further source reductions will be limited by new technology advancements, and while we will explore all feasible opportunities, significant additional achievements cannot be guaranteed, and thus this exemption does not afford a reliable alternative for FDA-regulated packaging which cannot use recycled content.

I hope this information is useful to you; if you have any questions, I would be glad to discuss this with you further. In addition, as I mentioned earlier, I would be happy to come to your office, with the appropriate technical personnel, to go into this issue in more detail.

Sincerely,

Kim Vollbrecht

Kimberlee A. Vollbrecht
Regional Manager

Attachment

3

THE PROCTER & GAMBLE COMPANY
STATE & LOCAL GOVERNMENT RELATIONS
1 PROCTER & GAMBLE PLAZA, CINCINNATI, OHIO 45202-3315

September 8, 1992

VIA FACSIMILE

Ms. Linda Hayes - HSW
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390

Dear Ms. Hayes:

This responds to the Department of Environmental Quality's request for written comments on the draft report to the 1993 Legislature concerning exemptions from the requirements of SB 66 for FDA-regulated rigid plastic containers. The draft report does an excellent job of reviewing the relevant issues associated with the three principle options, and discussing the important ramifications of each.

The Procter & Gamble Company strongly supports the draft report's conclusion that Option B -- delaying the effective date for FDA-regulated packaging -- is the preferred approach of the three identified.[1] At the same time, we believe that the issues raised in the discussion of this option point to some needed clarifications and revisions.

Technology Development/FDA Approval

The draft report is, in our opinion, overly optimistic concerning the ability to develop, and obtain FDA "non-objection" to, technologies for incorporating post-consumer content into plastic packaging. There is not enough data at this time to be sure even that regenerated PET will be able to be used broadly for FDA-regulated packaging. And keep in mind that a similar regeneration process simply is not an option for other resins such as HDPE. Other techniques, such as layering post-consumer and virgin resins, are not promising due to the poor barrier qualities of HDPE, which make it difficult to assure that there will be no migration of contaminants to the container's contents.

Contents of "Progress Reports"

Similarly, it is not clear what information would be satisfactory -- and similarly useful -- in complying with the requirement to submit annual progress reports in lieu of certification. We are not arguing with the need for such reports as a substitute for certification; we simply are concerned that the report format provide useful information, while not resulting in complex reporting (and auditing) requirements. I would suggest that this is an issue that should be further developed in the next draft of your report. Our technical people are in the process of reviewing this provision to develop recommendation on the report format, and we would be happy to work further with you on this issue over the next few weeks if that would be helpful to you.

[1]As a point of clarification, I would note that Option C -- providing an exemption from the recycled content requirement only -- is not technically consistent with the provisions of the law, which clearly speaks to reviewing exemptions from Section 34b generally, which includes all criteria, for FDA-regulated packaging.

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Additional Review Prior to Applying Criteria to FDA-Regulated Packages

We strongly support the draft report's recommendation for a 2-year delay in the effective date for FDA-regulated packaging. At the same time, we believe that the status reports discussed above will provide important information on the feasibility and timing for FDA-regulated packages to comply with SB 66. As these reports do not begin to come in until March 1995, the Legislature will not have an adequate opportunity to review the information from these reports until it meets in 1997. Consequently, we recommend that a second status report (following the 1995 report on recycled resin approvals) be presented to the 1997 Legislature. This report should revisit the issue of imposition of these requirements on FDA-regulated packaging, based on information compiled from the progress reports, and either confirm the recommendation of this draft report or recommend alternative approaches. To allow time for this report to be properly considered, we suggest that you consider an additional delay in the effective date, perhaps six months, to allow the 1997 Legislature to revisit this issue.

Recommended Change in Definition of "Manufacturer"

The second section of the draft report includes a recommendation that the definition of "manufacturer" be changed from the product manufacturer to the container manufacturer. This recommendation is based on a perceived easing of the administration burden on the Department to track compliance with the law. We do not believe that such a change would necessarily simplify the regulatory task. Several issues need to be considered in reviewing certification processes. Container manufacturers do not necessarily know where products will ultimately be shipped -- nor do product manufacturers wish to share this information broadly with package suppliers. Additionally, container manufacturers do not know (beyond information in the product manufacturer's specifications) what the strategy is for bringing a particular product line into compliance with the law -- i.e., which of the four options (content, recycling rate, source reduction, or reusability) will be pursued. Importantly, the container manufacturer only has control over two of these -- source reduction and recycled content. At the same time, a product manufacturer who wishes to pursue one of those two options must rely on the container manufacturer to fully comply with package specifications, or risk falling out of compliance with the law.

Because these are complex issues, we recommend that the DEQ initiate a formalized dialog that includes all affected parties in order to come up with the most efficient method of tracking compliance. Due to the complexity of issues to be addressed, we do not recommend that the DEQ attempt to resolve this issue prior to the end of this month, and consequently recommend that it be pursued separately from the further development of this draft report. We would appreciate an opportunity to participate in this process.

Finally, I would simply note that the discussion sections appear to assume that source reduction will continue to be an option indefinitely under the current law. In fact, this is only an option for the first five years. We would concur that, as the first element in the waste management hierarchy, source reduction should continue to be a priority focus. With this in mind, we would support a recommendation to the 1993 Legislature for the appropriate changes in the statute.

3

I hope these comments are helpful to you. I look forward to continuing to work with you on these issues.

Sincerely,

Kimberlee A. Vollbrecht
Regional Manager

3

THE PROCTER & GAMBLE COMPANY

PUBLIC AFFAIRS DIVISION

1 PROCTER & GAMBLE PLAZA, CINCINNATI, OHIO 45202-3315

October 20, 1992

Ms. Linda Hayes -- HSW
Department of Environmental Quality
811 SW 5th Avenue
Portland, OR 97204-1390

Dear Linda:

The Procter & Gamble Company appreciates the opportunity to comment on the second draft of your report to the 1993 Legislature concerning exemptions for FDA-regulated packaging. At this time, we do not have any additional comments to make beyond what was submitted on the initial draft (which we believe are still relevant to the second draft) and my comments during the public meeting on October 8.

Please let me know if any additional information would be useful to you.

Sincerely,

Kimberlee A. Vollbrecht/eab

Kimberlee A. Vollbrecht
Regional Manager

KAV10/eab

cc: J. A. Lane

OSPIRG
The Oregon State Public Interest Research Group
1536 SE 11th Portland, Oregon 97214 (503) 231-4181, FAX: (503) 231-4007

4

May 14, 1992

Ms. Linda Hayes
Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204

Re: Section 34e, chapter 385, Oregon Laws 1991:
DEQ Report On Whether To Recommend Exemption For Plastic Food Packaging

Dear Ms. Hayes:

This letter is to provide you with information I hope you will find helpful as you prepare the above-referenced report.

Pursuant to Section 34e, chapter 385, Oregon Laws 1991, on or before January 1, 1993, the department must report to the Legislative Assembly on whether to grant an exemption from criteria in ORS Section 459A.655 for rigid plastic containers that cannot meet the recycled content criterion and remain in compliance with United States Food and Drug Administration regulations.

There are two basic options for setting packaging standards: (1) a straight "recycled content" requirement (such as that set for glass containers in Senate Bill 66), or (2) a "multiple options" requirement under which recycled content is just one of several options that can be used to meet the law's requirements. Under the multiple options approach, there is no need for any special exemption for food packaging, because recycled content is not the only way to comply with the law.

During the 1991 session, the plastics industry sought to include in the law an exemption for plastic food packaging. We responded that if the law were a straight recycled content law, we would be willing to think about an exemption, but that because the law used the multiple options approach, an exemption was unnecessary.

As discussed in more detail below, granting a blanket exemption for plastic food packaging is unnecessary and will weaken the effect of the law. The law needs to be strengthened, not weakened. Accordingly, we strongly urge the DEQ not to recommend an exemption for plastic food packaging.

1. An exemption for plastic food packaging is unnecessary: ORS Section 459A.655 is designed to avoid the need to exempt food packaging by giving packagers options to meet the law's criteria.

ORS Section 459A.655 provides that a package complies with the law if it meets any one of the following standards by 1995: (i) it contains 25 percent recycled content; (ii) it is a rigid plastic container, and rigid plastic containers in the aggregate are being recycled in Oregon at a rate of 25 percent; (iii) it is a specific type of rigid plastic packaging, and that type of packaging is being recycled in Oregon at a rate of 25 percent; (iv) it is a particular product-associated (e.g., brand-name package), and such package is being recycled at a rate of 25 percent; or (v) it is reusable.

In addition, ORS 459A.660(2)(d) provides a time-limited exemption for plastic packaging that has been reduced in weight by 10 percent when compared to its weight five years earlier.

The "options" approach was supported by the plastics industry and Associated Oregon Industries as a way to give packagers maximum flexibility in meeting recycling standards as well as encourage them to adopt innovative solutions to the problem of plastics recycling. Even if certain types of plastic food packaging cannot meet the recycled content criterion, this does not mean they cannot comply with the other criteria of the law, including the source-reduction exemption.

For example, certain types of plastic food packaging already comply with the standards set in the bill. The recycling rate for PET soft drink bottles far exceeds 25 percent due to the Bottle Bill. In addition, PET soft drink bottles have achieved a 15 percent weight reduction in recent years due to removal of the HDPE base cup and decreasing the thickness of the PET. Coca-cola and Pepsi have pioneered the use of 25 percent recycled content soft drink containers, and have been followed by Kraft Foods' 25 percent recycled content salad dressing bottle.

There are also successful examples of reusable/refillable plastic containers. A company in Minnesota refills plastic milk jugs, and refillable plastic soft drink bottles are widely used in Europe.

Granting food packaging an exemption from meeting any of the standards would mean that food packaging would not even have to be recycled in Oregon. While there are questions about recycled content food packaging, there is no question that food packaging can be recycled into other types of packaging or products: detergent containers, oil containers, plastic lumber, recycling and compost bins, etc. If the plastics industry is unwilling to invest the time and resources in gaining FDA approval for using recycled content in food packaging,

it should invest time and resources to ensure that food packaging is used to make these other types of packaging and products.

The law now gives all packagers, including food packagers, the incentive to work with government and citizens to ensure that recycling rates for plastic packaging increase and to develop markets for recycled plastics. An exemption for plastic food packaging would remove any incentive for food packagers to support plastic recycling programs. Such an exemption would also remove the incentive for packagers and the plastics industry to continue to push the FDA to approve recycled content plastic for food packaging. An exemption for plastic food packaging is not only unnecessary, it would weaken the effect of the law.

2. An exemption for plastic food packaging would mean that a large percentage of plastic packaging would not have to meet any standard at all.

Food packaging comprises about 10 percent of municipal solid waste. Plastic accounts for 34 percent of food packaging alone, excluding beverage containers. Exempting plastic food packaging from any standard would mean that a large part of plastic packaging is excluded from contributing to the solution, and instead remains part of the problem.

Exempting plastic food packaging from any standards would also have an adverse effect on the ability of rigid plastic packaging in the aggregate to meet the law's 25 percent recycling rate standard.

3. A blanket, permanent exemption from the recycled content criterion would be overbroad and premature.

Even if plastic food packaging has difficulty meeting the recycled content portion of the law's criteria, it should still have to meet the other criteria (recycling rate, reuse or reduced packaging). Therefore, there is no need for any exemption in the law.

If you are considering an exemption for plastic food packaging from only the recycled content criterion, there are also compelling reasons against such an exemption.

First, given the rapid changes in recycling technology that are occurring, an exemption would be premature at this time. The law does not become effective until 1995. Rapid changes in technology are continually being made, and by 1995 there could be many technological advances that would make recycled content use in plastic food packaging commonplace.

Second, there is already plastic food packaging that contains 25 percent recycled content, and any exemption from the recycled content criterion should not apply to such packaging.

Third, because technology is rapidly changing and the FDA has already approved recycled content for some food packaging, no exemption should be granted without a showing from the packager that it has made a good faith effort to obtain FDA approval or a finding of no significant concern for recycled content use, and that the FDA has disapproved its request.

Finally, any exemption for food packaging should be time-limited, not permanent. A permanent exemption would remove any incentive for companies to find ways to use recycled content in food packaging. "Closing the loop" is the ultimate recycling goal, and a time-limited exemption would mean that companies must continue their search for food packaging that can contain recycled content.

In summary, there are no compelling reasons to recommend the exemption, and there are many compelling reasons such an exemption should not be granted.

We might be willing to consider limited exemptions from recycled content standards if the law were a straight recycled content law instead of a multiple options law. However, even with a straight recycled content law, there are already packages that contain recycled content and should not be exempt. In addition, if recycled content standards could not be met despite companies' good faith efforts to obtain FDA approval or FDA recognition that the proposed action was of no concern, there are good reasons to require plastic food packaging to meet recycling rate standards.

If you have any questions or need any additional information, please do not hesitate to contact us.

Sincerely,

Lauri G. Aunan

enclosures

c: Pat Vernon
Bob Danko
Peter Green

OSPIRG
The Oregon State Public Interest Research Group
1536 SE 11th Portland, Oregon 97214 (503) 231-4181, FAX: (503) 231-4007

To: Linda Hayes
Fr: Lauri Aunan
Da: July 30, 1992
Re: Plastics Food Packaging: Report on Whether Exemption Needed

SB 66 requires the Department to determine whether plastics food packaging needs an exemption from the law. As you know, OSPIRG's position is that no exemption is necessary, for several reasons. This is an attempt to provide a simplified explanation of the primary reason no exemption is needed, as there still seems to be confusion on the question.

1. Plastic packaging has by far the lowest recycling rate, has done the least to invest in recycling, and has the worst markets. The law was passed to require plastics to do something to improve plastics recycling in Oregon.

2. The law requires plastics as a whole or an industry or company to do one of four things:
   a. Meet 25% recycling rate, or
   b. Use 25% recycled content, or
   c. Use reusable package, or
   d. Use reduced package.

3. If plastics as a whole or an industry or a company starts doing something and shows investment, progress and a trend to improvement in meeting its goals, the law provides for an exemption.

4. If plastics/industry/company does nothing, then a fine is provided for.

Simply put, the law requires food packagers that use plastic packaging to DO SOMETHING. An exemption for food packaging would send the message that food packagers do not have to take any action. This was not the intent of the law. In addition, if food packaging is exempt from taking any action, then recycled food packaging should not be counted toward the recycling rate goals in the law.

Finally, maximum flexibility was built into the law. In addition to the a, b, c and d options and the "progress" exemption, the law allows the recycling rate option to be met by rigid plastic containers as a whole, by a certain type of container, by a certain resin type, and by an individual company. Thus, if the industry cannot achieve the rate, a company or industry sector can (e.g., milk jugs or soft drink bottles).

Please call if you have any questions.

cc: Pat Vernon, Bob Danko, Delyn Kies, Jerry Powell, Jeanne Roy, Jean Cameron

OSPIRG
The Oregon State Public Interest Research Group
1536 SE 11th Portland, Oregon 97214 (503) 231-4181, FAX: (503) 231-4007

4

September 2, 1992

Ms. Linda Hayes
Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204

Re: ORS 459.655:
DEQ Report On Whether To Recommend Exemption For Plastic Food Packaging

Dear Ms. Hayes:

Thank you for the opportunity to comment on the DEQ's draft report concerning whether plastic food packaging should be exempt from ORS 459A.655.

In our previous letter to you dated May 14, 1992, we urged the DEQ not to recommend an exemption for plastic food packaging for the following reasons:

1. An exemption for plastic food packaging is unnecessary: ORS Section 459A.655 is designed to avoid the need to exempt food packaging by giving packagers four options: meet a 25 percent recycling rate (there are three different ways to comply with this option), or use 25 percent recycled content, or use reusable packaging, or use reduced packaging.

2. An exemption for plastic food packaging would mean that a majority of rigid plastic packaging -- 52 percent by the DEQ's own calculations -- would not have to meet any standard at all. Exempting plastic food packaging from any standard would adversely effect the ability of rigid plastic packaging in the aggregate to meet the law's 25 percent recycling rate standard.

3. A blanket, permanent exemption from the recycled content criterion would be overbroad and premature. Even if plastic food packaging has difficulty meeting the recycled content portion of the law's criteria, it should still have to meet the other criteria (recycling rate, reuse or reduced packaging). Therefore, there is no need for any exemption in the law.

The Department's draft August 17, 1992 memorandum recommends "Option B," which would give plastic food packaging two additional years to comply with any of the standards in the law. OSPIRG finds no convincing reasons in the Department's draft report to support such an extension of time. Further, the dismal state of plastics recycling in Oregon is a compelling reason not to extend the deadline; if anything, the deadline should be accelerated to address a lack of industry support that threatens to halt significant plastics recycling in the state.

The DEQ's first reason for choosing Option B is that it will give plastic container manufacturers "time to research and seek FDA approval of recycled polymers." This reason only makes sense if the law required all rigid plastic packaging to contain recycled content -- as discussed above, it does not. The DEQ may wish to recommend that the law be amended in the 1993 session to remove all options and require all packaging to contain recycled content; we would be willing to consider such a change, and discuss what type of exemptions from a recycled-content only law would be appropriate for FDA-regulated packaging.

If the law is to remain an options law, then we strongly believe that giving food packaging two more years to meet any standards at all will only further delay improvement of plastics recycling in Oregon. First, because food packaging is 52 percent of rigid plastic packaging, delaying its responsibility for meeting recycling standards will undercut the infrastructure and markets improvements needed to improve plastics recycling. Second, it will send food packagers the message that further extensions, delays or exemptions are likely, leading to continued inaction from this sector of plastic packaging users.

Given the severe problems of plastics recycling, the plastics manufacturing industry and companies that use plastic packaging will have to work together to solve these problems. Delaying the standards for food packaging will keep the food packaging industry out of the loop for five more years, from now until 1997. Oregon cannot afford such a delay.

The DEQ's second reason for choosing Option B is that a delay of two years until 1997 will enable the Department "to develop criteria which demonstrates persistent good faith efforts to invest in recycling programs, reduce container weight by 10%, and to research and implement reuse programs for containers." We note that since recycling programs, reduced weight and reuse programs also apply to non-food packaging by 1995, there is no reason the DEQ needs two years beyond 1995 to develop such criteria, unless it needs until 1997 to do so for all packaging. If this is the case, then the DEQ is really arguing that the entire law should be delayed until 1997.

Since the Council for Solid Waste Solutions committed to reaching a 25 percent recycling rate for plastic containers by 1995, putting off the effective date of Oregon's law until 1997 would be requiring less of the industry than it has proposed for itself. Oregon's leadership role in recycling would be tarnished by such an approach.

Finally, DEQ should look at what types of plastic containers are already being recycled in Oregon. The most highly recycled containers are PET beverage bottles and HDPE milk jugs. This fact argues against a delay in standards for food packaging. What is needed is to build on the recycling success of PET soft drink bottles and milk jugs now, not to wait until 1997.

The recommendation of Option B signals a willingness by the DEQ to weaken Senate Bill 66 as it applies to the plastics and food packaging industries. Such an approach seems dangerous given that the law was passed only last year, and was a hard-fought compromise where all pieces were dependent on the other pieces. OSPIRG urges the DEQ to recommend Option A in its final report.

With respect to DEQ's recommendation to change the definition of "manufacturer," the argument that the current definition was merely an oversight by the Legislature is wrong. The issue of what companies should be responsible for compliance and reporting was carefully considered during the session. The problem is that responsibilities for the different options in the bill are most easily assumed by different sectors.

While container manufacturers could most easily report on recycled content use, product manufacturers have a better ability to report on recycling rates, reuse of containers, and reduction of containers. During the session, three compliance/reporting options were discussed: (1) container manufacturer as the only responsible party, (2) product manufacturer as the only responsible party, or (3) container manufacturer responsible for recycled content, and product manufacturer responsible for the other three options. Rather than have a two-party reporting system, the law has one, with the product manufacturer responsible for obtaining recycled content information from the container producer.

The law chose one option out of three close calls, all of which have some administrative issues. If administration is a problem, we would be willing to consider an exemption for small businesses.

There is a public policy reason for keeping some responsibility on product manufacturers, and we disagree with the report's conclusion that relieving product manufacturers from responsibility will achieve the same environmental results. Companies that manufacture or package products have a wide variety of containers to choose from. A company can choose from seven types of plastic resins, glass, aluminum, steel, or paperboard.

The law now puts the responsibility on the company that chooses the type of packaging it will use. Since these companies have the ability to determine how their products will be packaged, keeping them responsible will promote informed decision-making and lead to more environmentally sound packaging choices. For example, if a product manufacturer is now

packaging its product in a #7 plastic package, the law would encourage it to move to a #2, which is more highly recycled. If the product manufacturer cannot find a type of plastic package that is being recycled, contains recycled content, is reusable or reduced, it has the ability to switch to glass, aluminum, paperboard or metal, materials that are more highly recycled in Oregon.

If you have any questions or need any additional information, please do not hesitate to contact us.

Sincerely,

Lauri G. Aunan

c: E. Patricia Vernon
Bob Danko
Peter Green

OSPIRG
The Oregon State Public Interest Research Group
1536 SE 11th Portland, Oregon 97214 (503) 231-4181, FAX: (503) 231-4007

October 21, 1992

Ms. Linda Hayes
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Re: Plastics Packaging Exemption or Extension

Dear Linda:

Thank you for the opportunity to comment on the above matter. The October 8 meeting was very helpful. It was good to hear the positions being taken by the companies that must comply with the law and one of the companies, Procter & Gamble, that drafted the model bill from which Oregon's law was derived.

Exemption or Extension Issue

Oregon's law and a similar law in California were drafted to give companies maximum flexibility in meeting the law's requirements. Companies that cannot use recycled content should determine how they can reduce their packaging, refill or reuse it, or take steps to ensure either that their packaging is being recycled, or that rigid plastic containers in the aggregate are being recycled at 25 percent by 1995. We have previously submitted extensive written comments on this subject, and we refer you to those previous comments.

You have indicated an interest in what was intended by the language in section 34e(1) of Senate Bill 66, which states: "On or before January 1, 1993, the department shall report to the Legislative Assembly on whether to grant an exemption from the criteria established by section 34b of this 1991 Act for rigid plastic containers that cannot meet the recycled content criterion and remain in compliance with United States Food and Drug Administration regulations." (Emphasis added.) (Section 34b requires rigid plastic packaging to meet one of three criteria: 25% recycling rate; 25% recycled content; or reusable. In addition, a company can apply for an exemption from the criteria if its package has been reduced in weight.)

The issue of whether to exempt FDA-regulated packaging from all criteria of the law was discussed in the 1991 legislature, and was rejected. Section 34e(1) was intended to provide a forum for interested parties to present their case for a complete exemption from the law. No new evidence has been presented, and no new arguments have been made, justifying an exemption from all of the law's criteria. There is no more reason to exempt FDA-regulated packaging from all criteria today than there was in 1991. In addition, California's law makes clear that FDA-

regulated packaging may be eligible for a waiver "from the postconsumer material content requirement. . .but not from any other requirement" if certain conditions are met.

In its first two draft reports, the department has recommended a two-year extension for FDA-regulated packaging, giving such packaging two years beyond 1995, until 1997, to comply with any of the four options. We have previously commented that granting a delay or an exemption now is premature. Companies have two years to take steps to meet one of the four options. If they take steps and find extreme difficulties, the law already provides an exemption process. However, companies will not know what they are able to do until they try. We are concerned that providing an exemption or delay in 1992 or 1993 will remove any incentive to try to meet one of the four standards by the 1995 deadline.

Our concerns were proved well-founded by testimony at the October 8 meeting, where company after company asked for an exemption from all options, stated that the one-time, two-year extension proposed by the department was not long enough, and said that they would probably be back in 1997 to ask for more time. The testimony made clear that if companies are given until 1997, they will return in 1997 to ask for further extensions. On the other hand, if 1995 remains the target, companies will be more likely to take steps to show that they have met one of the four options, or that they have made significant progress and may deserve an exemption.

We appreciate the concerns that companies expressed at the meeting, but we believe there are constructive steps companies can take to meet the law's requirements. For example, although the #7 plastic microwave tray mentioned by Truitt Brothers may not be able to meet the recycled content or reuse requirements, there may be ways it can be reduced in weight or help to meet the overall 25 percent recycling rate. Plastic coded #7 can be used to make plastic lumber and other products that can be made with commingled plastics, and increasing the recycling level of such plastics will help the aggregate rate be met.

It is important to remember that companies are not being asked to take action in Oregon alone. California has a very similar law that is even more stringent in some respects (for example, PET plastic must reach a 55 percent recycling rate, and particular types of packages such as milk jugs and product-associated packages must meet a rate at least 20 percent greater than that required for rigid plastic packaging in the aggregate).

OSPIRG strongly opposes any exemption or extension of the existing law with respect to FDA-regulated packaging. The testimony at the October 8 meeting treated Oregon's law as if it were a straight recycled content law, disregarding any of the other options. An exemption or delay is only meaningful in the context of a straight recycled content law, and would be the only context under which we would discuss any exemptions or conditions under which exemptions or delays might be acceptable.

Finally, if the department's final report recommends either an exemption or extension beyond 1995 for certain categories of rigid plastic packaging, the packaging which receives the exemption or extension should not be included in calculating the overall recycling rate of rigid plastic packaging. For example, if plastic food packaging is exempted or compliance dates are extended, then milk jugs and soft drink bottle recycling levels should not be counted toward the aggregate recycling levels of rigid plastic packaging in Oregon.

Definition of Manufacturer Issue

Based on the testimony of John Normandin at the October 8 meeting, as well as the response from glass container manufacturers to SB 66, it is not clear that changing the definition of manufacturer as the department's draft reports recommend will improve the effectiveness of the law. OSPIRG agrees with Procter & Gamble that the department should study the issue further before making any recommendation to the legislature on this issue. Relevant information will be coming from the California Integrated Waste Management Board through its study on how to implement the law, and from an industry working group that is looking at reporting and certification, among other things.

Please note, however, that the Grocery Manufacturers of America members produce about 85 percent of all food and non-food items found on the shelves in Oregon and nationwide, according to a GMA letter dated September 18, 1992. Perhaps GMA could assist in coordinating reporting and certification of that 85 percent.

In summary, the department has been given the task of determining what should be the best policy for improving plastics recycling in Oregon. We submit that a policy of exemption or delay is the last thing that plastics recycling needs.

Sincerely,

Lauri G. Aunan

cc: Fred Hansen
Stephanie Hallock
E. Patricia Vernon
Peter Green

RECYCLING ADVOCATES

2420 S.W. Boundary Street, Portland, Oregon 97201 (503)244-0026

May 14, 1992

Linda Hayes
Department of Environmental Quality
811 SW 6th Ave.
Portland, OR 97204

Subject: DEQ Report on Exemption for Plastic Food Packaging

Dear Linda:

I understand that you will be preparing a report on whether or not to grant an exemption from recycling standards for rigid plastic containers that cannot meet the recycled content criterion and remain in compliance with FDA regulations.

DEQ should not recommend an exemption for food packaging for these reasons:

1. Non-recyclable plastic containers are replacing recyclable glass containers at an alarming rate. Between 1980 and 1987 the proportion of packaging made of glass declined by 23 percent, and that made of plastic increased by 11 percent. This trend has continued. In 1991 the use of plastics in packaging rose by 2.6 percent. It is in the interest of the State to stop this trend away from recyclable packaging.

2. The amount of plastics landfilled in the Metro region keeps rising even though total waste landfilled has begun to decline. In 1987 54,242 tons of plastics were disposed. In 1991 this figure increased to 94,097 tons, or about 9 percent of total waste disposed. According to research done by the City of Portland 9 percent by weight equals about 27 percent by volume. It is in the interest of the State to prevent the increasing amount of plastics being landfilled.

3. Senate Bill 66 has been touted as a substitute for the OSPIRG Recycling Initiative which industry fought. If a large segment of packaging is declared exempt, SB 66 will not be serving its purpose, and new legislation will be needed.

4. The exemption is unnecessary because the packaging can meet the standard by achieving a recycling rate of 25 percent rather than having recycled content. A 25 percent recycling rate could easily be achieved if industry guaranteed a market price or if a deposit were placed on the containers.

5. Exempting some plastic packaging would make it more difficult to reach a 25 percent recycling rate.

Let us know if we can be of further assistance.

Yours truly,

Jeanne Roy

There's no such place as "away"

5

RECYCLING ADVOCATES

2420 S.W. Boundary Street, Portland, Oregon 97201 (503)244-0026

RECEIVED
SEP 04 1992
Hazardous & Solid Waste Division
Department of Environmental Quality

To: Linda Hayes Jeanne Roy
From: Jeanne Roy, Recycling Advocates
Subject: Draft Exemption Report
Date: August 27, 1992

Recycling Advocates recommends Option A, no exemption for the following reasons:

1. SB 66 does not put the recycled-content requirement at odds with FDA regulations because recycled content is only one of several choices. The other choices are that the package 1) be reusable or 2) be recyclable. If the recyclable requirement is chosen, there are more choices. The package can reach the 25% recycling rate 1) along with all other rigid plastic containers, 2) along with containers of the same type, or 3) by itself. The law offers another choice. If its weight is reduced by 10%, the package can be exempt from the other requirements until 2000. And finally the packager has another choice. He can switch to another package which already meets the recycling requirement. Achieving 25% recycled content is one of seven choices!

. Too much emphasis is being placed on recycled content. I challange the statement of page 5 of your draft report that section 459A.655 was designed specifically for developing plastics recycling markets. That provision was passed because consumers want their package to be recyclable. Oregon consumers passed the Bottle Bill and the Recycling Opportunity Act to establish recycling systems for packaging. However, as plastic containers replaced recyclable glass, paper, aluminum and steel, consumers were frustrated. That feeling was the reason the Recycling Initiative was almost passed and the reason this provision was passed by the Legislature.

Recycled content legislation is one way of encouraging recycling. It's a good way, but its not the only way of achieving a significant recycling rate. Tetra Pak is a good example of what a company can do if it is serious about making its package recyclable. Two years ago there was no recycling of its package. There are now collection programs in 10 states, and a 100 schools in Oregon are collecting its milk and juice boxes. It has achieved this by subsidizing a recycling program.

3. Delaying the recycling requirements for plastic containers will put glass containers at a competitive disadvantage. The extent to which plastic containers have been replacing glass is alarming. It is almost impossible for consumers to purchase milk or vegetable oil in glass any more. There is only one brand of peanut butter still in glass. Between 1980 and 1987 the glass- container share of the packaging market dropped by 15%, and the plastic share increased by 38%. It is conceivable that Oregon could lose its glass manufacturer if the demand for glass continues to fall.

-end-

RECYCLING ADVOCATES

2420 S.W. Boundary Street, Portland, Oregon 97201 (503)244-0026

(5)

August 31, 1992

Dear Fred,

I was astonished to recieve DEQ's Draft Exemption Report recommending that plastic containers be relieved of SB66 recycling requirements for 2 years.

Oregonians have established a way of conserving resources and landfill space through recycling packaging. However, the substitution of non-recyclable plastics for recyclable containers is undermining the system. SB 66 says that the plastic packaging manufacturers must begin to do something to make their product recyclable. Yet, you are recommending that they be let off the hook.

This makes no sense to me. I hope you will rethink this matter.

Sincerely,

Joanne Roy

DEPARTMENT

Attached are my comments to Linda Hayes.

OREGON ENVIRONMENTAL COUNCIL

027 S.W. Arthur Street, Portland, Oregon 97201
Phone: 503/222-1963 • Fax: 503/241-4260

May 22, 1992

Linda Hayes
Solid Waste Division
Dept. of Environmental Quality
811 SW 6th Ave.
Portland, OR 97204

Dear Ms. Hayes,

I understand that you are preparing a report to the Legislature as required by Section 34e, chapter 385, Oregon Laws 1991 regarding a possible exemption for plastic food packaging from compliance with ORS Section 459A.655. The Oregon Environmental Council (OEC) wishes to go on record as strongly opposed to such an exemption.

Such an exemption is completely unnecessary, given the varied options for compliance outlined in Section 459A.655. For example, compliance with one or more of these options is already been demonstrated by PET soft drink bottles which comply in three ways: they are being recycled at a rate greater than 25%, have reduced their weight by more than 10% in the last five years, and even use 25% recycled content in the case of Coca-cola and Pepsi.

Considering that food packaging comprises about 10% of the MSW wastestream and more than one third of that is plastics, granting an exemption from compliance with Oregon's law would seriously undermine the law's intent to reduce our generation of wastes and create markets for recycled products. Not only are there plenty of examples of food packaging materials being recycled into other products, but given the 1995 deadline, there is also plenty of time for the plastics industry to work with Oregon to demonstrate to the Food and Drug Administration that recycled content is possible and acceptable in food packaging.

Please keep us advised as to opportunities for public comment on the DEQ report, if any. I'm certain that OEC's members would be eager to express their concerns on this issue.

Sincerely,

Jean R. Cameron
Policy Director

cc: Members of the Environmental
Quality Commission

OREGON ENVIRONMENTAL COUNCIL

027 S.W. Arthur Street, Portland, Oregon 97201
Phone: 503/222-1963 • Fax: 503/241-4260

MEMORANDUM
September 3, 1992

TO: Linda Hays, DEQ
FROM: Jean Cameron, OEC Jean Cameron
SUBJECT: Comments on Draft report to 1993 Legislature re: exemption of FDA regulated rigid plastic containers, dated 8/17/92

For the reasons listed below, the Oregon Environmental Council (OEC) urges the Department of Environmental Quality (DEQ) to adopt Option A, no exemption from requirements in ORS 459A.655:

1) The law does not require that plastic food packaging be made of recycled content, although that is one option. There are other options, ie, meeting a 25% aggregate recycling rate, using reusable packages, or using reduced packaging.

2) As a matter of act, food packaging is currently the most recycled type of plastic in Oregon, and it makes up 52% of rigid plastic containers in the state. Plastic milk jugs and PET soft drink containers comprise the majority of plastics being recycled. This demonstrates that a high recycling rate is achievable without concern for recycled content per se. Exempting plastic food packaging will seriously reduce the potential for plastics as a whole to meet the 25% recycling goal.

3) The Department does not need more time to develop special "criteria" for plastic food packaging recycling. Glass, aluminum, and tin food packaging is moving to comply with the law without asking for delays or more bureaucratic "guidance." The Department should comply with the spirit of SB 66 and keep Oregon in a position of national leadership vis a vis the plastics industry.

Thank you for this opportunity to comment.

7

resource
RECYCLING

NORTH AMERICA'S RECYCLING JOURNAL
P.O. BOX 10540, PORTLAND, OR 97210, (503) 227-1319, FAX (503) 227-6135

May 26, 1992

Linda Hayes
Oregon Department of Environmental Quality
811 S.W. Sixth
Portland, OR 97204

Subject: DEQ Report on Exemption of Plastic Food Packaging

Dear Ms. Hayes:

By 1993 the Department must report to the legislature giving its recommendation on whether to grant an exemption from recycling rules in ORS 459 for rigid plastic containers that cannot meet the recycled content standards and remain in compliance with federal FDA regulations.

As someone involved in the development of Senate Bill 66 (which includes this requirement of a Department report), I wish to offer several comments. (I am also a member of Oregon Recycling Markets Development Council which was created by the adoption of SB 66.)

The Department should not recommend an exemption be granted. I offer the following reasons:

1. One cause of the Northwest's lack of a sizable plastics reclamation industry is the relatively small amount of scrap plastics generated in the region. To exempt any amount of plastics packaging from the recycling collection option under the requirements of ORS 459A.655 would harm our ability to maintain strong markets for non-food plastic packaging.

2. Oregon law does not solely require recycled-content food packaging. The law was specifically designed so that food packagers had other options -- recycling collection and source reduction.

3. A major competitor to plastics food packaging is glass. Oregon is one of two states requiring recycled-content

glass container sales and manufacture. To exempt plastics is unfair to glass producers. It would be more prudent for DEQ to recommend that other forms of food packaging (metal and paper) also have legislated recycling standards.

4. Already we're seeing recycled-content plastic soft drink packaging made in part from depolymerized resin. FDA does not object to this recycling application. Similar recycling processes are being developed. To recommend an exemption will result in the removal of a key reason for industry to develop these recycling processes.

Should you have any questions regarding these comments, please don't hesitate to contact me at (503) 227-1319.

Sincerely,

Jerry Powell

Jerry Powell

resource
RECYCLING

NORTH AMERICA'S RECYCLING JOURNAL
P.O. BOX 10540, PORTLAND, OR 97210, (503) 227-1319, FAX (503) 227-6135

November 2, 1992

Fred Hansen, Director
Oregon DEQ
811 S.W. Sixth Ave.
Portland, OR 97204

Re: Rigid Plastic Container Standards

Dear Mr. Hansen:

In my professional opinion, the recycling standards for rigid plastic food containers should not be delayed. In particular, in the absence of any other state action, a delay in implementing the standards incorporated in Senate Bill 66 will cause severe harm to the existing and future plastics recycling industry in Oregon.

As a member of the state's recycling market development council, I am deeply concerned that the plastics industry is so quick to to seek delays and exemptions when they would be better served by launching recycling systems (as did the paper, metals and glass industries in the last two decades). To weaken Senate Bill 66 is to create an uneven playing field, where only plastics packaging is exempted from the bill's requirements.

Sincerely,
Jerry Powell
Jerry Powell
Editor-in-Chief

Received
Nov. 5, 1992

RECEIVED
JUL 0 1 1992
Hazardous & Solid Waste Divisi
Department of Environmental Quality

Association of Oregon Recyclers

June 29, 1992

Linda Hayes
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Subject: DEQ Report on Whether to Recommend Exemption for Plastic Food Packaging

Dear Ms. Hayes:

The Association of Oregon Recyclers (AOR), founded in 1976, is one of the country's first state recycling associations. It is a non-profit organization of 375 businesses, government agencies, other non-profit organizations and individuals dedicated to promoting recycling and waste reduction.

It is AOR's position that the Department should not recommend an exemption from recycling standards for plastic food packaging, for the reasons discussed below.

The law does not require recycled-content food packaging, but was designed to give food packagers other options, including meeting recycling rates and source-reducing their packaging. Accordingly, an exemption based on alleged inability of food packaging to contain recycled content by 1995 is unnecessary.

In order to build a sustainable plastics recycling infrastructure in Oregon and the Northwest, all scrap plastics in the region and all segments of the plastics industry need to be involved in both supply (collection) and demand (markets), An exemption for plastic food packaging from the recycling rate option under the law would severely hinder the ability to develop or maintain strong markets for non-food plastic packaging.

Given the 1995 deadline in the law and the rapid changes in recycling technology that are occurring, any exemption would be premature at this time. For example, Coca-Cola, Pepsi and Kraft Foods are already using food packaging containing 25 percent recycled content. In addition, there are many examples of food packaging materials being recycled into non-food packaging and other products. Granting an exemption for food packaging would only serve to undermine this work and create a disincentive for food packagers and the plastics industry to continue their important work in this area.

Many AOR members are working hard to make plastics recycling succeed. It is also clear that the public is demanding plastics recycling. The recycling standards for rigid plastic containers in SB 66 are an important part of ensuring long-term success for plastics recycling in Oregon.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Delyn Kies

Chair

8

Association of Oregon Recyclers

September 7, 1992

Ms. Linda Hayes
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Subject: DEQ Report on Whether to Recommend Exemption for Plastic Food Packaging

Dear Ms. Hayes:

This letter is in response to the Department's Memorandum dated August 17, 1992. Thank you for the opportunity to comment further on this important matter.

1. Response to Exemption Recommendations

Of the three options presented by the Department, AOR strongly urges the Department to recommend Option A, no exemption from requirements in ORS 459A.655.

As stated in AOR's letter to the Department dated June 29, 1992, there are three main reasons the Department should not recommend an exemption. First, the law does not require recycled content packaging, but gives other options, including recycling rates and reduced packaging. Second, in order to build a sustainable plastics recycling infrastructure in Oregon, all scrap plastics in the region and all segments of the plastics industry and plastics users must be involved in both supply (collection) and demand (markets). Delaying the law for food packaging, or exempting food packaging would severely hinder the ability to develop or maintain strong markets for non-food packaging. Third, while meeting the recycled content requirements are not the only way to comply, the existence of the recycled content option for packaging gives packagers an incentive to continue their important work in this area.

AOR strongly opposes the Department's recommendation of Option B, which would give only food and beverage packaging a two-year extension to comply with the law. The Department attempts to support its choice of Option B with two points: first, that it "gives plastic container manufacturers time to research and seek FDA approval of recycled polymers." Second, that it "enables the Department to develop criteria which demonstrates persistent good faith efforts to invest in recycling programs, reduce container weight by 10% and to research and implement reuse programs for containers."

The Department's first point is flawed because the law does not require food packaging to be made from recycled content. The law was intended to improve the recycling performance of plastics, currently the least-recycled material in Oregon. Industry involvement in and commitment to plastics recycling is critical to its success. The law requires the plastics industry and companies that use plastics packaging to do one of four things: (1) meet a 25% recycling rate, or (2) use 25% recycled content, or (3) use reusable packages, or (4) use reduced packages.

We believe that the easiest way for the industry and users to comply is to work together to ensure that the 25 percent aggregate recycling rate is achieved (although for the long-term sustainability of plastics recycling, a rate higher than 25 percent will be required). **Option B will ensure that no recycling progress is made for plastics in Oregon by delaying compliance for more than 50 percent of the covered containers, without purpose or need.** As discussed below, food packaging is currently the type of plastic that is being most recycled in Oregon. Food packaging makes up about 52 percent of rigid plastic containers in Oregon. If 52 percent of rigid plastic packaging in the state is not required to meet any of the options at the same time as non-food packaging, then the potential for plastics as a whole to meet the 25 percent recycling rate will be destroyed and the intent of the law, to improve plastics recycling, will be undermined.

The Department's first point is further flawed because it relies on the action or inaction of the Food and Drug Administration. If we wait two years for the FDA to act, and it does not act or provides no definitive answers, then must we wait yet another two years, and then two years after that? How long will the ultimate delay be? On the other hand, if the food packaging industry had begun working to improve plastics recycling when the law passed in 1991, it could have made significant advancements in recycling, and would be far closer to the 1995 requirements than it is today by taking the position that it should have to do nothing.

The Department's second point is flawed because it assumes that the Department needs more time to develop special criteria that apply only to food packaging. Does the Department believe that food packaging is so different from other plastic packaging that the same criteria (for recycling rate, reduction, reuse) must be developed separately for food packaging and non-food packaging? Or, is the Department really arguing for two more years to develop criteria for all packaging?

The Council for Solid Waste Solutions announced in 1991 that it would achieve a 25 percent recycling rate for plastic by 1995. Oregon should continue to keep its commitment to the legislation and to expect industry to keep theirs within the time frame developed. It would also appear that the second rationale for Option B will lead to an unnecessarily bureaucratic program if the Department spends two years developing "criteria" which demonstrates what the companies themselves will have to show. The Department should simply review the companies' demonstration of investment in recycling programs, reduction of container weight and reuse programs. Development of complex criteria is not needed and was not contemplated when the law was passed, and should not be added at this time.

AOR also opposes the choice of Option B for the following additional reasons:

- Glass food and beverage packaging is recycled at 48 percent in Oregon. Oregon law requires glass food and beverage packaging to certify that it contains 35 percent recycled content by 1995 and 50 percent recycled content by the year 2000. Glass containers have no options under Oregon law, and would be at a further disadvantage to plastic food and beverage packaging if plastic food and beverage packaging were given an even bigger advantage of two additional years to comply.

- A quick survey of what types of rigid plastic containers are being recycled in the state will show that food packaging -- milk jugs and PET soft drink bottles -- is the majority of the plastic that is being recycled. Further, most of such containers are not being recycled back into food or beverage containers, but into more durable products or non-food packaging. Thus, it makes no sense to exempt or delay standards for the very type of packaging that is being recycled. If the Department stays with its recommendation for Option B, then AOR believes it must be done on the condition that food packaging cannot count toward the 25 percent recycling rate target for 1995.

- There appears no rational basis for giving food packaging two extra years to comply, to meet any of the criteria, but not give any other type of packaging or product two more years.

AOR views the draft recommendation of the Department as a retreat from Senate Bill 66, passed only in 1991. The Department should consider what signal it will be sending to the other parties affected by Senate Bill 66, and if the ultimate result will be to defeat the fragile compromise it worked so hard to achieve last Session. We urge the Department to reconsider its recommendations and choose Option A.

2. Response to definition of manufacturer

AOR believes that the definition of "manufacturer" in 459A.650(2) shows the intent of the legislature to make product manufacturers, who have the ability to determine how their products will be packaged, the parties responsible for complying with the law. Making product manufacturers responsible makes them think about their packaging choices and promotes informed decision-making. If a product manufacturer cannot find a package that is being recycled, contains recycled content, is reusable or reduced, it has the ability to switch to a type of packaging that does meet one of those tests -- for example, glass or aluminum.

The use of the excess language "of rigid plastic containers" in sections 459A.655(a) and 459A.660(1) does not, in our view, change the definition of the word "manufacturer" in 459A.650(2). The defined term should control.

AOR further believes that extra handling of information can be eliminated by consolidated reporting through trade associations; for example, many stores order from United Grocers. If you have any questions, please do not hesitate to contact us.

Sincerely,

Delyn Kiser

Chair, Association of Oregon Recyclers

C·T·F·A
Representing the personal care products industry

E. Edward Kavanaugh
President

July 27, 1992

Ms. Linda Hayes
Recycling Specialist, HSW
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Re: Section 34e, Chapter 385, Oregon Laws 1991
DEQ Report to Legislature on Exemptions for FDA-Regulated Products

Dear Ms. Hayes:

Per our conversation, I have included some materials demonstrating recent state and federal legislative initiatives that have exempted cosmetics from packaging legislation that is almost identical to the Oregon packaging law (Chapter 385, Oregon Laws 1991). First, I have included the latest packaging amendment to the federal Resource Conservation and Recovery Act (RCRA), the country's principal solid waste law. **See** U.S. Rep. Al Swift (D-Washington), Amendment No. 27, approved by House Energy and Commerce Committee on July 1, 1992 (enclosed). That amendment to the House version of the RCRA bill, H.R. 3865, exempts cosmetics and packaging for other FDA-regulated products that come into direct contact with or hold the product from the bill's packaging standards. Specifically, the RCRA bill contains language exempting "packages that directly hold drugs, drug products, **cosmetics**, medical devices...or biological products...." For state and federal uniformity purposes, Oregon should adopt a similar exemption for immediate cosmetic packaging.

The second document I have included is the new Coalition of Northeastern Governors' (CONEG) Model Source Reduction Legislation modeled after the Oregon recycling law's Section 34. The CONEG legislation exempts packaging that "directly holds or comes into contact with" cosmetic products. CONEG Model at 8 (enclosed). In the 1992 session, New York introduced Senate Bill 8484 and Assembly Bill 11055 based on the CONEG model. The New York bills feature an exemption for packaging of cosmetics and other FDA-regulated products similar to the exemption in the CONEG model bill. Other states are expected to follow New York's lead and introduce CONEG-type source reduction bills in 1993. Therefore, given the similarity of the Oregon law and the CONEG and New York legislation, Oregon should exempt packaging for cosmetics and other FDA-regulated products coming into direct contact with the product.

The Cosmetic, Toiletry, and Fragrance Association
1101 17th Street, N.W. • Suite 300 • Washington, D.C. 20036 • (202) 331-1770 • Fax (202) 331-1969

You also expressed an interest in products that are regulated as cosmetics and over the counter (OTC) cosmetic drugs. I have attached a chapter from **The Cosmetic, Toiletry, and Fragrance Association (CTFA) Labeling Manual** on the OTC Drug Review Process. OTC drugs contain active ingredients approved by FDA for a particular purpose. FDA considers products to be cosmetics and OTC drugs based on the products' claims and ingredients. A product can be considered both a cosmetic and a drug. For example, a product which claims to promote tanning would be a cosmetic, if the same product is also represented to prevent sunburn, it would also be considered an OTC drug. Similarly, a shampoo product for cleansing is a cosmetic while the same product represented to be an anti-dandruff shampoo is an OTC drug. There are many such examples of "hybrid" products. CTFA believes that such "cosmetic-drugs" deserve the same exempt status as the packaging of "medication prescribed by physicians" already a part of the Oregon Law. Chapter 385, Section 34c(3)(a) (formerly S.B. 66 (1991). However, we believe the need for an exemption for FDA-regulated products is even broader.

Although one product is called a "cosmetic," and another is called a "cosmetic drug," the distinction is irrelevant when considering the safety of the packaging for both types of products. Cosmetic products and cosmetic-drugs are topically applied, and both present the same concerns if their packaging is a potential source of contamination because of use of recycled materials. At this stage in package recycling and reuse technology, there are many unknowns and companies are evaluating the use of recycled materials on a product formula by formula basis. Cosmetic manufacturers have strong incentives to reduce packaging, establish refilling programs where possible and use recycled materials because consumers have a strong interest in environmental issues. Manufacturers should not be forced prematurely to comply with the Oregon packaging mandates if they have questions about the packaging's effect on product purity. Therefore, cosmetics and cosmetic drugs should be exempt from the Oregon law.

Thank you for considering CTFA's view that cosmetics, cosmetic-drugs and OTC drugs should be exempted from Oregon's law. Packaging for such products that come into contact with that product should be exempted from Oregon's law as they have been or will be under RCRA, CONEG and New York legislation.

If you have any questions, please call me at (202) 331-1770. I look forward to commenting in more detail on your Department's draft report to the legislature in the coming months.

Sincerely,

Catherine Beckley

Catherine Beckley
Legal & Regulatory Counsel

C·T·F·A
Representing the personal care products industry

E. Edward Kavanaugh
President

September 4, 1992

VIA TELECOPIER AND OVERNIGHT MAIL

Ms. Linda Hayes
Recycling Specialist, HSW
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Re: First Draft Report to the 1993 Legislature. Consideration to exempt Food and Drug Administration (FDA)-regulated products in rigid plastic containers from minimum recycled content requirements in ORS 459A.655.

Dear Ms. Hayes:

On behalf of The Cosmetic, Toiletry, and Fragrance Association (CTFA),[1] I would like to express the concerns of the personal care products industry about the Oregon Department of Environmental Quality's (DEQ) first draft report to the Legislative Assembly as required under Section 34e, Chapter 385, Oregon Laws 1991.

[1] CTFA is the national trade association representing the personal care product industry. Founded in 1894, CTFA has approximately 240 active members -- companies that manufacture or distribute the vast majority of the finished cosmetic, toiletry and fragrance products marketed in the United States. CTFA also includes over 275 associate member companies from related industries, such as manufacturers of raw ingredients, product packaging and dispensing devices, and industries that provide services to the industry.

The central issue addressed in the draft report is whether cosmetics and over-the counter (OTC) drugs in certain plastic packaging can comply with the recycled content criterion in the law and remain in compliance with the Food, Drug, and Cosmetic Act and Food and Drug Administration (FDA) regulations.

In the draft report, DEQ proposes three possible scenarios for its report to the Legislature: (1) no exemption; (2) no exemption, but extension of the compliance date until January 1, 1997 "for those FDA-regulated containers for which there is currently no FDA-approved (no-objection) process for utilizing recycled resins;" and (3) allow an exemption from the recycled content criterion only, not the reuse or reduce options, for those containers discussed above in Option 2.

Given the short time period for commenting on the first draft report, CTFA's members have not been able to meet and fully discuss the options that DEQ has proposed. We will meet in mid-September and will be able to comment more fully for the second draft report. In the meantime, however, CTFA would like to reiterate that because the Oregon law is technology forcing and contains so many unknowns (feasibility of reaching recycling rate, effect of using 25 percent postconsumer material on products), cosmetic products should be exempt from the law.

Oregon's packaging law exempts from the recycled content criterion rigid plastic containers used for "medication prescribed by physicians" and tamper-resistant seals used for public health purposes. However, cosmetics and other topical products that are regulated by the U.S. Food and Drug Administration (FDA) as over the counter (OTC) drugs have been arbitrarily excluded from the FDA product exemption

in the Oregon law.[2] For many of the same health and safety reasons that prescription drugs were exempt, cosmetics and cosmetic drugs warrant an such an exemption.

As discussed below, there is precedent at the state and federal level for exempting cosmetics and other FDA-regulated products from laws that are very similar to the Oregon packaging law.

I. FDA and Its Regulation of Cosmetic Packaging

In the past, FDA's primary focus on the use of recycled materials in packaging has involved food packaging, rather than cosmetics or other FDA-regulated products.[3] However, FDA always has required safe cosmetic packaging as articulated in the Food, Drug, and Cosmetic Act's adulteration provision. The Act deems a cosmetic to be adulterated "[i]f its container is composed, in whole or part, of any poisonous or deleterious substances which render the contents injurious to health." 21 U.S.C. Sec. 361 (1982). Therefore, cosmetic manufacturers, in ensuring the substantiation of ingredient and product safety, they must take into account the impact of product packaging on the safety of its contents.

Two of the options in the Oregon packaging law are to use 25 percent recycled material in the package or reuse the product a minimum of five times. FDA

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[2] **See** July 28, 1992 letter from CTFA to Linda Hayes of Oregon DEQ on FDA regulation of drugs and cosmetic drugs (attached).

[3] FDA regulates food packaging as an indirect food additive and requires that "[a]ny substance as a component of articles that contact food shall be of a purity suitable its intended purpose." 21 C.F.R. Part 174.5(a)(2) (1991).

has said that such " 'command and control' regulatory approaches"...are in some cases "technically infeasible, inefficient or administratively unworkable."[4] CTFA's concerns about the use of recycled materials in packaging and the reuse of containers for personal care products parallel the concerns FDA has voiced recently about the use of recycled materials in food packaging such as: the source of recycled material and the sorting process; migration of detergents and solvents used in the recycling process; whether temperatures are high enough in the recycling process to kill sporulators and toxins; and whether recycled packages can withstand processing, transportation and shelf storage over time (cosmetics generally stay in containers longer than foods or drugs); whether recycled paper, inks and optical brighteners may be difficult to remove and may cause adulteration through their heavy metals.[5]

CTFA members may face a difficult, if not impossible, choice: they can comply with the Food, Drug, & Cosmetic Act's requirements or they can comply with the Oregon law that requires the use of recycled material for cosmetic packaging or its reuse at least five times. Given the newness and limitations of current recycling technology, many manufacturers may not be able to comply with the mandated use of recycled material and also ensure the safety of the product. Technology should be

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[4] Statement for the Record, U.S. Food and Drug Administration, Public Health Service and the Department of Health and Human Services, before House Subcommittee on Hazardous Materials and Transportation Committee on Energy and Commerce (March 10, 1992) regarding H.R. 3865, RCRA reauthorization legislation at 1.

[5] Id. at 4-7.

given more time to develop before cosmetics and OTC drugs should be subjected to these technology-forcing requirements.

II. Federal RCRA Reauthorization and a Cosmetic Exemption

During the 1992 session of the 102nd Congress, the House of Representatives and the U.S. Senate have considered legislation[6] to revise the Resource Conservation and Recovery Act ("RCRA"), the principal federal solid waste law first enacted in 1976. A central part of the RCRA reauthorization legislation is the mandated recycling of consumer product packaging that would be overseen by the U.S. Environmental Protection Agency (EPA). In particular, Section 4401 of H.R. 3865 sets out specific packaging content and recovery requirements for glass, aluminum, steel, and plastic packaging. In the future, the EPA may regulate "other materials...(other than paper, aluminum, glass, steel or plastic)...."[7]

The recycling and recovery scheme in H.R. 3865 is based on model packaging legislation drafted by public interest research groups or "PIRGs"[8] and the Coalition for

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[6] H.R. 3865, sponsor Sen. Max Baucus (D-Montana); S. 976, sponsor Rep. Al Swift (D-Washington).

[7] Paper is not subject to H.R. 3865, Section 4401(b)(1) "multiple options packaging strategy." Rather, it is subject to Section (c)(1).

[8] The origin of the model PIRG packaging legislation is a 1990 Oregon ballot initiative drafted by Oregon PIRG ("OSPIRG") that eventually failed at the polls. PIRGs were started by consumer advocate Ralph Nader and are active at both the state and federal level on consumer and environmental issues.

Northeastern Governors' (CONEG) Model Source Reduction Legislation.[9] The House legislation now offers five options for industry to choose to comply with the packaging "rates and dates" requirements. First, the "Industry-Wide Recovery Rate Option" sets specific minimum recovery rates depending on the packaging material (**e.g.**, aluminum - 65% by 1995). Second, the "Company Specific Program" requires the product packager to either recycle material or designate (pay) someone to recycle it at the recovery levels specified in the industry-wide plan described above. Third, another option requires that the package "must be made of materials that contain at least 25 percent postconsumer material...." Then, the "packager may average together the recycled content of all packages of the same material used by the packager in a year." Fourth, the packagers may choose to refill or reuse a minimum of five times at least 50 percent of their packaging. Fifth, the packager can "source reduce" or decrease the volume or weight per use or per unit of product by: a) 15 percent compared to the year before if using the same material; and b) 20 percent compared to the year before if using a different packaging material.

Because the packaging standards in H.R. 3865 are technology forcing and their effect on products in packaging is relatively unknown at this point, Congress has exempted many FDA-regulated products and their packaging. For state and federal uniformity purposes, Oregon should adopt a similar exemption for immediate cosmetic packaging.

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[9] See Discussion of CONEG's model legislation at of this Petition.

In June, the full House Energy and Commerce Committee amended its RCRA bill to include a **cosmetic exemption**. Rep. Al Swift's (D-Washington) amendment exempts "packages that directly hold drugs, drug products, cosmetics, medical devices... or biological products"[10] from the bill's five "Multiple Options Packaging Strategy" discussed above.[11] In the report accompanying H.R. 3865, the House Energy and Commerce Committee voiced many of the concerns of CTFA members:

> The suitability of recycled materials in packaging also varies from application to application. There are many instances in which the use of recycled materials may threaten the integrity of the product that the packaging is intended to protect. For example, currently, recycled plastics can be utilized in direct food contact in only limited circumstances because of the potential for food contamination. Manufacturers of pesticides regulated by the Federal Insecticide, Fungicide, and Rodenticide Act are also restricted in the use of recycled materials in their packaging.

If pesticide packaging is not required to incorporate recycled materials, then FDA-regulated products such as cosmetics, which are applied to the skin, eyes and face should be exempt as well.

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[10] Food packaging is no longer exempt from the House bill, but was amended to the satisfaction of the industry on June 30.

[11] This exemption appears to be based on the Coalition of Northeastern Governors'(CONEG) Model Source Reduction Legislation which also exempts packaging that "directly holds or comes into contact with" cosmetic products.

III. A Model Packaging Initiative and A Cosmetic Exemption

Another group to become involved in packaging regulation is the Coalition of Northeastern Governors (CONEG). CONEG is a non-regulatory, private group interested in problems common to the Northeast such as solid waste disposal. CONEG's Source Reduction Task Force is an advisory body of state agencies, industry and public interest groups that draft model legislation for the Northeast or other states.[12]

In February 1992, CONEG issued its Source Reduction Model Legislation, which gives packagers two options for decreasing the amount of virgin material in packaging. The CONEG model draws from the Oregon and California laws. The first option, the company-wide approach, allows any mixture of source reduction, reuse, recycling and use of recycled material to be applied to any combination of the company's packages as long as the overall reduction equals 15 percent. The second choice, the "package specific" option, requires the packager to recycle or reuse each of its packages.[13]

The CONEG proposal is significant because it is based on the packaging standards in Oregon and California laws, yet it recognizes the need for an exemption for **all FDA-regulated products**. Specifically, CONEG exempts "paper and plastic packages or packaging components which directly hold or contact **food**, **drug** or

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[12] For example, on December 14, 1989, CONEG's Source Reduction Council approved the CONEG Model Toxics Legislation for packaging and packaging components (inks, closures).

[13] CONEG follows the Oregon law's options of recycling at 25 percent, using only a material that is recycled at a rate of 25 percent in the state, reusing a packaging a minimum of five times or reducing the amount of packaging by 10 percent.

cosmetic products." Tamper-resistant and child resistant closures and medical device packaging are also exempt from the waste reduction requirements. Finally, CONEG's legislation exempts any packaging that would make compliance with health and safety regulations infeasible. The first state to introduce legislation based on the CONEG Source Reduction Model Legislation is New York.[14]

IV. Certification of Compliance Requirement

According to the draft report, the Department has proposed shifting the duty to report information about the amount and type of packaging from the end packaging user to the packaging manufacturer, as required by Section 34c. CTFA acknowledges the Department's goal of "eliminat[ing] extra handling of the information." The Department also stated that "operating a major certification program was not contemplated by the Legislature and will require additional Department staff or contracting out of certification activities."

CTFA believes, however, that requiring "certification" detailing the total tons of rigid plastic containers produced or sold in the state by resin type and the tons of recycled materials used in manufacturing the rigid plastic containers will result in an avalanche of documentation submitted to the Department, despite the fact the manufacturer will retain more detailed documents on file. A workable, realistic

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[14] Governor Cuomo's Program Bill 239 was the original proposal, which since has been introduced as New York Assembly Bill 11055 and Senate Bill 8484 during the 1992 legislative session.

approach to ensure compliance is to establish a certificate of compliance system similar to that in the 14 states[15] with laws prohibiting heavy metals in packaging.

The Coalition of Northeast Governors (CONEG) Model Toxics Legislation restricts the use of four heavy metals (lead, cadmium, mercury, hexavalent chromium) in packaging and packaging components. Adopted in 14 states, the law states:

> The Certificate of Compliance shall be signed by an authorized official of the manufacturing or supplying company.... The purchaser shall retain the Certificate of Compliance for as long as the package or packaging component is in use. A copy of the Certificate of Compliance shall be kept on file by the manufacturer or supplier of the package or packaging component. Certificates of Compliance, or copies thereof, shall be furnished to the [state administrative agency] upon its request and to members of the public....

Only one state, Maine, deviated from the model legislation and originally required the submission of certificates of compliance by April 1, 1992. However, when the Maine Waste Management Agency assessed the amount of paperwork it would have to keep on file and use staff time to assess, the Agency moved back the effective date for filing the certificate one year. According to the Waste Management staff, they intend to seek a legislative change to the certificate submission requirement to allow manufacturers to keep the forms on file.

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[15] Connecticut, Iowa, Georgia, Maine, Maryland, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Washington and Wisconsin.

Conclusion

It is CTFA's position that cosmetics and other personal care product packaging should be exempt from the recycled content criterion in S. 66. The U.S. Food and Drug Administration, Congress, New York and CONEG have expressed their concerns about the use of 25 percent recycled material or the reuse of packaging by exempting several, if not all FDA-regulated products. For state and national uniformity, Oregon DEQ's recommendation to the Legislature should consider an exemption for packaging that comes into direct contact with cosmetic and cosmetic-drug products.

In addition, we urge DEQ to revise the certification requirement to eliminate a very significant burden for both government and private business.

Thank you for consideration of our concerns about the proposed draft report on Sections 34c and e. We look forward to the next draft report and working with your office.

Respectfully submitted,

Catherine C. Beckley

Catherine C. Beckley
Legal & Regulatory Counsel

Oregon Draft Testimony

Good afternoon. My name is Catherine Beckley from the Cosmetic, Toiletry, and Fragrance Association, the national trade association for the personal care products industry. I am also representing the Nonprescription Drug Manufacturers Association, which represents the makers of over-the-counter (OTC) drugs.

First, I would like to thank Linda Hayes and the Department of Environmental Quality for providing this forum to express our thoughts on the Draft Report to the Legislature. I will make my remarks brief and would be glad to answer any questions of the panel. I would like to cover three topics:

1. How FDA regulates our packaging;
2. Technical limitations of complying with the law; and
3. Specific recommendations on the Draft report.

FDA Regulation/Approach to Cosmetics and OTC Drugs

The recommendations of the 2nd Draft Report appear tailored to the technology and regulation of food packaging. DEQ notes that "food safety is a legitimate concern that should not be jeopardized." Likewise, the safety of cosmetics and OTC drugs and the manner in which that is affected by packaging that comes into direct contact with the product is of the greatest concern to the cosmetic industry. Our products are applied to the skin and in some cases are used around the mouth and eyes.

However, the regulation of cosmetics and OTC drugs by the FDA differs from the regulation of food. However, the requirement that the products be safe is no different and, in each case the Agency

and the manufacturer must consider the possibility that contaminants may migrate from packaging that comes in contact with the product. Under the Food, Drug, and Cosmetic Act, it is the responsibility of the cosmetic or OTC drug manufacturer to guarantee the safety of its product in part by ensuring that the product is not adulterated by contaminants, migrating from direct contact packaging. If FDA were to determine the product to be adulterated due to contaminants from packaging, the Agency would have the same regulatory authority as for food, prescription drugs and devices to seize or enjoin sale of the product and to prosecute the manufacturer. Therefore, like the food industry, cosmetic and OTC drug companies conduct extensive testing of their product formulations and the interaction with packaging made from recycled content.

Although FDA has different ways of regulating food and cosmetics, the obligation is the same - to supply a safe product and package. The marketers of personal care products and nonprescription drugs are finding that despite a strong desire to adopt environmentally sound packaging practices, they have limited experience with recycling technology and have no past experience with or guidance from the FDA on how to comply with laws such as Oregon's. Therefore, more time is needed to assess the impact of using recycled material in our packaging and the feasibility of applying the other packaging options.

Safety Concerns and Technical Limitations

In the past few years, many marketers have been trying to respond to consumers' demand for less packaging and more recycled

packaging. Many are finding that with cosmetic and OTC products in rigid plastic containers there are technical limitations and unique considerations that will make complying with any of the options unlikely by 1995 and perhaps, even by 1997.

Some examples of technical problems companies have encountered include:

* Tri-layer sandwich molding does not guarantee that there will be no contamination from post-consumer recycled plastic. Therefore, extensive, long-term stability testing is required to confirm there is no leaching of contaminants into the product.

* For safety and regulatory reasons, the colorants used in cosmetic packaging must not migrate into the cosmetic product. Colorant profiles and leaching studies must be conducted to determine whether there is migration because azo dyes and anthraquinones have the potential for irritation, sensitization and photobiological adverse reactions following exposure to ultraviolet radiation.

* Deciding on a reduction in packaging also requires testing. For example, the typical test for a corrugated paper reduction program for a package requires a 6-month internal stack test, which is followed by sending the boxes to a major account's warehouse for several months of similar tests before a national change in the shipping package can be done.

* Next, many plastic bottles used for products such as shampoo are as thin as possible already for cost savings. Companies must conduct drop testing and pressure testing. This is especially necessary for high-alcohol products that could be flammable.

Comments on Specific Recommendations of Report

The Second Draft Report's Option B proposes a one-time, 2-year extension for FDA-regulated products in rigid plastic containers, if necessary. In the absence of an exemption for cosmetics and OTC drugs, CTFA supports DEQ's recognition that an extension is needed. However, we have concerns about the extension process.

First, we believe that an extension under Option B should be applicable to all the options as proposed in the First Draft Report. Many marketers are finding that they do not have 4 "options" to choose from because the law is technology forcing and contains so many unknowns. Among those unknowns are the feasibility of reaching the recycling rate and the effect of using 25 percent postconsumer material for different classes of products.

Second, the rationale for the extension date to 1997 is unclear. There is no indication that 1995 or even 1997 will be a feasible deadline for full compliance under any of the options. There also is no indication that FDA will have given industry guidance on how to use recycled materials in packaging. In the absence of such guidance, cosmetic and OTC drug companies need time to test all the options. One large company with almost 550 Stock Keeping Units (SKUs) has been able to meet the 25 percent recycled content requirement for 8 SKUs. And that took two years of substantial testing and effort.

Next, the Report proposes that starting in 1995, companies must approach the Department on a case-base basis for any extension. The likelihood of obtaining an extension from DEQ appears to be so subjective and uncertain that packagers trying to

make packaging for 1995 won't find out until then if they are eligible.

In conclusion, cosmetic and OTC drug marketers are making advances using recycled content and reducing secondary packaging. Some companies have reduced packaging because much of the outer packaging is paper, which has been recycled for a longer time. And although a few companies have been successful in using 25 percent recycled content, few companies can meet the options by 1995. Our membership includes many smaller companies that do not have the economies of scale of more environmentally sophisticated companies. Standards should not be based on the success of one or two companies, but should be attainable for all within a reasonable time period.

In conclusion, Congress and the Northeastern states are considering packaging legislation similar to Oregon's. In fact, they have recognized the unique safety concerns of packaging that comes into direct contact with FDA-regulated products and have exempted cosmetics, OTC drugs and other FDA-regulated products from such laws. Given such a precedent, it is reasonable for the Oregon DEQ to recommend that cosmetic and OTC drugs packaging changes warrant at the least an extension.

C·T·F·A
Representing the personal care products industry

October 21, 1992

E. Edward Kavanaugh
President

VIA TELECOPIER AND OVERNIGHT MAIL

Ms. Linda Hayes
Recycling Specialist, HSW
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Re: Second Draft Report on Section 34e, Chapter 385, Oregon Laws 1991 DEQ Report to Legislature on Exemptions for FDA-Regulated Products

Dear Ms. Hayes:

The Cosmetic, Toiletry, and Fragrance Association (CTFA),[1] submits this comment to express the concerns of the personal care products industry about the Oregon Department of Environmental Quality's (DEQ) Draft Report to the Legislative Assembly as required under Section 34e, Chapter 385, Oregon Laws 1991. The central issue addressed in the Draft Report is whether cosmetics in certain plastic packaging can comply with the criteria in the law and remain in compliance with the Food, Drug, and Cosmetic Act and Food and Drug Administration (FDA) regulations.

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[1] CTFA is the national trade association representing the personal care product industry. Founded in 1894, CTFA has approximately 240 active members -- companies that manufacture or distribute the vast majority of the finished cosmetic, toiletry and fragrance products marketed in the United States. CTFA also includes over 275 associate member companies from related industries, such as manufacturers of raw ingredients, product packaging and dispensing devices, and industries that provide services to the industry.

In support of CTFA's recommendation that cosmetic packaging that comes into direct contact with the product deserves exempt status from the criteria in Section 34b, this letter will discuss the regulation of personal care products and their packaging by the FDA and the concerns of the Agency and the industry about adulteration of the product via its packaging. Second, this letter will highlight some of the technical and logistical problems marketers face with complying with the four options by 1995. Finally, in Part III we will discuss the recommendations by DEQ to the Legislature on the extension process, certification process and their proposed finding that no further FDA product exemptions are warranted.

I. FDA Regulation of Cosmetics

The recommendations of the 2nd Draft Report appear tailored to the technology and regulation of food packaging. DEQ notes that "food safety is a legitimate concern that should not be jeopardized." Likewise, the safety of personal care products[2], and the manner in which that is affected by packaging that comes into direct contact with the product is of the greatest concern to

[2] Most personal care products are classified as "cosmetics" under the Food, Drug, and Cosmetic Act. Manufacturers are required by law to ensure the safety of ingredients and the product before marketing to consumers. FDA has authority to seize or enjoin the sale of products deemed to be "adulterated" (unsafe) for any reason, including concerns over the migration of contaminants from the packaging. CTFA also represents the concerns of manufacturers of OTC products such as sunscreens, mouthwashes, anti-dandruff shampoos and others. Although FDA exercises greater control over OTC drugs prior to marketing, it has identical concerns and enforcement authority over the safety of OTC ingredients, products and packaging.

our industry. Our products are applied to the skin and in some cases are used around the mouth and eyes.

The regulation of cosmetics by the FDA differs from the regulation of food. However, the requirement that the products be safe is no different and, in each case the Agency and the manufacturer must consider the possibility that contaminants may migrate from packaging that comes in contact with the product. Under the Food, Drug, and Cosmetic Act, it is the responsibility of the cosmetic manufacturer to guarantee the safety of its product in part by ensuring that the product is not adulterated by contaminants, migrating from direct contact packaging. The Act deems a cosmetic to be adulterated "[i]f its container is composed, in whole or part, of any poisonous or deleterious substances which render the contents injurious to health." 21 U.S.C. Sec. 361 (1982). If FDA were to determine the product to be adulterated due to contaminants from packaging, the Agency would have the same regulatory authority as for food, prescription drugs and devices to seize or enjoin sale of the product and to prosecute the manufacturer.

Although FDA has different ways of regulating food and cosmetics, the bottom line is the same-the products must be safe. Ensuring safety requires attention not only to the product and its ingredients, but also to the packaging that comes in contact with the product. The marketers of personal care products are finding that despite a strong desire to adopt environmentally sound packaging practices, they have limited experience with recycling technology and have no past experience with or guidance from the FDA on how to comply with laws such as Oregon's. Hence, CTFA

members may face an impossible situation: they may be unable to remain on the market in Oregon because they cannot satisfy the requirements of the Food, Drug, and Cosmetic Act and the Oregon law. More time is needed to assess the impact of using recycled material in our packaging and the feasibility of applying the other packaging options.

II. Analysis of the Recycled Content/Reuse/Rate/Reduce Options

In the past few years, marketers have been trying to respond to consumers' demand for less packaging and more recycled packaging. Many are finding that with cosmetic products in rigid plastic containers present technical limitations and unique considerations that will make complying with any of the options unlikely by 1995 and perhaps, even by 1997.

A. Limitations on the Use of 25 Percent Recycled Content

* CTFA's concerns about the use of recycled materials in packaging and the reuse of containers for personal care products parallel the concerns FDA has voiced to Congress about the use of recycled materials in food packaging.[3] One such concern is the source of recycled material and the process of sorting feedstock plastics. In particular, cosmetic marketers want to avoid the use of containers previously used for motor oil, household cleaners, and paints and solvents because of fear of the leaching that occurred while the product was in the packaging. These containers

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[3] Statement for the Record, U.S. Food and Drug Administration, Public Health Service and the Department of Health and Human Services, before House Subcommittee on Hazardous Materials and Transportation Committee on Energy and Commerce (March 10, 1992) regarding H.R. 3865, RCRA reauthorization legislation at 4-7.

may be suitable for some product uses, but they are not suitable for cosmetic packaging.

* FDA has also expressed concern about the migration of detergents and solvents used in the recycling process; whether temperatures are high enough in the recycling process to kill sporulators and toxins; and whether recycled packages can withstand processing, transportation and shelf storage over time (cosmetics generally stay in containers longer than foods or drugs); whether recycled paper, inks and optical brighteners may be difficult to remove and may cause adulteration through their heavy metals.

* The DEQ Draft Report contains a list of several "no objection" letters for food packaging made from recycled plastic resin. Through the no-objection process, FDA has given its approval for using that particular resin in direct contact with certain foods such as beverage bottles, egg cartons and fresh fruit and vegetable baskets. Given FDA's approval of some recycled food containers, one may question whether cosmetic products could use the approved food-grade recycled packaging. Food packaging with recycled content such as egg cartons and fruit crates are analogous to the outer box for some cosmetic products. Egg and fruit packaging does not come into direct contact with a viscous mixture such as shampoo and therefore, is not suitable for cosmetic products.

* Companies are also having problems getting the quality of used PET and HDPE necessary to meet the 25 percent recycled content option. There also is great uncertainty whether there will be an adequate supply as demand increases as the result of legislation.

* A large percentage of the available PET resin comes from milk containers. Using that PET has been difficult because of the sour milk odor left in the plastic. For personal care products that are scented or even scent-free, eliminating the odor has been a difficult technical problem, limiting the use of plastic blends.

* Tri-layer sandwich molding does not guarantee that there will be no migration from post-consumer recycled plastic. Therefore, extensive, long-term stability testing is required to confirm there is no leaching of contaminants into the product.

* Products such as shampoo contain surfactants. Because the function of surfactants is to extract dirt and impurities from the hair, there is a greater chance that contaminants could leach from the package to the product.

* There are concerns that personal care products with a high alcohol content such as mouthwashes and skin care cleansers and toners could leach contaminants more readily than other non-alcohol products.

* Many companies are having difficulty obtaining the molding technology needed to make the tri-laminate package by 1995 because it is not widely available. Even the largest companies have had difficulties retooling because of the large volume and variety of their packaging. Many cosmetic companies produce both the finished product and the packaging. Therefore, they cannot simply ask outside packaging companies to supply them with the coextruded packaging because packaging companies cannot meet the demand and are developing their own plastic recycling technology.

* Some maintain that the plastics industry should be able to develop the requisite recycling technology to meet the 25 percent

recycled content by 1995, just as the glass and aluminum industries have developed their own recycling technology. It took the latter industries more than five years to develop the technology and to retool. Also, the states and those industries had many years to establish statewide collection programs to make the recycled material available.

B. Limitations on the Reduction of Packaging by 10 Percent

Although the Oregon packaging law is characterized as a multiple options law, there are serious drawbacks to reduction as a viable option for many companies, especially those that have reduced packaging by at least 10 percent before 1990, the baseline year. If the intent of the law is to decrease packaging and a marketer reduced packaging before 1990, the company is being penalized for being more environmentally progressive than his or her competitors.

For cosmetic products subject to the law, those in plastic packaging over 8 ounces, such as shampoos, conditioners and hairsprays, the outer, secondary packaging generally has been eliminated and only the bottle directly holding the product remains. To further reduce such packages, the container must be "lightweighted." The result is a thinner container with an inferior ability to withstand damage such as dropping, being crushed in transportation, etc. Extensive testing was done to arrive at the original package weight and density and, further reduction is not a viable option for many companies. Some other technical hurdles to reduce packaging include:

* Before cosmetic packaging can be lightweighted or reduced, extensive package/product compatibility testing is required because

the thinner the package, the greater the chance for migration of colorants from the package. Colorants used in cosmetic packaging are not among the color additives approved by FDA for use directly in the cosmetic product. In other words, colorants used in packaging components are not in the same chemical families as those colorants approved by FDA for use directly in cosmetics.

The colorants azo dye and anthraquinone are widely use in cosmetic packaging. These colorants as well as plasticizers and packaging materials themselves are not intended for long-term contact with the skin because of the potential for adverse reaction. The colorants have the potential for irritation, sensitization and photobiological adverse reactions following exposure to ultraviolet radiation.

Therefore, for safety and regulatory reasons, the colorants used in cosmetic packaging must not migrate into the cosmetic product. Packaging colorants are therefore chosen for their fastness. The colorants/package combination must be compatible with the product. Colorant profiles and leaching studies must be conducted to ensure the colorant will not migrate into the product.

* Deciding on a reduction in packaging also requires testing. For example, the typical test for a corrugated paper reduction program for one national brand requires a 6-month internal stack test, which is followed by sending the boxes to a major account's warehouse for several months of similar tests before a national change in the shipping package can be done.

* Next, many plastic bottles used for products such as shampoo are already as thin as possible for cost savings. To decide on any package reduction or elimination, companies must

conduct thorough drop testing and pressure testing of the product to determine whether it can withstand transportation, storage, shelf life and conditions of use in the home. This is especially necessary for high-alcohol personal care products that could be flammable or combustible in some cases.

C. Limitations on the Reuse Option

The principal drawback of the reusable option is that when the package leaves the seller, he or she loses control of the package. For companies that interpret "reusable" to mean selling a small container that can be refilled by a larger size package,[4] once the product leaves the store they have no control over whether the consumer refills it five times. This makes quantifying the reuse extremely difficult for the marketer. Also, marketers that choose to refill a package in the store do not know how that container was used after it left the control of the merchant. A related concern is whether that package has been contaminated by bacteria, thereby creating the opportunity for the refilled product to become adulterated. Therefore, many companies must forgo refilling because of such safety concerns.

D. Limitations of the Use of Plastic Recycled at 25 Percent Rate Statewide

Probably the most uncertain option of the Oregon packaging law is use of a plastic that is recycled statewide at a rate of 25 percent by January 1, 1995. The law does give marketers latitude

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[4] However, it is unclear from the Oregon statute whether reusable at least five times for the same or substantially similar purpose means the selling of refillable containers.

to decide whether they will track the recycling rate of a particular product package, a type of plastic resin (PET, HDPE) or all the plastic containers in the aggregate. However, without being able to determine whether the state will reach the 25 percent rate, this is not an option. Since passage of the law, marketers have been deciding what packaging changes they must make to comply with the law. They cannot put all their eggs in one basket and rely on the rate option, so their options are diminished by one-quarter, making compliance more difficult.

III. Comments on Specific Recommendations of Second Draft Report

A. Precedent for Exempting Cosmetics From Packaging Bills

The DEQ Draft Report recommends against any exemptions for FDA-regulated products other than prescription drugs. However, other jurisdictions considering packaging legislation similar to Oregon's have recognized the unique safety concerns of packaging that comes into direct contact with FDA-regulated products and have exempted cosmetics, OTC drugs and other FDA-regulated products from such laws. In the interest of national uniformity, Oregon should consider the approach to FDA exemptions taken by the jurisdictions described below considering "environmentally acceptable" packaging initiatives.

1. Federal RCRA Reauthorization and Recycled Packaging

During the 1992 session of the 102nd Congress, the House of Representatives and the U.S. Senate have considered legislation[5]

[5] H.R. 3865, sponsor Sen. Max Baucus (D-Montana); S. 976, sponsor Rep. Al Swift (D-Washington).

to revise the Resource Conservation and Recovery Act ("RCRA"), the principal federal solid waste law first enacted in 1976. A central part of the RCRA reauthorization legislation is the mandated recycling of consumer product packaging that would be overseen by the U.S. Environmental Protection Agency (EPA). In particular, Section 4401 of H.R. 3865 sets out specific packaging content and recovery requirements for glass, aluminum, steel, and plastic packaging. In the future, the EPA may regulate "other materials... (other than paper, aluminum, glass, steel or plastic)...."[6]

The recycling and recovery scheme in H.R. 3865 is based on model packaging legislation drafted by public interest research groups and the Coalition of Northeastern Governors (CONEG) Model Source Reduction Legislation. The House legislation offers five options from which industry may choose to comply with the packaging law, which is very similar to Oregon's packaging law. Because the packaging standards in H.R. 3865 are technology forcing and their effect on products in packaging is relatively unknown at this point, Congress has exempted many FDA-regulated products and their packaging. For state and federal uniformity purposes, Oregon should adopt a similar exemption for direct cosmetic packaging.

In June, the full House Energy and Commerce Committee amended its RCRA bill to include a **cosmetic exemption.** Rep. Al Swift's (D-Washington) amendment exempts "packages that directly hold drugs, drug products, cosmetics, medical devices...or biological products"

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[6] Paper is not subject to H.R. 3865, Section 4401(b)(1) "multiple options packaging strategy." Rather, it is subject to Section (c)(1).

from the bill's five "Multiple Options Packaging Strategy." [7] In the report accompanying H.R. 3865, the House Energy and Commerce Committee voiced many of the concerns of CTFA members:

> The suitability of recycled materials in packaging also varies from application to application. There are many instances in which the use of recycled materials may threaten the integrity of the product that the packaging is intended to protect. For example, currently, recycled plastics can be utilized in direct food contact in only limited circumstances because of the potential for food contamination. Manufacturers of pesticides regulated by the Federal Insecticide, Fungicide, and Rodenticide Act are also restricted in the use of recycled materials in their packaging.

If pesticide packaging is not required to incorporate recycled materials, then FDA-regulated products such as cosmetics, which are applied to the skin, around the eyes should be exempt as well.

2. A Model Packaging Initiative and A Cosmetic Exemption

Another group to become involved in packaging regulation is the Coalition of Northeastern Governors (CONEG). CONEG is a non-regulatory, private group interested in problems common to the Northeast such as solid waste disposal. CONEG's Source Reduction Task Force is an advisory body of state agencies, industry and

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[7] This exemption appears to be based on the Coalition of Northeastern Governors'(CONEG) Model Source Reduction Legislation which also exempts packaging that "directly holds or comes into contact with" cosmetic products.

public interest groups that draft model legislation for the Northeast or other states.[8]

In February 1992, CONEG issued its Source Reduction Model Legislation, which gives packagers two options for decreasing the amount of virgin material in packaging. The CONEG model draws from the Oregon and California laws. The first option, the company-wide approach, allows any mixture of source reduction, reuse, recycling and use of recycled material to be applied to any combination of the company's packages as long as the overall reduction equals 15 percent. The second choice, the "package specific" option, requires the packager to recycle or reuse each of its packages.[9]

The CONEG proposal is significant because it is based on the packaging standards in Oregon and California laws, yet it recognizes the need for an exemption for **all FDA-regulated products**. Specifically, CONEG exempts "paper and plastic packages or packaging components which directly hold or contact **food, drug or cosmetic products.**" Tamper-resistant and child resistant closures and medical device packaging are also exempt from the waste reduction requirements. Finally, CONEG's legislation exempts any packaging that would make compliance with health and safety regulations infeasible. The first state to introduce legislation

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[8] For example, on December 14, 1989, CONEG's Source Reduction Council approved the CONEG Model Toxics Legislation for packaging and packaging components (inks, closures).

[9] CONEG follows the Oregon law's options of recycling at 25 percent, using only a material that is recycled at a rate of 25 percent in the state, reusing a packaging a minimum of five times or reducing the amount of packaging by 10 percent.

based on the CONEG Source Reduction Model Legislation is New York.[10]

B. The Extension Process

The Second Draft Report's Option B proposes a one-time, two-year extension to 1997 for FDA-regulated products in rigid plastic containers that choose the recycled content requirement, if necessary. Because the Draft Report recommends against any exemptions for FDA-regulated products, there should be more flexibility and changes to the the extension process.

* DEQ should consider extending the compliance deadline to 1997, without individual marketers having to certify on a case-by-case basis why they cannot comply. However, in 1997, marketers that could not meet any of the options could then be required to apply for an extension or exemption and submit a report to DEQ detailing their progress.

* An extension under DEQ's Option B should be applicable to all the options not just from the recycled content option. Section 34e(1) of the law states that the purpose of the Report to the Legislature is to study "whether to grant an exemption from the criteria [emphasis added] established by section 34b," which includes the reduce, reuse, recycling rate and recycled content options, not just the recycled content criterion. Many marketers are finding that they do not have four "options" to choose from because the law is technology forcing and contains so many unknowns. Among those unknowns are the feasibility of reaching the

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[10] Governor Cuomo's Program Bill 239 was the original proposal, which since has been introduced as New York Assembly Bill 11055 and Senate Bill 8484 during the 1992 legislative session.

recycling rate and the effect of using 25 percent postconsumer material for different classes of products. Therefore, DEQ's Report should recommend that the extension should apply to all the options because the statute refers to the plural term **criteria** established in Section 34b.

* The rationale for the extension dates is unclear. There is no indication that 1995 or even 1997 will be a feasible deadline for full compliance under any of the options. There also is no indication that FDA will have given industry guidance on how to use recycled materials in packaging as the food industry has obtained. In the absence of such guidance, cosmetic and OTC drug companies need time to evaluate the safety and technical feasibility of all the options.

* The Report proposes that starting in 1995, companies must approach the Department on a case-base basis for any extension. The likelihood of obtaining an extension from DEQ appears to be so subjective and uncertain that packagers trying to make packaging for 1995 won't find out until then if they are eligible. Marketers need to know their choices in packaging much in advance of that time.

C. Certification Requirement

According to the Draft Report, the Department has proposed shifting the duty to report information about the amount and type of packaging from the end packaging user to the packaging manufacturer, as required by Section 34c. CTFA acknowledges the Department's stated goal of "eliminat[ing] extra handling of the information." The Department also stated in its First Draft Report that "operating a major certification program was not contemplated

by the Legislature and will require additional Department staff or contracting out of certification activities."

CTFA believes that requiring "certification" detailing the total tons of rigid plastic containers produced or sold in the state by resin type and the tons of recycled materials used in manufacturing the rigid plastic containers will result in an avalanche of documentation submitted to the Department. For small companies, submitting detailed, updated yearly reports would greatly tax their one or two-person regulatory staff. For large companies with hundreds of products, similar reporting would add to their already huge regulatory burden.

A workable, realistic approach to ensure compliance is to establish a certificate of compliance system similar to that in the 13 states[11] with laws prohibiting heavy metals in packaging. The Coalition of Northeastern Governors (CONEG) Model Toxics Legislation restricts the use of four heavy metals (lead, cadmium, mercury, hexavalent chromium) in packaging and packaging components. Adopted in 13 states, the law states:

> The Certificate of Compliance shall be signed by an authorized official of the manufacturing or supplying company.... The purchaser shall retain the Certificate of Compliance for as long as the package or packaging component is in use. A copy of the Certificate of Compliance shall be kept on file by the manufacturer or supplier of the package or packaging component.

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[11] Connecticut, Georgia, Iowa, Maine, Maryland, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Washington and Wisconsin.

> Certificates of Compliance, or copies thereof, shall be furnished to the [state administrative agency] upon its request and to members of the public....

Only one state, Maine, deviated from the model legislation and originally required the submission of certificates of compliance by April 1, 1992. However, when the Maine Waste Management Agency assessed the amount of paperwork it would have to keep on file and the staff time required, the Agency moved back the effective date for filing the certificate one year. In a recent memo, the Waste Management staff said they intend to seek a legislative change to the certificate submission requirement to allow manufacturers to keep the forms on file and submit them to the Agency upon request.

CONCLUSION

Marketers of personal care products are making advances using recycled content and reducing secondary packaging. And although two companies have been successful in using 25 percent recycled content in cosmetic products, few companies can meet the options by 1995. Our membership includes many medium-sized and smaller companies that do not have the economies of scale of some larger companies. Standards should not be based on the success of one or two companies. Such requirements should be imposed only when they become technologically feasible and attainable by any company making a good faith effort to comply.

Therefore, it is reasonable for the Oregon DEQ to recommend an exemption for cosmetic packaging that comes into direct contact with the product based on safety concerns of the FDA and the recommendations of other legislators. At a minimum, an extension

until 1997 without the 1995 certification requirements is warranted. Then in 1997, marketers would have to demonstrate to DEQ whether they qualify for any additional extension.

The Department may fear that by exempting direct contact cosmetic packages from the law or revising the extension process, that the industry as a whole will not incorporate recycled material or reduce packaging. That is not the case. Because consumers want less packaging and recycled packages, companies will strive for using the most recycled content possible. To compete in the '90s, companies realize they must make environmental advances. However, even the most environmentally advanced marketers, recognize that meeting one of the options by 1995 for all their products is unrealistic. Many companies have had to forgo an environmental marketing advantage in the interest of delivering safe products and packaging.

Respectfully submitted,

Catherine C. Beckley

Catherine C. Beckley
Legal & Regulatory Counsel

MOLDED CONTAINER CORPORATION

August 20, 1992

Linda Hayes
State of Oregon
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390

Dear Linda:

Following up on our telephone conversation yesterday, I do have some comments concerning your draft report to the 1993 legislature concerning FDA regulated rigid plastic containers.

1. Concerning the word Manufacturer:

   It seems to me that the manufacturer of the product that goes inside a plastic container should be responsible for the reporting under the law. In virtually all cases, the manufacturer of the product specifies to the manufacturer of the plastic container what is expected. I cannot think of many cases where the manufacturer of the container specifies to his customer what container to purchase.

   As you state in the draft, there are many plastic container manufacturers in the country. I would suggest that the container manufacturer may not be able to identify which of the containers they sell to their customers end up in the State of Oregon. The packager of a product would have a much better chance of making that determination.

   I think the emphasis you are suggesting to put on the container manufacturer is misdirected.

2. Concerning FDA compliance:

   In my experience, container manufacturers do not file applications with FDA seeking recycled polymer approval. I would suggest that few manufacturers of plastic containers do research and development of polymers at all. Those applications and that type of research are done by the manufacturer of the resin in question. To ask a manufacturer of a container to report steps they have taken to secure FDA approval of recycled content resin would be a waste of time and effort, since there will be no report to give.

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The FDA has consistently maintained that virgin resin must be used in food contact applications. The only resins that have been approved for food contact by the FDA are depolymerized PET resins. The majority of food packaging is not PET, and the chances for getting FDA approval or a recycled content package are slim at best.

On another tack, I wonder if the State of Oregon seriously wants to tamper with the safety of the food supply for the citizens. We enjoy the cleanest purest food in the world, largely due to the stringent packaging laws in the country. Even the remote chance of introduction of a contaminate into the food supply should be avoided.

In general, I have a comment concerning how the law will impact some of the food manufacturers in the state. I know of packages that are packed in Oregon, that will be not welcome on the retail shelves after 1995, if there is not a 25% recycling rate for all plastic containers. These products are packaged in a material that was chosen for product protection as well as sales presentation. It will not be a material that will make recycling rates as a class.

It seems that we will have companies that manufacture in Oregon, that will be in violation of the law if they try to retail their products in the state. I do not like this idea at all.

My feeling is that as long as the FDA requires virgin resin, the manufacturers of the products so regulated should not be bound by any reporting to the State of Oregon. It will just create a pile of paper that will have no consequence.

I would encourage Option C. This would not exempt the manufacturer from the other options outlined in ORS 459A.655.

In your Option C discussion, in the Con area, you suggest that an exemption would be premature because FDA may change the virgin requirements. If that happens, this whole exemption would be moot.

Your 3rd point in the Con argument is pretty far fetched. If there are new recycling processes that FDA approves for food contact, all manufacturers of products that are packaged in plastic containers will be vitally interested in it.

As side line, it is interesting that you refer to commercially available. You do not make any mention of economically viable. I wonder if a commercially available resin that doubled the cost of the plastic package would have any chance at all of being used by a product manufacturer. Would the State of Oregon require it's use, regardless of cost?

Throughout the draft, you suggest that the manufacturer need be pushing FDA for a relaxing of the virgin content rules. I would suggest, as I have above, it is the large resin producers that work with FDA, not the manufacturer of the package or the product.

Some of the State of Oregon's largest manufacturers of products that are put into rigid plastic containers are locally owned business' that have neither the R&D capability nor the legal resources to pursue FDA approvals for new materials, but the draft suggests they need do just that.

Linda, I appreciate the opportunity to comment, and hope you will find the preceding helpful in making your final draft.

If you have any questions or comments, please feel free to call me.

Best regards,

John Normandin
VP, Sales and Marketing

MOLDED CONTAINER CORPORATION

October 8, 1992

Linda Hayes
Department of Environmental Quality
811 S.W. 6th
Portland, OR 97204-1390

Comments for DEQ concerning FDA regulated products, SB 66

1. Exemptions: Encourage option C

As long as FDA requires virgin resin for containers that are used for food contact, there is no way that a statute in Oregon will over ride that requirement. The FDA has the responsibility to oversee the health of the food supply in the country, and I doubt that the Legislature of Oregon is interested in taking the chance of contamination of the food supply.

The idea of a 2 year extension is interesting, but the wording of "one time" may put the state statute in conflict with the FDA requirements. What would happen on January 1, 1997 if the FDA has not sent letters of non objection.

There are only a couple of manufacturers of containers in the State of Oregon. I would guess that none of them have the legal staff or the R & D staff to petition FDA for approval post consumer recycled content packaging. It is unclear to me what would happen with plastic packaging manufacturers outside the state who's packages happen to end up on the shelves of Oregon.

Again, I am concerned that the department is interested in having container manufacturers and product packers pursue the production of recycled content containers if and when the FDA approves, regardless of cost of the material. I would hope that the state would not be in the position of forcing a manufacturer to use recycled resin that is commercially available, regardless of the economics. It seems to me that a resin may become available at a higher cost than the virgin equivalent.

2. CONCERNING THE DEFINITION OF MANUFACTURER

As a manufacturer of plastic containers in the State of Oregon, I sell containers to my customer either in or out of state. The customer either fills the container with product or resells the container to someone who fills the container. The filler or food processor then sends the container into a distribution chain that sends the product to the store shelves. I have no possible way of determining which of the containers I sell end up on the shelf in the State of Oregon.

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The only party that has the remotest chance of tracking the distribution of their product is the manufacturer of the product being sold.

I notice that the reasoning for the recommended change is that there are a large number of product packers and according to research a fewer numbers of packaging manufacturers. It seems to me that to change the wording of the law in order to make things easier for the regulating agency and push a virtually impossible task onto the package manufacturers is not what the law intended.

Best regards,

John Normandin

John Normandin
VP Sales & Marketing

11

August 25, 1992

Linda Hayes
Waste Reduction & Planning
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390

Nature's fresh Northwest!

Office
2326 NE Fremont
Portland, OR 97212
(503) 281-7489
fax (503) 288-7620

Beaverton Store
(503) 646-3824

Corbett Store
(503) 244-3934

Fremont Store
(503) 288-3414

Hillsdale Store
(503) 244-3110

Lake Oswego Deli
(503) 635-3374

Dear Linda;

I received the "Draft Report to the 1993 Legislature" considering exemptions for FDA-regulated rigid plastic containers. I thought I would drop a note with by feedback.

As I read the considered exemptions, there are none. If I am reading correctly, the DEQ recommends no exemptions but a delay of the effective date. First, I agree that these containers should not be exempt. Besides the fact that they represent a large percentage of the rigid plastic containers manufactured, I believe the intent of the law, by offering the options of having recycled content or be recyclable or reusable, took into considerations that some packaging simply might never have recycled content. The demand then becomes that those containers be part of a recycling program.

Second, I think the delay of the effective date for requirements is quite generous, however, I am willing to support this given the "progress report." I also see evidence that we are seriously moving toward recovery of plastic and by 1995 many of these containers will be part of a recycling program.

Third, I was happy to see the DEQ tackle the definition of "manufacturer." That the number of manufacturers of plastic containers is much smaller that the number of product manufacturers is indeed true. I expect we will all share the burden of certification, however. The manufacturer of the container will undoubtedly put a fraction of a cent on the package to the product manufacturer to cover the certification cost. This, of course, will be passed down to the consumer. Although to begin with the new certification will be difficult, once it is integrated into the operations I don't see the burden outweighing the advantages.

Thanks for taking the time to send the "DRAFT."

Sincerely,

Theresa

Theresa Marquez
Marketing Director

UNION CARBIDE CHEMICALS AND PLASTICS COMPANY INC.
POLYOLEFINS DIVISION

August 24, 1992

The Department of Environmental Quality
Linda Hayes - HSW
811 SW 6th Ave.
Portland, Oregon 97204-1390

Attention: Linda Hayes

Subject: Draft report to the 1993 legislature. Consideration to exempt FDA regulated rigid plastic containers from minimum recycled content requirements in ORS 459A.655.

Union Carbide Corp. is a reclaimer of post consumer polyethylene and PET and operates a facility with a 50 million pound annual capacity located in Piscataway New Jersey. Our PCR sales are to a number of customers to whom we also sell virgin polyethylene and they fabricate a wide variety of articles including rigid containers. At this time, and for the foreseeable future, we are unable to comply with FDA regulations to produce a product made from post consumer feedstock for use in direct food contact applications. For this reason, I ask that the Oregon DEQ request that the 1993 Oregon Legislature amend state law to grant an exemption from recycled content criterion for FDA- regulated rigid plastic containers.

Thank you for giving me this opportunity to comment. If I can be of any further assistance, please feel free to contact me.

Sincerely,

Keith Atkins

W. K. Atkins
Director of Solid Waste Management

cc: R.W. Lowman (SPI Partnership)

METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

August 27, 1992

Ms. Linda Hayes
HSW
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390

Dear Ms. Hayes:

Thank you for the opportunity to review DEQ's draft report on exempting rigid plastic food containers from the minimum content requirements in ORS 459A.655. Although Metro understands the complexities of recycling plastics and the concerns regarding the Food and Drug Administration's (FDA) restrictions, we support Option A (no extension) as the preferable course of action at this time. The primary reasons for this conclusion are as follows:

- Markets for post-consumer plastics are essential for plastics recycling to be economically viable. The public wants to recycle plastic. Since January of this year, Metro's Recycling Information Center has received 7000 calls on plastics recycling; this represents 17 percent of total calls received. The number continues to grow as programs come and go in the Portland region. Experts and special study committees have concluded that we need to find end uses for this material. Minimum content legislation is one way to increase the demand.

- ORS 459A.655 identifies alternatives to minimum recycled content to comply with the intent of the law. The 25 percent recycling rate can be met in three ways, and the reuse or reduced packaging provisions can be substituted should current FDA regulations make it difficult for plastic food packaging to meet the recycled content provisions. The 25 percent recycling rate is consistent with the Council for Solid Waste Solution's 1995 recycling goal for plastic bottles and containers.

- Maintaining the current compliance schedule may accelerate the development of new processing technologies or new non-food products using recycled plastics. It may also be an incentive for the FDA to re-evaluate its policies and hasten approval of new packaging.

Metro does not support any further delay in addressing the problem of markets for recycled plastic. The issue has been debated at length. We do not believe an extension of the deadline to 1997 is warranted at this time. We intend to continue working with the public, processors and manufacturers to increase recycling levels for plastics in the Portland metropolitan region. However, the results will be limited without adequate markets for the material collected and processed.

Sincerely,

Debbie Gorham
Waste Reduction Manager

DG\LZ:clk
cc: Rena Cusma, Executive Officer
Bob Martin, Solid Waste Director
s:\zimm\markets\plastic.ex

METRO

2000 SW First Avenue
Portland, OR 97201-5398
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October 20, 1992

Ms. Linda Hayes
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Dear Ms. ~~Hayes~~ Linda:

Metro has received the second draft of DEQ's report considering whether to exempt rigid plastic containers for FDA regulated products from the minimum content requirements of ORS 459A.655. Based on this review and hearing comments at the public meeting on October 8th, we continue to support Option A (no exemption or extension from requirements) as the best approach. Our rationale for this conclusion is summarized below.

1. Metro recognizes that incorporating minimum content in FDA regulated plastic containers is difficult. Health and safety are primary concerns for these products and the FDA "no-objection" process is lengthy and expensive for manufacturers. However, since most rigid plastic containers are food packaging and subject to FDA regulation, the one-time, two-year extension proposed in your second report has the potential to extend the compliance date of many products currently recycled in Oregon to 1997. This possibility weakens the intent of the law.

2. We still believe that one or more of the other options identified for plastics packaging can be implemented and the goal achieved by 1995. Reuse can be achieved by using refillable bottles for some products, such as soaps and beauty products. Reduction in the amount of packaging may be an option for others. In particular, Metro believes that the 25 percent recycling rate, either in aggregate, by resin type, or product category is attainable. Manufacturers should aggressively pursue this option, while at the same time working with the FDA to streamline their process.

3. The recycling rate approach would concentrate on increasing the use of recycled plastic in non-food products and durable goods. Examples include piping, flower pots and planters, garbage cans, pallets, harvesting crates, lumber and fence posts. Bottles for industrial and household cleaning products are other potential applications. Manufacturers should concentrate on identifying new applications and begin testing to bring these products into the marketplace as soon as possible. Public agencies and environmentally-conscious corporations are prepared to purchase the products when they are available.

D-117

4. As demand for plastics increases due to more applications in the durables and non-food packaging markets, recycling rates should also increase. Given Oregon's high recovery rates for PET soda bottles and HDPE milk jugs, we believe this approach is feasible and should be pursued concurrent with strategies to make it easier to incorporate minimum content in FDA regulated products.

5. Finally, we support Option A because it stimulates action now and does not allow for delays. Other states and nations have adopted similar, or even more stringent, recycling and minimum content legislation. The mandate from citizens to reduce waste and to design "environmentally-acceptable" packaging is clear. Actions to address this mandate should not be postponed.

Thank you for the chance to comment on your report. DEQ has done an excellent job of handling a complex issue and attempting to find the best policy and implementation option.

Sincerely,

Debbie Gorham

Debbie Gorham
Waste Reduction Manager

DG:gbc
cc: Rena Cusma, Executive Officer
Jim Gardner, Metro Council Presiding Officer
Bob Martin, Solid Waste Director

Continental Plastic Containers, Inc.

September 8, 1992

The Department of Environmental Quality
HSW
811 S.W. 6th Avenue
Portland, OR 96204-1390

Attn: Linda Hayes

This is in comment on ORS459A.655, Section 34c(1) regarding certification of rigid plastic containers. This section calls for manufacturers of rigid plastic containers to submit certification annually to the DEQ. As a blow molder of rigid plastic bottles with 15 blow molding plants in the U.S. and Puerto Rico, I submit that this is a responsibility that we cannot directly meet. We produce plastic bottles in various locations for customers who usually fill our bottles and our competitors' bottles with their products. These products are distributed nationally through various distribution channels, some eventually finding their way to the store shelves in Oregon. We, as a plastic container manufacturer, have no knowledge or direct control over what products are packaged and sold into Oregon. For us to certify our bottles in Oregon, we would have to have information given to us by our customers, the product manufacturers, and their customers, the distributors and their customers, the retailers as to what products are sold in Oregon. The name on the product label on the shelf in Oregon is the only logical place to start the certification process. In most cases, plastic bottles and containers do not have container producer names on them.

I would also submit, in the interests of minimizing the administrative certification burden, that the regulation require that all product manufacturers have on file certification from their rigid container suppliers that containers meet the specific requirements of the Oregon law. If Oregon wants to question any product or audit a sample of products, this certification file would be submitted for verification.

The CONEG heavy metal laws (now passed in 10 states and in operation) call for this type of certification system and, as a bottle producer, we have submitted to our customers certification letters that all of the materials and components of our bottles meet the requirements of these laws. We, naturally, have a file of certification letters from all of our suppliers to backup the

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certification letter to our customer. Thus, there is an administrative burden on all container users, producers, and their suppliers, but the burden on the states and business is kept to a minimum by eliminating the annual submissions.

We produce plastic bottles to specifications given us by our customers. The Oregon law gives multiple options for meeting its requirements, including, but not limited to recycle content, various recycle rates, reusable containers, and reduced containers with some exemptions based on product itself. Thus, some of the compliance options are based on a product in a container, not just the container itself. We, as a container manufacturer, do not know or control the reusability or source reduction options, for example.

In no way, by these suggested changes, is the container producer absolved from responsibility to produce containers that meet Oregon's requirements. We, in partnership with our customers, will be required to find the best option for each product and container. If we can't find an acceptable container option, we will be forced out of business. In production, we will be required to certify to our customers the agreed on specification for our container.

For these reasons, I think that ORS459A.660 should not require the manufacturer of plastic containers to submit annual certification directly to the DEQ. In addition, the definition of manufacturer should not be "manufacturer of rigid plastic containers" in 459A.655(1) and 459A.660(1). The current definition under ORS 459A.650(2) "producer or generator of a packaged product which is sold or offered to sale in Oregon in a rigid plastic container" should be accepted as is.

Thank you for allowing us to submit comments on ORS459A.655. If I can be of any further help in clarifying our position on this law, please call me.

Sincerely yours,

John McDonald

John M. McDonald
Director Environmental Affairs

KRAFT GENERAL FOODS

THEODORE L. BANKS
ASSISTANT TO GENERAL COUNSEL

September 8, 1992

Ms. Laura Hayes
Hazardous and Solid Waste Division
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Oregon 97204-1390

Dear Ms. Hayes:

This letter is in response to the Department of Environmental Quality's (DEQ) draft report regarding changes to 1991 S.B. 66. Kraft General Foods, Inc., which sells a variety of food products in Oregon, appreciates the opportunity to comment on this report. We strongly support the postponement of the compliance date to 1997 for all food products, and we oppose any alteration of the definition of container manufacturer.

Our primary obligation to the public is the delivery of safe and wholesome food products in an environmentally responsible manner. Accordingly, we have undertaken many initiatives that have reduced the amount of natural resources we use in the production, packaging, and delivery of our products, and this has enabled us to reduce the amount of packaging materials entering the solid waste stream.

While we have been able to make significant progress in many areas, there are some areas where available technology does not allow us to make packaging changes without compromising food safety and package integrity. While we were the first food company to use PET containing 25% recycled content in a non-beverage food product, we cannot simply substitute recycled plastic in all of our containers.

Using recycled plastic for food containers is not a trivial undertaking. While products not intended for human consumption (such as detergent) can utilize plastic that has been basically melted down from old containers, the risk of contamination from prior contents, non-food-approved additives or incidental contamination, makes this solution unacceptable (and illegal under FDA and USDA rules) in most food-contact situations. Complex technology involving the depolymerization of PET is starting to produce 25% recycled PET, but this product is currently available in limited quantities and at a cost higher than virgin resin. Nevertheless, we are undertaking to utilize this material as it becomes available.

Even if the recycled PET becomes more widely available, you should be aware that this material is suitable for use only in certain types of foods. For other foods, based on their fill temperature, water or oxygen barrier requirements, chemical composition or storage state, other types of materials (such as HDPE, LDPE, polystyrene or polypropylene) are required. We do not yet have satisfactory technology that will allow us to use recycled resins other than PET that will ensure safety and provide adequate protection to the food.

Similar concerns exist with regard to the use of recycled paperboard. The FDA has approved the use of recycled paperboard only in situations where the fat or water content of the food will not cause potential contaminants in the paperboard to migrate

KRAFT GENERAL FOODS, INC.
THREE LAKES DRIVE, NORTHFIELD, IL 60093-2758 (708) 646-3060
FAX: (708) 646-4431

D-124

RECYCLED

out and possibly adulterate the food. Accordingly, we have used recycled paperboard for many years for products such as dry pasta and cereal, but cannot currently use it for items such as bakery products and certain frozen foods. We must also be concerned about the strength of recycled paper, since recycling shortens the fibers, and significantly impairs certain physical properties. For example, the wet strength is markedly reduced, making recycled paperboard generally unsuitable for moist environments such as refrigerated or frozen foods.

Many other types of products sold to the public do not have these special food safety concerns, and it is our understanding that, for example, a detergent bottle can make use of recycled materials that were formerly in a milk bottle. However, our primary expertise is in the manufacture and sale of food products. We rely on government regulations and our packaging suppliers to provide us with information on the requirements, content, and performance of our packaging materials. We are only a consumer of packaging materials, not a manufacturer. Therefore, we have no way to certify what is in our containers--that information must come from the container manufacturer.

We concur with the DEQ's recommendation, and believe it would be wholly inappropriate to change the definition of manufacturer in the statute to impose additional burdens on consumers of packaging materials. This would do nothing to help the environment, but would potentially impose liability on food companies such as KGF for activities of upstream suppliers over which they have no control. At the least, the added administrative burden would increase costs of food sold in Oregon, and, with the absence of any environmental benefit, this type of burden on consumers who can least afford it is unjustified.

It is for these reasons that we request that the effective date of compliance be pushed back to 1997, and that no change be made in the definition of manufacturer.

We appreciate this opportunity to provide our comments, and would welcome any additional questions you might have.

Sincerely yours,

Theodore L. Banks

TLB:sk

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KRAFT GENERAL FOODS

THEODORE L. BANKS
ASSISTANT TO GENERAL COUNSEL

October 22, 1992

Ms. Linda Hayes - HSW
State of Oregon
Department of Environmental Quality
811 S.W. 6th Ave.
Portland, OR 92704-1390

FAX: 503-229-6977

Re: Second Draft of 1993 Legislative Report

Dear Ms. Hayes:

We appreciate the opportunity to comment on the draft report regarding exemption of rigid plastic containers holding FDA-regulated products from the minimum recycled content requirements in ORS 459A.655.

We think plastic containers holding FDA regulated products should be given an exemption from ORS 459A.655 for the following reasons:

1. The assurance of a safe and wholesome supply of food to the public should be of paramount importance. In practically all cases, rigid plastic food packaging cannot be further source reduced, nor be reused, without compromising the integrity or safety of the food products packaged within.

2. The technology to allow use of recycled plastics in this area is in its infancy. While some progress has been made with regard to one type of plastic (PET), and we are proud to be the first food company to use this recycled plastic in a food container, we currently pay a penalty for our use of this 25% recycled-content resin. Manufacturing capacity for this type of recycled-content PET is very limited, and, since PET is unsuitable for many other food products or package types, there is little chance that all manufacturers of FDA-regulated products could convert to such recycled-content packaging materials by 1997.

3. Exemption of food packaging would not signal a retreat from the general commitment to further plastic recycling. Plastic food packaging represents less than one percent of the solid waste stream; even if that entire amount were converted to 25% recycled-content materials, there would hardly be a noticeable reduction in the solid waste stream in Oregon. There are many products on the market that are not regulated

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RECYCLED

by the FDA whose packages can be converted to recycled plastic with no health or safety risk. These products would potentially represent an opportunity to achieve a more significant reduction in the solid waste stream with no risk to the consumer.

4. Even if an exemption is granted for FDA-regulated products, this would have no impact on the development of the infrastructure for recycling in Oregon, or on the opportunity for Oregon citizens to recycle the containers they purchase.

5. If the Department has concerns about an open-ended exemption for FDA-regulated products, a more appropriate regulatory scheme would be to establish a minimum two-year exemption period that could be extended for additional periods of time depending on the state of technological development, availability and cost of recycled resin, etc.

6. The regulatory scheme should provide some consideration for issues of cost and feasibility, not merely technical availability of a recycled-content resin. In many applications plastic containers allow for greater functionality (such as microwavability), lower cost, reduced energy consumption (in manufacturing, transportation, and storage), and elimination of risk of injury from breakage. When recycled-content resins first become available, they may lack certain performance characteristics that are important in some products, such as the ability to contain hot or acidic foods. Thus, reference to the appendix containing a list of approved processes cannot serve as a regulatory guide in the absence of consideration of the specific application in question.

7. We also know that these products will be more costly when first introduced. If the trigger of coverage of a regulation is merely the availability of resin without consideration of cost, then manufacturers forced to adopt a more expensive package will be forced to increase the cost of their products accordingly. Increases in the cost of food are like a regressive tax. Such increases have the heaviest impact on those portions of our society that spend the greatest percentage of disposable income on food products--those persons that can least afford such increases. Given the fact that these costs would be imposed in order to accomplish a virtually undetectable solid waste reduction, the social utility of this type of regulation should be reconsidered.

We would also wish to point out two areas where further clarification in the regulations might be appropriate:

1. Certain food products, such as meats, are exclusively regulated by the USDA rather than the FDA. The regulatory concerns regarding health and safety are largely similar, but since the FDA has no jurisdiction over USDA-regulated products (and even a state's ability to regulate USDA products is very limited), an exemption that relates only to the FDA would leave a significant gap. Therefore, we would expect that products regulated by either the USDA or FDA be treated similarly.

2. The language of exemption Option B or Option C with regard to "recycled content criterion" is somewhat confusing. We believe that the purpose of the exemption, whichever Option is chosen, is to grant an exemption from all of the requirements of ORS 459A.655. One way of reading the Department's report is that where the recycled content option is not available due to health concerns, manufacturers must still comply under the recycling rate or reusability options. It would not seem appropriate to increase the compliance burden (by allowing fewer compliance options) rather than reduce it. It might be more accurate to state that FDA-regulated products lacking an approved process shall be deemed to comply with the regulation.

Given the complexity of the factors that need to be considered in this area, the Department's efforts to provide a forum for all points of view is sincerely appreciated. However, we believe that recycling is not an end in itself. We need to work together for conservation of all raw materials, prevention of pollution, preservation of public health and product safety, while not needlessly penalizing any segment of society. We would urge that the Department's attention be focused on those areas where the greatest benefit to the environment can be achieved without economic dislocation or public health concerns rather than focusing on plastic food packaging where the potential reduction in solid waste is so small as to make such social costs hardly justifiable.

Sincerely yours,

Theodore L. Banks

TLB:sk

ore

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September 8, 1992

VIA TELECOPY AND MAIL

Linda Hayes
Recycling Specialist
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Oregon

Re: Comments to Draft Report; Request for Exemption for Medical Devices, Infant Formulas and Medical Food

Dear Ms. Hayes:

I represent Abbott Laboratories and am submitting these comments concerning the draft report on its behalf.

Abbott Laboratories produces a number of products which are regulated by the Food and Drug Administration and are covered by the requirements of the Food and Drug Act. In addition to manufacturing prescription drugs, which the legislature exempted from the requirements of S.B. 66, Abbott also manufactures medical devices, infant formulas, and medical food. Medical devices, infant formulas and medical food are all products which are covered by the Food and Drug Act and are specially regulated by the FDA. These products must meet stringent manufacturing requirements similar to the requirements applicable to the manufacturing of prescription drug products. See, e.g., 21 U.S.C. secs. 350a, 351, 360.

Abbott Laboratories submits that rigid plastic containers used for medical devices, infant formulas and medical food should be exempt from the minimum recycled plastic content requirements of S.B. 66. They should be exempt for the same reasons that prescription drug containers are exempt under the act. Rigid plastic containers which contain medical devices, medical food and infant formulas are already exempt from the minimum recycled plastic content requirements under section 42340(b) of the almost identical California law, a copy of which is attached. Moreover, regulation of medical device containers may be preempted by federal law. 21 U.S.C. sec. 360k.

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Generally, medical devices, infant formulas and medical food must conform to "current good manufacturing practices" as specified by the FDA in federal law and regulations. These "current good manufacturing practices" require that the product's packaging not be permitted to adulterate the product in any way. Therefore, packaging materials cannot be reactive or absorptive or permit migration from the exterior of the container. A drug or device is specifically considered adulterated under the Federal Food, Drug and Cosmetic Act "if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health." 21 U.S.C. sec. 351(a)(3). In addition, the packaging cannot degrade over the life of the product so as to allow the product to deteriorate prematurely.

Abbott Laboratories produces medical food and infant formulas in many different formulations. Although a division of Abbott produces infant formulas for normal infants, Abbott also produces medical food and infant formulas specially formulated to provide dietary management for infants and adults with specific medical needs. Often the medical conditions for which the special foods and formulas are provided are clinically serious or life-threatening. In many cases, the sick, the aged and the infants who will consume these specially formulated foods have compromised immune systems which make them especially susceptible to any extraneous or harmful substances which could migrate from the container or react with the food substances within the container. Such foods and formulas are typically either prescribed by a physician, available from a pharmacy or distributed directly to institutions such as hospitals, clinics, and federal or state agencies.

Abbott also manufactures diverse kinds of medical devices. These devices are often manufactured in relatively small quantities. Many of these devices are shipped in kit form, often to hospitals. Frequently, the packaging is made in the shape of the contents with depressions for each part of the kit, forming a tray from which each part of the device can be easily identified and removed. Rigid plastic packaging is the safest and most sanitary form of packaging available for many medical devices. Because plastic can be molded to the shape of the medical device, the medical device or kit can be sterilized inside and together with its own packaging. Obviously this kind of sterilization process reduces the opportunity for impurities to enter the container and contaminate the product, but the sterilization

process could itself present additional opportunities for reactivity if the container is composed of recycled content.

Although a delay, such as that suggested in the draft report, would be preferable to immediate application of the recycled content requirements, two years is not sufficient. It would not provide enough time to allow developments in packaging technology to occur, to perform and evaluate shelf-life studies to determine the potential for reactivity and degradation of packaging made with new recycled-content technology, and to obtain FDA approval of the particular technology for use with these specific products.

Rather than delaying implementation, however, medical devices, infant formulas and medical foods should simply be exempted from the act. The goals of the act will not be jeopardized by exempting these products. The packaging of these items accounts for a minuscule amount of the plastic packaging used in the state, and only a very minor benefit in the potential market for recycled plastic could be achieved through application of the recycled content requirements to these products. The cost of testing and obtaining approval for use of recycled content packages for these products would, however, be enormous. These increased costs should not be borne by those in need of medical products. Moreover, since Oregon is virtually alone in making these requirements applicable to these medical products, product manufacturers could find it impracticable to supply certain devices and products which are manufactured in small quantities to the Oregon market.

If the technology for use of recycled plastic materials develops, applications of the technology for packaging of these products should become apparent. Only then should application to medical devices, medical food and infant formulas be considered.

Sincerely,

Lynda N. Gardner

Lynda Nelson Gardner

Enclosures

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16

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October 22, 1992

Linda Hayes
Recycling Specialist
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Oregon

VIA HAND-DELIVERY

Re: Requests for Exemption for Certain Medical Products and FIFRA-Affected Products; Request for Clarification of Prescription Drug Exemption

Dear Ms. Hayes:

This letter reiterates my request that medical devices, infant formulas and medical foods be exempted from the minimum recycled plastic content packaging requirements of S.B. 66. I have also requested that you recommend to the legislature that products regulated under the Federal Insecticide, Fungicide and Rodenticide Act be exempted from those packaging requirements.

As I mentioned to you by telephone and also testified to at the public hearing on the draft report, there remain two issues that need to be clarified with respect to the prescription drug exemption as well. The present language only exempts "medications prescribed by physicians." We believe that the intention of the legislature was to also exempt prescription drugs before they are actually prescribed and medications prescribed by health care professionals (not just physicians) licensed by the state of Oregon to prescribe medications. It would be most helpful if your report could point out the desirability of clarifying this language to cover prescription drugs during transport and regardless of who prescribes them.

I believe that the written comments and oral testimony previously submitted provide ample support for these exemptions and clarifications. I would, however, be happy to provide any additional information you feel would be helpful or answer any questions that you may still have regarding these issues.

I would like to take this opportunity to thank you for your attention and thoughtfulness in these matters.

Sincerely,

Lynda N. Gardner
Lynda Nelson Gardner

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16

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September 25, 1992

Linda Hayes
Recycling Specialist
Department of Environmental Quality
Portland, Oregon

Re: Request for Recommendation to Legislature That FIFRA-Regulated Products Be Exempt From Minimum Recycled Plastic Content Requirements

Dear Ms. Hayes:

I represent Abbott Laboratories and these comments are submitted on its behalf. As an adjunct to my comments of September 10, I wish to recommend that products governed by the FIFRA (Federal Insecticide, Fungicide and Rodenticide Act) should at a minimum, be included in the study of plastics to be included with those governed by the FDA.

Abbott sells and distributes biochemical and microbial agricultural pesticides, which are regulated by the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). In addition, the transportation of these materials in commerce is regulated by the Department of Transportation under the Hazardous Materials Transportation Act. Most FIFRA-regulated products, if released into the environment in an uncontrolled manner, can be extremely dangerous to the public. Therefore, stringent manufacturing and performance standards have been promulgated by the federal government with respect to the containers for these products. All of these standards cannot be assured if recycled content is required to be used in FIFRA-regulated product containers. (For ease of discussion, I will refer to all FIFRA-regulated products as "pesticides," although the types of products affected by these regulations are broader than the products commonly thought of as pesticides.)

You recently prepared a draft report to the legislature concerning the potential exemption of FDA-regulated products from the recycled plastic content requirements of S.B. 66. Although

the legislature did not ask the Department of Environmental Quality to investigate the advisability of exempting pesticides regulated under FIFRA from the requirements of S.B. 66, we believe that such products, which are already exempt under California law, should be exempt from Oregon's recycled plastic content requirements. Accordingly, we request that you include in your report to the legislature a recommendation that products regulated under FIFRA be exempted from the recycled plastic content requirements. At a minimum these products should be treated in the same manner as the FDA regulated products addressed in your report.

Pesticide products are required to be registered under section 3 of FIFRA and the regulations promulgated thereunder. 40 CFR sec. 152.1. The term "pesticide product" includes the packaging in which the pesticide is sold or distributed. 40 CFR sec. 152.3(t). Hence, the composition of the container containing a pesticide product must be registered as well. After the product has been registered, any modification in the composition or packaging of a product requires an amended registration before the product as modified can be sold or distributed. 40 CFR sec. 152.44(a).

As mentioned earlier, the interstate transportation of pesticides and other hazardous materials is exclusively regulated by the United States Department of Transportation under the authority of the Hazardous Materials Transportation Act. Chapters 173, 178 and 179 of 49 CFR set out the performance specifications which must be met by plastic containers used as the inner packaging for pesticides. The performance specifications relate to stress, minimum thickness and ability to withstand pressure, impact and extreme temperatures. More general requirements place independent and additional obligations on the person offering a hazardous material for transportation to ensure that such packagings are compatible with their contents (particularly as this relates to permeability, softening, premature aging and embrittlement) and that no significant chemical reactions between the materials and contents of the package will occur. 49 CFR sec. 173.24.

Alternatives open to manufacturers of other products, such as reuse of containers or material reduction, are not available to the manufacturers of pesticides. The option of reusing plastic pesticide containers is not open to those selling or distributing pesticides since reuse of non-bulk packagings made of plastic is

strictly forbidden under the Hazardous Materials Transportation Act. 49 CFR sec. 173.28(b)(3). Moreover, the option of significantly reducing the amount of plastic used in a pesticide container is limited due to minimum thickness requirements and performance standards imposed by the regulations.

Application of the plastic content requirements of section 34 of S.B. 66 to pesticide products may be preempted by federal law. 49 CFR section 107.202(a)(5) specifically preempts any state law or regulation "which is not substantively the same as" any provision of the Hazardous Materials Transportation Act concerning the design, manufacturing, or fabrication of a package or container which is represented or sold as qualified for use in the transportation of hazardous materials. Thus the reuse and reduction requirements of section 34 of S.B. 66, as well as the recycled plastic content requirement, may be preempted by regulations. 49 CFR sec. 107.202(a)(2) & (5).

However, whether federal law preempts these requirements or not, it is not good public policy to apply the minimum recycled plastic content requirements to FIFRA-regulated products. Recycled content, the chemical composition of which could change from one batch of containers to the next, poses special risks to the public when used in pesticide containers. These risks include reactivity of the container with its contents, migration of components, premature degradation, and decreased durability. It is, therefore, both impractical and unsafe to impose these requirements on manufacturers of FIFRA-regulated products.

Please contact me immediately if you need any additional information. I hope you will give this proposal serious consideration.

Sincerely,

Lynda Nelson Gardner

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● becker projects

September 7, 1992

Linda Hayes
DEQ
811 SW Sixth Ave.
Portland, OR 97204

Dear Linda,

I am responding to the proposed delay in the effective date for plastics food packaging compliance with ORS 459.655, and I am doing so as a private business owner.

I got involved in recycling in 1987. At that time, only one location in the Portland-metropolitan area accepted plastics for recycling from the general public. A consistent market for post-consumer plastic was virtually non-existent. As the tide of public concern for the environment swelled, so did the locations for plastics collection. I was encouraged by what I saw, and I wanted to believe that plastics, like all the other materials used for packaging, were being successfully recycled.

But every time I visited a location that bragged of its successful program, I came away feeling that I had been deceived. Plastics recycling, for some reason, was no more than an act of legerdemain - all smoke and mirrors. I wanted to believe, so badly, that it was working, that I saw what they wanted me to see.

It was only a matter of time before the illusion began to crack and crumble. Now only one local processor accepts plastics generated by the public. It's as though we returned to the place we were five years ago. We moved backward, not forward.

It's not the fault of the processors. If they have no market for the material, they have little choice, but to stop accepting it. So what is the plastics industry doing to create markets? Right now they are spending a great deal of time and money fighting ORS 459A. Why not spend those dollars solving the problem, instead of creating another problem? This is probably an oversimplification of the issue, but if we allow them to back pedal one more time, they may look for other ways to circumvent the law. One delay or exemption may beget another.

I realize that it is difficult being wedged between industry and a federal regulatory agency. This is our chance to stand up to them and say "no." The plastics industry pours millions of dollars into public relations. Let them put their dollars where their press releases are! Let them fund serious efforts to make

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plastic packaging that will meet the guidelines of ORS 459A or stop bragging about their accomplishments.

I'm weary of promises from industry. Make them meet one of the criteria without a delay.

Here are a couple of little tidbits for your amusement:

As I was writing a piece on Metro's Recycling Information Center, an old-timer told me of the good ol' days when the OEC had the RIC. He remembered a time when they made a rubber stamp that read, "Plastics are now recyclable". This was in the early 1970s. What happened? Even mixed waste paper has a better success rate in terms of recycling.

During the North American Recycling Conference, here in Portland, the plastic industry was a strong presence. When asked if industry would standardize the material used in packaging in order to facilitate recycling, the spokesperson said that it would never happen. Making packaging that's recyclable is part of the law. Do they still believe it will never happen?

I feel that the plastics industry believes recycling will go away, just as it did in the '70s: It will weaken and people will move on to other things. The object of all their efforts seems to be saving their industry with the least amount of capital outlay.

My plea is more emotional than it should be. I feel I have been personally duped. I believed in that plastics would become recyclable the way other materials are. This hasn't happened. Industry is not supporting the markets that will make it happen. If you grant them two additional years, they may use it to formulate their next argument for another delay.

Please don't grant the delay. There are many of us inside and outside Oregon who support Option A. Call on us when you need us.

Sincerely,

Charlotte A. Becker
Becker Projects, Inc.

19.

HIMA
HEALTH INDUSTRY MANUFACTURERS ASSOCIATION

September 8, 1992

Linda Hayes, HSW
Oregon Department of Environmental Quality
811 SW 6th Ave.
Portland, Oregon 97204-1390

Dear Ms. Hayes:

I am writing on behalf of the Health Industry Manufacturers Association (HIMA) in response to the department's draft report (8/17/92) to the 1993 Legislature regarding consideration on exemption of FDA-regulated rigid plastic containers from minimum recycled content requirements in ORS 459A.655.

For your information, HIMA is a national trade association representing more than 300 manufacturers of healthcare technology products, including medical devices, diagnostics and healthcare information systems. HIMA member companies make products that span the entire spectrum of medical technology from tongue depressors to sophisticated life-saving equipment.

While we applaud the law's goal, reducing the amount of unnecessary packaging entering the waste stream, we are concerned that the law may affect our members ability to provide medical products in sterile packaging. In order for medical devices to be delivered in sterile condition, as required by the federal Food and Drug Administration (FDA), the packaging must maintain certain characteristics. There are major questions as to whether the packaging can remain sterile and stable up to and including the time of use and meet the requirements of ORS 459.655.

We assume that these are the types of concerns that led the Legislature to exempt packaging for "medication prescribed by physicians." With this language, the Legislature may have already intended to exempt medical devices, since many medical devices are part of medical treatment prescribed by physicians. However, we suggest that the Department recommend language that would clarify this section and clearly exempt medical devices for the above reasons.

In the enclosed position paper, we have included additional information to support our call for an exemption for medical devices. I would be happy to discuss this issue with you further.

Very truly yours,

Thomas E. Tremble
Manger, State Affairs

World Leaders in Health Care Innovation

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HIMA
HEALTH INDUSTRY MANUFACTURERS ASSOCIATION

Health Industry Manufacturers Association
Position Paper on State Efforts to Regulate Product Packaging

Introduction

Members of the Health Industry Manufacturers Association (HIMA) understand states' interest in reducing solid waste. Although plastics are part of the solid waste stream, plastics used for medical devices, diagnostic products and their packaging constitute a very small percentage.

Packages or packaging components which directly contain medical devices and diagnostic products are often critical in maintaining product safety, efficacy, and, particularly, a sterile barrier. Packaging material for medical devices and diagnostic products, including protective material, is subject to review by the federal Food and Drug Administration (FDA). For these reasons, HIMA believes that immediate packaging should be exempted from state efforts to regulate packaging.

Background

HIMA is a Washington, D.C. based trade association representing more than 300 manufacturers of health care technology products, including medical devices, diagnostics, and health care information systems. HIMA member companies make products that span the entire spectrum of medical technology from tongue depressors to sophisticated lifesaving equipment. The health care technology industry represents approximately $30 billion in annual revenues and provides employment for roughly 249,000 Americans. It is primarily composed of small, entrepreneurial companies. Approximately two-thirds of HIMA's members have annual sales of less than $20 million. These smaller companies are particularly sensitive to the effect that governmental policies have on their ability to provide innovative medical technologies.

The Health Care Technology Industry Works to Reduce Solid Waste

For many years, HIMA member companies have been working to reduce their solid waste. Members have been engaged in recycling projects involving materials ranging from paper to wood, chemicals, plastics, and glass. This is being done for environmental as well as economic reasons.

The medical technology industry helps its customers to segregate the recyclable from one-time use products so that they can reduce the environmental impact of their waste streams. In addition, recycled materials are used when and where product safety and efficacy are not affected or compromised.

Medical Devices and Diagnostics Require Unique Designs and Materials

- Many medical devices and diagnostics are regulated so that they are sterile and stable up to and including the time of use. Packaging that protects, guarantees sterility, and ensures convenient, economical, and safe storage is critical.

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19

- Materials that make up medical devices and diagnostic products have very diverse properties to ensure that a specific quantity, identity, and potency is delivered to ensure performance and/or testing results. Proper selection of these materials is a very complicated process.

- Many medical devices and diagnostic products require unique designs and materials that are not easily changed or modified, even when important environmental considerations arise.

- Materials selected to manufacture and package medical devices and diagnostic products must meet requirements under different transportation and storage conditions. Not all materials have this flexibility.

- Since the immediate packaging is an integral part of medical devices and diagnostic products, it, generally, cannot be changed without a special research effort and regulatory approval.

Therefore, HIMA and its members believe that packages or packaging components which directly hold or contact medical devices and diagnostics subject to regulation under the federal Food, Drug and Cosmetic Act (2, U.S.C. Sec. 301 and following), should be exempt from state legislation that requires:

- **packaging to be made from certain materials;**
- **packaging to be recycled or recyclable;**
- **packaging to be reusable or refillable;**
- **special codes or other additional product labeling, and**
- **disposal fees.**

Conclusion

Medical devices and diagnostic products must be packaged to preserve the product's integrity, sterility, stability, and efficacy. Since health care products are distributed through many channels, the possibility of jeopardizing these qualities is a very real concern. In many instances, this concern can only be addressed through multiple layers of packaging which are costly to manufacturers, but, nevertheless, necessary.

The quality of patient care must not be jeopardized through waste reduction efforts. Health care technology has contributed greatly to America's health care system, and patients have come to rely with confidence and security on sterile medical devices and diagnostic products. State efforts to reduce solid waste should be well thought out and coordinated to prevent excessive or contradictory requirements. Such efforts should not include regulating necessary materials which improve the quality of health care and deliver lifesaving technology to those in need.

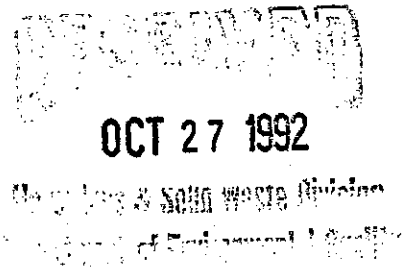
HIMA urges states to focus on an integrated, comprehensive system for waste processing and disposal. HIMA also recommends that states recognize the unique traits of medical devices and diagnostics and their packaging, and grant exemptions to them from regulations imposing recycling or biodegradability requirements at the expense of patient care.

HIMA

HEALTH INDUSTRY MANUFACTURERS ASSOCIATION

October 22, 1992

Via Fax



Ms. Linda Hayes, HSW
Oregon Department of Environmental Quality
811 SW 6th Ave.
Portland, Oregon 97204-1390

Dear Ms. Hayes:

Re: Second Draft of the 1993 Legislative Report

I am writing on behalf of the Health Industry Manufacturers Association (HIMA) to reiterate our position that the department should recommend to the Legislature that medical devices be exempted from the requirements of ORS 459A.655.

HIMA is a national trade association representing more than 300 manufacturers of healthcare technology products, including medical devices, diagnostics and health information systems. Member companies make products that span the spectrum of healthcare technology from tongue depressors to sophisticated life saving equipment.

While many of our members are involved in recycling programs and often make use of recycled materials when product safety and efficacy are not affected, they are concerned that they can not meet the requirements of ORS 459A.655 and satisfy the packaging requirements of the Federal Food and Drug Administration (FDA). Our members often must use virgin plastic to maintain sterility and ensure the device's efficacy up to and including the time of use by the patient. To give you an illustration of industry efforts at source reduction, the concerns of FDA, and the unique characteristerics necessary in medical device packaging, I am mailing you an issue of the magazine "Medical Device & Diagnostic Industry," which focuses on issues in reducing medical packaging waste. I hope that you will consider the information even though it will not reach you until after the comment deadline.

Conversations with department staff and others indicate that the department recognizes the uniqueness of medical device packaging and would look favorably upon an exemption for devices. However, the department appears unwilling to recommend that this oversight be rectified, preferring that the law be amended by the next legislature. It is unclear why the department has taken this position since it appears appropriate and consistent with the aim of the report for the department to draw the distinction between medical device packaging and other packaging.

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D-138

Therefore, we recommend that the Department of Environmental Quality recommend to the Legislature an exemption for medical devices similar to the exemption for prescription drugs. This clarification would serve to end the confusion among device manufacturers as to their status under the Oregon law and would ensure an uninterrupted supply of medical devices entering the state. HIMA staff would be willing to assist the department in developing the appropriate language, as we did with CONEG staff on their model legislation.

Thank you for the opportunity to express our concerns with the second draft of the report. I would be happy to discuss this with you further.

Sincerely,

Thomas E. Tremble
Manager, State Affairs

Baxter Healthcare Corporation
One Baxter Parkway
Deerfield, Illinois 60015-4633

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20

Baxter September 9, 1992 Via FAX

Ms. Linda Hayes, HSW
Department of Environmental Quality
811 SW 6th Ave.
Portland, OR 97204-1390

Dear Ms. Hayes:

Attached is Baxter Healthcare Corporation's position paper on packaging legislation. We are submitting it in response to your request for comments on the draft report to the 1993 legislature to exempt FDA-regulated, rigid plastic containers from the minimum recycled content requirements in ORS 459A.655.

While it appears the report primarily addresses food containers, Baxter would like to emphasize the need to also exempt from the minimum recycled content requirements, rigid plastic containers that are, or contain, medical devices, diagnostic solutions, and drugs.

As our position paper states - "Baxter supports voluntary industry efforts to minimize the volume and environmental impacts of packaging wastes. However, if packaging reduction goals absolutely must be imposed by legislation, then legislation affecting packaging materials should exempt medical devices, diagnostics and drugs if the legislation contradicts existing food and drug-related regulations or if the reductions cannot be achieved without interfering with product efficacy or sterility."

Thank you for the opportunity to comment on the draft report. If you would like to discuss Baxter's position in further detail, please call me at 708/948-4955.

Sincerely,

Charles J. Davison

Charles J. Davison
Manager, Environmental Affairs

xc: Bill Blackburn, DF3-2E
Donna Bower, Government Affairs-Washington, D.C.
Charlie Kohlmeyer, DF6-3W
Tom Tremble, State Affairs, HIMA-Washington, D.C.

D-140

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Baxter

BAXTER POSITION PAPER:

ENVIRONMENTAL LEGISLATION ON PACKAGING

Minimizing the environmental impacts of products and packaging makes good business sense and good environmental sense, especially given the growing public concern about the environment and soaring waste disposal costs. Baxter supports voluntary industry efforts to minimize the volume and environmental impacts of packaging wastes. Baxter also favors accurate, internationally recognizable labels that contain meaningful environmental information without restricting interstate and global commerce.

Further, Baxter supports uniformity among environmental packaging and labeling standards. These standards must not conflict with packaging and disposal standards set by other state, federal, and international bodies. For example, the Food and Drug Administration and similar bodies outside the United States specify detailed packaging standards to assure patients and healthcare professionals that medical devices, diagnostics, and drugs are safe and effective. Environmental legislation should not mandate packaging changes that will compromise these critical concerns. In addition, some types of used packaging, such as that contaminated with hazardous or infectious wastes, may not be easily reused or recycled under existing waste rules. New laws should not require packaging reuse or recycling which may violate these waste rules.

Based on these concerns, Baxter's position on proposed packaging legislation is summarized as follows:

1. We support voluntary rather than mandatory reductions in packaging waste. In particular, we support the following voluntary goals:

   (1) By 1995, reduce the average per-unit weight of packaging by 15 percent from 1990 levels.

   (2) Use the maximum feasible amount of recycled fiber in corrugated shipping containers.

   (3) Assure that no heavy metals are intentionally added to inks, dyes, adhesives or other packaging components.

20

(4) Use no foam packaging made with chlorofluorocarbons.

(5) Facilitate the recycling of packaging by:

a. Applying the American Paper Institute recycled/recyclable symbol to all appropriate packaging;

b. Applying the Society of Plastics Industry (SPI) identification codes to all rigid plastic containers of capacity greater than 8 oz. and to plastic components where it is technically feasible, except those that come in contact with blood or other potentially infectious substances.

(6) Encourage the reduction of packaging waste by promoting the sale of single-package, multi-product medical kits and the use of reusable shipping containers and pallets.

(7) Evaluate recycling of IV containers through pilot programs in hospitals.

(8) Use the Preferred Packaging Guidelines of the U.S. Coalition of Northeastern Governors in the design of new packaging.

(9) Initiate educational programs with customers and suppliers to expedite packaging source reduction and recycling.

(10) Minimize the use of chlorine-bleached paper and paperboard in packaging.

(11) Encourage suppliers and vendors to follow the above practices.

(12) Have each division of a company develop plans and goals specific to its type of products, packages and distribution systems to reduce environmental impacts.

2. We advocate the minimization of toxic heavy metals in packaging and packaging components unless there are no feasible alternatives.

3. We support the priorities of the Coalition of Northeastern Governors and European Economic Commission which favor source reduction over recycling and energy recovery. Consider the consequence if, for example, Baxter added recycled content to its corrugated boxes that have already been source-reduced

through the use of oriented-fiber technology. Adding recycled fibers would require additional mass to achieve equivalent box strength, which in turn would reverse the previous gains in source reduction.

4. We support a labeling scheme that preempts state and local laws. Baxter strongly encourages efforts to standardize U.S., Canadian, European Community, and other labels. Standardized labels will minimize interstate and international barriers to shipment of products and recycling of packaging. Drugs, medical devices and diagnostics should be exempted where the required method of labeling is technically impracticable.

5. If specific packaging reduction goals absolutely must be imposed by legislation, we offer the following recommendations:

   (1) Proposed legislation affecting packaging materials should exempt medical devices, diagnostics and drugs if the legislation contradicts existing food and drug-related regulations or if the reductions cannot be achieved without interfering with product efficacy or sterility.

   (2) Legislative definitions must clearly delineate packaging from the product itself, and exempt contaminated packaging for which disposal is required under medical, hazardous or special waste laws.

   (3) Baselines and mandatory packaging reduction targets expressed in total or percentage volume or weight should be set carefully. Such goals may penalize companies that have already implemented packaging reduction programs. These goals should also be adjusted for each industry to reflect the realistic opportunities for packaging improvements in that industry. Baxter also urges care in setting reduction goals that may effectively favor certain materials without full consideration of the comparative recyclability, reusability, energy-recovery value, cost and availability of substitutes.

The Clorox Company
Technical Center

21

September 3, 1992

Ms. Linda Hayes
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

Dear Ms. Hayes,

A copy of your draft recommendation relative to Senate Bill 66 on solid waste management was forwarded to us by the Partnership for Plastics Progress. Here is our input on your recommendation.

Regarding the two-year delay in implementing the requirements for foods, we support your recommendation.

Regarding the recommendation to change the definition of manufacturer to be the producer or generator of rigid plastic containers rather than the packager who uses those containers to contain products which are marketed by the packager, we strongly disagree with your recommendation.

We as a consumer products manufacturer and marketer should be responsible for satisfying your legal requirements. We will hold all our packaging suppliers accountable for certifying that packages we use meet all legal requirements. This type of certification is required in much of the "heavy metals" legislation based on the CONEG Model. Plastic packaging manufacturers cannot readily track the destination of packages they produce and then ship to packagers such as The Clorox Company. The only way that a package manufacturer could provide the same certification would be by obtaining specific shipment information from marketers which many of us would be reluctant to supply even if it was available, which it often will not be.

We understand that part of the rationale for focusing on package manufacturers is that they represent a fewer number of companies for the Department of Environmental Quality to monitor. However, I believe that the top 100 consumer products companies probably represent over 80% of the regulated products and therefore would be no more difficult to track than the package manufacturer. You would have the further advantage of having most of the consumer products companies in business in the state of Oregon. This is not generally true for the package manufacturers.

I hope this input is useful. If you have any questions or would like further clarification, please don't hesitate to contact me at (510) 847-6809 or fax (510) 463-1187.

Sincerely,

Terry Bedell
Environmental Packaging Manager

P.O. Box 493
Pleasanton, California
94566-0803
(510) 847-6100
Telecopy: (510) 463-1187

TAB:lm
92156TAB

cc: Robin Gentz, Pat Meehan, Mike Riley

D-144

The Clorox Company
Technical Center

21

October 20, 1992

Linda Hayes
State of Oregon, Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390
FAX # 503-229-6977

Dear Ms. Hayes,

We appreciate the opportunity to comment on your draft report for the Environmental Quality Commission on your proposed exemption for FDA regulated rigid plastic containers and on the definition of "manufacturer".

As stated in my previous letter, The Clorox Company supports your recommendation to postpone until January 1, 1997 the environmental packaging requirements from SB66 as they would apply to FDA regulated products. We believe this will avoid a blizzard of paperwork which would otherwise result as food product manufacturers would individually seek exemptions or postponements. While this extension may delay achieving a 25% recycling rate for rigid plastic containers, it will give all of us an opportunity to seek improved technology or other ways to meet the criteria defined in Oregon law.

On two other points we urge your reconsideration. The first is in the definition of manufacturer. Since many rigid plastic containers which are sold in Oregon are manufactured outside the state, we are concerned whether Oregon can realistically enforce the recommended definition. As a major marketer of consumer products in Oregon, we believe we are primarily responsible for meeting the requirements of this law. Our packaging manufacturers have no way of determining where the packages they sell us are sold. For reasons of confidentiality, we would prefer to not share the information they would require on sales in Oregon.

The second item is the law's requirement to submit a report certifying compliance. We believe that this will produce a very large volume of reports which will not directly contribute to assuring compliance with the law. At this time the enforcement mechanism for this law is not clear to us, it appears that this may also require a significant increase in manpower in the Department of Environmental Quality. We suggest that the approach to compliance be similar to that which is being proposed in California. Companies would be required to keep on file a certification of compliance which would then be audited on some statistically valid basis. This should minimize the effort required for companies to document their compliance and also minimize the manpower required by your state agency to verify that compliance.

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D-145

One final point, we would like to suggest that companies be given the latitude to comply with the legal requirements on a product line average basis or ideally on a company-wide average basis. For example, if a product line containing several flavors or sizes uses a total of 100 lb of packaging, the requirement would be that 25 lb of that total be recycled material. That 25 lb could be distributed uniformly across all flavors or sizes or could be used exclusively for one or two flavors or sizes at the discretion of the manufacturer. This option would not in any way reduce the amount of material being removed from the waste stream. It would allow manufacturers to more efficiently comply with the law.

I believe all of the points made above are consistent with the position that the California Integrated Waste Management Board will be taking on regulations in support of California SB235. The Clorox Company is critically concerned that these regulations be consistent to avoid costly inefficiencies in trying to meet varying state requirements.

Again, thanks for the opportunity to comment. Should you want any further clarification, please do not hesitate to give me a call at (510) 847-6809. I am looking forward to your final report.

Sincerely,

THE CLOROX COMPANY

Terry Bedell

Terry Bedell
Environmental Packaging Manager

TAB:lm
92185TAB

cc: Robin Gentz
Pat Meehan

National Food Processors Association

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Washington, D.C. 20005
202/639-5900
FAX 202/639-5932

VIA FACSIMILE

September 17, 1992

Ms. Linda Hayes
Department of Environmental Quality
State of Oregon
HSW, 811 SW 5th Avenue
Portland, OR 97204-1390

RE: DRAFT REPORT TO THE 1993 LEGISLATURE CONCERNING EXEMPTIONS FOR FDA-REGULATED RIGID PLASTIC CONTAINERS AND PROPOSED AMENDMENT TO THE DEFINITION OF "MANUFACTURER."

Dear Ms. Hayes:

On behalf of the National Food Processors Association (NFPA), I respectfully submit comments on the first draft report to the 1993 legislature concerning exemptions for Food and Drug Administration (FDA) regulated rigid plastic containers from minimum recycled content requirements of ORS 459A.655 as well as reconsideration of the definition of "manufacturer." NFPA is a national trade association which serves as the scientific voice of the food industry. The Association's 500 member companies, many of which do business in the State of Oregon, produce the nation's processed-packaged food products, food packaging and processing equipment. We are delighted to have an opportunity to share our views on this important issue.

BACKGROUND

NFPA is strongly supportive of public policy proposals which are sound environmental approaches to improve solid waste problems in the states. We believe that market incentives and community-based voluntary programs are the most economical and environmentally efficient means to achieve state policy goals. I must note that from its introduction, the recycling approach advanced by 1991 Senate Bill 66 proposed packaging mandates which were inconsistent with NFPA board policy. As a result, NFPA staunchly opposed the legislation and in particular, Chapter 385, Section 34. However, we offer comments today in the interest of abiding by the spirit of the current statute and to offer our assistance to the Department of Environmental Quality (DEQ) in developing a workable program.

1. DISCUSSION OF AN EXEMPTION FOR FDA-REGULATED RIGID PLASTIC CONTAINERS

Despite certain claims, much research is being done on the recovery and reuse of rigid plastic packaging. However, as recently as March, the Food and Drug Administration (FDA) concluded that, within the realm of current technology, recycled content and reuse of rigid plastic food packaging are not safe food processing practices. The agency also highlighted the importance of minimum integrity standards in food packaging, which places practical limitations on source reduction. FDA is also expected to issue proposed guidelines for use of recovered materials.

In the meantime, the industry has taken a lead in scientific research of plastic food packaging products. NFPA has convened an industry advisory committee and in 1993, at NFPA's Western Research Laboratory in Dublin, California, the industry will begin "challenge testing" of high density polyethylene (HDPE). This is one of the most commonly used plastics for food packaging. We hope our research will result in useful information which may be submitted to FDA for review. Completion may well be several years away and while there may be advances in the offing, we cannot guarantee that our findings will result in a recycling capability that is economically feasible for food processors and consumers.

As you know, virgin plastic packaging materials have a known purity and history, which can be certified to comply with federal law for use by food processors. Pursuant to market demands, many advances have been made to recycle plastics. For instance, polyethylene terephthalate (PETE), which is commonly used for soft drink bottles, may be adequately recycled in the marketplace today. Use of other recycled plastics pose a dilemma for food processors.

Under the definition of "rigid plastic containers" as delineated in Section 34a(8), these other plastics could include heat-sealed microwave trays and shelf-stable canned items.[1] Both types of packaging may become contaminated during normal consumer use and disposal, thus preventing them from being recycled into new food containers that can meet federal standards with any confidence. The technology does not yet exist to identify and remove incidental contaminates in the recycling process and render them comparable to the purity of virgin plastics the meet the standards required by the Act.

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[1] The industry typically refers to microwave trays and shelf-stable canned items as "semi-rigid plastic" containers.

As a matter of course, NFPA's first concern is the safety of food. Under the federal Food Drug & Cosmetic Act (the Act), food processors are required to use packages which are safe and suitable for their intended use. ORS 459A.655 requires that "rigid plastic containers" meet threshold recycling levels, unless a statutory exemption is granted by the Legislature. We believe that an exemption is critical to food processors' ability to provide Oregon citizens with safely packaged products.

Therefore, NFPA cannot support "Option A" which prohibits any such exemption. Under the current statute, source reduction as an alternative will not be available since many food packages have already been reduced and further changes would threaten the integrity of the packaging. It stands to reason that the only option for compliance will be to meet the statewide recycled rate criteria. Under this scenario, processors would be required to substitute packaging which meets the statewide rate, but which may in fact <u>not</u> be available in the marketplace. As a result, food processors would be forced to use more expensive packaging and packaging processes. The net effect may very well be a ban on the sale of many consumer products in the state.

We also reject "Option B" since it provides only for a delay in the effective date. We believe that the Legislature should periodically be apprised of the status of plastics recycling research; however, as discussed above, it is pre-mature to guarantee that the food industry will be able to <u>safely</u> comply with mandated content rates by 1997.

Finally, as drafted, we believe that "Option C" does not go far enough to meet the intent of the original legislation. NFPA believes that DEQ, or some other state government entity, <u>should</u> monitor the progress of research by private industry or government agencies in the area of plastics recycling and food safety. As stated above, NFPA is currently conducting studies in this area, but, we cannot assure that technology will meet Oregon's statutory time line, e.g. 1995 or even 1997. Therefore, we recommend the following language be included in the Department's recommendations to the legislature:

> Grant exemptions from recycled content criterion only for FDA-regulated containers for which there is no FDA-approved process for utilizing recycled resins. Exemptions for reuse, reduction and statewide compliance rates will also be necessary. Exemptions will take effect January 1, 1995. The Department shall submit

a status report and analysis to the 1995 Legislature on FDA recycled resin research and approvals, economic feasibility of plastics recycling and use of recycled plastics in food packaging.

2. DISCUSSION OF THE DEFINITION OF "MANUFACTURER"

As currently drafted, the definition would sweep food processors into the package certification requirements. While processors must use FDA-approved packages for food product storage of consumer goods, processors do not seek certification of the packaging from the Federal government, nor should such an attestation be considered reliable. The certification of recycled content is properly delegated to the manufacturer of the container and should be recognized as such in statute.

NFPA fully supports the Department's recommendation to clarify the definition of "manufacturer."

CONCLUSION

We applaud the Department's commitment to designing a comment and review process which is open to all interests. The report to the legislature, which will include, among other things, recommendations relating to an exemption for certain FDA-regulated rigid plastic containers, is important to the future of food product distribution and packaging in the State of Oregon. In view of current technological capabilities, this type of exemption remains critical to the food processing industry and we ask you to carefully consider our comments as you develop your report.

NFPA employs many scientists and regulatory experts at both its Washington, D.C. office and Dublin, California laboratory. As you develop the report to the legislature and continue regulatory implementation of SB 66, I urge you to look upon us as a resource.

We are delighted to assist you in any way we can. Should you have questions about our comments or wish further information, please do not hesitate to contact me at (202) 639-5919.

Sincerely,

Laurel A. Nelson
Director and Counsel
State Government Affairs

DRAFT COMMENTS TO BE DELIVERED AT

THE OCT. 8, 1992 PUBLIC HEARING

OF THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

ON THE DRAFT REPORT TO THE 1993 LEGISLATURE CONCERNING EXEMPTIONS FOR FDA-REGULATED RIGID PLASTIC CONTAINERS

Good afternoon, my name is Dr. Henry Chin. My title is Senior Director of the Chemistry Division, Western Research Laboratory, National Food Processors Assn. NFPA is a national trade association which serves as the scientific voice of the food industry. The Association's 500 member companies, many of which do business in the State of Oregon, produce the nation's processed/packaged food products, food packaging and processing equipment.

NFPA maintains three research laboratories, employing over 100 scientific personnel, which conduct a wide range of food science research. Our primary mission is to conduct research which will assist the industry in maintaining the availability, wholesomeness and safety of the food supply. At the Western Research Laboratory, in Dublin, California, we have been very deeply involved in food packaging research. For the past 15 years, the nearly 20 chemists and technicians in my group and I have been involved with a variety of projects which focus on package integrity and migration or extraction of materials from packaging materials into the food as well as other projects in the area of food safety and chemical residues.

NFPA submitted written comments on the first draft of the 1993 Legislative Report regarding exemptions for rigid plastic containers holding food.

We respectfully disagreed with the conclusions drawn in DEQ's first

draft and suggested a fourth option. This consisted of a full food exemption combined with a 1995 report to the legislature on the status of recycling technology. Although we will submit written comments on this issue within the time period, we are particularly concerned about the revised recommendation contained in the second draft. The language provides for a one time two year extension from the recycled content criterion alone. The alternative criterion, reduction and reuse, would be effective in 1995. We must respectfully but strenuously object to this recommendation. A one-time extension of two years of the recycle content criterion, while recognizing the unique requirements of food packaging, does not fully recognize the technical difficulty associated with assuring that recycled materials will not compromise the safety and wholesomeness of the food contained in the packaging. Furthermore, packaging sizes and weights cannot be reduced to any significant degree without compromising integrity and reuse poses dangers to the food supply. Let me explain why science supports our public policy position favoring an exemption for food packaging.

We recognized over two years ago that as interest increased in using recycled plastics for food packaging that protocols would need to be developed that could assume that those materials are safe for their intended use. We have drafted Guidelines for the Safe Use of Recycled Plastics for Food Packaging Application. It should be noted that NFPA supports a comprehensive approach to management of solid and recycling is only aspect of a broad program. This document speaks to the role that three aspects of

recycling; source control, process efficacy, and conditions of use play in assuring that recycled materials can comply with all regulations and safety considerations for packaging food. Source control addresses the ability to control the source of the feedstock used in a recycling process, through the use of specifications on the character of the material. Process efficacy refers to the ability of a reclamation process to remove contaminants. Condition of use addresses the fact that recycled materials may be limited to certain applications, for example short time, ambient temperature contact with a food. Thus we have come to recognize that recycling, as applied to food packaging, is a multi-faceted challenge in the areas of sourcing, cleaning and use. We have drafted companion documents on source control and a protocol to test process efficacy. Technical experts from both the food processing and the packaging industry have provided us with guidance on this project and our research program has been shared with scientists at FDA. FDA's guidance document "Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations" is highly compatible with our guidelines and test protocol. Our approach most likely may be applied equally well to both secondary recycling, defined as physical reprocessing, and tertiary recycling, which may involve the chemical depolymerization and subsequent regeneration and purification of the monomers or oligomers used in packaging. It is with this background in packaging research and food safety that I wish to offer comments on your draft report to the Legislature on recycle content, reuse, and source reduction as it relates to plastic

containers used for foods.

The test protocol development which I alluded to earlier, consists of three phases. Phase 1 seeks to identify a set of surrogate chemicals which could be reasonably expected to represent the wide spectrum of chemicals found in a post-use waste stream and to develop analytical methods to determine the concentrations of the surrogate absorbed in the plastic. Phase 2 will seek to validate the test protocol by challenging the reclamation stage of a recycling process by spiking the plastic with the surrogates and measuring the effectiveness of the process in reducing surrogate concentrations in the recycled material. Phase 3 is envisioned as a company-by-company validation of the actual reclamation process.

We are now in the final stages of completing Phase 1 of the project. The list of possible contaminants is immense. We have identified chemical contaminants that could be in post-consumer waste to include: pesticides, household cleaners, automotive products, personal care products, paints and solvents (chart 1). These materials represent not only a wide range in hazards but also a wide range in physical properties, like boiling point, solubility in plastic, water, and cleaners. It is technically impossible to test a packaging material to ensure that it is free of all possible contaminants which may have been introduced in post-consumer waste. To represent this "universe" of possible contaminants we have tried to develop a rationale way of characterizing possible contaminants and to select model chemicals which could be used to challenge a

process. We have designed a test protocol which uses seven chemicals as surrogates for classes of possible contaminants (chart 2). The development of this list of surrogates took nearly 6 months with the involvement of experts from the food and packaging industries.

Currently we are studying the rate of absorption of these surrogate chemicals by HDPE. We need to remember, however that HDPE is not the only polymer being used in food and beverage packaging. There are packages composed of PVC, PET, polycarbonate, nylon and other monomers and copolymers and each polymer will require its own validation study. We have exposed samples of HDPE to solutions containing the surrogates and have measured the rate of absorption. While the amount of chemical absorbed will depend upon the chemical and the plastic, we have found that many chemicals can be rapidly absorbed until an equilibrium level of the chemical in the plastic is reached (chart 3).

We measured the amount of absorbed chemical by exhaustively extracting the plastic with selected organic solvents. This is a very rigorous procedure, but we cannot answer with certainty that all of the absorbed surrogate has been removed. The exact same question can be asked of a reclamation process.

The analytical method which we have developed for measuring the surrogates can detect a few micrograms per square inch, about a part per million. For some chemicals, food companies will want the

assure the absence of migration at levels less than a part per billion. This is what FDA basically requires for migration limits in new packaging materials and it would be unreasonable to expect FDA to require less or for manufacturers to accept less for recycled materials.

This study was intended to design a test protocol which could be used to test the feasibility of a reclamation process. Some have suggested that chemical depolymerization of the HDPE is necessary in order to release all of the absorbed contaminants for analysis. Obviously, if depolymerization becomes a necessity for the analytical measurements, how much short of depolymerization can a reclamation process go without leaving too much contaminant behind?

The second phase of the project is scheduled to be arranged as a demonstration project to be conducted in 1993.

In this discussion thus far, I have perhaps over simplified our approach and made it seem like a strict black or white situation based upon the presence or absence of surrogates. However, our guidelines also deal with the very gray area of very small amounts of surrogates still present in the plastic after recycling. What criteria should be applied to determine acceptability? What amount of total foreign material? How does one factor in the fact that surrogates will migrate at different rates from different plastics, into different foods? Does one design packages with functional barriers between the recycle layer and the food? How can one

demonstrate that a functional barrier exists? There are obviously plenty of questions which remain unanswered. There may even be some questions which have been unasked.

In many areas, for example pesticide residues in foods, consumer and environmental groups, and the regulatory community demand a neglible risk standard, however that may be defined. I find it ironic that when science argues that a specific residue or additive is safe, the science is questioned, but in this area of recycling where most agree that science is currently not capable of providing assurances about the safe use of recycled plastics in food packaging, some seem to be calling for the acceptance of more risk by promulgating a regulation which puts people who consume packaged foods at risk. On one hand we demand an absolute assurance of safety, on the other we seem to be saying we don't care as long as you meet an arbitrary deadline.

Reuse presents the same dilemma as recycle content. What could have contaminated the container and how do you know its been removed? Instead of dilution of contaminated containers with other materials in the waste system and with virgin materials, an undetected contaminated package will remain in the system for some time.

Source reduction is another area of concern. Food containers provide both physical and chemical protection to the products held

within. The package provides a barrier to microbiogical contamination and spoilage and, at a minimum, a barrier to oxygen intrusion and moisture transfer. The package also provides protection against chemical contamination. Permeability is manifested not only by a loss of product quality, but also by degradation of the nutrient content of the food. Food packages are designed to resist the permeation of oxygen and moisture and provide a barrier to microbial and chemical contamination. For example, a widely used material consists of a plastic composed of two layers of polypropylene sandwiching a layer of ethylene vinyl alcohol. The EVOH provides an excellent barrier to oxygen transmission, while the polypropylene provides structural strength and a barrier to water transmission. Legislative or regulatory policy will not change the physical or chemical properties of EVOH to make it resistant to water or make polypropylene have a lower oxygen transmission coefficient. For many packages source reduction will mean a reduction in package integrity, compromising microbiological and chemical safety and reducing shelf-life and quality. Source reduction is not a viable alternative means of compliance for many food packages.

These issues are complex. We are not talking about packaging screws, or toys. We are not talking about convenience or estethics. We are talking about a safety issue which is much more complex than that involving any single residue or additive. We have systems in place to regulate what additives can be used, when and in what quantity. What we do not have in place is a system

that can reasonably ensure the safety of all recycled plastics.

A one-time 2-year extension is no adequate. Your faith in technology is appreciated but doe snot fully appreciate the technical challenges not only in developing the processes but also in verifying those processes work adequately. The time necessary to develop validation data will likely range from three months to a year, or more depending upon the test results. Safety evaluation may need to be done. This data may need to be reviewed by FDA. We know of food additive petitions which have been pending for years. When we submitted a petition to extend the use of hydrogen peroxide as a packaging sterilant from just polyethylene to all polyoletives, the elapsed time was about 18 months. This was a petition requested by FDA and involved only a literature review and petition preparation. The regulatory process moves slowly -- safety will not and should not be comprised.

In closing, I would like to say that we are willing to talk with DEQ in greater detail about our research and our results as they become available and I would like to invite representatives from DEQ to visit our lab in Dublin to view our research.

TRUITT BROS., INC.
1105 FRONT ST. N.E., P.O. BOX 309, SALEM, ORE. 97308-0309
(503) 362-3674 FAX: (503) 588-2868

October 15, 1992

Ms. Linda Hayes
Hazardous and Solid Waste Division
Department of Environmental Quality
811 S.W. 6th Ave.
Portland, OR 97204-1390

RE: Comments on 2nd Draft Rigid Plastic Report to the 1993 Legislature.

Dear Linda:

Truitt Bros., Inc., is a food processing company in Salem, Oregon. We use rigid plastic containers for some of the food products we produce. We are concerned about the impact of ORS 459A.655 and 495A.660 on our business.

Truitt Bros., Inc., appreciates the opportunity to provide comment on the Second Draft and to participate in the open meeting 10/8/92.

Discussion of Exemption Recommendation Options:

The DEQ recommends Option B in the Second Draft Report. Because our products are FDA regulated products we cannot use recycled material in our containers. Our containers are not re-usable and we have already reduced the materials in these packages to where further reduction is not possible. This leaves only one way to meet the law, and that is the 25% recycle rate. The two year extension for FDA regulated products is helpful, but Henry Chinn's presentation at the open meeting October 8, 1992, showed that a two year time frame will not be enough time to do all the work required and to get FDA acceptance on using recycled plastics in food containers.

We feel that an exemption with the provision to review and evaluate the progress before the end of the exemption period to decide what to do next is the best solution.

Too much is unknown and this causes considerable concern about ability to meet the 25% recycle rate.

Definition of Manufacturer:

Truitt Bros., Inc., strongly supports the DEQ recommendation that the manufacturer be defined as the container manufacturers. They are the only ones that can certify the content of the materials in the container.

As members of both the Northwest Food Processors Association and National Food Processors Association, we work closely with both of these organizations in considering the issues and gathering information on rigid plastic recycling.

Truitt Bros., Inc., is very supportive of reducing solid waste through recycling, reuse, or any acceptable way to accomplish this. A visit to our facility would be welcomed to show this. Our goal is to comply as quickly as possible without risk to food safety. We appreciate your consideration of our comments.

Sincerely,

TRUITT BROS., INC.

Peter Truitt

Peter Truitt
President

PT:gmm

24

GENERAL MILLS, INC. • EXECUTIVE OFFICES
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October 12, 1992

LAWRENCE H. SAWYER
Director
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Ms. Linda Hayes
Department of Environmental Quality
State of Oregon
HSW, 811 SW 5th Avenue
Portland, OR 97204-1390

Dear Ms. Hayes:

As a member of the Minneapolis and St. Paul business community, I was greatly involved in the discussions surrounding the Minneapolis and St. Paul plastic bans. The law provided that plastic packaging which wasn't environmentally sound was banned. Environmentally sound was defined as recycled or recyclable. Writing the law was one thing, implementing the law is another. In this letter, I wish to discuss why implemention wasn't possible and suggest a creative way Oregon can benefit from our experience.

Food products are not in the foreseeable future going to be packaged in recyclable plastic. The technology does not exist by which a food manufacturer can guarantee that recycled plastic food packaging will have virgin properties and thereby meet the food safety standards we have come to expect.

Recycling plastic food packaging has proved equally difficult. Except for bottles with necks, most food packaging is made from the resins 3 to 7. There are five factors which affect the probability a material will successfully recycle: the material's value, its durability in the waste steam, its density, its volume and it weight. The experience of Minneapolis and St. Paul teach that a material must have sufficient value, volume, durability and density to offset the collection, sorting and marketing costs. If the material lacks one of these essential features, the program costs will out strip even avoided cost expectations. Simply, a plastic butter tub doesn't have sufficient weight or volume in the municipal garbage stream to justify collecting or

Mailing Address: P.O. Box 1113, Minneapolis, Minnesota 55440

sorting the container. It's only real value is as fuel in a co-generator or inert landfill.

There is no environmentally sound safe alternative to current plastic food packaging choices. Most people when asked say, why not switch to paper. Food companies don't switch for several good environmental reasons. First, food contaminates paper and makes it unsuitable for recycling. Second, food packaging that comes in direct contact with food must either be made of virgin materials or have virgin properties. When virgin paper is used for food packaging, trees are in effect cut for a one time use; then the paper box is landfilled, incinerated or composted. As you know, paper is already some 40 percent of the problem, more is not needed.

When recycled paper is used a virgin barrier must be placed between the food and its package. Although this provides a second use for the paper portion of the package,
the barrier is virgin, probably plastic and if it is attached to the paper as in a frozen fish carton, guarantees that the carton will be incinerated or landfilled. In other words, the barrier which has protected the package from the food product has made another use of the paper portion of the package unusable even as compost.

Most food packaging lacks any recycle value. Exceptions are extremely high volume, somewhat valuable packages like the 85 billion aluminum cans produced last year. Food packaging materials are chosen because they are cheap and add little to manufacturing and distribution costs. They have even less value after they are used by the consumer. The municipal garbage stream is really a sanitation problem as Minneapolis and St. Paul found, it is not a gold mine. Cereal boxes are made from 100% recycled material. They are made out of paper fibers which are too short for any other productive use except as fill or fuel. Our supplier glues them together for one more trip to the market place. We bought this kind of box 30 years ago because it was cheap, not because it was made from recycled material. It was a good choice for economic reasons; today it happens to be sound environmentally.

Plastic food packaging is the most efficient use of material per unit of food available. Its properties protect food through the distribution system to your home. With some 75% of mothers with children working the fastest growing food sales category is items which take two steps to prepare; take it out of the package, put it in the microwave. Plastic food packaging is the only material which has the physical properties which permit the wide range of uses in today's market.

There are 13 to 15 thousand UPC codes representing the foods packaged in plastic resins. They comprise most of the dairy case, frozen foods, microwave products, the deli section, meat and fish trays, salad dressings, juices, and specialty items. Another way to think about this is that the superior packaging properties associated with plastic has provided good reasons why plastic has replaced glass in the nation's bathrooms. The same process is taking place in the kitchen except that plastic is also replacing paper.

Minneapolis and St. Paul taught us that for the most part plastic food packaging can justify its existence on safety and efficiency grounds without meeting a requirement as being recyclable. There are no known environmentally acceptable commercially available alternatives to current packaging. One way food manufactures could comply with the provisions of SB66 would be if credit were given for source reduced packaging. Oregon's law cannot assume packaging can be source reduced into thin air. This is not possible. If it's a food product it's going to have a package. The solution is workable source reduction provision. A manufacturer seeking compliance through this mechanism would have to demonstrate by some standard that its current packaging is as light and efficient as can be made and still provide adequate food safety. Further source reductions as required in current Oregon law would not be required.

As a manufacturer, we can do four things for Oregon. Packaging can be made lighter; i.e., more efficient, toxic free, from recycled materials and or be made easily to recycle and finally less product could be produced. ie., less packaging. Much of this work, except for less product has been accomplished. The Oregon plastic recycling law like

the Minneapolis and St. Paul ordinance is difficult to implement because both of them are based on the assumption that current plastic packaging is a poor packaging choice. Upon investigation, our metro area solid waste managers learned that this was not the case. Plastic food packaging is a sound econmical use of materials for the protection and delivery of our food supply Most of its current applications are not transferable to other materials. True, the high volume high value plastics can and should be recycled. But, we also learned that if the city tried to collect resins 3 to 7, there wasn't enough value, volume and density to justify the sorting and collection costs.

I hope this is helpful. If you wish to discuss the ideas presented here, please call me at 612-540-4590.

Sincerely,

Larry Sawyer

LHS:jw

cc: Laurel A. Nelson
National Food Processors Association

HELENE CURTIS

Helene Curtis, Inc.
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Research & Development

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October 19, 1992

Ms. Linda Hayes
Oregon Department of Environmental Quality
P.O. Box 1760
811 S.W. 6th Avenue
Portland, OR 97204

Dear Ms. Hayes:

I am submitting these comments on behalf of Helene Curtis, Inc. Helene Curtis is the largest manufacturer of haircare products in the United States, and a major manufacturer of other personal care products; namely, hand and body lotions, antiperspirants and deodorants, and skin care products.

Helene Curtis is keenly interested in regulatory developments pertaining to the Oregon packaging law, formerly Oregon Senate Bill 66. Helene Curtis is willing to share significant learning related to the packaging of these products. Hopefully this learning will assist the Oregon DEQ in the formation of reasonable public policy that does not dilute or compromise the intent of the statute or place undue burden on cosmetics and OTC drug manufacturers.

Helene Curtis strongly supports an exemption from the requirements of ORS 459A.655 for cosmetic and OTC drug products. These products are highly regulated, most notably by the Food and Drug Administration (FDA). Due to important concerns regarding the safety of our products, we must proceed with great care when making changes to our existing packaging.

We believe there are outstanding unresolved issues that preclude satisfactory rulemaking under the law. First of all, while the law appears to provide manufacturers with three options for compliance, these options are not practically available. Secondly, the law unfairly penalizes those companies who have already minimized the packaging of their products by providing an exemption for other companies if they reduce their packaging now. Finally, cosmetic and OTC drug packaging is an insignificant contributor to the municipal solid waste stream. According to a report by Franklin Associates, cosmetic packaging contributes less than one percent to the solid waste stream. Thus, an exemption for these products would not compromise the effect of the statute. The three policy issues above, when taken with the need to preserve product integrity in compliance with the federal Food, Drug, and Cosmetic Act, support an exemption for cosmetic and OTC drug products.

THE OPTIONS FOR COMPLIANCE ARE NOT AVAILABLE ON A PRACTICAL BASIS

A company may comply with ORS 459A.655 by any of the following methods:

1. Incorporating 25% post-consumer resin (PCR) in a package, or

2. Using a "recyclable" package, or

3. Using a "reusable" package.

There are serious obstacles within each of these options.

OBSTACLES TO THE USE OF 25% PCR

With current technology, there are only three ways to incorporate PCR in a rigid plastic container: by using a PCR blend, using a multilayer bottle structure, or by using a repolymerized resin. None of these methods are satisfactory given today's technology and available supply of quality recycled resin.

There are safety concerns with PCR blends. It is not possible to accurately quantify the types of toxics that may have contaminated the PCR stream. In addition, the degree to which toxics might leach into the product is not known. Since consumer safety is our first priority, the use of blends is not feasible at this time. As you are aware, PCR blends may also exhibit residual odor, compromising the perceived product safety.

As an alternative to blends, PCR may be incorporated by using multilayer bottle structures. Multilayer bottles, however, may only be manufactured using extrusion blow molding technology; therefore, those containers made by injection blow molding or stretch blow molding may not use the multilayer technology. While Helene Curtis does use a multilayer structure that incorporates at least 25% PCR in the bottles of one brand of shampoo and conditioner, it must be noted that this technology has not been proven to provide acceptable product integrity and stability across any other health and beauty aid category in which we compete.

Thirdly, there is a major drawback in using a repolymerized resin. Currently, polyethylene terephthalate (PET) is the only resin available in that form. PET is not commonly used in the cosmetics industry, as most bottles use a recyclable high density polyethylene (HDPE).

In addition to safety and technology concerns, there are supply issues with the use of PCR, primarily from a quality standpoint. As you know, Helene Curtis was the first company to incorporate PCR into shampoo and conditioner bottles. We incorporated PCR into twelve (12) stockkeeping units (SKUs) in two categories of our Salon Selectives brand. We currently manufacture over 550 SKUs in seven categories. This conversion of only twelve SKUs took over two (2) years. The primary reason the conversion took so long was the difficulty of locating an acceptable supply of quality PCR. Once the supply was located, we had to undertake significant testing for product integrity and consumer safety prior to entering the marketplace.

In addition, there are quantity concerns with this option. In 1991, the resin industry produced 132.7 MM tons of post-consumer homopolymer resin. If all manufacturers in the household and industrial chemicals category and the cosmetics, pharmaceutical, and fragrance categories utilized 25% PCR, the demand would be approximately 280 MM tons, exceeding the supply by over 100%.

OBSTACLES TO USING RECYCLABLE PACKAGES

Packages qualify as "recyclable" under the statute if any of the following is(are) true:

1. Rigid plastic containers are being recycled, in the aggregate, at a rate of 25% by 1/1/95, or

2. The package is made of a resin being recycled at a rate of 25% by 1/1/95, or

3. The package is a product-associated package, and that type of package is being recycled at a rate of 25% by 1/1/95.

These are all recycling rates in Oregon.

Unfortunately, this option regulates companies by a standard over which they have no control. In order for the recycling rates in Oregon to meet those targets, infrastructure and markets must be established within the state and consumers must utilize the infrastructure, thus creating the market supply. The consumer products industry cannot create the infrastructure, nor can they cause consumers to recycle containers. The consumer products manufacturer may only encourage consumer recycling, make it easy for the consumer to recognize a recyclable container by the use of recycling codes and/or other markings, and help to create demand. It is ultimately the responsibility of the Oregon consumer and government to create and maintain the infrastructure, and to nurture and sustain the supply side of the market.

All that aside, the "recyclable" container option is not viable, because the recycling rates are unknown at this time. In addition, the rates may exhibit variability and fall below the targets based on consumer behavior. If the manufacturer were to consider this option as a compliance strategy , the manufacturer would need at least two and a half to three years lead time so that other options could be implemented if the recycling rates were below the targets. As it stands, the manufacturer cannot take the risk that recycling rates will indeed reach the targets. You have told me, on an informal basis, that PET is currently exceeding the recycling rate of 25%. This is indeed good news, and of some consolation. However, this is only a viable option for those bottles using PET, which are an insignificant proportion of bottles in the cosmetic industry.

OBSTACLES TO REUSABLE PACKAGES

"Reusable" packages are defined in the statute as those packages that are used five or more times for the same or substantially similar use. Because the language in the statute is absolute ("is reused"), equitable rulemaking will be nearly impossible. Paradoxically, the language is vague in that it may be impossible to define "same or substantially similar use". Further, the "five times" appears to be completely arbitrary. For example, would a package qualify as reusable if it was used once as a shampoo bottle and four times as a plant mister body? If the package was only used four times, does it no longer qualify as reusable?

Due to the shortcomings of the language in the statute, we see the Oregon DEQ in a very difficult position in the rulemaking phase. The rulemaking must preserve the strict yet ambiguous language of the statute, while at the same time afford manufacturers protection, when those manufacturers make reusable packages that very few people are buying and/or reusing.

We are also concerned that the Oregon DEQ may inadvertently encourage the reuse of bottles for different purposes. There could be serious consumer safety and product liability consequences with this practice. If a consumer were to fill an empty shampoo bottle with a deleterious substance, and a second person assumed that the bottle contained shampoo, the second person could be at risk.

This option is completely dependent on consumer behavior. A manufacturer could design a package to be reused, but the consumer might not reuse the package, and the state of Oregon would receive no actual benefit. This is a valid concern, as the body of knowledge suggests that consumers' actual purchase behavior differs significantly from their expressed attitudes on "environmentally friendly" products. Thus, while consumers may express some interest in reusable packages, we know that there must be an added value component (i.e., monetary incentive or convenience) for them to turn attitudes into actual behavior.

THE EXEMPTION FOR SOURCE REDUCED PACKAGES HAS A BUILT-IN BIAS AGAINST COMPANIES THAT HAVE ALREADY REDUCED THEIR PACKAGE WEIGHT PER VOLUME AS MUCH AS POSSIBLE

At ORS 459A.660(3)(d), packages in which the ratio of package weight per volume has been reduced by at least 10% as compared to the same package five years earlier are exempt from the certification requirements in ORS 459A.655. The inequity of this exemption is clear. If a company has used excessive packaging for years and then reduces the excess plastic that shouldn't have been used in the first place, it receives an exemption from the requirements of ORS 459A.655. Another company, which has always used the minimum amount of plastic possible in its containers, cannot receive the exemption. This company must therefore take additional steps to comply with ORS 459A.655 and is thus penalized for its proactivity.

IN SUMMARY, THE AVAILABLE OPTIONS ARE NOT AS SIMPLE AS THEY APPEAR, AND MAY NOT EVEN BE ACHIEVABLE. WE THEREFORE REITERATE OUR REQUEST FOR AN EXEMPTION FOR COSMETICS AND OTC DRUGS. If the DEQ will not entertain an exemption, it is clear that an extension of the compliance dates is necessary while all of the outstanding practical regulatory and technological issues listed in this letter are studied and resolved.

We appreciate the help and effort you and the DEQ have provided in these proceedings. We understand the difficulties inherent in rulemaking, especially one in which there are conflicting and seemingly irreconcilable opinions. We do have a compromise position for you and DEQ to consider. This option, we believe, would satisfy the statutory intent, and not put companies in an untenable position. The option revolves around the concept of a source-reduced package.

If a company could certify that its packages were already at a minimum weight per volume, it should be also be exempted from the requirements of ORS 459A.655. Such an exemption would encourage the minimal use of plastics in packaging, thus reducing landfill waste, thus reducing air and water pollution associated with plastics use and manufacturing. This exemption would also remove the inherent bias against those companies that have been out front in reducing their plastics use. We believe the legislative intent is fully and indisputably addressed in this manner.

Thank you for your consideration of our comments. Please feel free to call me at (312)292-7035 if you or anyone at DEQ have questions.

Respectfully submitted,

Bruce Varner

Bruce D. Varner
Corporate Manager
Environmental Affairs

BVD/eh

HELENE CURTIS

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Research & Development

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October 26, 1992

Ms. Linda Hayes
Oregon Department of Environmental Quality
811 S.W. 6th Avenue
P.O. Box 1760
Portland, OR 97204

Dear Linda:

Thank you for your preliminary review of our comments in support of a cosmetics exemption in the Oregon Packaging Law. We are happy to provide you with the supplemental information and clarification you requested.

The resin industry produced 132.7 MM lbs. of PCR homopolymer in 1991. This data is from the American Plastics Council (formerly the Partnership for Plastics Progress).

We calculated demand from data provided by Silgan and Union Carbide. First, the total HDPE resin used in the relevant industries is as follows:

Household and Industrial Chemicals	=	889 MM lbs.
Cosmetics, Toiletries, and Pharmaceuticals	=	229 MM lbs.
Total	=	1,118 MM lbs.

Multiplying this total by 0.25 (PCR weight %) yields the demand of 279.5 MM lbs. I noted in our comment letter that we incorrectly listed the units as "MM tons". We apologize for the error; however, the demand in 1991 still exceeded the supply by over 100%.

Please feel free to call me at (312) 292-7035 if you have questions. We appreciate your efforts.

Sincerely,

Bruce

Bruce D. Varner
Corporate Manager
Environmental Affairs

BDV/eh

D-172

Planning & Development
Building & Permit Services

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October 21, 1992

Linda Hayes
Department of Environmental Quality
Hazardous and Solid Waste Division
811 SW 6th Ave.
Portland, OR 97204-1390

RE: REPORT ON EXEMPTIONS FOR FDA-REGULATED RIGID PLASTIC CONTAINERS

Dear Ms. Hayes,

The City of Eugene is concerned about a DEQ staff recommendation to delay the effective date by two years for industry compliance with the recycled-content criterion applying to rigid plastic containers holding FDA-regulated products. Such a policy would send the wrong signal at a time when industry must share responsibility for developing markets for recovered materials. And, a delay would postpone resolution of Oregon's plastics recycling problem.

The staff report notes that the delay option gives container manufacturers time to do the research and complete the application necessary for FDA non-objection to recycled content polymers. The plastics industry was consulted in crafting Senate Bill 66, and three and a half years will lapse between the bill's passage and deadline for meeting the minimum-content requirement. If industry has been slow to begin research and the application process, then the staff recommendation will reward that lack of commitment.

In addition, the 1991 Recycling Act provides flexibility for manufacturers. If industry cannot meet the minimum-content requirement, there are other options. If a food container cannot be made with recycled content, can it be recycled into another type of product or packaging?

The City of Eugene supported passage of Senate Bill 66 in the 1991 session because it included provisions for market development. Plastics are being collected locally. Haulers, processors and consumers want to be able to recycle plastic packaging. The City urges DEQ staff to continue working with the plastics and other industries to improve recycling and market development, not to weaken the 1991 Recycling Act with exemptions.

Sincerely,

Keli M. Osborn
Development Analyst

c: Solid Waste & Recycling Board

Chesebrough-Pond's USA Co.
RESEARCH LABORATORIES
TRUMBULL CORPORATE PARK, TRUMBULL, CONNECTICUT 06611

PATRICIA DEL MONACO
MANAGER
ENVIRONMENTAL & REGULATORY AFFAIRS

October 21, 1992

Ms. Linda Hayes
The Department of Environmental Quality - HSW
811 S.W. 6th Avenue
Portland, OR 97204-1390

Re: Section 34(e), Chapter 385, Oregon Laws 1991
"State of Oregon Report on Exemptions for FDA Regulated Rigid Plastic"

Dear Ms. Hayes,

Chesebrough-Pond's USA Co. ("Chesebrough-Pond's") would like to take this opportunity to comment on the second draft of the above referenced report. Chesebrough is a member of the Cosmetic, Toiletry and Fragrance Association ("CTFA"), and in general, supports comments submitted by the Association on behalf of its members.

Chesebrough-Pond's manufactures and markets many well known brands of personal care products, including Vaseline® Intensive Care® Lotion, Pond's® Cold Cream, Aim® Toothpaste and the Rave® and Faberge® lines of hair care products, all of which are regulated by the Federal Food and Drug Administration as cosmetics and/or over-the-counter ("OTC") drug products. As such, these products are formulated and packaged with the utmost concern for safety. Accordingly, Chesebrough-Pond's urges the Oregon Department of Environmental Quality ("DEQ") to reconsider the "Exemption Options" presented in the second draft of its report to the Legislative Assembly regarding plastic packaging for FDA regulated products.

REQUIREMENTS OF THE FEDERAL FOOD, DRUG AND COSMETIC ACT

The Federal Food, Drug and Cosmetic Act ("Act") prohibits the "introduction into interstate commerce of any food, drug or cosmetic that is adulterated..."[1], and includes among cosmetics and drugs deemed to be adulterated those which are packaged in containers "composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health."[2] Further, OTC drug products are subject to "Current Good Manufacturing Practices for Finished Pharmaceuticals" which specify requirements for drug packaging.[3]

In its report to the Legislative Assembly, DEQ failed to distinguish between the regulatory requirements for cosmetic and drug packaging and those for food packaging. There is no FDA approval process for cosmetic or drug packaging, and that which exists for food packaging is not applicable to cosmetic or drug packaging because of differences in product chemistry and consumer exposures. Therefore, when considering the use of recycled material or reusable or reduced packaging, cosmetic and drug manufacturers must evaluate each package/product combination individually to guarantee both compliance with the Act and more importantly, the safety of the finished product.

SECTION 34b., OPTIONS FOR COMPLIANCE

For reasons that follow, Chesebrough-Pond's believes that the recycled rate, reusable and reduced packaging options are very limited, if not infeasible, options for compliance for drug and cosmetic packaging. While presenting significant technical challenges, incorporation of recycled material into drug and cosmetic packaging may prove viable for compliance in the future. However, not all packaging will be able to comply by 1995.

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1 21 U.S.C. 331.

2 21 U.S.C. 361 and 21 U.S.C. 351.

3 21 CFR 330.1(a) and 21 CFR 330.1(f)

34b.(1)(b), RECYCLING RATES

Section 34b.(1)(b) provides that rigid plastic containers made of plastic which is recycled at a rate of 25% in Oregon by January 1, 1995 will be in compliance with the statute. Consumer product manufacturers such as Chesebrough-Pond's have no control over recycling rates in Oregon, and therefore cannot rely upon such an option for regulatory compliance. Further, due to fluctuating material prices and market demand, recycling rates are likely to vary substantially from year to year, thus adding even more uncertainty to the prospect of compliance through this option.

34b.(1)(c), REUSABLE PACKAGES

Section 34b.(c) allows manufacturers to use reusable packages to comply with the law. Due to significant health concerns associated with microbiological contamination, drug and cosmetic product manufacturers cannot consider this an option for compliance.

34c.(3)(d), REDUCED PACKAGES

Section 34c.(3)(d) provides an exemption from the standards for reduced packages. The Hazardous Materials Transportation Act requires consumer commodities to be contained in "strong" outside packaging. As a result, drug and cosmetic packages undergo extensive testing including "drop" testing, "stack" testing and "stability" testing at different temperatures to ensure integrity during shipping. Due to high shipping and material costs, most drug and cosmetic packages are already designed to be as "light" as possible without jeopardizing required package strength. Additionally, drug and cosmetic packages must remain secure against product tampering. Therefore, in many cases, a 10% further reduction in package weight is not possible, and subsequently not an option for compliance.

SECTION 34b(1)(a), RECYCLED CONTENT

While viewed by Chesebrough-Pond's as the most feasible option for compliance, incorporation of recycled material into drug and cosmetic packages presents significant technical challenges. Of primary concern is the migration of contaminants from the recycled material into the cosmetic or drug product, however, even if such migration can be prevented, manufacturing capacity and material supply may remain obstacles to compliance.

Safety Issues

Chesebrough-Pond's is committed to providing its customers with safe products. Cosmetics and OTC drugs are used on the skin and in and around the eyes and mouth, and the safety of these products cannot be compromised. Further, as detailed above, FDA considers any cosmetic or drug product contaminated by its packaging adulterated. For these reasons, the incorporation of recycled material into cosmetic and drug packaging must be implemented only after careful consideration and resolution of the safety concerns described below.

Many cosmetic and drug products contain solvents, surfactants or fatty materials which have the capability to "leach" contaminants from plastic packaging. Recycled plastic may contain any number of contaminants that could migrate into personal care products from packaging and prove harmful, including pesticides, household cleaners, and automotive products. Colorants not approved for use in cosmetic or drug products may also migrate from recycled plastic, and upon contact with the skin may cause irritization and sensitization. Migration of harmful substances can be prevented either by removing contaminants from recycled plastic or by employing a barrier between the recycled plastic and the drug or cosmetic product.

"Contaminant Free" Recycled Plastic

Technology being developed to ensure that recycled plastic is free of chemical contaminants must be further expanded and perfected before it can be routinely used in the manufacture of cosmetic and drug packaging. Such technology employs either physical reprocessing or chemical treatment. Physical reprocessing involves grinding post consumer plastic, washing the resulting pellets and melting and reforming the resin into new plastic packaging. Once an effective washing system is developed, analytical test methods to determine the purity of recycled plastic resin must also be established.

Chemical treatment methods of recycling focus primarily on the depolymerization and repolymerization of plastics. While currently available for PET plastic, chemical treatment methods have not yet been developed for polyethylene, the primary plastic used in personal care product packaging. If this technology can be developed, its impact on package integrity and product compatibility must be evaluated.

"Barrier" Technology

Rather than using recycled plastic in direct contact with drug and cosmetic products, manufacturers may choose "barrier" or "sandwich" technologies to incorporate recycled material in product packages. Chesebrough-Pond's has been successful using this technology for one product package, Aqua Net® pump hairspray bottles. The process used to fabricate the Aqua Net® bottles for Chesebrough-Pond's, co-extrusion blow molding, creates a tri-layer plastic laminate comprised of a middle layer of recycled plastic and outer and inner layers of virgin plastic, thus preventing product contact with contaminated recycled plastic.

While promising, "barrier" technologies currently present significant limitations. As mentioned earlier, each product must be evaluated individually for compatibility with its package, and some products are capable of "leaching" contaminants from recycled plastic even through a barrier of virgin material. Further, the equipment required to form the tri-layer packages is very specialized, and existing equipment cannot be easily adapted to accommodate the new technology. Therefore, in addition to time needed to resolve product/package compatibility issues, significant lead time is necessary to build equipment in sufficient quantity to provide capacity for manufacturing the volume of packaging needed by the industry.

CONCLUSION AND RECOMMENDATIONS

In conclusion, Chesebrough-Pond's urges DEQ to reconsider the "Exemption Options" detailed in the second draft report to the Legislative Assembly. Although the Department recognized the need for some extension of time for FDA regulated industries to comply with the statute, a one-time, two-year extension may not provide enough time for industry to develop the technology, resolve the safety issues and establish needed manufacturing capacity associated with incorporating recycled plastic in cosmetic and drug packaging.

Further, the Department's recommendation of "Option B" includes a "certification process" which requires manufacturers to justify their choice of the recycled content option, apparently for DEQ approval. Chesebrough-Pond's believes that this is contrary to the intent of Section 34e. which specifies that the Department report to the legislature on whether to grant an exemption from all criteria of Section 34b. for containers that cannot meet the recycled content criterion and remain in compliance with FDA regulations.

We believe that the intent of Section 34e. is to recognize the unique safety concerns of FDA regulated products, not to eliminate the most promising of four options for compliance. Therefore, if a package cannot comply with the recycled content option, it should be exempt from all requirements of 34b., without the department's review and approval of the company's choice of the recycled content option.

Recommendation

Chesebrough-Pond's supports a full exemption from the requirements of Sections 34b. and 34c. for all FDA regulated packages until January 1, 1997. However, due to the uncertainty of recycling technology and the difficulties associated with the other options provided by the Oregon law, a company that cannot comply in 1997 must be provided with the opportunity to apply for a further extension upon providing DEQ with a report on its progress toward full compliance.

While continuing to work toward increased use of recycled material in packaging, Chesebrough-Pond's must be able to guarantee the safety of its cosmetic and drug products. We hope to work with DEQ staff to develop a workable approach to achieving the goal of increased recycling in Oregon and appreciate this opportunity to comment.

Respectfully submitted,

Patricia Del Monaco

PDM/ef
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Founded 1881

NDMA

Better Health
Through Responsible
Self-Medication

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

October 21, 1992

Linda Hayes - HSW
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Oregon 97204-1390

Re: Second Draft of the 1993 Legislative Report: Consideration to Exempt Rigid Plastic Containers Holding FDA-Regulated Products From Minimum Recycled Content Requirements in ORS 459A.655

Dear Ms. Hayes:

These comments are filed on behalf of the Nonprescription Drug Manufacturers Association, whose members manufacture the overwhelming majority of common household medicines, including Tylenol, Bayer Aspirin, Alka-Seltzer and the many cough/cold, antacid and other medicinal products which consumers keep in their homes for family use. Many of the products manufactured by NDMA members may be packaged in what ORS 459A.655 defines as "rigid plastic containers." Their packaging might therefore fall under the requirements of the statute.

Nonprescription drug products are important to the household as a cost-effective alternative to physician visits for the minor, self-limiting conditions for which they are packaged and labeled, in accordance with extensive regulation by the U.S. Food and Drug Administration. Such products are rarely "prescribed by physicians" and would therefore not typically fall within exemption (3)(a) of ORS 459A.660. The vast majority are, however, packaged in tamper-resistant packaging, which the nonprescription drug industry pioneered with the close cooperation of the FDA following the capsule poisonings of 1982. Such products would apparently fall within exemption (3)(c) of ORS 459A.660. (The exceptions to FDA's tamper-resistant packaging requirements are insulin, which the pharmacist keeps behind the counter, medicated skin products, fluoride-containing toothpastes, and lozenges.

The Association and the overwhelming majority of its members, like many companies in other industries, have adopted and are continuing to develop many recycling measures to protect the environment. These include recycling unused or unusable rigid plastic containers, the composition of which many identify with a code on the bottom; recycling aerosolized cans and their

propellants; using only inks which will make the packaging recyclable; using water-based coatings which do not emit volatile compounds into the atmosphere and are recyclable; recycling reusable oils contained in outdated or returned products, as well as many other measures. However, the industry has undertaken these measures to allow for the use of recycled materials for non-drug use for the protection of the environment. They are not intended nor are they appropriate for reuse of recycled packaging for nonprescription drugs. Many such drugs are ingested and it is crucial for the safe and effective use of the product and the protection of the public health that they be regulated only in accordance with FDA requirements, without regard to the requirements of ORS 459A.655.

Acccordingly, while the Nonprescription Drug Manufacturers Association applauds the goal of ORS 459A.655 to reduce solid waste it respectfully recommends that all nonprescription drugs, whether "prescribed by physicians" or not, be exempted from the requirements of the statute.

Domestic Concerns

Nonprescription drugs, most of which consumers ingest, come in packages which are designed not merely to hold the product but to ensure its safety and effectiveness when the consumer uses it. In many cases that packaging is the "immediate product container" -- the bottle which contains the product rather than a box which contains the bottle. The FDA extensively regulates the packaging of nonprescription drugs under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.) for precisely that reason:

(1) Adulteration. Section 501 (a)(2)(A) of the Act prohibits the marketing of any drug if it has been prepared, packed or held under insanitary conditions.

"Current Good Manufacturing Practice". Section 501 (a)(2)(B) requires that all drugs be manufactured, packaged, packed and held in conformance with "current good manufacturing practice." The FDA's "current good manufacturing practice" regulations extensively regulate, among other things, the packaging of drugs, including nonprescription drugs, including:

Tamper-Resistant Packaging. 21 CFR 211.132 of the regulations have required since 1982 that the vast majority of nonprescription drugs be packaged in tamper-resistant packaging. (As noted, the Association's members pioneered tamper-resistant packaging).

Expiration Dating. 21 CFR 211.137 and 211.166 of the regulations have required since 1978 that nonprescription

drugs, like prescription drugs, be tested by their manufacturers to ensure that they maintain their stability (identity, quality, strength, and purity) over their shelf life in the packages in which they are marketed for the purpose of establishing an appropriate expiration date. To require that the manufacturers of nonprescription drugs change their packaging now would at a minimum negate the many years of stability testing which those products have undergone and would undoubtedly force at least the temporary withdrawal from the market of many common household medicines pending the development of recyclable packaging, if technologically possible, which would meet the requirements of ORS 459A.655.

Such technology is not presently available and the Association has grave doubts that it can practicably be developed in the foreseeable future. Polypropylene, polyethylene, polystyrene and other polymers and copolymers used in the manufacture of immediate product containers of nonprescription drugs can, of course, be reground. However, the recycled polymer will contain unknown resins and other adulterants, including potentially toxic amounts of other products, FDA-regulated or otherwise, that came in the packages that were recycled. In other words, a recycler can in no way assure his nonprescription drug manufacturer-customer that his recycled package conforms to the FDA's and the manufacturer's exacting specifications or that he could replicate or reproduce a package even under much less demanding specifications.

Other. The FDA's "current good manufacturing practice" regulations cover many other aspects of the packaging of nonprescription drugs as well. See 21 CFR 211.56, 211.58 (buildings used in e.g., the packaging of a drug must be kept in a clean and sanitary condition and in good repair); 21 CFR 211.63 (equipment used in e.g., the packing of a drug must allow for, among other things, cleaning and maintenance); 21 CFR 211.65 (equipment and compounds which come in contact with e.g., the container of the drug must not be reactive, additive, or absorptive in such a way as to affect the integrity of the product adversely); 21 CFR 211.67 (equipment and utensils used in e.g., the packing of a drug must be cleaned as appropriate); 21 CFR 211.72 (in general, fiber-releasing filters may not be used in e.g., the packing of a drug); 21 CFR 211.80, 211.82, 211.84, 211.86, 211.87, 211.89 211.122, 211.130 (drug product containers, among other things, must be quarantined prior to examination, examined or tested before use, normally used on a FIFO basis, and stored in such a way as to protect the product, and "rejected" containers must be quarantined to prevent their inappropriate use); 21 CFR 211.94 (drug product containers must be clean and, if appropriate, sterilized, may not be reactive, additive, or absorptive in such a way as to affect the integrity of the

product adversely and must provide adequate protection of the product against foreseeable adverse conditions of storage and use). It is unclear that nonprescription drug manufacturers could meet these requirements and still meet the requirements of ORS 459A.655.

(2) Child-Resistant Packaging. Section 502 (p) prohibits the marketing of a drug except in conformance with the child-resistant packaging requirements of the Poison Prevention Packaging Act. (NDMA members pioneered child-resistant packaging efforts before they were required by law).

(3) "Manufacturer, Packager, and Distributor" and Net Quantity of Contents. Section 502 (b) of the Act requires that the package bear a label containing the name and place of business of the manufacturer, packager, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

(4) "Conspicuousness". Section 502 (c) requires that the package carry all legally required labeling information with such conspicuousness as to render it likely to be read and understood by the consumer.

(5) "Compendial" Drugs. Section 502 (g) requires that if a drug is "listed" (i.e., defined or described) in a compendium such as the U.S. Pharmacopeia, the National Formulary, or the Homeopathic Pharmacopeia, it must be packaged in a container which conforms to the specifications of that pharmacopeia. The pharmacopeia may require, for example, that such drugs be packaged in a "tight" or "well-closed" container (defined terms). "Aspirin," "acetaminophen," "ibuprofen," and many other active ingredients contained in nonprescription drugs are so "listed."

(6) Drugs "Liable to Deterioration". Section 502 (h) requires that a drug which is "liable to deterioration" be packaged as the FDA prescribes for the protection of the public health.

(7) "Misleading" Containers. Section 502 (i)(1) prohibits the marketing of a drug in a container which is made, formed, or filled in a manner which is misleading.

(8) Color Additives. Section 502 (m) prohibits the marketing of color additives, many of which are contained in nonprescription drugs, unless their packaging complies with FDA regulations.

(9) Sterile Packaging. Some nonprescription drugs, such as eye care products, must be packaged in sterile containers. The Association questions whether those products can continue

to be packaged in a way which also meets the requirements of ORS 459A.655.

(10) "New Drugs". Some nonprescription drugs are subject to "new drug applications," which means that they have to be specifically approved by the FDA prior to marketing. FDA's approval authority extends from the ingredient or ingredients contained in the product to its packaging and labeling, in the interests of ensuring that the drug is safe and effective as it is delivered to the consumer. The FDA develops detailed packaging requirements for such drugs.

NDMA and its members, in the interests of protecting the public health, have also adopted various voluntary programs which significantly affect either the packaging or the labeling and, in turn, the packaging of nonprescription drugs, including:

(1) bulk mail sampling guidelines, which require that the packaging be of a design which would discourage opening by children and which require that only a small amount of the product be enclosed;

(2) listing the quantities of the active ingredients;

(3) listing the identities of the inactive ingredients; and

(4) limiting the package sizes of certain nonprescription drugs.

It should be noted that child-resistant packaging, tamper-resistant packaging, compendial packaging, sterile packaging and other forms of special packaging must also meet all other FDA packaging and labeling requirements as well. In short, nonprescription drugs, like drugs which are "prescribed by physicians," must meet many, varied and intertwined U.S. packaging and labeling requirements as well as voluntary NDMA public health programs and therefore might, in the interests of protecting the public health, depart from the literal requirements of ORS 459A.655.

As noted, nonprescription drugs are a cost-effective means of self treatment for millions of consumers with minor, self-limiting conditions. One reason for their low cost is there are currently no special state labeling or packaging requirements which would make nonprescription drugs legal in, e.g., forty-nine states and illegal in one. In other words, they may legally be shipped from any state into any state if they meet the stringent packaging and labeling requirements of the FDA. This regulatory structure of national uniformity benefits consumers by maintaining the low cost and ready availability of nonprescription drugs. If Oregon were to depart from it by establishing special packaging requirements it would raise the costs of nonprescription drugs nationwide as well

as in Oregon and would certainly inconvenience Oregon consumers.

International Concerns

Many nonprescription drugs manufactured in the U.S. are marketed in Canada and in some in developed countries overseas. Manufacturers of such drugs typically must submit a product "registration" application to the appropriate regulatory authority, which registration contains data about their packaging, among other things. If nonprescription drugs are not exempted from the requirements of ORS 459A.655, their manufacturers might well have to change their product registrations in other countries. Such a change would likely cause at least the temporary withdrawal of many nonprescription drugs from foreign markets, pending the development, if practicable, of technology which would satisfy the requirements of ORS 459A.655. In so doing it would raise the cost of those products to foreign consumers, inconvenience those consumers, and reduce the market for U.S. production of such products.

Conclusion

The Nonprescription Drug Manufacturers Association and its members are committed to protecting the environment and have taken significant steps to do so. However, nonprescription drugs, ingested or otherwise, must remain safe and effective in their packaging if they are to continue to perform their valuable public health function. NDMA therefore urges that all nonprescription drugs, whether "prescribed by a physician" or purchased directly by the consumer, be exempted from the requirements of ORS 459A.655.

Respectfully Submitted:

THE NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION:

James D. Cope
President

GMF/s

CITY OF
PORTLAND, OREGON
BUREAU OF ENVIRONMENTAL SERVICES

Earl Blumenauer, Commissioner
Mary T. Nolan, Director
1120 S.W. 5th, Rm. 400
Portland, Oregon 97204-1972
(503) 796-7740
FAX: (503) 796-6995

October 21, 1992

Linda Hayes
Department of Environmental Quality
Hazardous and Solid Waste Division
811 SW 6th Avenue
Portland, OR 97204-1390

Dear Ms. Hayes:

Thank you for the chance to comment on the Department of Environmental Quality's (Department) draft report regarding whether rigid plastic food containers should be exempt from ORS 459A.655.

As the Department points out in its report, this is an "industry choice" law. It offers three choices for the plastics industry or an individual manufacturer to meet the requirements of ORS 459A. 655. A container can either: be made from 25% recycled content; be made of a resin which has a 25% recycling rate in Oregon by 1995 (and there are three ways which this goal can be met); or can be a reusable container. Furthermore, a container could be exempted from the requirements of ORS 459A.655 if it could be certified that the ratio of package weight per unit of product had been reduced by at least 10 percent when compared to the same container used for the same product five years earlier.

With this level of flexibility already built in to the statute, the City disagrees that Option B, a one-time two year extension for rigid plastic food containers to meet a 25 percent minimum recycled content, should be implemented. The City offers the following specific arguments against Option B:

- As noted above, the plastic container manufacturers have other ways of meeting the requirements of the statute or to be exempted from it.

- According to DEQ's calculations, plastic food containers make up approximately 52% of all rigid plastic containers. Exempting food containers from the requirements of the statute would inhibit the ability of the remaining rigid plastic containers to meet a 25 percent aggregate recycling rate in Oregon by 1995. It should be noted that the Council for Solid Waste Solutions announced in 1991 that it would achieve a 25 percent recycling rate for plastic by 1995.

- Although the City shares the Department's feeling that, as a market development tool, obtaining 25 percent recycled content in packages would be the desired long term end result. The City also recognizes the benefit of this statute in stimulating activity in the collection and processing end of plastics recycling in the short term. A two year extension for rigid food containers to meet minimum content requirements could result in less incentive for the plastics industry to invest right now in the necessary recycling infrastructure to collect and market post-consumer plastics. Instead, the City believes that collection and processing capabilities should grow in the short term, with the material going into durable products other than packaging, while parallel efforts are being made to increase the ability to utilize recycled resin in food containers. It could be a win-win situation as the food container manufacturers would have ample supply developed from which to source by the time they received non-objection status from FDA.

- There are other industries in Oregon, namely newsprint and glass, that are making good faith efforts to meet the minimum content requirements in Senate Bill 66. Glass containers, a food packaging item, have no compliance options under the law like those that were included for plastic. This could place glass food and beverage containers at a disadvantage to plastic food and beverage containers if the plastic containers were given an additional two years to comply with the minimum content standards.

- The majority of the plastic being recycled currently in Oregon is food containers - Pet bottles and HDPE milk jugs. Most of these are not being recycled back into food or beverage containers, but into more durable products. An exemption from a specific compliance option does not seem necessary when it is being applied to the very type of material that is being recycled at the highest rate. If an exemption is going to be granted, however, the City hopes the Department would consider also changing the wording regarding the 25 percent recycling rate so that rigid plastic food containers could not count toward that recycling rate.

The City recommends that the Department adopt Option A, no exemptions. The only reasonable exemption which the City could agree to would be if a manufacturer could certify that its container was <u>under review</u> by FDA by March 1, 1995 or at the time of container certification which ever comes first. The City views any other exemption as a major departure from Senate Bill 66 which was only passed in 1991. The City is continually looking at the ability to add other plastics to its curbside recycling program. An exemption of this type would seriously hinder the City's ability to add these materials in the short term.

In regards to the proposal to change the definition of "manufacturer" in ORS 459A.650(2), the City believes that any change would alter the legislative intent of the statute. As it is written now, the manufacturers of products that are packaged in rigid plastic containers would be responsible for meeting the recycling rate requirements. This is the appropriate entity to place this responsibility on since the product manufacturers are ultimately able to choose the type of package they use. The current language would, therefore, encourage more informed decision-making on the part of the product manufacturers and therefore exert influence on the package manufacturers to produce more recyclable packaging.

Again, thank you for the opportunity to comment. If you have any questions regarding these comments, please feel free to contact me at 823-7133.

Sincerely,

Lisa West for Meganne Steele

Meganne Steele
Solid Waste Director

OWENS-BROCKWAY
PLASTICS & CLOSURES, a unit of Owens-Illinois

OCT 29 1992

October 22, 1992

Linda Hayes
Department of Environmental Quality
811 SW Sixth Street
Portland, Oregon 97204-1390

Dear Ms. Hayes:

This letter describes Owens-Brockway's concerns regarding the second draft of the 1993 Legislative Report, ORS 459A.655. Owens-Brockway operates over 30 manufacturing facilities for plastic bottles, jars and closures in the United States. ORS 459A.655 as drafted will have a major adverse impact on our business and our customers business. We have a number of concerns with the interpretations presented in the second draft of the 1993 Legislative Report. Our major concerns are outlined below. We reserve the right to supplement our concerns.

Certification

Section B. 2) ORS 459A.660 requires an annual certification by the manufacturer of rigid plastic containers produced or sold for sale in Oregon. The certification process recommended is not feasible. We make containers to our customers specifications and ship per their instructions. We can only track the first shipment of containers from our point of manufacture. We have no control or information on the subsequent distribution process and have no way of determining if the filled packages will be distributed in Oregon. This is entirely up to our customers to decide.

Further, because of the specifications provided by our customers, we cannot arbitrarily change the plastic material used or bottle weight (as in package reduction). The package contents will dictate the requirements for the package. Only the product manufacturer can decide the package requirements given the bottle performance, FDA regulations, performance expectation and the requirements of

various laws including Oregon law. Page eight of the second draft states that "the product company must request the recycled-content information from their container manufacturer". Actually, the product company specifies the materials used in the package.

As a related matter, page nine states that the number of container manufacturers is smaller than the product manufacturers; thereby, making certification simpler with the bottle manufacturer.

The information that 66 to 100 companies make nearly all the plastic packages is inaccurate. Apparently, these lists are of custom blow molders, and exclude the self manufacturing operations at many dairies, soft drink bottlers, and consumer product companies. There may be 100 dairies alone molding packages.

Our recommendation is to consider "manufacturer" to be the producer of the packaged product (or the importer in the case of imported goods) and not the manufacturer of the empty container. This will be consistent with our understanding of the implementation of similar legislation in California (SB 235).

Finally an annual certification process is too complicated and should be simplified. Any annual certification process will generate excessive paperwork and costs and by both industry and the state. To reduce this cost we suggest that the certification process be done by exemption. Only those products desiring exemption should need to submit documentation. A random audit procedure could still be used to assure compliance.

Exemptions

All drug packages should be exempt. The current language implies only prescription medications are exempt. Over the counter drugs should be considered the same as prescription drugs for the purpose of this legislation.

The drug approval process is expensive and time consuming. The drug manufacturer obtains approval from the FDA by testing every single drug in the package to be used. Changes to the package, including the substitution of one virgin material for another require re-testing and re-approval. Although the cost of testing is paid by the drug house we understand the cost may be $100,000 for each test.

Option A, B, or C

The three options presented in the second draft for food packages simply adjust the timing for FDA package implementation. A method that takes into account the different plastics, the product being packaged and economics should be used.

The desire for environmental packages and competition will encourage technology and the implementation of post consumer materials. While this provides strong incentives, we cannot implement technology that isn't available. Furthermore, the technology will develop for some materials and some products at different times. There are a variety of underlined performance issues for the use of PCR in various end use applications including FDA issues, barrier layer issues, product performance issues etc. Also, the time for FDA approval varies greatly. In any case, the legislation should never be interpreted to propose post consumer content in containers unless the performance has been demonstrated to our customer's satisfaction and accepted by the FDA and other regulatory agencies.

Very truly yours,

James E Hiltner

James E. Hiltner
Manager of Recycling

CLACKAMAS COUNTY

Department of Transportation & Development

WINSTON KURTH
EXECUTIVE DIRECTOR

RICHARD DOPP
DIRECTOR
OPERATIONS & ADMINISTRATION

TOM VANDERZANDEN
DIRECTOR
PLANNING & DEVELOPMENT

To: Department of Environmental Quality
Hazardous and Solid Waste

From: Clackamas County
Department of Transportation and Development

Date: October 22, 1992

Subject: Second DRAFT of the 1993 Legislative Report: Consideration to exempt rigid plastic containers holding FDA-regulated products from minimum recycled content requirements in ORS 459A.655

Clackamas County was involved in the partnership of government, industry and environmental advocates which developed the language in ORS 459A.655. The County feels that the four options given the plastics industry or individual manufacturer to meet the requirements makes the law very fair as it stands.

Industry and manufacturers are not tied to the recycled content option. Through their own purchasing power, they can request recycled content in items used by themselves, as well as assisting in the development of viable recycling markets, allowing plastics to attain the recycling rate specified in the recycling option.

Clackamas County would like to see the recommendation of Option A, which follows the intent of the law, which was to see that manufacturers of rigid plastic containers would have to take action to get their products recycled, reused, source reduced or to contain recycled materials.

902 Abernethy Road • Oregon City, OR 97045-1100 • (503) 655-8521 • FAX 650-3351

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Washington DC 20204

OCT 20 1992

Ms. Linda Hayes - HSW
The Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204-1390

Dear Ms. Hayes:

This is in response to your letter of September 30, 1992, requesting our comments on your draft of the 1993 Legislative Report in which you discuss the consideration to exempt rigid plastic containers holding FDA-regulated products from the minimum recycled content requirements of ORS 459A.655.

We would like to clarify that our letters listed in Item A of the appendix are to specific companies for their specific processes and are not applicable to other companies. Until we have in place some mechanism to consider comparable uses as a class, it will remain necessary for each company to request FDA to consider each specific situation and proposed use. Your discussion of our letters on page 5 does not make this clear.

Also, we have recently issued an additional "no objection" letter to E.I. du Pont de NeMours & Co. on PET resins produced from post-consumer PET through their methanolysis process.

Finally, your quote of Section 174.5(a)(2) is slightly incorrect. It should state "Any substance used as a component of articles that contact food shall be of a purity suitable for its intended use." (emphasis added).

We hope that these comments are useful to you. If we can be of any further help, please do not hesitate to contact the Division of Federal-State Relations, which is the office that coordinates our interactions with the states. Their address is: Division of Federal-State Relations, HFC-150, Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857.

Sincerely yours,

Helen R Thorshi

Helen R. Thorsheim, Ph.D.
Indirect Additives Branch, HFF-335
Division of Food and Color Additives
Center for Food Safety
and Applied Nutrition

33

Lane County

October 20, 1992

Linda Hayes
Hazardous and Solid Waste Division
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Oregon 97204-1390

RE: 1993 Legislative Report
Rigid Plastic Containers

Dear Ms. Hayes:

I've followed with interest the information regarding DEQ's draft report to the 1993 Legislature regarding the issue of exempting rigid plastic containers holding FDA-regulated products from the minimum recycled content requirements in ORS 459A.655. Although conflicts have so far prevented me from participating in discussions on the matter, I thought I'd at least send you my written thoughts.

As I'm sure you know, the market development and recycling content components of SB-66 were committed to by the paper, glass and plastics industries during the development of the bill. This commitment was to "match" that of local governments, recyclers and the refuse collection industry to make recycling work in Oregon. Now, even before the first deadlines are approached, I understand that some elements of the plastics manufacturing industry, in particular, are trying to eliminate or, at least, extend the SB-66 requirements that are applicable to their products. This comes at a juncture where the only significant effort on the part of a plastics industry member is about to sunset, i.e., Proctor and Gamble's colored HDPE price supports due to expire in January 1993.

I see no reason to modify the January 1, 1995 compliance date for recycling of rigid plastic containers to meet the requirements of ORS 459A.655. As mentioned in the draft report, the 25-percent recycled content requirement is only one of the compliance alternatives from which industry may choose. They always have the option of doing what they need to do with recycling markets to see that at least 25-percent of their rigid container product is recycled in Oregon. A permanent exemption or even a significant extension of time as the Department is recommending only reduces industry's incentive to find responsible alternatives to continuing the disposal of their products. If <u>any</u> segment of manufacturing industry isn't willing to be part of reducing waste disposal of their products and meeting statewide waste reduction goals, maybe it's time to re-consider product bans and other alternatives to continuing use of such products.

If DEQ feels that some modification of the current deadline is absolutely necessary, it should be the <u>very minimum</u> extension of time which would allow this issue to be considered again

Lane County Public Works

DEPARTMENT OF PUBLIC WORKS • 3040 NORTH DELTA HIGHWAY • EUGENE, OREGON 97401-1696 • 503/341-6900 • FAX: 503/687-8799

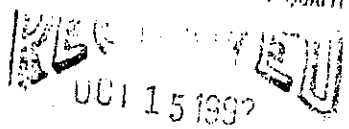
after industry has made a good-faith effort to comply with the current requirements. To me, this argues for only a six- month extension from January 1 to July 1, 1995 so that the issue can be considered again by the 1995 Legislature. If industry has done it's homework but a 25-percent recycled content or recycling level just isn't reasonably possible, alternatives to the current requirements can then be considered in the context of requirements for local recycling programs and the desired statewide level of recycling and waste reduction activity. Doing otherwise continues the situation where we're collecting and stockpiling materials for recycling while industry isn't doing its part to provide reasonable markets for the materials we collect.

Sincerely,

G. Craig Starr
Management Officer

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

(34)



OFFICE OF THE DIRECTOR

d Hansen
ector
artment of Environmental Quality
SW Sixth Ave.
tland, Or 97204

ar Mr. Hansen:

am writing to urge you to stand up to the plastics industry's
tempt to opt out of SB 66 or delay the recycling standards in
66.

nderstand the industry claims that if it cannot use recycled
tent in food packaging, then food packaging should not have to
t any of the other recycling standards in the law. Does this
ar that a company that cannot meet one of the four options
uld not have to do anything to improve plastics recycling in
egon? For example, if a company cannot use a reusable shampoo
tle, should it be exempt from all other recycling standards?
a milk jug cannot be made with recycled content, shouldn't it
recycled into another type of product or packaging?

want plastics recycling to work in Oregon because I do not want
be contributing unnecessary plastics to the waste stream; I
nt to be able to recycle them. SB 66 needs to be aggressively
plemented because Oregon cannot afford any further delay in
ving the problem of plastics recycling. The DEQ should not
ommend any exemption from the law or any delay in the law.

ncerely,

rmaine Curry
mpus Recycling
ysical Plant
niversity of Oregon
gene, Or 97403

Germaine

(35)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 16 1992
OFFICE OF THE DIRECTOR

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

October 13, 1992

Dear Mr. Hansen;

I am writing to express my concerns about the proposal to exempt plastic food packaging from having to meet the recycling standards required in SB 66.

The plastic recycling industry in Oregon is on the verge of disappearing. The industry has not come forth with the funding for market development as was promised to the 1991 legislature. The markets are very weak at this time. I just received notice yesterday that the primary local domestic plastic market has shut down for 8 weeks and there is concern that they may not reopen at all. Plastic recycling can work in Oregon. Collection and intermediate processing systems are already in place. We need markets!

I food packaging industry is exempted from the law, what message will other plastic packaging companies be receiving. I suspect that they will attempt to get exempted as well. The current problems with plastic recycling revolve around lack of markets. These markets do not have to be for food containers. All Oregon recycling bins should be made out of recycled plastic. This should have been a requirement of SB66. Oregon road signs and traffic barriers could be made from recycled plastic lumber. These two products alone would consume far more plastic than is currently being collected in Oregon. The food packaging industry does not need to be granted an extension because the plastic can't be put in food containers. Collect the containers and make them into something else. But do not allow the industry to continue to be a part of the solid waste problem without requiring them to be a part of the solid waste solution.

DEQ should not recommend any delays or exemptions for the food packaging industry. Let the law have a chance to work. SB 66 was a compromise bill between industry groups and recycling groups. This recycler is prepared to honor the agreement and collect and process the plastic. Please, make sure you keep the industry honest and make them honor their commitment to provide markets and end uses for the plastics.

Recycling works. Don't let the industry tell you otherwise.

Sincerely,

Suzanne Johannsen

Suzanne Johannsen
464 SE Wye Lane
L, OR 97702

D-197

OREGON SANITARY SERVICE INSTITUTE

Our members serve Oregon in collection, recycling and disposal of solid waste

MEMBER
NSWMA
National Solid Wastes
Management Association

(36)

October 15, 1992

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Dear Mr. Hansen:

It has come to the attention of OSSI that there is an effort on the part of the plastics industry to be excused from meeting the plastics packaging requirement of SB 66.

As you know, the passage of SB 66 was a result of compromise and hard-won consensus. In order to pass this landmark legislation, every group gave up some important positions and agreed to certain provisions which were at one time unacceptable.

At the time, the plastics industry agreed to the SB 66 requirements that it must meet. Allowing the plastics industry now to claim than it should not be subject to those requirements would not only set an unfortunate precedent, it would be patently unfair to the other partners of SB 66 who are working to meet the goals which were set.

Thank you for your consideration.

Very truly yours,

Kristan S. Mitchell
Governmental Affairs Director

D:\wp51\ksm\DEQ.pla

1880 Lancaster Drive NE • Suite 120 • Salem, Oregon 97305 • FAX (503) 399-7784 • Toll-Free in Oregon: 1-800-527-7624

OREGON BANK
A SECURITY PACIFIC COMPANY

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 22 1992
OFFICE OF THE DIRECTOR

October 20, 1992

Dear Mr. Hansen,

Please help the plastics industry - and the entire state - by standing firm on the recycling Standards set forth in SB 66.

At this point in time I <u>avoid</u> buying anything packaged in plastic. If the plastics industry would "get on the bandwagon" of recycling and make a big effort to become part of the solution they would gain customers and markets for their products.

DEQ should not recommend any exemption or delay in the law.

Thank You,

Sharon Trimble

Sharon R. Trimble
Portland, Oregon

HSW 2910 N. E. 42nd (38)
Portland, Oregon 972.
October 23, 1992

Fred Hanson
Director, DEQ
811 S. W. Sixth Avenue
Portland, Oregon 97204

Dear Mr. Hanson:

I am writing to urge you not to agree to the food manufacturers' attempt to be exempt from the provisions of SB on plastic recycling.

I understand that the industry contends that if it cannot use recycled content in food packaging, then food packaging shouldn't have to meet any of the other requirements.

But that doesn't mean that milk jugs, margarine containers, etc. can't be made of recyclable material. The recyclables can be used in making garbage cans, park benches, Rubbermaid articles, and other → useful items. So there is a market for them

With food packaging making up over 50% of plastic packaging, it is very important that the food industry contribute proportionately to the recycling effort.

Also such foods as ketchup and mustard can be more inexpensively be packaged in glass rather than plastic.

So I hope that the food industry too can help cut down the amount of plastic in the land fills.

Sincerely,
Catherine Collins

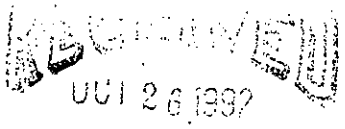
(39) TTSVV

Board of Commissioners

1130 N.W. Harriman • Bend, Oregon • 97701
(503) 388-6570 • FAX (503) 388-4752
Nancy Pope Schlangen
Dick Maudlin
Tom Throop

October 21, 1992

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY



OFFICE OF THE DIRECTOR

Fred Hansen, Director
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Oregon 97204

Dear Fred,

Of course, we in Central Oregon have heard about the plastics industry's efforts to circumvent Senate Bill 66, or at the very least, delay its implementation. Simply because a recycled material cannot be used in food packaging is no reason not to recycle the material. Plastic milk jugs are a prime example. In Deschutes County, we conduct a very successful plastic milk jug recycling program. If a milk jug cannot be made with recycled content, it would be ludicrous to wave the recycling requirements. This material can clearly be recycled into another product or packaging.

My purpose in writing is to appeal to you, Fred, that we in Central Oregon want plastic recycling to work. Our citizens are anxious for plastics recycling. Senate Bill 66 is landmark legislation and should be aggressively implemented. It would be without merit to further delay resolving the issue of plastics recycling in this State. Please do not provide exemptions to the law or delays in the implementation of the law.

Thank you for your consideration, Fred. Best wishes with all the public policy decisions ahead. Hope to see you sometime soon.

Sincerely,

DESCHUTES COUNTY BOARD OF COMMISSIONERS

Tom Throop

Tom Throop, Commissioner

TT/mmh

D-202

40

BEND RECYCLING TEAM
Conservation for Central Oregon, Inc.

P.O. BOX 849
BEND, OREGON 97709
(503) 388-3638

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
OCT 26 1992
OFFICE OF THE DIRECTOR

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

October 13, 1992

Dear Mr. Hansen;

We are writing to urge your continued support for recycling in Oregon. We understand that the plastic food packaging industry is seeking a delay of implementation for recycling standards for their plastic containers. We urge you to deny their request.

When SB66 was drafted in the 1991 Oregon Legislature, all of the industry groups and recycling interests participated. SB66 was an historic piece of legislation because it encompassed so much and yet passed both legislative bodies unanimously. This was due to the broad based support of the various groups who worked on the bill. True, not everyone agreed to everything, but there was general consensus on the direction for the future.

We urge you to allow the bill to remain the compromise it was intended to be. Do not allow individual groups to undermine parts of it. Recycling only works when all the parts of the system are in place. We have myriad examples in Oregon and the US today to show us how the recycling systems are affected when one part of the loop is not fully functioning.

For plastic recycling to work in Oregon, there must be markets and end uses for the materials being collected. The plastic industry agreed to fund market development. With markets in place, the food packaging industry has no need for exemption. If markets do not exist, then the whole system must be revisited. Plastic packaging bearing a recycling symbol indicates to the public that it is recyclable. Publicity from the plastic industry is telling the public that plastics are recyclable. Let the industry prove its claims. The law is not restrictive, it provides options and time to implement those options.

Our recycling organization has operated for many years to provide the best recycling program possible in our area. We have had to adapt to many changes. It has been painful at times. But we have succeeded because we have a commitment to recycling.

DEQ should not recommend any delays or exemptions for the food packaging industry. Let the law have a chance to work.

Sincerely,

The Bend Recycling Team Board of Directors

R Thomas Wykes
Joseph M. Scholtz
Ronald A Wentland
Carol Moorehead
Robert L. Fox
Nancy A. Ahlers

D-203

(41)

Tina Springer
1640 Neberogall Lp.
Albany, OR. 97321
Oct. 27, 1992

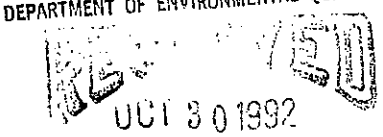
Dear Mr Hansen,

I am writing to urge you to stand up to the plastics industry's attempt to opt out of SB 66 or delay the recycling standards in SB 66.

I want to see plastics recycling work in Oregon because I feel we cannot afford to not recycle plastics to their fullest. The DEQ should not recommend any exemption from the law or any delay in the law. SB 66 need to be aggressively implemented.

Sincerely,

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY



(42)

OFFICE OF THE DIRECTOR

October 27, 1992

Fred Hansen
Director
Dep't of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

Dear Mr. Hansen:

My wife and I have been concerned about the hugh amounts of plastic that are collecting in our landfills.

I am writing to urge your strong support for SB 66 and to stand firmly against any effort by the industry to cause any exemptions or delays in the law created by SB 66.

I understand from talking with Lynda Hayes that the present problem is the extremely low cost of the virgin resins. I also understand that we have only 40 years supply of the resins and it also occurs to me that those resins must also be used in other products.

Is it not important to conserve those resins for products that do not unnecessarily clog our landfills?

Please, we urge you to stand firm requiring the the industry to comply with the standards now the law of Oregon.

Very truly yours,

Elven & Geraldine Sinnard
23 Becket
Lake Oswego, OR 97035

D-205

(43)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

NOV 2 1992

10/30/92

OFFICE OF THE DIRECTOR

Dear Mr. Hansen:

I am writing to urge you to stand up to the plastics industry's attempt to opt out of SB 66 or delay the recycling standards in SB 66.

I understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other recycling standards in the law. Does this mean any company that cannot meet one of the four options should not have to do anything to improve plastics recycling in Oregon? For example, if a company cannot use a reusable shampoo bottle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled content, shouldn't it be recycled into another type of product or packaging?

I want plastics recycling to work in Oregon because I want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problem of plastics recycling. The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely,

June Fleming

June M. Fleming
4719 N.E. 32nd Place
Portland, OR 97211

D-206

Received Nov. 3, 1992

(44)

Oct 31/92

Dear Mr. Hansen

Re: Senate Bill 66

Oregon citizens have made a commendable effort in recycling. Plastics constitute 20% of the total waste but are only recycled at the rate of 4%. Even more ominous is the growth rate of more plastic packaging.

This industry wants ~~plastics~~ plastics used in food packaging exempted from recycling. That will mean 50% of it's output!

Just because one aspect of recycling is difficult to

Continued next page

satisfy for the Plastic Packaging industry does that mean they should be exempt from all other recycling.

In conclusion, if a milk jug can't be made with recycled ~~plastics~~ packaging material, then shouldn't it be made into some other type of product?

Please stand up to the industry in their efforts to avoid the 'Plastic Avalanche'.

Sincerely
Bob Carleton
34390 Deerwood
Eugene OR
97405.

Fred Hanson
Director
DEQ
811 SW 6th Ave
Portland, OR 97204

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

NOV 3 1992

OFFICE OF THE DIRECTOR

(45)

10-29-92

Dear Mr. Hanson,

I am writing to urge you to stand up to the electric industries attempt to opt out of SB66 or delay the ~~recycling~~ recycling standards in SB66

The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely,

Jan Beeman
14574 SW Bill
Sherwood, OR
97140

(46)

Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland Oregon 97204

Dear Mr. Hansen:

I am writing to urge you to stand up to the plastics industry's attempt to opt out of SB 66 or delay the recycling standards in the SB 66.

I understand the industry claims that if it cannot use recyled content in food packaging should not have to meet any of the other recycling standards in the law. Does this mean any company that cannot meet <u>one</u> of four options should not have to do anything to improve plastics recyling in Oregon? For example, if a company cannot use a reusable shampoo blttle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled content, shouldn't it be recycled into another type of product or packaging?

I want plastics recycling to work in Oregon because I want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problem of plastics recycling. The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely,

Kim McDonnell
1125 Church Street
Dayton Oregon 97114
October 27, 1992

2580 SW 85TH
PDX 97225

47

Nov. 2, 1992

OFFICE OF THE DIRECTOR

Dear Mr. Hansen,

I am a life long Oregon resident and as such am proud of standards and traditions that have come to make our state outstanding.

We have been a recycling family for more than ten years and are truly enthused about the growing numbers who are choosing to be responsible about recycling.

It is very important for us to keep moving forward with the momentum that we have building. If DEQ does not hold firm on SB 66 requirements, Oregon will not see improvements in container recycling. To allow companies using rigid plastic containers until 1997 to comply with the law - is allowing them to have control of the situation.

We are able to see the effects of dwindling natural resources around us daily. Please help us stay ahead of the problem.

DEQ should not recommend any exemption or delay in the law's requirements.

Sincerely,

D-211 Lorna A. Lozano

(48)

November 3, 1992

Mr. Fred Hansen, Director
Dept. of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Re: SB 66

Dear Mr. Hansen:

Please support the recycling standards of SB 66 and **deny the attempts by the manufacturing industry to delay compliance until 1997.** The industry has seven options to comply with SB 66. Surely one of those options can be accomplished. We must immediately address the plastics problem. A delay is not a solution.

Please do not let DEQ recommend any exemption or delay in compliance with SB 66.

Sincerely,

Theresa Kempenich

Theresa A. Kempenich

3717 SW Corbett, No. 8
Portland, OR 97201

(49)

All Picked Up And Nowhere To Go

PLASTICS RECYCLING ACTION ALERT -- URGENT

The plastics industry is trying to gut Oregon's new plastic packaging recycling law. Oregonians must speak out to keep plastics recycling alive in Oregon.

In 1991 the Oregon Legislature unanimously passed Senate Bill 66. One part of SB 66 focuses on improving plastics recycling in Oregon. Plastic has the lowest recycling rate of any material. Even worse, plastic recycling programs in Oregon are failing because industry has not committed to making plastics recycling work.

The plastics industry is lobbying the Department of Environmental Quality (DEQ) to weaken the plastics packaging section of SB 66. Oregonians must let DEQ and industry know that we won't stand for weaker plastics recycling in Oregon.

Call the Department of Environmental Quality at (503) 229-5317

or

Write A Letter Today!

Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Dear Mr. Hansen:

I am writing to urge you to stand up to the plastics industry's attempt to opt out of SB 66 or delay the recycling standards in SB 66.

I understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other recycling standards in the law. Does this mean any company that cannot meet one of the four options should not have to do anything to improve plastics recycling in Oregon? For example, if a company cannot use a reusable shampoo bottle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled content, shouldn't it be recycled into another type of product or packaging?

I want plastics recycling to work in Oregon because I want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problem of plastics recycling. The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely,

Name Debra Jones
Address 1945 S.E. 47
Portland, Or 97215

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 4 1992
OFFICE OF THE DIRECTOR

OSPIRG

1536 SE 11th AVENUE PORTLAND, OR 97214 • (503) 231-4181

D-213

(50)

Sharon Conroy
1240 SE 73rd Avenue
Portland, OR 97215
(503)253-9668

Fred Hansen, Director
D.E.Q.
811 S.W. Sixth Avenue
Portland, OR 97204

Dear Mr. Hansen:

Having worked in the food industry, both manufacturing and brokering for fifteen years, I understand WHY the Plastics and Food Manufacturing Industries have attempted to delay the recycling standards in Senate Bill 66.

The massive change in packaging is expensive and the F.D.A. is slow to respond. However, it is of EXTREME IMPORTANCE that these two industries in particular take the challenge and participate in Oregon's Recycling efforts. The Rigid Plastic Food Container manufacturers and users need to comply as other industries have.

We do not have time to stall. The Food Industry must accept this challenge. We are quite capable of learning better packaging methods, and avenues for recycled products. This change must be accepted and adhered to.

I urge D.E.Q. to not recommend any exemption. D.E.Q. must hold firm on SB66's standards or this requirement could be procrastinated too long, and the plastics problem would continue.

Sincerely,

Sharon J. Conroy

D-214

11/2/92

(51)

Dear Mr. Hansen:

I am asking you to please insure that DEQ upholds the SB 66 plastics recycling requirements regarding rigid plastic food containers. A two-year delay will encourage more procrastination on a waste problem that is spiralling out of control.

You are the guardian of the public trust.

DEQ should not recommend any exemption or delay in the law's requirements.

Sincerely,

Kathleen Gow

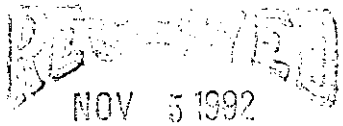
Kathleen E. Gow

Fred Hansen, Director
DEQ
811 S.W. 6th Ave.
Portland, OR 97204

Nov. 4, 1992

(52)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY



OFFICE OF THE DIRECTOR

Dear Mr. Hansen,

The recycling standards and time allotment of Senate Bill 66 ought to be adhered to. It is very important that we tackle the plastics problem, and do not allow extra time to manufacturers of plastics. They do not need the extra time; they just resist change. Please don't allow them to muscle you under.

I enclose a poem which I wrote a couple of years ago. I do feel a sense of urgency in regard to the non-compliance of the plastics industry, as well as to the proliferation of plastics.

Thank you for your consideration.

Sincerely yours,
Ann S. Holznagel
4935 S.W. 37th Ave
Portland, OR 97221

D-216

Plastics Unlimited

(52)

I've got a bunch of plastic sacks
To sort assorted trash.
I've gathered simply stacks and stacks,
And formed a basement stash.

I think that we might best succeed
By passing legislation
To rid the country of this weed
Called "plastics generation".

Recycle - DO! - A plastics stew!
U.S.'s Grand Creation!
No chance to stop this plastics crop —
Just haul it to a station —.

By ship, we send this wondrous stuff
To countries far away.
When do we say, "Enough's Enough!"
Is there no better way?

Neither self nor laws control
Consumer profligation;
Creature comforts are our goal —
We'll drown — a waste-full nation!

Ann Holznagel
April, 1990.

(53)

Mr. Hansen

I am writing in support of Senate Bill #66.

I want plastics Recycling to work in Oregon Because I want to Be able to Recycle plastic packaging

I feel Senate Bill #66 Should Be implemented in full force with no Exemptions from the law, and without Delay

I am endavor to Do my it Right and Doing it Now!

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
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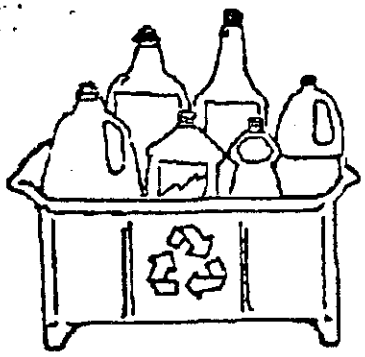
OFFICE OF THE DIRECTOR

Suzanne E Adams
2271 Marion St
North Bend Ore
97459

54



All Picked Up And Nowhere To Go

PLASTICS RECYCLING ACTION ALERT -- URGENT

The plastics industry is trying to gut Oregon's new plastic packaging recycling law. Oregonians must speak out to keep plastics recycling alive in Oregon.

In 1991 the Oregon Legislature unanimously passed Senate Bill 66. One part of SB 66 focuses on improving plastics recycling in Oregon. Plastic has the lowest recycling rate of any material. Even worse, plastic recycling programs in Oregon are failing because industry has not committed to making plastics recycling work.

The plastics industry is lobbying the Department of Environmental Quality (DEQ) to weaken the plastics packaging section of SB 66. Oregonians must let DEQ and industry know that we won't stand for weaker plastics recycling in Oregon.

Call the Department of Environmental Quality at (503) 229-5317

or

Write A Letter Today!

Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Thanks!
Ron N

Dear Mr. Hansen:

I am writing to urge you to stand up to the plastics industry's attempt to opt out of SB 66 or delay the recycling standards in SB 66.

I understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other recycling standards in the law. Does this mean any company that cannot meet one of the four options should not have to do anything to improve plastics recycling in Oregon? For example, if a company cannot use a reusable shampoo bottle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled content, shouldn't it be recycled into another type of product or packaging?

I want plastics recycling to work in Oregon because I want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problem of plastics recycling. The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely,

Name
Address

MS. CATHERINE B. NOLLENBERGER
1026 HENRY ST APT 8
ASHLAND OR 97520-3269

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
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NOV 5 1992
OFFICE OF THE DIRECTOR

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1536 SE 11th AVENUE PORTLAND, OR 97214 • (503) 231-4181

D-219

Randy and Jill Hack
7349 S.W. 166th Terrace
Beaverton, OR 97007

November 4, 1992

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

Dear Mr. Hansen:

We are writing to urge you to stand up to the manufacturing industry's attempt to delay the recycling standards in ***Senate Bill 66.***

We understand that the DEQ would allow companies using rigid plastic food containers until 1997 – instead of 1995 – to comply with the law. We see no reason why they can't comply with one of the seven options available to them.

If the DEQ does not hold firm on SB 66. requirements, Oregon will not see improvements in container recycling. We cannot afford to let the plastics problem continue.

The DEQ should not recommend any exemption or delay in the law's requirements.

Very truly yours,

Randy and Jill Hack

(56)

Dear Mr. Hansen

Please do not allow SB66 to be changed or delayed in regards to the recycling of plastics.

In Cannon Beach we have a great recycling program. When it opened to MILK jugs only, there was an immediate mountain of them - also no market. The collection had to be ceased & the jugs hauled off as trash. Such waste.

Thank you for your time & efforts

Patti Rouse
PO Box 206
Cannon Beach, OR
97110

(57)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

OFFICE OF THE DIRECTOR

November 4, 1992

Mr. Fred Hansen
Director
D.E.Q.
811 SW Sixth Avenue
Portland, OR 97204

It was recently brought to our attention that there is a possibility that DEQ may recommend that companies can continue to use rigid plastic food containers until 1997, instead of 1995 as was passed by law. We are writing to urge you not to allow this extension and to hold firm on SB 66. Please do not let the manufacturing industry's attempt to delay the recycling standards of this bill become a reality. We cannot afford to let the plastics problem continue!

Sincerely,

Liza & Gerald Maness

Liza & Gerald Maness
3903 SE 116th
Portland, OR 97266

D-222

4220 SW. Homestead Rd.
Wilsonville, Or. 97070
November 3, 1992

(58)

Fred Hansen, Director
DEQ
811 SW. Sixth Ave
Portland, Or. 97204

Dear Mr. Hansen:

I am writing to urge you to stand up to the manufacturing industry's attempt to delay the recycling standards in SB. 66.

I understand that DEQ would allow companies using rigid plastic food containers until 1997— instead of 1995- to comply with the law. We see no reason why they can't comply with one of the seven options available to them.

If DEQ does not hold firm on SB 66 requirements, Oregon will not see improvements in container recycling. We cannot afford to let the plastic problem continue.

DEQ should not recommend any exemption or delay in the law's requirements.

Yours truly,

Kathy Luiten

59

Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

NOV 6 1992

OFFICE OF THE DIRECTOR

59

Dear Mr. Hansen:

I am writing to urge you to stand up to the plastics industry's attempt to opt out of SB 66 or delay the recycling standards in SB 66.

I understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other recycling standards in the law. Does this mean any company that cannot meet <u>one</u> of the four options should not have to do anything to improve plastics recycling in Oregon? For example, if a company cannot use a reusable shampoo bottle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled content, shouldn't it be recycled into another type of product or packaging?

I want plastics recycling to work in Oregon because I want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problem of plastics recycling. The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely, Mary E. Kleiner

Name 17205 S. Abiqua Rd
Address Silv, Oregon 97381

(60)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

NOV 6 1992

OFFICE OF THE DIRECTOR

November 5, 1992

Fred Hansen, Director
D.E.Q.
811 S.W. Sixth Avenue
Portland, OR 97204

Dear Mr. Hansen:

I am writing to encourage you to stand firmly behind the standards in S.B. 66 regarding rigid food containers.

With public awareness and practice of recycling increasing, there is a greater expectation and demand for the plastics industry to get on board — now. Further extensions will damage both the industry's and DEQ's reputation. The public is ready and waiting for you to safeguard the requirements of the law.

Yours truly,

Pat Holter
9555 N.W. 316th Place
Hillsboro, OR 97124

(61)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

NOV 6 1992

OFFICE OF THE DIRECTOR

November 2, 1992

Fred Hansen, Director
D.E.Q.
811 SW Sixth Ave
Portland, OR 97204

Dear Mr. Hansen,

I very strongly support recycling measures and am appalled at the manufacturing industry's attempt to delay the standards in SB 66. The standard were passed and I see no reason that companies should not be able to comply with them. I am not surprised that they would try to get around them.

Please see that DEQ does not weaken the provisions of SB 66.

Sincerely,

Jerry Porter

Jerry Porter
3600 SW Beaverton-Hillsdale Hwy #10
Portland, OR 97221-3839

(62)

Fred Hansen, Director
D.E.Q
811 S.W Sixth Avenue
Portland, Or 97204

November 3, 1992

Dear Mr. Hansen,

I am writing you to urge you to stand up to the manufacturing industry's attempt to delay recycling standards in SB 66.

I understand that D.E.Q. would allow companies using rigid plastic food containers until 1997 — instead of 1995 — to comply with the law. We see no reason why they cannot comply with one of the seven options currently available to them.

If D.E.Q. does not hold firm on SB66 requirements, Oregon will not see improvements in container recycling. We cannot afford to let the plastics problem continue.

D.E.Q. must lead the way. Help Oregon to stay in the forefront of environmental health and creativity! Please do not recommend any exemption or delay in the laws requirements.

Sincerely, Christine Farrington, member, recycling advocates

(63)

November 5th,, 1992

2325 NW Hoyt
Portland, OR 97210
503-224-8051

Fred Hansen
D.E.Q.
811 SW Sixth
Portland, OR 97204

Mr. Hansen:

I understand that DEQ is entertaining a request to delay the implementation of the recycling standards required by Senate Bill 66 as they relate to plastics. I urge you not to do this accept the request.

As someone who works in the recycling industry and who keeps up with the ongoing debate over regulation vs. "encouraging the market" and the plastics industry's poor performance in promoting the use of recycled resins, I do not believe delaying enforcement is prudent. The plastics industry still seems to find it easier to try and buy legislation, or in this case a pardon, than to work honestly toward a reasonable long term solution. Please, once again, do not delay implementation of SB 66.

Please send me a letter indicating DEQ's decision on this matter, it can be sent to the above address.

Thank you for your time.

Sincerely,

Jon J. Kart

(64)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

NOV 6 1992

OFFICE OF THE DIRECTOR

Sharon Bobbe
P.O. Box 25817
Portland, Oregon 97225

November 4, 1992

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Ave.
Portland, Oregon 97204

Dear Mr. Hansen:

Please do not allow the manufacturing industry to delay their acceptance of responsibility in solid waste reduction and recycling any longer. Do not grant an additional two years for them to comply with the law as set in SB 66.

I have just completed the Master Recycler Training Program sponsored by OSU Extension Service and Recycling Advocates, and funded by Metro's 1% For Recycling. I am one of 27 participants in the second group trained. We are now to go into the community and teach others the philosophy, benefits and how-to's of recycling, and waste reduction to earn the title of Master Recycler. We need your help!

I implore you to work with us; to change for the better, our lives and those of future generations. The U.S. represents 5% of the world population but generates 25% of the waste. Americans go through 2,500,000 plastic bottles every **HOUR**, with only a small percentage ultimately being recycled.

Please do not recommend any exemptions and hold firm on the SB 66 requirements. There are many people in our own community and across the country doing their part to create less waste. It is not too much to ask that the manufacturing industry do theirs, as well.

Sincerely,

Sharon Bobbe

Sharon Bobbe

(65)

15
Nov. 5, 1992

DEQ
811 S.W. 6th
Portland, OR 97201

Attn: Plastics
Recycling Issue
re: SB 66

Dear DEQ,

Please demand compliance of the Plastics M.f.g. Industry to existing regulations. It's time DEQ let the Industry know we stand firm on the very reasonable re-straints of SB66. — no exemptions, no delays.

The Industry should be reminded that it lost its mandate to be environmentally irresponsible with the election of Bill Clinton on Nov. 3.

Sincerely,

Nancy Lou Tracy
7310 SW Pine St
Portland, OR 97223

(66)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
NOV 6 1992
OFFICE OF THE DIRECTOR

November 5, 1992

Mr. Fred Hansen, Director
D.E.Q.
811 SW Sixth Ave.
Portland, OR 97204

Dear Mr. Hansen:

I am writing this letter on behalf of our company, DEJA, Inc. We are a new company that is in the business of making shoes out of pre and post consumer recycled materials. Our concept is to reduce, reuse and recycle everything possible in our environment, with the vision to create a business that manufactures practical, high quality products from the highest percentage of recycled and environmentally sensitive materials as possible.

That is part of the reason that I am writing this letter to you. **We are very concerned about the plastic industry's attempt to delay the recycling standards stipulated in Senate Bill 66.** We feel that these matters need to be addressed in a timely manner and that we should not allow industry to delay something that so vitally needs addressing. If there could be some standards set within the plastics industry to limit the numbers of plastics that could be produced, this would be an ideal. I know this was not an issue of this bill, however, if we could at least force the industry to conform to the options available to them then we could begin to find new ways to recycle these products into something useful. This bill had very wide spread support from the citizens of Oregon and it should not be overlooked. Yet, the industry can not see beyond the vision of creating new and better plastics.

I think that by forcing the industry to adhear to the bill, we could begin to see changes that are necessary for our planets survival.

Thank you for your time.

Sincerely,

/s/ Julie Lewis

Julie Lewis
VP of Research & Product Concepts

JML/dlp

DEJA, INCORPORATED
7320 S.W. HUNZIKER, SUITE 305
TIGARD, OREGON 97223
TEL (503) 624-7443 FAX (503) 624-2620

D-231

11-4-92

(67)

Dear Mr Hansen,

I am writing to support you in showing some intestinal fortitude to the plastic industry's attempt to avoid SB66 or to delay recycling standards.

We cannot further delay solving the problems of recycling plastics. At one time we did little to use waste wood products or to recycle newsprint. We found this very wasteful in the long run and now quite profitable for industries involved in recycling and better utilization. The same should apply to plastics in recycling and expanded utilization.

Sincerely

Victor Damgaard Victor D Nielsen

NIELSEN, VICTOR
410 LAUREL ST.
JUNCTION CITY, OR 97448

68

The Columbia-Willamette Greens
A Portland and Metro Area Greens Organizing Committee
Affiliated with the U.S. Greens

P.O. Box 8136
Portland, OR 97207

November 5, 1992

Fred Hansen
Director
Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

Dear Mr. Hansen:

Our organization is opposed to any attempt by the plastics manufacturing industry to delay implementation of recycling standards in SB 66. The plastics industry has delayed creating a credible processing infrastructure in the Northwest or devoting sufficient funding to an adequate research and development program to solve recycled-content issues for food packaging.

We do not think that DEQ should recommend postponing SB 66's requirements for rigid plastic food containers for two years, until 1997. While the recycled-content provision may be an immediate challenge for rigid plastic food containers, there is no reason why the industry can not comply with at least one of the options listed in the law, particularly the 25 percent recycling rate standard.

While the 25 percent recycled-content provision appears to be a stumbling block for food applications, nevertheless, the soft drink industry was able to develop and implement its glycolysis process in two years. The soft drink industry is now manufacturing bottles with 25 percent recycled content and distributing them in Oregon. The burden should be on the other food and beverage companies to make the investment in research and provide documentation as to why they can not replicate the success of the PET soft drink container with recycled content.

However, even if rigid plastics packaging for food applications can not meet the recycled-content standard, there is no reason why this packaging can not satisfy the 25 percent recycling rate standard. There are a range of markets, from construction to agriculture, where use of this material would not be affected by its cleanliness to the degree that reuse in a food application would require. These rigid plastic food containers are being collected and marketed in a number of locations already around the country as documented by the plastics industry with their own surveys.

However, it is clear that the plastics industry is dragging its heels in the Northwest. The plastics industry's market development plan submitted to the Recycling Markets Development Council pales in scope and detail when compared to those of the glass and paper industries. Indeed, the plastics plan has encountered the greatest criticism and concern form the recycling community and municipalities.

The request by the plastics industry to delay meeting already weakened standards (compared to those for other packaging) only adds insult to injury. Indeed, the Columbia-Willamette Greens believe that the recovery and recycled-content standards for all packaging materials, including paper and metal, should be raised to the 50 percent level to which glass container packaging is being held. It is unfair to create an unlevel playing field. One consequence is that some companies are finding it easier to switch from packaging that has to meet more rigorous recycling standards, such as glass bottles, to plastics packaging with its less demanding requirements.

For example, in the last few years, a number of food products, such as peanut butter, have switched packaging from clear glass containers to PET or PVC rigid plastic containers. This switch includes national brands, as well as house ones. Even Fred Meyer, whose vice president chairs the state's recycling market development council, uses PET and PVC containers for its peanut butter. As is well known, the market for clear glass is very strong here, as elsewhere, while it is impossible to find an adequate market, if any, for PVC and non-soft drink PET in Portland, let alone the rest of the state.

And, while Pepsi manufacturers are to be commended for putting 25 percent recycled content in PET plastic bottles, this is still a step backward from its previous packaging choice. The company recently discontinued packaging in 12-ounce, one-way, clear glass bottles made with 50 percent recycled content in Portland's glass plant and shifted production to Washington for the 25 percent, recycled-content plastic containers. Oregon loses the jobs and the recycled content in the product goes down. There is no technical reason why the Pepsi manufacturers can not put more recycled content in their plastic bottles.

However, it would cost them more. Also, Oregon's law lets them off the hook with a lower recycled-content level.

By recommending a delay of the implementation of SB 66's standards, DEQ will only be encouraging more packagers to switch to rigid plastic food packaging and, thus, make Oregon's waste stream less recyclable.

Sincerely,

Steve Apotheker

Steve Apotheker
227-2329

(69)

Fred Hansen, Director
D.E.Q.
811 SW Sixth A ve.
Portland, Oregon 97204

Dear Mr. Hansen:

I am writing to urge you to stand up to the manufacturing industry's attempt to delay the recycling standards in SB 66.

I understand that DEQ would allow companies using rigid plastic food containers until 1997 - instead of 1995 - to comply with the law. We see no reason why they can't comply with one of the seven options available to them.

If DEQ does not hold firm on SB 66 requirments, Oregon will not see improvements in container recycling. We cannot afford to let the plastics problem continue.

DEQ should not recommend any exemption or delay in the law's requirments.

Yours truly,

Rick Craycraft

Rick Craycraft
4626 NE 19th
Portland 97211

D-236

JEREMY V. SARANT
ATTORNEY AT LAW

1125 AMERICAN BANK BUILDING
621 S.W. MORRISON ST.
PORTLAND, OREGON 97205-3814

TELEPHONE (503) 299-6199

November 5, 1992

Fred Hansen, Director
D.E.Q.
811 SW Sixth Avenue
Portland, OR 97204

Re: Plastic Recycling Standards

Dear Mr. Hansen:

Under SB 66 companies using rigid plastic food containers have until 1995 to comply with the recycling standards established by the law. It has come to my attention that DEQ is considering allowing a two year extension, to 1997, for compliance with implementation of those standards.

I believe that any delay in implementation of these recycling standards, is not only unnecessary and unjustified, but encourages further demands for delay in implementation of other provisions of the law.

There is no reasonable justification for delay in implementation of these standards, and I hope that you will act to timely enforce the provisions of SB 66.

Very truly yours,

Jeremy V. Sarant

JVS:wp

D-237

(71)

November 5, 1992

Fred Hansen, Director
D.E.Q.
811 SW Sixth Ave.
Portland, Oregon 97204

Dear Mr. Hansen:

I am writing to urge you to stand up to the manufacturing industry's attempt to delay the recycling standard in SB 66.

I understand the DEQ would allow companies using rigid plastic food containers until 1997 - instead of 1995 - to comply with the law. I see no reason why they can't comply with one of the seven options available to them.

If DEQ does not hold firm on SB 66 requirements, Oregon will not see improvements in container recycling. We cannot afford to let the plastics problem continue.

DEQ should not recommend any exemption or delay in the law's requirements.

Sincerely,

Susan Denning

Susan Denning
1225 NE 55th Ave.
Portland, OR 97213

(72)

FLORENCE FLESKES
1346 N.E. EMERSON
PORTLAND, OR 97211

Nov. 5, 1992

Fred Hansen, Director
D.E.Q.
811 S.W. Sixth Ave
Portland, Or 97204

Dear Mr. Hansen:

I am writing as every effort needs To be done To encourage Senate Bill 66 be used To help recycle Container plastic. This will not improve without a firm committment. We cannot afford To let the plastic problem continue.

Thank you,

Florence Fleskes

D-239

(73)

November 5, 1992

Lou Stagnitto
15204 SE Rupert
Oak Grove, OR 97267

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

Dear Mr. Hansen:

I am writing to you because I am concerned about plastics recycling. I am aware that the plastics industry is attempting to delay the recycling standards set forth in last year's Senate Bill 66. Their efforts to persuade DEQ to allow them to continue to use rigid plastic food containers until 1997, rather than the 1995 limit set forth in the legislation, should be resisted.

Oregon has made great strides in recycling during the last few years, and as you know we have much further to go. My frustration around recycling plastics is knowing that many of the plastics brought to recycling centers are only stored somewhere and not actually re-used, due to the cheapness of oil and thus the availability of virgin plastics. This is very frustrating to me. I continue to encourage others to recycle their plastics, and yet I don't feel the industry is doing enough on their end to make plastics recycling a worthwhile effort. If DEQ does permit the industry to weaken SB 66, I feel that Oregonians will not see improvements in container recycling, thus increasing the plastics problem.

I encourage you to recommend no delays or exemptions be granted in SB 66's requirements. Thank you for your consideration of this request.

Sincerely yours,

Lou Stagnitto

Lou Stagnitto

(74)

Holly P. Goldsmith
STRIKING IMAGE
50 Kerr Parkway #30
Lake Oswego, OR 97035

November 5, 1992

Fred Hansen, Director
DEQ
811 SW 6th Avenue
Portland, OR 97203

Dear Mr. Hansen,

I ***strongly*** encourage you to resist any efforts of the Plastic Industry in persuading DEQ into relaxing any of the requirements in SB 66.

It is my understanding that in 1991, companies were given until 1995 to comply with the law, meeting at least one of the options. Four years is sufficient time for companies of their size to conduct research, and perform thorough testing of different packaging materials. MCDONALD'S CORP is a perfect example of how quickly adherence can be made when there's initiative. The Portland Public Schools also acted quite promptly in meeting standards. The speed with which these two entities complied is demonstrative of the ability of other groups to meet the same standards.

DEQ should not allow ***any*** exemptions to the requirements of SB 66, ***nor any*** extentions on the compliance date. DEQ must stand firm.

Sincerely;

Holly P. Goldsmith

D-241

(75)

Fred Hansen, Director
DEQ
811 SW Sixth Ave.
Portland, OR 97204

Nov. 5 1992

Dear Mr Hansen

Please do not let the manufacturing industry to delay the recycling standards in senate bill 66. If DEQ doesn't stand by the senate bill requirements on container recycling (changing deadlines etc) we will not see improvements in container recycling

The plastic industry must change. We must punish the incentive now.

Very sincerely yours,
Mary Preston
2300 SW Sunset Blvd.
Portland, OR 97201

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 9 1992
OFFICE OF THE DIRECTOR

(76)

November 7, 1992

DEQ
Mr. Fred Hansen, Director
811 SW Sixth Ave.
Portland, OR 97204

Dear Mr. Hansen:

I am writing to you as a concerned citizen of Oregon. I was very much heartened by the 1991 passage of Senate Bill 66 and felt glad that something would finally be done about all the materials going needlessly into the landfill.

I would like to commend you for your efforts in getting this landmark legislation passed. I'm sure that you were instrumental in its passage and that thanks to you and the hard work of others, Oregon now can benefit from such a forward thinking piece of legislation. Thank you Mr. Hansen for your good work!

There is one thing I am concerned about now, however, that recently came to my attention. It seems that some plastics manufacturers have been talking with you and would like to see the provisions in SB66 regarding plastic recycling delayed until 1997.

I hope that you will remember that time is our enemy. We don't have all the time in the world to implement effective recycling. By putting off plastics recycling until later, we only make it more difficult to undertake the real job at hand: reducing and dealing effectively with our waste.

Please don't allow the pressure of these manufacturers to influence you too much. I'm sure there are ways for them to satisfy the mandate of SB66 outside of delaying all action until 1997. I hope that you will remember Oregon citizens like me when you reach a decision.

Sincerely,

Susan Brenner

Susan Brenner
Recycling Advocates

77

DR. RAYMOND E. BALCOMB
868 SW Troy, Portland, OR 97219-4478
(503) 244-0971

November 7, 1992

Fred Hansen, Director
Department of Environmental Quality
811 SW 6th Ave
Portland, OR 97204

Dear Mr. Hansen:

I am writing to urge you to implement aggressively SB 66 regarding the recycling of plastics, and not to allow industry to create loopholes in it (such as exempting plastics used in food packaging). The DEQ should not recommend any exemptions from the law or any delays in implementing the law. We want plastics in Oregon recycled! We are confident that the ingenuity used to create plastic packaging if directed toward its recycling can overcome the obstacles at reasonable cost.

Sincerely,

Ray & Hazel Balcomb

Dr. & Mrs. Raymond E. Balcomb

0-244

November 3, 1992

Fred Hansen, Director
Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204

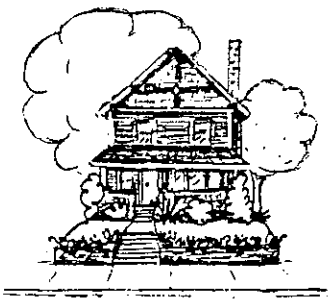
Dear Mr. Hansen,

Over the past several months I've noticed an encouraging increase in virtually all aspects of plastics recycling in this area. More containers are recyclable; more containers carry markings indicating recycled content. More enterprises dealing with the manufacture of items made from used plastic are appearing on the horizon in Oregon. The general public is becoming more and more aware of the significance of recycling as consumers.
Now I understand that DEQ has been asked to extend the deadline two years for compliance with SB66.
I feel very strongly that to allow this extension not only is unnecessary in light of the several options provided in SB66, but also would adversely affect the real progress in plastics recycling that is just now occurring.
I believe any extension would be a bit like having told the children to be in bed by 8 o'clock, to reverse that policy and relent to pleadings for "just one more hour." That's the sort of decision we invariably regret the very next day if not sooner.
Thank you for considering my concerns.

Sincerely,

Mary Coats

Mary S. Coats
716 Center Street
Oregon City, Oregon 97045



"ECKHOFF HOUSE"

- 1908 -
Across the street from the McLoughlin House National Historic Site

(503)650-4421

Jeanette R. Egger
1800 Ridgecrest Drive
Lake Oswego, OR 97034

79

November 5, 1992

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

RE: PLASTICS -- EXEMPTION PETITION

Dear Mr. Hansen:

My interest in recycling goes back to the days of Bill Bree in the '70's when he was a lone voice in the solid waste wilderness. The Oregon Legislature has taken decades to address the pressing issues of our waste of natural resources; our burgeoning landfills; our pollution of land and water by toxic waste and our diseconomy in proliferation of packaging -- whatever the container.

We did a monumental job with glass, innovative for its time. More could be done with glass; but nothing was ever done about plastics until the passage of SB 66, equally as innovative, and a measure with broad public support.

Now comes the same industry reluctance we have always known: "It can't be done"...well, they said that with glass too. Yet it was doable.

Industry has not proven its case that all the options available to it have been tried and found impossible. Until such time as all the options given to meet the dates stipulated in the legislation have been at least attempted, there is little justification for the Department to grant exemptions.

Many are watching this decision...those who have served in the citizen armies who passed petitions for ballot initiatives; those who lobbied unpaid for the passage of SB 66; those who -- like myself who serve on advisory boards relative to environmental protection and the myriad folks who bring recyclables to depots; to Nature's, and who recycle at work and at home...We watch with avid interest in whether the Department can stand up to the specious arguments advanced by the same group that makes the problem. They have created the mountains of undegradable, unusable waste that sucks up oil reserves and makes potential world conflicts.

It is time for them to be accountable and to do their part. The best thing the DEQ can do at this time is to hold the line until time and further research bring evidence that exemptions to plastics recycling laws are deemed appropriate. Now is not such a time.

Respectfully yours,

Jeanette R. Egger

Jeanette R. Egger
BOARD OF DIRECTORS MEMBER:
Environmental Federation of Oregon
Recycling Advocates

D-246
Past Board: OEC

60

11-4-92

Fred Hansen, Director
D.E.Q.
811 S.W. Sixth Av.
Portland, OR 97204

Dear Mr. Hansen:

As a steadfast recycler of some 20 years, I was disappointed to hear of a delay in D.E.Q. imposing recycling standards as established in SB 66.

I have watched the tremendous increase of plastic containers on our shelves over the years, which would all be fine were there a means of disposal other than land-filling it.

As a responsible consumer, I avoid buying plastic containers when there are alternatives. But there are not always alternatives.

I urge you to enforce the recycling standards in SB 66. We have so much to pay attention to. Our land-fills need the space.

Sincerely,
Charlie Blank, 2480 NW Quimby, Portland, OR 97210

(81)

4203 NE 28th
Portland, OR 97211

Fred Hansen, Director
DEQ
811 SW Sixth Ave.
Portland, OR 97204

Dear Mr. Hansen,

I urge you to honor the recycling standards that were set in SB 66 last session. Improving plastics recycling in Oregon is imperative, and industry must begin making plastics recycling work.

DEQ cannot allow companies using rigid plastic food containers until 1997 to comply with the law. The original deadline was 1995 and there is no reason why they can't comply with one of the seven options available to them.

DEQ must hold firm on SB 66's requirements. Plastic has the lowest recycling rate of any material, and we cannot afford to let the plastics problem continue.

Please work with your staff so that there are no exemptions or delays in the law's requirements.

Very truly yours,

Louise Tippens

D-248

5 NOV 92

Mr. Hansen,

Please add my support to others who want plastics recycling to continue in Oregon. I would wish that SB66 be agressively implemented by State officials.

Kate Kent

SALEM OR 973 PM 18 NOV 1992

82

1142 23rd Street N.E.
Salem
Oregon 97301

Fred Hansen
DEQ
811 SW Sixth Ave
Portland, OR
97204

83

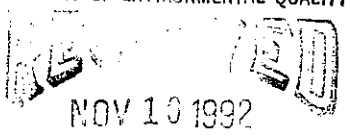
Dear Mr. Hansen -

I'm writing to urge you to continue your work for recycling plastics. SB66 needs to be aggressively implemented - It is important to me to have something constructive to do with used plastics & not continue to fill up the dumps with plastics - Thanks for your efforts

Hazel S. Ballonde

(8A)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY



OFFICE OF THE DIRECTOR

Fred Hansen, Director
D.E.Q.
811 S.W. Sixth Ave.
Portland, OR 97204

Dear Mr. Hansen:

I am writing to encourage you to stand up to the manufacturing industry's attempt to delay the recycling standards in Senate Bill 66.

I understand that if the plastics industry's lobby is successful, DEQ would allow companies using rigid plastic food containers until 1997 -- instead of 1995 -- to comply with the law. I see no reason why they can't comply with one of the seven options available to them.

The public seems more than willing to help reduce the amount of rigid plastic that ends up in landfills. Industry must equally commit itself to this task.

If DEQ does not hold firm on SB 66 requirements, Oregon will not see improvements in container recycling. We cannot afford to let the plastics problem continue. Let's let Oregon again be a leader in a 'greener' world.

DEQ should not recommend any exemption or delay in the law's requirements. Adherence to this kind of legislation seems the only clear way to move ahead.

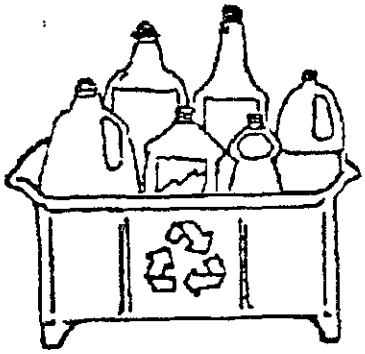
Very sincerely yours,

Mary Blankevoort

Mary Blankevoort
31320 N.E. Hurt Rd.
Troutdale, OR 97060

D-250

(85)



All Picked Up And Nowhere To Go

PLASTICS RECYCLING ACTION ALERT -- URGENT

The plastics industry is trying to gut Oregon's new plastic packaging recycling law. Oregonians must speak out to keep plastics recycling alive in Oregon.

In 1991 the Oregon Legislature unanimously passed Senate Bill 66. One part of SB 66 focuses on improving plastics recycling in Oregon. Plastic has the lowest recycling rate of any material. Even worse, plastic recycling programs in Oregon are failing because industry has not committed to making plastics recycling work.

The plastics industry is lobbying the Department of Environmental Quality (DEQ) to weaken the plastics packaging section of SB 66. Oregonians must let DEQ and industry know that we won't stand for weaker plastics recycling in Oregon.

Call the Department of Environmental Quality at (503) 229-5317

or

Write A Letter Today!

Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Dear Mr. Hansen:

I am writing to urge you to stand up to the plastics industry's attempt to opt out of SB 66 or delay the recycling standards in SB 66.

I understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other recycling standards in the law. Does this mean any company that cannot meet one of the four options should not have to do anything to improve plastics recycling in Oregon? For example, if a company cannot use a reusable shampoo bottle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled content, shouldn't it be recycled into another type of product or packaging?

I want plastics recycling to work in Oregon because I want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problem of plastics recycling. The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely,

Name
Address

GINGER BABIN
14825 SW. 81ST AVE.
PORTLAND, OR. 97224

A Concerned Citizen

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
NOV 10 1992
OFFICE OF THE DIRECTOR

OSPIRG

1536 SE 11th AVENUE PORTLAND, OR 97214 • (503) 231-4181

(86)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

NOV 10 1992

OFFICE OF THE DIRECTOR

Bismarck
640 NW Oak
Corvallis, OR. 97330

Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

Dear Mr. Hansen:

We are writing to urge you to stand up to the plastics industry's attempt to opt out of SB 66 or delay the recycling standards in SB 66.

We understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other recycing standards in the law. Does this mean any company that cannot meet one of the four options should not have to do anything to improve plastics recycling in Oregon? For example, if a company cannot use a reusable shampoo bottle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled content, should't it be recycled into another type of product or packaging?

We want plastics recycling to work in Oregon because we want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problem of plastics recycling. The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely,

Margaret Bismarck
Steven Bismarck

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

87

NOV 10 1992

OFFICE OF THE DIRECTOR

November 8, 1992

Fred Hansen, Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Dear Mr. Hansen:

I am writing to urge you to stand up to the plastics industry's attempt to opt out of SB 66 or delay the recycling standards in SB 66.

I understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other recycling standards in the law. Does this mean any company that cannot meet one of the four options should not have to do anything to improve plastics recycling in Oregon? For example, if a company cannot use a reusable shampoo bottle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled content, shouldn't it be recycled into another type of product or packaging?

I want plastics recycling to work in Oregon because I want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problem of plastics recycling. The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely,

David Force Karen Force

David A. and Karen Force

DAF/KF

28

November 11, 1992

The Department of Environmental Quality
Linda Hayes
HSW
811 S. W. 6th Ave.
Portland, Oregon 97204-1390

Dear Linda:

The Northwest Women in Recycling has read the second draft of the DEQ's report on whether to exempt rigid plastic containers for FDA-regulated products from the minimum content requirements of ORS 459A.655. The Northwest Women in Recycling oppose the exemption or any modifications to the criteria established by section 34b of the 1991 act.

It is our opinion that the basic premise of the compromise that Senate Bill 66 represents is that the plastics industry will put genuine effort into developing markets and healthy infrastructures for recovering the products the plastics industry manufactures. The plastics industry with the exception of polystyrene has not helped develop the markets or the infrastructures necessary for recycling of their material.

We have not heard leadership from the plastics industry, only rhetoric. In the recent draft report of the plastics industry to the recycled markets development council there is no detailed state of the markets report on plastics recycling opportunities in Oregon or the region. If the plastics industry had taken a leadership roll in plastics recycling we might have considered an exemption on the road to good programs. However, most of us have been observing their actions for over ten years and we know that there are no short term or long term strategies in place, only resistance.

Local plastics collectors and processors have been squeezed trying to meet the public demand for recycling. These people have invested in the future of plastics recycling by agreeing to collect material in the face of poor markets. The plastics market has proved to be a bad investment for most and even some of the stronger markets such as HDPE is now in doubt. Other secondary commodities markets such as paper and glass have protected their key suppliers during tough times because their intention is to be in business for a long time. It would seem that the plastics industry doesn't see a future for secondary plastics in Oregon.

We support the existing criteria as it calls for the plastics industry to step up and participate in recycling now. When we look around to other states who have adopted even tighter regulations

88

we realize that there is a clear mandate from the public to reduce solid waste, and it is up to the plastics industry to work with the FDA on new strategies for use of recycled material and to tell the public what the plastics industry can do for recycling markets not what the plastics industry can't do.

If you need further information, please call us. We appreciate the work you have done on this important issue.

Sincerely yours,

Susan Ziolkoff

Susan Ziolko
President, Northwest Women in Recycling
P. O. Box 69192
Portland, Oregon 97201

(89)

November 12, 1992

Mr. Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Dear Mr. Hansen:

I am writing to urge you to stand up to the plastic industry's attempt to opt out of SB 66 or delay the recycling standards in SB 66.

I understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other recycling standards in the law. Does this mean any company that cannot meet <u>one</u> of the four options should not have to do anything to improve plastics recycling in Oregon? For example, if a company cannot use a reusable shampoo bottle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled content, shouldn't it be recycled into another type of product or packaging?

I want plastics recycling to work in Oregon because I want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problem of plastics recycling. The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely,

Sheila Carlson

Sheila Carlson
4202 SW Chapman Way
Lake Oswego, Oregon 97035

Nov. 9, 1992

address on back

(90)

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

Dear Mr. Hansen,

I am writing out of my concern for the environment and my distress to learn that there is effort being exerted by the Plastics industry to circumvent provisions of SB66 - especially in regard to food packaging.

In many ways, Oregon has been an exemplary state in recycling. Let's hope & work to maintain our high standards!

I feel it is imperative that the DEQ not recommend any exemption from the law or any delay in implementing the law.

Sincerely,

Joanne V. Bliss

Received Nov. 13

address on back

(91)

Fred Hansen
Director DEQ
811 SW 6th Ave.
Portland, OR 97204

November 8, 1992

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 13 1992
OFFICE OF THE DIRECTOR

Dear Mr. Hansen,

It has come to my attention that there may be some changes in regard to the implementation of SB66. I would like to request that no exemption or delays to this law be allowed. Oregon has always be a progressive state in regard to the environment and it would be very disappointing to see a step backward.

Plastic recycling can work and should be greatly encouraged. Food packaging should take into consideration whether a package can be recycled for other products after its orginal use. It is time to stop cowing to the special interest of energy intensive industries such as plastic manufactures. Please consider the voice of the people as these decisions are being made.

Sincerely,
Renee Sessler

92

1122 SE 60
Portland, Oregon 97215
November 9, 1992

Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Dear Mr. Hansen:

I am writing to urge you to stand up to the plastics industry's attempt to change SB 66 or to delay its' implementation.

I understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other recycling standards in the law. I feel very strongly that companies should be required to meet one of the four options in SB 66.

I want plastics recycling to work in Oregon because I feel strongly that there must be a reduction in the large amount of plastics that are being dumped into the environment. A better plastic recycling program in Oregon would reduce the need for air-polluting incinerators, save energy, conserve natural resources and reduce pollution from manufacturing.

Plastics recycling is a vital part of keeping Oregon livable.

Sincerely,

Dena D. Turner

Dena Turner

D-259

(93)

Dear Mr. Hansen,

Please do whatever you can to continue plastics recycling in Oregon. I want to be able to recycle plastics and use products made from recycled plastics.

Let Oregon continue to lead in environmental issues.

received
Nov. 13

Nancy Cheney
610 NW 17th
Corvallis OR 97330

(94)

Dear Mr. Hanson,

I urge you to keep plastic recycling in OR. Do not weaken SB 66 before it gets a chance to work. DEQ should not recommend any exemption or delay in the law. Technology is coming – let's not fall out of the circle.

Teresa Giaconia

(93) 11/10/92

Sir:

Please see to it that SB66 is actively + energetically implemented. We must have the opportunity to recycle plastic packaging in our state. The DEQ should not recommend any exemptions or delays in the implementation of this law.

Thank you Doug Franks

(96)

received
1/30/17

Mr. Hansen—

I am writing to encourage you to support SB 66 which requires recycling of plastics. Recycling is the very least ~~industry~~ ~~state~~ can do to when it insists on producing such an environmentally degrading, non-biodegradable product.

Technology exists that makes recycling affordable, economical and socially responsible. Moreover, I support the required use of recycled material in new products (as a start). The DEQ should not recommend any exemption from the law granting delay.

Sincerely, DIANE CONRADI
PO Box 1165 ASHLAND OR 97520

Please Recycle

(97)

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

Dear Mr. Hansen:

I am writing to urge you to support the recycling standards mandated in Senate Bill 66.

I am a strong believer that recycling can work in Oregon and I believe that SB 66 presents a fair and reasonable approach to increasing the recycling rate of plastics. With the four options for packaging, industry cannot credibly argue that the bill places an "undue hardship" on their operations.

Recycling is a critical part of our state's and country's move towards long-term plans for energy consumption, landfill space, natural resource conservation and pollution from the manufacture of excessive packaging. As a result, the DEQ should NOT recommmend any exemptions from the law or any delay in the law's strict enforcement.

Sincerely,

Scott Turner
2734 S.E. 33rd Avenue
Portland, OR 97202

(98)

2140 S.W. Wynwood Ave.
Portland, OR 97225
(503) 641-5168

November 15, 1992

Pat Vernon
Hazardous & Solid Waste Division
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204-1390

Dear Ms. Vernon,

Re: Oregon SB 66--Plastic recycling in Oregon

I'm writing to request that DEQ not exempt the plastics industry from provisions of SB 66. I believe the plastics industry should not have an extension to 1997 to implement their responsibilities.

When the plastics industry representatives talk to the American public they act like they're talking to idiots. Yes, plastic is a truly revolutionary substance, giving us many valuable options for a higher quality of life: safer, lighter, more energy efficient cars--unbreakable food and beverage containers--eyeglasses--appliances and machinery--you name it. I say hooray for progress! Every salesperson knows that you can't stand on your present-day accomplishments--you've got to sell more or do something bigger and better--and if you don't another business person will surely be looking for ways to improve their own business to impact yours and their profits. So is the American way--o.k. But what went wrong with plastic? It's been years since we've all "discovered" that plastic has an extremely long life-span and is practically indestructible. Plastic containers have become the public's problem when plastic container disposal is actually the unaccounted for external costs of plastics manufacturers. When I think of the lack of responsibility on the part of plastic manufacturers for re-use and recycling I'm reminded of the tobacco industry's similar disavowal of responsibility for end results. Of course a cigarette smoker knows (or should know by now!) what they're in for when they smoke--health risks of a long-term nature. When one purchases a plastic container the disposal of the empty container should be a consideration--but is it? The plastic industry claims, just like the tobacco industry, that the consumer is making an informed choice and/or there is no harm. But the plastic container is different in one important respect: the purchaser has few other packaging options.

I've got quite a collection of plastic containers in my sewing room, kitchen, and garage. I didn't set out to make it happen--I just don't feel good about throwing away ALL the containers I can't keep from buying. Go to the grocery store, you'll see that nearly everything is packaged in plastic. Wonderful! I appreciate the convenience of unbroken containers for the manufacturers and shippers (even for me in the shower!)--but unless we find a way to have empty containers self-destruct in five seconds we're all in for a big mission impossible. I find it pretty discouraging that plastic containers will exist along side the road in illegal dump sites, or buried in landfills, longer than I will be on this earth!

The plastics industry has been running a advertisement on television this month suggesting that we (the public) take a closer look at the benefits of plastic: i.e., stronger,

(98)

lighter, more efficient parts for automobiles, etc. Hooray! I'm old enough to remember that automobiles were once primarily metal and now are made of plastic to comply with federal energy efficiency requirements (and trim costs). I also remember how loudly the auto industry omplained that such energy efficiency standards would ruin their business. The recent plastics advertisement misses an opportunity to tell us what they're going to do about all the old, unused plastic parts and empty food and beverage containers--instead the commercial was fully self-congratulatory. I'm not fooled into believing the plastic industry has done enough. For the amount of money put into such self-serving advertising the plastics industry could spend that money to plan and implement strategic plans to actually implement reuse of the massive amounts of non-usable but perfectly good plastic already hanging around the planet.

What are the real problems with plastic resin re-use and recycling? Federal health standards for food and drug packaging? Are there insufficient or discontinuous streams of recyclable plastics available in the marketplace? Are there too many colors of plastic manufactured which produce unsatisfactory results when recycled? Are there just too many resins to fit within the labeling system fabricated by the plastics industry? Or are people just too lazy to recycle? Many of the problems which are postulated as unsolveable are laid at the feet of consumers, but it's plain to see that the glut of recyclable plastic awaiting a new purpose exists not because we consumers don't care, but because virgin resin prices are subsidized (directly and indirectly) as a result of oil production/consumption. The sacred cow of freedom via the American automobile can no longer be the excuse offered up for why we can't solve the oroblem of solid waste disposable and resource depletion.

Consumers have few real choices in the marketplace when it comes to containers. It perfectly ridiculous to throw away an unmarked plastic shampoo bottle or even an non-recyclable # 3 bottle. The resin type marked on the amber plastic prescription bottles I get from PayLess is # 5. Too bad I can't actually recycle this plastic. Too bad too that they can't be reused--they're perfectly serviceable--why can't drug companies support plastic prescription bottles recycling and reuse? Why can't prescriptions be dispensed in recycled (and perfectly sanitary) paper?

Many of the plastic food, beverage and drug containers are ingeniously crafted and sturdy beyond need. These are the ones filling the nooks and crannies of my house. I keep hoping someday I'll be able to turn them over to some enterprising person(s) who will gladly reuse their resource component(s) and turn out products I can buy with pride, knowing that we've gone beyond our frontier mentality of "there's always more out there for the taking."

It's time to insist that the plastic industry meet its obligations to consumers and planet inhabitants. Please do not promulgate rules that allow the plastics industry to escape their duty to comply with Oregon's SB 66 now.

Sincerely,

Barbara McGaa

Barbara McGaa
One of the many concerned citizens & taxpayers

(99)

Nov. 16. 1992

Dear Mr. Hansen,

I understand that the plastics industry is pushing the D.E.Q. to weaken the plastics recycling law in Oregon (SB 66). That makes me sad and frustrated. I think it is wasteful. I think Oregon needs more plastics recycling not less.

I am nine years old and I care.

Sincerely,

Joseph Walker
6204 Cameron Way
Gladstone, Oregon 97027

D-266

(101)

November 16, 1992

Mr. Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204

Dear Mr. Hansen:

I am writing to urge you to stand up to the plastic industry's attempt to opt out of SB 66 or delay the recycling standards in SB 66.

I understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other recycling standards in the law. Does this mean any company that cannot meet <u>one</u> of the four options should not have to do anything to improve plastics recycling in Oregon? For example, if a company cannot use a reusable shampoo bottle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled content, shouldn't it be recycled into another type of product or packaging?

I want plastics recycling to work in Oregon because I want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problem of plastics recycling. The DEQ should not recommend any exemption from the law or any delay in the law.

Sincerely,

Quinton Carlson
601 SE 18th Avenue
Portland, Oregon 97214

(100)

Nov 16, 1992

Fred Hansen, Director
Department of Environmental Quality
811 SW 6th Ave
Portland, OR 97204

Dear Mr. Hansen,

I am a concerned citizen and the reason is the amount of plastics in the environment and our need to recycle these reusable packagings.

We must address this issue now. Oregon cannot afford putting off this problem any longer. So I am urging you to see that SB66 is implemented and the plastic industry follow these standards without delay or exemption.

Thank you for your concern

Diane L Coash
Medford, OR 97501

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 18 1992
OFFICE OF THE DIRECTOR

(102)

November 17, 1992

Dear Mr. Hansen,

Please fight to prevent exemptions from SB 66. Insist that plastic manufacturers comply with all requirements of SB 66. Do not allow any delays in this law.

Sincerely,

Charmian Mass

Charmian Mass
7101 NW Logan Rd.
Otis, OR 97368

D-269

103

16 November '92
2803 NW Cumberland Rd
Portland OR 97210

DEQ
811 SW 6th Ave
Ptld OR 97204

Gentlepersons:

I am told that there is considerable effort being made to weaken the plastics packaging portion of Senate Bill 66. Please do not permit this weakening.

I am confident there are many of us fully willing to accept short term cost of various forms in return for the long-term giant benefits of great limit in solid waste.

Plastic is a great tool with net benefit if reused, . . . reused . . . reused and recycled — but a great net burden if this is not done.

Sincerely,
Celleen K Harris

11/17/92

104

Mr. Hanson,

I am writing to you because I am concerned about the 1995 deadline for Senate Bill 66 not being met as scheduled. I understand the plastics industry is trying to get a further two year delay on meeting the requirements. 1995 is already a long time to wait, to give the plastics industry time to come up with a solution, without allowing them any longer. The rest of the country is way ahead of us on recycling. I know personally because I have relatives in the Midwest. If the plastics cannot be recycled into food containers they still can be made into the less sensitive products - pipes, new food storage containers, plastic lumber, etc. Alot of information is out there already for the plastics industry to use - plenty of research still being done. Why do they continue to waste time & further ruin our environment? I suppose it has much to do with not wanting to upset their immediate profits. This shortsighted and selfish thinking will only lessen everyone's quality of life. Please do not allow a further delay on Bill 66. Make the plastics industry of the northwest do their fair share. Keep the Northwest as environmentally progressive as its reputation. Thank you for

taking the time to read this.

(104)

Sincerely

Lee Jolyk

LEE JOLYK
812 S.W. 11th #3
CORVALLIS, OREGON 97333

105

Fred Hansen
Director
Department of Environmental Quality
811 SW Sixth Ave.
Portland, Oregon 97204

Dear. Mr. Hansen.

I am writing you to urge you and your department to make sure that the plastics industry does not become exempt from Senate Bill 66. That bill is there for a reason, lets not let the system fail after all this work.

Recycling is simply the re-use of a material in any form. Of course we would like to see material used indefinately, but we cannot do that quite yet. Someday we will. The sooner we start moving towards a better system, the better.

I hate to see plastic being picked up at my curbside only to end up in a landfill or expensively shipped elsewhere. SB 66 is a good one, make it stick.

Sincerely,
James Vincent Sayers Jr.

Fred. Hanson
DEQ
811 SW 6th Ave
Portland OR 97204

Dave Bradley
309 SW 9th Ave
Portland OR 972

106

Dear Mr. Hanson,

One of the main areas of concern that resulted in what finally was called Senate Bill 66, the Oregon recycling act, was Plastic.

The idea that plastic packaging should be exempted from regulation under this law is ridiculous.

The plastic packaging industry spent enough on advertising and printing meaningless numbers on their bag, boxes and bottles to begin implementation of the requirements under the law.

If you can't put food in recyled containers you can still make recylable containers for food, and pased recycled plastik for other products

Sincerely
Dave Bradley

Dear Mr. Atkinson,

107

I'm writing to you to ask that you support SB66 and stand up to the plastic industries.

People all over Oregon have worked hard to bring SB66 out originally. And we need it! It is very fair, giving the industries optime AND time.

Please support SB66

Yours,

Gretchen Stolte
2277 NE Thomas
Hillsboro OR 97124

Fred Hansen
Director
Dept of Environmental Quality
811 S.W. Sixth Ave
Portland, Oregon 97204

103

Nov. 18, 1992

Dear Ms. Hansen;

As a strong advocate for comprehensive recycling I'm writing to urge you to stand up to the plastics industrip attempt to get out of complying with requirements of SB66 and also to their efforts to delay the standards set by SB66.

I, for one, am distressed by the thought of dropping my 2's, 4's, 5's + 6's into the trash to begin that trip to the landfill. Given the progress Oregon has made toward ecological awareness, it is unconscionable.

Please be more aggressive with the plastics industry & hold them accountable to participating in the quality of the environment. continue live to live up to the name of your department & make a change in the condition of the earth for future generations. I urge you!

S. A Brown
P.O.B 10932
Portland, Oregon 97210

D-276

COLUMBIA COUNTY
LAND DEVELOPMENT SERVICES
COURTHOUSE
ST. HELENS, OREGON 97051
PHONE (503) 397-1501

109

November 20, 1992

Fred Hansen, Director
Department of Environmental Quality
811 SW 6th
Portland, OR 97204

Dear Mr. Hansen:

As Recycling Coordinator for Columbia County, I am inundated with calls from people wondering where they can recycle plastic. I must inform them that markets for post-consumer plastics are scarce. At the same time, I receive a lot of written material from various firms in the plastics industry promoting plastics recycling.

Unless we create a stronger market for post-consumer plastic, the recycling propaganda I receive amounts to a waste of time, paper and money.

I hope you will not soften the plastics packaging section of SB66. I know that they are lobbying very rigorously to weaken it, however, the fact remains that we need to establish a market for this material.

Sincerely,

Robin Stein
Recycling Coordinator

RS:sp

Director - D.E.Q.
811 SW 6th Ave.

Dear Mr. Hansen

(110)

I'm writing to urge you to stand up to the plastics industry's attempt to opt out of SB66 or delay the standards for plastic recycling in SB66.

I understand the industry claims that if it cannot use recycled content in food packaging, then food packaging should not have to meet any of the other standards of the law. Does this mean any company that cannot meet <u>one</u> of the four options should not have to do anything to improve plastics recycling? If a yogurt container can't be made with recycled content, shouldn't it be recycled into another product or packaging.

I want plastics recycling to work in Oregon which means I want to be able to recycle plastic packaging. SB66 needs to be aggressively implemented, not weakened. The DEQ should <u>not</u> recommend any exemption to the law or any delay in the law.

Sincerely,

Robert Van Newkirk
3924 NE Flanders
Portland, OR 97232

Fred Hansen
Director
Dept. of Environmental Quality
811 SW 6th Ave
PDX, OR 97204

(111)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 23 1992
OFFICE OF THE DIRECTOR

18 Nov. 1992

Dear Mr Hansen,

I am writing to urge you to stand firm in the face of the plastics industry's attempt to exempt themselves from SB66 as it stands.

As it is, plastic is not being recycled in Oregon. The milk jugs are being sent to Asia where it is unclear what happens to them, Thriftway puts out money in order to collect plastics once a month and delaying SB-66 will only make matters worse!

Plastics <u>can</u> be recycled! Coca-Cola + Pepsi use recycled plastics containers for <u>their</u> products- it doesn't take much.

D-279

Oregon is a leader in this nation on many issues, including recycling and Senate Bill 66 needs to be aggressively implemented. Further delays will simply send us on a faster track towards ultimate destruction — and this is the opinion of thousands of top-notch scientists across the globe. (111)

Sincerely,

Pamela Strong
7005 SW. 34th Ave
PDX, OR 97219-1714

(112)

Dear Mr. Hansen;

I am writing to ask you to hold the plastics industry accountable to the recycling standards in SB66. I want recycling to work in Oregon, I do my part, the plastics industry needs to make it's effort too.

Thanks!

Kevin Lucas

(113)

DAVID E. & GINNY GAINES
5203 SUMMIT ST.
WEST LINN, OREGON
97068

17 November 1992

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

Dear Mr. Hansen:

Our family is very committed to recycling . We have done so well at recycling that we have cut back the need for garbage service from one (1) 32 gallon can every week to one (1) garbage can a month. And we live in a suburban neighborhood not on a farm. We compost our yard debris and household, non-protein scrap. We recycle all number 2, 4, and 6 plastic as well as newspaper and scrap paper.

Last year we were glad to see the Oregon Legislature unanimously pass Senate Bill 66. Plastic must be recycled. We need to improve the quality of our environment.

I now read that the plastics industry claims that if it cannot use recycled content in food packaging, them food packaging should not have to meet any of the other recycling standards in the law. This is not right. The plastics industry must meet the standards set up by the bill and no exemption should be granted.

We want plastics recycling to work in Oregon. SB66 needs to be aggressively implemented. We cannot afford further delays in solving the problems of plastic recycling.

Having worked for an engineering firm for twenty years designing sawmills, I remember how the mill owners cried foul when the "tepee burners" were shut down. The funny thing was it did not take them very long to find uses for the all the scrap that had been burned, once they and the machinery manufacturers put their minds to it.

The same can be done with plastic recycling if we put our minds to work at it. Force the plastics industry off their behinds. Make them and the engineering and machinery manufacturers find a solution. DO NOT GIVE ANY EXEMPTIONS TO SB66.

Thank you for your time with this matter.

Sincerely yours;

David E Gaines — Virginia L. Gaines

David E. Gaines D-282 Virginia Gaines

(114)

Dear Fred -

I am writing to URGE you to stand up to the plastics industry's attempt to opt out of Senate Bill 66 or delay the recycling standards therein -

I want plastics recycling to work in Oregon because I want to Recycle plastics.

K. J. H.
2066 NW Glisan #22
Portland, OR 97209

Environmental Quality Commission

☐ Rule Adoption Item
☒ Action Item
☐ Information Item

Agenda Item M
December 11, 1992 Meeting

Title:

REPORT TO LEGISLATURE ON IMPLEMENTATION OF THE 1989 TOXICS USE REDUCTION AND HAZARDOUS WASTE REDUCTION ACT

Summary:

In 1989 the Legislature passed the Toxics Use Reduction and Hazardous Waste Reduction Act (TURHWR) which was designed to achieve voluntary in-plant changes that reduce, avoid, or eliminate the use of toxic chemicals and hazardous waste through mandatory facility planning. Oregon's efforts have been reviewed by the U.S. Government Accounting Office which has strongly recommended similar planning requirements at the national level.

In the last three years the Department has gained important experience in the implementation of this type of quasi-voluntary program. The lessons learned include the factors that lead to success in toxics use reduction, the difficulty experienced by smaller companies, the difficulty in measuring waste reduction, and the need for compliance assistance.

The facility planning requirements of the TURHWR Act have been very effective in getting large facilities to evaluate their toxic chemical use and hazardous waste generation and to make voluntary plans for the reduction of these environmental problems. The Department recommends that the plan review process for these facilities continue.

Facility planning for small facilities has been less successful. The Department recommends review of the TURHWR regulations to find simpler ways for these facilities to implement TURHWR planning. It is also recommended that the Department shift the emphasis from administrative compliance work to technical assistance by working cooperatively with trade associations and other industry groups to provide targeted information and assistance.

While qualitative measurements indicate that the program is a success, measurement of actual chemical and waste reduction is difficult. The Department recommends further work with existing reporting systems to develop a measurement tool for toxics use reduction.

Department Recommendation:

Adopt report.

Report Author	Division Administrator	Director
	Stephanie Hallock	

Oregon

Waste Reduction Assistance Program

FOR TOXIC SUBSTANCES AND HAZARDOUS WASTES

TOXICS USE REDUCTION REPORT

1993

Department of Environmental Quality
November 1992

deq Department of Environmental Quality ▪ 811 S.W. 6th Avenue ▪ Portland, Oregon 97204 ▪ (503) 229-5913

TOXICS USE REDUCTION REPORT

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Oregon is the first state in the nation to implement a Toxics Use Reduction and Hazardous Waste Reduction program. Several other states have passed similar laws to Oregon's Toxics Use Reduction and Hazardous Waste Reduction Act (TURHWRA). On the Federal level the United States Government Accounting Office (GAO) has reviewed Oregon's program and made a strong recommendation to Congress for similar planning requirements on a national level. The GAO report confirms that the Oregon program can achieve significant industrial reductions in the use of toxic chemicals.

The Toxics Use Reduction and Hazardous Waste Reduction Act was signed into law in July 1989 and requires certain industrial facilities to develop a Toxics Use Reduction and Hazardous Waste Reduction Plan and to report to the Department of Environmental Quality (DEQ) that the plan is complete. The Act further requires the Department to provide technical assistance to these facilities and to monitor their compliance. The Department is also tracking industrial chemical use and hazardous waste generation in order to determine if the planning requirements actually result in reductions.

The DEQ program has provided limited technical assistance in this area since 1987. Between 1989 and late 1990 the DEQ wrote administrative rules and provided technical assistance to those industrial facilities that requested it. Since early 1991 the Department has focused its efforts on implementation of the planning requirements of the Act, including the development of administrative systems to monitor and track compliance. In addition, the Department undertook an extensive information and education campaign to inform all facilities in Oregon of their obligations under this new law. This has included distribution of more than 107,000 copies of publications and reaching more than 12,000 individuals through training seminars and other public presentations.

These efforts were highly successful and have resulted in a very high compliance rate (97%) for those larger facilities with reduction plans due in 1991. Unfortunately, similar efforts by the Department to educate smaller facilities have achieved only a 36% compliance rate for those facilities that had plans due in 1992. The Department is evaluating ways to modify the planning requirements for these smaller facilities and is offering more technical assistance to this sector of the regulated community.

Although preparing plans is an important part of the program, actual reductions will only take place through implementation of these plans. To track the implementation progress, the Department is collecting annual data from the affected facilities that will determine whether this program is actually resulting in less chemicals being used and hazardous waste generated. To date, a quantitative

measurement tool is not available; however, the Department expects that one will be developed by mid-1993 and a full report will be available at that time.

The Department is strongly committed to toxics use reduction and has made it a priority by examining ways to incorporate the concepts into all environmental programs within the agency as a new tool for protection of Oregon's environment.

Section I: BACKGROUND

The 1989 Oregon Legislature addressed the issue of toxic chemical usage in Oregon through passage of the Toxics Use Reduction and Hazardous Waste Reduction Act, TURHWR, (HB 3515, Sections 1 through 16). This landmark legislation, developed by a coalition of industry, Oregon State Public Interest Research Group and the Department of Environmental Quality, declared that the best way to reduce the adverse effects of chemicals in the workplace and in the environment is by providing technical assistance to affected businesses, monitoring the usage of toxic chemicals and the generation of hazardous wastes, and requiring the affected businesses to engage in comprehensive facility planning.

The law is designed to achieve voluntary in-plant changes that reduce, avoid, or eliminate the use of toxic chemicals and hazardous wastes through mandatory facility planning. The foundation of the Act is that planning will result in better understanding of chemical use and hazardous waste generation and will reveal new technically and economically feasible options to reduce toxics and waste.

The Oregon law requires that TURHWR plans be prepared by certain types of industrial facilities and that these plans contain certain prescribed components. These are,

- A written policy statement;
- A written statement of plan scope and objectives;
- Numeric reduction goals for certain toxic substances and hazardous waste streams;
- Analysis of toxics use and hazardous waste streams and development of an associated cost-identifying accounting system;
- Identification of reduction opportunities and an implementation strategy;
- An employee awareness and training program; and
- A description of how the TURHWR program will be incorporated into management systems.

Failure to develop a plan or having an incomplete plan, per the above requirements, results in the issuance of a Notice of Plan Deficiency (NOD) with a minimum of 90 days to correct the deficiency. If a facility does not respond to the NOD a Compliance Order is issued and a public hearing is scheduled at least 90 days from the date of issuance. There are no fines or penalties associated with this program.

Furthermore, implementation of the plan and the achievement of the planned reduction goals is voluntary but progress is monitored by the Department.

Through the passage of this law Oregon, once again, has taken a national

leadership role. Since Massachusetts and Oregon were the first to pass similar laws in July, 1989, eight other states have passed various forms of legislation that clearly promote the reduction of toxic chemicals. The Federal Government will deliberate on a national facility planning law in the next Congress based, in part, on the Oregon model.

CURRENT STATE PROGRAMS

State	Date Law Enacted
Arizona	1991
Illinois	1989
Indiana	1990
Maine	1990
Massachusetts	1989
Minnesota	1990
New Jersey	1991
Oregon	1989
Vermont	1990
Washington	1990

Source: GAO report (GAO/RCED-92-212), June 1992

US Government Accounting Office Study

In April, 1992 DEQ assisted the United States Government Accounting Office (GAO) in a study of three state programs. The objectives of this study were to determine (1) the environmental and economic advantages of toxics use reduction, (2) the barriers to implementing reduction programs, and (3) the actions taken by states to encourage businesses to reduce their use of toxic chemicals.

To identify the advantages and barriers associated with reducing the use of toxic chemicals in industrial processes, the U.S. GAO interviewed program officials in three states (Illinois, Oregon, and Minnesota) that had enacted legislation specifically promoting toxics use reduction. They also interviewed officials from manufacturing firms and industry in both Oregon and Minnesota, as well as environmental groups and public interest groups. Oregon was chosen because of the relatively advanced nature of the TURHWR program and because 227 facilities had already completed their plans in 1991.

The GAO sent the results of this study to the U.S. Congress in June, 1992 for

inclusion in proposed national legislation that would require toxic use reduction facility planning similar to Oregon's. The report was supportive of the impact that facility planning can have on reducing the use of toxic chemicals.

> "Although toxics use reduction offers substantial benefits to human health, the environment, and, in many cases, to industry, firms have been slow to reduce their use of toxic chemicals because of the barriers to change. The information we obtained from representatives of states, industry, and environmental organizations and from studies and reports on toxics use reduction suggests that certain measures can help achieve significant reductions in the use of toxic chemicals. Such measures include (1) developing toxics use reduction plans for industrial facilities and (2) providing technical assistance to help individual firms, especially small and medium-sized firms, identify economically feasible approaches to reducing their use of toxic chemicals."
>
> "...Because firms must examine and evaluate their production processes and operations in order to develop plans, firms are likely to identify opportunities for improving their processes and operations and reducing their use of toxic chemicals. For example, most of the firms we visited had identified opportunities for improving their operations through the self-evaluation they had performed in developing such plans."
>
> GAO/RCED-92-212 Toxics Use Reduction

Section II: LESSONS LEARNED

In the last three years the Department has learned a considerable amount about implementation of this sort of quasi-voluntary program. These lessons will assist the Department in evaluation of the program and in making recommendations that make it better.

Smaller Companies Have Major Difficulties

Where facility planning seems to capture the interest and commitment from the larger facilities which were required to develop plans in 1991, similar planning for smaller companies is more difficult, as illustrated by the low compliance rate for plans due in 1992.

The reasons for this begin with the fact that the vast majority of these smaller

facilities have no environmental staff. Environmental and OSHA compliance most often is the responsibility of someone who only deals with these issues 3 or 4 weeks a year, mainly for annual report writing purposes. The rest of the year this person may be a bookkeeper, salesperson, clerical person, or production manager. Often times this person is given these added responsibilities with no training and in some cases no interest in or understanding of compliance issues or planning.

There are other reasons as well:

- Where larger facilities have high public visibility in the community, small facilities do not. Larger facilities are more likely to have to respond to the public, and TURHWR planning is perceived as being a "good neighbor". Most smaller facilities have considerably less pressure in this regard.

- Smaller facilities tend to be less profitable therefore resources are usually not readily available for consultants, environmental staff, or capital improvements that would increase their chemical efficiency.

- Smaller facilities find it difficult to make time to attend environmentally-oriented training sessions or to educate themselves about the advantages of facility planning.

- Telephone discussions with some facilities that have only a once a year hazardous waste generation event show that they are reluctant to do a plan because they think it is a waste of time for them. They would rather be out of compliance than go through the effort to develop a plan.

As a result of the above, the Department has concluded that the administrative rules governing the planning and reporting requirements for Small Quantity Generators should be evaluated and changes made to simplify the requirements for this group.

<u>High Administrative Workload</u>

The requirements on the Department to monitor, track, and report on facility compliance status through the Toxics Use Reduction Compliance System (TURCS) has added an unexpected heavy administrative burden. When the original budget was developed in 1989, DEQ estimated 1.2 FTE for data entry, annual progress report review, notice of plan completion review, compliance monitoring, reporting, and program and policy development. In fact, in the program development phases, since July 1991, DEQ has spent approximately 4.50 FTE on these tasks. This

more than a four-fold increase in the original estimate has severely reduced the technical assistance capabilities of the program from the original estimate of 5.8 FTE to 2.50 FTE.

Since most of the developmental work for the program is now completed and the compliance tracking can be accomplished by the TURCS, it is estimated that only 2.0 FTE will be needed to maintain the administrative aspects of the program. This will allow the program to focus on technical assistance in the next biennium.

Measurement of Reduction

The success of the TURHWR program is partially dependant on being able to measure the results of TURHWR planning on chemical usage and hazardous waste generation. To this end the statute was written to maximize the use of existing reporting systems required from EPA and the Department and to minimize the amount of "new" reporting requirements on industry.

Due to problems with getting certain data from EPA and other technical issues concerning the quality of existing data, the Department has not developed a measurement tool that can quantify chemical or hazardous waste reduction. Therefore, this report does not contain quantitative information on chemical use and hazardous waste generation. Section VI of this report explains the difficulties with developing a measurement tool.

Most Facilities Need Compliance Assistance

The Toxics Use Reduction on-site technical assistance program was established in statute as non-regulatory, i.e. DEQ assistance on TURHWR planning and implementation was not to result in enforcement action if hazardous waste violations were evident. DEQ found, however, that most facilities want and need compliance assistance more than TURHWR planning assistance and, predictably, some of these facilities expected to be "shielded" from regulation.

To preserve the integrity of the hazardous waste enforcement program and to keep the TURHWR program non-regulatory, the Department has made a clear distinction between TURHWR planning assistance and hazardous waste compliance assistance. A written policy has been developed to clarify what kind of assistance is given, where, and by which DEQ staff. The policy also clarifies when enforcement action is appropriate. It is expected that this policy will clarify roles and responsibilities for both DEQ field staff and the regulated community; however, some judgement will always be required on the part of DEQ staff as to

whether a technical assistance or enforcement response is appropriate.

Excellence in Reduction Planning

When the Department reviewed plans from the 1991 reporters, several factors were discovered that appear to lead to excellence in toxics use reduction. These include the following:

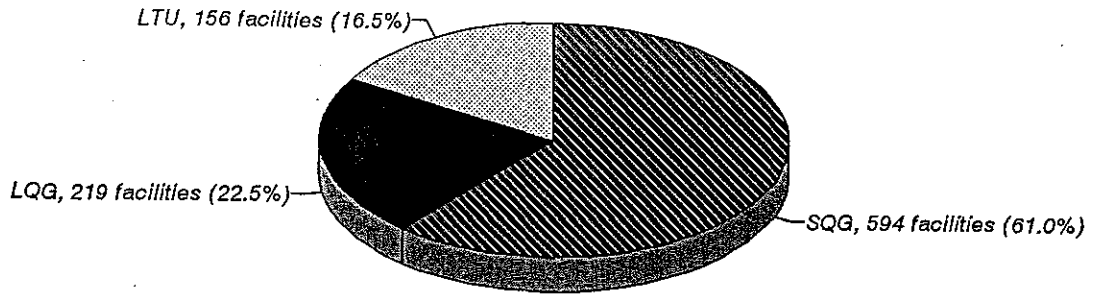
- Top management support and commitment to TURHWR plan implementation;
- Environmental goals that are part of company culture;
- Commitment to TURHWR planning at all level; and
- Commitment to environmental cost accounting systems.

These concepts are the foundation of all successful toxics use reduction programs in Oregon. In the next two years the Department will be investigating ways to transfer these findings to other facilities in an effort to increase the success of reduction planning throughout Oregon.

Section III: IMPLEMENTATION

There are 967 facilities in Oregon that were required to prepare TURHWR plans in 1991 or 1992. The chart below illustrates how these facilities are separated.

TURHWR Regulated Facilities



LTU = Large Toxic User
LQG = Large Quantity HW Generator
SQG = Small Quantity HW Generator

The program has been implemented on schedule as outlined in statute. The law splits the TURHWR planning requirements into two groups with different deadlines for completion of a plan. The large quantity hazardous waste generators (LQG) and large toxic users (LTU) were required to submit a notice of plan completion (NPC) to the Department before September 1, 1991. The small quantity hazardous waste generators, that were not also LTUs, were required to submit their NPC before September 1, 1992. In addition, new LQGs and LTUs were also required to submit their NPC by September 1, 1992.

The following is the schedule and highlights of this process.

Implementation Schedule

September 1, 1990	Administrative rules completed
March, 1991	Program announcement sent to all facilities
April/May 1991	Statewide training on TURHWR Act
September 1, 1991	Notice of Plan Completion due from LTUs and LQGs
March 1992	Mailing to Small Quantity Generators (SQG)
May/June 1992	Statewide training on TURHWR Act
July 1992	TURHWR computerized compliance Log operational
September 1, 1992	Annual Progress Reports due from 1991 planners
September 1, 1992	Notice of Plan Completion due from SQGs and new LTUs and LQGs
September 1, each year	Annual Progress Reports due from all facilities

Compliance for 1991 Planners

The statute requires facilities that were either Large Toxics Users (LTU) and Large Quantity Generators of hazardous waste (LQG) in 1990 to prepare a reduction plan and notify the Department by September 1, 1991. This group totaled 227 facilities.

In October, 1991 a Notice of Deficiency (NOD) was sent to 100 facilities that had not notified the Department of their TURHWR plan completion. This letter also gave these facilities until December 1, 1991 to complete a plan and submit a Notice of Plan Completion (NPC). In addition the program staff called each of the non-compliant facilities to discuss any problems in preparing their plans and offered technical assistance. Fewer than 20 facility requested assistance in preparing their

plans and almost all of the facilities said that they were developing a plan.

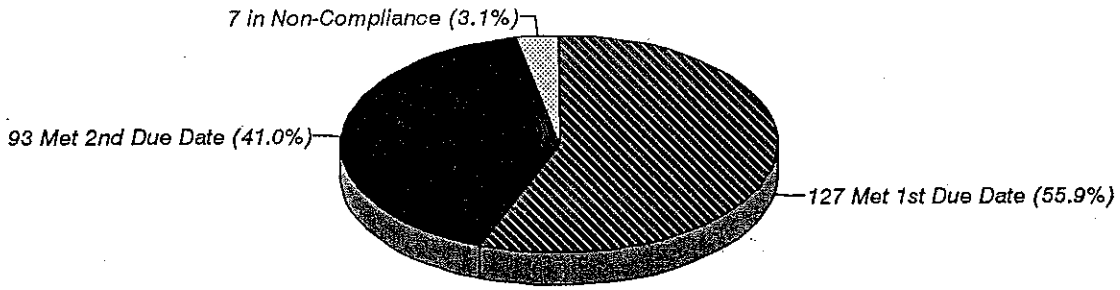
As a result of this effort all but 7 of 1991 planners had submitted their NPC by August 31, 1992. The Department subsequently issued a Notice of Violation and Compliance Order to these 7 facilities in September and October of 1992 which gave these facilities 90 days to complete a plan or show up for a public hearing to explain why they could not complete their plan.

The Department fully expects that these delinquent facilities will complete their plans before the final deadline and no public hearing will be necessary.

1991 TURHWR Compliance

Required	227	
Received (9/1/91)	127	
Percentage in Compliance		56%
Received as of 8/31/92	220	
Percentage in Compliance		97%

TURHWR Plan Compliance
Plans Due 1991



Quality of 1991 Plans

Department staff selected and formally reviewed 39 TURHWR plans from the first year planning facilities in April and June, 1992. This review was done either at the facility or at the Department's offices in Portland. These facilities were selected because of their large usage of toxic chemicals and their generation of hazardous wastes.

The plans were reviewed for completion, per OAR 340-135-050, and for

information on chemical usage and hazardous waste generation. Additionally, the staff and facility representatives discussed industrial processes, reduction goals, management commitment and implementation schedules and responsibilities.

From the 39 plans that were reviewed 13 were found deficient. The following illustrates the areas where plans were deficient. Some plans had more than one deficiency.

DEFICIENCY	FREQUENCY
Reduction Goals	9
Cost assessments	5
Toxics and/or HW assessment	4
Reduction options	3
Plan not available	2
Employee training/awareness program	2
Incorporation into management procedures	2
Policy statement	1

A Notice of Deficiency was issued to the 13 facilities that had deficient plans and the TURHWR technical assistance staff has worked with these facilities to complete their plans.

Although some deficiencies were found, for the most part, the plans showed considerable effort and commitment by companies to reduce chemical usage and hazardous waste generation. In fact, many facility representatives mentioned that the planning process was very beneficial in developing a cohesive initiative within the company and that the existence of the plan had increased the awareness of top management to the problems and costs associated with chemical use and hazardous waste generation. This increased awareness by management had made implementation of the plan considerably easier.

Annual Progress Reports

The regulations require that facilities report annually on the progress they are making implementing their plans. First year planners (1991) were required to send an Annual Progress Report (APR) to the Department by september 1, 1992. As of October 15, 1992, 185 first year planning facilities had reported out of 227 that were required to submit APRs. A Notice of Deficiency was sent to the non-reporting facilities in October, 1992. This required that the report be filed with the Department by January 15, 1993.

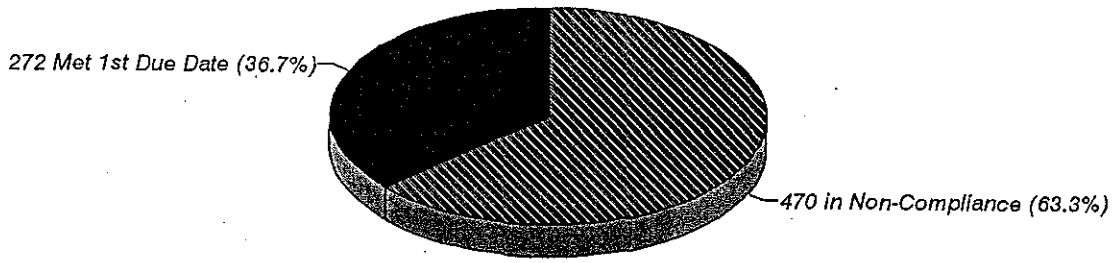
Compliance for 1992 Planners

For the second year cycle, 742 smaller facilities and large facilities that were new to the program since 1990 were required to develop a TURHWR plan and submit a Notice of Plan Completion to the Department by September 1, 1992. As of October 15, 1992 only 272 facilities (37%) had responded. In October the Department sent a Notice of Deficiency to the remaining 470 facilities that were not in compliance requiring them to file a Notice of Plan Completion by January 15, 1993.

1992 TURHWR Plans

Required	742
Received as of 10/15/92	272
Percentage in Compliance	37%

TURHWR Plan Compliance
Plans Due 1992



Although fourteen training sessions had previously been held around the state in the Spring and Summer of 1992, several facilities requested that the Waste Reduction Assistance Program hold two additional planning workshops. The attendance at these training sessions, when compared to the large number of non-complying facilities (470), was disappointing. Seven people attended in Eugene and 38 in Portland. This low attendance rate is consistent, however, with what the Department experienced at the earlier training sessions and illustrates the Department's finding that these smaller facilities generally do not respond to this kind of training. The program staff is evaluating how to deliver information to this

group of companies through trade associations and other mechanisms specifically geared to the different industry groups.

Because of the difficulty in reaching this large number of primarily small hazardous waste generators, the Department will send a final letter in January to the remaining non-compliant facilities informing them that they are still not in compliance with the law, and offering technical assistance from DEQ. Additional publications and training sessions will be targeted at these smaller facilities, but enforcement against those who do not complete plans will occur only in the course of DEQ's normal hazardous waste compliance inspection schedule. The limited resources in the TURHWR program are better utilized to educate and train those businesses that willingly seek out DEQ to assist them in implementing chemical and hazardous waste reduction programs.

Development of TUR Compliance Log

Under ORS 465.021 (5) the Department is required to develop and maintain a log of each plan or progress report reviewed, a list of all plans or progress reports that have been found inadequate and descriptions of corrective actions taken.

In support of this requirement, DEQ has developed a management information system called "TURCS" or Toxics Use Reduction Compliance System. This system currently has its own data base, which was taken from the existing hazardous waste information system and contains additional toxics use reduction and hazardous waste reduction data.

This system determines whether a facility is required to develop a written hazardous waste plan and records those facilities who notify DEQ using the Notice of Plan Completion. It also tracks those facilities that are required by statute to develop a written annual progress report (APR) for the plan and whether the facility has submitted required information on DEQ's Annual Progress Report (APR) form.

Facilities which fail to provide either required report are identified automatically and the system generates Notice of Deficiency (NOD) letters. The NOD letters are sent to the delinquent facilities giving each facility 90 days to complete their written plan or annual progress report and to notify DEQ of their compliance. When notified the data is entered and available to program personnel via on-line terminals or by printed reports.

The TURCS system also captures and tracks basic information on technical assistance visits, plan reviews, APR reviews, and whether a plan or APR is found deficient. The system also captures the reasons for the inadequate plans or APRs.

Two printed logs required by statue and rule are provided by the system. One log lists all plan and APR inspection activities and the second lists all deficient plans and APR with associated follow-up activities. A management report showing all facilities with outstanding plan or APR deficiencies is provided to program people to insure that appropriate follow-up activities are done and to track the delinquent facilities.

The on-line capability of the system shows the history and current status of any facility. This on-line system is available to program personnel at the main office. It will shortly be available to DEQ regional staff for their inspection activities. It is especially valuable to check the current status and history for any facility that has a question about their TURHWR compliance.

Currently some Notice of Deficiency letters are generated by the system and some manually. In the future virtually all Notice of Deficiency letters, reminder letters, and administrative orders will be generated by the system. This capability along with the management report for tracking delinquent facilities will minimize the administrative workload for the program personnel and maximize their efforts in providing technical assistance and appropriate follow-up activities on reducing hazardous waste.

Section IV: TECHNICAL ASSISTANCE

Toxics use reduction technical assistance has been a limited part of DEQ's hazardous waste program since 1987. The passage of the TURHWRA in 1989 expanded the capabilities of the Department and the mandate for technical assistance.

Program activities include development and distribution of technical publications; responding to requests for information; workshop presentations to industry, local governments, environmental consultants and industry trade associations; and on-site industrial visits to assist in preparing and implementing TURHWR plans.

Priority Setting

The TURHWRA requires the DEQ to provide technical assistance to facilities that are required to develop reduction plans and to smaller hazardous waste generators that don't have to develop these plans. These smaller facilities are referred to as Conditionally Exempt Hazardous Waste Generators (CEG). The law further stipulates priorities for which users and generators shall get technical assistance.

These priorities include the following:

(a) Amounts and toxicity of toxics used and amounts of hazardous waste disposed of, discharged and released;

(b) Potential for current and future toxics use reduction and hazardous waste reduction; and

(c) The toxics related exposures and risks posed to public health, safety and the environment.

In general the Department has followed these priorities. The Department has been able to achieve the first priority through the use of existing data in EPA's Toxic Release Inventory reports and DEQ's hazardous waste reports. The second priority has been achieved through the development and use of a TURHWR technical library at DEQ which helps keep the staff updated on technologies and practices that reduce chemical usage and hazardous waste generation and how these can be applied to specific industries.

The last priority, however, has been extremely difficult to follow. The Department has not been able to find a published body of science that gives the risk from exposure to chemicals in an industrial setting or in the environment. Consequently, the Department has been using informal discussions and anecdotes from industry and EPA to help in understanding these risks.

General Technical Assistance Activities

DEQ delivers this technical assistance through the Waste Reduction Assistance Program (WRAP) as part of the overall hazardous waste program. Publications, workshops, and training sessions are presented by WRAP staff who are based in DEQ's Portland office. Whenever possible, WRAP technical assistance is integrated with hazardous waste compliance assistance; however, as mentioned earlier, care must be taken to ensure that technical assistance is separated from enforcement. Generally, WRAP can stay separate from compliance since WRAP is based in DEQ headquarters in Portland while hazardous waste compliance is done by DEQ field staff based in the Department's regional offices.

Summary of Activities

From January 1991 through August 1992, an average of 433 phone calls per month were received requesting regulatory and TURHWR assistance. In that same period of time over 107,000 copies of publications were distributed to Oregon businesses and other interested parties and WRAP staff spoke at more than 160 events reaching more than 12,000 participants.

The following highlights the technical assistance activities of the WRAP staff in 1991 and 1992.

- Developed and distributed more than 5000 copies of TURHWR planning guide. The program also developed and distributed another 5000 copies of a comprehensive regulatory handbook for small quantity generators and conditionally exempt generators, as well as numerous factsheets, handbooks and informational bulletins.

- Presentations were requested and given to many groups in 1991 and 1992. Topics included TURHWR planning and industrial process changes and hazardous waste management. Attendance ranged from 10 to 350.

  Chevron Dealers
  Pacific Printing Industries
  Metro Auto Dealers
  Job Service Employers
  Holladay Park Hospital
  Hazardous Materials In Construction
  State Safety Conference
  Lane community College
  Refrigeration Engineers Society
  Umpqua Valley Home Builders Association
  Pacific NW Pollution Control Association
  Women in Automotive Repair
  Portland City Club
  North American Materials Exchange Conference
  Oregon Rental Association
  US Dept. of Interior - Bureau of Mines
  US Forest Service
  Public Utility District Managers
  Portland Community College - Environmental Technology Students

Oregon State University - Civil Engineering Graduate Students
Oregon Assoc. of Fleet Maintenance Mgrs.
Clackamas Community College
Automotive Service Association
Weyerhaeuser Corporation
Portland Club of Lithographers
Hospital Engineering Symposium
Toyota Dealers Association
Mt. Hood Community College
Fleet Management Association
Oregon Agriculture Chemical Association
Hazardous Waste Law Conference
Oregon Department of Transportation
Autobody Craftsman Tradeshow
Oregon Trucking Association
Industrial Engineer Tradeshow
General Motors Dealers Association
American Electroplaters and Surface Finishers
Korean Drycleaners Association
Northwest Plant Engineering Conference

- WRAP sponsored independent workshops as well as those in conjunction with Associated Oregon Industries (AOI) and the American Electronics Association (AEA). A total of more than 3,500 individuals attended the following workshops:

  TURHWR Planning Workshops (20)
  University of Tennessee Solvent Reduction Teleconference
  Pollution Prevention Assessment Training (3)
  Responsible Hazardous Materials Management (6)
  Hazardous Waste Management Workshops (8)

- WRAP provided two workshops for the wood products industry and lumber mills. This lead to the development of a "model" TURHWR plan for lumber mills that was used by all of these facilities in Oregon.

- WRAP contracted with Oregon State University to produce a TURHWR planning guide for new car dealerships and the auto service industry and to provide 6 training sessions for these groups.

On-site Industrial Visits

One of the key activities of the Waste Reduction Assistance Program is doing industrial on-site visits. These visits have become the cornerstone of the program and the primary method of monitoring what industry is doing, measuring the implementation of the plans, and helping industry find technical and operational alternatives that reduce chemical use and hazardous waste generation.

For the period from April, 1991 to October 1, 1992 the WRAP staff have visited 74 separate facilities and have performed an additional 39 follow-up visits, for a total of 113 visits. Of the 74 facilities visited, 33 asked for specific technical assistance for industrial process changes that would reduce chemical usage and hazardous waste generation. The other visits were to provide regulatory, plan preparation, and plan review assistance.

Governor's Award Program

The Governor's Award for Toxics Use Reduction is coordinated by the WRAP. This award recognizes and honors achievements by Oregon businesses, public institutions and private organizations that significantly reduce the use of toxic chemicals and generation of hazardous waste.

In the first year, 1991, applications were solicited from all Large Toxics Users and hazardous waste generators registered with the Department. Judges were selected from public interest groups, industry representatives, the Governor's office, the U.S. EPA Region X, and the Pacific Northwest Regional Pollution Prevention Research Center. Two equal winners were chosen for this first award; Wacker Siltronic Corporation, a Portland producer of silicon wafers; and Consolidated Freightways, a major trucking operation, for their Portland repair shops.

In 1992, a single award was given to Intel Corporation in Hillsboro, Oregon for their strong commitment to toxics use reduction and integration of a pollution prevention philosophy into the corporate business structure. Four other companies were recognized for their achievements and received commendations from the Governor. These were;

- Oregon Department of Transportation - Highway Division, 2800 Salem Street facility, Salem

- Kadal's Tigard Auto Body, Tigard

- Hewlett Packard Corp., Corvallis, and

- Siltec Siltronics Corp., Salem

Governor Roberts presented the 1992 awards in Portland at the Responsible Hazardous Materials Management Conference and Trade Show on September 15, 1992.

Section V: OTHER PROGRAM ACTIVITIES

In addition to program implementation, administrative, and technical assistance activities the DEQ program staff have been working with several other DEQ programs, local, regional and national organizations to improve the Oregon program. Major activities in this area include:

- The DEQ Hazardous Waste Program staff in conjunction with the Hazardous Waste and Toxics Use Reduction Advisory Committee changed the hazardous waste fee systems to encourage waste reduction practices.

- Participation in the Pacific Northwest Regional Pollution Prevention Roundtable. This forum is made up of Pollution Prevention managers and key staff from EPA Region X and the states of Alaska, Idaho, Oregon, and Washington as well as the Province of British Columbia, Canada. It meets quarterly to discuss program issues and to exchange information on pollution prevention and hazardous waste reduction. This group has provided pollution prevention assessment training for program staff that go on-site to provide technical assistance. In Oregon, some staff from all the major programs at DEQ (e.g. Air Quality, Water Quality, Regional Operations, etc) have received this training as have representatives from the Portland Metropolitan District (METRO) and the City of Portland.

- Coordination with EPA's "33/50 Program". This Federal program asks selected businesses to voluntarily reduce the use of 17 toxic chemicals 33% by 1992 and 50% by 1995. There are 18 facilities in Oregon that are participating in this program and each of these facilities is also required to develop a TURHWR plan. DEQ is monitoring the reductions from this program and is coordinating our TURHWR activities with the "33/50 Program" staff and the affected companies. Letters from Governor Roberts and DEQ Director Fred Hansen were sent to EPA in support of this program.

- Participation in EPA Region X's activities to develop a standardized methodology for measuring toxic use reduction. This included work groups on measurement and reporting which lead directly to the development of a new DEQ Toxics Use Reduction Reporting Form. This effort is on-going.

- Participation in the National Roundtable of State Pollution Prevention Programs. Much like the Regional Roundtable mentioned above, this group is made up of pollution prevention program staff from the 50 states and the ten EPA regional offices and EPA headquarters. Oregon representatives have been asked to lead discussion groups at the semi-annual meetings of this group. This group also serves as a sounding board for new federal initiatives on Pollution Prevention. Many of the concepts in the Oregon TURHWRA were developed from work that the National Roundtable had completed in 1988 and 1989.

Section VI: MEASUREMENT OF REDUCTION

Is the TURHWR program actually resulting in reductions in the use of toxic chemicals and hazardous wastes? This is a key question that has been asked in Oregon and in the other states that have similar planning requirements. The answer is: We don't know, yet!

Qualitatively, based on compliance with planning requirements, interest in training, technical assistance and other meetings and discussions with Oregon industry the program is very successful with the larger facilities and only moderately successful with smaller facilities. Section II of this report explains the reasons why smaller facilities are having a more difficult time with the law.

Quantitatively, it is extremely difficult at this time to ascertain what actual reductions have occurred in Oregon's industry. This is primarily due to the fact that reduction data are not specifically measured or reported by industry and therefore have to be interpreted indirectly through multiple regulatory reporting systems to multiple state and federal agencies with sometimes inadequate or conflicting information.

To measure the program quantitatively, the Department has undertaken an effort to develop a system of measurement for chemical use and hazardous waste reduction.

The work has been a pioneering effort to gather, evaluate, and combine the data and information available from three separate regulatory reporting systems into a

coherent quantitative system that will track chemical use and waste generation and provide insight into the reasons for changes in reported quantities.

The three regulatory systems, the Toxics Release Inventory (TRI), the hazardous waste Biannual Reporting System (BRS), and the TURHWR Annual Progress Report (APR) are separate reporting systems that collectively contain data on toxic chemical usage, hazardous waste generation and progress by industry toward meeting reduction goals.

Through working with the States of Washington and Alaska as well as EPA Region X, the Department has made substantial progress in identifying the limitations of the three reporting mechanisms but has not been able to develop a quantitative measurement tool from the current reporting systems. For this reason the Department, through the National Roundtable of State Pollution Prevention Programs, has joined with U.S. EPA and several other states in an on-going effort to share information on measurement processes which are being developed in those states.

In the next year the Department will also be looking at air and water quality permitting information in an effort to augment the information available from the three existing reporting systems that are being used.

The Department is committed to finding a measurement tool that can be used for quantitative analysis of reduction efforts by Oregon industry. In this regard the Department has once again joined the states of Alaska and Washington along with Ohio and North Carolina, with funding from U.S. EPA, to more formally evaluate the existing reporting systems, their appropriateness for measuring chemical reductions, and to develop a measurement tool. Work on this will begin in January, 1993 and preliminary results should be available in July, 1993.

Some of the major shortcomings and issues with the existing data systems are described below.

Toxics Release Inventory (TRI)

This annual report is required by EPA from all manufacturing facilities that manufacture or use large amounts of certain toxic chemicals. Facilities that report under this program are defined in Oregon's TURHWR Act as Large Toxics Users and must develop a reduction plan. The State Fire Marshal manages the program in Oregon. However, the Department does work closely with both EPA and the Fire Marshall and intends to use these data to measure toxic chemical reduction. There are three major problems with the system that severely limit the usefulness of these data for our purposes, at this time.

1) 1991 data will not be available from EPA until March or April 1993, making a comparison between 1990 and 1991 impossible at this time.

2) Our analysis of 1989 and 1990 TRI data suggests that, although it is getting better over time, the data quality is very inaccurate. This is primarily due to the fact that industry is still learning the system and EPA only has minimum quality checks on the reported data. Further adding to the quality problem is the fact that EPA changes the reporting requirements annually making the normalizing of the data from year to year difficult.

3) TRI data do not adequately account for production changes and the effect they have on chemical use, i.e., if a facility reports a reduction in chemical use is it due to a drop in production or more efficient use of chemicals?

Because of the above, meaningful analysis of the TRI data on the impact of the TURHWR program won't be completed until mid-1993.

Hazardous Waste Reports

Hazardous waste generators are required by law to report to DEQ about waste managed in Oregon. DEQ, working with industry, has recently developed a more comprehensive and efficient reporting system.

The new system collects hazardous waste management information for wastes that are managed both on-site and off-site by a facility. The old system only gathered information on wastes managed off-site. The new system also collects data from a much larger universe of generators because for the first time Conditionally Exempt Generators are required to do minimal reporting. The old system only collected information from Small Quantity Generators and Large Quantity Generators.

The impact of these changes appears to have been a fourfold increase in the reported amount of hazardous waste generated in Oregon between 1990 and 1991, while, in actuality, we don't know how much waste was managed on-site prior to 1991. This makes comparisons with previous years difficult. Better data will be available in April, 1993 after the second year of reporting on the new forms has been completed. Better TURHWR analysis should be possible at that time.

The Department plans on developing a full TURHWR data report in May, 1993.

Section VII: CONCLUSIONS

1) The facility planning requirements of the TURHWR Act have been very effective in getting large facilities to evaluate their toxic chemical use and hazardous waste generation and to make voluntary plans for the reduction of these environmental problems. This is due to higher public visibility, more staff and capital to apply to TUR planning, greater awareness of the advantages of this kind of planning, greater understanding of costs associated with environmental compliance, and internal management structures that reward creativity in this area. These facilities also had strong representation during the development of the law and the subsequent Administrative Rules which has given them a since of ownership and commitment that the smaller facilities do not have. It is recommended that the Department continue with the plan review process for these facilities and that further technical, environmental cost, and management information be developed that can be shared with the environmental staff and management at these facilities.

2) The public nature of the process has been a prime motivator for many of the large facilities. The threat of a public hearing for those facilities that do not comply with the planning requirements seems to be enough to get larger facilities to write plans.

3) Facility planning has been less successful with smaller facilities. As seen by the relatively low compliance rate for 1992 planners and the low attendance at DEQ sponsored plan preparation seminars, it is obvious that these facilities do not respond to the program with the same commitment as larger facilities. For this reason it is recommended that the Department review the TURHWR regulations to find simpler ways for these facilities to implement TURHWR planning. It is also recommended that the Department shift the emphasis from administrative compliance work to technical assistance by working cooperatively with the trade associations and other industry groups to provide information and technical assistance to specific industry sectors.

4) Qualitative measurement (i.e. workshops, telephone calls, publications, on-site visits, etc.) indicates that the program is a success. However, quantitative measurement of actual chemical and waste reduction is extremely difficult at this time. Because of this the Department has only anecdotal information and it is unknown whether reductions are actually being exhibited. The Department recommends continued work with the existing reporting systems to develop a quantitative measurement tool for toxics use reduction.

Environmental Quality Commission

☐ Rule Adoption Item
☑ Action Item
☒ Information Item

Agenda Item N
December 11, 1992 Meeting

Title:

REPORT TO THE LEGISLATURE ON THE CONDITIONALLY EXEMPT SMALL QUANTITY HAZARDOUS WASTE GENERATOR PILOT PROJECT

Summary:

The 1989 Legislature required DEQ to study management and funding options for hazardous waste produced by Conditionally Exempt Generators (CEG). This report describes who CEGs are and summarizes the hazardous waste collection events held around the state. Other CEG activities, including technical assistance, CEG handbook production, generator workshops and waste management survey are also discussed in the report.

CEGs are typically businesses such as dry cleaners, printers, auto body shops and governments and schools which produce less than 220 pounds of hazardous waste each month. CEGs face a limited number of options to properly dispose of their waste. Costs are high and few hazardous waste firms serve CEGs. At the same time, landfills are restricting what they will accept. As a result, hazardous wastes tend to accumulate on site.

CEG hazardous waste collection events were held in October 1991 and this past spring in Portland, Medford, Eugene and McMinnville. The composition of wastes taken at most events was very similar with a fairly even distribution between paint, solvents, and herbicides/pesticides. Paint and solvents constituted over 50% of total wastes at all events. In an on-site survey, 40% indicated that their waste was between 1 and 5 years old.

The collections events offer a one-time, convenient and reasonably priced means of disposal, which is well suited for non-routine generators. However, they do not represent a long term solution for CEG waste disposal.

Based on its experience with collections events, survey results and discussions with CEGs, the Department offers a list of recommendations for future action that includes increased local government assistance for CEG programs, continued technical assistance, rule development, and encouraging the use of existing waste management services.

Department Recommendation:

Adopt report.

Kathleen Hennessy — Report Author
Stephanie Hallock — Division Administrator
Fred Hansen — Director

#

Oregon

Waste Reduction Assistance Program

FOR TOXIC SUBSTANCES AND HAZARDOUS WASTES

1993 CONDITIONALLY EXEMPT SMALL QUANTITY HAZARDOUS WASTE GENERATOR REPORT TO THE LEGISLATURE

deq Department of Environmental Quality ▪ 811 S.W. 6th Avenue ▪ Portland, Oregon 97204 ▪ (503) 229-5913

TABLE OF CONTENTS

ATTACHMENTS

Conditionally Exempt Small Quantity Hazardous Waste Generator (CEG) Report

Executive Summary

INTRODUCTION

Conditionally Exempt Small Quantity Hazardous Waste Generators (CEGs) produce the smallest amount of hazardous waste of any generator category, yet they have fewer and more costly disposal options.

The problem CEGs face in disposing of their hazardous wastes can be summarized as follows:

1. Costs for disposing of small amounts of hazardous waste are high
2. Few hazardous waste firms serve CEGs
3. Hazardous wastes are accumulated on-site because of disposal costs, distance to waste management firms and limited knowledge of waste management options. This can cause a potentially unsafe situation.
4. Some wastes have to be managed as hazardous since solid waste landfills are restricting what they will accept.

House Bill 3515 (ORS 459.419) passed in 1989, required DEQ to study management and funding options for hazardous waste produced by CEGs. This bill recognized the need for more waste disposal options for CEGs and directed the Department to conduct a CEG pilot project of hazardous waste collection events within, but not limited to, the boundaries of the Portland Metropolitan Service District (Metro). DEQ conducted the first of five hazardous waste collection events in October, 1991.

This report describes the businesses that are CEGs and the disposal problems they face. It also summarizes the findings of the collection events and CEG activities conducted since the 1991 legislative session. Findings and recommendations addressing disposal options for CEGs are provided along with recommendations for future CEG activities, and the role of government is explored.

BACKGROUND

CEGs typically are businesses, such as dry cleaners, printers, auto body shops, local/state governments, and schools. While most CEGs are small businesses, they may also be large businesses that produce small amounts of hazardous waste.

CEGs produce less than 220 pounds (half a 55-gallon drum) of hazardous waste each month, often taking several months to fill a drum. CEGs are exempt from most hazardous waste regulations, and are the only generators not required to register with the DEQ; therefore the Department has limited information about CEG waste management needs, precisely how many CEGs are in the state, what their predominant wastestreams are, and what portion of total hazardous wastes their wastes represent. In other words, CEGs present a challenge to the Department in terms of improving their understanding of what regulations apply to their business, and providing waste management assistance.

FINDINGS AND RECOMMENDATIONS

Findings

1. Waste disposal options are extemely limited and costly for CEGs in Oregon.

2. Few waste management firms deal with CEGs. Those that do are located long distances from most CEGs.

3. Many CEGs accumulate waste on-site because of disposal costs, distances to facilities, and a limited knowledge of waste management options.

4. The Department's ability to provide waste management assistance to CEGs is restricted since they are not required to register as generators.

Recommendations

1. Partially fund a pilot project at Metro to collect certain CEG wastes.

2. Provide financial assistance to local governments throughout the state to conduct combined household/CEG collection events, and/or establish permanent collection facilities.

3. Encourage waste management firms to develop waste programs tailored to meet CEG needs.

4. Offer discount subsidies, for a limited time, for waste disposal at waste management firms.

5. Continue work with trade associations and industry groups to provide technical assistance to CEGs, while exploring innovative ways of working with this group.

Conditionally Exempt Small Quantity Hazardous Waste Generator Report

January 1993

BACKGROUND

Conditionally Exempt Small Quantity Hazardous Waste Generators (CEGs) produce the smallest volume of hazardous waste of any generator category, but they are the largest generator category. The name conditionally exempt refers to fact that generators are exempt from most regulations if they meet certain conditions. CEGs are exempt from the federal hazardous waste law (adopted by the state), known as the Resource Conservation and Recovery Act (RCRA), if they comply with the following conditions:

- Conduct a waste determination on all solid waste to properly identify hazardous wastes;
- Produce less than 220 pounds (about one-half of a 55-gallon drum) of hazardous waste, or 2.2 pounds of acutely hazardous waste, per month;
- Store less than 2,200 pounds of hazardous waste, or 2.2 pounds of acutely hazardous waste, on site at any one time; and
- Deliver hazardous wastes to one of the following:

  A permitted hazardous waste facility,

  A permitted municipal or industrial solid waste facility which is allowed to accept hazardous waste produced by CEGs, or

  A designated facility which recycles, reclaims, or beneficially uses the waste.

If these conditions are not met, the waste and the generator are subject to the extensive hazardous waste management requirements of Subtitle C of RCRA.

CEGs can be one-time generators, such as a school cleaning out old lab chemicals, or they can be a nonprofit organization, a dry cleaner, or a rural property owner on whose property hazardous waste has been illegally dumped. Examples of the types of wastes CEGs can produce are photographic solutions from printers, solvents from building contractors, lead-acid batteries, waste oil and antifreeze from vehicle maintenance shops, and plating wastes from metal manufacturers.

Of the nearly 2,300 hazardous waste generators registered with the state, 1,500* (65%) are Conditionally Exempt (see Figure 1). Although CEGs are not required to register with the Department, 1,500 registered as of the end of 1991 to obtain a DEQ/EPA identification number, which is required by most waste management firms before accepting wastes to be shipped off-site.

In Oregon, CEGs are primarily found in the following groups:

Vehicle Maintenance	48%
Non-manufacturing	22%
Construction	13%
Other Manufacturing	9%
Metal Manufacturing	8%

Effects of Hazardous Waste In the Environment

Along with industrialization came problems associated with hazardous wastes. Since the passage of the Clean Air and Clean Water Acts in the early 1970's, major portions of the total volume of hazardous waste have been disposed of in or on the land. Hazardous waste is usually released into the environment in one of three ways:

1. In unlined solid waste landfills
2. Down the sewer
3. Dumped illegally

1. It is disposed of in unlined solid waste landfills, which are not designed to handle hazardous wastes.

The problem of hazardous waste in solid waste landfills is attracting more attention. As landfill technology evolves and landfills reach capacity, facilities close, and long-term management problems of leachate and groundwater contamination from hazardous waste increase.

Most of Oregon's 100 active solid waste landfills do not meet current environmental design standards: only fourteen have groundwater monitoring systems and only five have engineered leachate collection systems.

*This figure is based on voluntary registration and is considered low. It is estimated there are between 4,000 and 13,000 CEGs in the state.

2. It is poured down the sewer destined for a sewage treatment plant which may not be designed to treat it.

Disposal of untreated hazardous waste into a sewage treatment system can upset the treatment process, degrade collection systems, and result in discharge of toxics to surface waters. There are recorded instances of pipes disintegrating due to the action of corrosive wastes. Local sewerage agencies may be unaware of an industrial discharge until a pipe fails. Compromised collection lines can cause wastewater to leak into the soil, negatively impacting groundwater.

Discharge of hazardous waste into the sewer system can also concentrate chemical constituents in the treatment sludge, rendering it unmarketable or causing it to become hazardous waste. Sewerage agencies are responsible for determining the types of wastes they accept for treatment and are required to meet increasingly stringent water quality discharge standards. Many are beginning to restrict the types and amounts of material that may be discharged to the sewer.

3. It is dumped illegally on the ground or surface water, allowing it to migrate to groundwater.

Illegal disposal of wastes to the land can threaten public health and degrade groundwater where cleanup can be costly and difficult. The expense of lawful hazardous waste disposal and implementation of tighter sewer restrictions may actually increase illegal waste disposal, unless economically feasible disposal options are made available.

In addition to these environmental concerns, exposure to unregulated hazardous waste can be hazardous to the health and safety of landfill and wastewater workers and can damage waste handling equipment. Long-term and unsafe storage of these wastes is a risk to health and safety, as well as to the environment.

CEG Disposal Problems

CEGs face a limited number of options to dispose of their wastes. Options for CEG disposal are even more limited in rural communities than they are in cities.

Costs for disposing of small amounts of hazardous waste are high. A generator wanting to dispose of paint might be charged more for disposal than the paint cost. Hazardous waste firms charge fees for profiles, lab testing, transportation, treatment and disposal.

Hazardous waste management firms charge profile fees for each waste in order to develop a general picture, or profile of the waste, including such details as

concentration of certain chemicals in the waste. Costs for profiles can range from $300 to $1,000 per waste which is either an annual or one-time fee depending on the firm. Waste management firms also charge for lab testing to characterize the waste. Depending on the waste, these charges could run as high as $1,000 per test. Additional lab tests are required for unknown wastes, i.e., wastes that are either unmarked, or illegally dumped onto someone's property.

CEGs have two options when it comes to transportation costs. Either they can pay a hazardous waste management firm to pick up their wastes on site, or they can drop the wastes off themselves. Few waste firms find it economical to pick up CEG waste, and it is often a long haul for CEGs dropping off their wastes. It is difficult to estimate transportation costs, since they vary depending on distances, but total transportation costs could include mileage to the CEG's business, transportation back to the waste management firm, and costs to transport the waste to the disposal or treatment site, which may be out of state.

Treatment costs vary widely depending on the waste. Incineration of hazardous wastes generally runs the highest of treatment methods and can average around $1,000 a drum. The closest permitted incinerators to Oregon are located in Utah, Kansas, and Oklahoma.

Finally, disposal costs typically are on a per gallon basis, depending on the type of waste and treatment methods available to dispose of the waste; however many waste management firms charge not by volume of waste received, but by container size. In other words, a CEG may be charged for a full drum of waste regardless of the amount of waste in the container.

Although the amount of hazardous waste that ends up in unlined solid waste landfills is estimated to be only two tenths of one percent, some solid waste landfill operators are restricting what they will accept at their facilities to minimize future liability. For example, liquid latex paint is not accepted at most solid waste landfills; therefore, if no recycling options exist, this waste must be managed as a hazardous waste even though it is not generally a hazardous waste. At this time, the Portland Metropolitan Service District (Metro) permanent depot for household hazardous waste will not accept hazardous waste from any business, including CEGs.

COLLECTION EVENTS

The 65th Legislative Assembly found that CEGs do not have economically feasible options to manage their waste. The Legislature also concluded that disposal of hazardous waste, which includes CEG waste, in solid waste municipal landfills, to the sewer, or illegally, presents a potential hazard to public health and the environment because these facilities may not be designed to handle such wastes. House Bill 3515

adopted in ORS 459.419 Section 73 directed the Department to conduct a CEG pilot project consisting of several statewide hazardous waste collection events for CEGs.

Events were held in Portland in 1991 and 1992, and in Eugene, McMinnville and Medford in 1992. A summary of the 1991 collection event is included in Table 7 of the Appendix, and the 1992 events are summarized in Table 8.

All events were coordinated with local governments, and all participants registered their wastes with DEQ. Participants also signed a statement certifying that they were Conditionally Exempt. A typical event was conducted as follows: DEQ and local governments publicized the event through trade associations, industry groups, local publications, and with the help of local governments and extension services. Generators then called DEQ requesting an application, which was returned to DEQ with the generator's name and address, a description of wastes for disposal, and a signed certification of generator status. Generators received confirmation of their participation once DEQ approved the wastes with the waste management contractor, and verified generator status.

Coordination and implementation of the events went smoothly. Only a few generators tried to register unacceptable wastes (i.e., unknown wastes or more than 2.2 pounds of acutely hazardous waste). Three generators were disqualified because they were not Conditionally Exempt. A total of 219 generators participated in the events, and a total of 6,059 gallons of waste was disposed.

DEQ received over 300 calls from generators requesting applications for the events and asking questions about hazardous waste management. The Department has developed a CEG mailing list from these calls.

Costs

The events were partially funded by DEQ and generators paid the balance of the cost. From the generator's perspective, these events were cost effective for most wastes, compared to the marketplace. Most paid between $5 and $6 per gallon, with the first five gallons free at the collection events. DEQ subsidized around 40-50 percent of the generator's cost of disposal. As an example, it cost a generator approximately $300 to dispose of 55 gallons of waste paint: the same waste could cost roughly $700 if disposed at a waste management firm.

In terms of overall cost, however, these events did not represent the most economical way to dispose of hazardous waste. The overhead costs of a mobile facility (setup, travel, tarps, tents, etc.) were not passed on to the generators. If these costs had been passed on to generators, they would have paid between $10.00 and $36.00 a gallon.

While mobile collection events are not generally cost effective, they do offer CEGs:

1. Reduced disposal rates for many wastes
2. Convenient disposal location
3. One of the few disposal options outside the Portland metropolitan area.

In addition, these events offered many CEGs an introduction to hazardous waste management firms, and they gave DEQ the opportunity to provide technical assistance to these generators on how to reduce or improve management of their wastes.

The following summarizes the costs associated with the events:

	Costs Per Gallon Collected		
	Cost to Generators	DEQ Subsidy	Total Costs
Portland (10-91)	$ 7.50	$ 28.20	$ 36.70
McMinnville	6.00	4.00	10.00
Medford*	2.00 - 6.00	4.00-10.00	12.00
Portland (6-92)*	5.00-10.00	4.00 - 9.00	14.00
Eugene	6.00	17.80	23.80

Figure 2 in the Appendix compares costs, number of participants, volume and type of wastes for all events. McMinnville had the lowest contractor setup costs of any locations - 30% of total costs, compared to a high of 56% for the 1991 Portland event partly because of shared setup costs with a household hazardous waste collection event held at the same site.

Waste Collected

More waste was collected at the 1992 Portland event than any other location, however, the waste was collected over a two-day period.

The two major wastestreams collected at all events were paint and solvents (see Figure 3). The only exception was McMinnville, where more solvents and pesticides were collected than any other type of waste. A complete wastestream analysis of each of the events conducted in 1992 is included in Tables 2-5, and Figures 4-7 in the Appendix.

*Disposal costs varied, depending on waste

Following are the percentages of wastes collected at the events, by waste type:

Paint related products	30%
Solvents	27%
Pesticides, herbicides	17%
Acids, bases	14%
Miscellaneous (Household batteries, oxidizers, etc.)	8%
Automotive	2%

Manufacturing firms and government were always in the top three industry categories. The only significant difference in the types of industries that participated was the agricultural industry which participated only in the McMinnville event and the automotive industry which participated in just the Portland events.

Survey Results

A survey was conducted of 55 CEGs at the Portland event in 1992. Results are summarized on Table 1, with major findings highlighted below:

1. Nearly 40 percent of those surveyed indicated their waste was between one month and one year old. Another 40 percent said their waste was between one year and five years old.

2. Over half would have used hazardous waste management firms for disposal of their wastes if the event was not available.

3. Cost was the most frequently cited barrier to proper hazardous waste management, followed by inconvenience, and lack of knowledge of the regulations.

4. Of those aware of DEQ's waste reduction technical assistance program, only one-third had used it.

5. Most respondents indicated they wanted DEQ to provide waste management and continued on-site technical assistance.

Conclusion

After talking with more than 300 CEGs interested in participating in these events and discussing waste management issues in general, it is clear that there is a need for a long-term solution to Conditionally Exempt hazardous waste disposal, in terms of both

cost and convenience.

Although these events did not represent a long-term solution for CEG waste disposal, they did offer a one-time, convenient, reasonably priced means of disposal, well suited for non-routine generators. The events also offered access to disposal for CEGs outside the metropolitan area. Finally, the collection events were well received by the communities in which they were held and by participants. DEQ had an opportunity to offer technical assistance to a large group of generators who had never used a hazardous waste management company for disposal of their wastes. The Department also gained new knowledge of the universe of CEGs throughout the state, the types and sizes of businesses, their predominant wastestreams, and the hazardous waste management problems they face.

Contacts resulting from this program will help DEQ target mailings of regulatory changes, provide technical assistance in the form of industry or waste-specific factsheets, and direct future CEG collection programs.

OTHER CEG ACTIVITIES

In addition to the collection events the Department conducted the following activities:

1. CEG Handbook

In September 1992, DEQ published a handbook on hazardous waste management regulations and waste reduction opportunites for CEGs. This was a combined effort of DEQ, Portland area governments, and trade associations. The handbook is written for generators who have little or no hazardous waste management expertise and contains information on hazardous waste identification, waste management regulations, hazardous waste reduction, and references. The manual is available to local governments, trade associations, and CEGs and has been mailed to all registered CEGs. Over 2,500 have been distributed. As generator outreach activities progress, the Department will mail the handbook to targeted businesses.

2. Industry Specific Handbooks

The Department is working on several industry specific handbooks for photoprocessors and dry cleaners, that provide detailed waste management and waste reduction information. The manuals are being developed with industry groups and trade associations. Additional manuals are planned for the automotive service, printing, and construction business sectors.

3. Trade Associations

The Department is working with trade associations to develop a list of such groups in the state by the type of industry they serve, number of members, newsletter deadlines, etc., to be used for mailings. The Department receives numerous requests for presentations to various industry groups and trade associations and made more than 25 presentations throughout the state in 1992.

4. On-site Technical Assistance

Senate Bill 241 (ORS 466.068) was enacted by the 1991 Legislature to provide hazardous waste technical assistance to CEGs. The bill provided for new DEQ field staff, funded by an increase in the disposal fees at hazardous waste landfill facilities. Four field personnel were hired as of September 1992 to provide on-site technical assistance to CEGs.

5. Generator Workshops

The Department conducted a series of two-day hazardous waste workshops around the state in 1991. The workshops were co-sponsored by Association of Oregon Industries, National Federation of Independent Businesses, Automotive Service Association, and the Pacific Printing Industries and many of those attending were CEGs. The workshops were well received, especially in areas of the state with limited DEQ field staff.

6. Waste Management Survey

The Department and Metro conducted a survey of waste management companies that service CEGs. The survey revealed that, while all the companies contacted said that they managed CEG waste, very few did more than a small fraction of their business with CEGs. Results of the survey are included in Table 6 in the Appendix.

FINDINGS AND RECOMMENDATIONS

The following findings and recommendations for future CEG activities are based on the Department's experience in providing technical assistance to CEGs, in dealing with trade associations and industry groups, and on the results of the collection events:

Findings

1. Waste disposal options are extremely limited and costly for CEGs in Oregon. Options are particularly limited for sporadic or one-time producers of small amounts of hazardous waste, and for CEGs outside of the Portland metropolitan

area. Options that were once available such as disposal in the sewer or at solid waste landfills are narrowing.

2. Few waste management firms service CEGs, and those that do are located several miles from most CEGs.

3. Many CEGs accumulate their waste on-site because of rising disposal costs, distance to disposal facilities, and a limited knowledge of waste management options.

4. Because CEGs are not required to register as generators, the Department is restricted in its ability to provide technical assistance, and to implement legislatively mandated programs.

Recommendations

1. Support and provide partial funding for a pilot project at Metro to collect certain CEG wastes at established, designated transfer facilities. Assist Metro in taking the lead role for CEG waste collection in the metropolitan area through collection events, and/or establishing permanent facilities to collect CEG waste. Encourage recycling and reuse of wastes where possible.

2. Provide financial assistance to local governments throughout the state to conduct, where possible, combined household/CEG hazardous waste collection events, and/or to establish permanent facilities to collect CEG waste. Maintain ability to fund one-time collection events, while providing financial assistance to local governments to establish permanent collection facilities.

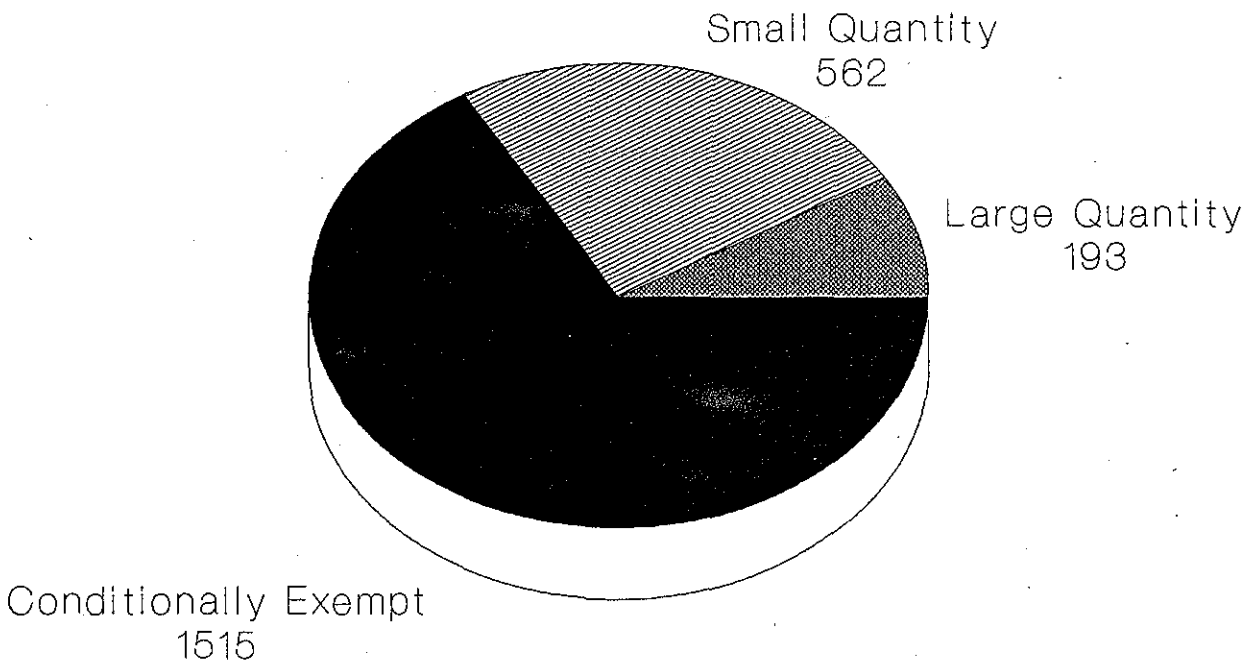
3. Encourage more waste management firms to accept CEG wastes throughout the state by developing programs that target a wider audience of CEGs with costs and transportation of wastes tailored to meet CEG needs.

4. Work with existing waste management firms to offer, for a limited time, discount subsidies for waste disposal to encourage CEGs to register with the Department.

5. Continue working with trade associations and industry groups to meet CEG technical assistance needs through on-site visits, industry or waste-specific handbooks and factsheets, and workshops. In addition, explore innovative approaches in working with this group, and develop materials that clarify regulations, identify waste reduction opportunities, and offer waste management support.

Figur 1

OREGON REGISTERED HAZARDOUS WASTE GENERATORS



1991 Generator Registration Data

Figure 2

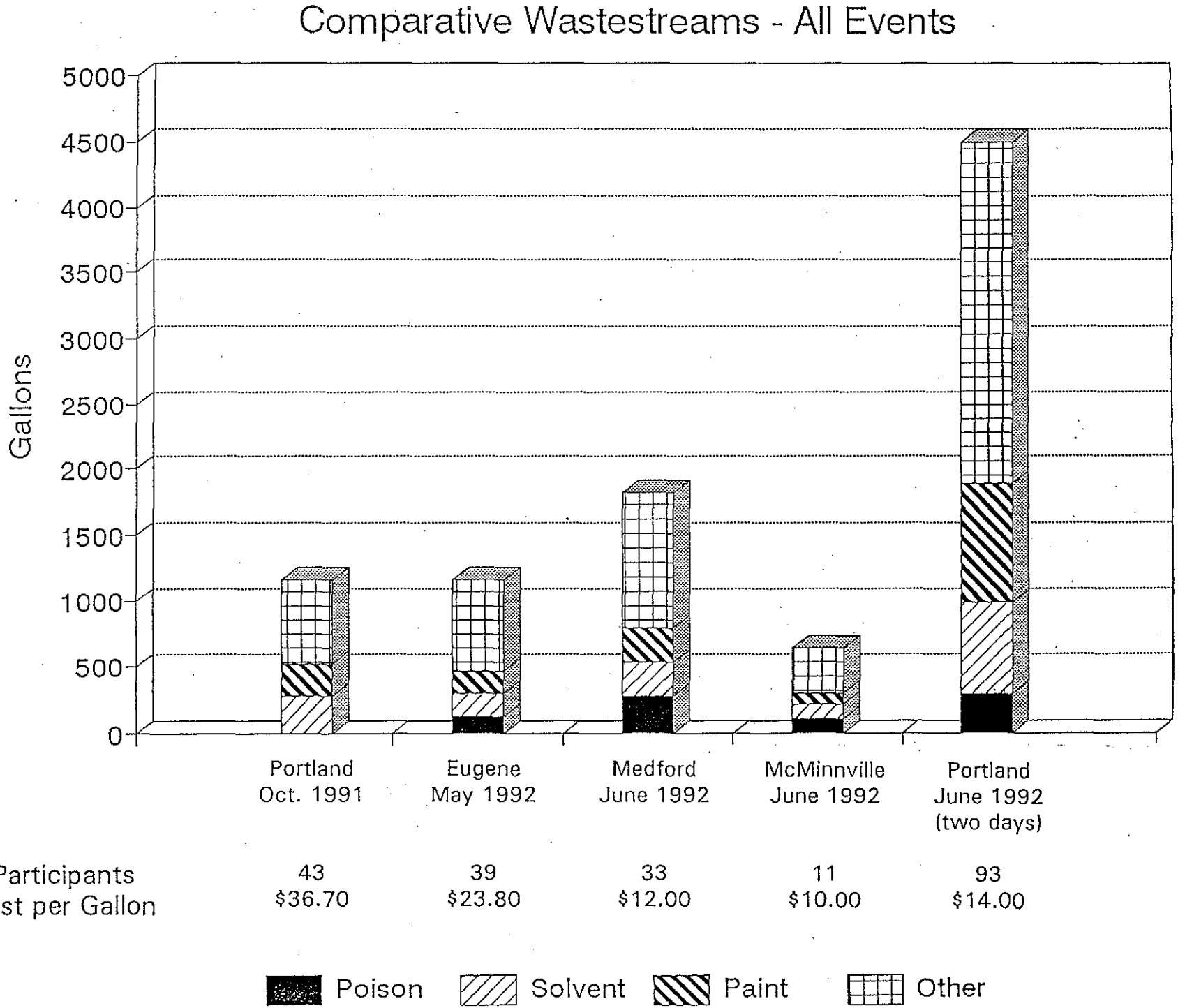
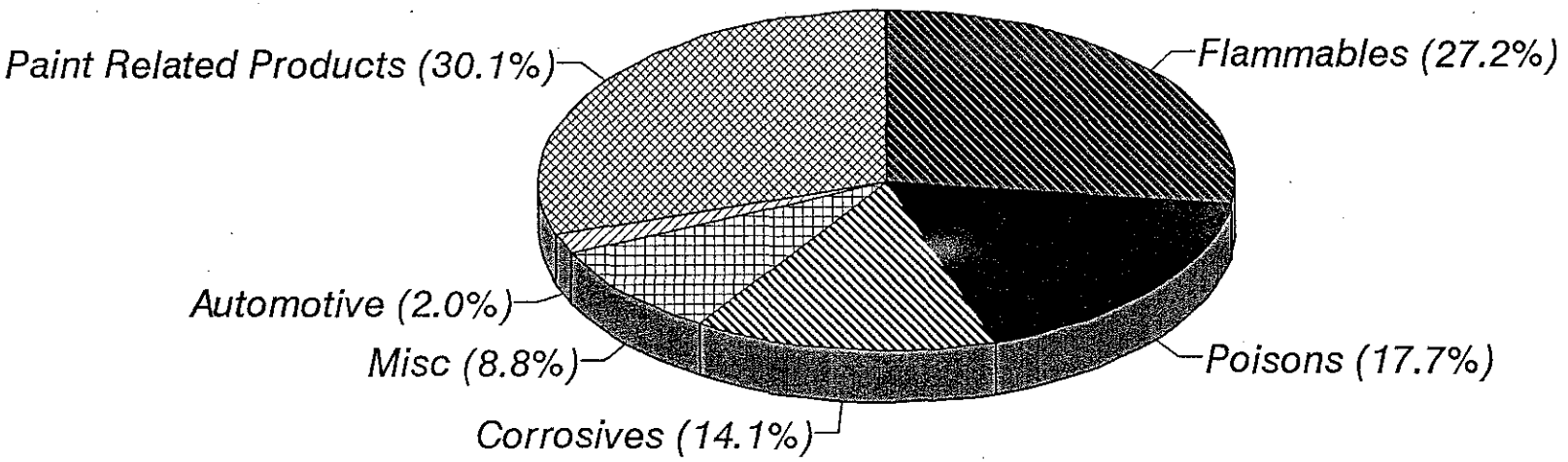

Comparative Wastestreams - All Events
Gallons
5000
4500
4000
3500
3000
2500
2000
1500
1000
500
0
Portland Oct. 1991
Eugene May 1992
Medford June 1992
McMinnville June 1992
Portland June 1992 (two days)
Participants
Cost per Gallon
43
$36.70
39
$23.80
33
$12.00
11
$10.00
93
$14.00
Poison
Solvent
Paint
Other

Figure 3

Wastestreams By Group
All Events



Flammables:	Solvents
Corrosives:	Acids, Bases
Poisons:	Herbicides, Pesticides
Misc.:	Household Batteries, Oxidizers, Flammable Solids, etc.

Table 1

Portland CEG Hazardous Waste Collection Event
Survey Results

Survey Questions	Total
Surveys returned	55

Not every generator returned a survey. Those who responded did not answer every question. For some questions, there could be multiple answers; therefore, the totals for each question will not necessarily add up to 55.

HOW DID YOU HEAR ABOUT EVENT	
Received flyer	29
Trade group	5
Other	21
AVERAGE AGE OF WASTE	
Less than one month	1
1 month--1 year	22
1--5 years	22
> 5 years	6
Don't know	4
EVER USE WASTE MGMT. CO. FOR DISPOSAL	
Yes	28
No	26
ALTERNATIVE IF COLLECTION EVENT NOT AVAILABLE	
Store	19
Garbage	3
Hazardous waste mgmt. company	32
Sewer	1
Other	0
Don't know	5

Table 1 (Continued)

BIGGEST BARRIER TO PROPER WASTE MGMT.	
Cost	32
Convenience	21
Complex rules	12
Lack knowledge	18
Fear regulations	9
AWARE OF DEQ TECHNICAL ASSISTANCE PROGRAM?	
Yes	30
No	22
EVER USE DEQ TECHNICAL ASSISTANCE PROGRAM?	
Yes	10
No	42
WHAT TYPE OF TECHNICAL ASSISTANCE WANT DEQ TO PROVIDE	
Waste management	26
Waste reduction	12
On-site technical assistance	19
NUMBER OF EMPLOYEES IN BUSINESS	
0--100	37
100-500	5
500+	3

Table 2

Spring 1992 CESQG Wastestream Analysis

LANE COUNTY

CESQG Collection Event May 1, 1992			
	DRMS	LBS	%
Paint Related Products			
Adhesives/Resins	0	0	0.0%
Lacquers	0	0	0.0%
Oil-Based Paints	3	1620	25.2%
Latex	0	0	0.0%
Totals	3	1620	25.2%
Automotive Products			
Motor Oil	0	0	0.0%
Antifreeze	0	0	0.0%
Auto Batteries	0	0	0.0%
Totals	0	0	0.0%
Poisons			
Herbicides/Pesticides	11	1095	17.0%
Aerosol -- Pesticides	0	0	0.0%
Totals	11	1095	17.0%
Flammables			
N. H. Solvents	3	1640	25.5%
Aerosol Non-Pesticide	0	0	0.0%
Totals	3	1640	25.5%
Corrosives			
Acids	1	356	5.5%
Bases	1	63	1.0%
Totals	2	419	6.5%
Miscellaneous			
Household Batteries	0	0	0.0%
Flammable Solids	1	9	0.1%
Oxidizers	1	14	0.2%
PCB Solids	0	0	0.0%
PCB Liquids	0	0	0.0%
Asbestos	0	0	0.0%
Other	3	1630	25.4%
Totals	5	1653	25.7%
Grand Totals	24	6427	100.0%

C.SS.ODEQ.LOCATION.CEG.LANECOUN.XLS

Table 3

Spring 1992 CESQG Wastestream Analysis

MEDFORD

CESQG Collection Event June 5, 1992			
	DRMS	LBS	%
Paint Related Products			
Adhesives/Resins	0	0	0.0%
Lacquers	0	0	0.0%
Oil-Based Paints	7	2200	21.5%
Latex	2	580	5.7%
Totals	9	2780	27.2%
Automotive Products			
Motor Oil	2	320	3.1%
Antifreeze	1	290	2.8%
Auto Batteries	0	0	0.0%
Totals	3	610	6.0%
Poisons			
Herbicides/Pesticides	14	2780	27.2%
Aerosol -- Pesticides	0	0	0.0%
Totals	14	2780	27.2%
Flammables			
N. H. Solvents	6	2580	25.3%
Aerosol Non-Pesticide	1	30	0.3%
Totals	7	2610	25.6%
Corrosives			
Acids	2	450	4.4%
Bases	3	945	9.3%
Totals	5	1395	13.7%
Miscellaneous			
Household Batteries	0	0	0.0%
Flammable Solids	1	25	0.2%
Oxidizers	1	10	0.1%
PCB Solids	0	0	0.0%
PCB Liquids	0	0	0.0%
Asbestos	0	0	0.0%
Other	0	0	0.0%
Totals	2	35	0.3%
Grand Totals	40	10210	100.0%

Table 4

Spring 1992 CESQG Wastestream Analysis

McMINNVILLE

CESQG Collection Event June 13, 1992			
	DRMS	LBS	%
Paint Related Products			
Adhesives/Resins	0	0	0.0%
Lacquers	0	0	0.0%
Oil-Based Paints	7	1410	25.1%
Latex	0	0	
Totals	7	1410	25.1%
Automotive Products			
Motor Oil	1	250	4.5%
Antifreeze	0	0	0.0%
Auto Batteries	0	0	0.0%
Totals	1	250	4.5%
Poisons			
Herbicides/Pesticides	4	1610	28.7%
Aerosol -- Pesticides	0	0	0.0%
Totals	4	1610	28.7%
Flammables			
N. H. Solvents	4	1820	32.4%
Aerosol Non-Pesticide	0	0	0.0%
Totals	4	1820	32.4%
Corrosives			
Acids	1	200	3.6%
Bases	1	112	2.0%
Totals	2	312	5.6%
Miscellaneous			
Household Batteries	2	8	0.1%
Flammable Solids	0	0	0.0%
Oxidizers	1	200	3.6%
PCB Solids	0	0	0.0%
PCB Liquids	0	0	0.0%
Asbestos	0	0	0.0%
Other	0	0	0.0%
Totals	3	208	3.7%
Grand Totals	21	5610	100.0%

Table 5

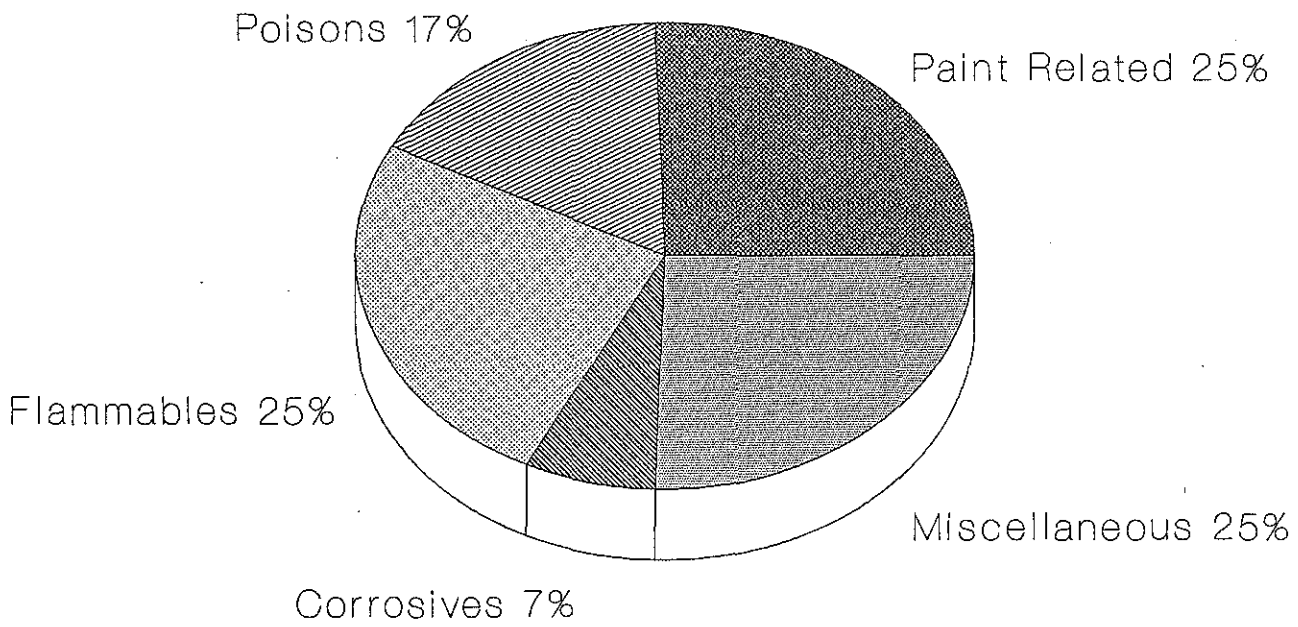
Spring 1992 CESQG Wastestream Analysis

PORTLAND

CESQG Collection Event June 17-18, 1992			
	DRMS	LBS	%
Paint Related Products			
Adhesives/Resins	0	0	0.0%
Lacquers	0	0	0.0%
Oil-Based Paints	22	6400	30.4%
Latex	4	815	3.9%
Totals	26	7215	34.2%
Automotive Products			
Motor Oil	0	0	0.0%
Antifreeze	0	0	0.0%
Auto Batteries	0	0	0.0%
Totals	0	0	0.0%
Poisons			
Herbicides/Pesticides	11	2185	10.4%
Aerosol -- Pesticides	1	20	0.1%
Totals	12	2205	10.5%
Flammables			
N. H. Solvents	13	5700	27.0%
Aerosol Non-Pesticide	1	30	0.1%
Totals	14	5730	27.2%
Corrosives			
Acids	4	840	4.0%
Bases	11	3155	15.0%
Totals	15	3995	19.0%
Miscellaneous			
Household Batteries	1	100	0.5%
Flammable Solids	1	10	0.0%
Oxidizers	7	1820	8.6%
PCB Solids	0	0	0.0%
PCB Liquids	0	0	0.0%
Asbestos	0	0	0.0%
Other	0	0	0.0%
Totals	9	1930	9.2%
Grand Totals	76	21075	100.0%

Figure 4

EUGENE WASTESTREAM PERCENTAGES BY GROUP MAY 1, 1992



Figur 5

MEDFORD WASTESTREAMS BY GROUP
JUNE 5, 1992

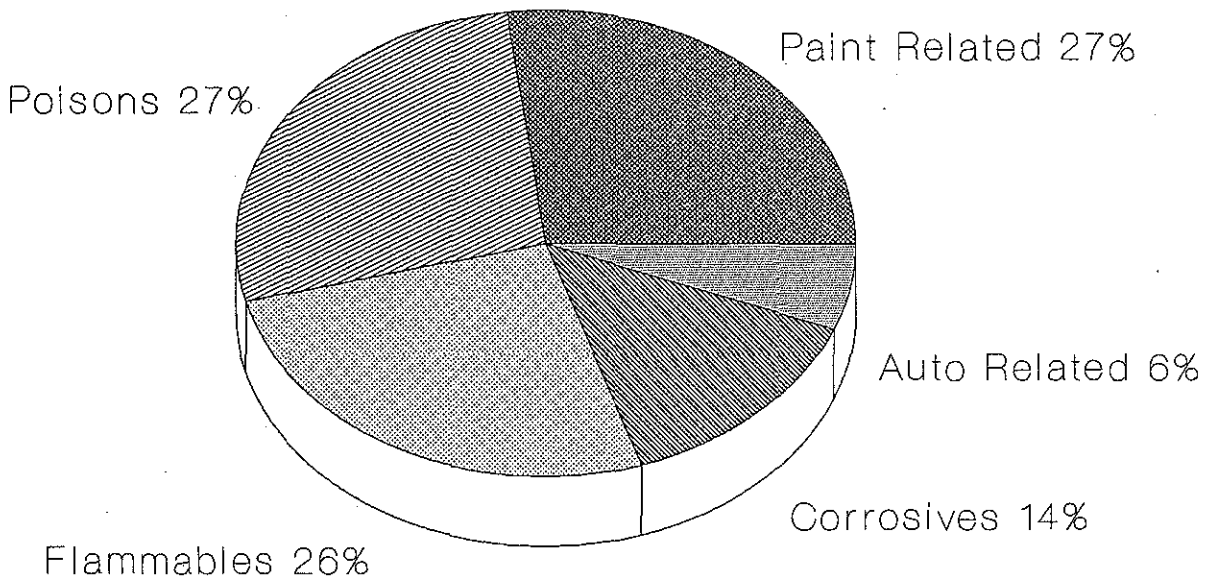
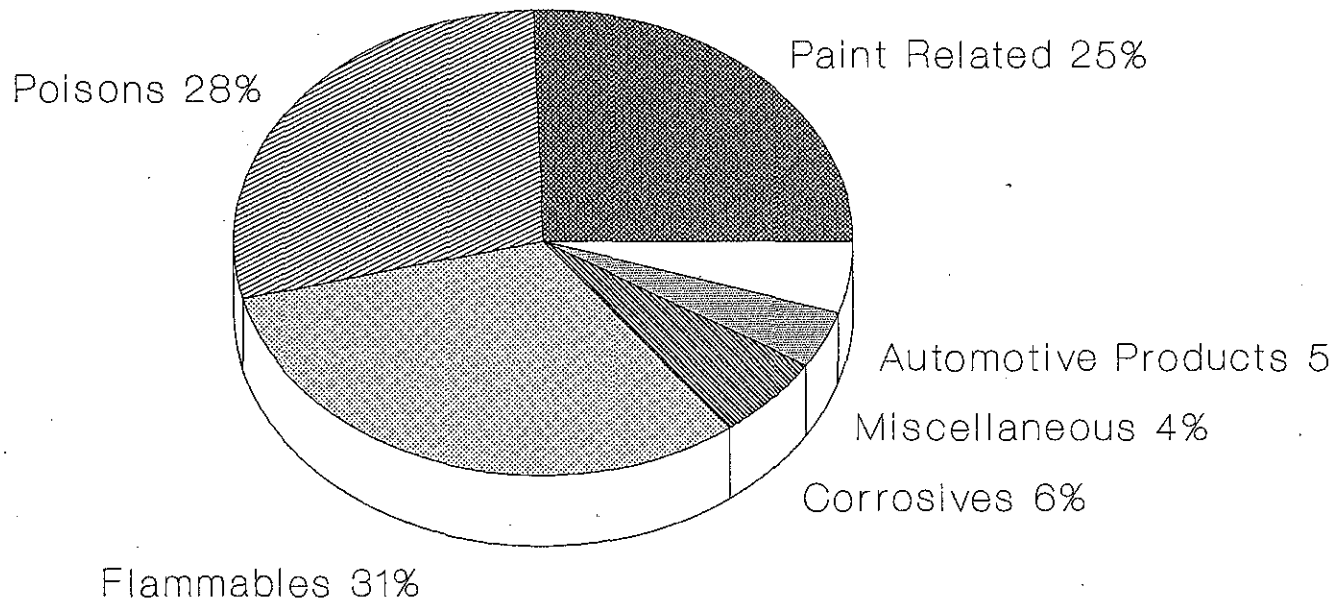


Figure 6

McMINNVILLE WASTESTREAMS BY GROUP
JUNE 13, 1992



Figu. 7

PORTLAND WASTESTREAMS BY GROUP
JUNE 17-18, 1992

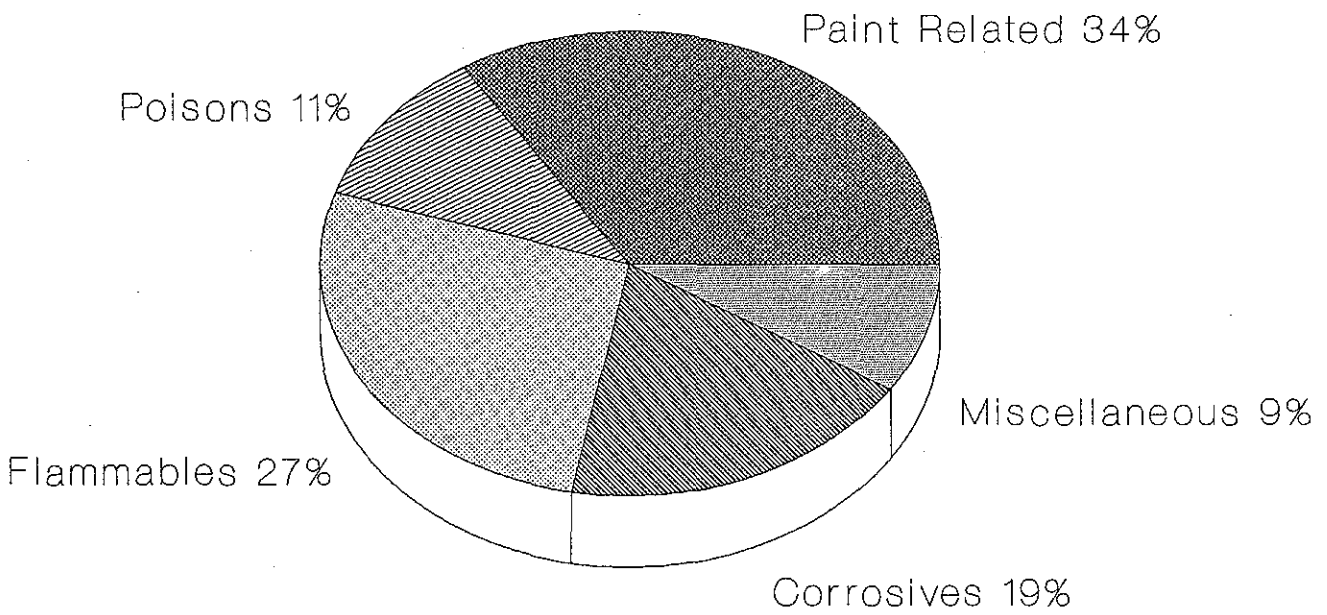


EXHIBIT 1

SURVEY
of
WASTE MANAGEMENT FIRMS
serving
CONDITIONALLY-EXEMPT GENERATORS OF HAZARDOUS WASTE
in
THE PORTLAND METROPOLITAN AREA

March, 1991

In March, 1991 Metro and DEQ jointly conducted a survey of twenty firms that provide waste management services to conditionally-exempt generators (CEGs) of hazardous waste in the Portland metropolitan area. CEGs are businesses that produce less than 220 pounds of hazardous waste or less than 2.2 pounds of acutely hazardous waste per month, and store less than 2200 pounds of hazardous waste and less than 2.2 pounds of acutely hazardous waste on site at any one time.

The following firms were contacted for the survey:

1. Chemical Waste Management
2. Burlington Environmental
3. North American Environmental
4. Envirotech Systems, Inc.
5. Envirosafe Resources of Idaho
6. Hallmark Refining Corp.
7. American Antifreeze
8. Environmental Pacific
9. Northwest Enviroservice
10. Enviromental Remedial Action/ Technical Services (Chemical Waste Mgmt)
11. Pacific X-Ray Corporation
12. Pegasus Waste Management
13. Riedel Environmental
14. Saftey Kleen
15. Sol Pro
16. Special Resource Management
17. Spencer Environmental
18. Sunwest Energy
19. Van Waters & Rogers
20. Wesco Parts Cleaners
21. Westcomp

The objective of the survey was to begin a process to establish an estimate of the number of CEGs in the Portland metropolitan area so that planning for a pilot project, mandated by HB 3515 (1989), could begin. The survey was conducted jointly by DEQ and Metro staff as the initial step in the process of planning for the pilot project.

The survey was designed to provide broad information on CEGs. Firms that provide services to CEGs were targeted so that staff gain a representative understanding of how much CEG waste was currently managed properly. This information could then be compared to data that describes the number of CEGs in the metropolitan area.

RESULTS

All of the waste management firms (WMF) contacted provided some level of service to CEGs. Among the services offered, 16 stated that they provide waste collection and transportation, 14 provide waste disposal and 15 provide waste recycling.

WASTE MANAGEMENT SURVEY RESPONSES

Sample Size N=20

1. **Do you provide waste management services to CEGs?**

   Responses: Yes 20 No 0

2. **What type of waste management does your company offer to CEGs?**

	Responses:	*Yes*	*No*	*NA*
a.	Waste collection and Transportation	16	3	1
b.	Waste Disposal	14	5	1
c.	Waste Recycling	15	4	1
d.	Consulting	10	9	1
e.	Waste Exchange	6	8	6
f.	Other (list)			

   Comments: "Other" answers: Training(2), Newsletter, Collection of oily wastes, Permitted disposal site (2), Provides waste stabilization (2), Analytical lab.

3. **Do you specifically market your services to CEGs?**

   Responses: Yes 6 No 13 NA 1

4. **Do you provide services tailored to CEGs that are not offered to the larger generator? (if yes, list)**

Responses: Yes 8 No 11 NA 1

5. **Of the waste management services you provide in the Portland Metropolitan area, what proportion is CEG related?"**

Responses: 0%, <2%, <5%(2), 10%, 25%, 40%, 50%, 60%, 75%, 99%, Unknown(8), very small, very little

6. **Approximately how many CEGs in the Portland Metropolitan area use your service?**

	Responses:		*Totals*
a.	Auto Related Services	0, 10, 100,250,600	960
b.	Dry Cleaners	0, 3, 5, 10, 20, 40	78
c.	Labs	2(3), 10, 15	31
d.	Manufacturers	1, 2, 25, 40, 50	118
e.	Photoprocessors	3, 10, 100, 250	363
f.	Other (list)	Pulp & Paper, Printers, Maintenance	

7. **What types of CEG waste does your company manage?**

Responses:

a.	Acids & Bases	12
b.	Antifreeze	11
c.	Inks	11
d.	Inorganic Liquids	12
e.	Paints (oil based)	12
f.	Paints (latex)	12
g.	PCBs	11
h.	Pesticides	11
i.	Photoprocessing	12
j.	Reactives	11
k.	Sludges (metal bearing	12
l.	Sludges (still bottoms)	12
m.	Solvents (non-chlorinated)	14
n.	Solvents (chlorinated)	11
o.	Other:	

Waste oil, oily waste, tin/lead solder, router dust from circuit board manufacturing, discarded electronic equipment,discarded x-ray film, batteries

8. **Are you a regulated Treatment/Storage/Disposal (TSD) facility?**

Responses: Yes 9 No 11

9. **Additional Comments:**

Chemical Waste Management

Subsidiaries of company provide different specific services. One service offered is coordination of combination of smaller routes so that smaller generators have proper disposal capabilities.

Burlington Environmental

BE maintains an open depot for some CEGs one day per month in Washougal, WA. Contact suspects that most CEGs are ignorant of proper disposal practices.

North American Environmental

Handles PCBs only. Contact did not provide further information.

Envirotech Systems, Inc.

Firm has grown in the Portland area, does not market services except for auto body shops. Acts as a resource by providing information to CEGs.

Envirosafe Resources of Idaho

Hallmark Refining Corp.

Firm also handles discarded x-ray film, which is incinerated in Washington.

American Antifreeze

Environmental Pacific

Only 25% of CEGs who produce waste batteries use proper disposal services. Regulations need to target the other 75%. CEGs should file quarterly reports to DEQ on disposal quantities and practices.

Northwest Enviroservice

Enviromental Remedial Action/
Technical Services
(Chemical Waste Mgmt)

Pacific X-Ray Corporation

Pegasus Waste Management

Also provide route service.

Riedel Environmental

Saftey Kleen

Sol Pro

Special Resource Management

Spencer Environmental

Company has developed wastewater treatment capability for sump pumpings.

Sunwest Energy
Van Waters & Rogers
Wesco Parts Cleaners

Company provides route service.

Westcomp

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMORANDUM

DATE: March 6, 1992

TO: Roy Brower, Manager Waste Reduction and Assistance Program

FROM: Rick Volpel RV

SUBJECT: October 10, 1991 CEG Pilot Waste Collection Event

Oregon Revised Statutes [ORS 459.417 Section 73 (2)] requires the Department to "contract for a pilot project" to provide for the collection of CEG waste within the boundaries of the metropolitan service district. Section 73 (3) states that any fees charged to CEGs involved in the pilot project shall be reasonable and balance the need to promote waste reduction through fees on disposal and the need to encourage use of the service. To meet this mandate an initial collection event was held on October 10, 1991 at the Metro Central Transfer Station. The following summarizes the results of the event.

INTRODUCTION

Due to time limitations, the decision to hold an October event was made only six weeks prior to the event. This was done in consultation with Metro's Solid Waste Department staff. To save time and money, the event was originally planned to be held in conjunction with a household collection event that Metro was sponsoring on October 12th. The CEG event was to be held on October 10-11 and was originally scheduled to occur at the same location as one of the household collection sites. Burlington Environmental (formerly Chempro) was selected as the contractor. Because this company already held a contract with the state to perform household events, the CEG event could be billed as part of the same agreement. Unfortunately, the site chosen for the CEG event was deemed inappropriate for the household event. Although Burlington Environmental performed waste management activities for both events, the events were held separately.

A generator application form was developed to pre-register participants. It was adopted from a form used by the state of Minnesota for a similar event and is attached. The application was mailed on September 4 to: CEGs within the Portland metropolitan region registered with the Department; county solid waste departments; local sewer agencies; local trade group representatives; and metro area members of the Automotive Service Association of Oregon. The deadline for returning the application to DEQ was September 24, 1991. Applications were reviewed by DEQ and Burlington Environmental staff to ensure that quantities and types of wastes were acceptable for the collection and that no regulated Large Quantity or Small Quantity hazardous waste generators were participating. Applicants were allowed to bring a maximum of 25 gallons of waste. There was no fee for the first five gallons of waste brought in. A flat fee of $7.50 per gallon was charged for waste in excess of five gallons. Letters were sent to the applicants indicating their waste disposal costs and their scheduled time to drop off waste.

COLLECTION EVENT RESULTS

The October 10, 1991 CEG collection event ran from 8:00 am to 4:00 pm. Set up for the event occurred on October 9. Burlington Environmental personnel arrived on-site at 7:00 am on the day of the event. DEQ and Metro personnel arrived at 7:30 am. It was planned that approximately six cars would arrive per hour to ensure a smooth steady flow of customers. DEQ personnel greeted the participants, collected the disposal fee and assisted participants in filling out a waste generator questionnaire.

Participation

Of the 53 applicants that responded, 43 brought in waste for disposal. Three applicants were considered ineligible: two were businesses located outside of the metro area, and one was disqualified by the waste contractor[1]. The types of businesses participating in the CEG event are shown in Table 1. The greatest number of participants were from the manufacturing sector represented by 15 of the 43 total participants.

TABLE 1
PARTICIPATING BUSINESSES

Business Type	Number of Participants
Manufacturing	13
Dry-Cleaner	3
Sales	6
Auto Service	5
Painting Contractor	4
Government	4
Metal Finisher	2
Printer	2
Hospital	1
Photo Processor	1
Food Processor	1
TOTAL	43

[1]The generator disqualified by the contractor had in excess of 220 pounds of hazardous waste on-site. Washington state regulations prohibit CEGs (small quantity hazardous waste generators in Washington) from accumulating more than 220 pounds of hazardous waste on-site at any one time and still remain a CEG. The generator disqualified by the contractor was indeed a CEG by Oregon hazardous waste regulations. DEQ allowed the disqualification because the Contractor works out of a facility located in the state of Washington. Their permit requires them to manage hazardous waste according to Washington state law.

Waste Analysis

The major types of waste received were paint related materials and solvents (Table 2). These were from 70% of the participating businesses. The average amount of waste brought in per participant was 15 gallons.

TABLE 2
CEG WASTE COMPOSITION

Wastes Received	Amount (Gallons)	Percent Total
Paint related material	257	39.8
Non-chlorinated solvents	170	26.4
Chlorinated solvents	103	16.0
Waste caustics	43	6.7
Waste acids	30	4.7
Oxidizers	3	0.5
Other RCRA waste*	22	3.4
Non-RCRA hazardous waste**	17	2.6
TOTAL	645	100

* Includes phenol, sodium azide, sodium thiosulfate, methoxychlor and parlodion.
** Primarily used oil.

Costs

The total cost of the event (excluding DEQ staff time) was $23,704.70 and is broken down as follows:

Contractor Set-up Costs	$13,297.20	56%
Waste Disposal Costs	$10,417.50	44%
TOTAL	$23,714.70	100%

The amount paid by event participants was $3,259.38 and is included in the waste disposal costs category. This accounted for approximately 14% of total event costs. The cost to the Department was $20,445.32. The average cost per participant was $552 while the average amount paid by each participant was $75.

Survey Results

A survey was distributed to participants as part of the collection event (attached). Thirty-one participants responded and in many cases, the person transporting the waste for collection did not have information to adequately answer the questionnaire. However, some points of interest were noted:

- Most of the wastes brought to the event had been in storage for at least one year;
- The participants were somewhat aware of hazardous waste management requirements; and
- The majority of respondents said they would have had their wastes managed by a hazardous waste management firm if the collection event was not available.

In addition, respondents felt that there is a need for added waste management technical assistance and would like to see periodic CEG collection events established in the metro area. A list has been established for CEGs wishing to participate in future collection events.

DISCUSSION

Based on the amount of waste brought to the event and the satisfaction of respondents, the CEG pilot project was a success. A major issue that requires examination however, if this type of event is to be repeated, is the high cost for the collection of CEG waste. Due to the small number of participants, the average cost per participant was relatively high ($552). One reason for this is due to contractor set-up costs. Based on discussions with Burlington Environmental, it is clear that set-up costs will remain relatively stable for each collection event. Increased participation should result in a decreased costs per participant as illustrated in Figure 1. From this information, it appears that an efficient number for the collection event is a minimum of 150 or more participants to make the event more cost effective. Based on this, it is recommended that we increase the number of participants we serve at future collection events.

In addition, I recommend that we examine other cost savings mechanisms to make CEG waste collection manageable. This can be accomplished by charging CEG wastes variable rates based on waste type brought to a collection event. The October event billed all waste based on a flat fee. Because of the type of material received (primarily paint waste and solvents), it might have been more cost effective to pay on a waste-type basis.

In lieu of or in addition to a collection event, the Department could issue coupons to

CEGs to be redeemed at a local TSD for disposal of their wastes. Burlington Environmental is already accepting waste from CEGs, Safety-Kleen and Wescomp have expressed an interest in doing this. This could result in considerable cost savings as well as encourage the use of an existing facilities, because no contractor set-up charge would be required and appointments could be spread out over a period of time. This would also promote a market-based approach using the existing infrastructure.

Although the event was small, those responding to the survey indicated that they would have managed their waste through a hazardous waste management company if the collection event was not available. We need to strategize n how to target audiences and deliver information to CEGs not managing their wastes correctly.

Oregon Department of Environmental Quality
A PILOT HAZARDOUS WASTE COLLECTION PROJECT

for Oregon Businesses Producing Small Amounts of Hazardous Waste

Information and Application

What's Happening?

The Oregon Department of Environmental Quality (DEQ), in cooperation with The Metropolitan Service District (Metro), is sponsoring an experimental pilot project for conditionally exempt small quantity hazardous waste generators on October 10 and 11, 1991. This project, the first of its kind in the state, will allow certain Portland metro area companies, producing small amounts of hazardous waste, an opportunity to drop off their hazardous waste at a collection point for proper disposal. This project and funding was authorized by the Oregon Legislature in 1989 by H.B. 3515.

State environmental regulations require ALL Oregon companies producing hazardous wastes to manage and dispose of them properly. Options for conditionally exempt generators are not readily available and those available are often viewed by companies as complicated and costly. The pilot project is designed to allow companies to dispose of hazardous waste in a simpler and less costly manner.

To participate, generators will be required to pay a portion of the disposal costs. Generators will be responsible for about 40% of the actual costs of disposal. DEQ will cover the remaining costs. These costs are designed to be lower than the cost to individual businesses arranging for their own disposal.

What Hazardous Wastes Could My Business Have?

Hazardous wastes are wastes that are flammable, corrosive, toxic, or reactive. Some examples of common hazardous wastes that will be accepted at the collection pilot project are:

- parts-washer solvents
- paint-gun cleaners
- dry-cleaning solvents
- cleaners/degreasers
- thinners
- paint strippers
- paints
- corrosives
- inks
- mercury
- photographic fixers
- plating wastes
- PCB light ballasts
- laboratory chemical wastes
- pesticides/herbicides/insecticides
- antifreeze

What Kinds of Businesses Can Participate?

Conditionally exempt hazardous waste generators are businesses, industries and institutions producing less than 220 pounds of hazardous waste per month during each of the last 12 months. Through the pilot project in the Portland metro area, these generators are allowed to dispose of up to 25 gallons, or about 210 pounds, of hazardous waste.

Conditionally exempt hazardous waste generators may include:

- auto repair shops
- medical/dental clinics
- dry cleaners
- printing companies
- manufacturers
- commercial painters
- golf courses
- service stations
- cities and counties
- machine shops
- laboratories
- photo processors

In order to dispose of waste through this program, companies are required to apply for and receive prior approval from DEQ for specific types and quantities of waste.

Printed on Recycled Paper

Businesses producing more than 220 pounds of hazardous waste each month must manage their hazardous wastes following stricter regulations and are NOT eligible to participate in this project. Generators of larger quantities of waste can contact DEQ at 229-5913 for more information. A Hazardous and Solid Waste Resource Directory is available from DEQ which provides a comprehensive list of hazardous waste service providers.

How much will it cost?

The first 5 gallons of waste will be free. Additional wastes will be charged a flat fee of $ 7.50 per gallon up to a maximum of 25 gallons (or about 210 pounds). Disposal charge will be based on the size of the container that you bring in. Participants are required to pre-register and pay for their portion of the management costs prior to or at the time the waste is dropped off.

What wastes will not be accepted?

- radioactive wastes
- explosives
- infectious (medical) wastes
- Chlordane
- acutely hazardous wastes as listed in 40 CFR 261.33(e)
- certain poisons, pesticides and very reactive wastes
- dioxin-containing material, such as the wood preservative pentachlorophenol and the herbicide 2,4,5-T

How can my company participate?

Step 1: Determine if your company is eligible to participate in the pilot project by evaluating your waste streams. Be sure you are not registered as a small or large quantity generator with DEQ or EPA.

Step 2: Fill out the attached application and return it to DEQ. The application must be received by DEQ no later than September 23, 1991. Estimate your cost for disposal using section 3 of the application form (Remember the first 5 gallons are free). Costs are based on the size of the container that is brought in and not the amount in the container. Be sure to sign the certification statement stating that your company is a conditionally exempt generator.

Step 3: You will be contacted by DEQ for an appointment time to drop off your waste at the collection site and arrange payment.

Step 4: Bring your wastes to the collection site. As a conditionally exempt generator, you are allowed to transport your own waste to the collection site. Make sure that the waste containers are covered and in sound condition. Take proper care to avoid spillage or exposure to the waste during transport. Do not mix your wastes.

For more information

For more information on the pilot project, call Rick Volpel at 229-6590.

Oregon Department of Environmental Quality
Waste Reduction Assistance Program
811 SW 6th Avenue
Portland, Oregon 97204

PILOT PROJECT APPLICATION FORM for conditionally exempt generators of hazardous waste

1. Company Information

Company Name | Type of Business

Mailing Address | Site Address(if different)

City | State | Zip Code

Contact Person | Telephone ( )

2. Wastes You Want to Dispose of through this Project (up to 25 gallons)

Describe, in as much detail as possible, wastes you want to drop off at the collection site. Include the chemical and trade name; how you use the material; physical state (liquid, solid, sludge); chemical characteristics (e.g., flammable); and chemical constituents and percentages (from the product label). Send copies of Material Safety Data Sheets, if available, and any laboratory-test results you may have for the wastes. In listing quantities of waste, be as accurate as possible. Disposal costs are dependent on the quantity of waste you bring in, and you will only be allowed to dispose of the quantities you list below.

Paint, Solvent and Photographic Fixer Wastes (attach additional sheets, if needed)	Container Size(s)
Latex Paint Description:	
Paint Sludge, Still Bottoms, Other Sludges Description:	
Paint Thinner, Mineral Spirits, Stoddard Solvent, Other Flammable Solvent (chemical name if available): Description:	

Other Hazardous Wastes (attach other sheets if necessary)	Container Size(s)
#1 Waste Name: Description:	
#2 Waste Name: Description:	
#3 Waste: Description:	

3. Information on Hazardous Wastes Your Business Produces Each Year

Total amount of hazardous waste produced each year: _____ gallons (for liquids): _____ pounds (for solids)

Hazardous wastes may include, but are not limited to, the following waste types:

Solvents:

- Thinners
- Parts washer solvents
- Paint gun cleaners
- Cleaners/degreasers
- Dry-cleaning solvents
- Paint strippers
- Ignitable liquids/solids other than solvents
- Corrosives
- Pesticides/herbicides/insecticides
- Photographic fixer
- Oil based paints
- Laboratory wastes
- Inks
- Mercury
- Plating wastes
- Antifreeze
- PCBs

4. Estimating Your Disposal Costs

Use the container sizes of the waste listed in Section 2 to determine your disposal costs. The first five gallons will be disposed at no cost to the generator. Remember you are limited to a total of 25 gallons (or about 210 pounds) of waste. Costs are based on the size of the container that the waste in brought to the collection event (for example; if you bring a five gallon pail, you will be charged for five gallons of waste whether the pail is full or not). Do not mix wastes together. Final costs will be billed to the participants and must be paid before the collection of the waste.

Waste to be disposed: gallons _____ X $ 7.50/gallon = $ _____

Subtotal = $ _____

Subtract - $ 37.50 (first 5 gallons of containers)

Total Amount to be paid $ _____ (Must not exceed $ 150.00)

All waste brought into the collection site must be pre-registered. Payment for the collection of the waste must be made to DEQ by check either prior to, or at the time of collection. Once your application form is received, you will be contacted by DEQ to schedule a time, day and location to bring in your waste. The collection event is scheduled for October 10-11, 1991. Please contact Rick Volpel at DEQ at 229-6590, for additional information.

OREGON

Waste Reduction Assistance Program

For Toxic Substances and Hazardous Wastes

Conditionally Exempt Generator Questionnaire

Welcome to the Conditionally Exempt Generator Pilot Collection Project. It is requested that you complete this questionnaire while the waste is being removed from your vehicle. Please check the appropriate answers. Your response will be kept anonymous.

1. How did you hear about the event?
   - Received flyer _____
   - Trade Group _____
   - Other _____

2. What is the average age of the waste brought in today?
   - Less than one month _____
   - 1 month - 1 year _____
   - 1 year - 5 years _____
   - Greater than 5 years _____
   - Unknown _____

3. Have you used a hazardous waste management firm for the disposal of your hazardous waste before?
   - Yes _____
   - No _____

4. If this collection event was not available, what would happen to this waste?
   - Stored _____
   - Placed in garbage _____
   - Hazardous waste management firm _____
   - Placed in sewer _____
   - Other _____
   - Don't know _____

5. In your opinion, what is the biggest barrier to proper management of hazard waste for small businesses?
   - Cost _____
   - Convenience _____
   - Rules too complex _____
   - Lack knowledge of rules _____
   - Fear of regulations _____
   - Other (list) _____

6. Are you aware of DEQ technical assistance program?
   - Yes _____
   - No _____

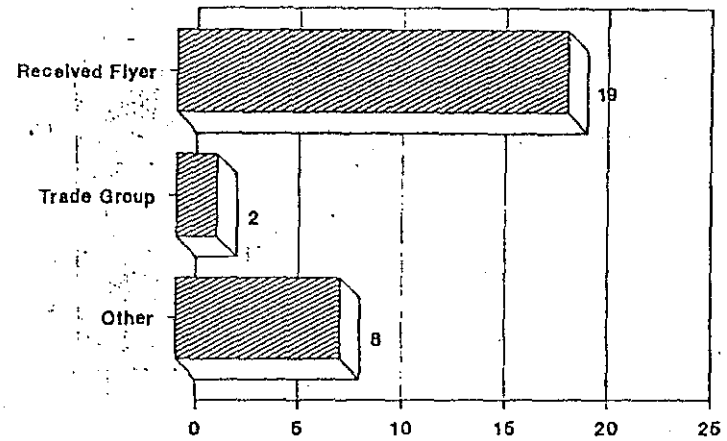
7. Have you used DEQ technical Assistance before?
   - Yes _____
   - No _____

8. Would type of technical assistance would you like to see DEQ provide?
   - Waste management _____
   - Waste reduction _____
   - On-site assistance _____
   - Other (list) _____

See Other Side Please

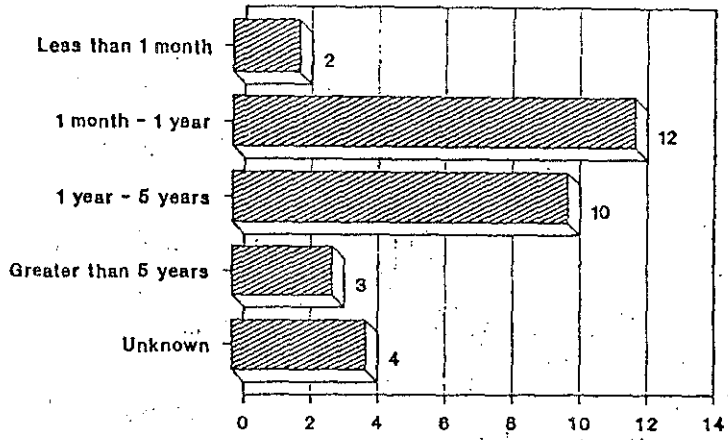
Question 1

How did you hear about the event?



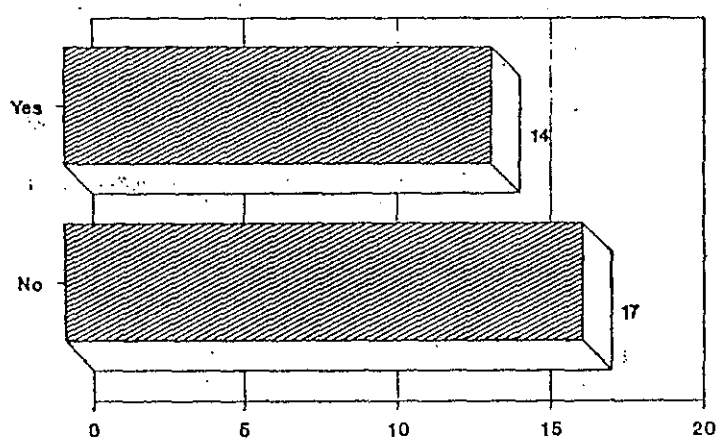
Question 2

What was the average age of the waste?



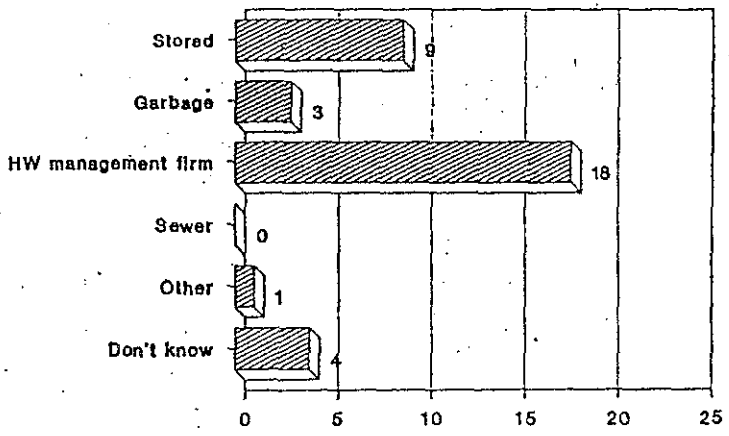
Question 3

Have you used a HW management firm?

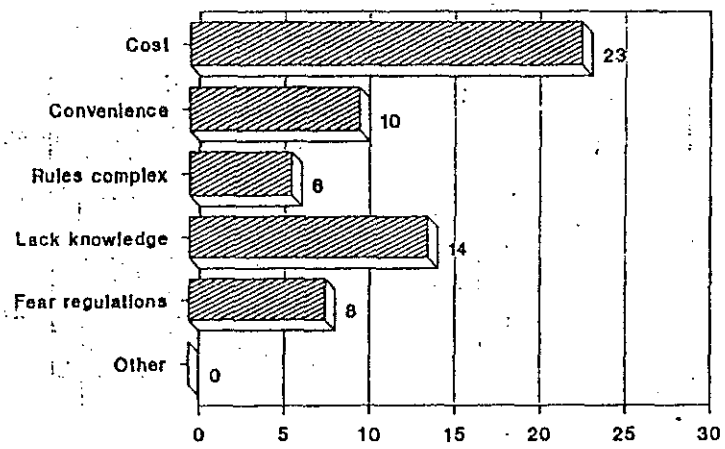


Question 4

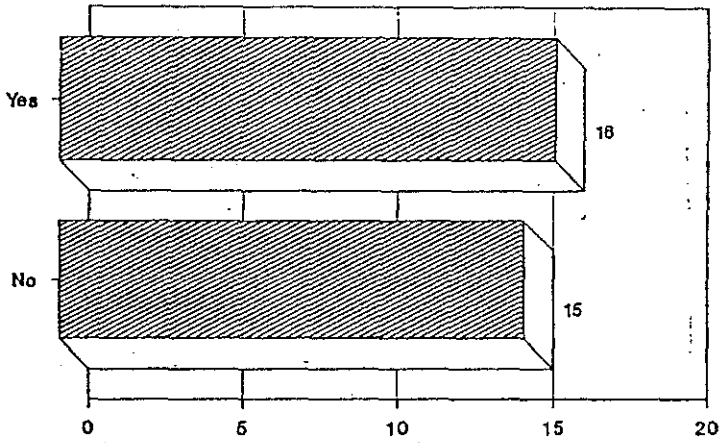
What would happen to this waste?



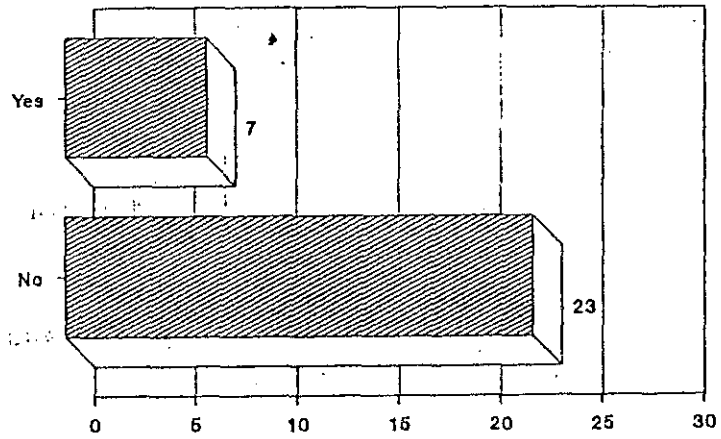
Question 5
What is biggest barrier?



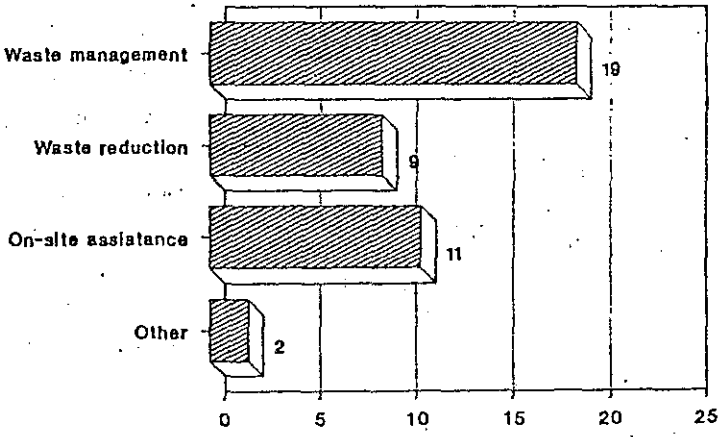
Question 6
Are you aware of DEQ assistance?



Question 7
Have you used DEQ assistance?



Question 8
What TA would you like provided?



Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item O
December 11, 1992 Meeting

Title:

REPORT TO LEGISLATURE ON STATUS OF RECYCLING IN OREGON

Summary:

This report summarizes the status of local and state implementation of the 1983 Opportunity to Recycle Act and the 1991 Recycling Act. It includes information on state procurement and testing of recycled products, compost and sewage sludge product testing, technical and financial assistance provided local governments, progress on the state solid waste management plan, progress on the waste composition study, and information on the status of recycled content provisions by material.

Important findings include:

* The majority of Oregon cities over 4,000 are implementing weekly recycling collection and distribution of residential recycling containers.

* Anticipated government purchases of recycled products for fiscal year 1993 increased 500% in dollar value over 1991 purchases.

* Thirteen local workgroups around the state are actively participating in the development of the statewide solid waste management plan required by the 1991 Act.

* Three domestic glass manufacturers are already meeting the 35% minimum recycled content requirement set for the year 1995 and one has reached the 50% minimum content requirement set for the year 2000 by the 1991 Act.

* The 1991 Recycling Act set a waste reduction goal of 50% for the year 2000. The Department is currently developing systems and collecting data that will result in a county-by-county materials recovery rate assessment in 1995.

Department Recommendation:

Adopt Report

Report Author	Division Administrator	Director
Alene Cordas	Stephanie Hallock	Fred Hansen

STATUS OF RECYCLING IN OREGON
Report to the 1993 Oregon Legislature

EXECUTIVE SUMMARY

Nineteen-ninety-five is the year set by the Oregon Legislature when counties and wastesheds will measure their success in meeting assigned materials recovery rates. To that end, the Department of Environmental Quality (DEQ) currently is developing systems and collecting data from a number of elements, under authority from Senate Bill 66, as codified in Oregon Revised Statutes 459A (the 1991 Recycling Act).

The Act sets a 50 percent reduction goal for the year 2000. Its provisions address all elements of the recycling triangle---collection, remanufacturing, and purchasing products made of recycled materials. **Collection:** cities are required to extend the recycling services offered their citizens; counties are required to meet interim recovery goals set for 1995. **Remanufacturing:** private industries must include minimum recycled content in their products, and a Markets Development Council, composed of government, environmental, and industry representatives appointed by the Governor, is required to develop strategies to strengthen markets. **Purchasing:** public agencies are required to increase the variety of recycled product purchases and to test and evaluate specific products made from recycled materials.

This report includes information on technical assistance provided to local governments by DEQ, and on the status of solid waste reduction and planning grants awarded by DEQ to local governments. It also summarizes the status of local and state implementation of the 1983 Recycling Opportunity Act and the 1991 Recycling Act. Important findings include:

- Under the solid waste planning and recycling grant program (1989 Legislature), 24 grants totaling $612,000 have been awarded to local governments.

- Eighty-six percent of the Oregon cities over 4,000 which responded to a preliminary inquiry in September indicated that they are implementing weekly recycling collection, expanded education and promotion, and distribution of residential recycling containers. These are the first three of eight recycling service options under the 1991 Recycling Act.

- Based on contracts in place, anticipated government purchases of recycled products for FY 1993 increased 500 percent by dollar volume over 1991 purchases.

- Three glass manufacturers already surpass the 50 percent minimum content requirement set for the year 2000 by the 1991 Recycling Act.

- Thirteen local workgroups from around the state are actively participating in development of the statewide solid waste management plan required by the 1991 Act.

STATUS OF RECYCLING IN OREGON
Report to the 1993 Oregon Legislature

INTRODUCTION

As of November 1992, the Department of Environmental Quality (DEQ), environmental organizations, industries, and recycling programs throughout Oregon are looking ahead. Materials recovery rates will be assessed by county in 1995. Currently, DEQ is gathering the data from various elements to calculate those rates. Information which will be available and used to develop an initial report on materials recovery rates by July 1993 includes per capita disposal and materials recovery rates by counties and wastesheds; and participation in, and materials recovery rates for, single-family on-route and commercial recycling collection.

LEGISLATIVE HISTORY

The immediate success of the Oregon Bottle Bill (1971) indicated that Oregonians were willing to take part in recycling programs designed to control litter and protect the environment. The Recycling Opportunity Act (1983) built on this willingness by setting up a system where recycling services were offered to all Oregonians, but where participation in those services was not required. Instead, all Oregonians were to be offered the opportunity to recycle a number of materials---either at their homes (curbside recycling) in cities over 4,000 population; or at conveniently-located drop-off sites in the more rural areas of the state. "Affected persons," the providers of solid waste services in each community, were required to provide these recycling services. A provision in ORS 459A.120 (1989) authorized DEQ to provide funding to assist local governments with implementation of federal and state solid waste legislation.

Oregon's Newest Legislation

Senate Bill 66, as codified in Oregon Revised Statutes 459A (the 1991 Recycling Act), complements previous solid waste management legislation in Oregon by addressing all elements of the recycling triangle: collection, remanufacturing, and purchasing. The Act set a statewide goal of 50 percent recovery from the solid waste stream by the year 2000. To provide an interim measure, the Act assigns recovery rates for the year 1995 for each county and wasteshed (areas of the state which share solid waste facilities). Goals were set based on demographics such as population and distance from markets.

Public agencies are required to expand purchases of items made from recycled materials. Product testing and evaluation is assigned to the appropriate state agencies. The Act also establishes a Markets Development Council with representatives of the Northwest glass, paper and plastic industries, environmental groups, haulers, and governments.

The Act clarified local solid waste responsibilities. Counties are responsible for reaching assigned 1995 recovery goals. They also must collect data and other information required for annual recycling reports which are sent to DEQ.

To meet target recovery rates under the 1991 Recycling Act, cities over 4,000 population are responsible for providing expanded recycling services which must be selected from the following eight options:

- weekly curbside collection
- expanded education and promotion
- distribution of residential recycling containers
- multi-family collection
- residential yard debris collection
- commercial collection
- expanded recycling depots
- collection rate incentives

Cities of 4,000-10,000 population must choose three options; cities over 10,000 population must select four or five options, depending on the options chosen. Experience with existing recycling programs shows that implementing the first three elements can significantly increase recycling participation and recovered material tonnages, which will help achieve the recovery rate assigned each county.

This delineation of local solid waste responsibilities has helped foster a new spirit of cooperation and partnership among local solid waste industry representatives and local governments. In many cases, the first time that city and county officials, haulers, and grass-roots volunteers met together was when DEQ staff presented on-site information about local requirements under the new legislation. From information received by DEQ, it is evident that local representatives have continued to work together to strengthen community recycling programs.

1991 RECYCLING ACT LEGISLATIVE PROVISIONS

A. PRIVATE SECTOR REPORTING

Accurate and complete data is necessary to measure county and statewide progress in reaching recovery rates. For the first time in Oregon recycling history, legislation has placed extensive reporting requirements on the private sector. (In the past, DEQ had authority to collect data only on curbside residential collection.)

The 1991 Recycling Act requires, and has given DEQ the authority to survey and collect data from the private sector, including, but not limited to, drop-off depots, buy-back centers, and end-users. Data on tonnage of recyclables from commercial collection, depot systems and residential curbside collection will be combined with data from annual surveys of private recyclers and private facilities to calculate recovery rates.

To assist in monitoring and analyzing waste and recovery information, DEQ has devoted time and resources to setting up a comprehensive data management system. The system is expected to alleviate the weaknesses inherent in previous collection and analysis systems. Based on this standardized system of data collection and analysis, for the first time the state and counties will be using the same method for comparisons.

B. CITIES and COUNTIES

1. Reporting

Wastesheds and counties are required to report annually to DEQ on the status of providing the opportunity to recycle. The Environmental Quality Commission (EQC) may require mandatory participation if local participation or recovery is not adequate. To date, no community has been required to implement mandatory recycling.

The Department received recycling reports for 1991 from all 38 wastesheds, and has approved 34 of those. Three reports were conditionally approved, with conditions outlined for program improvements. (Although not all principal recyclable materials were being collected in those wastesheds, a number of additional materials were collected. In addition, they were conducting at least the minimum education and promotion required under Oregon Revised Statutes 459A.)

One report was disapproved because it indicated that the county had neither collected materials nor conducted any type of education and promotion during the reporting period. The county has since organized a recycling committee and is preparing a solid waste management plan; at the same time, DEQ is working to devise solutions to local barriers to recycling.

The issue of transportation from collection site to markets, combined with weak market prices, continues to plague a number of Oregon communities, especially those located outside the Willamette Valley corridor. This issue was evident in each of the reports which did not receive full DEQ approval.

2. Service Options

On the next recycling reports, which will cover the year 1992, DEQ will verify service option choices and review status of implementation of the 1991 Recycling Act. These reports are due back in February 1993.

Service option choices made as of a Fall 1992 preliminary survey (80 percent response rate) indicates that the majority of respondents have chosen the first three options, which have been found to be most effective in increasing recovery rates.

RECYCLING SERVICE OPTIONS	cities 4,000-10,000	cities over 10,000
a. Weekly Curbside Collection	74%	96%
b. Expanded Education & Promotion	74%	100%
c. Residential Recycling Containers	63%	92%
d. Multi-family Collection	7%	38%
e. Residential Yard Debris	7%	42%
f. Commercial Collection	37%	38%
g. Expanded Recycling Depots	44%	27%
h. Collection Rate Incentives	7%	27%

It has been pointed out that the service options focus on recycling but give no attention to waste reduction techniques. As a case in point, concern has been expressed that established home composting programs could hurt achievement of a county's 1995 recovery rate, or at the least, put the program at odds with the yard debris service option. One solution would be to utilize per capita disposal as a measure of recovery.

C. The STATE'S ROLE

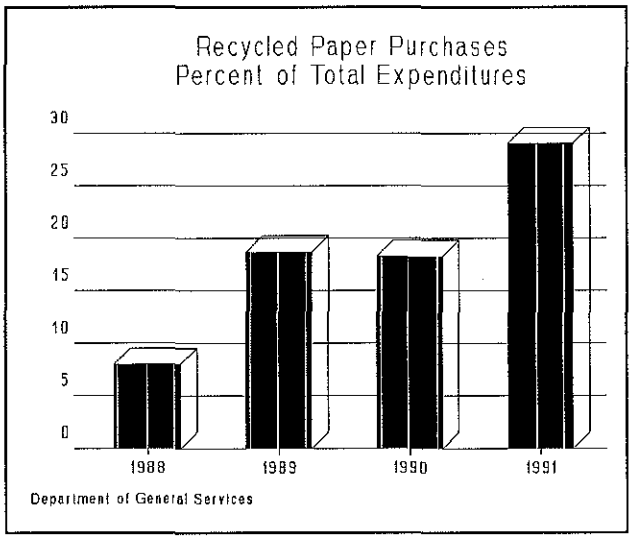
1. Procurement

The 1991 Act expanded procurement and testing of recycled product requirements. In addition, the Act requires bidders on state contracts to specify recycled content of their product. With public sector purchases approaching 20 percent of the nation's Gross National Product, this action can stimulate markets at the same time it sets an example for the private sector to follow.

In 1991, State of Oregon purchases of recycled paper exceeded the 1993 goal of 25 percent set in the 1991 Recycling Act. By dollar volume, these purchases represent a 50 percent increase over 1990 figures in a year when total overall purchases declined by seven percent.

The range of recycled products purchased included not only such items as office copy and FAX paper and supplies, but also fuel oil, retread tires, automotive batteries, remanufactured equipment, and highway signage.

Recycled product purchases totaled only $1 million in the four years prior to passage of the 1991 Recycling Act, compared to $2.5 million in the first year of the Act. Based on contracts in place, total recycled product purchases for 1993 anticipate a 500 percent increase by dollar volume from 1991 figures.



2. Compost and Sewage Sludge Products Testing

As required by the 1991 Act, representatives of the Oregon Departments of Forestry, Parks and Recreation, Transportation and General Services formed a test group ("Team Compost") to identify and evaluate uses for compost and environmentally-safe sewage sludge in public areas and to designate minimum purchasing standards for state agencies. The group requested and received technical input from a number of other state agencies, counties, and city sewage treatment plants.

Materials were applied and tested in four state parks, around state buildings, at freeway interchanges and at plant research nurseries. As a result of the testing, Team Compost developed a document which enables state agencies and producers of these materials to categorize and describe specific products. The document also is designed to be used to make appropriate decisions for application of compost and sewage sludge.

Major recommendations of the compost and sewage sludge study include:

- A technical advisory committee should be established to periodically review new products, new combinations and new application procedures.
- The state should take all reasonable steps to implement programs for prudent and cost-effective compost use.
- The state should significantly limit use of non-biodegradable and hazardous waste in composted materials and specify that all such materials be source-separated and tested prior to acquisition by the state.
- The burden of responsibility and liability should rest on the source generator of the product.

D. DEQ's ROLE

1. Technical Assistance to Local Governments

Local governments are requesting technical assistance because of new federal and state legislative requirements governing solid waste management. The growing public interest in environmental protection also has spurred local governments to take a more active role in community solid waste management. These are in addition to requests for information and assistance in implementing provisions of the 1991 Recycling Act.

In the past year, staff has made over 100 presentations and telephone contacts, and continues to schedule on-site visits. Printed material is developed and distributed as needed. In addition to fact sheets on specific topics and an ongoing bimonthly newsletter, guides and handbooks have been produced on commercial recycling, on commercial waste reduction, and on techniques of education and promotion. In addition, DEQ continues its annual statewide Recycling Awareness Week promotion, preparing a proclamation signed by the Governor and developing other suggestions for local government participation.

2. Statewide Solid Waste Management Plan

As required by the 1991 Recycling Act, DEQ is developing an integrated solid waste management plan to provide a comprehensive framework on which to base future solid waste decisions in Oregon. It will offer concrete, tangible mechanisms for following the state's waste management hierarchy of reduce, reuse, recycle, compost, recover, and landfill. It also will be a guide for making local solid waste management decisions which integrate local, statewide, regional and national concerns, including the impact of federal Resource Conservation Recovery Act landfill requirements (RCRA Subtitle D). Its focus is four-fold:

- source reduction
- material recovery
- residue management
- systems management

To supply input from all geographical sections of the state and to help identify community-specific issues and goals, 13 local workgroups have been organized and meet regularly.

Progress on the solid waste management plan is reviewed periodically by DEQ's Solid Waste Advisory Committee, which has directed staff to develop a plan with "visionary direction." The completed document is scheduled to be adopted by the Environmental Quality Commission in 1994.

3. Waste Composition Study

In 1991, 2,600,000 tons of municipal solid waste was generated and disposed of in Oregon. The Department was directed to study this waste to come up with information on which components of the waste stream could be effectively subject to further resource recovery efforts. A waste composition study also can be utilized to provide information to potential markets on the availability of specific recyclable materials; and can be useful as a baseline to measure the effects of future waste reduction efforts.

When DEQ completes its first statewide waste composition sampling in March 1993, eight hundred samples will have been taken from 11 sites in 10 counties. Samples, which are taken each season of the year at each site, are being hand-sorted into 83 separate waste categories in four substreams. (Substreams include residential, commercial, residential and commercial mixed, and self-haul.)

First-quarter sampling shows a very small amount of newspaper (ranging from .56-5.07 percent) and deposit beverage bottles (ranging from .00-.18 percent) in each of the four substreams. The percentage of yard debris in the residential and self-haul substreams, on the other hand, is much higher than in commercial and mixed substreams. Yard debris from residential sampling ranges from 14.55-19.27 percent; in self-haul samples, it ranges from 12.25-23.08 percent. In commercial samples, it ranges from 4.18-6.70 percent, and in mixed samples, from 7.40-12.66 percent. Sampling shows that food waste is close to twenty percent in each of the four substreams, although it would be expected to be ten percent, based on studies from other states.

By the end of the study, enough samples will have been taken to analyze results not only by material composition, but also by geographical section of the state.

4. Minimum Recycled Content Provisions

The 1991 legislation required DEQ to survey the glass and newsprint industries to assess the current level of recycled materials in their products. Since those industries have established recycling and processing systems, content reporting was required earlier than the 1995 compliance date. This baseline information will help assess the need for additional programs and the relationship between supply and demand.

Glass

Of the 17 domestic glass manufacturers identified by DEQ, 14 manufacturers have responded. Eight disclosed their aggregate recycled content to DEQ. Two companies currently surpass the 35 percent minimum content required in the year 1995, and one surpasses the year 2000 minimum requirement of 50 percent recycled content.

Of the 18 identified foreign manufacturers, seven responded. Only three were able to give the aggregate recycled content of the glass containers and bottles they manufactured in 1992. Two surpass the 50 percent minimum content requirement for the year 2000.

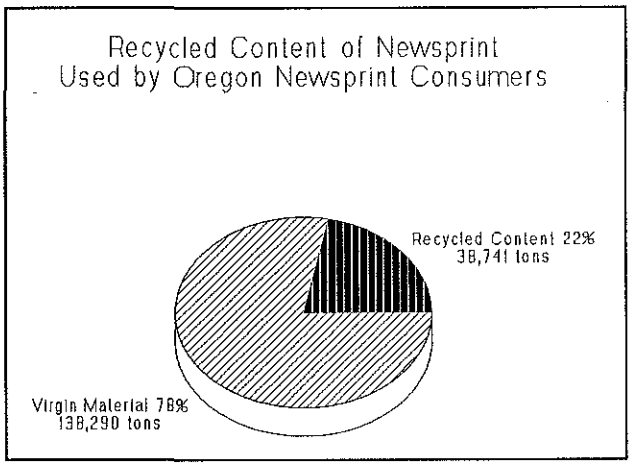
A number of companies responded that they would not disclose their aggregate recycled content unless the information were treated as proprietary. Others responded that they did not sell any glass containers in Oregon. According to the manufacturers, it is nearly impossible to track their products to Oregon. A container is sold to a bottle distributor or product company which then fills or sells it to other distribution locations or to wholesale and retail stores. By the time a container reaches its final market place, it could change hands four or five times.

The Department will continue to encourage manufacturers to establish tracking mechanisms to determine the amount of glass containers ultimately sold in Oregon.

Newsprint

The Department asked 45 newsprint consumers in Oregon to report 1991 recycled newsprint consumption. In addition, ten newsprint manufacturers in the Pacific Northwest were reminded of their responsibility to notify their customers of the amount of recycled content in the newsprint they received. Both groups returned information in a timely manner.

Twenty-four consumers already meet or surpass the 1995 annual individual aggregate post-consumer recycled content goal.



The 1991 aggregate consumption for all Oregon newsprint consumers was 177,031 tons. Of those, 38,741 tons were recycled newsprint fibers, resulting in a 22 percent aggregate recycled-content rate.

Oregon Law, Chapter 385 allows for voluntary agreements with newsprint consumer associations. Both the Oregon Newspaper Publishers Association and Pacific Printing Industries (an association of commercial printers) have signed voluntary agreements with the Oregon Newsprint Recycling Task Force to reach a voluntary goal of 25 percent aggregate recycled content by the year 1995.

FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS

The 1989 Legislature authorized DEQ to award funds to local governments from a 50 cent per ton surcharge on domestic solid waste received at disposal sites (ORS 459A.120 (2)(e)). The solid waste planning and recycling grant program is directed towards small rural communities which are most deficient in solid waste planning and/or recycling program activities. Many of those communities lack the technical capacity and the financial resources to develop the comprehensive solutions to local solid waste issues which are required by new federal requirements governing landfills.

population	counties	% of state population	number of grants awarded	dollars awarded and total %
Less than 10,000	Wheeler, Gilliam, Sherman, Wallowa, Harney, Lake, Morrow, & Grant	1%	6 (25%)	$138,075 (22%)
10,000 - 25,000	Jefferson, Crook, Baker, Hood River, Curry, Tillamook, Wasco, & Union	5%	4 (17%)	$122,096 (20%)
25,000 - 50,000	Malheur, Clatsop, Columbia, Lincoln, & Polk	6%	4 (17%)	$ 96,898 (16%)
50,000 - 100,000	Klamath, Umatilla, Coos, Josephine, Yamhill, Benton, Deschutes, Douglas, & Linn	24%	9 (37%)	$175,881 (29%)
100,000 +	Jackson, Marion, Clackamas, Lane, Washington, & Multnomah	64%	1 (4%)	$ 80,000 (13%)

As of November 1992, 24 grants totalling $612,950 have been awarded. The majority of grant recipients proposed to provide significant financial and in-kind matching resources. State funding provided by the state has accounted for only 53 percent of the total proposed project costs. Virtually all grant recipients are doing what they proposed; most of the 24 grants are not yet completed. Projects range from expanding recycling depots and purchasing additional equipment to preparing solid waste management plans.

LOOKING AHEAD

The Department anticipates its initial report on materials recovery rates in July 1993. This will give each county and wasteshed some measure of its progress towards reaching the interim recovery goals set for 1995.

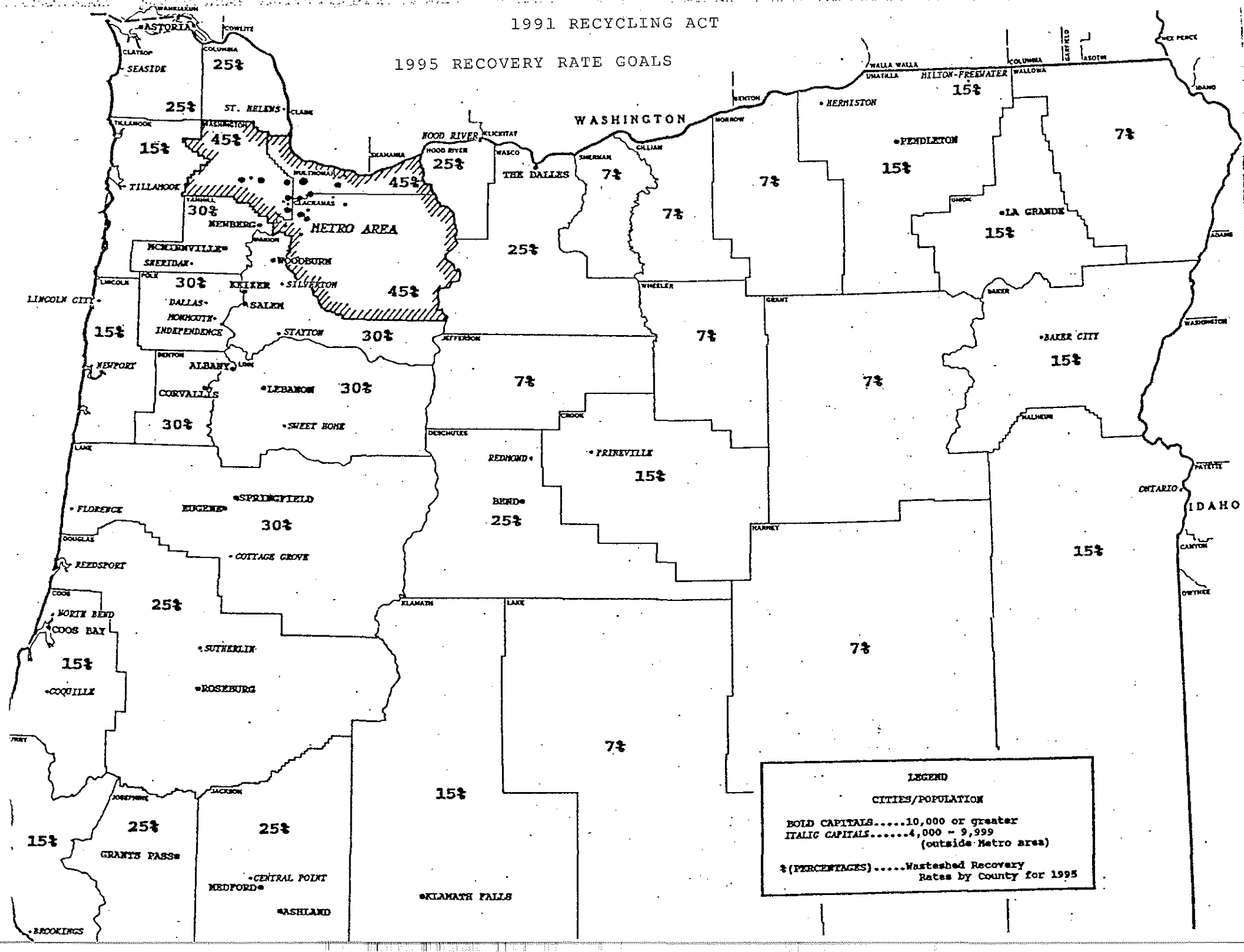
To carry out other provisions of the Act, DEQ staff, city and county officials, private businesses and grassroots organization representatives must continue to work together to meet the interim goals, to strengthen markets and to come up with a shared approach to managing solid waste. The challenge for the remainder of the '90's will be to continue to seek consensus and participation from all representatives of the solid waste field. When this is realized, future solid waste management decisions and direction will be based both on sound, reliable data, and on input from all players.

REPORT QUALIFICATIONS

This report is intended to satisfy the following statutory reporting requirements: ORS 459.055(5), 459.355, 459A.040, 459A.610, 459A.505, and 459A.550. Reports on the plastics exemption program (459A.650), household hazardous waste program (459.411), and battery recycling (459.434) are being submitted to the Oregon Legislature as separate documents.

1991 RECYCLING ACT

1995 RECOVERY RATE GOALS



LEGEND

CITIES/POPULATION

BOLD CAPITALS.....10,000 or greater
ITALIC CAPITALS.....4,000 - 9,999
(outside Metro area)

%(PERCENTAGES).....Wastershed Recovery Rates by County for 1995

Environmental Quality Commission

☐ Rule Adoption Item
☑ Action Item
☐ Information Item

Agenda Item P
December 11, 1992 Meeting

Title:

REPORT TO LEGISLATURE ON HOUSEHOLD HAZARDOUS WASTE PROGRAM

Summary:

The 1991 Oregon Legislature instructed DEQ to research and report back on alternative funding for the State's household hazardous waste (HHW) program. This program is currently funded through a per ton fee on waste disposed at solid waste disposal sites that receive domestic waste. The program has conducted 24 one-day HHW collection events throughout the State and begun a process of educating Oregonians about HHW.

DEQ asked representatives from local government, the retail industry, solid waste management and environmental organizations to serve on a work group to develop funding options. During its deliberations, the work group received input from representatives of the paint, battery and pesticide manufacturing industries.

The work group recommends and DEQ concurs that the State's role in HHW be limited to the provision of technical assistance to local governments and a continued statewide education program. They recommend a phase-out of State-operated one-day collections programs over the next four to six years while shifting assistance to local program development.

The work group also recommends and DEQ concurs that a reasonable funding level for the HHW program would be $1.6 million for the 1993-95 biennium. This includes the continued use of the solid waste disposal fee and a contribution from the "front-end" of a product's life-cycle. This level of funding would allow HHW collection events, provide start-up assistance for local communities to develop their own programs, assist with disposal costs and conduct a statewide education program.

Department Recommendation:

Adopt report.

Susan Violette	Stephanie Hallock	Fred Hansen
Report Author	Division Administrator	Director

State of Oregon

Household Hazardous Waste Program Funding Alternatives

Report to the 1993 Oregon Legislature

Required by ORS 459.418 (Section 13B, Chapter 38, Oregon Laws 1991)

Household Hazardous Waste Funding Alternatives
Report to the 1993 Oregon Legislature

SUMMARY

The 1991 Oregon Legislature instructed the Department of Environmental Quality (DEQ) to research and report back on alternative funding for the State's household hazardous waste (HHW) program. This program is currently funded through a per ton fee on waste disposed at solid waste disposal sites that receive domestic solid waste. In 1991, the legislature approved an increase in the solid waste disposal fee which was used to expand the household hazardous waste collection program and aided in implementing the Oregon Recycling Act (SB 66). There was not, however, clear evidence that this single funding source was the most desirable option for HHW so the legislature prohibited use of this revenue for HHW after December 1993 and instructed DEQ to look at other funding options.

In December of 1991, DEQ asked representatives from local government, the retail industry, solid waste management and environmental organizations to serve on a work group to develop funding options. During its deliberations, the work group also received input from representatives of the paint, battery and pesticide manufacturing industries. The work group's recommendations included a long-term HHW program and two alternative funding options.

DEQ concurs with the recommendations of the household hazardous waste work group. A description of the work group's recommendations and DEQ's comments follow a discussion about the HHW problem and a brief legislative history of the State's HHW program. For additional details about the work group's recommendations and DEQ's current HHW program, please refer to the document titled "Household Hazardous Waste Work Group: Final Report" which is attached.

HOUSEHOLD HAZARDOUS WASTE: A PROBLEM AND AN OPPORTUNITY

Oven cleaners, furniture polish, paint thinners, weed killers, batteries, old paint, antifreeze - these are examples of products found in most households and, once discarded, are called household hazardous waste (HHW). HHW is so named because it contains substances which can be injurious to human health in minute or accumulated quantities. Today, if an Oregonian needs to discard any of these items, the most obvious options are into the wastebasket, down the drain, onto the land, or into surface water. Oregonians want other options:

> "Hundreds turn in boxloads of household hazardous waste"
>
> *Some people brought boxloads of the stuff from far away, and many had stored the items for years, but all were determined to dispose of their household hazardous waste safely at Jackson County's first collection day Saturday. (Medford Mail Tribune, June 7, 1992)*

The least expensive way to reduce problems associated with household hazardous waste is to educate consumers to reduce, reuse or recycle household hazardous products. Oregonians also need a safe way to dispose of the hazardous waste which they cannot avoid creating or which has been stored in their home for years.

LEGISLATIVE HISTORY

The 1989 Oregon Legislature authorized DEQ to operate a three year pilot household hazardous waste collection project outside of the Metropolitan Service District and a state-wide HHW public education program (HB 3515). The program was funded from the tonnage fee on solid waste disposal at a level of $600,000 for the 1989-91 biennium. The legislature also mandated a HHW program be implemented by the Metropolitan Service District which included establishing permanent collection depots in the Portland area and a promotional campaign to encourage citizens to use the permanent depots.

The 1991 Oregon Legislature authorized expansion of the household hazardous waste collection program and increased the funding for the 1991-93 biennium to $1.2 million. The expanded program was funded primarily through an increase in the solid waste disposal fee ($1,050,000) with a contribution ($150,000) from the State's General Fund. The increase in the disposal fee was considered to be an interim source of additional funding through December 31, 1993. Without new legislation, funding for the State's HHW program will return to the pre-1991 level of $600,000 for the 1993-95 biennium.

LONG-TERM PROGRAM DESIGN

Historically and by legislative mandate, management of solid waste is the responsibility of local governments. Due to the demographic differences between communities throughout Oregon, the work group determined that the type of household hazardous waste collection method for each community or region should decided at the local level. Predominately for this reason, the work group recommended the that State's role be limited to: 1) provision of technical and financial assistance to help local governments set up their own household hazardous waste programs and 2) continuation of a statewide education program. The work group also recommended the continuation of State sponsored one-day collection events until most communities around the state have had the opportunity to participate.

DEQ agrees that the State should not get into the solid waste collection business, except to the extent that it would assist with the development of local collection programs. This is currently being accomplished through the limited offering of one-day collection events which help local communities gain experience holding collection events.

The work group suggested that DEQ may want to investigate combining household hazardous waste collection with the collection of hazardous waste from small businesses which are conditionally exempt from hazardous waste regulations. Conditionally exempt generators are businesses which produce less than 220 pounds of hazardous waste per month. The work group also suggested that DEQ investigate the possibility of banning certain types of HHW from landfills

The Department agrees strongly with the suggestion to combine the collection of hazardous waste from both households and small businesses because this would reduce the overall cost of each program. The possibility of banning certain types of HHW from landfills also deserves further research, but would require significant participation from those who would be effected.

PROPOSED PROGRAM REVENUE REQUIREMENTS

The work group recommends and DEQ concurs that a reasonable funding level for the household hazardous waste program would be $1.6 million for the 1993-95 biennium and beyond. This amount would allow DEQ to sponsor one-day collection events, provide start-up assistance for local communities to develop their own long-term collection programs, assist local communities with disposal costs, and conduct a statewide education program about household hazardous waste. The work group's recommendation is to phase out the state operated one-day programs over the next four to six years and to shift that funding into assistance for long-term start-up programs at the local level.

The work group's recommendation increases the funding for the HHW program by $400,000 per biennium. The increase in funding would be used to help local governments set up permanent collection sites and would also be used to significantly expand the State's education program.

LONG-TERM FUNDING RECOMMENDATION

Philosophically, the work group felt that every business or individual who contributes to the creation of household hazardous waste should contribute to the solution. Revenue sources are referred to as "back-end," meaning waste management activities and "front-end," meaning manufacturers and retailers of household hazardous products.

Back-end Funding

The work group recommended continuing to use the solid waste disposal fee, at the current level of approximately $1.1 million, to fund part of the State's household hazardous waste program for the 1993-1995 biennium. The remainder ($500,000) of the HHW program's funding should be contributed from the front-end of a product's life cycle, that is from manufacturers or retailers.

Front-end Funding

The work group recommended the selection of **one of these two** front-end options for implementation beginning in the 1993-95 biennium:

Option 1.

An **annual registration fee paid by retailers** who sell household hazardous products. The fee would be graduated based on either the number of employees, the amount of household hazardous products sold, or the gross sales of a business. Or;

Option 2.

A surcharge to the Fire Marshal's Hazardous Substance Possession Fee paid by retailers.

DEQ agrees with the work group's recommendation, as stated in the final report, that DEQ work with retailers and manufacturers to encourage voluntary activities. These activities could include educating consumers about household hazardous products, and promoting product take-back opportunities.

A manufacturers' fee was also considered to be philosophically desirable by the group; however, problems with the administration of this fee precluded the group from recommending this funding source. One problem with a manufacturers' fee is that collecting a fee from the numerous manufacturers of even more numerous household hazardous products would be very costly, but assessing a fee on only a few of the types of household hazardous products is considered inequitable. Another problem is that most manufacturers of household hazardous products reside outside of the state which would make the enforcement of a manufacturers' fee difficult. Considering the revenue goal is $500,000 per biennium, the cost of administering a manufacturers' fee could exceed the amount of revenue sought.

State of Oregon
Department of Environmental Quality's

Household Hazardous Waste Work Group

Final Report

September 1992

Household Hazardous Waste Work Group

Final Report

This report is dedicated to the memory of Cheryl Kincaid, who died in an airplane crash in June 1992. Cheryl had been Public Works Director of the City of Grants Pass. As a member of the Household Hazardous Waste Work Group, Cheryl's contributions to this document were invaluable.

Disclaimer: This is not a consensus report. Not everyone in the work group agreed with every recommendation, but overall this report adequately represents the work group's deliberations.

For more information contact: Susan Violette, Management Analyst
Department of Environmental Quality
(503) 229-6602

Household Hazardous Waste Work Group
Final Report

TABLE OF CONTENTS

Household Hazardous Waste Work Group
Final Report

I. INTRODUCTION

The 1991 Oregon Legislature instructed the Department of Environmental Quality (DEQ) to research and report back on alternative funding for the State's household hazardous waste (HHW) program established by the 1989 Legislature. This program is currently funded through a per ton fee on waste disposed at municipal solid waste landfills. In 1991, the legislature approved an increase in the solid waste disposal fee which was used to expand the household hazardous waste collection program and aided in implementing the Oregon Recycling Act. There was not, however, clear evidence that this single funding source was the most desirable option for HHW and the legislature chose to approve the added revenue only through December 1993. The purpose of this report is to identify alternative funding options for long-term funding of the State's household hazardous waste program.

In December of 1991, DEQ asked representatives from local government, the retail industry, solid waste management and environmental organizations to serve on a work group to develop funding options. The membership of the HHW work group is listed in Attachment A. During its deliberations, the work group also received input from representatives of the paint, battery and pesticide manufacturing industries.

While the work group's primary mission was to arrive at funding recommendations, the work group felt it could not make those recommendations without considering the components of the State's household hazardous waste program. For this reason, the work group recommended a long-term program design prior to reviewing funding alternatives.

With regard to funding, the work group sought to develop a rational and equitable recommendation to fund a long-term household hazardous waste program. The work group chose not to limit itself to one funding recommendation, but instead selected funding options. The recommendations in this report are meant to provide direction for further research into funding sources. The research should be concluded prior to the 1993-95 legislative session.

II. HOUSEHOLD HAZARDOUS WASTE: A PROBLEM AND AN OPPORTUNITY

Oven cleaners, furniture polish, paint thinners, weed killers, batteries, old paint, antifreeze - these are examples of products found in most households which, once discarded, are called household hazardous waste (HHW). HHW is so named because it contains substances which can be injurious to human health in minute or accumulated quantities. Today, if an Oregonian needs to discard any of these items, the most obvious options are into the wastebasket, down the drain, onto the ground or into a stream. Oregonians want other options:

> *HUNDREDS TURN IN BOXLOADS OF HOUSEHOLD HAZARDOUS WASTE*
>
> *Some people brought boxloads of the stuff from far away, and many had stored the items for years, but all were determined to dispose of their household hazardous waste safely at Jackson County's first collection day Saturday. (Medford Mail Tribune, June 7, 1992)*

Although the exact magnitude of the state's household hazardous waste problem is not yet known, Oregon is not alone in its concern. In 1991, all 50 states had some type of HHW collection program which, nationwide, included 96 permanent collection facilities. Meanwhile, the U.S. Environmental Protection Agency (EPA) may soon require HHW education and collection by wastewater treatment plants out of concern about nonindustrial sources of toxics and other harmful pollutants.

A. THE PROBLEM

Household hazardous waste causes environmental damage and presents safety hazards to both the public and sanitary workers. Financial liability for environmental damage under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), EPA's Superfund program, is a growing concern for municipal solid waste landfills, where most HHW goes. Approximately 22 percent of the sites placed on the National Priority List for hazardous waste site cleanup are closed municipal landfills.

1. Environmental Damage

Household hazardous waste contains the same chemicals that, if discarded by commercial establishments, would be regulated as a hazardous waste under the Resource Conservation and Recovery Act. Even though hazardous chemicals from household sources are not regulated, they have been linked to:

- Contaminated landfill leachate which can be carried to groundwater
- Hazardous air emissions from landfills
- Heavy metal accumulations in domestic wastewaster, such as cadmium, lead, mercury, nickel
- Classification of ash from municipal incinerators as hazardous waste

The detrimental effects of household hazardous waste are cumulative from many small sources, although in some cases only a small amount of hazardous waste can cause severe environmental damage. For example, it only takes one pint of solvent to cause measurable fish kills. A pint jar of mercury which was taken to a Seattle HHW collection event could have contaminated Seattle's largest (125 million-gallons-per-day) sewage treatment plant if it had been poured down the drain. The contamination of Milwaukie, Oregon's drinking water supply might have been caused by as little as three gallons of trichloroethylene (TCE), a substance which may be found in some household solvents.

The long-term effects of disposing household hazardous waste is not yet clear. What is known is that an estimated 27 million pounds of HHW is disposed annually in Oregon. And, an additional 26 million to 70 million pounds may be stored in homes and garages. The Metropolitan Service District (Metro) has collected 361,010 pounds of HHW during the first six months of operation of its permanent collection facility, and this comes from less than 2% of the households Metro serves.

2. Safety

Many chemical products found in homes can pose health or safety hazards. The health and safety concerns surrounding household hazardous waste are somewhat easier to document than the long-term environmental damage, since spills and accidents frequently make front-page news.

FUMES TRIGGER SEARCH

A small amount of lawn-mower gasoline dumped into a street drain wound up drawing eight fire rigs and 26 fire department personnel including a hazardous materials squad...(Oregonian 12-9-88)

And, from newspapers around the country:

BUG SPRAY BACKFIRES, BLOWS OUT THE WINDOWS
WOMAN DIES IN HOME ACCIDENT [involving oven cleaner]
TOILET BLOWS ITS TANK DUE TO CLEAN THINKING

The above examples pertain to the general public, but service providers are also at risk. Refuse collectors have been injured from unknowingly collecting household trash containing toxic chemicals. During a twelve month period, forty-two garbage collectors in Los Angeles suffered injuries requiring hospital treatment due to chemical exposure from acids and toxic fumes. Fire fighters have been injured when responding to residential fires involving storage of flammables, such as paint products or pesticides.

3. Municipal Liability

Anyone who has worked recently in solid waste management is prepared for something new each day. However, nothing is scarier than confronting Superfund liability for refuse collection. This new issue threatens every refuse hauler and local government in the country with millions in superfund liability. (Trumbull and Coleman,"Superfund Liability for Landfills," The Trumbull Law Firm).

States, cities and counties are being held liable for Superfund cleanup of hazardous waste at landfills. Hazardous waste from households is no less of an environmental threat than the same hazardous waste from industries. Municipalities are combating their concern over Superfund liability both in the courts and by taking preventative measures through providing household hazardous waste collection programs.

B. THE OPPORTUNITY FOR POLLUTION PREVENTION

The least expensive way to reduce problems associated with household hazardous waste is to educate consumers to reduce, reuse or recycle household hazardous products. Oregonians also need a safe way to dispose of the hazardous waste which they cannot avoid creating or which has been stored in their home for years.

III. LEGISLATIVE HISTORY

The 1989 Oregon Legislature authorized DEQ to operate a three year pilot household hazardous waste collection project outside of the Metropolitan Service District and a state-wide HHW public education program. The program was funded from the tonnage fee on solid waste disposal at a level of $600,000 for the 1989-91 biennium. The legislature also mandated a HHW program be implemented by the Metropolitan Service District which included establishing permanent collection depots in the Portland area and a promotional campaign to encourage citizens to use the permanent depots.

The 1991 Oregon Legislature authorized expansion of the household hazardous waste collection program to a state-wide one. Funding for the 1991-93 biennium was increased to $1.2 million. The expanded program was funded primarily through an increase in the solid waste disposal fee with a contribution ($150,000) from the State's General Fund. The increase in the disposal fee was considered to be an interim source of additional funding through December 31, 1993.

IV. CURRENT HOUSEHOLD HAZARDOUS WASTE PROGRAMS IN OREGON

The State's household hazardous waste program began in October 1990. Since that time DEQ has sponsored 24 one-day collection events throughout the State and has begun the process of educating Oregonians about HHW. By the end of the 1991-93 biennium, DEQ expects to sponsor 10 more collection events.

At the local level, Metro has constructed a permanent HHW collection facility in Oregon City and construction is scheduled for a second permanent facility in Northwest Portland which is expected to be completed by early 1993. Metro also provides education on substitutes for household hazardous products and responds to HHW questions through that agency's information hotline.

In addition, Lane County began local HHW collection in 1986 with annual (now biannual) HHW roundups and Corvallis Disposal Company is developing a mobile collection facility, after having participated in a State sponsored one-day collection event.

A. STATE SPONSORED COLLECTION EVENTS

In conjunction with local governments and with help from many local volunteers, DEQ has sponsored 24 collection events, attended by over 6,000 Oregonians who brought 582,000 pounds of waste. Ten more events are scheduled for the remainder of the 1991-93 biennium. These events have proven to be very popular:

> *HAZARDOUS WASTE COLLECTION DRAWS 207,574 POUNDS*
>
> *Oregonians in communities ranging from La Grande to Coos Bay have taken advantage of a fledgling program organized by the Department of Environmental Quality to properly dispose of their household hazardous wastes. (Lebanon Express, Dec. 25, 1991)*
>
> *BARRELS OF TOXINS TURNED IN*
>
> *There were about 450 cars filled with 8,568 gallons of smelly household toxins that rolled into the Grants Pass maintenance yard...(Grants Pass Daily Courier, June 8, 1992)*
>
> *HAZARDOUS WASTE GOES OUT, BUT NOT IN THE TRASH*
>
> *Ashland's dukes of hazardous waste came out in cars, on bicycles and even dragging small red wagons...(Ashland Daily Tidings, June 11, 1992)*

Locations for collection events were determined through a competitive grant process open to local governments. Decisions were made based on specific criteria which included:

- Communities which had not held HHW events before;
- Availability of volunteers and a safe collection site;
- Communities which demonstrated the ability to publicize the collection and educate the public about safer alternatives;
- Proposals designed to decrease the cost per household and to collect more waste, through a paint exchange, satellite collections or an innovative approach.

To date DEQ has received 54 applications to hold collection events with an average cost of $38,000 per event. The high cost of each event is due to the cost of safely collecting and disposing of hazardous waste. Detailed information about participation and expenditures may be found in Attachment C.

B. EDUCATION

DEQ's household hazardous waste education program has produced 14 brochures. One describes what HHW is, and the other 13 provide detailed information about alternatives to commonly used hazardous products. In July 1992, nearly 4,000 brochures were distributed, primarily to organizations which then distribute them to the public. Work in progress includes the production of an educational video and school curriculum for household hazardous waste.

C. TECHNICAL ASSISTANCE

Organizing a safe and successful household hazardous waste collection event requires technical expertise which many local governments do not have and promotion which takes staff time to develop. To help local governments set up their own collection events, DEQ has developed a HHW collection event handbook. A self-standing display is also available. Being developed is a media packet for local governments, which includes newspaper ads, press releases, and a recorded radio public service announcement .

DEQ receives approximately 150 calls per month regarding household hazardous waste, generally from callers outside Metro's service area. Staff assists citizens in finding the most environmentally safe method for disposal. The calls the State receives are generally outside of Metro's service area. The Metro Recycling Information Hotline reported 5,500 requests in 1990 and 8,500 requests in 1991 for information about HHW.

V. PROPOSED LONG-TERM HOUSEHOLD HAZARDOUS WASTE PROGRAM

Historically and by legislative mandate, management of solid waste is the responsibility of local governments. The work group, therefore, recommends the State's role should be: 1) to provide technical and financial assistance to help local governments set up their own household hazardous waste programs and 2) to continue the development and implementation of a statewide education program.

To avoid duplication of efforts and capitalize on economies of scale, the State's household hazardous waste program must work closely with local governments and in conjunction with the Metropolitan Service District.

A. PROGRAM COMPONENTS

The work group identified four components of a successful household hazardous waste program for Oregon. The State would continue its role in the **coordination of one-day collection events** until more communities throughout the state have had an opportunity to participate. To encourage the development of local household hazardous waste collection programs, the State's program would provide **financial assistance in the form of competitive grants** to communities which are establishing long-term collection programs. The State's ongoing role would include a **public education program** to reduce the generation of household hazardous waste and a **technical assistance program** for communities sponsoring household hazardous waste collection programs.

1. One-day Collection Events

One-day collection events similar to those held currently would be continued. Special consideration would be given to those communities which have not yet participated in the State's program. Each year the amount of money expended on collection events would be reduced, with complete phaseout in four to six years. It is anticipated that many communities will continue the events with their own funding.

2. Competitive Grant Program

Grants would be used to guide local collection programs toward regional collection systems with long-term viability. Types of projects which would be eligible for financial assistance include but are not limited to:

- permanent collection facilities
- mobile collection units
- locally sponsored one-day collection events
- innovative HHW management
- assistance with HHW disposal costs

This program would be phased in as the State-sponsored one-day collection events are phased out.

3. Education

The State would continue its participation in public education about household hazardous products with the goal of reducing the generation of household hazardous waste in Oregon. Numerous types of education alternatives were discussed by the work group. The specific design of the education program will be determined based on additional research done by DEQ staff on the cost-effectiveness of the many types of HHW education methods available. The work group recommends that the State encourage voluntary shelf labeling by retailers to identify household hazardous products. Labels would be generated by the state, along with technical assistance regarding their use. Education activities could include:

- Brochures
- Toll free information calls to DEQ
- Voluntary Retail Shelf Labeling
- Displays (for fairs, etc.)
- School course curriculum
- Radio and T.V. Ads
- Newspaper Ads
- Video

4. Technical Assistance

Ongoing household hazardous waste collection services would be provided at the local level; however, local governments and others involved with solid waste have expressed a need for continued technical guidance to be provided by the State.

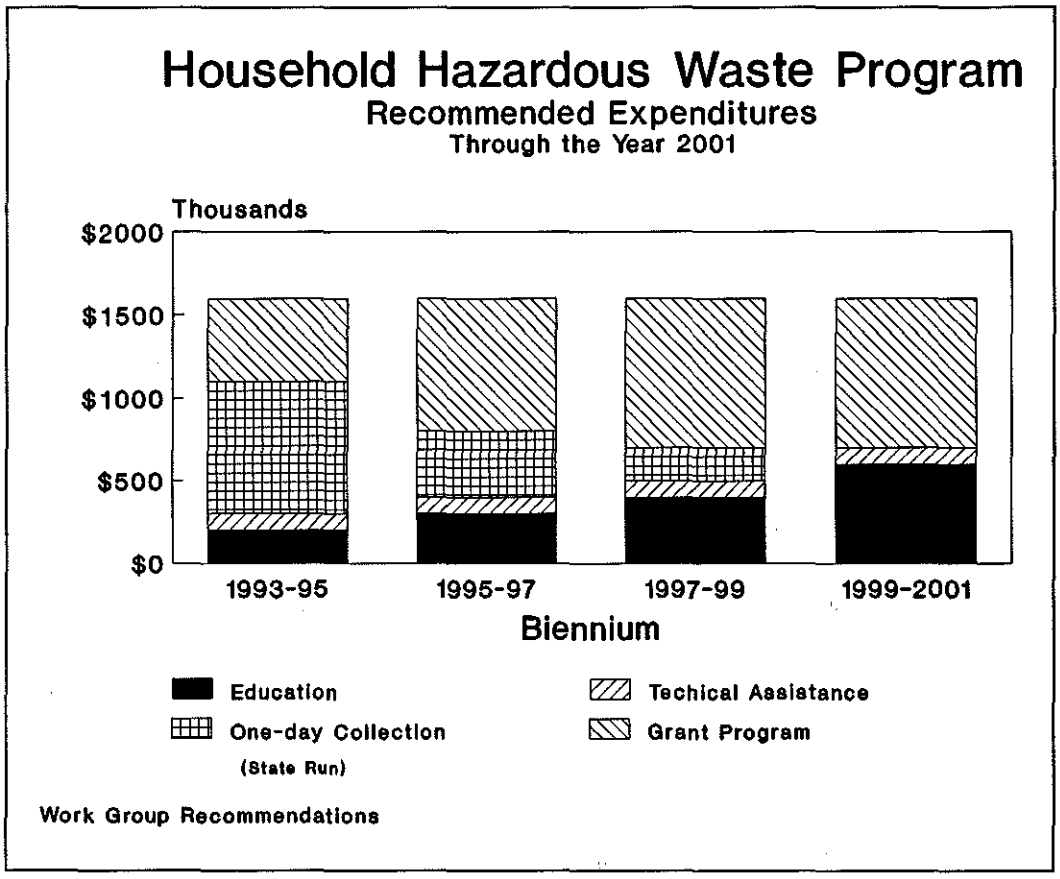
Examples of the types of State technical assistance which would be provided:

- Further developing "how-to" guide and providing one-on-one assistance for local HHW collection programs
- Providing promotional material for HHW collection events
- Developing list of target products or target wastes

VI. PROPOSED PROGRAM REVENUE REQUIREMENTS

The work group recommends funding the household hazardous waste program at $1.6 million for the 1993-95 biennium and beyond. The work group agreed to this amount with the caveat that it may not be enough from the point of view of local governments. However, given the State's current fiscal constraints, $1.6 million was considered to be reasonable.

This amount would allow DEQ to sponsor one-day collection events, provide start-up assistance for local communities to develop their own long-term collection programs, assist local communities with disposal costs, and conduct a statewide education program about household hazardous waste. The work group's recommendation is to phase out the one-day programs over the next four to six years and to shift that funding into assistance for long-term start-up programs at the local level.



VII. LONG-TERM FUNDING RECOMMENDATIONS

Philosophically, the work group felt that every business or individual who contributes to the creation of household hazardous waste should contribute to the solution. Revenue sources are referred to as "front-end" meaning manufacturers and retailers of household hazardous products and "back-end" meaning waste management industries.

A. FUNDING RECOMMENDATION

Back-end Funding

The work group recommends continuing to use the solid waste disposal fee, at current levels, to fund part of the State's household hazardous waste program for the 1993-1995 biennium. Continued funding through the disposal fee, however, should be dependent upon contributions from the front-end of a product's life cycle, that is from manufacturers or retailers.

Front-end Funding

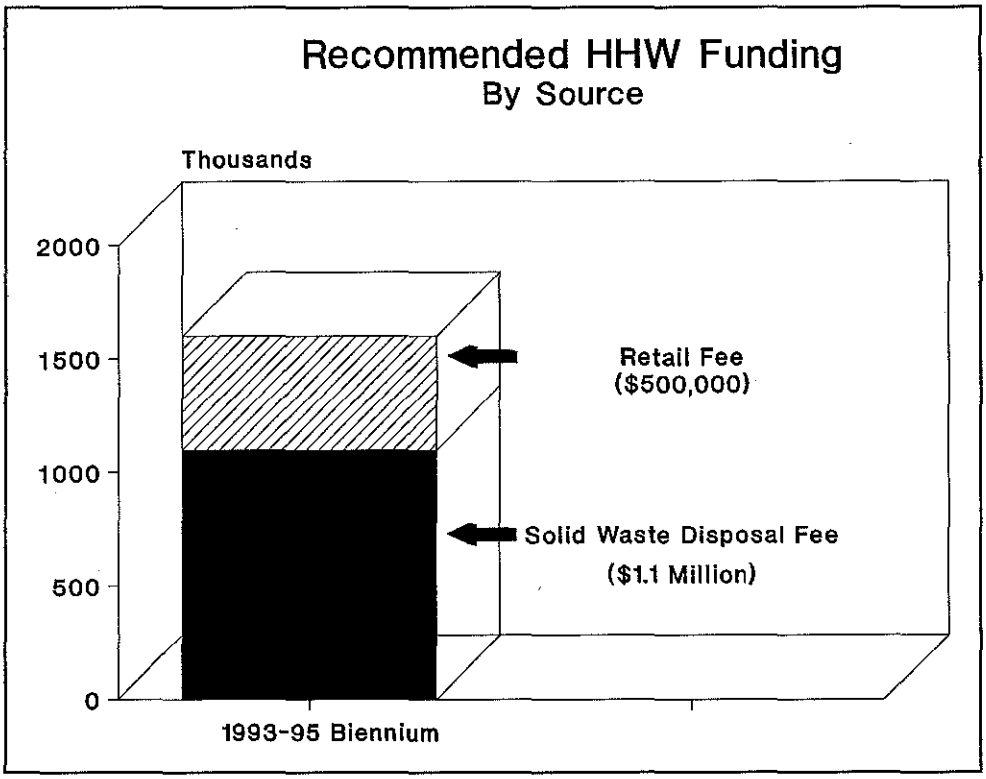
The work group chose not to limit itself to one front-end funding recommendation, but instead selected two funding alternatives. The work group recommends one of these two options be implemented beginning in the 1993-95 biennium:

1. An **annual registration fee** paid by retailers who sell household hazardous products. The fee would be graduated based on either the number of employees, the amount of household hazardous products sold, or the gross sales of a business.

2. A surcharge to the **Fire Marshal's Hazardous Substance Possession Fee** paid by retailers.

The work group also recommends that DEQ work with retailers and manufacturers to encourage voluntary activities, such as educating consumers about household hazardous products, and promoting product take-back opportunities. These activities should not be in lieu of financial contributions from the front-end.

A manufacturers fee was considered to be philosophically desirable by the group, however, problems with the administration of this fee precluded the group from recommending this funding source. Further discussion of the problems associated with a manufacturers fee are detailed in Section VII. (C).



B. FUNDING SELECTION CRITERIA

The HHW work group looked at 17 funding options (Attachment C) and applied selection criteria to each option. The criteria used informally by the work group are listed below. Those with an asterisk were given the most weight.

- *Ease and cost of administration* *
- *Fee structure is equitable* *
- *Politically feasible (broad based support)* *
- *Generates enough funding*
- *Connection between fee and program*
- *Reduces use of household hazardous products*

- *Those who benefit pay*
  (users, manufacturers, waste management industry)
- *Long-term stability of funding source*
- *Encourages proper disposal*

The group felt the first criteria, ease and cost of administration, was particularly important since the $1.6 million goal is a relatively small amount of money. The cost of administering a fee should not approach the amount which is made available for the household hazardous waste program.

The ideal fee would act to reduce the amount of household hazardous products purchased. One way to discourage the use of certain products is to substantially raise the price of the products either through a manufacturers fee or a fee added at the time of purchase; however, neither of those methods ranked high in ease and cost of administration or political feasibility. For this reason the work group proposes raising revenue to fund an education program to reduce the generation of household hazardous waste, rather than charging a fee which would significantly raise the price of household hazardous products.

C. FEE ALTERNATIVES

The work group narrowed 17 prospective funding alternatives to five. These five were considered to be the most philosophically desirable and the most feasible. Below is a listing of the 17 alternatives which were considered initially. For a complete listing of the advantages and disadvantages of all 17 funding alternatives see Attachment C.

Seventeen Original Funding Alternatives

Collection Participant Fee
Hazardous Substance Fee
In-kind Service From Local Gov't
Manufacturers Fee
Private Company Donations
Retailer Fee
Solid Waste Surcharge on Garbage
Wholesaler Fee
Fee on Advertising of HH Products
Hazardous Waste (HW) Disposal Fee
Local Government Matching
Oregon Out-of-State Disposal Surcharge
Regional HW Disposal Contribution
Solid Waste Disposal Fee
Wastewaster Treatment Plant Fee

Top Five Alternatives

An explanation and the advantages and disadvantages of the top five alternatives chosen by the work group follow:

1. Solid Waste Disposal Fee:

Continuation of this currently used program funding method was accepted as part of the work group's funding recommendation.

Fee Description

The state-wide solid waste disposal fee currently supports several Department activities related to solid waste management and recycling. It is assessed on the amount of tonnage of solid waste disposed at municipal solid waste landfills. In the 1991-93 biennium, this fee is providing about $1.1 million (the equivalent of about $0.20 per ton) for State household hazardous waste activities.

Advantages

The solid waste disposal fee is broad-based in that it is collected indirectly from all Oregon residents who pay to dispose of waste in landfills either as self-haulers or through payment to a collection service. At current levels, this fee does not impose severe hardship on any one group.

The statewide solid waste disposal fee is already in place with a smoothly operating collection system.

Local government and solid waste management representatives were willing to recommend continued funding of the State's household hazardous waste program at the current levels through this fee with only one caveat: to recognize a balance in responsibility for proper disposal of HHW. Additional revenue for the program must come from a "front-end" source as well (manufacturers, retailers).

Disadvantages

Using the state-wide solid waste disposal fee for the household hazardous waste program will lose support if a front-end contribution is not added. Local governments and landfill operators prefer that any fees on local waste disposal be used at the local, not state, level. Solid waste disposal fees are customarily used by local government and landfill operators for activities such as meeting new federal standards for landfills and financing the sitecleanup of closures. With other pressures on solid waste disposal fees, there may not be much support for raising the statewide solid waste disposal fee to support a continuing HHW program.

2. Retail Annual Registration Fee

This option was accepted as part of the work group's funding recommendation.

Fee Description

The fee would involve annual registration by retailers who sell household hazardous products. The fee could be graduated with small retailers paying from $25 to $50 and large retailers paying from $200 to $300 annually.

Advantages

Comments in favor of this option include: 1) the cost could eventually be passed on to the consumer; 2) there are enough retailers which sell household hazardous products so that the fee could be spread out to many, keeping the burden on any one business relatively small; 3) the fee is related to the problem; 4) the retailers would be "buying the right" to sell household hazardous products; 5) the annual fee is small compared to the cost of disposal; and 6) the fee would have a relatively low administrative cost.

Disadvantages

The main disadvantage of an annual registration fee is the potential impact on retailers. Oregon retailers currently pay numerous fees for many State programs. Addition of one more, albeit modest, State charge will meet resistance because of the retailer's existing burden. Some other concerns with this fee include: 1) if the fee applies to each retail outlet, retail chains would pay several times; 2) the fee would initially come out of retailers profit margins; and, 3) this fee is too small to have an effect on the amount of household hazardous products sold.

3. Surcharge on the Fire Marshal's Hazardous Substance Possession Fee

This option was accepted as part of the work group's funding recommendation.

Fee Description

Hazardous Substance Possession Fees were adopted by the 1989 Legislature to fund the Fire Marshal's implementation of the Community Right-to-Know Act, DEQ's implementation of the Toxic Use Reduction Program, and part of the State's Superfund program. These fees are assessed based upon the single highest quantity range of a hazardous substance reported to be possessed (or stored) by Oregon employers. Each fee currently ranges from a low of zero for less than 100 pounds of hazardous substances to a maximum of $2,000 for more than 50,000,000 pounds.

Advantages

The Fire Marshal's Hazardous Substance Possession Fee is already in place, therefore the administrative burden, both on the State and on retailers would be minimized. Another advantage of this collection method is the possibility of designing the fee to increase in relation to the amount of hazardous products stored, thus increasing the equity of the fee among retailers. Equity would be increase because there would be a likely relationship between the amount of hazardous products stored to the amount sold.

Disadvantages

The surcharge on the Hazardous Substance Fee would place an additional collection burden on the Fire Marshal's Office. To raise enough revenue, retailers who are not yet paying the Fire Marshal's fee may be required to report to the Fire Marshal and pay the surcharge.

4. Solid Waste Surcharge on Garbage Collection Service and Self-Haulers

This option was rejected by the work group.

Fee Description

Garbage haulers and landfill operators would assess and collect a per household surcharge as an add-on to the monthly garbage service bill or to the disposal fee at landfills.

Advantages

A surcharge could provide education to garbage collection service customers about household hazardous waste through charges on their bills. It would be easy to administer and collection costs would be low because there are just over one-hundred garbage haulers in the state. The State of Washington uses this fee to fund much of its solid waste program. This fee would spread the cost to many individuals.

Disadvantages

This is a back-end fee which would be paid by essentially the same groups as the solid waste disposal fee. If this option was selected, it would mean that DEQ would create a new collection mechanism. The additional burden of administering this fee would fall both on DEQ and garbage haulers. Both would need to set up new accounting and collection procedures to process this fee.

5. Product Registration Fees on Manufacturers

This option was rejected by the work group.

Fee Description

This fee would be modeled after the Oregon Department of Agriculture's pesticide product registration fee. Each product to be sold in the state would require registration by the manufacturer. A fee would be assessed based on the number of products registered per manufacturer.

Due to the difficulty of administering a fee on all manufacturers of household hazardous products, originally the work group focused on three product types: pesticides, paint and batteries. Paint and pesticides are the two product types which are received at HHW collection events in the greatest quantities, and batteries may be one of the more toxic types of household hazardous waste.

Advantages

Assessing a fee on manufacturers fits the criterion that those who play a part in the creation of HHW should contribute to funding the cost of disposal. The fee would be collected from manufacturers in other states which sell their products in Oregon, as well as Oregon manufacturers. The current Department of Agriculture pesticide fee could be increased to provide HHW funding without significant new collection costs.

Disadvantages

Assessing a fee on only a few of the numerous types of household hazardous products is considered inequitable, but assessing a fee on all such products would be very difficult. For example, a partial listing of manufacturers of automotive, pesticide and building products included 86 different manufacturers.

The cost of administration for products, other than pesticides, could be very high since it would be difficult to track the numerous products which would need to be registered and to locate their manufacturers. (It was relatively easy for the State Department of Agriculture to establish its fee program, because federal law requires pesticide manufacturers to register their products).

Attachment A

Household Hazardous Waste Work Group
December 1991 through July 1992

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Corvallis Disposal

Ron Nagy
Metropolitan Service District

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Bruce Lumper
The Dalles

Kimberly McAlear
Payless Drug Stores

Jack Munro
Association of Oregon Food Industries

Ken Sandusky
Waste Management Division, Lane County

Quincy Sugarman
OSPIRG

Jack Wolfin
Burlington Environmental

Household Hazardous Waste Collection Event Data
Oregon Department of Environmental Quality

1991 Collection Events

Location	Partici-pants	Pounds Of Waste	Total Cost	Average Waste per Person (lbs)	Average Cost Per Pound
Corvallis	897	67,717	$96,583	75	$1.43
Albany	748	52,295	$49,858	70	$0.95
The Dalles	266	21,350	$46,329	80	$2.17
Roseburg	216	17,640	$38,233	82	$2.17
Newport	211	16,246	$38,850	77	$2.39
Tillamook	175	14,185	$29,450	81	$2.08
Coos Bay	101	9,447	$32,508	94	$3.44
Pacific City	97	8,727	$11,000	90	$1.26
Manzanita	97	2,604	$11,630	27	$4.47
La Grande	90	7,435	$26,712	83	$3.59
Sweet Home	52	4,156	$16,383	80	$3.94
TOTALS	2950	221,802	$397,536	75	$1.79

Average Cost Per Event - $36,140

1992 Collection Events (Spring only)

Location	Partici-pants	Pounds Of Waste	Total Cost	Average Waste per Person (lbs)	Average Cost Per Pound
Astoria	582	57,154	$62,064	98	$1.09
Ashland	545	34,377	$55,909	63	$1.63
Grants Pass	490	42,239	$73,500	86	$1.74
Medford	435	40,955	$66,559	94	$1.63
McMinnville	335	40,035	$55,819	120	$1.39
The Dalles	290	32,705	$40,807	113	$1.25
Newberg	236	30,095	$40,921	128	$1.36
Seaside	215	29,108	$36,386	135	$1.25
Hood River	215	27,318	$37,046	127	$1.36
Cannon Beach	153	9,734	$26,310	64	$2.70
Cascade Locks	40	4,460	$10,288	112	$2.31
Moro	34	9,037	$10,788	266	$1.19
Maupin	20	3,100	$7,658	155	$2.47
TOTALS	3,590	360,317	$524,055	100	$1.45

Average Cost Per Event - $40,312

FUNDING OPTIONS FOR HOUSEHOLD HAZARDOUS WASTE

	ADVANTAGES FOR OREGON	DISADVANTAGES FOR OREGON
HHW-Solid Waste Disposal Fee (1) Calif., Iowa, Illinois, Kansas, Mississippi, New Jersey, Delaware	1). Already supports Oregon's HHW program 2). Broad based fee that is directly related to HHW, which is a "solid waste" under Oregon and federal law.	1). Sewage treatment facilities benefit, but only landfills are paying 2). Local governments prefer a "front-end" funding source, not a disposal fee, for the state program
Hazardous Waste Disposal Fee	1). Could encourage combining HHW and CEG collections 2). Already in place in Oregon and funding CEG technical assistance, therefore it is easy to collect	1). So far in Oregon, solid waste fees have paid for solid waste programs and HW fees have paid for HW programs 2). DEQ is committed to not proposing to increase this fee until at least 1995
Sewage Fee (on waste water or DEQ permit)	1). The two main disposal methods for HHW are landfills and sanitary sewers. Now only landfills pay.	1). Not everyone is on a sanitary sewer line 2). Sewage treatment permit fees are already significantly increasing
Solid Waste Surcharge on Garbage Bills (i.e., garbage haulers gross receipts fee) (1) Minnesota	1). Citizens "see" the surcharge they are paying 2). A one or two percent surcharge raises significant revenue	1). Not everyone has garbage service, self-haulers would need to be charged at the landfill
Hazardous Substance Fee (i.e., an addition to the Fire Marshal's fee) (1) Washington, Oregon	1). Already established	1). Already under pressure for being excessive 2). This is generally a fee on industries therefore, there is not a direct tie-in

(1) List of state governments which are using this type of funding source for HHW programs.

	ADVANTAGES	DISADVANTAGES
Retail Fee (1) Iowa, Ariz	1). A source of the problem is paying for the solution 2). Could provide disincentive for purchasing hazardous household products	1). The product fee could be difficult to administer and collect 2). Affects thousands of retail outlets
Wholesale Fee	1). A source of the problem is paying for the solution 2). Collection at the wholesale level would be more politically acceptable	1). Costs will be passed on to the consumer without connecting the cost to the hazardous properties of product 2). Difficult to administer (wholesalers can both manufacturers and retailers)
Manufacturer Fee (1) Florida, Oregon (pesticides)	1). A source of the problem is paying for the solution 2). Most manufacturers are out-of-state, therefore, fewer OR businesses affected 3). The Dept. of Ag. is already charging this type of fee for pesticides	1). Dept. of Agriculture could consider this its territory for pesticides 2). Will be difficult to locate manufacturers for some products 3). Any petroleum product fees may need to go into the Oregon Hwy. Trust Fund
Charging Participants at Collection Event or Depot	1). Easy to collect 2). Makes people take responsibility for the waste they generate	1). May dissuade participation 2). Can not recover full cost
In-kind Service From Local Government (1) Oregon, Minnesota	1). Makes local gov't participate 2). Improves the quality of the program	1). Can not cover full cost 2). May discourage some local governments

(1) List of state governments which are using this type of funding source for HHW programs.

	ADVANTAGES	DISADVANTAGES
Local Government Matching (1) Alaska, Calif., Conn., Iowa, Mississippi, Missouri	1). Spreads out cost of and responsibility of program	1). May dissuade many small governments from participating
Private Company Donations or In-kind Services (1) Calif.	1). Not directly from taxpayers pocket 2). Both program and companies benefit 3). Useful for pilot programs	1). Unlikely to get much money 2). Not a stable source of funding 3). Public could question motive of some companies
Oregon Out-of-state Disposal Surcharge (pending court decision)	1). May be politically attractive in Oregon 2). Money new, not already "allocated"	1). Out-of-state payers would not benefit from in-state HHW program
Regional Hazardous Waste Disposal Contribution (Existing fee offset for HHW disposal costs)	1). Easy to administer	1). Not all wastes should be disposed 2). Site may not take all wastes that need disposal 3). May not be legal or politically acceptable
Fee on Advertising of Household Hazardous Products	1). Advertising is an attractive target	1). Difficult to administer and collect

(1) List of state governments which are using this type of funding source for HHW programs.

Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☑ Information Item

Agenda Item Q
December 11, 1992 Meeting

Title:

REPORT TO LEGISLATURE ON IMPLEMENTATION OF HOUSEHOLD BATTERY BILL

Summary:

The 1991 Oregon Legislature required regulation of the content, labeling and design of two types of consumer batteries, alkaline manganese and rechargeable. These batteries represent the largest single contribution of two potentially toxic heavy metals to the municipal solid wastestream: approximately 88% of the total mercury and 54% of the total cadmium.

Oregon's legislation banned the sale of alkaline manganese batteries unless manufacturers certified to DEQ that the mercury content is below a maximum permissible level. All eight U.S. manufacturers of these batteries have certified to DEQ that their product will contain less mercury than the maximum standard by January 1, 1992.

For cadmium and lead, the legislation banned the sale of rechargeable battery products after July 1, 1993, unless the battery or battery packs containing rechargeable batteries were labeled with a standard recycling label and redesigned to be easily removable by consumers for recycling purposes. The rechargeable battery industry is moving to meet the requirements as required by Oregon statute.

The report offers several suggestions for future action including a ban on mercuric oxide batteries and the establishment of a permanent battery collection system for Oregon.

Department Recommendation:

Adopt report.

Report Author	Division Administrator	Director
Maggie Conley	Stephanie Hallock	Fred Hansen

REPORT TO OREGON LEGISLATURE
January, 1993

This report is intended to satisfy the statutory reporting requirement under ORS 459.439--that the Department of Environmental Quality (DEQ) shall evaluate and report to the Legislative Assembly on or before January 1, 1993, on the implementation of the 1991 Consumer Battery Regulation Legislation (ORS 459.434 to ORS 459.439).

This legislation represents the first effort Oregon has made to regulate the types of household batteries sold in the state and, thereby control pollutants from these batteries. Batteries containing mercury, cadmium, and lead (with the exception of lead acid vehicle batteries) are currently allowed to be disposed of in solid waste landfills. They contribute a substantial amount of heavy metals which go to landfills.

I. PURPOSE OF 1991 BATTERY LEGISLATION

To eventually reduce the concentration of several potentially toxic heavy metals in municipal solid wastes, Oregon passed legislation in 1991 to regulate two types of consumer batteries, alkaline manganese and rechargeable, commonly used in household products such as flashlights and cordless phones. Oregon thus joined seventeen other states which to date have moved to reduce the toxicity of their municipal solid waste by regulating the content, labeling and design of consumer batteries.

While the disposal of spent consumer batteries represents only a small fraction of the total annual municipal solid waste in Oregon (roughly 2,000 tons out of 2 million tons) these same batteries represent the largest single contribution of two potentially toxic heavy metals to that wastestream--approximately 88 percent of the total mercury and 54 percent of the total cadmium. The use of rechargeable sealed lead batteries for portable tools means additional amounts of lead, another potentially toxic heavy metal, will be found in Oregon municipal solid waste as well.

A. Alkaline Manganese Batteries - Mercury Content Regulation

Alkaline manganese batteries currently represent 62 percent of all domestic consumer battery sales in the U.S. While the mercury content of these batteries has been reduced dramatically over the past 12 years, they still represent the largest volume of mercury from household batteries disposed of in municipal solid waste. To ensure that low mercury content alkaline manganese batteries are being sold in the state, Oregon's legislation banned the sale of alkaline manganese batteries unless battery manufacturers which distribute batteries in Oregon certified to the Oregon DEQ that the mercury content of those batteries was below a maximum permissible level. Further,

the legislation required that these same manufacturers provide information about their on-going efforts to reduce to zero the mercury content of any batteries which they produce.

B. Rechargeables - Laying the Groundwork for Recycling

To deal with cadmium and lead, which are potentially recyclable, the legislation banned the sale of rechargeable battery products containing these substances after July 1, 1993, unless the battery or battery packs containing the rechargeable batteries were labeled with a standard recycling label and redesigned to be easily removable by consumers for recycling purposes. For nonconsumer rechargeable batteries, the legislation requires only that the battery is removable or is separate from the product for recycling purposes. These basic changes lay the groundwork for the recycling of rechargeables and their diversion from municipal solid wastes.

II. IMPLEMENTATION OF THE 1991 BATTERY LEGISLATION

A. Alkaline Manganese Batteries - Certification

ORS 459.434 Limitation on sale of alkaline manganese batteries.
(1) Except as provided in subsection (2) of this section, no person may sell or offer for sale in this state an alkaline manganese battery manufactured on or after January 1, 1992, that contains more than 0.025 percent mercury by weight of the battery. (2) Any alkaline manganese batteries having a size and shape resembling a button or coin may be sold if the mercury content of the battery is 25 milligrams or less of mercury.

ORS 459.438 Certification of mercury content of batteries sold or offered for sale in Oregon. (1) Any alkaline manganese battery manufacturer that distributes batteries in Oregon shall certify in writing to the Department of Environmental Quality the mercury content of any batteries sold or offered for sale in Oregon.
(2) The certification required under subsection (1) of this section shall:
(a) Be submitted biennially; and
(b) Include information about the efforts of the manufacturer to reduce to zero the mercury content of any batteries produced by the manufacturer.

U.S. battery manufacturers produce approximately 90 percent of all the household batteries sold in Oregon. All eight U.S. battery manufacturers have certified to the Oregon DEQ that their consumer alkaline manganese batteries manufactured on or after January 1, 1992, contain less mercury than the maximum Oregon content standard of 0.025 percent by weight or 25

milligrams for button or coin shapes. These manufacturers also submitted the required information about their efforts to reduce to zero the mercury content of all batteries which they currently produce.

Varta, of Germany, through its New York distributorship, also provided the required certification information to DEQ. Additionally, Ray Balfour, of the National Electrical Manufacturers' Association, provided information about Japanese adoption of "no mercury added" formulations for their alkaline manganese batteries in January. The new Japanese mercury content for alkaline manganese batteries would fall well below the maximum content standard set by Oregon.

Therefore, regarding alkaline manganese batteries, U.S. battery manufacturers and Varta have met Oregon's certification requirements under ORS 459.438. From the certification information provided and a review of recent state battery studies, it is likely that a "no mercury added" standard will be reached and adopted by the U.S. battery industry for alkaline manganese and zinc-carbon batteries as early as the end of 1995. These two battery types presently represent over 80 percent of all domestic sales of household batteries in the U.S. For the one remaining battery type which contains a significant concentration of mercury--mercuric oxide--the battery industry is supporting an eventual ban on the sale of the consumer mercuric oxide batteries and a collection system for the non-consumer mercuric oxide batteries to divert these batteries from the municipal wastestream.

B. Rechargeables - Labeling and Redesign

ORS 439.436. Limitations on sale of product or battery pack containing nickel cadmium battery or small lead battery. No distributor may sell or offer for sale in this state any product manufactured on or after July 1, 1993, that contains a nickel cadmium or small lead battery or a battery pack containing a nickel cadmium or small lead battery unless:
(1) In the case of consumer products;
(a) The battery can be easily removed by the consumer, or is contained in a battery pack that is separate from the product and can be easily removed from the product; and
(b) The battery and the package containing the battery are labeled in a manner to meet the requirements of the International Standards Organization (ISO 7000-1135) recycling symbol with the chemical composition "Cd" for nickel cadmium batteries or "Pb" for small lead batteries included as a part of the recycling symbol.
(2) In the case of nonconsumer products, the battery can be removed or is contained in a battery pack that is separate from the product.

The states of Vermont, Connecticut, Minnesota, New Jersey and New York have passed comprehensive consumer battery legislation. These five states require almost identical labeling, redesign and a July 1, 1993, deadline for all rechargeable batteries and products. Oregon's legislation adopts this same language. In fact, the legislation for rechargeable batteries adopted by Oregon and the other states was originally developed in-house by the Battery Products Alliance (composed largely of manufacturers of rechargeable appliances and the batteries they contain). These requirements are the industry standard and were first incorporated into state law by Connecticut in 1989.

In order to meet these requirements, the battery industry formed the Portable Rechargeable Battery Association (PRBA) to explore ways to respond to these changes. PRBA membership, combined with non-member Apple Computer, represents in excess of 90 percent of the U.S. production of rechargeable products and batteries, according to Todd Tater, the executive director of PRBA.

PRBA has begun developing the standard recycling labeling (a draft has already been approved by Oregon DEQ), is working with the state of Minnesota to set up and test pilot collection systems, and is negotiating with the French firm SNAM, among others, for the establishment of a nickel-cadmium battery recycling facility in the United States. It is also actively notifying the rechargeable battery industry about the changes in labeling and design required by July 1, 1993, for their rechargeable products.

The rechargeable battery industry, spearheaded by PRBA, is moving to meet the requirements of labeling and redesign of rechargeable products required by Oregon statute.

III. EFFECTIVENESS OF OREGON'S LEGISLATION AND RECOMMENDATIONS FOR FUTURE LEGISLATION

The effectiveness of Oregon's legislation in reducing the amount of mercury, lead and cadmium in Oregon's solid waste steam is minimal at present. Future effects should be significant.

1. Mercury

The reduction of mercury in alkaline manganese batteries by manufacturers has been ongoing for several years worldwide, and Oregon is benefiting from that conversion regardless of the Oregon legislation. In fact, no change in any current selling practices of U.S. battery manufacturers was required to meet the mercury content requirement of the Oregon legislation. While the future should see a significant reduction in mercury volume in Oregon's solid waste

stream, Oregon's legislation will essentially confirm the national trend. After 1994, the major source of high content mercury batteries remaining in the solid waste stream will be non-consumer mercuric oxide which are currently 2% of the mercury batteries sold today. By then a national collection system should be in place for mercuric oxide batteries. If not, it is recommended that Oregon consider requiring the battery industry to develop a battery collection system for these batteries in order to divert them from Oregon's solid waste stream and support the national trend to remove all mercury from the battery wastestream.

2. Cadmium and Lead

The implementation of Oregon's legislation for rechargeable batteries has had the initial effect of pushing the battery industry to do more outreach in notifying original equipment managers of Oregon's labeling and redesign requirements. Labeling and redesigning rechargeable batteries, however, only sets the stage for eventual collection and reclamation systems which have yet to be put in place. In order to reduce the volume of cadmium and lead in Oregon's solid waste stream, the eventual establishment of a collection system in Oregon compatible with a national reclamation system by the battery industry will be necessary. It is recommended that Oregon closely monitor the current effort by the battery industry to establish an effective national collection and reclamation system for rechargeables. If there is no movement to establish such a collection system as part of that effort, it is further recommended that Oregon require establishment of such a system.

References: The battery data and state legislative information, although not referenced, was drawn from the comprehensive April 1992 nationwide study, Feasibility Study for the Implementation of Consumer Dry Cell Battery Recycling as an Alternative to Disposal, Illinois Department of Energy and Natural Resources, 1992.

(B) Existing residential and commercial collection service customers shall be provided information identified in OAR 340-90-030(3)(c)(A) at least quarterly through a written or more effective notice or combination of both.

(C) At least annually information regarding the benefits of recycling and the type and amount of materials recycled during the past year shall be provided directly to the collection service customer in written form and shall include additional information including the procedure for preparing materials for collection.

(D) Targeting of at least one community or media event per year to promote recycling.

(E) Utilizing a variety of materials and media formats to disseminate the information in the expanded program in order to reach the maximum number of collection service customers and residential and commercial generators of solid waste.

(d) Establish and implement a recycling collection program through local ordinance, contract or any other means enforceable by the appropriate city or county ~~which requires the collector and the landlord~~ for each multi-family dwelling complex having five or more units. ~~to provide the collection service and the appropriate convenient location and equipment for collection of source separated recyclables.~~ The collection program shall meet the following requirements:

(A) Collect at least four principal recyclable materials or the number of materials required to be collected under the residential on-route collection program, whichever is less.

(B) Provide educational and promotional information directed toward the residents of multi-family dwelling units periodically as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle including the types of materials to be recycled and the method for properly preparing those materials.

(e) Establish and implement an effective residential yard debris program for the collection and composting of residential yard debris. The program shall include the following elements:

Agenda Item E

Amend OAR 340-90-190

Section (3), delete each unit is considered one residential generator

Section(4), Add at the end

Where multi-family complexes are treated as single customers, the local government providing the yard debris service shall assure that yard debris service is provided at a level equivalent to service provided single family dwellings. Equivalent service shall be based on the amount of yard debris generated.

Local government shall make this determination and any related adjustment in service, no later than their next rate review process.

John Williams
12770 SW Foothill Dr.
Portland, OR 97225
503-626-5736 (fax) 503-641-2093
December 10, 1992

Dear Director Hansen and the Commissioners:

Please adopt a formal regulation allowing the Department of Environmental Quality to limit toxic air emissions. At present, DEQ has only an unofficial guideline to determine if additional study is required for new or modified producers of additional toxic air pollution.

This DEQ guideline is based on whether a source produces a "Significant Emission Rate" (SER) in pounds/hr or lb/year of air toxics. The allowable concentrations of non-cancer causing air toxics are based on workplace standards. For the allowable concentrations of carcinogens, DEQ is using EPA-computed figures that allows an increased cancer risk of 1 additional cancer per 100,000 people.

If the SER is exceeded, than DEQ may require the applicant to complete a health risk analysis. But this analysis is not a mandatory provision.

SUGGESTIONS FOR A DEQ AIR TOXICS RULE

1. The current, informal allowable concentrations of toxics in the air are set too high. These rates are based on 1/100th of the workplace standards for these substances. But Washington sets its allowable concentration at only 1/300th of the workplace standards.

2. The Significant Emission Rates (SER) is set too high. In some cases, Oregon's SER is based on a source's annual, rather than hourly, emission of toxics. This fails to regulate sources that do not operate year-around, but may still produce large amounts of air toxics over short periods. In contrast, New Mexico and Nevada toxic air rules contain SERs based on pounds emitted in 1 hour and 8-hour periods. Washington requires evaluation of any new air toxics source.

3. Require pollution sources to install the best toxics control technology if SERs or allowable concentrations would be exceeded.

4. Require health risk analysis of emissions exceeding the SER. This analysis should consider the cumulative effect of other sources of an air toxic within an appropriate area.

5. Allowable concentrations for carcinogens should be based on a risk factor of 1 increased cancer per 1 million people.

- end -

THE WILDERNESS SOCIETY

OREGON REGION

December 10, 1992

Fred Hansen, Director
State of Oregon
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204

Dear Mr. Hansen,

The following comments concern the Department's draft interim hazardous air pollutant rule. We ask that this letter be distributed to members of the Environmental Quality Commission prior to their December 11 meeting in Portland.

As you know, we are concerned about the environmental effects of chemical mining. We also are troubled by the potential negative impacts of chemical mining operations on the health of those who work at chemical mine sites and citizens who live in close proximity to such mines. Of particular interest to us is the issue of hazardous air pollutants emitted by chemical mining operations. It is our understanding that the Department has had in effect a draft interim hazardous air pollutant rule since 1987. It also is our perception that as an interim program, the rule is viewed as a guideline only. We are concerned that as a guideline, the interim rule is unenforceable.

During operation of chemical mines, high levels of quartz dust and chemicals such as mercury and arsenic likely will be emitted into the air. These substances are present in the soils and rock at mine sites and are expelled into the air during the drilling, blasting, crushing, loading, and conveying of ore. In addition, if cyanide briquettes are utilized by mining operations, the loading and unloading of briquettes at mines probably would generate cyanide dust. Cyanide also is likely to be airborne

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(503) 248-0452

from sprayers atop the heap leach pads, from the heap leach pads themselves, and from the pregnant and barren ponds. These emissions have troubling implications for worker health and for air quality in general. Neighbors of the mine, including small children and the elderly, will be exposed to emissions 24 hours per day. Workers also may be exposed for longer than eight-hour periods, since mines often operate on 24-hour schedules.

We ask that the Department consider strengthening the draft rule to take into consideration issues associated with chemical mining operations, including the potentially lengthier pollutant exposure times inherent in mining operations. We respectfully suggest that this issue be made a discussion topic at an Environmental Quality Commission meeting in the very near future.

Thank you for your time and consideration of this important issue.

Sincerely,

Valerie Kitchen
Regional Associate

Larry Tuttle
Regional Director

John Williams
12770 SW Foothill Dr.
Portland, OR 97225
503-626-5736 (fax) 503-641-2093
December 10, 1992

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-end-

C·T·F·A
Representing the personal care products industry

E. Edward Kavanaugh
President

TESTIMONY OF THE COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION (CTFA) BEFORE THE OREGON ENVIRONMENTAL QUALITY COMMISSION ON DEPARTMENT OF ENVIRONMENTAL QUALITY REPORT ON PLASTIC EXEMPTION REPORT PURSUANT TO S.B. 66

CATHERINE BECKLEY
LEGAL & REGULATORY COUNSEL
THE COSMETIC, TOILETRY & FRAGRANCE ASSOCIATION
DECEMBER 11, 1992

CTFA TESTIMONY BEFORE OREGON ENVIRONMENTAL QUALITY COMMISSION

On behalf of the members of the Cosmetic, Toiletry, and Fragrance Association (CTFA), I would like to briefly comment on the Final Rigid Plastic Container Exemption Report for Senate Bill 66.

Over the past few months, CTFA and individual member companies have shared significant learning with the Department of Environmental Quality (DEQ). We found the process to be open and appreciated working with the Staff. However, we are disappointed that such fundamental changes to earlier drafts of the Report were made in their Final Report.

I. The FDA and the Duty to Supply Safe Products and Packaging

First, I'd like to clarify that "cosmetics" are more than makeup preparations or so-called "vanity products." Cosmetics include over 80 categories of personal care products such as sunscreens, dental products, shampoos, antiperspirants and corrective makeup. These products promote human health and hygiene by assisting in the prevention of skin cancer, sunburn, tooth decay, gum disease, and bacterial infections. Oregon consumers want these products and the industry has a moral responsibility for the safety of these consumers.

Besides the industry's ethical responsibility, the U.S. Food and Drug Administration (FDA) requires that both cosmetic products **and** their packaging be safe. Manufacturers take this duty especially seriously because cosmetics are applied to the skin, mouth, hair and eyes.

The DEQ Report stated that industry should do more to get FDA to approve recycled plastic packaging for FDA-regulated products such as food. However, FDA regulates cosmetic packaging differently from food or device packaging. Cosmetic packaging is not subject to premarket approval by FDA. Also in contrast to food packaging, there is no cosmetic-grade packaging material approved by FDA for across-the-board use. Therefore, personal care product companies must test each individual package to assess whether impurities from recycled materials leach into the product.

And the marketers of personal care products are finding that despite a strong desire to adopt environmentally sound packaging practices, they have limited experience with recycling technology and have no past experience with or guidance from the FDA on how to comply with laws such as Oregon's. Therefore, more time is needed to assess the impact of using recycled material in our packaging and the feasibility of applying the other packaging options. We also think neither DEQ or OSPIRG has demonstrated that packaging safety issues have been adequately addressed to justify no exemption or at least a reasonable extension for compliance.

II. The DEQ Report is Contrary to S.B. 66's Legislative Intent

A. FDA-Regulated Products Are Arbitrarily Singled Out

CTFA thinks that DEQ's recommendation to eliminate two of the four compliance options for FDA-regulated products departs significantly from the legislative intent of S.B. 66. FDA-regulated products, compared with other consumer products, appear to be arbitrarily targeted for stricter treatment under the law. The

DEQ recommendation ignores the purpose of Section 34e - that DEQ report to the Legislature on whether FDA-regulated products should be exempt from S.B. 66 because of possible conflict with FDA regulations. By calling for the Report, the Legislature recognized that different treatment may be warranted for FDA products because they are subject to strict federal regulation. Therefore, limiting compliance options for FDA products alone is a substantial retreat from the intent of the original law.

B. Recommending Fees Is Outside DEQ Authority Under Sec. 34e

DEQ recommends a yearly "licensing fee" for companies that cannot use 25% recycled content or be reused 5 times. Nowhere in Section 34e(1) of the 1991 Recycling Act is DEQ asked to report on funding the rigid plastic container program. The sole charge of DEQ is to make recommendations to the Legislature on whether certain FDA product categories (food, cosmetics, over-the-counter drug products) should be exempt from the law.

C. Source Reduction Should Remain An Option

CTFA also thinks that the DEQ's recommendation to eliminate two of the four compliance options is a significant setback for marketers facing the 1995 deadline. Specifically, the DEQ report suggests the elimination of the "reduction" and "rate" options that is - (1) reducing product packaging by 10 percent or (2) using a plastic resin that is recycled at a rate of 25 percent statewide. The reason for their deletion

from a solid waste policy perspective is questionable given that the U.S. Environmental Protection Agency (EPA) and the U.S. Public Interest Research Group (USPIRG) favor packaging reduction over recycling and reuse. Reduction or elimination is preferred because it keeps packaging from ever going to a landfill. With recycling, the packaging cannot be reused forever and eventually goes to a landfill.

Although industry has said that reducing packaging is not always an adequate option for companies that can't use recycled packaging, that does not mean, in some cases, for some products, marketers cannot use the option. On the contrary, companies are already successfully reducing their packaging. For example:

* THE **NEAT SQUEEZE** pump of **CREST TOOTHPASTE** gives a **45% source reduction** and a **30% volume reduction** from traditional pumps.

* The plastic in **SUAVE** and **DEGREE ANTIPERSPIRANT** and **DEODORANT SOLID** canisters was **reduced by 3%** in August 1992.

* **JERGENS ADVANCED THERAPY LOTION** has introduced a refill pouch which has **78% less packaging** than the 15 oz. pump.

* Many company brands now offer a **combination shampoo and conditioner product**, eliminating the need for a separate container for a conditioner, amounting to a **100% source reduction**.

Therefore, marketers should still have the **option** to source reduce, even though it will not be feasible for many products. Reducing compliance options is a step back in encouraging companies to accomplish the goals of S.B. 66.

Likewise, marketers should be able to rely on the statewide 25 percent recycling rate option. The original intent of the law was to foster plastic recycling in the state.

By taking away the rate option, product marketers have less incentive to help build recycling programs in Oregon.

Conclusion

In conclusion, the cosmetic industry is committed to working with DEQ in the future to demonstrate the progress companies are making with individual products. I have attached to my testimony examples of environmental packaging innovations and contributions to Oregon's recycling efforts by CTFA members. Some of those companies will be able to comply with S.B. 66 by 1995 for some individual products. However, many of those same companies may not be able to comply for all of their products by 1995. Therefore, a balance must be struck between the goals of S.B. 66, the importance of safe packaging and the evolution of plastic recycling technology. Thank you for considering our comments.

EXAMPLES OF ENVIRONMENTAL PACKAGING CHANGES BY SOME COSMETIC MANUFACTURERS

Chesebrough-Pond's AQUA NET PUMP HAIRSPRAY now contains 25 percent recycled content.

Clairol made the following packaging changes:

* Elimination of carton from BAN SOLID DEODORANT in 1991, saving 560 tons of paperboard annually. Reduction of package on BAN ROLL-ON in 1991, saving 600 tons of paperboard annually.

* In 1992, BAN CLEAR DEODORANT was introduced without a package, eliminating the potential use of 500 tons of paperboard annually.

* Eliminated plastic liners from FINAL NET and CLAIRMIST HAIRSPRAYS AND ULTRESS CONDITIONER closures.

* Reduced the amount of plastic used for FROST & TIP and QUIET TOUCH trays by 20 percent.

* Reduced the 4 oz. applicator container for MISS CLAIROL by 15 percent by weight.

* Fifty percent recycled plastic is used in plastic gloves and heat caps included with hair dye products.

* Use postconsumer regrind tri-layer molding process for LOGICS salon hair care containers.

Helene Curtis made the following packaging changes:

* SALON SELECTIVES in August 1992 a tri-layered container with virgin HDPE material on the inner and outer layers, and postconsumer resin sandwiched between. Plastic made from recycled milk containers will replace 800,000 pounds of virgin HDPE in the manufacturing process, about 25 percent of the total amount used to make regular coral bottles.

* Introduction of SUAVE FACIAL CARE line without outer cartons in June 1992.

* Removal of SUAVE and FINESSE HAIRSPRAY and GEL outer cartons in mid-1980s saving 1,200,000 lbs. of paper board annually.

* Removal of SUAVE and DEGREE SOLID and ROLL-ON packages in August 1991 amounting to 60 million fewer paper board cartons.

L&F Products TUSSY DEODORANT are being re-introduced without outer paper cartons which will save tons of solid waste annually.

Procter & Gamble made the following packaging changes:

* IVORY SHAMPOO 15 oz. package was 30 grams of plastic and now is 27 grams amounting to 10 percent source reduction.

* VIDAL SASSOON AIRSPRAY HAIRSPRAY comes in full size with a pump and a refill.

* Eliminated SURE AND SECRET DEODORANTS outer carton saving 80 million cartons per year.

Agenda Item L

Oregon Environmental Quality Commission

Request to Present Information

Dan Colegrove
Name (Please Print Clearly)

980 9th St. #1600 Sacramento, CA 95814
Address

Grocery Manufacturers of America
Affiliation

Please limit comments to five minutes.

Agenda Item L

Oregon Environmental Quality Commission

Request to Present Information

Catherine Beckley
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1101 17th St NW Suite 300 Wash, D.C. 20036
Address

Cosmetic, Toiletry & Fragrance Assn
Affiliation

Please limit comments to five minutes.

Agenda Item L

Oregon Environmental Quality Commission

Request to Present Information

Jeanne Roy
Name (Please Print Clearly)

2420 SW Boundary St.
Address

Recycling Advocates
Affiliation

Please limit comments to five minutes.

Agenda Item L

Oregon Environmental Quality Commission

Request to Present Information

Lynda Gardner
Name (Please Print Clearly)

121 SW Salmon, Suite 1400
Address

Gardner, Cosgrove & Gardner (representing:
1. Pharmaceutical Manufacturers Ass'n
2. Abbott Laboratories)
Affiliation

Please limit comments to five minutes.

Agenda Item L

Oregon Environmental Quality Commission

Request to Present Information

Jerry Powell

Name (Please Print Clearly)

1121 NW 21st Portland OR

Address

Affiliation

Please limit comments to five minutes.

Agenda Item L

Oregon Environmental Quality Commission

Request to Present Information

Susan Brenner

Name (Please Print Clearly)

1920 NW 130th Ave Portland, OR 97229

Address

Recycling Advocates

Affiliation

Please limit comments to five minutes.

Agenda Item L

Oregon Environmental Quality Commission

Request to Present Information

Lauri Aungan
Name (Please Print Clearly)

1536 SE 11th Ave Portland
Address

OSPIRG
Affiliation

Please limit comments to five minutes.

Agenda Item L

Oregon Environmental Quality Commission

Request to Present Information

Rob Guttridge
Name (Please Print Clearly)

815 Washington St. Oregon City
Address

~~Recycle~~ Association of Oregon Recyclers
Affiliation

Please limit comments to five minutes.

Agenda Item I

Oregon Environmental Quality Commission

Request to Present Information

DONALD SCHUT
Name (Please Print Clearly)

230 East 2ND McMinnville OR 97128
Address

City of McMinnville
Affiliation

Please limit comments to five minutes.

Agenda Item E

Oregon Environmental Quality Commission

Request to Present Information

Meganne Steele
Name (Please Print Clearly)

Rm 400, 1120 SW 5th
Address

City of Portland, Bureau of Env. Svc.
Affiliation

Please limit comments to five minutes.

Agenda Item E

Oregon Environmental Quality Commission

Request to Present Information

DAVID TEARD
Name (Please Print Clearly)

4025 NE 32 Ave. Portland, OR
Address

Oregon Apartment Assn.
Affiliation

Please limit comments to five minutes.

Agenda Item E

Oregon Environmental Quality Commission

Request to Present Information

Jeanne Roy
Name (Please Print Clearly)

2420 SW Boundary St.
Address

Recycling Advocates
Affiliation

Please limit comments to five minutes.

Agenda Item J

Oregon Environmental Quality Commission

Request to Present Information

Lew Rink
Name (Please Print Clearly)

7933 NE 21st Ave
Address

Anodizing Inc.
Affiliation

Please limit comments to five minutes.

Agenda Item J

Oregon Environmental Quality Commission

Request to Present Information

Michael W. Davis
Name (Please Print Clearly)

5325 NE Skyport Way
Address

Anodizing Inc / Coating Line Manager
Affiliation

Please limit comments to five minutes.

*OSPIRG * Recycling Advocates * Oregon Environmental Council * Association of Oregon Recyclers * Metro * Bend Recycling Team * BRING Recycling * Clackamas County * Suzanne Johannsen * League of Women Voters of Oregon * Northwest Women in Recycling * Jerry Powell * Becker Projects, Inc.*

December 9, 1992

Environmental Quality Commission
c/o William W. Wessinger
121 SW Salmon Suite 1100
Portland, Oregon 97204

Re: EQC Regular Meeting, December 11, 1992
Agenda Item L

Dear EQC Members:

Agenda Item L concerns the plastic packaging recycling standards in Senate Bill 66, passed unanimously by the 1991 Legislature. Senate Bill 66 sets options for recycling standards for rigid plastic containers that must be met by 1995. The law also requires glass containers, newspapers and phone books to be made with recycled content.

Agenda Item L is the DEQ's report on whether to recommend amending Senate Bill 66 to exempt certain plastic packaging from having to meet the recycling requirements in the law. The DEQ's report (1) does not recommend an exemption or extension for food packaging, and (2) recommends that the law be amended to reduce the law's four recycling options to one standard, recycled content, with a licensing fee for companies that do not meet the recycled content standard.

Although the DEQ recommends against exempting plastic food packaging from the law, some industries will urge the Environmental Quality Commission to recommend an exemption and will press the Legislature to pass an exemption. The undersigned urge the Environmental Quality Commission to take the following position with respect to Agenda Item L:

1. Confirm the DEQ recommendation of no exemption for plastic food packaging and no delay in the effective date of the law.

2. Urge the Legislature to keep the current law in place and require companies to comply with the current law.

3. Do not recommend amending the law unless the amendments would strengthen the law. The DEQ report forms a basis for strengthening amendments but should require rigid plastic containers to meet recycling standards significantly higher than 25% by 2000, to be consistent with the requirements on glass containers. If fees are recommended for companies that do not use recycled content the fees must be high enough to encourage manufacturers to

aggressively attempt to gain FDA approval for use of recycled content, and to build a plastics recycling infrastructure and develop recycling markets for post-consumer plastic in Oregon.

The reasons to keep the current law in place or strengthen it are as follows:

•Plastic is the least-recycled material in Oregon. The plastics industry has not made the same type of recycling investments in the state as have the aluminum, glass and paper industries.

•The public is demanding plastic recycling, but the public's ability to recycle plastics is shrinking. Plastics collection programs are failing and some recyclers are halting plastics collection.

•In 1991 the plastics industry announced that it was committed to reaching a 25% recycling level for plastic containers by 1995. In Oregon and California, the plastics industry helped pass laws that require plastic containers to be recycled at 25% in the aggregate by 1995. To make the law more flexible for companies that wanted other recycling options, the law also allows use of 25% recycled content, reuse, or reduced packaging. California has not exempted any food packaging from its law.

•Exempting plastic food packaging from the law would exempt more than half of all containers from the law's requirements. This would undercut the ability of non-food plastic containers to meet the aggregate 25% recycling rate.

•Plastics recycling cannot succeed without commitment from the plastics industry to meet the 25% recycling rate goal. Exempting food packaging would weaken the law, sending the message that the industry does not have to comply with the standards it agreed to in 1991.

•The central goal and intent of the law is for plastic containers, in the aggregate, to reach a 25% recycling rate. In order to accomplish this goal, the plastics industry must work with packagers, recyclers, retailers and local governments to increase the recycling rate of all plastic, not just food containers.

Some of the steps they can take include: design their plastic packaging to be more easily collected and recycled; use the type of plastic that already has a higher recycling rate, such as #2 HDPE used in milk jugs; provide price guarantees for collected and processed plastic, such as aluminum and paper companies have done to ensure high recycling levels; assist in transportation of Oregon plastics to existing plastics plants that can use recycled plastic in manufacturing; and work to locate a plastics recycling plant in the Pacific Northwest. To date, the industry has not agreed to take any of these steps.

The plastics industry has promised better plastics recycling for years. Senate Bill 66 provides the pressure to ensure that the promise is kept. We urge the Environmental Quality Commission to stand firm on Senate Bill 66 and if the law is to be changed, strengthen rather than weaken it.

Thank you for your consideration of this matter.

Sincerely,

Lauri Aunan
OSPIRG

Jeanne Roy
Recycling Advocates

Jean Cameron
Oregon Environmental Council

Association of Oregon Recyclers
Metro
Bend Recycling Team, Bend
BRING Recycling, Eugene
Clackamas County
Suzanne Johannsen, Bend
League of Women Voters of Oregon
Northwest Women in Recycling
Jerry Powell, Portland
Becker Projects, Inc., Portland

1880 Lancaster Dr. NE, Suite 120
Salem, OR 97305
December 10, 1992

Environmental Quality Commission
811 SW 6th Avenue
Portland, OR 97204

Dear Members of the Environmental Quality Commission:

The Association of Oregon Counties, the League of Oregon Cities and the Oregon Sanitary Service Institute have joined together to comment on the Environmental Quality Commission's consideration of exemptions for FDA regulated rigid plastic containers.

At the December 11, 1992, meeting of the Commission, the Department of Environmental Quality will present its report on recommendations to the 1993 Legislature. Agenda item "L" (Report to the Legislature on Exemptions for FDA Regulated Rigid Plastic Containers) concerns the plastic packaging recycling standards of Senate Bill 66, the Oregon Recycling Act.

SB 66 includes recycling standards for rigid plastic containers which must be met by 1995. The plastics industry now seeks to be excused from meeting those requirements.

The passage of SB 66 in 1991 was a result of compromise and hard-won consensus reached by the groups affected by the legislation, including industry, local government, collectors and environmental concerns. At the time, the plastics industry agreed to the SB 66 requirements that it must meet. Excusing the plastics industry from its requirements at this time would not only set an unfortunate precedent, it would also be patently unfair to the other partners of SB 66 who are working to meet the goals.

The Association of Oregon Counties, the League of Oregon Cities and the Oregon Sanitary Service Institute urge the Commission to maintain the requirements of SB 66, or accept the DEQ's recommendation to reduce the current four recycling standards to recycled content only, requiring a licensing fee for those companies which do not meet the standard.

Sincerely,

Gordon G. Fultz
Association of Oregon Counties

Phillip J. Fell
League of Oregon Cities

Kristan S. Mitchell
Oregon Sanitary Service Institute

State of Oregon
Department of Environmental Quality Memorandum

Date: December 11, 1992

To: Environmental Quality Commission

From: Fred Hansen

Subject: Director's Report

DMV Demonstration Project

The demonstration project to sell vehicle registration tags at the DEQ I/M station in Medford has been immediately successful. The project has been enthusiastically received by the public and by the news media, including favorable editorials in the Medford Mail Tribune and the Oregonian. The Division of Motor Vehicles (DMV) and DEQ launched the demonstration project to improve customer service by offering to process vehicle registrations at the inspection station along with the vehicle testing. The program will be evaluated to see if it should be implemented in the Portland stations as well.

Oxygenated Fuel

Carbon monoxide levels were noticeably lower in the Portland area during the month of November; the first month of the federally mandated oxygenated fuel program. The average carbon monoxide level for November 1992 was 36.4 on the Air Pollution Index, compared to the November 1991 average of 49.1.

SIP Revisions Submitted

The Department has submitted 6 State Implementation Plan (SIP) revisions to EPA to meet Clean Air Act requirements. The revisions covered emission inventory, small business assistance program oxygenated fuels and new source review. Oregon remains one of only a handful of states that have met all Clean Air Act requirements on time.

Information Systems

The Department reported on our information systems development efforts to the Legislative Committee on Data Processing on December 2. We explained our leadership efforts in state government to develop information systems using state-of-the art Integrated Computer Assisted Software Engineering tools and an open systems approach. The open systems approach is now being fostered throughout state government. This effort will allow us to move toward a better agency wide information management system. We expect to budget 2.5% of our operating budget for systems development (estimated at $2 - 3 million).

ODOT Facilities

On December 9, we met with ODOT upper management and engineers to launch a program to provide technical assistance for high priority facilities and to develop a plan for statewide cross-media compliance at all facilities. We will be setting up a standing group to address potential problems and to look for pollution prevention opportunities.

ODOT Meeting

The Oregon Transportation Commission will be sending an invitation to the Commission to attend a meeting with its members and the Land Conservation and Development Commission. The discussion would focus on land use and transportation issues as they relate to air quality.

Multi-Media Inspections

DEQ has taken the lead from EPA for multi-media inspections in Oregon. The first inspection was conducted at Industrial Oil in Klamath Falls on December 9. We have had concerns about the facility based on citizen complaints and our observations of apparent hazardous waste on the site, evidence of past oil spills and the close proximity of the facility to the Klamath River.

The Department sent a team of regional staff, EPA specialists and the Oregon State Police who procured and served an administrative search warrant.

State of Oregon
Department of Environmental Quality Memorandum

Date: December 1, 1992

To: Environmental Quality Commission

From: Monika Johnson

Subject: 12/11/92 EQC meeting Staff Reports

In this packet you will find the following EQC staff reports:

- Agenda Item A - Minutes of the October 15 and 16 meeting and of the Nov. 10 Conference call
- Agenda Item J - Anodizing Inc. request for a New Source Review rule variance
- Agenda Item K - Recommendations of the State's Task Force on Motor Vehicle Emission Reductions in the Portland Area
- Agenda Item M - Report to Legislature on Implementation of the 1989 Toxics Use Reduction and Hazardous Waste Reduction Act
- Agenda Item N - Report to the Legislature on the Conditionally Exempt Small Quantity Hazardous Waste Generator Pilot Project
- An updated DEQ phone directory
- CSO Public Involvement Program Results of Community Leader Interviews: Executive Summary

Agenda Item L will be sent to you on a later date.

State of Oregon
Department of Environmental Quality **Memorandum**

Date: November 30, 1992

To: Environmental Quality Commission

From: Monika Johnson

Subject: EQC Staff Reports for 12/11/92 Meeting

Enclosed in this packet you will find the following staff reports:

- Agenda Item B - Approval of Tax Credit Applications
- Agenda Item C - Rule Adoption: Proposed SW Fee for Orphan Sites
- Agenda Item D - Rule Adoption: Rule Exempting Lenders ... from Cleanup Liability
- Agenda Item E - Rule Adoption: Solid Waste Reduction and Recycling Rules
- Agenda Item F - Rule Adoption: Proposed Revisions to Definition of "Disposal Systems" etc.
- Agenda Item G - Rule Adoption: Proposed Amendments to the State Revolving Fund (SRF) Rules
- Agenda Item H - Proposal to Amend the EQC Bond Resolution Adopted in Sept 1991 to Include Approval for Use of Bond Proceeds for State Revolving Fund Match
- Agenda Item I - Request of the City of McMinnville
- Agenda Item O - Report to Legislature on Status of Recycling in Oregon
- Agenda Item P - Reports to the Legislature on Household Hazardous Waste Program
- Agenda Item Q - Implementation of Household Battery Legislation

Other agenda items will be forwarded to you at a later date.

State of Oregon
Department of Environmental Quality **Memorandum**

Date: December 11, 1992

To: Carol Whipple

From: Barbara Burton
Barbara Burton

Subject: Your Inquiry Regarding City of Butte Falls Municipal Annual Compliance Fee

The City paid their annual fee of $986 in mid-August, about three weeks after the first invoice went out. Tom Lucas remembers three telephone conversations with the City, in which they objected to the fee. They also told Tom that they would pay the fee anyway since they did not believe it would do any good to appeal to the Commission (since they appealed to the Commission for a hardship waiver of the 1991 fee and were turned down).

cc: Mike Downs
Tom Lucas

Fred:

(1) There are no "draft rules" on Air Toxics. Instead, there is an "interim policy" developed prior to 1990 CAA Amendments. (They are right, it is unenforceable)

(2) I expect that our administrative rules related to Title ~~IV~~ III will address better how we deal with the issue of "scientifically defensible" for purposes of "protecting public health + environment"

(3) Am not sure if mining operations are covered by Title III - I should have answer by 11:30 this A.M.

(4) Quartz is <u>not</u> covered as an Air Toxic under Title III. Cyanide <u>is</u> covered under Title III.

Steve

THE WILDERNESS SOCIETY

OREGON REGION

December 10, 1992

Fred Hansen, Director
State of Oregon
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204

Dear Mr. Hansen,

The following comments concern the Department's draft interim hazardous air pollutant rule. We ask that this letter be distributed to members of the Environmental Quality Commission prior to their December 11 meeting in Portland.

As you know, we are concerned about the environmental effects of chemical mining. We also are troubled by the potential negative impacts of chemical mining operations on the health of those who work at chemical mine sites and citizens who live in close proximity to such mines. Of particular interest to us is the issue of hazardous air pollutants emitted by chemical mining operations. It is our understanding that the Department has had in effect a draft interim hazardous air pollutant rule since 1987. It also is our perception that as an interim program, the rule is viewed as a guideline only. We are concerned that as a guideline, the interim rule is unenforceable.

During operation of chemical mines, high levels of quartz dust and chemicals such as mercury and arsenic likely will be emitted into the air. These substances are present in the soils and rock at mine sites and are expelled into the air during the drilling, blasting, crushing, loading, and conveying of ore. In addition, if cyanide briquettes are utilized by mining operations, the loading and unloading of briquettes at mines probably would generate cyanide dust. Cyanide also is likely to be airborne

610 SOUTHWEST ALDER, SUITE 915, PORTLAND, OREGON 97205
(503) 248-0452

from sprayers atop the heap leach pads, from the heap leach pads themselves, and from the pregnant and barren ponds. These emissions have troubling implications for worker health and for air quality in general. Neighbors of the mine, including small children and the elderly, will be exposed to emissions 24 hours per day. Workers also may be exposed for longer than eight-hour periods, since mines often operate on 24-hour schedules.

We ask that the Department consider strengthening the draft rule to take into consideration issues associated with chemical mining operations, including the potentially lengthier pollutant exposure times inherent in mining operations. We respectfully suggest that this issue be made a discussion topic at an Environmental Quality Commission meeting in the very near future.

Thank you for your time and consideration of this important issue.

Sincerely,

Valerie Kitchen
Regional Associate

Larry Tuttle
Regional Director

John Williams
12770 SW Foothill Dr.
Portland, OR 97225
503-626-5736 (fax) 503-641-2093
December 10, 1992

Dear Director Hansen and the Commissioners:

Please adopt a formal regulation allowing the Department of Environmental Quality to limit toxic air emissions. At present, DEQ has only an unofficial guideline to determine if additional study is required for new or modified producers of additional toxic air pollution.

This DEQ guideline is based on whether a source produces a "Significant Emission Rate" (SER) in pounds/hr or lb/year of air toxics. The allowable concentrations of non-cancer causing air toxics are based on workplace standards. For the allowable concentrations of carcinogens, DEQ is using EPA-computed figures that allows an increased cancer risk of 1 additional cancer per 100,000 people.

If the SER is exceeded, than DEQ may require the applicant to complete a health risk analysis. But this analysis is not a mandatory provision.

SUGGESTIONS FOR A DEQ AIR TOXICS RULE

1. The current, informal allowable concentrations of toxics in the air are set too high. These rates are based on 1/100th of the workplace standards for these substances. But Washington sets its allowable concentration at only 1/300th of the workplace standards.

2. The Significant Emission Rates (SER) is set too high. In some cases, Oregon's SER is based on a source's annual, rather than hourly, emission of toxics. This fails to regulate sources that do not operate year-around, but may still produce large amounts of air toxics over short periods. In contrast, New Mexico and Nevada toxic air rules contain SERs based on pounds emitted in 1 hour and 8-hour periods. Washington requires evaluation of <u>any</u> new air toxics source.

3. Require pollution sources to install the best toxics control technology if SERs or allowable concentrations would be exceeded.

4. Require health risk analysis of emissions exceeding the SER. This analysis should consider the cumulative effect of other sources of an air toxic within an appropriate area.

5. Allowable concentrations for carcinogens should be based on a risk factor of 1 increased cancer per 1 million people.

-end-

Highlights of Governor's Budget

Total Budget Summary (Dollars in Millions)

	Reduced Budget	Decision Packages	Total Budget
General Funds	$ 18.5	$ 1.3	$ 19.8
Other Funds	90.7	15.9	106.6
Federal Funds	57.5	2.0	59.5
Total "Operating"	166.7	19.2	185.9
Debt service			22.8
Other Non-limited			56.6
Total Budget			$ 265.3
		Positions	650
		FTE	632

Governor's Budget

Guidelines for Development

Reduced Level Budget - 80% of current level General Fund
90% of current level Federal and Other
Decision Packages - Could "add back" General Fund - up to 90% Federal and Other capped at current level
Plus special Benchmark packages

Mandated Budget: All of Department's budget within Mandated

DEQ Impacts

Reductions

--Staffing:

Reduced level permanent positions	-49
Total Budget (incl. Decision Packages)	+32
Management position reductions (30%)	-28
Reduced other administrative and support positions	

--Vehicle Inspection Program - reduced customer service

--Illegal drug lab cleanup - did not restore General Fund reduction

12/11/92

Highlights of Governor's Budget

Major Policies & Programs Supported

--Continue bonding to match Water Quality State Revolving Fund and provide Sewer Safety Net funding - substituted Lottery funds for General Fund debt service

--Enhanced Technical Assistance, primarily for local government

--Liveable Communities Environmental Teams - Lottery funding

--State Motor Vehicle Task Force initiatives (legislation provides for enhanced testing, expanded boundaries, and other proposals)

--Additional CO/Ozone & PM10 control strategies

--Shift Water Quality plan review from General Fund to fees

--Continue Columbia River Bi-State study and greatly enhance scope of lower Columbia River study & management planning

--Major multi-agency project under Ecosystem Recovery lead benchmark - Watershed Health program

--Continue Orphan Site & Voluntary Cleanup programs at approximately same level as current biennium

--Increase Management Services resources, particularly information management, to keep pace with agency needs

--UST permit fee increase (legislation increases maximum allowable)

--Environmental Crimes - resources at Justice Department and State Police to support investigation and prosecution

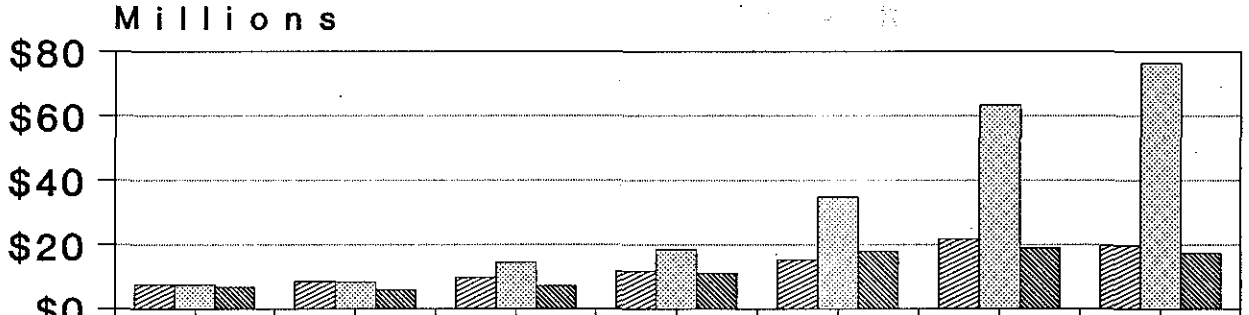
--Continue Strategic Water Management Group grant program

Legislation

--Early sunset of Pollution Control Tax Credit - no significant impact on agency's budget

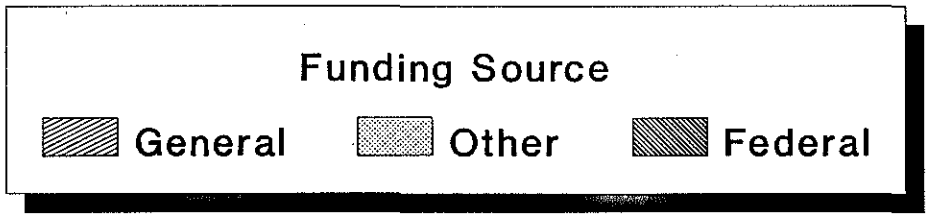
12/11/92

DEQ BUDGET
Dollar Comparison by Fund



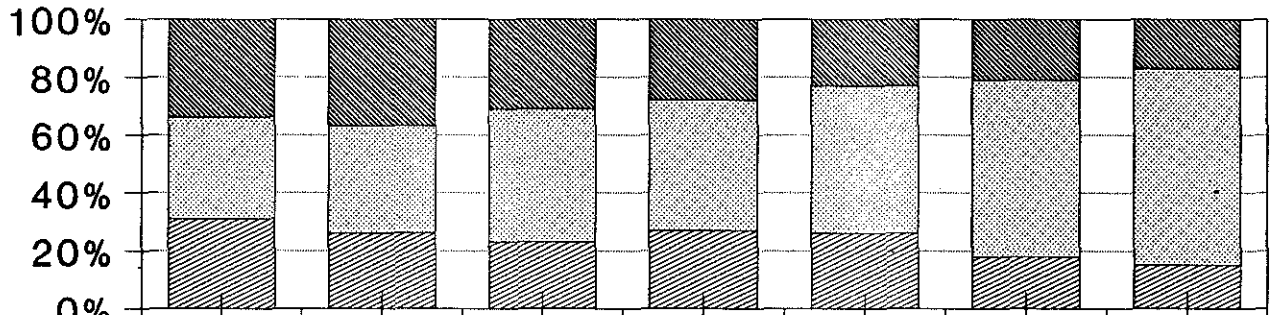
	81-83	83-85	85-87	87-89	89-91	91-93*	93-95**
General	$7.461	$8.481	$9.728	$11.695	$15.299	$21.782	$19.77
Other	$7.53	$8.386	$14.435	$18.515	$34.867	$63.493	$76.599
Federal	$6.65	$5.99	$7.197	$11.018	$18.036	$19.029	$17.394

Biennium



*91-93 Legislatively Approved Budget
**93-95 Governor's Budget
Excl SRF & UST Financial Special Payment

DEQ OPERATING BUDGET
Percentage By Fund



	81-83	83-85	85-87	87-89	89-91	91-93*	93-95**
General	34%	37%	31%	28%	23%	21%	17%
Other	35%	37%	46%	45%	51%	61%	68%
Federal	31%	26%	23%	27%	26%	18%	15%

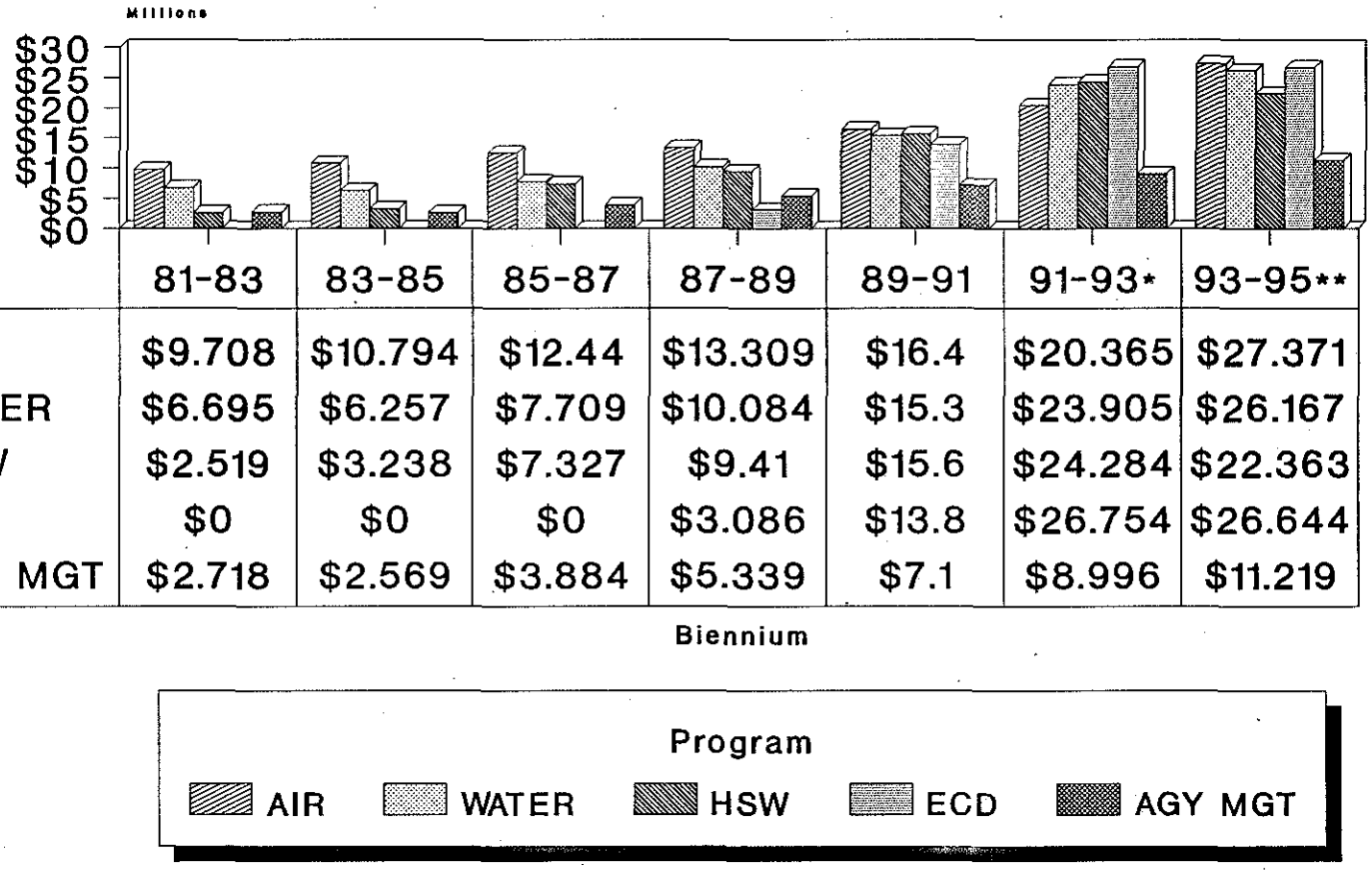
Biennium

Funding Source

Federal Other General

*91-93 Legislatively Approved Budget
**93-95 Governor's Budget
Excl SRF & UST Financial Special Payment

DEQ OPERATING BUDGET
Dollar Comparison by Program Area

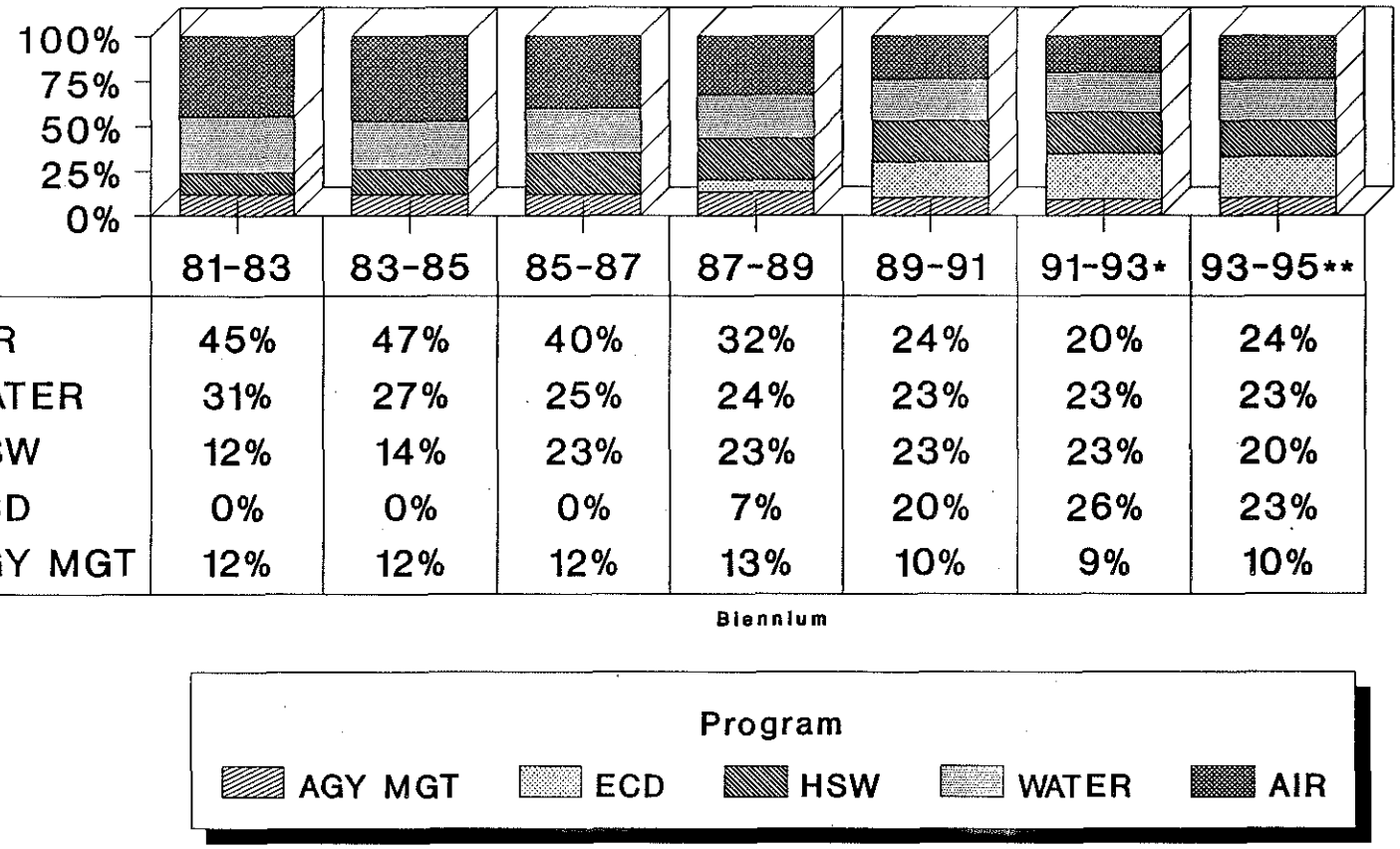


	81-83	83-85	85-87	87-89	89-91	91-93*	93-95**
AIR	$9.708	$10.794	$12.44	$13.309	$16.4	$20.365	$27.371
WATER	$6.695	$6.257	$7.709	$10.084	$15.3	$23.905	$26.167
HSW	$2.519	$3.238	$7.327	$9.41	$15.6	$24.284	$22.363
ECD	$0	$0	$0	$3.086	$13.8	$26.754	$26.644
AGY MGT	$2.718	$2.569	$3.884	$5.339	$7.1	$8.996	$11.219

*91-93 Legislatively Approved Budget
**93-95 Governor's Budget
Excl SRF & UST Financial Special Payment

DEQ OPERATING BUDGET

Percentage of Budget by Program Area

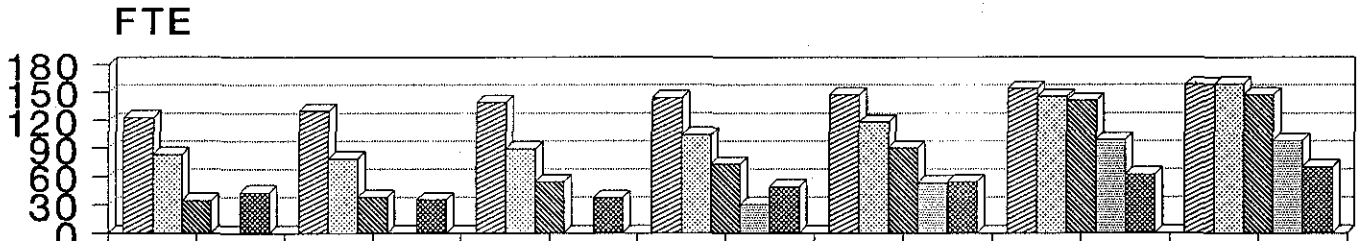


	81-83	83-85	85-87	87-89	89-91	91-93*	93-95**
AIR	45%	47%	40%	32%	24%	20%	24%
WATER	31%	27%	25%	24%	23%	23%	23%
HSW	12%	14%	23%	23%	23%	23%	20%
ECD	0%	0%	0%	7%	20%	26%	23%
AGY MGT	12%	12%	12%	13%	10%	9%	10%

*91-93 Legislatively Approved Budget
**93-95 Governor's Budget
Excl SRF & UST Financial Special Payment

DEQ OPERATING BUDGET

FTE by Program



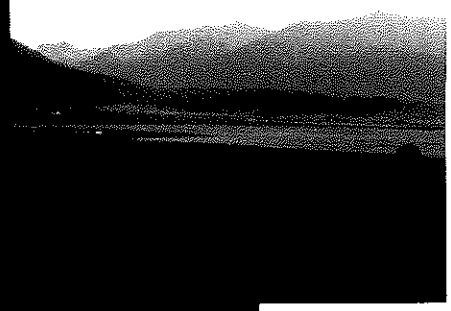
	81-83	83-85	85-87	87-89	89-91	91-93*	93-95**
AIR	123	130	139	144	147	154	158
WATER	83	79	89	104	118	145	159
HSW	34	38	54	73	90	141	147
ECD	0	0	0	30	53	99	98
AGY MGT	43	35	37	49	54	62	70

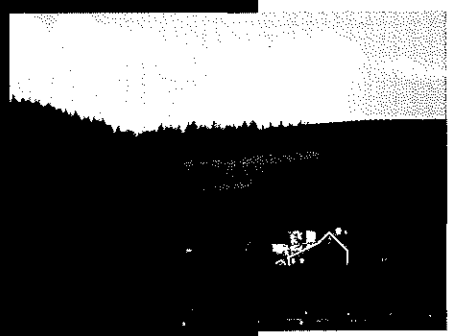
Biennium

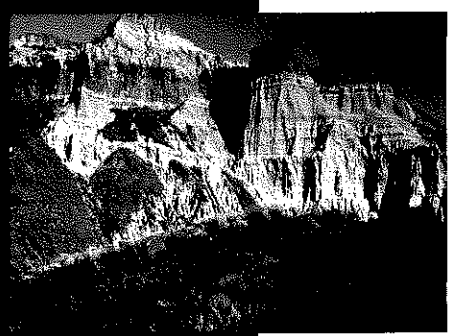
Program

AIR WATER HSW ECD AGY MGT

*91-93 LEGISLATIVELY APPROVED BUDGET
**93-95 GOVERNOR'S BUDGET







BUDGET IN BRIEF

Governor's Budget

- Mandated
- Mandated Plus
- Recommended

1993 - 1995

Barbara Roberts

GOVERNOR

The "Budget in Brief" is a summary of the Governor's Budget for the 1993-95 biennium. It describes each of the nine program areas in the Mandated, Mandated Plus, and the Recommended budgets. To purchase the entire budget document or obtain additional copies of this document, please call the Executive Department's Accounting Division at 378-3156, extension 221.

TABLE OF CONTENTS

GOVERNOR'S MESSAGE

These are challenging times to develop a state budget. We are striving to invest in Oregon's future, while streamlining state government, adapting to changing demands from Oregonians, and handling the increased school funding obligation under the property tax limit. My beliefs and Oregonians' values are reflected in this budget.

Since I took office, I have involved more than 10,000 Oregonians in a discussion about government, about the services Oregon needs for the future, and how to pay for them. Over and over, Oregonians told me that they care about the quality of our public services. They told me they were willing to pay for those services, as long as they knew government would use our tax dollars wisely.

I announced in January that I would streamline state government, cut layers of administration, find ways to make programs more efficient and reduce the number of state workers. I have done that. This budget document shows the many efforts that individual agencies have made, and the overall effects are clear.

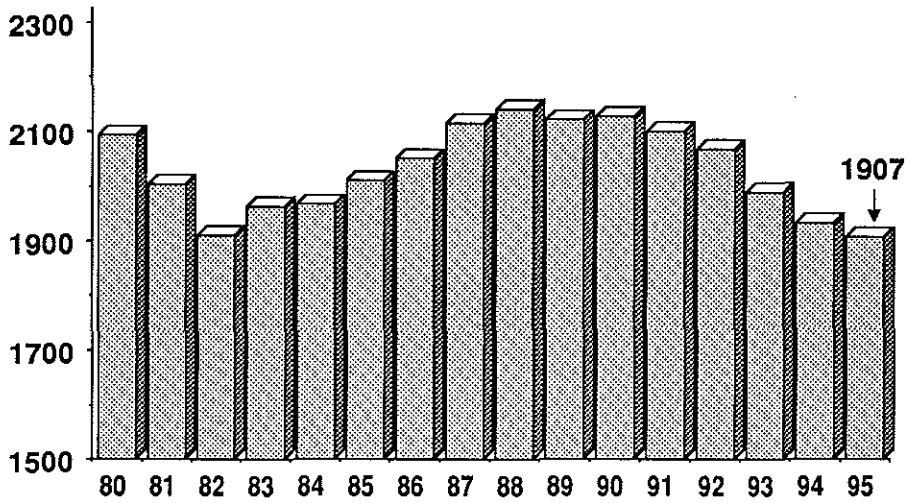
Changing Government

We are streamlining state agencies to provide a more effective and accountable government. I propose to consolidate agencies and shift programs so that similar functions are not scattered throughout different agencies. For example, emergency response, criminal justice planning and child care services are each consolidated for more effective management and to cut duplication. Other agencies, such as Oregon Public Broadcasting and the Oregon State Fair, will move to the private sector. And many licensing boards will become semi-independent agencies. In all, I have proposed eliminations, privatizations and mergers that will cut the number of state agencies by more than half — from 116 to 56.

Government is changing the way it does business. Oregon has won national recognition for its work in performance measurement — tracking the actual success of state programs. Each agency is setting standards to measure how well its programs are working, and then is rating its success and setting priorities with those measurements. For example, instead of simply measuring the welfare caseloads it handles, the Adult and Family Services Division is tracking the average length of time clients are on welfare, and the percentage of them who get jobs.

And while Oregon's population is increasing, the number of state workers is dropping: Fewer workers are serving more people. The ratio of state employees to the number of Oregonians has been dropping steadily since 1988, and under the 1993-95 budget is projected to fall just below the per capita level of

Number of State Employees
Per 100,000 Oregonians



Source: U.S. Bureau of Labor Statistics

staffing in 1982, during the depths of Oregon's recession. In fact, state government staffing is expected to fall to the lowest level in at least 20 years. My budget eliminates 4,000 jobs.

All these efforts are part of my on-going efforts to ensure that government is accountable to the public and that it delivers services as effectively and efficiently as possible.

Changes in Oregon's Population

While state government is undergoing those changes in its own management, forces outside government also are shaping the future of state services. Changes in Oregon's population have a significant impact on the services demanded of government.

Oregon's population is changing — not only in total population numbers, but significantly in composition. From 1980 to 1990, the number of Oregonians over age 75 increased 40.5 percent, sharply increasing demand for health care and senior services. Baby boomers' children increased the 5 to 9 year old age group 10.8 percent, increasing school enrollment.

The ethnic composition of Oregon's workforce also is changing. The number of African Americans, Hispanics, Asian Americans and Native Americans — while still a small percentage of the overall population — grew at four times the rate of

the white population between 1980 and 1990. These ethnic groups tend to be younger, increasing the demand for primary and secondary education. In addition, the number of households in which Spanish is the primary language spoken almost doubled, which poses another challenge for Oregon schools.

Finally, Oregon is reflecting several national trends that increase the demands on government. The number of people living in poverty in Oregon increased 25.8 percent between 1980 and 1990, and there was a 33 percent increase in the number of single-parent households. And like other states, Oregon's prison and jail population has exploded. Oregon's prison population increased 128.2 percent from 1980 to 1990.

Government agencies must be flexible enough to respond to changing demands, less bureaucratic and more responsive. That is happening — government is changing.

Changing Economic Factors

After two years of very limited growth, Oregon's job and income growth rates are expected to improve in the second half of 1993 as the national economy recovers. Also boosting Oregon's economy are these factors: More people are moving to Oregon, manufacturing is growing slightly, and the construction industry is rebounding.

The economic indicators reflect those trends. Oregonians' personal income is expected to grow 14.7 percent in 1993-95, faster than in 1991-93. Employment is expected to grow 5.8 percent, twice as fast as in 1991-93. And Oregon's population will continue to rise, with a 3.3 percent growth expected in 1993-95.

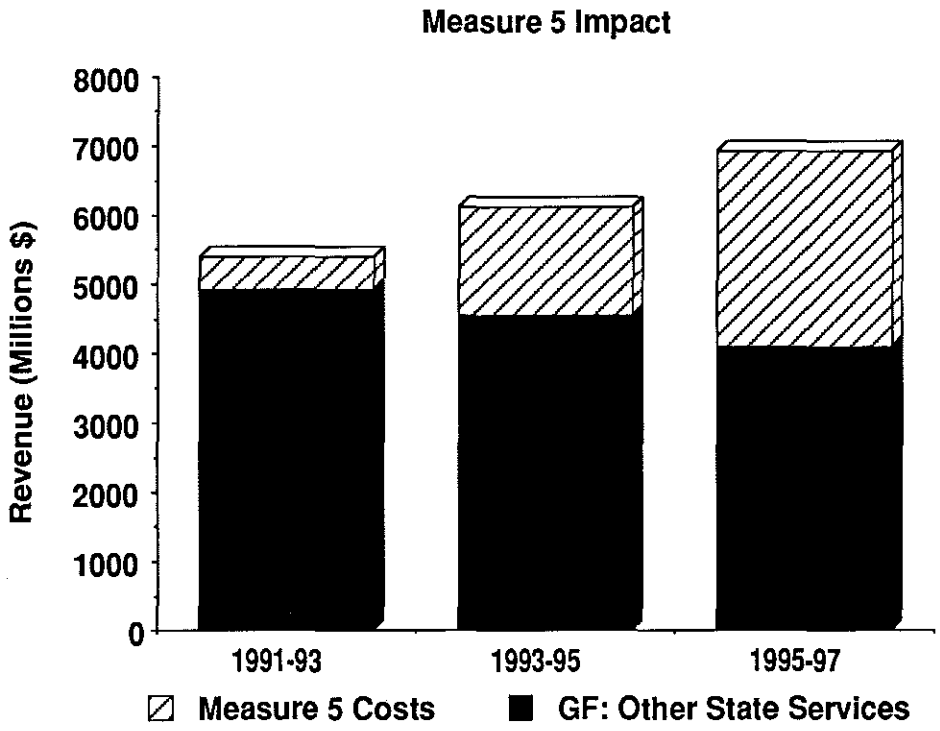
Overall, the Oregon economy's growth rate is about to pick up. There are several factors, however, that dampen that growth. Timber industry employment is still low, state government is downsizing, and the overall U.S. economy is still sluggish. Oregon will not return soon to the high-growth economy of the late 1980s.

State Government Revenue

The changing economic factors influence Oregon's state government revenue for the next two years. The state General Fund is expected to collect $6.12 billion in revenues in 1993-95. Added to that sum is $277 million carried over from the 1991-93 budget, for total General Fund resources of $6.4 billion. That's a 9.5 percent increase in resources over 1991-93, just about enough to cover the effects of inflation (6.6 percent over two years) and population growth (3.3 percent).

The state's revenue growth spurred by the growing economy is not enough to cover the effects of another major factor: replacing local school funding.

Measure 5, the 1990 property tax limitation took effect July 1, 1991. It lowers property tax rates gradually over five years, to $15 per $1,000 in assessed value in

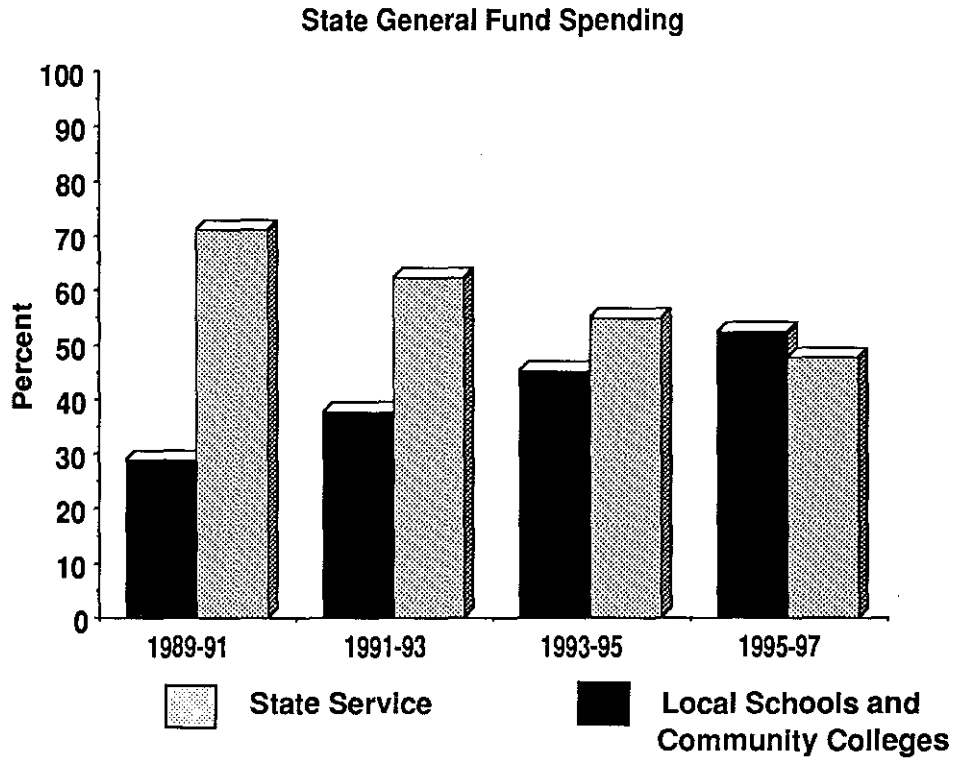


1995-96. Measure 5 requires the state General Fund to replace property tax money that local schools, community colleges and other local education districts won't be able to collect under the lower property taxes.

Measure 5 adds a tremendous burden to the state's General Fund. In 1991-93, for example, the state replaced $467 million in local school and community college property taxes. In 1993-95, that figure grows by more than $1 billion, to $1.57 billion.

State government's General Fund is the only state fund that can be used for the general purposes of government. The main source for this fund is the personal income tax, and about 90 percent is used for education, public safety and human services.

Measure 5 forces a major shift in the General Fund. Spending on local schools and community colleges took 29 percent of the state's General Fund budget in 1989-91, the budget before Measure 5 passed. Since then, the share has crept up, to 38 percent in 1991-93, and to 45 percent in my Mandated Budget for 1993-95. That trend will continue: In 1995-97, K-12 education and community colleges could take 52 percent of the General Fund.



The increasing costs of Measure 5 on the General Fund mean the state can not continue its current services. In fact, continuing services that the Legislature has approved into the next budget would have cost roughly $7.4 billion, approximately $1.8 billion more than in 1991-93. The largest factors in that increase are the added Measure 5 costs in 1993-95 ($1.1 billion), increasing costs in K-12 education and community colleges, and human services caseload increases and medical inflation.

Mandated Budget

With those costs, continuing current services would have cost about $1.2 billion more than the expected revenues. State agencies have streamlined their operations, become more efficient and cut costs. But those efficiency measures can not make up for the funding shortfall. The only option was to set priorities and cut services. Because about 90 percent of the General Fund budget pays for education, public safety and human services, those programs could not escape budget cuts. I weighed the service reductions carefully, and set my own priorities in the Mandated Budget for 1993-95.

And as I weighed those priorities, I always kept the Oregon Benchmarks in mind — the measurable goals we have adopted for Oregon's future. They help us keep score, allowing us to chart our progress and hold ourselves accountable. But more than that, they help guide us to build the kind of Oregon we want, a future that state services help to create.

I didn't look at the budget just in terms of whether a program was funded, or whether a state institution stayed open. I looked at the budget in terms of results. Were we doing enough to prevent teen pregnancy? Will this program help us meet our benchmarks for clean air, livable communities and sustainable ecosystems? What about reducing the number of AIDS patients, or providing health care in rural areas? Those questions helped guide my choices.

I developed the best budget I could under the revenue available within current law. But in two areas, I have concerns that the budget does not adequately address Oregon's needs now, or in the future: human services and education.

When I met with Oregonians in *A Conversation With Oregon*, they told me they thought government should become more efficient. But they also told me that they did not want to cut services dramatically to make up for Measure 5. They did not want to abandon Oregonians in need, and they wanted to ensure that Oregon children receive a good education in public schools.

Mandated Plus Budget

Oregonians said they were willing to pay for the services they want and need in the future, as long as they know their dollars will be well-spent. I do not believe the reductions in human services in the Mandated Budget are acceptable to Oregonians. In my Mandated Plus Budget, I have presented options to pay for those important services. The changes I have proposed — increasing the cigarette and beer and wine taxes, and adding a health provider tax — offer a base of funding for vital services. They ensure that health services and alcohol and drug related programs will have a sure source of funding, and that these priorities won't have to compete for every dollar with public safety or education.

Most important, these taxes enforce some accountability for the costs that the products cause. Tobacco use is now the leading preventable cause of death in Oregon: It contributed to almost one-third of all Oregon deaths in 1991, according to Health Division reports, including 33 deaths of infants whose mothers smoked during pregnancy. The toll that tobacco exacts on Oregon's health is enormous, as is its cost to state government. The state provides health care to almost one in 10 Oregonians through the Medicaid program, 235,000 in October alone. The costs of this program are large, and tobacco use contributes significantly to that expense.

Alcohol and drug use also exact a heavy toll on the state budget — in public safety programs, services to families and children and health care. Consider these statistics:

- Parents who abuse drugs or alcohol are involved in 78 percent of the cases in which the state removes children from their homes, placing them in foster care or other care.

- Three-quarters of the youths in the juvenile corrections system are addicted to drugs or alcohol, or use them habitually.
- A recent profile of prison inmates indicates that 72 percent have a "severe" or "moderate" problem with drugs or alcohol, or both.

A dollar spent on drug and alcohol treatment can pay great dividends in the future. But too often, those seeking help confront long waiting lists for treatment. Between 1989 and 1992, the number of adults on the waiting list for treatment increased by more than 34 percent, from 1,582 to 2,113. This is not acceptable.

To deal with these serious human service concerns, I propose these tax increases in the Mandated Plus Budget:

- The cigarette tax would increase by 10 cents a pack, to 38 cents. This would raise about $44.2 million, dedicated to health services and other programs related to tobacco use.
- The beer and wine tax would increase by 5 cents a drink. This would raise about $75.7 million, dedicated to treating alcohol and drug abuse and programs addressing the impact of that abuse. (Only nine states have a lower tax on beer than Oregon, and most of those impose a sales tax.)

The Oregon Health Plan

Those increases to current taxes will address some of Oregon's most pressing health concerns. But they do not truly allow the state to ensure that all Oregonians have an adequate level of health care: They do not fund the Oregon Health Plan.

I believe the Oregon Health Plan is vital to our state and the well-being of its citizens. Under the health plan, a basic benefit package developed from a prioritized list of health services will be delivered through a managed care delivery system. By setting those priorities, Oregon can extend its health care dollars to provide the most effective services to more people. State government would offer health coverage to an additional 120,000 low-income Oregonians under the Oregon Health Plan, almost 50 percent more than now covered.

I have proposed a special program budget for the Oregon Health Plan, one that uses a health care provider tax for funding. This gross receipts tax on health service providers would raise about $100 million dedicated to paying for health services.

The Recommended Budget

When I began work on my budget proposals, I knew that I had a challenge. I wanted to build a budget that would allow us to live within our means. I wanted to chart a course for Oregon's future, investing in services for Oregon's future. And I wanted to present the Legislature and Oregonians with options, to lay the choices for our future. I think my Mandated Plus Budget does that.

But I would not be true to myself if I said that the budget plans I have laid out above address Oregon's future adequately. Short-term, we would get by. But those plans do not provide a stable long-term funding for Oregon's schools, and they do not address the inequities in Oregon's tax system.

I believe Oregon's tax system should be overhauled. In *A Conversation With Oregon*, I discussed Oregon's tax system with hundreds of randomly selected citizens. Together, we developed some principles that any tax reform plan should address:

- Oregon should reform the entire tax system, not simply add a tax.
- The tax system must become more fair and balanced among different income levels and sources of revenue.
- The tax system should ensure equity between households and businesses.

Based on those principles, I believe the following elements should be included in Oregon's tax reform:

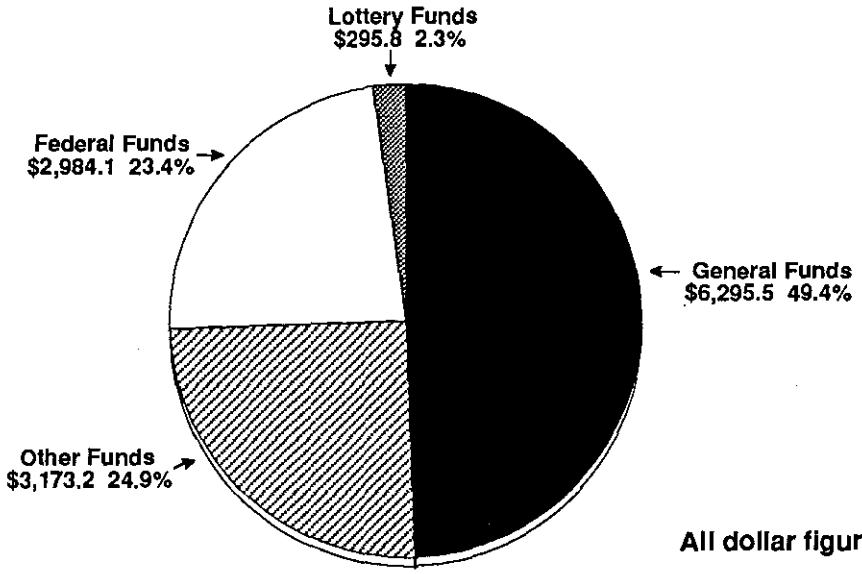
- Reform of the property tax assessment system;
- Minimized loss of property tax revenue to schools, and maximized local control;
- Significant personal income tax relief; and
- A retail sales tax on goods dedicated to education, with exemptions for household necessities and a low-income tax credit.

The amount of revenue generated by any tax reform plan would obviously depend on the final design of the package, and the date of approval by the voters.

But first things first. I want to work with the Legislature on this budget and on the important decisions we face. We will start with the Mandated Budget, deciding what our priorities are for our limited funding. And together, we will set a course for Oregons' future.

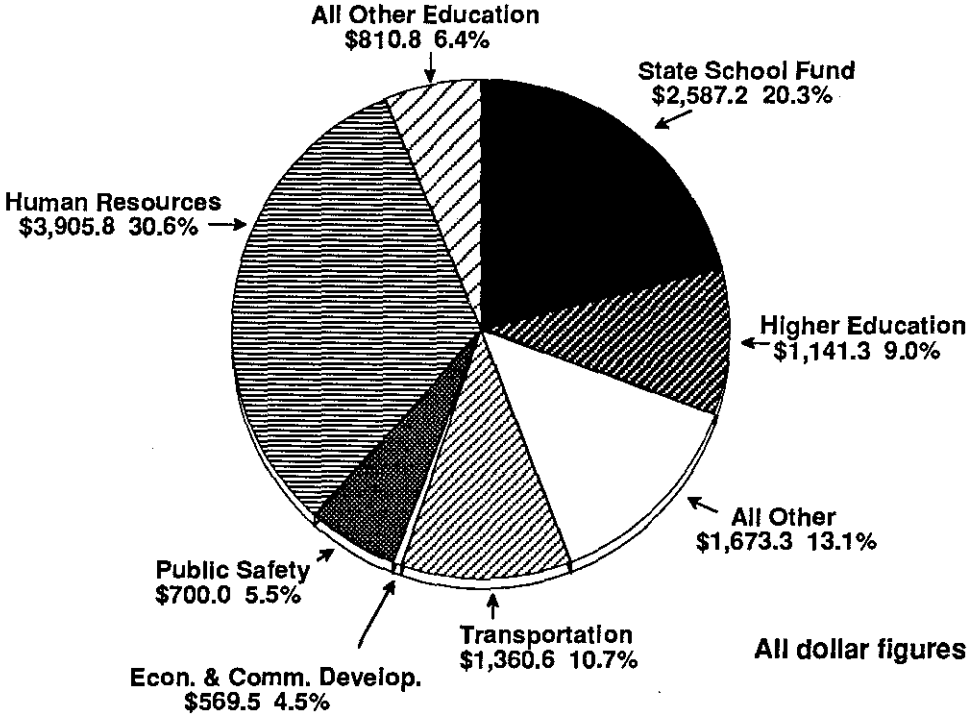
1993-95 All Funds Budget

Operating Expenditures by Fund Source
Total: $12,748.6 million



All dollar figures are in millions.

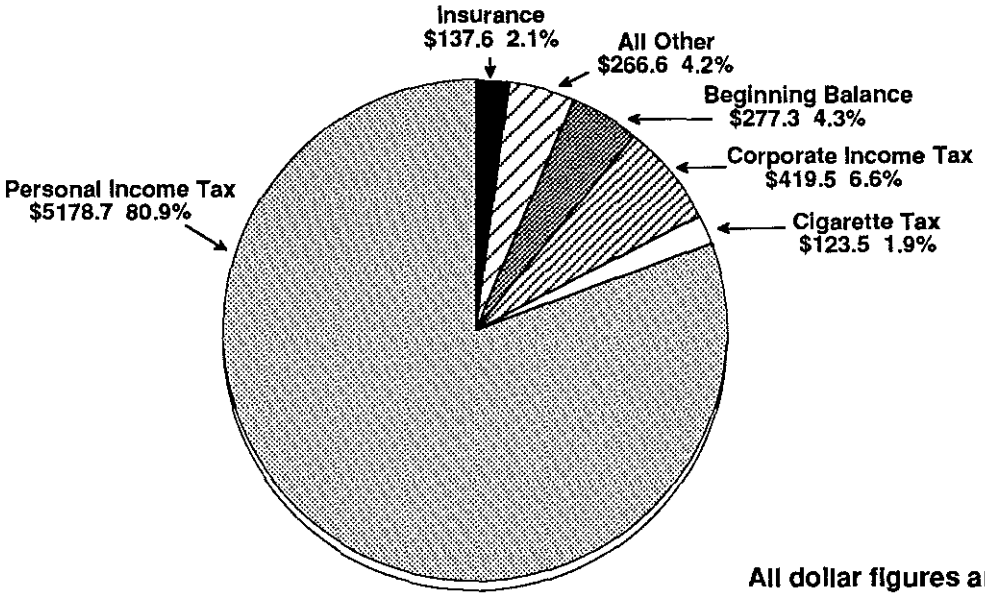
Operating Expenditures by Program Area
Total: $12,748.6 million



All dollar figures are in millions.

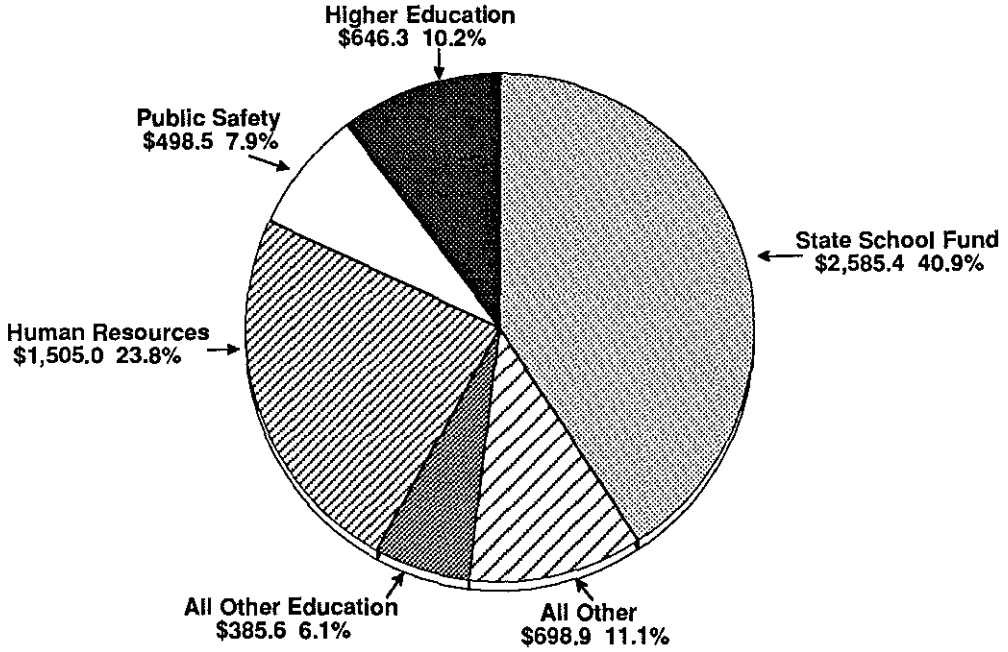
1993-95 General Fund Mandated Budget

Resources
Total: $6,403.2 million

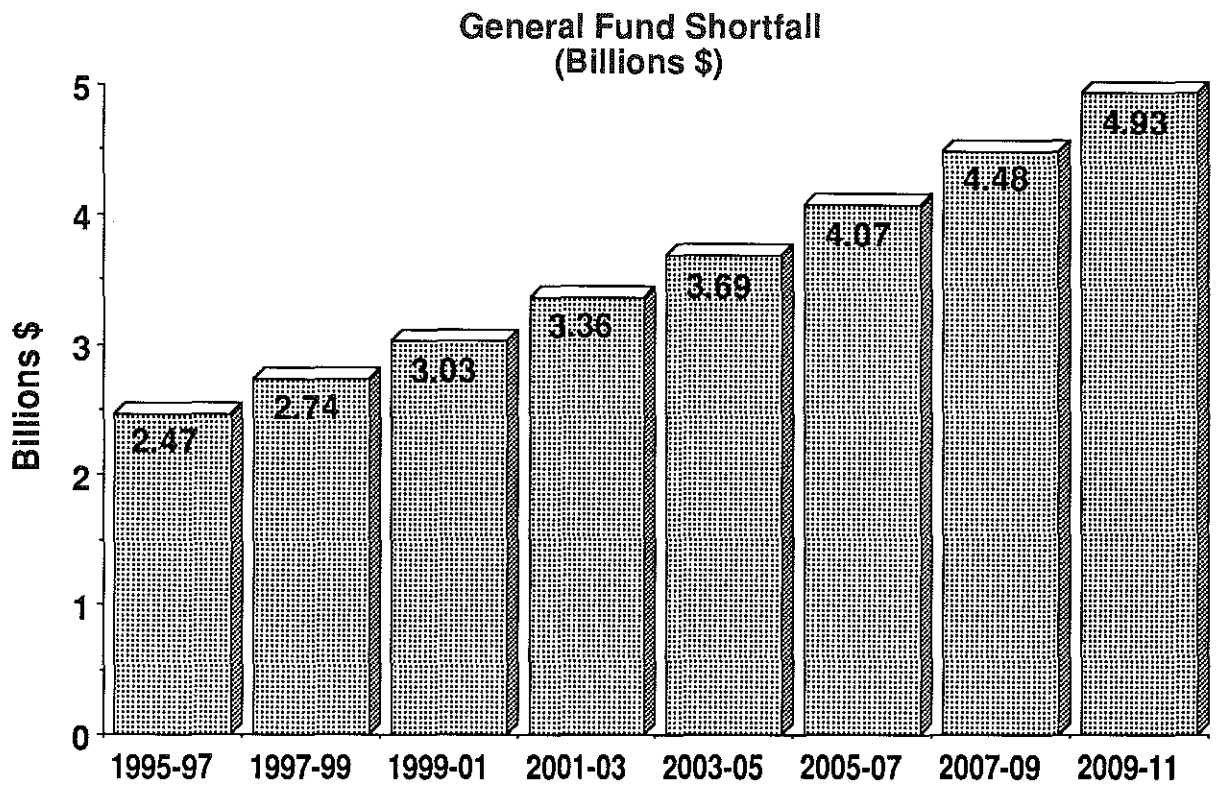


All dollar figures are in millions.

Expenditures
Total: $6,319.7 million



All dollar figures are in millions.



Forecast Assumptions:

- 1995-97 economic assumptions are based on December revenue forecast.
- Personal income is assumed to grow 10% above the DRI national long-term forecast rate.
- Population is assumed to grow 10% above the DRI long-term national forecast rate.
- Assessed value is assumed to increase 9% in 93-94, 8% in 94-96 and 7% thereafter.
- General Fund resources are assumed to grow at the same rate as personal income.
- School replacement costs are assumed to grow 6% per year.
- General Fund expenditures are calculated by subtracting replacement revenue and 2 % (ending balance) from resources.
- Inflation is based on DRI Long-Term forecast.

General Fund Expenditures* As a Percent of Oregon Personal Income

(Target = 4.7% = 91-93 Level)

* Minus Measure 5 Replacement Costs

1995-97	2.93%
1997-99	2.95
1999-01	3.01
2001-03	3.05
2003-05	3.17
2005-07	3.23
2007-09	3.29
2009-11	3.35

DEFINITION OF TERMS

BIENNIUM

The two year budget period that begins on July 1 of odd-numbered years and ends on June 30 of the next odd-numbered year. For example, the 1993-95 biennium will begin on July 1, 1993 and end on June 30, 1995.

CAPITAL CONSTRUCTION

Expenses of $100,000 or more to build or remodel a building or to purchase land.

CAPITAL IMPROVEMENT

Expenses of less than $100,000 to build or remodel a building.

CAPITAL OUTLAY

Administrative cost related to major purchases, such as office furniture or computer systems.

CURRENT SERVICE LEVEL

The cost of continuing programs at the level that has been approved by the Legislature. Also called the Legislatively Approved Program Level.

EXPENDITURE LIMITATION

A limit set by the Legislature on how much Other Funds or Federal Funds the agency can spend. If an agency finds after the Legislative session is over that it can receive more money for a project or program than the Legislature has approved, they must return to the Legislative Emergency Board to get authority to spend the money.

FEDERAL FUNDS

Money from the federal government to fund specific agencies and programs. In addition, it often requires a General Fund "match" in order to receive the federal money.

FTE (Full-Time Equivalency)

A mathematical formula for calculating the cost of state employees. A position filled for all 24 months of a biennium is one FTE. A position filled part-time or for only a part of a biennium is pro-rated accordingly. For example, an agency may receive authority for a position for only one year of the two year budget cycle, which means it is .5 FTE.

GENERAL FUND

The only state money that can be used for general purposes of state government and is not dedicated to a specific agency or program. Most of this money comes from the state personal and corporate income taxes. Some other revenues, from liquor sales, cigarette and other sales also go into the General Fund. Ninety percent of the General Fund is used to pay for Education, Human Resources, and Public Safety agencies and programs.

NONLIMITED EXPENDITURE

Funds for a specific purpose that are not subject to a limit by the Legislature.

OTHER FUNDS

Money received by state agencies that does not come from the General Fund or the federal government. These funds are usually a "dedicated" financial source that can often only be spent for a specific purpose. For example, park user fees can only be used by the Parks and Recreation Department and lottery funds can only be spent on economic development activities.

PERFORMANCE MEASURE

Agency standards used to measure how efficient and effective an agency is in performing its mission.

PERSONAL SERVICES

The cost of state employees, including salary, benefits, and other payroll costs.

PHASE-IN

This is the term used to describe a program or expenditure that did not affect the state for the entire two-year budget cycle. For example, a salary increase of $100 per month is given to an employee on July 1 of the second year of the biennium. This costs the agency $1200 for the remaining 12 months of that biennium. When the agency budgets for the next biennium, the cost to continue that salary increase will be $100 a month for 24 months or $2400. The result is a phase-in cost of $1200.

PROGRAM AREA

Executive Branch agencies have been organized into nine groupings for greater coordination, efficiency and accountability for results. The nine program areas are Education, Human Resources, Public Safety, Economic and Community Development, Natural Resources, Transportation, Consumer and Business Services, Revenue and Collection Services, and Administration.

SERVICES AND SUPPLIES

Administrative costs of doing business, including travel, rent, office supplies, etc.

SPAN OF CONTROL

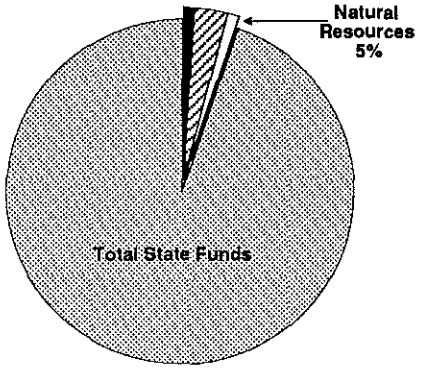
The ratio of number of supervisors to employees.

SPECIAL PAYMENTS

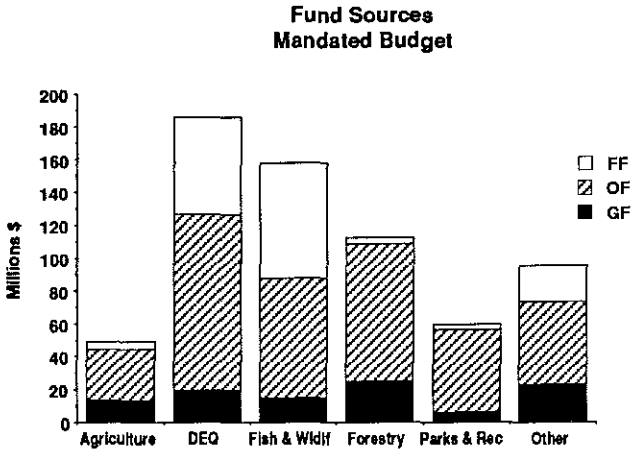
These are the funds that are used to provide direct payment to individuals, providers of services, or other organizations, such as county government, school districts, etc. This category is the money that is not spent on state government employees and administrative costs and comprises approximately 67 percent of the General Fund and 56 percent of the total budget.

EXPLANATION OF CHARTS

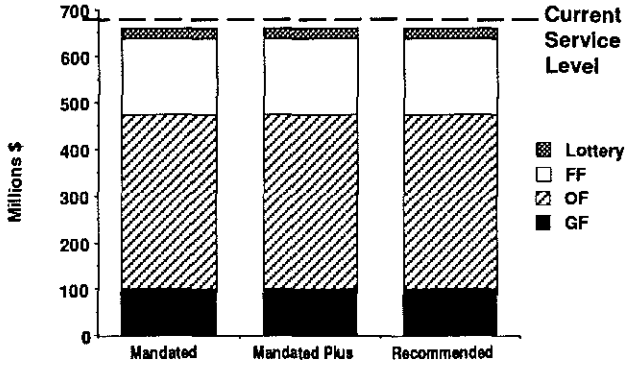
These charts appear in all of the Program Areas.



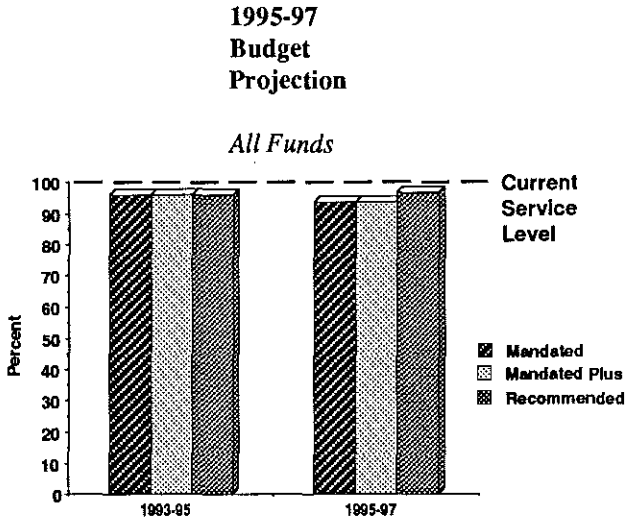
This chart compares the Program Area's Mandated Budget -- by fund source -- to the total of all funds in the State's Mandated Budget. (A similar chart appears in the individual agency description comparing it to the Program Area.)



This chart shows the agencies in the Program Area by fund source in the Mandated Budget. Lottery funds are included in Other Funds (OF) in this chart. (This chart also appears in the agency descriptions.)

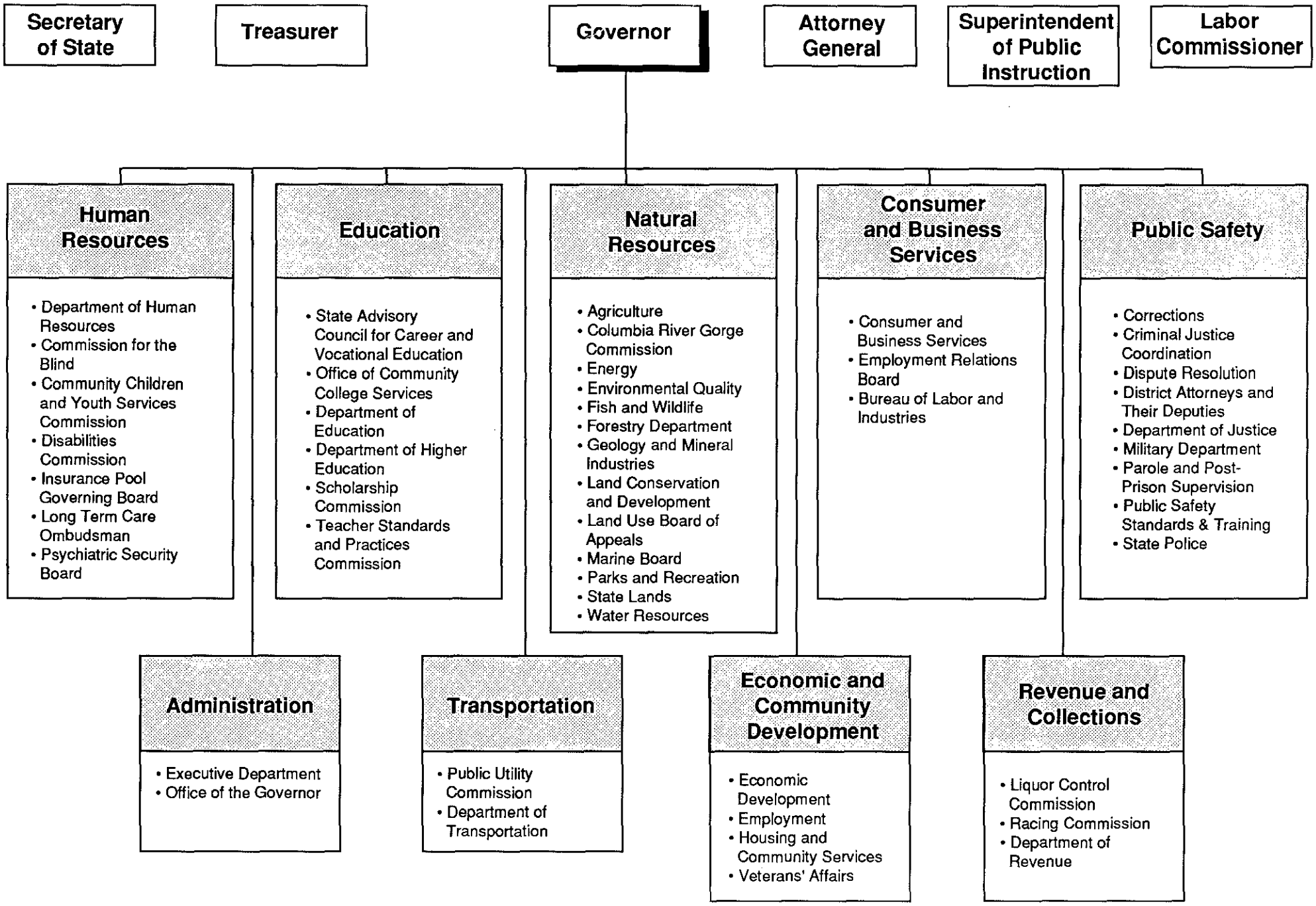


This chart compares the Program Area's Mandated, Mandated Plus and Recommended Budgets to the Program Area's Current Service Level. Lottery funds are broken out separately.

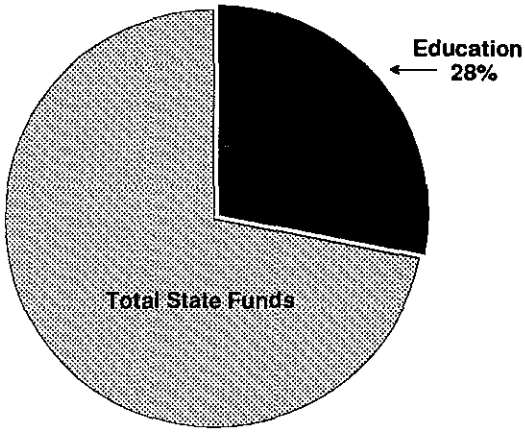


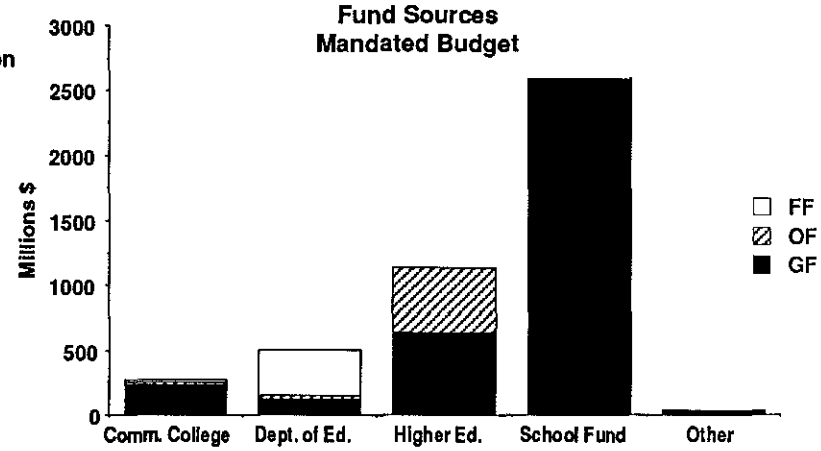
This chart compares the Program Area's Current Service Level to the service levels proposed in the Area's Mandated, Mandated Plus and Recommended Budgets in 1993-95 and 1995-97.

EXECUTIVE BRANCH



EDUCATION





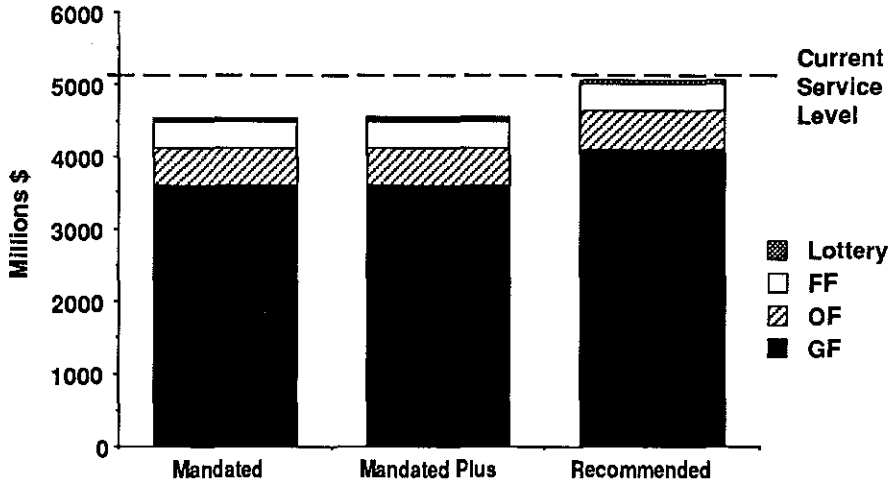
Program Area Agencies

State Advisory Council for Career and Vocational Education
Department of Higher Education
Teacher Standards and Practices Commission
Office of Community College Services
Department of Education
Scholarship Commission

Mission

These agencies offer educational services to Oregonians, from early childhood into post-graduate research, including on-going adult education. Together, they develop Oregonians' skills and knowledge, self-esteem, workforce productivity and learning capabilities; enrich the cultural life of Oregon; help support and maintain a healthy state economy; and create, evaluate and pass on the body of knowledge necessary to educate future generations.

1993-95 Budget Program Area



	1989-91 Actual	1991-93 Estimated	1993-95 Mandated Budget	1993-95 Mandated Plus	1993-95 Recommended Budget
General Fund	2,128,327,842	2,971,094,028	3,599,896,622	3,599,896,622	4,100,305,519
Other Funds	364,145,375	452,412,566	564,140,367	566,406,857	586,706,857
Federal Funds	260,482,718	322,838,667	375,371,143	375,371,143	375,371,143
Total	2,752,955,935	3,746,345,261	4,539,408,132	4,541,674,622	5,062,383,519
Number of Positions	17,664	18,030	16,451	16,466	16,865
Number of FTE	16,098.87	16,396.13	15,216.74	15,231.74	15,630.74

Efficiencies and Economies

Streamlining programs. The Office of Educational Policy and Planning (OEPP) will disband in this budget. The Department of Education, which now licenses private vocational schools, will take over the OEPP's post-secondary program authorization functions. The Economic Development Department will assume OEPP's role staffing the Workforce Quality Council. Oregon Public Broadcasting will become an independent, non-profit organization. The State Library will become an arm of the Secretary of State's office.

Cutting administrative costs. The Department of Higher Education has undertaken several efforts to cut administrative costs. It has consolidated administration of programs to eliminate duplication. For example, although four institutions offer nursing classes, the entire nursing program is administered from the Oregon Health Sciences University. The department's Board Administrative Review Committee also is examining ways to streamline administration. For example, at Oregon State University, a study team identified $12.1 million in potential administrative savings. Overall, Higher Education plans to cut its administration by 20 to 25 percent in the 1993-95 budget.

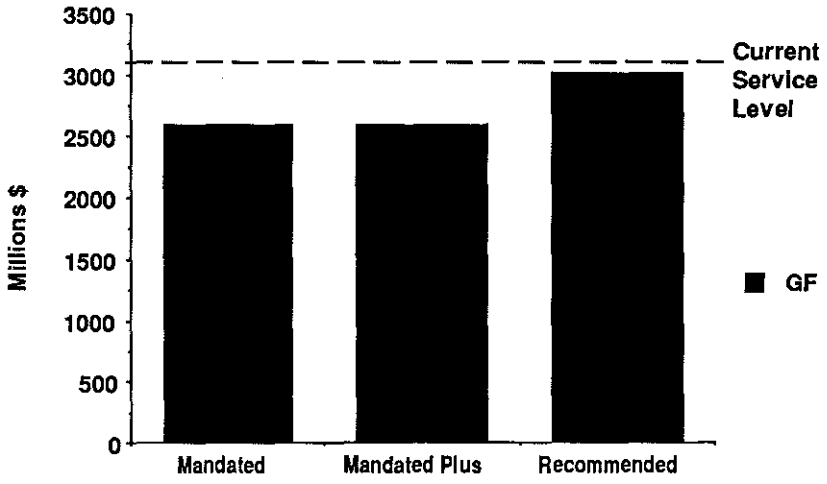
Increasing productivity. Higher Education faculty will increase their productivity by 15 percent. For most university faculty, that is the equivalent of teaching one additional class or section per year. The Scholarship Commission upgraded its computer system to streamline the loan collection process.

1993-95 Budget

Education, from pre-kindergarten through graduate research, takes the largest share of the state's General Fund. The major pieces of this program area are: State School Support for local K-12 schools, the Department of Education's programs, state support for community colleges, and the Department of Higher Education. Budget proposals for each of these is discussed individually.

State School Fund

1993-95 Budget



Mandated Budget

The State School Fund — direct payments to local school districts — is the largest single item in the General Fund budget. (This money is allocated to the Department of Education for distribution to school districts.) State school support has been growing as the state replaces local school district property taxes under Measure 5, and continues to pay a portion of local school costs as it has traditionally.

Continuing current school programs at their current level into 1993-95 will cost an estimated $5.4 billion. In the Mandated Budget, the state will provide $2.6 billion in the State School Fund, including both the traditional basic school support and the Measure 5 replacement costs. Combined with local property taxes, this will fund schools at 90.4 percent of their current program level. School districts will have to cut an average of 9.6 percent from their administrative costs and programs.

Mandated Plus

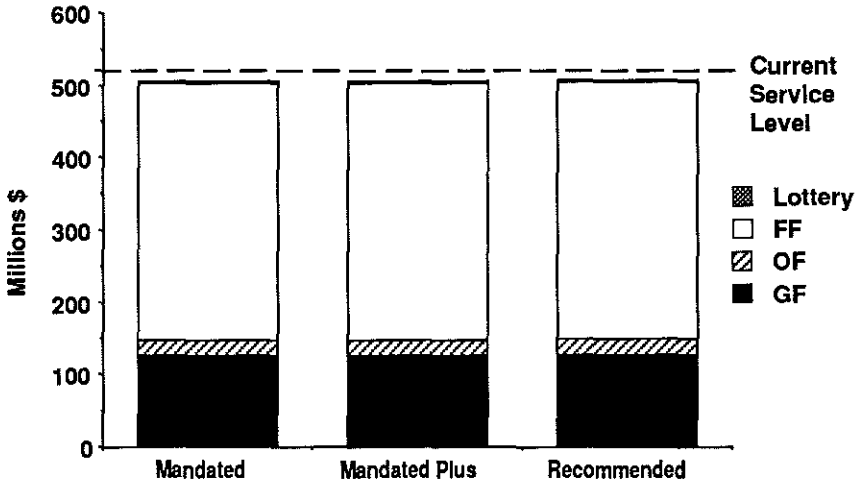
No change from Mandated Budget.

Recommended

The Governor proposes to increase school funding by $430 million in the Recommended Budget. Local property taxes and state support combined will fund schools at 98.3 percent of their current program level. School districts will have to absorb a reduction of 1.7 percent from current programs. (The amount of money raised by tax reform and available for schools will depend on the detail of the tax plan passed by the Legislature and the election date.)

Department of Education

1993-95 Budget



Mandated Budget

The Department of Education's operations continue at reduced levels in the Mandated Budget. School districts may receive less administrative, budgetary and financial management advice, and some student assessment services will be reduced. The Schools for the Blind and Deaf have a reduced budget, which will reduce services. However, the Superintendent of Public Instruction is developing a plan to consolidate the schools onto a single campus, which will cut operation costs.

The budget focuses state grant-in-aid programs on two goals: implementing school reform, and educating children who are outside the classroom for medical reasons or pre-kindergarten children who have special needs. Grant-in-aid for other services is eliminated.

The budget also invests lottery dollars to fund programs important to the state's strategy of education reform and workforce development:

- Student testing related to the Education Act for the 21st Century is maintained. (General Fund dollars for testing are eliminated.)
- Workforce quality committee cross functional teams will be trained to become leaders and change agents in their communities.
- Ed-Net and other distance learning methods will bring to 10,000 students the applied math, science, technology and communications courses they need to meet the requirements for the Certificate of Advanced Mastery, a key element of the education reform plan.

Mandated Plus

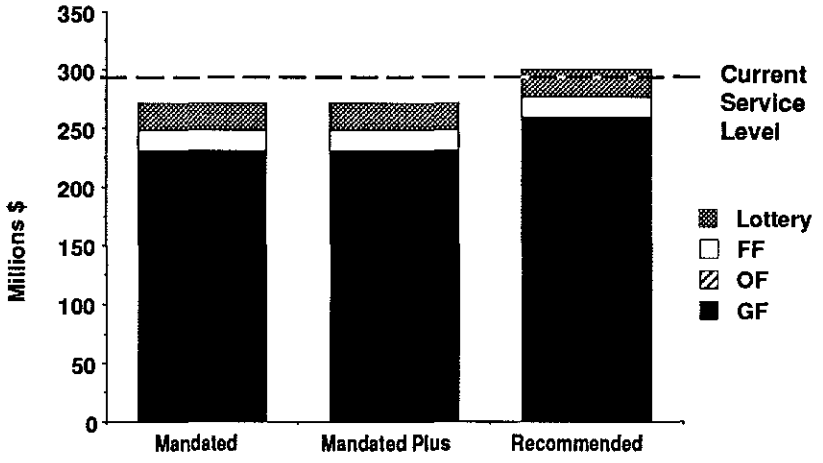
No change from Mandated Budget.

Recommended

To further school reform, the Governor increases school improvement and staff development grants.

Community Colleges

1993-95 Budget



Mandated Budget

Funding for Oregon's 16 community colleges is split between state support and local property taxes in the community college districts. In addition, each community college sets tuition rates. The state has historically supported part of the community college costs through contributions from the General Fund and targeted funding from lottery dollars.

As Measure 5 phases in, it limits property taxes community colleges collect. The state must replace those lost property taxes. Therefore, the state's share of community college funding is growing. The Mandated Budget provides $228.4 million in unrestricted state grant-in-aid to community colleges. With state aid and local property tax collections, community colleges will be able to cover an estimated 89.9 percent of their current program level. Community colleges on average, will face a shortfall of 10.1 percent — which they will cover through a combination of cuts in programs, administration, and/or tuition increases.

The Governor also proposes to spend lottery dollars in the community colleges for particular programs important to the success of the Education Act for the 21st Century, the school reform plan passed by the 1991 Legislature. This includes training for faculty and counselors who will implement school reform in Oregon's elementary and secondary schools, expanding the state's professional and technical education programs, creating Applied Technology Centers and expanding the Literacy Hotline.

This additional funding, combined with local property taxes, will bring community colleges up to 95.1 percent of their current program level.

Mandated Plus

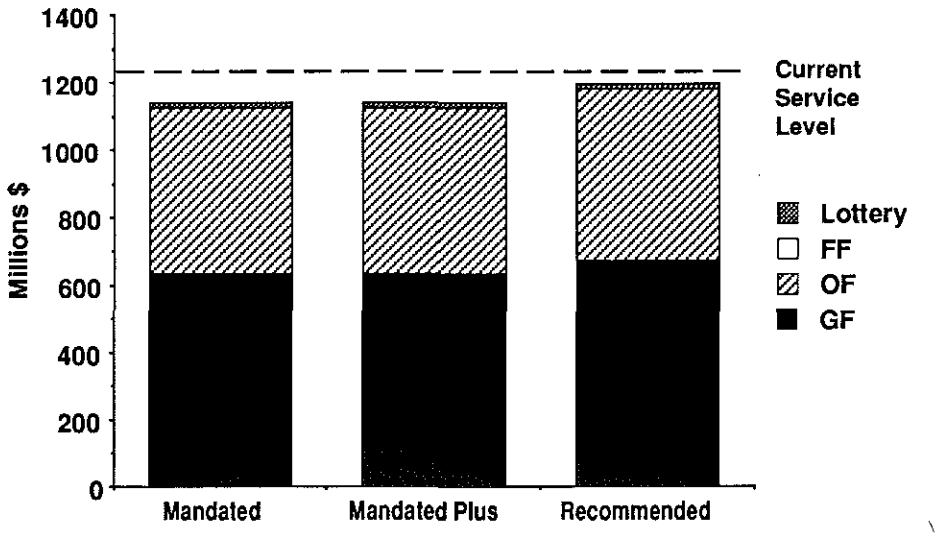
No change from Mandated Budget.

Recommended

The Recommended Budget provides an additional $28.6 million General Fund for the community colleges. This amount will bring overall community college funding to 101.3 percent of the current legislatively approved program level, including lottery funding.

Higher Education

1993-95 Budget



Mandated Budget

The Mandated Budget for Department of Higher Education instructional programs requires lower student enrollment, tuition increases, elimination of selected academic programs and the efficiencies and economies listed above. Oregon expects a large increase in the demand for an undergraduate education in the future, as the number of high school graduates is projected to increase dramatically. Therefore, this budget is structured to preserve the system's capacity to accommodate expected growth in the future.

This budget has major impacts on students in two areas: access and cost.

- Enrollment will drop 7 percent. Thousands of Oregon students will no longer be able to attend a state college or university. Enrollment will drop by 4,460 students to 56,020 students in 1993-95.
- Tuition will increase. The Governor is concerned that lower- and middle-income students not be priced out of the higher education system. This budget increases tuition 7 percent a year for resident undergraduates, and adds $4 million in tuition waivers for low-income resident students. (In a related budget, the State Scholarship Commission will focus all its financial aid on low-income Oregon residents enrolled in full-time undergraduate programs.)

Other reductions in the Higher Education Mandated Budget include:

- Reducing the Child Development Rehabilitation Center's medical services to low-income children, below certain federal requirements.
- Closing the College of Veterinary Medicine and the Pediatric Dentistry Residency Program.
- Raising dental clinic fees.
- Reducing agricultural research and extension services.

The Governor considers higher education vital to Oregon's economic development, and proposes funding certain programs from lottery dollars:

- New graduate level engineering programs in the Portland area would be developed through theJoint Graduate Schools of Engineering.

- The Oregon Joint Professional Schools of Business will develop business programs at the University of Oregon, Oregon State University and Portland State University.
- The budget includes training for faculty and counselors who will implement school reform in elementary and secondary schools, under the Education Act for the 21st Century passed in 1991.
- A rural health initiative will maintain nursing class availability at Oregon Health Sciences University and the regional colleges and will encourage medical professionals to work in rural areas through the Area Health Education Centers.
- The Forest Research Laboratory will continue its research on ecosystem analysis, the health of westside forests and ways to help Oregon wood product manufacturers meet international lumber standards. (Lottery dollars will replace General Funds.)
- The Agricultural Experiment Station will have funding for additional research to address consumer concerns about the environment and to expand agricultural marketing opportunities.

Mandated Plus

The Mandated Plus Budget will add two projects using the proposed beer and wine tax increase. The Child Development and Rehabilitation Center will supply additional medical services to low-income children (some of them hurt by alcohol or drug abuse by their parents) and would meet federal requirements for maintenance of effort. The Mandated Plus Budget also will fund the Perinatal Project and SAFE Program, designed to reduce alcohol and drug use by pregnant women.

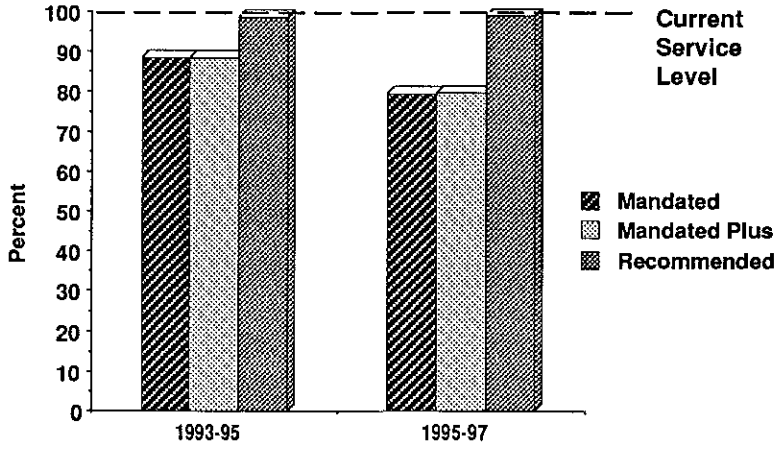
Recommended

The Recommended Budget allows an additional 4,350 undergraduate and graduate students to attend Oregon's colleges and universities, essentially restoring enrollment to 1991-93 levels. This budget also provides training to educators who work with preschool children who may be drug-affected, disabled or abused and who need help to be able to enter school ready to learn. (In a related agency, the Recommended Budget for the Scholarship Commission will allow the Need Grant Program to offer financial aid to almost 4,000 additional low-income undergraduate students.)

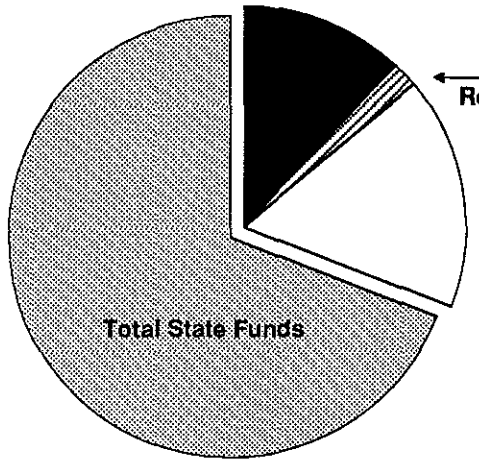
1995-97 Budget Projection

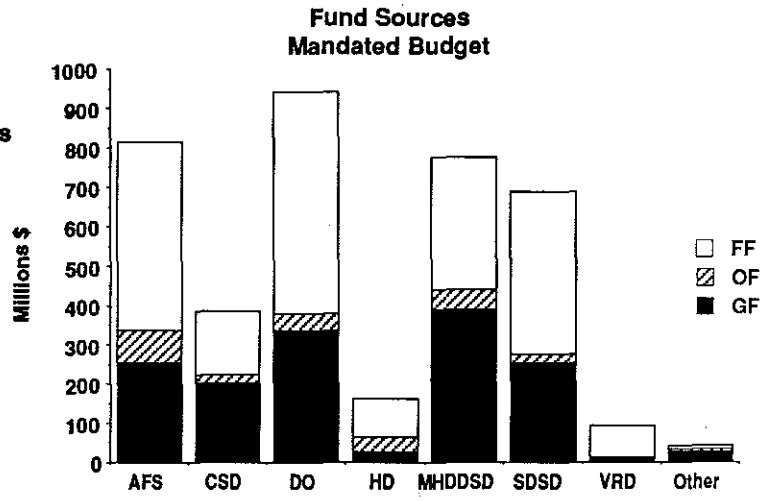
All Funds

Education Program Area



HUMAN RESOURCES





Program Area Agencies

Department of Human Resources
- Adult and Family Services
- Children's Services
- Health
- Mental Health and Developmental Disability Services
- Office of the Director
- Senior and Disabled Services
- Vocational Rehabilitation

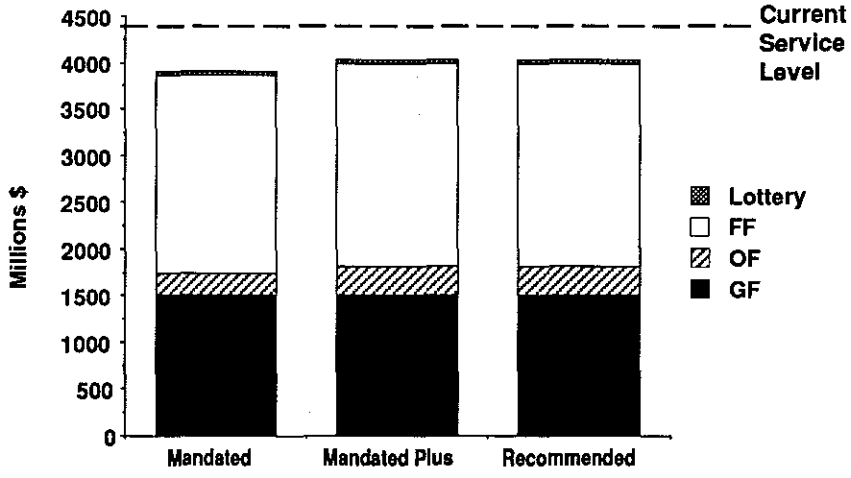
Oregon Disabilities Commission
Commission for the Blind
Community Children and Youth Services Commission
Insurance Pool Governing Board
Long Term Care Ombudsman
Psychiatric Security Review Board

NOTE: The Oregon Health Plan budget is outlined in a special program, separate from the Human Resources program area.

Mission

These agencies' mission is to promote individuals' self-sufficiency, strengthen families, keep youths in school, enhance physical and mental health, and promote equality of opportunity for people without regard for disability.

1993-95 Budget Program Area



	1989-91 Actual	1991-93 Estimated	1993-95 Mandated Budget	1993-95 Mandated Plus	1993-95 Recommended Budget
General Fund	1,190,557,494	1,431,670,699	1,504,976,786	1,504,826,406	1,504,826,406
Other Funds	149,254,798	230,762,126	268,410,300	350,498,062	350,498,062
Federal Funds	1,426,069,852	1,956,849,899	2,132,420,713	2,167,220,984	2,167,220,984
Total	2,765,882,144	3,619,282,724	3,905,807,799	4,022,545,452	4,022,545,452
Number of Positions	10,725	10,420	9,714	9,735	9,735
Number of FTE	9,656.77	9,585.48	9,224.40	9,242.90	9,242.90

Efficiencies and Economies

Shifting functions to the private sector. The Commission for the Blind transferred most activities previously operated by its Industries for the Blind program to Blind Enterprises of Oregon, a private non-profit organization. The Senior and Disabled Services Division will privatize all pre-admission assessments of long-term care needs for persons seeking admission to nursing home facilities.

Cutting administration. In the Adult and Family Services Division (AFS), each manager will supervise an average of 12 employees. AFS will save $5.1 million General Fund in the 1993-95 budget through position reductions and other administrative cuts. The Children's Services Division has also cut management, to one manager for every 9.4 employees. The Mental Health and Developmental Disability Services Division has cut managers to one for every 11 employees.

Automating for efficiency. The Children's Services Division is spending $1.2 million in technology improvements to continue giving caseworkers better access to computers, cutting paperwork and increasing the time caseworkers can spend working with children and families. The Office of the Director is spending $1 million to integrate client information Department-wide.

Consolidating agencies. The Health Services Commission and the Health Resources Commission staff are transferred from Executive Department to Health Division's Center for Health Policy to strengthen the state's ability to craft a cohesive health strategy. The Commission for Child Care and the Migrant Day Care program and some daycare licensing functions of the Children's Services Division are transferred to the Office of Child Care in Employment Department.

Decentralized service delivery. Several human resources agencies are moving services to communities:

- The Vocational Rehabilitation Division closed the Salem Rehabilitation Facility, which provided residential and vocational training services. Services will be provided in communities statewide.

- Dammasch State Hospital for the mentally ill is reduced from 342 to 132 beds by closing two wards and moving those clients to the community and by transferring 82 long-term hospital beds to community residential programs.
- Fifty-five adults with developmental disabilities will move from nursing homes into 15 new community residences.

1993-95 Mandated Budget

The Mandated Budget for human resources agencies is defined less by what is funded than by what is not. In developing the budgets, the Governor set these three goals: to protect services for the most vulnerable populations in Oregon; to continue services that encourage self-sufficiency, such as skills training for welfare recipients or home health care for those who might otherwise be institutionalized; and to stress prevention services, where an early investment in Oregonians' emotional, mental and physical health can prevent long-term problems. The budgets also work to maximize the federal matching dollars available to Oregon human services. However, despite these priorities, many important services will be reduced or eliminated in this budget:

Children and Families

- Seventeen fewer juvenile corrections workers will provide services in the community.
- The Children's Services Division will eliminate services for non-delinquent youths ages 13 to 17, who have behavioral problems or who are suffering from neglect.
- Welfare cash payments to about 46,000 families a month will be cut by 5 percent. For an average family of three, payments will be $436 a month rather than $460 a month.

Individuals with Mental Illness or Developmental Disabilities

- The one remaining mental health early intervention/prevention program for children, in Union County, is eliminated.
- Community mental health services for adults will drop by 19 percent.
- Mental health outpatient treatment for children who don't qualify for Medicaid drops by 11 percent.
- Residential services for 733 developmentally disabled adults will be lost, a 19 percent reduction.
- Vocational services for developmentally disabled adults in semi-independent living situations, foster care and residential facilities are eliminated, and 45 percent of disabled adults living at home will lose vocational services.

Seniors

- Medicaid funded home-delivered meals for senior citizens will be eliminated.
- The state will no longer provide services to seniors with less serious impairments, including those who need help bathing, dressing, house cleaning and running errands.
- Extremely poor, temporarily disabled adults without children will not receive cash assistance.

Other reductions

- The state will limit inflation increases for payments to nursing facilities.
- The Vocational Rehabilitation Division will eliminate sheltered work services for 153 clients who are unable to work unassisted.
- Medical services for low income families and individuals will be reduced by more than $75 million total funds.

However, even in these budgets, agencies have seized opportunities to improve services or redirect their efforts. The Children's Services Division is focusing on family support and services to allow children to stay safely with their families instead of going into out-of-home placements. The agency will increase its family unity services including special emphasis on services for African-American families with pre-school children. A total of 55 workers will be redirected to provide clinical expertise and case consultation to field offices.

The Mandated Budget also includes a few expanded or new services, all emphasizing prevention and self-sufficiency:

- The Adult and Family Services Division will expand its pilot "self sufficiency" project to five sites statewide. These projects offer enhanced services to welfare applicants to help them become self-sufficient, shortening the time they spend on welfare, or finding them alternatives to going on welfare at all.
- Eight new school-based teen health clinics will be added to the current 13. These clinics will provide teens with needed health information, including pregnancy and AIDS prevention. Community outreach for teens not in school will be provided in areas with high dropout and teen pregnancy rates.
- HIV counseling, testing, community education and wellness programs are increased to expand efforts to contain the spread of the virus.
- A school-to-work transition program for 2,100 youths with disabilities will be available through the Vocational Rehabilitation Division and other partners.
- Grants for communities will increase in two priority areas: helping pre-school children meet development standards for their age, and helping to reduce the teen pregnancy rate by targeting a prevention effort to girls ages 9 to 12 who may be at risk of early pregnancy.

Some programs in this area related to workforce and economic development will be maintained by lottery dollars:

- The JOBS program, which offers education and job skills training to welfare parents, will continue services to more than 20,000 clients, including teens and displaced workers.
- The Health Division will help local communities with technical assistance to meet the federal Safe Drinking Water Act.

Mandated Plus

The Governor believes that the service reductions in the Mandated Budget are unacceptable, and that they do not adequately invest in the health, well-being and self-sufficiency of Oregonians. She has proposed two tax increases in the Mandated Plus Budget: a beer and wine tax increase to 5 cents a drink to pay for services to combat problems caused by alcohol and drug use; and a cigarette tax increase (10 cents/pack) to pay for services related to tobacco use and health. Most revenue raised by those taxes will pay for programs in the human resources area.

Beer and Wine Tax

- A comprehensive system of prevention, early intervention and treatment of alcohol and other drug abuse will reduce the risks for teenagers and pregnant women.
- Alcohol and drug treatment slots for minorities will increase.
- Recovering alcohol and drug abusers will receive additional transitional housing.
- Treatment waiting lists will be shorter.
- Community mental health programs are added for 200 pre-school children who live with their mothers in seven residential alcohol and drug treatment programs.
- Children and adolescents up to 18 years old admitted to the Oregon State Hospital will receive alcohol and drug assessment, treatment and referral for care after their release.

Cigarette Tax

- Outpatient mental health treatment is restored for children who don't qualify for Medicaid.
- The Health Division will increase support to the 34 local health departments.
- The medical examiner program will be restored.
- A new anti-smoking campaign will help reduce the number of deaths related to tobacco, now the leading preventable cause of death among Oregonians.
- The Medically Needy program would be restored for low-income, aged and disabled Oregonians. This program offers medical help to Oregonians whose income is slightly too high to qualify them for other programs, but whose medical bills are very high.

- Medical services will be restored to senior citizens in nursing homes and to most seniors in the community who have physical impairments preventing them from caring for themselves.
- The state will develop the "pay or play" program, part of the Oregon Health Plan, requiring employers to provide health insurance for their permanent employees in 1995-97.

The increased beer and wine tax revenues will also offset costs for some programs paid for by the General Fund or lottery dollars in the Mandated Budget, including alcohol and drug treatment programs in the community and treatment services for JOBS clients, some vocational rehabilitation clients and for youth in close custody. That will allow the General Fund to pay for these services in the Mandated Plus Budget:

- Welfare clients would receive further JOBS services in the pilot self-sufficiency centers, and day care help for JOBS clients who are working will expand.
- HIV client services and payment for clients' prescription drugs would expand, and community prevention efforts would increase.
- Supported employment for mentally ill adults is fully restored.

Some services will be funded by a combination of offset General Fund and new cigarette tax revenue:

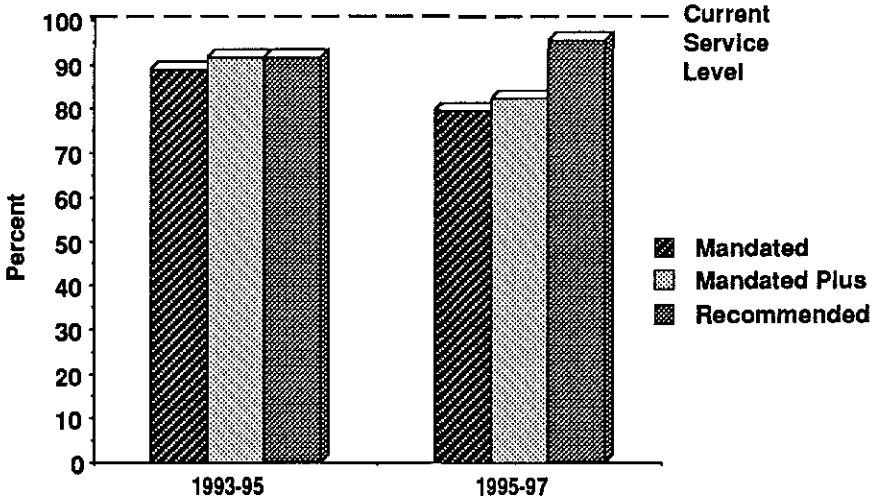
- Community mental health treatment for adults is restored to a 95 percent level.
- Residential services to developmentally disabled Oregonians is fully restored, and vocational services are restored to a 92 percent level.

Recommended

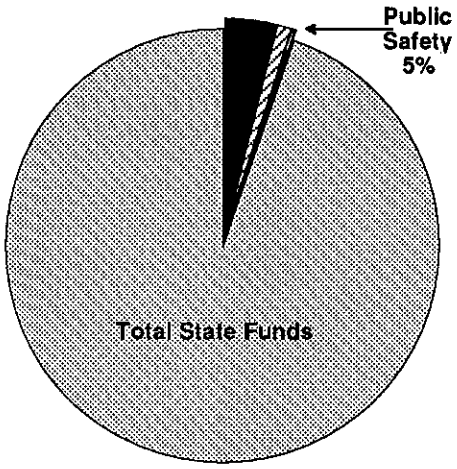
No change from Mandated Plus Budget.

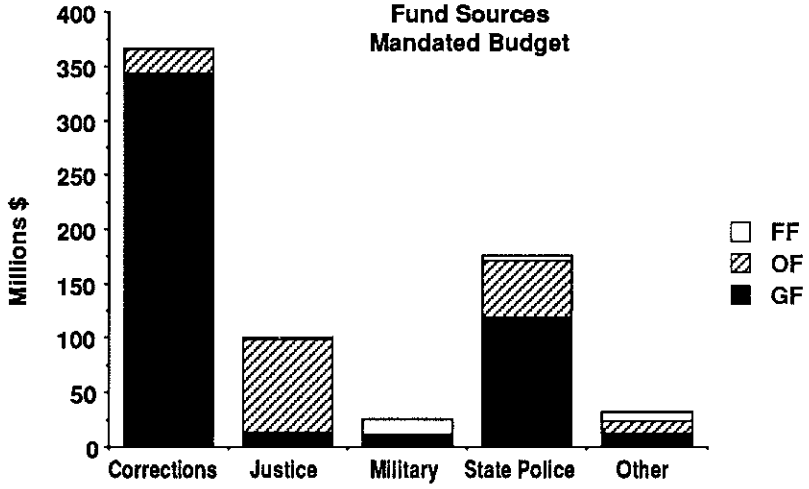
1995-97 Budget Projection

All Funds



PUBLIC SAFETY





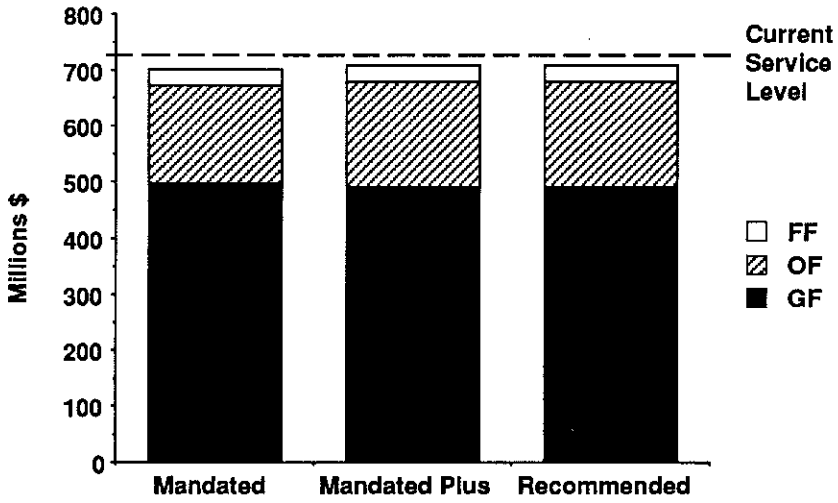
Program Area Agencies

Department of Corrections	Criminal Justice Council
Dispute Resolution Comm.	District Attorneys and Their Deputies
Department of Justice	Military Department
Board of Parole and Post-Prison Supervision	Board on Public Safety Standards and Training
	Department of State Police

Mission

To maintain law, justice and public safety in Oregon. Their duties include: law enforcement, criminal justice planning, emergency response, representing the state's legal interests, protecting property from fire and hazardous materials and operation of the prison, parole and probation systems.

1993-95 Budget Program Area



	1989-91 Actual	1991-93 Estimated	1993-95 Mandated Budget	1993-95 Mandated Plus	1993-95 Recommended Budget
General Funds	414,998,090	486,255,195	498,473,546	491,732,873	491,732,873
Other Funds	146,906,710	181,940,234	173,068,617	188,035,299	188,035,299
Federal Funds	19,298,009	24,831,167	28,482,178	28,482,178	28,482,178
Total	581,202,809	693,026,596	700,024,341	708,250,350	708,250,350
Number of Positions	4,792	4,816	4,262	4,262	4,262
Number of FTE	4,311.99	4,603.97	4,146.14	4,146.14	4,146.14

Efficiencies and Economies

Consolidating agencies. Several agency mergers are proposed for the Public Safety program area:

- The Office of the State Fire Marshal and the Emergency Management Division will be merged into the Department of State Police to allow better coordination of emergency response and program operations.
- The Board on Public Safety Standards and Training and the Fire Standards and Accreditation Board will merge, eliminating duplicate services. One agency will be responsible for setting standards and accreditation for peace officers and fire officials.
- The Criminal Justice Services Division is eliminated, with the State Police taking on management of the Law Enforcement Data System and the Criminal Justice Council absorbing the policy and planning functions.

Closing facilities. Several agencies have streamlined their operations and have proposed closing facilities not needed to deliver services:

- The Department of Corrections closed two small, aging prison facilities in 1991-93, moving the programs to larger prisons.
- The Military Department will close 10 of its 42 Oregon armories, choosing armory closures that will have the least effect on training and emergency response.
- By merging with the Oregon State Police, the Office of the State Fire Marshal will be able to close seven of nine field offices and move its operations into police field offices.

Cutting Administration. Most public safety agencies have reduced their administration. For example, the Department of Corrections trimmed 71 administrative positions, the Department of Justice's Support Enforcement Division has reduced the number of administrative positions by 22 percent, the Office of the State Fire Marshal cut 43 percent of its management positions and the Oregon State Police cut 54 middle management positions.

Saving through technology. The Corrections Department is continuing to automate its financial, manufacturing and inventory systems. The Department is dovetailing its automation that tracks offenders with the Board of Parole and Post-Prison Supervision, allowing parole and probation officers to manage their caseloads better. The Support Enforcement Division has automated nearly all the forms and procedures for collecting child support payments. And the Dispute Resolution Commission has connected its members by electronic mail, reducing the need for meetings and saving mail and travel costs.

1993-95 Mandated Budget

The Governor's mandated budget maintains most of the state's capacity to catch and punish criminals. The agencies worked to find the most effective ways to meet established goals, and to set priorities for services. The most significant changes from current services were in the largest public safety state agencies: the Corrections Department, the Oregon State Police and the Department of Justice.

Corrections Department. Under this proposal, the Corrections Department will make a major investment in a range of programs designed to address the serious problem of recidivism: Too many offenders are returned to prison again and again for violating the terms of their release or committing new crimes. The budget proposal almost doubles current funding for community services, sanctions and parole transition programs.

New or expanded programs include:

- A boot camp program for first-time offenders.
- Improved transition from the prisons into the community, including work and housing programs.
- Prison programs such as drug and alcohol treatment, education and job skills training.
- More local sanctions such as electronic monitoring.

Almost 80 percent of the Corrections Department budget pays for the prison system, and the department could not cut its budget significantly without reducing prison capacity. The department proposes to close two prisons, the Mill Creek Correctional Facility in Salem and the Oregon Corrections Intake Center in Oregon City, in addition to the two facilities closed in 1991-93. Altogether, this will reduce the number of prison beds in Oregon by 602 to a capacity of 6,088.

The proposal also cuts funding for community supervision and sets priorities within the program. Resources in the 1991-93 biennium are already stretched so thin that about half the 30,000 offenders on parole, probation and post-prison supervision are actively supervised. The budget eliminates the nominal supervision now provided for the least dangerous offenders, concentrating resources

on more effective supervision of higher-risk person-to-person offenders and other high priority cases. For the first time, the state will charge prisoners who are in work programs or who have significant assets to cover part of the cost of their incarceration.

Oregon State Police. The State Police will lose 100 trooper positions and 46 support positions from their current authorization. However, because many of the currently authorized positions are unfilled, Oregonians will not see a net decrease in state police staffing under this budget.

The Department of State Police will consolidate its operations and close some of its facilities around Oregon. The budget does not fund one of its seven crime laboratories, seven of the 19 state police outposts, and five of the 25 patrol offices. In addition the regional dispatch center in Portland will close, with duties transferred to the Salem dispatch center. The State Police chose to maintain outposts and stations that allow the most effective deployment of troopers and the most efficient coverage of the state.

The department has set two high priorities in this budget: investigating crimes against children, and increasing the effectiveness of highway patrol. An additional 22 troopers will be assigned to the child protection unit to investigate cases of missing and abducted children, and to identify, investigate and arrest pedophile offenders. The budget also allows the department to begin using 12 motorcycles to patrol urban area highways more efficiently. The motorcycle patrols will be focused on highly congested areas and commercial vehicle enforcement.

Department of Justice. Most of the Department's work is to provide legal counsel and representation to other state agencies. Those services will continue at close to the current level. Child support collection efforts are expanded under the budget, to increase cost recoveries for families. The budget does reduce some General Fund programs, such as funding for criminal and capital appeals, district attorney assistance, and litigation in organized crime, racketeering, and corrections cases. The Crime Victims Assistance program also will lose some General Fund support, as will criminal intelligence and the consumer protection programs.

Mandated Plus

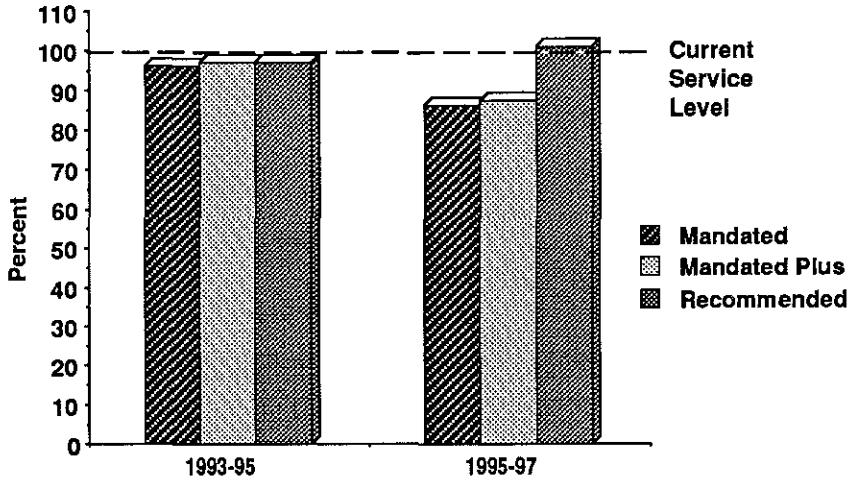
The Corrections Department is the only public safety agency whose budget changes in the Mandated Plus Budget, as some of the new beer and wine tax money supports drug and alcohol treatment for criminal offenders. The Mandated Plus Budget expands alcohol and drug treatment capacity to serve an additional 2,760 offenders, and pregnant women offenders both in and out of prison will receive a range of substance abuse treatment services. The department believes that treating offenders' addictions is a critical step in combating

recidivism and preventing offenders from lapsing back into criminal behavior. Treating pregnant women offenders is even more critical, because the health and safety of their children is at risk.

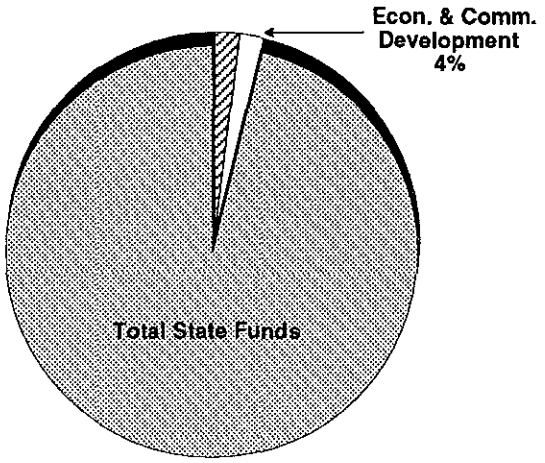
Recommended No change from the Mandated Plus Budget.

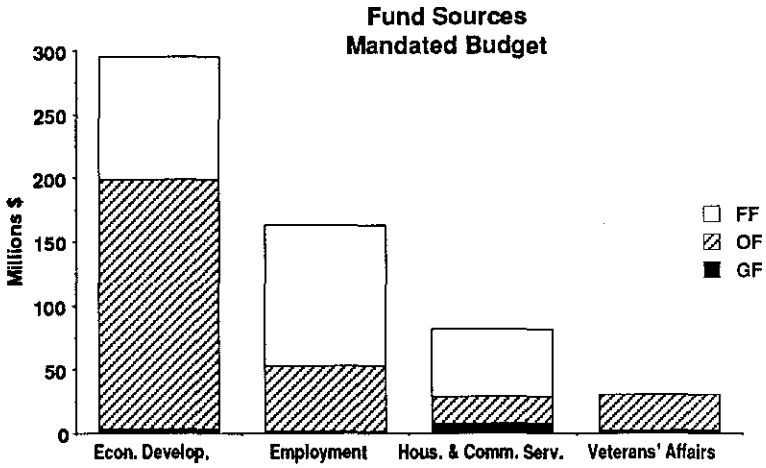
1995-97 Budget Projection

All Funds



ECONOMIC AND COMMUNITY DEVELOPMENT





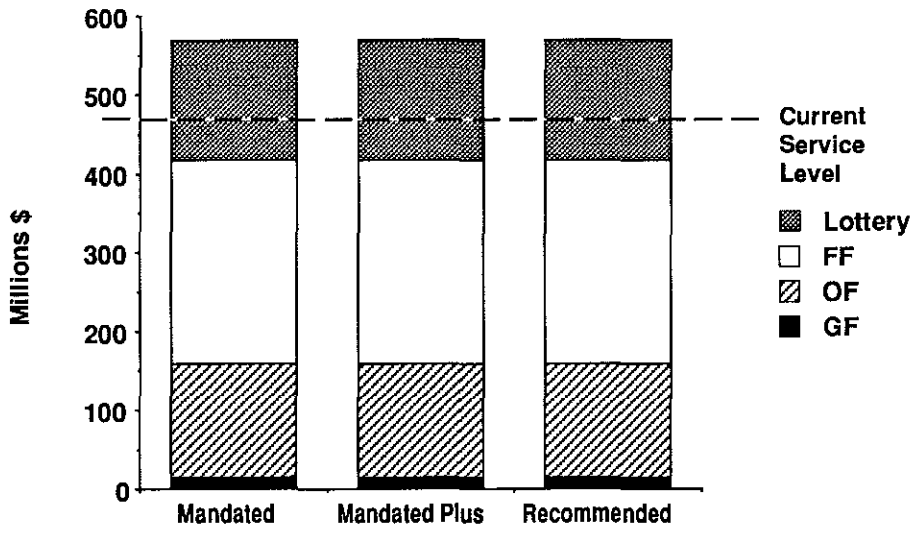
Program Area Agencies

Economic Development
Employment Department
Housing and Community Services Department
Department of Veterans' Affairs

Mission

Economic and Community Development agencies promote the development of strong Oregon communities by creating jobs, promoting Oregon's workforce, addressing housing needs, reducing poverty, assisting Oregon veterans and their survivors, and promoting child care as a workforce issue.

1993-95 Budget Program Area



	1989-91 Actual	1991-93 Estimated	1993-95 Mandated Budget	1993-95 Mandated Plus	1993-95 Recommended Budget
General Funds	98,355,785	41,880,350	14,687,259	14,687,259,	14,687,259
Other Funds	122,910,925	146,353,358	296,690,706	296,890,706	296,890,706
Federal Funds	213,517,705	248,671,685	258,094,257	258,094,257	258,094,257
Total	434,784,415	436,905,393	569,472,222	569,672,222	569,672,222
Number of Positions	1,739	1,845	1,766	1,766	1,766
Number of FTE	1,622.24	1,763.77	1,653.56	1,653.56	1,653.56

Efficiencies and Economies

Reorganizing operations. The Governor is proposing a more logical and effective organization for economic and community development. These are examples:

- The Employment Department will be a separate agency. It will continue to serve clients of the Department of Human Resources, but will place greater emphasis on Oregon's economic development, education and workforce training issues. It will work closely with other Economic and Community Development agencies for better coordination and service delivery.
- The Employment Appeals Board is moved into the Employment Department, eliminating its need for separate offices and staffing, and speeding decision-making for contested unemployment insurance claims.
- The Office of Child Care will consolidate child care and day care programs now scattered in three different agencies.
- The Department of Veterans' Affairs merged two financial sections into the Financial Administration Division, eliminating duplication.

Cutting administration. The Employment Division has eliminated 55 positions, including two layers of managers, the regional manager and deputy administrator positions. The Department of Veterans' Affairs, which had a ratio of one supervisor for every four employees now has a span of control of one-to-seven.

1993-95 Mandated Budget

The Governor's budget will invest in businesses, communities and people to produce a diversified economy in urban and rural Oregon that generates productive jobs and higher incomes for all Oregonians. This program area has a substantial increase in lottery funds dedicated to economic development.

Investing in people to become the best educated and prepared workforce in America by the year 2000, and equal to any in the world by 2010. The budget includes major efforts to build an exceptionally competent, self-reliant and skilled workforce:

- The Workforce Quality Council will begin a new program, distributing regional workforce development grants to help local communities build workers' skills and education.
- The state's investment in further training and education for dislocated workers is significantly increased.
- A new information system shared by 13 agencies and the Workforce Quality Council will prepare a base of information to develop a coordinated strategy for the state's workforce development, education and training programs.
- The Employment Department will continue and expand an information network that includes touchscreen kiosks for Oregonians to receive services and information, a touch-tone telephone system so clients can record information to continue benefits, and job opening listing accessible from a personal computer.

Investing in Oregon businesses to ensure they remain highly competitive, world-wide. The budget includes strategies to build Oregon's economy with efforts targeted at certain businesses or industries:

- The state will continue and expand many of its current business development efforts, such as those related to tourism, film and video industries and international trade.
- The Economic Development Department will more than quadruple its efforts to develop "key industries" — those areas such as metals, agriculture and biotechnology that have been identified as major opportunities for Oregon's economy.
- The budget includes ports improvements, including funding to dredge the Coos Bay channel.
- A new industrial modernization program will supply companies with technology and productivity assessments and help to ensure that Oregon businesses remain highly competitive world-wide.
- Important efforts to attract targeted businesses increase — with higher funding for worker training important to businesses that need a specialized workforce and for the public works fund that provides infrastructure improvements necessary for business expansion.

Investing in livable communities to ensure they remain attractive places to live and do business. Livable communities, with a good supply of affordable housing and an infrastructure to support business, are vital to Oregon's economy. The budget includes programs to invest in communities, with special efforts targeted to rural communities:

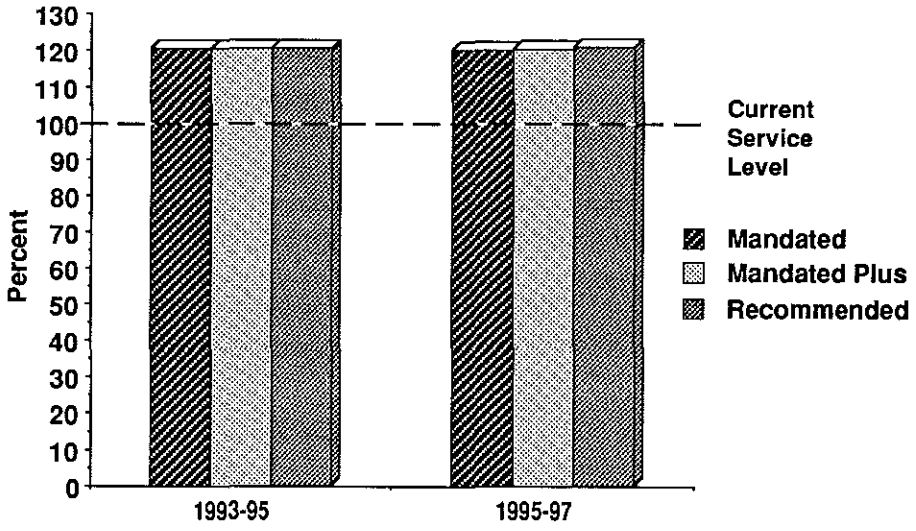
- Regional strategies funding is increased by 33 percent in 1993-95, offering greater opportunities for Oregon's communities to pursue their regional economic development strategies.
- Rural communities will receive new funding to build and upgrade community use facilities, such as community centers or medical centers, and will also benefit from on-going rural development efforts.
- A new initiative will identify lands suitable for industrial development and plan for necessary infrastructure development of those lands.
- Local communities will receive greatly increased financial grants for local drinking and wastewater treatment projects to help them comply with the federal Safe Drinking Water Act and the Clean Water Act.
- The budget makes a significant investment in affordable housing, with increases in the Oregon Housing Fund to add to the supply of affordable housing for low- and very low-income households, and to help homeless people and those at risk of becoming homeless.
- Under a new program, the state will offer grants to help locally based Community Development Corporations, which are non-profit organizations that operate social service and housing programs.

Mandated Plus No change from the mandated budget.

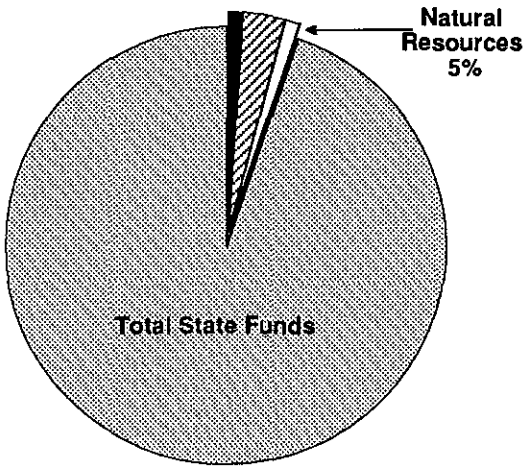
Recommended No change from the mandated budget.

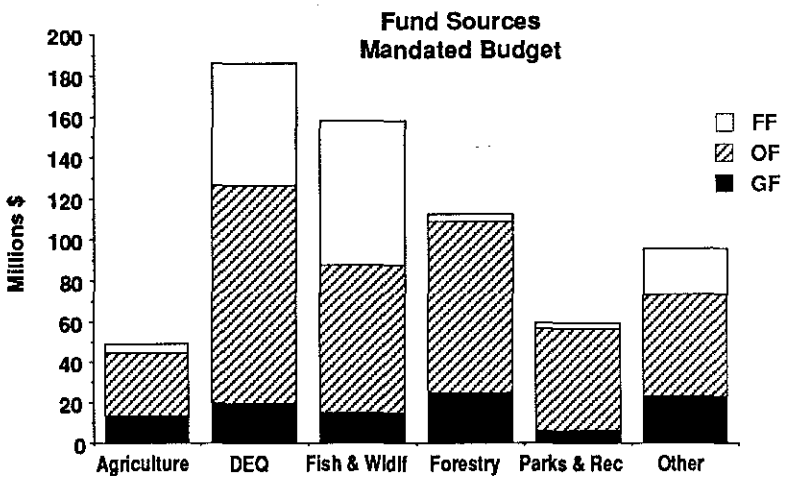
1995-97 Budget Projection

All Funds



NATURAL RESOURCES





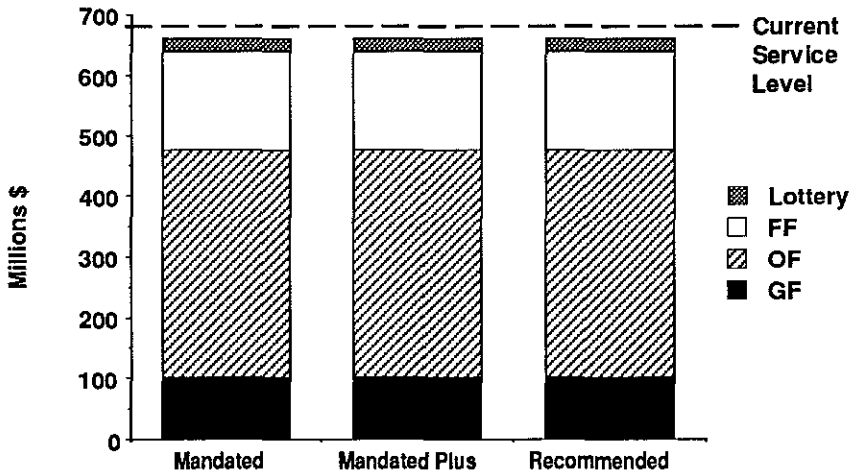
Program Area Agencies

Department of Agriculture
Department of Energy
Department of Fish and Wildlife
Department of Geology and Mineral Industries
Land Use Board of Appeals
Department of Parks and Recreation
Columbia River Gorge Commission
Department of Environmental Quality
Forestry Department
Department of Land Conservation and Development
Marine Board
Division of State Lands
Water Resources Department

Mission

The natural resources agencies are charged with managing, protecting and preserving Oregon's natural resources in the best interests of present and future generations and a sound, diversified and sustainable economy.

1993-95 Budget Program Area



	1989-91 Actual	1991-93 Estimated	1993-95 Mandated Budget	1993-95 Mandated Plus	1993-95 Recommended Budget
General Fund	112,621,746	111,250,540	102,194,527	102,194,527	102,194,527
Other Funds	239,945,570	315,543,271	395,397,445	395,397,445	395,397,445
Federal Funds	79,596,348	134,192,795	163,264,819	163,264,819	163,264,819
Total	432,163,664	560,986,606	660,856,791	660,856,791	660,856,791
Number of Positions	4,779	5,555	5,306	5,306	5,306
Number of FTE	3,349.49	3,788.20	3,634.99	3,634.99	3,634.99

Efficiencies and Economies

Cutting administration. Many of these agencies have cut administrative positions. The Department of Agriculture eliminated 14 management positions and the Water Resources Department reduced its management staff by six positions. In these two agencies and in the Forestry Department, the Department of Fish and Wildlife and the Department of Energy, managers now supervise an average of nine employees instead of six. The Department of Environmental Quality cut its administrative staff by 30 percent, so most department managers will supervise 10 to 15 staff. Both the Department of Environmental Quality and the Parks and Recreation Department are decentralizing administrative support services into regional offices. In addition, the Parks Department is eliminating one regional office.

Setting priorities. The Department of Geology and Mineral Industries has restructured its technical support functions and eliminates the rock laboratory. The Department of Agriculture used a customer survey to help evaluate program priorities, and is eliminating lower priority services. The Division of State Lands no longer will administer student loan programs that are not directly related to its mission.

1993-95 Mandated Budget

Oregon's continued high quality of life and economic well-being depend on our environment and our natural resources. The agencies in the natural resources program area share the mission of protecting and conserving the ecosystem and guiding sustainable use of our valuable resources for current and future generations. This recognizes that our environmental and natural resources are as much a part of the state's infrastructure as bridges, sewers and highways.

With that in mind, the budget for the natural resources area focuses on two major themes: continuity in management and strategic environmental investment.

Continuity in management. The budget recognizes that continuity is essential in natural resource management. Scientific and resource data must be collected steadily over time, if they are to provide the basis for sound management decisions and policy. And the resource itself must have a stable level of protection, restoration and enhancement if Oregon is to avoid serious environmental degradation and the economic dislocation that goes with it.

The budget, then, reflects the need to fund the natural resources program area on a level that keeps the underlying base of resource protection as whole as possible. This budget will maintain our current basic commitment to field level protection and technical services, and continues the most essential data collection and service to the public.

Strategic environmental investment. The budget also includes strategic investments to protect Oregon's quality of life and halt environmental decline in critical program areas, in accordance with the Oregon Benchmarks. These innovations will play a crucial role in economic development and the future economic health of the state. Therefore, the budget makes a major commitment of lottery dollars, as well as General Fund and Other Funds in these areas: watershed health, urban growth and transportation, Columbia River water quality, water resources management and maintenance of parks and recreation facilities.

The Watershed Health Benchmark investments will fund a targeted, joint field effort by eight natural resources agencies to identify and implement strategies for watershed and ecosystem health in two areas: the South Coast and the Grande Ronde. Both areas are now facing significant degradation and potential listing of threatened and endangered species. The effort will emphasize concrete, on-the-ground actions to improve the watershed and ecosystem health. The participating agencies will provide contracts and grants at the local level that will create local jobs, while adding a minimum of state staff. The investment in watershed health is $10 million.

The Urban Mobility Benchmark in the natural resource area focuses on efforts to manage urban growth to support the Oregon Transportation Plan. The budget emphasizes reducing single-occupancy vehicle use in order to meet air quality standards and establishing patterns for future economic development consistent with urban livability goals. The budget invests $6.8 million in these urban growth and transportation efforts.

The budget for Columbia River programs will support water quality studies and joint projects with the State of Washington aimed at developing a long-range management strategy for this magnificent river resource. The budget includes $960,000 for this purpose.

The Water Resources Department will focus on the pressing need to ease long-standing tension surrounding water management throughout Oregon. The department's ability to respond to water management needs and make timely decisions has a tremendous impact on economic development, and provides a crucial element of policy and program management in all other natural resources agencies. In addition to its role in the watershed health project described above, the Water Resources Department will invest $3.2 million in projects with these goals:

- Achieving a balance between instream and out-of-stream water use without disrupting the economy;
- Slowing or halting the listing of aquatic species under the federal Endangered Species Act; and
- Enhancing participation of local groups in watershed improvement efforts that have a critical impact on their communities.

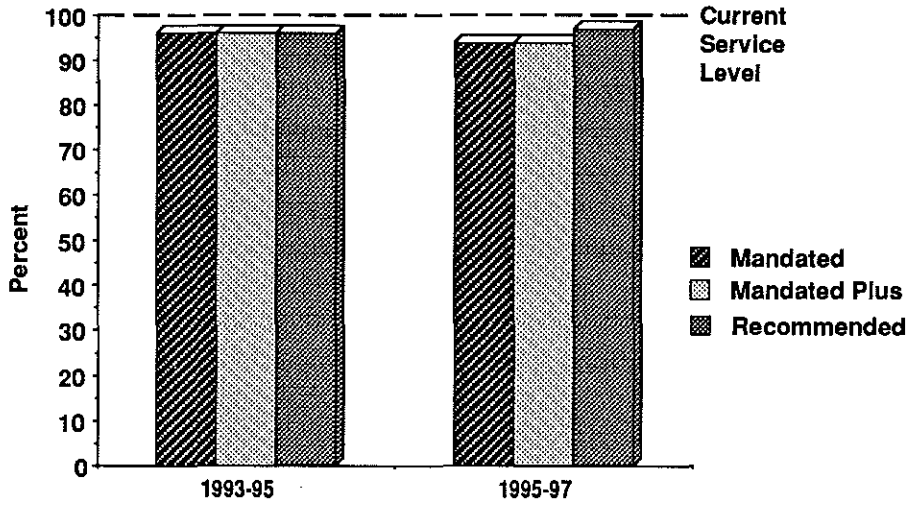
Finally, the Department of Parks and Recreation will make $2.3 million in improvements to facilities at state parks. This will help address a long-standing deficiency in a system where capital investment and facility maintenance has not kept pace with ever greater demands on our parks. Recent studies indicate that the state parks system had an impact on Oregon's economy of about $470 million in the past year. With increasing visitor use from both in- and out-of-state, the Governor believes we cannot afford to continue neglecting this resource.

Mandated Plus No change from the Mandated Budget.

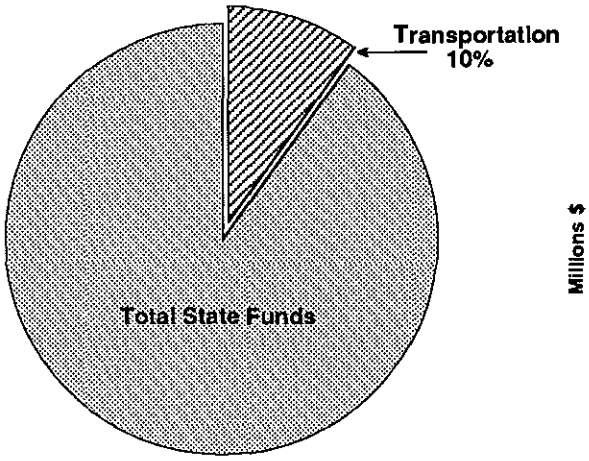
Recommended No change from the Mandated Budget.

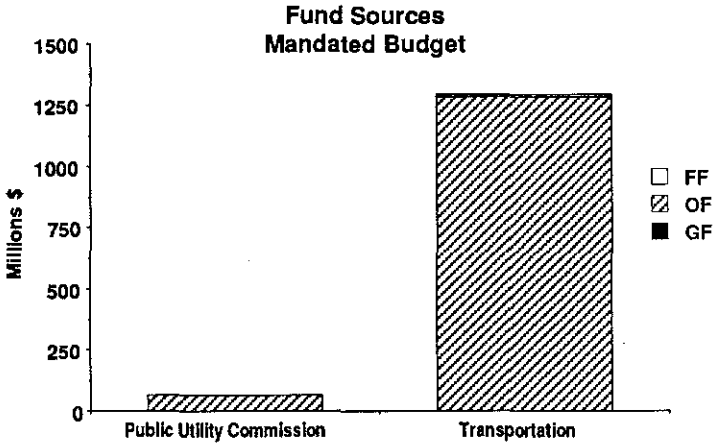
1995-97 Budget Projection

All Funds



TRANSPORTATION





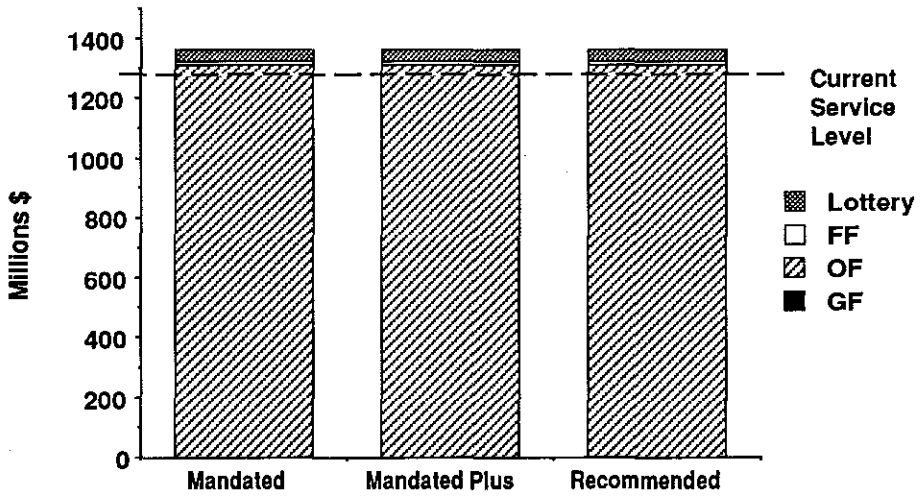
Program Area Agencies

Public Utility Commission
Department of Transportation

Mission

The Oregon Department of Transportation provides leadership and vision in the development and management of a statewide transportation network. The Public Utility Commission regulates the utility and transportation industries to ensure safe, reliable service at just and reasonable rates.

1993-95 Budget Program Area



	1989-91 Actual	1991-93 Estimated	1993-95 Mandated Budget	1993-95 Mandated Plus	1993-95 Recommended Budget
General Fund	1,035,060	1,214,566	551,020	551,020	551,020
Other Funds	1,114,752,195	1,196,564,751	1,346,255,512	1,346,255,512	1,346,255,512
Federal Funds	11,957,778	12,354,572	13,750,076	13,750,076	13,750,076
Total	1,127,745,033	1,210,133,889	1,360,556,608	1,360,556,608	1,360,566,608
Number of Positions	5,466	5,482	5,264	5,264	5,264
Number of FTE	4,968.57	5,082.52	4,932.73	4,932.73	4,932.73

Efficiencies and Economies

Reorganization for effectiveness. The Department of Transportation is undertaking a major reorganization into a single, unified agency. The old divisional structure will be replaced with a structure based on function that results in more effective and comprehensive transportation planning. The reorganization increases efficiency and productivity and eliminates duplication. The Department of Transportation has eliminated 108 administrative positions.

Cutting administration. As directed by the 1991 Legislature, the Public Utility Commission has reorganized to reduce the number of positions in management service. This budget eliminated 26 management positions.

1993-95 Mandated Budget

Department of Transportation. This budget makes large investments in Oregon's first comprehensive Oregon Transportation Plan through light rail expansion, development of high-speed rail, help for rural areas and increased federal financing for transportation infrastructure. These are major components:

- Light rail funding increases, with planning for a new rail line. The Governor proposes to speed up work on the Westside Light Rail project from Portland to Washington County by increasing payments to Tri-Met. The budget also includes $4 million in lottery dollars to begin design work, engineering and environmental analysis for a light rail system extension into Clackamas County.
- High speed rail is a priority. The Governor proposes to invest $1 million in lottery dollars to begin planning for a high speed rail system in Oregon, including initial track studies and upgrade plans.
- Federal money will rebuild Oregon's transportation system. The federal government's Intermodal Surface Transportation Efficiency Act will provide up to $100 million a year in new and flexible funding for broad transportation infrastructure and system improvements.

- Rural areas get help. The Access Oregon Highways program will improve 15 major highways needed for commerce, rural trade and tourism. The budget would increase taxes on jet fuel and aviation gas by $1.1 million to be used as matching funds to finance up to $10 million in community service airport improvements.
- Transportation systems, land use planning and urban growth management will work together to achieve the vision of the Oregon Transportation Plan.

Public Utility Commission. The budget supports new initiatives in staff training and use of technology to operate more effectively. The Public Utility Commission will not continue the following programs, which were determined to be low-priority during a review of state programs last fall: private water company regulation, log and dump truck motor carrier regulation, rail employee safety, truck insurance requirement enforcement and railroad crossing safety.

Mandated Plus

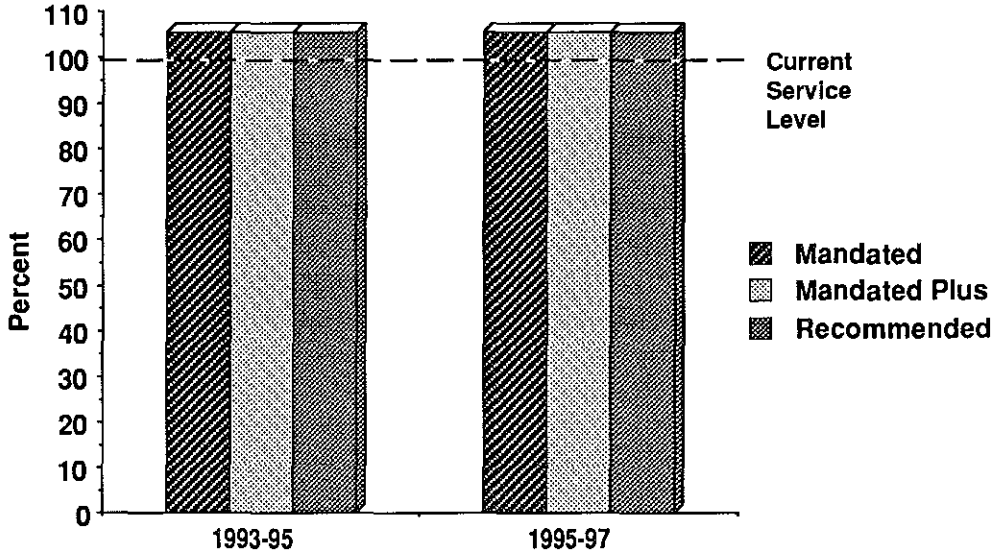
No change from the Mandated Budget.

Recommended

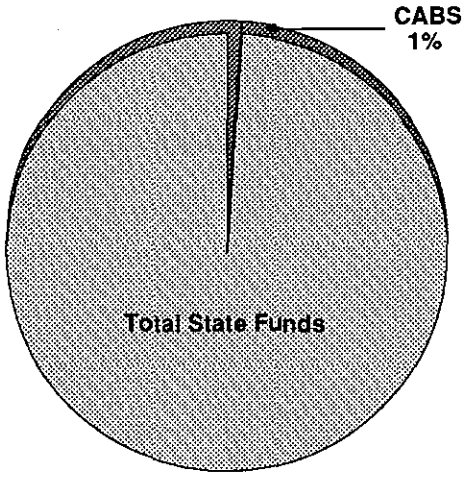
No change from the Mandated Budget.

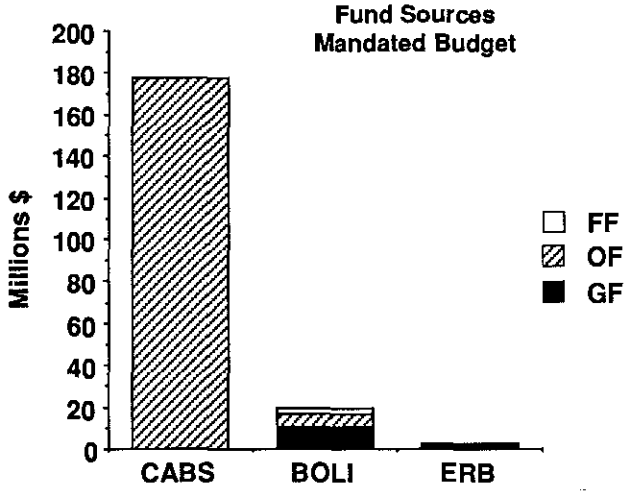
1995-97 Budget Projection

All Funds



CONSUMER AND BUSINESS SERVICES





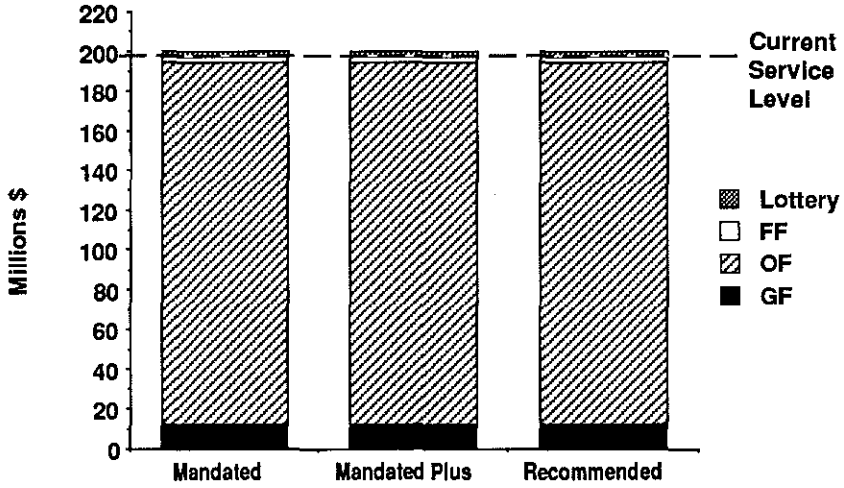
Program Area Agencies

Department of Consumer and Business Services
Bureau of Labor and Industries
Employment Relations Board

Mission

The mission of the agencies is to protect consumers of financial, insurance, real estate, construction, health care and other professional services; to maintain fair employment practices; to maintain a safe and healthy work environment; to help injured workers; and to promote fair competition in regulated markets.

1993-95 Budget Program Area



	1989-91 Actual	1991-93 Estimated	1993-95 Mandated Budget	1993-95 Mandated Plus	1993-95 Recommended Budget
General Fund	15,366,405	15,082,288	12,331,639	12,331,639	12,331,639
Other Funds	108,355,936	163,515,729	184,257,312	184,257,312	184,257,312
Federal Funds	8,942,853	1,763,763	2,695,291	2,695,291	2,695,291
Total	132,665,194	180,361,780	199,284,242	199,284,242	199,284,242
Number of Positions	1,451	1,518	1,328	1,328	1,328
Number of FTE	1,296.80	1,472.84	1,311.96	1,311.96	1,311.96

Note: The actual and estimated numbers include agencies that are being proposed to be removed from state government.

Efficiencies and Economies

Merging agencies. Governor Roberts has proposed merging nine agencies to form a Department of Consumer and Business Services. The merger will allow better coordination of related activities in worker safety, construction, real estate, banking and insurance. These services are now splintered over several agencies. Over time, the merger will produce savings by combining central service functions such as payroll and personnel.

Better ways to deliver services. Twenty-eight licensing boards and advisory councils will become semi-independent, operating outside the state budget and with less oversight by the Executive Department. These activities do not need the current level of oversight from state government, and may be able to operate more effectively as semi-independent agencies.

Lower workers' compensation rates. The state has increased worksite inspections, consultations and training sessions to reduce on-the-job illness and accident rates. This has led to lower workers' compensation rates, saving Oregon businesses more than $200 million over three years. Due to increased worker safety and legislative reforms, state government will also save $25 million in workers' compensation costs in 1993-95.

Eliminating some activities. The state will transfer pawnbroker regulation to local authorities and will deregulate debt collectors, debt consolidation agencies and sellers of "money order" checks. The proposal also abolishes the Wage and Hour Commission.

Cutting administration. The agencies have eliminated management positions, increasing the number of employees each manager supervises.

Improving service. Many agencies have improved services. For example, in the last five years, turn-around time on tax service license renewals has gone from 10 days to 24 hours, and the recovery rate for customers who have trouble collecting from insurance companies has doubled.

1993-95 Mandated Budget

The Governor's Mandated Budget will continue most programs at current legislatively approved levels, and will set a priority on some key areas.

For example, workplace safety is a priority in this budget. The Department of Consumer and Business Services is emphasizing its inspection, consulting and training efforts within the OR-OSHA Division. In addition, inspections of farm and forest labor camps will be improved in the Bureau of Labor and Industries.

The Department's budget also includes components of the Oregon Health Plan: regulation of the small group health insurance reform policies, and support for the Medical Insurance Pool Board program, which offers access to medical coverage for about 3,200 Oregonians denied coverage for health reasons.

Lottery dollars will also improve training programs for dislocated workers and youth apprenticeship programs within the Bureau of Labor and Industry.

Some efforts that depend most on General Fund revenues would face reductions or would be funded by other sources, to offset the General Fund loss:

- The Employment Relations Board will eliminate mediation services in grievance and unfair labor practice cases, and may have to reduce the time it devotes to mediation in each collective bargaining case.
- The Wage and Hour Division in the Bureau of Labor and Industry would shift from General Funds to employer fees to continue issuing work permits and employment certificates.
- The Apprenticeship and Training Division would shift from General Funds to lottery funds.

Mandated Plus

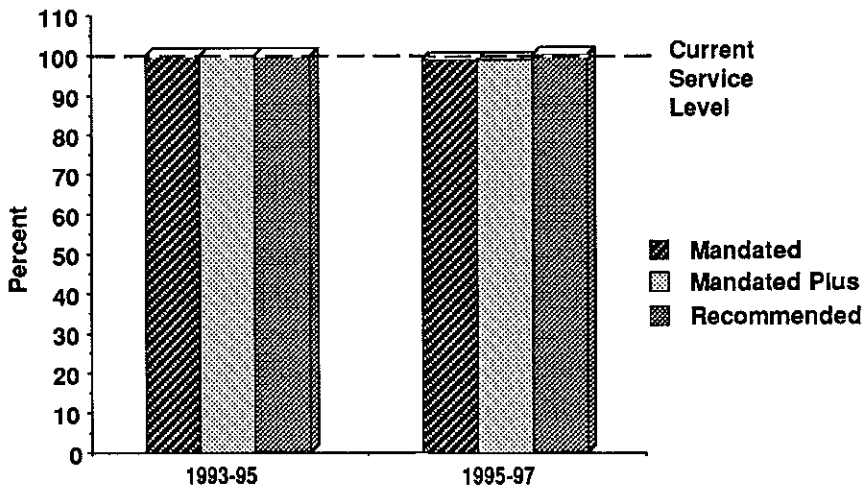
No change from the Mandated Budget.

Recommended

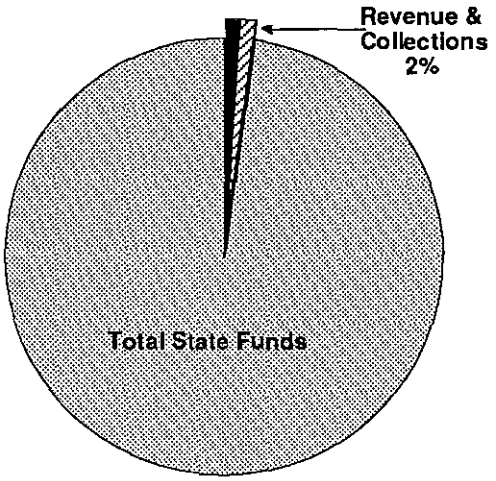
No change from the Mandated Budget.

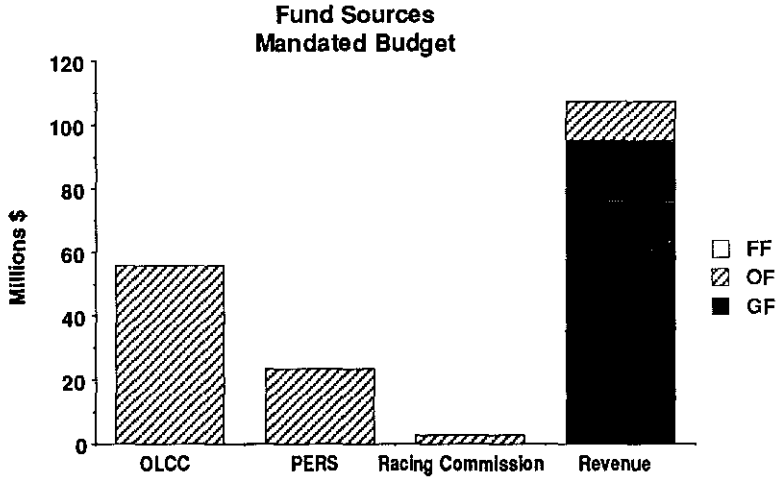
1995-97 Budget Projection

All Funds



REVENUE AND COLLECTIONS





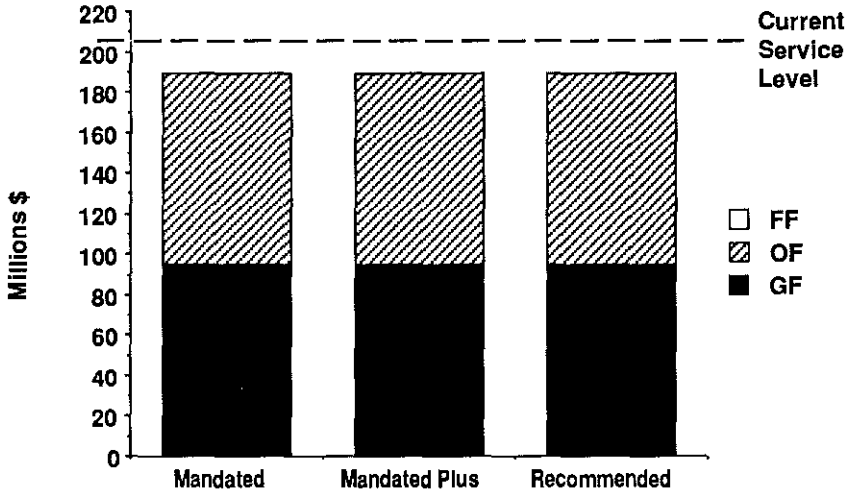
Program Area Agencies

Oregon Liquor Control Commission
Public Employes' Retirement System
Racing Commission
Department of Revenue

Mission

These four state agencies are responsible for generating, collecting and distributing revenue. Each has a defined mission, including effective administration of the Liquor Control Acts, ensuring that public employees have retirement income, regulating the pari-mutuel industry and effective management of the tax systems.

1993-95 Budget Program Area



	1989-91 Actual	1991-93 Estimated	1993-95 Mandated Budget	1993-95 Mandated Plus	1993-95 Recommended Budget
General Fund	193,927,807*	111,916,574	95,370,863	95,370,863	95,370,863
Other Funds	74,024,653	86,465,419	94,187,197	94,187,197	94,187,197
Total	267,952,460	198,381,993	189,558,060	189,558,060	189,558,060
Number of Positions	1,470	1,517	1,356	1,356	1,356
Number of FTE	1,302.18	1,357.83	1,250.63	1,250.63	1,250.63

*116 million was used for property tax relief

Efficiencies and Economies

Automating for efficiency. The Department of Revenue is handling an increasing workload (due to population growth) through automation and increased efficiency in processing returns. The Public Employes' Retirement System has increased productivity with a new computer system that allows retirement counselors and public employers easier access to retirement information, easing counselor workloads and speeding accounting functions. And the Racing Commission is using hand-held computers in the field to streamline recording of officials' decisions and other activities at race meets.

Cutting administration. The OLCC has reduced its staff by almost 12 percent, making significant cuts in management and increasing the number of employees each manager supervises. The OLCC created self-directed work teams to improve flexibility and creativity of its staff and to give them more decision-making authority.

Reorganizing for effectiveness. The Department of Revenue reorganized its collections to allow agents to become more specialized and more knowledgeable — improving taxpayer compliance.

1993-95 Mandated Budget

This budget preserves the program area's ability to generate revenue for many state programs. Generally, agencies maintain their legislatively approved service levels into 1993-95. There are only a few notable changes:

- The Public Employes' Retirement System will close the Eugene and Tigard retirement counseling centers.
- The Oregon Liquor Control Commission will increase agents' compensation as part of a 5% liquor tax increase.

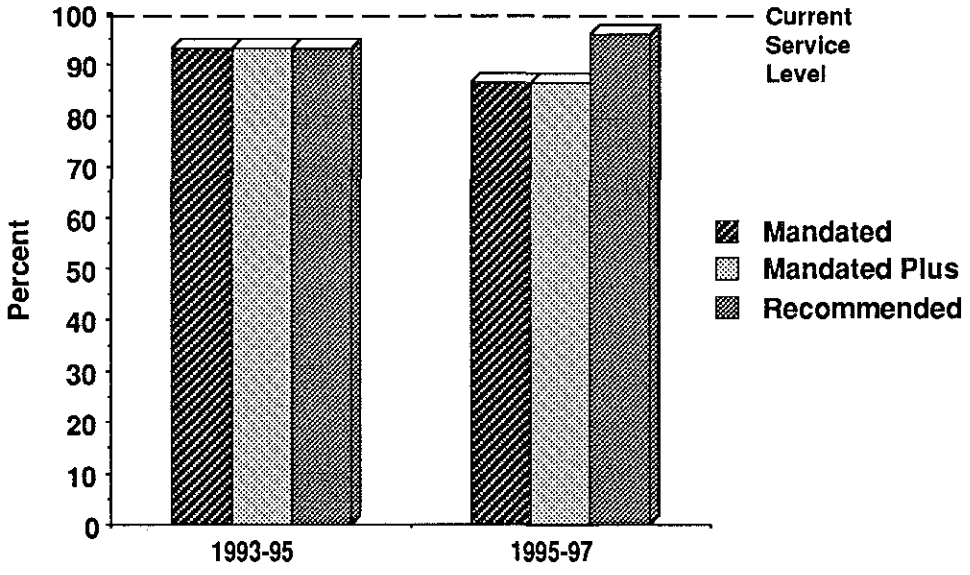
- The Revenue Department will add two positions related to the "pay or play" component of the Oregon Health Plan, to plan implementation of the employer mandated health insurance program. The program relies heavily on the state's payroll tax system for assessment and collection.
- The Racing Commission will no longer distribute revenue to the Department of Agriculture, counties, non-governmental units, and the Oregon State University School of Veterinary Medicine. These revenues will be transferred to the General Fund.

Mandated Plus No change from the Mandated Budget.

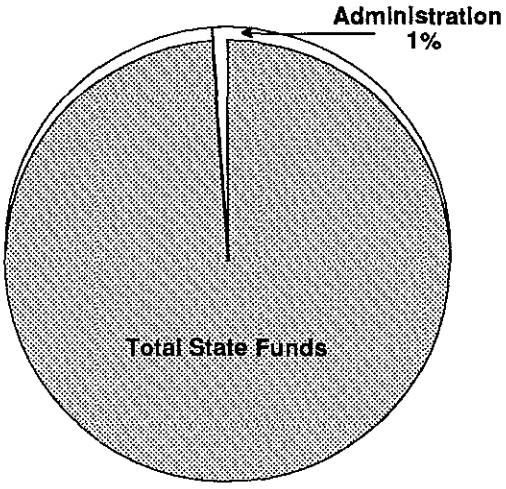
Recommended No change from the Mandated Budget.

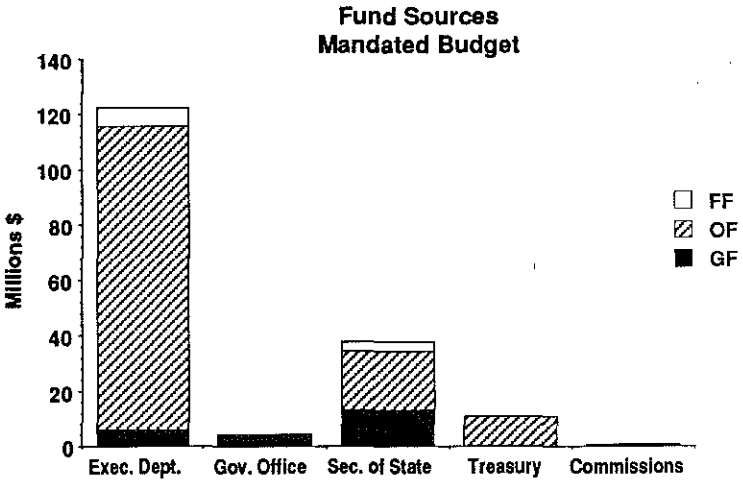
1995-97 Budget Projection

All Funds



ADMINISTRATION





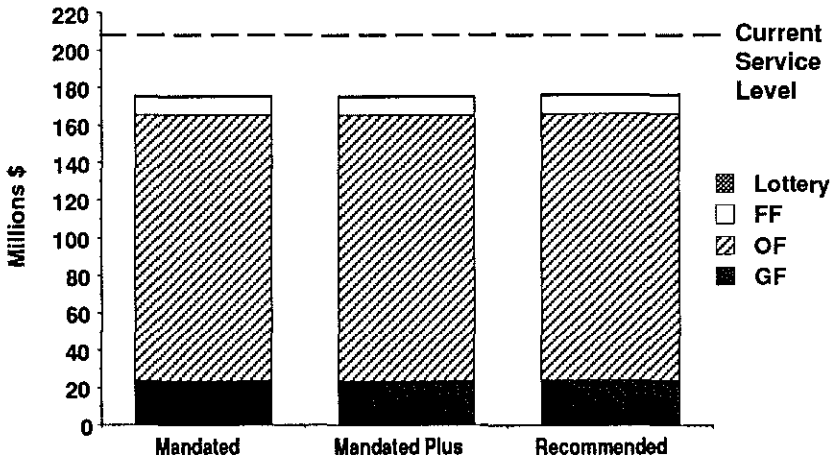
Program Area Agencies

Executive Department
Secretary of State
Commission on Black Affairs
Commission for Women
Office of the Governor
State Treasury
Commission on Hispanic Affairs
Human Rights Commission

Mission

These agencies provide leadership and direction for state government executive branch operations; foster efficient and effective use of public resources; deliver services that support state government operations; and work to remove barriers due to race, gender and other factors that diminish full opportunity for all Oregonians. The State Treasurer manages all moneys in the state Treasury, and the Secretary of State is responsible for election laws and information, maintaining public records, auditing and financial reporting.

1993-95 Budget Program Area



	1989-91 Actual	1991-93 Estimated	1993-95 Mandated Budget	1993-95 Mandated Plus	1993-95 Recommended Budget
General Fund	59,283,393	34,745,942	23,483,857	23,483,857	24,383,384
Other Funds	176,347,201	157,649,273	142,166,105	142,166,105	142,166,105
Federal Funds	337,296,435	27,357,699	9,933,547	9,933,547	9,933,547
Total	572,927,029	219,752,914	175,583,509	175,583,509	176,483,036
Number of Positions	1,303	1,309	941	941	948
Number of FTE	1,232.44	1,265.49	925.31	925.31	932.31

Note: The actuals and estimates include agencies that are in this program area under the current organizational structure.

Efficiencies and Economies

Reorganizing operations. Many programs within this area have shifted, as the Governor proposes a more logical and effective organization for administration. These are some examples:

- The central government functions of the Department of General Services and Ed-Net have been combined into the Executive Department, improving management of common issues and reducing administrative costs by more than $1 million.
- The Appraiser Certification and Licensure Board moves from the Secretary of State's office to the Department of Consumer and Business Services, and the Board of Accountancy and Board of Tax Service Examiners will become semi-independent agencies.
- The State Library will become a division of the Secretary of State's office to allow greater coordination with the Archives Division.
- The Emergency Management Division and State Fire Marshal move from the Executive Department to the Department of State Police, allowing better coordination of emergency response.
- The Criminal Justice Services Division of the Executive Department is eliminated, with its functions absorbed by the Criminal Justice Council and the State Police.

Cutting Administration. The agencies have eliminated management positions, increasing the number of employees each manager supervises.

Automating for efficiency. Agencies have used new technology to improve operations:

- The Treasury has implemented an automated investment pool service system that may be accessed by touch-tone phone, cutting transac tion time and increasing accuracy by confirming the transaction immediately by fax. The Treasury also has updated its computer applications system, improving the data available for managers' decision-making.

- Other advances include electronic publication of job openings, automation of central purchasing, increased teleconferencing to reduce travel and meeting costs, electronic publishing, and telecommunications investment in data network consolidation with assistance to agencies in system design and long distance rate negotiation.

Lower workers' compensation rates. An increased emphasis on worker safety and early return to work has dramatically reduced state governments' workers' compensation costs. This has reduced time-loss claims, workdays lost and serious injuries. These improvements will save agencies more than $25 million in workers' compensation premiums in the1993-95 biennium.

1993-95 Mandated Budget

The Governor proposes to create a Human Rights Commission, with a mission to identify and remove barriers related to race, national origin, gender, religion and sexual orientation that diminish full opportunity and quality of life for all Oregonians. The 11-member commission, with two employees, would review and assume responsibility for selected priority Oregon Benchmarks measuring barriers that keep under-represented groups from achieving parity with the population at large. With affected agencies and groups, the Commission will develop strategies that result in measurable goals paralleling those set forth in the Oregon Benchmarks. The Commission will develop a five-year work plan stressing measurable achievement toward its goals.

The number of positions in the Governor's Office is reduced from 34 to 26 in 1993-95. This budget eliminates the Citizen's Representative Office, one communications position, a policy analyst and three support staff positions.

The consolidated Executive Department will save in personnel, accounting, information resources and the director's office expenditures. The budget anticipates that the Printing Division would become a public corporation. The budget includes investment in the core accounting, purchasing and budgeting elements of a financial management system, to be paid for by certificates of participation. Lottery funding will be invested in consulting services to improve contact with Congressional appropriations committees to increase funding for projects that help Oregon and bring jobs to the state.

Mandated Plus

No Change from the Mandated Budget.

Recommended

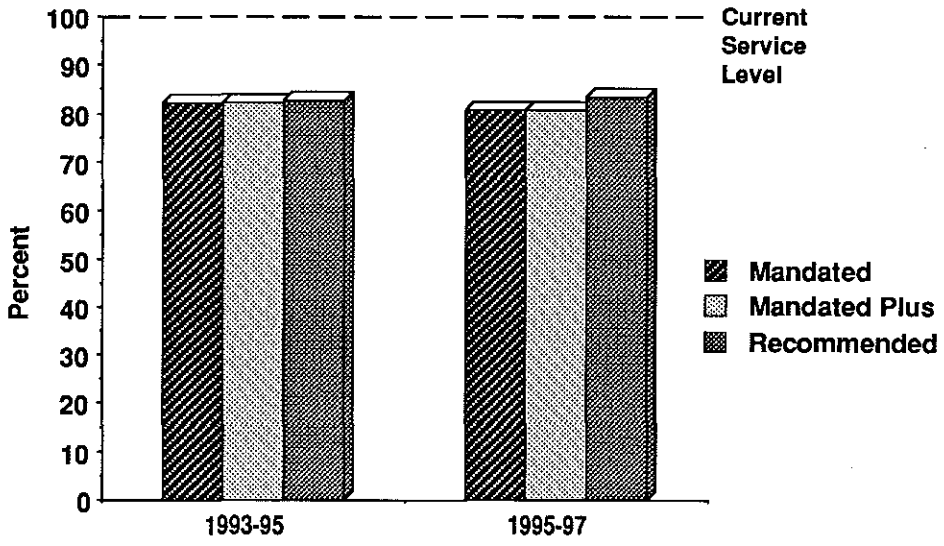
The Recommended Budget would add three additional positions and related services and supplies to enhance the Human Rights Commission's ability to meet its goals.

The State Library will receive $106,590 to restore state grants to local libraries at the federally mandated level.

This budget also would restore the Citizen's Representative Office to a level that would adequately respond to the needs of the citizens of Oregon as they interact with state government.

1995-97 Budget Projection

All Funds

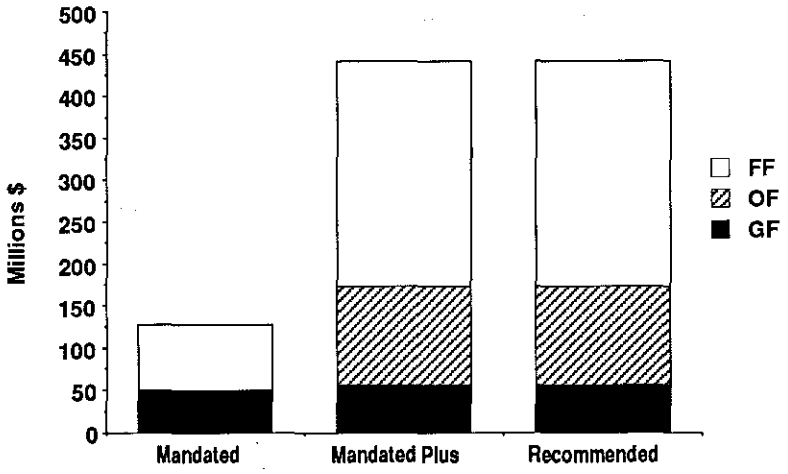


OREGON HEALTH PLAN

Description

The Oregon Health Plan is an innovative effort to expand health care coverage to all Oregonians. A basic benefit package based on a prioritized list of health services will be delivered through a managed care delivery system. By setting those priorities, Oregon can extend its health care dollars to provide the most effective services to many more people. By implementing the Oregon Health Plan, state government can provide those services to more low-income people. In fact, under the plans outlined in the waiver request sent to the federal administration, Oregon would offer health coverage to an additional 120,000 Oregonians — almost 50 percent more than now covered.

1993-95 Budget Special Program



	1989-91 Actual	1991-93 Estimated	1993-95 Mandated Budget	1993-95 Mandated Plus	1993-95 Recommended Budget
General Fund	0	0	49,001,559	56,087,570	56,087,570
Other Funds	0	0	0	116,807,949	116,807,949
Federal Funds	0	0	79,187,696	269,041,067	269,041,067
Total	0	0	128,189,255	441,936,586	441,936,586
Number of Positions	0	0	0	15	15
Number of FTE	0	0	0	13.95	13.95

1993-95 Mandated Budget

The Mandated Budget provides $49 million in General Fund for medical services to low-income Oregonians. Even with this money, Governor Roberts does not believe the funding is adequate to implement the Oregon Health Plan, because the dollars would not cover enough of the prioritized services. Therefore, the Mandated Budget does not implement the Oregon Health Plan, but continues to deliver services under the current Medicaid system.

Overall, medical services to low-income Oregonians still fall 8 percent below the 1991-93 level. Service reductions in the Mandated Budget include:

- Payments to taxi companies transporting medical patients are cut to 80 percent of billed charges, and payments to air ambulance providers will be cut to 75 percent of billed charges.
- The state eliminates the special reimbursement rates to hospitals with fewer than 50 beds within 30 miles of another hospital.
- Chiropractor services, naturopath services and vision services for adults are eliminated.
- In-patient reimbursement is cut 10 percent.
- Extremely poor, temporarily disabled adults will not receive out-patient services or physician services.
- Adults will be limited to 12 paid physician visits per year.
- The state will not cover over-the-counter drugs.
- Coverage for occupational, physical, speech and hearing therapies is eliminated.
- Home health and personal care services will be reduced.
- About 4,288 senior citizens will not receive medical services.
- The Medically Needy program for the aged and disabled will be eliminated. This program serves adults whose income is slightly too high to qualify for other state assistance, but who have very high medical bills.

Mandated

The Governor proposes a gross receipts tax on health service providers to implement the Oregon Health Plan. This budget also depends on revenue from a proposed increase in the cigarette tax and General Fund dollars that become available as the cigarette tax and beer and wine tax offset program costs in other state agencies.

With that money, the Oregon Health Plan will be funded adequately, to the level of prioritized services approved by the 1991 Legislature. This budget assumes the Oregon Health Plan will begin on June 1, 1993 and continue through the 1993-95 biennium. The state plans to implement the health plan initially for families and children. Eventually, the aged and disabled will be included. However, this budget provides services to the aged and disabled under the current Medicaid programs. The Mandated Plus Budget restores many of their medical services, including the Medically Needy program, and medical services for 3,332 additional seniors.

These are the Mandated Plus Budget's remaining reductions in current health care services to the aged and disabled:

- Payments to transport medical patients will be cut to 80 percent of billed charges, and payments to air ambulance providers would be cut to 75 percent of billed charge.
- The state will eliminate the special payment rates to hospitals with fewer than 50 beds within 30 miles of another hospital.
- Chiropractor services and naturopath services for adults will be eliminated.
- In-patient reimbursement will be cut 10 percent.
- Adults will be limited to 12 paid physician visits per year.
- Medical services to 956 senior citizens will no longer be provided.

Revenue

Implementation of the Oregon Health Plan is funded by a health care provider tax, with matching Federal Funds.

LOTTERY FUNDS DISTRIBUTION

Under the Oregon Constitution, all proceeds from the state lottery must be used to create jobs and further economic development in Oregon. Lottery funding has increased strongly in this budget, due almost entirely to the introduction of video poker. The 1993-95 budget contains $295.8 million in lottery funding, compared to $111.2 million in 1991-93.

The Governor's budget invests in business, communities and people to produce a diversified economy in urban and rural Oregon that generates productive jobs and higher incomes for all Oregonians. This is how the dollars break out:

Investing in People

Major efforts are proposed to help Oregonians become the best educated and prepared workforce in America by the year 2000, and equal to any in the world by 2010. This includes efforts such as job training, education, and other workforce development projects. $107.1 million.

Investing in Businesses

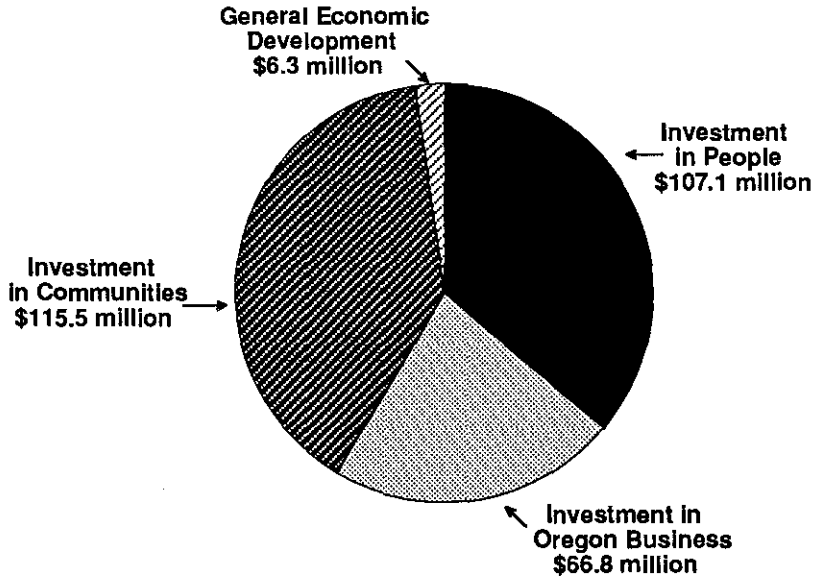
The budget includes strategies to invest in Oregon businesses and industries to ensure they remain highly competitive world-wide. This includes such efforts as business development efforts targeted at key and growing Oregon industries, industrial modernization and port improvements. $66.8 million.

Investing in Communities

Programs are proposed to invest in livable communities, to ensure they remain attractive places to work and do businesses. This includes efforts to ensure a supply of affordable housing and an infrastructure to support business. $115.5 million.

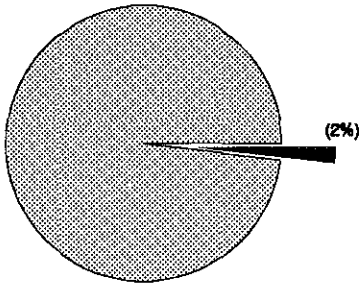
General Economic Development

In addition, the budget includes funding for the general administration of the Department of Economic Development and for the Progress Board. $6.3 million.



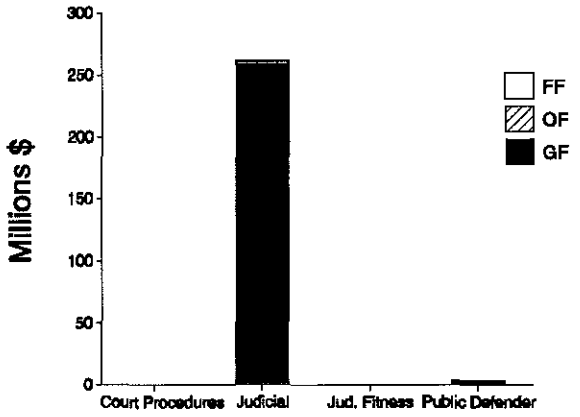
JUDICIAL BRANCH

Judicial Branch Requested Budget



Total Program Area Budget
$12.7 Billion

Judicial Branch Requested Budget



Judicial Branch Agencies

Judicial Department
Judicial Fitness Commission
Council on Court Procedures
Public Defender

Mission

The Oregon court system was created by the Oregon Constitution to ensure due process of law for citizens. The Judicial Branch is one of three co-equal branches of state government.

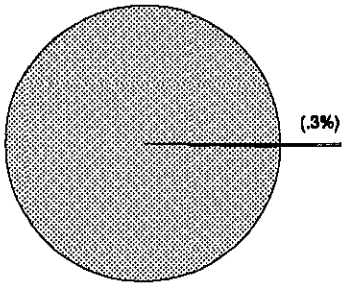
Operating Budget	1989-91 Actual	1991-93 Estimated	1993-95 Chief Justice's Budget
General Fund	$206,910,074	$234,995,893	$263,250,737
Other Funds	1,268,155	1,777,509	2,128,971
Federal Funds	40,207	74,914	81,331
Total	$208,218,436	$236,848,316	$265,461,039
Number of Positions	1,671	1,688	1,677
Number of FTE	1,518.28	1,529.69	1,350.20

1993-95 Request

The Chief Justice of the Supreme Court submitted budgets for the Judicial Department, Council on Court Procedures, and the Commission on Judicial Fitness that continue operations at 1991-93 levels, adjusted for inflation and salary step and benefit increases for nonjudicial staff. The Judicial Department budget also funds salary increases for judges, who are not eligible for salary step increases. The Public Defender Committee's budget makes staff reductions and eliminates representation in parole appeals.

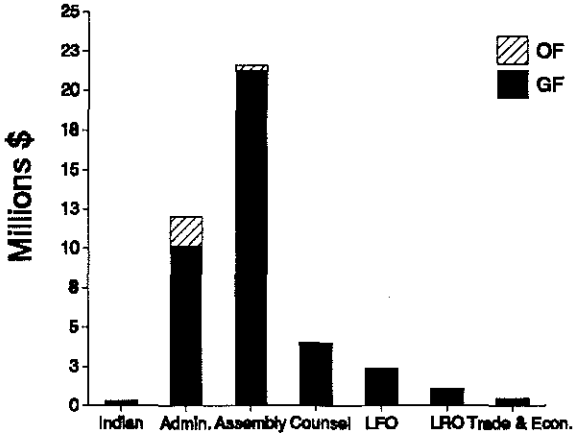
LEGISLATIVE

Legislative Requested Budget



Total Program Area Budget
$12.7 Billion

Legislative Branch Requested Budget



Legislative Branch Agencies

Commission on Indian Services
Legislative Administration Committee
Legislative Assembly
Legislative Committee on
Trade and Economic Development
Legislative Fiscal Officer
Legislative Revenue Officer
Legislative Counsel Committee

Mission

To enact laws, finance state government, and furnish an arena for discussion of public issues.

Operating Budget	1989-91 Actual	1991-93 Estimated	1993-95 Chief Justice's Budget
General Fund	$34,379,484	$37,848,041	$39,500,675
Other Funds	3,346,492	2,212,001	2,258,067
Total	$37,725,976	$40,060,042	$41,758,742
Number of Positions	751	737	741
Number of FTE	400.39	381.19	394.69

Note: These numbers do not include Nonlimited dollars. See appendix.

Efficiencies and Economies

Legislative Administration -- Consolidated its eight units into three and reduced the number of managers from 23 to 13.

Legislative Revenue Officer -- Converted mainframe computer applications to personal computers to improve response times of economic forecasts at a reduced cost.
Legislative Counsel Committee -- Dissolved the Distribution Section of the Oregon Revised Statute Publications Program with services being contracted with the Legislative Administration Committee Information Services Program.

Legislative Branch Budget

The Legislative Branch includes the Legislative Assembly and its committees, commissions, and officers. Oregon law names permanent legislative committees and officers to service the Legislature or to make recommendations in specific areas. These are the Legislative Administration Committee, Legislative Counsel Committee, Joint Legislative Revenue and School Finance Committee, Joint Legislative Committee on Trade and Economic Development, Joint Committee on Data Processing, Legislative Audit Committee, and the Emergency Board. Officers include the Legislative Fiscal Officer and the Legislative Revenue Officer.

The requested budget maintains program operations at the 1991-93 legislatively approved program level.

leg.nar

STATE OF OREGON
Executive Department
155 Cottage St. N.E.
Salem, OR 97310

(B) Existing residential and commercial collection service customers shall be provided information identified in OAR 340-90-030(3)(c)(A) at least quarterly through a written or more effective notice or combination of both.

(C) At least annually information regarding the benefits of recycling and the type and amount of materials recycled during the past year shall be provided directly to the collection service customer in written form and shall include additional information including the procedure for preparing materials for collection.

(D) Targeting of at least one community or media event per year to promote recycling.

(E) Utilizing a variety of materials and media formats to disseminate the information in the expanded program in order to reach the maximum number of collection service customers and residential and commercial generators of solid waste.

(d) Establish and implement a recycling collection program through local ordinance, contract or any other means enforceable by the appropriate city or county ~~which requires the collector and the landlord~~ for each multi-family dwelling complex having five or more units. ~~to provide the collection service and the appropriate convenient location and equipment for collection of source separated recyclables.~~ The collection program shall meet the following requirements:

(A) Collect at least four principal recyclable materials or the number of materials required to be collected under the residential on-route collection program, whichever is less.

(B) Provide educational and promotional information directed toward the residents of multi-family dwelling units periodically as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle including the types of materials to be recycled and the method for properly preparing those materials.

(e) Establish and implement an effective residential yard debris program for the collection and composting of residential yard debris. The program shall include the following elements:

Agenda Item E

Amend OAR 340-90-190

Section (3), delete each unit is considered one residential generator

Section(4), Add at the end

Where multi-family complexes are treated as single customers, the local government providing the yard debris service shall assure that yard debris service is provided at a level equivalent to service provided single family dwellings. Equivalent service shall be based on the amount of yard debris generated.

Local government shall make this determination and any related adjustment in service, no later than their next rate review process.

State of Oregon
Department of Environmental Quality Memorandum

Date: December 11, 1992

To: Environmental Quality Commission

From: Fred Hansen

Subject: Director's Report

DMV Demonstration Project

The demonstration project to sell vehicle registration tags at the DEQ I/M station in Medford has been immediately successful. The project has been enthusiastically received by the public and by the news media, including favorable editorials in the Medford Mail Tribune and the Oregonian. The Division of Motor Vehicles (DMV) and DEQ launched the demonstration project to improve customer service by offering to process vehicle registrations at the inspection station along with the vehicle testing. The program will be evaluated to see if it should be implemented in the Portland stations as well.

Oxygenated Fuel

Carbon monoxide levels were noticeably lower in the Portland area during the month of November; the first month of the federally mandated oxygenated fuel program. The average carbon monoxide level for November 1992 was 36.4 on the Air Pollution Index, compared to the November 1991 average of 49.1.

SIP Revisions Submitted

The Department has submitted 6 State Implementation Plan (SIP) revisions to EPA to meet Clean Air Act requirements. The revisions covered emission inventory, small business assistance program oxygenated fuels and new source review. Oregon remains one of only a handful of states that have met all Clean Air Act requirements on time.

Information Systems

The Department reported on our information systems development efforts to the Legislative Committee on Data Processing on December 2. We explained our leadership efforts in state government to develop information systems using state-of-the art Integrated Computer Assisted Software Engineering tools and an open systems approach. The open systems approach is now being fostered throughout state government. This effort will allow us to move toward a better agency wide information management system. We expect to budget 2.5% of our operating budget for systems development (estimated at $2 - 3 million).

ODOT Facilities

On December 9, we met with ODOT upper management and engineers to launch a program to provide technical assistance for high priority facilities and to develop a plan for statewide cross-media compliance at all facilities. We will be setting up a standing group to address potential problems and to look for pollution prevention opportunities.

ODOT Meeting

The Oregon Transportation Commission will be sending an invitation to the Commission to attend a meeting with its members and the Land Conservation and Development Commission. The discussion would focus on land use and transportation issues as they relate to air quality.

Multi-Media Inspections

DEQ has taken the lead from EPA for multi-media inspections in Oregon. The first inspection was conducted at Industrial Oil in Klamath Falls on December 9. We have had concerns about the facility based on citizen complaints and our observations of apparent hazardous waste on the site, evidence of past oil spills and the close proximity of the facility to the Klamath River.

The Department sent a team of regional staff, EPA specialists and the Oregon State Police who procured and served an administrative search warrant.

State of Oregon
Department of Environmental Quality Memorandum

Date: November 2, 1992

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Dioxin Limits

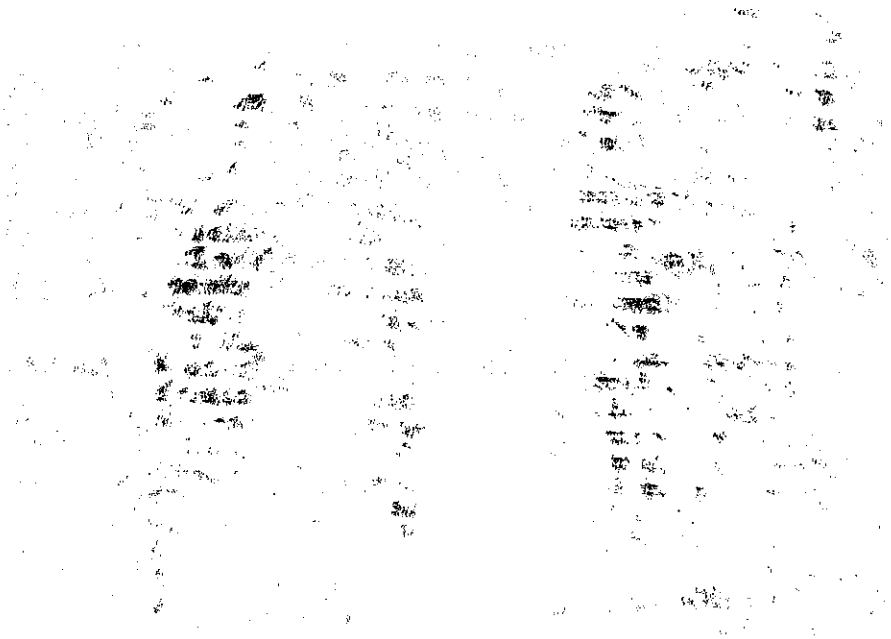
Attached is a self-explanatory letter from the U. S. Environmental Protection Agency (EPA) about dioxin levels allowed to be discharged under the Total Maximum Daily Load (TMDL) set for both Oregon and Washington mills. This issue may be important because of Boise Cascade's desire to be treated in Oregon as they are in their Wallula mill; that is, to be determined to be in compliance as long as they are showing nondetect in their final effluent (detect being assumed to be at 10 parts per quadrillion (ppq)).

As you can see from EPA's calculations in relationship to both the James River and Boise Cascade Oregon mills that a different concentration in the final effluent would be necessary to meet the waste load allocation already assigned. As laboratory analytical detection capability improves, we may well be measuring compliance for these two mills in their final effluent.

Please let me or Lydia know if you have any questions.

/kp

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

Reply To
Attn Of: WD-137

OCT 29 1992

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 2 1992
OFFICE OF THE DIRECTOR

Fred Hansen, Director
State of Oregon
Department of Environmental Quality
Executive Building
811 SW Sixth Avenue
Portland, Oregon 97204

Dear Mr. Hansen: Fred

This letter is in response to our conversation of October 22, regarding the dioxin limits and monitoring in the NPDES permit for Boise Cascade, Wallula. As we discussed, the permit limits are not being changed by the settlement agreement between the Department of Ecology and Boise Cascade. However, the monitoring requirement is being changed to allow Boise Cascade to determine compliance with the dioxin limit by quarterly monitoring at end-of-pipe instead of at the bleach plant effluent.

The dioxin limit in Boise Cascade's permit is based on the total maximum daily load (TMDL) for dioxin in the Columbia River. Ecology used the wasteload allocation as a long-term average and derived a daily maximum loading using the statistical approach in EPA's Technical Support Document for Water Quality-based Toxics Control (TSD). This resulted in a limit of 10.3 parts per quadrillion (ppq), based on the 99th percentile. Because 10.3 ppq is essentially equal to the detection limit of 10 ppq, compliance can be determined at end-of-pipe. For comparison, the end-of-pipe and bleach plant concentrations of dioxin for Oregon's mills are shown in Attachment 1.

You also asked for clarification regarding the difference between 95th and 99th percentiles in establishing permit limits. The TSD recommends assuming that effluent data are log-normally distributed and deriving effluent limits that represent the 95th or 99th percentile. As shown in Attachment 2, for a given long-term average, the 95th percentile represents that concentration below which 95 percent of the collected data will fall. Likewise, 99 percent of the data will fall below the 99th percentile. Therefore, the 95th percentile is a more stringent value than the 99th percentile.

I hope this helps to clarify the areas we discussed. If you have any further questions, please contact me at (206) 553-1793 or Carla Fisher at (206) 553-1756.

Sincerely,

Charles E. Findley
Director, Water Division

Attachments

ATTACHMENT 1

FINAL EFFLUENT VS BLEACH PLANT DIOXIN CONCENTRATIONS

Facility	TMDL - Wasteload Allocation (mg/day)	Daily Max Loading (mg/day)[1]	End-of-Pipe Conc (pg/l)[2]	Bleach Plant Conc (pg/l)[2]	Monitoring Frequency
City of St. Helens (Boise Cascade)	0.27	0.84	6.5	18[3,4]	Monthly
James River II, Wauna	0.21	0.65	4.3	17[3]	Monthly
Pope & Talbot	0.19	0.41	7.1	45[5]	Monthly

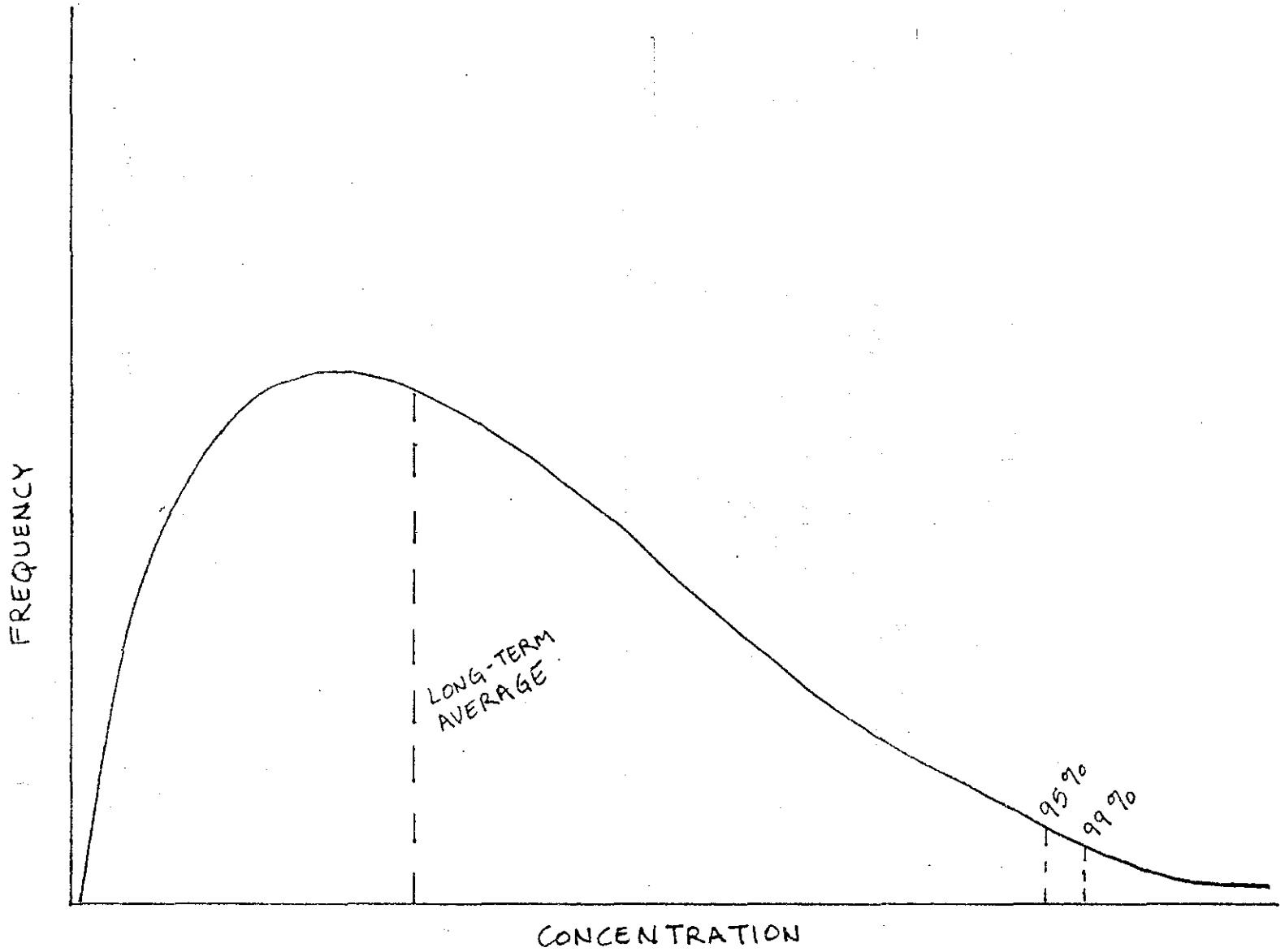
[1] The daily maximum loading is calculated from the wasteload allocation using the statistics in EPA's TSD.

[2] Based on limited flow data.

[3] Boise Cascade and James River can demonstrate the percent removal of their treatment systems, which will allow them to have higher bleach plant loadings: the bleach plant loading will be the daily max loading times the removal factor.

[4] Boise Cascade has two waste streams that contribute TCDD to their final effluent: the bleach plant and landfill leachate. Therefore, the "bleach plant conc" is not accurate, because it does not represent the flow from the landfill leachate (i.e,. it assumes the entire dioxin concentration if from the bleach plant flow).

[5] Pope & Talbot has demonstrated that their removal factor is 1.82. This gives a bleach plant loading of 0.41 x 1.82 or 0.75 mg/day.



ATTACHMENT 2 : 95th & 99th PERCENTILES

The Nation

50-Cents-a-Gallon Tax Could Buy a Whole Lot

By MATTHEW L. WALD

THE United States has a budget deficit, a trade deficit and an appetite for oil so huge that the fate of oil-exporting kings and emirs is a major focus of foreign policy. To help get out of this fix, Ross Perot, like the Presidential candidates Paul Tsongas and John B. Anderson before him, has proposed that the United States impose a stiff tax on gasoline, both to stem the national appetite for imported oil and to raise money.

Washington has always assumed that raising gas taxes to rival those in Europe or Japan would infuriate every voter with a driver's license, and neither President Bush nor Gov. Bill Clinton has endorsed Mr. Perot's idea.

But it's in the air and the budget deficit looms. A gas tax proposal would give Congress another crack at the oil import problem, which it largely sidestepped earlier this month when it passed an energy bill that makes substantial changes in the electric utility industry but does nothing to raise automobile fuel economy or give oil drillers access to promising prospects in Alaska or offshore. (It does, however, require state governments and Federal agencies to buy themselves some vehicles that run on something besides gasoline.)

More people seem willing to confront the import question lately. Kenneth Derr, the chairman of Chevron Corporation, the nation's biggest oil refiner, told a business group in Philadelphia earlier this month that he would support a large tax on gasoline if it were part of a serious plan to cut the deficit. The president of Conoco has made similar statements.

Mr. Perot has proposed a 50-cent-a-gallon tax, phased in over five years. What exactly would that buy the country?

The nation uses about 110 billion gallons a year. At the current price — about $1.10 for a gallon of unleaded — each penny of tax would bring in over $1 billion, and a 50-cent tax would fetch $55 billion a year.

Spending the Gas Tax

The Federal budget deficit next year will probably be about $320 billion. The Pentagon budget will be about $290 billion. Washington's total non-military discretionary budget — what Congress can really decide about, after entitlement programs and interest charges — is about $250 billion. Interest on the national debt will be some $200 billion.

In this context, $55 billion is a big piece of change — more than Washington will spend this year on food stamps plus child nutrition plus the earned income tax credit for poor people plus guaranteed student loans.

There would be no shortage of ways to spend the gas tax revenues if they were up for grabs and not simply applied to the deficit. But since a gas tax is designed in part to curtail gas use, it might be worthwhile to consider what $55 billion would buy in the way of alternative transportation, like bullet trains or electric cars. Even if they aren't driving gas-powered automobiles, people still have to travel. Last year a consortium of European and American firms proposed a 200-mile-an-hour train that would connect Houston, Dallas, San Antonio and Austin, in a 620-mile triangle, at a cost of $5.7 billion. Costs are speculative, but $50 billion a year would more than finance construction of similar trains between Boston and Washington, New York and Chicago, or San Diego and San Francisco or maybe through to Seattle.

Bullet trains would cost $6 billion. So would scrapping most old cars. The deficit, at $320 billion, is pricier.

The Advanced Battery Consortium, a partnership of Chrysler, Ford, General Motors and the Federal Government, hopes to soon be spending $100 million a year on electric car research. That's a mere twenty-fifth of $50 billion.

Maybe a lower-tech solution is appropriate. There are about 210 million Americans over the age of 10; with $50 billion Washington could buy each of them a very nice mountain bike.

Something that would stimulate the economy more would be popular. In California two years ago, to reduce air pollution, Unocal bought gas-guzzling old cars for $700 and a bus pass. Then it crushed them, improving the average fuel economy of cars on the road.

Last fall the DRI/McGraw Hill consulting firm proposed that the Government do the same with nine million vehicles dating from 1967 to 1978. The cost: only $6.3 billion. Even allowing a hefty sum for administrative costs, a "scrappage" program that had to spend tens of billions would soon be buying old cars that were not so old, perhaps anything that has been on the road long enough to have a full ashtray.

The auto industry would love that, because it would raise demand for new cars, and oil interests would prefer it to having to re-tool refineries, but environmentalists say that many of those cars will be retired soon without Government intervention. Gasoline taxes, everyone agrees, are a more direct approach, but less palatable.

Last fall, Congress considered raising the tax by a nickel but was scared out of it by the White House. The previous year it instituted a 5-cent-a-gallon-increase, and broke with precedent in another major way: For the first time since the Highway Trust Fund was established in 1956, Congress decided that some gas tax money would go elsewhere, into the general fund. The diversion was 2.5 cents.

Major interests are lined up against a bigger gasoline tax, notably the oil industry, which has seen demand stay essentially flat for the last few years and does not want to see it decline. At the American Petroleum Institute, Charles DiBona, the president, played down the value a tax would have.

An Insider's View

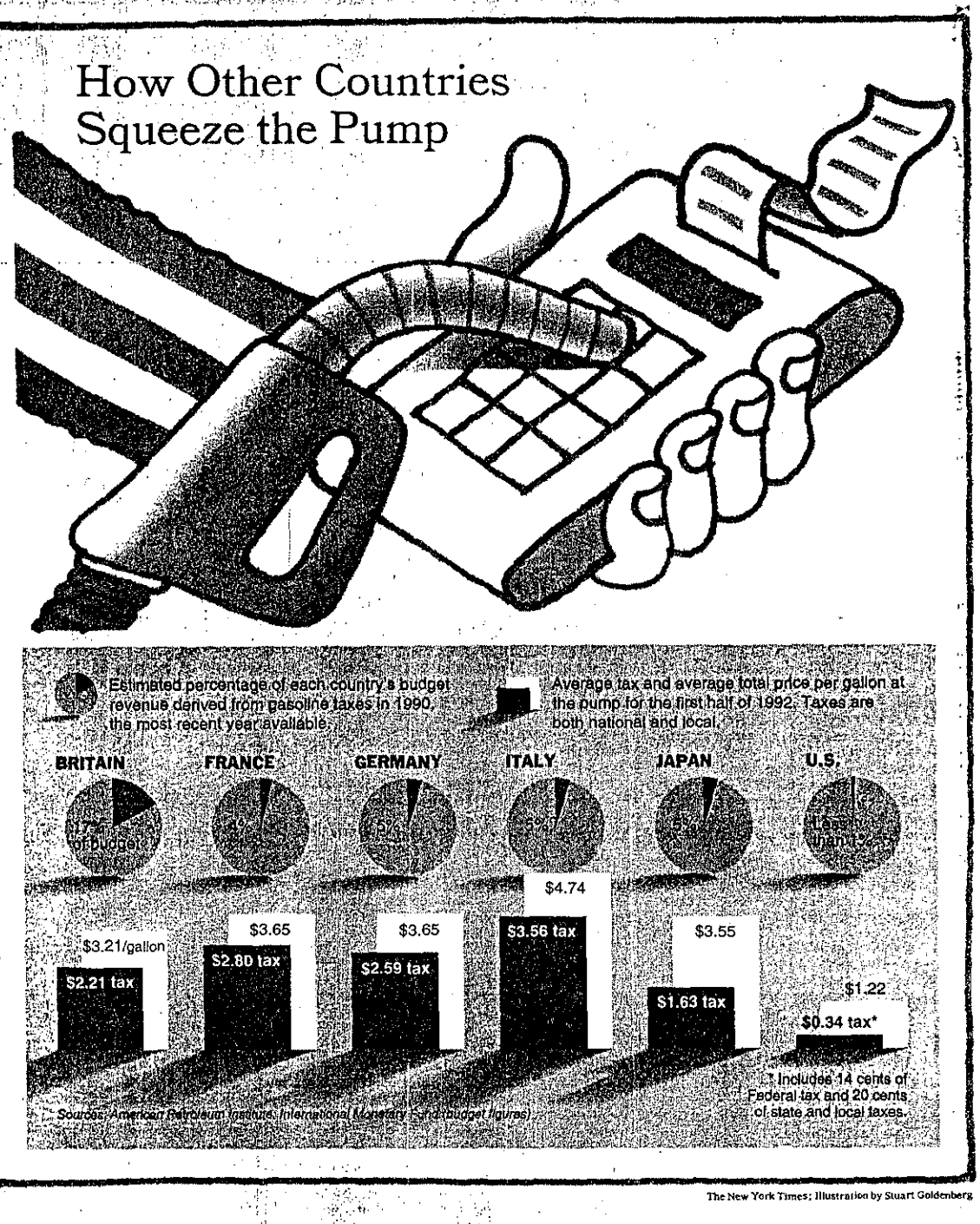
In the short term, he predicted, demand would decline only 2 or 3 percent, as motorists drove a little less or slower. As they replaced their cars and chose more fuel-efficient models, demand would decline by a maximum of 10 percent, he said. His numbers seem roughly in line with historical experience. Between 1978, just before the fall of the Shah of Iran and the ensuing oil crunch, and 1982, prices nearly doubled and consumption declined just over 10 percent.

But gasoline is only about 40 percent of oil consumption, he pointed out, so even if gasoline sales dropped by one-fourth, total oil use would decline only about 10 percent. Mr. DiBona thinks that taxes would be catastrophically unfair. In Wyoming, according to statistics assembled by his group, Federal gasoline tax comes to $243 a year per household versus $91 in New York. Increasing the tax by 50 cents would make it $1,580 in Wyoming and $592 in New York, he said. A gasoline tax rise is unpalatable, he said, if it means that "a hard-working, God-fearing farmer in Wyoming will pay seven times as much as a stockbroker in New York."

There are other reasons, too, suggested another oil expert, Joseph A. Stanislaw, managing director of Cambridge Energy Research Associates. Europe has gasoline taxes — France imposes about $2.80 a gallon and Italy even more, $3.56, for example — because it is resource-poor, he said.

"A history of not having this stuff has allowed it the luxury of taxing gasoline, like other sinful things, like whiskey, cigarettes and perfumes," he said. Americans will not get used to the idea, he said, just as he, living in Paris, cannot get used to paying $60 to fill up the family station wagon.

"But in the U.S.," he said, "it's always been a free good and it's very hard to begin taxing it. We helped discover the stuff, and we treat it as if it's our own."



The New York Times; Illustration by Stuart Goldenberg

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Idaho
Oregon
Washington

EPA News Release

92-100

Contact: Bob Jacobson
EPA/Seattle
(800) 424-4372...from Alaska,
Idaho, Oregon and Washington
or
(206) 553-1203.....direct line

DRAFT

December 3, 1992

FOR IMMEDIATE RELEASE

Alaska, Idaho and Washington are among 12 states around the nation affected by today's announcement in Washington, D.C., that the U.S. Environmental Protection Agency has set standards that will, for the first time, bring wastewater discharges in those states under controls to help protect human health from toxic pollutants discharged into streams, rivers, lakes and bays.

Up to now, Oregon is the only state in the Pacific Northwest to have adopted such standards on its own, and to use them as the basis for prescribing enforceable limits on the amount of toxic effluent released by factories, mills and other wastewater dischargers.

Dischargers in Alaska, Idaho and Washington can expect their wastewater discharge permits to be changed to reflect the new toxic standards when their existing Clean Water Act permits come up for renewal, according to Chuck Findley, director of EPA's regional water division in Seattle. In Alaska and Idaho, discharge permits are issued by EPA, Findley said. In Washington, the permits are issued by the Department of Ecology under authority delegated to that agency by EPA.

"First and foremost, the new standards are of paramount importance because they will help protect human health from toxic pollutants in wastewater discharges," Findley declared. "Second, the standards establish a level playing field so that dischargers in one state are subject to effluent limitations in their permits no less stringent than the limits for dischargers in all other states."

Findley explained that the situation varies from state to state. Across the country, many states have already adopted.

(more)

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DRAFT

water quality standards for toxics, some more completely than others. For example, Oregon -- which like Washington has permitting authority -- has numerical standards corresponding to the EPA standards announced today and is currently using them to set effluent limitations for Department of Environmental Quality wastewater discharge permits. In Washington, the Department of Ecology has standards for toxic pollutants to protect the aquatic environment, but not numerical standards to protect human health.

States are encouraged to follow the Oregon example and develop their own standards, according to EPA Administrator William K. Reilly in Washington, D.C.

"Many states have adopted good water quality standards for toxics, but the delay of some is forcing us (EPA) to step in, to accelerate the control of the most prevalent toxic pollutants impairing surface waters," Reilly said. "I urge these jurisdictions to continue their efforts to adopt their own standards so that these federal standards can be withdrawn."

Alaska and Idaho, as they move toward enacting water quality standards that protect human health from toxic pollutants, need not adopt standards identical to EPA's, said Findley. EPA insists only that the toxics in surface water do not present a anything greater than a 1-in-100,000 risk that a person will develop illness or disease.

Today's standards are predicated on EPA's intent to keep risks from 98 different toxic pollutants in surface waters to nothing more than 1-in-100,000 to 1-in-a-million range. The 98 pollutants include mercury, arsenic, other heavy metals, and organic chemicals such as dioxin, chloroform, polychlorinated biphenyls (PCBs) and various pesticide products, many of which are known or suspected carcinogens.

Findley emphasized that the new EPA standards will complement other efforts already undertaken by EPA, state pollution control agencies and local authorities to reduce risks of toxics to health and the environment.

"The new standards are not a panacea," Findley said. "Once discharge permits incorporate effluent limitations derived from the standards, discharges of toxics will be reduced.

"The situation will be improved, but that's not to say that all problems will be solved. We will still face pollution from urban run-off and from the historical build-up of pollutants in sediments. We've not achieved -- nor will we ever achieve -- a pollution-free environment, but we're getting closer all the time."

DRAFT

Source: Current and Target Recovery Rates for Plastics Packaging in Oregon, RIS, October 1990

Table 1

POST-CONSUMER PLASTIC PACKAGING
RECOVERY TOTALS AND RATES
OREGON, 1989
in million lbs.

Resin Type	OR Weight Generated	Recycled *Weight*	*Rate*
HDPE(1)	39.2	4.524	11.5%
LDPE	36.7	0.523	1.4%
PP	14.3	0.049	0.3%
PS and EPS	19.6	0.241	1.2%
PVC	7.2	0.016	0.2%
PET	11.0	6.869	62.6%
Other	4.1	0	
TOTAL	**132.2**	**12.2**	**9.2%**
Total, w/out PET soft-drink bottles	**125.1**	**5.4**	**4.3%**

(1) HDPE total includes 25 percent of PET recovery reported, to account for basecups. PET totals are reduced 25 percent accordingly.

Resin	OR Wt. Generated Rigid	Recycled Weight
HDPE	31.1	4.524
PP	3.5	.049
PS	7.3	.241
PVC	2.1	.016
PET	10.2	6.869
	54.2	11.699

$\frac{11.699}{54.2} = 21.6\%$

OSPIRG * Recycling Advocates * Oregon Environmental Council * Association of Oregon Recyclers * Metro * Bend Recycling Team * BRING Recycling * Clackamas County * Suzanne Johannsen * League of Women Voters of Oregon * Northwest Women in Recycling * Jerry Powell * Becker Projects, Inc.

December 9, 1992

Environmental Quality Commission
c/o William W. Wessinger
121 SW Salmon Suite 1100
Portland, Oregon 97204

Re: EQC Regular Meeting, December 11, 1992
Agenda Item L

Dear EQC Members:

Agenda Item L concerns the plastic packaging recycling standards in Senate Bill 66, passed unanimously by the 1991 Legislature. Senate Bill 66 sets options for recycling standards for rigid plastic containers that must be met by 1995. The law also requires glass containers, newspapers and phone books to be made with recycled content.

Agenda Item L is the DEQ's report on whether to recommend amending Senate Bill 66 to exempt certain plastic packaging from having to meet the recycling requirements in the law. The DEQ's report (1) does not recommend an exemption or extension for food packaging, and (2) recommends that the law be amended to reduce the law's four recycling options to one standard, recycled content, with a licensing fee for companies that do not meet the recycled content standard.

Although the DEQ recommends against exempting plastic food packaging from the law, some industries will urge the Environmental Quality Commission to recommend an exemption and will press the Legislature to pass an exemption. The undersigned urge the Environmental Quality Commission to take the following position with respect to Agenda Item L:

1. Confirm the DEQ recommendation of no exemption for plastic food packaging and no delay in the effective date of the law.

2. Urge the Legislature to keep the current law in place and require companies to comply with the current law.

3. Do not recommend amending the law unless the amendments would strengthen the law. The DEQ report forms a basis for strengthening amendments but should require rigid plastic containers to meet recycling standards significantly higher than 25% by 2000, to be consistent with the requirements on glass containers. If fees are recommended for companies that do not use recycled content the fees must be high enough to encourage manufacturers to

aggressively attempt to gain FDA approval for use of recycled content, and to build a plastics recycling infrastructure and develop recycling markets for post-consumer plastic in Oregon.

The reasons to keep the current law in place or strengthen it are as follows:

•Plastic is the least-recycled material in Oregon. The plastics industry has not made the same type of recycling investments in the state as have the aluminum, glass and paper industries.

•The public is demanding plastic recycling, but the public's ability to recycle plastics is shrinking. Plastics collection programs are failing and some recyclers are halting plastics collection.

•In 1991 the plastics industry announced that it was committed to reaching a 25% recycling level for plastic containers by 1995. In Oregon and California, the plastics industry helped pass laws that require plastic containers to be recycled at 25% in the aggregate by 1995. To make the law more flexible for companies that wanted other recycling options, the law also allows use of 25% recycled content, reuse, or reduced packaging. California has not exempted any food packaging from its law.

•Exempting plastic food packaging from the law would exempt more than half of all containers from the law's requirements. This would undercut the ability of non-food plastic containers to meet the aggregate 25% recycling rate.

•Plastics recycling cannot succeed without commitment from the plastics industry to meet the 25% recycling rate goal. Exempting food packaging would weaken the law, sending the message that the industry does not have to comply with the standards it agreed to in 1991.

•The central goal and intent of the law is for plastic containers, in the aggregate, to reach a 25% recycling rate. In order to accomplish this goal, the plastics industry must work with packagers, recyclers, retailers and local governments to increase the recycling rate of all plastic, not just food containers.

Some of the steps they can take include: design their plastic packaging to be more easily collected and recycled; use the type of plastic that already has a higher recycling rate, such as #2 HDPE used in milk jugs; provide price guarantees for collected and processed plastic, such as aluminum and paper companies have done to ensure high recycling levels; assist in transportation of Oregon plastics to existing plastics plants that can use recycled plastic in manufacturing; and work to locate a plastics recycling plant in the Pacific Northwest. To date, the industry has not agreed to take any of these steps.

The plastics industry has promised better plastics recycling for years. Senate Bill 66 provides the pressure to ensure that the promise is kept. We urge the Environmental Quality Commission to stand firm on Senate Bill 66 and if the law is to be changed, strengthen rather than weaken it.

Thank you for your consideration of this matter.

Sincerely,

Lauri Aunan
OSPIRG

Jeanne Roy
Recycling Advocates

Jean Cameron
Oregon Environmental Council

Association of Oregon Recyclers
Metro
Bend Recycling Team, Bend
BRING Recycling, Eugene
Clackamas County
Suzanne Johannsen, Bend
League of Women Voters of Oregon
Northwest Women in Recycling
Jerry Powell, Portland
Becker Projects, Inc., Portland

FAX TRANSMISSION

Christenson ELECTRIC

PHONE: (503) 285-3780

FAX: (503) 289-6610

CONTROLS DIVISION

Please hand deliver asap ; Thanks

TO: Linda Hayes 229-6977 FROM: PAM BROWN

COMPANY: DEQ DATE: 12/11/92

NUMBER OF PAGES INCLUDING THIS PAGE 2

MESSAGE:

Linda, 1:00 is not a good time for me. I'll give it a try if I'm not there please understand! Can someone read it for me....? Good luck. Your report was great

Pam

Environmental Quality Commission
December 11, 1992
811 S. W. 6th Avenue
Portland, Oregon

MEMBERS OF THE ENVIRONMENTAL QUALITY COMMISSION:

My name is Pamela Brown and I head the energy management and controls division of Christenson Electric, Inc. I am also the Chairperson of the City of Portland Environmental Commission and I am a member of the DEQ Solid Waste Advisory Committee. In 1990, I served on the City of Portland Plastics Waste Reduction Task Force. Formerly, I was Assistant Vice-President and Director of Environmental Programs at Fred Meyer, Inc. I worked at Fred Meyer for 17 years in engineering and public affairs and twelve of my years were spent on environmental issues affecting business.

I support the the rigid plastic container exemption from the DEQ that will be sent to the 1993 Oregon Legislature. Furthermore, the DEQ Solid Waste Advisory Committee which is made up of a cross-section of business, public agencies and citizens voted unanimously to support a no exemption motion.

I have spent much of my time working with and observing the plastics industry behavior in Oregon, across the United States and world-wide. If the plastics industry had taken a leadership role in plastics recycling I might have considered an exemption as a good faith action on the road to innovative and creative plastics recycling programs. However, innovative and creative plastics recycling programs are not a reality and there is a clear mandate from the public to reduce solid waste. It is up to the plastics industry to work with the FDA on new strategies for the use of recycled material. This is time for the plastics industry to tell the public what the plastics industry can do for recycling and not what the plastics industry can't do. The plastics industry has to take some responsibility for the end use of the plastics the industry produces.

The plastics industry was heavily represented at the table when Senate Bill 66, The Recycling Act was crafted in 1991. The plastics industry was the only commodity that was given any options. The plastics industry with the exception of polystyrene has failed to move forward on any of the other options (25% recycling rate, reuse, 10% reduction in container weight) and keeps resisting what the public is demanding: effective plastic recycling programs that may need to be subsidized for a time by the plastics industry itself.

The DEQ Rigid Plastic Container Exemption Report is a thorough report, objectively and thoughtfully prepared and I urge you to endorse this report.

Sincerely,

Pamela Brown
Christenson Controls
6235 N. Basin
Portland, Oregon 97217

C·T·F·A
Representing the personal care products industry

E. Edward Kavanaugh
President

TESTIMONY OF THE COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION (CTFA) BEFORE THE OREGON ENVIRONMENTAL QUALITY COMMISSION ON DEPARTMENT OF ENVIRONMENTAL QUALITY REPORT ON PLASTIC EXEMPTION REPORT PURSUANT TO S.B. 66

CATHERINE BECKLEY
LEGAL & REGULATORY COUNSEL
THE COSMETIC, TOILETRY & FRAGRANCE ASSOCIATION
DECEMBER 11, 1992

CTFA TESTIMONY BEFORE OREGON ENVIRONMENTAL QUALITY COMMISSION

On behalf of the members of the Cosmetic, Toiletry, and Fragrance Association (CTFA), I would like to briefly comment on the Final Rigid Plastic Container Exemption Report for Senate Bill 66.

Over the past few months, CTFA and individual member companies have shared significant learning with the Department of Environmental Quality (DEQ). We found the process to be open and appreciated working with the Staff. However, we are disappointed that such fundamental changes to earlier drafts of the Report were made in their Final Report.

I. The FDA and the Duty to Supply Safe Products and Packaging

First, I'd like to clarify that "cosmetics" are more than makeup preparations or so-called "vanity products." Cosmetics include over 80 categories of personal care products such as sunscreens, dental products, shampoos, antiperspirants and corrective makeup. These products promote human health and hygiene by assisting in the prevention of skin cancer, sunburn, tooth decay, gum disease, and bacterial infections. Oregon consumers want these products and the industry has a moral responsibility for the safety of these consumers.

Besides the industry's ethical responsibility, the U.S. Food and Drug Administration (FDA) requires that both cosmetic products **and** their packaging be safe. Manufacturers take this duty especially seriously because cosmetics are applied to the skin, mouth, hair and eyes.

The DEQ Report stated that industry should do more to get FDA to approve recycled plastic packaging for FDA-regulated products such as food. However, FDA regulates cosmetic packaging differently from food or device packaging. Cosmetic packaging is not subject to premarket approval by FDA. Also in contrast to food packaging, there is no cosmetic-grade packaging material approved by FDA for across-the-board use. Therefore, personal care product companies must test each individual package to assess whether impurities from recycled materials leach into the product.

And the marketers of personal care products are finding that despite a strong desire to adopt environmentally sound packaging practices, they have limited experience with recycling technology and have no past experience with or guidance from the FDA on how to comply with laws such as Oregon's. Therefore, more time is needed to assess the impact of using recycled material in our packaging and the feasibility of applying the other packaging options. We also think neither DEQ or OSPIRG has demonstrated that packaging safety issues have been adequately addressed to justify no exemption or at least a reasonable extension for compliance.

II. The DEQ Report is Contrary to S.B. 66's Legislative Intent

A. FDA-Regulated Products Are Arbitrarily Singled Out

CTFA thinks that DEQ's recommendation to eliminate two of the four compliance options for FDA-regulated products departs significantly from the legislative intent of S.B. 66. FDA-regulated products, compared with other consumer products, appear to be arbitrarily targeted for stricter treatment under the law. The

DEQ recommendation ignores the purpose of Section 34e - that DEQ report to the Legislature on whether FDA-regulated products should be exempt from S.B. 66 because of possible conflict with FDA regulations. By calling for the Report, the Legislature recognized that different treatment may be warranted for FDA products because they are subject to strict federal regulation. Therefore, limiting compliance options for FDA products alone is a substantial retreat from the intent of the original law.

B. Recommending Fees Is Outside DEQ Authority Under Sec. 34e

DEQ recommends a yearly "licensing fee" for companies that cannot use 25% recycled content or be reused 5 times. Nowhere in Section 34e(1) of the 1991 Recycling Act is DEQ asked to report on funding the rigid plastic container program. The sole charge of DEQ is to make recommendations to the Legislature on whether certain FDA product categories (food, cosmetics, over-the-counter drug products) should be exempt from the law.

C. Source Reduction Should Remain An Option

CTFA also thinks that the DEQ's recommendation to eliminate two of the four compliance options is a significant setback for marketers facing the 1995 deadline. Specifically, the DEQ report suggests the elimination of the "reduction" and "rate" options that is - (1) reducing product packaging by 10 percent or (2) using a plastic resin that is recycled at a rate of 25 percent statewide. The reason for their deletion

from a solid waste policy perspective is questionable given that the U.S. Environmental Protection Agency (EPA) and the U.S. Public Interest Research Group (USPIRG) favor packaging reduction over recycling and reuse. Reduction or elimination is preferred because it keeps packaging from ever going to a landfill. With recycling, the packaging cannot be reused forever and eventually goes to a landfill.

Although industry has said that reducing packaging is not always an adequate option for companies that can't use recycled packaging, that does not mean, in some cases, for some products, marketers cannot use the option. On the contrary, companies are already successfully reducing their packaging. For example:

* THE **NEAT SQUEEZE** pump of **CREST TOOTHPASTE** gives a **45% source reduction** and a **30% volume reduction** from traditional pumps.

* The plastic in **SUAVE** and **DEGREE ANTIPERSPIRANT** and **DEODORANT SOLID** canisters was **reduced by 3%** in August 1992.

* **JERGENS ADVANCED THERAPY LOTION** has introduced a refill pouch which has **78% less packaging** than the 15 oz. pump.

* Many company brands now offer a **combination shampoo and conditioner product**, eliminating the need for a separate container for a conditioner, amounting to a **100% source reduction.**

Therefore, marketers should still have the **option** to source reduce, even though it will not be feasible for many products. Reducing compliance options is a step back in encouraging companies to accomplish the goals of S.B. 66.

Likewise, marketers should be able to rely on the statewide 25 percent recycling rate option. The original intent of the law was to foster plastic recycling in the state.

By taking away the rate option, product marketers have less incentive to help build recycling programs in Oregon.

Conclusion

In conclusion, the cosmetic industry is committed to working with DEQ in the future to demonstrate the progress companies are making with individual products. I have attached to my testimony examples of environmental packaging innovations and contributions to Oregon's recycling efforts by CTFA members. Some of those companies will be able to comply with S.B. 66 by 1995 for some individual products. However, many of those same companies may not be able to comply for all of their products by 1995. Therefore, a balance must be struck between the goals of S.B. 66, the importance of safe packaging and the evolution of plastic recycling technology. Thank you for considering our comments.

EXAMPLES OF ENVIRONMENTAL PACKAGING CHANGES BY SOME COSMETIC MANUFACTURERS

Chesebrough-Pond's AQUA NET PUMP HAIRSPRAY now contains 25 percent recycled content.

Clairol made the following packaging changes:

* Elimination of carton from BAN SOLID DEODORANT in 1991, saving 560 tons of paperboard annually. Reduction of package on BAN ROLL-ON in 1991, saving 600 tons of paperboard annually.

* In 1992, BAN CLEAR DEODORANT was introduced without a package, eliminating the potential use of 500 tons of paperboard annually.

* Eliminated plastic liners from FINAL NET and CLAIRMIST HAIRSPRAYS AND ULTRESS CONDITIONER closures.

* Reduced the amount of plastic used for FROST & TIP and QUIET TOUCH trays by 20 percent.

* Reduced the 4 oz. applicator container for MISS CLAIROL by 15 percent by weight.

* Fifty percent recycled plastic is used in plastic gloves and heat caps included with hair dye products.

* Use postconsumer regrind tri-layer molding process for LOGICS salon hair care containers.

Helene Curtis made the following packaging changes:

* SALON SELECTIVES in August 1992 a tri-layered container with virgin HDPE material on the inner and outer layers, and postconsumer resin sandwiched between. Plastic made from recycled milk containers will replace 800,000 pounds of virgin HDPE in the manufacturing process, about 25 percent of the total amount used to make regular coral bottles.

* Introduction of SUAVE FACIAL CARE line without outer cartons in June 1992.

* Removal of SUAVE and FINESSE HAIRSPRAY and GEL outer cartons in mid-1980s saving 1,200,000 lbs. of paper board annually.

* Removal of SUAVE and DEGREE SOLID and ROLL-ON packages in August 1991 amounting to 60 million fewer paper board cartons.

L&F Products TUSSY DEODORANT are being re-introduced without outer paper cartons which will save tons of solid waste annually.

Procter & Gamble made the following packaging changes:

* IVORY SHAMPOO 15 oz. package was 30 grams of plastic and now is 27 grams amounting to 10 percent source reduction.

* VIDAL SASSOON AIRSPRAY HAIRSPRAY comes in full size with a pump and a refill.

* Eliminated SURE AND SECRET DEODORANTS outer carton saving 80 million cartons per year.

Helene Curtis, Inc.
4401 W. North Avenue
Chicago, Illinois
60639-4769
Telephone 312-661-0222

Research & Development

December 4, 1992

Mr. William W. Wessinger, Chairman
Oregon Environmental Quality Commission
121 Southwest Salmon
Portland, OR 97204

RE: EQC Meeting of December 11, 1992
Agenda Item "L"
Rigid Plastic Container Exemption Report

Dear Chairman Wessinger:

I am submitting these comments on the above referenced report on behalf of Helene Curtis, Inc. Helene Curtis is the leading manufacturer of haircare products in the United States. Helene Curtis is also a major manufacturer of other personal care products; namely, hand and body lotions, antiperspirants and deodorants, and skin care products.

Helene Curtis is keenly interested in the developments surrounding Oregon S.B. 66, and we have worked cooperatively with the Oregon Department of Environmental Quality (ODEQ) in the development of the Rigid Plastic Container Exemption Report. As a market leader in the use of post-consumer resin (PCR) in shampoo and conditioner bottles, we shared significant learning with the ODEQ.

We have serious concerns with the report as written. We understand that this report is listed as an action item on your agenda. **We urge the Commission to disapprove this report as written, so that the report does not go "as is" to the Oregon Legislative Assembly.** We feel that the ODEQ position could have negative public health consequences if industry is not given sufficient time to complete required testing prior to incorporation of recycled resin into consumer packaged goods.

SAFETY/TECHNICAL ISSUES

Helene Curtis submitted written technical and policy comments to the ODEQ on October 19, 1992, and supplemented those comments at the request of ODEQ by letter dated October 26, 1992. For ease of reference, I have enclosed copies of comments we have submitted thus far.

There are several barriers to incorporating PCR into rigid plastic containers. First of all, technology has not developed sufficiently to allow safe use of PCR across all resin types, bottle geometries, and product types. More importantly, there are legitimate product safety concerns about the use of PCR that were not addressed by the ODEQ. Before marketing a product in a bottle made in part of recycled material, extensive safety and stability testing must be completed. We know this very well at Helene Curtis, as we have converted eight (8) stockkeeping units (SKUs) of our Salon Selectives brand of shampoo and conditioner to bottles containing at least 25% PCR by weight. This conversion took over two (2) years. A substantial part of that time was spent in safety and stability testing. The irony here is that the compliance option presenting the most potential consumer safety risk is the preferred option in the ODEQ report before you. The ODEQ mentioned our safety concerns, but offered no solutions for those concerns.

POLICY ISSUES

Having read the Rigid Plastic Container Exemption Report, it is our firm belief that the position of the ODEQ is inconsistent with their legislative mandate and, as a matter of fact, goes beyond the mandate considerably. Oregon Laws, Chapter 385, Section 34(e)(1) directs the ODEQ to report on whether to grant an exemption from the packaging criteria in Section 34b of the Act (ORS 459.655) for those products that can not meet the recycled content criterion and remain in compliance with federal Food and Drug Administration regulations. This section does not ask or authorize the ODEQ to recommend changes to the statute, nor does it ask or authorize the ODEQ to suggest funding mechanisms for development of recycling infrastructure. Actually, the ODEQ position could be seen as contrary to the statute, as Section 34d of the Act specifically requires local governments to establish recycling infrastructure if stable markets exist. Determination of market stability is the responsibility of the Recycling Markets Development Council.

While we disagree with the outcome, we appreciate the fact that ODEQ solicited public participation in these matters. We appreciate your consideration of our comments, and we are willing to provide further information to the EQC or the ODEQ as you see fit.

Please call me at (312) 292-7035 if you have any questions.

Respectfully Submitted,

Bruce D. Varner
Corporate Manager
Environmental Affairs

BVD/eh

mental Quality Commission
liam Wessinger
Salmon #1100.
l, OR 97204

QC Members:

am writing you to urge you to support
tics recycling standards in Senate Bill 66.
understand the industry claims that it cannot
ycled content in food packaging - therefore
don't have to meet any of the other recyclin
ds in the law. There are four options
the law which the companies can implement
ove plastics recycling in Oregon. For example
ompany cannot use reusable shampoo bottles
d reduce the weight of its packaging. If
. jar cannot be made with recycled content,
be recycled into another type of product
aging.
ant plastics recycling to be a reality in Oregon.
es to be implemented aggressively without delay.
to solve the problem of plastics recycling and therefore
c should not recommend any exemption or delay to
5.

Sincerely, Robert VanPeenbergh
3924 NE Flanders St.
Portland, OR 97232

Environmental Quality Commission
C/O William Wessinger
1211 SW Salmon #1100
Portland, OR 97204

Dear EQC members,

I am writing to urge you to support recycling~~s~~ standards in Senate Bill 66o. Senate Bill 66o gives the plastic industries four options to improve Oregon recycling. It seems very reasonable to meet at least <u>one</u> of these four options.

I want to be able to recycle my plastic products. At the moment, the standards for plastics (the actual amount being recycled) is the lowest (next to paper etc..).

The EQC should not recommend any exemption from the law or any delay in the law. I look forward to hearing your comments on these issues.

Sincerely,

Ms. Gretchen Stolte

2277 NE Thomas
Hillsboro, OR
97124

William Wessinger
% E.Q.C.
121 S.W. Salmon #1100
PDX 97204

Dave Bradley
309 SW 4th #325
PDX 97204

Dear Mr. Wessinger,

It's not surprising that the plastics packaging industry is trying to wiggle out of compliance with Oregons new recyling law (SB66). Loophole-closing and inforcement are natural follow-ups to new laws.

So I'll just point out that I want to be able to use plastic packaging but I'll avoid that if I can't recycle the stuff.

I can understand if, under pre-existing law, a company cannot comply with <u>one</u> of the standards they should be exempted from that <u>particular</u> postion of the recycling law. But they <u>should</u> comply with the rest of it.

You should be used to tough decisions by now, but this seems simple. Please support the Oregon Recycling Act.

Regards,

Dave Bradley

Environmental Quality Commission
c/o William Wessinger
121 SW Salmon #1100
Portland, OR 97204

December 1, 1992

Dear EQC Members,

I am writing to urge you to uphold the standards set for plastics recycling by Senate Bill 66 in 1991.

There is no reason that industry shouldn't do its part in improving recycling in Oregon. Plastic has the lowest recycling rate of any material, because the companies that produce it aren't taking it back. They should be prompted to invest in recycling → save money in the long run, and not add to the problem of already over-burdened landfills.

As the EQC, you should be on the cutting edge of improving the quality of our environment. Please support SB 66, with no exemptions nor delays in its implementation.

Sincerely,

Leslie Sanders
3745 SE Main
Portland, OR 97214

12-1-92

Dear EQC,

I'm writing to urge you to support keeping Senate Bill 66 the way it is.

I'm aware that the plastics industry is putting on the pressure and doing everything to convince you they can't possibly meet the requirements of this bill. But weakening the deadline could ultimately defeat this bill. If the plastics industry weakens the law to the magnitude of moving back the deadline to 1997, they could succeed two years from now to weaken the bill further. The plastics industry can meet the requirements under SB66, they just don't want to.

So please listen to someone that does want plastics recycling to work in

regon. Adding to our landfills is a bigger problem to Oregon, than SB 66 is to the plastics industry. So let's help it work.

I urge you to support plastics recycling in Oregon by keeping SB 66 strong.

RSVP Audrey Albrecht
526 N.W. 21st #46
Portland, OR 97209

Environmental Quality Commission
c/o William Wessinger
121 S.W. Salmon #1100
Portland, Oregon 97204

Dear EQC Members:

I am writing to you to urge that you support Senate Bill 66.

I understand the industry claims that it cannot use Recycled content food packaging, and therefore food packaging should not have to meet any of the other Recycling standards in the law. Does this mean any Company that cannot meet one of four options shouldn't have to do anything to improve plastics Recycling in Oregon.

I Want Plastic Recycling to Work in Oregon. SB 66 needs ~~easy~~ to be aggressively implemented in Oregon

And I believe the EQC should not Recommend any exemption from the law or any delay in the law

Sincerely,
Gerald Vanderstrand

Gerald Vanderstrand
23300 W. Arata Rd #186
Troutdale, Oregon 97060

12/01/92

William Wessinger
% Environmental Quality Commission
121 SW Salmon, #1100
Portland, OR 97204

Dear EQC members:

I am writing to urge you to support the plastics recycling standards in SB 66. I understand that the industry states that it cannot use recycled content in food packaging, and so food packaging should not have to meet any of the other recycling standards in the law. If a milk jug can't be made with recycled content, shouldn't it be recycled into another type of product? -- I favor lawn furniture!

I want plastics recycling to work in Oregon. The EQC should not recommend any exemption from the law or any delay in the law.

Sincerely,
Carla Rathburn
6630 SW 171
Aloha, OR 97007

Dec. 4, 1992

Environmental Quality Commission
c/o William Wessinger
121 SW Salmon #1100
Portland, OR 97204

Dear EQC:

I am writing to urge you to support the plastics recycling standards in Senate Bill 66.

I understand the food packaging industry claims it cannot meet the recycled content standards in the law. But the law gives them more than 1 option and there's no reason they should be exempted because they cannot meet 1 out of 4 ~~[illegible]~~ options. The food packaging industry should do their part to make plastics recycling a reality in Oregon. Food packaging represents more than 50% of packaging! I am personally frustrated that I must throw away items that industry tells me can be recycled. They must responsible for making recyclability a reality

and not just a meaningless symbol stamped on the bottom of a package.

Senate Bill 66 must be implemented. The EQC should not recommend any exemption from the law or any delay in the law.

Sincerely,

Pamela Peck
2224 SE Brooklyn
Portland, OR 97202

Dear EQC members:

I am writing to urge you to support the plastics recycling standards in senate bill 66.

I understand the industry claims that it cannot use recycled content in food packaging, and therefore food packaging should not have to meet any of the other recycling standards in the law. Does this mean any company that cannot meet <u>one</u> of the four options should not have to do anything to improve plastics recycling in Oregon? For example, if a company cannot use a reusable shampoo bottle, should it be exempt from all other recycling standards? If a milk jug cannot be made with recycled contents, shouldn't it be recycled into another type of product or packaging?

I want plastics recycling to work in Oregon because I want to be able to recycle plastic packaging. SB 66 needs to be aggressively implemented because Oregon cannot afford any further delay in solving the problems of plastics recycling. The EQC should not recommend any exemption from the law or any delay in the law.

Sincerely,

Thomas W Kennedy
2157 W. Burnside #1

TO THE MEMBERS OF THE E.Q.C.:

IN THE MOVIE "THE GRADUATE", THE LEAD CHARACTER WAS RECOMMENDED TO INVEST IN "PLASTICS". ACTUALLY, IT SEEMS THAT SOMEONE EDITED THE ORIGINAL SCRIPT. HE PROBABLY SHOULD HAVE INVESTED IN PLASTICS RECYCLING.

THE CURRENT TREND IN RECYCLING IS LOOKING UP, HOWEVER WE MUST EXPAND THE ACTUAL RECYCLABILITY OF THINGS, ESPECIALLY PLASTIC ITEMS.

PLEASE SUPPORT THE STANDARDS IN S.B. #66.

THANKS:

Environmental Quality Commission
c/o William Wessinger
121 SW Salmon #1100
Portland, OR 97204

December 4, 1992

Dear EQC Members:

I am writing to urge you to support the plastics recycling standards in Senate Bill 66.

Although the industry claims it can't use recycled content in food packaging, we SHOULD NOT allow them to gut ~~the~~ SB 66 by exempting them from all other recycling standards! I think food packaging should be recycled into non-food related plastic products. The EQC should not delay nor grant exemptions to SB 66

Sincerely,

Fred Mossman

Fred Mossman
847 SW Broadway Dr #32
Portland OR 97201

Environmental Quality Commission
c/o William Wessinger
121 SW Salmon # 1100
Portland, Oregon 97204

Dear EQC Members:

This letter concerns Senate Bill 66, the plastics recycling standards, which I need to see your support behind.

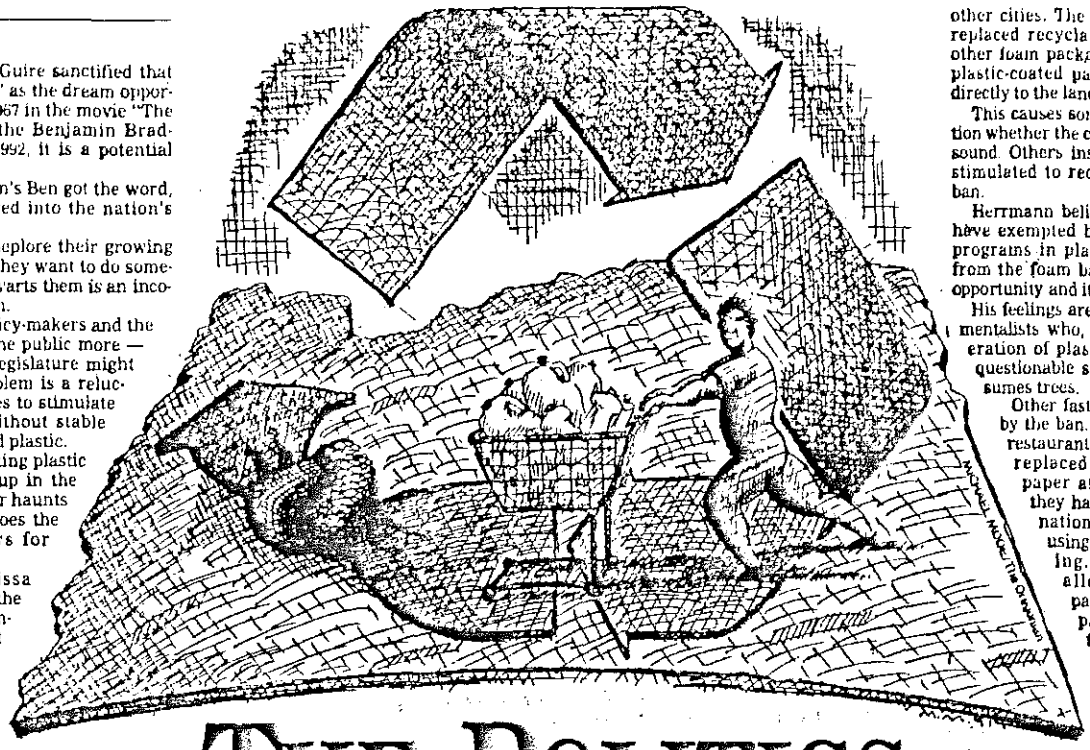
I love my plastics recycling program, but I don't know where it goes; I don't see any packaging made with recycled plastic content. I realize food can't be packaged in recycled plastic, (due to silly human superstition), but everything else can! Virgin materials, petroleum products, for microwavable dishes? Give me a break!

Oregonians love to recycle. Give us some help! The D.E.Q. seems to have a grip on this. Many support SB 66. Let's hear from you.

Sincerely,

David A. Rucker
3550 SW Beaverton-Hillsdale Hwy
Portland, OR 97221

By JULIE STERLING



THE POLITICS OF RECYCLING

Oregonians are ready to recycle plastics, but recyclers don't have a coherent system in place

"Plastics."

Mr. McGuire sanctified that "one word" as the dream opportunity for the class of 1967 in the movie "The Graduate." Now, for the Benjamin Braddocks of the class of 1992, it is a potential nightmare.

Since Dustin Hoffman's Ben got the word, plastic waste has flowed into the nation's landfills like lava.

Oregon consumers deplore their growing plastic wasteland, and they want to do something about it. What thwarts them is an incoherent collection system.

The government policy-makers and the plastics industry owe the public more — and the 1991 Oregon Legislature might lead the way. The problem is a reluctance by public agencies to stimulate recycling programs without stable markets for reprocessed plastic.

The specter of collecting plastic waste that might end up in the dump for lack of a buyer haunts the policy people. So does the question of who pays for higher collection costs.

The irony, said Lissa West, a specialist with the Department of Environmental Quality, is that the public is "probably way ahead of both policy and industry people" in its eagerness to recycle.

Until recently, each seemed to be waiting for the other to do something — the policy-makers to pass stiff recycling standards and the industry to begin investing in secondary plastic.

Senate Bill 66, which passed the Oregon Senate unanimously April 29 and is in hearings in the House, offers hope. The bill mandates a 25 percent recycled-content level for plastic containers by 1995 unless they are recycled at a rate of 25 percent or reusable. It also requires that all rigid plastic bottles and containers sold in Oregon be coded, as many are already under a voluntary program of the plastics industry.

Most important, the bill has the support of the plastics industry and, says Ted Hughes, the industry's legislative counsel, "It's a good bill." If passed, it should stimulate the markets for secondary plastic, forcing local governments to step up collection and deposit systems for plastic waste.

It should also force the petroleum industry, which produces virgin plastic, to make a long-term commitment to retrieving and reprocessing its product, something long advocated by recycling guru Jerry Herrmann of the John Inskeep Environmental Learning Center at Clackamas Community College.

In the Portland area, plastics recycling has been a random affair, kept alive by environmentalists, a few earth-conscious haulers, scattered food markets and the few reprocessors who turn waste into saleable secondary plastic. From time to time their more innovative efforts are rewarded with grants from the Metropolitan Service District.

Consumers have responded by proving that they can — and will — recycle their plastic tubs, milk jugs and detergent bottles, even if the rules are so complicated that they make glass-bottle retrieval look like a nursery game.

Consumers are learning codes and acronyms reminiscent of the periodic table in a chemistry lab in order to sort their plastics by resin, a reprocessing requirement.

But sometimes they are left holding their bags of cleaned and sorted plastics while they look for an oasis that will take them. Systems that receive plastic waste are as rare as an empty trash can at the beach on a sunny day.

What one rejects, another will take, and a consumer might make three different stops to recycle every plastic container. Some abuse the depots by leaving plastic toys and other unrecyclable items.

□

Plastic, says city of Portland policy analyst Catherine Fitch, now accounts for 9 percent of the total weight and 18 percent to 27 percent of the total volume of the metropolitan-area landfill.

And plastic represents 18 percent of the volume of the nation's solid waste, according to a report in last December's issue of the Society of Plastics Engineers recycling newsletter.

In a DEQ report released last October, the recovery rate for post-consumer plastic packaging in Oregon was 9.2 percent, with more than half of that represented by soft-drink bottles, returnable under the Oregon Bottle bill. Oregon has a long way to go to meet the 25 percent target rate proposed in SB66.

With SB66, or some form of it, a likelihood, reprocessors such as Denton Plastics Inc. in Northeast Portland and Partek Corp in Vancouver, Wash., have reason to anticipate a boom. Partek already enjoys a joint-venture relationship with Phillips 66 to reprocess milk jugs and colored plastic into marketable pellets. It has worked with Procter & Gamble to recover plastic in Tide, Cheer and Downy bottles.

Dennis Denton already sells some of his reprocessed plastic to companies such as Gage Industries Inc. in Lake Oswego for use in the manufacture of plastic flower pots, toys, tire chain boxes and other items.

A public awakening to plastics recycling was brought on, in part, by two tremors: the city of Portland's ban on the use of polystyrene foam by restaurants and food vendors, which went into effect Jan. 1, 1990, and Ballot Measure 6, Ospirg's packaging recycling measure, which was defeated in November, but only after a formidable No on 6 campaign that was generously supported by the plastics industry. The measure incorporated some of the criteria of SB66.

If it did nothing else, the Portland ban on polystyrene foam called attention to the volume of plastic waste going into the landfills.

In the aftermath, McDonald's restaurants abandoned a recycling system it had introduced in partnership with Denton's.

Now, McDonald's is out of the foam business entirely — worldwide — and mainly because of polystyrene bans in Portland and other cities. The giant fast-food chain has replaced recyclable foam clamshells and other foam packaging with non-recyclable plastic-coated paper packaging that goes directly to the landfill.

This causes some policy analysts to question whether the city ban is environmentally sound. Others insist that the industry was stimulated to recycle only because of the ban.

Herrmann believes that Portland should have exempted businesses with recycling programs in place (such as McDonald's) from the foam ban. "Here was Portland's opportunity and it blew it."

His feelings are shared by many environmentalists who, while decrying the proliferation of plastic waste, see paper as a questionable substitute — one that consumes trees.

Other fast-food chains were affected by the ban. Twenty-nine Burger King restaurants in the metropolitan area replaced plastic foam cups with paper after the ban. Otherwise, they had followed the established national Burger King policy of using biogradable paper packaging. Burger King does use allowable plastic lids for paper cups and salads. The paper packaging is potentially compostable, although at present it goes to the landfill.

Vancouver-based Burgerville USA had stopped using most of its foam packaging before the Portland ban. Foam cups were the last to go.

Denton's continues to collect foam products, but has abandoned a machine it purchased to process McDonald's waste. Large hauls of polystyrene foam products, such as the trays from the Portland School District, are baled for other companies to reprocess.

But the post-consumer foam supply continues to dwindle in the Portland area. The Portland School Board on May 9 voted to reactivate its dishwashers and phase in a return to permanent dishes and trays. The decision was an environmental rather than an economic one. District studies showed that using permanent dishes, though more costly, is environmentally less harmful than making and recycling throw-away polystyrene.

The school district is exempt from the city ban as are other public and non-profit agencies and institutions.

Since the ban, several grocery stores have developed systems for receiving various plastics, including polystyrene foam.

Sorting plastic is much more elaborate than separating clear glass from green glass. Plastic containers are made from several different types of resins. In order to be marketable, secondary plastic must be reprocessed according to resin. Mixed plastics are anathema to the reprocessors.

To help the consumer sort, the plastics industry voluntarily codes many containers and expects most will be marked by the end of this year.

For example, HDPE (high-density polyethylene) dairy tubs, bottles and milk jugs are marked with a 2 inside a triangle of arrows, the recycling symbol.

LDPE (low-density polyethylene) plastic — lids, tops and film, including The Oregonian's plastic sleeves — carries a 4, and so on. (See glossary.)

But, it gets more complicated. HDPE (2) comes in two varieties — the milk-jug variety and the colored-bottle variety. And some are blow-molded while others are extruded. Melt points differ. And there is no market for mixed plastics — although Herrmann's

Please turn to RECYCLING, Page D4

Julie Sterling is a Portland free-lance writer.

Recycling: Mixed loads not accepted

Continued from Page D1

Environmental Learning Center has a Metro grant to test its use in making plastic lumber.

Haulers who get unmarketable plastics have no choice but to take them to the dump because reprocessors, such as Partek and Denton, will not buy or accept even a free load if it contains mixed or uncoded plastics.

Stan Amy, general manager of the Nature's markets, refuses to let the volatile economics of plastics subvert his in-store retrieval system. It costs him $20,000 a year to re-sort and haul, but he writes it off to customer service.

The 26 Thriftway stores in the metropolitan area participate in a monthly plastic round-up, supported by Denton and other sponsors.

Denton exercises a wizardly presence over the ungainly bottles, battery cases, plastic cable, misprinted plastic film and other discards that his machines reduce to marketable chips, black BBs and granules. He sees a bright future for his business and believes consumers are the key. "They drive the demand."

In Lane County, Ken Sandusky, recycling coordinator, would agree. Consumer demand in the Eugene-Springfield area has resulted in haulers picking up mixed plastics curbside — but what each will take varies from one to another. They donate the plastics to Goodwill Industries, which sorts them and tries to market them. In addition, Lane County disposal sites provide receptacles for various plastics.

If SB66 becomes law, city and regional governments will have to come up with systems at least as user friendly as Lane County's.

Since 1988, the Portland-area regional government, Metro, has awarded nearly $300,000 in grants for small-scale pilot projects related to plastics recycling. A grant of $18,500 seeded Sunflower Recycling's 24-hour depot and on-site plastics grinder. One for $17,400 will help Durst's Thriftee Market develop a model in-store collection program.

And when the city of Portland begins regulating residential waste haulers in October, it will require same-day weekly pickups of both garbage and recyclables and the addition of plastic milk jugs and magazines to the curbside recycling list, although some haulers already pick up milk jugs voluntarily. The new policy should provide the framework for collecting additional recyclables as new markets are developed.

Most important, local and regional governments should join with industry to speak to the public in a common voice about how and where to recycle their plastics. With more recycling, the plastics of Ben Braddock's and today's generations, instead of choking landfills, will reappear in the toys and trinkets of the future.

PLASTIC BY RESIN

The Society of the Plastics Industry's codes are stamped voluntarily on the bottoms of many containers to identify the particular resin used in their manufacture. Plastic waste must be sorted by resin before it can be reprocessed. Most recycling depots won't take uncoded waste. Some will take only two or three codes.

Codes

1 **PET or PETE** (polyethylene terephthalate)
Used in carbonated beverage containers that are recycled under Oregon's bottle-return bill. Not generally listed for collection because of this.

2 **HDPE** (high-density polyethylene)
The most marketable of the resins. Gallon milk jugs, dairy tubs, detergent, shampoo, bleach bottles. Can be colored, translucent or opaque.

3 **V** (vinyl)
Includes automobile seat covers.

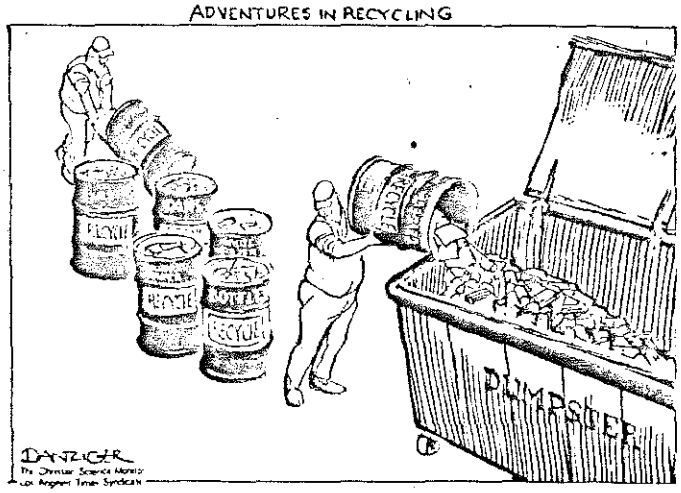
4 **LDPE** (low-density polyethylene)
Plastic bags, film, lids, tops.

5 **PP** (polypropylene)
Some containers for snack food, catsup, salad dressings.

6 **PS** (polystyrene)
In its rigid form, some dairy and food containers, cutlery, VCR tapes. Also foam packaging, including bakery and meat trays, egg cartons, coffee cups, clamshells.

Source: Society of the Plastics Industry

The Oregonian



Stan Amy, general manager of the Nature's markets, refuses to let the volatile economics of plastics subvert his in-store retrieval system.

August 4, 1992

PLASTICS ALERT!!

We Regret to inform you that the Saturday 2-4-6 Plastic Recycling Program at Far West Fibers has failed. After Saturday, August 8, 1992, we will no longer be able to accept household plastic containers for recycling.

Prior to July, we were able to give the 2-4-6 plastics away. Due to economic reasons, the processor discontinued their post-consumer plastics recycling program on July 1st, 1992. We now must pay to have clean, source separated 2-4-6 plastics hauled from our depot to the processor. We cannot afford this additional cost to our already heavily subsidized plastic program. Last year, we spent over $15,000.00 in order to provide labor and storage space for 2-4-6 plastics.

We will continue to accept No. 2 HDPE (High Density Polyethylene) natural colored milk, juice and water jugs, if they are cleaned & crushed, and if the caps and paper labels have been removed. We accept milk jugs seven days a week (Monday - Friday 8:00am - 5:00pm and Saturday & Sunday 9:00am - 5:00 pm). We subsidize this program as well and give the milk jugs away to a local processor. Our estimated unreimbursed cost to provide this service to the community is $7,200.00 per year.

Thank you for your support and contribution to 2-4-6 plastic recycling over the past years. We encourage you to deliver your 2-4-6 plastics to your neighborhood Thriftway grocery store on the last Saturday of each month.

Please contact the Metro Recycling Information Switchboard if you have additional questions concerning opportunities to recycle plastics (224-5555). Good Luck.

Far West Fibers
Beaverton Recycling Center

What's happening in Oregon

New yard waste site opens in Clackamas

Haulers and landscapers on the east side of the Portland-metropolitan area now have another option for the yard debris they collect. O.M Scott & Sons Company opened its new windrow composting facility the week of Nov. 16 in the Clackamas Industrial Park. The facility is equipped with scales and designed to serve only commercial customers.

Finished yard debris compost will be sold in bulk at the site and will also be incorporated into the Scotts/Hyponex line of bagged lawn and garden products sold at retail stores throughout the Pacific Northwest.

O.M. Scott & Sons currently has facilities in Washington and California in addition to the new Clackamas site and a testing facility located in Gervais, OR.

Watch next month's newletter for more on this story.

Information provided by Becky Crockett, Parametrix, Portland

Meetings

Youth Conference Committee
Nov. 19, 4 - 5:30 p.m.,
Metro, Room 240, 2000 S.W. First, Portland

Buy Recycled Conference Committee
Nov. 19, 1 p.m.
Clean Washington Center, 2001 6th Ave., Seattle

Sunflower steps over plastic pitfalls

Sunflower Recycling, one of the longest operating non-profit public recycling depots in the area, still offers recycling services for plastics numbered 2, 5 and 6 at its facility in Southeast Portland. Number 5, polypropylene, and number 6, polystyrene, are among the plastics that plague consumers. Everything from soap bottles to cottage cheese and yogurt containers is made from these two types of plastic resin, yet markets for the remanufacture of the materials are scarce and unreliable.

Still Sunflowwer persists. The latest wrinkle in Sunflower's program is its agreement to accept political campaign lawn signs for recycling. According to John Garofalo, manager of Sunflower, the signs are made from corrugated polystyrene and the public can drop the signs in with other number 6 materials. Staples and stakes must first be removed, but it's a small price to pay for this service. The public can even bring the wooden stakes along and pitch them in the wood waste pile at the facility.

Garofalo says Sunflower is currently taking in about 10 to 12 tons of plastic each month. The materials are sorted and baled, then shipped, mainly to processors outside Oregon. Still the difference between the costs and the return is several cents per pound. He says donations from the public have helped keep plastics recycling alive at the facility.

Equipment sales right niche for longtime AOR member

Steve Colton, longtime AOR member and past Board member, has been busy lately. His company, Colton Equipment Sales Co., represents several recycling equipment manufacturers and sells balers, shredders, air conveying systems, belt conveyors and the Warren & Baerg Fuel Cuber.

In September, Sunflower Recycling in Portland in stalled a Balemaster Group 17 extrrusion baler to be used for corrugated cardboard, newspaper, mixed waste and office papers, plastics and some scrap metal. According to Colton, this baler puts Sunflower in the top 10 in Portland when it comes to capable baling systems.

Colton also recently installed equipment at Smurfit Recycling, Sacramento. A baler, the Logemann 245-A1-AT-Dg, offers both a bale gate and the new "decompression platen" that prevents jamming from overbuilding bales. This feature is unique to Logemann.

Soon a Warren & Baerg Fuel Cubing System will be up and running at the Duraflake Division of Willamette Industries in Albany to handle its wood sander dust. This material has usually been landfilled. The cubed material will go to the Willamette Industries paper mill in Albany to be mixed with hog fuel as feedstock for the boiler there.

Not only has Colton seen several sales in the past few months, he has taken in a new partner. John Scott, formerly of SSI Shredding Systems, will be responsible for promoting the Logemann baler line, the Warren & Baerg Fuel cubers and Jeffrey hammermills for the handling of wood waste.

Colton Equipment has sales offices in the Portland area and in Dallas, TX. Congrats Steve and John. Keep up the good work.

THE OREGONIAN, FRIDAY, JULY 31, 1992

Plastics recycling project's success proves both good and bad

■ The program by Thriftway and the Girl Scouts is an ecological dream, but has major problems

By SUNNY STAUTZ
Special writer, The Oregonian

TROUTDALE — Thriftway Stores and the Girl Scouts have recycled enough milk jugs to reach from Portland to Seattle, but now they aren't sure whether their joint project is an ecological dream come true or a polyethylene nightmare.

What started as a one-year plastic recycling program tied to Earth Day has become a major commitment of time and resources. The volume of plastic that consumers have given to the Scouts has been overwhelming. Unfortunately, much of the plastic is of a type that cannot be recycled.

However, neither of the co-sponsors believes it can quit until someone else is ready to step in.

"We're the midnight watch and nobody's coming to relieve us," said Deb Catello, public relations director for the Pacific Northwest Girl Scout Council. "Our commitment was to offer a temporary depot solution until a government program was in place."

Jan Cavitt, events coordinator with Thriftway Stores United Grocers Inc., said the program started in February 1991 when Thriftway, the Girl Scouts and Denton Plastics Inc. started a program to recycle on one Saturday a month for 10 months. It became so popular it expanded throughout the Thriftway chain.

On the last Saturday of each month, 53 independently owned Thriftway stores from Cottage Grove to Vancouver, Wash., collect an average of 50,000 pounds of plastic stamped with recycle numbers 2, 4 or 6.

"Consumer response has been overall very good," said Jim Fisher, manager of the Sandy Thriftway. "It has added to our business, about a 15-20 increase on that day."

Denton Plastics created the "Recycle by the Numbers" slogan and agreed to pick up the plastic, said owner Dennis Denton. They then paid the Girl Scouts on a per-pound basis.

The first months of recycling were frustrating. Girl Scouts had to endure angry complaints from consumers who wanted to get rid of all plastics — not just those labeled 2, 4 or 6.

Not all plastic containers are recyclable because the market is limited. Milk jugs are the easiest to recycle. Next are high-density polyethylene containers labeled No. 2 — laundry detergent bottles. Low-density polyethylene are labeled No. 4 — plastic soft-drink rings, produce bags and lids on butter tubs. The only other plastic with a large market is polystyrene foam in cups and meat trays.

> *"We're the midnight watch and nobody's coming to relieve us."*
>
> **Deb Catello,** Pacific Northwest Girl Scout Council

There is little or no market for plastics labeled 1, 5, or 7 — although the container will be labeled "recyclable."

Consumers sometimes were irate when the plastic they had washed and toted to the recycling depot was rejected.

Catello said the Scouts had to learn two things: "Recycling . . . and community relations. Public frustration would sometimes boil over and they would dump garbage into recycling bins."

The cost of re-sorting and of collection undermined the partnership of Denton Plastics and Thriftway Stores, almost ending the program last winter. "It was costing us too much money," said Denton, who was paying for transportation, material and labor costs to re-sort and clean the plastic.

Thriftway switched to Environmental Plastics in Oregon City.

Cavitt said Thriftway felt like it had a tiger by the tail. There was no graceful way to get out of the program, because the public so strongly identified it with Thriftway stores. Thriftway Stores United Grocers is paying $6,000 a month to transport plastics to a recycler, and another $2,500 a month for supplies, said Cavitt.

Individual Thriftway store owners now pay the groups that work on recycling on Saturdays. Catello said Girl Scout troops receive from $35 to $100 for their efforts.

Stan Kezar, owner of Environmental Plastics, said he had to re-sort almost all of the 40,000 pounds that Thriftway brought in June, but he agreed to give the program a second chance.

"We were told if it's not cleaned up, they're not going to do it either," said Fisher.

July's haul, said Kezar, seemed to be a little better. "We're fighting an educational problem. Newcomers throw in everything but the kitchen sink — and I swear I've seen a kitchen sink float by here someplace."

Still, he added, the Thriftway recycling is one of the most successful programs around.

Plastics recycling experiment fails

By DOUG BROWNING
Of the Argus

A local garbage hauler says he's been losing about $5,000 to $6,000 a month trying to recycle plastic materials, and that's why he removed two Hillsboro bins that opened less than three months ago.

Tom Miller of Miller's Sanitary Service in Beaverton was a partner in Citistics Inc., which placed the bins in parking lots at Hillsboro PayLess Drug outlets.

The effort was financed in part by a grant through the Metropolitan Service District's "1 percent for recycling" program.

"It really hit us all at once," Miller said Monday. "The price dropped from 14 cents per pound to six cents per pound, and we were just squeaking by at 14 cents.

"This didn't fail because of a lack of response from the public. In fact, we had trouble keeping the bins emptied."

In a recent article, The Wall Street Journal said a survey indicated that recycling plastic is a problem throughout the country.

The basic problem is that few uses for recycled plastic have been developed.

Miller said, for example, that the federal Food and Drug Administration won't let certain foods be packaged in recycled plastic.

"Part of the problem is that we need to decide where the responsibility lies," Miller said. "The plastics industry is not taking a responsible role.

"They're marketing a lot of products that have the recycling symbol on them when the reality is that the technology doesn't exist to do it cost effectively.

"Lots of materials have no potential for re-use, and that makes it difficult to have a closed-loop system.

"I think Portland's ban on polystyrene food packaging got manufacturers' attention. But in general I don't want it to reach that point. There are too many useful plastic products to just concentrate on one end of the system."

Miller has been involved with a Washington County solid waste planning advisory committee and says that group may be able to devise a practical local solution.

"We're still trying to work on some sort of system," he said. "It's just got to be one that doesn't eat such a large hole in my pocketbook."

There are other locations where local residents can recycle some plastic materials. See below for more information.

One is at Environmental Recycling in Scholls. Call 628-3633 for details.

On the second Saturday off each month there are dropoff points in Gales Creek and Banks.

The Banks location is at Sunset Park from 9 a.m. to 3 p.m.

The Gales Creek location is open 8 a.m. to noon at the corner of Old Wilson River Highway and Sargeant Road. Call 359-4182 for details about the Gales Creek effort.

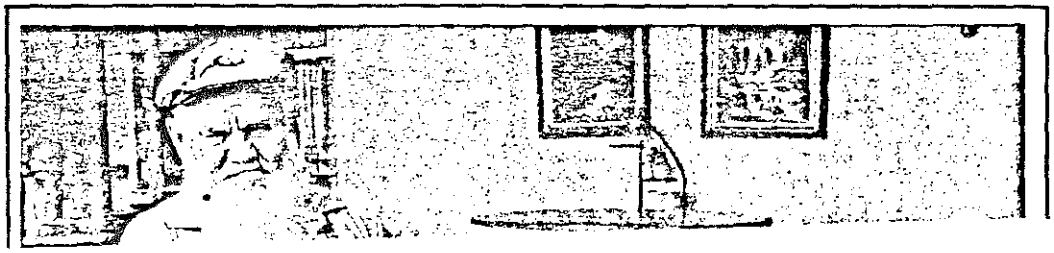
Aloha Recycling at 3755 SW 205th Ave. has a 24-hour dropoff point for milk, juice and water jugs.

In general, plastics that can be recycled include pop bottles; milk, juice and water jugs; dairy containers, such as those used for cottage cheese, butter, margarine and yogurt, and polystyrene food containers.

Some locations will accept other containers marked with the universal recycling symbol (three arrows forming a closed loop). However, call before taking such materials to dropoff point.

Hillsboro Argus

Tuesday, July 10, 1990 | An independent, locally owned newspaper since 1873 | Hillsboro, Oregon | 25¢



Kingsley will direct county elections office

CURRENT AND TARGET RECOVERY RATES FOR PLASTICS PACKAGING IN OREGON

Prepared for

The Oregon Department of Environmental Quality

by

Resource Integration Systems, Ltd.

Portland, Oregon

October 1990

Printed on Recycled Paper

Table 1

POST-CONSUMER PLASTIC PACKAGING
RECOVERY TOTALS AND RATES
OREGON, 1989
in million lbs.

Resin Type	OR Weight Generated	Recycled *Weight*	*Rate*
HDPE(1)	39.2	4.524	11.5%
LDPE	36.7	0.523	1.4%
PP	14.3	0.049	0.3%
PS and EPS	19.6	0.241	1.2%
PVC	7.2	0.016	0.2%
PET	11.0	6.869	62.6%
Other	4.1	0	
TOTAL	**132.2**	**12.2**	**9.2%**
Total, w/out PET soft-drink bottles	**125.1**	**5.4**	**4.3%**

(1) HDPE total includes 25 percent of PET recovery reported, to account for basecups. PET totals are reduced 25 percent accordingly.

Packaging

The study focuses on recovery and disposal of plastics packaging. An item is only considered packaging if it has been used to convey a product to the consumer. Packaging does not include:

- disposable dishes, bowls or utensils such as would be purchased for a picnic
- film bags, sacks or wrap sold for home or commercial storage
- garbage bags
- factory trimmings or rejects intended to be packaging but not used for that purpose.

WASTESTREAM PLASTICS PACKAGING

An estimated 120 million lbs (60,000 tons) of plastics packaging are disposed in Oregon, accounting for 2.6 percent of the wastestream.

Packaging applications for each resin represent the following percentages of the State's muncipal solid waste:

HDPE	0.75%
LDPE	0.79%
PS and EPS	0.42%
PP	0.31%
PET	0.09%
Other	0.09%

CURRENT RECOVERY RATES

Table 1 displays recovery weights and rates for each resin.

Only PET currently meets the 15 percent criterion set out in ORS 468.969, with 6.9 million lbs. captured for a 63 percent recycling rate. This quantity represents 96 percent of Oregon's estimated PET soft drink bottles. Other PET packaging, such as liquor bottles, are not

the U.S. are taking part in the program, sponsored by Baxter Healthcare Corp.

Stock Watch

The second quarter of 1992 was no winner for publicly traded plastics reclaimers. Advanced Environmental Recycling Technologies saw its stock price end at $2 per share on June 30. This is on the low end of the scale for AERT; its stock value has varied between $1.50 and $3.25 over the last year.

North American Recycling Systems, a waste management operator and plastics reclaimer, just entered the public stock market this year. With a value of $3.87 per share at the end of the quarter, NARS shareholders saw their stock value drop 58 percent during the period.

Polymerix stock value also fell sharply in the second quarter, slumping 63 percent to end at a value of $0.38 per share.

The decline in value at Pure Tech International was less severe (12 percent). Pure Tech's stock sold for $8.38 per share at the end of June.

Wellman, the big player among publicly traded plastics reclaimers, recorded a 25 percent drop in value during the second quarter, ending at $21.38 per share on June 30.

People in the News

M. Allen Maten Jr. has been named director of automotive programs for the Partnership for Plastics Progress. He will be headquartered in Detroit and serves as technical advisor and program manager between the plastics and automobile industry . . . Fernley Smith, former president of Midwest Elastomers (Wapakoneta, Ohio), has established Environmental Technologies Alternatives, a consulting firm devoted to helping clients develop the technology and markets for recycled plastic and rubber materials. For information: (419) 227-3518.

Study Results

Northeastern state recycling officials are very concerned about the status of post-consumer plastics recycling. In a recently issued study, the Northeast Recycling Council (a coordinating body that includes these state officials) concluded that major barriers exist for expanded recycling. The report cites the major problems as the inability of reclaimed resin to meet virgin resin specifications; the relatively low supply of collected plastics, which thus limits recycling investments; the significant regulatory and technical impediments restricting the use of post-consumer resin in new packaging; and the inherent weaknesses of the plastic lumber market.

The NERC document offers a number of recommendations, including legislated minimum recycled-content standards for plastic products; the use of labeling standards; expanded public and private procurement of recycled products; enhanced recyclable plastics collections; and increased research and development activities by the plastics industry into plastics recycling.

Federal Watch

On a 28-15 vote, the House Energy and Commerce Committee on July 2nd sent a federal waste management act to the full House of Representatives. Among the many sections of the bill is one key requirement on plastic packaging producers. The measure calls for a 25 percent plastic recycling rate by 1995. Among the waivers for producers are these: if the package contains 25 percent post-consumer content; if the package has been reduced in volume or weight by 15 percent; or if the package can be refilled up to five times.

European Plastic Recycling

Frost & Sullivan, the London research firm, tells us that plastics recycling in the European Economic Community reached 2.0108 billion pounds last year. LDPE recovery led at 1.232 billion pounds, followed by HDPE at .3344 billion pounds. The leading recycling countries were:

— Germany, with sales of $141 million
— Italy at $95 million
— France at $65 million.

The researchers predict that recycling levels will double by 1995, when scrap plastic sales in the European Economic Community reach $1.47 billion.

Plastics Supplement

Each May, *Resource Recycling*, the monthly magazine, publishes a supplement focusing on plastics recycling. The 1992 edition featured:

— an assessment of the status of PET bottles-to-bottles recycling
— an estimation of plastic container collection costs
— the results of a survey of all U.S. and Canadian producers of plastic lumber and profiles

EDITORIAL

Recycled Plastics: Supply-Side Highs— Demand-Side Lows

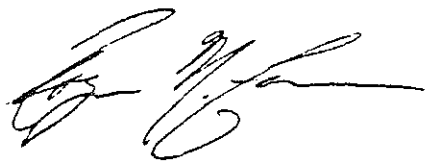
The supply-side plan for recycling plastics is reasonably strong and gaining strength; but the demand-side for reclaimed/recycled material is falling short of our expectations. It may be that until we're told that X amount of recycle must be used with Y amount of new material, we are not about to incur and pass on the increase in material costs for using recycle. The reason is that there are no substantial markets for handling the ever growing stockpiles of HDPE, LDPE, PP, PS, and PVC. And the added cost for using PET in food packaging makes it a costly pursuit.

The rationale for the soft market for HDPE, LDPE, PP, PS, and PVC appears to be twofold: The government has not responded in keeping with the supply-side of the program in providing guidelines (percentages of recycle to virgin materials or acceptable applications for recycle) for reuse of these materials (this we expected); and the price of after-market materials is greater than that of new materials. From a profit-and-loss standpoint, we may find ourselves in a bit of a financial quandary. Is recycle the kind of product that manufacturers will voluntarily purchase?

Without sufficient demand for recycled materials, we'll create a warehouse glut of these materials that may render them less than enticing to the people who collect and market them. And stockpiling supply-side product in lieu of cash flow cannot be taken lightly. The one exception, PET, is being used for numerous after-market products. And even though it costs more than new PET when used for food packaging, some companies are doing it: For example, Coca-Cola is using recycled PET in some of its one liter bottles. This may be a singular effort to comply with voluntary usage of recycled material in food packaging. But other recyclable materials are falling short in after-market bulk-material sales. What's the alternative? Well, perhaps it's time for "dates and rates."

In brief, dates and rates, a proposed government program, refers to mandatory contents of recyclable materials by legislated dates. A voice in the packaging industry appears to be against the government's mandating such a program — it is felt, and perhaps justifiably so, that government should not legislate mandatory contents and dates to the industry. But if it doesn't, if something isn't done to further the use of recycle in tandem with new material, we may see the demand-side of this effort take a protracted decline.

Until the government establishes a schedule of dates and rates, there doesn't seem to be much that we can do to stimulate the flow of reclaimed material from warehouse to processor to manufacturer. We might not care for the government's delivering a mandate, but it may be the only way to enforce and stimulate the demand-side of plastics recycling. □



Roger M. Ferris
EDITOR

Plastics Recycling: Up or Down?

Behind the growth in plastic soft drink "PET" bottle recycling is a story of little to no recycling for many types of plastics packaging. PET bottles have reached a rate of 38 percent, and HDPE base cups near that rate. Recycling of PET bottles and HDPE base cups is growing due to (1) the bottle bill; (2) the competitive price of recycled PET compared to virgin PET (PET is energy intensive, making the inherent value of the recycled material high); and (3) predictability of material in clear soda bottles.

But, these examples are just two of some 30 categories of plastic packaging. The facts are:

* Recycling of 651 million pounds of packaging is *a mere 4.3 percent of all plastics packaging sales in 1991.*

* Recycling of 846 million pounds of the six resins represents *less than 1.4 percent of all plastics sales in 1991.*

* The National Polystyrene Recycling Company's goal of recycling 250 million pounds of polystyrene by 1995 may be well out of reach for the industry. The PPP's recent recycling report shows that *the industry has achieved only one-tenth of that goal.*

* These recycling rates do not begin to compare with those for other materials (e.g., aluminum at 62.4%, glass at 31%, newspaper at 20%, and steel cans at 34%).

* Recycling rates for plastics packaging other than PET bottles remains at 10 pecent or less.

PLASTICS IN PACKAGING: SALES AND POSTCONSUMER RECYCLING, 1991

	Total Sales of Material (MM lbs)	Sales to Packaging (MM lbs)	Post-Consumer Recycling (MM lbs)	Percent of Total Resin Sales	Percent of Total Sales to Packaging
PET	2348	793	327	13.9%	41.2%
HDPE	9193	4397	281	3.1%	6.4%
PS	4877	1268	24.3	0.5%	1.9%
LDPE	6326	3740	56	0.9%	1.5%
PP	8155	1557	150	1.8%	9.6%
PVC	9130	707	7.5	0.1%	1.1%

Sources: EDF calculations based on data sources as below:
a) Modern Plastics (January 1992); 1991 Resin Report.
b) PPP Press Release, June 1, 1992 and updated numbers per telephone conversations.
c) PS packaging sales based on 26% of total being sold to packaging (C&EN, 10/15/90, p.15).

MORE

Contact:
Environmental Defense Fund
Jackie Prince 202-387-3500

A Glimpse at Markets From Around the Country:

* A major joint venture between Du Pont and Waste Management, Inc. folded because the collection and processing costs outpaced income, even though it only handled PET and HDPE bottles. (Adam Lashinsky, "WMI/Du Pont Recycling Venture Failing, Official Says," Plastics News, April 29, 1991.)

* In Nashville, TN: A pilot plastics recycling program "will die in February, a victim of deadly low prices from plastics dealers." (Carol Ritchie, "Plastics Recycling: Low Prices Kill Tennessee Program," Nashville Banner, 2/1/92, as reported in Greenwire, 2/5/92.)

* In Houston, TX: "Because of the collapsing market for recovered plastic, American Reclaiming Corp. last week indefinately closed the only plant in the [Houston] area handling [plastic milk bottles, water bottles, soda bottles and bags collected in local recycling programs]." (Dyer/Byars, "Recycling: Lack of Markets Causes Plant Shutdown," Houston Chronicle, 1/23/92, as reported in Greenwire, 2/28/92.)

END

THE NEW YORK TIMES, TUESDAY, JUNE 2, 1992

Market Is Shriveling for Recycled Plastics

By JOHN HOLUSHA

The nation's plastic producers reported yesterday that they were recycling more plastic bottles, yogurt containers and margarine tubs than ever before, but they also said they were having difficulty with sluggish markets and low prices for recycled materials.

According to the Partnership for Plastics Progress, which is affiliated with the industry's main trade association, the Society of the Plastics Industry, about 11 percent of these plastic containers were recycled in 1991, up from 7 percent in 1990. But only 651 million pounds of the 14.4 billion pounds of plastic packaging produced last year escaped the trash heap, for a recycling rate of 4.5 percent.

J. Roger Hirl, president of the Occidental Chemical Corporation and chairman of the partnership, said markets for recycled materials in general were in their deepest recession in years. "The embryonic plastics recycling industry has been particularly hard hit by the recession," Mr. Hirl said.

Hurt by Low Oil Prices

"The recession has been a major factor," agreed John Ruston, a solid-waste specialist at the Environmental Defense Fund. He said low oil prices had driven the price of oil-derived virgin plastics, like high-density polyethylene, so low that recycled material, which is considered of lower quality, had little appeal.

According to Chemical Week magazine, the current price for the new material is 30 to 33 cents a pound, down from 43 to 46 cents a pound early last year.

Mr. Hirl appealed to consumers to request more recycled plastics in products. He said more than 4,400 communities have collection or drop-off programs for plastic containers, but there has been a lag in developing uses for the materials. "Consumers have the power to help provide stability to recycling markets by requesting and buying more items made from recycled materials," he said.

Nevertheless, a spokeswoman for the trade group said the industry opposed proposed legislation that would mandate levels of recycled material in new bottles and cups. "Industry is best equipped to decide what products can be recycled, not the government," the spokeswoman, Susan Moore, said. She acknowledged that plastic recycling was a money loser for the industry since it was started a few years ago.

> Few new uses have been developed for the recovered material.

Some environmentalists say such legislation is essential to develop the markets and processing plants for materials, like plastics, that are difficult to recycle. "The strongest economies in the world, Germany and Japan, have the best recycling rates," said Allen Hershkowitz, a senior scientist at the National Resources Defense Council. "The reason they have developed coherent markets for recycled materials is that they have had leadership at the national level."

For example, he said, producers of plastic containers in Germany are required to recycle the containers after use by consumers, though not necessarily as the same products. This avoids the problem of contamination in packages used for food.

Although markets for the most commonly recycled materials — aluminum, glass and paper — have also been soft, finding ways to recycle plastics economically is particularly difficult, Mr. Ruston said. Plastic bottles, the most commonly recycled plastic products, are like balloons that rapidly fill collection trucks but bring in little revenue because payment is based on weight.

Recycling Times, a publication of the National Solid Waste Management Association, says many scrap processors and brokers refuse to handle light plastics, like polystyrene foam, because of the light weight and low prices paid by users.

In addition, there is a broad variety of plastic resins that are similar in appearance but incompatible in recycling processes. "A single polyvinyl chloride bottle can contaminate 10,000 polyethylene terephthalate bottles," Mr. Ruston said. This is because polyvinyl chloride chars at temperatures needed to melt the other plastic, and spreads black specs in the clear material.

Although plastic recycling has been uneconomical, the big chemical companies that produce plastics have invested in recycling plants to avoid product bans, taxes and other legislation intended to reduce the amount of solid waste going to landfills. According to the partnership, more than 120 companies recycle plastic products.

One of the most successful recycling projects is the use of soft-drink bottles to produce fiber used in carpeting and the lining of cold-weather clothing. According to the partnership, 36 percent of all these bottles produced were recycled last year.

GL

respondents would prefer a product labeled "biodegradable" over one that wasn't—even

sumers will have to evaluate those claims on their own. To do that, it's necessary to understand what green

never included in municipal recycling programs.

The bottom line is that "recyclable" means different things in different places. Your local public or private waste hauler should be able to tell you what your community recycles. Buy accordingly, and ignore the package puffery.

Recycled. Like the term "recyclable," the term "recycled" has a flexible meaning. The attorneys general's Green Report concluded that "when consumers think about recycling, they are thinking only about post-consumer waste—the trash they leave at their curb." But some products labeled "recycled" can include so-called pre-consumer waste—factory trimmings, production rejects, unsold or obsolete inventory—that has been reclaimed and reused for years, for reasons of economy.

Though aluminum, steel, and glass containers have significant recycled content, it's usually not mentioned on the label. But paper products of all types frequently bear labels claiming that they're "recycled." There are no guidelines on just how much post-consumer waste, if any, must be in a paper product for it to be labeled as recycled.

The Green Report argues that "recycled" labels should be restricted to

Plastics Decoded

RECYCLING BY THE NUMBERS

Turn over virtually any plastic packaged-goods container, and on the bottom you'll see the familiar arrows-chasing-arrows recycling emblem, with a number in the middle and sometimes also a few letters underneath.

It's the resin-coding system of the Society of the Plastics Industry, designed to enable consumers and recycling-center operators to separate the various plastic resins, which can't readily be recycled if they're mixed together. Here's what the numbers mean and where they're commonly found:

1. Polyethylene terephthalate (PET, PETE)—Soft-drink bottles; frequently recycled.
2. High-density polyethylene (HDPE)—Milk and detergent jugs; frequently recycled.
3. Polyvinyl chloride (PV, V)—Some shampoos and such; rarely recycled; burning produces toxic gases.
4. Low-density polyethylene (LDPE)—Plastic film and wrap; rarely recycled.
5. Polypropylene (PP)—Food lids, containers; rarely recycled.
6. Polystyrene (PS)—Food containers and foam burger boxes, hot-drink cups, plates; occasionally recycled from schools, cafeterias, and restaurants.
7. Mixed resins — All other resins; rarely recycled.

RECYCLING ADVOCATES
2420 S.W. Boundary Street, Portland, Oregon 97201 (503)244-0026

Old Yard Debris Rules

Local jurisdictions in Multnomah, Clackamas, and Washington counties individually or jointly were to develop yard debris recycling plans.

Minimum collection standards (p. A-98-99)
- Washington County's plan provides depots.
- Metro's Plan calls for weekly curbside by 1994 if market capacity for compost is adequate.

Performance standards (p. A-99)
- By 1989 - 25% yard debris recovery
- By 1992 - 80% yard debris recovery

New Yard Debris Rules

Local jurisdictions where yard debris is a principal recyclable material shall individually or jointly implement a program that meets the minimum requirements.

Minimum collection standards
- Monthly collection (p. A-13) or
- Weekly depots (p. A-13) or
- Monthly collection April-Oct + monthly depots Nov-March (p. A-26)
- Monthly collection April-Oct + weekly depots Nov-March (p. A-26)
- Biweekly depots (p. A-26)

Performance standards
- 45% recovery rate for 3 counties in aggregate (p. A-18)

Proposed amendments

Retain all old yard debris rules

or

Retain at least 340-60-120(2)(d) and (e) on p. A-97 and 340-60-125(5)(d) on p. A-99 and 340-60-130 on p. 100 and 101.

(d) Any changes in the Metro yard debris recycling plan, waste reduction plan, or solid waste management plan affecting yard debris recycling shall be approved by the Department prior to being implemented.

(e) Metro shall monitor the implementation of the yard debris recycling programs and shall report local government and other affected person compliance or non compliance in a report to the Department at least annually.

(5) Unless otherwise provided in an approved yard debris recycling plan, yard debris recycling programs developed for local jurisdictions in the Clackamas, Multnomah, ~~Portland~~, and Washington, ~~and West Linn~~ Wastesheds shall be implemented to meet the following minimum performance ~~standards~~ for recovery of yard debris generated in that jurisdiction: (d) By July, 1992 recovery of at least 80% of the yard debris generated in the area.

or

1. Revise the introductory language to 340-90-050 on page A-15 to read:

> The purpose of this rule is to define the wastesheds as designated in ORS 459A.010, and state the recovery rate that each wasteshed shall achieve ~~by~~ for each year beginning with calendar year 1995.

2. Revise 340-90-050 (35) on page A-18 to read:

> Clackamas, Multnomah and Washington counties, in aggregate, as a single wasteshed shall achieve (A) an overall recovery rate of 45 percent and (B) a recovery rate for yard debris of 80 percent. No more than 5 percent of the overall recovery rate may be by the processing of mixed municipal solid waste compost. If the Metropolitan Service District does not develop and operate a mixed solid waste composting process for a minimum of six months during calendar year 1995, the overall recovery rate for Clackamas, Multnomah and Washington counties in aggregate shall be 40 percent for calendar year 1995.

3. ~~Retain~~ Yard Debris ~~Charge~~ Rule
AOAR 340-60-130 (~~p. 100~~)

AMERICAN PLASTICS COUNCIL

(Formerly the Partnership for Plastics Progress)

FRIDAY, DECEMBER 11, 1992

COMMENTS BY THE AMERICAN PLASTICS COUNCIL ON THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY's (DEQ) RIGID PLASTIC CONTAINER EXEMPTION REPORT TO THE LEGISLATURE

On behalf of the 26 leading plastic resin producers nationwide and the broader plastic processor community, including Oregon companies, we wish to respond to DEQ's recommendations to eliminate the recycling rate option from SB 66. This recommendation strikes us as premature, unnecessary and possibly counter-productive to the incentive to achieve recycling success in Oregon.

First, if the 25 percent recycling rate goal for rigid containers is not achieved by January 1995 then product manufacturers are left with the other options in order to comply with the law. DEQ's suggestion to remove the recycling rate option is unnecessary since this would obviously happen if sufficient recycling programs do not exist for plastics. This is the intent of SB 66. It is somewhat premature for the DEQ to conclude that an overall recycling goal cannot be met.

Second, eliminating recycling rate goals means that the DEQ is emphasizing the content requirement which may do little to help find markets for Oregon containers. This is because probably 90 percent of rigid containers used in Oregon are imported from jurisdictions nationwide and worldwide. Compliance with Oregon law would be obtained by importing containers which derive their content from other states--near where those containers are manufactured.

However, the way SB 66 is worded now, the achievement of a 25 percent recycling rate in Oregon means that markets would exist for Oregon's rigid containers collected in scores of community programs.

Finally plastic is a versatile material, and bottles and other rigid containers are being recycled into non-packaging products, i.e. carpets, plastic strapping, fiber, durable goods, etc. Mandated content on containers fails to recognize the versatility of the material to move into many high-value recycling markets.

Submitted by Roger Bernstein, Director, State Government Affairs, American Plastics Council

A Joint Initiative with The Society of the Plastics Industry, Inc.
1275 K Street, NW Suite 400 Washington, DC 20005 FAX 202 • 371•5679 202 • 371•5319

1880 Lancaster Dr. NE, Suite 120
Salem, OR 97305
December 10, 1992

Environmental Quality Commission
811 SW 6th Avenue
Portland, OR 97204

Dear Members of the Environmental Quality Commission:

The Association of Oregon Counties, the League of Oregon Cities and the Oregon Sanitary Service Institute have joined together to comment on the Environmental Quality Commission's consideration of exemptions for FDA regulated rigid plastic containers.

At the December 11, 1992, meeting of the Commission, the Department of Environmental Quality will present its report on recommendations to the 1993 Legislature. Agenda item "L" (Report to the Legislature on Exemptions for FDA Regulated Rigid Plastic Containers) concerns the plastic packaging recycling standards of Senate Bill 66, the Oregon Recycling Act.

SB 66 includes recycling standards for rigid plastic containers which must be met by 1995. The plastics industry now seeks to be excused from meeting those requirements.

The passage of SB 66 in 1991 was a result of compromise and hard-won consensus reached by the groups affected by the legislation, including industry, local government, collectors and environmental concerns. At the time, the plastics industry agreed to the SB 66 requirements that it must meet. Excusing the plastics industry from its requirements at this time would not only set an unfortunate precedent, it would also be patently unfair to the other partners of SB 66 who are working to meet the goals.

The Association of Oregon Counties, the League of Oregon Cities and the Oregon Sanitary Service Institute urge the Commission to maintain the requirements of SB 66, or accept the DEQ's recommendation to reduce the current four recycling standards to recycled content only, requiring a licensing fee for those companies which do not meet the standard.

Sincerely,

Gordon G. Fultz
Association of Oregon Counties

Phillip J. Fell
League of Oregon Cities

Kristan S. Mitchell
Oregon Sanitary Service Institute

CITY OF PORTLAND
ENVIRONMENTAL SERVICES

1120 S.W. Fifth Ave., Room 400, Portland, Oregon 97204-1972
(503) 796-7740, FAX (503) 796-6995

Comments to the Oregon Environmental Quality Commission
regarding
Proposed Solid Waste Reduction and Recycling Rules
OAR Chapter 340, Division 90

offered by
The City of Portland
Bureau of Environmental Services
December 11, 1992

Chair, members of the Commission, my name is Meganne Steele. I am the Solid Waste Director for the Portland Bureau of Environmental Services. The City appreciates the opportunity to comment today on the proposed rules for solid waste reduction and recycling (OAR Chapter 340, Division 90).

The City of Portland (City) has been involved in the process of both reviewing the proposed rules during their development, through our representation on the Solid Waste Advisory Committee, as well as providing written and verbal testimony at the hearing held on the rules on October 19, 1992 in Portland. The City appreciate's the staff's review of comments received and have noted that changes were made to the rules for both multi-family dwelling and yard debris collection menu items (OAR 340-90-040 (3)) as a result of our testimony.

The City understands that staff received additional written testimony during the comment period which was considered in the final revision of the rules. However, the City was unaware of the content of the written testimony until the staff report was received last week. The City would like to comment briefly on one of the changes that was made after the hearing which deals with the charge for yard debris collection and how that is applied to multi-family dwellings up to and including four units (OAR 340-90-190). The proposed rule would require that local jurisdictions where yard debris is a principal recyclable material include the cost of collection of one unit of yard debris per month for each dwelling unit in the garbage rate. Previously, the cost of collection of one unit of yard debris had to be included for each residential generator of yard debris. The City feels that the rule should should not be modified for the following reasons:

- Yard debris at multi-family dwellings is generated in a manner different fromother recyclable materials. Oftentimes in multi-family dwellings, residents within the dwelling units are not generating the yard debris. Rather, the yard debris is generated by the owner/manager, or a contractor to the owner/manager, who is also

often the holder of the account with the garbage collection firm. The resident, therefore, is not in an inequitable position as compared to a single family resident since their yard debris is taken care of and the owner/manager can still have additional units of yard debris collected at cost.

- This change in the rules has a rate impact for the City of Portland. Currently, the City has set garbage rates which include one unit of yard debris per month for each residential account. Additional units may be placed out for collection at cost. Many multi-family dwellings have "shared service" (i.e. one account signs up for two 60 gallon roll carts in a single location for a four-plex vs. four separate accounts each with a 32 gallon can). In order to comply with the rule as proposed, the City would have to adjust rates for duplexes, triplexes and four-plexes to incorporate the cost of collecting the additional units of yard debris for the remaining dwelling units. Most local jurisdictions in the Metro area have scheduled their rate changes to take effect July 1st of every year to coincide with changes in tipping fees which might go into effect. Therefore, increased costs related to the implementation of this rule would probably be born either by the hauler or the City and would not be recovered through the rate until July 1, 1993.

In summary, the City of Portland would recommend no change in OAR 340-90-190. If the Commission decides to approve the change, then the City would urge the Commission to postpone the currently proposed rule change until July 1, 1993 when local jurisdictions are scheduled to revise their rates.

Thank you again for the opportunity to comment on the proposed solid waste reduction and recycling rules. The City looks forward to working with the Department to reach our recycling goals.

State of Oregon
Department of Environmental Quality Memorandum

Date: December 11, 1992

To: ENVIRONMENTAL QUALITY COMMISSION

From: Olivia Clark, Assistant to the Director

Subject: 1993 Legislative Agenda

Out of the 30 legislative concepts reviewed by the Commission and Department earlier this year, eleven were selected for submission to the 1993 legislature. The Executive Department is currently reviewing the eleven bill drafts for final approval. Attached is the list of DEQ bill drafts for which we expect to receive final approval.

The Department's legislative proposals represent a cross section of initiatives that range from pollution prevention strategies such as wellhead protection to the pursuit of enhanced criminal authority to both deter and punish environmental crimes. One of the Department's major initiatives for the 1993 session comes out the strategies identified by the State Motor Vehicle Emissions Task Force. These include an enhanced vehicle emission inspection program and a vehicle emission fee.

When the legislature convenes January 11 there will be a variety of important changes. First, the leadership of the Senate will change with the retirement of Senate President John Kitzhaber. The Senate is expected to select new leadership in January. Second, there will be roughly 24 new legislators who have not previously served in the legislature: 17 in the House and 7 in the Senate. Other changes will be seen in the legislative committee structure as announced by House Speaker Larry Campbell. Most noteworthy for the Department's legislative issues is the creation of a new eleven-member House Committee on "Natural Resources" which combines the Energy and Environment, Agriculture, Forestry and Natural Resources, and Water Committees.

DEQ 1993 LEGISLATIVE PROPOSALS

Number	Title	Description
LC 848	Pollution Tax Credit Program	The proposal will sunset the program in June 1993. Governor's "mandated" budget returns $2 million to budget in 93-95.
LC 849	Local Government Capital Replacement and Reserve Account	Provide a means for local governments to locally fund long-term dedicated capital replacement reserve account for water and wastewater facilities.
LC 850	State Motor Vehicle Emission Task Force	Recommendations to meet mobility needs in Portland area while also meeting and maintaining air quality goals. Strategies requiring legislation include enhanced vehicle inspection and maintenance program and vehicle emissions fee.
LC 852	Environmental Crimes	Ensure that criminal authorities are clear and enforceable, and serve as an adequate deterrent and punishment for crime. Federal mandate for air.
LC 853	Wellhead Protection	Multi-agency effort to protect wellheads and prevent contamination of public drinking water supplies at the local level.
LC 854	Water Pollution Control Fund	Increase availability of financial assistance to local government by leveraging funds and create self-supporting program.
LC 855	Fees for Plan Reviews	Authorize specific fees for providing engineering review and associated analyses in wastewater treatment facilities.

Number	Title	Description
LC 856	Clean Air Act Updates	New federal clean air requirements and interpretations mean amending HB2175 to maintain federal delegation.
LC 935	Underground Storage Tanks	Per tank fee increase proposed due to lack of federal funds, decrease in size of regulated community and increased costs.
LC 857	Compliance with EPA Subtitle D Regulations	Attorney General identified deficiencies in meeting federal solid waste regulations. Must strenghten active oversight of closed landfills and financial assurance for site closure.

Environmental Quality Commission

☑ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item D
December 11, 1992 Meeting

Title:

Rule Adoption: Rule Exempting Lenders, ORS 709 Trust Companies Acting as Fiduciaries, and Government Entities from Cleanup Liability (Lender Liability Rules)

Summary:

Under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and state environmental cleanup statutes, property owners and operators are strictly liable for hazardous substance releases. Both laws exempt lenders from liability when the forms of ownership in a property are primarily to protect a security interest, such as a loan. However, a federal court decision has suggested that a secured creditor might be liable for cleanup if the creditor could influence the treatment of hazardous waste even if the creditor did not actually participate in the management of the facility.

The crux of the issue addressed by these proposed rules is defining what constitutes "participation in management" and can lead to cleanup liability. The Environmental Protection Agency (EPA) adopted rules on this subject in April 1992. The 1991 Oregon legislature directed the Environmental Quality Commission (EQC) to adopt rules to clarify lender liability, or security interest, exemptions. The EQC rules were to be consistent with, and parallel in effect to, the federal regulations. The EQC was also directed to adopt rules that clarified liability for Oregon Revised Statute Chapter 709 trust companies acting as fiduciaries. Trust liability issues were not addressed in the EPA rules.

The proposed rules only clarify liability, and do not create or remove any basis for liability. The responsible party remains liable for all cleanup costs. The rules were developed with the assistance of the Lender Liability Advisory Committee. The Committee wrestled with the Legislative directive and EPA rules, and committee members differed on certain technical and legal issues in the rule. However, the proposed rules as presented provide a reasonable degree of certainty about liability. The results are a clearer understanding of cleanup liability that will better allow lenders and fiduciaries to provide needed capital and services to businesses and individuals.

Department Recommendation:

Adopt the rules for lender liability as presented in Attachment A of the staff report.

Report Author	Division Administrator	Director

11/23/92

State of Oregon
Department of Environmental Quality Memorandum

Date: November 24, 1992

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item D, December 11, 1992 EQC Meeting

Rule Adoption: "Lender Liability Rule" (Rule Exempting Lenders, ORS Chapter 709 Trust Companies Acting as Fiduciaries, and Governmental Entities Involuntarily Acquiring Property from Cleanup Liability)

Background

The Oregon Legislature directed the Environmental Quality Commission (EQC) to adopt rules which clarified the security interest exemption to environmental cleanup liability for lenders and ORS Chapter 709 trust companies. These rules were to be consistent with and parallel in effect to the proposed federal rule and exemptions. The Legislature also directed the Department of Environmental Quality to appoint an advisory committee to aid in the development of rules. The Department formed the Lender Liability Advisory Committee (LLAC or the Committee), and LLAC first met on February 21, 1992. The Environmental Protection Agency (EPA) promulgated its lender liability exemption regulation on April 29, 1992. After numerous meetings, the Department, with LLAC advice, drafted rules to go to public comment.

On August 18, 1992, the Director authorized the Environmental Cleanup Division (ECD) to proceed to a rulemaking hearing. The proposed "lender liability rule" was parallel in effect to the federal "Superfund" lender liability regulation, but the Oregon rule reflected the unique conditions contained in Oregon's cleanup law, ORS 465.200 *et seq.*.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on October 1, 1992. Notice was mailed on October 5 and 6, 1992, to the mailing list of those persons who had asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action. Notice for the public hearings was published in the *Oregonian* on October 1 and 18, 1992, and in the *Register-Guard* on October 4 and 18, 1992.

Public Hearings were held on October 20, 1992, at 2:00 p.m. in Portland and on October 21, 1992, in Eugene with Jeff Christensen serving as Presiding Officer. The

Presiding Officer's Reports (Attachment C) summarize the oral testimony presented at the hearings.

Written comment was received through October 30, 1992. Authors of the written comments are listed in Attachment D.

Department staff have evaluated the comments received (Attachment E). Based upon that evaluation, modifications to the initial rulemaking proposal are being recommended by the Department. Minor modifications are summarized below; detailed changes are shown in Attachment F.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

Issue this Proposed Rulemaking Action is Intended to Address

Under HB 3349 (adopted as Chapter 680 of the 1991 Oregon laws) the Oregon Legislature directed the Environmental Quality Commission (EQC) to adopt rules clarifying what is termed the "security interest exemption." This exemption to environmental cleanup liability allows lenders to hold "indicia of ownership" to secure repayment of loans by the borrowers without becoming "owners" of the property and strictly liable for contamination cleanup costs associated with the property. To the extent consistent with this objective, the Oregon rules were to be consistent with and parallel in effect to the regulations promulgated by the Environmental Protection Agency (EPA) regarding lender liability under the federal "Superfund" statute, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 *et seq.* The EPA amended 40 CFR Part 300 (the National Contingency Plan [NCP]) on April 29, 1992 when the final rule was published in the Federal Register (57 FR 18343).

The Director charged the LLAC to aid in crafting a rule that would be consistent with the unique Oregon environmental cleanup statutes. The resulting proposed rule clarifies potential liability as an "owner or operator" under the environmental cleanup statute's strict liability scheme. The rule clarifies what activities the lender may engage in before and after foreclosure while remaining within the exemption to cleanup liability.

Additionally, the rule clarifies the exemption to liability for certain governmental activities and delineates the exemption to cleanup liability for ORS Ch. 709 trust who act as fiduciaries. The LLAC recommendation to adopt the proposed rule was written by Chair David G. Ellis and is Attachment G. LLAC membership is found in Attachment I.

Authority to Address the Issue

Pursuant to ORS 183.335(7), the following authorities provide information about the Environmental Quality Commission's intended action to adopt a rule:

Chapter 680 of the 1991 Oregon Laws (HB 3349)
ORS 465.400, 465.435, 465.440.

Process for Development of the Rulemaking Proposal (including alternatives considered)

What was the problem?

Under the federal Superfund and the state environmental cleanup statute "owners and operators" are strictly liable for the release of hazardous substances at their facilities. Both statutory schemes exclude lenders who maintain indicia of ownership in a facility primarily to protect a security interest as owners or operators. However, in *United States v. Fleet Factors Corp.*, 901 F.2d 1550 (11th Cir. 1990), *cert denied,* 111 S.Ct. 752 (1991), the court suggested that a secured creditor might be liable if the creditor participated in the management of a facility "to a degree indicating a capacity to influence the corporation's treatment of hazardous wastes." 901 F.2d at 1557. Fearing potential liability for merely having the "capacity to influence" environmental compliance, the lending community sought clarification of the existing regulations.

The Environmental Protection Agency (EPA) proposed such a rule on June 24, 1991, and, after significant comment and revision, the regulation became effective on April 29, 1992. In House Bill (HB) 3349 (enacted as Chapter 680) the 1991 Oregon Legislature directed the EQC to adopt rules to clarify the security interest exemption, and, to the extent consistent with this objective, parallel in effect to the federal regulations. The EQC was also directed to adopt rules that clarified liability for ORS Ch. 709 trust companies acting as fiduciaries.

How does this proposed rule help solve the problem

The proposed rule addresses the liability of lenders and governmental entities as does the federal regulation, and the Oregon rule addresses ORS Ch. 709 trust companies acting in a fiduciary capacity. The rule clarifies which activities a lender, governmental entity, or trust company may undertake while remaining within the exemption to environmental cleanup liability. By providing this level of certainty, lenders and fiduciaries can provide necessary capital and services to businesses and individuals while reducing the risk of assuming unquantifiable cleanup liability.

How was the rule developed

The Department formed the Lender Liability Advisory Committee (LLAC) which consisted of eleven members who represented the banking community, non-regulated lenders, municipalities, and the environmental community. See the member list in Attachment I. The full LLAC met eight times over ten months to advise the Department on how to craft the rules, and the trustee sub-committee met an additional four times.

Throughout the process the Department sought out interested persons. The Department mailed draft versions of the rule to interested persons; made public presentations on the rule; published notice in major newspapers; and held two public hearings.

What are the other potential alternatives for dealing with the issue?

1. Model the state rule even more closely on the federal rule. (This alternative might conflict with the Oregon Legislature's directive to include ORS Ch. 709 trust company coverage. Additionally, such an alternative might be beyond EQC's rulemaking powers as to certain evidentiary matters [the federal rule is currently under challenge on this issue].).

2. Model the state rule less on the federal rule. (This alternative might create more uncertainty as to whether the provisions of the federal rule would supplement or conflict with the state rule. Greater certainty and parallel in effect rules were dual goals.)

3. Wait until any legal challenges to the federal rule are resolved before adopting rules. (This alternative might result in long delay without any net benefit as to the Oregon rules.)

How do the rules affect the public, regulated community, other agencies

The rules clarify which activities a lender or a trust company may undertake while remaining within the exemption to environmental liability. By providing this level of certainty, lenders and fiduciaries can provide necessary capital and services to businesses and individuals while reducing the risk of assuming cleanup liability. The lending community has argued that the increased certainty from these rules might lessen the "credit crunch" to certain industries.

The Department does not believe that clarifying the exemption will result in any addition "orphan" sites which would require public expenditures for cleanup. The rule should separate out potentially responsible parties from responsible parties at an earlier stage, but responsible parties will still be liable for the cleanup. While certain properties which are "involuntarily acquired" (e.g. by tax default) may become "orphan" sites, these rules do not create the government exception, the rules only clarify instances that are "involuntary" under the cleanup statute.

The rules do not create or delete any basis for liability. The rules only clarify the existing bases in the state environmental cleanup law. The rules might reduce certain transaction costs in determining who are the responsible parties, and the rules might make some additional credit available. These financial benefits are admittedly speculative; for a fuller discussion of economic impacts, see Attachment B-3.

How will the rule be implemented

The rule will be effective upon adoption and filing with the Secretary of State. When the state or other plaintiff seeks cost recovery, the defendant might make the claim that the defendant falls within the exemption and is not liable for the cleanup costs. See the implementation plan in Attachment B-5.

Summary of Rulemaking Proposal Presented for Public Hearing and Discussion of Significant Issues Involved.

When the Lender Liability Advisory Committee met in February 1992, LLAC knew the general contours of the proposed regulation, but there was considerable uncertainty as to what the final federal regulation would be after EPA responded to the extensive public comments. Between the first LLAC meeting and publication of the EPA rule on April 29, 1992, the Committee considered where it would be necessary and appropriate to

depart from the proposed federal rule to address Oregon's needs. The LLAC raised and resolved the issues listed below. (For a detailed discussion of these issues, see Attachment H.)

- General Changes which Occur Throughout the Proposed Oregon Rule
    - Correcting Cites From Federal Statutes (CERCLA) to Oregon Statutes
    - Language Deletions (e.g. "vessels")
    - Terms of Art Clarifications (e.g. "disposal")
    - Consistent use of "may" (permissive) and "might" (possibility)
    - Changing federal numbering system to Oregon numbering system
    - Sectioning and sub-sectioning ("nesting")
- Burden of Proof
- "Participation in Management" (Financial/Administrative/Operational Acts)
- "Fair Consideration" v. "Fair Market Value"
- Bases of Liability Other Than As "Owner or Operator"
- Pre-foreclosure and Post-foreclosure Acts Within the Exemption
- "Reasonably Expeditious"
- ORS Chapter 709 Trusts Acting as Fiduciary Exemption Issues
    - Maintaining an Action Against the Trust Without Personal Liability of the Trustee
    - Permissible acts by the Fiduciary

The LLAC discussed these major issues and recommended to either amend/delete portions of the federal rule or knowingly adopt the federal language. The LLAC

struggled with the dual directive to be "parallel in effect" with the federal regulation (especially as to lenders) and yet be different from the federal regulation (especially as to fiduciaries). An exemption for fiduciary liability was explicitly excluded from the federal regulation, but the Oregon Legislature revised the Oregon statute to include fiduciaries and directed the EQC to develop additional rules to flesh out the recently amended statute.

The resultant rule is different than the federal regulation, but the Oregon rule is consistent with and parallel in effect to the federal regulation. Undoubtedly, the proposed rule remains an imperfect rule as it is based on a flawed model. The degree of certainty gained by the rule remains in doubt until the rule is applied and tested in court.

Still the rule addresses a perceived need to assure lenders and Ch. 709 trust companies that they will not be held liable for merely having the capacity to influence borrower decisions. The rule provides "laundry lists" of what is or is not permissible within the exemption. Make no mistake: these determinations are fact-sensitive. Liability will depend on what the lender and the trustee did, and these acts will be examined to determine if the lender or trustee might be held liable as "owner or operator" or under some other basis of liability. Neither the Oregon rule nor the federal rule are blanket exemptions.

The Department has addressed the significant policies inherent in the federal rule and adapted the federal rule to fit the Oregon statutes. The Department has concerns that the federal rule is sometimes unclear, unduly repetitive, and might exceed the rulemaking authority of the EPA. The Department, with the LLAC's assistance, has crafted a rule that is clearer, less repetitive, and within the rulemaking authority of the EQC.

Summary of Significant Public Comment and Changes Proposed in Response

Written public comments are contained in Attachment J and are available upon request. The public comments and detailed Department responses are summarized in Attachment E. Listed below are capsulized comments and Department responses:

The federal rule allows 12 months to list property after foreclosure; the public comment draft of the Oregon rule allowed only 6 months.	Both Department staff and LLAC believed 6 months was adequate time to list property and so drafted the rule. The Department elected to change to 12

	months to avoid any "trap for the unwary." LLAC concurred.
The public comment version of the rules drafted the ORS Ch. 709 trust company exception too narrowly.	The original draft covered only "trustee" functions of the trust companies. The Department agreed that was too narrow and expanded the rule to cover other fiduciary functions.
The public comment version of the rule prevents initial funding and subsequent funding of the trust by the grantor.	The Department changed to allow grantor funding, but subsequent purchases by the trust company are not covered under this exemption. The "innocent landowner" defense still requires "due diligence" by the trust company that elects to add property.
The determinations whether a lender falls within the exemption or not are "fact-sensitive."	The Department agrees; the fact-sensitive nature of the exemptions are stressed throughout rule.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules regarding the exemptions for lenders, ORS Ch. 709 trust companies acting as fiduciaries, and governmental entities from cleanup liability as presented in Attachment A.

Attachments

A. Rules Proposed for Adoption
B. Supporting Procedural Documentation:
   - Public Notice
   - Rulemaking Statements (Statement of Need)
   - Fiscal and Economic Impact Statement
   - Land Use Evaluation Statement
   - Implementation Plan
C. Presiding Officer's Report on Public Hearing
D. List of Persons Making Written Comments
E. Department's Evaluation of Public Comment
F. Changes to original rulemaking proposal made in response to public comment
G. Advisory Committee Recommendation
H. Advisory Committee/Department Background Information
I. Advisory Committee Membership List

Reference Documents (available upon request)

J. Written Comments Received

Approved:

Section: Mary Wahl

Division: Michael Downs

Report Prepared By: Brooks Koenig

Phone: 229-6801

Date Prepared: November 19, 1992

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11/19/92

Note: The following rules (OAR 340-122-115 to 117) are modeled on the federal regulations (40 CFR 300.1100 *et seq.*, 57 FR 18343) recently promulgated by the Environmental Protection Agency (EPA). The federal rules are currently under challenge in the U.S. Court of Appeals for the District of Columbia Circuit. Should portions of the federal regulation be held to be invalid, the Department of Environmental Quality (DEQ) will review the Oregon rules to determine whether the Oregon rules should be amended.

OAR 340-122-115 Security Interest Exemption.

(1) Pre-foreclosure. A person or "holder" who maintains indicia of ownership primarily to protect a security interest in a facility, and who does not participate in the management of the facility, is not an "owner or operator" of such facility under ORS 465.255(1)(a) and (b). Whether a transaction falls within this exemption will depend on the facts and on the law otherwise applicable to the transaction.

(a) "Holder" for the purposes of ORS 465.200 *et seq.* and this rule means a person who maintains indicia of ownership (as defined below) primarily to protect a security interest (as defined below). A holder includes the initial holder (such as a loan originator), any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market), a guarantor of an obligation, a surety, or any other person who holds ownership indicia primarily to protect a security interest, or a receiver or other person who acts on behalf or for the benefit of a holder.

(b) "Indicia of ownership" as used in ORS 465.200 *et seq.* and this rule means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title to real or personal property acquired incident to foreclosure or its equivalents. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, judgment liens, statutory liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), legal or equitable title obtained pursuant to foreclosure, and their equivalents. Evidence of such interests also include, but are not limited to, assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(c) "Primarily to protect a security interest" as used in ORS 465.200 *et seq.* and this rule means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation. The term

"primarily to protect a security interest" does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest.

(d) "Security interest" as used in ORS 465.200 *et seq.* and this rule means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trusts, liens, judgment liens, statutory liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(e) "Participating in the management of a facility" as used in ORS 465.200 *et seq.* and this rule means that the holder is engaging or has engaged in acts of facility management, as defined herein:

(A) Actions That Are Participation in Management. Participation in the management of a facility means actual participation in the management or operational affairs of the facility by the holder, and does not include the mere capacity to influence, or ability to influence, or the unexercised right to control facility operations. Whether the holder has participated in management sufficiently to void the exemption is a fact-sensitive inquiry. In all cases, the determination of whether a holder is participating in management depends on the holder's actions with respect to the facility rather than the outcomes associated with such actions. A holder is participating in management, while the borrower is still in possession of the facility encumbered by the security interest, only if the holder either:

(i) exercises decisionmaking control over the borrower's environmental compliance, such that the holder has undertaken responsibility for the borrower's hazardous substance handling or disposal practices; or

(ii) exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day operational (as opposed to financial or administrative) decisionmaking of the enterprise. Operational aspects of the enterprise include, but are not limited to, functions typically performed by positions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative

aspects include, but are not limited to, functions typically performed by positions such as that of credit manager, accounts payable/receivable manager, personnel manager, controller, or chief financial officer.

(B) Actions That Are Not Participation in Management.

(i) Actions at the Inception of the Loan or Other Transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management. A prospective holder who undertakes or requires an environmental inspection of the facility in which indicia of ownership is to be held, or requires a prospective borrower to clean up a facility or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the facility's management. Neither the statute nor this rule requires a holder to conduct or require an inspection to qualify for the exemption, and the liability of a holder cannot be based on or affected by the holder not conducting or requiring an inspection.

Note: A person who desires to preserve or claim a defense under ORS 465.255(2)(a) must undertake the appropriate inquiry described in ORS 465.255(6).

(ii) Policing the Security Interest or Loan. A holder who engages in policing activities prior to foreclosure or its equivalents will remain within the exemption provided that the holder does not by such actions participate in the management of the facility. Such policing actions include, but are not limited to, requiring the borrower to clean up the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the facility (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(iii) Work Out. A holder who engages in work out activities prior to foreclosure or its equivalents will remain within the exemption provided that the holder does not by such action participate in the management of

the facility. For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure or its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance relating to work out activities; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(iv) Actions Taken Under ORS 465.255(7)(a). A holder does not participate in the management of a facility merely by taking a response action in accordance with ORS 465.255(7)(a).

(2) Post-foreclosure. A person who holds indicia of ownership after foreclosure or its equivalents primarily to protect a security interest is not an "owner or operator" of such facility under ORS 465.255(1)(a) and (b) provided that the holder undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility, taking all facts and circumstances into consideration, and provided that the holder did not participate in management prior to foreclosure or its equivalents.

(a) "Foreclosure or its equivalents" as used in this rule include, but are not limited to, purchase at foreclosure sale; acquisition or assignment of title in lieu of foreclosure; termination of a lease financing transaction or other repossession; acquisition of a right to title or possession; an agreement in satisfaction of the obligation; or any other formal or informal manner (whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower) by which the holder acquires title to or possession of the secured property. Indicia of ownership that are held primarily to protect a security interest include legal or equitable title acquired through or incident to foreclosure or its equivalents.

(b) A holder who did not participate in management prior to foreclosure or its equivalents, may sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or

substitution of the lessee), liquidate, maintain business activities, wind up operations, undertake any response action in accordance with ORS 465.255(7)(a), and take measures to preserve, protect, or prepare the secured asset prior to sale or other disposition without voiding the exemption, provided that the holder undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest the facility in a reasonably expeditious manner. To show that the holder has acted in a "reasonably expeditious manner," the holder may:

(A) use whatever commercially reasonable means to sell, re-lease, or divest as are relevant or appropriate with respect to the facility; or

(B) establish that the ownership indicia maintained following foreclosure or its equivalents continue to be held primarily to protect a security interest if, within twelve months following foreclosure, the holder lists the facility with a broker, dealer, or agent who deals with the type of property in question, or advertises the facility as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the facility in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located. For purposes of this provision, the twelve-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, acts diligently to acquire marketable title. If the holder fails to act diligently to acquire marketable title, the twelve-month period begins to run on the date of the foreclosure or its equivalents.

(c) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the facility establishes that the ownership indicia in the secured property are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(A) "Fair consideration," in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the facility, is the value of the security interest calculated as follows:

(i) an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of property subject to a lease financing transaction) pursuant to foreclosure or its equivalents; plus

(ii) any unpaid interest, rent, or penalties (whether arising before or after foreclosure or its equivalents); plus

(iii) all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure or its equivalents, retention, maintaining the business activities of the enterprise, preserving, protecting and preparing the facility prior to sale, re-lease of property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or other disposition; plus

(iv) remedial action costs incurred under ORS 465.255(7)(a); less

(v) any amounts received by the holder in connection with any partial disposition of the property, gross revenues received as a result of maintaining the business activities of the enterprise, and any amounts paid by the borrower subsequent to the acquisition of full title (or possession in the case of property subject to a lease financing transaction) pursuant to foreclosure or its equivalents.

(B) In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth above.

(C) "Outbids, rejects, or fails to act upon an offer" of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt of a written, bona fide, firm offer of fair consideration for the property received at any time after six months following foreclosure and its equivalents. A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed facility, including

all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates the ability to perform. For purposes of this provision, the six-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, acts diligently to acquire marketable title. If the holder fails to act diligently to acquire marketable title, the six-month period begins to run on the date of foreclosure or its equivalents.

(3) Holder's Basis of Liability Independent of Status as Owner or Operator

(a) Notwithstanding this rule, a holder may incur liability in connection with its activities under the independent bases of liability set forth in ORS 465.255(1)(d) to (7).

(b) A holder who obtains actual knowledge of a release at a facility acquired by the holder through foreclosure or its equivalents and then subsequently transfers ownership or operation of the facility to another person without disclosing such knowledge shall not be entitled to the security interest exemption and shall be considered an "owner or operator" under ORS 465.255(1)(c).

(c) This rule applies only to liability under ORS 465.200 *et seq.* and does not apply to any right that the state or any person may have under federal statute, common law, or state statute other than ORS 465.200 *et seq.* to recover remedial action costs or to seek any other relief related to a release.

340-122-116 Involuntary Acquisition of Property by the Government.

(1) State or local government ownership or control of property by involuntary acquisition or involuntary transfers within the meaning of ORS 465.255(3)(a)(A) includes, but is not limited to:

(a) Involuntary acquisitions by or transfers to a state or local government entity in its capacity as a sovereign, including transfers or acquisitions pursuant to abandonment proceedings, or as the result of tax delinquency, bankruptcy, or escheat, or other circumstances in which the government involuntarily obtains ownership or control of property by virtue of its function as sovereign;

(b) Acquisitions by or transfers to a state or local government entity or its agent (including governmental lending and credit institutions, loan guarantors, loan insurers, and financial regulatory entities that acquire security interests or properties of failed private lending or depository institutions) acting as a conservator or receiver pursuant to statutory mandate or regulatory authority;

(c) Acquisitions or transfers of assets through foreclosure or its equivalents or other means by a state or local government entity in the course of administering a governmental loan or loan guarantee or loan insurance program; and

(d) Acquisitions by or transfers to a state or local government entity pursuant to seizure or forfeiture authority.

(2) Nothing in this rule affects the applicability of OAR 340-122-115 to any security interest, property, or asset acquired by a state or local governmental entity pursuant to an involuntary acquisition or transfer.

(3) Notwithstanding the exemptions in (1) above, a governmental entity may be subject to the independent bases of liability set forth in ORS 465.255.

(4) This rule applies only to liability under ORS 465.200 *et seq.* and does not apply to any right that the state or any person may have under federal statute, common law, or state statute other than ORS 465.200 *et seq.* to recover remedial action costs or to seek any other relief related to a release.

340-122-117 Exemption for ORS Chapter 709 Trust Companies Acting as Fiduciaries

(1) An ORS Chapter 709 trust company acting as a fiduciary and holding property in a fiduciary capacity is exempt from personal liability as an "owner or operator" of the property under ORS 465.255(1)(a) and (b) if:

(a) the contamination of the property occurred before establishment of the fiduciary relationship and acceptance of the property by the trust company, and, prior to the establishment of the fiduciary relationship, the trust company did not participate in management of the property as defined in OAR 340-122-115; or

(b) the contamination of the property occurred after establishment of the fiduciary relationship and acceptance of the property by the trust company and the contamination was not the result of an act or omission of the trust company described in OAR 344-122-117(2).

(2) Notwithstanding the exemption in (1) above, an ORS Chapter 709 trust company acting as a fiduciary may be personally liable regarding a release at property held in a fiduciary capacity if:

(a) an act or omission of the trust company constitutes an independent basis for liability under ORS 465.255 (1)(c) to (7); or

(b) the release results from an act or omission of the trust company occurring outside the scope of its duties and the standard of care required under ORS 128.057; or

(c) the release otherwise results from an act or omission of the trust company that is negligent, grossly negligent, reckless, willful, or intentional.

(3) Notwithstanding the exemption to the personal liability of the trust company set forth above, this rule does not prevent claims against:

(a) assets that are part of or all of any estate or trust that contains the facility;

(b) any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the ORS Chapter 709 trust company.

The assets of a trust or estate remain subject to any claims for liability pertaining to contaminated property even if legal title rests with the trust company. Such claims may be asserted against the trust company in its representative capacity, whether or not the trust company is personally liable.

(4) The exemption to personal liability of the trust company set forth above does not apply to ownership or operation of a facility at property which is:

(a) acquired by the trust company for the trust, estate, or principal, in exchange for assets of the trust, estate, or principal; and

(b) acquired subsequent to the establishment of the fiduciary relationship.

(5) This rule applies only to liability under ORS 465.200 *et seq.* and does not apply to any right that the state or any person may have under federal statute, common law, or state statute other than ORS 465.200 *et seq.* to recover remedial action costs or to seek any other relief related to a release.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rule Exempting Lenders, ORS Ch. 709 Trusts Acting as Fiduciaries, and Governmental Entities from Environmental Cleanup Liability

Date Issued:	October 1, 1992
Public Hearings:	October 20, 21, 1992
Comments Due:	October 30, 1992

WHO IS AFFECTED:

Lenders, banks, financial institutions, and other persons who hold indicia of ownership primarily to protect a security interest; ORS Ch. 709 trusts acting as fiduciaries; governmental entities involuntarily gaining contaminated properties; other Potentially Responsible Parties (PRPs); third parties seeking to recover cleanup costs; and the general public.

WHAT IS PROPOSED:

The Department proposes additions to its environmental cleanup laws to clarify when lenders and trustees will not be liable as "owners or operators" for the cleanup of contaminated property. This will allow lenders to loan money to borrowers without assuming the borrower's environmental liability, and trustees will be able to administer trusts without assuming the grantor's liability. The proposed rule only clarifies liability; it does not create or remove any basis for liability. The responsible party remains liable for all cleanup costs.

WHAT ARE THE HIGHLIGHTS:

Clarifies which activities lenders may conduct prior to foreclosure and remain within the exemption to cleanup liability and not be considered an "owner or operator."

Clarifies which activities lenders may conduct after foreclosure and remain within the exemption to cleanup liability and not be considered an "owner or operator."

Clarifies which activities an ORS Ch. 709 trust acting as a fiduciary may conduct and remain within the exemption to cleanup liability and not be considered an "owner or operator."

Clarifies which activities are involuntary acquisitions by governmental entities and fall within the exemption to cleanup liability.

811 S.W. 6th Avenue
Portland, OR 97204

FOR FURTHER INFORMATION:

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

HOW TO COMMENT:

Public Hearings to provide information and receive public comment are scheduled as follows:

Portland
October 20, 1992
2:00 p.m. until closing
DEQ Headquarters Bldg.

Room 10-A
811 SW 6th Ave.
Portland, OR 97204

Eugene
October 21, 1992
2:30 p.m. until closing
Lane Co. Public Service Bldg.
Conference Room A
125 E. 8th.
Eugene, OR 97401

Written comments must be received by close of business on October 30, 1992 at the following address:

Department of Environmental Quality
Environmental Cleanup Division (ECD)
811 S. W. 6th Avenue
Portland, Oregon, 97204

A copy of the Proposed Rule may be reviewed at the above address. A copy may be obtained from the Department by calling Brooks Koenig at the ECD Division at (503) 229-6801 or calling toll free in Oregon 1-800-452-4011.

WHAT IS THE NEXT STEP:

The Department will evaluate comments received and will make a recommendation to the Environmental Quality Commission. Interested parties can request to be notified of the date the Commission will consider the matter by writing to the Department at the above address or by calling the above numbers.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Exempting Lenders, ORS Ch. 709 Trusts Acting as Fiduciaries, and Governmental Entities from Environmental Cleanup Liability

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

Chapter 680 of the 1991 Oregon Laws (HB 3349)
ORS 465.400, 465.435, 465.440.

2. Need for the Rule

The Oregon Legislature directed the Environmental Quality Commission (EQC) to adopt a rule which clarified the security interest exemption and was consistent with and parallel in effect to the federal rule and exemption. The Environmental Protection Agency (EPA) promulgated its lender liability exemption regulation on April 29, 1992.

3. Principal Documents Relied Upon in this Rulemaking

Chapter 680 of the 1991 Oregon Laws (HB 3349)
ORS 465.200 *et seq.*
57 FR 18343 (April 29, 1992)
United States v. Fleet Factors Corp., 901 F.2d 1550 (11th Cir. 1990)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Exempting Lenders, ORS Ch. 709 Trusts Acting as Fiduciaries, and Governmental Entities from Environmental Cleanup Liability

Fiscal and Economic Impact Statement

Introduction

The Department is proposing rules which clarify when lenders, ORS Ch. 709 trusts acting as fiduciaries, and governmental entities are exempt as "owners or operators" from environmental cleanup liabilities related to the release of hazardous substances at facilities. The proposed rules do not create any additional liabilities under the environmental cleanup law (ORS 465.200 *et seq.*), nor do the proposed rules impose any additional regulatory burdens or costs. The proposed rules only clarify existing liabilities that might attach to those considered "owners or operators" of facilities.

By providing this clarity, lenders will have a degree of certainty as to the potential liability of lending activities. This certainty will, in turn, enable lenders to make loans to certain enterprises which were formerly viewed by lenders as being too risky for loans.

Similarly, the proposed rule will allow ORS Ch. 709 trusts acting as fiduciaries to accept trusts that might include contaminated property as part of the trust assets. Formerly, trust companies might have rejected such trusts for fear that the trustee would be personally liable. Under the proposed rule, the trustee may now conduct certain activities (including cleanup activities) without incurring personal liability.

Finally, the proposed rule will clarify governmental liability when the governmental entity involuntarily acquires contaminated property. The rule clarifies which governmental activities will be deemed to be "involuntary" and thus exempt from cleanup liabilities.

The overall impact of the rule will be to free up credit and reduce transaction costs. The proposed rules neither expand nor reduce liability, but only clarify when the liability attaches.

General Public

The general public should not incur any additional costs under the proposed rules. The rules retain the same "polluter pays" principle established by the broad statutory liability scheme. The proposed rules clarify who the responsible parties are, but the rules should not result in greater environmental cleanup costs being borne by the public. Some people have argued that the proposed rule reduces the pool of Potentially Responsible Parties (PRPs) and therefore public costs will increase as more sites become "orphan" sites. The Department does not agree with this analysis. The pool of PRPs remains the same; the proposed rule will get to the responsible party more quickly. If a lender is responsible for a release, the lender is liable. The proposed rules clarify which acts by a lender might make the lender liable. Lenders have argued that there will be fewer "orphan" sites with the rule since lenders will now be able to conduct certain limited activities which benefit the environment as well as securing repayment of debt. Lenders believe the certainty provided by the proposed rules will benefit the lenders, the borrowers, and the public by properly allocating the cleanup costs to the responsible parties. The proposed rules might avoid some of the transaction costs in weaning the responsible parties from the potentially responsible parties.

Small Business

Small businesses might benefit from the proposed rules as lenders might be willing to make loans to businesses who use hazardous substances. Prior to the rules, lenders were reluctant to make loans to firms who might face significant cleanup costs. If lenders were found to be personally liable for cleanup costs, the liability might have greatly exceeded the value of the loan. Under the proposed rules, lenders may now loan money and limit risk to the amount of the loan. Of course, lenders will still evaluate the ability to repay before granting a loan, but now money can be loaned for a host of activities (including cleanup) without putting the lender at risk for contamination which the lender had no role in creating or maintaining.

Certain lenders are small businesses. The proposed rules benefit these parties because company assets are no longer at risk since the lender is not personally liable as an "owner or operator" unless the lender acts outside the exemption.

While the rule protects the legitimate small business lender, the rule is also structured to preclude "safe harbors" for sham loans. Responsible parties cannot shelter properties through a dummy lender. In such a scenario, the borrower will remain liable, and, if the lender participated in management or is responsible for "causing, contributing to, or exacerbating" a release, the lender too will be liable for environmental cleanup.

Large Business

Like small businesses, large businesses may benefit from the freeing up of credit that might flow from the rules. Again, lenders will be able to lend funds and limit their liability to the amount of the loan. Lenders will still evaluate the ability to repay before granting a loan, but lenders may now advise on financial matters without the potential of becoming an "owner or operator" and incurring strict, joint and several liability.

Certain lenders and ORS Ch. 709 trust companies are themselves large businesses. The proposed rules benefit these parties because company assets are no longer at risk since the lender or trustee is not personally liable as an "owner or operator" unless the lender/trustee acts outside the exemption. While the personal liability faced by lenders and trustees was more theoretical than actual, the proposed rule makes it clear that the lender's or trustee's "deep pockets" are available for cleanup costs only if the lender acts outside the exemption. Lenders/trustees will not be liable for merely having the capability to influence operation or management of a facility. This clarity will enable lenders and trustees to return to their normal financial business practices.

Local Governments

The proposed rule includes governmental foreclosures and seizures and forfeitures as "involuntary" acquisitions and thus exempt from certain cleanup liabilities. Governmental entities can be liable for other cleanup costs under other conditions. The proposed rule merely clarifies which acts under the existing statute would be deemed to be "involuntary." The proposed rule neither expands nor contracts liability, but it might limit the liability of local governments for the clean up of contaminated property.

State Agencies

The proposed rules will have no fiscal impact on the Department of Environmental Quality (DEQ). There is no implementation plan necessary so there will be no additional staffing or expenditures required. Likewise, there will be no additional revenues generated from the rules. When the Department seeks cost recovery from cleanup activities, the proposed rule will make it clear which persons should be included in the pool of Potentially Responsible Parties (PRPs). This change might reduce transaction costs by eliminating non-PRPs early in the process.

Other agencies might benefit from the clarification of what are "involuntary" acquisitions. Again, by clarifying which activities are excluded from liability and which are subject to liability, governmental agencies will be able to make better decisions regarding contaminated properties and reduce transaction costs in getting those properties cleaned up.

Assumptions

There are no quantitative economic assumptions employed in this analysis. The qualitative analysis is that greater risk (uncertainty) leads to greater costs or risk avoidance. Lenders and trust companies argue that the very unquantifiable nature of environmental liability leads them to either structure the loan/trust to avoid liability (high transaction costs) or avoid the risk (not make the loan or accept the trust).

Much of the impetus for the proposed rule came from the fear of lenders who thought they might be held personally liable for cleanup costs because they had the "capacity to influence" environmental decisions by their borrowers. *See United States v. Fleet Factors Corp.*, 901 F.2d 1550 (11th Cir. 1990) *and* the virtual flood of commentaries about the case. While this fear undoubtedly influenced lending practices, it is impossible to quantify how much the "credit crunch" can be attributed to lenders' fear of environmental cleanup liability. Nonetheless, the lending community asserts than credit will open up if the lenders have more certainty when they might or might not be liable.

Cases involving trustee liability are more rare than lender liability. Despite the lack of liability, trustees feared their "innocent" involvement with real estate would put their other investments at risk. In the 1990 Annual Report of the Division of Finance and Corporate Securities, ORS Ch. 709 trusts reported total assets of approximately $25.5 billion. Of this amount, approximately $7.6 billion were discretionary assets of which approximately $210 million were in real estate. Trustees feared that 1% of their assets were putting the other 99% at risk and that trustees would be forced to decline trusts that contained real estate. Again, it is impossible to quantify the fiscal impact of the proposed rules, but the qualitative response from trustees is that trust companies will be able to accept trusts with real estate assets. Prudent management of those assets should result in more, not fewer, cleanups.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Exempting Lenders, ORS Ch. 709 Trusts Acting as Fiduciaries, and Governmental Entities from Environmental Cleanup Liability

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rules clarify when lenders, ORS Ch. 709 trusts acting as fiduciaries, and governmental entities are exempt from cleanup liabilities related to the release of hazardous substances at a facility. The proposed rules do not create any additional liabilities under the environmental cleanup laws (ORS 465.200 *et seq.*), but they do clarify existing liabilities that attach to "owners or operators" of such facilities.

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

a. If yes, identify existing program/rule/activity:

Not applicable

b. 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

c. If no, apply the SAC Program 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.

Environmental cleanup rules and activities have not been determined land use programs through the Department's State Agency Coordination Program pursuant to OAR 660-30-075(2) and OAR 340-18-070. (Continued next page.)

Environmental cleanup activities are neither specially referenced in the statewide planning goals nor are they reasonably expected to have significant effects on resources or present or future land uses. The proposed rule only clarifies when certain parties might be liable under the existing environmental cleanup program; such a rule will not affect land use.

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

Intergovernmental Coord.

Date

Approved 5/17/12

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Lender Liability Rule (Rule exempting lenders, ORS Ch. 709 trust companies acting as fiduciaries, and governmental entities from cleanup liability.)

Rule Implementation Plan

Summary of the Proposed Rule

The proposed additional rules to the state's environmental cleanup laws clarify when lenders, trust companies, and local governments will not be liable for the cleanup up of contaminated property. This will allow lenders to loan money to borrowers without assuming the borrower's environmental liability; will allow trust companies to fulfill their fiduciary duties without assuming the principal's liability; and will allow local governments to involuntarily acquire property without being liable for the defaulting party's liability. The proposed rules only clarify liability; they do not create or remove any basis for liability. The responsible party remains liable for all cleanup costs.

Proposed Effective Date of the Rule

The rules will be effective upon filing with the Secretary of State.

Proposal for Notification of Affected Persons

Copies of the final rule as adopted will be mailed to all interested parties. Public notices will be released to major newspapers within the state.

Proposed Implementing Actions

There are no required implementing actions. These rules only clarify the bases for liability that are established with the Oregon environmental cleanup law. ORS 465.200 *et. seq.* Under that law, the plaintiff must show that the defendant is liable for cleanup costs. Under the proposed rules, the defendant will have the opportunity to show the defendant fits under one of the exemptions. The rules make it clearer which acts are and are not included in the exemption.

These rules will not require any additional staffing within DEQ nor any additional burden on the Attorney General's Office. The actions needed to separate potentially responsible parties from responsible parties will be the same.

The rules will not impose any additional burden upon the regulated community. The exemptions for which they might qualify are already contained in the statutes. The rules will provide additional guidelines to determine whether the party falls within the exemption or not.

Proposed Training/Assistance Actions

There will be no specific DEQ staff training with these rules. The rules are focused on legal cost recovery issues and will be more within the purview of the Department of Justice.

There are no technical assistance seminars planned for the regulated community. However, the Department has participated in numerous CLE (continuing legal education) programs, planning seminars, and local government seminars. The Department will continue to respond to requests and will sponsor seminars such as the ICMA Conference this coming January.

State of Oregon
Department of Environmental Quality Memorandum

Date: October 20, 1992

To: Environmental Quality Commission

From: Jeff Christensen, Hearings Officer

Subject: Report on the Public Hearing held in Portland, Oregon on October 20, 1992 on the "Lender Liability Rule." (Rules exempting lenders, ORS Ch. 709 trusts acting as fiduciaries, and governmental entities from cleanup liability as proposed in OAR 340-122-115 to 117.)

Number of Persons Participating:
(signup sheets available upon request)

6 People attended the hearing

4 People gave oral testimony

2 People submitted written testimony

Hearing Summary:

The hearing was opened at 2:05 p.m.

Mr. Kenneth Sherman Jr. of the Oregon Bankers Association was the first to testify. Mr. Sherman submitted the text of his comments as written testimony. Mr. Sherman's points were as follows:

1. Use of "might" throughout the proposed rule is substantively different than the EPA wording. The proposed rule is thus not parallel in effect to the federal rule since the federal wording makes a definitive absolute statement where the proposed rule merely raises a possibility.

2. The proposed rule requires lenders to list property for sale six months after foreclosure while the federal rule grants twelve months. There is no compelling reason for the shorter time.

3. Typo. "At" should be "of" in 340-122-117(1).

4. The Chapter 709 trust exemption is too narrowly drafted and does not include other functions such as conservator or personal representative that should be covered.

5. As drafted, 340-122-117(4) takes away any protection granted to trust since property is always added "subsequent to the formation of the trust." At a minimum, the clause should allow initial funding, but the preferred remedy would be to delete the subsection.

The next person to testify was Lillian Frease of McMinnville, OR. Ms. Frease's points were:

1. A rule on lender liability is needed because lenders are hesitant to lend on real estate and it is having an adverse effect on the market.

2. The exemption for lenders should include all lenders, including individuals, and not just the banks.

3. The statutes and rules are too vague. There needs to be a clearer line to determine who is liable for cleanup costs.

4. Enforcement of environmental laws is too lax. Neither EPA nor DEQ will do what they should be doing to force people to clean up. Ms. Frease described a landfill site where different governmental entities passed the buck, no one took responsibility, and the site is still a mess.

The next person scheduled to speak was Cleo Westphal. Ms. Westphal declined to make any comment during the hearing, but noted after the meeting that the protection afforded to Chapter 709 trusts should be afforded to individuals who act in the same capacity.

The next person to testify was Frank Hilton, an attorney from Portland. Mr. Hilton's points were:

1. Overall the rule has good balance. Corporate trusts should not be granted overly-broad protections against liability.

2. Trusts gaining property after the initial funding of the trust should be performing their "due diligence" and using the "innocent landowner" defense rather than a broad exemption.

3. Agree that the rule should be modified to allow the "initial funding" of the trust.

The final person to testify was David G. Ellis, Associate General Counsel for First Interstate Bank of Oregon, and chair of the Lender Liability Advisory Committee. Mr. Ellis submitted his statement as written testimony, and he commented that the proposed 340-122-117(4) needs to be clarified so it applies only in those situations where the trustee uses trust assets to acquire real property for the trust and not where the grantor transfers additional real property into the trust.

After inquiring if there were any additional comments and hearing none, the hearing was closed at 2:50 p.m.

State of Oregon
Department of Environmental Quality Memorandum

Date: October 22, 1992

To: Environmental Quality Commission

From: Jeff Christensen, Hearings Officer

Subject: Report on the Public Hearing held in Eugene, Oregon on October 21, 1992 on the "Lender Liability Rule." (Rules exempting lenders, ORS Ch. 709 trusts acting as fiduciaries, and governmental entities from cleanup liability as proposed in OAR 340-122-115 to 117.)

Number of Persons Participating:
(signup sheets available upon request)

7 People attended the hearing

0 People gave oral testimony

0 People submitted written testimony

Hearing Summary:

After the preliminary opening remarks at 2:30 p.m. the hearings officer inquired whether anyone wished to give testimony. No one wished to testify, but all present were interested in the rules. The hearings officer asked Brooks Koenig, DEQ staff person and principal author, to give a brief, informal presentation.

Mr. Koenig spent about 20 minutes describing the federal rule, the proposed rule, and some of the differences between the two rules. At the end of his presentation, several people asked questions regarding some of the background documents and Mr. Koenig's presentation.

The first question was whether the proposed rule would eliminate or diminish the "due diligence" requirement of lenders. Mr. Koenig responded that "due diligence" is still required to take advantage of the "innocent landowner" defense, but "due diligence" was not to be used as evidence whether a lender had "participated in management" or not under the proposed rule.

Another question was whether the proposed rule would affect which industries lenders would loan money. Mr. Koenig responded that the rule would give some certainty to banks that the

only risk they would face would be the risk of non-repayment rather than the open-ended risk of being liable for environmental clean-up. This limit on risk might make credit more readily available to industries which might pose relatively high environmental risks relative to their net worth (e.g. dry cleaners).

There was a question about the staff report's conclusion that there would be no increase in the number of "orphan" sites resulting from tax default properties now that the proposed rule exempted "involuntary acquisitions." Mr. Koenig explained that the governmental exemption already exists in the statute. The rules merely clarify what is an "involuntary acquisition." The proposed rule will not increase or decrease the number of properties "dumped" on local government nor change the liability of local government.

The last question was whether the six month timeframe to divest property after foreclosure was appropriate since the federal rule allows twelve months. Mr. Koenig explained the six month requirement is a requirement only to list the property and that the clock doesn't start running until "marketable title" is obtained. The same comment was raised in the Portland hearing, and Mr. Koenig will discuss with the advisory committee whether the proposed rule ought to be amended to provide for the same timeline as the federal rule.

As all these questions were pertinent, those present were again asked if they would like to formally offer testimony. Again, all declined, but a few stated they might make written comments. The address and fax number for submittal of written comments was provided along with a reminder that comments are due by October 30, 1992.

As there were no comments to be made, the meeting was closed at 2:45 p.m. without any recording.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Exempting Lenders, ORS Ch. 709 Trust Companies Acting as Fiduciaries, and Governmental Entities from Environmental Cleanup Liability

List of Persons Making Written Comments

1. Kenneth Sherman, Jr.
   Oregon Bankers Association

2. David G. Ellis
   First Interstate Bank of Oregon, N.A.
   Chair Lender Liability Advisory Committee

3. Alan C. Bennett
   Vice President and Trust Officer, Pioneer Trust Bank, N.A.

4. Steven Patrick Rodeman
   Oregon Credit Union League

5. Kenneth Sherman, Jr. (Suggested rule language)
   Oregon Bankers Association

6. Quincy Sugarman
   Oregon state Public Interest Research Group

7. Alan C. Bennett (Suggested rule language)
   Vice President and Trust Officer, Pioneer Trust Bank, N.A.

8. Michael F Najewicz
   Senior Counsel, Bank of America

Summaries of these comments and the Department's responses to the comments are contained in Attachment E.

State of Oregon
Department of Environmental Quality

Department Response to Public Comments

on the

Proposed "Lender Liability" Rule

(OAR 340-122-115 to 117)

Summarized below are the the public comments to the "Lender Liability" rule and the Department's response to those comments. Since some commenters made the same comments as other commenters, lengthy Department responses are referenced rather than repeated. The comments are presented in chronological order as received during the public comment period.

THE COMMENTS OF MR. KENNETH SHERMAN, JR. OF THE OREGON BANKERS ASSOCIATION ARE PRESENTED FIRST.

Comment:

1. Use of "might" throughout the proposed rule is substantively different than the EPA wording. The proposed rule is thus not parallel in effect to the federal rule since the federal wording makes a definitive absolute statement where the proposed rule merely raises a possibility.

Department Response:

The Department agrees that the use of "might" might create unintended legal ambiguity and has re-drafted the rule without using "might."

However, the Department disagrees that the federal rule makes "definitive absolute statements," and, even if it did, the Oregon rule would continue stress that any example is illustrative only, not determinative. Whether a particular set of circumstances fits within the exemption is fact-sensitive. Merely putting the correct label on an action (calling a "partnership" a "mortgage," for an extreme example) does not automatically exempt the action from possible liability. The federal preamble stresses the fact-dependent nature of the exemption, and the Oregon rule deliberately incorporated that fact-sensitive emphasis into its rule rather than burying it in the staff report.

Comment:

2. The proposed rule requires lenders to list property for sale six months after foreclosure while the federal rule grants twelve months. There is no compelling reason for the shorter time.

Department Response:

The Department agrees and has re-drafted the rule to allow twelve months to list.

The advisory committee debated this issue and concluded there was not a compelling reason to allow a year to merely list the property. The Department believed six months was adequate and drafted the Public Comment Draft of the rule with the shorter time limit. After receiving formal and informal comments that such changes were "traps for the unwary," the Department concluded it would be better to be consistent with the federal regulation.

Comment:

3. Typo. "At" should be "of" in 340-122-117(1).

Department Response:

The Department agrees and made the change.

Comment:

4. The Chapter 709 trust exemption is too narrowly drafted and does not include other functions such as conservator or personal representative that should be covered.

Department Response:

The Department agrees and has re-drafted the section to be more inclusive.

Earlier drafts of the rule included a "laundry list" of permissible functions by a Chapter 709 trusts. As with the lender section of the rule, the difficulty was to be inclusive of functions that were properly within the exemption without inviting abuse. The Public Comment Draft was drawn narrowly, and the Department has concluded that the exemption can be extended to certain fiduciary functions other than that of "duly-appointed trustee."

Comment:

5. As drafted, 340-122-117(4) takes away any protection granted to trust since property is always added "subsequent to the formation of the trust." At a minimum, the clause should allow initial funding, but the preferred remedy would be to delete the subsection.

Department Response:

The Department agrees that the rule must allow the grantor to add property to the trust. The Department considered limiting that addition to "initial funding," but elected instead to allow a broader range of additional funding. (See comments from Ellis and Bennett below.)

However, if a trust company purchases real property to augment the trust, the trust company might be personally liable. This exemption would not apply to such a purchase, and the trust company would have to rely on "due diligence" to employ the "innocent landowner" defense.

THE NEXT COMMENTS ARE FROM LILLIAN FREASE OF MCMINNVILLE, OR.

Comment:

1. A rule on lender liability is needed because lenders are hesitant to lend on real estate and it is having an adverse effect on the market.

Department Response:

The Department hopes the proposed rule will lessen the "credit crunch" as to real estate loans. The financial community has repeated throughout the federal and state rulemaking processes that gaining this additional degree of certainty will make lenders more likely to loan money on property that may be contaminated.

Comment:

2. The exemption for lenders should include all lenders, including individuals, and not just the banks.

Department Response:

The proposed rules cover all lenders - all who "maintain indicia of ownership primarily to protect a security interest in a facility . . ."

Comment:

3. The statutes and rules are too vague. There needs to be a clearer line to determine who is liable for cleanup costs.

Department Response:

The proposed rule is one effort to clarify liability. Both the federal "Superfund" and the state cleanup law have broad provisions as to who might be liable and who might fit within an exemption. The proposed rule defines some of the acts that lenders, ORS Ch. 709 trusts, and government can take and still fit within the exemption.

Comment:

4. Enforcement of environmental laws is too lax. Neither EPA nor DEQ will do what they should be doing to force people to clean up. Ms. Frease described a landfill site where different governmental entities passed the buck; no one took responsibility; and the site is still a mess.

Department Response:

The Department agrees more sites should be cleaned up. Environmental cleanup is a costly, time-consuming process, and the Department must prioritize which sites get immediate attention. Generally, the Department uses a "worst site first" approach, but the Department has initiated the Voluntary Cleanup Section and other programs on a "pay-as-you-go" basis. Unfortunately, there are sites that are not "bad enough" to be cleaned up immediately and/or do not have responsible parties willing to clean up.
The Department is currently developing rules to address municipal landfill cleanups.

THE NEXT COMMENT IS FROM CLEO WESTPHAL FROM MCMINNVILLE.

Comment:

1. The protection afforded to Chapter 709 trusts should be afforded to individuals who act in the same capacity.

Department Response:

The Department disagrees. Although there are instances where an exemption for a non-Chapter 709 fiduciary would be appropriate, the potential for abuse exceeds the net benefit. The Oregon Legislature debated this issue and limited the exemption to ORS Chapter 709 trusts in the cleanup statute (ORS 465.255(3)(c) and Chapter 680 Section 5 of Oregon Laws

1991). The Department agrees with this limitation, but, even if it did not, the Department could not make a rule outside the limits of the statute.

THE NEXT COMMENTS ARE FROM FRANK HILTON, AN ATTORNEY FROM PORTLAND.

Comment:

1. Overall the rule has good balance. Corporate trusts should not be granted overly-broad protections against liability.

Department Response:

The Department agrees. The changes to the rule since the public comment period clarify the rule, but, overall, the rule maintains this balance.

Comment:

2. Trusts gaining property after the initial funding of the trust should be performing their "due diligence" and using the "innocent landowner" defense rather than a broad exemption.

Department Response:

The Department agrees. See the Department responses to Sherman, Ellis, and Bennett for fuller discussion.

Comment:

3. Agree that the rule should be modified to allow the "initial funding" of the trust.

Department Response:

The Department agrees. See the Department responses to Sherman, Ellis, and Bennett for fuller discussion.

THE NEXT COMMENT IS FROM DAVID G. ELLIS, ASSOCIATE GENERAL COUNSEL FOR FIRST INTERSTATE BANK OF OREGON, AND CHAIR OF THE LENDER LIABILITY ADVISORY COMMITTEE.

Comment:

1. The proposed 340-122-117(4) needs to be clarified so it applies only in those situations where the trustee uses trust assets to acquire real property for the trust and not where the grantor transfers additional real property into the trust.

Department Response:

The Department agrees and has re-drafted this subsection. See the responses to Sherman (above) and Bennett (below) for fuller discussion.

THE NEXT UNATTRIBUTED COMMENTS ARE FROM THE INFORMAL QUESTION/ANSWER SESSION HELD IN EUGENE ON OCTOBER 21, 1992.

Comment:

1. Will the proposed rule eliminate or diminish the "due diligence" requirement of lenders?

Department Response:

"Due diligence" is still required to take advantage of the "innocent landowner" defense, but "due diligence" is not evidence whether a lender has "participated in management" or not under the proposed rule. Lenders, ORS Ch. 709 trusts, and government can still be liable for environmental cleanup costs if they "cause, contribute to, or exacerbate" a release. Good business practices also dictate "due diligence." Lenders want to get the loan repaid, and trust companies want to administer the trust in a cost-efficient manner; both goals are more likely if the lender/trust performs "due diligence" to either avoid problem properties or utilize the "innocent landowner" defense.

Comment:

2. Will the proposed rule affect which industries lenders will loan money?

Department Response:

The rule gives some certainty to banks that the only risk they will face is the risk of non-repayment rather than the open-ended risk of being liable for environmental clean-up. This limit on risk might make credit more readily available to industries which might pose relatively high environmental risks relative to their net worth. Lenders can lend to these

industries (including loans for environmental controls) without assuming the unquantifiable risk of environmental cleanup. Of course, lenders will base any loan on the ability to repay, and if the industry/facility is not likely to survive, lenders will not loan to them.

Comment:

3. How can the staff report conclude there would be no increase in the number of "orphan" sites? What about tax default properties owned by local government now that the proposed rule exempts "involuntary acquisitions?"

Department Response:

The governmental exemption already exists in the statute. The rules merely clarify what is an "involuntary acquisition." The proposed rule will not increase or decrease the number of properties "dumped" on local government or change the liability of local government. "Orphan" sites are a problem, and the Department is working through the Voluntary Cleanup Section and others to get these sites safe and back into productive use.

Comment:

4. Why did the Department elect to use a six month timeframe to divest property after foreclosure when the federal rule allows twelve months?

Department Response:

As noted above, the Department has reconsidered the six month limit and has re-drafted the rule to have the same twelve month limit as the federal rule.

The six month requirement was a requirement only to <u>list</u> the property and the clock did not start running until "marketable title" was obtained. However, since the same comment was raised in the Portland hearing (see Sherman comments), the Department discussed the issue with the advisory committee and amended the rule to provide for the same timeline as the federal rule.

THE FOLLOWING COMMENTS ARE FROM ALAN C. BENNETT, VICE PRESIDENT AND TRUST OFFICER OF THE PIONEER TRUST BANK OF SALEM.

Comment:

1. Section 117 is too narrowly drawn. "Trustee" should be expanded to include the definition of a fiduciary as a trustee, agent, custodian, or attorney-in-fact operating under ORS Chapter 709.

Department Response:

The Department agrees and has re-drafted the section.

Comment:

2. Sub-section 117(4) is vague and unnecessarily broad. Acquisition of property after the formation of the trust must happen in the initial funding of the trust and happens frequently during the life of the trust, often due to outside circumstances or actions of others over which the fiduciary has no control.

Department Response:

The Department agrees and has re-drafted the section.
Mr. Bennett, the above commenter, wrote, "If the point that the Department is trying to make with respect to Section (4) is that a fiduciary who voluntarily and knowingly participates in the purchase of such property and who does not take such appropriate steps as are necessary to comply with the statutes relating to environmental protection may be held personally liable for the cleanup notwithstanding the general exemption, this subsection should be rewritten to so state." The Department agrees. The Department was trying to make that point and has incorporated similar language into the rule.

THE FOLLOWING COMMENTS ARE FROM STEVEN PATRICK RODEMAN, STAFF ATTORNEY FOR THE OREGON CREDIT UNION LEAGUE.

Comment:

The Oregon Credit Union league supports the rule as proposed.

Department Response:

The Department appreciates the OCUL's review of the rule and subsequent support.

THE FOLLOWING COMMENTS WERE A FOLLOW-UP FROM PREVIOUS COMMENTS FROM MR. KENNETH SHERMAN, JR. AND MR. ALAN C. BENNETT.

Comment:

Mr. Sherman and Mr. Bennett drafted a new 340-122-117 (see attachment) where they suggested substituting "trust company" for "trust" or "trustee" to incorporate a broader range of fiduciary capacities.

Department Response:

The Department has incorporated the suggested changes into the revised rule. The Department agrees the proposed language is clearer than the Public Comment Draft. However, the Department continues to note that determinations whether a trust company fits within the exception or not are fact-sensitive determinations.

THE FOLLOWING COMMENTS ARE FROM MS. QUINCY SUGARMAN OF THE OREGON STATE PUBLIC INTEREST RESEARCH GROUP (OSPIRG):

Comment:

1. OSPIRG opposes generally the narrowing of liability. The proposed rules are to clarify liability, not narrow liability.

Department Response:

The Department agrees. The proposed rules clarify liability; the rules neither expand nor contract liability, they merely make it clearer which activities might make one subject to liability for cleanup costs.

Comment:

2. The proposed rules stress three important factors that should not be overlooked:

   (a) Determination of "participation in management" is fact-sensitive;

   (b) "Due diligence" is still required to use the "innocent landowner" defense; and

   (c) Holders not liable as "owners or operators" might still be liable under other provisions of Oregon cleanup law.

Department Response:

The Department agrees these are critical factors. The exemption is a limited exemption and should not be read too broadly.

Comment:

3. OSPIRG disagrees with the Department's fiscal and economic impact statement in two regards:

(a) The Department's claim that the rules "will free up credit and reduce transaction costs" is without evidence; and

(b) The Department's claim that there will be no increased costs to the public is without evidence.

Department Response:

The Department agrees there is not evidence for either statement. Perhaps the Department's final paragraph on page 1 of the Fiscal and Economic Impact Statement (Attachment D) reads too absolutely; the intent of the Department was to convey the potential benefits of the rule. The Department makes the contingent basis of this potential clearer in the following pages of the report.

During the committee meetings, members of the lending community noted that if lenders had more certainty as to their potential liability, they would increase the amount of credit that would go to borrowers who might have been rejected earlier for being "too risky." Lenders stressed that this "freeing up of credit" would be "at the margins" and not a wholesale shift in lending approaches.

The reduction in transaction costs is also speculative. The hope of the rule was to create a clearer line as to what is, and is not, "participation in management." If the lender falls clearly on one side of the line or the other, the time and costs determining liability should be reduced. However, as often noted, the determination is fact-sensitive and battles over these facts could lead to just as great "transaction costs" as before.

The Department continues to believe there will be no increased costs to the public or an increase in the number of "orphan" sites. Remember, the rules do not eliminate any basis of liability; the rules only clarify the existing bases. If a lender, trust company, or government were exempt before the rule, they are exempt now. If they were not liable and the property were dumped as an "orphan" site, that, too, will continue. If the rule does anything, it should make the determination from a potentially responsible person to a responsible person easier and less time consuming.

As with any rule, the future impacts of the rule are speculative and there might be unforeseen consequences. The Department and the Committee have attempted to forecast those outcomes, but until we (or other states or the federal government) has experience with the rule, we will not have evidence as to its impact.

MR. ALAN C. BENNETT SENT A FOLLOW-UP LETTER TO THE COMMENTS AND RE-DRAFTED 340-122-117 HE AND MR. SHERMAN SENT EARLIER.

Comment:

1. Using "trust company" instead of "trust" or "trustee" opens up the rule to other fiduciary functions without over-broadening the rule.

Department Response:

The Department agrees and has incorporated the suggested language into the revised rule.

THE FOLLOWING COMMENTS WERE RECEIVED AFTER THE COMMENT DEADLINE OF OCTOBER 30, 1992. THE DEPARTMENT IS SEEKING TO PRODUCE THE BEST POSSIBLE RULE AND HAS ELECTED TO RECORD AND RESPOND TO THESE COMMENTS.

MR. MICHAEL NAJEWICZ OF THE BANK OF AMERICA CALLED ON NOVEMBER 2, 1992 (AND FOLLOWED WITH A FAX AND LETTER) TO EXPRESS THE FOLLOWING:

Comment:

1. Future advances under a line of credit are not explicitly covered under the "work out" provisions or under the "indicia of ownership" or "security interest" sections.

Department Response:

The Department believes future advances under a line of credit secured by an interest in real or personal property would be an action covered by the exemption subject to the other provisions (e.g. not "participating in management"). The Department believes the definition of "indicia of ownership" is inclusive enough without adding another form of financing to the rule.

THE SELECTED PORTIONS OF THE RULE SHOWN BELOW SHOW THE SIGNIFICANT CHANGES (~~DELETIONS~~; ADDITIONS)TO THE PROPOSED RULE SINCE THE PUBLIC COMMENT PERIOD ENDED ON OCTOBER 30, 1992.
MINOR CHANGES ARE NOT SHOWN IN THIS SUMMARY.
ALL CHANGES WERE MADE IN RESPONSE TO PUBLIC COMMENTS AND WERE REVIEWED AND APPROVED BY THE LENDER LIABILITY ADVISORY COMMITTEE ON NOVEMBER 4, 1992.
THE PROPOSED VERSION OF THE RULE IS ATTACHMENT A

Note: The following rules (OAR 340-122-115 to 117) are modeled on the federal regulations (40 CFR 300.1100 *et seq.*, 57 FR 18343) recently promulgated by the Environmental Protection Agency (EPA). The federal rules are currently under challenge in the U.S. Court of Appeals for the District of Columbia Circuit. Should portions of the federal regulation be held to be invalid, the Department of Environmental Quality (DEQ) will review the Oregon rules to determine whether the Oregon rules should be amended.

OAR 340-122-115 Security Interest Exemption.

(1) Pre-foreclosure. A person or "holder" who maintains indicia of ownership primarily to protect a security interest in a facility, and who does not participate in the management of the facility, is not an "owner or operator" of such facility under ORS 465.255(1)(a) and (b). Whether a transaction falls within this exemption will depend on the facts and on the law otherwise applicable to the transaction.

(a) "Holder" for the purposes of ORS 465.200 *et seq.* and this rule means a person who maintains indicia of ownership (as defined below) primarily to protect a security interest (as defined below). A holder includes the initial holder (such as a loan originator), any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market), a guarantor of an obligation, a surety, or any other person who holds ownership indicia primarily to protect a security interest, or a receiver or other person who acts on behalf or for the benefit of a holder.

(b) "Indicia of ownership" as used in ORS 465.200 *et seq.* and this rule means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title to real or personal property acquired incident to foreclosure or its equivalents. Evidence of such interests ~~might~~ include, but ~~is~~ are not limited to, mortgages, deeds of trust, liens, judgment liens, statutory liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select

agreement in satisfaction of the obligation; or any other formal or informal manner (whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower) by which the holder acquires title to or possession of the secured property. Indicia of ownership that are held primarily to protect a security interest include legal or equitable title acquired through or incident to foreclosure or its equivalents.

(b) A holder who did not participate in management prior to foreclosure or its equivalents, may sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), liquidate, maintain business activities, wind up operations, undertake any response action in accordance with ORS 465.255(7)(a), and take measures to preserve, protect, or prepare the secured asset prior to sale or other disposition without voiding the exemption, provided that the holder undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest the facility in a reasonably expeditious manner. To show that the holder has acted in a "reasonably expeditious manner," the holder may:

(A) use whatever commercially reasonable means to sell, re-lease, or divest as are relevant or appropriate with respect to the facility; or

(B) establish that the ownership indicia maintained following foreclosure or its equivalents continue to be held primarily to protect a security interest if, within ~~six~~ twelve months following foreclosure, the holder lists the facility with a broker, dealer, or agent who deals with the type of property in question, or advertises the facility as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the facility in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located. For purposes of this provision, the ~~six~~ twelve-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, acts diligently to acquire marketable title. If the holder fails to act diligently to acquire marketable title, the ~~six~~ twelve-month period begins to run on the date of the foreclosure or its equivalents.

340-122-117 Exemption for ORS Chapter 709 Trust Companies Acting as Fiduciaries

(1) An ORS Chapter 709 trust company acting as a fiduciary and holding property in a fiduciary capacity is exempt from personal liability as an "owner or operator" ~~at~~ of the property under ORS 465.255(1)(a) and (b) if:

~~(a) the fiduciary acts as a duly appointed trustee carrying out lawful purposes of the trust; and~~

(~~b~~a) the contamination of the property occurred before establishment of the fiduciary relationship and acceptance of the property by the trust company, and prior to the establishment of the fiduciary relationship, the trust company ~~the fiduciary accepted the trust property and the fiduciary did not, prior to accepting the trust property,~~ did not participate in management of the property as defined in OAR 340-122-115; or

(e~~b~~) the contamination of the property occurred after establishment of the fiduciary relationship and acceptance of ~~accepted the trust~~ the property by the trust company and the contamination was not the result of an act or omission of the trust company ~~fiduciary~~ described in OAR 344-122-117(2).

(2) Notwithstanding the exemption in (1) above, an ORS Chapter 709 trust company acting as a fiduciary ~~might~~ may be personally liable regarding a release at ~~trust~~ property held in a fiduciary capacity if:

(a) an ~~trustee~~ act or omission of the trust company constitutes an independent basis for liability under ORS 465.255 (1)(c) to (7); or

(b) the release results from an ~~trustee~~ act or omission of the trust company occurring outside the scope of its duties and the standard of care required under ORS 128.057; or

(c) the release otherwise results from an ~~trustee~~ act or omission of the trust company that is negligent, grossly negligent, reckless, willful, or intentional.

(3) Notwithstanding the exemption to the personal liability of the ~~trustee~~ trust company set forth above, this rule does not prevent claims against:

(a) assets that are part of or all of ~~the~~ any estate or trust that contains the facility;

(b) any other estate or trust of the decedent, grantor, ward or other person whose estate or trust contains the facility that is administered by the ORS Chapter 709 trust company.~~; or any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility.~~

The assets of a trust or estate ~~itself~~ remains subject to any claims for liability pertaining to ~~liable as an owner of the~~ contaminated property even if legal title rests with the ~~trustee~~ trust company. Such claims may be asserted against the ~~fiduciary~~ trust company in its representative capacity, whether or not the ~~fiduciary~~ trust company is personally liable.

(4) The exemption to personal liability of the ~~trustee~~ trust company set forth above does not apply to ownership or operation of a facility at property which is:

(a) acquired by the ~~trustee~~ trust company for the trust, estate or principal, in exchange for assets of the trust, estate or principal; and ~~subsequent to formation of the trust.~~

(b) acquired subsequent to the establishment of the fiduciary relationship.

(5) This rule applies only to liability under ORS 465.200 *et seq.* and does not apply to any right that the state or any person ~~might~~ may have under federal statute, common law, or state statute other than ORS 465.200 *et seq.* to recover remedial action costs or to seek any other relief related to a release.

November 4, 1992

Environmental Quality Commission
811 S.W. 6th Avenue
Portland, Oregon 97204

Dear Commission Members:

The Lender Liability Advisory Committee ("LLAC") was appointed by the Director of the Department of Environmental Quality to advise the DEQ and this Commission on development of rules under ORS 465.435 and 465.440. These rules (OAR 340-122-115 to 117) are presented to you today and LLAC recommends their adoption.

These rules are similar in form and substance to the EPA's Lender Liability Rule. The proposed Oregon rules depart from the federal model in several particulars. These departures were each considered and often the subject of lengthy debate within the LLAC, and a majority of LLAC is satisfied that each change is for the better. There were differences of opinion on the LLAC, both regarding the need for these rules and departures from the federal model. I believe all opinions were given serious consideration and the proposed rules reflect compromise.

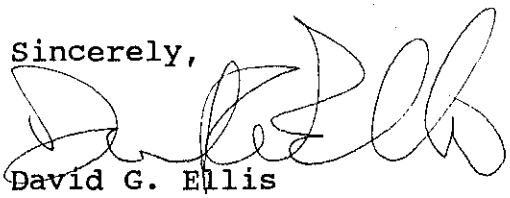
Several changes were made to the proposed rules after public comment. The only significant changes make the exemption provided to Chapter 709 trust companies apply to any activity of such trust company when acting in a "fiduciary capacity". The proposed rule had previously, though unintentionally, been limited to situations where the trust company was acting as a trustee.

Given the Oregon legislature's direction and the existing EPA rule the LLAC recommends the proposed rules. As you know the EPA rule is being challenged in court. Efforts continue to make legislative changes to federal environmental and/or banking laws to address clean-up liability. The LLAC recognizes that federal legislative action or the results of the court challenge to the EPA rule may provide reason to amend these rules at a later date.

The LLAC can be reconvened by the Director if further advice is requested concerning any changes the Commission might consider. We do recommend that any proposed change receive the close scrutiny of the Department, the Department of Justice, and the LLAC.

Finally, we commend the Department staff involved in this process for their hard work and patience in working to bring these proposed rules to this Commission.

Sincerely,



David G. Ellis
LLAC Chair

c: LLAC
Fred Hanson, Director, DEQ
Mike Downs, ECD Administrator, DEQ
Mary Wahl, Policy and Program Development, DEQ
Brooks Koenig, Policy and Program Development, DEQ

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Exempting Lenders, ORS Ch. 709 Trusts Acting as Fiduciaries, and Governmental Entities From Environmental Cleanup Liability

Additional Background Information

Introduction

Under HB 3349 (adopted as Chapter 680 of the 1991 Oregon laws) the Oregon Legislature directed the Environmental Quality Commission (EQC) to adopt rules clarifying the security interest exemption. To the extent consistent with this objective, the Oregon rules were to be consistent with and parallel in effect to the regulations promulgated by the Environmental Protection Agency (EPA) regarding lender liability under the federal "Superfund" statute, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 *et seq.* The EPA amended 40 CFR Part 300 on April 29, 1992 when the final rule was published in the Federal Register (57 FR 18343).

The Legislature directed the Department of Environmental Quality (DEQ or the Department) to appoint an advisory committee to aid in the development of rules. The Department formed the Lender Liability Advisory Committee (LLAC or the Committee), and LLAC first met on February 21, 1992. The DEQ Director, Fred Hansen, charged the Committee to craft a rule that would be consistent with and parallel in effect to the federal rule yet respond to the unique Oregon environmental cleanup statutes.

The EPA rule originally went to public comment on June 24, 1991. When the Committee met in February 1992, LLAC knew the general contours of the proposed regulation, but there was considerable uncertainty as to what the final federal regulation would be after EPA responded to the extensive public comments. Between the first LLAC meeting and publication of the EPA rule on April 29, 1992, the Committee considered where it would be necessary and appropriate to depart from the proposed federal rule to address Oregon's needs. Many of the initial issues identified by LLAC remained issues to be resolved as the final federal rule was very similar to the proposed rule of June 1991 and raised the same issues.

The LLAC discussed major issues and recommended to either amend/delete portions of the federal rule or knowingly adopt the federal language. The LLAC struggled with the dual directive to be "parallel in effect" with the federal regulation (especially as to lenders) and

yet be different from the federal regulation (especially as to fiduciaries). An exemption for fiduciary liability was explicitly excluded from the federal regulation, but the Oregon Legislature revised the Oregon statute to include fiduciaries and directed the EQC to develop additional rules to flesh out the recently amended statute. The Department is proposing a rule that is different than the federal regulation, but the Oregon rule is consistent with and parallel in effect to the federal regulation.

Regrettably, the proposed rule remains an imperfect rule as it is based on a flawed model. Some of the definitions in the Oregon rule remain as circular as the definitions in the model federal rule. Some of the "bright line" standards appear to be remarkably dull. The degree of certainty gained by the rule remains in doubt until the rule is applied and tested in court. Still the rule addresses a perceived need to assure lenders and Ch. 709 trustees that they will not be held liable for merely having the capacity to influence borrower decisions. The rule provides "laundry lists" of what is or is not permissible within the exemption. Make no mistake: these determinations are fact-sensitive. Liability will depend on what the lender and the trustee did, and these acts will be examined to determine if the lender or trustee might be held liable as "owner or operator" or under some other basis of liability. Neither the Oregon rule nor the federal rule are blanket exemptions.

This background document summarizes the major differences between the federal rule and the proposed Oregon rule. Issues covered in this document include:

- General Changes which Occur Throughout the Proposed Oregon Rule
  - Correcting Cites From Federal Statutes (CERCLA) to Oregon Statutes
  - Language Deletions (e.g. "vessels")
  - Terms of Art Clarifications (e.g. "disposal")
  - Consistent use of "may" (permissive) and "might" (possibility)
  - Changing federal numbering system to Oregon numbering system
  - Sectioning and sub-sectioning ("nesting")
- Burden of Proof
- "Participation in Management" (Financial/Administrative/Operational Acts)
- "Fair Consideration" v. "Fair Market Value"
- Bases of Liability Other Than As "Owner or Operator"

- Pre-foreclosure and Post-foreclosure Acts Within the Exemption
- "Reasonably Expeditious"
- ORS Chapter 709 Trusts Acting as Fiduciary Exemption Issues
    - Maintaining an Action Against the Trust Without Personal Liability of the Trustee
    - Permissible acts by the Fiduciary
- A Few Minor Changes that Took Some Major Time
    - Forms of Liens
    - Cash
    - "Able" in whose judgment?
    - "only"
    - "Preventive" work out

Details of the issues above are discussed below:

- **General Changes**

- Changing Cites from Federal Statutes to Oregon Statutes

Perhaps the most obvious difference between the federal and the Oregon rules is that the federal rule cites to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund") while the Oregon rule cites to the Oregon cleanup statute, ORS 465.200 *et seq.* As the underlying statutes are also "parallel in effect," but different, so are the clarifying rules. Whenever the federal rule cited to CERCLA, the Oregon rule cited to the parallel section in ORS 465.200 *et seq.* The most significant differences as to cites involved the "other bases for liability" which are discussed below.

- Language Deletions

The Oregon statute does not refer to "vessels" so the proposed rules do not refer to "vessels." Wherever the EPA used "vessels" in the federal rule, it was stricken in the Oregon draft.

- Terms of Art

When certain CERCLA "terms of art" were used, the Oregon rule references the appropriate Oregon statute where parallel, but different, terms are employed. For example, within CERCLA the term "disposal" is quite inclusive, and a person who "disposes" or "arranges to dispose" hazardous substances might be liable. Under ORS 465.200 *et seq.* persons who "cause, contribute to, or exacerbate" releases of hazardous substances might be liable, but the Oregon statute does not use the term "dispose." CERCLA's use of "transport" (with a subsequent "release") might be another term of art that is covered in Oregon's "cause, contribute to, or exacerbate" language. "Terms of art" are always evolving, and new court cases may give new meaning to certain terms. The best the proposed Oregon rule can do is use the federal terms when appropriate and not use them when they would lead to confusion.

- "May" v. "Might"

The federal rule was inconsistent in its language as to when something was required or certain (using "shall"); when something was permitted (using "may"); and when something was a possibility (using "might"). The Public Comment Draft of the Oregon rule ~~is~~ was consistent in its usage, and, when discussing the possibility of liability, used "might." For example, when the proposed rule employed "laundry lists" to suggest activities that possibly fall with the exemption, the Oregon rule used "might include" where the federal rule used "include" or "may include."

During the public comment period a commenter noted that the dictionary meaning of "might" suggested a lesser possibility than "may," and the commenter was concerned that the Oregon draft was weaker than the federal rule and therefore inconsistent with the federal rule. The commenter read the federal rule's use of "include" in a number of places to be "definitive, absolute statement[s], leaving no room for doubt."

While the committee believes that "might" represents the appropriate possibility that an example given in the rule might apply to a fact-specific case, the committee does not want to make the Oregon rule "weaker" or inconsistent with the federal rule. Again noting that examples are only illustrative and facts not labels determine whether the exemption applies, the committee has elected to go along with the federal phrasing. The committee wishes to note that it does not read the federal rule as "absolute," but again dependent on the facts and law in the circumstances where the exemption is sought.

[As a side issue, Oregon statutory drafting prefers either "shall" (mandatory) or may (permissive, possible) and disfavors "might."]

- Numbering

The federal numbering system differs from the Oregon system. All of the sections are renumbered to the Oregon system.

- Nesting

In some cases, the federal numbering and "nesting" of the sections and sub-sections was confusing. In the Oregon rule, the "nesting" has been rearranged to be clearer and to reduce some of the federal redundancy. The changes in the "nesting" led to some materials being deleted. In most cases, the Committee recommended superfluous repetitive materials simply be deleted. Where the Department elected to change the nesting, greater clarity was achieved. In a few cases (discussed below), the Oregon rule might be viewed as being substantively different than the federal rule.

- Burden of Proof

The federal rule was not clear in how it allocated the "burden of proof" regarding the exemption. Additionally, many Committee members and others questioned whether the federal rule was within the scope of EPA's rulemaking power. The federal rule states: "The plaintiff bears the burden of establishing that the defendant is liable as an owner or operator." 40 CFR 300.1100; *see* 57 FR at 18382 and 18367 for rule and preamble discussion.

An Assistant Attorney General participated in the LLAC, and he recommended the federal "burden of proof" language be deleted. The AG's memo concluded that under existing law and rules of evidence the plaintiff has the burden of proof as to owner or operator liability, but a defendant has the burden of proof as to falling within the exemption. The Committee agreed. The Committee found the EPA rule and preamble confusing, and LLAC thought the attempt to allocate the burden of proof might be beyond EPA's rulemaking power. Rather than repeat those possible errors, the Department deleted the EPA language, and opted to rely on the Oregon rules of evidence and case law. Whether the Oregon rule as to the burden of proof will be interpreted differently than the federal rule is an open question, but the Department and the Committee believe the allocation of the burden of proof should not be a part of rules adopted by the Environmental Quality Commission.

- "Participation in Management"

Defining "participation in management" is the crux of both sets of rules. CERCLA states: "Such term [owner or operator] does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his

security interest in the vessel or facility." 42 U.S.C. § 9601(20)(A). The Oregon statute states: "'Owner or operator' does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility." ORS 465.200(12). Prior to the federal and proposed Oregon exemption rules if a lender "participated in management," the lender became an "owner or operator" and was strictly liable for cleanup costs. What acts, then, were "participation in management?"

One case suggested participation might include involvement "to a degree indicating a capacity to influence the corporation's treatment of hazardous wastes." *United States v. Fleet Factors Corp.*, 901 F.2d 1550, 1557 (11th Cir. 1990), *cert. denied,* 111 S.Ct. 752 (1991). Lenders feared the "capacity to influence" threshold would make them automatically liable since the power to control the purse-strings could be equated with the "capacity to influence."

The EPA rule defines *Actions That Are Participation in Management* (40 CFR 300.1100(c)(1) and *Actions that Are Not Participation in Management* (40 CFR 300.1100(c)(2). *See* 57 FR at 18383. The proposed Oregon rule follows the same general format, but the Oregon rule differs slightly as to the "nesting" of certain elements. The Oregon rule makes it clearer that a lender may "participate in management" after foreclosure and still fall within an exemption. OAR 340-122-0115(2). To fall within the exemption the lender must not have participated in management prior to foreclosure, and the lender must undertake to dispose of the foreclosed property in a "reasonably expeditious manner."

The Oregon rule uses subsections or "nests" to clarify the meaning of "reasonably expeditious" and "fair consideration" (discussed below) within the foreclosure context. The Oregon rule also "unnests" the "Bases of Liability Other Than as an Owner or Operator" (also discussed below). The federal rule appeared to have the potential to be misconstrued that liability would attach for only post-foreclosure activities by a lender. All lender activities (including pre-foreclosure) may be examined to see if they fall under the "other bases for liability" and not fall under the "owner or operator" exemption.

The Committee spent a considerable amount of time debating the breadth of activities that a lender could perform without "participating in management." Everyone agreed that the unexercised "capacity to influence" was not "participation in management" (PIM), but members differed greatly as to when "influence" turned into "control." The EPA rule differentiated between administrative/financial activities (not PIM) and operational activities (PIM). The EPA rule provided a laundry list of functions (e.g. plant manager or chief operating officer) which were "operational" (PIM) and a laundry list of functions (e.g. personnel manager or chief financial officer) which were "administrative" or "financial" (not PIM). 40 CFR 300.1100(c)(1)(ii)(B); *see* 57 FR at 18383.

When coupled with a statement in the preamble that the EPA was developing a "general test [that] should also reflect the distinction between the control exercised by a person who is

exercising decisionmaking authority over the operational aspects of the facility, and the influence that may be exerted (no matter how great) over the borrower by a person who is not part of the facility's decisionmaking hierarchy" (57 FR at 18359), one could get the impression that anything less than control was not "participation in management." However, the EPA preamble noted: "Whether the holder has participated in management sufficiently to void the exemption is a fact-sensitive inquiry. . . . In all cases, the determination of whether a holder is participating in management depends on the holder's actions with respect to the facility, rather than the outcomes associated with such actions." 57 FR at 18375.

Most LLAC members thought it was stretching credibility to state that a lender who acted as personnel manager and chief financial officer and exerted great influence (but not control) was not "participating in management." Nonetheless, the Committee saw merit in keeping the EPA's laundry lists, but LLAC recommended the rules be modified by stating "aspects might include, but are not limited to, functions typically performed by positions such as . . ." This language reinforced the idea that these lists were examples, and what really mattered was what the person did, not the title. In a similar vein, the Oregon rule added the "fact-sensitive inquiry" language into the rule. This language reminds those seeking the exemption, that the question of "influence" (not PIM) and "control" (PIM) will be determined by the facts, not titles. OAR 340-122-115(e)(A).

- "Fair Consideration" v. "Fair Market Value"

The Committee spent a fair amount of time debating whether to use the EPA formulation of "fair consideration" or whether to use "fair market value" as the line to distinguish "protecting the security interest" from "investment" (or any other purpose other than protecting the security interest). At first blush, "fair consideration" seemed overly-generous to lenders who made bad business decisions (who now wanted a rule for getting full recovery despite the contaminated collateral) or who wanted to "maintain business activities" for long periods after foreclosure (since the federal rule allows operating a facility until one sells for "fair consideration"). The Committee was also reluctant to accept yet another CERCLA "term of art" when another legal standard, "fair market value," was available. On further review, however, LLAC concluded there was more to be gained than lost by following the EPA rule and recommended keeping the EPA language.

First was the "consistency" or "parallel" argument. While the Oregon rule need not be in total lockstep agreement with the federal rule, departing from "fair consideration" might have raised more problems than it solved. "Fair consideration" might be such an integral part of the federal rule that deleting it from the Oregon rule might undermine the value of the courts' interpretation of the federal rule and subsequent application by analogy to the Oregon rule. In a similar vein, the Committee did not want to create a whipsaw for the PRP-lender who might not be liable under one set of cleanup rules but be liable under the other.

Next was the valuation argument. While "fair market value" has a long legal history, determining "fair market value" at any one parcel is difficult. Determining "fair market value" at a contaminated site at a point in time might be impossible (certainly a time-consuming and expensive battle of experts). "Fair consideration," on the other hand, appears to have a more readily calculated value. While there might be some proof problems with all elements, "fair consideration" is still a good baseline number.

Third was the fact that the lender is not guaranteed "fair consideration." If the lender rejects a bona fide offer of "fair consideration," the lender, in essence, has also purchased cleanup liability. In all likelihood, the lender will accept less than "fair consideration." "Fair consideration" acts as an upper lid on the amount the lender can seek without voiding the exemption.

Fourth, "fair market value" may be greater than "fair consideration." Some of the Committee members thought that "fair market value" would be lower than "fair consideration," and lenders who made bad business decisions (in hindsight) should have to suffer the consequences by selling the foreclosed property at or below "fair market value" even if "fair market value" did not cover the amount of the loan. What was not considered was when "fair market value" was greater than the loan amount or greater than "fair consideration." Here it seems as if the lender should still be forced to divest itself of the property if the lender "protects the security interest" (gets back the amount of the loan and interest) even if less than "fair market value."

On the whole, the Committee agreed "fair consideration" was a better measure than "fair market value." The Committee found the EPA rule difficult to read and therefore recommended breaking the mega-sentence down into five subsections in the Oregon rule. *See* OAR 340-122-115(2)(c)(A)(i) to (v).

One substantive change to the "fair consideration" definition was to change "net revenues" to "gross revenues" in subsection (v) since costs were already recovered in subsection (iii).

- Bases of Liability Other Than as "Owner or Operator"

CERCLA identifies four broad classes of responsible parties that are liable for the costs of cleaning up hazardous substances: the first two classes include "owners or operators;" the third consists of those who arrange for disposal or treatment of hazardous substances; the fourth includes people who transport hazardous substances. CERCLA, 42 U.S.C. 9607(a)(1) to (4). ORS 465.255(1)(a) to (e) identifies five bases for strict liability, and ORS 465.255(2) to (7) identifies other bases of liability and defenses to that liability. The EPA lender liability exemption applies to the first two "owner or operator" classes only. CERCLA 42 U.S.C. 9607(a)(1) and (2). Likewise, the Oregon rule applies to the first two "owner or operator" classes only. ORS 465.255(1)(a) and (b).

Both sets of rules "warn" the lender that acts other than as an "owner or operator" might subject the lender to liability. The EPA rule alerts the lender of this possibility in § 300.1100(c)(1)(i) in a somewhat oblique manner, and, more explicitly, in § 300.1100(d)(3). The Oregon sets out the warning as to other bases of liability in 340-122-115(3) (lender liability); 340-122-116(3) (governmental liability); and 340-122-117(2) (Ch. 709 trust acting as a fiduciary liability).

The Committee recommended different "nesting" than the federal rule to make sure the other bases for liability were clear. The committee recommended against paraphrasing the bases for liability (e.g. "cause, contribute to, or exacerbate a release") and preferred citing to the statute. The Committee believed this would be clearer as to both the bases for liability and the possible defenses to liability.

Not all of the bases for liability (nor all of the defenses to liability) contained in the Oregon statutes have been tested in the courts. The proposed rules exempt lenders, governmental entities, and Ch. 709 trusts acting as fiduciaries from "owner or operator" liability under certain circumstances, but these entities might be liable under the previously untested bases for liability if their acts, or failures to act, result in releases.

- Pre-foreclosure and Post-foreclosure Acts

The EPA rule specifies what acts a lender may take prior to foreclosure which are not "participation in management" and therefore are within the exemption: acts prior to the loan; policing activities; loan work outs; and taking CERCLA § 107(d)(1) response actions. After foreclosure, the EPA allows a broader range of activities (including "maintain[ing] business activities") with an outside boundary that the lender must attempt to divest itself of the contaminated property. *See* 40 CFR 300.1100(c)(2) to (d)(3); 57 FR at 18383 - 18384.

The proposed Oregon rule follows the EPA regulation, but the Oregon rule included a change in format (nesting), some minor word changes, and some "warnings" that the lender exemption does not exempt all activities by the lender.

The Oregon rule formats (nests) the rule by listing four activities under (B) Actions That Are Not Participation in Management: (i) Actions at the Inception (prior to the loan); (ii) Policing: (iii) Work Out; and (iv) Actions Taken Under ORS 465.255(7)(a). Foreclosure activities are separated in a new section (2). The rule clarifies that in the post-foreclosure stage the lender may "maintain business activities" as long as the lender undertakes to divest itself of the property.

In each of the forgoing sections, the Oregon rule made minor language changes to clarify the rule. This report will not detail each minute change, but it will discuss the more

substantive changes. The "**Note:**" in 340-122-115(1)(e)(B)(i) was added to clarify that while conducting "all appropriate inquiry" or "due diligence" would not be evidence of "participation in management," anyone who wishes to use the "innocent landowner defense" must conduct "all appropriate inquiry." The Department did not want to create a trap for the unwary nor create the impression that the rule in any way reduces the need for "due diligence."

The EPA rule combined the "Policing and Workout" section; the Committee believed that it was clearer to address each activity separately. The Committee recommended striking some of the language in 40 CFR 300.1100(c)(2)(ii) as being overly broad, and to employ the more precise language in 40 CFR 300.1100(c)(2)(ii)(A) and (B). *See* 57 FR at 18383 *and* OAR 340-122-115(1)(e)(B)(ii) and (iii).

As noted above, a post-foreclosure lender may "maintain business activities" at a facility and still remain within the exemption. Many on the Committee regarded "maintain business activities" as an EPA bureaucratic euphemism for "operate." It was clear to the Committee if the lender "maintained business activities," the lender was "participating in management." The problem was how to clarify the rule without doing irreparable damage to the parallelism of the rule. The Department came to the reluctant conclusion that the Oregon rule must use the same language if we hope to have a parallel rule where federal court cases will aid in the interpretation of the Oregon rules. While the Department and the Committee may have chided the EPA for its failure to use straightforward language, the Department followed the same path to keep a parallel rule.

However, the Department did elect to move some sections of the foreclosure section around and to eliminate some repetitive language from the EPA rule. The Oregon rule shifts the third sentence from 40 CFR 300.1100(d) to the lead sentence in OAR 340-122-115(2). This makes it clearer that a lender might remain within the exemption post-foreclosure (if the lender has not participated in management prior to foreclosure and undertakes to divest itself of the property in a "reasonably expeditious manner" [discussed in a separate section below] after foreclosure).

Again, the Oregon rule divides the rule into different sections for greater clarity. To be "reasonably expeditious" is to be either (A) "commercially reasonable" or (B) taking steps to sell the property six months after foreclosure. "Fair consideration" is broken into five sections ([i] to [v]) rather than the EPA formulation of a 200+-word sentence. The "Other Bases of Liability" section was "unnested" from the federal rule (40 CFR 300.1100(d)(3)), and made a separate section in the Oregon rule (OAR 340-122-115(3)). This "unnesting" makes it clearer that all lenders are subject to the other bases of liability and not just post-foreclosure lenders.

- "Reasonably Expeditious"

Within the EPA section on foreclosure activities, the federal rule discusses what is or is not "reasonably expeditious." 40 CFR 300.1100(d)(1) and (2)(i). In short, the federal rule allows an unspecified time for the lender to divest itself of property if the lender acts in a "commercially reasonable" fashion, or the lender can show the lender is "reasonably expeditious" by listing the property within 12 months after foreclosure and obtaining marketable title. The proposed Oregon rule kept the "commercially reasonable" language, but shortened the time to list to six months.

The Committee agreed that in some instances a strict time limit would be counterproductive to cleanup activities. (E.g. a strict 18-month limit could be unreasonable by making a lender liable even though the lender was doing all the right things to make the property marketable by cleaning it up.) On the other hand, the Committee could see no good reason why a lender could not at least list the property six months after foreclosure to show "reasonably expeditious" progress to divest the property. The Department elected to use the shorter time limit, but even this six-month window is subject to the "after acquiring marketable title" qualifier, so any lender should be able to meet the standard.

During the public comment period, commenters noted that the switch form twelve months to six months could be a "trap for the unwary." While six months would probably be adequate, there did not seem to be a compelling reason to depart from the federal rule. Again, the committee believes that the six month period is more than adequate to merely list the property, but the committee agrees that consistency with the federal rule outweighs the need to have a shorter timeframe to attempt to divest the foreclosed property. The committee recommends the use of the twelve month period.

- ORS Chapter 709 Trusts Acting as Fiduciary Exemption Issues

As mentioned earlier in this summary, the federal rule does not cover trustees and/or fiduciaries. The federal rule preamble stated there was no legal basis for including an exemption for trustees/fiduciaries. *See* 57 FR at 18349. A few members on the LLAC Fiduciary Sub-committee believed that the EPA's legal analysis as to trustee liability was incorrect. While there may be few cases where trustees have been held to be personally liable, it appeared to these members that such an outcome was possible even if EPA stated "no commenter cited any principle of law that would command this result." 57 FR at 18349. While the EPA "found no colorable legal basis" to include a trustee exemption, the Committee and the Oregon Legislature did. The Legislature directed: "[T]he Environmental Quality Commission by rule shall define the instances in which a person acting under ORS chapter 709 and in a fiduciary capacity shall be exempt from liability for environmental contamination at property the fiduciary holds in a fiduciary capacity." Chapter 680 of 1991 Oregon Laws, Section 5.

- Maintaining an Action Against the Trust Without Personal Liability of the Trustee

The Department, the Committee and the EPA all agree that the assets of the trust should be available to clean up contaminated property within the trust even if the trustee is not personally liable. While everyone agreed with the principle that trust assets should be available for cleanup, some Committee members and the Attorney General were uncertain as to the mechanics of reaching those assets if the trustee were exempt. Here discussion centered on the trustee's right of indemnification or exoneration as to funds paid out by the trustee or funds from the trust taken to pay certain expenses. In these cases, the trustee was named in the action; the Committee did not want to thwart a legitimate cost recovery action against the trust by creating an overly-inclusive exemption for the trustee.

The Department solved the problem by drafting the rule so that the trust remains liable for cleanup costs even if the trustee is not personally liable. The trustee may have claims asserted against it in its representative capacity even if the trustee is not personally liable for amounts greater than the assets of the trust. This aspect of the proposed rule, OAR 340-122-117(3), is supported by the definition of "person" in ORS 465.200(13) (including "trust" as a "person" who might be liable) and by the common law of trusts (including the tenet that no person or trust has the right to maintain a nuisance). The proposed Oregon rule incorporates some of the language which the state of Michigan used in a similar provision in its statutes (MCL 299.612a), and the proposed rule is consistent with trustee practices within the state of Oregon.

- Permissible acts by the Fiduciary

Once the Department resolved the issue that the trust is still liable even if the trustee is exempt from personal liability as an owner or operator, there remained the issue of the scope of activities the trustee could perform and remain within the exemption. The first broad cut was to state that trustees might be personally liable if they fell under any of the independent bases for liability under ORS 465.255(1)(c) to (7). This followed the same approach used for lenders.

However, the Department concluded it could not use the pre-foreclosure "participation in management" standard nor the post-foreclosure obligation to undertake the divestiture of property as were used for lenders. At the most basic level, the Department concluded that trustees do "participate in management" and keeping property is integral to performing their fiduciary duties. Having the same restrictions on trustees as were on the lenders would subvert the legitimate purposes of the trust. Nonetheless, numerous LLAC members were concerned about allowing trustees to become "owners and operators" while avoiding the strict liability that normally attaches to those who are "owners or operators" (under ORS 465.255(1)(a) and (b)).

There was considerable discussion about "sham" or "segregated" trusts where the grantor dumps the "dirty" property into one trust and places the "clean" properties into another

trust. The grantor would hope that any cleanup costs related to the "dirty" property would be borne by the state, and the "clean" property would continue to provide a stream of benefits. (Under the scenario, the "dirty" property would become an "orphan" where the beneficiaries could reject the liabilities, the trustee is newly exempt, and the grantor is without assets so the state would be stuck with the cleanup costs.)

The Committee felt that the proposed rule and existing law made such a hypothetical extremely unlikely. The first limitation of the rule is that it is limited to ORS chapter 709 trusts acting in a fiduciary capacity. While limiting the exemption to "regulated" trusts is certainly no guarantee that "sham" trusts will not be established, it does limit the number of potential trustees and it results in a higher level of scrutiny of the trustee's activities.

A second limitation on sham trusts would be the prohibitions against fraudulent transfers and conveyances. *See generally* ORS 95.200 *et seq.* If the trust were determined to be fraudulent as to present or future creditors, the creditor may obtain avoidance of the transfer, attachment against the asset, or other equitable remedy.

The third limitation on sham trusts was the continuing possible liability of the trustee. The proposed exemption is a limited exemption for "owners or operators." If a trustee would use such poor business sense as to accept a trust with only contaminated property, the trustee might become personally liable in the administration of that trust under the "other bases of liability." Acts, or failures to act, may make a trustee liable under the "cause, contribute to, or exacerbate" basis of liability. A trustee cannot turn a blind eye toward the contaminated property and expect to be exempted from all liability.

A fourth limitation on a trustee participating in a sham trust is the "prudent person" standard of care required of trustees under ORS 128.057. While the proposed rule exempts trustees from "owner or operator" strict liability, the trustee might still be liable for negligent acts related to a release. The acts of the trustee will be judged against the prudent person duty of care specified in ORS 128.057.

Collectively, the Committee believed that the limitations against abuse of the proposed exemption were adequate and that the exemption for "owner or operator" liability of trustees should be granted. However, if any of the four limitations against sham trusts were not incorporated into the rule, the recommendation may have been otherwise. At the risk of redundancy, the trustee/fiduciary exemption was limited to ORS chapter 709 trusts because of the belief that these trustees would be less likely to participate in any form of sham trust. If the establishing statute would not have contained this limitation, it is unlikely that the Department could have drafted the fiduciary exception as proposed.

During the public comment period, commenters noted that the section as drafted presented two major problems: (1) the scope of the rule was limited to trustees and did not include other fiduciaries; and (2) the prohibition against subsequent additions to the trust would prohibit even the initial funding of the trust.

To solve the first problem, the commenter suggested substituting "trust company" for "trustee" so the other fiduciary functions performed by the trust company (e.g. personal representative) would be included. All of these functions would be held to the standard of care stated in ORS 128.057.

To solve the second problem, the commenter suggested that the grantor be able to add property to the trust (including initial funding), but if the trust company used trust assets to acquire property, those transactions would not be covered under the exemption. If the trust company wishes to have the "innocent landowner" defense, the trust company must perform "due diligence" as required under the existing statute.

The suggested language by the commenter was incorporated into the final rule as it appeared to have both the proper breadth while retaining the proper degree of potential liability.

- A Few Minor Changes that Took Some Major Time

This document is a summary of significant policy changes between the federal EPA rule and the proposed Oregon rule. Even though the summary by definition misses some detail, the following details are included in this report because the Committee spent a significant amount of time and effort looking at details. The comments that follow will be conclusory, but the reader should be aware of the level of detail that the Committee delved into developing these rules.

- Forms of Liens

Some on the Committee thought that the federal rule was too narrowly drafted as to liens. The federal rule was to apply in title-theory and lien-theory states as to "indicia of ownership." The Committee agreed with that portion of the rule, but also thought that the rule should protect individuals who might have a materialman's lien against a contaminated property. (E.g. a contractor who does work for a service station and enforces a lien for non-payment should be protected from "owner or operator" liability.) Some members thought this may be opening the exemption door too wide, but the majority believed that the broader exemption should be incorporated into the Oregon rule, and the Department drafted the rule to include materialman liens.

- Cash

The federal rule contains the following language concerning post-foreclosure sales: "A 'written, *bona fide*, firm offer' means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed vessel or facility, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform." 40 CFR 300.1100(d)(2)(ii)(B); 57 FR at 18384. "Cash offer" bothered a number of committee members as they viewed the term to require a literal

delivery of currency; banking members and others were less bothered by the term stating that it was understood that the term meant that the lender who foreclosed would not have to offer financing for the buyer and that the buyer would have to offer "good funds" even if those funds were not a suitcase full of currency. After quite a bit of debate about whether to include a definition of "cash," the Committee recommended leaving the term as it was in the federal rule without further definition. The Department agreed with the recommendation to leave the language without further definition, but the Department included the discussion of the term in these support documents to determine if the additional definition is an issue of significance to commenters.

- "Able" in whose judgment?

Another stumbling block in the federal rule was the "able purchaser who demonstrates to the holder's satisfaction . . ." language. Here members said that an "able purchaser" is an "able purchaser," and a lender should not have the unbridled power to reject a legitimate offer. A lender on the Committee agreed the power to reject should not be unlimited, but there should be some objective determination that the purchaser is "able." The Department struck the "to the holder's satisfaction," but kept an objective determination ("demonstrates the ability to perform"). Proposed OAR 340-122-115(2)(c)(C).

- "only"

The Committee spent a good deal of time debating the appropriateness of the "only" in 40 CFR 300.1100(c)(1) as to actions that are "participation in management." The Committee recommended keeping the same "only" in the proposed Oregon rule (340-122-115(1)(e)(A)), but only after it was clarified that lenders might still be liable under the "other bases of liability" (OAR 340-122-115(3)). Many members felt that the federal language overly narrowed the concept of "participation in management," but the Department elected to keep the "only" as long as the lender remained subject to the other bases of liability. Again, this drafting kept the rules parallel.

- "preventive" work out

Some LLAC members objected to the broad language in 40 CFR 300.1100(c)(2)(ii)(B). *See* 57 FR at 18383. When read together, "preventive work out" and "providing specific or general financial or other advice, suggestions, counseling, or guidance" could appear to once again slip back into "participation in management" without calling it "participation in management." The Department agreed to follow the EPA model and allow "preventive" work outs (before default), but to modify the rule so the lender's advice would be only that which "relat[ed] to work out activities." OAR 340-122-115(1)(e)(B)(iii).

CONCLUSION

The Department believes it has crafted a rule that is consistent with and parallel in effect to the federal rule on lender liability. The Oregon rule also addresses ORS chapter 709 trustees acting as fiduciaries, so the Oregon rule is also different than the federal rule.

The Department has addressed the significant policies inherent in the federal rule and adapted the federal rule to fit the Oregon statutes. The rule proposed for adoption is clearer, less repetitive, and more inclusive than the federal rule, yet the proposed rule maintains the appropriate level of potential liability. The Lender Liability Advisory Committee recommends adoption of the rule.

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