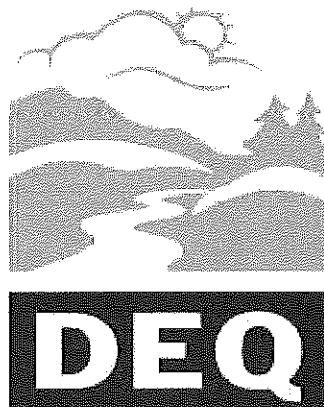


**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 04/23/1993**



**State of Oregon
Department of
Environmental
Quality**

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A G E N D A

ENVIRONMENTAL QUALITY COMMISSION MEETING

April 23, 1993
DEQ Conference Room 3a
811 S. W. 6th Avenue
Portland, Oregon

Friday, April 23, 1993: Regular Meeting beginning at 8:30 a.m.

Notes:

Because of the uncertain length of time needed for each agenda item, the Commission may deal with any item at any time in the meeting. If a specific time is indicated for an agenda item, an effort will be made to consider that item as close to that time as possible. However, scheduled times may be modified if agreeable with participants. Anyone wishing to be heard or listen to the discussion on any item should arrive at the beginning of the meeting to avoid missing the item of interest.

Public Forum: The Commission will break the meeting at approximately 11:30 a.m. for the Public Forum if there are people signed up to speak. The Public Forum is an opportunity for citizens to speak to the Commission on environmental issues and concerns not a part of the agenda for this meeting. Individual presentations will be limited to 5 minutes. The Commission may discontinue this forum after a reasonable time if an exceptionally large number of speakers wish to appear.

- A. Approval of Minutes
- B. Approval of Tax Credits
- C. †Rule Adoption: Revisions to Open Field Burning Rules
- D. †Rule Adoption: Solid Waste Orphan Site Account Rules
- E. Review and Approval of Bear Creek Sub-Basin Nonpoint Source Pollution Watershed Management Plans
- F. City of Portland: Progress Report on Control of Combined Sewer Overflows (10:30 a.m.)
This item is scheduled for 10:30 a.m. and may be taken out of order.

G. Information Item: DEQ and Future Power Generation Needs in Oregon (1:00 p.m.)

This item is scheduled for 1:00 p.m. and may be taken out of order.

H. Commission Members Reports (Oral)

I. Director's Report (Oral)

J. Status Report on Legislative Proposals (Oral)

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

The Commission has set aside June 10, 1993, for their next meeting. The location has not been established.

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

April 8, 1993

Meeting Notice

Special Joint Meeting

OREGON TRANSPORTATION COMMISSION
LAND CONSERVATION AND DEVELOPMENT COMMISSION
ENVIRONMENTAL QUALITY COMMISSION

April 22, 1993
Quality Inn
3301 Market Street N.E.
Salem, Oregon

6:00 - 9:00 p.m.

The Environmental Quality Commission will meet jointly with the Oregon Transportation Commission and the Land Conservation and Development Commission to provide an opportunity for discussion of issues of common interest.

The Commissions will gather at 6:00 p.m. for informal conversation and dinner and will convene the meeting at about 7:00 p.m.

April 8, 1993

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Minutes are not final until approved by the EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Twenty Seventh Meeting
March 5, 1993

Breakfast Meeting

The Environmental Quality Commission met for breakfast, 7:30 a.m., Friday, March 5, 1993, in Conference Room 10A, Oregon Department of Environmental Quality (DEQ), 811 S. W. Sixth Avenue in Portland, Oregon. Carolyn Young, Public Affairs Manager, spoke to the Commission about the education programs, publicity campaigns and public service announcements underway by and involving the Department.

Regular Meeting

The Environmental Quality Commission regular meeting was convened at 9:00 a.m. on Friday, March 5, in Conference Room 3A, DEQ, 811 S. W. Sixth Avenue in Portland, Oregon. The following commission members were present:

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

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

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

Chair Wessinger called the meeting to order.

A. Approval of Minutes

Commissioner Lorenzen moved approval of the minutes of the work session held on January 28, 1993, and revised minutes of the regular meeting held on January 29, 1993. Commissioner Castle seconded the motion. The work session and regular meeting minutes with revised page 6 were unanimously approved.

B. Approval of Tax Credits

The Department recommended the following tax credit applications be approved.

Application Number	Applicant	Description
TC-3732	Norpac Foods, Inc.	Model LSCA 1030 Evapco centrifugal fan evaporative condensers and associated support equipment.
TC-3819	United Disposal Services, Inc.	Steel building with concrete floor for receiving and sorting old corrugated cardboard.
TC-3843	Troudt Bros. Sanitary & Recycling Services, Inc.	1985 Ford F350 truck equipped with a Peerless retriever compactor unit.
TC-3874	Elf Atochem North America	Spill control system consisting of a coated concrete secondary containment structure for four acid storage tanks.
TC-3880	Smith Bros. Farm	Used John Deere 4040 tractor.
TC-3912	Avison Wood Specialties	Pneumatic sawdust collection system, collection hoods, blowpipes, fan, and cyclone collector.
TC-3934	Mill Waste Recycling Co.	Portable log deck waste processor with Timpete trailer, Falcon Hog, and a Strick trailer with a Hydroscreen model DF100.

Application Number	Applicant	Description
TC-3935	Far West Fibers, Inc.	Krause conveyor belt sorting system for post-consumer newspaper.
TC-3937	Ryder Truck Rental	Auto air conditioning recycling machine.
TC-3938	Ryder Truck Rental	Auto air conditioning recycling machine.
TC-3943	Spalding & Son, Inc.	Datatest 90AS Opacity System.
TC-3944	Frank Warrens Automotive	Auto air conditioning recycling machine.
TC-3951	Alpine Disposal and Recycling	Twenty four cubic yard steel roll-off container for recyclable magazine storage and transportation.
TC-3952	Ray's Speedo & Elect.	Auto air conditioning recycling machine.
TC-3955	Carl Jr. Farms	Used John Deere 4650 tractor.
TC-3877	Elf Atochem North America	Spill control system for sodium chlorate plant.

Commissioner Whipple moved approval of all 16 applications; Lorenzen seconded the motion. The motion was unanimously approved.

NOTE: Agenda Items D and E were considered before Agenda Item C.

D. Rule Adoption: Revised Solid Waste Rules to Incorporate Federal Criteria for Municipal Solid Waste Landfills (Subtitle D)

This agenda item proposed adoption of revised solid waste rules to incorporate federal criteria for municipal solid waste landfills ("Subtitle D"). The rule change is necessary in order to implement federal requirements and gain recognition from the U. S. Environmental Protection Agency (EPA) as an approved state.

January 23, 1992

Gail Achterman, Chair of the Solid Waste Advisory Committee (SWAC), introduced the rule revision, noting she believed the SWAC would unanimously support rule adoption in the current version. Chuck Donaldson, Hazardous and Solid Waste (HSW) Division, discussed the major change made between the rule as put forward for public comment and the Department's final recommendation (the requirement for a secondary leachate collection system, which the proposed rule now allows on a case-by-case basis but is not required).

Chair Wessinger commented that Coos County submitted rather severe comments on the proposed rule and asked if DEQ had addressed their concerns. Staff responded that removal of the secondary leachate collection requirement has partly responded to this concern. However, many of the county's apprehensions are with federal criteria, and the Department cannot change those requirements. The Department intends to exercise as fully as possible the implementation flexibility allowed after Oregon receives "approved state" status from the EPA.

Additionally, Chair Wessinger asked about the major areas where state requirements are more stringent than federal requirements. Staff indicated that more stringent state requirements are specifically listed on page 3 of the staff report. None of the state requirements represent major impacts. Director Hansen noted that state rules cover additional areas not addressed by the federal criteria.

Commissioner Whipple asked about the federal prohibition on open burning; specifically, what would be the impact of the rules on small landfills and how much difficultly would it take to implement those rules. Staff indicated the rules would be a hardship on the smaller landfills but the Department will be able to address some of these concerns with consent orders (e.g., phased implementation) to help ease the impact.

Commissioner Lorenzen referred to the summary of Subtitle D (handout) and noted that landfill siting close to airports was prohibited. He asked about the effect this would have on the Pendleton airport. Staff replied that Subtitle D allows continued landfill operation if an owner/operator can demonstrate the landfill does not pose a bird hazard to aircraft. The Department is attempting to clarify with the Federal Aviation Authority how they intend to interpret this regulation.

Commission Whipple moved that the staff report be adopted; Commissioner Castle seconded motion. The motion was unanimously approved.

E. Report on Cross-Media Risk Assessment Project

Cross-Media Advisory Committee Chair Jim Petersen and Marianne Fitzgerald and Regina Bridwell of the Department's Cross-Media Risk Assessment Project gave an informational presentation on the Cross-Media Risk Assessment Project. The project was designed to develop a methodology for incorporating cross-media risk assessment considerations into agency programs, as proposed in the Department's strategic plan.

Chair Petersen outlined some of the issues which the advisory committee debated, including confidentiality of data, risk communication and the use of risk assessments in agency decision making. Ms. Fitzgerald outlined project goals and some outcomes, including increased awareness among Department staff of the need to communicate with other programs before making decisions, and development of procedures to facilitate cross-media communication. Ms. Bridwell described the comparative risk model being developed for the project and how the modeling information would be used in various applications in agency decision making. This information will be used, along with technical or economic feasibility or other considerations, to make a decision regarding which technology to choose.

Project staff and advisory committee members concluded that the project was successful in developing a greater awareness of the need to consider problems from a cross-media perspective, and tools were developed to accomplish this goal (procedures, forms and a comparative risk model). The tools are still in the early stages of development and need to be reevaluated over time to determine the usefulness and effectiveness in accomplishing goals.

C. Rule Adoption: Proposed Amendments to Pollution Control Tax Credit Rule

This agenda item proposed adoption of permanent amendments to the pollution control tax credits rule. The amendments change the return on investment and percent allocable evaluation procedures for tax credit applications where pollution control facilities are integral to the applicant's business. Except for one change made in response to public comment, these amendments are identical to temporary rule amendments adopted by the Commission at the January 29, 1993, meeting.

John Fink of the Department indicated that no oral or written testimony was received at the public hearing held for the proposed rules amendments. However, James River and Intel did send the Department a letter about the proposal. Commissioner Whipple said she was surprised that more comments were not received.

January 23, 1992

Commissioner Castle moved that the proposed amendments to the Pollution Control Tax Credit Rule be approved; Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

F. Modification of Chemical Waste Management Arlington Facility Permit

Director Hansen introduced this agenda item about a permit modification decision made by the Commission and an informational item about a possible temporary authorization to begin construction for a landfill expansion. David St. Louis and Fredrick Moore of the HSW Division were present to answer questions.

Director Hansen told the Commission the temporary authorization issue became immaterial due to the day before notification from the facility that the construction of the landfill expansion was being dropped. Realizing that temporary authorization was no longer an issue, Chair Wessinger said that a temporary authorization may be a way to "rubber stamp" a decision, and it may be difficult to later refuse what was authorized now. Director Hansen and Mr. St. Louis explained that such an authorization would only be granted if the issue was a straight-forward technical decision and all interested parties knew the issue; however, bringing this issue to the Commission before the Department granted authorization indicated that an authorization would not be granted without exploring all possible viewpoints and concerns.

Mr. St. Louis indicated that before the Commission was an action item authorizing storage at building S-2A and double-stacking of drums at three buildings. He further stated the Department is considering future rulemaking to defer such technical decisions to the Department.

Commissioner Lorenzen moved approval of the storage permit modification excluding the proposed modification issue regarding a landfill expansion; Commissioner Whipple seconded the motion. The motion was unanimously approved.

G. Request by the City of Canby for an Increase in Permitted Mass Load Limitations Pursuant to OAR 340-41-026

This agenda item requested Commission approval of an increase in the allowable mass discharge load limitations for the City of Canby. OAR 340-41-026 (2) codifies an EQC policy which requires that growth and development be accommodated within existing permitted loads unless otherwise approved by the Commission. Mike Wiltsey of the DEQ Northwest Region staff explained the City of Canby was in the

process of upgrading its sewerage facilities to accommodate a larger population and meet minimum design criteria contained in the rules. They were requesting a slight load increase for the summer months and a larger mass load increase in the winter months. The Department evaluated the request and concluded there would be no measurable adverse impact on water quality resulting from the project. Therefore, the Department recommended approval of the City's request. The approved load increase will be incorporated into a new National Pollutant Discharge Elimination System Waste Discharge permit.

Commissioner McMahan asked about the potential cumulative effects if other sources made a similar request. Director Hansen noted the water quality analysis performed on each request would assure that adverse impacts would not occur. Commissioner Castle asked about the relationship between this request and the Willamette River study. Neil Mullane of the WQ Division responded that the Willamette study will include information about the potential future load distribution and cumulative effects.

Commissioner Castle moved that the Department recommendation be approved; Commissioner McMahan seconded the motion. The motion was unanimously approved.

H. Information Item: State/EPA Agreement Priorities

This agenda item was about the annual agreement between the Department and EPA which establishes the mutual understanding of program priorities and expected accomplishments for the next fiscal year (July 1, 1993, through June 30, 1994). The agreement becomes the basis for federal funding assistance to the Department.

Director Hansen introduced this item. Commissioner Castle indicated that it was difficult for the Commission to comment on this item in a way that would be helpful. Commissioner Lorenzen said he found the report somewhat helpful in providing an overall picture of the Department's activities. He noted, however, that mining was not included in the report. Director Hansen indicated the EPA funds about 18 percent of the Department's programs, and the list of priorities focuses on issues of concern to the EPA; therefore, some issues of concern to the Department (such as mining) are not on the list.

Commissioner Castle moved to accept the report; Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

I. Household Hazardous Waste Program Update

Maggie Conley, HSW Division, presented a slide show and overview of the Household Hazardous Program. She indicated the program has been operating for over two years. There have been one-day collection events at 27 different locations around the state with a total of 7,000 participants in attendance. Ms. Conley said the program is a three-year pilot scheduled to end this year. Senate Bill 67 was introduced in the 1993 state legislature by Senator Dick Springer to continue the one-day household hazardous waste events beyond 1993 and to begin a grant program to local governments.

K. Commission Members Reports (Oral)

There were no Commission reports given.

L. Director's Report (Oral)

- Oxygenated Fuel Program. The Oxygenated Fuel Program officially ended March 1 and from an air quality perspective the program was successful. Portland had significantly lower average and peak carbon monoxide (CO) levels and a slightly higher rate of passage for cars at the vehicle inspection stations. Part of the reason for low ambient CO levels was good ventilation but the data suggests oxygenated fuel was a major factor.
- Non-friable Asbestos Regulation. The Oregon Asbestos Advisory Board completed its review of the Department's asbestos regulation and recommended it remain as adopted by the Commission on September 18, 1991. At that meeting, the Commission adopted changes as contained in the EPA's new Nation Emission Standard For Hazardous Air Pollutants (NESHAP) and that are required by federal delegation. One of the new NESHAP standards was less stringent than existing Department regulations, and staff did not agree with this approach which would have allowed flooring that contained asbestos to remain in place during building demolition.

January 23, 1992

- Strategic Water Management Group Task Force Report. A Strategic Water Management Group (SWMG) task force completed review on implementation of the Groundwater Protection Act of 1989. Task force members reviewed how each of the involved agencies (Departments of Agriculture, Water Resources, Environmental Quality and Oregon State University, etc.) responded to the act over the past three years. The group's recommendations to SWMG were that the groundwater program declare no new groundwater management areas in the next biennium and, instead, spend more resources on statewide groundwater quality monitoring, data management and community involvement.
- Backyard Burning Ban Request. The Department received a letter from John Charles (OEC) and Jeanne Roy (Recycling Advocates) requesting the Department extend the backyard burning ban in the Portland metropolitan area to the outlying communities of Gresham, Troutdale, Hillsboro, Forest Grove, etc. The reason for the request was to support yard debris recycling.

The Department does not plan to propose a rule change because state statute requires that any extension of the ban boundary can only be done if required to meet air quality standards. The Department cannot, at this time, demonstrate that air quality standards would not be met. The Department will try to work with the OEC on addressing the problems of yard debris processors in other ways.

- VOC Sources Out of Compliance with RACT and New Source Review Requirements. The Air Quality Division recently discovered a number of sources whose emissions have exceeded not only the Reasonably Available Control Technology (RACT) requirements but also the 40-ton per year Volatile Organic Compound (VOC) Significant Emission Rate. In most cases, the industrial sources did not report or receive approval from the Department for changes to production or process that led to noncompliance. Most have been discovered through review of their applications for permit renewal.

The Department is considering an approach to these sources that would involve enforcement action for exceeding the limits but allow them to achieve the below the significant emission rate through proper allocation of RACT. This would require a rule change by the Commission and approval by the EPA.

- Status of the UST Financial Assistance Program.

The Department has suspended all activity in the UST Financial Assistance Program as of March 15. This action was taken because of the risk of having to repay any expended funds to the highway fund. Staff have been transferred to other Department duties for the remainder of the biennium. If the legislature is able to establish another funding mechanism for the program, the trained staff can be returned to the program; otherwise, the program will end in June.

- Hearing Authorization. Use of the Solid Waste Orphan Site Account: this proposed rule establishes eligibility requirements for use of the solid waste Orphan Site Account, criteria for selection of projects and the amounts to be spent from the account for cleanup activities, and conditions for use of Orphan Site Account funds.

M. Status Report on Legislative Proposals (Oral)

Olivia Clark, Liaison to the Legislature, provided the Commission with brief updates on the following bills:

- House Bill 2214, Motor Vehicle Testing: sent to a special House task force headed by Representative Tom Brian.
- House Bill 2071, Tax Credit Program Sunset: heard by the Income Tax Subcommittee; on hold.
- House Bill 2149, Wellhead Protection: tabled.
- Senate Bill 87, Underground Storage Tank Fee Increase: is being explored for other funding mechanisms by the petroleum industry.
- Senate Bill 88, Environmental Crimes: assigned to a work group; Associated Oregon Industry submitted their own proposal.
- House Bills 2716, 2662, Agency Rulemaking and Process Revisions: limits DEQ/EQC authority; hearing postponed.
- Ways and Means: scheduled for April 9 through 22.

This item was scheduled for 1:00 p.m. and was taken up as the last agenda item.

J. Work Session on Recycling

The Solid Waste Reduction and Planning staff gave a historical overview of Oregon legislation related to recycling. The Bottle Bill, Opportunity to Recycle Act and 1991 Recycling Act were addressed which provided the Commission with information about their role in implementing this legislation.

A panel of representatives from the hauling industry, local and regional governments and the Oregon Markets Development Council gave brief presentations on their role in recycling. The panel included John Hebard, Douglas County; Bob Martin, Metro; Sue McHenry, hauler from Pendleton; and Jerry Powell, Market Development Council member.

Commissioner Lorenzen thanked Ms. McHenry for her help in cleaning up illegal dump sites near the Pendleton airport.

Staff indicated that another work session is planned. The next work session will be an in-depth discussion of about the involvement of local governments and solid waste management plans.

There was no further business, and the meeting adjourned at 2:10 p.m.

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Minutes are not final until approved by the EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of a Special Telephone Conference Call
March 26, 1992

**Adoption of a Temporary Rule to Set the Underground Storage Tank
Regulatory Fee at Zero Dollars (\$0) per Load Withdrawn from a Bulk Facility**

The Environmental Quality Commission special telephone conference call meeting was convened at about 8:30 a.m. on Friday, March 26, 1993. Participating in the conference call were Chair William Wessinger, Vice Chair Emery Castle, Commissioners Whipple, Lorenzen and McMahan, Fred Hansen and Richard Reiter. The public could participate by speaker phone in the Director's Office of the Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon.

Note: The staff report presented at this meeting, which contained the Department's recommendations, is on file in the Office of the Director, DEQ, 811 S. W. Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of this record and is on file at the above address. These written materials are incorporated into the minutes of the meeting by reference.

This agenda item proposed the adoption of a temporary rule. On March 17, 1993, the Director authorized the Hazardous and Solid Waste Division to propose a temporary rule which would set the underground storage tank regulatory fee (UST loading fee) from \$65 per load withdrawn from a bulk facility to zero dollars (\$0) per load. The UST loading fee was intended to raise revenue for the UST financial assistance program established by Senate Bill 1215. The purpose of setting the fee at \$0 is to allow review of funding alternatives for the UST financial assistance program by the petroleum industry and Oregon Legislative Assembly without the burden upon industry to collect and remit the \$65 loading fee.

Director Hansen provided an introduction of this agenda item for the Commission. He stated that what was at issue was that the financial assistance program authorized establishment of a 1.1 cent per gallon fee and established as backup a \$65 loading fee which would be assessed each time petroleum was loaded without regard to volume. AAA challenged the funding mechanism of the 1.1 cent fee. The Supreme Court ruled only on the 1.1 cent fee issue. Oregon statutes automatically provided for the \$65 load fee if the 1.1 cent fee was unconstitutional with backup funding retroactive to October 1, 1991. Also, members of the petroleum industry may challenge the Oregon Department of Revenue's authority to collect the \$65 fee.

Commissioner Lorenzen asked why the \$65 loading fee issue was not raised when the 1.1 cent fee was challenged. Director Hansen indicated that the Department had not been a party in the litigation but did oppose AAA's motion. Mr. Reiter said that legally AAA could not bring up the \$65 fee issue because that issue was not legally effective until the Supreme Court ruled on the 1.1 cent fee. He added the Court does not give advisory rulings on statutory provisions, and, mechanically, the \$65 load fee could not be considered at the same time as the 1.1 cent issue.

Mr. Reiter said the reason for the temporary rules was the unfairness of the flat fee in the market place. He said that depending on the size of a business's fleet of trucks, 3, 6, or 7 cents per gallon could be added to the wholesale price of a gallon of petroleum. It has become apparent the dramatic effect this fee would have on the petroleum market place. Mr. Reiter indicated that unlike the 1.1 cent fee which would have been applied to the beneficiaries of the fund, the \$65 load fee would also have been charged to all petroleum handlers including the heating oil industry who would not benefit from the fund.

Chair Wessinger said that the original program had been developed to help small operators to comply with federal regulations. He said this temporary rule would leave the operators with no program. He asked if the Department had any indication where to find funding. Director Hansen replied that the efforts for insuring that the program will meet federal requirements and that gas supplies will be available in rural areas would not be discontinued since no funding presently exists. He said that legislators are interested in this issue; however, most discussion has occurred among the various beneficiaries or payors of such fees. Director Hansen said that another reason for repeal of the fee was that as long as authorization existed for collecting the \$65 load fee, efforts to bring forth a solution would be frustrated.

Environmental Quality Commission Minutes
Special Telephone Conference Call
Page 3
March 26, 1992

Commissioner Lorenzen said he believed this was the appropriate action to take and appreciated the equity problem. He said he had concern about acting within lawful authority (Section 19a). He said the Commission has the authority to adjust the fee but it did not appear that the Commission has absolute discretion. He said a provision of repealing the fee indicates the Department must prove that less money is needed. Director Hansen said that Mr. Reiter had been in contact with the Attorney General's office and that there are grounds to have the Commission take action. Commissioner Castle reiterated Commissioner Lorenzen's concern.

Action: Commissioner Castle moved to adopt the temporary rule as presented in Attachment C of the Department's staff report, Statement of Need and Findings of Fact in Attachment D. Commissioner Whipple seconded the motion. The motion was unanimously approved. The temporary rule will become effective upon filing with the Secretary of State.

Environmental Quality Commission

- Rule Adoption Item
 Action Item
 Information Item

Agenda Item B
April 23, 1993 Meeting

Title:

Approval of Tax Credit Applications

Summary:

Attachment A of the staff report presents the Department's evaluation and recommendation for certification of 38 tax credit applications with a total facility cost of \$4,775,732 as follows:

- 3 Air Quality facilities with a total facility cost of \$493,105.
- 12 Air conditioner coolant recycling machines with a total facility cost of \$32,771.
- 10 Field Burning related applications recommended by the Department of Agriculture with a total facility cost of \$679,400.
- 2 Solid Waste Recycling facilities with a total facility cost of \$863,254.
- 2 Water Quality facilities with a total facility cost of \$601,487.
- 7 Underground Storage Tank related facilities with a total facility cost of \$517,936.
- 2 Solid Waste Landfill related facilities with a total facility cost of \$1,587,779.

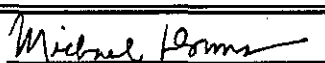
Five of the applications have facility costs exceeding \$250,000 (1 Air Quality, 1 Solid Waste Recycling, 1 Water Quality, and 2 Solid Waste Landfill) and have been reviewed by independent contractors selected by the Department. Contractor review statements are provided with the application review reports.

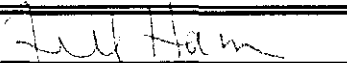
Attachment A includes review reports for two tax credit applications recommended for denial by the Department of Agriculture. One existing tax credit certificate is proposed for transfer from Gregory Affiliates, Inc. to Superior Lumber Company. Oregon Metallurgical Corporation has requested an extension of time to submit two tax credit applications. Also attached is the Department's evaluation and recommendation for United Disposal Service, Inc.'s request for a waiver of the requirement that a final application be submitted within two years of substantial completion.

Department Recommendation:

- 1) Approve issuance of tax credit certificates for 38 applications as presented in Attachment A of the staff report.
- 2) Deny tax credit certification for two applications as presented in Attachment A of the staff report and recommended by the Department of Agriculture.
- 3) Approve transfer of certificate 1987 from Gregory Affiliates, Inc. to Superior Lumber Company.
- 4) Approve request by Oregon Metallurgical Corporation for extension of time to submit tax credit applications.
- 5) Approve waiver request by United Disposal Service, Inc.


Report Author


Division Administrator


Director

March 24, 1993

*A large print copy of this report is available upon request.

State of Oregon
Department of Environmental Quality

Memorandum†

Date: April 6, 1993

To: Environmental Quality Commission
From: Fred Hansen, Director *FH*
Subject: Agenda Item B, April 23, 1993 EQC Meeting
Approval of Tax Credit Applications

Statement of the Need for Action

This staff report presents the staff analysis of pollution control facilities tax credit applications and the Department's recommendation for Commission action on these applications. The following is a summary of the applications presented in this report:

Tax Credit Application Review Reports:

Application Number	Applicant	Description
TC-3508	Gerald E. Phelan	1990 Allen 8827 straw rake.
TC-3509	Gerald E. Phelan	1990 Sunney Roadrunner straw handler.
TC-3510	Gerald E. Phelan	Freeman 370 T + 6 three string baler.
TC-3511	Gerald E. Phelan	200' x 100' x 22' steel truss grass straw storage shed.
TC-3525	Gerald E. Phelan	1991 Roadrunner with hay squeeze.
TC-3749	Willamette Industries, Inc.	Collection and recovery system consisting of reinforced concrete structures, a trench drain line, and a collection sump.

†A large print copy of this report is available upon request.

Application Number	Applicant	Description
TC-3844	Russell Oil Co.	Installation of two fiberglass tanks and fiberglass piping, spill containment basins, probes to hook up to existing tank monitoring system, line leak detectors, overflow alarm monitoring wells, sumps and automatic shutoff devices.
TC-3859	Hayworth Seed Warehouse, Inc.	Blue Sky baghouse and associated support equipment.
TC-3909	Verger Chrysler Plymouth Dodge, Inc.	Auto air conditioning recycling machine.
TC-3953	Gerald E. Phelan	1992 Roadrunner with hay squeeze.
TC-3954	Gerald E. Phelan	350' x 120' x 24' pole construction, metal clad, grass straw storage shed.
TC-3956	Marshall's Automotive	Auto air conditioning recycling machine.
TC-3959	Younger Oil Co., Inc.	Installation of an impressed current cathodic protection system around four steel tanks and the piping to the cardlock portion of the facility.
TC-3960	Younger Oil Co., Inc.	Installation of an impressed current cathodic protection system around three steel tanks and piping.
TC-3966	Bill Miller	John Deere 4630 tractor and flail chopper.
TC-3968	North Eugene Automotive	Auto air conditioning recycling machine.
TC-3969	Central Oregon Motors	Auto air conditioning recycling machine.
TC-3971	Farmington Tire and Automotive	Auto air conditioning recycling machine.
TC-3972	Todd Ditchen	New Holland 1085 balewagon.
TC-3974	Walser Enterprises	Two Freeman 370 SP balers.

Application Number	Applicant	Description
TC-3975	Walser Enterprises	New Holland Model 1085 haystacker.
TC-3976	S & R Auto Repair	Auto air conditioning recycling machine.
TC-3980	Portland General Electric Company	Two ENDA-1220 continuous emission monitoring systems and display equipment.
TC-3985	Mountain Tech	Auto air conditioning recycling machine.
TC-3987	Leathers Oil Co.	Installation of three STI-P3 tanks and double wall fiberglass piping, spill containment basins, line leak detectors, monitoring wells, sumps, Stage I and piping for Stage II vapor recovery and automatic shutoff valves.
TC-3988	Top-Flite Automotive	Auto air conditioning recycling machine.
TC-3989	Estergard Farms, Inc.	New Holland windrower, big wheel rake, and Rears bagger loafer.
TC-3990	Mechtronics	Auto air conditioning recycling machine.
TC-3992	Prestige Auto Repair	Auto air conditioning recycling machine.
TC-3994	Double J, Inc.	Auto air conditioning recycling machine.
TC-3995	F & Z Rentals Co.	Installation of two fiberglass and three STI-P3 tanks, fiberglass piping, spill containment basins, tank monitor system, line leak detectors, overflow alarm, monitoring wells, sumps, Stage II vapor recovery and automatic shutoff devices.
TC-4005	Colspers Corp.	Kilcom Baler, Model KI-5.
TC-4008	M & W Automotive	Auto air conditioning recycling machine.

Application Number	Applicant	Description
TC-4009	James Caputo	Installation of four STI-P3 tanks and double wall fiberglass piping, spill containment basins, tank monitor system, turbine leak detectors, overflow alarm, monitoring wells, sumps, Stage I & II vapor recovery and automatic shutoff devices.
TC-4014	L. P. Busch, Inc.	Installation of three single wall STI-P3 tanks and double wall enviroflex piping, spill containment basins, tank monitor, overflow alarms, monitoring wells, sumps, automatic shutoff devices, Stage I and piping for Stage II vapor recovery.

**Tax Credit Application Review Reports With Facility Costs Over \$250,000
 (Accountant Review Reports Attached):**

Application Number	Applicant	Description
TC-2061	James River II, Inc.	Compacted clay landfill liner, leachate collection system, and groundwater monitoring wells.
TC-2382	Treasure Chest Advertising Company	Katec 2013 natural gas fired thermal afterburner and associated support equipment.
TC-3475	Boise Cascade Corporation	Surface water runoff and drainage collection system and a 24" clay landfill cap.
TC-3696	Container Recovery, Inc.	Twenty six tractor trucks used for collecting recyclable beverage containers.

Application Number	Applicant	Description
TC-3903	Intel Corporation	Two storage tanks for waste phosphoric acid and associated piping, valves, and controls.

Background

In addition to the approval of tax credit applications, the staff report includes a request to transfer certificate number 1987, and a request for an extension to submit tax credit applications.

Certificate number 1987 was issued by the Commission on June 10, 1988 to Gregory Affiliates, Inc. for a facility located in Glendale, Oregon. On December 31, 1991 the claimed facility was sold to Superior Lumber Company and the parties have formally requested that certificate number 1987 be transferred. The Department is recommending that this transfer be approved by the Commission.

Oregon Metallurgical Corporation has requested an extension of time to submit two tax credit applications. An analysis of this request is included in the staff report. The Department recommends that a six month extension be granted to the applicant.

Two of the field burning related application review reports (TC-3511 and TC-3954) included in the attached staff report are recommendations for denial by the Department of Agriculture. This recommendation is based on a determination that the return on investment for the claimed facilities is greater than the reference rate of return and, therefore, the percent allocable to pollution control is 0 percent. Pursuant to ORS 468.190(2) and OAR 340-16-030(5)(e), the Commission is required to deny certification in such instances.

United Disposal Service, Inc. has requested a waiver of the requirement that an application be submitted within two years of substantial completion of the facility. The Department previously issued a preliminary certificate and the applicant constructed the facility, however, the Department apparently did not furnish the applicant with a final application form and instructions as was the procedure at the time. Based on these circumstances, the Department recommends that the Commission waive the two year submission requirement.

Memo To: Environmental Quality Commission
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Authority to Address the Issue

ORS 468.150 through 468.190 and OAR 340-16-005 through 340-16-050 (Pollution Control Facilities Tax Credit).

ORS 468.925 through 468.965 and OAR 340-17-010 through 340-17-055 (Reclaimed Plastic Product Tax Credit).

Alternatives

None.

Summary of Any Prior Public Input Opportunity

The Department does not solicit public comment on individual tax credit applications during the staff application review process. Opportunity for public comment exists during the Commission meeting when the applications are considered for action.

Conclusions

- o The recommendations for action on the attached applications, extension request, and transfer request are consistent with statutory provisions and administrative rules related to the pollution control facilities and reclaimed plastic product tax credit programs.
- o Proposed April 23, 1993 Pollution Control Tax Credit Totals:

<u>Certificates</u>	<u>Certified Costs*</u>	<u>No. of Certificates</u>
Air Quality	\$ 493,105	3
CFC	32,771	12
Field Burning	679,400	10
Hazardous Waste	0	0
Noise	0	0
Plastics	0	0
Solid Waste - Recycling	863,254	2
Water Quality	601,487	2
Underground Storage Tanks	517,936	7
Solid Waste - Landfills	<u>1,587,779</u>	<u>2</u>
TOTAL	\$ 4,775,732	38

o 1993 Calendar Year Totals Through March 31, 1993:

<u>Certificates</u>	<u>Certified Costs*</u>	<u>No. of Certificates</u>
Air Quality	\$ 342,093	3
CFC	25,763	8
Field Burning	236,931	4
Hazardous Waste	0	0
Noise	0	0
Plastics	6,660	1
Solid Waste - Recycling	521,145	7
Water Quality	749,647	5
Underground Storage Tanks	0	0
Solid Waste - Landfills	<u>3,377,202</u>	<u>1</u>
TOTAL	\$ 5,259,441	29

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

Recommendation for Commission Action

It is recommended that the Commission approve certification for the tax credit applications as presented in Attachment A of the Department Staff Report which includes field burning related applications recommended by the Department of Agriculture. The Department also recommends approval of the transfer of certificate number 1987 from Gregory Affiliates, Inc. to Superior Lumber Company, the request for extension of time to submit a tax credit applications by Oregon Metallurgical Corporation, and the waiver of time to submit an application requested by United Disposal Service, Inc.

Intended Followup Actions

Notify applicants of Environmental Quality Commission actions.

Attachments

- A. Pollution Control Tax Credit Application Review Reports.

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Reference Documents (available upon request)

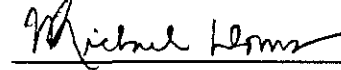
1. ORS 468.150 through 468.190.
2. OAR 340-16-005 through 340-16-050.
3. ORS 468.925 through 468.965.
4. OAR 340-17-010 through 340-17-055.

Approved:

Section:



Division:



Report Prepared By: John Fink

Phone: 229-6149

Date Prepared: March 24, 1993

State of Oregon
Department of Environmental Quality

Transfer of Pollution Control Facility Certificate

1. Certificate to be transferred from:

Gregory Affiliates, Inc.
dba Gregory Forest Products, Inc.
4800 SW Griffith Drive
Beaverton, Oregon 97005

Certificate to be transferred to:

Superior Lumber Co.
P. O. Box 250
Glendale, Oregon 97442

2. Transfer Request

Gregory Affiliates, Inc. requests that the Environmental Quality Commission approve the transfer of the certificate identified below from Gregory Affiliates, Inc. to Superior Lumber Company. The transfer is necessary because Superior Lumber purchased Gregory Affiliates, Inc.'s Glendale facility on December 31, 1991.

3. Description of Certificate (Copy Attached)

<u>Certificate</u>	<u>Issuance Date</u>	<u>Certified Cost</u>
1987	6/10/88	\$129,161.00

4. Summation

Due to the sale of the claimed facility, Gregory Affiliates, Inc. requests that the Environmental Quality Commission transfer tax credit certificate 1987 to Superior Lumber Co.

5. Director's Recommendation

The Director recommends that the Environmental Quality Commission approve the transfer of the above identified certificate. The transfer is valid only for the remaining available tax relief for the certificate.

John Fink
229-6149
March 25, 1993

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 1987
Date of Issue 6-10-1988
Application No. T-2393

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Gregory Affiliates, Inc. dba Gregory Forest Products, Inc. 4800 SW Griffith Drive Beaverton, OR 97005	Location of Pollution Control Facility: Glendale, OR
As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner	
Description of Pollution Control Facility: Installation of Burley Industries Scrubbers on Veneer Dryers	
Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil	
Date Pollution Control Facility was completed: <u>December 31, 1985</u> Placed into operation: <u>February 27, 1986</u>	
Actual Cost of Pollution Control Facility: \$ <u>129,161.00</u>	
Percent of actual cost properly allocable to pollution control: <p style="text-align: center;">100%</p>	

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of ORS 468.175 and subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE — The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed James E. Petersen
 Title James E. Petersen, Chairman
 Approved by the Environmental Quality Commission on
 the 10th day of June, 1988.

Superior

POST OFFICE BOX 250 • GLENDALE, OREGON 97442

MARCH 31, 1993

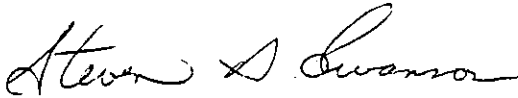
JOHN FINK
DEPARTMENT OF ENVIRONMENTAL QUALITY
811 S.W. SIXTH AVENUE
PORTLAND, OR 97204

RE: POLLUTION CONTROL FACILITY CERTIFICATE #1987

DEAR JOHN,

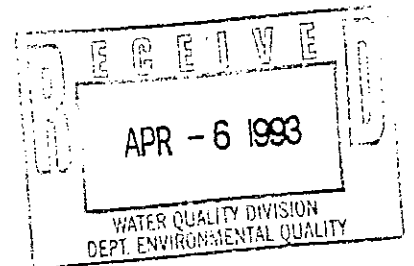
SUPERIOR LUMBER CO. PURCHASED THE FORMER GREGORY FOREST PRODUCTS FACILITY DECEMBER 31, 1991. WE REQUEST THAT THE ABOVE REFERENCED CREDITS BE TRANSFERRED TO SUPERIOR LUMBER CO., FEDERAL I.D. #93-0475444.

SINCERELY,



STEVEN D. SWANSON
GENERAL MANAGER

CC: JOHN BLUME, CPA-MOSS ADAMS



Superior Lumber Co.

2695 Glendale Valley Road
Glendale, Oregon 97442
Office: (503) 832-2153
Sales: (503) 832-2151
FAX: (503) 832-2893

Superior Veneer Co.

303 Mehlwood Lane,
Glendale, Oregon 97442
Office: (503) 832-1121
Sales: (503) 832-1130
FAX: (503) 832-1139

Superior Timber Co., Inc.

303 Mehlwood Lane
Glendale, Oregon 97442
Office: (503) 832-1121
FAX: (503) 832-1139

GREGORY AFFILIATES, INC.

Sept. 30, 1992

Mr. John Fink
Dept. of Environmental Quality
811 S.W. 6th Ave.
Portland, OR. 97204

DEPARTMENT OF ENVIRONMENTAL QUALITY
Air Quality Control
Date Received: 3/24/93
Acknowledged By: JM

Re: GregoryAffiliates, Inc. (Or.Fil'g No. 919989)
Return of Pollution Control Facility Certificate No. 1987
(Issued 6/10/88; Application T-2393)

Dear John:

This letter accompanies the return of the Pollution Control Facility Certificate indicated above for the installation of Burley Industries Scrubbers on Veneer Dryers. The actual cost of PCF approved in the certificate was \$129,161, and 100% of the cost was allocable to pollution control.

The owner of the facility was Gregory Affiliates, Inc. operating through its subsidiary, Gregory Forest Products, Inc. The entities have always filed a consolidated return for federal purposes and a combined return for Oregon purposes. Their first return reflecting the available credit was for the fiscal year ended Mar 31, 1989. The utilization of the credit is recapped below:

Fiscal Year Ended	Credit Balance	Credit Used	Credit Not Used Yet
3/31/89	\$64,581	\$6,458	
3/31/90	\$58,123	\$6,458	
3/31/91	\$51,665	None	\$6,458
3/31/92	\$45,207	None	\$4,844*

Please note the facility was sold, effective 12/31/91, to Superior Lumber Co. (P.O.Box 250, Glendale, OR. 97442) and 75% (*9/12 months) part year credit was calculated for our FYE 3/31/92.

Very truly yours.

N. Willene Larvik
N. Willene Larvik
(503) 526-5605

cc: Superior Lumber Co. ✓

State of Oregon
Department of Environmental Quality

Request for Extension of Time to Submit a Tax Credit Application

1. Applicant

Oregon Metallurgical Corporation
530 W. 34th Avenue
Albany, Oregon 97321

2. Request

The applicant has requested an extension of the time to submit applications for two pollution control facilities:

- 1) A water pollution control facility consisting of a caustic storage tank, neutralization tank, 20% caustic storage tank, piping, foundation, and instrumentation.
- 2) An air pollution control facility consisting of a caustic scrubber.

The applicant has stated that its accountant has not completed the facility cost certifications and, therefore, they are unable to submit the applications. According to the applicant, the request for facility cost certifications was originally made to the accountant in July 1992. The accountant has requested additional information from the applicant which the applicant has supplied, but the final certifications have not been issued. A copy of the applicant's explanation is attached.

The specified facilities were completed and placed into service on February 1, 1991. This request was received by the Department on January 28, 1993 within two years of substantial completion of the facility.

3. Authority to Address Request

OAR 340-16-020(c) provides the Commission with the authority to grant an extension of time to submit an application if circumstances beyond the control of the applicant would make a timely filing unreasonable. The request must be filed within two years of substantial completion.

4. Director's Recommendation

The Director recommends that the Environmental Quality Commission grant Oregon Metallurgical Corporation a six month filing extension for the specified pollution control facilities terminating on August 1, 1993.

John Fink
229-6149
March 12, 1993



OREGON METALLURGICAL CORPORATION

State Of Oregon
Department of Environmental Quality
811 SW Sixth Avenue
Portland, Or 97204
Attn: Mr. John Fink

February 23, 1993

Dear Mr. Fink,

In response to your letter of February 23, 1993 regarding our application for Pollution Control Tax Credit, extension of time to file, I submit the following explanation.


In July of 1992 I submitted our request for certification to the independent auditors Coopers & Lybrand located in Eugene, Oregon for the two facilities. I submitted additional information as requested to Coopers on September 17, 1992. Coopers continued to scrutinize the information and again requested final information on November 16, 1992 which was submitted on the same date. I continued to follow up on the progress of their audit in December of 1992 and again in January of 1993. As of today's date I have not received the requested certifications.

Coopers has assured me that the documents will be forth coming in the next two weeks.

Upon receipt I should be able to immediately submit the application for tax credit to your office. I have requested the extension of (1) year from February 1, 1993. I do not believe that the full amount of time will be required. Hopefully, the commission will approve a reasonable amount of time to cover your examination of the applications and any necessary changes required by Oremet.

Let me know if you need additional information.

Best Regards,


John R. Blanchard, Credit Manager
Oremet Titanium

STATE OF OREGON
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

United Disposal Service, Inc.
 2215 N. Front Street
 Woodburn Or 97071

The applicant owns and operates a solid waste collection service and recyclable materials collection and processing depot in Woodburn, Oregon. Application was made for tax credit for a solid waste pollution control facility.

2. Description of Facility

The facility is a recyclable materials collection processing depot including paving, building and facilities for public drop off area, recyclable processing area, paper baler, recycling container repair shop, paper and other recyclable material storage, sorting, and loading area, coordinator's and support staff office, and instructional signs. Some of these facilities were constructed in conjunction with a solid waste collection service facility. Only that portion of the total solid waste and recycling service facility which is dedicated to recycling has been claimed as the recycling pollution control facility.

Cost Category	Total Facility Cost	Cost Allocated to recycling
a. Construction	958,218	197,514
b. Permits and Taxes	133,930	13,651
c. Fencing and Security	25,941	5,190
d. Instructional signs	718	443
e. Land, Engineering, & Survey	174,570	26,423
f. Electrical	814	446
g. Landscaping	5,245	268
h. Scales	20,025	20,025
i. Office and telephone	14,624	746
j. Fuel tank	31,874	1,625
Total facility cost	\$ 1,365,959	
Claimed facility cost		\$ 266,331

An accountant's certification was provided.

3. Procedural Requirements

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

The facility has met statutory deadlines in that:

- a. Construction of the facility was begun in December 1, 1987 and substantially completed by January 6, 1989.
- b. The facility was placed into operation on January 9, 1989.

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

The facility has not met a statutory requirement in that:

- d. Construction of the facility was substantially completed on January 6, 1989 and the application for final certification was submitted on January 21, 1993 which was not within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to reduce a substantial quantity of solid waste through recycling. The applicant claimed only those portions of the complete recycling and solid waste collection depot which were used for recycling. Those portions used for solid waste collection were not included as a part of the "facility."

b. Eligible Cost Findings

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

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

This factor is applicable because the materials processed by the facility, glass, aluminum, steel, cardboard, newspaper, and used oil, are recovered for recycling and are sold as commodities.

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

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

The recycling facility was constructed as a part of a recycling program required by state and local solid waste management programs. The recycling program is subsidized with income from solid waste collection services. The average annual cash flow for the recycling facility is a negative value because the cost of operation is greater than the sum of the income from the sale of recyclables plus the savings from reduced disposal fees. The percent return on investment is 0%. As a result, the percent allocable is 100%.

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

The applicant has not identified and is not aware of alternative methods for achieving the same objective. It is the Department's determination that the proposed facility is an acceptable method of achieving the pollution control objective.

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

There are no savings from this facility. The average annual operating cost exceeds the income from this facility and has been included in the ROI calculations.

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

There are no other factors to consider in establishing the actual cost of the facility properly allocable to material recovery from solid waste.

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

- c. Tax Credit Application 2394, submitted by United Disposal, presents some unusual aspects which warrant Commission discussion.

This is a situation where the applicant received preliminary approval in 1989. This occurred at a time when legislative requirements, administrative procedures, and agency staff were changing. These changes affected the requirements for preliminary applications and the agency procedure for transmittal of final application instructions and forms. The applicant is required to submit a final application on forms provided by the Department. Normal procedure prior to this time was for Department staff to provide the applicant with final application forms, including the instructions with time requirements, immediately after Department inspection of completed construction. Department staff inspected the completed facility on May 19, 1989. There is no record that final instructions or application forms were provided to United Disposal. The applicant became aware that their tax credit was incomplete on August 11, 1992 when the issue was raised by Department staff. The applicant formally contacted the Department on August 12, 1992 requesting our direction as to proper procedures and final application forms were sent to United Disposal. United Disposal submitted the completed application to the Department on 1/21/93.

In summary, the Department failed to provide the applicant with the necessary forms to submit a timely application. The applicant incorrectly assumed that the application procedure was complete upon final inspection and was unaware until questioned by Department staff that a timely application had not been submitted. The applicant requests a waiver of the requirement that a final application be submitted within two years of substantial completion of the facility.

Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of solid waste through recycling.
- c. The facility complies with DEQ statutes and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. **Director's Recommendation**

Based upon the findings, it is recommended that this applicant be granted a waiver of the two year application submission requirement for Tax Credit No. 2394. If the Commission Concurs, the application will be submitted to an independent accountant for review and then be presented to the Commission for final consideration.

WRB:wrb
wp51/tax/tc2394rr.sta
(503)229-5934
April 6, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Gerald E. Phelan
33973 Looney Lane
Tangent OR 97389

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

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

2. Description of Claimed Facility

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

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

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

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

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

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

Before the straw can be baled it must be gathered in rows. The rake takes a wide path of grass straw and piles it into a narrower windrow reducing the number of passes required by the baler. The rake is used on approximately 2,500 acres annually.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 1, 1990, and the application was submitted on May 16, 1991, within two years of substantial purchase of the equipment. The application for certification was found to be complete on January 26, 1993.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

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

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

The applicant has determined the gross annual income projection for the baling and straw marketing business to be \$10,833,311 for the five years and \$9,166,310 projected annual operating expenses for the five years. Cash flow is \$1,667,001 with an average annual cash flow of \$333,400 for the baling and straw marketing business. The equipment considered for certification is .9% (\$15,385 divided by \$1,708,345) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$3,000 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$15,385) divided by the average annual cash flow (\$3,000) equals a return on investment factor of 5.128. Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is 14.5%. Using the annual percent return of 14.5% and the reference annual percent return of 18.3%, 21% is allocable to pollution control.

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

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

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

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

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 21%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 21%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$15,385.33, with 21% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3508.

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

jb:bm/3508
January 26, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Gerald E. Phelan
33973 Looney Lane
Tangent OR 97389

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

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

2. Description of Claimed Facility

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

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

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

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

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

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

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

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 1, 1990 and the application was submitted on May 16, 1991 within two years of substantial purchase of the equipment. The application for certification was found to be complete on January 26, 1993.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

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

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

The applicant has determined the gross annual income projection for the baling and straw marketing business to be \$10,833,311 for the five years and \$9,166,310 projected annual operating expenses for the five years. Cash flow is \$1,667,001 with an average annual cash flow of \$333,400 for the baling and straw marketing business. The equipment considered for certification is 4% (\$66,154 divided by \$1,708,345) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$13,336 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$66,154) divided by the average annual cash flow (\$13,336) equals a return on investment factor of 4.96. Using Table 1 of OAR 340-16-030 for a life of 5 years, the annual percent return on investment is .25%. Using the annual percent return of .25% and the reference annual percent return of 18.3%, 99% is allocable to pollution control.

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

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

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

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

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 99%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 99%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$66,154, with 99% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3509.

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

jb:bm/3509
January 26, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Gerald E. Phelan
33973 Looney Lane
Tangent OR 97389

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

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

2. Description of Claimed Facility

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

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

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

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

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

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

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

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on June 27, 1990, and the application was submitted on May 16, 1991, within two years of substantial purchase of the equipment. The application for certification was found to be complete on January 26, 1993.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing the appropriate size and weight in packaging.

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

The applicant has determined the gross annual income projection for the baling and straw marketing business to be \$10,833,311 for the five years and \$9,166,310 projected annual operating expenses for the five years. Cash flow is \$1,667,001 with an average annual cash flow of \$333,400 for the baling and straw marketing business. The equipment considered for certification is 2% (\$36,373 divided by \$1,708,345) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$6,668 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$36,373) divided by the average annual cash flow (\$6,668) equals a return on investment factor of 5.455. Using Table 1 of OAR 340-16-030 for a life of 7 years, the annual percent return on investment is 6.75%. Using the annual percent return of 6.75% and the reference annual percent return of 18.3%, 63% is allocable to pollution control.

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

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

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

There is an increase in operating costs of \$24,000 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 63%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 63%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$36,373, with 63% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3510.

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

jb:bm/3510
January 26, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Gerald E. Phelan
33973 Looney Lane
Tangent OR 97389

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

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

2. Description of Claimed Facility

The facility described in this application is a 200' x 100' x 22' steel truss, grass straw storage shed, located at 33973 Looney Lane, Tangent, Oregon. The land and buildings are owned by the applicant.

Claimed equipment cost: \$135,691.27
(Accountant's Certification was provided.)

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

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

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

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

The straw storage shed protects another 750 acres of straw from the weather, keeping the commodity in a salable condition.

4. Procedural Requirements

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

Construction of the facility was substantially completed on August 31, 1990, and the application was submitted on May 16, 1991, within two years of substantial completion of the facility. The application for certification was found to be complete on January 26, 1993.

5. Evaluation of Application

a. The facility is eligible under ORS 468.150 because the facility is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)A):
"Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

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

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

The applicant has determined the gross annual income projection for the baling and straw marketing business to be \$10,833,311 for the five years and \$9,166,310 projected annual operating expenses for the five years. Cash flow is \$1,667,001 with an average annual cash flow of \$333,400 for the baling and straw marketing business. The equipment considered for certification is 8% (\$135,691 divided by \$1,708,345) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$26,672 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$135,691) divided by the average annual cash flow (\$26,672) equals a return on investment factor of 5.087. Using Table 1 of OAR 340-16-030 for a life of 20 years, the annual percent return on investment is 19%. Using the annual percent return of 19% and the reference annual percent return of 18.3%, no portion is allocable to pollution control.

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

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

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

There is an increase in operating costs of \$7,655 to annually maintain and operate the facility. These costs were considered in the return on investment calculation.

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 0%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 0%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is not recommended that a Pollution Control Facility Certificate be issued for the facility claimed in Tax Credit Application Number TC-3511. It is recommended that the processing fee be refunded.

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

jb:bm/3511
January 26, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Gerald E. Phelan
33973 Looney Lane
Tangent OR 97389

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

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

2. Description of Claimed Facility

The equipment described in this application is a 1991 Roadrunner with hay squeeze, located at 33973 Looney Lane, Tangent, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$81,613.89
(Accountant's Certification was provided.)

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

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

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

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

The Roadrunner with hay squeeze will enable the applicant to load baled straw from the fields onto flatbeds and unload and load straw in the storage facilities. The hay squeeze will accommodate straw removal on an additional 3,000 acres.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on May 24, 1991, and the application was submitted on May 28, 1991, within two years of substantial purchase of the equipment. The application for certification was found to be complete on January 26, 1993.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing straw bale handling capabilities on an additional 3,000 acres.

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

The applicant has determined the gross annual income projection for the baling and straw marketing business to be \$10,833,311 for the five years and \$9,166,310 projected annual operating expenses for the five years. Cash flow is \$1,667,001 with an average annual cash flow of \$333,400 for the baling and straw marketing business. The equipment considered for certification is 5% (\$81,613 divided by \$1,708,345) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$16,670 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$81,613) divided by the average annual cash flow (\$16,670) equals a return on investment factor of 4.896. Using Table 1 of OAR 340-16-030 for a life of 5 years, the annual percent return on investment is .75%. Using the annual percent return of .75% and the reference annual percent return of 18.1%, 96% is allocable to pollution control.

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

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

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

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

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 96%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 96%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$81,613.89, with 96% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3525.

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

jb:bm/3525
January 26, 1993

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Willamette Industries, Inc.
Albany Paper Mill
3800-3825 First Interstate Tower
1300 SW 5th Ave.
Portland, OR. 97201

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

An application was made for a tax credit for a water pollution control facility.

2. Description of Facility

The claimed facility consists of a collection and recovery system that has been installed around the "mega" storage tank that contains "white liquor" at the paper mill. The purpose of the facility is to collect and contain spills of the white liquor, a pulping chemical, in order to prevent discharges from reaching the Willamette River and its tributaries. The estimated useful life of the facility is 5 years.

The collection and recovery system includes a reinforced concrete containment system constructed around the mega tank that consists of an apron, perimeter wall (dike), and a small sump. The containment system sump drains into a 4-foot wide rectangular concrete trench line that diverts spills from the containment area into a six-foot deep concrete collection sump. Two pumps and a monitoring system have been installed in the collection sump to detect and transfer spills to the plant's treatment system. The mega tank is a 1,000,000 gallon vessel that temporarily stores white liquor at a temperature of approximately 240 degrees Fahrenheit. Since the vessel is very large and the quantity of liquor stored varies with plant operations, Willamette Industries built a collection system to contain the most likely spill event and secured the Department's approval prior to construction of the containment system.

The concrete apron, wall, and small sump built around the tank can contain 220,000 gallons of liquor in the event of a spill. This volume is greater than the normal volume of liquor stored in the tank. Spills collecting on the apron and sump area will be diverted into the rectangular trench drain line designed to contain a flow of 3500 gallons per minute (GPM). Spills carried by the trench drain line will enter into the larger collection sump, and the pumping system will transfer spills from the sump into the paper mill's collection system for treatment in the wastewater treatment plant.

Claimed Facility Cost: \$178,667.44

An Accountant's Certification was provided to support the claimed facility cost.

3. Procedural Requirements

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

The facility met statutory deadlines in that construction of the facility was substantially completed on December 15, 1991. The application for certification was found to be complete on January 27, 1993, within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to prevent water pollution. The requirement is to comply with OAR 340-41-445 and the requirements of the applicant's National Pollutant Discharge Elimination System (NPDES) waste discharge permit.

Willamette Industries' Albany paper mill operates as an unbleached Kraft mill, and kraft linerboard and bag paper are manufactured. The white liquor stored in the mega tank is a pulping chemical used in the manufacture of the paper products. Willamette Industries has had a past spill of the chemical that entered Consur Slough, a tributary of the Willamette River. The facility received a Stipulated and Final Order and a fine from the Department for the release of the spilled chemical into waters of the State.

According to the Willamette Basin Standards given in OAR 340-41-445, toxic substances should be not discharged above natural background levels into waters of the State in amounts, concentrations, or combinations that may harm, alter, or accumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare, or beneficial uses.

Further, the applicant's NPDES permit requires development and implementation of a Best Management Practices (BMP) Plan to prevent the release of toxic and hazardous pollutants from spillage or leaks from the manufacturing and treatment processes of the paper mill. The installation of the collection and recovery system fulfills the requirement of the BMP Plan for this storage area at the plant.

b. Eligible Cost Findings

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

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

The facility does not recover or convert waste products into a salable or usable commodity. The spilled liquor can be diverted into the paper mill's wastewater treatment system for proper treatment and disposal.

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

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

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

The applicant states that constructing a flexible membrane liner and a new dike around the mega tank was evaluated. The cost for this alternative was estimated at \$250,000, which exceeded the cost of the containment system installed. It is the Department's determination that the proposed facility is an acceptable method for achieving the pollution control objective.

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

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

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules, and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$178,667.44 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3749.

Pamela Fink:crw
IW\WC10\WC11115.5
Application No. T-3749
(503)229-6385, Ext. 248
March 16, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Russell Oil Co.
PO Box 7
Boardman, OR 97818

The applicant owns and operates a fuel distributorship at I-84 and Laurel Lane, Boardman OR 97818, facility no. 8882.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of two additional fiberglass tanks and fiberglass piping, spill containment basins, probes to hook up to existing tank monitor system, line leak detectors, overfill alarm monitoring wells, sumps and automatic shutoff devices.

Claimed facility cost \$ 45,202 *
(Accountant's certification was provided)

Percent allocable to pollution control 100%

* The Department concludes that the eligible facility cost for the project is \$31,290. This represents a difference of \$13,912 from the applicant's claimed cost of \$45,202 due to a determination by the Department that the cost of labor and materials to install two additional tanks, piping and the loading rack (\$9,008) and a submersible pump (\$904) are not eligible pursuant to the definition of a pollution control facility in ORS 468.155. In addition, a math error (\$4,000) was made per discussion with the applicant.

3. Procedural Requirements

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

The facility was substantially completed on January 10, 1992 and placed into operation on January 10, 1992. The application for certification was submitted to the Department on August 24, 1992, within two years of the completion date. The application was determined complete and filed on March 19, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of four cathodically protected steel tanks and piping with spill and overfill prevention and vapor monitoring wells.

To respond to requirements established 12-22-88, the applicant installed:

- 1) For corrosion protection - Fiberglass tanks and piping.
- 2) For spill and overfill prevention - Spill containment basins, overfill alarm, sumps and automatic shutoff devices.
- 3) For leak detection - Line leak detectors, probes to hook up to existing tank monitor system and monitoring wells.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant did not indicate that alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table.

	<u>Eligible Facility Cost</u>	<u>Percent Allocable</u>	<u>Amount Allocable</u>
Corrosion Protection:			
Fiberglass tanks & piping	\$ 9,130	60 % (1)	\$ 5,478
Spill & Overfill Prevention:			
Spill containment basins	447	100	447
Overfill alarm	195	100	195
Sumps	2,794	100	2,794
Automatic shutoff devices	92	100	92
Leak Detection:			
Line leak detectors	189	100	189
Monitoring wells	449	100	449
Labor & materials	17,994	100	17,994
Total	\$ 31,290	88 %	\$ 27,638

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$9,130 and the bare steel system is \$3,638, the resulting portion of the eligible tank and piping cost allocable to pollution control is 60%.

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 88%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$31,290 with 88% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3844.

Barbara Anderson:ew
(503) 229-5870
March 19, 1993

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Hayworth Seed Warehouse, Inc.
PO Box 264
Harrisburg, OR 97446

The applicant owns and operates a processing and storage facility for grass seed and wheat in Harrisburg, OR.

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

2. Description of Facility

The claimed facility controls the emissions of the applicant's waste handling system. The facility consists of a Blue Sky baghouse and associated support equipment.

Claimed Facility Cost: \$32,398.67

Accountant's Certification was provided.

The applicant indicated the useful life of the facility is twenty years.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Construction of the facility was substantially completed on May 20, 1991 and placed into operation on June 15, 1991. The application for final certification was submitted to the Department on September 15, 1992, within two years of substantial completion of the facility. The application was found to be complete on March 8, 1993.

4. Evaluation of Application

a. Rationale For Eligibility

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

pollution. This is in accordance with OAR Chapter 340, Division 21, Section 030. The Air Contaminant Discharge Permit for this source, 22-4017, items 2 and 3 requires the permittee to control particulate emissions. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The claimed facility controls the emissions of the applicants waste handling system. The waste handling system removes particulate from grass seed cleaning, mixing, and bagging operations conducted in the applicant's warehouse. The straw, chaff and dust separated from seed is transported by a pneumatic conveyance system to the screenings bunker. The baghouse sits on top of the bunker and removes particulate from the air emitted to the atmosphere. Particulate falls from the filters into the hopper. The hopper is emptied both by dumping into trucks and with a screw conveyor system to a storage building.

b. Eligible Cost Findings

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

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

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

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

There is no income or savings from the facility, so there is no return on the investment.

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

Baghouses are best available control technology for the control of particulate.

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

There is no savings from the facility. The cost of maintaining and operating the facility is \$3,200 annually.

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

There are no other factors to consider in establishing the actual cost of the facility properly allocable to the control of pollution. The principal purpose of the facility is to prevent a substantial quantity of air pollution.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.
- c. The facility complies with DEQ statutes, rules, and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$32,398.67 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3859.

BKF

March 11, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Verger Chrysler Plymouth Dodge, Inc.
1400 Ocean Blvd.
Coos Bay OR 97420

The applicant owns and operates an automobile sales and repair establishment in Coos Bay, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$3,606.75
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on November 1, 1992. The facility was placed into operation on November 1, 1992. The application for final certification was submitted to the Department on November 12, 1992, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to reduce air pollution. This reduction is accomplished by capturing and recycling air contaminants, as defined in ORS 468.275. The air contaminant is R-134A (CF₃CH₂F) which is used as

a substitute for R12 in automobile air conditioners.

Eligible equipment must be certified by Underwriters Laboratory (UL) as meeting the requirements and specifications of UL1963 and the Society of Automotive Engineers (SAE) standards, J1990 and J2210 or other requirements and specifications determined by the Department as being equivalent. The facility meets these requirements.

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$15.67/pound. The applicant estimated an annual coolant recovery rate of 25 pounds.

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

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

o Depreciation of machine

Based on these considerations, the Department estimated the return on investment to be less than zero.

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

A distinct portion of this automobile air conditioning coolant recovery and recycling equipment makes an insignificant contribution to the principal purpose of the claimed facility. This coolant recovery equipment has the capability to return (recharge) coolant to automobile air conditioning systems. The additional expense incurred in the purchase of equipment with recharge capabilities is not allocable to pollution control. The Department estimates the additional expense incurred is \$700.00.

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 80%.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 80%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$3,606.75 with 80% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3909.

BKF

March 15, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Gerald E. Phelan
33973 Looney Lane
Tangent OR 97389

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

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

2. Description of Claimed Facility

The equipment described in this application is a '1992 Roadrunner with hay squeeze, located at 33973 Looney Lane, Tangent, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$92,619.87
(Accountant's Certification was provided.)

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

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

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

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

The Roadrunner with hay squeeze will enable the applicant to load baled straw from the fields onto flatbeds and unload and load straw at the storage facilities. The hay squeeze will accommodate straw removal on an additional 3,000 acres.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 1, 1992, and the application was submitted on January 6, 1993, within two years of substantial purchase of the equipment. The application for certification was found to be complete on January 27, 1993.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing straw bale handling capabilities on approximately 3,000 acres.

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

The applicant has determined the gross annual income projection for the baling and straw marketing business to be \$10,833,311 for the five years and \$9,166,310 projected annual operating expenses for the five years. Cash flow is \$1,667,001 with an average annual cash flow of \$333,400 for the baling and straw marketing business. The equipment considered for certification is 5% (\$92,619 divided by \$1,708,345) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$16,670 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$92,619) divided by the average annual cash flow (\$16,670) equals a return on investment factor of 5.556. Using Table 1 of OAR 340-16-030 for a life of 5 years, the annual percent return on investment is 0%. Using the annual percent return of 0% and the reference annual percent return of 17%, 100% is allocable to pollution control.

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

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

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

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

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

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

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

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$92,619.87, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3953.

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

jb:bm/3953
January 27, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Gerald E. Phelan
33973 Looney Lane
Tangent OR 97389

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

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

2. Description of Claimed Facility

The facility described in this application is a 350' x 120' x 24' pole construction, metal clad, grass seed storage shed, located at 33973 Looney Lane, Tangent, Oregon. The land and buildings are owned by the applicant.

Claimed equipment cost: \$249,786
(Accountant's Certification was provided.)

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

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

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

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

The straw storage shed protects approximately 1,500 acres of straw from the weather, keeping the commodity in a salable condition.

4. Procedural Requirements

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

Construction of the facility was substantially completed on July 30, 1992, and the application for final certification was found to be complete on January 27, 1993. The application was submitted within two years of substantial completion of the facility.

5. Evaluation of Application

a. The facility is eligible under ORS 468.150 because the facility is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f))A):
"Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The facility promotes the conversion of a waste product (straw) into a salable commodity by providing protection from inclement weather for straw from approximately 1,500 acres.

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

The applicant has determined the gross annual income projection for the baling and straw marketing business to be \$10,833,311 for the five years and \$9,166,310 projected annual operating expenses for the five years. Cash flow is \$1,667,001 with an average annual cash flow of \$333,400 for the baling and straw marketing business. The equipment considered for certification is 15% (\$249,786 divided by \$1,708,345) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$50,010 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$249,786) divided by the average annual cash flow (\$50,010) equals a return on investment factor of 4.994. Using Table 1 of OAR 340-16-030 for a life of 20 years, the annual percent return on investment is 19.5%. Using the annual percent return of 19.5% and the reference annual percent return of 17%, no portion is allocable to pollution control.

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

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

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

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

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 0%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 0%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is not recommended that a Pollution Control Facility Certificate be issued for the facility claimed in Tax Credit Application Number TC-3954. It is recommended that the processing fee be refunded.

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

jb:bm/3954
March 22, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Marshall's Automotive
2110 S. Highway 97
Redmond OR 97756

The applicant owns and operates an automotive repair establishment in Redmond, Oregon.

Application was made for tax credit for an air pollution control facility which is leased by the applicant. The applicant has received authorization from the lessor to receive tax credit certification.

2. Description of Facility

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

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

Claimed Facility Cost: \$1,900.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on March 1, 1991. The facility was placed into operation on March 1, 1991. The application for final certification was submitted to the Department on January 11, 1993, within two years of substantial completion of the facility. The application was found to be complete on February 12, 1993.

4. Evaluation of Application

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

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

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$5.00/pound. The applicant estimated an annual coolant recovery rate of 50 pounds.

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

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$1,900.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3956.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Younger Oil Co., Inc.
PO Box 87
Albany, OR 97321

The applicant owns and operates a gas station and cardlock at 33380 Hwy. 34, SE, Albany OR 97321, facility no. 3579.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of an impressed current cathodic protection system around four steel tanks and the piping to the cardlock portion of the facility.

Claimed facility cost (Documentation of cost was provided)	\$ 7,940
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Percent allocable to pollution control	100%
--	------

3. Procedural Requirements

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

The facility was substantially completed on June 1, 1992 and placed into operation on June 1, 1992. The application for certification was submitted to the Department on January 13, 1993, within two years of the completion date. The application was determined complete and filed on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of four steel exterior tanks and steel piping to the cardlock with no corrosion protection and no spill and overfill prevention or leak detection equipment. (Piping to the retail portion of the facility is fiberglass.)

To respond to requirements established 12-22-88, the applicant installed:

- 1) For corrosion protection - Impressed current cathodic protection on four tanks and the piping that is steel.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

The Department concludes that all of the costs claimed by the applicant (\$7,940) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant also considered replacing the tanks. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table.

	<u>Eligible Facility Cost</u>	<u>Percent Allocable</u>	<u>Amount Allocable</u>
Corrosion Protection: Impressed current cathodic protection	\$ 7,940	100 %	\$ 7,940
Total	\$ 7,940	100 %	\$ 7,940

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$7,940 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3959.

Barbara Anderson:ew
(503) 229-5870
March 9, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Younger Oil Co., Inc.
PO Box 87
Albany, OR 97321

The applicant owns and operates a gas station and convenience store at 1450 NW Ninth, Corvallis OR 97330, facility no. 3559.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of an impressed current cathodic protection system around three steel tanks and piping.

Claimed facility cost \$ 7,940
(Documentation of cost was provided)

Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility was substantially completed on June 1, 1992 and placed into operation on June 1, 1992. The application for certification was submitted to the Department on January 13, 1993, within two years of the completion date. The application was determined complete and filed on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of three steel exterior tanks and steel piping with no corrosion protection and no spill and overflow prevention or leak detection equipment.

To respond to requirements established 12-22-88, the applicant installed:

- 1) For corrosion protection - Impressed current cathodic protection on tanks and piping.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

The Department concludes that all of the costs claimed by the applicant (\$7,940) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant also considered replacing the tanks. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table.

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Corrosion Protection: Impressed current cathodic protection	\$ 7,940	100 %	\$ 7,940
Total	\$ 7,940	100 %	\$ 7,940

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases in soil or water. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$7,940 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3960.

Barbara Anderson:ew
(503) 229-5870
March 9, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Bill Miller
34465 Midway Drive SE
Albany OR 97321

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

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

2. Description of Claimed Facility

The equipment described in this application is located at 34465 Midway Drive SE, Albany, Oregon. The equipment is owned by the applicant.

John Deere 4630 Tractor \$22,500
Flail Chopper 10,268

Claimed equipment cost: \$32,768
(Accountant's Certification was provided.)

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

The applicant has 1,127 acres of annual grass seed under cultivation. Through the 1991 season he registered all of his acreage for open field burning and averaged approximately 930 acres actually open field burned annually.

Beginning with the 1992 season, the applicant flail chops all the straw in his annual grass seed fields as an alternative to open field burning.

The applicant states that he does not plan on open field burning any acreage in the future unless a field or fields experiences a serious pest or weed infestation that cannot be eradicated in any other manner.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on February 1, 1992. The application was submitted on January 24, 1993 and the

application for certification was found to be complete on January 29, 1993. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

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

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

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

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

<u>Implement</u>	<u>Acres Worked</u>	<u>Acres/Hour</u>	<u>Annual Operating Hours</u>
Flail Chopper	1,127	6	188
Total Annual Operating Hours			188

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

<u>Equipment</u>	<u>Claimed Cost</u>	<u>Percent Allocable</u>	<u>Cost Allocable</u>
Flail Chopper	\$10,268	100%	\$10,268
JD 4630 Tractor	<u>22,500</u>	42%	<u>9,450</u>
Total	\$32,768	60%	\$19,718

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

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

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

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

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 60%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 60%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$32,768, with 60% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3966.

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

jb:bmTC3966
February 1, 1993

- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 90%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$127,826 with 90% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3995.

Barbara Anderson:ew
(503) 229-5870
March 23, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Todd Ditchen
7705 Hazelgreen Rd NE
Salem OR 97305

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

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

2. Description of Claimed Facility

The equipment described in this application is a New Holland 1085 balewagon, located at 7705 Hazelgreen Road NE, Salem, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$79,000
(Accountant's Certification was provided.)

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

The applicant has 13 perennial grass seed acres under cultivation. This application also involves 1,700 acres of neighboring growers: Five Oak Farms, Eder Bros., Doug and Ernie Zielinski, and Glen Zielinski. Prior to 1990, these growers, including the applicant, were registrants in the open field burning program. Each year based on individual farm needs, these growers registered and open field burned a percentage of their grass seed acreage.

They began to experiment with alternatives to open field burning deciding that having their fields baled off and attempting to market the straw was the most economical. To avoid replacing open field burning with propane flaming and stack burning they realized the need to promptly remove the baled straw from the fields and deliver it into storage. Prompt removal allows field treatment without thermal sanitation and reduces weather damage to the straw that leads to stack burning.

For each grower to purchase a balewagon (stacker) was cost prohibitive so the applicant made the investment. He incurs all the annual operating costs and charges a per acre fee to stack the baled straw and move it to the respective storage facilities.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on May 19, 1992. The application was submitted on January 29, 1993 and the application for final certification was found to be complete on March 1, 1993. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing the means to stack the baled straw and move it into storage.

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

The actual cost of claimed equipment (\$79,000) divided by the average annual cash flow (\$7,750) equals a return on investment factor of 10.194. Using Table 1 of OAR 340-16-030 for a life of 7 years, the annual percent return on investment is 0%. Using the annual percent return of 0% and the reference annual percent return of 17%, 100% is allocable to pollution control.

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

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

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

There is an increase in operating costs of \$9,250 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$79,000, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3972.

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

jb:bm3972
March 4, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Galen Walser, Owner
Walser Enterprises
1490 SE Geary Circle #2
Albany OR 97321

The applicant owns and operates a custom baling operation in Linn County, Oregon.

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

2. Description of Claimed Facility

The equipment described in this application is located at 2440 Ferry Street, Bldg. #C, Albany, Oregon. The equipment is owned by the applicant.

Freeman baler 370 SP	\$ 50,000
Freeman baler 370 SP	50,000

Claimed equipment cost: \$100,000
(Accountant's Certification was provided.)

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

The applicant, by way of contract with Gerald E. Phelan, Inc., operates a custom baling firm that provides straw removal services to Willamette Valley grass seed growers unable to invest in straw removal and straw handling equipment or are impeded by time or manpower constraints during the period when straw must be removed to avoid spoilage. The applicant's custom baling services include raking the straw into windrows, baling, and stacking fieldside.

The applicant states that he rakes, bales, and stacks the grass straw residue from an average of 3,750 acres annually as the fields are assigned to him by Gerald E. Phelan, Inc. The applicant enclosed a letter from Gerald E. Phelan stating that the fields were open burned prior to the straw removal alternative.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on May 1, 1991. The application was submitted on January 29, 1993 and the application for final certification was found to be complete on February 9, 1993. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing the means to remove the straw from the fields in a timely manner.

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

Based on the prior two years tax returns, the applicant has determined the gross annual income projection for the baling and straw marketing business to be \$538,900 for the five years and \$404,600 projected annual operating expenses for the five years. Cash flow is \$134,300 with an average annual cash flow of \$26,860 for the baling and straw marketing business. The equipment considered for certification is 38% (\$100,000 divided by \$264,867) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$10,206.80 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$100,000) divided by the average annual cash flow (\$10,206) equals a return on

investment factor of 9.797. Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is .50%. Using the annual percent return of .50% and the reference annual percent return of 18.1%, 97% is allocable to pollution control.

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

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

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

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

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 97%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 97%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$100,000, with 97% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3974.

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

jb:bm3974
February 8, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Galen Walser, Owner
Walser Enterprises
1490 SE Geary Circle #2
Albany OR 97321

The applicant owns and operates a custom baling operation in Linn County, Oregon.

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

2. Description of Claimed Facility

The equipment described in this application is a New Holland haystacker, Model 1085, located at 2440 Ferry Street, Bldg. #C, Albany, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$73,000
(Accountant's Certification was provided.)

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

The applicant, by way of contract with Gerald E. Phelan, Inc., operates a custom baling firm that provides straw removal services to Willamette Valley grass seed growers unable to invest in straw removal and straw handling equipment or are impeded by time or manpower constraints during the period when straw must be removed to avoid spoilage. The applicant's custom baling services include raking the straw into windrows, baling, and stacking fieldside.

The applicant states that he rakes, bales, and stacks the grass straw residue from an average of 3,750 acres annually as the fields are assigned to him by Gerald E. Phelan, Inc. The applicant enclosed a letter from Gerald E. Phelan stating that the fields were open burned prior to the straw removal alternative.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 1, 1992. The application was submitted on January 29, 1993; and the application for final certification was found to be complete on February 9, 1993. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing the means to remove the straw from the fields in a timely manner.

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

Based on the prior two years tax returns, the applicant has determined the gross annual income projection for the baling and straw marketing business to be \$538,900 for the five years and \$404,600 projected annual operating expenses for the five years. Cash flow is \$134,300 with an average annual cash flow of \$26,860 for the baling and straw marketing business. The equipment considered for certification is 28% (\$73,000 divided by \$264,867) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$7,520 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$73,000) divided by the average annual cash flow (\$7,520) equals a return on investment factor of 9.707. Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is .50%. Using the annual percent return of .50% and the reference annual percent return of 17%, 97% is allocable to pollution control.

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

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

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

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

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 97%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 97%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$73,000, with 97% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3975.

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

jb:bm3975
February 8, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

S & R Auto Repair
509 E 2nd
The Dalles OR 97508

The applicant owns and operates an automotive repair establishment in The Dalles, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$2,650.05
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on May 31, 1991. The facility was placed into operation on June 1, 1991. The application for final certification was submitted to the Department on February 3, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$5.00/pound. The applicant estimated an annual coolant recovery rate of 25 pounds.

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$2,650,05 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3976.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Portland General Electric Company
Beaver Generating Plant
121 SW Salmon Street, 1WTC-10
Portland, OR 97204

The applicant owns and operates a combined cycle combustion turbine generating facility in Clatskanie, Oregon.

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

2. Description of Facility

The claimed facility monitors and reduces emissions of NO_x from the combustion canisters of two of the six combustion turbines. The facility consists of two ENDA-1220 continuous emission monitoring (CEM) systems and display equipment. The two CEM systems monitor emissions from turbines one and two.

Claimed Facility Cost: \$58,882.35

The applicant indicated on the application the useful life of the facility is fifteen years.

Accountant's Certification was provided.

3. Procedural Requirements

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

The facility met all statutory deadlines in that: Installation of the facility was substantially completed on September 25, 1991 and placed into operation on September 25, 1991. The application for final certification was submitted to the Department on February 12, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 8, 1993.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. The air contaminant Discharge Permit for this source, 05-2520, item 3 and 8 require the permittee to control and monitor NO_x emissions. This is in accordance with the Federal New Source Performance Standards. The specific standards are 40 CFR 60.330 to 60.335, Subpart GG, of the Federal Code. The control of emissions is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The facility provides information which enables the operators of the power generating plant control room to adjust the combustion process and reduce NO_x emissions. The emissions reduction is accomplished by lowering the temperature in the combustion canisters. At lower temperatures the levels of NO_x emitted decrease. The temperature reduction is accomplished through the injection of water into the combustion canister.

The facility samples the exhaust gas generated by the combustion turbine and an infrared analyzer determines the NO_x levels. The control room has both a strip chart and instantaneous digital display. An alarm in the control panel notifies control room operators when the NO_x levels rise above 50 ppm.

b. Eligible Cost Findings

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

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

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

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

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

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

In addition to control of NO_x emissions the facility records data for compliance purposes. A scrubber system can be used to control NO_x emissions. A scrubber system can not record data or aid in process control to prevent the creation of excess levels of NO_x.

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

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

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

There are no other factors to consider in establishing the actual cost of the facility properly allocable to the control of pollution. The principal purpose of the facility is to prevent a substantial quantity of air pollution.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.
- c. The facility complies with Federal Code and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$58,882.35 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3980.

BKF:

March 11, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Mountain Tech
1002 7th Ave.
Oregon City OR 97045-2406

The applicant owns and operates an automotive repair establishment in Oregon City, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$2,700.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on August 4, 1992. The facility was placed into operation on August 4, 1992. The application for final certification was submitted to the Department on February 16, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$6.50/pound. The applicant estimated an annual coolant recovery rate of 16 pounds.

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$2,700 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3985.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Leathers Oil Co.
22300 SE Stark
Gresham, OR 97030

The applicant owns and operates a service station at 10202 NE Sandy Blvd., Portland OR 97220, facility no. 4294.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks. The application also included related air quality Stage I and Stage II vapor recovery equipment.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of three STI-P3 tanks and double wall fiberglass piping, spill containment basins, line leak detectors, monitoring wells, sumps, Stage I and piping for Stage II vapor recovery and automatic shutoff devices.

Claimed facility cost \$ 111,427 *
(Accountant's certification was provided)

Percent allocable to pollution control 100%

* The Department concludes that the eligible facility cost for the project is \$122,581. This represents a difference of \$11,154 from the applicant's claimed cost of \$111,427 due to a determination by the Department that the cost of tanks and piping should be the full price of \$17,634 rather than full cost reduced by the cost of bare steel tanks and piping.

3. Procedural Requirements

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

The facility was substantially completed on July 1, 1992 and placed into operation on July 1, 1992. The application for certification was submitted to the Department on February 17, 1993, within two years of the completion date. The application was determined complete and filed on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of three steel tanks and piping with no corrosion protection and no spill and overflow prevention or leak detection equipment.

To respond to Air Quality regulations under OAR 340-22-400 - 403 and Underground Storage Tank requirements established 12-22-88, the applicant installed:

- 1) For corrosion protection - STI-P3 tanks and double wall fiberglass piping.
- 2) For spill and overflow prevention - Spill containment basins, sumps and automatic shutoff devices.
- 3) For leak detection - Line leak detectors and monitoring wells.

The applicant also installed Stage I and piping for Stage II vapor recovery.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Corrosion Protection:				
STI-P3 tanks & fiberglass piping	\$ 17,634	37	% (1)	\$ 6,525
Spill & Overflow Prevention:				
Spill containment basins	579	100		579
Sumps	3,000	100		3,000
Automatic shutoff devices	805	100		805
Leak Detection:				
Line leak detectors	749	100		749
Monitoring wells	298	100		298
Stage I & piping for Stage II vapor recovery	3,300	100		3,300
Labor & materials	96,216	100		96,216
Total	\$ 122,581	91	%	\$ 111,472

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$17,634 and the bare steel system is \$11,154, the resulting portion of the eligible tank and piping cost allocable to pollution control is 37%.

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 91%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$122,581 with 91% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3987.

Barbara Anderson:ew

(503) 229-5870

March 12, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Top-Flite Automotive
490 Ivy St.
Junction City OR 97448

The applicant owns and operates an automotive repair establishment in Junction City, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$2,595.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on September 4, 1991. The facility was placed into operation on September 12, 1991. The application for final certification was submitted to the Department on February 22, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$6.50/pound. The applicant estimated an annual coolant recovery rate of 30 pounds.

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$2,595.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3988.

BKF

March 15, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Estergard Farms, Inc.
32022 Priceboro Drive
Harrisburg OR 97446

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

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

2. Description of Claimed Facility

The equipment described in this application is located at 32022 Priceboro Drive, Harrisburg, Oregon. The equipment is owned by the applicant.

New Holland Windrower	\$ 40,250
Big Wheel Rake	\$ 10,895
Rears Bagger Loafer	\$ 51,341

Claimed equipment cost: \$102,486
(Accountant's Certification was provided.)

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

The applicant has 1,600 perennial acres and 600 annual acres under grass seed cultivation. Prior to 1990 the applicant registered and open field burned as many acres as the smoke management program and weather permitted. In 1990, the applicant contracted with custom balers to remove the straw from 500 acres; by 1992, 1,000 acres of straw were baled off as an alternative to open field burning. In 1990, the applicant was stack burning straw from 440 acres; stack burning was reduced to 60 acres by 1992. In 1990, the applicant burned straw stubble on 250 acres by propane flaming; by 1992, the applicant no longer utilizes propane burning as a method to sanitize fields.

The applicant states that to replace these forms of open burning he has experimented until finding the most effective way to sanitize fields without any type of burning. The first step in the applicant's alternative to open field burning uses a self-propelled windrower equipped with a fourteen foot knife to cut the straw stubble left after baling. At the same time, the windrower gathers the stubble and lays it in rows. A rake with a 40 foot mobile arm and 17 needle nose wheels rake the stubble into larger rows for additional baling. The last phase in non-thermal sanitation

involves the Rears Bagger Loafer. This flail and loaf machine picks up the remaining stubble, volunteer seeds, and weed seeds, deposits them into a 3,700 cubic foot transport container, and moves the matter to a location for composting.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on August 5, 1991. The application was submitted on February 23, 1993; and the application for final certification was found to be complete on March 3, 1993. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a usable commodity by providing a method to bale the remaining stubble after an initial baling of the field and the ability to remove small stubble, volunteer seeds, and weed seeds for composting.

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

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

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

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

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

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

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

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

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

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$102,486, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3989.

Jim Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
jb:bm3989/March 4, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Mechtronics
2717 Third Street
Tillamook OR 97141

The applicant owns and operates an automotive repair establishment in Tillamook, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$3,185.50
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on July 20, 1992. The facility was placed into operation on July 21, 1992. The application for final certification was submitted to the Department on February 24, 1993; within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$5.50/pound. The applicant estimated an annual coolant recovery rate of 75 pounds.

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

A distinct portion of this automobile air conditioning coolant recovery and recycling equipment makes an insignificant contribution to the principal purpose of the claimed facility. This coolant recovery equipment has the capability to return (recharge) coolant to automobile air conditioning systems. Recharge capabilities in coolant recovery and recycling equipment is not required by state or federal

law. The additional expense incurred in the purchase of equipment with recharge capabilities is not allocable to pollution control. The Department estimates the additional expense incurred is \$700.00.

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 78%.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 78%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$3185.50 with 78% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3990.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Prestige Auto Repair
2490 State St.
Salem OR 97301

The applicant owns and operates an automotive repair establishment in Salem, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$3,105.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on June 9, 1992. The facility was placed into operation on June 9, 1992. The application for final certification was submitted to the Department on March 1, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 12, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to

comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$5.85/pound. The applicant estimated an annual coolant recovery rate of 90 pounds.

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

- o Electricity consumption of machine
- o Additional labor to operate machine

- o Machine maintenance costs
- o Depreciation of machine

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$3,105.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3992.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Double J, Inc., dba The Gold Wrench
655 E Arlington
Gladstone OR 97027

The applicant owns and operates an automotive repair establishment in Oregon City, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$2,695.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on June 10, 1991. The facility was placed into operation on June 10, 1991. The application for final certification was submitted to the Department on March 3, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$2,695.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3994.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

F & Z Rentals Co.
PO Box 325
Gresham, OR 97030

The applicant owns and operates a service station at 16431 SE Foster Rd., Portland OR 97030, facility no. 6923.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks. The application also included related air quality Stage II vapor recovery equipment.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of two fiberglass and three STI-P3 tanks, fiberglass piping, spill containment basins, tank monitor system, line leak detectors, overflow alarm, monitoring wells, sumps, Stage II vapor recovery and automatic shutoff devices.

Claimed facility cost \$ 123,783 *
(Accountant's certification was provided)

Percent allocable to pollution control 100%

* The Department concludes that the eligible facility cost for the project is \$127,826. This represents a difference of \$6,943 from the applicant's claimed cost of \$123,783 due to a determination by the Department that the cost of five corrosion protected tanks is \$15,693 rather than the \$10,200 amount selected in error by the applicant and turbines (\$1,450) are not eligible pursuant to the definition of a pollution control facility in ORS 468.155.

3. Procedural Requirements

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

The facility was substantially completed on December 1, 1992 and placed into operation on December 1, 1992. The application for certification was submitted to the Department on March 3, 1993, within two years of the completion date. The application was determined complete and filed on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases into soil, water or air. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of six bare steel tanks and piping with no corrosion protection and no spill and overflow prevention or leak detection equipment.

To respond to Air Quality regulations under OAR 340-22-400 - 403 and Underground Storage Tank requirements established 12-22-88, the applicant installed:

- 1) For corrosion protection - Two fiberglass and three STI-P3 tanks and fiberglass piping.
- 2) For spill and overflow prevention - Spill containment basins, sumps, overflow alarm and automatic shutoff devices.
- 3) For leak detection - Tank monitor, line leak detectors and monitoring wells.

The applicant also installed Stage II vapor recovery.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Corrosion Protection:				
2 Fiberglass tanks, 3 STI-P3 tanks & fiberglass piping	\$ 18,074	36	% (1)	\$ 6,507
Spill & Overfill Prevention:				
Spill containment basins	1,000	100		1,000
Sumps	2,930	100		2,930
Overfill Alarm	3,900	100		3,900
Automatic shutoff devices	1,523	100		1,523
Leak Detection:				
Tank monitor	8,000	90	(2)	7,200
Line leak detectors	330	100		330
Monitoring wells	365	100		365
Stage II vapor recovery	3,840	100		3,840
Labor & materials	87,864	100		87,864
Total	\$ 127,826	90	%	\$ 115,459

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$18,074 and the bare steel system is \$11,651, the resulting portion of the eligible tank and piping cost allocable to pollution control is 36%.
- (2) The applicant's cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.

- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 90%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$127,826 with 90% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3995.

Barbara Anderson:ew
(503) 229-5870
March 23, 1993

Application No. T-4005

STATE OF OREGON
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Colsper Corp.
dba Astoria Recycling, Inc.
P. O. Box 115
Astoria, OR 97103

The applicant owns and operates a solid waste service and a recyclable materials curbside collection and processing service. Application was made for tax credit for a solid waste pollution control facility.

2. Description of Facility

The facility is a Kilcom Baler, Model KI-5, Serial # 132. This baler is used to bale plastic milk jugs and office waste paper which are collected as part of a local government required on-route collection program.

Claimed facility cost: \$ 5,208.26

Copies of invoices were provided.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

- a. The facility was purchased on September 17, 1991.
- b. The facility was placed into operation on September 27, 1991.
- c. The application for tax credit was submitted to the Department on March 5, 1993, within two years of substantial completion of the facility.
- d. The application was found to be technically complete and was filed on March 11, 1993.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the claimed facility is to reduce a substantial quantity of solid waste through recycling.
- b. Eligible Cost Findings

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

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

This factor is applicable because the material processed by the facility is recovered and sold as a commodity.

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

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

The applicant is collecting plastic milk jugs and office waste paper as a requirement of the City of Astoria Recycling collection contract. The pollution control facility was not considered to be an intergal part of the applicant's business. The average annual cash flow for this activity is negative and this activity is subsidized by garbage collection fees. This cash flow analysis includes a direct subsidy from the City of Astoria. As a result, using Table 1, OAR 340-16-030, the return on investment is 0% and the percent allocable is 100%.

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

The applicant has not identified and is not aware of alternative methods for achieving the same objective. It is the Department's determination that the proposed facility is an acceptable method of achieving the material recovery objective.

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

There are no savings associated with the purchase or use of this facility.

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

There are no other factors to consider in establishing the actual cost of the facility properly allocable to material recovery from solid waste.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of solid waste through recycling.
- c. The facility complies with DEQ statutes and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings, it is recommended that a Pollution Control Facility certificate bearing the cost of \$5,208.26 with 100% allocable to pollution control be issued for the facility claimed in Tax Credit Application No. T-4005.

WRB:wrb
wp51\tax\tc4005RR.STA
(503)229-5934
March 23, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

M & W Automotive
12485 SW Main Street
Tigard OR 97224

The applicant owns and operates an automotive repair establishment in Tigard, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$1,999.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on May 6, 1992. The facility was placed into operation on May 6, 1992. The application for final certification was submitted to the Department on March 9, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to

comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$5.00/pound. The applicant estimated an annual coolant recovery rate of 150 pounds.

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

- o Electricity consumption of machine
- o Additional labor to operate machine

- o Machine maintenance costs
- o Depreciation of machine

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$1,999.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4008.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

James Caputo
1525 SE Ladd
Portland, OR 97214

The applicant owns and operates a service station at 1525 SE Ladd, Portland OR 97214, facility no. 8083.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks. The application also included related air quality Stage I and Stage II vapor recovery equipment.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of four STI-P3 tanks and double wall fiberglass piping, spill containment basins, tank monitor system, turbine leak detectors, overflow alarm, monitoring wells, sumps, Stage I & II vapor recovery and automatic shutoff devices.

Claimed facility cost \$ 111,318
(Accountant's certification was provided)

Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility was substantially completed on December 15, 1992 and placed into operation on December 15, 1992. The application for certification was submitted to the Department on March 10, 1993, within two years of the completion date. The application was determined complete and filed on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases into soil, water or air. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of four bare steel tanks and piping with no corrosion protection and no spill and overfill prevention or leak detection equipment.

To respond to Air Quality regulations under OAR 340-22-400 - 403 and Underground Storage Tank requirements established 12-22-88, the applicant installed:

- 1) For corrosion protection - STI-P3 tanks and double wall fiberglass piping.
- 2) For spill and overfill prevention - Spill containment basins, sumps, overfill alarm and automatic shutoff devices.
- 3) For leak detection - Tank monitor system, turbine leak detectors and monitoring wells.

The applicant also installed Stage I & II vapor recovery.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

The Department concludes that all of the costs claimed by the applicant (\$111,318) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Corrosion Protection:				
STI-P3 tanks & fiberglass piping	\$ 19,769	44	% (1)	\$ 8,698
Spill & Overfill Prevention:				
Spill containment basins	867	100		867
Sumps	1,600	100		1,600
Overfill Alarm	195	100		195
Automatic shutoff devices	242	100		242
Leak Detection:				
Tank monitor	8,412	90	(2)	7,571
Turbine leak detectors	1,011	100		1,011
Monitoring wells	276	100		276
Labor & materials (includes Stage I & II vapor recovery)	78,946	100		78,946
Total	\$ 111,318	89	%	\$ 99,406

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$19,769 and the bare steel system is \$11,038, the resulting portion of the eligible tank and piping cost allocable to pollution control is 44%.
- (2) The applicant's cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 89%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$111,318 with 89% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4009.

Barbara Anderson:ew
(503) 229-5870
March 11, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

L. P. Busch, Inc.
2624 Pacific Ave.
Forest Grove, OR 97116

The applicant owns and operates a service station at 9138 SE Foster Rd., Portland OR 97266, facility no. 1919.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks. The application also included related air quality Stage I and Stage II vapor recovery equipment.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of three single wall STI-P3 tanks and double wall enviroflex piping, spill containment basins, tank monitor, overflow alarm, monitoring wells, sumps, automatic shutoff devices, Stage I and piping for Stage II vapor recovery.

Claimed facility cost \$ 109,041
(Accountant's certification was provided)

Percent allocable to pollution control 100%

3. Procedural Requirements

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

The facility was substantially completed on June 1, 1991 and placed into operation on June 1, 1991. The application for certification was submitted to the Department on March 17, 1993, within two years of the completion date. The application was determined complete and filed on March 19, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases into soil, water or air. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of three steel tanks and piping with no corrosion protection and no spill and overflow prevention or leak detection equipment.

To respond to Air Quality regulations under OAR 340-22-400 - 403 and Underground Storage Tank requirements established 12-22-88, the applicant installed:

- 1) For corrosion protection - STI-P3 tanks & enviroflex double wall piping.
- 2) For spill and overflow prevention - Spill containment basins, overflow alarm, sumps & automatic shutoff devices.
- 3) For leak detection - Tank monitor & monitoring wells

The applicant also installed Stage I and piping for Stage II vapor recovery.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

The Department concludes that all of the costs claimed by the applicant (\$109,041) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Corrosion Protection:				
STI-P3 tanks & enviroflex piping	\$ 16,918	42	% (1)	\$ 7,106
Spill & Overfill Prevention:				
Spill containment basins	603	100		603
Overfill alarm	195	100		195
Sumps	1,980	100		1,980
Automatic shutoff devices	986	100		986
Leak Detection:				
Tank monitor	6,506	90	% (2)	5,855
Monitoring wells	284	100		284
Labor & materials (includes Stage I & piping for Stage II vapor recovery)	81,569	100		81,569
Total	\$ 109,041	90	%	\$ 98,578

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$16,918 and the bare steel system is \$9,882, the resulting portion of the eligible tank and piping cost allocable to pollution control is 42%.
- (2) The applicant's cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 90%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$109,041 with 90% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4014.

Barbara Anderson:ew
(503) 229-5870
March 19, 1993

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

James River II, Inc.
Wauna Mill
Route 2 P.O. Box 2185
Clatskanie, OR 97016

The applicant owns and operates an integrated pulp and paper manufacturing facility in Clatskanie, Oregon.

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

2. Description of Facility

The facility consists of a compacted clay liner, a leachate collection system and groundwater monitoring wells.

Claimed Facility Cost: \$943,253
Less: Nonallowable Costs: (\$ 12,718)
Eligible Facility Cost: \$930,535

(The tax credit application showed the claimed facility cost of \$1,222,324, certified by the Accountant. Based on a letter from James River dated November 8, 1991, the cost of the claimed facility was adjusted to \$943,253 due to ineligible road and lighting costs. A cost allocation review of this application by an independent contractor has identified \$12,718 in nonallowable costs claimed by the applicant. The eligible facility cost has been reduced for these nonallowable costs).

3. Procedural Requirements

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

The facility met the statutory deadline in that construction of the facility was substantially completed on November 1, 1988. The application for tax credit certification was received July 3, 1990. Long delays in obtaining requested supporting information for the tax credit from the applicant were caused in part by changes in Department staff to process the application and also due to the reorganization within the company.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department, to prevent groundwater pollution. This prevention is accomplished by the proper disposal of solid waste as defined in ORS 466.005.

DEQ issued a Solid Waste Permit No. 1148 to the James River Wauna Mill landfill. The landfill is for the disposal of primary sludge, woodmill and log deck debris, fiber rejects and general mill trash. The permit required specific landfill design features for leachate control, collection and disposal.

James River is in compliance with the conditions of its solid waste permit.

- b. Eligible Cost Findings

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

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

The facility does not recover or convert waste products into a salable or usable commodity. The collected leachate is discharged to a wastewater treatment facility at the mill.

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

There is no return on investment for this facility because there is no income or cost savings derived from the liner.

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

Other alternatives considered were flash dry/incineration, fluid bed incineration, multi-hearth incineration and composting. All the incineration alternatives required landfilling of residuals which would have resulted in higher operating and maintenance costs. The compost market in Clatsop County was questionable.

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

There are no savings from the facility. The cost of maintaining and operating the facility is \$340,560 annually.

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

- (a) The Environmental Quality Commission has directed that tax credit applications at or above \$250,000 go through an additional accounting review to determine if costs were properly allocated. This review was performed under contract by the firm of KPMG Peat Marwick. The review identified the following issues related to the claimed facility cost:

- i) There was an \$841 discrepancy between the claimed facility cost and the detailed cost summary furnished to Peat Marwick and there was no supporting documentation for \$11,877 in costs claimed in the application.

The Department concludes that insupportable costs are not eligible for tax credit certification and recommends that the claimed facility cost be reduced for the total of these two items (\$12,718).

- ii) The claimed facility cost includes \$234,000 related to site clearing and grading.

In previous commercial landfill tax credit applications, the Department and Commission have concluded that such costs are not eligible for tax credit certification. For these applicants,

site preparation costs are a necessary business activity and are unrelated to the principal or sole purpose of pollution control. James River is not in the business of providing solid waste disposal services. Site clearing and grading were required in order to install the landfill liner and to provide proper slopes to allow the leachate collection system to function. The Department concludes that, in this instance, these costs meet the principal purpose criterion and are eligible for tax credit certification. The Attorney General's Office concurs with the Department's determination.

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to prevent groundwater contamination and accomplishes this purpose by proper disposal of solid waste as defined in ORS 468.005.
- c. The facility complies with DEQ statutes and rules and permit conditions.
- d. An independent accounting firm under contract with the Department has concluded that no further procedures be performed on T-2061, other than the adjustment for nonallowable costs.
- e. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$930,253 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2061.

RCDulay:crw
IW\WC9602
(503) 229-5876
3-12-92

KPMG Peat Marwick

Certified Public Accountants

Suite 2000
1211 South West Fifth Avenue
Portland, OR 97204

Telephone 503 221 6500

Telefax 503 223 0162

January 15, 1993

Environmental Quality Commission
811 S. W. Sixth Avenue
Portland, Oregon 97204-1390

Gentlemen:

At your request, we have performed certain agreed-upon procedures, as discussed below, on certain accounting records of James River Corporation (the Company) and the Company's Pollution Control Tax Credit Application #2061 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ) for the Wauna Mill (the Landfill). Our procedures and findings are as follows:

Procedures:

1. We read the Application, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits - Sections 468.150 through 468.190 (Statutes), and the Oregon Administrative Rules on Pollution Control Tax Credits - Sections 340-16-005 through 340-16-050 (OAR's).
2. We discussed the Application, Statutes and OAR's with certain DEQ personnel, including Noam Stampfer, Roberta Young, Renato Dulay and John Fink.
3. We also discussed the Application with Dan Gallagher, Eric Emmett and Carol Selby of James River Corporation.

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4. We obtained from representatives of the Company detailed accounting records (e.g., detailed cost summary, vendor invoices, contractor invoices, etc.) supporting the following costs that were included in the Application:

Consulting fees	\$ 165,406
Site work	778,026
Monitoring wells	<u>32,321</u>
	975,753
Less:	
Haul road	(28,000)
work pad	<u>(4,500)</u>
Total	\$ <u>943,253</u>

We compared the total cost per the Application to the cost per the detailed cost summary provided by the Company.

We compared the costs per the detailed cost summary to supporting documentation (vendor invoices, contractor invoices) provided by the Company.

5. We obtained letters from Eric W. Emmett, P.E., Senior Project Engineer on the Landfill, dated September 2 and November 10, 1992. The letters explained the \$778,026 of costs included in the application that were called "site work".
6. We discussed with Dan Gallagher and Eric Emmett of the Company the method for allocating internal costs of labor and materials to the project.

Findings:

1. The accountant's report attached to the Company's Application was signed by an internal auditor.

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2. There is an \$841 discrepancy between the amount on the Application and the total amount of costs listed on the summary of costs for the project received from the Company in procedure 4. The detail is presented below:

Revised Application	\$ 943,253
Costs per cost summary provided by James River Corporation	<u>942,412</u>
Difference	\$ <u>841</u>

3. Of the total cost of the site work (\$778,026) included in the Application, the cost of clearing and grading is \$234,000. In an Attorney General's office correspondence dated February 11, 1992, they state:

"...that facilities necessary for the operation of the business per se would be treated differently from those that are necessary for the purpose of pollution control. In the case of a landfill, it would seem that the land and excavation would be necessary for the operation of the business per se, while liners and leachate collection and treatment systems ordinarily would not be required in the absence of environmental concerns."

In a letter received from Eric Emmett, Senior Project Engineer for the Landfill, he stated:

"...clearing and grading was required so that the bottom liner (a key pollution control component) could be placed and compacted to the required permeability limits. The side walls and bottom of the site were cut and filled as necessary to provide appropriate slopes so that the leachate collection system would drain properly...(though the walls and bottom of the site were somewhat irregular and covered with grasses, low brushes, and scattered tree stumps, it could have been used as a landfill as it was (i.e., without capital expenditures))."

James River Corporation is using the Landfill for internal waste disposal, not for revenue producing activity. A final decision must be made by the Environmental Quality Commission with respect to this issue.

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4. When we read the detailed cost summary and the supporting invoices obtained in procedure 4 for the expenses claimed in the Application, it was determined that there was no supporting documentation for \$11,877 of earned expenses. These amounts were identified on the cost summary as follows:

Hart Crowser	\$ 3,208
Hart Crowser	1,986
Hart Crowser	162
Other	4,900
Other	4,011
Other	(2,471)
Other	76
Pittsburg Labs	<u>3</u>
	\$ <u>11,877</u>

5. \$18,464 of the total costs contained in the detailed cost summary obtained in procedure 4 were created in-house (primarily mill engineering and mill labor). Based on discussions with Mr. Gallagher, the in-house costs were charged to this project based on standard procedures. These procedures included coding the project number on an employee's time card. These hours are charged at a predetermined standard rate, which includes payroll, payroll benefits and other employee costs.

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

It is understood that this report is solely for the use of the State of Oregon Environmental Quality Commission, the Department of Environmental Quality and the Company and should not be used or distributed for any purpose to anyone who is not a party to the Application.

KPMG Peat Marwick

State of Oregon
 Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Treasure Chest Advertising Company, Inc.
 Portland Division
 511 W. Citrus Edge
 Glendora, CA 91740

The applicant owns and operates a commercial web offset printing plant in Portland, Oregon.

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

2. Description of Facility

The claimed facility controls the atmospheric emissions of Volatile Organic Compounds (VOC) produced when printing inks are force dried in dryers. The facility consists of a Katec 2013 natural gas fired thermal afterburner and support equipment.

Claimed facility cost:

	<u>Equipment Cost to Lessor</u>	<u>Equipment Cost to Applicant</u>
Katec 2013 afterburner	\$393,960	
Sheet metal fabrication		\$128,211
Miscellaneous fabrication		22,407
Electrical installation		18,500
Electrical sub feed & misc.		9,104
	<hr/>	<hr/>
Sub-total, Costs	393,960	178,222
Grand Total, Costs		\$572,182

The claimed facility replaces a previously certified pollution control facility. On February 24, 1984, Pollution Control Facility Certificate No. 1735 was issued to Treasure Chest Advertising Company, Inc. for \$122,783.00. The facility was a TEC Systems HRXX 4000 thermal afterburner. In accordance with OAR 340-16-025(g), the applicant is eligible for the difference between the like-for-like replacement costs of the original facility and the new facility. The applicant submitted it would cost \$170,286.00 to replace the original facility.

Claimed Facility Costs	\$572,182.00
Like-for-like deduction	-\$170,358.00
Adjusted Facility Costs	\$401,824.00

Accountant's certification was provided.

The applicant provided a copy of the written agreement between the lessor and lessee designating the applicant to receive the tax credit.

The applicant indicated the useful life of the facility is ten years.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was approved before application for final certification was made.
- b. The Department received notification on November 13, 1987 from the applicant of intent to replace the original facility.
- c. On August 10, 1990 the Environmental Quality Commission approved a one year extension for the applicant to file an application for pollution control facility tax credit certification.
- d. Construction of the facility was substantially completed on March 13, 1988. The facility was placed into operation on March 24, 1988. The application for

final certification was submitted to the Department on June 28, 1991, and the application for final certification was found to be complete on October 11, 1991.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. This is in accordance with OAR Chapter 340, Division 22, section 170(7b). The Air Contaminant Discharge Permit for this source, 26-3110, items 6 and 7 requires the permittee to control the emissions of volatile organic compounds. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

In 1988, the applicant installed a new web offset printing line. The new line was an addition to an existing line. The original print line was controlled by a TEC Systems HRXX 4000 thermal afterburner which was previously certified as a pollution control facility. The Katec 2013 thermal afterburner controls the emissions from both the old and the new lines and replaces the TEC Systems afterburner.

The VOC are generated when solvents mixed with ink are dried in dryers. The efficiency of capturing the solvent fumes and ducting them to the afterburner is 100%. After entering the afterburner, the destruction efficiency of the captured fumes is 97.5%. No heat recovery from the afterburner is returned to the plant.

b. Eligible Cost Findings

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

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

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

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

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

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

Thermal afterburners are considered to be highly efficient for the control of VOC generated by printing operations when operated properly.

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

There are no savings from the facility.

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

a) This facility replaces a previously certified pollution control facility. The accounting review performed under contract with the Department estimated the like-for-like replacement costs of the previous facility to be \$182,328.00. The applicant estimated the replacement cost to be \$170,358.00. The Department chose the applicant's estimate because the assumptions it was based on were more realistic. The effect of this on the allocation of costs is discussed in section two.

b) The Environmental Quality Commission has directed that tax credit applications at or above \$250,000.00 go through an additional Departmental accounting review, to determine if costs were properly allocated. This review was performed under contract with the Department by the accounting firm of KPMG Peat Marwick (see attached report).

Other than the adjustment for like-for-like replacement costs, the cost allocation review of this application has identified no issues to be resolved and confirms the cost allocation as submitted in the application.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.
- c. The facility complies with DEQ statutes and permit conditions.
- d. An independent accounting firm under contract with the Department has concluded that no further review procedures be performed on TC-2382 (see attachment).
- e. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$401,824.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2382.

Ray Potts:aq
Brian Fields:aq
LEGAL\AH19047
March 29, 1993



Certified Public Accountants

Suite 2000
1211 South West Fifth Avenue
Portland, OR 97204

Telephone 503 221 6500

Telefax 503 223 0162

April 2, 1993

Environmental Quality Commission
811 S. W. Sixth Avenue
Portland, Oregon 97204-1390

Commissioners:

At your request, we have performed certain agreed-upon procedures, as discussed below, on certain accounting records of Treasure Chest Advertising Company, Inc. (the Company) and the Company's Pollution Control Tax Credit Application #2382 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ) for a thermal afterburner used to control atmospheric omission. Our procedures and findings are as follows:

Procedures and Findings

1. a. We read the Oregon Revised Statutes on Pollution Control Facilities Tax Credits - Section 468.150 through 468.190 (Statutes), and the Oregon Administrative Rules on Pollution Control Tax Credits - Sections 340-16-005 through 340-16-050 (OAR's).
- b. We read the Application #2382 and discussed the application with certain DEQ personnel, including Brian Fields, application processor, and John Fink, project coordinator.



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Peat Marwick

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2. We obtained the independent auditors report, dated June 24, 1991, from Shelton, Kerr and Townsend, in which they stated they have examined evidence supporting the following claimed costs of the facility:

Fair market value of leased KATEC 2013 afterburner	\$ 393,960
Fabrication and ducting	128,211
Freight	9,953
Permits	883
Cranes	2,145
Allocated cost of electrical and other installation	<u>37,030</u>
	\$ <u>572,182</u>

3. We traced the purchase price of the KATEC 2013 afterburner of \$393,960 to the equipment lease.
4. We obtained copies of invoices for \$128,211 from Troy Sheet Metal Works and read the description on the invoices.
5. We discussed with Dale Gilbert, tax manager for Treasure Chest, the method of allocation used to obtain the installation costs allocated to the claimed facility cost. He explained that the installation of the afterburner was part of a much large expansion project and that certain costs relating to the entire project had to be allocated.
6. We read correspondence from the Company explaining the allocation was based on estimates made by Norm Rudder, Treasure Chest's manager of construction projects.

Peat Marwick

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7. a. The claimed facility replaced a previously certified pollution control facility. We obtained the following information on the earlier facility from Application #1662, Certificate #1735, issued on February 24, 1984:

<u>Item</u>	<u>Cost</u>
A. TEC Systems Model HRXX, Size 4000	\$ 80,180
B. Dryer Exhaust Fan Upgrade for Item A	1,000
C. Freight on Items A and B	4,712
D. Incinerator Installation Site Pad	1,891
E. Dryer to Incinerator Exhaust Duct and Incinerator Exhaust Stack	<u>35,000</u>
Total claimed facility installed cost	\$ <u>122,783</u>

OAR 340-16-025 requires that the current claimed facility cost be reduced by the like for like replacement cost of the original facility. In the current application, the claimed facility cost was reduced by the like for like replacement cost of the original facility as follows:

Claimed facility costs	\$ 572,182
Like for like deduction	<u>(119,985)</u>
Adjusted facility costs	\$ <u>452,197</u>

- b. We obtained a copy of a letter from TEC Systems dated June 15, 1992, written to Treasure Chest Advertising, which quoted the 1988 list price of TEC Systems HRXX 4000 afterburner as \$119,985.

This quote did not include replacement costs for supplemental items included in the original credit application, specifically items B, C, D and E listed in 7.a. above.

~~AMC~~ Peat Marwick

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- c. We calculated a revised like for like replacement cost for the original facility based on the following formula:

Original cost of TEC HRXX 4000		Original cost of total original facility
+		+
Replacement cost of TEC HRXX 4000	=	Like for like replacement cost of original facility
	OR	
\$80,180		\$122,783
+		+
\$119,985	=	Like for like replacement cost of original facility
	OR	
Like for like replacement cost of original facility	=	<u>\$ 182,328</u>

~~XXXX~~ Peat Marwick

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- d. We discussed the above estimated like for like replacement cost with Dale Gilbert, tax manager of Treasure Chest. He recommended the following calculation:

<u>Item</u>	<u>Original cost</u>	<u>Replacement cost</u>	<u>Method of estimating replacement cost</u>
A. TEC Systems Model HRXX. Size 4000	\$ 80,180	119,985	As quoted
B. Dryer Exhaust Fan Upgrade for Item A	1,000	1,000	Assumed no change
C. Freight on Items A and B	4,712	4,712	Assumed no change
D. Incinerator Installation Site Pad	1,891	1,891	Assumed no change
E. Dryer to Incinerator Exhaust Duct and Incinerator Exhaust Stack	<u>35,000</u>	<u>42,770 (1)</u>	
Total claimed facility installed cost	\$ <u>122,783</u>	<u>170,358</u>	

- (1) Installation costs in current application for afterburner ducting serving three presses was \$128,211. Original application was for one press. Assume replacement cost would be one-third of \$128,211, or \$42,770.

The two approaches resulted in estimates of like for like replacement costs of \$182,328 and \$170,358, as compared to the application amount of \$119,985.

~~KPMG~~ Peat Marwick

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

It is understood that this report is solely for the use of the State of Oregon Environmental Quality Commission, the Department of Environmental Quality and the Company and should not be used or distributed for any purpose to anyone who is not a party to the Application.

KPMG Peat Marwick

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Boise Cascade Corporation
Paper Group
One Jefferson Square
Boise, ID 83728

The applicant owns and operates a tissue and business grade paper manufacturing plant in St. Helens, Oregon.

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

2. Description of Facility

The claimed facility consists of a contaminated runoff and groundwater drainage collection system and a 24" clay cap for a landfill.

Claimed Facility Cost: \$657,244.31
Accountant's Certification was provided.

The facility cost was adjusted downward from the original claimed amount \$662,588.30 due to ineligible costs of ramps and associated engineering fees as discussed and with concurrence from the applicant.

3. Procedural Requirements

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

The facility met statutory deadlines in that construction of the facility was substantially completed on November 15, 1990 and the application for certification was submitted May 6, 1991. Additional information requested was submitted on June 8, 1992. There were delays in the submission of additional information because of Department staff changes and work load.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department, to prevent groundwater pollution. This

prevention is accomplished by the proper disposal of solid waste as defined in ORS 459.005.

DEQ issued a Solid Waste Permit No. 1152 to Boise Cascade to operate the South 80 landfill at plant site. The landfill was only allowed to accept industrial solid waste from the pulp and paper mill. The claimed facility was considered to be an interim only and its use was terminated on May 31, 1988. Closure and post-closure maintenance requirements were specified by the Department in the permit. The closure and post-closure maintenance plan was approved by the Department on March 20, 1987 and August 2, 1990. The cover cap will prevent precipitation from infiltrating the solid waste and percolate through the bottom of the landfill. Any leachate generated will be collected by the constructed drainage system which discharges into the mill wastewater treatment system.

Boise Cascade has been in compliance with the conditions and limitations of its Solid Waste Permit No.1152.

b. Eligible Cost Findings

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

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

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

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

There is no return on investment for this facility.

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

There are no known alternatives.

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

There are no savings from the facility.

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

a) The claimed facility cost included costs for a broken windshield and the construction for ramps. In a subsequent discussions with the applicant and by a letter from Boise Cascade dated June 8, 1992, it was determined that the two items are not directly associated with the closure of the landfill. In addition, there is an engineering cost associated to the ramps and this portion should be deducted from the total claimed facility cost.

The adjusted facility cost is determined as follows:

Ramps	=	\$4,391.16
Broken windshield	=	<u>280.53</u>
Total		\$4,671.69

Construction costs (excluding engineering cost)

L & H Grading	=	\$512,766.41
Gundle Lining System	=	46,993.05
Westinghouse Electric	=	120.69
Fiberglass Maintenance	=	14,264.63
Advance Drainage System	=	<u>225.00</u>
Total		\$574,369.78

Engineering cost associated to the ramps

Total engineering cost	=	\$87,937.99
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Engineering cost for ramps

<u>4,391.16</u>	x 87,937.99	=	\$672.30
574,369.78			

Total ineligible cost

Ramps	=	\$4,391.16
Engineering for ramps	=	672.30
Broken windshield	=	<u>280.53</u>

Total	\$5,343.99
Claimed facility cost	\$662,588.30
Adjusted facility cost	
662,588.30 - 5,343.99	= \$657,244.31

- b) The Environmental Quality Commission has directed that tax credit applications at or above \$250,000 go through an additional accounting review to determine if costs were properly allocated. This review was performed under contract by the accounting firm of Coopers & Lybrand and supports the adjusted claimed facility costs as noted above.
- c) There are no other factors to consider in establishing the actual cost of the facility properly allocable to prevention, control or reduction of pollution.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to prevent groundwater pollution and accomplishes this purpose by the proper disposal of solid waste as defined in ORS 459.005.
- c. The facility complies with DEQ statutes and rules and permit conditions.
- d. An independent accounting firm under contract with the Department has concluded that no further procedures be performed on TC-3475 (see attached review report).
- e. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$657,244.31 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3475.

RCDulay:
(DOC. NO.)
(503) 229-5374

**Environmental Quality Commission
811 S.W. Sixth Ave.
Portland, OR 97204**

At your request, we have performed certain agreed upon procedures with respect to Boise Cascade's (the Company), Application for the Pollution Control Tax Credit Application TC No. 3475 regarding its White Paper Division facility in St. Helens, Oregon. The adjusted aggregate claim was for \$657,244. Our procedures are as follows:

1. We read the Application, Oregon Revised Statutes on Pollution Control, sections 468.150 - 468.190 (the statutes), the Oregon Administrative Rules on Pollution Control Tax Credits, 340-16-005 through 340-16-050 and some recent Justice Department rulings for guidance on pollution tax credits.
2. We read the Application and Tax Relief Application Review Report and discussed them with John Fink of the DEQ.
3. We discussed the Application and Statutes with Richard Garber, Process/Environmental Engineer, and Al Mick, Environmental Engineering Manager, of Boise Cascade.
4. We inquired of Mr. Garber as to the purpose of the applicable pollution control facility and whether the facility is 100% allocable to pollution control.
5. We also inquired as to whether any income is or will be derived from the facility.
6. We inquired from Mr. Garber as to whether any indirect costs or internally generated costs were included in the total costs claimed on the Application. We were informed that all costs were from outside vendors which were not related parties of Boise Cascade.
7. We observed the pollution control facility through an on-site visit.
8. We reviewed invoices and other evidence supporting the amount of \$657,244 claimed for the facility.

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

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

Coopers & Lybrand

Coopers & Lybrand
February 27, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Container Recovery, Inc.
3900 NW Yeon Avenue
Portland, OR 97210

The applicant is a cooperative which owns and operates a beverage container collection and recycling facility in Portland, Oregon.

Application was made for tax credit for a solid waste recycling facility leased by the applicant.

2. Description of Facility

The claimed facility is 26 tractor trucks used solely for collection of recyclable beverage containers generated at retail outlets as a result of the Oregon Bottle Bill. These trucks are being purchased through capital leases. Lease agreements and a letter from the lessor authorizing the applicant to take allowable tax credits were provided to the Department.

Claimed Facility Cost: \$858,046.00

An Accountant's Certification was provided. An independent cost allocation review was also carried out.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

The facility was substantially completed on January 1, 1990 and placed into operation January 1, 1990. The application for certification was submitted to the Department on December 31, 1991, within two years of the completion date. The application was determined complete and filed on August 14, 1992.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to reduce a substantial quantity of solid waste through recycling. This reduction is accomplished by the use of a material recovery process.

These vehicles are used to collect glass and plastic bottles and steel and aluminum cans returned to retailers under provisions of the Oregon Bottle Bill. Prior to this collection service, beverage wholesalers picked up empty beverage containers and delivered them to recycling processors. Over 54 million pounds of beverage containers were recycled in 1990, and over 60 million pounds of beverage containers were recycled in 1991.

b. Eligible Cost Findings

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

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

This factor is applicable because the entire purpose of the facility is to transport recyclable materials collected from beverage retailers and distributors. Material is collected and transported to Container Recovery's processing center where it is processed and then shipped to end users.

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

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

The applicant states that for the first 5 years of operation, there will be a small positive cash flow. Annual income from the collection charges and sales of the recycled materials are slightly higher than operating and maintenance expenses. Container Recovery, Inc. charges retailers for collection at a level just adequate to cover costs. When the cost of leasing the 26 tractor trucks claimed as the "facility" are subtracted from operation expenses, there is a substantial, positive average annual cash flow.

Using Table 1 of OAR 340-60-030, for a life of 5 years and a return on investment factor of 3.28, the percent return on investment is 15.9%. As a result, the percent allocable would be 12%.

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

The applicant states no other alternative method was considered. Use of tractor trailer trucks was the only available method of achieving this objective.

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

There are no savings from the facility. Collection service is an essential part of the service provided by the cooperative.

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

a) The Environmental Quality Commission has directed that tax credit applications at or above \$250,000 go through an additional accounting review to determine if costs were properly allocated. This review was performed under contract by the accounting firm of KPMG Peat Marwick. The cost allocation review of this application has identified no issues to be resolved.

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

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 12%.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of solid waste through recycling.

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

- c. The facility complies with DEQ statutes and rules.
- d. An independent accounting firm under contract with the Department has concluded that no further procedures be performed on T-3696.
- e. The portion of the facility cost that is properly allocable to pollution control is 12%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$858,046.00 with 12% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3696.

WRB:b

U:\RECY\RPT\YB11849T

(503) 229-5934

3/30/93



Certified Public Accountants

Suite 2000
1211 South West Fifth Avenue
Portland, OR 97204

Telephone 503 221 0500

telex 503 223 0162

March 31, 1993

Environmental Quality Commission
811 S. W. Sixth Avenue
Portland, Oregon 97204-1390**Commissioners:**

At your request, we have performed certain agreed-upon procedures, as discussed below, on certain accounting records of Container Recovery, Inc. (the Company) and the Company's Pollution Control Tax Credit Application #3696 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ) for the portion of the cost allocable to pollution control of tractors used for collection of empty beverage containers. Our procedures and findings are as follows:

Procedures and Findings

1. a. We read the Oregon Revised Statutes on Pollution Control Facilities Tax Credits - Section 468.150 through 468.190 (Statutes), and the Oregon Administrative Rules on Pollution Control Tax Credits - Sections 340-16-005 through 340-16-050 (OAR's).
- b. We read the Application #3696 and subsequent correspondence dated February 25, 1992, March 30, 1992 and July 2, 1992 from the Company. The correspondence explained or revised portions of the Application.
- c. We discussed the Application, Statutes and OAR's with certain DEQ personnel, including John Fink, project coordinator.
- d. The Applicant, in a July 2, 1992 correspondence, had requested property tax exemption in lieu of income tax credits. Since the claimed facilities (tractors) are not subject to ad valorem tax, the property tax exemption would not be available to the Company. The tax credit, however, is available to the Company.



Environmental Quality Commission
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2. a. We obtained the schedule of leased tractors that comprises the cost of the claimed facilities. Lease numbers, lease inception dates, fair market values at inception date, and lease payments for 1990 and 1991 for 26 tractors were included in the schedule.
- b. We added the fair market values at lease inception date of the 26 tractors on the schedule and agreed this amount to the \$858,046 of claimed facilities costs included in the revised application.
- c. We obtained the Report of Independent Auditors,, dated June 18, 1992, from Coopers and Lybrand, in which they stated they agreed the equipment numbers, lease inception dates, and fair market values of the leased equipment on the schedule to the lease documents.
3. a. We obtained Schedule V of the Company's Application which is used to determine the portion of actual costs allocable to the pollution credit. We agreed the gross annual income and annual operating expenses on Schedule V to the Company's schedule of operating expenses for 1990 through 1994.
- b. From the numbers on Schedule V, we recomputed the average annual cash flow for five year and agreed this to the numbers computed by the Company.
- c. We recomputed the return on investment calculation and agreed this to the amount computed by the Company.
- d. We obtained the reference annual percent return on investment from Table 1 in OAR 340-16-030. We recomputed the actual cost properly allocable to pollution control (12%) and agreed this to the Application.
- e. The claimed cost allocable to pollution control credit was computed as follows:

Claimed facility cost	\$ 858,046
Percent allocable to pollution control	<u>12%</u>
Cost eligible for pollution control credit	\$ <u>102,965</u>

Environmental Quality Commission

March 31, 1993

Page 3

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

It is understood that this report is solely for the use of the State of Oregon Environmental Quality Commission, the Department of Environmental Quality and the Company and should not be used or distributed for any purpose to anyone who is not a party to the Application.

K.P.M.A. Peat Marwick

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Intel Corporation
Oregon Site
5200 N.E. Elam Young Parkway
MS AL4-19
Hillsboro, Oregon 97214

The applicant owns and operates a manufacturing and testing facility for microcomputer chips in Aloha, Oregon.

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

2. Description of Facility

The applicant uses phosphoric acid in the manufacturing process. The applicant has installed a facility to reclaim 100% of the phosphoric acid for reuse by a local fertilizer manufacturer.

The claimed facility consists of two storage tanks for waste phosphoric acid, plus associated piping, valves and controls. Waste phosphoric acid is collected in the tanks and periodically pumped into a tank truck for shipment off site. The claimed facility also includes spill containment to prevent releases to the environment in the event of a tank or pipe failure.

If the phosphoric acid were not reclaimed, it would be disposed of by neutralization and discharge to the Unified Sewerage Agency municipal sewer system which ultimately discharges to the Tualatin River. The Tualatin River is Water Quality Limited, and a Total Maximum Daily Load (TMDL) has been established for phosphate. The claimed facility, by eliminating the discharge of phosphoric acid, helps reduce the amount of phosphate discharged to the Tualatin River.

The applicant claimed a facility cost of \$433,500.00; however, the Department identified two itemized costs that are not eligible, these being CPA Review at \$1,380.00, and capitalized interest cost at \$2,110.00. The claimed facility cost has been adjusted by subtracting these

ineligible costs. A cost allocation review of this application by an independent contractor has identified an additional \$7,190 in nonallowable costs claimed by the applicant.

Claimed Facility Cost: \$422,820.00 (adjusted)
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadlines in that construction of the facility was substantially completed on July 14, 1991, and the application for certification was found to be complete on November 25, 1992, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to prevent a substantial quantity of water pollution. This prevention is accomplished by the disposal of an industrial waste through reuse of the waste material.

b. Eligible Cost Findings

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

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

All of the waste product is a salable or usable commodity consisting of phosphoric acid. The applicant has estimated that for the first five years the gross annual income from the sale of the phosphoric acid will be \$24,162.00; the annual operating expenses will be \$18,110.00; and the annual cash flow will be \$6,052.00. This cash flow has been considered in the facility return on investment calculation.

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

The return on investment factor for the facility, based on the eligible cost of the facility and the annual cash flow, is:

$$\$422,820/6,052 = 70$$

From Table 1, OAR 340-16-030, for a useful life of ten years, the annual percent return on investment (ROI) is 0%. The reference annual percent return on investment (RROI) is 18.1%. The portion of actual costs properly allocable to pollution control is

$$(18.1 - 0)/18.1 \times 100 = 100\%$$

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

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

There are no known alternatives.

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

There are no savings from the facility. The cost of maintaining and operating the facility is \$18,110.00 annually. Sale of usable product from the facility has already been considered in item 4(b)(1), above.

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

- a) The applicant previously applied for and received a pollution control tax credit for its Acid Waste Neutralization (AWN) system. Prior to construction of the present claimed facility, phosphoric acid was disposed of through the AWN system, so some portion of that system might reasonably be considered as a treatment system for phosphoric acid. Intel's records for October, November and December, 1992, were reviewed to see what

portion of the AWN system might be used for phosphoric acid disposal. Over those three months, the flow to the AWN system averaged 7,793,740 gallons per month. Over the same time period, the flow to the claimed facility averaged 8,004 gallons per month, with the highest flow during that time being approximately 10,000 gallons per month. The flow of phosphoric acid to the claimed facility represents approximately $10,000/7,793,740 \times 100 = 0.13$ percent of the current flow to the AWN system.

The Department concludes that treatment of waste phosphoric acid represented an insignificant part of the AWN system, and that no adjustment need be made to account for the previous tax credit.

- b) The Environmental Quality Commission has directed that tax credit applications at or above \$250,000 go through an additional departmental accounting review to determine if costs were properly allocated. This review was performed under contract with the Department by the accounting firm of Symonds, Evans & Larson.

Other than the adjustment for nonallowable costs, the cost allocation review of this application has identified no issues to be resolved.

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

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

5. Summation

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

- b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution and accomplishes this purpose through disposal of an industrial waste by reuse of the waste material.
- c. The facility complies with permit conditions.
- d. An independent accounting firm under contract with the Department has concluded that no further review procedures be performed on T-3903 (see attached review report) other than the adjustment for nonallowable costs.
- e. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$422,820 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3903.

George F. Davis:GFD
T-3903
(503)229-6385 (x242)
February 10, 1993

SYMONDS, EVANS & LARSON
CERTIFIED PUBLIC ACCOUNTANTS

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

At your request, we have performed certain agreed-upon procedures with respect to Intel Corporation's (the Company's) Pollution Control Tax Credit Application No. 3903 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ) for the Water Pollution Control Facility in Aloha, Oregon (the Facility). The Application has a claimed Facility cost of \$430,010 (as adjusted). Our procedures, findings and conclusion are as follows:

Procedures:

1. We read the Application, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits – Sections 468.150 through 468.190 (the Statutes), and the Oregon Administrative Rules on Pollution Control Tax Credits – Sections 340-16-005 through 340-16-050 (OAR's).
2. We reviewed certain documents which support the Application.
3. We discussed the Application, the Statutes and OAR's with certain DEQ personnel, including John Fink and George Davis.
4. We discussed certain components of the Application with John Arand, Jim Brandt, Larry Walz, Bonnie Brady, Joe Secola and John Berglund of the Company.
5. We toured the Facility with Mr. Arand.
6. We confirmed certain costs of the Facility with Jeff Young of Loy Clark Pipeline Company, a contractor who performed services for Intel related to the Facility.
7. We requested that Mr. Arand confirm the following:

SYMONDS, EVANS & LARSON

CERTIFIED PUBLIC ACCOUNTANTS

- a) There were no internal costs of the Company (or affiliates of the Company) that were included in the Application other than labor costs of \$5,662.
- b) There were no related parties or affiliates of the Company which had billings which were included in the Application.
- c) The capacity of the Facility is adequate for the Company's present operations and does not include significant capacity for potential future operations.
- d) With respect to the return on investment calculation:
 - i) The Company intends on continuing its contract with Ind/Ag Chemicals, Inc. (Western Farm Services) to sell the reusable phosphoric acid for \$5 per ton.
 - ii) The calculation of the reduced NaOH usage of \$21,545 per year is based on supportable data which is true and correct.
 - iii) The estimate of costs for labor and repairs and maintenance aggregating \$18,110 per year is reasonable based on the nature of the Facility.

Findings:

- 1. through 6.

No matters came to our attention that caused us to believe that the Application should be adjusted, except for \$6,120 in costs related to a wall that was constructed for security and aesthetic purposes and \$1,070 in costs related to a safety shower. As a result, the allowable costs for the Application should be reduced to \$422,820.

- 7. Mr. Arand confirmed in writing that such assertions were true and correct.

Conclusion:

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

SYMONDS, EVANS & LARSON
CERTIFIED PUBLIC ACCOUNTANTS

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

Symonds, Evans & Larson

February 2, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Todd Ditchen
7705 Hazelgreen Rd NE
Salem OR 97305

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

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

2. Description of Claimed Facility

The equipment described in this application is a New Holland 1085 balewagon, located at 7705 Hazelgreen Road NE, Salem, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$79,000
(Accountant's Certification was provided.)

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

The applicant has 13 perennial grass seed acres under cultivation. This application also involves 1,700 acres of neighboring growers: Five Oak Farms, Eder Bros., Doug and Ernie Zielinski, and Glen Zielinski. Prior to 1990, these growers, including the applicant, were registrants in the open field burning program. Each year based on individual farm needs, these growers registered and open field burned a percentage of their grass seed acreage.

They began to experiment with alternatives to open field burning deciding that having their fields baled off and attempting to market the straw was the most economical. To avoid replacing open field burning with propane flaming and stack burning they realized the need to promptly remove the baled straw from the fields and deliver it into storage. Prompt removal allows field treatment without thermal sanitation and reduces weather damage to the straw that leads to stack burning.

For each grower to purchase a balewagon (stacker) was cost prohibitive so the applicant made the investment. He incurs all the annual operating costs and charges a per acre fee to stack the baled straw and move it to the respective storage facilities.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on May 19, 1992. The application was submitted on January 29, 1993 and the application for final certification was found to be complete on March 1, 1993. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing the means to stack the baled straw and move it into storage.

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

The actual cost of claimed equipment (\$79,000) divided by the average annual cash flow (\$7,750) equals a return on investment factor of 10.194. Using Table 1 of OAR 340-16-030 for a life of 7 years, the annual percent return on investment is 0%. Using the annual percent return of 0% and the reference annual percent return of 17%, 100% is allocable to pollution control.

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

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

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

There is an increase in operating costs of \$9,250 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$79,000, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3972.

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

jb:bm3972
March 4, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Galen Walser, Owner
Walser Enterprises
1490 SE Geary Circle #2
Albany OR 97321

The applicant owns and operates a custom baling operation in Linn County, Oregon.

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

2. Description of Claimed Facility

The equipment described in this application is located at 2440 Ferry Street, Bldg. #C, Albany, Oregon. The equipment is owned by the applicant.

Freeman baler 370 SP	\$ 50,000
Freeman baler 370 SP	50,000

Claimed equipment cost: \$100,000
(Accountant's Certification was provided.)

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

The applicant, by way of contract with Gerald E. Phelan, Inc., operates a custom baling firm that provides straw removal services to Willamette Valley grass seed growers unable to invest in straw removal and straw handling equipment or are impeded by time or manpower constraints during the period when straw must be removed to avoid spoilage. The applicant's custom baling services include raking the straw into windrows, baling, and stacking fieldside.

The applicant states that he rakes, bales, and stacks the grass straw residue from an average of 3,750 acres annually as the fields are assigned to him by Gerald E. Phelan, Inc. The applicant enclosed a letter from Gerald E. Phelan stating that the fields were open burned prior to the straw removal alternative.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on May 1, 1991. The application was submitted on January 29, 1993 and the application for final certification was found to be complete on February 9, 1993. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing the means to remove the straw from the fields in a timely manner.

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

Based on the prior two years tax returns, the applicant has determined the gross annual income projection for the baling and straw marketing business to be \$538,900 for the five years and \$404,600 projected annual operating expenses for the five years. Cash flow is \$134,300 with an average annual cash flow of \$26,860 for the baling and straw marketing business. The equipment considered for certification is 38% (\$100,000 divided by \$264,867) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$10,206.80 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$100,000) divided by the average annual cash flow (\$10,206) equals a return on

investment factor of 9.797. Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is .50%. Using the annual percent return of .50% and the reference annual percent return of 18.1%, 97% is allocable to pollution control.

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

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

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

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

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 97%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 97%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$100,000, with 97% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3974.

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

jb:bm3974
February 8, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Galen Walser, Owner
Walser Enterprises
1490 SE Geary Circle #2
Albany OR 97321

The applicant owns and operates a custom baling operation in Linn County, Oregon.

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

2. Description of Claimed Facility

The equipment described in this application is a New Holland haystacker, Model 1085, located at 2440 Ferry Street, Bldg. #C, Albany, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$73,000
(Accountant's Certification was provided.)

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

The applicant, by way of contract with Gerald E. Phelan, Inc., operates a custom baling firm that provides straw removal services to Willamette Valley grass seed growers unable to invest in straw removal and straw handling equipment or are impeded by time or manpower constraints during the period when straw must be removed to avoid spoilage. The applicant's custom baling services include raking the straw into windrows, baling, and stacking fieldside.

The applicant states that he rakes, bales, and stacks the grass straw residue from an average of 3,750 acres annually as the fields are assigned to him by Gerald E. Phelan, Inc. The applicant enclosed a letter from Gerald E. Phelan stating that the fields were open burned prior to the straw removal alternative.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 1, 1992. The application was submitted on January 29, 1993; and the application for final certification was found to be complete on February 9, 1993. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing the means to remove the straw from the fields in a timely manner.

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

Based on the prior two years tax returns, the applicant has determined the gross annual income projection for the baling and straw marketing business to be \$538,900 for the five years and \$404,600 projected annual operating expenses for the five years. Cash flow is \$134,300 with an average annual cash flow of \$26,860 for the baling and straw marketing business. The equipment considered for certification is 28% (\$73,000 divided by \$264,867) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$7,520 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$73,000) divided by the average annual cash flow (\$7,520) equals a return on investment factor of 9.707. Using Table 1 of OAR 340-16-030 for a life of 10 years, the annual percent return on investment is .50%. Using the annual percent return of .50% and the reference annual percent return of 17%, 97% is allocable to pollution control.

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

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

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

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

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

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

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 97%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 97%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$73,000, with 97% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3975.

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

jb:bm3975
February 8, 1993

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

S & R Auto Repair
509 E 2nd
The Dalles OR 97508

The applicant owns and operates an automotive repair establishment in The Dalles, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$2,650.05
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on May 31, 1991. The facility was placed into operation on June 1, 1991. The application for final certification was submitted to the Department on February 3, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$5.00/pound. The applicant estimated an annual coolant recovery rate of 25 pounds.

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$2,650.05 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3976.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Portland General Electric Company
Beaver Generating Plant
121 SW Salmon Street, 1WTC-10
Portland, OR 97204

The applicant owns and operates a combined cycle combustion turbine generating facility in Clatskanie, Oregon.

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

2. Description of Facility

The claimed facility monitors and reduces emissions of NO_x from the combustion canisters of two of the six combustion turbines. The facility consists of two ENDA-1220 continuous emission monitoring (CEM) systems and display equipment. The two CEM systems monitor emissions from turbines one and two.

Claimed Facility Cost: \$58,882.35

The applicant indicated on the application the useful life of the facility is fifteen years.

Accountant's Certification was provided.

3. Procedural Requirements

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

The facility met all statutory deadlines in that: Installation of the facility was substantially completed on September 25, 1991 and placed into operation on September 25, 1991. The application for final certification was submitted to the Department on February 12, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 8, 1993.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. The air contaminant Discharge Permit for this source, 05-2520, item 3 and 8 require the permittee to control and monitor NO_x emissions. This is in accordance with the Federal New Source Performance Standards. The specific standards are 40 CFR 60.330 to 60.335, Subpart GG, of the Federal Code. The control of emissions is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The facility provides information which enables the operators of the power generating plant control room to adjust the combustion process and reduce NO_x emissions. The emissions reduction is accomplished by lowering the temperature in the combustion canisters. At lower temperatures the levels of NO_x emitted decrease. The temperature reduction is accomplished through the injection of water into the combustion canister.

The facility samples the exhaust gas generated by the combustion turbine and an infrared analyzer determines the NO_x levels. The control room has both a strip chart and instantaneous digital display. An alarm in the control panel notifies control room operators when the NO_x levels rise above 50 ppm.

b. Eligible Cost Findings

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

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

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

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

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

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

In addition to control of NO_x emissions the facility records data for compliance purposes. A scrubber system can be used to control NO_x emissions. A scrubber system can not record data or aid in process control to prevent the creation of excess levels of NO_x.

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

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

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

There are no other factors to consider in establishing the actual cost of the facility properly allocable to the control of pollution. The principal purpose of the facility is to prevent a substantial quantity of air pollution.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.
- c. The facility complies with Federal Code and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$58,882.35 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3980.

BKF:

March 11, 1993

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Mountain Tech
1002 7th Ave.
Oregon City OR 97045-2406

The applicant owns and operates an automotive repair establishment in Oregon City, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$2,700.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on August 4, 1992. The facility was placed into operation on August 4, 1992. The application for final certification was submitted to the Department on February 16, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$6.50/pound. The applicant estimated an annual coolant recovery rate of 16 pounds.

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$2,700 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3985.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Leathers Oil Co.
22300 SE Stark
Gresham, OR 97030

The applicant owns and operates a service station at 10202 NE Sandy Blvd., Portland OR 97220, facility no. 4294.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks. The application also included related air quality Stage I and Stage II vapor recovery equipment.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of three STI-P3 tanks and double wall fiberglass piping, spill containment basins, line leak detectors, monitoring wells, sumps, Stage I and piping for Stage II vapor recovery and automatic shutoff devices.

Claimed facility cost \$ 111,427 *
(Accountant's certification was provided)

Percent allocable to pollution control 100%

* The Department concludes that the eligible facility cost for the project is \$122,581. This represents a difference of \$11,154 from the applicant's claimed cost of \$111,427 due to a determination by the Department that the cost of tanks and piping should be the full price of \$17,634 rather than full cost reduced by the cost of bare steel tanks and piping.

3. Procedural Requirements

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

The facility was substantially completed on July 1, 1992 and placed into operation on July 1, 1992. The application for certification was submitted to the Department on February 17, 1993, within two years of the completion date. The application was determined complete and filed on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil and water. This is accomplished by preventing releases into soil or water. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of three steel tanks and piping with no corrosion protection and no spill and overfill prevention or leak detection equipment.

To respond to Air Quality regulations under OAR 340-22-400 - 403 and Underground Storage Tank requirements established 12-22-88, the applicant installed:

- 1) For corrosion protection - STI-P3 tanks and double wall fiberglass piping.
- 2) For spill and overfill prevention - Spill containment basins, sumps and automatic shutoff devices.
- 3) For leak detection - Line leak detectors and monitoring wells.

The applicant also installed Stage I and piping for Stage II vapor recovery.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table.

	Eligible Facility Cost	Percent Allocable	Amount Allocable
Corrosion Protection:			
STI-P3 tanks & fiberglass piping	\$ 17,634	37 % (1)	\$ 6,525
Spill & Overfill Prevention:			
Spill containment basins	579	100	579
Sumps	3,000	100	3,000
Automatic shutoff devices	805	100	805
Leak Detection:			
Line leak detectors	749	100	749
Monitoring wells	298	100	298
Stage I & piping for Stage II vapor recovery	3,300	100	3,300
Labor & materials	96,216	100	96,216
Total	\$ 122,581	91 %	\$ 111,472

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$17,634 and the bare steel system is \$11,154, the resulting portion of the eligible tank and piping cost allocable to pollution control is 37%.

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 91%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$122,581 with 91% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-3987.

Barbara Anderson:ew
(503) 229-5870
March 12, 1993

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Top-Flite Automotive
490 Ivy St.
Junction City OR 97448

The applicant owns and operates an automotive repair establishment in Junction City, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$2,595.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on September 4, 1991. The facility was placed into operation on September 12, 1991. The application for final certification was submitted to the Department on February 22, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$6.50/pound. The applicant estimated an annual coolant recovery rate of 30 pounds.

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$2,595.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3988.

BKF

March 15, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Estergard Farms, Inc.
32022 Priceboro Drive
Harrisburg OR 97446

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

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

2. Description of Claimed Facility

The equipment described in this application is located at 32022 Priceboro Drive, Harrisburg, Oregon. The equipment is owned by the applicant.

New Holland Windrower	\$ 40,250
Big Wheel Rake	\$ 10,895
Rears Bagger Loafer	\$ 51,341

Claimed equipment cost: \$102,486
(Accountant's Certification was provided.)

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

The applicant has 1,600 perennial acres and 600 annual acres under grass seed cultivation. Prior to 1990 the applicant registered and open field burned as many acres as the smoke management program and weather permitted. In 1990, the applicant contracted with custom balers to remove the straw from 500 acres; by 1992, 1,000 acres of straw were baled off as an alternative to open field burning. In 1990, the applicant was stack burning straw from 440 acres; stack burning was reduced to 60 acres by 1992. In 1990, the applicant burned straw stubble on 250 acres by propane flaming; by 1992, the applicant no longer utilizes propane burning as a method to sanitize fields.

The applicant states that to replace these forms of open burning he has experimented until finding the most effective way to sanitize fields without any type of burning. The first step in the applicant's alternative to open field burning uses a self-propelled windrower equipped with a fourteen foot knife to cut the straw stubble left after baling. At the same time, the windrower gathers the stubble and lays it in rows. A rake with a 40 foot mobile arm and 17 needle nose wheels rake the stubble into larger rows for additional baling. The last phase in non-thermal sanitation

involves the Rears Bagger Loafer. This flail and loaf machine picks up the remaining stubble, volunteer seeds, and weed seeds, deposits them into a 3,700 cubic foot transport container, and moves the matter to a location for composting.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on August 5, 1991. The application was submitted on February 23, 1993; and the application for final certification was found to be complete on March 3, 1993. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a usable commodity by providing a method to bale the remaining stubble after an initial baling of the field and the ability to remove small stubble, volunteer seeds, and weed seeds for composting.

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

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

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

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

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

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

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

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

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

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$102,486, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3989.

Jim Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
jb:bm3989/March 4, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Mechtronics
2717 Third Street
Tillamook OR 97141

The applicant owns and operates an automotive repair establishment in Tillamook, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$3,185.50
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on July 20, 1992. The facility was placed into operation on July 21, 1992. The application for final certification was submitted to the Department on February 24, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$5.50/pound. The applicant estimated an annual coolant recovery rate of 75 pounds.

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

A distinct portion of this automobile air conditioning coolant recovery and recycling equipment makes an insignificant contribution to the principal purpose of the claimed facility. This coolant recovery equipment has the capability to return (recharge) coolant to automobile air conditioning systems. Recharge capabilities in coolant recovery and recycling equipment is not required by state or federal

law. The additional expense incurred in the purchase of equipment with recharge capabilities is not allocable to pollution control. The Department estimates the additional expense incurred is \$700.00.

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 78%.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 78%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$3185.50 with 78% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3990.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Prestige Auto Repair
2490 State St.
Salem OR 97301

The applicant owns and operates an automotive repair establishment in Salem, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$3,105.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on June 9, 1992. The facility was placed into operation on June 9, 1992. The application for final certification was submitted to the Department on March 1, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 12, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as defined in ORS 468.275. The requirement is to

comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$5.85/pound. The applicant estimated an annual coolant recovery rate of 90 pounds.

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

- o Electricity consumption of machine
- o Additional labor to operate machine

- o Machine maintenance costs
- o Depreciation of machine

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$3,105.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3992.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Double J, Inc., dba The Gold Wrench
655 E Arlington
Gladstone OR 97027

The applicant owns and operates an automotive repair establishment in Oregon City, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$2,695.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on June 10, 1991. The facility was placed into operation on June 10, 1991. The application for final certification was submitted to the Department on March 3, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$2,695.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3994.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

F & Z Rentals Co.
PO Box 325
Gresham, OR 97030

The applicant owns and operates a service station at 16431 SE Foster Rd., Portland OR 97030, facility no. 6923.

Application was made for a tax credit for a water pollution control facility involving underground storage tanks. The application also included related air quality Stage II vapor recovery equipment.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are the installation of two fiberglass and three STI-P3 tanks, fiberglass piping, spill containment basins, tank monitor system, line leak detectors, overfill alarm, monitoring wells, sumps, Stage II vapor recovery and automatic shutoff devices.

Claimed facility cost \$ 123,783 *
(Accountant's certification was provided)

Percent allocable to pollution control 100%

* The Department concludes that the eligible facility cost for the project is \$127,826. This represents a difference of \$6,943 from the applicant's claimed cost of \$123,783 due to a determination by the Department that the cost of five corrosion protected tanks is \$15,693 rather than the \$10,200 amount selected in error by the applicant and turbines (\$1,450) are not eligible pursuant to the definition of a pollution control facility in ORS 468.155.

3. Procedural Requirements

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

The facility was substantially completed on December 1, 1992 and placed into operation on December 1, 1992. The application for certification was submitted to the Department on March 3, 1993, within two years of the completion date. The application was determined complete and filed on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with underground storage tank requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases into soil, water or air. The facility qualifies as a "pollution control facility", defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."

Prior to the installation of pollution control, the facility consisted of six bare steel tanks and piping with no corrosion protection and no spill and overflow prevention or leak detection equipment.

To respond to Air Quality regulations under OAR 340-22-400 - 403 and Underground Storage Tank requirements established 12-22-88, the applicant installed:

- 1) For corrosion protection - Two fiberglass and three STI-P3 tanks and fiberglass piping.
- 2) For spill and overflow prevention - Spill containment basins, sumps, overflow alarm and automatic shutoff devices.
- 3) For leak detection - Tank monitor, line leak detectors and monitoring wells.

The applicant also installed Stage II vapor recovery.

Based on information currently available, the applicant is in compliance with all applicable DEQ regulations in that these tanks are permitted and fee payments are current.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant indicated that no alternative methods were considered. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

The applicant claims no savings or increase in costs as a result of the installation.

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

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

The actual cost of the facility properly allocable to pollution control is determined by using these factors as displayed in the following table.

	Eligible Facility Cost	Percent Allocable		Amount Allocable
Corrosion Protection:				
2 Fiberglass tanks, 3 STI-P3 tanks & fiberglass piping	\$ 18,074	36	% (1)	\$ 6,507
Spill & Overfill Prevention:				
Spill containment basins	1,000	100		1,000
Sumps	2,930	100		2,930
Overfill Alarm	3,900	100		3,900
Automatic shutoff devices	1,523	100		1,523
Leak Detection:				
Tank monitor	8,000	90	(2)	7,200
Line leak detectors	330	100		330
Monitoring wells	365	100		365
Stage II vapor recovery	3,840	100		3,840
Labor & materials	87,864	100		87,864
Total	\$ 127,826	90	%	\$ 115,459

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$18,074 and the bare steel system is \$11,651, the resulting portion of the eligible tank and piping cost allocable to pollution control is 36%.
- (2) The applicant's cost for a tank monitor is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

North Eugene Automotive
1665 River Road
Eugene OR 97404

The applicant owns and operates an automotive repair establishment in Eugene, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$2,268.48
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on October 12, 1992. The facility was placed into operation on October 12, 1992. The application for final certification was submitted to the Department on January 27, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$5.00/pound. The applicant estimated an annual coolant recovery rate of 40 pounds.

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$2,268.48 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3968.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Central Oregon Motors
dba Eugene Engines
1601 A West Seventh Ave
Eugene OR 97402

The applicant owns and operates an automotive service establishment in Eugene, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$3,468.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on April 22, 1992. The facility was placed into operation on April 22, 1992. The application for final certification was submitted to the Department on January 28, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by

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

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

b. Eligible Cost Findings

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

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

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

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

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

Specifically, the applicant estimated the cost to applicant of virgin coolant at \$5.33/pound. The applicant estimated an annual coolant recovery rate of 20 pounds.

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

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

A distinct portion of this automobile air conditioning coolant recovery and recycling equipment makes an insignificant contribution to the principal purpose of the claimed facility. This coolant recovery equipment has the capability to return (recharge) coolant to automobile air conditioning systems. Recharge capabilities in coolant recovery and recycling

equipment is not required by state or federal law. The additional expense incurred in the purchase of equipment with recharge capabilities is not allocable to pollution control. The Department estimates the additional expense incurred is \$700.00.

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 80%.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 80%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$3,468.00 with 80% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3969.

BKF

March 15, 1993

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Farmington Tire and Automotive, dba Auto Tech
13345 SW Canyon Road
Beaverton OR 97005

The applicant owns and operates an automotive repair establishment in Beaverton, Oregon.

Application was made for tax credit for an air pollution control facility which is owned by the applicant.

2. Description of Facility

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

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

Claimed Facility Cost: \$2,599.00
(Costs have been documented)

3. Procedural Requirements

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

Installation of the facility was substantially completed on September 4, 1992. The facility was placed into operation on September 4, 1992. The application for final certification was submitted to the Department on January 29, 1993, within two years of substantial completion of the facility. The application was found to be complete on March 15, 1993.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution. This reduction is accomplished by capturing and/or recycling air contaminants, as

defined in ORS 468.275. The requirement is to comply with ORS 468.612-621 and OAR 340-22-410 to 415.

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

- o Electricity consumption of machine

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

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

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

The applicant has identified no alternatives.

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

There are savings from the facility to recover and reuse coolant. The applicant may use the recycled coolant in customer vehicles. In this case the savings are tied to the displaced cost of virgin coolant. Alternately, the applicant could sell the coolant to a second shop where the coolant is used. In this case the savings to the applicant are tied to the sales price of recycled coolant.

However, for this applicant increases in business operations and maintenance costs exceeded facility savings. These cost estimates are discussed in 2) above.

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

A distinct portion of this automobile air conditioning coolant recovery and recycling equipment makes an insignificant contribution to the principal purpose of the claimed facility. The applicant included \$130.20 in the claimed facility costs for equipment used in servicing automobile air conditioning systems. The additional expense incurred in the purchase of equipment unrelated to recovery

and recycling of air conditioner coolant is not allocable to pollution control.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 95%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$2,599.00 with 95% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 3971.

BKF

March 15, 1993

State of Oregon
 Department of Environmental Quality

Memorandum

Date: April 13, 1993

To: Environmental Quality Commission
 From: Fred Hansen, Director *Fell*
 Subject: Addendum to Agenda Item B, April 23, 1993 EQC Meeting

The Department recommends that the following field burning related tax credit applications be added to Agenda Item B, Approval of Tax Credit Applications:

Application Number	Applicant	Description
TC-3910	OR/PAC Feed & Forage, Ltd.	Four 144' x 124' x 22' pole construction, metal clad, grass straw storage sheds.
TC-3970	OR/PAC Feed & Forage, Ltd.	1992 Sunny D Oregon Roadrunner with hay squeeze.
TC-3973	OR/PAC Feed & Forage, Ltd.	124' x 144' x 22' pole construction, metal clad, grass seed straw storage shed and a 125' x 144' x 22' straw press building.

Tax Relief Application Review Reports are attached, including the Department of Agriculture's recommendations. Revised April 23, 1993 pollution control tax credit totals including these applications are:

<u>Certificates</u>	<u>Certified Costs*</u>	<u>No. of Certificates</u>
Air Quality	\$ 493,105	3
CFC	32,771	12
Field Burning	1,250,948	13
Hazardous Waste	0	0
Noise	0	0
Plastics	0	0
Solid Waste - Recycling	863,254	2
Water Quality	601,487	2
Underground Storage Tanks	517,936	7
Solid Waste - Landfills	<u>1,587,779</u>	<u>2</u>
TOTAL	\$ 5,347,280	41

Attachments

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

OR/PAC Feed & Forage, LTD.
PO Box 352
Junction City, Oregon 97448

The applicant owns and operates a custom baling operation in Linn County, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is 4 (four) 144' x 124' x 22' pole construction, metal clad, grass seed straw storage sheds, located at 91736 Greenhill Road, Junction City, Oregon. The land and buildings are owned by the applicant.

Claimed facility cost: \$242,890.49
(Accountant's Certification was provided.)

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

The applicants rake, bale, stack, transport, store, compress and transport to port of departure or make available to domestic markets the straw from grass seed grower's farms. The applicants perform this service in exchange for the straw. The applicants state the growers do not have the equipment or storage facilities to perform the services they provide and the growers were open field burning the acreage before they engaged the applicants to remove their straw. Applicant receives only the straw for the straw removal services.

Applicant states that storage is an absolute necessity to supply the domestic and export markets. The majority of the straw removed from the fields is delivered into storage. The buildings provide protection from inclement weather while the straw is marketed in baled form domestically and in double compressed form for export.

The applicants estimate they bale 8,786 acres for the export market and 1,200 acres for the domestic market for a total of 9,986 acres on approximately 30 grass seed growers' farms (list provided with application).

The applicants estimate they remove an average of two tons of baled straw per acre or 2,400 tons for the domestic market with production costs of \$37.29 per ton and gross income of \$37 per ton. At two tons

Application No. TC-3910

Page 2

of baled straw per acre the applicants remove 17,572 tons for the export market with production costs of \$71.16 per ton and gross income of \$75 per ton. These production and gross income figures are well within the ranges developed by Tom Hartung for the Department of Agriculture's Field Burning Alternatives Research.

4. Procedural Requirements

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

Construction of the facility was substantially completed on September 20, 1992. The application for final certification was found to be complete on December 14, 1992. The application was submitted within two years of substantial completion of the facility.

5. Evaluation of Application

a. The facility is eligible under ORS 468.150 because the facility is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The facility promotes the conversion of a waste product (straw) into a salable commodity by providing protection from inclement weather while it is marketed in baled form domestically and double compressed form for export.

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

The applicant has determined the total gross annual income projection to be \$7,125,600 and 6,699,600 total projected annual operating expenses for the five years. Total annual cash flow is \$426,000 with an average annual cash flow of \$85,200. The facilities considered for certification are 20%

(\$242,890.49 divided by \$1,192,384.96) of the total listed equipment and facilities (detailed list provided with application) for the business, producing an average annual cash flow of \$17,040 applicable to the applicant's allocation of costs.

The actual cost of claimed facility (\$242,890.49) divided by the average annual cash flow (\$17,040) equals a return on investment factor of 14.254. Using Table 1 of OAR 340-16-030 for a life of 15 years, the annual percent return on investment is .75%. Using the annual percent return of .75% and the reference annual percent return of 17%, 96% is allocable to pollution control.

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

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

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

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

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

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

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 96%.

6. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 96%.

Application No. TC-3910
Page 4

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$242,890.49, with 96% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-3910.

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

jb:bmTC3910
April 6, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

OR/PAC Feed & Forage, LTD
PO Box 352
Junction City OR 97448

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

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

2. Description of Claimed Facility

The equipment described in this application is a 1992 Sunny D Oregon Roadrunner with hay squeeze, located at 91736 Greenhill Road, Junction City, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$81,704
(Accountant's Certification was provided.)

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

The applicants rake, bale, stack, transport, store, compress and transport to port of departure or make available to domestic markets the straw from grass seed grower's farms. The applicants perform this service in exchange for the straw. The applicants state the growers do not have the equipment or storage facilities to perform the services they provide and the growers were open field burning the acreage before they engaged the applicants to remove their straw. Applicant receives only the straw for the straw removal services.

Applicant states that storage is an absolute necessity to supply the domestic and export markets. The majority of the straw removed from the fields is delivered into storage. The buildings provide protection from inclement weather while the straw is marketed in baled form domestically and in double compressed form for export.

The applicants estimate they bale 8,786 acres for the export market and 1,200 acres for the domestic market for a total of 9,986 acres on approximately 30 grass seed growers' farms (list provided with application).

The applicants estimate they remove an average of two tons of baled straw per acre or 2,400 tons for the domestic market with production costs of \$37.29 per ton and gross income of \$37 per ton. At two tons of baled straw per acre the applicants remove 17,572 tons for the export market with production costs of \$71.16 per ton and gross

income of \$75 per ton. These production and gross income figures are well within the ranges developed by Tom Hartung for the Department of Agriculture's Field Burning Alternatives Research.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 1, 1992. The application was submitted on January 29, 1993; and the application for final certification was found to be complete on February 5, 1993. The application was submitted within two years of substantial purchase of the equipment.

5. Evaluation of Application

a. The equipment is eligible under ORS 468.150 because the equipment is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)(A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing the mobility to move the baled straw into storage in a timely fashion.

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

The applicant has determined the total gross annual income projection for the baling and straw marketing to be \$7,125,600 for the five years and \$6,699,600 projected annual operating expenses for the five years. Cash flow is \$426,000 with an average annual cash flow of \$85,200 for the baling and straw marketing business. The equipment considered for certification is 7% (\$81,704 divided by \$1,192,384) of the

total listed equipment and facilities for the business, producing an average annual cash flow of \$5,964 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$81,704) divided by the average annual cash flow (\$5,964) equals a return on investment factor of 13.699. Using Table 1 of OAR 340-16-030 for a life of 7 years, the annual percent return on investment is 0%. Using the annual percent return of 0% and the reference annual percent return of 17%, 100% is allocable to pollution control.

3. The alternative methods, equipment and costs for achieving the same pollution control objective.

The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the purchase of the equipment.

There is an increase in operating costs to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

5. Any other factors which are relevant in establishing the portion of the actual cost of the equipment properly allocable to the prevention, control or reduction of air pollution.

There are no other factors to consider in establishing the actual cost of the equipment properly allocable to prevention, control or reduction of air pollution.

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 100%.

6. Summation

- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c. The equipment complies with DEQ statutes and rules.
- d. The portion of the equipment that is properly allocable to pollution control is 100%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$81,704, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-3970.

Jim Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792

jb:bm3970
April 6, 1993

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

OR/PAC Feed & Forage, LTD
PO Box 352
Junction City OR 97448

The applicant owns and operates a grass seed farm operation and custom baling firm in Lane County, Oregon.

Application was made for tax credit for an air pollution control facility.

2. Description of Claimed Facility

The facility described in this application is a 124' x 144' pole construction, metal clad, grass seed storage shed and a 125' x 144' straw press building, located at 91736 Greenhill Road, Junction City, Oregon. The land and buildings are owned by the applicant.

Grass seed straw storage shed \$ 65,017.48
Straw press and building \$181,935.64

Claimed facility cost: \$246,953.12
(Accountant's Certification was provided.)

3. Description of farm operation plan to reduce open field burning.

The applicants rake, bale, stack, transport, store, compress and transport to port of departure or make available to domestic markets the straw from grass seed grower's farms. The applicants perform this service in exchange for the straw. The applicants state the growers do not have the equipment or storage facilities to perform the services they provide and the growers were open field burning the acreage before they engaged the applicants to remove their straw. Applicant receives only the straw for the straw removal services.

Applicant states that storage is an absolute necessity to supply the domestic and export markets. The majority of the straw removed from the fields is delivered into storage. The buildings provide protection from inclement weather while the straw is marketed in baled form domestically and in double compressed form for export.

The applicants estimate they bale 8,786 acres for the export market and 1,200 acres for the domestic market for a total of 9,986 acres on approximately 30 grass seed growers' farms (list provided with application).

Application No. TC-3973

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The applicants estimate they remove an average of two tons of baled straw per acre or 2,400 tons for the domestic market with production costs of \$37.29 per ton and gross income of \$37 per ton. At two tons of baled straw per acre the applicants remove 17,572 tons for the export market with production costs of \$71.16 per ton and gross income of \$75 per ton. These production and gross income figures are well within the ranges developed by Tom Hartung for the Department of Agriculture's Field Burning Alternatives Research.

4. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16. The facility has met all statutory deadlines in that:

Construction of the facility was substantially completed on December 1, 1992. The application for final certification was found to be complete on February 8, 1993. The application was submitted on January 29, 1993, within two years of substantial completion of the facility.

5. Evaluation of Application

a. The facility is eligible under ORS 468.150 because the facility is an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution. This reduction is accomplished by reduction of air contaminants, defined in ORS 468A.005; by reducing the maximum acreage to be open burned in the Willamette Valley as required in OAR 340-26-013; and, the facility's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f)A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

In determining the percent of the pollution control facility cost allocable to pollution control, the following factors from ORS 468.190 have been considered and analyzed as indicated:

1. The extent to which the facility is used to recover and convert waste products into a salable or usable commodity.

The facility promotes the conversion of a waste product (straw) into a salable commodity by providing protection from inclement weather and the ability to double compress the product for export.

2. The estimated annual percent return on the investment in the facility.

The applicant has determined the gross annual income projection for the baling and straw marketing to be \$7,125,600 for the five years and \$6,699,600 projected annual operating expenses for the five years. Cash flow is \$426,000 with an average annual cash flow of \$85,200 for the baling and straw marketing business. The equipment considered for certification is 21% (\$246,953 divided by \$1,192,384) of the total listed equipment and facilities for the business, producing an average annual cash flow of \$17,892 applicable to the applicant's allocation of costs.

The actual cost of claimed equipment (\$246,953) divided by the average annual cash flow (\$17,892) equals a return on investment factor of 13.802. Using Table 1 of OAR 340-16-030 for a life of 15 years, the annual percent return on investment is 1%. Using the annual percent return of 1% and the reference annual percent return of 17%, 94% is allocable to pollution control.

3. The alternative methods, equipment and costs for achieving the same pollution control objective.

The method chosen is an accepted method for reduction of air pollution. The method is one of the least costly, most effective methods of reducing air pollution.

4. Any related savings or increase in costs which occur or may occur as a result of the installation of the facility.

There is an increase in operating costs to annually maintain and operate the facility. These costs were considered in the return on investment calculation.

5. Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air pollution.

There are no other factors to consider in establishing the actual cost of the facility properly allocable to prevention, control or reduction of air pollution.

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 94%.

6. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

Application No. TC-3973

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- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility that is properly allocable to pollution control is 94%.

7. Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$246,953.12 with 94% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-3973.

Jim Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792

jb:bm3973
April 5, 1993

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item C
April 22, 1993 Meeting

Title: Field Burning Rule Adoption		
Summary: Oregon Administrative Rules 340-26-001 through 340-26-055 apply to the open field burning, propane flaming, and stack and pile burning of all perennial and annual grass seed and cereal grain crops and associated residue within the Willamette Valley. Regulation of these activities is needed to insure compliance with the Federal Clean Air Act. This proposal amends existing rules to further reduce particulate emissions, reduce violations, lower administrative costs, and increase revenue available for research and development.		
Department Recommendation: Adopt the proposed Field Burning Rules as presented in attachment A of the staff report.		
<u>Ernie Hensel for Steve Lane</u> Report Author	<u>She Greenwood</u> Division Administrator	<u>Bill Hans</u> Director

April 29, 1993

†A large print copy of this report is available upon request.

Date: April 22, 1993

To: Environmental Quality Commission
From: Fred Hansen, Director *Ful*
Subject: Agenda Item C, April 22, EQC Meeting
Field Burning Rule Adoption

Background

On March 5, 1993 the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would amend Division 26. The intended results of the amendments are to reduce emissions, clarify the existing rules, and reduce administrative costs.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on March 1, 1993. 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 on February 25, 1993.

A Public Hearing was held March 17, 1993, 9:00 am, Division of State Lands, Salem, Oregon with Wendy Anderson serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through March 18, 1993, 5:00 pm. A list of written comments received is included as Attachment D. (A copy of the comments is available upon request.)

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

[†]A large print copy of this report is available upon request.

Memo To: Environmental Quality Commission
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Page 2

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

The amendments are intended to clarify the existing field burning rules, reduce emissions and insure compliance, and revise administrative procedures to reduce cost and maximize revenue for research and development.

Relationship to Federal and Adjacent State Rules

There are no analogous federal rules or other states governing open field burning. However, there are similar smoke management programs in eastern Washington and Idaho operated by the grass seed industry and local jurisdictions. These programs are patterned after Oregon's field burning program and are less stringent.

Authority to Address the Issue

The Commission's authority to adopt these rules is provided in Oregon Revised Statutes (ORS) Chapter 468 and Chapter 468A.

Process for Development of the Rulemaking Proposal (including alternatives considered)

The Department of Agriculture and DEQ first jointly identified ways to amend existing rules to reduce administrative costs, decrease emissions, clarify existing rules, increase safety, and insure compliance. The proposed rules were then reviewed by an advisory committee consisting of eight grass seed growers, the Oregon Seed Council, State Fire Marshal, and the Department of Agriculture. The Department met with the Committee on two occasions and thoroughly discussed all the existing rules and the proposed amendments. The Committee and the Department agreed that some of the proposed amendments should become policy rather than rule, the committee agreed to take an active role assisting and educating other growers to insure compliance, and the proposed rules were redrafted. Copies of the redrafted rules were sent to the advisory committee and all known affected grass seed growers for review and comment. A public hearing was also held to receive comment.

Memo To: Environmental Quality Commission
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Page 3

Additional advisory committee meetings will be held to develop policies and establish an educational/assistance program.

Summary of Rulemaking Proposal Presented for Public Hearing and Discussion of Significant Issues Involved.

REGISTRATION

The proposed rules change the registration process from a field by field system to an acreage registration system. The old system required growers to register each specific field and identify the method of sanitation by April 1st of each year. Because growers could not accurately identify the method of sanitation so early in the season and the high cost of registering their fields for open field burning and propane flaming, they chose to register most of their acreage for stack burning. This approach allowed growers to register their fields without paying a registration fee and provided some flexibility to change the sanitation method at a later date. Because of multiple registration changes this practice substantially increased the Department's administrative costs and thereby reduced the funds available for research.

The proposed acreage registration system will provide growers the flexibility they need, reduce the Department's administrative burden, and reduce costs.

STACK AND PILE BURNING

Currently stack and pile burning continues throughout the winter and the Department has recorded and verified many complaint calls and smoke impacts resulting from wet smoldering stacks. The Department has also observed many stacks containing noncombustible and prohibited material which result in excessive emissions.

The Department proposes to reduce emissions and smoke impacts by prohibiting the burning of wet stacks and stacks containing materials which inhibit burning or emit noxious fumes, and encourage growers to compost this residue.

PREPARATORY BURNING

Preparatory burning is designed to reduce potential fire hazards and increase safety by using back firing techniques to create fire guards around or near combustible vegetation and structures. Current rules provide specific days to conduct preparatory burning but also allow prep burning immediately

prior to open field burning. Most prep burning is conducted immediately prior to open field burning, resulting in a substantial increase in the time required to burn the field, poor plume development, substantial low level smoke, premature smoke saturation of the air shed, and reduced burning opportunities for other growers.

The proposed amendments encourage prep burning on designated days when open field burning is prohibited. This will promote rapid ignition when the field is ultimately open burned, resulting in faster hotter fires, better plume rise, reduced low level smoke, increased safety, and optimized burning opportunities.

PROPANE FLAMING

Over the past several years the Department has observed a dramatic increase in the number and seriousness of propane flaming violations. These violations have resulted in heavy smoke impacts to numerous communities, open field burning in the fire safety buffer zone, and wild fires adjacent to Interstate 5 and heavy smoke obscuring I-5.

The Department is proposing to clarify and amend existing rules by specifying propane flamer operation requirements, field preparation criteria, and establish standards for other non-certified mobile flame sanitation methods. The Department will also work with the advisory committee to establish a grower education program and develop policies for field preparation techniques and other preventative measures.

Summary of Significant Public Comment and Changes Proposed in Response

1. Two respondents testified the requirement to allow only dry stacks to be burned was too prohibitive and the term "dry" was vague.

The Department's intent is to prohibit the burning of stacks and piles which are so wet they will not ignite or burn rapidly but will smolder for days and produce excessive emissions. The Department, with the assistance of the advisory committee, will address these concerns and define the term "dry."

2. The Department of Agriculture stated they could not change to the new acreage registration system this season because

the existing rules required registration to be completed by April 1 and the proposed amendments will not be adopted until April 22. They suggest a provision be added making the rule amendments contained in OAR 340-26-012 effective after December 31, 1993.

The Department has added the requested provision.

3. One respondent stated wild fires resulting from open field burning have damaged her property and requested growers be required to provide a 24 hour notice of intent to burn.

The Department responded it was not possible to determine 24 hours in advance if field burning would be conducted. The Department also stated their problem should be alleviated by the State Fire Marshal's proposed stricter rules and enforcement policies of fire guard requirements.

4. One respondent stated that open field burning, propane flaming, and stack burning are illegal and unconstitutional acts and suggests these activities be banned.

Oregon Revised Statutes 468 and 468A direct the Department to carry out a smoke management program to regulate field burning activities in the Willamette Valley.

Summary of How the Proposed Rule Will Work and How it Will be Implemented

- * Each grower wanting to open burn, propane flame, or stack burn grass seed or cereal grain residue in the Willamette Valley must register the acreage, identify the proposed method of sanitation, and pay a registration fee. They must also obtain a burn permit and pay a fee prior to burning. The burn permit specifies the date, time, and acreage allowed to be burned. The registration and permit program is operated through a network of permit agents under contract to the Department of Agriculture.
- * The proposed registration system allows greater flexibility to growers by setting up accounts under each burn category (open, propane, stack) for each grower. During the registration process, the Department of Agriculture will allocate acreage into the accounts under each category based on the growers' requests and the total available acreage in the Willamette Valley. The actual fields to be burned remain uncommitted to a burn

type until the permitting process, immediately preceding the burn. The growers will be able to draw upon their burn type accounts as the season proceeds, and the need for burn type for each field is determined by the grower.

In contrast, the existing rule requires a field by field registration long before the need for burn type is known. This results in many re-registrations, and late penalties in some cases. The proposed regulation would also eliminate late fees for re-registration after December 31, 1993. A late fee would still be required for late registration.

- * During the burn season the Department of Agriculture (ODA), under contract to the Department of Environmental Quality, monitors meteorological and air quality conditions and has the responsibility of regulating the amount of burning allowed based on air quality and safety considerations. When conditions are right the ODA directs the permit agents to release acreage for burning. The location of the burns, acreage released, and the burn period are dependent upon current and forecast meteorological and air quality conditions.

- * The Department Environmental Quality (DEQ) oversees the smoke management program, ensures compliance, and operates and maintains the meteorological and nephelometer network.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding field burning in the Willamette Valley as presented in Attachment A of the Department Staff Report.

Attachments

- A. Rule (Amendments) Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Public Notice of Hearing (Chance to Comment)
 - 3. Rulemaking Statements (Statement of Need)
 - 4. Fiscal and Economic Impact Statement
 - 5. Land Use Evaluation Statement
- C. Presiding Officer's Report on Public Hearing
- D. List of Written Comments Received
- E. Department's Evaluation of Public Comment

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- F. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
- G. Advisory Committee Membership and Report
- H. Rule Implementation Plan
- I. (Other Attachments as appropriate)

Reference Documents (available upon request).

Written Comments Received (listed in Attachment D)
(Other Documents supporting rule development process or proposal)

Approved:

Section: Bruce E Arnold
Division: She Greenwood

Report Prepared By: Stephen Crane

Phone: (503) 229-5353

Date Prepared: April 22, 1993

SDC:BEA:a
MISC\AH71220
3/23/93

DIVISION 26

FIELD BURNING RULES (Willamette Valley)

Introduction

340-26-001

- (1) This Division applies to the open field burning, propane flaming, and stack and pile burning of all perennial and annual grass seed and cereal grain crops, and ~~for~~ associated residue within the Willamette Valley. The open burning of all other agricultural waste material, including sanitizing perennial and annual grass seed crops by open burning in counties outside the Willamette Valley, (referred to as "fourth priority agricultural burning") is governed by OAR Chapter 340, Division 23, Rules for Open Burning. Enforcement procedure and civil penalties for open field burning, propane flaming, and stack and pile burning are established in Oregon Administrative Rules Chapter 340 Division 12.
- (2) Organization of rules:
 - (a) OAR 340-26-003 is the policy statement of the Environmental Quality Commission setting forth the goals of this Division;
 - (b) OAR 340-26-005 contains definitions of terms which have specialized meanings within the context of this Division;
 - (c) OAR 340-26-010 lists general provisions and requirements pertaining to all open field burning, propane flaming, and stack and pile burning with particular emphasis on the duties and responsibilities of the grower registrant;
 - (d) OAR 340-26-012 lists procedures and requirements for registration of acreage, issuance of permits, collection of fees, and keeping of records, with particular emphasis on the duties and responsibilities of the local permit issuing agencies;
 - (e) OAR 340-26-013 establishes acreage limits and methods of determining acreage allocations;
 - (f) OAR 340-26-015 establishes criteria for authorization of open field burning, propane flaming, and stack and pile burning pursuant to the administration of a daily smoke management control program;
 - (g) OAR 340-26-031 establishes special provisions pertaining to field burning by public agencies for official purposes, such as "training fires";
 - (h) OAR 340-26-033 establishes special provisions pertaining to "preparatory burning";
 - (i) OAR 340-26-035 establishes special provisions pertaining to open field burning for experimental purposes;

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- (j) OAR 340-26-040 establishes special provisions and procedures pertaining to emergency cessation of burning;
- (k) OAR 340-26-045 establishes provisions pertaining to propane flaming;
- (l) OAR 340-26-055 establishes provisions pertaining to "stack and pile burning".

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 12-1984, f. & ef. 7-13-84; DEQ 11-1987, f. & ef. 6-15-87; AQ 17, f. & ef. 3-11-92

Policy

340-26-003 In the interest of public health and welfare, it is the declared public policy of the State of Oregon to reduce the practice of open field burning while developing and providing alternative methods of field sanitation and alternative methods of utilizing and marketing crop residues and to control, reduce, and prevent air pollution from open field burning, propane flaming, and stack and pile burning by smoke management. In developing and carrying out a smoke management control program it is the policy of the Environmental Quality Commission:

- (1) To provide for a maximum level of burning with a minimum level of smoke impact on the public, recognizing:
 - (a) The importance of flexibility and judgment in the daily decision-making process, within established and necessary limits;
 - (b) The need for operational efficiency within and between each organizational level;
 - (c) The need for effective compliance with all regulations and restrictions.
- (2) To study, develop and encourage the use of reasonable and economically feasible alternatives to the practice of open field burning.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 5-1984, f. & ef. 3-7-84; AQ 17, f. & ef. 3-11-92

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Definitions

340-26-005 As used in this Division:

- (1) "Actively extinguish" means the direct application of water or other fire retardant to an open field fire.
- (2) "Approved alternative method(s)" means any method approved by the Department to be a satisfactory alternative field sanitation method to open field burning.
- (3) "Approved alternative facilities" means any land, structure, building, installation, excavation, machinery, equipment, or device approved by the Department for use in conjunction with an approved alternative method.
- (4) "Commission" means the Environmental Quality Commission.
- (5) "Cumulative hours of smoke intrusion in the Eugene-Springfield area" means the average of the totals of cumulative hours of smoke intrusion recorded for the Eugene site and the Springfield site. Provided the Department determines that field burning was a significant contributor to the smoke intrusion:
 - (a) The Department shall record one hour of intrusion for each hour the nephelometer hourly reading exceed a background level by 1.8×10^4 b-scat units or more but less than the applicable value in subsection (b) or (c) of this section;
 - (b) Between June 16 and September 14 of each year, two hours of smoke intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level of 5.0×10^4 b-scat units;
 - (c) Between September 15 and June 15 of each year two hours of intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by 4.0×10^4 b-scat units.The background level shall be the average of the three hourly readings immediately prior to the intrusion.
- (6) "Department" means the Department of Environmental Quality. The Department may enter into contracts with the Oregon Department of Agriculture or other agencies to carryout the purposes set forth in these rules.
- (7) "Director" means the Director of the Department or delegated employee representative pursuant to ORS 468.045(3).
- (8) "District allocation" means the total amount of acreage sub-allocated annually to the fire district, based on the district's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued within the district, subject to daily authorization. District allocation is defined by the following identity:

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District Allocation =

$$\frac{\text{Maximum annual acreage limit}}{\text{Total acreage registered in the Valley}} \times \text{Total acreage registered in the District}$$

- (9) "Drying day" means a 24-hour period during which the relative humidity reached a minimum less than 50% and no rainfall was recorded at the nearest reliable measuring site.
- (10) "Effective mixing height" means either the actual height of plume rise as determined by aircraft measurement or the calculated or estimated mixing height as determined by the Department, whichever is greater.
- (11) "Field-by-field burning" means burning on a limited or restricted basis in which the amount, rate, and area authorized for burning is closely controlled and monitored. Included under this definition are "training fires" and experimental open field burning.
- (12) "Field reference code" means a unique four-part code which identifies a particular registered field for mapping purposes. The first part of the code shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the crop type, and the fourth part the size (acreage) of the field (e.g., a 35 acre perennial (bluegrass) field registered on line 2 of registration form number 1953 would be 1953-2-P-BL-35).
- (13) "Fire district" or "district" means a fire permit issuing agency.
- (14) "Fire permit" means a permit issued by a local fire permit issuing agency pursuant to ORS 477.515, 477.530, 476.380, or 478.960.
- (15) "Fires-out time" means the time announced by the Department when all flames and major smoke sources associated with open field burning should be out and prohibition conditions are scheduled to be imposed.
- (16) "Fire safety buffer zone" shall have the same meaning as defined in the State Fire marshal rules.
- (17) "Fluffing" means an approved mechanical method of stirring or tedding crop residues for enhanced aeration and drying of the full fuel load, thereby improving the field's combustion characteristics.
- (18) "Grower allocation" means the amount of acreage sub-allocated annually to the grower registrant, based on the grower registrant's pro rata share of the maximum annual acreage limitation, representing the maximum amount

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for which burning permits may be issued, subject to daily authorization. Grower allocation is defined by the following identity:

Grower Allocation =

$$\frac{\text{Maximum annual acreage limit}}{\text{Total acreage registered in the Valley}}$$

x Total acreage registered by grower registrant

- (19) "Grower registrant" means any person who registers acreage with the Department for purposes of open field burning, propane flaming or stack or pile burning.
- (20) "Marginal conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.
- (21) "Marginal day" means a day on which marginal conditions exist.
- (22) "Nephelometer" means an instrument for measuring ambient smoke concentrations.
- (23) "Northerly winds" means winds coming from directions from 290° to 90° in the north part of the compass, averaged through the effective mixing height.
- (24) "Open field burning" means burning of any perennial or annual grass seed or cereal grain crop, or associated residue, in such manner that combustion air and combustion products are not effectively controlled.
- (25) "Open burning" means the burning of agricultural, construction, demolition, domestic, or commercial waste or any other burning which occurs in such a manner that combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney pursuant to OAR 340-23-030.
- (26) "Open field burning permit" means a permit issued by the Department pursuant to ORS 468A.575.
- (27) "Permit issuing agency" or "Permit agent" means the county court or board of county commissioners, or fire chief or a rural fire protection district or other person authorized to issue fire permits pursuant to ORS 477.515, 477.530, 476.380, or 478.960.
- (28) "Preparatory burning" means controlled burning of portions of selected problem fields for the specific purpose of reducing the fire hazard potential or other conditions which would otherwise inhibit rapid ignition burning when

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- the field is subsequently open burned.
- (29) "Priority acreage" means acreage located within a priority area.
- (30) "Priority areas" means the following areas of the Willamette Valley:
- (a) Areas in or within three miles of the city limits of incorporated cities having populations of 10,000 or greater;
 - (b) Areas within one mile of airports servicing regularly scheduled airline flights;
 - (c) Areas in Lane County south of the line formed by U.S. Highway 126 and Oregon Highway 126;
 - (d) Areas in or within three miles of the city limits of the City of Lebanon;
 - (e) Areas on the west and east side of and within 1/4 mile of these highways: 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.
- (31) "Prohibition conditions" means conditions under which open field burning is not allowed except for individual burns specifically authorized by the Department pursuant to OAR 340-26-015(2).
- (32) "Propane flaming" means ~~an approved alternative method of burning which employs~~ a mobile flamer device which meets the following design specifications and utilizes and an auxiliary fuel such that combustion is nearly complete and emissions are significantly reduced:
- (a) Flamer nozzles shall not be more than 15 inches apart;
 - (b) A heat deflecting hood is required and shall extend a minimum of 3 feet beyond the last row of nozzles.

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- (33) "Propane flaming permit" means a permit issued by the Department pursuant to ORS 468A.575 and consisting of a validation number and specifying the conditions and acreage specifically registered and allocated for propane flaming.
- (34) "Quota" means an amount of acreage established by the Department for each fire district for use in authorizing daily burning limits in a manner to provide, as reasonably as practicable, an equitable opportunity for burning in each area.
- (35) "Rapid ignition techniques" means a method of burning in which all sides of the field are ignited as rapidly as practicable in order to maximize plume rise. Little or no preparatory backfire burning shall be done.
- (36) "Released allocation" means that part of a growers allocation, by registration form, that is unused and voluntarily released to the Department for first come-first serve dispersal to other grower registrants.
- (37) "Residue" means straw, stubble and associated crop material generated in the production of grass seed and cereal grain crops.
- (38) "Responsible person" means each person who is in ownership, control, or custody of the real property on which open burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, or the grower registrant. Each person who causes or allows open field burning, propane flaming, or stack or pile burning to be maintained shall also be considered a responsible person.
- (39) "Small-seeded seed crops requiring flame sanitation" means small-seeded grass, legume, and vegetable crops, or other types approved by the Department, which are planted in early autumn, are grown specifically for seed production, and which require flame sanitation for proper cultivation. For purposes of this Division, clover and sugar beets are specifically included. Cereal grains, hairy vetch, or field peas are specifically not included.
- (40) "Smoke management" means a system for the daily or hourly control of open field burning, propane flaming, or stack or pile burning through authorization of the times, locations, amounts and other restrictions on burning, so as to provide for suitable atmospheric dispersion of smoke particulate and to minimize impact on the public.
- (41) "Southerly winds" means winds coming from directions from 90° to 290° in the south part of the compass, averaged through the effective mixing height.

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- (42) "Stack burning" means the open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops.
- (43) "Stack burning permit" means a permit issued by the Department pursuant to ORS 468A.575 and consisting of a validation number and specifying the conditions and acreage specifically registered for stack or pile burning.
- (44) "Test fires" means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.
- (45) "Training fires" means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.
- (46) "Unusually high evaporative weather conditions" means a combination of meteorological conditions following periods of rain which result in sufficiently high rates of evaporation, as determined by the Department, where fuel (residue) moisture content would be expected to approach about 12 percent or less.
- (47) "Validation number" means:
(a) For open field burning a unique five-part number issued by the Department or its delegate [a permit-issuing agency which validates a]identifying a specific field and acreage allowed to be open field burn[ing,] ed and the date and time the permit was issued. [propane flaming, or stack or pile burning permit for a specific acreage in a specific location on a specific day. The first part of the validation number shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the number of the month and the day of issuance, the fourth part the hour burning authorization was given based on a 24-hour clock, and the fifth part shall indicate the size of acreage to be burned] (e.g., a validation number issued August 26 at 2:30 p.m. for a 70-acre burn for a field registered on line 2 of registration form number 1953 would be 1953-2-0826-1430-070) [-.];
(b) For propane flaming and stack or pile burning a unique five part alphanumerical, issued by the Department or its delegate, identifying a specific field and acreage allowed to be propane flamed or stack or pile burned, the date and time the permit was issued, and the burn type. (e.g., a validation number issued on July 15 for a 100 acre field to be propane flamed registered on line 4 of registration form 9999 would be 9999-4-0715-P-100.

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- (48) "Ventilation Index (VI)" means a calculated value used as a criterion of atmospheric ventilation capabilities. The Ventilation Index as used in these rules is defined by the following identity:

$$VI = \frac{\text{(Effective mixing height (feet))}}{1000}$$

x (Average wind speed through the effective mixing height (knots))

- (49) "Willamette Valley" means the areas of Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill Counties lying between the crest of the Coast Range and the crest of the Cascade Mountains, and includes the following:
- (a) "South Valley", the areas of jurisdiction of all fire permit issuing agents or agencies in the Willamette Valley portions of the counties of Benton, Lane, or Linn;
 - (b) "North Valley", the areas of jurisdiction of all other fire permit issuing agents or agencies in the Willamette Valley.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 24-1979(Temp), f. & ef. 7-5-79; DEQ 28-1979, f. & ef. 9-13-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

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General Requirements

340-26-010

- (1) No person shall cause or allow open field burning, propane flaming, or stack or pile burning on any acreage unless said acreage or stack or pile location has first been registered and mapped pursuant to OAR 340-26-012(1), the registration fee has been paid, and the registration (permit application) has been approved by the Department.
- (2) No person shall cause or allow open field burning, propane flaming, or stack or pile burning without first obtaining and being able to readily demonstrate a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 340-26-012(2). On the specific day of and prior to the open field burning, propane flaming, or pile or stack burning of any grass seed or cereal grain crop or associated residue the grower registrant shall obtain, in person or by telephone, a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 340-26-012.
- (3) No person shall open field burn cereal grain acreage unless that person first issues to the Department a signed statement, and then acts to insure, that said acreage will be planted in the following growing season to a small-seeded seed crop requiring flame sanitation for proper cultivation, as defined in OAR 340-26-005(34).
- (4) No person shall cause or allow open field burning, propane flaming, or stack or pile burning which is contrary to the Department's announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division.
- (5) Each responsible person open field burning or propane flaming shall have an operating radio receiver and shall directly monitor the Department's burn schedule announcements at all times while open field burning or propane flaming.
- (6) Each responsible person open field burning or propane flaming shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department.
- (7) No person shall cause or allow open field burning or stack or pile burning ~~{shall be conducted}~~ within 1/4 mile of either side of any Interstate freeway within the Willamette Valley or within 1/8 mile of either side of the designated roadways listed in OAR 837-110-080(2)(c). In addition, no person shall cause or allow open field burning ~~{shall be~~

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~~conducted~~ in any of the remaining area within a fire safety buffer zone ~~{without prior authorization from the Department}~~ unless a noncombustible ground surface has been provided between the field to be burned and the nearest edge of the roadway right-of-way as required by OAR 837-110-080.

- (8) Each responsible person open field burning, propane flaming, or stack or pile burning within a priority area or fire safety buffer zone around a designated city, airport or highway shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the designated city, airport or highway.
- (9) Each responsible person open field burning shall make every reasonable effort to expedite and promote efficient burning and prevent excessive emissions of smoke by:

(a) Meeting all of the State Fire Marshal requirements specified in OAR 837-110-040 through 080;

- ~~{(a)}~~ (b) Ensuring ~~{that}~~ field residues are evenly distributed, dry, and in ~~{generally}~~ good burning condition;
- ~~{(b)}~~ ~~{Utilizing ignition devices, fire control and water supplies which meet the requirements of the State Fire Marshal, as specified in OAR 837-110-020 through 837-110-040}~~

- (c) Employing rapid ignition techniques on all acreage where there are no imminent fire hazards or public safety concerns.

~~{(10) Each responsible person open field burning shall attend the burn until effectively extinguished.}~~

~~{(11)}~~ (10) Open field burning, propane flaming, or stack or pile burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order or decree of the Commission or any other government entity having jurisdiction.

~~{(12)}~~ (11) Any revisions to the maximum acreage to be burned, allocation or permit issuing procedures, or any other substantive changes to this Division affecting open field burning, propane flaming, or stack or pile burning for any year shall be made prior to June 1 of

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that year. In making such changes, the Commission shall consult with Oregon State University.
~~[(13)]~~ **(12)** Open field burning shall be regulated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I areas (sec. 5.2 of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-20-047).

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-88; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Certified Alternative to Open Field Burning

340-26-011 [DEQ 105, f. & ef. 12-26-75;
DEQ 114, f. 6-4-76;
DEQ 138, f. 6-30-77;
DEQ 140(Temp), f. & ef. 7-27-77
thru 11-23-77;
DEQ 6-1978, f. & ef. 4-18-78;
DEQ 8-1978(Temp), f. & ef. 6-8-78
thru 10-5-78;
DEQ 2-1980, f. & ef. 1-21-80;
DEQ 12-1980, f. & ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
Repealed by DEQ 5-1984,
f. & ef. 3-7-84]

Registration, Permits, Fees, Records

340-26-012 In administering a field burning smoke management program, the Department may contract with counties or fire districts or other responsible individual to administer

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registration of acreage, issuance of permits, collection of fees and keeping of records for open field burning, propane flaming, or stack or pile burning within their permit jurisdictions. The Department shall pay said authority for these services in accordance with the payment schedule provided for in ORS 468A.615. Three quarters of said payment shall be made prior to July 1 of each year and the remainder shall be paid within 10 days after completion of the end of season reconciliation.{+}

(1) Registration of acreage.

- (a) On or before April 1 of each year, all acreage to be open burned, propane flamed, or stack or pile burned under this Division shall be registered with the Department or its authorized permit agent on registration forms provided by the Department. Said acreage shall also be delineated on specially provided registration map materials and identified using a unique field reference code. Registration and mapping shall be completed according to the established procedures of the Department. At the time of registration, a non-refundable registration fee of \$2 shall be paid for each acre registered for open field burning and \$1 shall be paid for each acre registered for propane flaming for each acre registered shall be paid at the time of registration. After December 31, 1993 the registration fees for open field burning and propane flaming shall be paid into separate designated accounts.

A complete registration (permit application) shall consist of a fully executed registration form, map and fee. Acreage registered by April 1 under any classification (open field burning, propane flaming, or stack or pile burning) may be issued a burn permit under another classification if:

- (A) allocation is available for the subsequent classification and;
- (B) the initial registration fee is made equal to or greater than the subsequent classification and allocation is transferred under the direction of the Department.

After December 31, 1993 acreage registered by April 1 under any classification (open field burning, propane flaming, or stack or pile burning) may be issued a burn permit if:

- (A) allocation is available and;
- (B) the initial registration fee account has a sufficient balance.

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- (b) Registration of open field burning, propane flaming, or stack or pile burning acreage and payment of applicable registration fees into an open field burning, propane flaming, or stack or pile burning account after April 1 of each year shall require the prior approval of the Department and an additional \$1 per acre late registration fee. if The late registration fee shall not be charged if the late registration is not due to the fault of the late registrant or one under his the registrant's control.
 - (c) Copies of all registration forms and fees shall be forwarded to the Department promptly by the permit agent. Registration map materials shall be made available to the Department at all times for inspection and reproduction.
 - (d) The Department shall act on any registration application within 60 days of receipt of a completed application. The Department may deny or revoke any registration application which is incomplete, false or contrary to state law or this Division.
 - (e) ~~{It is the responsibility of}~~ The grower registrant ~~{to}~~ shall insure ~~{that}~~ the information presented on the registration form and map is complete and accurate.
- (2) Permits.
- (a) Permits for open field burning, propane flaming, or stack or pile burning shall be issued by the Department, or its authorized permit agent, to the grower registrant in accordance with the established procedures of the Department, and the times, locations, amounts and other restrictions set forth by the Department or this Division.
 - (b) A fire permit from the local fire permit issuing agency is also required for all open burning pursuant to ORS 477.515, 477.530, 476.380, 478.960.
 - (c) A valid open field burning permit shall consist of:
 - (A) An open field burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered and annually allocated for burning;
 - (B) A validation number issued by the local permit agent on the day of the burn identifying the specific acreage allowed for burning and the date and time the permit was issued; and
 - (C) Payment of the required \$8.00 per acre burn fee.

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- (d) A valid propane flaming permit shall consist of:
 - (A) A propane flaming permit issued by the Department which specifies the permit conditions in effect at all times while flaming and which identifies the acreage specifically registered and annually allocated for propane flaming;
 - (B) A validation number issued by the local permit agent identifying the specific acreage allowed for propane flaming and the date and time the permit was issued; and
 - (C) Payment of the required \$2 per acre propane flaming fee.
- (e) A valid stack or pile burning permit shall consist of:
 - (A) A stack or pile burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered for burning;
 - (B) A validation number issued by the local permit agent identifying the specific acreage allowed for burning and the date and time the permit was issued; and
 - (C) Payment of the required burn fee:
 - (i) \$2 per acre from January 1, 1992, to December 31, 1997;
 - (ii) \$4 per acre burn fee in 1998;
 - (iii) \$6 per acre burn fee in 1999;
 - (iv) \$8 per acre burn fee in 2000; and
 - (v) \$10 per acre burn fee in 2001 and thereafter.
- (f) Burning permits shall at all times be limited by and subject to the burn schedule and other requirements or conditions announced or set forth by the Department.
- (g) No person shall issue burning permits for open field burning, propane flaming, or stack or pile burning of:
 - (A) More acreage than the amount sub-allocated annually to the District by the Department pursuant to OAR 340-26-013(2);
 - (B) Priority or fire safety buffer zone acreage located on the upwind side of any city, airport, Interstate freeway or highway within the same priority area or buffer zone.

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- (h) It is the responsibility of each local permit issuing agency to establish and implement a system for distributing open field burning, propane flaming, or stack or pile burning permits to individual grower registrants when burning is authorized, provided that such system is fair, orderly and consistent with state law, this Division and any other provisions set forth by the Department.
- (3) Fees.
- (a) Permit agents shall collect, properly document and promptly forward all required registration, late registration fees, and burn fees to the Department.
- (b) All fees shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund and shall be appropriated pursuant to ORS 468A.550 to 468A.620.
- (4) Records.
- (a) Permit agents shall at all times keep proper and accurate records of all transactions pertaining to registrations, permits, fees, allocations, and other matters specified by the Department. Such records shall be kept by the permit agent for a period of at least five years and made available for inspection by the appropriate authorities.
- (b) Permit agents shall submit to the Department on specially provided forms weekly reports of all acreage burned in their permit jurisdictions. These reports shall cover the weekly period of Monday through Sunday, and shall be mailed and post-marked no later than the first working day of the following week.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. & ef. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

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[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Acreage Limitations, Allocations

340-26-013

- (1) Limitation of Acreage.
 - (a) Except for acreage and residue open field burned pursuant to OAR 340-26-035, 340-26-040, 340-26-045, and 340-26-055 the maximum acreage to be open field burned annually in the Willamette Valley under this Division shall not exceed:
 - (A) 140,000 acres for 1992 and 1993;
 - (B) 120,000 acres for 1994 and 1995;
 - (C) 100,000 acres for 1996 and 1997; and
 - (D) 40,000 acres for 1998 and thereafter.
 - (b) Notwithstanding the annual limitations, up to 25,000 acres of steep terrain and species identified by the Director of Agriculture may be open burned annually and shall be considered outside the limitation.
 - (c) Other limitations on acreage allowed to be open field burned are specified in OAR 340-26-015(7), 340-26-033(2) and 340-26-035(1).
 - (d) The maximum acreage to be propane flamed annually in the Willamette Valley under this Division shall not exceed 75,000 acres.
 - (e) Other limitations on acreage allowed to be propane flamed are specified in OAR 340-26-045.
- (2) Allocation of Acreage.
 - (a) In the event that total registration as of April 1 is less than or equal to the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) and (d) of this rule, the Department shall sub-allocate to each grower registrant and each district (subject to daily burn authorization) 100 percent of their respective registered acreage.
 - (b) In the event that total registration as of April 1 exceeds the maximum acreage allowed to be open **field** burned **or propane flamed** annually, pursuant to subsection (1)(a) of this rule, the Department may sub-allocate to growers on a pro rata share basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation". In addition, the Department shall sub-allocate to each respective fire district, its pro rata share of the maximum acreage limit based on acreage registered within the

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- district, referred to as "district allocation".
- (c) To insure optimum permit utilization, the Department may adjust fire district allocations.
 - (d) Transfer of allocations for farm management purposes may be made within and between fire districts and between grower registrants on a one-in/one-out basis under the supervision of the Department. The Department may assist grower registrants by administering a reserve of released allocation for first come-first served utilization.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. & ef. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 13-1979, f. & ef. 6-8-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; AQ 17, f. & ef. 3-11-92

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Daily Burning Authorization Criteria

340-26-015 As part of the smoke management program provided for in ORS 468A.590 the Department shall set forth the types and extent of open field burning, propane flaming, and stack and pile burning to be allowed each day according to the provisions established in this section and this Division:

- (1) During the active burning season and on an as needed basis, the Department shall announce the field burning schedule over the field burning radio network operated specifically for this purpose. The schedule shall specify the times, locations, amounts and other restrictions in effect for open field burning, propane flaming, and stack and pile burning. The Department shall notify the State Fire Marshal of the burning schedule for dissemination to appropriate Willamette Valley agencies.
- (2) Prohibition conditions.
 - (a) Prohibition conditions shall be in effect at all

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- times unless specifically determined and announced otherwise by the Department.
- (b) Under prohibition conditions, no permits shall be issued and no open field burning shall be conducted in any area except for individual burns specifically authorized by the Department on a limited extent basis. Such limited burning may include field-by-field burning, preparatory burning, or burning of test fires, except that:
- (A) No open field burning shall be allowed:
- (i) In any area subject to a ventilation index of less than 10.0;
 - (ii) In any area upwind, or in the immediate vicinity, of any area in which, based upon real-time monitoring, a violation of federal or state air quality standards is projected to occur.
- (B) Only test-fire burning may be allowed:
- (i) In any area subject to a ventilation index of between 10.0 and 15.0, inclusive, except for experimental burning specifically authorized by the Department pursuant to OAR 340-26-035;
 - (ii) When relative humidity at the nearest reliable measuring station exceeds 50 percent under forecast northerly winds or 65 percent under forecast southerly winds.
- (3) Marginal conditions.
- (a) The Department shall announce that marginal conditions are in effect and open field burning is allowed when, in its best judgment and within the established limits of this Division, the prevailing atmospheric dispersion and burning conditions are suitable for satisfactory smoke dispersal with minimal impact on the public, provided that the minimum conditions set forth in paragraphs (2)(b)(A) and (B) of this rule are satisfied.
- (b) Under marginal conditions, permits may be issued and open field burning may be conducted in accordance with the times, locations, amounts, and other restrictions set forth by the Department and this Division.
- (4) Hours of burning.
- (a) Burning hours shall be limited to those specifically authorized by the Department each day and may be changed at any time when necessary to attain and

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- maintain air quality.
- (b) Burning hours may be reduced by the fire chief or his deputy, and burning may be prohibited by the State Fire Marshal, when necessary to prevent danger to life or property from fire, pursuant to ORS 478.960.
- (5) Locations of burning:
- (a) Locations of burning shall at all times be limited to those areas specifically authorized by the Department, except that:
 - (A) No priority or fire safety buffer zone acreage shall be burned upwind of any city, airport, Interstate freeway or highway within the same priority area or buffer zone;
 - (B) No south Valley priority acreage shall be burned upwind of the Eugene-Springfield non-attainment area.
- (6) Amounts of burning.
- (a) In order to provide for an efficient and equitable distribution of burning, daily authorizations of acreages shall be issued by the Department in terms of single or multiple fire district quotas. The Department shall establish quotas for each fire district and may adjust the quotas of any district when conditions in its judgment warrant such action.
 - (b) Unless otherwise specifically announced by the Department, a one quota limit shall be considered in effect for each district authorized for burning.
 - (c) The Department may issue more restrictive limitations on the amount, density or frequency of burning in any area or on the basis of crop type, when conditions in its judgment warrant such action.
- (7) Limitations on burning based on air quality.
- (a) The Department shall establish the minimum allowable effective mixing height required for burning based upon cumulative hours of smoke intrusion in the Eugene-Springfield area as follows:
 - (A) Except as provided in paragraph (B) of this subsection, burning shall not be permitted whenever the effective mixing height is less than the minimum allowable height specified in Table 1, and by reference made a part of this Division;
 - (B) Notwithstanding the effective mixing height restrictions of paragraph (A) of this subsection, the Department may authorize burning of up to 1000 acres total per day for the Willamette Valley, consistent with smoke

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- management considerations and this Division.
- (8) Limitations on burning based on rainfall.
- (a) Open field burning and propane flaming shall be prohibited in any area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station.
 - (b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.
- (9) Other discretionary provisions and restrictions.
- (a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgment warrant such action.
 - (b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid.
 - (c) The Department may designate additional areas as priority areas when conditions in its judgment warrant such action.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 24-1979(Temp), f. & ef. 7-5-79; DEQ 28-1979, f. & ef. 9-13-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

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Winter Burning Season Regulations
340-26-020

Stat. Auth.: ORS Ch. 468 & 468A

[DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ
93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ
104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ
138, f. 6-30-77; DEQ 6-1978, f. 4-18-78; DEQ
8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ
2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef.
4-21-80; DEQ 9-1981, f. & ef. 3-19-81; Repealed
by DEQ 5-1984, f. & ef. 3-7-84]

Civil Penalties

340-26-025 [DEQ 93(Temp), f. & ef. 7-11-75 thru
11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114,
f. 6-4-76; DEQ 1, f. 6-30-77; DEQ 6-1978, f. &
ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78
thru 10-5-78; DEQ 2-1980, f. & ef. 1-21-80; DEQ
12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef.
3-19-81; DEQ 5-1984, f. & ef. 3-7-84; Repealed
by DEQ 15-1990, f. & cert. ef. 3-30-90]

**Tax Credits for Approved Alternative Methods, and Approved
Alternative Facilities**

340-26-030 [DEQ 114, f. & ef. 6-4-76; DEQ 138, f.
6-30-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ
8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ
2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef.
4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f.
& ef. 3-7-84; Repealed by DEQ 12-1984, f. & ef.
7-13-84]

Burning by Public Agencies (Training Fires)

340-26-031 Open field burning on grass seed or cereal grain
acreage by or for any public agency for official purposes,
including the training of fire-fighting personnel, may be
permitted by the Department on a prescheduled basis consistent
with smoke management considerations and subject to the following
conditions:

- (1) Such burning must be deemed necessary by the official local
authority having jurisdiction and must be conducted in a
manner consistent with its purpose.
- (2) Such burning must be limited to the minimum number of acres
and occasions reasonably needed but in no case exceed 35
acres per fire or occasion.

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- (3) The responsible person shall ~~insure that such burning~~ complies with the provisions of OAR 340-26-010 through 340-26-013.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 5-1984, f. & ef. 3-7-84; AQ 17, f. & ef. 3-11-92

Preparatory Burning

~~340-26-033~~ The Department ~~may allow~~ **encourages the preparatory burning of portions of selected problem fields[,] to reduce or eliminate potential fire hazards and safety problems and to expedite the subsequent burning of the field. Such burning shall be** consistent with smoke management considerations and subject to the following conditions[.]:

- ~~[(1) Such burning must, in the opinion of the Department, be necessary to reduce or eliminate a potential fire hazard or safety problem in order to expedite the subsequent burning of the field.]~~
- ~~(2)~~ **(1) Each responsible person [Such burning] shall [be] limit[ed] the acres burned to the minimum [number of acres] necessary to eliminate potential fire hazards or safety problems but [,] in no case exceed[ing] 5 acres for each burn unless specifically authorized by the Department. [for a maximum of 100 acres each day.]**
- ~~(3)~~ **(2) [Such burning must] Each responsible person conducting preparatory burning shall employ backfiring burning techniques.**
- ~~(4)~~ **(3) [Such burning is exempt from the provisions of OAR 340-26-015 but must] Each responsible person conducting preparatory burning shall comply with the provisions of OAR 340-26-010 through 340-26-013 and OAR 837-110-010 through 837-110-090.**

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 11-1987, f. & ef. 6-15-87

Experimental Burning

340-26-035 The Department may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468A.620, consistent with smoke management considerations and subject to the following conditions:

- (1) Acreage experimentally open burned, propane flamed, or stack or pile burned shall not exceed 1,000 acres annually.
- (2) Acreage experimentally open burned shall not apply to the district allocation or to the maximum annual acreage limit specified in OAR 340-26-013(1)(a) or (d).
- (3) Such burning is exempt from the provisions of OAR 340-26-015 but must comply with the provisions of OAR 340-26-010 and 340-26-012, except that the Department may elect to waive all or part of the per acre open field burning or propane flaming fee.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; AQ 17, f. & ef. 3-11-92

Emergency Burning, Cessation

340-26-040 Pursuant to ORS 468A.610 and upon finding of extreme danger to public health or safety, the Commission may order temporary emergency cessation of all open field burning in any area of the Willamette Valley.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 5-1984, f. & ef. 3-7-84; AQ 17, f. & ef. 3-11-92

Propane Flaming

340-26-045

- (1) The use of propane flammers, mobile field sanitizing devices, and other field sanitation methods specifically approved by the Department are subject to the following conditions:
 - (a) The field ~~must~~ **shall** first be prepared as follows:
 - (A) Either the field must have previously been open burned and the appropriate fees paid; or
 - (B) The field stubble must be flail-chopped, mowed,

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or otherwise cut close to the ground and the loose straw removed ~~{to the extent practicable and}~~ so the remaining stubble will not sustain an open fire.

- (b) Propane flaming operations shall comply with the following criteria:
- (A) Unless otherwise specifically restricted by the Department~~{, and except for the use of propane flammers in preparing fire breaks,}~~ propane flaming may be conducted only between the hours of 9 a.m. and sunset between June 1 and August 31 of each year and ~~{(} 9 a.m. to one-half hour before sunset {on or after}~~ between September 1 {}} and October 14 of each year;
 - (B) ~~{Every effort shall be made to operate}~~ Propane flammers shall be operated in overlapping strips, crosswise to the prevailing wind, beginning along the downwind edge of the field;
 - (C) No person shall cause or allow propane flaming which results in ~~The remaining field residue must not sustained~~ an open fire. Should sustained open fire create excessive smoke all flame and smoke sources shall be immediately and actively extinguished;
 - ~~{(D) A fire permit must first be obtained from the local fire permit issuing agency;}~~
 - ~~{(E) Every effort shall be made to conduct propane flaming in a manner which minimizes smoke emissions;}~~
 - (D) No person shall cause or allow ~~{to maintain}~~ any propane flaming which results in visibility impairment on any Interstate highways or roadways specified in OAR 837-110-080(1) and (2). Should visibility impairment occur, all flame and smoke sources shall be immediately and actively extinguished;
 - (E) The acreage must be registered and permits obtained pursuant to OAR 340-26-012.
- ~~{(c) In addition to the conditions specified in paragraphs (a) and (b) of this section, propane flaming operations within any fire safety buffer zone must comply with the following criteria: (A) Propaning shall be conducted at a vehicle speed appropriate for complete combustion and minimum smoke emissions but should not exceed 5 miles per hour;}~~

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 26 - DEPARTMENT OF ENVIRONMENTAL QUALITY

~~{(B)}~~**(F)** No **person** ~~{propaning}~~ shall ~~{be}~~ **cause or allow**~~{ed}~~ **propane flaming** when either the relative humidity at the nearest reliable measuring station exceeds 65 percent or the surface winds exceed 15 miles per hour;

~~{(C)}~~**(G)** ~~{The presences of any}~~ **All** regrowth ~~{in the field between}~~ **over 8** ~~{6 and 12}~~ inches in height shall be mowed or cut close to the ground~~{,}~~ and removed ~~{providing mechanical removal of the resultant field residues is practicable. Any regrowth exceeding 12 inches shall be mowed or cut close to the ground and removed}~~.

(d) All propane flaming operations shall be conducted in accordance with the State Fire Marshal's safety requirements specified in OAR 837-110-100 through 837-110-160.

~~{(2)}~~ **(e)** No person shall cause or allow to be initiated or maintained any propane flaming **or other mobile fire sanitation methods not certified by the Department** on any day or at any time if the Department has determined and notified the State Fire Marshal that propane flaming is prohibited because of adverse meteorological or air quality conditions.

~~{(3)}~~**(2)** The Department may issue restrictive limitations on the amount, density or frequency of propane flaming **or other mobile fire sanitation methods** in any area when meteorological conditions are unsuitable for adequate smoke dispersion, or deterioration of ambient air quality occurs.

~~{(4)}~~ ~~All propane flaming operations shall be conducted in accordance with the State Fire Marshal's safety requirements, as specified in OAR 837-110-100 through 837-110-160.}~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

Stack Burning

340-26-055 The open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops used for seed production is allowed subject to the following conditions:

- (1) No person shall cause or allow to be initiated or maintained any stack or pile burning on any day or at any time if the Department has notified the State Fire Marshal that such burning is prohibited because of meteorological or air quality conditions;
- ~~[(2) A fire permit must be obtained from the local permit issuing agency;]~~
- ~~+(3)~~(2) No person shall cause or allow stack or pile burning of any grass seed or cereal grain All residue unless said residue is to be burned must be dry ~~[to the extent practicable]~~ and free of all other combustible and non-combustible material. ~~Covering the stacks is advised when necessary and practicable to protect the material from moisture ;~~
- ~~+(4)~~(3) ~~[It shall be the duty of]~~ Each responsible person shall to make every reasonable effort to promote efficient burning, minimize smoke emissions, and extinguish any stack burning which is in violation of any rule of the Commission;
- ~~+(5)~~(4) No stack or pile burning shall be conducted within any State Fire Marshal buffer zone "non-combustible ground surface" area (e.g., within 1/4 mile of Interstate I-5, or 1/8 mile of any designated roadway), as specified in OAR 837-110-080;
- ~~+(6)~~(5) The acreage must be registered and permits obtained pursuant to OAR 340-26-012.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 11-1987, f. & ef. 6-15-88; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

TABLE 1
(340-26-015)

**MINIMUM ALLOWABLE EFFECTIVE MIXING HEIGHT
REQUIRED FOR BURNING BASED UPON THE CUMULATIVE HOURS
OF SMOKE INTRUSION IN THE EUGENE-SPRINGFIELD AREA**

<u>Cumulative Hours of Smoke Intrusion in the Eugene-Springfield Area</u>	<u>Minimum Allowable Effective Mixing Height (feet)</u>
0 - 14	No minimum
15 - 19	4,000
20 - 24	4,500
25 and greater	5,500

MISC\AH71201

NOTICE OF PROPOSED RULEMAKING HEARING(Rulemaking Statements and Statement of Fiscal Impact **must** accompany this form.)**AGENCY:** Department of Environmental Quality, Air Quality Division

The above named agency gives notice of hearing.

HEARING TO BE HELD:

DATE:	TIME:	LOCATION:
March 17, 1993	9:00 a.m.	Land Board Room Division of State Lands 775 Summer Street Salem, OR 97310

Hearings Officer: Wendy Anderson

Pursuant to the Statutory Authority of ORS 468 and 468A, the following action is proposed:

ADOPT: OAR 340-26-020**AMEND:** OAR 340-26-001, OAR 340-26-005, OAR 340-26-010, OAR 340-26-012, OAR 340-26-013, OAR 340-26-031, OAR 340-26-033, OAR 340-26-045, and OAR 340-26-055.**REPEAL:** No Rules repealed Prior Notice Given; Hearing Requested by Interested persons No Prior Notice Given**SUMMARY:** The proposed amendments clarify existing rules, establishes acreage registration procedure and re-registration late fee, restricts training fires, encourages preparatory burning.

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by 5:00 p.m. March 18, 1993 will also be considered. Written comments should be sent to and copies of the proposed rulemaking may be obtained from:

AGENCY: Department of Environmental Quality
ADDRESS: Air Quality Division
811 S. W. 6th Avenue
Portland, Oregon 97204

ATTN: Stephen Crane**PHONE:** (503) 229-5353 or Toll Free 1-800-452-4011

Date: February 15, 1993

To: Interested and Affected Public

Subject: Rulemaking Proposal - Amend Rules for Open Field
Burning (Willamette Valley)

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to amend Oregon Administrative Rules governing open field burning, propane flaming, and stack and pile burning of grass seed and cereal grain crops and associated residue in the Willamette Valley.

This proposal would clarify and amend existing rules for preparatory burning, propane flaming, open field burning, and stack burning, establish a one dollar per acre late fee for re-registering acreage after April 1, and establish rules for winter stack and pile burning.

These rules and amendments are proposed to reduce emissions, increase compliance, and reduce costs.

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 "Legal Notice" and the general "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)

[†]A large print copy of this report is available upon request.

Memo To: Interested and Affected Public
February 15, 1993
Page 2

Attachment E A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.

Attachment F (Other attachments as appropriate and necessary)

Hearing Process Details

You are invited to review these materials and present written or oral comment in accordance with the following:

Date: March 17, 1993
Time: 9:00 a.m.
Place: Land Board Room
Division of State Lands
775 Summer Street
Salem, OR 97310

Deadline for submittal of Written Comments: March 18, 1993
5:00 p.m.

Wendy Anderson 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

Memo To: Interested and Affected Public
February 15, 1993
Page 3

rulemaking proposal is April 22-23, 1993. 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 notified of the proposed final action on this rulemaking proposal.

The EQC expects testimony and comment on proposed rules to be presented during the hearing process so that full consideration by the Department may occur before a final recommendation is made. The EQC may elect to receive comment during the meeting where the rule is considered for adoption; however, such comment will be limited to the effect of changes made by the Department after the public comment period in response to testimony received. The EQC strongly encourages people with concerns regarding the proposed rule to communicate those concerns to the Department at the earliest possible date so that an effort may be made to understand the issues and develop options for resolution where possible.

Background on Development of the Rulemaking Proposal

What is the problem

REGISTRATION AND PAYMENT OF FEES

House Bill 3343 established registration, burn permit, and fee requirements for propane flaming and stack and pile burning. The new fees were designed to cover the additional administrative costs of tracking, permitting, and monitoring. Although the bill increased available revenue and increased payments to fire districts for registering acreage and issuing burn permits, no consideration was given to covering the additional administrative costs associated with re-registration.

During the 1992 season the Department allowed growers to initially register their acreage for open field burning, propane flaming, or stack burning and later switch (re-register) the acreage from one burn category to another without an additional fee. This policy resulted in a substantial increase in workload and overall cost to the program and reduced revenue for research. Each re-registration takes approximately 15 minutes and costs \$3.00. During the 1992 season approximately 1,600 re-registration transactions were made for a total additional cost of \$4,800.

Memo To: Interested and Affected Public
February 15, 1993
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The Department proposes to allow growers to register acreage in each of the three burn categories (open field burning, propane flaming and stack burning) and pay the appropriate registration fee into designated accounts. After registration and prior to burning a given field the grower would specify the method of sanitation and the registration fee would then be deducted from the dedicated account.

Registration of acreage or paying additional registration fees into the designated accounts after April 1st constitutes late registration, therefore, the Department proposes the existing one dollar per acre late registration fee be extended to include re-registration of acreage after April 1 to offset the additional administrative costs.

The proposed amendments also establish a payment schedule to permit agents. Under this proposal, three fourths of the payment will be made before July 1st and the remainder will be made after the completion of reconciliation.

Overall the proposed amendments provide growers with significantly more flexibility to plan their burning operations and reduces their costs, ensures an equitable distribution of funds to the permit agents, decreases permit agent and Department workload, and significantly reduces the number of re-registration transactions and associated administrative costs.

STACK & PILE BURNING/WINTER BURNING

Currently stack burning continues throughout the winter and is only regulated by general burn authorizations. During the past several winters the Department has taken and verified many complaint calls regarding smoke impacts from stack burning.

The Department proposes to establish rules to require only dry stacks and piles to be burned. The proposed amendments will result in decreased emissions and fewer smoke impacts.

PREPARATORY BURNING

Preparatory burning is designed to reduce potential fire hazards and increase safety by using back firing techniques to create fire guards around or near combustible vegetation and structures. Current rules provide specific days to conduct preparatory burning but also allow prep burning immediately prior to open field burning. Most prep burning is conducted immediately prior to open field burning, resulting in a substantial increase in the time required to burn the field,

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poor plume development, substantial low level smoke, premature smoke saturation of the air shed, and reduced burning opportunities for other growers.

Amendments to Oregon Administrative Rule OAR 340-26-033 are being proposed to encourage preparatory burning on days when open field burning is prohibited. This will promote rapid ignition when the field is ultimately open burned resulting in faster hotter burns, better plume rise, reduced low level smoke, increased safety, and optimize burning opportunities.

PROPANE FLAMING

Propane flaming has not been as closely regulated as open field burning because, when done properly, the combustion process is controlled, particulate emissions are significantly reduced, and smoke is minimized. Propane flaming is, therefore, allowed in the non-combustible portion of the fire safety buffer zone, is a recognized alternative for preparing fire guards, and is permitted during periods of relatively poor air quality.

Over the past several years the Department has observed a dramatic increase in the number and seriousness of propane flaming violations. These violations have resulted in heavy smoke impacts to numerous communities, open field burning in the fire safety buffer zone, and wild fires adjacent to Interstate 5 and heavy smoke obscuring I-5.

The Department is proposing to clarify and amend existing rules by specifying propane flamer operation requirements, field preparation criteria, and establishing standards for other non-certified mobile flame sanitation methods.

How does this proposed rule help solve the problem

OAR 340-26-005 Definitions:

- (24) Definition of open field burning clarified.
- (32) Definition for propane flaming amended to reflect 1991 statutory changes.

OAR 340-26-010:

- (7) Rule Clarification. Prohibits open field burning and stack burning in the noncombustible portion of the fire safety buffer zone. Rule promotes

Memo To: Interested and Affected Public
February 15, 1993
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safety, reduces chance of smoke impacts to major highways, and increases compliance.

- (9) (a),
(b), (c) Amends requirements for open field burning to insure compliance with State Fire Marshal rules, reduce emissions.

OAR 340-26-012 Registration, Permits, Fees, and Records:

The proposed amendments provide control over the dispersion of funds to the fire districts, give growers more flexibility to plan burning operations and reduce their costs, reduces administrative costs, and improves accuracy of registration and burn permit records.

- (1) (a): The registration procedure is changed from a field by field basis to an acreage basis. Registration fees are paid into an open field burning or a propane flaming account based on total acreage for each burn category. Provides flexibility for the grower and reduces costs.
- (1) (b): Establishes one dollar per acre late fee for changing from one sanitation method to another after April 1. Encourages early and accurate registration of acreage.

OAR 340-26-033 Preparatory Burning:

The proposed rule encourages preparatory burning on problem fields to expedite subsequent open field burning. The proposed amendments coupled with new State Fire Marshal fire guard requirements will result in faster and hotter burns, better plume rise, reduced emissions and low level smoke, and greater safety. It will also optimize burn opportunities for all growers.

OAR 340-26-045 Propane Flaming:

The proposed amendments require regrowth over 8 inches high to be cut prior to propane flaming, prohibits sustained open flame, and limits other non-certified mobile fire sanitation methods during State Fire Marshal conditions and periods of poor air quality. The proposed

Memo To: Interested and Affected Public
February 15, 1993
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changes should result in a better understanding of the rules, increased compliance, and reduced emissions.

OAR 340-26-055 Stack Burning:

The stack burning rules are amended to ensure only dry grass seed and cereal grain crop residue is burned. These changes will result in faster burning stacks and reduced emissions.

How was the rule developed

The rules were developed with the help of an advisory committee consisting of grass seed growers, the Department of Agriculture, Oregon Seed Council, and the State Fire Marshal.

How does it affect the public, regulated community, other agencies

The public will benefit from fewer smoke impacts and overall cleaner air. The regulated community will benefit from more burn opportunities, increased funding for research and development, and easier compliance.

The Department of Agriculture and DEQ will benefit from reduced administrative costs, lower emissions, and better compliance.

How will the rule be implemented

The rules will be implemented through the existing field burning program. Under this plan, the Department of Agriculture administers the smoke management program, collects registration and burn permit fees, and manages the research and development program. The DEQ is responsible for operating and maintaining the air quality monitoring network, developing administrative rules, and enforcement.

Are there time constraints

Growers are required to register their fields by April 1 of 1993 to avoid late registration fees. In addition, they need to plan their harvest activities in advance. To address the growers needs for the 1993 season these rules should be in place on or about April 1, 1993.

Memo To: Interested and Affected Public
February 15, 1993
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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:

Stephen Crane
Air Quality Division
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204
(503) 229-5353

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Open Field Burning (Willamette Valley)

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

This proposal amends Oregon Administrative Rules (OAR) 340, Division 26. It is proposed under the authority of Oregon Revised Statutes (ORS) Chapter 468 and Chapter 468A.

2. Need for the Rule

Oregon Administrative Rules 340-26-001 through 340-26-055 apply to the open field burning, propane flaming, and stack and pile burning of all perennial and annual grass seed and cereal grain crops and associated residue within the Willamette Valley. Regulation of these activities is needed to obtain EPA approval of the State Implementation Plan (SIP) and to insure compliance with the Federal Clean Air Act.

This proposal amends existing rules to further reduce particulate emissions, reduce violations, lower administrative costs, and increase revenue available for research and development.

OAR 340-26-001 Introduction:

- (1) Housekeeping
- (2)(g) Incorporates winter burning season regulations (OAR 340-26-020) into the organization of rules.

OAR 340-26-005 Definitions:

- (24) Definition of open field burning clarified.
- (32) Definition for propane flaming amended to reflect 1991 statutory changes.

OAR 340-26-010 General Requirements:

- (7) Rule Clarification. Prohibits open field burning and stack burning in the noncombustible portion of the fire safety buffer zone. Rule promotes safety, reduces chance of smoke impacts to major highways, and increases compliance.

- (9) (a),
(b), (c) Amends requirements for open field burning to insure compliance with State Fire Marshal rules and reduce emissions.

OAR 340-26-012 Registration, Permits, Fees, and Records:

Provides control over the dispersion of funds to the fire districts and gives growers more flexibility for registration and subsequent burning of their fields. Saves money, ensures proper distribution of funds, and improves accuracy of registration and burn permit records.

- (1) (a) Changes registration from a field by field basis to an acreage basis.

- (1) (b) Establishes one dollar per acre late fee for changing from one sanitation method to another after April 1. Covers extra costs associated with re-registration.

OAR 340-26-033 Preparatory Burning:

The proposed rule encourages preparatory burning on problem fields to expedite subsequent open field burning. Proposed amendments coupled with new State Fire Marshal fire guard requirements will result in faster and hotter burns, better plume rise, reduced emissions and low level smoke, and greater safety. It will also optimize burn opportunities for all growers.

OAR 340-26-045 Propane Flaming:

The proposed amendments clarify the expectations of the Department and set stricter standards for field preparation. Limitations for other non-certified mobile fire sanitation methods are also established. The proposed changes should result in a better understanding of the rules, increased compliance, and reduced emissions.

OAR 340-26-055 Stack Burning:

The stack burning rules are amended to ensure only dry grass seed and cereal grain crop residue is burned. These changes will result in faster burning stacks and reduced emissions.

3. Principal Documents Relied Upon in this Rulemaking

- o Oregon Administrative Rules Chapter 340, Division 26.
- o Oregon Revised Statutes (ORS) 468A.550 through 468A.620.
- o Federal Clean Air Act Amendments of 1990, PL 101-549, November 15, 1990.

All legal documents referenced may be inspected, during normal business hours, at the Department of Environmental Quality (DEQ), Air Quality Division, 811 S.W. Avenue, Portland, Oregon.

**Rulemaking Proposal
for
Open Field Burning (Willamette Valley)**

Fiscal and Economic Impact Statement

Introduction

- Statement of overall degree of economic impact
- Summary Chart

General Public

The proposed rule changes are not expected to have a fiscal or economic impact on the general public.

Small Business

The proposed rule changes are expected to have a minor economic impact to grass seed growers and custom bailers in the Willamette Valley. The proposed rule changes should give growers the flexibility they need to plan their burn operations, reduce their costs, and avoid late registration fees.

In 1991 House Bill 3343 established acreage registration requirements for stack and pile burning and registration fees for propane flaming. The bill also increased the registration fees for open field burning. In response to HB 3343, the Department adopted a policy allowing growers to initially register their acreage for open field burning, propane flaming or stack burning and at a later date re-register the same acreage under a different category at no additional cost. This policy was established to maximize flexibility and reduce grower costs. Unfortunately, because of the overwhelming number of re-registrations, the Departments' work load and administrative costs increased substantially.

To encourage accurate registrations, provide growers with more flexibility and reduce associated late registration costs, and reduce administrative costs the Department proposes to change the registration process from a field by field basis to an acreage basis. Under this plan growers would be allowed to register acreage without specifying the method of sanitation for each field. Growers would pay a registration fee into an account for acreage anticipated to be open field burned and propane flamed and these accounts

would be debited when the method of sanitation was specified and prior to burning. The Department also proposes to charge a one dollar per acre late fee for re-registrations made after the initial April 1 registration deadline. A late registration fee is authorized under ORS 468A.615. Each re-registration takes approximately 15 minutes and costs \$3.00. In 1992 approximately 1,600 fields were re-registered for a total additional cost to the Department of \$4,800.

Large Business

The proposed rule changes are not expected to have a fiscal or economic impact on large business.

Local Governments

The proposed rule changes are not expected to have a fiscal or economic impact on local governments.

State Agencies

Overall the proposed rule changes are expected to reduce the administrative costs for both the Department of Agriculture and DEQ by an estimated \$10,000 annually.

Assumptions

NONE

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Open Field Burning (Willamette Valley)

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

Oregon Administrative Rules (OAR) 340-26-001 through 340-26-055 apply to the open field burning, propane flaming, and stack and pile burning of all perennial and annual grass seed and cereal grain crops and associated residue within the Willamette Valley. Regulation of these activities are needed to obtain US Environmental Protection Agency approval of the State Implementation Plan and to insure compliance with the Federal Clean Air Act.

This proposal amends existing rules to further reduce particulate emissions, prevent violations, lower administrative costs, and maximize funds available for research and development as required by ORS 468A.615 (3).

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:

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes ___ No X (if no, explain): The current SAC program does not identify field burning regulation as a program that affects land use.

c. If no, apply the following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to

statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2. above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involves more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

This program is not specifically referenced in the statewide planning goals and is not expected to have significant effects on resources, objectives, or areas identified in the planning goals. The program is not reasonably expected to have significant effects on land uses in the acknowledged comprehensive plans.

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.

Division

Robert L. G.
Intergovernmental Coord.

2-10-93
Date

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 17, 1993

To: Environmental Quality Commission
From: Wendy Anderson, AQ
Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: March 17, 1993,
beginning at 9:17

Hearing Location: Division of State Lands
Land Board Room, Salem

Type of Proposal: Amend Rules for Open Field Burning
(Willamette Valley)

The rulemaking hearing on the above titled proposal was convened at 9:17 am on March 17, 1993. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Six people were in attendance, two people signed up to give testimony.

Prior to receiving testimony, Steve Crane briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

People were then called to testify in the order of receipt of witness registration forms and presented testimony as noted below.

Dawn Hall: Asks that the growers be required to give their neighbors 24 hours notification before burning fields. Dawn Hall did not submit written testimony.

Eric Bower: Re:OAR 340-26-033, Stated that prep burning is a good safety tool, but that it is a good idea to also set back fires when the time comes to open burn the field.

Re:OAR 340-26-055(2), Questioned the use of the word "dry". ("No person shall ...allow stack or pile burning...unless said residue is dry...") What is the definition of "dry"?

Re:OAR 340-26-055(3), Believes that the word "reasonable" (which is slated to be taken out of this

Memo To: Environmental Quality Commission
Presiding Officer's Report
March 17, 1993 Rulemaking Hearing
Page 2

paragraph) should be left in the rule ("...Each responsible person shall make every reasonable effort to promote efficient burning...").
Eric Bower did not submit written testimony.

There were no written comments submitted during the March 17 hearing, however, written testimony was received from:

Jim Britton, Manager, Smoke Management Program, Natural Resources Division, Department of Agriculture.

George VanLeeuwen, 27070 Irish Bend Loop, Halsey, OR

Jan Wroncy, P.O. Box 1101, Eugene, OR 97440

Bill Johnson, Executive Director, E.N.U.F., Inc., P.O. Box 258, Foster, OR 97345.

There was no further testimony and the hearing was closed at 10:30 am.

Attachments:

Written Testimony Submitted for the Record.
Hearing Sign-In Sheet
Registrations for Testimony

MISC\AH71197

LIST OF WRITTEN COMMENTS

1. George VanLeeuwen, grass seed grower, received March 17, 1993.
 - * Expressed concern regarding permit agents changes and the term "dry" as it relates to stack burning.
2. Jim Britton, Department of Agriculture, received March 9, 1993.
 - * Requested implementation of proposed amendments to OAR 340-26-012 be delayed until December 31, 1993.
3. Jan Wroncy, citizen, received March 18, 1993.
 - * Stated open field burning, propane flaming, and stack burning are illegal and unconstitutional and by administering the field program the Department facilitates the violation of Federal Law and Oregon's Constitution.
4. Bill Johnson, Executive Director, E.N.U.F., received March 22, 1993.
 - * States proposed rules would result in extra cost to the general public and encourage unlawful burning.

MISC\AH71193

EVALUATION OF PUBLIC COMMENT

1. Two respondents testified the requirement to allow only dry stacks to be burned was too prohibitive and the term "dry" was vague.

The Department's intent is to prohibit the burning of stacks and piles which are so wet they will not ignite or burn rapidly but will smolder for days and produce excessive emissions. The Department, with assistance of the advisory committee, will address these concerns by policy and by defining the term "dry."

2. The Department of Agriculture stated they could not change to the new acreage registration system this season because the existing rules required registration to be completed by April 1 and the proposed amendments will not be adopted until April 22. They suggest a provision be added making the rule amendments contained in OAR 340-26-012 effective after December 31, 1993.

The Department has added the requested provision.

3. One respondent stated wild fires resulting from open field burning have damaged her property and requested growers be required to provide a 24 hour notice of intent to burn.

The Department responded it was not possible to determine 24 hours in advance if field burning would be conducted. The Department also stated their problem should be alleviated by the State Fire Marshals proposed stricter rules and enforcement policies of fire guard requirements.

4. One respondent stated that open field burning, propane flaming, and stack burning are illegal and unconstitutional acts and suggests these activities be ban.

Oregon Revised Statutes 468 and 468A directs the Department to carry out a smoke management program to regulate field burning activities in the Willamette Valley.

CHANGES TO ORIGINAL
RULE MAKING PROPOSAL
IN RESPONSE TO PUBLIC COMMENT

RULE: OAR 340-26-012

CONCERN: The Department of Agriculture stated they could not change to the new acreage registration system this season because the existing rules required registration to be completed by April 1 and the proposed amendments will not be adopted until April 22. They suggest a provision be added making the rule amendments contained in OAR 340-26-012 effective after December 31, 1993.

RESPONSE: The acreage registration program will be implemented after December 31, 1993.

The rule proposed rule shall be amended to read "
(a)...at the time of registration, a non-refundable registration fee of \$2 shall be paid for each acre registered for open field burning and \$1 shall be paid for each acre registered for propane flaming. After December 31, 1993 the registration fees for open field burning and propane flaming shall be paid into separate designated accounts.

A complete registration (permit application) shall consist of a fully executed registration form, map, and fee. Acreage registered by April 1 under any classification (open field burning, propane flaming, or stack or pile burning) may be issued a burn permit under another classification if:

- (A) allocation is available for the subsequent classification and;
- (B) the initial registration fee is made equal to or greater than the subsequent classification and allocation is transferred under the direction of the Department.

After December 31, 1993 acreage registered by April 1 under any classification (open field burning, propane flaming, or stack or pile burning) may be issued a burn permit if:

- (A) allocation is available and;
- (B) the initial registration fee account has a sufficient balance.

ATTACHMENT F

Page 2

RULE: OAR 340-26-055 (2)

CONCERN: Two respondents testified the requirement to allow only dry stacks to be burned was too prohibitive and the term "dry" was too vague.

RESPONSE: The term "dry" will be defined and included in a policy statement.

RULE: OAR 340-26-055 (3)

CONCERN: One person stated the rule may be difficult to comply with and stated the term "reasonable" should be reinstated.

RESPONSE: The term "reasonable" will be reinstated.

The proposed rule shall be amended to read "...each responsible shall make every **reasonable** effort to promote efficient burning, minimize smoke emissions, and extinguish any stack burning which is in violation of any rule of the Commission...."

MISC\AH71194

ATTACHMENT G

ADVISORY COMMITTEE
MEMBERSHIP AND REPORT

MEMBER	AFFILIATION
Bob Lindsay	Grower
Ray Rice	Grower
Eric Bowers	Grower
Jerry Mullen	Grower
Stan Christensen	Grower
Bob Riches	Grower
Robert Doerfler	Grower
Ralph Fisher	Grower
David Nelson	Oregon Seed Council
Mike Rodia	State Fire Marshal
Henry Hanf	State Fire Marshal
Chuck Craig	Department of Agriculture
Jim Britton	Department of Agriculture
Sarah Armitage	DEQ
Stephen Crane	DEQ

REPORT: Two advisory committee meetings were held in Salem to discuss the proposed field burning rule amendments. The first meeting was held on February 3, 1993 and was attended by all of the members. The meeting was opened with a brief overview of the proposed amendments and followed by an in-depth discussion of each rule. The Department revised many of the proposed rules as a result of the first meeting.

A second meeting was held on February 10 and was attended by 4 growers, representatives from the State Fire Marshals Office and Department of Agriculture, and DEQ. The remainder of the rules and the new revisions were discussed and agreed upon.

The Seed Council and the Growers agreed to work with the Department to develop standards for field preparation for propane flaming, and establish an educational program to help other growers comply with the rules.

Overall the advisory committee was very enthusiastic and provided valuable comments and suggestions. The Department looks forward to working with them in the future.

RULE IMPLEMENTATION PLAN

Copies of the final rule package will be mailed to all registered grass seed growers, permit agents, Oregon Seed Council, and all other known affected parties. The Department will review the changes with permit agents and enlist their help to inform the growers. The Department of Agriculture and DEQ will also provide growers assistance during the field burning season.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item D
April 23, 1993 Meeting

Title:

Proposed Rules for the Solid Waste Orphan Site Account


Summary:

The purpose of these proposed rules is to establish eligibility, selection criteria and conditions for use of solid waste Orphan Site Account funds. The rules focus on the following primary areas:


- * Eligible sites (solid waste landfills).
- * Priority order of funding factors, with environmental risk being top priority.
- * Conditions for use of funds as loan or grant.
- * Limitations on use of funds.

Department Recommendation:

Adopt rules.


Report Author


Division Administrator


Director

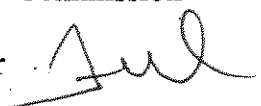
April 5, 1993

†A large print copy of this report is available upon request.

State of Oregon
Department of Environmental Quality

Memorandum[†]

Date: April 6, 1993

To: Environmental Quality Commission
From: Fred Hansen, Director 
Subject: Agenda Item D, April 23, 1993, EQC Meeting

Proposed Rules for Use of the Solid Waste Orphan Site Account

Background

On January 14, 1993, the Director authorized the Environmental Cleanup Division to proceed to a rulemaking hearing on proposed rules which would establish eligibility, selection criteria and conditions for use of solid waste Orphan Site Account funds. This proposal would permit use of solid waste Orphan Site Account funds for the investigation and cleanup of hazardous substance releases from solid waste disposal facilities, in accordance with ORS 459.236.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on February 1, 1993. On January 22, 1993, 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.

Public Hearings were held on February 22, 23 and 24, 1993, in Pendleton, Portland and Medford with Wayne Thomas, Brooks Koenig and Dennis Belsky serving as Presiding Officers. The Presiding Officers' Reports (Attachment C) summarize the oral testimony presented at the hearing.

The period to receive written comment was open through 5 p.m., March 1, 1993. No written comments were received.

Department staff have evaluated the comments received (Attachment D). Based upon that evaluation, no modifications to the initial rulemaking proposal are being recommended by the Department.

[†]A large print copy of this report is available upon request.

Memo To: Environmental Quality Commission
Agenda Item D
April 23, 1993 Meeting
Page 2

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.

Issue this Proposed Rulemaking Action is Intended to Address

Solid waste disposal facilities may leak hazardous substances into the environment. In some cases, the cleanup of such releases to levels which protect public health and the environment can cost millions of dollars.

The Orphan Site Account (OSA) enabling legislation was adopted in 1989 to provide a means of financing the investigation and cleanup of so-called "orphan sites" under Oregon's environmental cleanup law (ORS 465). It covered two kinds of disposal sites: industrial sites and domestic solid waste disposal facilities. These proposed rules affect only domestic solid waste disposal facilities.

Domestic solid waste facilities may be either privately owned and operated, or owned and operated by local governments. The OSA may be used at privately-owned and operated facilities if the responsible parties are unknown, unwilling or unable to pay for removal or remedial actions. The Legislature recognized that local governments do not ordinarily qualify as "unknown, unwilling or unable," but may still face significant financial limitations in complying with environmental cleanup requirements. Therefore, the Legislature provided that the OSA may be used to pay cleanup costs associated with local government solid waste facilities, subject to a financial contribution by the local government as outlined in ORS 459.311 (surcharge or equivalent revenue requirement). The surcharge applies to a local government unit that is responsible for conducting a remedial action or removal at a solid waste site, or to a local government which contributed solid waste to a solid waste disposal site and is legally liable for cleanup of the site. The surcharge is to be imposed on all billings for solid waste collection services within the boundaries of the local government unit unless the local government provides an equivalent amount of funding through another source. The charge imposed is the equivalent of \$12 per person per year and \$60 per person total.

Revenue for the domestic solid waste facility side of the OSA started being collected on January 1, 1993 from a 13 cents per ton solid waste disposal fee. This will raise an estimated \$400,000 per year. The fee is to be used exclusively for the investigation and

cleanup of facilities which have accepted municipal solid waste. Fee revenue may be used either directly to fund required environmental cleanup projects, or to repay bonds sold for financing cleanup projects at solid waste disposal facilities.

The proposed rule establishes eligibility requirements for use of the solid waste OSA, criteria for selection of projects and the amounts to be spent from the Account for cleanup activities, and conditions for use of OSA funds.

Relationship to Federal and Adjacent State Rules

1. Federal. The proposed rules have no direct counterpart in federal laws or regulations. The closest federal statutes governing environmental cleanup of releases of hazardous substances from solid waste landfills are the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).

Under federal statutes, a responsible party may be held liable for environmental cleanup if the party owned or operated a facility requiring cleanup, or if the party sent waste to a facility requiring cleanup. In contrast to the proposed regulations which allow a local government the opportunity to cap its financial liability to DEQ for environmental cleanup costs, liability under CERCLA may be imposed for all remedial action costs associated with the cleanup, irrespective of the extent to which the local government contributed to the cleanup problem. The proposed regulations do not affect liability of a responsible party under CERCLA or RCRA.

2. Adjacent States. *Washington.* The State of Washington has a state superfund program, the Model Toxics Control Act, funded from a toxic substance possession tax. Cleanup of contaminated landfills is eligible for funding if a local government is the owner/operator or has some liability for cleanup, or if its an abandoned ("orphan") site. Funds may be used for up to half of a local government's expenses eligible for the cleanup. This has the same effect as the Oregon law and proposed rules of imposing less stringent financial requirements for cleanup on local governments.

Idaho. The State of Idaho does not have a state superfund program.

California. The State of California has a Hazardous Substance Account ("California Superfund") which may provide funding for cleanup of contaminated

sites (including municipal solid waste disposal sites) causing significant problems to the environment or public health. Sites are hazard-ranked, with the worst sites receiving attention first. California enters into preliminary non-binding arbitration to apportion costs of cleanups. California law does not allow "joint and several liability" for required cleanups, as does CERCLA. In California, cleanup cost liability is based on the percent any potentially responsible party (PRP) contributed to the problem, with the State picking up any "orphan shares." If a local government is one of the PRPs, it would be responsible for its cost share. If it doesn't pay, the State can withhold the municipality's state funding until it does pay. Municipalities have been trying to change California law to say that local governments would not be PRPs under some circumstances, i.e. if they only provided a business license to a garbage transporter. This would be less stringent than federal law.

Nevada. The State of Nevada has a state superfund program financed through a tipping fee on hazardous waste sites. The fund may be used for solid waste disposal sites if no responsible party can be identified. In general, Nevada's program follows federal criteria very closely.

Authority to Address the Issue

ORS 459.045, 459.236 and 459.311.

Process for Development of the Rulemaking Proposal (including alternatives considered)

The statute establishes the framework and overall eligibility to receive assistance from the OSA. But the Attorney General's Office advised that the Department ought not disburse available OSA monies prior to rule adoption defining what projects and specific costs would be eligible for funding. The rule was developed with the assistance of a Solid Waste Orphan Site Account Work Group, along with representatives from DEQ and the Oregon Department of Justice. The Work Group included representatives of local governments, land disposal operations, industry and an environmental organization, and met on four occasions.

The Work Group and DEQ staff addressed a fairly wide range of issues and alternative approaches. One of the areas creating much discussion was treatment of costs incurred prior to the effective date of this rule ("prior costs"), namely, to what extent should

local government environmental prior cleanup costs "count" towards a local government unit's surcharge obligations? The following options were considered:

- 1) No prior costs would be counted;
- 2) All prior costs would be counted, including costs incurred as part of a previously-approved DEQ permit for operation of a domestic solid waste disposal facility; and
- 3) Some prior costs would be counted (a variety of costs were considered).

The proposed rule (340-122-540(5)) reflects Option 3. It permits DEQ to evaluate allowing costs incurred pursuant to implementation of an order or agreement under ORS 465, if incurred after the effective date of the enabling legislation (July 24, 1989). It was felt that this option was a fair compromise, and would retain Department control over use of the OSA for sites involved with cleanup activities before the effective date of the rule. See Attachment B-4, Fiscal and Economic Impact Statement, for a more detailed discussion.

The Work Group also considered alternatives for the type of costs eligible for funding: only "hard" costs (direct expenses associated with cleanup activities), vs. expenses incurred in site investigation and remedy evaluation, administrative and legal expenses. The proposed rule (340-122-540(4)) allows all the above costs, but gives preference to direct cleanup costs. Work Group consensus was that giving preference to funding direct cleanup costs would provide a better "return" on use of the OSA; but funding other costs may be appropriate in some situations.

Summary of Rulemaking Proposal Presented for Public Hearing and Discussion of Significant Issues Involved.

The proposed rule establishes eligibility requirements for use of the solid waste OSA, criteria for selection of projects and the amounts to be spent from the Account for cleanup activities, conditions and limitations for use of OSA funds.

1. Eligibility

Potentially eligible sites include: a) solid waste disposal facilities owned or operated by a local government; and b) privately-owned or operated solid waste

disposal sites, if the responsible parties are unknown, unwilling or unable to undertake removal or remedial action.

2. Selection Criteria and Funding Amounts

Sites will be selected and the amount of remedial action funding will be determined based on the funding factors in OAR 340-122-540. These include:

- a) The site's risk to public health and the environment;
- b) The need for action at the site relative to fund availability and the need for action at other sites;
- c) The extent to which other obligations or sources of funding for the same activities exist or will be sufficient over the life of the remedial activity;
- d) The nature of the activities for which funding is sought; and
- e) The extent to which the removal or remedial action was undertaken before the effective date of these rules.

3. Conditions for Use of OSA Funds

OSA funds may be provided in the form of a loan or a grant. The rule does not establish a preference between providing loans or grants. Grants are to be used to pay for remedial action costs in excess of local government surcharge requirements. With respect to loans, the Department's intent is to issue loans only when the local government's surcharge generates insufficient funds to begin a required cleanup in a timely manner. In most cases, the Department intends to work with local governments to phase in required work in a manner which will prevent the need for use of loans.

The proposed rules describe the application process for local governments, and provide for an annual review process of the applications. The rules also describe general provisions to be included in the grant or loan agreement required between DEQ and a local government to receive OSA funds.

4. Limitations

Proposed OAR 340-122-590 describes limitations pertaining to these rules. Major limitations include:

- a) OSA funding shall not substitute for existing obligations, such as financial assurance requirements for landfill closure under ORS 459.
- b) DEQ may use OSA funds for interim actions instead of final remedial actions. DEQ is not obligated to pay all remedial action costs exceeding the surcharge or equivalent funding requirements of ORS 459.311.
- c) The rules do not preclude multiple local government units from agreeing to apportion responsibility for remedial action costs.
- d) The rules do not prevent DEQ from undertaking or requiring emergency removal or remedial activities.
- e) The rules do not require DEQ to spend all available solid waste monies during any given funding cycle. DEQ may, for example, retain a portion of the funds as a reserve for future use.

Summary of Significant Public Comment and Changes Proposed in Response

No comments were received recommending substantive changes to the rule as presented for public hearing, and consequently no changes are proposed from that draft rule. See Attachment D for the Department's Evaluation of Public Comment.

Summary of How the Proposed Rule Will Work and How it Will be Implemented

The Department will inform interested persons of the rule adoption. Staff is preparing a loan/grant application packet and a guidance packet concerning local government calculation of the surcharge or equivalent revenue requirements. DEQ staff will determine a schedule for submittal and review of the first round of applications (likely due date for consideration of applications for the 1993-95 biennium: August 1, 1993).

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Agenda Item D
April 23, 1993 Meeting
Page 8

Recommendation for Commission Action

It is recommended that the Commission adopt the rules regarding eligibility, selection criteria and conditions for use of solid waste Orphan Site Account funds for the investigation and cleanup of hazardous substance releases from solid waste disposal facilities as presented in Attachment A of the Department Staff Report.

Attachments

- A. Rule Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Public Notice of Hearing (Chance to Comment)
 - 3. Rulemaking Statements (Statement of Need)
 - 4. Fiscal and Economic Impact Statement
 - 5. Land Use Evaluation Statement
- C. Presiding Officers' Reports on Public Hearings
- D. Department's Evaluation of Public Comment
- E. Advisory Committee Membership
- F. Rule Implementation Plan
- G. ORS 459.236 and 459.311

Reference Documents (available upon request)

ORS 465
Rulemaking Proposal Package (with Rules as Proposed for Public Hearing)
Solid Waste Orphan Site Account Work Group, summary of meetings held
September 3, September 30, October 28 and December 9, 1992.

Memo To: Environmental Quality Commission
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April 23, 1993 Meeting
Page 9

Approved:

Section: *John Lutzke*

Division: *Mary Walsh*

Section: *[Signature]*

Division: *Stephanie Hallock*

Report Prepared By: Deanna Mueller-Crispin and
Jeff Christensen

Phone: 229-5808, 229-6391

Date Prepared: April 1, 1993

eqcosa2.adp

ATTACHMENT A
PROPOSED
SOLID WASTE ORPHAN SITE ACCOUNT RULES

1/9/93

340-122-510 PURPOSE

These rules establish eligibility, selection criteria, and conditions for use of solid waste Orphan Site Account funds. Solid waste Orphan Site Account funds are to be used for investigation and cleanup of hazardous substance releases from solid waste disposal facilities, in accordance with ORS 459.236.

340-122-520 DEFINITIONS

Terms not defined in this section have the meanings set forth in ORS 459.005 and ORS 465.200. Additional terms are defined as follows:

(1) "Repayment plan" means a written agreement between the Department and a local government unit setting forth the terms and schedule for repayment by the local government unit of monies provided by the Department pursuant to ORS 459.236(5). The repayment plan may be incorporated into an agreement or order for removal or remedial action issued by the Department under ORS 465.260.

(2) "Solid waste Orphan Site Account" means those monies in the Orphan Site Account established under ORS 465.380 to be used to pay certain costs for removal or remedial action at solid waste disposal sites. The solid waste Orphan Site Account consists of monies collected from the solid waste disposal fee imposed under ORS 459.236, monies paid the Department pursuant to a repayment plan, monies originally spent from the solid waste Orphan Site Account and recovered from responsible parties, and proceeds from interest.

(3) "Surcharge or equivalent funding" means the charge authorized under ORS 459.311 to be imposed on solid waste collection services by a local government unit, or an equivalent amount of funding provided by the local government unit from another source.

340-122-530 ELIGIBLE SITES

The terms "disposal site", "hazardous substances" and "release" are defined in ORS 459.005(11), 465.200(9) and 465.200(14), respectively. Within the meaning of these terms, the solid waste Orphan Site Account may be used for investigation and cleanup of a release of hazardous substances at the following types of solid waste disposal sites:

(1) Solid waste disposal sites owned or operated by a local government unit. Examples include:

(a) sites where the local government unit is conducting a removal or remedial action pursuant to ORS 465.260; and

(b) sites owned or operated by a local government unit where DEQ is conducting a removal or remedial action.

(2) Privately-owned or operated solid waste disposal sites which receive or received domestic solid waste and for which DEQ determines responsible parties are unknown, unwilling, or unable to undertake removal or remedial action. Examples include:

(a) sites for which a local government unit has liability where DEQ conducts a removal or remedial action;

(b) sites for which a local government unit has no liability where DEQ conducts a removal or remedial action; and

(c) sites where a local government unit conducts a removal or remedial action at an orphan site under an ORS 465.260 order or agreement with DEQ.

340-122-540 FUNDING FACTORS

DEQ may fund only those remedial action costs defined in ORS 465.200(16) that are reasonable in DEQ's judgement. DEQ shall consider at least the following factors, to the extent relevant information is available, in determining which removals or remedial actions shall receive funding from the solid waste Orphan Site Account and the amount of funding:

(1) The site's risk to public health and the environment, based on consideration of the factors set forth in OAR 340-122-080(2) and other available hazard ranking or risk assessment information. Each site's risk shall be evaluated relative to the risk posed by other eligible sites.

(2) The need for removal or remedial action at the site relative to fund availability and the need for removal or remedial activities at other sites.

(3) The extent to which other obligations or sources of funding for the same activities exist or will be sufficient over the life of the removal or remedial activity (e.g., ORS chapter 459 closure financial assurance).

(4) The nature of the activities for which funding is sought, in the following order of preference:

a) direct costs of cleanup, provided that adequate technical investigation has been completed;

b) direct costs of technical investigation and remedy evaluation.

c) indirect costs (e.g. administration and overhead associated with the investigation or cleanup activities).

d) legal costs.

(5) The extent to which the removal or remedial action was undertaken before the effective date of these rules. For any such prior activities, DEQ may provide funding from the solid waste Orphan Site Account, provided:

(a) The activities were performed pursuant to an order or agreement under ORS 465.260 ensuring that all activities were protective of health and the environment;

(b) The funding is only for amounts exceeding the amount collected, or to be repaid, by the local government unit through surcharge or equivalent funding;

(c) The activities were performed on or after July 24, 1989 (i.e., the effective date of HB 3515); and

(d) The activities are evaluated under and subject to the factors set forth in sections (1) through (4) of this rule.

340-122-550 GRANTS AND LOANS

DEQ may provide local government units with solid waste Orphan Site Account funds in the form of:

- (1) a grant for remedial action costs exceeding the maximum amount collected by surcharge or equivalent funding; or
- (2) a loan for remedial action costs up to the amount raised by surcharge or equivalent funding.

340-122-560 APPLICATION PROCESS

(1) Local government unit applicants shall submit a grant or loan application to DEQ on a DEQ-approved form, and additional information deemed necessary by DEQ. Applications for potential funding will be due according to a schedule determined by the Department.

(2) Except for emergency actions to protect public health and the environment, funding decisions about use of the solid waste Orphan Site Account shall be made once a year.

340-122-570 FUNDING CONDITIONS

(1) For grants under 340-122-550(1), the local government unit and DEQ shall enter a grant agreement, including provisions regarding:

- (a) specification of removal or remedial activities and DEQ oversight pursuant to an ORS 465.260 order or agreement;
- (b) calculation, collection, and use of local government units' surcharge or equivalent funding obligations under ORS 459.236(4);
- (c) necessary cost documentation, accounting, and auditing procedures; and
- (d) where applicable, recovery of remedial action costs from responsible parties.

(2) For loans under 340-122-550(2), the local government unit and DEQ shall enter a loan agreement, including provisions regarding:

(a) the same items set forth in 340-122-570(1)(a), (c) and (d);

(b) calculation, collection, and use of local government units' surcharge or equivalent funding obligations under ORS 459.236(5); and

(c) a repayment plan for the amount of solid waste Orphan Site Account monies provided, plus payment of interest, but excluding the first \$100,000 spent by the local government on removal or remedial activities.

340-122-580 APPLICATION OF SURCHARGE PROCEEDS

(1) Subject to OAR 340-122-540, proceeds from surcharge or equivalent funding collected by a local government unit shall be credited by DEQ toward the local government unit's funding obligation under ORS 459.236(4) or (5) if the proceeds are:

(a) Expended for removal or remedial action undertaken by the local government unit at a solid waste disposal site in accordance with an ORS 465.260 order or agreement; or

(b) Paid to DEQ for the costs of removal or remedial action undertaken by DEQ at a solid waste disposal site; or

(c) Paid to a third party for the costs of removal or remedial action undertaken by the third party at a solid waste disposal site in accordance with an ORS 465.260 order or agreement.

(2) Proceeds used for any of the purposes set forth in section (1) of this rule, at one or more solid waste disposal sites, shall be credited toward a local government unit's total funding obligation under ORS 459.236(4) or (5) on a cumulative basis. Any amount of surcharge proceeds retained for collection and accounting costs under ORS 459.311(5), up to 5 percent of the surcharge, shall be included in the amount credited toward a local government unit's total funding obligation under ORS 459.236(4) or (5).

340-122-590 LIMITATIONS

- (1) Funding from the solid waste Orphan Site Account under these rules does not substitute for existing obligations, including solid waste disposal site financial assurance requirements of ORS Chapter 459.
- (2) DEQ may apply the factors set forth in OAR 340-122-540 to use solid waste Orphan Site funds for interim removal actions instead of final remedial actions. DEQ is not obligated to use solid waste Orphan Site Account funds to undertake final remedial action or to pay with solid waste Orphan Site Account monies all remedial action costs exceeding surcharge or equivalent funding.
- (3) These rules do not provide an exemption or defense to liability to third parties or to a DEQ enforcement or cost recovery action should a local government unit refuse to undertake necessary remedial activities or fail to apply surcharge or equivalent funding as required by a loan or grant agreement with DEQ.
- (4) These rules do not preclude multiple local government units or potentially responsible parties from agreeing to apportion responsibility for remedial action costs, which apportionment may be reflected in the amount of solid waste Orphan Site Account funding requested.
- (5) These rules do not prevent DEQ from undertaking or requiring emergency removal or remedial activities as necessary to protect public health, safety, and welfare or the environment.
- (6) These rules do not require DEQ to spend all available solid waste Orphan Site Account funds during any given funding cycle. DEQ may, for example, retain a portion of funds to be used as a reserve for potential emergency actions or for future use at a prospective higher priority site.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Use of the Solid Waste Orphan Site Account

Rulemaking Statements

Pursuant to ORS 183.335(7), this statement provides information about the Environmental Quality Commission's intended action to adopt a rule.

1. Legal Authority

ORS 459.045, ORS 459.236 and ORS 459.311.

2. Need for the Rule

The proposed rule establishes eligibility requirements for use of the solid waste Orphan Site Account, criteria for selection of projects and the amounts to be spent from the Account, and conditions for use of Orphan Site Account funds.

3. Principal Documents Relied Upon in this Rulemaking

Hansen, Fred, Director of Department of Environmental Quality, letter to Emergency Board requesting acknowledgement of the Orphan Site Account solid waste tipping fee report, October 28, 1991.

Solid Waste Orphan Site Account Work Group, summary of meetings held September 3, September 30, October 28, and December 9, 1992.

ORS 459 and ORS 465.

These documents are available for review during normal business hours at the Department's office, 811 S.W. Sixth Avenue, Portland, Oregon.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Use of the Solid Waste Orphan Site Account

Date Issued: February 1, 1993
Public Hearings: February 22, 23 and 24, 1993
Comments Due: March 1, 1993

**WHO IS
AFFECTED:**

Owners and operators of solid waste disposal facilities, municipal solid waste collectors, local governments, and the general public.

**WHAT IS
PROPOSED:**

The proposed rules establish eligibility requirements for use of the Orphan Site Account to clean up releases of hazardous substances at domestic solid waste disposal facilities. Eligible facilities may be owned or operated by local governments or may be privately-owned or operated facilities if the responsible parties are unknown, unwilling, or unable to undertake removal or remedial actions. The rules also establish criteria for selection of projects and the amounts to be spent from the Account, and conditions for use of Orphan Site Account funds.

**WHAT ARE THE
HIGHLIGHTS:**

Sites will be selected, and the amount of remedial action funding will be determined, based on the factors described in the proposed OAR 340-122-540. These factors include: 1) the site's risk to public health and the environment; 2) the need for action at the site relative to fund availability and the need for action at other sites; 3) the extent to which other obligations or sources of funding for the same activities exist or will be sufficient over the life of the remedial activity; 4) the nature of the activities for which funding is sought; and 5) the extent to which the removal or remedial action was undertaken before the effective date of these rules.

(continued)



811 S.W. 6th Avenue
Portland, OR 97204

11/1/86

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

**HOW TO
COMMENT:**

Public Hearings to provide information and receive public comment are scheduled as follows:

Date: February 22, 1993
Time: 10:00 a.m.
Place: Pioneer 148, Pioneer Hall, Blue Mountain
Community College, Pendleton, Oregon

Date: February 23, 1993
Time: 10:00 a.m.
Place: 811 S.W. Sixth Avenue, Room 3A, Portland, Oregon

Date: February 24, 1993
Time: 10:00 a.m.
Place: Justice Building, 100 South Oakdale, Room 106,
Medford, Oregon

Written comments must be received by 5:00 p.m. on March 1, 1993, at the following address:

Deanna Mueller-Crispin
Department of Environmental Quality
Hazardous and Solid Waste Division
811 SW 6th Avenue, 7th Floor
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 Jenny Root in the Hazardous and Solid Waste Division at 229-6509, or toll free at 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.

SW\RPT\SK4515

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Use of the Solid Waste Orphan Site Account

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

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2. Need for the Rule

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3. Principal Documents Relied Upon in this Rulemaking

Hansen, Fred, Director of Department of Environmental Quality, letter to Emergency Board requesting acknowledgement of the Orphan Site Account solid waste tipping fee report, October 28, 1991.

Solid Waste Orphan Site Account Work Group, summary of meetings held September 3, September 30, October 28, and December 9, 1992.

ORS 459 and ORS 465.

These documents are available for review during normal business hours at the Department's office, 811 S.W. Sixth Avenue, Portland, Oregon.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Use of the Solid Waste Orphan Site Account

Fiscal and Economic Impact Statement

Introduction

The information which follows describes the known fiscal and economic impacts of the proposed solid waste Orphan Site Account rules. The information which follows does not purport to describe fiscal or economic impacts associated with enactment in 1989 of the Orphan Site Account statutory provisions (see ORS 459.236, 459.311 and 465.380), nor does it purport to describe impacts associated with the 13 cents per ton state-wide solid waste Orphan Site Account fee, which was the subject of rules adopted by the Environmental Quality Commission on December 11, 1992. The proposed rules establish eligibility requirements for use of the solid waste Orphan Site Account, criteria for selection of projects, and conditions for use of funds.

Facilities to be cleaned up with solid waste Orphan Site Account funds are subject to provisions of Oregon's environmental cleanup law, ORS 465. The facilities may be closed or currently operating facilities for disposal of domestic solid waste. The facilities may be owned and operated by local government or private parties. At privately-owned or operated disposal facilities, the Department is required to make a determination that all responsible parties are "unknown, unwilling or unable" to pay for required environmental cleanup activities. Only those facilities which involve a release of hazardous substances to the environment are eligible for Orphan Site Account financial assistance. The proposed rule, if enacted, will mandate that environmental priority of the site is a fundamental consideration for purposes of deciding which sites to finance under the Orphan Site Account. It should be explicitly noted that decisions about which sites or projects to fund have not yet been made.

Statement of Overall Degree of Economic Impact

The Department anticipates adoption of these rules will have both positive and negative economic and fiscal impacts. In general, the Department expects positive economic impacts resulting from availability, under the rules, of funds for environmental cleanup of solid waste disposal facilities which have experienced a release of hazardous substances. Without enactment of the rules, revenue collected for cleanup (13 cents per ton solid waste tipping fee enacted by the Environmental Quality Commission and effective January 1,

1993) will remain unspent, sites requiring cleanup will not get cleaned, and contamination will continue to spread until the site is cleaned. In addition, since local government unit surcharge and equivalent revenue requirements of ORS 459.311 provide certain limits on the responsibility of a local government for environmental cleanup costs¹, implementation of the solid waste Orphan Site Account effectively provides local governments and local citizens with an "insurance policy" against potentially-catastrophic costs associated with some environmental cleanup projects. Without this insurance policy, local governments and other parties responsible for conducting remedial activities are, by statute, held strictly liable for all environmental cleanup costs.

The proposed rules will also have negative fiscal and economic impacts. Specifically, the rules require that in order to qualify for potential Orphan Site Account funding, local government units must participate in paying for costs associated with environmental cleanup, or demonstrate that they have previously met the local government unit surcharge or equivalent revenue requirements of ORS 459.311. In addition, it is possible to argue that because of the cost of environmental cleanups, local governments, responsible parties, and the state of Oregon ought not clean up releases of hazardous substances. These rules, if enacted, will provide for funds to clean up high priority sites.

Alternatives Considered

During the course of developing the proposed rules, the Work Group and DEQ staff addressed a fairly wide range of issues and alternative approaches. In the judgement of DEQ staff, sections of the proposed rule dealing with the solid waste surcharge or equivalent revenue requirements of ORS 459.311 have the greatest potential for fiscal and economic impacts.

The Work Group and DEQ staff considered several options for treatment of prior local government unit costs as "counting" towards a local government unit's surcharge obligations:

- 1) no prior costs would be counted;

¹ ORS 459.311 requires that local government units which are responsible for conducting a solid waste disposal facility removal or remedial action under ORS 465.260--or a local government which contributed solid waste to a site for which the local government unit is liable under ORS 465.255 or other applicable law--shall raise an amount equivalent to a maximum of \$60/person collected over five years. The local government unit has the flexibility to raise required revenue by adding a charge to billings of solid waste collection services or, alternatively, by other means.

2) all prior environmental cleanup costs would be counted, including costs incurred as part of a previously-approved permit for operation of a domestic solid waste disposal facility; and

3) some prior costs would be counted (a variety of costs were considered).

The proposed rule reflects Option 3. Option 3 provides for some limited recognition of prior costs as qualifying to be counted as part of the affected local government units' contribution requirements [see proposed rule OAR 340-122-540(5)]. Specifically, under OAR 340-122-540(5), DEQ would evaluate and may recognize costs incurred pursuant to implementation of an order or agreement under ORS 465, the environmental cleanup law. Costs incurred as a consequence of routine operation or maintenance of a permitted solid waste disposal facility ordinarily would not be regarded as meeting the solid waste surcharge or equivalent revenue requirements of ORS 459.311. The following hypothetical example is presented to help illustrate the potential local and state-wide fiscal and economic impacts associated with Options 2 and 3.

Hypothetical Example: Suppose that a local government of 25,000 population is the sole responsible party for a \$3,000,000 solid waste disposal facility environmental cleanup project to be completed under ORS 465, with activities commencing in calendar year 1994. The local government unit has owned and operated the facility since 1960 under permit from the Department. According to the local government, the total cost of constructing and operating the facility has amounted to \$10,000,000. In addition, the local government unit contends that, of the \$10,000,000 in total facility expenses since 1960, \$3,000,000 has been spent for environmental protection.

If prior environmental protection expenses were counted towards the solid waste surcharge or equivalent revenue obligations of ORS 459.311 (Option 2), all ORS 465 environmental cleanup costs would be paid for out of the Orphan Site Account. The Department estimates that a \$3,000,000 environmental cleanup project could be financed over a five-year period with an additional fee of \$.177/ton state-wide solid waste disposal fee (an estimated 3,400,000 tons of solid waste received statewide in 1992 at facilities accepting domestic solid waste x \$.177/ton x 5 years = \$3,009,000). Since a typical one-can per week residential customer generates about 1 ton of solid waste per year, the statewide impact upon Oregon households of financing the cleanup with an "all prior costs counted" option would be approximately \$.885/household (\$.177/year x 5 years). Oregon businesses, institutions and other entities generating domestic solid waste would also be impacted (under the statute, local government units retain the flexibility to charge businesses, institutions and other entities differently than households or at approximately the same levels).

Under the proposed rule (Option 3), the \$3,000,000 future cleanup project would be financed with equal contributions from the responsible local government and the state, e.g., the local government would contribute an amount equivalent to \$1,500,000 ($\$60/\text{person} \times 25,000 = \$1,500,000$). Therefore, under the proposed rules, the local direct fiscal and economic impact would be an equivalent of \$60/person, which would be financed over five years ($\$12/\text{person}/\text{year}$). The Department estimates that the remaining \$1,500,000 environmental cleanup project could be financed over a five year period with an additional fee of \$.089/ton state-wide solid waste disposal fee ($3,400,000 \text{ tons} \times \$.089/\text{ton} \times 5 \text{ years} = \$1,513,000$). As such, the statewide impact upon Oregon households of financing the cleanup under the proposed rules would be approximately \$.445/household ($\$.089/\text{year} \times 5 \text{ years}$). Oregon businesses, institutions and other entities generating domestic solid waste would also be impacted (again, local government units retain the flexibility to charge businesses, institutions and households at the same levels--or differently--than collection service fees for households).

For the affected local government unit, the combined impact of the proposed rule would be approximately \$60.18/person [$\$60.18 = \$60 + (\$.445 \text{ per household at } 2.52 \text{ estimated persons per household})$]. In contrast, without any Orphan Site Account access rule, the affected local government unit would be solely liable for completion of the estimated \$3,000,000 cleanup, at a cost equivalent to \$120/person ($\$3,000,000/25,000 \text{ people}$). In the hypothetical example cited above, Options 1 and 3 entail equivalent local and statewide fiscal and economic impacts.

In the judgement of DEQ staff, the proposed rule (Option 3) has the following positive fiscal and economic impact when compared to the Option 2, "all prior costs":

- 1) given equal amounts of available state financial assistance, the proposed rule will enable cleanup of more facilities because, in some instances, local government matching fund requirements will be greater than would be the case if more prior expenses were to be recognized as meeting the surcharge or equivalent revenue requirements;
- 2) the proposed rule may help to limit future increases to the current 13 cents per ton statewide solid waste disposal fee, since it is likely that a greater portion of future environmental cleanup expenses would be paid for by responsible local governments; and
- 3) calculation and verification of qualifying prior costs poses significant local and state administrative costs.

In addition, Oregon Department of Justice representatives have advised that when enacting the Orphan Site Account legislation, it appears the Legislature did not intend for

the Orphan Site Account to substitute for existing obligations associated with ownership or operation of a permitted solid waste facility.

General Public

Under the proposed rule, domestic solid waste disposal facility cleanups would be financed initially from proceeds resulting from implementation of the solid waste surcharge or equivalent revenue requirements of ORS 459.311 (unless the affected local government units had previously discharged their surcharge or equivalent revenue obligations). As previously discussed, ORS 459.311 requires that local government units responsible for remedial action costs at a solid waste disposal facility raise a maximum of \$12/person/year (up to \$60/person), with the proceeds to be used for required cleanup activities. Once the requirements of ORS 459.311 have been implemented, the solid waste Orphan Site Account could be used to pay for the cleanup. In effect, the solid waste Orphan Site Account proposed rule provides for a cooperative or joint financing program for the environmental cleanup of solid waste disposal facilities.

Therefore, the general public will be indirectly impacted by implementation of both types of financing envisioned in the enabling legislation and these rules, specifically: 1) local government unit surcharge or equivalent revenue requirements; and 2) use of the state solid waste Orphan Site Account. As discussed in the "Alternatives Considered" section, if significant prior expenditures for solid waste permit operation were counted as meeting a local government unit's surcharge or equivalent revenue obligations, the result might be the need for greater use of the state's Orphan Site Account, and potential increases in the state-wide Orphan Site Account solid waste disposal fee. DEQ is not able to quantify the potential impact on reduced state-wide disposal fees, in part because the number of sites which will need to be cleaned up under ORS 465 is unknown. In addition, the general public is affected by these rules to the extent that the rules limit certain environmental cleanup liability costs to \$12/person/year and \$60/person/total (see ORS chapter 459 and proposed OAR 340-122-570 through 580).

Small Business

It is anticipated that solid waste collectors and some disposal facility operators will incur administrative costs in implementation of the solid waste surcharge or equivalent revenue requirements of ORS 459.311. ORS 459.311(5) and (6) authorize retention by affected solid waste collectors and disposal facility operators to retain five percent of the solid waste surcharge amounts in order to defray the costs of collecting and accounting for the proceeds of the charge.

For other Oregon small businesses, since the solid waste Orphan Site Account will only lend or grant funds to local government units responsible for conducting a solid waste disposal facility environmental cleanup, the proposed rule will not have a direct impact. Indirectly, as users of municipal solid waste disposal services (or, in the event local government units elect to raise ORS 459.311-required revenue from alternative sources), small businesses will feel whatever effects occur in terms of increased collection service rates. This impact should be negligible and represents significantly less potential financial exposure than would be the case if strict liability for environmental costs were to be assumed by responsible local government units.

Large Business

Since the solid waste Orphan Site Account will only lend or grant funds to local government units responsible for conducting a solid waste disposal facility environmental cleanup, the proposed rule will not have a direct impact on large business, except businesses involved in domestic solid waste collection services. However, as users of municipal solid waste disposal services (or, in the event local government units elect to raise ORS 459.311-required revenue from alternative sources), large businesses will feel whatever indirect effects occur in terms of increased collection service rates. This impact should be negligible and represents significantly less potential financial exposure than would be the case if strict liability for environmental costs were to be assumed by responsible local government units.

Local Governments

The proposed rule clarifies local government requirements for implementation of the solid waste surcharge or equivalent revenue provisions of ORS 459.311, establishes priorities for use of Orphan Site Account fund use (OAR 340-122-540), and specifies conditions for use of Orphan Site Account funds (OAR 340-122-570).

As such, the proposed rule directly impacts local governments, especially those local government units which own or operate (or previously owned or operated) a solid waste disposal facility and local government units which have made arrangements for collection and transportation of municipal solid waste to other facilities. Among other provisions, the rule provides for implementation of financial assistance for environmental cleanup of solid waste disposal facilities. It is anticipated that local governments will incur administrative costs to assess and collect surcharge or equivalent revenue requirements required by ORS 459.311, and administrative costs associated with applications for Orphan Site Account grants and loans. Applications for grants and loans are voluntary and, in the event a loan is made to any local government unit, ORS 459.236(5)(b) provides that the local government unit is not required to repay the first \$100,000 the local government unit expends on removal or remedial action.

The proposed rule does not require that the Orphan Site Account pay cleanup costs in excess of the surcharge or equivalent revenue requirements [see proposed OAR 340-122-590(2)]. However, if work were required by the Department pursuant to an order or other agreement under ORS 465.260, the amount of removal or remedial activities required of local government units can be limited by local government implementation of the provisions of ORS 459.311 and these rules. In effect, following local government implementation of ORS 459.311 in a manner consistent with these rules, any additional required removal or remedial action under a Department ORS 465.260 order or agreement would be financed by the Orphan Site Account or, potentially, from other sources of state financing.

In addition, local governments are indirectly impacted by the proposed rule because, consistent with funding factors contained in OAR 340-122-540 and other provisions of the rule, available Orphan Site Account funds may be used for environmental cleanup of privately-owned or operated solid waste disposal facilities in instances where the responsible parties are unknown, unwilling or unable. Extensive use of Orphan Site Account funds at private facilities would mean that fewer local government owned and operated facilities will be cleaned with available funds or, alternatively, that the state-wide solid waste disposal fee for the Orphan Site Account will need to be increased to support cleanup of local government facilities.

State Agencies

The proposed rule will not significantly impact Department staffing requirements. Some local government grant and loan administrative responsibilities are inherent to implementation of these rules, however, and the Department may elect to provide guidance to assist local government units with preparation of grant and loan applications and with implementation of the solid waste surcharge or equivalent revenue requirements of ORS 459.311. With respect to Orphan Site Account revenues and expenditures, the purpose of the proposed rules is to enable implementation of the solid waste Orphan Site Account consistent with Legislatively-authorized expenditure limitations.

The Department believes the rule proposal has no impact on other state agencies, other than limited, indirect effects they may experience as users of domestic solid waste disposal collection services.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Use of the Solid Waste Orphan Site Account

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rules establish eligibility requirements for use of the solid waste Orphan Site Account, criteria for selection of projects and conditions for use of funds.

Facilities to be cleaned with solid waste Orphan Site Account funds are subject to the provisions of Oregon's environmental cleanup law, ORS 465. The facilities may be closed or currently operating facilities for disposal of domestic solid waste. In addition, the facilities may be owned or operated by local governments or, alternatively, they may be owned or operated by private parties. At privately-owned or operated disposal facilities, the Department is required to make a determination that all parties responsible for conducting any required environmental cleanup activities under ORS 465 are unknown, unwilling or unable to conduct the required activities. The proposed rule, if enacted, will mandate that environmental priority of the site is one of the fundamental considerations for purposes of deciding which sites to finance under the Orphan Site Account.

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 following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

- 1. Specifically referenced in the statewide planning goals; or
- 2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2. above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involves more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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. Environmental cleanup activities are neither specifically referenced in the statewide planning goals nor are they reasonably expected to have significant effects on resources or present or future land uses.

- 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.

Mary Wain
Division

Roberts Yu
Intergovernmental Coord.

1/8/93
Date

ATTACHMENT C

State of Oregon
Department of Environmental Quality

Memorandum

Date: February 23, 1992

To: Environmental Quality Commission

From: Deanna Mueller-Crispin for Wayne Thomas, Presiding Officer

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: 2/22/93, beginning at 10:05 a.m.
Hearing Location: Pendleton, Oregon

Title of Proposal: Use of the Solid Waste Orphan Site Account

The rulemaking hearing on the above titled proposal was convened at 10:05 a.m.. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Two people were in attendance in addition to three DEQ staff, but no people signed up to give testimony.

Prior to inviting testimony, Wayne Thomas briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

The opportunity to provide testimony was then provided, but none was presented.

No written comments were handed in.

The hearing was formally closed at 10:20 a.m. Informal discussion on use of the Orphan Site Fund continued until about 11:20 a.m.

State of Oregon
Department of Environmental Quality

Memorandum

Date: February 24, 1993

To: Environmental Quality Commission
From: Brooks Koenig *BKoenig*
Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: February 24, 1993, at 10:00 a.m.
Hearing Location: Portland, OR (DEQ Headquarters)
Title of Proposal: Use of the Solid Waste Orphan Site Account

The rulemaking hearing on the above titled proposal was convened at 10:08 a.m. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Two people were in attendance; two people signed up to give testimony.

People were then called to testify in the order of receipt of witness registration forms and presented testimony as noted below.

Paul Hribernick, Black & Helterline. Mr. Hribernick was the chair of the Department's advisory committee on the use of the solid waste orphan site account. He complimented the agency on the proposed rule noting that the rule contained both enough flexibility and structure to assist in the cleanup of solid waste sites. Mr. Hribernick particularly liked the priority scheme and emphasis on covering direct cleanup costs first.

Jack McGowan, SOLV. Mr. McGowan summarized the history and accomplishments of SOLV and noted the ever growing need to fund solid waste remediation activities. Mr. McGowan cited some statistics about illegal dumping and noted the need for more civil enforcement authorities rather than reliance on criminal authorities. Mr. McGowan urged the Department to support the model dumping ordinance as proposed by Multnomah Co. and Metro.

No one submitted written comments at the hearing.

There was no further testimony at this time (10:18 a.m.), and the hearing was recessed. After a twenty minute recess no other participants had arrived so the hearing was closed at 10:38 a.m.

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 16, 1992

To: Environmental Quality Commission
From: Dennis Belsky
Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: February 24, beginning at 10:00 a.m.
Hearing Location: Medford, Oregon

Title of Proposal: Use of the Solid Waste Orphan Site Account

The rulemaking hearing on the above titled proposal was convened at approximately 10:05 a.m. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Four people were in attendance, although no-one signed up to give testimony. Attendees included an environmental consultant, solid waste haulers from Rogue Disposal and Trico Disposal, and a representative of Josephine County Environmental Health Department. Staff representative Jeff Christensen briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

There was no written or verbal testimony presented. An informal discussion of solid waste and hazardous waste issues continued for approximately 45 minutes. The hearing was adjourned at approximately 10:50 a.m.

C - 3

ATTACHMENT D

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 19, 1993

To: Environmental Quality Commission
From: Deanna Mueller-Crispin
Subject: Summary of Public Comments and Response to Comments, Solid Waste Orphan Site Account Rule Adoption

Public hearings were held on the proposed rules on February 22, 23 and 24, 1993. A total of eight people attended the hearings. Two persons gave oral testimony. No written comments were received by the Department. Below is a summary of the comments received and the Department's responses.

COMMENT: The Solid Waste Orphan Site Account Work Group dealt with many issues and their recommendations for program criteria as incorporated into the draft rule are reasonable and should be adopted.

RESPONSE: The rules being proposed for adoption are the same as were put out for public comment.

COMMENT: The Orphan Site Account is targeted at one segment of the problem [municipal solid waste landfills with releases of hazardous substances]. However, it doesn't address the problem of illegal dumping. Special funding for remediation of illegal dumping is needed. Dumping laws are not being enforced. Metro is developing a model illegal dumping ordinance which would facilitate enforcement. The ordinance changes illegal dumping from a criminal to a civil offense, thus putting enforcement on a faster track. It would also offer an incentive to report illegal dumping by giving part of any fine to the person reporting the offense.

RESPONSE: Legislative action would be required to provide state funding for illegal dumping. But the Department would encourage local governments to adopt ordinances allowing better control of illegal dumping.

ATTACHMENT E

Members of the Orphan Site Account
Solid Waste Advisory Work Group

Members

Paul Hribernick, Chair
Bill Webber
Jack Albright
Doug Coenen
Jim Craven
Qunicy Sugarman
Jim Whitty
Phillip Fell
Rudy Murgo
Judge Laura Pryor
Rick Partipilo

Representing

public
Oregon Sanitary Service Inst.
Bureau of Land Management
private landfill
Am. Electronics Assn
environmental
industry
League of Oregon Cities
League of Oregon Cities
Assn of Oregon Counties
Assn of Oregon Counties

ATTACHMENT F

State of Oregon DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for New Rules for Use of the Solid Waste Orphan Site Account

Rule Implementation Plan

Summary of the Proposed Rule

The proposed rule would establish eligibility, selection criteria and conditions for use of solid waste Orphan Site Account funds. It would permit use of solid waste Orphan Site Account funds for the investigation and cleanup of hazardous substance releases from solid waste disposal facilities, in accordance with ORS 459.236. It will affect owners and operators (including local governments) of open or closed municipal solid waste disposal sites with confirmed releases of hazardous substances.

Proposed Effective Date of the Rule

The rule is proposed to take effect immediately upon adoption by the Environmental Quality Commission and upon filing with the Secretary of State.

Proposal for Notification of Affected Persons

The Notice of Proposed Rulemaking was sent to all solid waste permittees, owners and operators, city and county governments, garbage haulers, watershed representatives, and other interested persons. A press release will be issued advising that rules have been adopted, and an additional mailing will be completed to local governments. This will include information on the due date for submittal of financial assistance applications.

Proposed Implementing Actions

The Department is preparing a loan/grant application packet for use by local governments. This packet will be reviewed by the Solid Waste Orphan Site Account Work Group. The proposed rule provides for an annual review process of applications; DEQ is developing a

schedule for submittal and review of the first round of applications. The likely due date for consideration of applications for the 1993-95 biennium is August 1, 1993. The Department intends to complete recommendations concerning applications for funding by December 30, 1993. If warranted, a request will then be prepared to the Legislative Emergency Board requesting expenditure limitation authorization for proposed eligible projects.

Proposed Training/Assistance Actions

The Department will seek opportunities to make sure local government units are informed of their potential eligibility for the program, and are aware of application procedures. This will include mailings and possibly presentations at local government forums. The Department is preparing a guidance packet concerning local government calculation of surcharge or equivalent revenue requirements, and eligible costs. In the case of identified releases of hazardous substances from landfills, DEQ staff works with local government owners and operators to determine an optimal course of remedial action. This will include assistance in understanding how Orphan Site Account funds might be used.

osa.imp

SOLID WASTE CONTROL

459.247

safety and welfare of the people of the state. The commission may allow the applicant to substitute other financial assurance for the bond or letter of credit, in the form and amount the commission considers satisfactory. (1971 c.648 §9; 1977 c.37 §1; 1983 c.144 §1; 1987 c.376 §18; 1989 c.333 §154; 1991 c.331 §65; 1991 c.385 §12a)

459.236 Additional permit fees for remedial action or removal; amount; utilization; eligibility of local governments. (1) In addition to the permit fees provided in ORS 459.235, upon prior approval by the Executive Department and a report to the Emergency Board prior to adopting the fees, and annually on January 1, there is imposed a fee on all disposal sites that receive domestic solid waste except transfer stations. The amount raised shall be up to \$1 million per year, based on the estimated tonnage or the actual tonnage, if known, received at the site and any other similar or related factors the commission finds appropriate. Such fees shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(2) For solid waste generated within the boundaries of a metropolitan service district, the fee imposed under subsection (1) of this section, but not the permit fees provided in ORS 459.235, shall be levied on the district, not the disposal site.

(3)(a) A local government unit that franchises or licenses a domestic solid waste site shall allow the disposal site to pass through the amount of the fees established by the commission in subsection (1) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsection (1) of this section to a solid waste collector who uses the site, a local government unit that franchises or licenses the collection of solid waste shall allow the franchisee or licensee to include the amount of the fee in the solid waste collection service rate.

(4) Except as provided in subsection (5) of this section, moneys collected under this section shall be deposited in the Orphan Site Account created under ORS ~~466.590~~ ^{465.386} to be used to pay the costs of removal or remedial action of hazardous substances, in excess of the maximum amount collected under ORS 459.311 at:

(a) Solid waste disposal sites owned or operated by a local government unit; or

(b) Privately owned or operated solid waste disposal sites that receive or received domestic solid waste for which the department determines the responsible party is unknown, unwilling or unable to undertake any

portion or phase of a removal or remedial action.

(5) The moneys collected under this section, or proceeds of any bond sale under ORS 468.195 for which moneys collected under this section are pledged for repayment shall be made available to a local government unit to pay removal or remedial action costs at a site if:

(a) The local government unit is responsible for conducting removal or remedial action under ORS ~~466.570~~; and ^{465.260}

(b) The local government unit repays any moneys equal to the amount that may be raised by the charge imposed under ORS 459.311 and interest on such moneys, in accordance with an agreement between the local government unit and the department. A local government unit is not required to repay the first \$100,000 the local government unit expends on removal or remedial action.

(6) As used in this section, "removal" and "remedial action" have the meaning given those terms in ORS ~~466.540~~. (1989 c.333 §138; 1991 c.703 §43) ^{465.200}

Note: 459.236 was added to and made a part of ORS 459.005 to 459.426 by legislative action but was not added to any smaller series therein. (The series 459.005 to 459.426 became 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 in 1991.) See Preface to Oregon Revised Statutes for further explanation.

459.240 (1969 c.90 §4; repealed by 1971 c.648 §331)

sured by permit conditions or bond requirements. [1987 c.876 §7]

459.311 Surcharge for remedial action or removal; amount; collection; allocation. A local government unit that is responsible for conducting a remedial action or removal or related activities under ORS ~~466.570~~ at a solid waste disposal site, or a local government unit that contributed solid waste to a solid waste disposal site for which the local government is liable under ORS ~~466.567~~ or other applicable law, shall impose a charge to be added to all billings for solid waste collection services rendered within the boundaries of that local government unit unless the local government unit provides an equivalent amount of funding through another source. A charge imposed under this section shall be subject to the following requirements:

465.260

465.255

(1) The charge shall be:

(a) An amount equal to a maximum amount of \$12 per capita per year and \$60 per capita per local government unit;

(b) Collected for each volumetric or weight unit of solid waste collected;

(c) Imposed equitably on all persons who dispose of solid waste; and

(d) For a local government unit imposing and collecting a charge on behalf of another local government unit responsible for remedial action or related activities at a disposal site, an amount that, as a proportion of the total cost, equals the proportion of solid waste the local government unit contributed to such disposal site.

(2) The charge shall be collected on behalf of the local government unit by solid waste collectors who are subject to franchising, licensing or permitting requirements adopted by the local government unit. Notwithstanding any restriction on rates contained in a franchise or other local regulations, a solid waste collector may add the charge to bills for solid waste collection. The local government unit may enter into an intergovernmental agreement with any other unit of local government to provide for imposition and collection of the charge on behalf of the local government unit.

(3) The solid waste collector shall remit the proceeds of the charge to the local government unit according to procedures adopted by the local government unit by ordinance. However, solid waste collectors shall not be responsible for covering any shortage caused by failure of a customer to pay charges for solid waste collection.

(4) A local government unit imposing a charge under this subsection may require solid waste collectors to submit reports or

other documentation necessary to establish compliance with the requirements of this section or the ordinance adopted by the local government unit. All information contained in such reports relating to the number of accounts served by the solid waste collector or the revenue produced from such accounts shall be exempt from public disclosure.

(5) A solid waste collector required to collect charges under this subsection may retain five percent of the charge in order to defray the costs of collecting and accounting for the proceeds of the charge.

(6) If a person disposes of solid waste at a disposal site within the boundaries of a local government unit imposing a fee under this section without using the services of a commercial solid waste collector, the person shall pay the fee established by this section at the time the person disposes of solid waste at the disposal site. That portion of the charge attributable to administrative costs as provided in subsection (5) of this section shall be retained by the operator of the solid waste disposal site. The operator of the solid waste disposal site shall remit the balance of the charge according to procedures established by ordinance by the local government unit imposing the charge.

(7) Except for the amount allocated to defray the administrative expenses of a solid waste collector or disposal site operator under subsections (5) and (6) of this section, proceeds of the charge shall be placed into a dedicated local government remedial action fund established by the local government unit and may be used only to pay for remedial action costs. As used in this subsection, "remedial action costs" also includes the cost of retiring debt incurred in connection with a remedial action.

(8) The amount collected through the charge shall be the amount necessary to fund the local government unit's remedial action costs at one or more solid waste disposal sites for which a local government unit is responsible for conducting a remedial action or removal or related activities under ORS ~~466.570~~, or is liable under ORS ~~466.567~~ or other applicable law and necessary administrative expenses incurred under this section, and may include an increment to cover any delinquencies in collections. The amount of the charge may be adjusted from time to time as necessary to maintain the remedial action fund at the level necessary to accommodate the local government unit's remedial action responsibilities, but shall not exceed the maximum amounts provided in paragraph (a) of subsection (1) of this section.

(9) Any local government unit located within the boundaries of a metropolitan ser-

vice district may enter into an intergovernmental agreement with the district to transfer to the district the funding authority granted under this subsection and the responsibility for performing all remedial action obligations for which the local government unit may be responsible.

(10) As used in this section, "remedial action," "remedial action costs" and "removal" have the meaning given those terms in ORS ~~466.540~~. [1989 c.333 §137] *465.200*

Note: 459.311 was added to and made a part of ORS 459.005 to 459.426 by legislative action but was not added to any smaller series therein. (The series 459.005 to 459.426 became 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 in 1991.) See Preface to Oregon Revised Statutes for further explanation.

465.260
465.255

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item E
April 23, 1993 Meeting

Title:

Review of Bear Creek (Jackson County) Nonpoint Source Control Plans and Implementation and Compliance Schedule

Summary:

Bear Creek violates water quality standards for pH, dissolved oxygen, ammonia nitrogen, and fecal bacteria. There are concerns about low stream flow, increased temperature, and sediment as well. Achievement of water quality goals will require reduction in pollution from nonpoint sources (NPS) throughout the watershed. This includes reductions in runoff from urban, agricultural, and forested areas.

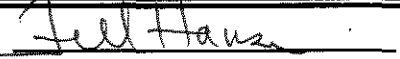
A TMDL for phosphorus has been established. Designated Management Agencies have produced program plans for controlling NPS pollution. The program plans must be reviewed by the Commission. These plans represent first level strategies. They focus on monitoring, public awareness, problem inventories, and review of local ordinances. Additional detail and commitment will be needed. A compliance and implementation schedule has been proposed. A public hearing has been held.

Department Recommendation:

It is recommended that the Commission approve the plans in concept for a limited duration with the condition that DMAs adhere to a compliance and implementation schedule that details minimum requirements for additional information and program development. Status of implementation would be re-evaluated at the end of 1994.


Report Author



Division
Administrator


Director

April 6, 1993

†A large print copy of this report is available upon request.

Date: April 6, 1993

To: Environmental Quality Commission
From: Fred Hansen, Director 
Subject: Agenda Item E, April 23, 1993, EQC Meeting

Review of Bear Creek (Jackson County) Nonpoint Source
Control Plans and Implementation and Compliance
Schedule

Statement of the Issue

Total Maximum Daily Loads (TMDLs) have been established for Ammonia Nitrogen, Biochemical Oxygen Demand, and Total Phosphorus in Bear Creek. Load allocations have been assigned to diffuse, area-wide sources of pollution, or nonpoint source (NPS) pollution. These allocations will require reductions in NPS contributions of phosphorus. State and local Designated Management Agencies (DMAs) have developed program plans which broadly outline how they will reduce NPS pollution to achieve the load allocations. The rule establishing the TMDLs for Bear Creek also require the Environmental Quality Commission (Commission, EQC) to review the adequacy of the plans. The purpose of this agenda item is to provide the Commission an opportunity to review the plans and adopt or reject a compliance and implementation schedule to carry out the plans.

Background

A complete Bear Creek Water Quality Assessment is included as Attachment A. Some important highlights follow:

Bear Creek experiences violations of water quality standards for pH, dissolved oxygen, ammonia toxicity and bacteria. Ammonia and bacteria violations occur during all seasons. Dissolved oxygen violations occur during all seasons, but are more frequent during low flow periods in late summer and fall when irrigation is occurring. The pH violations occur primarily during the spring through fall months. Concerns also exist related to low flows, temperature, turbidity, and sediment. Beneficial uses impaired by these parameters include fish and other aquatic life, salmonid spawning and

[†]A large print copy of this report is available upon request.

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rearing, anadromous fish passage, recreation and aesthetic quality. With the exception of ammonia (which is entirely point source related), much of the water quality degradation in the Bear Creek watershed results from nonpoint source, area-wide, pollution (as opposed to point sources like the Ashland STP). Because of the complex nature of nonpoint source pollution control, progress toward achieving standards has been challenging.

Nonpoint source contributors to the water quality problems of the creek include urban runoff and stormwater, erosion from construction sites, agricultural runoff and erosion, and forest operation runoff and erosion. Major landscape changes have occurred in the basin including: isolation of the creek from its floodplain, loss of wetland and riparian functions, installation of reservoirs and extensive irrigation canal systems, covering of soils with impervious surfaces as a result of urban development and roads. All of these landscape changes have led to major alterations in hydrology and ecological dynamics which further exacerbate the water quality problems. As a result, solutions must not focus exclusively on water chemistry. While the TMDL process does set limits for specific pollutant loads, the process is intended to be a catalyst for a watershed approach that includes ecological, aesthetic and social values in the solutions.

In July of 1989, TMDLs for Bear Creek were adopted by the Commission. Preliminary allocation of loads were established in September of 1990. To meet the load allocations, reductions in NPS nutrient (phosphorus) contributions is required. While the TMDL addresses phosphorus specifically, reductions in NPS bacteria contributions is also required to meet standards. Reduction in NPS sediment and temperature contributions will also be necessary to meet water quality goals in Bear Creek.

Jackson County and the incorporated cities within the Bear Creek subbasin were required to submit program plans for controlling runoff within their jurisdictions. The cities involved are: Ashland, Central Point, Jacksonville, Medford, Phoenix, and Talent. The Oregon Departments of Forestry and Agriculture (ODF and ODA) were required to submit program plans for reducing NPS pollution from state and private forest land and from agricultural lands respectively. The Jackson Soil and Water Conservation District has worked closely with

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ODA. Guidance for development of NPS watershed management plans was provided by the Department to the management agencies. The guidance document outlined the expectations and needs of the Department relevant to management plans. A copy of that document is available on request.

In developing the plans, the Rogue Valley Council of Governments (RVCOG) acted as the coordinating agency. Regular meetings of the agencies and cities involved were facilitated by RVCOG. The intent was to produce a package of plans which are compatible with each other and which reflect a basin-wide water quality approach to achieving standards in Bear Creek. The plans are intended to be reviewed as a whole package, rather than individually.

Each of the designated agencies have now submitted a program plan. The plans are quite general in nature. They do not provide the level of detail anticipated by the guidance. They do, however, represent first level strategies for beginning implementation efforts to control NPS pollution in the subbasin. The plans focus on:

1. Coordinated watershed-wide water quality monitoring.
2. Watershed-wide public awareness and education.
3. Inventories and correction of problem sites.
4. Review and refinement of local ordinances to insure that pollution reduction practices are applied.

In addition to the items listed above, the cities will investigate the condition of sanitary and storm sewers and identify strategies for correcting problems identified. The Department of Agriculture, in cooperation with the Jackson Soil and Water Conservation District will ensure that all permitted Confined Animal Feeding Operations (CAFO) are complying with existing requirements of the CAFO program. The Department of Forestry will continue to insure that the Forest Protection Act is being complied with. Jackson county will work to eliminate any identified problems related to failing septic tanks and county road ditches. The compliance date established by the Commission when the TMDLs for Bear Creek were adopted is December 31, 1994. It is intended that the program plans for control of nonpoint sources of pollution be implemented on a schedule consistent with meeting the compliance date.

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It is important to note that the facility plan for the City of Ashland sewage treatment plant (STP) has not yet been completed. The completion date has twice been extended in order to allow more thorough evaluation of options. The plan is currently due on July 1, 1993. Decisions on the facility plan could affect flows in the creek which could, in turn, influence NPS control needs. In addition, Environmental Protection Agency (EPA) guidance for stormwater permits for small and medium sized cities has not yet been issued. This guidance, expected in 1994, may also influence NPS control requirements.

Some of the DMAs have expressed concern that they may be required to install capital improvement projects for reduction of nutrients (primarily phosphorus) before the STP facility upgrades have been completed. To address this concern the proposed Compliance and Implementation Schedule, under the heading of "Additional Practices" (Attachment B, page 3) states that capital improvement projects and construction of treatment facilities can be delayed until after the Ashland STP is complete if there is an established schedule for making decisions. It should be understood that the implementation of program plans is intended to reduce NPS pollution in general. This includes sediment, bacteria, turbidity, temperature and others, as well as the nutrient concerns being addressed in the Ashland STP facility plan. Therefore, implementation schedules related to NPS program plans do not need to be directly coupled with the STP facility plan.

Additional detail on the water quality problems experienced by Bear Creek and on the control strategies identified in the program plans is included in the Bear Creek Water Quality Assessment (Attachment A). The text of each individual plan is available on request. A proposed Compliance and Implementation Schedule has been produced and is included as Attachment B.

Authority to Address the Issue

OAR 340-41-385, adopted in 1989 and revised in 1990, set the TMDLs for Bear Creek. The same rule required development of program plans for NPS pollution control by specified agencies, required public hearings be held on those plans, and required Commission review of the plans. Copies of the rule and enabling statutes are available on request.

SW\WC11\WC11331.5

Authority for local implementation efforts exist as follows: All jurisdictions must comply with DEQ water quality standards. Incorporated cities have the authority to address pollution control through local ordinances regulating construction, development, zoning, etc. Jackson County has authority to regulate septic systems, county roads, and land use. The Forest Practices Act provides authority over forest activities on state and private land. DEQ rules and permit programs provide specific authority to control discharges from confined animal feeding operations and container nurseries (these programs are implemented by ODA through a memorandum of agreement with DEQ). Specific authority for control of pollution from other forms of agriculture is not clear. Bills currently before the Legislature may provide additional authorities.

Alternatives and Evaluation

A number of options were considered by the Department:

1. Reject the plans. Provide specific comments and guidance on additional information and details needed. Require re-submittal of complete, fully detailed, plans by time certain or EQC direct the Department to write detailed plans that specify actions and schedules that must be adhered to.

Pros: Sends a clear message that additional details and firm schedules are required.

Cons: Will further delay implementation of efforts to reduce NPS pollution in Bear Creek (time frame for submission of plans was already extended once). May not provide sufficient flexibility to deal with unknowns related to the Ashland STP and future stormwater permit requirements.

2. Acknowledge that the plans submitted fulfill the minimum requirements for first level strategies for beginning of implementation efforts. Clarify that more detail and stronger commitments will be needed. Work through MOA's or other agreements.

Pros: Avoids rejection, re-review, or rewriting of plans. Encourages DMAs to continue implementing the plans while also giving them feed-back on additional needs.

Cons: Does not provide a clear enforcement mechanism to make sure additional information and commitments are developed and implemented in a timely manner. Does not address lack of clear authority for agricultural areas.

3. Approve plans in concept for a limited duration with the condition that DMAs adhere to a compliance and implementation schedule (Attachment B) that details minimum requirements for additional information and program development. Re-evaluate status at end of 1994.

Pros: Allows implementation to proceed while clarifying additional needs. Provides an enforcement mechanism (at least for the urban DMAs) to insure performance. Allows for re-evaluation in a couple of years after issues related to the Ashland sewage treatment plant are resolved and EPA guidance on stormwater permits for medium sized cities is issued.

Cons: While more specific guidance is provided, this approach still does not insure that the additional details and program development will result in a program that will achieve water quality standards. Does not directly address agriculture authorities (although this could be addressed during the re-evaluation).

4. Acknowledge that the program plan approach is not leading to NPS improvements as quickly as anticipated. Relieve the DMAs of the responsibility of further manipulation of the plans. Direct the Department to develop for EQC consideration a rule (or policy) that would set minimum requirements for NPS pollution prevention and control in Bear Creek or in all TMDL basins where NPS load allocations are established. (Additional Requirements could be developed for specific basins as needed.) Specific programs/actions required could include:

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- rigorous erosion control for development
- eliminate or minimize runoff from new development
- begin a stormwater permitting process equivalent to EPA guidance for large cities.
- require approved farm plans (at least for "bad actors" or near streams)
- eliminate or minimize runoff from non-commercial farms (rural resident).
- riparian & streambank management/protection
- increased program activities to insure compliance with existing programs related to FPA, CAFO, etc.

Pros: Clearly identifies minimum requirements for compliance with NPS requirements. Addresses the regulatory gaps related to agriculture.

Cons: Impression may be given that Bear Creek residents are being treated more harshly than residents of other TMDL basins (unless the policy/rules were written to apply to all TMDL basins. May be viewed as overly rigid.

5. Recommend out-right approval of the plans as they are currently written. Direct DMAs to implement plans with no further guidance or requirements.

Pros: Requires no additional effort.

Cons: Water quality standards would probably not be met.

Summary of Any Prior Public Input Opportunity

The Department conducted a public hearing, on behalf of the Commission, on the evening of Wednesday January 20, 1993, in Medford. Comments were solicited on the individual program plans, the water quality assessment produced by the Department, and the draft compliance and implementation schedule. A copy of the presiding officer's report is attached (Attachment C). Both the assessment and the compliance schedule were modified in response to comments received.

Some of the DMAs held hearings of their own on their individual plans. Discussions were also held with their individual governing boards.

Conclusions

- ▶ Bear Creek violates water quality standards for pH, dissolved oxygen, ammonia toxicity, and fecal bacteria.
- ▶ Low stream flow, increased temperature, and sediment are also concerns.
- ▶ TMDLs for total phosphorus, ammonia nitrogen, and biochemical oxygen demand have been established.
- ▶ Achievement of water quality goals will require reduction in pollution from nonpoint sources throughout the watershed. Including reductions in pollutant loading and runoff from urban, agricultural, and forested areas.
- ▶ Designated Management Agencies have produced program plans.
 - program plans represent first level strategies.
 - plans focus on monitoring, public awareness/education, problem inventories, review of ordinances.
 - additional detail and commitment will be needed.
- ▶ OAR 340-41-385 requires public hearings and Commission review of the plans.
- ▶ Alternatives for Commission action have been discussed.

Recommendation for Commission Action

It is recommended that the Commission adopt alternative 3. This approach will allow DMAs to continue with implementation while also establishing a firm schedule for development of additional detail and commitments. By limiting the approval period the Commission would be requiring a review and possible adjustment of the program at the end of 1994, after questions related to the City of Ashland sewage treatment plant and EPA stormwater requirements are resolved. The Department could

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review the approach to controlling NPS pollution in all TMDL streams and make recommendations to the Commission, at a later date, relative policies or rules for minimum NPS control requirements.

Attachments

- A. Bear Creek Water Quality Assessment.
- B. Bear Creek Basin Nonpoint Source Management Implementation and Compliance Schedule for Designated Management Agencies. (DMAs).
- C. Review of Bear Creek (Jackson County) Nonpoint Source Control Program Plans and Implementation & Compliance Schedule, Presiding Officer's Report for Public Hearing.

Reference Documents (available upon request)

- 1. Guidance for Nonpoint Source Watershed Management Plans. December 1988. State of Oregon Department of Environmental Quality.
- 2. Bear Creek Agricultural Abatement Plan for Nonpoint Source Pollution. Jackson soil and Water Conservation District.
- 3. City of Ashland Department of Public Works Urban Runoff Water Quality Program Plan.
- 4. City of Central Point Urban Runoff Water Quality Program Plan.
- 5. City of Jacksonville Urban Runoff Water Quality Program Plan.
- 6. City of Medford Urban Runoff Water Quality Program Plan.
- 7. City of Phoenix Urban Runoff Water Quality Program Plan.
- 8. City of Talent Urban Runoff Water Quality Program Plan.
- 9. Oregon Department of Forestry Nonpoint Source Water Quality Management Program Plan for the Bear Creek Basin (Jackson County).
- 10. Oregon Administrative Rule 340-41-385, Rogue Basin, Special Policies and Guidelines.

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Approved:

Section: Alfred

Division: Michael Pours

Report Prepared By: Mitch Wolgamott
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Date Prepared: March 9, 1993

Mitch Wolgamott:crw
6 APR 93

Water Quality Assessment

Bear Creek

WQ CONCERNS AT A GLANCE:

Water Quality-limited?	Yes
Segment Identifiers:	PNRS#
Parameters of Concern:	
TMDLs Set	Total Phosphorus Biochemical Oxygen Demand Ammonia Nitrogen
Others	Fecal Bacteria Temperature Sediment Low Flows
Uses Affected:	Fish and Aquatic Life Salmonid Spawning and Rearing Anadromous Fish Passage Recreation
Known Sources:	<u>Point Sources</u> -- STP, Log Ponds <u>NPS</u> -- CAFOs, Stormwater/urban runoff, Irrigated and non- irrigated agriculture.

BACKGROUND INFORMATION

The area of concern is the Bear Creek Valley located in Jackson County, Oregon. The creek is affected by effluent discharged from the City of Ashland sewage treatment plant, industries with discharging log ponds, discharges and runoff from confined animal feeding operations, urban runoff, irrigation return flows, and runoff from agricultural and forestry operations. As a result of increased nutrient and oxygen demand loads from these activities, Bear Creek experiences violations of water quality standards for pH, dissolved oxygen, and ammonia toxicity. Concerns also exist related to increased temperatures, fecal bacteria, and sediment.

Bear Creek begins at the confluence of Emigrant and Neil Creeks near the City of Ashland. The Bear Creek watershed encompasses over 290 square miles. The basin is about 30 miles in length. The upper end of the basin is made up of narrow mountain canyons. At the lower end the basin widens to form an eight mile wide delta near Bear Creek's confluence with the Rogue River.

The highest water demand in Jackson County occurs in the Bear Creek watershed. Transport and storage are important aspects of water management in the County. Irrigated agriculture and domestic consumption are the major water uses. Irrigation is a requirement for agriculture in the Bear Creek valley. To ensure a supply of water for irrigation, water is diverted from the Klamath Basin and the Little Applegate into the Bear Creek system. Major storage facilities include Hyatt, Howard Prairie, Reeder, Fish, Four Mile, and Agate Reservoirs. Stored water is delivered to Bear Creek during the irrigation season via a series of canals and natural drainageways. Irrigation district managers have noted increased water usage as a result of farms and ranches being broken up into smaller 5-20 acre parcels. This is thought to be a result of a tendency for less efficient use of water on these smaller parcels. The concern is not just for increasing demands on water but also degrading water quality as a result of increasing pollutant loads and decreasing stream flows.

PROBLEM DESCRIPTION

The fact that problems related to degradation of water quality exist in the bear Creek Watershed has been acknowledged for many years. Studies supported by Clean Water Act Section 208 planning grants in the 1970s identified problems related to fecal bacteria, low flows, sediment, turbidity, nutrients, and temperature. Because much of the source of the water quality degradation is area-wide in nature (as opposed to point sources), and because of the complex nature of area-wide source control, progress toward solutions has been challenging.

Beneficial Uses Affected

The designated uses of the Bear Creek sub-basin are:

Public domestic water supply	industrial water supply
irrigation	livestock watering
anadromous fish passage	salmonid fish rearing
salmonid fish spawning	wildlife and hunting
resident fish and aquatic life	fishing
boating	water contact recreation
aesthetic quality	

Beneficial uses identified as being impacted in the most recent nonpoint source assessment are:

Municipal water supply	irrigation
cold water fish	other aquatic life
wildlife	water contact recreation
aesthetic quality	

Pollutant/problem types of concern are:

Low dissolved oxygen	nutrients
pesticides & toxics	bacteria

sedimentation	decreased stream flow
insufficient stream structure	excessive algae growth

Identified probable causes are:

Erosion	runoff from roads
runoff from industry	vegetation removal
elimination of thermal cover	streambank structures
water withdrawal	bank filling & dredging
debris/waste dumping	animal and human waste
irrigation return flows	

Associated landuses include:

irrigated agriculture	non-irrigated agriculture
nurseries	quarries
stormwater management	road construction
residential & industrial construction, maintenance & runoff	

Applicable Water Quality Standards

Based on visible indicators and water quality monitoring data collected in recent years, water quality standards are being violated for dissolved oxygen, pH, ammonia toxicity, and bacteria. As a result of these standards violations, beneficial uses are not being fully supported.

Available Monitoring Data

Water quality monitoring in Bear Creek subbasin has occurred periodically at least as far back as 1960. The Oregon Department of Environmental Quality (DEQ) maintains a long term ambient monitoring site at Kirtland Road about one mile upstream from the mouth of Bear Creek. Additional sites have been established further up-stream at Eagle Mill Road and Valley View Road. Data from these sites and others are available on the EPA Storet data base. Data collection is on-going.

Preliminary water quality assessments were conducted, using Clean Water Act Section 208 planning grant funds, in the mid-1970s. The U.S. Geological Survey undertook a study to identify major surface water quality problems in Bear Creek beginning in 1976. The study ran through 1978 and included collection and interpretation of water quality monitoring data. The Jackson County Department of Planning and Development, Environmental Sanitation Division investigated fecal coliform sources in 1982. In June of 1984, the Rogue Valley Council of Governments produced an issue paper on water quality data collected from spring 1983 through spring 1984. DEQ special studies were conducted in the years immediately preceding establishment of TMDLs and allocation

of loads in 1989 and 1990.

Parameters of Concern

The parameters of primary concern are nutrients (with phosphorus of most concern), biochemical oxygen demand (BOD), and ammonia toxicity. Fecal bacteria, temperature and sediment are also of concern. Beneficial uses impaired by these parameters include: fish and aquatic life, salmonid spawning and rearing, anadromous fish passage, fishing, and aesthetic quality.

POLLUTANT SOURCES

Bear Creek is affected by sewerage treatment plant effluent, Industries with discharging log ponds, irrigation return flows, urban runoff and stormwater, septic tanks, agricultural runoff including runoff from confined animal feeding operations (CAFO), runoff from forest operations.

Sewage Treatment Plants

The City of Ashland operates the Ashland Sewage Treatment Plant (STP). The STP is the largest single source of nutrients and BOD to Bear Creek. It is also the source of ammonia toxicity.

Log Ponds

Industries with discharging log ponds contribute to the BOD load to Bear Creek. These facilities operate on either general permit or National Pollution Discharge Elimination System (NPDES) permits.

Urban Runoff and Stormwater

There are six incorporated cities in the Bear Creek subbasin. Total population of these cities is approximately 82,900. Total population of the entire valley is approximately 90,000. Jackson County as a whole currently has some 146,400 residents and is expected to increase to a population of 180,000 by the year 2000.

The incorporated cities contribute to pollution problems in Bear Creek through stormwater discharges and through diffuse (nonpoint) runoff. Stormwater and runoff carry a variety of pollutants to the streams including nutrients, sediment, bacteria, and potentially fertilizers, pesticides and other toxics. As the area becomes more and more urbanized, more and more impervious surfaces, such as roofs, parking lots, and

streets, are created. This leads to less infiltration of water into the soil creating more contaminated runoff. Massive soil disturbance at construction sites can be a major source of sediment during construction. In addition, the removal of riparian vegetation and compaction of soils next to urban streams further exacerbates the runoff/stormwater problems and can lead to stream bank stability problems which contribute even more sediment to streams. Removal of riparian vegetation contributes to temperature increases.

Agriculture

Crop production in the Bear Creek area requires water for irrigation. Approximately 80,000 acre-feet of water is diverted annually from the Klamath Basin into the Bear Creek Watershed. About 72 percent of the agricultural land is irrigated. Water is conveyed to the farms by a series of high and low canals, which run parallel to Bear Creek on the uplands above crop land. Takeout ditches carry water to the farms from these canals. Many of the facilities are subject to seepage and waste-water losses, decreasing the efficiency of the delivery system. An estimated 25 percent of water conveyed for crop use is lost to seepage. Flood and sprinkler application are the most prominent forms of irrigation. Most row crops are furrow irrigated. Sprinkler systems have been installed on about 70 percent of orchards as well as on some hay and pasture land. Conversion to sprinkler irrigation has resulted in the establishment of permanent sod cover which reduces erosion, runoff, and water pollution. Use of sprinklers for frost control has also contributed to reduction of air pollution. Irrigation tailwater enters Bear Creek. Runoff and discharges from confined animal feeding operations (CAFO) and container nursery operations are concerns. Irrigation tailwater and runoff from agricultural sources carry sediment, fertilizers, pesticides, and animal wastes (nutrients and bacteria) to the stream. Sub-surface flows may also play a role in pollutant transport. Removal of riparian vegetation contributes to temperature increases. In addition, the removal of riparian vegetation and compaction of soils next to streams in agricultural areas further exacerbates the runoff problems and can lead to stream bank stability problems which contribute even more sediment to streams.

Forestry

Forest land makes up approximately 60 percent of the Bear Creek subbasin. Almost all of this land is located at the upper end of the watershed and along the divides. Water quality is affected by forest harvesting through the harvesting activity itself, and through associated road building and slash burning. These activities can lead to increased erosion and the movement

of sediments and associated pollutants into the streams. Beneficial uses such as fish spawning and rearing are degraded by the sediment itself. Nutrients and other pollutants associated with the sediments, or released by slash burning, contribute to water quality degradation downstream. Removal of streamside vegetation contributes to temperature increases.

ACTIONS TO DATE

To date, activities aimed at addressing water quality problems in Bear Creek have been primarily planning efforts. Total Maximum Daily Loads for nutrients and biochemical oxygen demand were adopted in July of 1989. Preliminary allocation of loads were established in September of 1990. The City of Ashland is currently evaluating alternatives for upgrading the Ashland sewage treatment plant to achieve its load allocations. The incorporated cities in the watershed, the Oregon Department of Agriculture, the Oregon Department of Forestry, and Jackson County have conducted program planning to generally lay out how they will proceed to reduce nonpoint source pollution loads to Bear Creek.

POLLUTION CONTROL STRATEGY

Point Sources

Reduction of nutrients, BOD, and ammonia from sewage treatment plants and log ponds will be approached through the National Pollution Discharge Elimination System (NPDES) permit program for which DEQ has responsibility in Oregon. Covered industries and construction sites disturbing land areas greater than five acres will also be required to obtain NPDES stormwater permits. The NPDES program provides for the issuance of permits for discharges and establishment of minimum treatment requirements as permit conditions. Container nursery operations which have discharges that reach Bear Creek or any of its tributaries after June of 1993 will also be required to obtain NPDES permits. Confined Animal Feeding Operations (CAFO) are controlled through a permit program operated jointly by the Oregon Department of Agriculture and DEQ. This program will be reviewed and strengthened as necessary.

Nonpoint Sources

Program plans have been developed by the responsible Designated Management Agencies (DMAs) in the Bear Creek subbasin. These DMAs are: the Oregon Department of Agriculture, the Oregon Department of Forestry, Jackson County and the following incorporated cities in the watershed -- City of Ashland, City of Central Point, City of Jacksonville, City of Medford, City of Phoenix, City of Talent. These program plans represent first level strategies for beginning implementation of efforts to control area-wide (NPS) water pollution. The long term goal of the plans is to achieve and protect beneficial uses of water in Bear Creek.

As a first step toward refinement and implementation of NPS control efforts the DMAs will cooperate to implement a number of tasks on a watershed-wide basis:

- 1) Develop and implement a coordinated monitoring plan to gather additional water quality data. This data will be used to further refine water quality assessments and to evaluate effectiveness of control efforts as they are implemented.
- 2) Develop and implement watershed-wide public awareness plans. These efforts will be intended to raise the level of public awareness of the water quality problems in Bear Creek and to begin educating the public about what they, as individuals, can do to help improve water quality.
- 3) Complete "streamwalk" or other program to identify problems/locations along Bear Creek and its tributaries which need attention/resolution. This effort will include such items as streambank erosion sites, pipes of unknown origin with discharges to the creek, removal of vegetation, etc.
- 4) Identify the need for, and adopt, any necessary new or refined ordinances to minimize the movement of soil, sediment, and/or contaminated runoff from development sites, building sites, agricultural operations, road building sites, or other sites where soils have been disturbed.
- 5) Identify and make final selections of any other options/alternatives or best management practices/systems which need to be implemented. Develop implementation schedules for these options/alternatives.

In addition to the items listed above, the cities will investigate the condition of sanitary and storm sewers and, as necessary, will design or refine maintenance programs to deal with problems identified. Cities will also investigate the nature of effluent discharging from the storm sewers. The Department of Agriculture (ODA), in cooperation with the Jackson County Soil and Water Conservation District (SWCD), will ensure that all permitted CAFOs in the watershed are in compliance with their permit conditions and will make recommendations for changing general permit conditions (which apply statewide) as necessary to improve water quality. ODA and SWCD will also ensure that container nurseries in the watershed are complying with requirements. Jackson County has responsibility for investigating and controlling pollution from septic systems. The County will also develop and implement a program to maintain county road ditches in a way that will minimize transport of sediment, nutrients, and other pollutants to waters of the state.

The complete text of individual program plans can be viewed at the office of the individual DMAs or at the Rogue Valley Council of Governments or at DEQ.

REFERENCES

- Baumgartner, R. 1989. Bear Creek - Establishment of Total Maximum Daily Loads. Environmental Quality Commission Staff Report.
- Dittmer, E. 1984. Water Quality Data Report Bear Creek Basin. Rogue Valley Council of Governments. 32 p.
- Jackson County. 1982. Evaluation of Fecal Coliform Sources. Environmental Sanitation Division, Department of Planning and Development, Jackson County. 105 p.
- LaRiviere, J.R. 1976. The Water Quality of Bear Creek & The Middle Rogue River Basins. Jackson County Department of Planning & Development.
- LaRiviere, J.R., E. Quan, W. Westgarth, and R. Culver. 1977. A Preliminary Assessment of Water Quality and Rural Non-point Sources in the Bear Creek Basin Jackson County, Oregon. Rogue Valley Council of Governments.
- Sturdevant, D. 1990. Proposed Adoption of Rule Establishing Bear Creek TMDL Time Schedule. Environmental Quality Commission Staff Report.
- Wittenberg, L.A. and S.W. McKenzie. 1980. Water Quality of Bear Creek Basin, Jackson County, Oregon. U.S. Geological Survey Water Resources Investigations, Open File Report 80-158.

PROGRAM PLANS

- Bear Creek Agricultural Abatement Plan for Nonpoint Source Pollution. Jackson Soil and Water Conservation District.
- City of Ashland Department of Public Works Urban Runoff Water Quality Program Plan
- City of Central Point Urban Runoff Water Quality Program Plan
- City of Jacksonville Urban Runoff Water Quality Program Plan
- City of Medford Urban Runoff Water Quality Program Plan
- City of Phoenix Urban Runoff Water Quality Program Plan
- City of Talent Urban Runoff Water Quality Program Plan
- Oregon Department of Forestry Nonpoint Source Water Quality Management Program Plan for the Bear Creek Basin (Jackson County)

April 1993

Bear Creek Basin Nonpoint Source Management
Implementation and Compliance Schedule for
Designated Management Agencies (DMAs)

Urban DMAs:

City of Ashland
City of Central Point
City of Jacksonville
City of Medford
City of Phoenix
City of Talent

Rural DMAs:

Oregon Dept. Agriculture
Oregon Dept. Forestry
Jackson County

The dates specified below assume adoption of the compliance schedule by the EQC at the April 23, 1993 commission meeting. Dates were established to allow for necessary consultation with the respective Councils of the DMAs. Any delays in EQC action or changes in dates will be communicated to the DMAs in writing.

TASKS FOR ALL DMAS

<u>DATE</u>	<u>TASK</u>
	MONITORING
09/30/93	Submit to DEQ an acceptable ambient and stormwater monitoring plan which identifies sites to be sampled, frequency of sampling, parameters to be measured, methods of analysis, mechanisms of reporting results to DEQ, quality assurance mechanisms. The ambient effort is intended to characterize the conditions in Bear Creek and its tributaries. The stormwater monitoring effort is intended to characterize the nature of effluent discharging from storm sewers to Bear Creek and its tributaries.
6/93	Submit a draft plan to DEQ for comment and begin implementation. Identify budgets necessary to carry out the plan and document availability of resources. There should be at least a sub-set of sites at which each of the following parameters are measured on at least a quarterly basis (preferably more frequently to provide sufficient data for assessing trends): phosphorus, dissolved oxygen, pH, bacteria, and temperature.

6/93-12/94 Continue to implement monitoring efforts while finalizing monitoring plan. After the final plan is submitted, monitoring will be on-going but the monitoring program is expected to evolve over time. Data should be evaluated on an annual basis. Results of data evaluation may be used to justify changes to the monitoring plan. Implementation of the monitoring plan may occur in phases so long as there is at least at sub-set of sites that are sampled regularly for the parameters listed above and that can be used for trending. DEQ staff will be available to assist with development of the plan and with data evaluation. DEQ may also assist with implementation by providing partial funding and/or laboratory services. But the responsibility to insure that the minimum monitoring requirements are met lies with the DMAs.

PUBLIC AWARENESS

09/30/93 Develop and submit to DEQ an acceptable, detailed written public awareness plan. The plan should reflect a coordinated, basin-wide effort that includes activities of all DMAs. Plan should identify specific activities/products and schedules which will be implemented prior to 12/94. The strategy should include such things as: developing exhibits that can be placed in shopping malls, colleges, area banks, etc., media involvement -- participation in local talk shows, generation of news stories, a series of well publicized public seminars, a system for receiving public feed-back. Identify budgets and schedules, document availability of resources. In addition, identify any optional activities/products to be implemented prior to 12/94 and activities/products which will be on-going.

9/93-12/94 Implement the accepted public awareness plan. Submit copies of all printed public awareness/education materials to DEQ as they are produced.

STREAM INVENTORIES

- 12/01/93 Complete problem inventory of high priority sections of Bear Creek and/or its tributaries within the jurisdiction. This can be done using streamwalk methods, aerial evaluation, or other methods. Submit report to DEQ which identifies and sets priorities for problems/locations identified that need attention/resolution. Report should include recommended course of action and schedule for action. Include such items as streambank erosion sites, pipes of unknown origin discharging to stream, illegal dump sites, sites where re-vegetation is needed, etc.
- 10/93 Identify area of responsibility for each DMA.
11/93 Prioritize stream segments for inventorying.
12/93 Complete streamwalk/inventory for high priority segments. Submit report to DEQ.
- 12/93-12/94 Begin addressing problems identified and complete inventories for remaining segments. Submit report to DEQ identifying problems that have been addressed and schedule for addressing remaining problem sites.

LOCAL ORDINANCES

- 09/01/94 Review existing ordinances and, if necessary, revise or adopt new ordinances to minimize the movement off site of soil, sediment, and contaminated runoff from development sites, building sites, agricultural operations, road building sites, or other sites where soils have been disturbed. Emphasis should be on prevention of erosion, rather than on control after the fact. Encourage the installation of permanent runoff treatment systems for new development.
- 8/93 Compile existing ordinances and provide to DEQ for comments. DEQ will comment on existing ordinances within 30 days of receiving a complete package of existing ordinances.
- 03/94 Conduct public hearings on new or modified local ordinances. Report to DEQ.
- 06/94 Adopt and enact new or modified local ordinances as necessary. Report to DEQ.

ADDITIONAL PRACTICES

10/01/93

Make selections and identify any other options/alternatives or BMPs to be implemented. Develop implementation schedules for meeting and TMDL requirements and maintenance of water quality. This may include, but is not limited to: Selection of practices, sites and schedules for construction of treatment facilities (including pilot projects), selection and implementation schedules for flow augmentation options, selection and implementation schedules for farm plan options, irrigation conversions, or other options for agricultural, other BMPs.

Final decisions for large capitol improvement projects/construction of treatment facilities may be delayed until the City of Ashland sewage treatment plant facilities plan is finalized and construction is complete. However, an acceptable and firm schedule for making decisions should be identified and submitted to DEQ.

TASKS FOR URBAN DMAs

<u>DATE</u>	<u>TASK</u>
	SEWER SYSTEMS
12/31/94	Investigate design and condition of sanitary sewer system and storm sewer system. Identify problems, develop a plan to address identified problems, and implement the plan. Report to DEQ.
10/93	Develop and refine storm sewer and sanitary sewer system maps. Submit copies to DEQ.
10/93	Survey storm sewers for dry weather flows. If such flows are found, identify source and determine whether corrective actions are necessary. Set priorities and begin implementation of corrective actions. Report status to DEQ.
03/94	Develop and/or refine an inspection and maintenance program for storm sewer system. Include regular cleaning of drains and catch basins.
12/94	Complete implementation of necessary corrective actions. Report on actions taken.

Note: Federal guidance for NPDES stormwater requirements (including monitoring requirements) for municipalities under 100,000 in population is due in October 1993. It is anticipated that permit requirements for cities in critical basins will be similar to requirements already in existence for larger cities. Urban DMAs in the Bear Creek watershed are encouraged to begin now to investigate the nature of effluent discharging from storm sewers and report results to DEQ. At a minimum this effort should include a representative sampling of effluent from flowing storm sewers during wet weather and during dry weather from any storm sewers found to have dry season flows that are expected to continue after the summer of 1994. Parameters analyzed for should include phosphorus, BOD, pH, and bacteria.

TASKS FOR AGRICULTURE DMA

<u>DATE</u>	<u>TASK</u>
	CAFO
11/30/93	Complete inspections of all permitted CAFOs and, if needed, develop enforceable schedules that will result in all CAFOs being in compliance with permit conditions prior to December 31, 1994. Report to DEQ identifying all CAFOs and their compliance status, all actions taken or to be taken.
06/93	Aerial inspections complete. Report to DEQ.
10/93	On-ground follow-up inspections complete.

NURSERIES

10/01/93	All containerized nurseries inspected, during irrigation season, to determine compliance with container nursery requirements. Report to DEQ identifying status of all container nurseries.
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TASKS FOR JACKSON COUNTY

<u>DATE</u>	<u>TASK</u>
	SEPTIC SYSTEMS
09/01/93	Develop and begin implementation of a program to identify and correct failing septic systems. Submit report to DEQ identifying the program elements, schedule, budget requirements, and documentation of availability of resources.
	COUNTY ROAD DITCHES
09/01/93	Develop and begin implementation of program to maintain county roadside ditches in such a way to minimize transport of sediment, nutrients, and other pollutants to waters of the state. Include provisions to establish and maintain vegetative cover on entire county road right-of-way. Where possible, convert ditches to vegetated swales and direct road ditch discharges into passive treatment facilities (infiltration basins, wet ponds, detention ponds, etc.) prior to entering waters of the state. Submit an acceptable report to DEQ identifying the program elements, schedule, budget requirements and documentation of availability of resources.

Attachment C
Agenda Item E
April 23, 1993 EQC Meeting

State of Oregon
Department of Environmental Quality

Memorandum

Date: January 28, 1993

To: Environmental Quality Commission

From: Andy Schaedel, Surface Water Section, WQ Division *ASchaedel*

Subject: Presiding Officer's Report for Public Hearing
Hearing Date and Time: January 20, 1993,
beginning at 7 p.m.
Hearing Location: Jackson County
Courthouse Auditorium,
Medford, Oregon

Title of Proposal: Review of Bear Creek (Jackson
County) Nonpoint Source Control
Program Plans and Implementation
& Compliance Schedule

The public hearing on the above titled proposal was convened at approximately 7:05 p.m. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Approximately 15 people were in attendance, two people signed up to give testimony.

Prior to receiving testimony, Mitch Wolgamott briefly explained the water quality problems in Bear Creek, the reason the nonpoint source control program plans were developed, and responded to questions from the audience.

People were then called to testify in the order of receipt of witness registration forms and presented testimony as noted below.

Bill Caldwell, Manager of Medford Irrigation District, 1340 Myers Ln., Medford, OR 97501.

In the identification of the problems, Mr. Caldwell recalls that agriculture was assigned about 10 percent of the problem. The rest was attributed to other sources. Agriculture interests want to be on record as having put together their program by working together. Mr. Caldwell would like to make

Memo To: Environmental Quality Commission
Presiding Officer's Report
January 20, 1993 Public Hearing
Page 2

DEQ/EQC aware that the agricultural community is attempting to provide a leadership role in cleaning up Bear Creek. Mr. Caldwell does not believe that Bear Creek was historically a free flowing stream; agriculture has made it so through building of reservoirs and bringing in water for irrigation. The agriculture program plan speaks to what agriculture can and is doing to help solve problems in Bear Creek. Written testimony was not submitted.

Judson M. Parsons, Vice Chairman of the Jackson Soil and Water Conservation District and Orchardist, 3405 Hillcrest Rd., Medford, OR 97504

Mr. Parsons added support to what Bill Caldwell said. Mr. Parsons feels that the preliminary draft water quality assessment treats agriculture a little more harshly than it does forestry. The statement that sprinklers have been installed on "some orchards" is inaccurate. Sprinklers have been installed on many acres of orchard land. Seventy percent of orchards are now irrigated with sprinklers and along with the sprinklers has come permanent sod cover which reduces erosion. The use of sprinklers for frost protection reduces air pollution in addition to reducing water pollution. On page six of the document, under "actions to date" it is stated that past actions have been primarily planing efforts. Mr. Parsons points out that much more than planning has been done over the past 20 to 30 years. Positive steps have been taken to implement best management practices. There is much more to be done but credit should be given for what has already been done. Written testimony was not submitted.

The following people handed in written comments but did not present oral testimony:

Mike Wolf, on behalf of the Oregon Department of Agriculture and the Jackson Soil and Water Conservation District.

Jerry Grondin, DEQ Water Quality Division, Ground Water Section.

In addition to written testimony, Marc Prevost, Water Quality Coordinator, Rogue Valley Council of Governments, submitted an alternative "Bear Creek Basin Non-point Source Management and Compliance Schedule for the Designated Management Agencies." This document was developed cooperatively by the Designated Management Agencies (DMAs) in the Bear Creek Basin and

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Page 3

submitted on behalf of all of the DMAs: City of Ashland, City of Central Point, City of Jacksonville, City of Medford, City of Phoenix, City of Talent, Jackson County, Oregon Department of Agriculture, Oregon Department of Forestry. An addendum to this alternative implementation and compliance schedule was submitted by the Oregon Department of Forestry.

Copies of all written testimony and the alternative schedule developed by the DMAs are attached.

There was no further testimony and the formal hearing was closed at about 7:30 p.m. After the formal hearing was closed an informal question and answer session continued for approximately one hour.

Attachments:

Written Testimony Submitted for the Record.

January 26, 1993

To: Mitch Wolgamott

From: Mike Wolf

Subject: Oregon Department of Agriculture and Jackson Soil and Water Conservation District Comment on DEQ's Draft Bear Creek Basin Nonpoint Source Management Implementation and Compliance Schedule for Designated Management Agencies, available for public hearing on January 20, 1993

DEPARTMENT OF
AGRICULTURE

This letter provides the Oregon Department of Agriculture's and the Jackson Soil and Water Conservation District's (SWCD) response and comment on the draft implementation and compliance schedule as presented by DEQ at public hearing in Jackson County January 20, 1993. The following is the implementation and compliance schedule proposed by the agricultural DMA and LMA to address the nonpoint TMDLs as established by DEQ for the Bear Creek Basin.

MONITORING PLAN

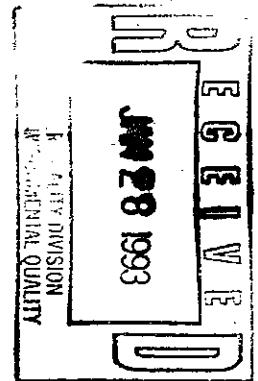
The SWCD agrees to participate in a joint two stage monitoring program with all of the other DMAs:

- 1) The SWCD will assist with the development of basin maps designating DMA geographic areas of responsibility for monitoring. These maps will be completed by the end of March 1993.
- 2) From March 1993 through March 1995, the SWCD will take conductivity readings at designated sites twice annually, once during the irrigation season and once during the non-irrigation season. Monitoring will be conducted in coordination with other DMA efforts being undertaken through RVCOG. This agreement on conductivity testing is based upon using the RVCOG meter free of charge or through support from other sources. Further specific testing may be conducted if "hot spots" are detected. Assistance with further specific testing will be requested of DEQ as appropriate.

Further testing after March 1995 will be determined at a later date based on water quality program status and available resources.

Additional: ODA and the SWCD request that the DEQ Assessments Section continue sampling/testing of Bear Creek twice annually and inform the ODA and the SWCD where pollutant contribution is occurring. It might be advantageous for agricultural LMA staff to accompany DEQ staff when this sampling is being conducted.

Additional: ODA and the SWCD request a meeting twice a year with DEQ staff to discuss the results of DEQ and DMA/LMA monitoring, to be used to refine the nonpoint source implementation program as appropriate.



Barbara Roberts
Governor



635 Capitol Street NE
Salem, OR 97310-0110

A complete or revised monitoring plan will be submitted to DEQ in conjunction with other DMA plans by the end of August 1993.

PUBLIC AWARENESS PLAN

The SWCD will develop and implement a detailed plan of water quality information and education programs and activities. This plan will be submitted to DEQ by the end of April 1993. Many short-term and long-term activities are dependent on grant acquisition, continued county funding, and a USDA reorganizational plan currently under consideration, and are subject to revision based on these circumstances.

STREAMWALK ACTIVITY

The SWCD will conduct streamwalk activities on Bear Creek jointly with the other DMAs. This streamwalk will be done in conjunction with the monitoring plan. Sections of Bear Creek have been walked, and problem sites identified and acted on by the responsible agency. The stream and tributary system is large and streamwalks of the entire system would entail time and monies which the agricultural and other management agencies do not have.

The agricultural DMA/LMA will work with the other DMAs to develop a detailed streamwalk plan by October 1994. The SWCD will continue to act on those areas where complaints are made as staffing and resources allow.

ORDINANCE CHANGES

The agricultural DMA/LMA will collect existing ordinances relating to agriculture and send them to DEQ for review by 5/31/93.

The SWCD requests DEQ's comments and suggestions on the adequacy of existing ordinances by 8/31/93.

Current law does not provide ODA or the SWCD with effective authority to adopt regulate agricultural nonpoint source pollution. Current authorities rest with DEQ and/or local county government. Legislation under consideration during the 1993 legislative session may result in a change in authorities. By June 1994, ODA and/or the SWCD will provide technical assistance on development of ODA's recommended ordinance modifications to the agency or jurisdiction with the authority and desire to implement new or refined ordinances.

Necessary public hearings and implementation of any new or refined ordinances would have to be accomplished by the agency/jurisdiction with authority on an appropriate time schedule.

SELECT BMPs AND IDENTIFY ALTERNATIVES TO BE IMPLEMENTED

Site-specific BMPs will be applied on agricultural operations as indicated in the agricultural nonpoint source plan. In most cases, BMPs will be applied within the context of a Resource Management System as appropriate. Critical water quality practices such as irrigation system conversion, irrigation water management, nutrient management, etc. are expected to produce long-term, ongoing water quality benefits. ODA and the SWCD can provide annual status reports to DEQ on BMP planning and implementation. The first status report will be completed and submitted by November 1993.

The agricultural DMA/LMA can assist the other DMAs in providing DEQ with regular updates on major basinwide or subbasin projects under consideration, such as flow augmentation and capital improvement projects to improve the efficiencies of irrigation systems.

COMPLIANCE VERIFICATION OF PERMITTED CAFOS

The Oregon Department of Agriculture will complete aerial inspections of all permitted CAFO operations in the Bear Creek Basin by June 1993.

The Oregon Department of Agriculture will complete necessary on-the-ground followup inspections of permitted CAFO operations in the Bear Creek Basin by June 1993.

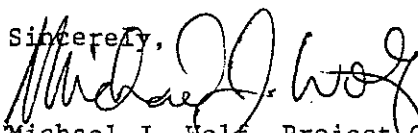
By December 1993, the Oregon Department of Agriculture will develop necessary enforceable schedules with individual permitted CAFO operators to assure their compliance with permit conditions by December 31, 1994.

COMPLIANCE VERIFICATION OF CONTAINER NURSERIES

During the 1993 irrigation season, the Oregon Department of Agriculture will inspect all container nurseries in the Bear Creek Basin which have submitted letters of intent to ODA. ODA will provide DEQ with a status report on container nursery compliance by November 1993.

The Oregon Department of Agriculture and the Jackson Soil and Water Conservation District are confident that these activities, integrated with the efforts and activities of the other nonpoint source DMAs, represent a clear commitment to continued water quality improvements in Bear Creek. Please contact me with any questions on the tasks and schedule adjustments we are proposing.

Sincerely,



Michael J. Wolf, Project Coordinator
Natural Resources Division
503-378-3810 / 378-2590 FAX

cc: John Billings, SWCD
Bob Hummell, SCS
Brian Lanning, SCS
Marc Prevost, RVCOG

Date: January 20, 1993

To: Mitch Wolgamott: DEQ:WQ:SW
From: Jerry Grondin: DEQ:WQ:GW J
Subject: Bear Creek (Jackson County) Nonpoint Source Control
Program Plans and Implementation & Compliance Schedule

Thank you for the opportunity to comment upon the Bear Creek (Jackson County) Nonpoint Source Control Program Plans and Implementation & Compliance Schedule.

Review of the summary document and schedule indicate all monitoring will focus upon surface runoff and discharges. I recommend adding a groundwater component to the monitoring for the following reasons:

1. septic systems which discharge to the sub-surface are considered a potential source of nutrient loading to Bear Creek;
2. water from sewage treatment plants, urban storm water, log ponds, confined animal feeding operations, container nurseries, irrigated agriculture, and forestry operations may infiltrate the subsurface, travel via groundwater, and discharge to surface water bodies like Bear Creek;
3. groundwater degraded by anthropogenic sources (nitrate and solvents) appears to exist within the Bear Creek valley;
4. groundwater degraded by geologic sources (fluoride, boron, arsenic, sodium, chloride, TDS) also appears to exist within the valley.

Thus, the potential source of surface water degradation by groundwater should be considered in any monitoring and source management plan development.

Groundwater monitoring could occur two ways:

1. government conducted:
 - a. cooperative cost-sharing between the USGS and the local governments and/or Jackson County; or
 - b. grant money supported; or

Memo To: Mitch Wolgamott: DEQ:WQ:SW
January 20, 1993
Page 2

- c. contracted with a university or private consulting company; or
 - d. conducted directly by Jackson County and/or the local governments.
2. well owner conducted. Require well owners to have water from their wells analyzed for a specified list of constituents, and submit the results to a specified public body;
- a. require as part of the sale of a property (this option should be coordinated with the Oregon Health Division well testing program); and/or
 - b. require for all well owners within a specified geographic area during specified time(s).

This groundwater monitoring would make assessing the impacts to Bear Creek and recommended source control more complete.

I hope this memo is useful to you. Please contact me at 229-6743 if you have any questions or comments.

cc: Amy Patton: DEQ:WQ:GW
Lucinda Bidleman: DEQ:WQ:WQ
Rick Kepler: DEQ:WQ:GW

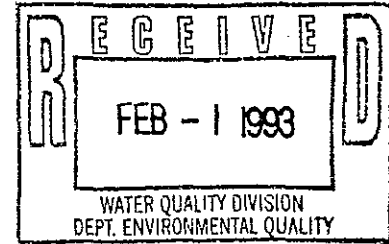
ROGUE VALLEY Council of Governments

155 S. Second Street
P.O. Box 3275
Central Point, OR 97502

503-664-6674

Jan. 29, 1993

D. Mitch Wolgamott
Non-Point Source Specialist
Department of Environmental Quality
811 SW 6th Ave
Portland, OR 97204



RE: TMDL Compliance and Implementation Schedule Comments

Mr. Wolgamott;

Please find attached the Bear Creek Basin DMAs' coordinated response to your November 24, 1992 letter. While the DMAs understand that their comments are being made in response to the DEQ suggested compliance and implementation schedule, they request that DEQ adopt their attached schedule as the formal "enforceable" document.

In addition to the attached proposed coordinated response, some additional observations were made concerning DEQ's proposed compliance schedule. These include:

MONITORING PLAN

The monitoring plan should consist of bimonthly conductivity readings at DMA selected sites. As stated in the attached proposed schedule, this effort should continue for two years to allow for identification of "hot spots." After the two year period the monitoring should be reduced to twice yearly. Some of the DMAs feel that no detailed testing should occur until after the City of Ashland corrects its sewage effluent problem and the County identifies and corrects failing septic systems. If DEQ requires more extensive monitoring in the interim, DMAs feel that DEQ should be responsible for carrying out these tests - perhaps by continuing its bi-annual testing program. The DMAs are concerned that they are not in the position to be able to provide extensive background monitoring to DEQ.

STREAMWALK

Streamwalk activities will involve corrective maintenance, as related to the walk, and not in capital improvement projects to treat storm water. The streamwalk needs to be an on-going process. The October 1993 report will chronicle the first of a continuing series of smaller walks, rather than one "definitive" walk.



ORDINANCES

DEQ must provide timely reviews in order to meet any ordinance schedule. Also the DMAs want to emphasize that DEQ is responsible for erosion control on construction sites over 5 acres.

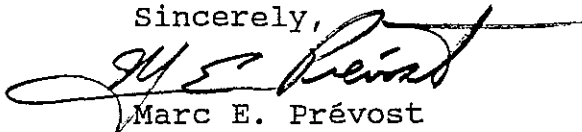
BEST MANAGEMENT PRACTICES

The DMAs want DEQ to recognize that their BMPs will not include construction of storm water treatment facilities until the Ashland Treatment Plant issue is resolved, failing septic systems have been identified and repaired, and the resulting effects on Bear Creek determined.

STORM DISCHARGE INVESTIGATION

The DMAs are opposed to testing storm discharges unless there is a federal to law mandate this - including the details of what tests are required. The DMAs do not feel compelled to participate in an expensive testing program without be required to do so.

Sincerely,



Marc E. Prévost
Water Quality Coordinator

**Bear Creek Basin Non-point Source Management
Implementation and Compliance Schedule
for the
Designated Management Agencies (DMAs)**

January 29, 1993

BACKGROUND

On December 8 and December 11, 1992 the Rogue Valley Council of Governments (RVCOG) coordinated meetings of the Bear Creek Basin DMAs. The purpose of the meetings was for the DMAs to collectively address DEQ's November 24, 1992 letter from Mitch Wolgamott. In this letter DEQ requested that the DMAs cooperate in the development of an implementation and compliance schedule which would add detail to their existing draft TMDL program plans. The letter also requested that the schedule be "a single document that a person can look at to determine what all DMAs are responsible for" and that all the DMAs "work together on these tasks in a basin-wide approach."

As a result of the two meetings mentioned above, and DEQ's request for cooperation, the DMAs collectively drafted a proposed implementation and compliance schedule. On January 20, 1993 a meeting between DEQ and the DMAs was held at the RVCOG to discuss that first draft. DEQ also held a public hearing that evening on the proposed program plans and compliance schedule.

The implementation and compliance schedule included in this document represents a culmination of those meetings and public hearing. Attached as an addendum are the comments of the Department of Forestry. Comments from the Department of Agriculture have been sent to DEQ under separate cover but a copy is also included as an attachment because it was developed as part of the cooperation on this document. Cooperation included the following DMAs:

Urban DMAs:

City of Ashland
City of Central Point
City of Jacksonville
City of Medford
City of Phoenix
City of Talent

Rural DMAs:

Jackson County
Oregon Dept. of Agriculture
Oregon Dept. of Forestry

All correspondence regarding this document should be directed to:
Marc E. Prevost, Water Resources Coordinator
Rogue Valley Council of Governments
PO Box 3275, Central Point, OR 97502.

PROPOSED IMPLEMENTATION AND COMPLIANCE SCHEDULE
TO ADDRESS NONPOINT TMDLs
Within The
BEAR CREEK WATERSHED

The following is the implementation and compliance schedule proposed by the identified DMAs' to meet Oregon State Rules in regards to addressing the non-point TMDLs as established by DEQ for the Bear Creek Watershed.

MONITORING

DMAs have decided on the following TMDL monitoring plan to be implemented in three phases:

- 1) Maps will be developed for the entire Bear Creek Watershed by the RVCOG with the assistance of the DMAs. These maps will include designated sub-areas of responsibility for each DMA to monitor. The maps will be started in Feb., 1993 and completed by March, 1993.
- 2) Bimonthly monitoring will be done using the conductivity meter beginning March, 1993 and continue until March 1995. Bimonthly monitoring will locate "hot spots" which require immediate corrective action. This examination will include storm sewer effluent discharges. Identified hot spots will be checked for DEQ specified TMDL parameters. All DMAs will assume responsibility to do testing within their own designated monitoring areas.
- 3) After March 1995 intensive monitoring efforts will be reduce to twice yearly - once during high flow and once during low flow months. Each DMA will maintain responsibility for monitoring their own designated geographic area.

Additional: DEQ will continue monthly monitoring at their three Bear Creek sampling sites.

Additional: The RVCOG will continue doing monthly water quality sampling of sixteen sites along the mainstem of Bear Creek for the parameters it has historically tested for (temperature, pH, fecal coliform, total suspended solids, and turbidity). The location of these sites and the results of these tests for 1992 have been forwarded to DEQ.

OTHER: It is important that the monitoring program be timed to coincide with the completion of the City of Ashland's Waste Water Treatment Facility upgrade. Some of the DMAs have expressed concern that their efforts to improve the TMDL's will be masked by the pollutant contributions made by the Ashland Waste Water Treatment Plant.

Coordination of the monitoring activities will be the responsibility of the RVCOG Water Resources Coordinator. The Coordinator will hold twice annual monitoring meetings for the first two years and then once annual thereafter. It is anticipated that DEQ will be represented at and participate in these meetings. The purpose of monitoring meetings will be to help collect, collate, and share data and to discuss other pertinent information about the ongoing efforts.

More specific details will be added to this monitoring plan by the end of September, 1993.

PUBLIC AWARENESS

The DMAs will develop a basin wide publicity plan which includes three approaches:

1) Continuation of Current Activities - Each DMA will continue its historical efforts, on an on-going basis, to be actively involved in public education activities concerning the maintenance and improvement of water quality within the Bear Creek Watershed. These activities include:

- * annual mailings of educational materials targeting some pressing water pollution problem such as proper waste disposal, erosion control, and storm drain protection;
- * painting of warnings messages on curbs near storm drains;
- * printing and distribution of posters and fliers which are handed out or displayed at prominent locations;
- * press releases, news stories and guest editorials concerning water related problems and how they were resolved.

2) Targeted Information Blitz - Once the monitoring has identified "hot spots" each DMA will target their education activities toward correcting these specific problems and drawing public attention to the resolution. This will coincide with the two year monitoring effort (March, 1993 to March, 1995) and each DMA will be responsible for their own educational activities.

3) Basin-wide Awareness Program - After the two year monitoring program all DMAs will work together to develop an on-going educational publicity plan. This plan will be similar to other educational materials that are currently distributed throughout the basin. The RVCOG will assist in this effort by coordinating the DMAs and by searching for grant opportunities.

More specific details to this public awareness plan will be added by the end of April, 1993.

STORM AND SANITARY SEWER MAPPING

Urban DMAs have begun mapping their storm and sanitary sewer systems and they will have this task completed by the end of June, 1993.

INSPECTION & MAINTENANCE PROGRAMS FOR STORM SEWER SYSTEMS

DMAs will develop and refine their own inspection and maintenance programs by February, 1994. A report on the condition of their storm or combined sanitary/storm sewer systems will be forwarded to DEQ by the end of March, 1994.

OTHER OPTIONS AND BMPs

The DEQ has acknowledged that the Ashland Wastewater Treatment Facility is the largest single contributor of pollutants remaining in Bear Creek. The DMAs will not try to justify expenditures to their respective councils on capital improvements until the Ashland Treatment Facility has completed its improvements. The DMAs will complete, as appropriate, a capital improvement plan once Ashland's results are known.

DRY WEATHER STORM SEWER INSPECTIONS

Urban DMAs are currently doing storm drain inspections. Inspections will be completed by the end of October, 1993. The Cities of Phoenix and Ashland have stated they vary from this requirement because many of their storm sewers function for agricultural irrigation purposes.

Each DMA will implement corrective actions between October, 1993 and October, 1994. The proposed delay is to permit the DMAs to budget additional funding. 1993 budgets have already been established and they do not contain funding for this activity.

The City of Ashland has submitted a draft agreement to the Talent Irrigation District in reference to joint maintenance and repair responsibilities for the facilities they jointly use.

ORDINANCE CHANGES

The DMAs have agreed to the following ordinance change process:

- 1) All the DMAs will compile their existing ordinances and send them to DEQ for review. RVCOG will assemble the ordinances and deliver them to DEQ by the end of May, 1993. DEQ will identify who will review these ordinances and return suggested changes/additions.
- 2) The DMAs will evaluate the DEQ suggestions and will determine what additional ordinances or changes in existing ordinances they will take to public hearing. Public hearings will be completed by the end of October, 1993. Urban trac-out ordinances will be included with these suggested changes. Draft final ordinances will be available to DEQ by June, 1994.
- 3) All DMAs will adopt new ordinances by September, 1994.

Other: DEQ will be responsible for erosion from all construction on sites over five acres through its permitting and monitoring process. DEQ already has responsibility for this activity for most of the cities.

STREAMWALK ACTIVITY

All DMAs will undertake the streamwalk activity in a coordinated manner. Each DMA will accept the geographic area to streamwalk based on the same area it is responsible for within its monitoring program. This activity will be undertaken in three phases:

- 1) Designation of Geographic Areas - Each DMA will be designated a geographic area of responsibility by the end of March, 1993.
- 2) Streamwalk - Each DMA will examine sections of the Bear Creek Basin within their designated geographic area while undertaking the monitoring program. This activity will last from March, 1993 to March, 1995. Periodic reporting to DEQ will occur on the same time intervals as the monitoring reports. Coordination of streamwalk efforts will also occur on the same schedule as outlined for the DMA monitoring meetings.

3) Ongoing Streamwalk - After March, 1995 a coordinated ongoing, basin-wide streamwalk will occur once yearly coinciding with one of the two bi-annual monitoring events. The RVCOG will coordinate this activity. More specific details on the streamwalk plan will be developed by October, 1994.

The following activities involve only a specific DMA and will be addressed individually by them.

1. JACKSON COUNTY

FAILING SEPTIC SYSTEMS

Jackson County currently follows state rules governing septic systems and they cooperate closely with the other cities within the county. Additionally, the county has now developed its draft program plan as required by DEQ. Accordingly the county feels it is already in compliance with this task. If their program plan does not meet DEQ's requirements then DEQ and the county must address this point separately.

COUNTY ROADSIDE DITCH MAINTENANCE

The county roadside ditch maintenance program is covered within the Jackson County program plan. If their program plan does not meet DEQ's requirements for this activity then DEQ and the county must address this point.

2. OREGON DEPARTMENT OF AGRICULTURE

The Oregon Department of Agriculture and the Jackson Soil and Water Conservation District have decided that their Implementation and Compliance Schedule will be closely linked with the timing and tasks of the urban DMAs. Their responses are attached as an addendum to this document. This attachment will include the following:

- * **ON-THE-GROUND FOLLOW-UP INSPECTIONS**
- * **COMPLETION OF AERIAL INSPECTIONS**
- * **CONTAINERIZED NURSERIES**
- * **COMPLETION OF INSPECTIONS OF CAFOs**

OTHER OBSERVATIONS NOTED BY THE DMAs

The following points were made by the DMAs at the two meetings. The DMAs have directed that RVCOG forward these comments to DEQ for response.

1. The DMAs have been and are currently cooperating in watershed management efforts within the Bear Creek Basin. Because cooperation has been beneficial to them in the use of limited resources the DMAs will cooperate on the implementation and monitoring of their proposed program plans. The level of cooperation will be determined by objective. The DMAs have no current plans to develop "one surface water management district... that covers the entire watershed" as suggested in the November 24, 1992 DEQ letter.

2. The DMAs are still confused over what significance an EQC review of program plans and implementation schedule serves, especially in terms of compliance enforcement. We now understand that copies of all the DMA program plans will be available to the EQC for their review. What still concerns the DMAs is the statement in the DEQ letter of November 24, 1992 that: "When the EQC takes action on the plans it will also take action on a compliance and implementation schedule. If the schedule is adopted by the EQC it will become a binding and enforceable document." Verbal communication with DEQ has indicated that even after the EQC adopts the compliance and implementation schedule they give no guarantee to the DMAs that these schedules will be considered by DEQ to meet DMA obligations as set forth by state rule or the Clean Water Act.

3. The DMAs want DEQ to acknowledge that the effluent from the City of Ashland's waste water treatment facility may in some locations mask downstream improvements because downstream monitoring will reflect background contributions of pollutants from upstream sources. In some cases the background contribution of pollutants from the City of Ashland's treatment facility may not be easy to trace back to them as the source because their effluent water is carried extensively throughout the valley in irrigation canals. The DMAs feel there may be some areas where improvements in "hot spots" will be "masked" by the City of Ashland's effluent contribution until their situation is improved.

The DMAs are confident that they can work together with DEQ and the State of Oregon to address our common water quality concerns. They feel the implementation of the proposed schedule will be a big step forward in that effort.

OREGON DEPARTMENT OF FORESTRY
ADDENDUM TO THE DRAFT
PROPOSED IMPLEMENTATION AND TMDL COMPLIANCE SCHEDULE
TO ADDRESS NONPOINT SOURCE CONTROL
Within The
BEAR CREEK WATERSHED

MONITORING

The Department of Forestry (ODF) completed its planned single season of water sample collection in the Bear Creek basin in October, 1992. The sampling results should be analyzed and reported to the Department of Environmental Quality (DEQ) and other designated management agencies (DMAs) by October 1993. This monitoring project followed ODF's Nonpoint Source Water Quality Management Program Plan for the Bear Creek Basin. The conclusions reached in this analysis will be used to evaluate the Forest Practices rules effectiveness as best management practices (BMPs) for nonpoint source control in the basin.

PUBLIC AWARENESS

ODF's Forest Practices Program accomplishes much of its purpose by providing education and information to forest operators. A primary purpose of the Forest Practices Program is management of water quality resulting from commercial forest operations. Resource damage prevention is a primary tenet of the program. Informed operators and landowners are best able to comply with the BMP rules and protect water quality on forest land.

The Program is designed to inform forest operators and landowners of potentially sensitive resources in the initial process of notifying the State Forester of planned operations. Additional resource protection information is supplied through written guidelines, written recommendations, conversations during on-site inspections, and written statements of potential enforcement action.

ODF extends information to the general public through public displays at fairs and conferences, through public information publications, and any available public contacts.

These public awareness activities will continue to be provided in the Bear Creek basin through the ODF Southwest Oregon District office in Central Point. These activities are expected to be ongoing through and beyond the compliance schedule period.

SOURCE DETECTION ACTIVITY

The Forest Practices Program's equivalent of other DMAs' streamwalk effort is the field inspection process. Forest Practices Foresters receive notification of all forest operations in their areas of responsibility, and regularly patrol their areas, inspecting

operations for water quality protection practices. This program is expected to be funded to continue these activities.

FOREST PRACTICES PROGRAM (BMP) IMPLEMENTATION

The Forest Practices Program is dynamic and has often been changed in response to issues arising from water quality needs. A range of actions are available and have been used to address program issues. In some cases, additional training for program personnel is scheduled. In other situations, additional emphasis is focused on needed practices through landowner and operator education programs. Clarifying the interpretation of rules by the Department is sometimes enough. When practices need to be added, deleted or changed substantially, the Board of Forestry acts on the rules in the process specified for rulemaking in the Administrative Procedures Act. Circumstances determine the actions selected to adjust program results. ODF will work with the other Bear Creek basin DMAs to attain any program changes needed to correct water quality deficiencies in the watershed.

SUMMARY

The water quality objectives of ODF's nonpoint source management plan for the Bear Creek basin are to continue managing and monitoring water quality and forest growth and harvest through the Forest Practices Program. This program's rules are designed to be best management practices. The rules are administered, interpreted, and modified as necessary to maintain beneficial uses of water during forest operations.

BRIEFING TO THE ENVIRONMENTAL
QUALITY COMMISSION
APRIL 23, 1993

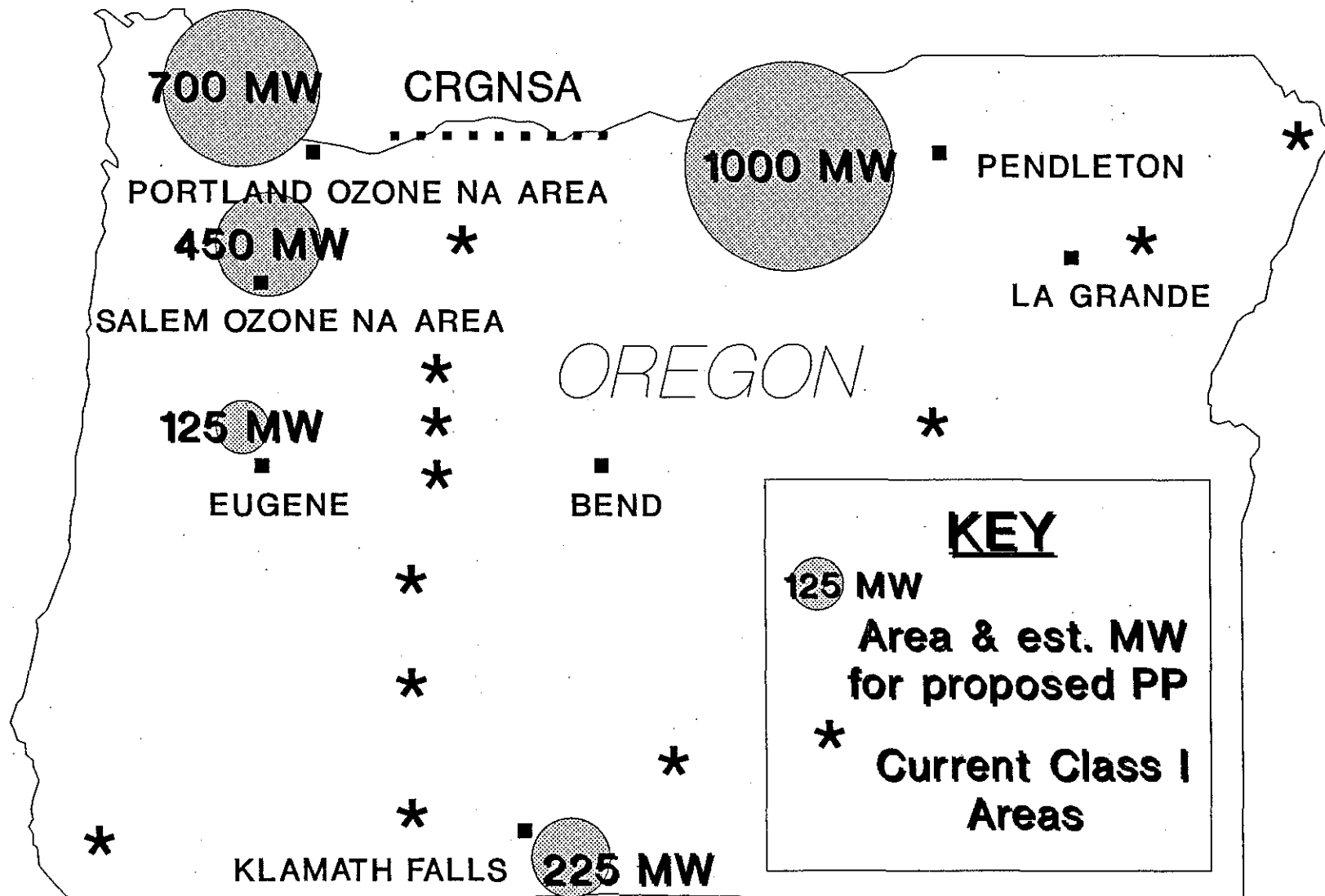
*ISSUES RELATED TO THE
CURRENT GROWTH OF
POWER PLANTS IN OREGON*

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

AQ REQUIREMENTS FOR NEW POWER PLANTS

- MUST NOT CAUSE NAAQS VIOLATION
- MUST NOT EXCEED PSD INCREMENT
- MUST NOT CAUSE SIGNIFICANT IMPAIRMENT OF VISIBILITY IN ANY CLASS I AREA
- IF ATTAINMENT AREA - INSTALL BACT
- IF NONATTAINMENT AREA - INSTALL LAER

POWER PLANT SITING AREAS



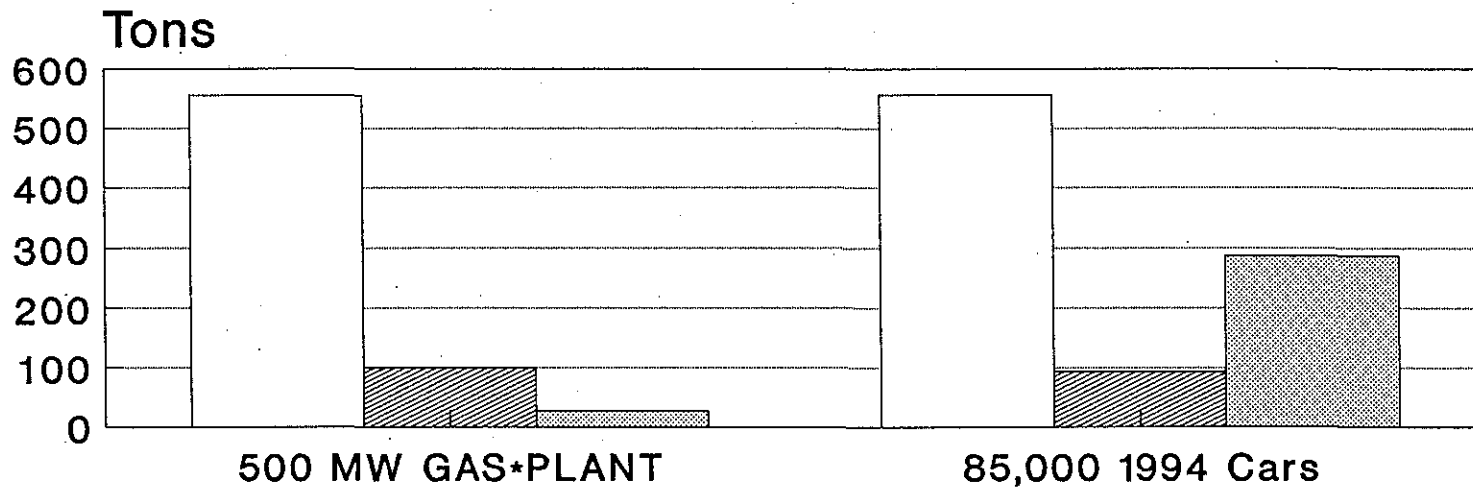
AIR POLLUTANTS OF CONCERN FROM NAT'L GAS*POWER PLANTS

1. *NITROGEN OXIDES (NO_x)* - MAJOR CONCERN, IMPACTS IN OZONE AREAS, PSD & VISIBILITY.
2. *VOLATILE ORGANIC COMPOUNDS (VOC)* - LESS OZONE AND VISIBILITY IMPACTS THAN NO_x.
3. *SULFUR DIOXIDE (SO₂)* - FROM OIL USED AS BACKUP TO GAS, MOSTLY VISIBILITY CONCERN.
4. *CARBON MONOXIDE (CO)* - LESS CONCERN THAN NO_x, SOME IMPACT IN CO NA AREAS.
5. *PARTICULATE MATTER (PM₁₀)* - SOME IMPACT IN PM₁₀ NA AREAS, PSD, & VISIBILITY.

* WITH OIL BACKUP

EMISSIONS COMPARISON

500MW NAT'L GAS PLANT = 85,000 CARS*



ANNUAL EMISSIONS

POLLUTANT

□ NOx ▨ PM ▩ VOC

- * INTERRUPTIBLE FUEL - OIL BACKUP
- PROPOSED CONTROLS = BACT
- CO EMISSIONS 4X HIGHER FOR CARS

PAST EXPERIENCES IN SITING POWER PLANTS

- *EARLY '70s* - SIMILAR INCREASE IN POWER PLANTS ENCOUNTERED SITING AND AIRSHED PROBLEMS.
- 1974 EFSC RULES ESTABLISHED "*UNSUITABLE AREAS*" FOR POWER PLANTS BASED ON POOR METEOROLOGY (POTENTIAL AQ PROBLEMS).
- 1993 EFSC RULES *DELETE* "UNSUITABLE AREAS" BASED ON CURRENT DEQ AQ RULES MORE APPLICABLE AND MORE STRINGENT.

AIR QUALITY CONCERNS

- *MAJOR INCREASE* IN PERMITTING WORKLOAD.
- NEED *CUMULATIVE AQ IMPACT STUDY* OF FUTURE IMPACT ON NA & CLASS I AREAS, CRGNSA, & PSD INCREMENT CONSUMPTION.
- CUMULATIVE AQ IMPACTS IN NE OREGON FROM POWER PLANTS + INCREASED SLASH BURNING RELATED TO *FOREST HEALTH ISSUE*.
- *SECONDARY IMPACTS* IF GAS PRICES INCREASE.
- LAND USE COMPATIBILITY AND NOISE ISSUES.

ISSUES AND QUESTIONS FOR THE COMMISSION

- SHOULD DEQ APPLY A SURCHARGE TO ALL PSD PERMIT APPLICANTS TO ADDRESS THE NEED FOR FOR ADDITIONAL RESOURCES?

QUESTION #1

ISSUES AND QUESTIONS FOR THE COMMISSION

- DOES THE COMMISSION SUPPORT THE DEPARTMENT'S POSITION THAT A STUDY IS NEEDED OF CUMULATIVE IMPACTS OF PP?
- IF SO, WHAT APPROACH SHOULD BE CONSIDERED IF THIS STUDY IS NOT CONDUCTED BY NWPPC?
- (1) DEVELOP A RULE TO REQUIRE ONE?
(2) CONSIDER HOLDING UP INDIVIDUAL PERMITS UNTIL ADDITIONAL "FACT FINDING" ON CUMULATIVE IMPACTS IS DONE?

QUESTION #2

ISSUES AND QUESTIONS FOR THE COMMISSION

- SHOULD THE DEPARTMENT CONSIDER A RULE WHICH WOULD APPORTION PART OF THE PSD INCREMENT, SUCH AS 50%, TO A NEW SOURCE, MUCH IN THE SAME MANNER AS IS CURRENTLY DONE FOR NEW SOURCES IN NONATTAINMENT AREAS?

QUESTION #3

ISSUES AND QUESTIONS FOR THE COMMISSION

- GIVEN SCENIC QUALITIES OF THE CRGNSA, AND THE POTENTIAL AQ IMPACTS FROM NEW POWER PLANTS AND OTHER SOURCES, SHOULD THE DEPARTMENT MAKE REDESIGNATION OF THE COLUMBIA GORGE TO A CLASS I AREA A PRIORITY AT THIS TIME?
- IF SO, SHOULD SOME OF THE DEPARTMENT'S FUNDS BE REDIRECTED TO PROVIDE FOR THE ECONOMIC ANALYSIS THAT'S REQUIRED FOR REDESIGNATION?

QUESTION #4

Date: April 22, 1993

To: Environmental Quality Commission

From: Michael W. Graine, Assistant to the Director
MWG

Subject: State Energy Policy and Future Energy Facilities

Attached are some materials for the Commission members for your meeting to discuss impacts from future power plants in Oregon. The materials include an analysis by the Oregon Department of Energy of Oregon's future energy needs and probable new energy resources to meet those needs, the role of the Energy Facility Siting Council and other state agencies in reviewing applications for new energy facilities and a diagram of the Energy Facility Siting Council's application process.

I will discuss current state energy policy and the implications of the applications for new energy facilities which are pending before our Energy Facility Siting Council. I will also discuss legislation proposed by the utility industry to change the process for siting and reviewing energy facilities. I would also be happy to discuss other issues and answer other questions you may have on energy issues. I look forward to meeting with you.

f:\dir-off\mwg\efsc\eqc

Barbara Roberts
Governor



625 Marion Street NE
Salem, OR 97310
(503) 378-4040
FAX (503) 373-7806
TDD (503) 378-4040
Toll Free 1-800-221-8035

Ten-Year Outlook for Power in Oregon/Region

1. Regional surplus is over due to increases in demand and reductions in supply
 - Population growth
 - Industrial growth
 - Drought
 - Trojan
 - Salmon recovery
2. Oregon's major suppliers--BPA, PGE, Pacific--will need 3,300 average megawatts by 2000 for all their customers in the West (moderate growth scenario).
 - 52% from natural gas plants, power purchases, and exchanges
 - 39% from conservation and system efficiencies
 - 9% from renewable resources
3. Demand from Oregon customers alone is estimated at about 500 average megawatts by 2000 (about 1 percent/year). Growth could be higher or lower.
 - 500 MW = Moderate growth (most likely)
 - 1,300 MW = growth equal to last several years
 - 250 MW = growth equal to trend in early 1980s
4. We cannot predict exactly how many new power plants will be built in Oregon or where they will be built. Natural gas and renewable resource power plants can be built in one state to serve customers in another state.
5. To date, nine developers have notified EFSC of their intent to build plants in Oregon:
 - 8 are natural gas-fired plants (2,625 MW)
 - 1 is pumped storage (1000 MW).
6. To meet Oregon's electricity needs at the lowest possible cost, we need to achieve 400 average megawatts of conservation between now and 2000. (The total amount of conservation achieved by state and all utilities between 1975 and today totals 320 average megawatts.)

4/16/93

Who's Who in Oregon's Energy Facility Siting

Energy Facility Siting Council (EFSC) is responsible for assuring that:

....the siting, construction, and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state (ORS 469.310).

- conducts "one-stop" review of energy facilities
- draws on standards of other agencies where appropriate
- coordinates review among numerous state and local entities
- issues site certificate and inspects to assure compliance with conditions of certificate

Major Permits Issued in Conjunction with EFSC Certificate

- water use (Water Resources)
- state lands (Lands)
- wetlands (Lands)
- subsurface drilling (DoGAMI)

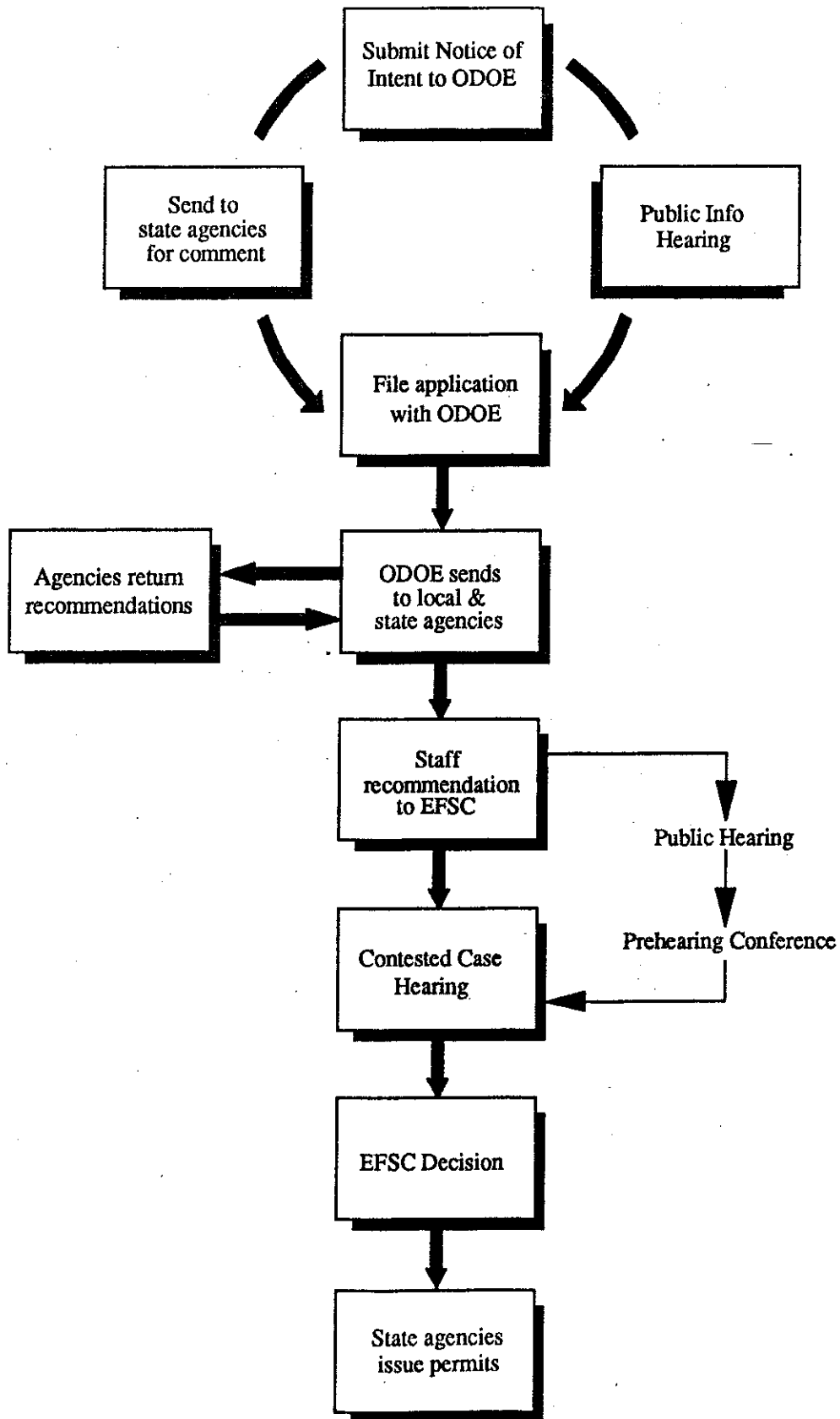
EFSC Considerations/Standards not Covered by Other Agency Permits

- need for power confirmation (ODOE Biennial Plan and EFSC standards drawn from utility least cost plans, BPA resource acquisition plans, NPPC forecasts and acquisition plans)
- recreation (state/local parks entities)
- archaeological (Parks/SHPO, Native American tribes, local govts.)
- land use (LCDC, city, county)
- fish/wildlife/endangered plants (F&W, Agriculture)
- Electromagnetic fields (EFSC's EMF committee)
- financial/technical/managerial
- visual/aesthetic/noise

Major Permits Issued Independent of EFSC Certificate

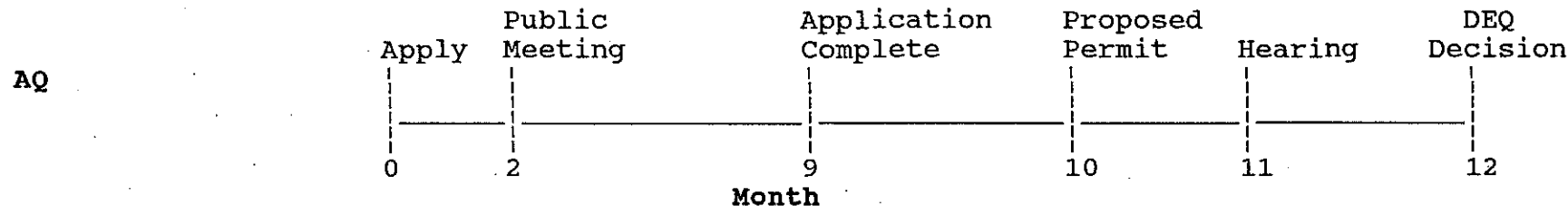
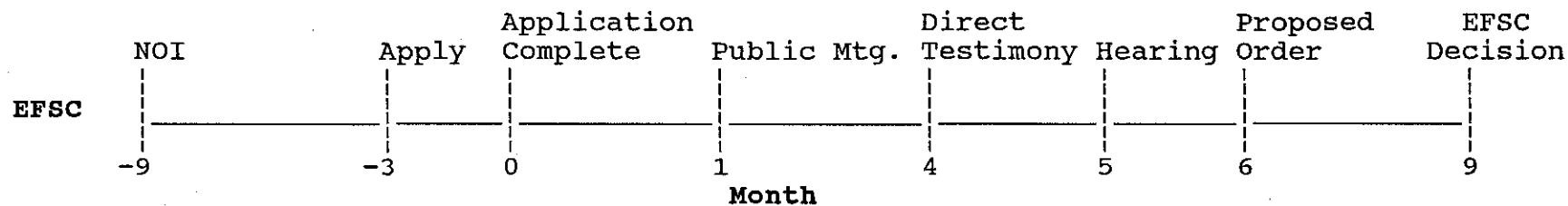
- federally delegated air and water quality permits outside EFSC process (DEQ)
- federal agency approvals

Energy Facility Siting Council Application Process Diagram



I. AQ/EFSC PERMITS OVERVIEW

- * CAA requires Air Quality Permit prior to construction.
- * EFSC issues Site Certification. Due to our Federal Delegation these processes can not be merged. However, DOE and DEQ are cooperating.



- * Coordination Issues/Work Load

II. CURRENT STATUS

1. U.S. Generating & Coyote Springs
 - a. Submitted December 92, January 93.
 - b. A.Q. Comments
 - c. Awaiting amended application
2. Air Products/PEP
 - a. Preapplication meeting March, 1992
 - b. NOI October, 1992
 - c. A.Q. awaits monitoring plan, offset plan, application.
3. Columbia Co.
 - a. No preapplication meeting
 - b. NOI October, 1992
 - c. Public meeting 4/20

III. WORKLOAD

- * 4 projects active + 4 in NOI process + 12 potential = 20 total.
- * PSD permits are resource intensive: address entire air sheds case-by-case, site specific (4 major meetings + lots of little ones).
- * Complications:
 - a. Historically we get one PSD/yr, don't want Energy projects to take away from normal load and backlog - this is a bulge in the work load.
 - b. Proximity of sources
 - c. Degree of cooperation

IV. POSSIBLE SOLUTIONS

- * 8 projects (2000 MW) over 2 years.
- * Need to strengthen the permitting team.
- * Need two 24-month limited duration positions.
- * Fees raise part of this.
- * A surcharge of \$15,000 - 20,000/PSD application would make up the difference.
- * Will the commission support rulemaking to raise this fee?

State of Oregon
Department of Environmental Quality

Memorandum[†]

Date: April 19, 1993

To: Environmental Quality Commission
From: Fred Hansen, Director *Fell*
Subject: Special Agenda Item, April 23, 1993 EQC Meeting

Findings for Intergovernmental Agreement between DEQ and Portland (the "Agreement".)

Statement of the Issue

On January 29, 1993 the EQC authorized the issuance and sale of pollution control bonds, with some of the bond proceeds to be used to acquire special assessment bonds from the City of Portland. The basic document covering the structure of and security for the special assessment bonds is the Intergovernmental Agreement between the DEQ and Portland. The Department of Justice has advised that the Commission formally make certain findings to be incorporated into the Agreement, which is in the process of being amended.

The current Agreement contains a recitation that

The Environmental Quality Commission has found that the Portland sewer development project, as defined in the Plan and administered in accordance with this Agreement, will be self-supporting and self-liquidating from revenues, gifts, grants from the federal government, user charges, assessments or other fees.

DEQ and the City are proposing to amend the Agreement. The proposed amendments are sufficiently substantive that the Commission is being asked to make a new finding as to the self-supporting and self-liquidating nature of the project.

Neither DEQ nor the City would be able to execute the amended Agreement containing this recitation unless until the Commission had, in fact, made such a finding.

[†]A large print copy of this report is available upon request.

Memo To: Environmental Quality Commission
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Background

In 1986 the Commission found that a threat to drinking water existed in the unincorporated area of mid-Multnomah County and ordered the implementation of the Sewer Implementation Plan (the "Plan") which had been prepared by the East County Sanitary Sewer Consortium. Under the Plan, Portland (and Gresham) would install sanitary sewers in the area. To pay the sewerage costs, the Plan recommended that Portland and Gresham issue special assessment bonds for purchase by DEQ. DEQ in turn would finance the purchase of these bonds through the issuance of general obligation pollution control bonds. The special assessment bonds would be paid for through property owner installment payments, additionally secured by a lien against the sewered properties. To date DEQ has purchased \$13.845 million in Portland special assessment bonds and \$5.255 million in Gresham special assessment bonds.

The proposed amendments to the Agreement cover such issues as overall financing structure, proposed amount of special assessment bonds to be sold to DEQ, amount of Bancroft bonding and certain Ballot Measure 5 considerations. Details may be found in Attachment A.

Authority to Address the Issue

The entire Plan is being undertaken in response to the Commission's determination in 1986 that a threat to drinking water exists in the mid-Multnomah County area. The Commission recitation is contained in the current Agreement. The Commission has authorized the issuance of pollution control bonds to finance the implementation of the Plan.

The "self-supporting and self-liquidating" language in the Agreement mirrors the language in Section 2, Article XI-H of the Oregon Constitution and in ORS 468.220. While both the Constitution and the Statute require projects to be at least 70 percent self-liquidating and self-supporting the Agreement requires the Plan to be 100 percent as no grants are contemplated.

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Alternatives and Evaluation

It is necessary for DEQ and Portland to enter into the amended Agreement before the parties can execute a bond purchase agreement for Portland's next series of special assessment bonds. This purchase, and contemporaneous sale of State of Oregon Pollution Control Bonds, is scheduled for June 1993. The amount of the sale/purchase is expected to be approximately \$60 million. Without this money Portland will be unable to pay its maturing short term notes or to continue with the construction of the sewer projects. The State Treasurer, with the advice of the Department, is currently recruiting and selecting investment bankers to underwrite the Pollution Control Bonds.

There is no alternative method of financing for the Plan, and the provision of bond proceeds in time to keep sewer construction on schedule requires the execution of the amended Agreement in a timely manner. The Commission's findings must be included in the amended Agreement.

Summary of Any Prior Public Input Opportunity

The Commission provided opportunity for public input at its meeting of May 25, 1990 at which the original Agreement was discussed and again at its June 29, 1990 meeting at which it approved the Agreement. In addition the Commission provided opportunity for public input at its meetings of August 10, 1990; June 1, 1992 and January 29, 1993. At each of these meetings then Commission specifically authorized sale of Pollution control Bonds and use of the proceeds to acquire special assessment bonds.

Conclusions

- The Commission has the authority and responsibility to make the required findings.
- The Commission has in the past considered and approved the Agreement.
- The information and analysis presented indicates that the Portland sewer development project will continue to be self-supporting and self-liquidating under the terms of the amended Agreement.

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- It is necessary for the Commission to make the required findings in a timely manner in order for the financing of sewer construction in mid-Multnomah County to proceed on schedule.

Proposed Findings

THE STATE OF OREGON ENVIRONMENTAL QUALITY COMMISSION FINDS THAT THE PORTLAND SEWER DEVELOPMENT PROJECT AS DEFINED IN THE PLAN AND ADMINISTERED IN ACCORDANCE WITH THE AMENDED INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PORTLAND, OREGON AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, WILL BE SELF-SUPPORTING AND SELF-LIQUIDATING FROM REVENUES, GIFTS, GRANTS FROM THE FEDERAL GOVERNMENT, USER CHARGES, ASSESSMENTS, OR OTHER FEES.

Recommendation for Commission Action

It is recommended that the Commission adopt the findings set forth above and acknowledge the changes to the Agreement summarized in Attachment A of the Department Staff Report which is attached hereto.

Attachments

- A. Summary of Proposed Changes

Reference Documents (available upon request)

1. Oregon Constitution, Article XI-H, Section 2.
2. ORS 468.220
3. Intergovernmental Agreement between City of Portland, Oregon and Oregon Department of Environmental Quality, dated July 5, 1990.

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4. Draft Amended Intergovernmental Agreement between City of Portland, Oregon and Oregon Department of Environmental Quality, dated April 5, 1993.
5. Oregon Department of Justice Review of Amended Mid-County Sewer Agreement with City of Portland, DOJ File No. 340-980-FG004-90.
6. Official Statement, City of Portland, Sewer System Revenue Bonds, 1992 Series A (\$75,590,000) and Sewer System Revenue Refunding Bonds, Series 1992 B (\$21,860,000).

Approved:

Section:

Lydia R. Taylor

Division:

Lydia R. Taylor

Report Prepared By: Barrett MacDougall

Phone: (503) 229-5355

Date Prepared: April 19, 1993

BM/hs
PDXAGR
04.20.93

Attachment A.

Summary of proposed amendments to the Agreement and related changes to the Mid County Sewer Project.

1. Until mid 1992, Portland financed and constructed sewers in mid-Multnomah County on a Local Improvement District (LID) by LID basis. Bond anticipation notes were issued to finance sewer construction within a specific LID. When construction within that LID was completed, the owners of the benefitted properties would be assessed, the assessments would be accumulated into a bond (special assessment bond) and this bond would be sold to DEQ.

With the acceleration of the pace of construction, Portland stopped using the LID process and now includes mid-county projects as part of the Bureau of Environmental Services overall capital improvement plan. Benefitted property owners are now charged line and branch charges for the collector and branch sewers that serve them. These charges can be financed through financing contracts with the City. State statutes enable the establishment of priority liens on the financed properties. These financing contracts, secured by the liens, are now accumulated into special assessment bonds for sale to DEQ.

2. The original Agreement called for DEQ to purchase \$180 million in special assessment bonds from Portland; Portland now estimates this amount will be closer to \$140 million.
3. Under the terms of the original Agreement, Portland was to provide Bancroft Bond financing up to a maximum of \$30 million outstanding at any one time for projects identified in the Plan which were located within its corporate boundaries. This \$30 million commitment was to be utilized prior to drawing on DEQ's bond purchase commitment. Prior to the passage of Ballot Measure 5 Portland had Bancrofted some \$17 million.

Under Measure 5, Bancroft Bonds now require a vote of the people, which takes the issue out of the financial area and into the political arena. Consequently, Portland has requested DEQ to waive this provision. It appears uncertain whether the voters would approve the issuance of Bancroft Bonds. Portland's financial advisor has estimated that selling directly into the financial markets special assessments of the sort DEQ has agreed to purchase would initially add 2 to 3 percent to the interest rates.

As a substitute for the Bancroft Bond financing, Portland has provided a \$40 million cash subsidy from its sewer revenues to lower assessments on properties benefitted by (and charged for) new sewer construction.


4. DEQ and the City of Portland and their respective legal and financial advisors have had considerable discussion as to other possible Measure 5 affects on the financial arrangements. Of particular concern was the question as to what would happen if the payments by benefitted properties (and the related financing contracts and liens) were held to be taxes and required to be included int the compressed \$10/\$1000 limit.

The amended Agreement contains provisions which allows Portland some flexibility in dealing with this situation but which also provides that Portland must, as soon as possible, establish in consultation with DEQ a schedule for the amortization of outstanding bonds which avoids the possibility of substantial balloon payments.

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 23, 1993

To: Environmental Quality Commission
From: Fred Hansen 
Subject: Director's Report

Court Upholds DEQ Surcharge

The Oregon Supreme Court has affirmed the Court of Appeals and upheld the DEQ solid waste surcharge on out-of-state-waste. The fee is compensation for specific costs the State incurs, such as tax credits and increased environmental liability. The surcharge was contested by Oregon Waste Systems, Gilliam County and Columbia Resource Company. The petitioners have 90 days to appeal the ruling to the U.S. Supreme Court.

Salt Caves Ruling Upheld

The Oregon State Appeals Court has upheld the EQC decision denying certification for the Klamath Falls' Salt Caves hydroelectric project. The EQC denied the certification because the project would increase the water temperature of the Klamath River in violation of the temperature standard.

DEQ Helps Avert Tanker Spill

The DEQ worked cooperatively with the Governor and Coast Guard this week to ensure that a cargo ship taking on water was brought safely into Astoria. The ship had lost a hold cover in a storm and was taking on water when it requested permission to enter the Columbia River. Diesel, bunker C fuel oil, copper and Bentonite clay were on board. After conferring with the Governor, DEQ made specific recommendations to the Coast Guard to assure that precautions were taken to minimize the possibility of an accident.

Budget Status

DEQ is well into hearings with a special house appropriations subcommittee established to deal with DEQ and LCDC budgets. There have been a number of information hearings and we just yesterday began the actual work sessions. The outcome will be referred to a senate ways and means committee.

New D.A. Named

Rick Gates was selected last month as the new Division Administrator of the Lab. He brings a wealth of experience from his many years of work with DEQ. He has proven to be a dedicated, hard worker and an experienced manager.

Memo To: Environmental Quality Commission
April 23, 1993
Page 2

Hansen Appointments

Fred Hansen has been appointed a member of the National Governors' Association Task Force on Implementation of the Clean Air Act. As such, he will be meeting periodically with the EPA and will have an opportunity to influence EPA decisions on how the Clean Air Act will be implemented.

Hansen has also been named as a member of the National Commission on Superfund.

Hearing Authorizations

* Commitment to revise the State Implementation Plan to reflect changes in the Vehicle Inspection Program

The Clean Air Act, as amended in 1990, establishes various deadlines for the EPA and the states to complete specific tasks. The deadline for states to submit corrections to existing vehicle inspection programs was November 16, 1992. Since the EPA did not publish final guidance until November 5, 1992, the State of Oregon, through DEQ, submitted a committal revision to the State Implementation Plan (SIP) in order to meet the November 16 deadline. This public hearing is to review the timeline by which DEQ will submit a complete SIP to the EPA.

* Amendment to Charge for Yard Debris Collection Rule

Local governments have requested that the current rule be made permanent and that the language be rewritten for clarity.

April 12, 1993

Department of Environmental Quality

Summary Listing of More Stringent Regulatory Requirements

Description of Regulatory Requirement	Legal Citation	How Federal Requirements are Exceeded	Why
<u>1. STATE LAW REQUIREMENT:</u>			
<u>No Federal Counterpart</u>			
<u>General</u>			
• Review and Approval of plans for pollution control facilities prior to Construction	ORS 468A.055, 468B.055	No similar federal requirement	State Law Requirement
• Actions consistent with land use plans and State Planning Goals	ORS 197.180	No similar federal requirement	State Law Requirement
• Fees to recover part of the cost of program implementation	Multiple Statutory Fees	No federal requirement for fees, except for new per ton emission fee under 1990 Clean Air Act Amendments	State Law Requirements
<u>Air Quality</u>			
• Licensing and Certification of Asbestos Workers and Contractors	ORS 468A.700 et.seq.; OAR 340-33-010 thru 090	No similar federal requirement	State Law Requirement
• Wood stove Efficiency Certification Requirements	ORS 468A:480; OAR 340-34-045 thru 115	No similar federal requirement	State Law Requirement
• Noise Regulation	ORS 467.010 et.seq.; OAR 340-35-005 et.seq.	No similar federal requirement	State Law Requirement
<u>Water Quality</u>			
• Ban on use of anti-fouling paint containing Tri-Butyl Tin	ORS 634.500 et.seq.	No similar federal requirement	State Law Requirement
• Ban on sale of detergents containing phosphorous	ORS 468B.120 et.seq.	No similar federal requirement	State Law Requirement
• Sewerage Works Operator Certification Requirements	ORS 448.405 et.seq.; OAR Chapter 340, Division 49	No similar federal requirement	State Law Requirement
• Performance Bond Requirements for private sewerage facilities	ORS 454.425, OAR Chapter 340, Division 15	No similar federal requirement	State Law Requirement
• Regulation and Permitting of On-Site Sewage Disposal Facilities	ORS 454.605 et.seq. OAR Chapter 340, Div. 71 & 73	No similar federal requirement	State Law Requirement

Description of Regulatory Requirement	Legal Citation	How Federal Requirements are Exceeded	Why
<ul style="list-style-type: none"> Mandatory Annexation to alleviate Health Hazard 	ORS 222.840 et.seq.	No similar federal requirement	State Law Requirement
<u>Hazardous Waste</u>			
<ul style="list-style-type: none"> Siting process for Hazardous Waste or PCB treatment or disposal facility 	ORS 466.025(3), ORS 466.055; OAR Chapter 340, Division 120	No similar federal requirement	State Law Requirement
<ul style="list-style-type: none"> Hazardous Waste Disposal Facility Permit denial required upon recommendation of Health Division 	ORS 466.135; OAR 340-106-003	No similar federal requirement	State Law Requirement
<ul style="list-style-type: none"> Requirement for Toxic Use Reduction Plans and Implementation Reporting 	ORS 465.003-037; OAR Chapter 340, Division 135	No similar federal requirement	State Law Requirement
<u>Solid Waste</u>			
<ul style="list-style-type: none"> General regulation of solid waste landfills, transfer stations, and other solid waste treatment and disposal facilities 	ORS Chapter 459; OAR Chapter 340, Divisions 93-97	No similar federal requirement Federal requirements that must be met for the State program to be operated in lieu of the Federal Subtitle D program are evolving. It is not possible to determine whether current state requirements are more stringent.	State Law Requirement
<ul style="list-style-type: none"> Waste shipped to Oregon from another state must meet requirements of that state if they are more stringent 	ORS 459.055(9); OAR 340-93-040(4)	No similar federal requirement	State Law Requirement
<ul style="list-style-type: none"> Prohibition of large appliances and tires at solid waste disposal sites 	ORS 459.247; OAR 340-93-040(3)	No similar federal requirement	State Law Requirement
<ul style="list-style-type: none"> Regulation of Waste Tire Storage Sites and Waste Tire Transporters 	ORS 459.705-790; OAR Chapter 340, Division 64	No similar federal requirement	State Law Requirement
<ul style="list-style-type: none"> Solid Waste Reduction and Recycling Requirements 	ORS 459.250, 459A; OAR Chapter 340, Divisions 90, 91	No similar federal requirement	State Law Requirement
<u>Underground Storage Tanks</u>			
<ul style="list-style-type: none"> Licensing of contractors and certification of supervisors involved in work on underground storage tanks 	ORS 466.750(1)-(5); OAR Chapter 340, Divisions 160, 162, 163	No similar federal requirement	State Law Requirement
<ul style="list-style-type: none"> Prohibits placing motor fuel in unpermitted underground storage tank 	ORS 466.760(2); OAR 340-150-150	No similar federal requirement	State Law Requirement

Description of Regulatory Requirement	Legal Citation	How Federal Requirements are Exceeded	Why
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2. STATE LAW REQUIREMENT; More Stringent than Federal Counterpart

Air Quality

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| <ul style="list-style-type: none"> Air Contaminant Discharge Permit Requirement | ORS 468A.040-075;
OAR Chapt. 340, Division 14,
OAR 340-20-140 et.seq. | State permit requirement applies to more sources than new 1990 Federal Permit Requirements. | State Law Requirement |
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Water Quality

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| <ul style="list-style-type: none"> Wastewater Discharge/Disposal Permit | ORS 468B.050; OAR Chapter 340, Divisions 14 & 45 | Permit required for facilities that do not discharge to streams; federal requirement only applies to stream discharges | State Law Requirement |
| <ul style="list-style-type: none"> Control and limit placement of auto bodies and parts in streams for bank stabilization | ORS 468B.065;
OAR Chapter 340, Division 46 | No similar federal requirements, but could be regulated under NPDES permit | State Law Requirement |
| <ul style="list-style-type: none"> Confined Animal Feeding Operation Permit | ORS 468B.050(d), 468B.200 et.seq.; OAR Chapter 340, Divisions 14 & 45 | Federal requirements only apply to a few larger facilities that have a potential discharge to surface water. | State Law Requirement |
| <ul style="list-style-type: none"> Oil Spill Contingency Plans for oil storage facilities, and oil tankers and barges | ORS 468B.340 et.seq.;;
OAR Chapter 340, Division 47 | State requirements apply to cargo vessels not covered by federal requirements. | State Law Requirement |
| <ul style="list-style-type: none"> Groundwater Protection Act of 1989 | ORS 468B.150 et.seq.;;
OAR Chapter 340, Division 40 | EPA has issued guidance with goals similar to Oregon law, however, there is not a current federal requirement. | State Law Requirement |

Hazardous Waste

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| <ul style="list-style-type: none"> Justify need for increases in hazardous waste disposal capacity or changes in handling methods | ORS 466.055(4);
OAR 340-105-021 | Justification not required in federal system | State Law Requirement |
| <ul style="list-style-type: none"> Pesticide residues are hazardous waste unless declassified by DEQ rule | ORS 466.005(7)(a);
OAR 340-101-033(5), OAR Chapt. 340, Division 109 | Federal rules regulate fewer pesticide residues. | State Law Requirement |
| <ul style="list-style-type: none"> Pesticide containers are classified as hazardous waste. DEQ rules exempt decontaminated containers. | ORS 466.005(7)(c);
OAR 340-101-033(5), OAR Chapt. 340, Division 109 | Federal requirements apply to fewer containers | State Law Requirement |
| <ul style="list-style-type: none"> Public Hearing required on proposed permit for a hazardous waste disposal site | ORS 464.125, 466.130;
OAR 340-106-012 | Hearing discretionary under EPA rules | State Law Requirement |

Description of Regulatory Requirement	Legal Citation	How Federal Requirements are Exceeded	Why
<ul style="list-style-type: none"> Public Records Law limits confidentiality of some information 	ORS 466.090(2), ORS 192.410 et.seq.; OAR 340-100-005, 340-105-012	EPA would allow some information to be held confidential that would have to be released under Oregon Law	State Law Requirement
<ul style="list-style-type: none"> Spill Reporting to Emergency Management Division (in addition to reporting to National Response Center) 	ORS 466.635; OAR 340-108-020	Reporting to state EMD is an extra step	State Law Requirement
<u>Underground Storage Tanks</u>			
<ul style="list-style-type: none"> Permit required for underground petroleum and chemical storage tanks 	ORS 466.760; OAR 340-150-020	EPA only requires registration, not a permit	State Law Requirement
<ul style="list-style-type: none"> Variance required for deviation from standard UST installation practice 	ORS 466.780; OAR 340-150-003	EPA requires submittal of plan for deviation, but does not require approval	State Law Requirement
<ul style="list-style-type: none"> Geographic rules requiring more stringent standard may be adopted (none have been) 	ORS 466.745(2); OAR 340-150-125	No similar federal provision	State Law Requirement
<u>3. DEQ RULE REQUIREMENT:</u>			
<u>No Federal Counterpart</u>			
<u>Air Quality</u>			
<ul style="list-style-type: none"> Visible Emissions from automobiles, noise tests with emission tests 	OAR 340-24-005 thru 040, 340-24-337	No similar federal requirement	Public Concerns
<ul style="list-style-type: none"> Regulate odors and nuisances from air emissions 	OAR 340-21-050, 340-28-045, 340-29-011	No comparable federal requirements	Public Concerns, Health and Environment
<ul style="list-style-type: none"> Air emissions from crematories 	OAR 340-25-890 thru 905	No specific EPA rules for this source category	Public Concerns, Health and Environment
<ul style="list-style-type: none"> Local air pollution authority rules to control nuisances (became state rules when local authorities dissolved) 	OAR 340-28-001 et.seq., 340-29-001 et.seq.	No comparable federal requirements	Predate federal requirements, Public Concerns, Health and Environment
<ul style="list-style-type: none"> Reporting of excess air emissions 	OAR 340-20-350 thru 380	Federal guidance, but no federal requirement when rules adopted. New federal requirements are addressing in some cases	Predate federal requirements, Certainty, Efficiency

Description of Regulatory Requirement	Legal Citation	How Federal Requirements are Exceeded	Why
<u>Water Quality</u>			
<ul style="list-style-type: none"> Regulation of facilities that use chemicals to extract metals from ore (chemical mining) 	OAR Chapter 340, Division 43	No similar federal requirements	Prevention, Public Concerns, Certainty, Health and Environment
<ul style="list-style-type: none"> Fees to fund administration of State Revolving Loan Program 	OAR 340-54-065(8)	Fees are not federally required.	Efficiency
<u>Hazardous Waste</u>			
<ul style="list-style-type: none"> 3% and 10% mixture rule: prevents mixing of wastes to avoid federal regulation 	OAR 340-101-033(2)	Plugged loophole in federal requirements. New federal TCLP rules address some concerns; further evaluation pending	Prevention, Health and Environment, Equity
<ul style="list-style-type: none"> Regulates mining waste as hazardous waste if it tests hazardous 	OAR 340-101-004(1) & (2)	Congress directed that mining waste be excluded from hazardous waste classification, regardless of testing	Equity, Health and Environment, Certainty
<ul style="list-style-type: none"> Regulates nerve gas as hazardous waste 	OAR 340-101-033(6)(a) & (b)	Federal rules do not currently regulate nerve gas; may soon be regulated however	Health and Environment, Certainty, Public Concerns
<ul style="list-style-type: none"> Prohibit modification or reconstruction of existing hazardous waste facilities without a permit 	OAR 340-105-010(c)	EPA rules do not address this issue	Prevention, Certainty
<ul style="list-style-type: none"> Prohibit food-chain crops to be grown on sites used for land treatment of hazardous waste 	OAR 340-104-276	EPA rules do not prohibit this practice	Prevention, Certainty, Health and Environment
<ul style="list-style-type: none"> DEQ rules do not include EPA provision that compliance with hazardous waste incinerator permit constitutes compliance with rules 	OAR 340-104-343	EPA does not require all rules to be addressed in permit, therefore DEQ did not adopt this requirement	Health and Environment
<u>Solid Waste</u>			
<ul style="list-style-type: none"> Regulation of solid waste "treatment" facilities 	OAR 340-96-050	Such facilities not covered by federal criteria	Prevention
<ul style="list-style-type: none"> Require same degree of environmental protection for leachate storage and treatment systems as for landfills 	OAR 340-94-060(3)	Leachate Lagoons not covered by EPA	Prevention

Description of Regulatory Requirement	Legal Citation	How Federal Requirements are Exceeded	Why
4. DEQ RULE REQUIREMENT; More Stringent than Federal Counterpart			
<u>Air Quality</u>			
<ul style="list-style-type: none"> New Source Review (NSR) Requirements are applied equally to new sources and modified sources 	OAR 340-20-220 thru 276	Federal rules allow some new sources to avoid NSR while a modified source of the same size would be required to go through NSR.	Equity, Performance Standard
<ul style="list-style-type: none"> Plant Site Emission Limits (PSEL) applicable to all sources with permits. 	OAR 340-20-300 thru 320	No directly comparable federal rule, however, must meet technology standards.	Certainty, Efficiency, Performance Standard
<ul style="list-style-type: none"> Retained total suspended particulate standard in addition to new PM₁₀ standard to control nuisance conditions 	OAR 340-31-015	EPA deleted total suspended particulate standard, no regulation of nuisances.	Predates federal standard, Health and Environment, Public Concern
<ul style="list-style-type: none"> Special requirements for non-attainment areas to meet AQ standards 	OAR 340-30-012 thru 230	EPA requires AQ standards be met, methods for doing so may be more stringent than minimum technology requirements	Performance Standard, Prevention, Growth Margin
<ul style="list-style-type: none"> Contingency plans that automatically activate if attainment strategies fail to meet standards; removal of woodstove upon sale of home is such a measure 	OAR 340-24-200 thru 215	EPA requires contingency plans but does not mandate specific measures	Performance Standard
<ul style="list-style-type: none"> Visibility Requirements for Class 1 areas 	OAR 340-20-047	Visibility improvement plans are federally required; specific measures are not mandated	Performance Standard
<ul style="list-style-type: none"> Statewide requirements for meeting AQ standard, PSD requirements, and visibility protection in attainment and non attainment areas. 	OAR 340-20-001, 340-25-535 thru 805, 340-26-001 thru 055, 340-23-022 thru 115, 340-22-005	Specific elements not required, although standards must be met	Performance Standard, Prevention

Description of Regulatory Requirement	Legal Citation	How Federal Requirements are Exceeded	Why
<u>Water Quality</u>			
<ul style="list-style-type: none"> • Various Water Quality Standards 	OAR Chapter 340, Division 41	EPA does not have specific standards, however, EPA has approved selected standards in other states that are less stringent than Oregon's existing standards.	Public Concerns, Prevention, Health and Environment
<ul style="list-style-type: none"> • Willamette Basin wastewater discharges regulated by treatment requirements and load limitations 	Individual permit limitations	Permit requirements are more stringent than EPA minimum technology requirements	Performance Standard, Growth Accommodation
<ul style="list-style-type: none"> • Municipal wastewater facilities must meet minimum design criteria for new or modified facilities 	OAR Chapter 340, Division 41	Minimum design criteria are more stringent than EPA minimum technology standards	Prevention, Growth Accommodation, Health and Environment
<ul style="list-style-type: none"> • Special policies require first priority to be utilization of wastewater rather than stream discharge, and prohibit new discharges to lakes 	OAR 340-41-026(5) & (6)	While encouraged, there are no comparable federal requirements	Prevention
<ul style="list-style-type: none"> • Policy that requires growth to be accommodated by increased treatment efficiency so that waste loads do not increase 	OAR 340-41-026(2) & (3)	Federal rules would allow expansion at minimum technology requirements, with more stringent requirements only when stream standards are actually violated.	Prevention, Growth Accommodation
<ul style="list-style-type: none"> • AOX limits in bleached kraft pulp mill permits to address concerns regarding otherwise unregulated discharges of chlorinated organic compounds 	Individual permit conditions	EPA is studying the issue, and has not yet proposed any similar requirements nationwide. EPA has included a similar limit in one permit it issued.	Health and Environment, Public Concerns
<ul style="list-style-type: none"> • Monitoring requirements for demonstration of compliance with permitted waste discharge load for TCDD Dioxin 	Individual permit condition	EPA has approved a method of monitoring that is less "rigorous" and thus less stringent	Public Concerns, Health and Environment
<ul style="list-style-type: none"> • Regulation of waste disposal into wells by use of permits 	OAR Chapter 340, Division 44	EPA does not regulate in all area that DEQ rules address.	Prevention
<ul style="list-style-type: none"> • Storm water regulation and monitoring requirements 	Individual permit conditions	EPA does not include discharge limitations in permits to assure water quality standards compliance (even though standards must be met).	Efficiency, Certainty

Description of Regulatory Requirement	Legal Citation	How Federal Requirements are Exceeded	Why
<ul style="list-style-type: none"> State Revolving Loan Fund implementation rules 	OAR 340-54-065	Some believe DEQ credit standard is more stringent than EPA requirement. DEQ disagrees.	Certainty
<ul style="list-style-type: none"> Requirements for Clear Lake Watershed (near Florence) to protect drinking water source 	OAR 340-41-270	No directly related federal requirements	Public Concerns, Prevention, Health and Environment
<ul style="list-style-type: none"> Use of reclaimed water (treated effluent) from sewage treatment plants 	OAR Chapter 340, Division 55	No comparable federal rules	Prevention
<ul style="list-style-type: none"> Regulation of land application and disposal of sewage sludge 	OAR Chapter 340, Division 50	Federal rules were adopted in November 1992. Existing DEQ rules may be more stringent in some areas. DEQ, with assistance of an advisory committee, is currently reevaluating the state rules in light of the federal rules and will be proposing some changes.	Predate, Prevention
<u>Hazardous Waste</u>			
<ul style="list-style-type: none"> Reporting by generators, TSDs (treatment, storage and disposal facilities) and hazardous waste recycling facilities 	OAR 340-102-041 and 044	Federal rules require biennial reporting by large generators and TSDs only. DEQ requires all facilities to report annually and to report more information.	Prevention
<ul style="list-style-type: none"> Notification of any threat to health or environment 	OAR 340-104-056	EPA only requires notification if threat is outside the facility. DEQ requires more comprehensive report	Prevention, Health and Environment, Public Concerns
<ul style="list-style-type: none"> Reporting of spills of petroleum and hazardous substances 	OAR 340-108-020	DEQ requires reporting of events that do not have to be reported under federal requirements	Prevention, Health and Environment, Public Concerns
<ul style="list-style-type: none"> Financial assurance for Hazardous Waste Disposal Facilities 	OAR 340-104-143	DEQ rules provide fewer options than are available under federal rules. DEQ is in the process of changing this to reflect federal options	Certainty, Health and Environment
<ul style="list-style-type: none"> Include expected closure cost estimates in closure and post closure plan for hazardous waste pile 	OAR 340-104-258	EPA does not require such information to be included	Prevention

Description of Regulatory Requirement	Legal Citation	How Federal Requirements are Exceeded	Why
<ul style="list-style-type: none"> • DEQ rules do not allow hazardous waste incinerators to conduct trial burns under special permits 	OAR 340-104-340	EPA allows trial burns under special permits (without full public process)	Public Concerns, Health and Environment
<ul style="list-style-type: none"> • DEQ rules do not allow surface impoundment to be used for hazardous waste disposal, and require removal at closure 	OAR 340-104-228	EPA allows closure in place; subject to a 30 year post closure permit with groundwater monitoring	Certainty, Public Concerns
<ul style="list-style-type: none"> • Secondary Containment required for fully regulated generator storing hazardous waste in tanks or more than 100 containers 	OAR 340-102-034	EPA does not require secondary containment to protect groundwater	Prevention, Health and Environment
<ul style="list-style-type: none"> • Unsaturated zone monitoring may be required at any hazardous waste facility 	OAR 340-104-029	EPA requires it only at land treatment sites	Prevention
Solid Waste			
<ul style="list-style-type: none"> • Definition of "municipal solid waste landfill" includes any facility receiving domestic, <u>commercial or institutional</u> waste 	OAR 340-93-030(28) & (54)	The federal definition refers to facility receiving waste "generated by households"	Equity, Prevention, Health and Environment
<ul style="list-style-type: none"> • DEQ rules prohibit new landfills in gravel pits or wellhead protection areas where there is a risk of groundwater pollution 	OAR 340-94-030(4), 340-95-014(4)	There is no similar federal restriction	Health and Environment, Prevention, Certainty
<ul style="list-style-type: none"> • New landfills may be required to provide greater protection for groundwater (than single composite liner) where site specific conditions warrant 	OAR 340-94-060(6)	There is no federal requirement beyond the single composite liner	Prevention, Health and Environment
<ul style="list-style-type: none"> • Special management (operation) procedures for some wastes (sharps, infectious waste, asbestos, yard debris) 	OAR 340-93-190, 340-94-040(1), 340-95-020(3)	There are not federal special management procedures	Public Concerns, Prevention, Health and Environment
<ul style="list-style-type: none"> • Permitted facilities may only receive those wastes specifically allowed in the permit, without application for additional waste 	OAR 340-94-040(11)(a), 340-95-020(2)	There are no comparable federal provisions	Prevention
<ul style="list-style-type: none"> • DEQ rules address application requirements, site feasibility studies, operational requirements, etc. 	OAR 340-93-070, 340-93-130, 340-94-080(2), 340-94-110(3), 340-95-040(2), 340-95-060(3)	These requirements are more specific than federal rules and may be viewed as more stringent	Prevention

Description of Regulatory Requirement	Legal Citation	How Federal Requirements are Exceeded	Why
<ul style="list-style-type: none"> Oregon Groundwater Protection Act Standards are applied to landfill sites 	OAR 340-94-080(1)(a), 340-95-040(1)(a)	These standards include an anti-degradation policy and other specifics that may be more stringent than EPA landfill criteria	Prevention
<u>Underground Storage Tanks</u>			
<ul style="list-style-type: none"> DEQ definition of "residential tank" (defines who is exempted from regulation) is limited to tanks located at a single family dwelling 	OAR 340-150-003	EPA definition is broader and includes any residential unit such as nursing homes and apartments	Prevention, Health and Environment
<ul style="list-style-type: none"> DEQ adopted federal rules with a few exceptions relative to reporting, notification, tank corrosion protection and monitoring, tank certification procedures, leak detection design, site assessment relative to closure 	OAR 340-150-003	Requirements are more detailed in these areas and may be considered more stringent	Prevention, Health and Environment, Efficiency, Certainty
<u>State Superfund (Environmental Cleanup)</u>			
<ul style="list-style-type: none"> DEQ primary cleanup standard for hazardous substances of "background or lowest feasible concentration" 	OAR 340-122-040 & 045	EPA requires permanent solutions that are effective, cost effective, implementable. Evaluation of cleanup to background is not specifically required. While DEQ requirement is not more stringent, it may appear to be	Health and Environment
<ul style="list-style-type: none"> Numeric cleanup standards for releases of petroleum from underground storage tanks (soil and groundwater) and for hazardous substance releases at simple sites (soil) 	OAR 340-122-045, 340-122-205 thru 360,	EPA has no similar standards that allow a streamlined option for expedited cleanups. In specific situations, numeric standards may be more stringent than case-by-case cleanup determination, but are optional	Certainty, Efficiency
<ul style="list-style-type: none"> Soil matrix cleanup level of 0.08 mg/kg for PCBs that is optionally applicable for contemporary spills and past practice sites 	OAR 340-122-045	EPA's cleanup level is 10 mg/kg for contemporary spills, however, EPA requires clean cover with 10 inches of soil, while DEQ's optional level (for contemporary spills and past practices is based on residual concentration without additional controls	Certainty, Efficiency, Health and Environment, Equity

Notes:

The following "key words" are used in the "Why" column to identify the primary justification or rationale for DEQ rules that are arguably more stringent than counterpart federal requirements:

- Prevention* -- The rule requirements are intended to prevent pollution problems from occurring, and thus reduce the need for costly cleanups or retrofitting to add pollution control facilities.
- Growth Accommodation* -- The rule requirements are intended to achieve and maintain some capacity to accommodate growth and development by assimilating new or expanded pollutant discharges or emissions.
- Equity* -- The rule requirements are intended to make the requirements applicable to sources more equitable and fair.
- Certainty* -- The rule requirements are intended to simplify and clarify federal requirements, reconcile apparent inconsistencies and conflicts between various federal rules or between federal requirements and state law requirements, and provide greater certainty for the regulated community.
- Health and Environment* -- The rule requirements are intended to assure protection of public health and environmental quality, especially in areas where federal rules fail to address the issue, federal rules attempting to address the issue are delayed (slow promulgation or court challenge), or the federal rules simply provide inadequate protection.
- Predates* -- The state rule predates the federal requirement. Many federal rules are adopted long after states have addressed the environmental concerns. If the later federal rule is less stringent than the state rule, an evaluation is conducted and the Department will propose to relax the state rule if it concludes that public health and environmental quality will be protected and the action will be consistent with state policy direction.
- Public Concerns* -- Oregon citizens may express strong concerns about issues that EPA has not addressed, either because they lack the authority, or because the issues is not a high enough national priority.
- Performance Standards* -- Some rule requirements reflect the choice of procedures or mechanisms to achieve environmental performance standards, and may appear to be more stringent than minimum federal procedures or minimum technology standards.
- Efficiency* -- Some rule requirements are intended to define a better way to address multiple, potentially conflicting requirements or allow for more effective use of limited staff or other resources.

April 12, 1993

Department of Environmental Quality

Listing of More Stringent Regulatory Requirements

This listing identifies provisions of Oregon Law and DEQ rules that may be viewed as more stringent than federal requirements. This listing is divided into four categories as follows:

1. State Law Requirement; No Federal Counterpart
2. State Law Requirement; More Stringent than Federal Counterpart
3. DEQ Rule Requirement; No Federal Counterpart
4. DEQ Rule Requirement; More Stringent than Federal Counterpart

The term "DEQ Rules" refers to rules adopted by the Environmental Quality Commission (Commission or EQC) which DEQ implements.

The following "key words" are used to identify the primary justification or rationale for DEQ rules that are arguably more stringent than counterpart federal requirements:

Prevention -- The rule requirements are intended to prevent pollution problems from occurring, and thus reduce the need for costly cleanups or retrofitting to add pollution control facilities.

Growth Accommodation -- The rule requirements are intended to achieve and maintain some capacity to accommodate growth and development by assimilating new or expanded pollutant discharges or emissions.

Equity -- The rule requirements are intended to make the requirements applicable to sources more equitable and fair.

Certainty -- The rule requirements are intended to simplify and clarify federal requirements, reconcile apparent inconsistencies and conflicts between various federal rules or between federal requirements and state law requirements, and provide greater certainty for the regulated community.

Health and Environment -- The rule requirements are intended to assure protection of public health and environmental quality, especially in areas where federal rules fail to address the issue, federal rules attempting to address the issue are delayed (slow promulgation or court challenge), or the federal rules simply provide inadequate protection.

Predates -- The state rule **predates** the federal requirement. Many federal rules are adopted long after states have addressed the environmental concerns. If the later federal rule is less stringent than the state rule, an evaluation is conducted and the Department will propose to relax the state rule if it concludes that public health and environmental quality will be protected and the action will be consistent with state policy direction.

Public Concerns -- Oregon citizens may express strong concerns about issues that EPA has not addressed, either because they lack the authority, or because the issues is not a high enough national priority.

Performance Standards -- Some rule requirements reflect the choice of procedures or mechanisms to achieve environmental performance standards, and may appear to be more stringent than minimum federal procedures or minimum technology standards.

Efficiency -- Some rule requirements are intended to define a better way to address multiple, potentially conflicting requirements or allow for more effective use of limited staff or other resources.

1. STATE LAW REQUIREMENT; No Federal Counterpart

General

- Oregon's requirements in law and rule for review and approval of pollution control facility plans is an example of a "preventive" requirement that generally does not exist as a regulatory requirement in federal law. These requirements give an opportunity to make sure, prior to construction, that environmental requirements will be met. Through routine inspections, DEQ staff become aware of design problems that can be prevented in the future. It is almost always cheaper to make changes prior to construction to address a potential problem rather than coming back later to retrofit a facility to correct a problem. (In one area, plan approval is required under federal rules and that is as a condition for receiving financial assistance for sewerage works construction under federal grant or state administered revolving loan fund programs.)
- Oregon law requires DEQ actions to be consistent with acknowledged land use plans and statewide planning goals. This requirement necessitates some procedural requirement applicable to permittees that are not federally required. DEQ rules require a land use compatibility statement to accompany permit applications to assist in assuring compliance with this state statutory requirement. Such requirements are part of an overall process that attempts to prevent problems up front by appropriate planning and environmental review.
- Oregon law and DEQ rules impose fees in most program areas to recover part of the cost of program implementation. The only federally mandated fee is a per ton emission fee requirement imposed by the federal Clean Air Act.

Air Quality

- Oregon law and DEQ rules provide for licensing and certification of asbestos workers and contractors to prevent exposure to asbestos by contractors and the public. Asbestos is regulated as a hazardous air pollutant under the federal Clean Air Act, but the federal rules do not address contractor licensing and certification. [ORS 468A.700-760; OAR 340-33-010 thru 090]

- DEQ eliminated most of its wood stove certification program when federal requirements were adopted. However, the efficiency certification requirements that are mandated by state law were retained. There are no federal efficiency certification requirements. [ORS 468A.480; OAR 340-34-045 thru 115]
- DEQ Noise regulations have been adopted pursuant to Oregon law. There is no comparable noise regulatory requirement in federal law or rule. (The noise rules remain in effect, however, DEQ budget for implementation was deleted in 1991.) [ORS 467.010-990; OAR Chapter 340, Division 35]

Water Quality

- Oregon law bans the use of anti-fouling paints containing TBT (Tri-Butyl Tin) due to toxic adverse effects on oysters in Oregon bays. There is no similar federal prohibition on the use of TBT. [ORS 634.500 et.seq.]
- Oregon law has banned the sale of detergents containing phosphorous in an effort to reduce the pollution caused by phosphorous in treated wastewater discharges to streams. There is no similar federal prohibition. [ORS 468B.120 et.seq.]
- Pursuant to Oregon law, DEQ regulations establish a program and criteria for certification of sewage facility operators. To be certified, operators must demonstrate their knowledge and ability to operate such facilities. Sewage facilities must be supervised by a certified operator. Examination fees are collected to underwrite the Department's program administrative costs. Operators certification programs have been established in 48 states. Oregon's operators certification program is similar to programs which have been instituted in other western states. Federal regulations for operators certification are envisioned in the next two to five years. [ORS 448.405 et.seq.; OAR Chapter 340, Division 49]
- Oregon law and DEQ rules require private sewerage facilities with a design capacity greater than 5,000 gallons per day to post a performance bond. [ORS 454.425; OAR Chapter 340, Division 15]
- Pursuant to state law, DEQ has adopted extensive rules governing the construction, alteration, repair, operation and maintenance of standard and alternative on-site sewage treatment and disposal systems (septic tanks, drain fields, sand filters, etc.). Generally, these are the types of systems that serve individual houses and businesses. Rules also establish a process for consideration of variance from standards, establishes licensing requirements for persons engaged in sewage disposal service activities, and contains a schedule of application fees. There is no entity of the Federal Government that has jurisdiction over this subject matter. [ORS 454.605 et.seq., OAR Chapter 340, Division 71 and 73]

- Oregon law establishes a process that can result in forced annexation of property to a city or district and a requirement that the city or district construct facilities as necessary to alleviate a health hazard in the area. [ORS 222.840 et.seq.]

Hazardous Waste

- Oregon law (and DEQ rules implementing that statute) requires facilities to go through a siting process while applying for a DEQ permit to build a hazardous waste or PCB treatment or disposal facility. [ORS 466.025(3), ORS 466.055; OAR Chapter 340, Division 120]
- Pursuant to Oregon law, DEQ rules require that hazardous waste disposal facility permits be denied if the Health Division so recommends. [ORS 466.135; OAR 340-106-003]
- Oregon law requires all large and small hazardous waste generators and persons reporting toxic chemical releases to EPA under the federal community right to know legislation to develop Toxics Use Reduction Plans. Plans must include a statement of management support, analysis of toxics use and hazardous waste generation, identification of reduction opportunities and implementation strategies, establishment of employee awareness and training programs, and institutionalization of the program to ensure an on-going effort. Those required to submit plans must also report annually on their progress to DEQ. EPA has adopted some waste reduction planning requirements under the Storm Water Program and is considering it in other areas, but does not currently have comparable requirements. [ORS 465.003 through 037; OAR Chapter 340, Division 135]

Federal law requires all generators shipping hazardous waste off-site to have a waste minimization program. EPA has accepted an Oregon generator's Toxic Use Reduction Plan as evidence of having met this federal program requirement.

Solid Waste

- For years, DEQ has had regulations governing solid waste landfills, industrial landfills, septage lagoons, incinerators, transfer stations, and solid waste treatment facilities such as composters and material recovery facilities. Under Oregon law, DEQ uses a permit as a primary regulatory tool for such solid waste facilities. EPA rules established performance-based criteria for solid waste disposal facilities which were enforceable only by state programs or by citizen lawsuit. There was no EPA requirement for a permit as a regulatory tool. Thus, it can be argued that the existing DEQ solid waste disposal regulations are more stringent than federal requirements, because states are "allowed" but not "required" to have a solid waste regulatory program.

[ORS 459.005, 459.045, 459.205, 459.215 through 335; OAR Chapter 340, Divisions 93, 94, 95, 96, and 97]

- Oregon law requires that if another state prohibits or restricts the disposal of any waste, the same prohibition or restriction applies to the disposal of that waste in Oregon. DEQ Solid Waste Rules incorporate that provision. [ORS 459.055(9); OAR 340-93-040(4)]
- Oregon law and DEQ rules prohibit a number of items such as large appliances and tires disposal at solid waste disposal sites. There is no comparable federal restriction. [ORS 459.247; OAR 340-93-040(3)]
- Pursuant to state law, DEQ regulates waste tire storage sites and waste tire carriers (transporters). There is no comparable federal program. [ORS 459.705 to 790; OAR Chapter 340, Division 64]
- Historically the federal government has always viewed solid waste management, particularly solid waste reduction and recycling, as programs that are the responsibility of state and local government. Consequently, there are no comparable federal requirements for solid waste reduction and recycling. [ORS 459.250, ORS 459A; OAR Chapter 340, Divisions 90 and 91] Examples of state solid waste reduction and recycling program requirements that exist solely as state mandated programs resulting from state law are:
 - **Recycling Programs for Communities over 4,000 population:** State law requires communities to provide public education and promotion programs for recycling as well as recycling collection programs that include such options as weekly collection service, recycling collection containers, yard debris collection programs, and commercial recycling collection.
 - **Legislatively mandated recycling recovery rates for each watershed:** State law requires each watershed in the state to achieve a certain recovery rate of recyclable materials by 1995.
 - **Minimum recycled content for certain materials sold in Oregon:** State law establishes minimum recycled content requirements for glass food and beverage containers, newsprint, directories and as one of several options for rigid plastic containers. These content requirements are established as a method to stimulate markets for recyclable materials.
 - **Lead Acid Battery Recycling:** State law provides that retailers of lead acid batteries shall take back used batteries from customers and these batteries are returned to the manufacturer for recycling. Lead acid

batteries have been banned from disposal and are recycled at a rate over 93% in Oregon because of this law.

- **Selling of Batteries:** State law mandates that alkaline manganese batteries with more than .025 percent mercury cannot be sold in Oregon. Certain battery operated products with rechargeable batteries must have easily removable batteries.
- **Recycling and Solid Waste Reduction Certification:** State law requires that anyone wishing to dispose of more than 1,000 tons a year of solid waste in Oregon landfills must certify that they are providing the opportunity to recycle comparable to Oregon's local recycling requirements. In addition if someone wishes to dispose of 75,000 tons or more a year in an Oregon landfill they must have an approved waste reduction program that demonstrates they are making the best effort possible to reduce waste prior to any disposal.
- **Household Hazardous Waste:** Oregon law created a household and small business hazardous waste collection program which provides for separation and safe management of household and small business hazardous wastes that create environmental and health hazards if disposed with the general solid waste stream.

Underground Storage Tanks

- Oregon law provides for licensing of contractors and certification of supervisors involved in installation, testing, and decommissioning of underground storage tanks. EPA has no similar program or requirement. (Prevention, Health and Environment, Efficiency, Public Concerns) [ORS 466.750(1)-(5); OAR Chapter 340, Divisions 160, 162, 163]
- Under Oregon law and DEQ rules, regulated substances (e.g. motor fuel) may not be deposited into an UST that does not have an UST permit. EPA does not have this requirement. [ORS 466.760(2); OAR 340-150-150]

2. STATE LAW REQUIREMENT; More Stringent than Federal Counterpart

Air Quality

- State law and DEQ rules require sources to obtain an air contaminant discharge permit. The 1990 Clean Air Act amendments establish a federal permit requirement for some sources, but not all sources. [ORS 468A.040-075; OAR Chapter 340, Division 14, OAR 340-20-140 et.seq.]

Water Quality

- Oregon law and DEQ rules require permits for wastewater treatment and disposal facilities that do not discharge to streams; EPA does not. Such permits assure proper operation of waste treatment and disposal facilities so that pollution of streams and groundwater does not occur. [ORS 468B.050; OAR Chapter 340, Divisions 14 and 45] [The NPDES (National Pollutant Discharge Elimination System) permit is a joint Federal/State permit for discharges to streams; the WPCF (Water Pollution Control Facilities) permit is used for facilities where state law provides for a permit and a federal permit is not required.]
- DEQ has rules which were adopted to control and limit the placement of auto bodies and parts thereof, including tires, as river bank stabilization. The EPA has no specific regulations pertaining to this activity, although EPA could possibly require an NPDES permit for this activity. [ORS 468B.065; OAR Chapter 340, Division 46]
- DEQ requires Water Pollution Control Facility (WPCF) permits for Confined Animal Feeding Operations (CAFO); EPA requires permits only for larger CAFO facilities and then only if there is a potential discharge to surface water. [ORS 468B.050(d), 468B.200 et. seq.; OAR Chapter 340, Divisions 14 & 45]
- Federal law requires oil spill contingency plans for oil storage facilities, and oil tankers and barges. Oregon law and DEQ rules are more stringent than federal requirements in that they require cargo vessels above a certain size to be covered by a spill contingency plan. Oregon requirements are also more specific about prevention requirements. [ORS 468B.340 et.seq.; OAR Chapter 340, Division 47]
- The Oregon Legislature adopted a Groundwater Protection Act in 1989. There is currently no federal groundwater legislation that would compare to this. EPA has issued "guidance" on what they think a state groundwater program should look like, however, may not have current authority to require or implement such a program. The goals of EPA's guidance document are similar to the goals of the Oregon Groundwater Protection Act. [ORS 468B.150 et.seq.; OAR Chapter 340, Division 40]

Hazardous Waste

- Oregon law requires a hazardous waste treatment and disposal facility to justify the need for increases in capacity or changes in handling and disposal methods. [ORS 466.055(4); OAR 340-105-021]
- Oregon law requires all unwanted pesticides and pesticide residues to be classified as a hazardous waste unless specifically declassified by DEQ rules.

DEQ rules limit the amount of pesticide residues required to be regulated as hazardous waste to those failing an aquatic toxicity test. The federal program regulates a smaller number of pesticide residues as hazardous waste. [ORS 466.005(7)(a); OAR 340-101-033(5), OAR Chapter 340, Division 109]

- Oregon law defines used pesticide containers as Hazardous Waste. Some believe the requirements of this law go beyond the comparable federal requirements. DEQ rules limited this definition by exempting decontaminated containers. This rule was developed with assistance of an advisory committee consisting of representatives from the agriculture pesticide use and application industry, forestry, home pest control, the universities, and lawn and garden interests. Federal RCRA regulations require triple rinsing of pesticide containers having held a "P" listed (acutely toxic) pesticide. Containers having held a "U" listed (toxic) pesticide are considered empty while containing one inch of residue. [ORS 466.005(7)(c); OAR 340-101-033(5), OAR Chapter 340, Division 109]
- Oregon law and DEQ rules require a public hearing on a proposed permit for a hazardous waste disposal site; a hearing is discretionary under EPA rules. [ORS 466.125, 466.130; OAR 340-106-012]
- Oregon's open records law defines conditions under which information submitted to an agency such as DEQ may be kept confidential. DEQ rules are based on this Oregon law. Hazardous waste sources note that Oregon's requirements necessitate extra effort to try to justify confidentiality, and may result in denial of a request for confidentiality that EPA would approve, and are thus more stringent. Oregon law establishes a fundamentally more open policy related to public records than the federal requirements. [ORS 466.090(2), 192.410 et.seq.; OAR 340-100-005, 340-105-012]
- Oregon law requires immediate reporting of spills of hazardous materials to the Emergency Management Division if the responsible person knows the spill or release is a reportable quantity. Federal law requires reporting of spills to the National Response Center. Some believe this requirement for dual reporting is unnecessary and overly stringent. Reporting to the state Emergency Management Division facilitates immediate state response. [ORS 466.635; OAR 340-108-020]

Underground Storage Tanks

- Oregon law and DEQ rules require a permit for underground petroleum and chemical storage tanks. EPA requirement is for registration only. [ORS 466.760; OAR 340-150-020]
- Oregon law allows the EQC to approve variances from standard practices for installation of underground storage tanks after making findings. The EQC can

delegate the variance authority to the Department and has done so by rule. The rule requires approval of plans for any deviation from standard practice for underground tanks. EPA requires submittal only and does not require approval. [ORS 466.780; OAR 340-150-003]

- Oregon law provides for geographic underground storage tank rules which are more stringent than federal minimums, where needed. The federal program has no such provision. Note: At this time the Environmental Quality Commission has adopted no geographic specific rules. [ORS 466.745(2); OAR 340-150-125]

3. DEQ RULE REQUIREMENT; No Federal Counterpart

Air Quality

- Oregon has requirements dealing with visible emissions from automobiles; EPA does not. DEQ also conducts noise tests in conjunction with auto emission inspections; there is no similar federal requirement. [OAR 340-24-005 thru 040, 340-24-337] (*Public Concerns*)
- Oregon has requirements to prevent odors and nuisances caused by air emissions. EPA has no comparable requirements. [OAR 340-21-050, 340-28-045, 340-29-011] (*Public Concerns, Health and Environment*)
- DEQ has adopted rules for air emissions from crematories. EPA has not established comparable rules for this source category. [OAR 340-25-890 thru 905] (*Public Concerns, Health and Environment*)
- Prior to the existence of DEQ, a number of local air authorities regulated air quality in Oregon. The rules of these authorities were incorporated into DEQ rules for the areas of the state formerly regulated by the authorities when they were dissolved. In some cases, these rules have no federal counterpart. For example, the rules for certain counties include a large particulate standard to prevent deposition on private property, fugitive emission requirements and odor requirements. [OAR 340-28-001 et.seq., 340-29-001 et.seq.] (*Predate, Public Concerns, Health and Environment*)
- Requirements for reporting of excess air emissions were adopted to clarify requirements for sources which exceed emission standards and to address sources liability for scheduled maintenance and similar activities. While these rules were based on federal guidance, no comparable federal rules existed at the time. New federal requirements for certain major sources address excess emissions in part, and DEQ plans to coordinate and combine requirements where possible. [OAR 340-20-350 thru 380] (*Predate, Certainty, Efficiency*)

Water Quality

- The Environmental Quality Commission has adopted rules and guidelines which require application of all reasonable and available methods for control of wastes and chemicals relative to design, construction, operation, and closure of mining operations which use cyanide or other toxic chemicals to extract metals or metal-bearing minerals from the ore and which produce wastes or wastewaters containing toxic materials. There are no similar federal requirements. These rules are intended to prevent water pollution, protect public health and the quality of the environment, and give early warning and certainty regarding environmental requirements to the mining industry as they develop plans and proposals for mining in Oregon. [OAR Chapter 340, Division 43] (*Prevention, Public Concerns, Certainty, Health and Environment*)
- DEQ rules for the SRF program establish loan fees to provide funds to pay for administration of the program. These fees are not specifically mandated by state statute, nor are they prohibited. Such fees are not federally required. [OAR 340-54-065(8)] (*Efficiency*)

Hazardous Waste

- 3% and 10% mixture rule: This is a label applied to a rule in the hazardous waste program. This state rule was originally adopted to fill a major loophole in the EPA Hazardous Waste (RCRA) program which allowed certain hazardous used or unused chemicals to be mixed or contained in wastes and thus avoid being regulated under the Federal program. The DEQ rule regulates as hazardous wastes those wastes containing 3% or more of the chemicals which EPA lists as "acutely toxic" or 10% or more of the chemicals that EPA lists as simply "toxic". At the time the rule was adopted, EPA only regulated pure solvents use for degreasing operations, and not mixtures containing more than one solvent. EPA recently promulgated rules for the Toxic Characteristic Leaching Procedure (TCLP) test. This test procedure now addresses more of the 3% and 10% toxic chemicals than before, and, therefore addresses some of the DEQ concerns associated with mixing and diluting hazardous chemicals and wastes to avoid regulation. The Commission has adopted the federal TCLP rule by reference. The Department's Hazardous Waste Advisory Committee will be asked to evaluate this issue when it reconvenes and recommend whether the 3% and 10% rule should be revised or deleted. [OAR 340-101-033(2)] (*Prevention, Health and Environment, Equity*)
- DEQ rules regulate processing residues from the extraction and beneficiation of ores and minerals as hazardous wastes if the wastes are determined through testing to fall within the classification as hazardous waste. EPA hazardous waste rules under direction of congress (the Bevill Amendment) exclude such wastes from hazardous waste classification, regardless of testing results. [OAR 340-101-004(1) and (2)] (*Equity, Health and Environment, Certainty*)

- DEQ rules regulate nerve gas as a hazardous waste. EPA rules do not currently regulate nerve gas. Oregon is one of only about 6 states where nerve gas is stored in large quantities; hence it is not a priority national issue. EPA may soon regulate this material under the Federal Facilities Compliance Act of 1992. [OAR 340-101-033(6)(a) & (b)] (*Health and Environment, Certainty, Public Concerns*)
- DEQ rules prohibit modification or reconstruction of existing hazardous waste management facilities without a permit. EPA rules do not. [OAR 340-105-010(c)] (*Prevention, Certainty*)
- DEQ rules do not allow food-chain crops to be grown on sites used for land treatment of hazardous wastes. EPA rules have no similar restriction and therefore allow food-chain crops to be grown on such sites. [OAR 340-104-276] (*Prevention, Certainty, Health and Environment*)
- DEQ rules do not include the EPA provision that compliance with the permit for a hazardous waste incinerator constitutes compliance with rules. Although EPA should be requiring all rules to be reflected in the permit, they fail to do so. DEQ requirements in this regard may be viewed as more stringent. [OAR 340-104-343] (*Health and Environment*)

Solid Waste

- DEQ rules include a new rule specifying requirements for "solid waste treatment facilities". These are not covered by federal criteria. [OAR 340-96-050] (*Prevention*)
- DEQ rules require that leachate storage and treatment systems be designed to the same degree of environmental protection as are landfills. Leachate lagoons are not covered by EPA solid waste criteria. [OAR 340-94-060(3)] (*Prevention*)

4. DEQ RULE REQUIREMENT; More Stringent than Federal Counterpart

Air Quality

- Federal New Source Review (NSR) minimum requirements for attainment and nonattainment areas specify that any proposed new source emitting more than 100 tons per year, and any modified source emitting more than a "significant emission rate" for a given pollutant must go through a new source review process and comply with minimum technology standards. Oregon, as part of its State Implementation Plan (SIP) for attaining and maintaining compliance with air quality standards, lowered the 100 ton threshold for new sources to the significant emission rate for modified sources in order to achieve equity

between new and modified sources and to more adequately protect attainment and maintenance of Federal air quality standards. In the case of a VOC (volatile organic compound) source, for example, this would be going from 100 tons to 40 tons. [OAR 340-20-220 thru 276] (*Equity, Performance Standard*)

- DEQ rules assign a "plant site emission limit (PSEL)" to nearly all sources with air contaminant discharge permits. The PSEL rule requires a limit on total source emissions in accordance with source operations and air quality standards. While EPA does not have a comparable rule, EPA requires states to adopt rules which will ensure federal Clean Air Act provisions, which require states to have enforceable emission standards, are met. DEQ believes the PSEL rule is consistent with, and not more stringent than, this requirement. In addition, this rule allows the New Source Review and Prevention of Significant Deterioration delegated federal programs to be simplified in Oregon. [OAR 340-20-300 thru 320] (*Certainty, Efficiency, Performance Standard*)
- Oregon adopted the federal fine particulate standard (PM₁₀) standard and retained its existing total suspended particulate (TSP) standard whereas EPA deleted the TSP standard when it adopted the PM₁₀ standard. [OAR 340-31-015] (*Predate, Health and Environment, Public Concern*)
- DEQ has adopted special requirements for significant sources in nonattainment areas (e.g. Klamath Falls, Medford, Grants Pass) as part of a strategy to meet and maintain air quality standards. [OAR 340-30-012 thru 230] (*Performance Standard, Prevention, Growth Margin*) This includes, for example:
 - Requirements for emission standards for specific industrial source categories;
 - A lower significant emission rate cutoff for review of new and modified sources of PM₁₀; and
 - Requirements for compliance assurance such as continuous emission monitoring, and rules for indirect sources of carbon monoxide such as parking structures.
- Federal rules for non-attainment areas require the state to adopt a contingency plan that will automatically be implemented in the event that attainment strategies fail to achieve compliance with air quality standards by the federal deadline. Oregon's contingency plan (pursuant to statute) requires removal of the woodstove upon sale of the home as an emission source reduction measure. EPA has no specific requirement that would mandate this particular approach to meeting the contingency plan requirement. [OAR 340-24-200 thru 215] (*Performance Standard*)

- Some believe that DEQ rules regarding visibility are more stringent than federal requirements. DEQ believes its current rules fall short of fully meeting the Clean Air Act visibility protection goal of remedying any existing impairment. [OAR 340-20-047] (*Performance Standard*)
- DEQ has adopted statewide requirements as part of the general strategy to meet federal requirements for air quality standards, prevention of significant deterioration and visibility protection in attainment and nonattainment areas. (*Performance Standard, Prevention*) For example:
 - A policy to require highest and best practical treatment and control was adopted to set a baseline requirement for control of all industrial emissions. While this standard has been partially superseded by specific federal technology standards, it still covers significant emission sources not addressed by those standards. DEQ has determined that this policy needs to be clarified and defined more precisely in light of the highly specific requirements of the federal Clean Air Act Amendments of 1990. [OAR 340-20-001]
 - Statewide performance and emission standards were established for a number of specific industrial source categories to provide a minimum level of control throughout the state for particulate and volatile organic compounds. General process and fugitive emission standards were adopted to control emissions of particulate matter from other sources with no specific emission standards. [OAR 340-25-535 thru 805]
 - Rules for open burning in urban areas and agricultural open burning in the Willamette Valley help control particulate, protect visibility and prevent nuisances. [OAR 340-26-001 thru 055, 340-23-022 thru 115]
 - Sulfur content of fuels was also restricted to prevent exceedences of the federal sulfur dioxide standard. [OAR 340-22-005]

Water Quality

- Some may argue that selected water quality standards adopted by DEQ are more stringent than would be required by EPA. Some have suggested that Oregon's dissolved oxygen standard could be less stringent in some stream reaches and still protect resident aquatic life. Representatives of the Pulp and Paper industry have pointed to the fact that EPA has approved a less stringent standard for Dioxin in several other states as evidence that the Oregon's dioxin standard is unnecessarily stringent. (EPA recently promulgated standards for dioxin and other toxics for a number of states that failed to adopt standards. The EPA promulgated state standards were similar in stringency to Oregon's standards.)

EPA does not adopt national water quality standards. EPA publishes technical guidance which includes a summary of available technical literature. States are expected to use this guidance together with locally developed information on water quality and beneficial uses to develop standards which will assure protection of uses. Particular emphasis must be placed on standards to achieve the national goals of protection of aquatic life, and contact recreation (the fishable/swimmable goals). EPA guidance for toxics identifies health risk based numbers for three ranges of risk: 10^{-5} , 10^{-6} , and 10^{-7} . EPA recommends use of the 10^{-6} based numbers and will use those numbers if it is required to adopt standards because a state fails to act. The EPA Administrator can approve a less restrictive standard if a scientifically defensible case is presented and, following appropriate public involvement, the state demonstrates a willingness to subject its citizens to a greater level of risk.

State developed and adopted standards are then submitted to EPA for review and approval. Upon approval by EPA, the state standards become federally enforceable standards. Extraordinary justification is required by EPA to justify (1) approval of any standards that would allow a lowering of existing high quality water, or (2) relaxation of an existing approved standard.

Oregon's current standards were adopted in 1976, based on best available information and policy direction at that time. Standards have been updated on several occasions since, including adoption of standards for additional pollutant parameters. EPA requires states to periodically review standards (triennial review) and update them as appropriate. DEQ solicits comments on all standards during this process, and does an in depth evaluation on several standards that are deemed to be high priority for updating. Existing standards currently being reviewed by DEQ include dissolved oxygen, temperature, pH and bacteria. DEQ has established two advisory committees to assist in this review process; a policy committee and a technical committee. A subcommittee of the technical committee has been established for each of the standards being reviewed. [OAR Chapter 340, Division 41] (*Public Concerns, Prevention, Health and Environment*)

- In the Willamette Basin, Oregon has for two decades required wastewater dischargers to control discharges to a more stringent level than the federal minimum technology standards in order to meet water quality standards and provide a margin for growth of population and industry. Such requirements are more stringent than federal requirements to the extent that they provide a margin for growth. [Individual permit limitations] (*Performance Standard, Growth Accommodation*)
- 1976, Oregon's water quality rules were revised to include minimum design criteria for new or modified municipal waste treatment facilities that were more stringent than federal minimum technology requirements. These minimum design criteria were intended to protect existing high quality waters and assure

that growth and development could be accommodated without degradation of water quality. [OAR 340-41-215, 255, 295, 335, 375, 455, 495, 535, 575, 615, 655, 695, 735, 775, 815, 855, 895, 935, 975] (*Prevention, Growth Accommodation, Health and Environment*)

- Oregon water quality rules contain a number of policies that are intended to minimize or prevent water pollution. One policy requires that for new sources, alternatives which utilize reuse or disposal with no discharge to public waters be given highest priority for use wherever practicable. Another policy prohibits discharges to lakes without specific EQC approval. There is no federal counterpart for these requirements. [OAR 340-41-026(5) & (6)] (*Prevention*)
- Oregon's water quality rules contain a policy which requires existing sources to accommodate growth and development by increasing the efficiency of waste treatment and control so that existing assigned waste load limitations are not exceeded unless otherwise approved pursuant to specific criteria established by rule by the EQC. This rule was adopted to clearly notify existing sources of the need and opportunity to plan and manage their growth in a manner that would maintain existing water quality and compliance with water quality standards while growth occurred. There is no comparable federal requirement. Federal procedures would allow a source to expand using the established minimum technology standards. When the stream is found to be violating water quality standards, sources would be required to retrofit their facilities to achieve more stringent standards. [OAR 340-41-026(2) & (3)] (*Prevention, Growth Accommodation*)
- Oregon's establishment of a limit on AOX discharges from pulp mills is an example of a situation where federal standards do not currently address an environmental issue of concern to Oregonians. AOX is one of several surrogate parameters that seek to measure total chlorinated organics. EPA has published guidance for the states to consider in establishing a standard for a chlorinated organic compound commonly called dioxin. EPA has not addressed other chlorinated organic compounds, some of which are "known" or "probable" carcinogens. A review of available scientific information persuaded the Department that it was appropriate to establish an AOX limit in the pulp mill permits because technology used to control Dioxin could cause other chlorinated organics to increase. In addition, the public had expressed concerns on this issue. The goal of the permit limit was to require utilization of known and practicable technology to significantly reduce the level of chlorinated organic compounds in the mill discharges, not to force technology development. The Department believes it is appropriate to address issues such as this where available technical information suggests a need for concern, and EPA has for whatever reason not yet addressed the issue. Two pulp mills appealed the AOX permit limit, claiming that AOX is an inappropriate regulatory parameter, that the number is inappropriate, and that the technology

necessary to meet the limit is not demonstrated and practicable. Following contested case procedures, the Commission upheld the AOX permit provisions in the permits. Upon petition for reconsideration by the mills, the Commission agreed to reconsider the AOX provisions following submittal of preliminary operating data on newly installed control facilities. Thus, the AOX limit is effectively stayed pending completion of the reconsideration by the Commission. [Individual permit conditions] (*Health and Environment, Public Concerns*)

- Pulp mills argue that DEQ's permit requirements for monitoring of TCDD Dioxin discharges are more stringent than requirements of EPA or other states. Based on the current dioxin standard, EPA has established a Total Maximum Daily Load (TMDL) and Waste Load Allocation (WLA) for the major known contributors of dioxin to waters in the Columbia River Basin (pulp mills). The WLA divides the TMDL among the individual sources. The mass load allocation of dioxin for an individual mill, diluted in the total mill effluent, yields a concentration that is below the level of analytical detection. EPA has approved a monitoring approach that considers a mill to be in compliance with their waste load allocation if dioxin is "not detectable" in the total mill wastewater effluent after treatment. Under this approach, if the actual concentration was just below the detection limit, the wasteload allocation would actually be significantly exceeded. DEQ requires the mills to use a measuring and calculation process that more nearly approximates the actual discharge level of dioxin. Since the pulp bleach process is the process where dioxin is produced, DEQ requires measurement of dioxin in the bleach plant effluent (before dilution with other mill wastes). DEQ's approach requires measurement of dioxin levels removed from the process in sludge, allows for some degradation in the treatment system, and calculates an estimated discharge quantity based upon this information. [Individual permit condition] (*Public Concerns, Health and Environment*)
- DEQ has regulations for controlling discharges of wastewater into disposal wells. EPA has rules regulating the underground injection of wastewater which allow states to regulate underground injection by rule or by permit. DEQ rules require wastewater permits for some categories of injection and define requirements by rule for others. Where a permit is required, a Water Pollution Control Facilities (WPCF) Permit is issued. As with other DEQ permits, fees are required. These regulations are consistent with EPA regulations in those areas where EPA has specific regulations for underground injection. The DEQ regulations do cover some areas where EPA has not formulated regulations, and thus could be viewed as more stringent. [OAR Chapter 340, Division 44] (*Prevention*)
- Some suggest that the procedural and substantive requirements for controlling storm water exceed federally mandated requirements. DEQ does not believe that state requirements exceed federally mandated requirements to any

significant degree. DEQ has sought to streamline requirements such that they are less onerous than federal requirements. DEQ's application requirements require less data gathering than EPA's requirements. DEQ accepts grab samples for monitoring whereas EPA requires a more complex and costly monitoring approach using composite samples. DEQ has included discharge limiting conditions in permits for oil and grease, pH, and floating debris. These are deemed appropriate to assure compliance with water quality standards. Failure by EPA to include such limits in stormwater permits it issues does not relieve the permittee from responsibility for compliance with these water quality standards. [Federal requirements implemented by conditions included in general permits issued pursuant to general permit authority.] (*Efficiency, Certainty*)

In implementing the stormwater program, DEQ has identified some discharges of process wastewater that have not previously been permitted as required. An example of this is truck wash water. This is process waste rather than stormwater and is regulated differently. There may be some confusion, however, in relation to stormwater regulation since it was discharged to the stormwater system.

DEQ has also recently corrected an error in application of stormwater permit requirements for bulk petroleum facilities. DEQ was requiring permits from all bulk facilities whereas EPA requires permits only from bulk facilities which have vehicle maintenance shops or equipment cleaning operations. DEQ is now requiring permits consistent with the EPA requirements.

- DEQ has established a State Revolving Loan Fund (SRF) loan program to provide loans for sewerage works construction. This program replaces the old Federal grant program and is largely funded with federal funds. Some believe that the credit standard in DEQ's rule is more stringent in that it requires more security than the federal rules. DEQ does not agree with such an interpretation. [OAR 340-54-065] (*Certainty*)
- DEQ rules establish requirements for wastewater control in the Clear Lake Watershed near Florence in order to protect the groundwater aquifer and source of drinking water for the area. [OAR 340-41-270] (*Public Concerns, Prevention, Health and Environment*)
- DEQ has adopted rules to regulate the use of reclaimed water (treated effluent) from sewage treatment plants to assure protection of public health and the environment. These rules include standards for treated effluent quality when the treated effluent would be used for irrigation of food crops, golf courses, parks and for other uses. The rules also contain operational requirements to assure proper operation and accountability for the use of reclaimed water. There are no comparable federal statutes or regulations that pertain to use of treated sewage effluent. [OAR Chapter 340, Division 55] (*Prevention*)

- Oregon has adopted rules to regulate land application and disposal of sewage sludge and septic tank sludge (septage). These rules were adopted in 1984 in order to help protect the state's natural resources and public health as well as promote the beneficial recycling (land application) of properly treated and managed sludges and septage. The rules establish soil loading limits for nutrients and other specified pollutants to protect groundwater and prevent cumulative buildup to harmful levels in the soil. Sludge management plans and written site authorization are required by DEQ rules. Federal rules were adopted in November 1992. Existing DEQ rules may be more stringent in some areas. DEQ, with assistance of an advisory committee, is currently reevaluating the state rules in light of the federal rules and will be proposing some changes. [OAR 340, Division 50] (*Predate, Prevention*)

Hazardous Waste

- DEQ rules requires annual reporting by all generators, TSDs (Treatment, Storage, and Disposal Facilities) and hazardous waste recycling facilities. EPA requires biennial reporting by large generators and TSDs only. (Such a requirement is part of a strategy to increase awareness of hazardous waste requirements and prevent problems from developing.) Also, the DEQ requires reporting of 28 more pieces of data than EPA does. Examples include location and contact information. DEQ rules require Small Quantity Hazardous Waste generators to complete a comprehensive manifest exception report; EPA requires less information in the report. [OAR 340-102-041] [OAR 340-102-044] (*Prevention*)
- DEQ rules require notification of any threat to health or environment. EPA requires notification only if the threat is outside the facility. DEQ also requires a more comprehensive report. [OAR 340-104-056] (*Prevention, Health and Environment, Public Concerns*)
- DEQ rules for reporting of spills of petroleum and hazardous substances require reporting of events that do not have to be reported under federal requirements. [OAR 340-108-020] (*Prevention, Health and Environment, Public Concerns*)
- DEQ rules allow fewer options for providing financial assurance for hazardous waste disposal facilities and are thus more stringent. When initially adopted, DEQ wanted to make sure that real dollars were available to address problems at disposal sites if needed. DEQ is in the process of changing this to allow additional options similar to the federal rules. [OAR 340-104-143] (*Certainty, Health and Environment*)
- DEQ rules require inclusion of expected closure costs in the closure and post closure plan for a hazardous waste pile; EPA does not. [OAR 340-104-258] (*Prevention*)

- DEQ rules do not allow hazardous waste incinerators to conduct trial burns under special permits; EPA does. [OAR 340-104-340] (*Public Concerns, Health and Environment*)
- DEQ rules do not allow surface impoundments to be used for hazardous waste disposal; EPA does. DEQ rules also require removal or treatment of all wastes in an impoundment at closure whereas EPA allows wastes to be solidified and left in place. However, if left in place, EPA rules require a 30 year post closure permit with groundwater monitoring, and if groundwater is already contaminated, cleanup would be required. DEQ's approach, while appearing more stringent, is intended to reduce the need to obtain a disposal site permit (a difficult process) and conduct long term post closure care and monitoring at the site. [OAR 340-104-228] (*Certainty, Public Concerns*)
- DEQ rules require fully regulated hazardous waste generators to provide secondary containment if storing hazardous waste in tanks or in more than 100 containers; EPA does not. [OAR 340-102-034] (*Prevention, Health and Environment*)
- DEQ rules provide that unsaturated zone monitoring may be required at any hazardous waste facility; EPA requires it only at land treatment sites. [OAR 340-104-029] (*Prevention*)

Solid Waste

- New EPA rules for municipal solid waste landfills, adopted in October 1991, impose design and operational standards as well as performance standards on municipal landfills. The new federal rules also expect states to have an enforcement mechanism, such as a permit program, to regulate municipal solid waste landfills. Proposed new and amended Solid Waste Disposal regulations were adopted by the EQC on March 5, 1993. These rules address the new federal rules for municipal landfills, and are more stringent than federal rules in the following areas:
 - **Applicability:** The definition of "municipal solid waste landfill" in the proposed DEQ rules is broader than the federal definition. It includes any facility receiving domestic, commercial or institutional waste. The federal definition refers to a facility receiving waste "generated by households." [OAR 340-93-030(28) & (54)] (*Equity, Prevention, Health and Environment*)
 - **Location:** The proposed DEQ rules provide that new landfills may not be sited in gravel pits or wellhead protection areas where there are findings that there is risk of groundwater pollution. There is no similar federal restriction. [OAR 340-94-030(4), 340-95-010(4)] (*Health and Environment, Prevention, Certainty*)

- **Design:** The proposed rules allow the Department to require, where site-specific conditions warrant, new municipal solid waste landfills to provide additional protection to protect groundwater or to afford enhanced monitoring beyond the federal requirement for a single composite liner requirement. [OAR 340-94-060(6)] (*Prevention, Health and Environment*)
- **Operations:**
 - Special management procedures are required for some solid wastes, which must be included in a Special Waste Management Plan. Examples include isolation and special handling of "sharps" or infectious waste, special handling of asbestos, additional requirements for compaction of yard debris if handled in large quantities, etc.. There are no Federal special management procedures. [OAR 340-93-190, 340-94-040(1), 340-95-020(3)] (*Public Concerns, Prevention, Health and Environment*)
 - The proposed rule specifies that only those solid wastes specifically allowed in the permit may be received. Application must be made to DEQ to accept additional wastes. There is no Federal counterpart. [OAR 340-94-040(11)(a), 340-95-020(2)] (*Prevention*)

There are no federal requirements similar to these.

- Existing DEQ solid waste rules are more specific than the new federal rules in a number of areas, such as information required for a permit application, a site feasibility study, operational requirements, some procedures such as split samples for groundwater monitoring, and procedures for updates and modifications to approved closure plans. These requirements may be viewed as more stringent. [OAR 340-93-070, 340-93-130, 340-94-080(2), 340-94-110(3), 340-95-040(2), 340-95-060(3)] (*Prevention*)
- The DEQ Solid Waste Program implements at landfill sites the groundwater quality standards established under the Oregon Groundwater Protection Act (ORS 468B.150 et.seq.). These standards include an anti-degradation policy and other specifics which may be viewed as more stringent than EPA landfill related criteria which relate primarily to drinking water maximum contaminant levels. [OAR 340-94-080(1)(a), 340-95-040(1)(a)] (*Prevention*)

Underground Storage Tanks

- DEQ's definition of "Residential tank" (which defines who is regulated) is limited to tanks located at a single family dwelling; thus allowing fewer tanks

to be exempted from the UST regulations. EPA definition includes tanks on any property used for dwelling purposes; thus includes any residential unit such as nursing homes and apartments. [OAR 340-150-003] (*Prevention, Health and Environment*)

- DEQ has adopted the extensive federal regulations on underground storage tanks by reference with a few specific exceptions which may be considered more stringent to address state concerns for pollution prevention, protection of health and environment, establishment of greater certainty for the regulated community, or to provide greater efficiency. State exceptions require additional reporting and notification, better tank corrosion protection evaluation and monitoring, specific tank certification procedures, qualified leak detection design, site assessment prior to and during tank closure. [OAR 340-150-003] (*Prevention, Health and Environment, Efficiency, Certainty*)

Some claim that DEQ rules require more cathodic protection for lined tanks than is required by EPA. This is not the case. DEQ's draft rule proposal that went to hearing in 1990 **did** contain language requiring lined tanks to be cathodically protected. After receiving comments and subsequently discussing the comments with the UST Advisory Committee, the rule language on upgrading tanks by lining **was changed** to read identical to EPA regulations.

State Superfund (Environmental Cleanup)

- EQC's primary cleanup standard for releases of hazardous substances is "background or lowest feasible concentration". This standard was adopted by the EQC with a nearly unanimous recommendation from a broadbased Advisory Committee that included representatives from industry. EPA does not require a responsible party to address whether technologies will clean the site to "background". However, both federal and state standards require that, to the maximum extent possible, cleanups use permanent solutions and that they be effective, cost-effective, and implementable. Under state requirements, background chemical values are used as standards for cleanups only when cleanup to background is feasible. This component of Oregon's environmental cleanup program is interpreted by most as being more stringent than federal requirements when in fact it is not in most cases. [OAR 340-122-040 & 045] (*Health and Environment*)
- DEQ has established numeric cleanup standards for releases of petroleum from underground storage tanks (soil and groundwater) and for hazardous substance releases at simple sites (soil). EPA has adopted no comparable numeric standards. DEQ numeric standards were enacted to help streamline the (federal) underground storage tank and (state) environmental cleanup processes by providing an alternative to a case-by-case cleanup level determination and hence an expedited cleanup option. However, it is possible that DEQ's numeric standards could be more stringent, depending on site specific

conditions. In this case, the responsible party has the option to do the site-specific assessment and thereby move back to the process that is parallel to the federal program requirements. [OAR 340-122-045, 340-122-205 through 260] (*Certainty, Efficiency*)


- Utilities have expressed a concern that the DEQ numeric soil cleanup level for PCBs is established at 0.08 mg/kg whereas EPA's spill response cleanup level is 10 mg/kg. The DEQ soil cleanup number of 0.08 mg/kg was based on a risk analysis using best available scientific data. The DEQ numeric soil cleanup level is optional, not required. If a responsible party feels the numeric soil cleanup level would be to their disadvantage, they have the option of going through the process to develop a site-specific cleanup plan and cleanup level. State cleanup levels may be used for both contemporary spills and past practices, while EPA's PCB spill cleanup policy only applies to contemporary spills. EPA's policy also requires a clean cover (at least 10 inches of clean soil), while DEQ's optional numeric cleanup levels are based on residual concentrations without such additional controls. [OAR 340-122-045] (*Certainty, Efficiency, Health and Environment, Equity*)

March 31, 1993

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 12, 1993

To: Environmental Quality Commission
From: Fred Hansen 
Subject: Background Information

Joint Meeting of Transportation Commission, Land Conservation and
Development Commission, and Environmental Quality Commission

Following are some thoughts to assist you in preparing the joint meeting between the Oregon Transportation Commission, the Land Conservation and Development Commission, and the Environmental Quality Commission on April 22, 1993. Also attached for background purposes is a report prepared by the House Special Task Force on Emissions. This report puts the Portland air quality problem in perspective and includes the recommendations of the State's Motor Vehicle Task Force and the modifications made by the House Special Task Force on Emissions.

**INTERRELATIONSHIP BETWEEN AIR QUALITY, TRANSPORTATION AND
LAND USE**

There is a distinct and strong relationship between land use, transportation and air quality. This relationship may be summarized as follows.

- Over the latter half of this century, land use has centered on motor vehicle friendly designs.
- In response, the transportation system has been focused on meeting this demand with abundant roadways and parking spaces.
- The resulting high use of motor vehicles has contributed to congestion, high infrastructure costs and nonattainment of federal air quality standards.
- Continuation of this pattern threatens continued negative impacts, particularly in the Portland area where the projected population growth is high.
- Land use changes brought about by new transportation plans and alternative travel

Memo To: Environmental Quality Commission

April 12, 1993

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facilities can result in a reduction in future potential traffic congestion and air pollution.

- Addressing the land use, transportation and air quality problems with the same or similar strategy offers the opportunity to accomplish the objectives of all three commissions in the most cost effective manner.

DLCD TRANSPORTATION RULE ISSUES

The DLCD (Department of Land Conservation and Development) Transportation rule, with its objective of reducing VMT (Vehicle Miles Traveled) and parking spaces per capita, offers the opportunity to head in a new, coordinated and positive direction with respect to land use, transportation and air quality. The Rule requires local governments to develop an implementation plan by May 1996. It is generally felt that some form of a market or regulatory program will be necessary as an implementation mechanism to provide a disincentive to driving and that pedestrian, bike and transit infrastructure will need to be significantly expanded. Implementation of the transportation rule presents some difficult challenges and policy issues which are already surfacing. There are primarily three implementation issues that should be discussed by the three Commissions:

Air Quality Strategy as an Implementation Mechanism.

The State's Motor Vehicle Emission Task Force for the Portland area recommended a substantial emission based vehicle fee for the Portland area. While providing a major emission reduction strategy element, this fee could also provide a major regional implementation force in reducing vehicle trips per capita while providing funding of a level that would greatly enhance the transit capacity in the region. This approach was generally supported by the region and could save local governments considerable future debate in developing a consensus approach for an implementation plan to meet the transportation rule requirements.

Issue: The House Special Task Force on Emissions was adamantly opposed to an emission fee. They have recommended an aggressive employer trip reduction program and parking space restrictions on new construction as a substitute. This regulatory approach could also serve as a major regional implementation force in meeting the transportation rule.

Question: Are the three Commissions comfortable with this approach?

Transit Funding

Substantial new revenue will be needed by Tri-Met to provide new service to meet the demand created by the reduction in vehicle trips required by the Transportation Rule.

Issue: The Oregon Transportation Plan funding package was relying on the vehicle emission fee recommended by the State's Task force to provide a substantial portion of the funds needed by Tri-Met to provided needed transit service improvement. The House Special Task Force on Emissions has indicated that a substantial increase in vehicle registration fees should be considered for providing this revenue.

Question: Do the three Commissions feel any further efforts should be made to pursue a vehicle emission fee? A vehicle registration fee that would generate the same revenue as the emission fee would be less effective in reducing actual emissions because it creates no market force for reducing driving.

Local Government Implementation Plans

The Transportation Rule requires local governments to develop a detailed implementation plan by May 1996.

Issue: Some local governments already appear unable to meet the Transportation Rule May 1993 deadline for more minor portions of the implementation plan. The effort required by local governments to meet the May 1996 deadline may not be as difficult and controversial if a state imposed regional air quality strategy is adopted. This strategy would, pursuant to the House Special Task Force on Emissions, have major trip reduction elements such as parking ratio's and employer trip reduction programs.

Question: Should anything further be done to provide greater assurance that an effective implementation program will be in place in a timely manner to meet the transportation rule requirements? Should the option to require individual land use actions to conform to the transportation rule if local governments fail to submit implementation plans be made a firm requirement?

OTHER POTENTIAL ISSUES FOR DISCUSSION

Following are a couple of other issues that could be appropriate to discuss at the joint meeting if time permits:

Memo To: Environmental Quality Commission
April 12, 1993
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Water Quality Issues

Discussions to date have focused heavily on the airshed effects of added population in metropolitan areas. Added population also places pressure on the ability to maintain Water Quality Standards. Population growth leads to increased waste loads from municipal sewage treatment facilities and the new and expanded industrial facilities that provide jobs for the expanded population. Runoff from roads and urban areas adds to the non-point source pollution concerns. Expansion of recreational facilities and opportunities also places demands on water quality.

Compliance with Environmental Requirements for Agency Operations

The Department of Transportation has an ongoing effort to insure that their operations comply with environmental requirements at their maintenance shops and at project sites. Examples include underground storage tank compliance, disposal of solid waste and hazardous waste, and insuring that construction and maintenance contracts contain appropriate environmental protection provisions and that contractors abide by those provisions.


FH:1

Enclosure

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 7, 1993

To: Environmental Quality Commission
From: Fred Hansen 
Subject: Newmont Grassy Mountain Corporation

On April 5, 1993, Newmont Grassy Mountain Corporation filed notice with the Department of Geology and Mineral Industries of its intent to file a Consolidated Application for a proposed gold chemical process mine at the Grassy Mountain Site in Malheur County. A copy of Newmont's filing is attached.

HB 2244 passed by the 1991 legislature (Chapter 735, OL 1991) established a process for coordination of agency actions relative to permitting and approval of chemical process mining operations. Under this legislation, each agency ultimately issues their own permits, but the public notification processes, application submittal, application processing, and any subsequent permit appeal processes are required to be coordinated. The coordinated process will require us to make some adjustments in our "normal" permit processing procedures, and we currently see no obstacles to doing so.

Relative to permit appeals, HB 2244 provides that any person who participates through the process through testimony or otherwise has the right to appeal permit decisions through the contested case process. This is different from the basic administrative procedures act process which provides for the applicant to request a contested case hearing, and limits third party challenges to filing a suit in circuit court.

It seems reasonable to assume that any action ultimately taken by the Department on a permit application will be appealed, and the Commission will have to make a determination and enter an order in a contested case. Michael Huston will be providing some further information regarding this to assist in avoiding problems with ex parte contacts regarding this proposal.

We will be providing some additional information on the interagency coordination and permit application processing process (when various steps will occur, when public notice will be given and hearings will be held, etc.) so that you will have a better understanding of how and when decisions will be made on this very significant proposal.

Enclosure

NEWMONT MINING CORPORATION

ONE UNITED BANK CENTER
1700 LINCOLN STREET
DENVER, COLORADO 80203
(303) 863-7414

RECEIVED
APR - 5 1993
MLR

April 5, 1993

Oregon Department of Geology and Mineral Industries
Portland, Oregon 97321
Attention: Mr. Don Hull, State Geologist

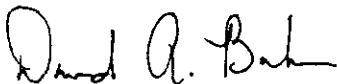
Subject: Submittal of Notice of Intent, Grassy Mountain Site, Malheur County, Oregon

Dear Mr. Hull:

Transmitted herewith is the Newmont Grassy Mountain Corporation's Notice of Intent for the Grassy Mountain Site in Malheur County, Oregon. This Letter will serve to notify you, pursuant to OAR Chapter 632, Division 37-035(1) of Newmont's intent to submit a Consolidated Application for a proposed gold chemical process mine at the Grassy Mountain Site in 1993.

If you have any questions or require additional information, please contact me at (303) 837-5885.

Sincerely,



David A. Baker
Vice President,
Environmental Affairs

Consolidated Application Processing Procedures

Newmont Grassy Mountain Corporation Proposal

April 19, 1993

Who	What	When	Comment
Pre-Application Phase			
Applicant	Submit "Notice of Intent to Submit Consolidated Application" (NOI) to DOGAMI	When ready	NOI must include Name and location of the proposed operation, name and address of prospective applicant, and brief description of the proposed mining operation.
Applicant	Post notices along the boundary of the proposed permit area	Within 10 days after submitting NOI	
DOGAMI	<ul style="list-style-type: none"> • Issue Public Notice • Activate Project Coordinating Committee • Activate Technical Review Team • Provide names of cooperating agency participants to applicant 	Upon receipt of NOI	See Note at the end of this table for a Description of the Public Notice process.
PUBLIC	Opportunity to request to be on the "Master List" to receive all public notices regarding proposed mine	At any time, but likely to occur as a response to the initial notice.	\$5 must be paid to DOGAMI for each address requested to be placed on the Master List to help defray the cost of mailings.
Applicant	Notify DOGAMI of readiness to collect baseline data	When ready.	Notification includes workplan for data collection (methodologies, area, timing, etc.)
Technical Review Team	<ul style="list-style-type: none"> • Reviews work plan for baseline data collection to determine accuracy. • Determines the study areas for a proposed mine. • Requests and receives additional information as needed. • Approves methodology to be used in collection of baseline data • Coordinates with the applicant the collection and verification of baseline data. 	As soon as practicable after receipt of work plan (consistent with deadlines).	Public Notice may be required for Technical Review Team meetings since they are leading to a decision.

Who	What	When	Comment
DOGAMI	<ul style="list-style-type: none"> • Issue Public Notice • Conduct Public Informational Meeting near site • Conduct Public Informational Meeting in State population center • Receive written comments 	<p>Upon Receipt of Notice Within 30 days of Receipt of Notice</p> <p>Within 30 days of Receipt of Notice for 45 days from Receipt of Notice</p>	
PUBLIC	<ul style="list-style-type: none"> • Attend Public Informational Meeting • Submit Written Comments to DOGAMI 	Submit within 45 days of DOGAMI's receipt of notice.	comments should address issues raised by the mine proposal and information relevant to characterization of the pre-mine environment.
<u>Application Phase</u>			
Applicant	Submit Consolidated Application to DOGAMI	When ready	<p>Application must include the following:</p> <ul style="list-style-type: none"> • General Information • Existing Environment - Baseline Data • Operating Plan • Reclamation and Closure Plan • Alternatives Analysis • All additional information required by law or rule of each permitting agency
DOGAMI	Provide Application copy to each permitting agency, cooperating agency, and affected federal and local agency	Within 10 days of receipt of application	
Technical Review Team	<ul style="list-style-type: none"> • Reviews application to determine completeness • requests and receives additional information as needed (an implied step) • Makes "preliminary" determination that application is complete and agencies are ready to begin permit drafting 	As soon as practicable after receipt of application (consistent with deadline and subsequent steps for determining that application is complete)	Public Notice may be required for Technical Review Team meetings since they are leading to a decision.

Who	What	When	Comment
DOGAMI	<ul style="list-style-type: none"> Issue Public Notice of (1) Receipt of Application and preliminary determination that application appears complete, and (2) Public Hearing and Comment Period on whether the application is complete. 		
DOGAMI	<ul style="list-style-type: none"> Request additional information from applicant if needed (based on detailed public comments). Upon receipt of additional information requested, give Public Notice of 14 day opportunity for written comment 		If applicant is not required to submit additional information as suggested in public comments, agencies must prepare written response explaining why additional information was not requested.
DOGAMI and Agencies	Determine that Application is Complete (includes verification of baseline data)	Within 90 days of receipt of application	
DOGAMI	Issue NOTICE TO PROCEED (assumption is that this notice goes to the applicant <u>and</u> the permitting agencies)	Upon determination that Application is complete	This starts the process for detailed application evaluation and the development of draft permits.
DOGAMI	If new information becomes available or is needed (and received), give appropriate Public Notice and hold a Public Hearing within 14 days of receipt of the additional information	As needed after Notice to Proceed is issued.	
Technical Review Team	<ul style="list-style-type: none"> Determines the scope of the Environmental Evaluation. Identifies alternatives not analyzed by the applicant. Directs analysis of such alternatives. Consults with Project Coordinating Committee on the Environmental Evaluation. 	Upon issuance of Notice to Proceed	Public Notice may be required for Technical Review Team meetings since they are leading to a decision.
DOGAMI	<ul style="list-style-type: none"> Contract for preparation of an Environmental Evaluation (impact analysis, cumulative impact analysis, alternatives analysis) Contract for preparation of a Socioeconomic Impact Analysis 	<p>Upon issuance of notice to proceed</p> <p>Upon issuance of notice to proceed</p>	

Who	What	When	Comment
Contractors	<ul style="list-style-type: none"> • Prepare Environmental Evaluation and submits to DOGAMI • Prepare Socioeconomic Impact Analysis 	Pursuant to contract schedule	Environmental Analysis must be completed at least 60 days before issuance of draft permits.
DOGAMI	<ul style="list-style-type: none"> • Issue Public Notice of receipt of Environmental Evaluation • Receives Comments • Distributes Socioeconomic Impact Analysis to local governments in the area and affected agencies 	<ul style="list-style-type: none"> • Upon receipt of Environmental Evaluation • for 14 days after notice • Upon receipt of Socioeconomic Impact Analysis 	
Cooperating Agencies	<ul style="list-style-type: none"> • Submit to DOGAMI proposed conditions for incorporation in Draft Operating Permit • Submit written concurrence with conditions of Draft Operating Permit 	<p>As appropriate</p> <p>At least 30 days before issuance of draft permit</p>	DOGAMI issues the Operating Permit. A Cooperating Agency submittal must pertain to its statutory authority. DOGAMI must include cooperating agency conditions in the Operating Permit.
Permitting Agencies	Submit draft permit (or permit denial document) to DOGAMI	Within 225 days of Notice to Proceed; and not sooner than 60 days after receipt of Environmental Evaluation	Each permitting agency must include explanation of anything inconsistent with Environmental Evaluation.
DOGAMI	Check for conflicts between permits (as result of conditions imposed by a cooperating agency)	Upon receipt of all draft permits	(rules only refer to conflicts between permits resulting from a condition imposed by a "cooperating agency" -- logic would suggest that the check for conflicts should be broader)
Technical Review Team	Resolve any conflicts between draft permits		Public Notice may be required for Technical Review Team meetings since they are leading to a decision.
DOGAMI	Issue Public Notice of the date and location of a <u>consolidated hearing</u> and the period for <u>written comments</u> on all permits	Within 15 days after receipt of all Draft Permits	
DOGAMI and all Permit Agencies	Conduct Consolidated Hearing	Between 45 and 60 days after public notice is issued	

Who	What	When	Comment
Cooperating Agencies	<ul style="list-style-type: none"> • Submit to DOGAMI proposed conditions for incorporation in Operating Permit • Submit written concurrence with conditions of Operating Permit 	<p>As appropriate</p> <p>At least 7 days before issuance of final operating permit</p>	A Cooperating Agency submittal must pertain to its statutory authority. DOGAMI must include cooperating agency conditions in the Operating Permit.
Permitting Agencies	<ul style="list-style-type: none"> • Evaluate testimony received at consolidated hearing and in writing • Submit draft Final Permit to DOGAMI 		(This step is not specified in rules, but it appears necessary to permit potential conflict resolution prior to permit issuance,)
DOGAMI	Check for conflicts between permits (as result of conditions imposed by a cooperating agency)	Upon receipt of all draft permits	(rules only refer to conflicts between permits resulting from a condition imposed by a "cooperating agency" -- logic would suggest that the check for conflicts should be broader)
Technical Review Team	Resolve any conflicts between draft permits		Public Notice may be required for Technical Review Team meetings since they are leading to a decision.
DOGAMI	<ul style="list-style-type: none"> • Determine amount of financial security required in accordance with OAR 340-37-135 (reclamation bond or approved alternative security) adequate to allow DOGAMI to meet the requirements of the reclamation and closure plan and to provide protection of surface and subsurface resources. • Secure financial security. • Notify permit agencies that security is on file and that permits may be issued. 	Prior to permit issuance and start of mine operations.	
Permitting Agencies	<ul style="list-style-type: none"> • Issue permit (or otherwise take final action on application) • Notify DOGAMI of permit issuance 	Within 45 days of Consolidated Hearing (or sooner if required by federal law) <u>and</u> within 1 year of issuance of Notice to Proceed	With concurrence of the applicant, the processing of the application may be suspended for a period of time to permit resolution of outstanding issues.
DOGAMI	Issue Public Notice of the issuance of final permits	Upon issuance of permits	

Who	What	When	Comment
Appeals			
Applicant or Qualifying Person	File a written request for a consolidated contested case hearing	Within 30 days after permit was granted or denied	Request must state reasons for requesting hearing and objections to permitting agency's actions.
DOGAMI	Schedule Consolidate Contested Case Hearing	Hearing must be held between 60 and 75 days after permit issuance or denial	Permits are suspended until completion of Consolidated Contested Case Hearing.
Permitting Agencies	Appoint Hearings Officer to participate in the Consolidated Contested Case Hearing (or agree to use the Chief Hearings Officer appointed by DOGAMI)		
Permitting Agencies	Make final disposition of appeal of their permit by issuance of a final order in accordance with their procedures based upon Consolidate Contested Case record and recommendations of Hearings Officer.	As soon as reasonable after hearing	Further appeal of permits is to the Supreme Court within 60 days following entry of an order in the Contested Case. Permit is stayed for 6 months pending Judicial Review (unless exception is granted).

Notes:

Public Notice Process:

- Mail notice to all permitting agencies, cooperating agencies, and affected federal and local agencies.
- Mail notice to each owner of property located within 1/2 mile of the proposed "permit area".
- Mail notice to all unpatented mineral claimants located within 1/2 mile of the proposed "permit area".
- Mail notice to persons on the "Master List".
- Publish notice in one "statewide" and one "local" general circulation newspaper once per week for two weeks immediately preceding an action requiring notice.

The "Master List"

This list is comprised of persons who request to be on the list and pay \$5 to help defray the cost of mailings. Initially, permitting and cooperating agencies are to provide a list of persons who have expressed interest in a proposed chemical process mine to DOGAMI. It is assumed that persons who receive the first mailing and elect not to pay the \$5 will be removed from the list. Persons can be added at any time through the process by making a request and paying the \$5.

Date: April 20, 1993

To: Environmental Quality Commissioners
From: Fred Hansen *FH*
Subject: Possible Points of Inquiry, City of Portland
Presentation on Combined Sewer Overflows

The Department has been regularly meeting with City staff to discuss various technical elements of the CSO project. The Commission may wish to use the City's presentation this Friday as an opportunity to give the City some broad direction as they complete the draft facilities plan due July 1, 1993 and continue their efforts in informing and involving city residents. Questions such as the following directed to the City could assist in that effort.

1. **How does the City view the "value" of having a swimmable Willamette River? What impact does the frequent shut down of the Willamette River for recreation have on the general livability of the City, and what impact does it have on the City's image both to citizens and to tourists?**

Background - Media accounts of the City's concerns about CSO's seem to strongly emphasize costs to the exclusion of the environmental benefits derived from controlling discharges.

2. **Does the City view the level of CSO control and the cleanliness of the lower Willamette as a decision for only Portlanders to make?**

Background - It is true that Portlanders will be required to pay for controlling CSO discharges. However, the fate of the lower Willamette River is of concern to all Oregonians, not just Portland residents. Media reports seem to indicate that the City believes that the decision on the level of control is for Portlanders only to make.

3. **If the City proposes to build storm water sumps, how will you insure that groundwater is not contaminated?**

Background - The City is proposing to construct 9600 storm water sumps to reduce the overall flows in the combined sewers. The Commission would not want to trade one environmental problem for another one.

Memo To: Environmental Quality Commissioners
April 20, 1993
Page 2

4. **What is different about Portland that you should not be required to eliminate all combined sewer outfalls, like almost all other Oregon cities?**

Background - Twenty-five Oregon cities have separated their combined sewer systems since 1980, including Salem, Albany and Roseburg. Sixteen states do not permit combined sewer systems with any discharges.

5. **Would the City be willing to prepare control options for other frequencies of discharge?**

Background - The City has prepared information on two levels of control, that required in the Order (3/10 years), and the minimum federal standard of 85% reduction (6 or 7 discharges per year including one discharge in September). They are in the process of preparing information on the level of control needed to eliminate all summer discharges in an average year. If the Commission is interested in seeing other levels of control, now would be a good time to express that interest.

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 20, 1993

To: Fred Hansen and DA's
From: Barbara Burton
Subject: Information Packet on Portland Combined Sewer Overflows
(CSO's)

Attached is background information that may assist the discussion today. The informational memos are as follows:

- Quick Facts About Portland CSO Discharges
- Rules/Policies That Relate to CSO Standards
- Other State Standards for CSO Discharges
- List of Oregon Municipalities That Have Eliminated CSO Discharges Since 1980, Including Those On Schedule
- List of Willamette Valley Municipalities With Combined Sewers in 1933
- Relative Cost of Portland CSO Project (to other recent sewer or treatment plant upgrades required in Oregon)
- Location of Upstream Dischargers That Could Affect Bacteria Levels in Portland
- Copy of Portland SFO

Date: April 20, 1993

To: Files
From: Barbara Burton
Subject: Quick Facts About Portland CSO Discharges

54 overflow points

- 13 to Columbia Slough, a TMDL stream
- 41 to Willamette River

Total discharge in average rainfall year - Approximately 6 billion gallons

Number of days of discharge - for average discharge point, 93 days/year. For most frequently discharging overflow, 161 days/year.

Average characteristics of overflows:

Fecal coliform - 154,000/100 ml
Total suspended solids - 137 mg/l
BOD - 55 mg/l
Total kjeldahl nitrogen - 5.5 mg/l
Phosphate - 0.55 mg/l
Zinc - 0.1 mg/l (0.12 mg/l is WQS)
Lead - 0.019 mg/l (0.082 mg/l is WQS)

Date: April 19, 1993

To: Mike Downs

From: Barbara Burton

Subject: Existing Rules/Policies That Relate to CSO Standards

The design standard placed in the Portland Order is as follows:

"...eliminate all Discharges that violate applicable water quality standards from November 1 through April 30 except during storms greater than or equal to a storm with a five year return frequency and to eliminate all Discharges that violate applicable water quality standards from May through October 31 except during storms greater than or equal to a storm with a ten year return frequency..."

Applicable State Rules/Policies

Oregon does not have a rule that directly applies to CSO discharges. The above standard for Portland included in the Order could be changed without a rule change and without violating any rule.

The Portland standard for summer time discharges was derived from OAR 340-41-034(3)(f) which states:

"Sewerage construction programs should be designed to eliminate raw sewage bypassing during the summer recreation season (except for a storm event greater than the one in ten year 24 hour storm) as soon as practicable. A program and timetable should be developed through negotiation with each affected source. Bypasses which occur during the remainder of the year should be eliminated in accordance with an approved longer term maintenance based correction program. More stringent schedules may be imposed as necessary to protect drinking water supplies and shellfish growing areas."

Note that the rule says "should be designed", not "must be" or "shall be" designed.

The Portland standard for winter time discharges is the same as the Department has been applying for all pump stations and construction grant projects for the past five years or more. This is a technical decision, where we had to give some direction to the municipalities as to how big to build sewer lines and pump stations, and the degree to which sewer flows had to be captured and treated. The authority for requiring this design standard is

Memo To: Mike Downs
April 19, 1993
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included in OAR 340-52-035(4) which allows engineering plans to be rejected if:

"The project includes a planned discharge of raw or inadequately treated waste which reasonably can be prevented."

Note that no construction of treatment works may occur without prior Department approval of engineering plans. In addition, the Department has declined to award construction grants or loans that fail to meet this winter standard.

There are a number of ambient water quality standards that are likely violated by CSO discharges. These may include periodic violations of several heavy metals (lead, copper and zinc) which are associated with the storm water portion of the discharges. The water quality impact of most concern is from the potential human health threat from discharge of human wastes. The bacteria standard to protect contact recreational activities is in OAR 340-41-445(2)(e):

"...Organisms of the coliform group where associate with fecal sources (MPN or equivalent MF using a representative number of samples). Freshwaters: A log mean of 200 fecal coliform per 100 milliliters based on a minimum of five samples in a 30-day period with no more than ten percent of the samples in the 30-day period with no more than ten percent of the samples in the 30-day period exceeding 400 per 100 ml."

OAR 340-41-445(2)(f) also applies:

"Bacterial pollution or other conditions deleterious to waters used for domestic purposes, livestock watering, irrigation, bathing, or shell fish propagation, or otherwise injurious to public health shall not be allowed."

OAR 340-41-445(2)(k-1) apply:

"(k) Objectionable discoloration, scum, oily sleek or floating solids, or coating of aquatic life with oil films shall not be allowed;

(1) Aesthetic conditions offensive to the human senses of sight, taste, smell, or touch shall not be allowed."

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Existing Federal Rules Regulating CSO's

The National Combined Sewer Overflow Control Strategy was published in the August 10, 1989 Federal Register. The major requirements are that all CSO's must meet minimum technology-based limitations, and must meet any applicable state water quality standards. The six minimum technology-based limitations are to be determined by the permit issuing authority, based on best professional judgment, and are as follows:

1. Proper operation and regular maintenance programs for the sewer system and CSO points.
2. Maximum use of the collection system for storage.
3. Review and modification of pretreatment programs to assure CSO impacts are minimized.
4. Maximization of flow to the POTW for treatment.
5. Prohibition of dry weather overflows.
6. Control of solid and floatable material in CSO discharges.

The Department has set standards for the first four of these requirements and included them in Portland's permit. The prohibition of dry weather overflows the City is working on, and will achieve by 1996 (included in an Order). The control of solid and floatable material will be achieved when water quality standards are achieved (included in an Order).

EPA has proposed a revision of their CSO Control Policy, which was put out for comment in late December, 1992. The final document has not been issued. The draft revised document was negotiated with municipalities, state regulatory agencies, and other interested parties. It differs from the original policy as follows:

1. Three more technology based limitations are added - pollution prevention, public notification, and monitoring. These are less effluent limitations than program requirements.
2. States are strongly urged to review their water quality standards, and where appropriate change them to allow higher wet weather standards. Existing beneficial uses must be protected.

Memo To: Mike Downs
April 19, 1993
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3. If a municipality complies with the nine technology based limitations, and meets one of the following standards, then it is "presumed" to be in compliance with applicable Clean Water Act requirements (including state water quality standards).

- No more than six overflows per year in an urban area; or
- Elimination or capture and treatment of 85% by volume of system wide discharges on an annual basis; or
- An equivalent reduction by mass of pollutants to 85% volume reduction above.

"HOWEVER, THIS PRESUMPTION WILL NOT APPLY IF THE PERMITTING AUTHORITY DETERMINES THAT THE LONG-TERM CSO CONTROL PLAN WILL NOT RESULT IN ATTAINMENT OF CWA REQUIREMENTS." [This is a quote from page 18 of the draft revised policy.]

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 7, 1993

To: Mike Downs

From: Barbara Burton

Subject: Other State Standards for CSO Discharges - FYI

I keep hearing in the media and from Portland either outright statements or statements that imply that Portland's CSO design standards are the most stringent in the country. This is not true. It's not even true that the standards for Portland are the most stringent in Oregon. Sixteen states do not allow any combined sewer systems at all, and another 15 (like Oregon) allow very few combined sewer systems. The following information is from a March, 1992 EPA report comparing CSO design standards.

Number of states not allowing combined sewer systems at any discharge rate: 16

Number of states with 1 to 5 combined sewer systems: 15

Number of municipalities in Oregon with separate sewer systems (no combined sewer discharges allowed): approximately 180

States with CSO discharge standards more stringent than Oregon: Illinois, Michigan, and Vermont (of nine states total that have established standards discussed in report)

(OVER)

Memo To: Mike Downs
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The EPA report information describing the state standards is not detailed. A summary is provided below of discharge standards as described for the nine states listed in the report. These standards are of two types: so many discharges allowed per time period (such as 3 discharges permitted in a 10 year period); and discharges are allowed when sewer system flows exceed a certain amount (such as Portland must provide secondary treatment for up to 3 times the dry weather flow).

Using Portland as an example, they are required to provide secondary treatment for flows up to three times the dry weather flow (defined as 3 times 100 million gallons per day). When flows in the sewer system exceed 300 million gallons per day (currently approximately 93 days/year), then they will be required to provide primary treatment. They will be allowed 3 discharges per 10 years where no treatment is provided for the discharges.

State	Frequency/Flow, Discharges Allowed	
	Untreated Discharges	Primary Effluent Discharges
Oregon	3/10 years	> 3X dry wthr flow (?)*
Cal.	8/year	
Illinois	>10X dry wthr flow	Unlimited
Mass.	4/year	
Michigan	1/10 years	1/year
Rhode Is	1/year	Unlimited
Wash.	1/year	
Wisc.	1.7/year	
Vermont		
No cont	1/2 years	
Contact	0 allowed	

* Construction of wet weather or primary treatment facilities, and allocation of waste loads is contingent on EQC approval. It is assumed that primary treatment will be sufficient to meet water quality standards. Secondary treatment is required up to three times dry weather flow.

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 19, 1993

To: Mike Downs
From: Barbara Burton
Subject: Oregon Municipalities That Have Eliminated CSO
Discharges Since 1980

The 1980 Needs Survey (prepared every two years for EPA) listed the following Oregon municipalities as having combined sewers. All of them have either completed sewer separation or have otherwise eliminated CSO discharges, or are scheduled to do so within the next few years.

Albany
Aumsville
Coos Bay
Cottage Grove
Creswell
Dallas
Gervais
Gladstone - scheduled for elimination 1995?
Grants Pass
Huntington
Independence
Jefferson
Klamath Falls
La Grande
Lebanon
Monmouth
Myrtle Point
Newport
North Bend
Ontario
Oregon City - scheduled for separation by end of 1993
Pendleton
Roseburg
Salem
Silverton
St. Helens
Woodburn

Municipalities remaining with CSO's:

Portland - to be controlled by year 2011
Astoria - to be controlled by year 2022
Corvallis - to be controlled by year 2001
The Dalles - to be controlled by year 1998
McMinnville - to be controlled by year 2000

SEWAGE DISPOSAL DATA FOR WILLAMETTE VALLEY CITIES

NAME OF CITY	POP. 1930	PRESENT SEWER FACILITIES										RECOMMENDED IMPROVEMENTS IMMEDIATE										
		None	Combined System	Separate System	Per cent Sewered	Number of Sewer Outlets	Present Treatment Facilities	EFLUENT DISCHARGED INTO (NAME OF STREAM)	Estimated Low Water Flow of Stream - c.f.s.	Miles Flow to Willamette River	Planes willamette River miles above Sallwood Br.	REMARKS	New Sewer System	Extension of Sewer System	Intercepting Sewer	Sewage Pumping	Primary Treatment	Final Treatment	Chlorination of Effluent	None	REMARKS	
Albany	5325	x			95	11	0	Willamette Riv.	2200	-	101											
Amity	438	x						Salt Creek	1-	37	38	via Yamhill River	?	x	x	x	?	?				
Aumsville	153	x						Mill Creek	200	15	68											x
Aurora	215	x						Pudding Riv.	50	6	18											?
Banks	209	x						Dairy Creek	10	51	11	via Tualatin River										x
Barlow	40	x						Molalla River	40	3	18											x
Beaverton	1138	x						Beaverton Cr.	1-	43	11	via Tualatin River	x		?	x	x	?				
Brownsville	746	x			15	2	0	Calapooya Riv.	15	32	101		x		?	x	?	?				
Canby	744	x						Molalla River	40	3	18		x		?	x	?	?				
Carlton	749	x			95	2	(a)	N. Fk. Yamhill Riv.	10	20	38	via Yamhill River										2 Plants required
Coburg	263	x						Small Creek	0+	2	154											x
Cornelius	487	x						Tualatin River	20	44	11		x		?	x	?	?				
Corvallis	7585	x			95	5	0	Willamette Riv.	2100	-	113			x	x	x						
Cottage Grove	2473	x			85	2	0	Willamette Riv.	15	-	185			x	?	x	?	?				
Creswell	345	x						Small Creek	0+	2	173											?
Dallas	2515		x		80	1	(a)	Rickreall Cr.	3	12	72					x	x					
Dayton	375	x						Yamhill Riv.	35	5	38					?						?
Donald	114	x						Small Creek	0+	2	18	via Pudding River										x
Dundee	232	x						Willamette Riv.	3300	-	35											x
Estacada	524	x			80	1	0	Clackamas Riv.	550	24	8											x
Eugene	18901	x			99	1	0	Willamette Riv.	500	-	160				x	x						
Falls City	494	x						Luckiamute Riv.	1-	27	90											?
Forest Grove	1859		x		99	1	(b)	Tualatin River	20	49	11					?	x					
Gaston	227	x						Tualatin River	1-	55	11											x
Gervais	254	x						Small Creek	0+	29	18	via Pudding River										x
Gladstone	1348	x			75	2	0	Clackamas Riv.	580	1	8			x	x	x						?
Gresham	1635	x						Johnson Creek	1-	14	2			x			x	x				
Halsey	300	x						Muddy Creek	1-	18	116											x
Harrisburg	575	x			50	1	0	Willamette Riv.	1900	-	142			x	?	x						
Hillsboro	3039		x		50	1	(a)	Tualatin River	20	38	11			x	x	x	x					
Hubbard	330		x		95	1	(a)	Mill Creek	0+	11	18	via Pudding River										?
Independence	1248	x			60	1	0	Willamette Riv.	2600	-	79			x	x	x						
Jefferson	391	x						Santiam Riv.	350	9	91			?		?	?					?
Junction City	922	x						Willamette Riv.	2300	-	144			x		?	x					
Lafayette	350	x						Yamhill Riv.	35	8	38			?		?	?					?
Lebanon	1851	x			95	1	0	So. Fk. Santiam R.	35	28	91	via Santiam River				x	x					
M ^c Minville	2917	x			95	7	0	Yamhill River	25	15	38				x	x	x					
Milwaukie	1767	x			40	1	0	Willamette R.	4000	-	2			x		x	x					
Molalla	655	x						Creamery Cr.	1-	22	18	via Pudding River	x		?	x	?					
Monmouth	906		x		99	1	(a)	Ash Creek	0+	4	79				x	x						?
Monroe	227	x			30	1	0	Long Tom Riv.	20	14	126											x
Mt. Angel	979		x		90	1	(a)	Small Creek	0+	27	18	via Pudding River				x	x					?
Newberg	2951		x		90	4	(a)	Willamette Riv.	3300	-	35	3 Small Septic Tanks	x		?	x						Relief Sewers for Storm Water
Oregon City	5761	x			98	13	0	Willamette Riv.	3400	-	9				x	x	x					
Orengo	40	x						Rock Creek	1-	38	11	via Tualatin River										x
Oswego	1285		x		10	1	0	Willamette Riv.	4000	-	4	Private Sewer Only	x		?	x						
Philomath	694	x						Marys River	5	10	113			x		?	x	x				
Portland	301815	x			98	55	0	Willamette Riv.	4000	-					x	x	x					
Salem	26266	x			99	5	0	Willamette Riv.	3100	-	68				x	x	x					
Sandy	284	x						Small Creek	1-	21	8	via Clackamas River										x
Scio	258	x						Thomas Creek	1-	22	91	via Santiam River										x
Scotts Mills	153	x						Butte Creek	5-	28	18	via Pudding River										x
Sheridan	1008	x						Yamhill River	35	40	38			x		?	x	?	?			
Sherwood	382		x		80	4	(a)	Cedar Creek	1-	19	11	via Tualatin River										?
Silverton	2462		x		90	2	0	Silver Creek	10	43	18	via Pudding River			x	?	x	x				
Springfield	2364	x			75	1	0	Willamette Riv.	500	-	164					x	x	?	?			
Stanton	797	x						No. Fk. Santiam R.	90	28	91	via Santiam River	x		?	x						
St. Paul	148	x						Small Creek	0+	7	28											x
Tualatin	193	x						Tualatin River	20	8	11											x
West Salem	974	x			95	2	(a)	Willamette Riv.	3100	-	68	Septic Tank on Outlet			?	x	x					
West Linn	1956	x			60	7	0	Willamette Riv.	3400	-	9				x	x	x					
Willamina	360	x						Yamhill River	35	47	38			?		?	?	?	?			
Woodburn	1675	x			90	4	(c)	Mill Creek	0+	15	18	via Pudding River			x	x	x					
Yamhill	390	x						No. Fk. Yamhill R.	10	25	38	via Yamhill River	?			?	?	?	?			
Turner	283	x						Mill Creek	200	10	68											x

Notes
 (a) Septic Tank
 (b) Clarification Tank - separate Sludge Digestion
 (c) Septic Tanks with Contact Beds
 x Indicates Information or Definite Recommendations
 ? Indicates Uncertainty More Detailed Study Necessary.

STATE RECONSTRUCTION ADVISORY BOARD
 CONSULTING ENGINEERS ON SEWAGE DISPOSAL
 Ray E. Koon
 John W. Cunningham
 Robert G. Dieck

FIG. 3

To accompany report of August, 1935.

Date: 4-12-93 3:36pm
From: Barbara Burton:WQ:DEQ
To: Fred Hansen:OD
cc: Barbara Burton:WQ:DEQ, Mike Downs
Subj: Relative Cost of Portland CSO Project

Mike asked me to prepare information at Commissioner Lorenzen's request, and send it through you. The question was how expensive is the Portland CSO project on a per capita basis, compared to other plant expansions/sewer projects. The short answer is that the Portland project will be more expensive than some projects we have required, but less expensive than others on a per capita basis.

I looked at the eleven projects we funded in part in the past three years, where I could easily locate the project costs/local share/population data. All costs listed are total capital cost of project that the locals had to come up with. Where the project involved abandonment of an existing septic tank and connection to the sewer, a \$800/capita expense is added (these costs are born by the homeowner, and do not appear in the capital costs we track). The Portland data is listed first:

Municipality: Portland
Total local cost (assuming no grant funds): \$500m to \$1 billion
Per capita cost: \$1111 to \$2222
Type of project: combined sewer overflow elimination

Municipality: Prineville
Total local cost: \$488,000
Per capita cost: \$88
Type of project: Plant upgrade

Municipality: Stanfield
Total local cost: \$450,000
Per capita cost: \$275
Type of project: Plant upgrade

Municipality: Siletz
Total local cost: \$842,000
Per capita cost: \$652
Project: Plant upgrade

Municipality: Fossil
Total local cost: \$247,000
Per capita cost: \$619
Project: Plant upgrade

Municipality: Bay City
Total local cost: \$1,661,000
Per capita cost: \$1539
Project: Plant upgrade

Municipality: Sweet Home
Total local cost: \$1,146,000

Per capita cost: \$164
Project: Plant upgrade

Municipality: Oregon City, HOPP area
Total local cost: \$3,227,000
Per capita cost: \$2698
Project: Sewer area of failing septic tanks

Municipality: Brooks
Total local cost: \$1,837,000
Per capita cost: \$5052
Project: Provide sewers, treatment plant for area of failing septic tanks

Municipality: Albany, North Albany area
Total local cost: \$6,124,000
Per capita cost: \$2131
Project: Provide sewers in area of failing septic tanks

Municipality: Mt. Angel
Total local cost: \$1,270,000
Per capita cost: \$458
Project: Plant upgrade

Municipality: Corvallis, W. Philomath Blvd
Total local cost: \$1,089,000
Per capita cost: \$8060
Project: Provide sewers in area of failing septic tanks

Comments on the above information:

1. All of the above projects have significant grant dollars which offset project costs, and several of them also got block grants, which means that the above project costs are much lower than the total project costs. Only those dollars the community was required to provide as their match are included above. Portland will probably not get significant (if any) grant funds. This all means that while the Portland project may be more expensive than many recent projects, in the future all projects will be more expensive making the Portland project less expensive relative to other projects.
2. Sewer projects tend to be more expensive than simple plant upgrades and expansions, as can be seen above. Since grants were tied in to plant expansions and not sewer projects generally, the above information may be somewhat misleading as a comparison with the Portland project. We do not get cost information for sewer projects unless a grant or loan is applied for to finance.

Let me know if more/different information is needed.

Date: April 14, 1993

To: Files

From: Barbara Burton

Subject: Location of Upstream Major Point Source Dischargers
That Could Affect Bacteria Levels in Portland

Types of point source discharges that can significantly affect ambient fecal coliform bacteria levels:

- Combined sewer overflows - occur when it rains, year around
- Sanitary sewer system overflows - typically only occur when groundwater is high, major storms (December, January, February)
- Pulp mill discharges - Klebsiella bacteria show up as fecal coliform in testing, although they are not of animal origin
- Start of Portland CSO discharge points - River Mile 18 on Willamette
- Estimated distance of discharges that could impact bacterial levels in Willamette River at Portland, winter flow conditions - upstream to Eugene (RM 178)
- Estimated distance of discharges that could impact bacterial levels in Willamette River at Portland, summer flow conditions - upstream to Canby or Newberg (RM 33 or 50, respectively)

Unless otherwise noted, the following only discharge properly disinfected effluent, with no recurring discharge of untreated human wastes, or discharge pulp mill effluent (Klebsiella bacteria). Location of upstream dischargers in order by river mile:

Kellogg Creek - 18.5
Oak Lodge - 20.1
Tri-City - 25.2 - Overflows from Oregon City and West Linn
James River pulp mill, West Linn - 26.4
Smurfit pulp mill, Oregon City - 27.5
Tualatin River - enters at 28.5
 Durham - 9.5
 Rock Creek - 38.0

Memo To: Files
April 14, 1993
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Hillsboro - 44.4
Forest Grove - 56.9 - Winter overflows
Canby - 33.0
Newberg - 50.3
McMinnville - enters at 54.9 after 12.2 miles in Yamhill
system - Some overflows
Salem - 78.2 A few days of overflows each winter
Albany - 119.0 Less than 20 days of overflows each winter
Corvallis - 130.8 Combined sewers, discharges during heavy
rains year around
Pope and Talbot, Halsey - 147.2
Eugene - 178.0

Known wet weather discharges of raw sewage:

Oregon City - On schedule to eliminate
West Linn - On schedule to eliminate
USA Pump Station #3 - On schedule to eliminate
Forest Grove - On schedule to eliminate
Salem - Currently on plan
Albany - No schedule yet, but recently separated sewers
Corvallis - On schedule to eliminate

Known dry weather discharge of raw sewage in area of influence
(about river mile 50) - NONE expected after 1995. Oregon City
and West Linn are on Stipulation and Final Orders and are in the
process of eliminating overflows.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY,) STIPULATION AND FINAL ORDER
OF THE STATE OF OREGON,) No. WQ-NWR-91-75
) MULTNOMAH COUNTY
Department,)
)
v.)
)
CITY OF PORTLAND,)
)
Respondent.)
)

WHEREAS:

1. On August 5, 1991, the Department of Environmental Quality (Department or DEQ) issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 100807 (Permit) to the City of Portland (Respondent), pursuant to Oregon Revised Statutes (ORS) 468.740 and the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, as amended. The Permit authorizes the Respondent to construct, install, modify or operate waste water treatment control and disposal facilities (facilities) and discharge adequately treated waste waters into the Columbia River and Willamette River, waters of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expires on March 31, 1996.

2. Respondent's sewage collection system is comprised in part of combined sewers designed to collect both sanitary sewage and storm runoff water. The combined sewer system is designed and intended to collect and transport all sanitary sewage to Respondent's sewage treatment plant during periods of dry weather;

1 Respondent's sewage treatment plant during periods of dry weather;
2 however, during some periods of wet weather, the combined sanitary
3 sewage and storm runoff entering the system exceeds the system's
4 capacity to collect and transport sewage to the sewage treatment
5 plant. At such times, the excess combined sanitary sewage and storm
6 runoff are discharged through Combined Sewer Overflows directly to
7 the Willamette River and Columbia Slough, waters of the state,
8 without treatment. Respondent's system includes 54 Combined Sewer
9 Overflows. In addition, Respondent owns and operates sewage pump
10 stations, one of which, the Ankeny Pump Station, may not be capable
11 of pumping all incoming combined sanitary sewage and storm runoff
12 during periods of wet weather. At such times, combined sanitary
13 sewage and storm runoff are discharged from the Ankeny Pump Station
14 directly to the Willamette River without treatment. The discharges
15 of combined sanitary sewage and storm runoff from the Combined Sewer
16 Overflows and the Ankeny Pump Station (Discharges) may cause
17 violations of Oregon's water quality standards for Fecal Coliform
18 bacteria and possibly other parameters in the Columbia Slough and
19 the Willamette River.

20 3. Respondent's prior NPDES permit, issued on September 18,
21 1984, did not expressly identify the combined sewer overflow
22 discharge points that are part of the sewer system. Prior to the
23 development of the Department's final draft 'Oregon Strategy for
24 Regulating Combined Sewer Overflows (CSOs)' on February 28, 1991, as
25 a matter of policy the Department did not always list CSO discharge
26 points in an NPDES permit but, in many instances, issued permits for

1 an entire sewer system. EPA's Region 10 office approved the
2 issuance of such permits. Respondent's 1984 NPDES permit is a
3 permit for the sewer system, which includes CSO outfalls, but did
4 not contain specific effluent limitations for CSOs.

5 4. Since the adoption of water quality standards for the
6 Willamette Basin (included in Oregon Administrative Rules 340-41-
7 445) by the Environmental Quality Commission in 1976, Respondent
8 has discharged combined sanitary sewage and storm runoff and may
9 have caused violations of water quality standards. These water
10 quality standards include limitations on visible solids and
11 floatable material.

12 5. DEQ and the Respondent recognize that until new or
13 modified facilities are constructed and put into full operation,
14 Respondent may cause violations of the water quality standards at
15 times.

16 6. Respondent presently is conducting or preparing to
17 conduct studies and facilities planning in order to determine the
18 quantity and quality of combined sanitary sewage and storm runoff
19 discharged from its sewage system, and to determine appropriate
20 methods and time schedules to eliminate violations of water quality
21 standards.

22 7. The Department and Respondent recognize that the
23 Environmental Quality Commission (Commission) has the power to
24 impose a civil penalty and to issue an abatement order for
25 violations of water quality standards. Therefore, pursuant to ORS
26 183.415(5), the Department and Respondent wish to settle those

1 possible past violations referred to in Paragraph 4 and to limit
2 and resolve the future violations referred to in Paragraph 5 in
3 advance by this Stipulation and Final Order. In light of the
4 recent development of EPA and Departmental strategy and policy
5 governing permitting and evaluation of CSO impacts on water
6 quality, imposition of a civil penalty at this time is not deemed
7 appropriate by the Department.

8 8. This Stipulation and Final Order is not intended to
9 limit, in any way, the Department's right to proceed against
10 Respondent in any forum for any past or future violations not
11 expressly settled herein.

12
13 NOW THEREFORE, it is stipulated and agreed that:

14 9. The Commission hereby issues a final order:

15 a. Requiring the Respondent to eliminate all
16 Discharges that violate applicable water quality standards from
17 November 1 through April 30 except during storms greater than or
18 equal to a storm with a five year return frequency and to eliminate
19 all Discharges that violate applicable water quality standards from
20 May 1 through October 31 except during storms greater than or equal
21 to a storm with a ten year return frequency, as soon as reasonably
22 practicable, but no later than the following schedule:

23 (1) By no later than September 1, 1991, the
24 Respondent shall submit to the Department a draft scope of study
25 for the facilities plan. The scope of study shall include an
26 outline of the final facilities plan content, and sufficient detail

1 on how the necessary information is to be obtained to complete the
2 facilities plan. The facilities plan shall, at a minimum, include a
3 characterization of the Discharges including volume, times of
4 discharge, and bacterial and chemical content; alternatives for
5 eliminating water quality violations attributable to CSO's; the
6 environmental and other impacts of the alternatives evaluated; the
7 estimated cost of the alternatives; an evaluation of the impact of
8 the CSO control alternatives on the Columbia Blvd. wastewater
9 treatment plant; if the CSO alternatives will cause permit
10 violations at the treatment plant, an evaluation of alternatives to
11 expand or upgrade the treatment plant so as to maintain compliance
12 with existing discharge standards; recommended control alternatives
13 including any required plant upgrades that will result in compliance
14 with water quality standards for the CSO discharges and compliance
15 with the existing treatment plant discharge standards; a detailed
16 implementation schedule for completing the recommended actions; a
17 detailed demonstration that the recommended actions are the least
18 cost/environmentally sound alternatives that will achieve the
19 discharge limitations specified in this order; and a mechanism for
20 financing the recommended improvements. The facilities plan shall
21 include detailed implementation plans and financing plans for
22 attaining compliance with applicable water quality standards at all
23 CSO's alternatively: (1) for attaining compliance at all CSO's by
24 December 1, 2006; and (2) for attaining compliance at all CSO's by
25 December 1, 2011;

1 (2) By no later than October 1, 1991, the
2 Respondent shall submit to the Department a draft scope of study for
3 an interim control measures study. The interim control measures
4 study shall include a brief narrative description of each control
5 measure; which CSO's would be affected by each control measure; the
6 estimated impact of each control measure on quantity, quality, and
7 timing of discharge; the estimated impact of each control measure on
8 beneficial uses; the estimated capital cost and annual operation and
9 maintenance cost for each control measure; and the estimated time
10 needed to install or initiate each control measure. The interim
11 control measures to be evaluated and included in the interim control
12 measures study shall include but are not limited to the following:
13 screens and other technologies for removing large solids and
14 floatables; maximization of in-line storage including passive and
15 automatic regulators; removal of new and/or existing roof drain
16 connections from the sewer system; increased line flushing including
17 an evaluation of timing and location of flushing activities;
18 increased street sweeping; the review and modification of
19 pretreatment program; and increased cleaning of catch basins;

20 (3) Within thirty (30) days of receiving written
21 comments from the Department, the Respondent shall submit to the
22 Department final approvable scopes of study for interim control
23 measures study and the facilities plan;

24 (4) By no later than December 31, 1992, the
25 Respondent shall submit the portion of the facilities plan that
26 characterizes Combined Sewer Overflows;

1 (5) By no later than December 31, 1992, the
2 Respondent shall submit the draft interim control measures study to
3 be used by the Department and the Commission to determine
4 appropriate and reasonably practicable interim control measures to
5 reduce water quality impacts until such time as final compliance is
6 attained.

7 (6) Within thirty (30) days of receiving written
8 comments from the Department, the Respondent shall submit to the
9 Department and the Commission the final interim control measures
10 study that is approvable by the Department as to content and
11 completeness;

12 (7) Upon submission of the final interim control
13 measures study, the Commission, upon recommendation of the
14 Department, shall establish the required interim control measures
15 and the schedule for their implementation;

16 (8) By no later than July 1, 1993, the Respondent
17 shall submit a draft facilities plan to the Department;

18 (9) Within six months of receiving written
19 comments from the Department, the Respondent shall submit to the
20 Department a final facilities plan that is approvable by the
21 Department as to content and completeness. The Department will
22 review the facilities plan and prepare recommendations to the
23 Commission for CSO control strategies and schedules for implementing
24 them. Final approval of the control strategies and schedules to
25 eliminate applicable water quality standards violations attributable
26 to CSO's will be by the Commission;

1 (10) By no later than October 1, 1996, the
2 Respondent shall remove all large solids and floatables from
3 discharges to the Columbia Slough;

4 (11) By no later than December 1, 1997, the
5 Respondent shall submit final engineering plans and specifications
6 for construction work required to comply with Section 9(a)(13);

7 (12) By no later than May 1, 1998, the Respondent
8 shall begin construction required to comply with Section 9(a)(13);

9 (13) By no later than December 1, 2001, the
10 Respondent shall eliminate discharges that violate applicable water
11 quality standards, subject to the storm return frequencies specified
12 in Paragraph 9(a) of this Order, at 20 of the CSO discharge points,
13 including all discharges to Columbia Slough, consistent with the
14 facilities plan approved by the Commission;

15 (14) By no later than December 1, 2001 the
16 Respondent shall submit final engineering plans and specifications
17 for construction work required to comply with Section 9(a)(16);

18 (15) By no later than May 1, 2003 the Respondent
19 shall begin construction required to comply with Section 9(a)(16);

20 (16) By no later than December 1, 2006 the
21 respondent shall eliminate discharges that violate applicable water
22 quality standards, subject to the storm return frequencies specified
23 in Paragraph 9(a) of this Order, at 16 of the remaining CSO
24 discharge points, consistent with the facilities plan approved by
25 the Commission;

1 (17) By no later than December 1, 2006 the
2 Respondent shall submit engineering plans and specifications for
3 construction work required to comply with Section 9(a)(19);

4 (18) By no later than May 1, 2008, the Respondent
5 shall begin construction required to comply with Section 9(a)(19);

6 (19) By no later than December 1, 2011, the
7 Respondent shall eliminate discharges that violate applicable water
8 quality standards, subject to the storm return frequencies specified
9 in Paragraph 9(a) of this Order, at all remaining CSO discharge
10 points, consistent with the facilities plan approved by the
11 Commission;

12 (20) By no later than September 1 of each year that
13 this Order is in effect, the Respondent shall submit to the
14 Department and to the Commission for review an annual progress
15 report on efforts to minimize and eliminate discharges that violate
16 water quality standards. These annual reports shall include at a
17 minimum work completed in the previous fiscal year and work
18 scheduled to be completed in the current fiscal year.

19 b. Requiring Respondent to implement the interim
20 control measures as specified in Attachment 1 to this Order;

21 c. Requiring Respondent to comply with all the terms,
22 schedules and conditions of the Permit, except those modified by
23 Paragraph 9(a) above, or of any other NPDES waste discharge permit
24 or modified permit issued to Respondent while this Order is in
25 effect.

1 d. Requiring Respondent to demonstrate that each
2 discharge is in compliance with applicable water quality standards,
3 by a means approved by the Department, within twelve months of the
4 scheduled date when compliance is required in this Order. (Nothing
5 in this paragraph shall prevent the Department from enforcing this
6 Order during the twelve month demonstration period.)

7 e. Requiring Respondent to identify each discharge
8 that is converted to a storm sewer discharge only.

9 f. Requiring Respondent, in the event that Respondent
10 chooses to retain a Discharge with any connected sanitary wastes, to
11 apply for a modification of Respondent's permit requesting a waste
12 load increase and appropriately sized mixing zone. (Nothing in this
13 paragraph shall affect the Department's or the Commission's
14 discretion over granting such a request.)

15 g. Requiring Respondent, upon receipt of a written
16 notice from the Department for any violations of the Stipulation and
17 Final Order, to pay the following civil penalties:

18 (i) \$1,000 for each day of each violation of each
19 provision of the compliance schedules set forth in
20 Paragraph 9(a) and Attachment 1.

21 (ii) \$2,500 per outfall per day for each CSO
22 outfall for which Respondent fails to demonstrate
23 compliance with applicable water quality standards
24 as specified in 9(d). Discharges that are listed
25 and regulated in Respondent's Permit as may be
26

1 allowed in 9(f) shall not be subject to stipulated
2 civil penalties under the terms of this Order.

3 10. Respondent agrees that the dates specified in Paragraph 9
4 above are firm commitments for the maximum time required for the
5 completion of each task subject only to extraordinary events beyond
6 Respondent's reasonable control which causes or may cause a delay or
7 deviation in performance of the requirements of this Stipulation and
8 Final Order. In the event of such an extraordinary event,
9 Respondent shall immediately notify the Department verbally of the
10 cause of delay or deviation and its anticipated duration, the
11 measures that have been or will be taken to prevent or minimize the
12 delay or deviation, and the timetable by which Respondent proposes
13 to carry out such measures. Respondent shall confirm in writing
14 this information within five (5) working days of the onset of the
15 event. It is Respondent's responsibility in the written
16 notification to demonstrate to the Department's satisfaction that
17 the delay or deviation has been or will be caused by circumstances
18 beyond the control and despite due diligence of Respondent. If
19 Respondent so demonstrates, the Department shall extend times of
20 performance of related activities under the Stipulation and Final
21 Order as appropriate. Circumstances or events beyond Respondent's
22 control include, but are not limited to, acts of nature, unforeseen
23 strikes, work stoppages, fires, explosion, riot, sabotage, or war.
24 Increased cost of performance or consultant's failure to provide
25 timely reports shall not be considered circumstances beyond
26 Respondent's control.

1 11. Regarding the violations set forth in Paragraph 4 and 5
2 above, which are expressly settled herein without penalty,
3 Respondent and the Department hereby waive any and all of their
4 rights to any and all notices, hearing, judicial review, and to
5 service of a copy of the final order herein. The Department
6 reserves the right to enforce this order through appropriate
7 administrative and judicial proceedings.

8 12. Regarding the schedule set forth in Paragraph 9(a) above,
9 Respondent acknowledges that Respondent is responsible for
10 complying with that schedule regardless of the availability of any
11 federal or state grant monies.

12 13. The terms of this Stipulation and Final Order may be
13 amended by the mutual agreement of the Commission and Respondent,
14 after notice and opportunity for public comment; or with respect to
15 the compliance schedules or limitations herein, by the Commission if
16 it finds, after review and evaluation of the facilities plan
17 including alternative discharge limitations and the alternative
18 schedules required under Paragraph 9(a)1, that modification of this
19 Order is reasonable.

20 14. Respondent acknowledges that it has actual notice of the
21 contents and requirements of the Stipulation and Final Order and
22 that failure to fulfill any of the requirements hereof would
23 constitute a violation of this Stipulation and Final Order and
24 subject Respondent to payment of civil penalties pursuant to
25 Paragraph 9(e) above.
26

1 15. This Stipulation and Final Order shall terminate 60 days
2 after Respondent demonstrates full compliance with the requirements
3 of the schedule set forth in Paragraph 9(a) above.

4 16. If it becomes necessary to allocate wasteloads as a result
5 of either the Willamette River or the Columbia River being
6 designated as Water Quality Limited, the parties agree that
7 Respondent's reductions in discharges pursuant to this agreement
8 will be considered as contributing to Respondent's share of the
9 obligation to achieve water quality standards.

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RESPONDENT

8/1/91
Date

Mike Lindberg for
(Name) J. E. Bud Clark
(Title) Mayor

Barbara Clark by Craig Prosser
Barbara Clark, Auditor

DEPARTMENT OF ENVIRONMENTAL QUALITY

AUG 4 5 1991
Date

Fred Hansen
Fred Hansen, Director

FINAL ORDER

IT IS SO ORDERED:

COMMISSION

ENVIRONMENTAL QUALITY

AUG 4 5 1991
Date

William P. Hutchison, Jr.
William P. Hutchison, Jr., Chairman
Environmental Quality Commission

ATTACHMENT 1

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2
3
4
5 1. Respondent shall clean and/or flush sewers in three sub-
6 basins, from the diversion structures to one-half mile up the
7 sewer lines, during August, 1991 and during August, 1992. The
8 three sub-basins shall be: (a) a sub-basin representative of
9 sub-basins having the heaviest settleable solids accumulation;
10 and (b) two sub-basins expected to have average settleable
11 solids accumulation. The respondent shall estimate the volume
12 of settleable solids captured in each sub-basin during the
13 annual flushing and cleaning, and shall analyze a
14 representative sample of the settleable solids captured in each
15 sub-basin for biochemical oxygen demand, total suspended
16 solids, fecal coliform bacteria, silver, arsenic, cadmium,
17 chromium, copper, mercury, nickel, lead, zinc, and cyanide.
18 Respondent shall include all test results in the interim
19 control measures study specified elsewhere in this Order.

20
21 2. Respondent shall intensify street cleaning in three sub-
22 basins and study the effects of the intensified street
23 cleaning on reducing pollutants entering the combined sewer
24 system. Street cleaning shall be completed once per month,
25 ending when the interim control measures study is approved by
26 the Department. Respondent shall submit to the Department by

1 no later than September 1, 1991 a draft sampling program for
2 measuring the impact of the intensified street cleaning.
3 Within 30 days of receiving written comments from the
4 Department, the Respondent shall submit a final approvable
5 sampling plan and implement the intensified street cleaning
6 and monitoring program. Respondent shall include all test
7 results in the interim control measures study specified
8 elsewhere in this Order.
9

10 3. Respondent shall inspect all diversion structures on a weekly
11 basis and clean the structures as necessary to maintain
12 hydraulic performance. Respondent shall report all blockages
13 at diversion structures that result in dry weather discharges
14 on Respondent's Daily Monitoring Report submitted to the
15 Department on a monthly basis. Respondent shall record
16 whether or not a discharge is occurring from each diversion
17 structure to an outfall, as observed at each diversion
18 structure during the weekly inspections, and shall make this
19 report available to the Department upon request by the
20 Department.
21

22 4. Respondent shall modify diversion structures #SW55, WC58,
23 SJ31, E5, E7, and EC7 to assure proper hydraulic performance
24 by October 31, 1991.
25
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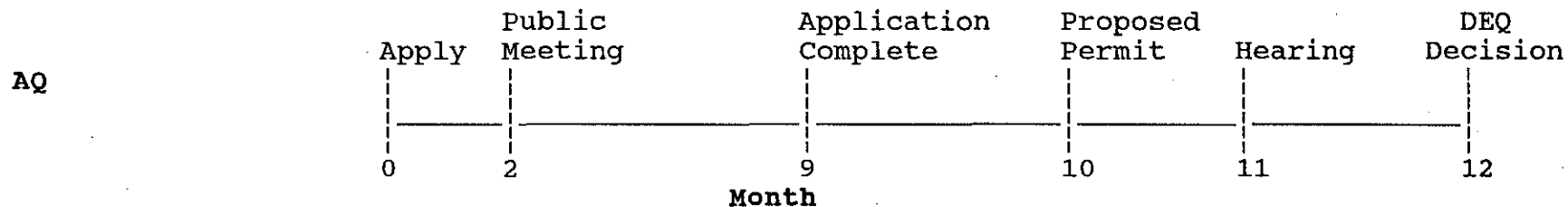
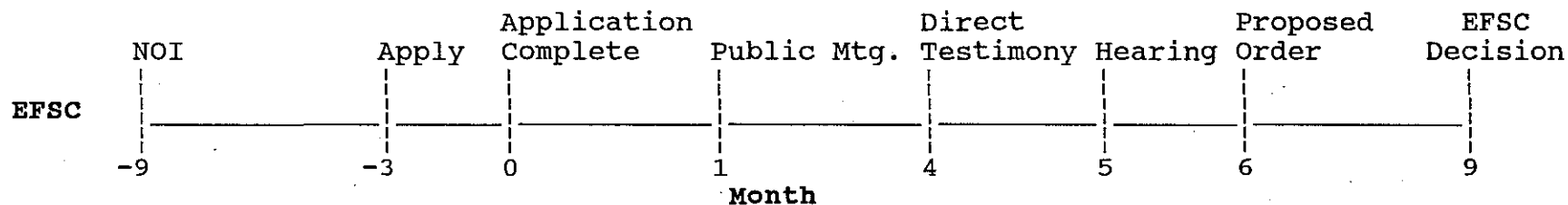
- 1 5. Respondent shall design and install two innovative, "low
2 technology" screening methods proposed by the Respondent by
3 December 1, 1991. Respondent shall evaluate the effectiveness
4 of each screening device and include the results in the interim
5 control measures study specified elsewhere in this Order.
6
- 7 6. By no later than August 1, 1992, Respondent shall evaluate the
8 feasibility of converting each Significant Industrial User with
9 batch discharges to dry weather only discharges. Upon permit
10 renewal and where reasonable, Respondent shall modify such
11 industrial discharge permits to prohibit batch discharges
12 during rain events.
13
- 14 7. Respondent shall prohibit all dischargers who request
15 Respondent's approval prior to a non-permit, periodic, or one-
16 time batch discharge from discharging during rain events.
17 Exceptions shall be made only if extenuating circumstances can
18 be demonstrated to show that it is unreasonable to apply this
19 restriction.
20
- 21 8. By September 1, 1991, Respondent shall post signs at each CSO
22 discharge location indicating the presence of the CSO
23 structure and the inadvisability of water contact activities
24 in these locations during and subsequent to rain storms.
25
26

1 9. As soon as practicable, but by no later than October 31, 1992,
2 Respondent shall install seventeen additional level flow
3 monitoring stations at diversion structures approved by the
4 Department. Respondent shall include in each flow monitoring
5 installation a telemetry device that will indicate an alarm at
6 Respondent's control terminal whenever a discharge during dry
7 weather occurs. Respondent shall attempt to eliminate the
8 immediate cause of any dry weather discharge within one hour of
9 an alarm. Respondent shall report all dry weather discharges
10 on the Daily Monitoring Report submitted to the Department
11 monthly. The Department may require flow monitoring stations
12 at additional diversion structures if dry weather discharges
13 are observed.

14
15 10. Respondent shall conduct and submit to the Department a study
16 that evaluates each CSO discharge for the presence of
17 syringes. Respondent shall submit to the Department a draft
18 study plan for evaluating the presence of syringes in CSO
19 discharges by no later than October 1, 1991. Within six
20 months of receiving written comments from the Department,
21 Respondent shall submit the study to the Department.
22
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I. AQ/EFSC PERMITS OVERVIEW

- * CAA requires Air Quality Permit prior to construction.
- * EFSC issues Site Certification. Due to our Federal Delegation these processes can not be merged. However, DOE and DEQ are cooperating.



- * Coordination Issues/Work Load

II. CURRENT STATUS

1. U.S. Generating & Coyote Springs
 - a. Submitted December 92, January 93.
 - b. A.Q. Comments
 - c. Awaiting amended application
2. Air Products/PEP
 - a. Preapplication meeting March, 1992
 - b. NOI October, 1992
 - c. A.Q. awaits monitoring plan, offset plan, application.
3. Columbia Co.
 - a. No preapplication meeting
 - b. NOI October, 1992
 - c. Public meeting 4/20

III. WORKLOAD

- * 4 projects active + 4 in NOI process + 12 potential = 20 total.
- * PSD permits are resource intensive: address entire air sheds case-by-case, site specific (4 major meetings + lots of little ones).
- * Complications:
 - a. Historically we get one PSD/yr, don't want Energy projects to take away from normal load and backlog - this is a bulge in the work load.
 - b. Proximity of sources
 - c. Degree of cooperation

IV. POSSIBLE SOLUTIONS

- * 8 projects (2000 MW) over 2 years.
- * Need to strengthen the permitting team.
- * Need two 24-month limited duration positions.
- * Fees raise part of this.
- * A surcharge of \$15,000 - 20,000/PSD application would make up the difference.
- * Will the commission support rulemaking to raise this fee?