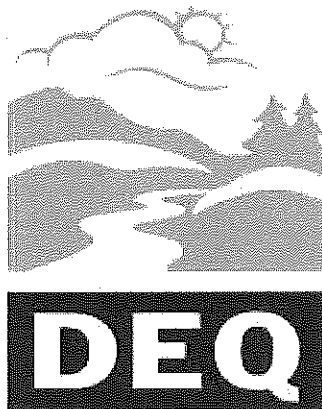


**OREGON  
ENVIRONMENTAL QUALITY  
COMMISSION MEETING  
MATERIALS 03/10/1994**



**State of Oregon  
Department of  
Environmental  
Quality**

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**Date:** March 10, 1994  
**From:** Jacqueline Greenleaf  
Policy & Planning Division  
**To:** Environmental Quality Commission  
**Subject:** Instream Water Rights



Oregon Parks and Recreation Department is one of the three agencies entitled to apply for instream water rights. Our specific charge is to quantify instream flow needs for recreational and scenic values. As you might imagine, quantifying flows for these purposes can involve more diverse criteria than is the case for fish habitat or for pollution control.

While our rule defines "Scenic Attraction", it does not specify a methodology for arriving at a specific flow or water level to protect scenic value. We have simply not addressed the gap between available systems for rating visual quality and a specific amount of water. Observers may honestly disagree as to scenically acceptable water levels, especially if the discussion expands to include the relative aesthetics of a droughty landscape and a full waterbody. While most people could probably reach agreement on the general range of a scenically acceptable water level, it can become very difficult to arrive at the specific quantity. Rather than attempt in advance to establish a detailed procedure, we have made the intuitive assumption that water levels sufficient to protect water quality, fish, and recreation will most likely protect scenic values. Time and experience may eventually allow us to arrive at a better method.

Our rule does establish a process for arriving at recreation flow levels. We are to identify the existing recreation uses, describe each in terms of its season, location, setting, and intensity, and the amount of water needed to maintain that use. We are not required to complete a full-blown recreation flow study, but instead may rely on existing sources, including the opinions of expert users. If exact data about the amount of water required for a particular activity does not exist, we may use our



best professional judgment to arrive at an estimate. After taking into account competing uses any institutional constraints such as dam releases and court cases, we then determine the monthly flows necessary to support the existing uses.

What has our actual experience with instream flows been? Frankly, we have not been as assertive as some would like. We lack the staff to invest the necessary time.

Our first priority is to protect flows on State Scenic Waterways and Federal Wild and Scenic Rivers. The urgency to quantify these flows was diminished by the Diack case. This Oregon Supreme Court decision required the Water Resources Department to quantify the flows necessary to protect scenic waterway values, and to ensure that new water rights do not degrade these flows. This has been done, so that there is *de facto* protection. So why don't we just use those WRD flows to apply for instream rights? First, WRD did not follow the procedure that is laid out in our rule, and we would have to redo the work. Second, WRD concentrated on flows necessary for boating. This is an intuitively obvious approach that undoubtedly is adequate for the purposes of the Diack decision. However, boating flows are not the sum total of water-based recreation. A flow that pleases a whitewater boater will terrify a swimmer and exclude an angler completely.

On our own, we have applied for instream water rights on the Sandy and on the Upper Klamath. Recreational flows on these rivers are immediately threatened by increasing demands for municipal water or by hydroelectric projects. We also joined ODFW on a number of their applications. We've backed off from that approach because protecting the biological needs of fish is not necessarily the same as protecting the needs of recreationists.

As important as instream flows are to us, we have had to let ODFW and WRD shoulder most of the burden. As agency experience with this unique statute grows, we will continue to look for ways to participate more actively than we have been able to thus far.

DIVISION 60

INSTREAM WATER RIGHTS

**Purpose**

**736-60-000** (1) These rules, promulgated in accordance with ORS 537.332 to 537.360, set the policy, procedures, standards, methodology, and definitions for instream water right applications made by the Oregon State Parks and Recreation Department to the Water Resources Department, for the protection of recreational values and scenic attraction.

(2) These rules set out: The methodology for determining flow requirements and water surface elevations for recreational use(s) and scenic attraction, the standard for setting the priority for processing instream water right proposals, the internal procedures for application for and coordination of instream water rights, and the process for assisting with transfers of regular water rights to instream water rights.

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360  
Hist.: PR 5-1991, f. & cert. ef. 5-17-91

**Policy**

**736-60-005** It is the policy of the Parks and Recreation Department to apply to the Water Resources Department for instream water rights on the streams, rivers, lakes, and wetlands of the state to protect scenic attraction and recreational values for the benefit of present and future generations of citizens of this state.

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360  
Hist.: PR 5-1991, f. & cert. ef. 5-17-91

**Definitions**

**736-60-010** As used in these rules:

(1) "Application" means the instream water right application form developed by the Water Resources Department as referenced in OAR 690-77-020(1).

(2) "Commission" means the Parks and Recreation Commission.

(3) "Department" means the Oregon State Parks and Recreation Department.

(4) "DEQ" means the Department of Environmental Quality.

(5) "Director" means the director of the Parks and Recreation Department.

(6) "Instream Water Rights Coordinator" or "Coordinator" means the staff person in the Department whose responsibility includes receiving, reviewing, and preparing all material pertinent to filing for and obtaining an instream water right from the Water Resources Department.

(7) "Instream Water Right Study" means a recreation flow requirement proposal developed by the Department or the public-at-large utilizing the Oregon Recreation Methodology.

(8) "ODF&W" means the Oregon Department of Fish and Wildlife.

(9) "Oregon Recreation Methodology" means the methodology developed by the Department to determine the recreation flow or water level requirements for scenic attraction and recreational values of a stream, river, lake or wetland. (See OAR

736-60-015.) Definitions specific to this methodology are as follows:

(10) "Recreation Flow Requirement" means the amount of water needed to accommodate the predominant recreational use(s) or scenic attraction occurring during any given month. This is determined by the Oregon Recreation Methodology (section (9) of this rule). This requirement may be quantified as:

(a) An amount of flow in cubic feet per second (cfs), such as in a stream or river;

(b) A water surface elevation above mean sea level (feet); or

(c) Acre feet.

(11) "Amount of Recreation Use" means the number of users that participate in each specific recreational use. This is usually expressed in number of visitors over a certain period of time (e.g., one visitor in a 24 hour period is one visitor day).

(12) "Competing Uses" means all water uses that are perceived to be in competition with recreational uses, including both competing instream recreational uses (for example white water rafting and fishing) and out of stream uses.

(13) "Experience Setting" means a description of the natural surroundings, land, recreation facility developments, and public recreation use conditions encountered by recreational users.

(14) "Location of Recreational Use" means the site or river segment where the recreational activity takes place.

(15) "Time Period of Recreation Use" means the time period, by month, for any given recreation use.

(16) "Type of Recreational Use" means specific recreational use(s) that are stream flow or water-level dependent (for example boating, fishing, white water kayaking).

(17) "Scenic Attraction" means a picturesque natural feature or setting of a stream, river, or lake, including, but not limited to, waterfalls, rapids, pools, springs, wetlands, and islands that may create viewer interest, fascination, admiration, or attention.

(18) "WRD" means the Water Resources Department.

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360  
Hist.: PR 5-1991, f. & cert. ef. 5-17-91

**Recreation Flow Requirement Methodology**

**736-60-015** (1) Recreation flow requirements requested in Department instream water right applications shall be based on the methodology in this section. According to this methodology, the recreation flow is the flow or water level needed to accommodate the predominant recreational use(s) occurring during any given month. The Department shall make this determination using the following procedure:

(a) Each existing type of recreational use shall be identified and fully described. Each type may have separate, discrete, instream flow requirements and seasons of use. Some stream flow dependent uses may occur on the riverbank including, but not limited to, scenic attraction and wildlife viewing, camping, hiking, boating access, and picnicking;

(b) Each type of recreational use shall be described as follows and according to the definitions (OAR 736-60-010):

(A) Time period of recreational use;



**OREGON ADMINISTRATIVE RULES**  
**CHAPTER 736, DIVISION 60 — STATE PARKS AND RECREATION DEPARTMENT**

(B) Stream flow, or range of flows, that support the use depicted by month, or by half-month if appropriate, and quantified in cubic feet per second (cfs), or, if for a lake or other standing water body, in feet above mean sea level or acre feet;

(C) Location(s) of recreational use. Locations may be described in any way that provides sufficient details to identify a common location for the use, including by reference to the Environmental Protection Agency's stream reach numbering system or other such documented system in wide use;

(D) Experience setting. Reference to the "Recreation Opportunity Spectrum" system of the U.S. Forest Service is helpful, but not mandatory. A discussion of current and planned recreation developments and management programs must be included;

(E) Amount of recreational use. The popularity of a stream, river, lake, or wetland, while not the sole basis for instream water rights requests, must be taken into account. The Department will use its best efforts to obtain quantifiable data on actual recreational use. Professional judgment described in relative terms (i.e., low, moderate, or high) may be used when precise data are not available;

(F) Competing use(s), if any;

(G) Institutional constraints. These may include, but are not limited to:

(i) Recreation use permits;

(ii) Fishing regulations;

(iii) Dam releases;

(iv) Minimum perennial streamflows or other instream water rights;

(v) Court decisions;

(vi) Standards contained in OAR 690-77-045 (WRD);

(vii) Acknowledged comprehensive land use plan of local government.

(c) Depict the flows needed by month to accommodate the predominant recreational use(s), and explain how these flows were established.

(2) The following sources may be consulted for information described in subsections (1)(a) and (b) of this rule and for determining recreation flow requirements. Other appropriate sources may be used:

(a) "Recreational Values on Oregon Rivers" prepared for the Northwest Power Planning Council (1987) by State Parks and Recreation Department;

(b) Local, state, and federal managing agency plans, records, and reports;

(c) Professional guide service records (i.e., trip logs, etc.);

(d) River recreation guides and publications;

(e) Professional or expert opinion, i.e., published authors, professional guides, agency staff, etc.;

(f) On-site surveys of recreational users;

(g) Water Resources Department records, basin reports, and water use programs pertinent to recreation flow;

(h) U.S. Geologic Survey and Oregon stream gauge records;

(i) Reports prepared under the National Environmental Policy Act;

(j) "Nationwide River Inventory" prepared by the National Park Service;

(k) "Oregon Outdoor Recreation Plan" (SCORP) prepared by the Department;

(l) Findings and conclusions of other instream recreation flow studies conducted using generally accepted methods where consistent with goals and policies of the Parks and Recreation Department;

(m) Recreation flow assessments conducted by WRD.

(3) In situations where recreation flow data does not exist, the instream flow requirements of ODFW or DEQ, whichever is higher, may satisfy the recreation flow requirement necessary for recreational value and scenic attraction.

(4) Staff gauges or other generally established river level measuring devices shall be used to report recreation flow requirements only when a stream cross section analysis has been conducted which will allow accurate conversion to cfs. Direct measurement shall be used to determine lake water surface elevations above mean sea level necessary to maintain recreational value or scenic attraction.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the State Parks and Recreation Department.]

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

#### Responsibilities to WRD

**736-60-020** (1) The Department shall coordinate with WRD on establishing priorities for monitoring of flows of instream water rights: The Department shall coordinate with WRD watermasters to develop monitoring plans for instream water rights. The location and method of instream flow measurement shall be selected to ensure that the instream water right is adequately monitored throughout the entire reach. Monitoring plans may include:

(a) Use of volunteers and Department personnel to conduct monitoring;

(b) The frequency of monitoring;

(c) A system for reporting and enforcing violations of instream water rights.

(2) In cases where it is known that the request for flows is higher than the estimated average natural flow, as defined by WRD, the Department shall provide in the application justification for additional flow or identify the intended source of water in accordance with OAR 690-77-045(3)(e) (WRD).

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360

Hist.: PR 5-1991, f. & cert. ef. 5-17-91

#### Internal Application Process for Instream Water Right

**736-60-030** (1) While only Parks, ODF&W, and DEQ may request instream water rights, requests may be initiated by the Department, by other local, state, or federal agencies, or by the public at large.

(2) All requests and studies shall be submitted to the instream water rights Coordinator, using a typewritten or printed format and including the following information:

(a) A description of the location of recreational use, including a description of the existing flow regime by month following the Oregon Recreation Methodology (OAR 736-60-015);

(b) A summary of the study participants and a list of authors and their qualifications;

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**CHAPTER 736, DIVISION 60 — STATE PARKS AND RECREATION DEPARTMENT**

(c) The recreation flow requirement recommendation expressed in cubic feet per second, or, if for standing water body, in feet above mean sea level or in acre feet; and

(d) The date and the signature of the submitting authority, organization, or individual.

(3) The instream water rights Coordinator shall review all studies within a reasonable time for compliance with this rule and Department goals, objectives, and policies. The study may be returned to the initiator for amendment, changes, or additional justification.

(4) If the study is found to be consistent with this rule and Department goals, objectives, and policies, the Coordinator may prepare a draft application. If competing instream recreational uses exist, the Director may choose to apply for only the predominant recreational use or uses. The Director shall maintain a record of the reasons for the decision. The draft application shall contain all the information required by OAR 690-77-020.

(5) The Coordinator shall notify ODF&W and DEQ of the proposed application. Changes or corrections to the draft application suggested by DEQ and ODF&W shall be reviewed and made if they are determined to be consistent with available information, this rule, Department goals, objectives, policies, and the purposes for the instream water right application.

(6) DEQ, or ODF&W, or both, may incorporate the public uses for which they are responsible into a Department application for instream water rights in accordance with OAR 690-77-020.

(7) To the greatest extent possible, the final application shall accommodate the requests of ODF&W and DEQ, provided such amendments are consistent with available data, this rule, Department goals, objectives, and policies, and the purposes of the instream water right application. In the event the Department withdraws an application of an instream water right that was proposed by anyone other than the Department, it shall endeavor to notify the party of the reasons for withdrawal.

(8) The final application shall be signed by the Director or the Director's designated representative. If DEQ or ODF&W, or both, are combining their applications for an instream water right with the Department's application, the application must be signed by designated representatives of the respective agencies.

(9) The Coordinator shall notify affected local governments, pursuant to OAR 690-77-020(4), and, by request, any other interested parties, of the instream water right application.

(10) The Department at any time in the application process, may withdraw an application on which it is the sole signator. If the Department is a co-applicant with ODF&W or DEQ, or both, any party may withdraw its interest in the application.

(11) The priority of instream water right acquisition shall be for streams:

(a) Designated as a State Scenic Waterway, or National Wild and Scenic River;

(b) With significant statewide recreation opportunities;

(c) With recreation opportunities of regional significance;

(d) With potential of being adversely impacted by continued out of stream appropriation; or

(e) Identified as important recreational resources in comprehensive plans or regional economic strategies.

(12) Amendments, whether for greater or lesser flows than those previously granted, will be processed under the standards contained in OAR 690-77-080 (WRD).

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360  
Hist.: PR 5-1991, f. & cert. ef. 5-17-91

**Purchase, Lease, or Gift of Water Rights for Instream Water Rights**

**736-60-040** (1) The Department may purchase, lease, or accept as gifts, water rights for the purpose of transferring the water right to an instream water right for the public uses and purposes set forth in OAR 736-60-000 through 736-60-040:

(a) Water rights that may be transferred to instream water rights shall be reviewed for potential benefits and adverse impacts to recreation values and scenic attraction;

(b) Standards set out in this rule shall apply to establish priorities for water rights that are to be bought or leased;

(c) Gifts of water rights shall be accepted regardless of priorities set out in OAR 736-60-020, if the transfer does not harm recreation or scenic attraction values. Donors of gifts shall be recognized through a formal Commission process.

(2) Instream water rights are held by the Water Resources Department in the public interest in accordance with ORS 537.332 to 537.360.

Stat. Auth.: ORS 183.335(7), 183.341 & 537.332 - 537.360  
Hist.: PR 5-1991, f. & cert. ef. 5-17-91

State of Oregon  
Department of Environmental Quality

Memorandum

Date: March 10, 1994

**To:** Environmental Quality Commission  
**From:** Fred Hansen, Director  
**Subject:** Commission Work Session - The Why and How of Instream Water Rights

The Department recently completed its first set of applications for instream water rights. During the EQC review several commissioners ask that a work session be held to further discuss the issues surrounding instream water rights. We have scheduled this commission work session to address these issues.

The purpose of this work session is to further the EQC's understanding of the instream water rights issues and how your actions support the statewide instream water rights program. My intent is to have the key State agencies (OWRD, ODEQ, ODF&W, OP&RD) discuss their efforts and responsibilities in the following format:

- History and background of The Instream Water Rights Issues by the Water Resources Department (10 min.).
- Presentation on the policies, rules and process developed by each authorized agency for the preparation and submission of instream water rights applications. (ODF&W, OP&RD, ODEQ) (30 min)
- Presentation by the Water Resources Department on the instream water rights review and approval policies, rules and process (20 min.).
- Case Study of application location overlap between authorized agencies or what does the Water Resources Department do when two or more applicant agencies apply for instream water rights on the same stream segment (OWRD) (20 min.).
- Closing with a round-table discussion between EQC and participants or an informal question and answer discussion.

The focus of the instream water rights issues is water quantity. The intent of the instream water rights program is to classify and protect an instream flow necessary to fulfill the public's needs.

IWR Application # 73532

Certificate # \_\_\_\_\_

STATE OF OREGON

**RECEIVED**

WATER RESOURCES DEPARTMENT

AUG - 5 1993

Application for Instream Water Right  
by  
Oregon Department of Environmental Quality

WATER RESOURCES DEPT.  
SALEM, OREGON

Applicant: Fred Hansen for the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204

1. The name of the stream of the proposed instream water right is Pudding River, a tributary of the Molalla River.
2. The public use this instream water right is based on is providing required stream flows for pollution abatement.
3. The amount of water (in cubic feet per second) needed by month for the category of public use is as follows:

PUBLIC USE(S): Pollution Abatement

<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
36	36	36	36	36	36	36	36	36	36	36	36

4. The reach of the stream identified for an instream water right is from (upstream end) river mile 10, within the south east quarter of section 13, Township 4 south, Range 1 west W.M., in Clackamas and Marion Counties to (downstream end) river mile 0, within the north west quarter of section 29, Township 3 south, Range 1 east W.M., in Clackamas County.
5. Technical data relied on in this application are obtained from the United States Geological Survey's "National Water Information System" accessible through the "Automated Data Processing System"; State of Oregon Water Resources Department's stream flow data base; and the State of Oregon Department of Environmental Quality's stream flow data base.

The data analysis was empirically developed using observed relationships between monitoring sites, available flow statistics (U.S.G.S.) and flows estimated using drainage basin area, stream miles, location in the drainage and altitude at the reference site.

IWR Application # 73532

Certificate # \_\_\_\_\_

6. The following state agencies were notified of the intent to file for an instream water right on:

Oregon Department of Fish and Wildlife	Date:
Oregon Department of Parks and Recreation	Date:

7. If possible, include recommendations for measuring locations or methods:

Establish a gaging structure at or near the upstream limit of the identified reach.

8. If possible, include recommendations for assisting the Water Resources Department in measuring and monitoring procedures:

Department of Environmental Quality personnel will assist the Watermaster in establishing a monitoring plan and program. The intent of DEQ assistance is to provide data collection activities where a WRD monitoring site is close to an NPDES permitted outfall or a Department's water quality monitoring site; equipment and training are available to assure data collection activities and reporting meet WRD standards.

9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5) (c)]:

NONE

**RECEIVED**

**AUG - 5 1993**

10. Remarks:

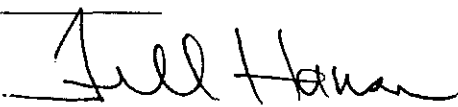
NONE

WATER RESOURCES DEPT.  
SALEM, OREGON

An instream water right may be allowed for an instream beneficial use of water subject to existing water rights which have an effective date prior to the filing date of this application.

This type of beneficial use is for the benefit of the public and a certificate issued confirming an instream water right shall be held in trust by the Water Resources Department for the people of the State of Oregon, pursuant to ORS 537.341.

Date: \_\_\_\_\_

Signature:   
 Fred Hansen, Director  
 Oregon Department of Environmental Quality

Date: December 29, 1993

OREGON WATER RESOURCES DEPARTMENT  
SATISFACTORY REPORT OF TECHNICAL REVIEW  
FOR AN INSTREAM WATER RIGHT APPLICATION

OBJECTIONS TO THE PROPOSED INSTREAM WATER RIGHT TECHNICAL REVIEW REPORT, AS DESCRIBED BELOW, MUST BE RECEIVED IN WRITING BY THE OREGON WATER RESOURCES DEPARTMENT, 3850 PORTLAND ROAD NE, SALEM, OREGON 97310, ON OR BEFORE 5 PM: March 11, 1994.

1. APPLICATION FILE NUMBER -IS 73532
2. APPLICATION INFORMATION

Application name/address/phone:

Oregon Department of Enviromental Quality  
811 S.W. Sixth Avenue  
Portland, Oregon 97204

Date application received for filing and/or tentative date of priority: 8/ 5/1993

Source: PUDDING R tributary to MOLALLA R

County: CLACKAMAS

Proposed use: Providing required stream flows for pollution abatement.

The amount of water (in cubic feet per second) requested by month:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0

To be maintained in:

PUDDING RIVER FROM RIVER MILE 10.0 (SE1/4, SECTION 13, TOWNSHIP 4S, RANGE 1W WM); TO THE MOUTH AT RIVER MILE 0.0 (NW1/4, SECTION 29, TOWNSHIP 3S, RANGE 1E WM)

### 3. TECHNICAL REVIEW

The application is complete and free of defects.

The proposed use is not restricted or prohibited by statute.

The Department of Environmental Quality 1990 Water Quality Status Assessment Report (305b Report) has been submitted by the applicant as supporting data.

An assessment with respect to conditions previously imposed on other instream water rights granted for the same source has been completed.

An assessment with respect to other Commission administrative rules, including but not limited to the applicable basin program has been completed.

An evaluation of the information received from the local government(s) regarding the compatibility of the proposed instream water use with land use plans and regulations has been completed.

The level of instream flow requested is based on the methods of determining instream flow needs that have been approved administrative rule of the agency submitting this application.

The evaluation of the estimated average natural flow available from the proposed source during the time(s) and in the amounts requested in the application is described below. The recommended flows take into consideration planned uses and reasonably anticipated future demands for water from the source for agricultural and other uses as required by the standards for public interest review:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	REQUESTED
2380	2270	1790	1260	742	347	151	91.0	88.9	138	936	2260	AVE FLOW

## REPORT CONCLUSIONS

The proposed water use, as conditioned, passed this technical review. The information contained in the application along with the supporting data submitted by the applicant indicate that the flow levels set out in this report are necessary to protect the public use.

The applicant is required by Section 303 of the federal Clean Water Act to establish total maximum daily loads (TMDLs) on rivers and streams which have been designated as "water quality limited." (See DEQ 305b Report.) The stream identified in this application is designated as water quality limited. Oregon's "Clean Water Strategy" requires the applicant to develop a priority list for implementing protection and antidegradation measures for management of water quality limited streams and rivers. (See DEQ 305b Report.) The applicant has elected to file this application for instream water right protection as a part of its clean water strategy.

### 5. PROPOSED CERTIFICATE CONDITIONS

[The following proposed conditions will apply to water use and will appear on the face of the certificate.]

1. The right is limited to not more than the amounts, in cubic feet per second, during the time periods listed below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0	36.0

2. The water right holder shall measure and report the in-stream flow along the reach of the stream or river described in the certificate as may be required by the standards for in-stream water right reporting of the Water Resources Commission.
3. This instream right shall not have priority over human or livestock consumption.
4. The instream flow allocated pursuant to this water right is not in addition to other instream flows created by a prior water right or designated minimum perennial stream flow.



STATE OF OREGON  
COUNTIES OF MARION/CLACKAMAS  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON  
WATER RESOURCES DEPARTMENT  
SALEM, OREGON 97310

confirms the right to use the waters of THE PUDDING RIVER, a tributary of the MOLALLA RIVER, in the Willamette River Basin to maintain an instream flow for the purpose OF FISH AND WILDLIFE. SPECIFICALLY, THESE FLOWS WILL PROVIDE MINIMUM PASSAGE FLOWS FOR FALL CHINOOK AND COHO SALMON.

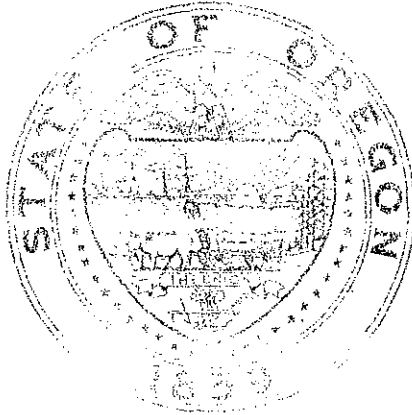
The right is for flows to be maintained in the PUDDING RIVER FROM THE HIGHWAY 99 EAST BRIDGE AT AURORA AT RIVER MILE 8.1 (SE 1/4 SE 1/4 SECTION 12, T 4 S, R 1 W, W.M.); TO THE MOUTH OF THE PUDDING RIVER AT RIVER MILE 0.0 (SE 1/4 NW 1/4, SECTION 29, T 3 S, R 1 E, W.M.).

The right is established under Oregon Revised Statutes 537.341.

The date of priority is JULY 13, 1989.

The right is limited to not more than the amounts during the time periods listed below:

<u>Period</u>	<u>Flows (cubic foot per second)</u>
OCTOBER 1 - OCTOBER 31	60
NOVEMBER 1 - MAY 31	80
JUNE 1 - JUNE 30	60
JULY 1 - JULY 15	50
JULY 16 - SEPTEMBER 30	40



Witness the signature of the Water Resources Director affixed this 20TH day of AUGUST, 1990

*William H. Young*  
Water Resources Director

Recorded in State Record of Water Right Certificates number 64740.

IS 69998.JS

FEB 14 1994

February 7, 1994

WATER RESOURCES DEPT  
SALEM, OREGON

DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

Steve Brown, Manager  
Water Rights Division  
Water Resources Department  
3850 Portland Road, Northeast  
Salem, Oregon 97310

Re: Yamhill River - Water Quality Limited - Public's Interest  
Review of Further Reductions of Instream Flows and Impact on  
Instream Water Quality.

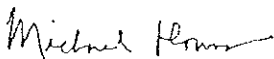
Dear Mr. Brown:

The Yamhill River drainage basin has been identified as water quality limited by the Department. The Department's analysis of water quality in this basin indicates that during periods of low flow, water quality problems exist. As a result of extensive analysis, Total Maximum Daily Loads (TMDL) have been set for this basin. These TMDLs are based in-part on the estimated low flows, which normally occur during the summer period of May 1st to October 31st of each year. On August 5, 1993, the Department submitted application for instream water rights to protect the public's interest to provide pollution abatement flows in the Yamhill River basin. A listing of the specific stream segments and requested instream flow is attached.

It is the Department's opinion that additional out of stream use of water will reduce available instream flows during the seasonal low flow period, thus, increasing the likelihood of exacerbating identified water quality problems in this drainage basin. The Department does not believe that it is in the public's interest to further reduce the instream flows during the seasonal low flow period in this drainage basin.

If you have questions or wish to further discuss this issue please feel free to contact Neil Mullane (503-229-5284) of my staff.

Sincerely,



Michael Downs  
Administrator  
Water Quality Division

MD:JE:crw  
SA\WC12\WC12135.5



811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
TDD (503) 229-6993  
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WATER RESOURCES DEPT.  
SALEM, OREGON

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY  
INSTREAM WATER RIGHT APPLICATIONS LIST  
17-Dec-93

WATER BASIN RIVER NAME STREAM NAME	WRD APP. NUMBER	RIVER REACH		FLOW CFS
		FROM	TO	
=====				
YAMHILL RIVER BASIN				
YAMHILL RIVER	73547	5	0	31.7
YAMHILL RIVER	73548	8	5	31.5
YAMHILL RIVER	73549	9	8	31
YAMHILL RIVER	73550	11	9	28.5
NORTH YAMHILL RIVER	73551	3	0	7
NORTH YAMHILL RIVER	73552	15	3	5
SOUTH YAMHILL RIVER	73553	5	0	21.2
SOUTH YAMHILL RIVER	73554	6	5	15
SOUTH YAMHILL RIVER	73555	16	6	14.6
SOUTH YAMHILL RIVER	73556	24	16	14.2
SOUTH YAMHILL RIVER	73557	30	24	12.7
SOUTH YAMHILL RIVER	73558	40	30	12
SOUTH YAMHILL RIVER	73559	41	40	10.5
SOUTH YAMHILL RIVER	73560	43	41	10.1
SOUTH YAMHILL RIVER	73561	50	43	1.1
SALT CREEK	73562	HEAD	0	0.4
DEER CREEK	73563	HEAD	0	1.5
MILL CREEK	73564	HEAD	0	1.5
WILLIMINA CREEK	73565	HEAD	0	9
=====				

FEB 14 1994

DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

February 7, 1994

Steve Brown, Manager  
Water Rights Division  
Water Resources Department  
3850 Portland Road, Northeast  
Salem, Oregon 97310

Re: Tualatin River - Water Quality Limited - Public's Interest  
Review of Further Reductions of Instream Flows and Impact on  
Instream Water Quality.

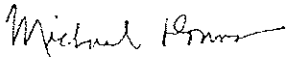
Dear Mr. Brown:

The Tualatin River drainage basin has been identified as water quality limited by the Department. The Department's analysis of water quality in this basin indicates that during periods of low flow, water quality problems exist. As a result of extensive analysis, Total Maximum Daily Loads (TMDL) have been set for this basin. These TMDLs are based in-part on the estimated low flows, which normally occur during the summer period of May 1st to October 31st of each year. On August 5, 1993, the Department submitted application for instream water rights to protect the public's interest to provide pollution abatement flows in the Tualatin River basin. A listing of the specific stream segments and requested instream flow is attached.

It is the Department's opinion that additional out of stream use of water will reduce available instream flows during the seasonal low flow period, thus, increasing the likelihood of exacerbating identified water quality problems in this drainage basin. The Department does not believe that it is in the public's interest to further reduce the instream flows during the seasonal low flow period in this drainage basin.

If you have questions or wish to further discuss this issue please feel free to contact Neil Mullane (503-229-5284) of my staff.

Sincerely,



Michael Downs  
Administrator  
Water Quality Division

MD:JE:crw  
SA\WC12\WC12134.5



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120  
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WATER  
SALIN

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY  
INSTREAM WATER RIGHT APPLICATIONS LIST  
17-Dec-93

WATER BASIN RIVER NAME STREAM NAME	WRD APP. NUMBER	RIVER REACH		FLOW
		FROM	TO	CFS
=====				
TUALATIN RIVER BASIN				
TUALATIN RIVER	73538	38.5	0	100
TUALATIN RIVER	73539	52.8	38.5	75
TUALATIN RIVER	73540	58.8	52.8	25
TUALATIN RIVER	73541	68.8	58.8	30
DAIRY CREEK	73542	HEAD	0	10
FANNO CREEK	73543	HEAD	0	2.5
GALES CREEK	73544	HEAD	0	5
ROCK CREEK	73545	HEAD	0	2.5
SCOGGINS CREEK	73546	HEAD	0	25
=====				

FEB 14 1994

WATER RESOURCES DEP.  
SALEM, OREGON

DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

February 7, 1994

Steve Brown, Manager  
Water Rights Division  
Water Resources Department  
3850 Portland Road, Northeast  
Salem, Oregon 97310

Re: Pudding River - Water Quality Limited - Public's Interest  
Review of Further Reductions of Instream Flows and Impact on  
Instream Water Quality.

Dear Mr. Brown:

The Pudding River drainage basin has been identified as water quality limited by the Department. The Department's analysis of water quality in this basin indicates that during periods of low flow, water quality problems exist. As a result of extensive analysis, Total Maximum Daily Loads (TMDL) have been set for this basin. These TMDLs are based in-part on the estimated low flows, which normally occur during the summer period of May 1st to October 31st of each year. On August 5, 1993, the Department submitted application for instream water rights to protect the public's interest to provide pollution abatement flows in the Pudding River basin. A listing of the specific stream segments and requested instream flow is attached.

It is the Department's opinion that additional out of stream use of water will reduce available instream flows during the seasonal low flow period, thus, increasing the likelihood of exacerbating identified water quality problems in this drainage basin. The Department does not believe that it is in the public's interest to further reduce the instream flows during the seasonal low flow period in this drainage basin.

If you have questions or wish to further discuss this issue please feel free to contact Neil Mullane (503-229-5284) of my staff.

Sincerely,



Michael Downs  
Administrator  
Water Quality Division

MD:JE:crw  
SA\WC12\WC12133.5



811 SW Sixth Avenue  
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TDD (503) 229-6993  
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OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY  
INSTREAM WATER RIGHT APPLICATIONS LIST  
17-Dec-93

RECEIVED  
FEB 14 1994  
WATER RESOURCES DEPT  
S.W.M. OREGON

WATER BASIN	WRD	RIVER REACH		FLOW
RIVER NAME	APP.	FROM	TO	CFS
STREAM NAME	NUMBER			
=====				
PUDDING RIVER BASIN				
PUDDING RIVER	73532	10	0	36
PUDDING RIVER	73533	21.5	10	16
PUDDING RIVER	73534	41	21.5	11
PUDDING RIVER	73535	49	41	6.7
PUDDING RIVER	73536	51	49	5
SILVER CREEK	73537	HEAD	0	3.6
=====				

## DEQ INSTREAM WATER RIGHTS FILED WITH OWRD

NUMBER	SOURCE	> TRIBUTARY	FLOW
IS 73532	PUDDING R	> MOLALLA R	36.0
IS 73533	PUDDING R	> MOLALLA R	16.0
IS 73534	PUDDING R	> MOLALLA R	11.0
IS 73535	PUDDING R	> MOLALLA R	6.7
IS 73536	PUDDING R	> MOLALLA R	5.0
IS 73537	SILVER CR	> PUDDING R	3.6
IS 73538	TUALATIN R	> WILLAMETTE R	100.0
IS 73539	TUALATIN R	> WILLAMETTE R	75.0
IS 73540	TUALATIN R	> WILLAMETTE R	25.0
IS 73541	TUALATIN R	> WILLAMETTE R	30.0
IS 73542	DAIRY CR	> TUALATIN R	10.0
IS 73543	FANNO CR	> TUALATIN R	2.5
IS 73544	GALES CR	> TUALATIN R	5.0
IS 73545	ROCK CR	> TUALATIN R	2.5
IS 73546	SCOGGINS CR	> TUALATIN R	25.0
IS 73547	YAMHILL R	> WILLAMETTE R	31.7
IS 73548	YAMHILL R	> WILLAMETTE R	31.5
IS 73549	YAMHILL R	> WILLAMETTE R	31.0
IS 73550	YAMHILL R	> WILLAMETTE R	28.5
IS 73551	N YAMHILL R	> YAMHILL R	7.0
IS 73552	N YAMHILL R	> YAMHILL R	5.0
IS 73553	S YAMHILL R	> YAMHILL R	21.2
IS 73554	S YAMHILL R	> YAMHILL R	15.0
IS 73555	S YAMHILL R	> YAMHILL R	14.6
IS 73556	S YAMHILL R	> YAMHILL R	14.2
IS 73557	S YAMHILL R	> YAMHILL R	12.7
IS 73558	S YAMHILL R	> YAMHILL R	12.0
IS 73559	S YAMHILL R	> YAMHILL R	10.5
IS 73560	S YAMHILL R	> YAMHILL R	10.1
IS 73561	S YAMHILL R	> YAMHILL R	1.1
IS 73562	SALT CR	> S YAMHILL R	0.4
IS 73563	DEER CR	> S YAMHILL R	1.5
IS 73564	MILL CR	> S YAMHILL R	1.5
IS 73565	WILLAMINA CR	> S YAMHILL R	9.0

TOTAL FILES = 34



**ODFW INSTREAM WATER RIGHTS FILED WITH OWRD**

NUMBER	SOURCE > TRIBUTARY
IS 69949	REYNOLDS CR > JOHN DAY R
IS 69951	DEARDORFF CR > JOHN DAY R
IS 69958	CLEAR CR > GRANITE CR
IS 69959	BULL RUN CR > GRANITE CR
IS 69960	N FK JOHN DAY R > JOHN DAY R
IS 69961	GRANITE BOULDER CR > M FK JOHN DAY R
IS 69963	FIELDS CR > JOHN DAY R
IS 70020	E FK TROUT CR > BIG TROUT CR
IS 70021	MCDERMITT CR > QUINN R
IS 70022	LITTLE WHITEHORSE CR > WHITEHORSE CR
IS 70023	WHITEHORSE CR > ALVORD DESERT
IS 70024	WILLOW CR > ALVORD DESERT
IS 70026	BIG TROUT CR > TROUT CR
IS 70027	LITTLE TROUT CR > TROUT CR
IS 70028	BIG TROUT CR > TROUT CR
IS 70029	TROUT CR > ALVORD L
IS 70087	DESCHUTES R > COLUMBIA R
IS 70094	KLAMATH R > PACIFIC OCEAN
IS 70228	JOHNSON CR > PACIFIC OCEAN
IS 70229	CROOKED CR > PACIFIC OCEAN
IS 70230	BEAR CR > COQUILLE R
IS 70231	BIG CR > SUNSET BAY
IS 70247	TROUT CR > DESCHUTES R
IS 70249	SALMONBERRY R > NEHALEM R
IS 70250	BRIDGE CR > JOHN DAY R
IS 70251	ROCK CR > JOHN DAY R
IS 70263	BEAR CR > BRIDGE CR
IS 70288	FOLEY CR > NEHALEM R
IS 70303	N FK MALHEUR R > MALHEUR R
IS 70304	N FK MALHEUR R > MALHEUR R
IS 70305	LITTLE MALHEUR R > MALHEUR R
IS 70306	CRANE CR > N FK MALHEUR R
IS 70307	LITTLE CRANE CR > CRANE CR
IS 70308	ELK CR > N FK MALHEUR R
IS 70309	SWAMP CR > N FK MALHEUR R
IS 70324	N FK OWYHEE R > OWYHEE R
IS 70325	MALHEUR R > SNAKE R
IS 70339	TROUT CR > DESCHUTES R
IS 70348	TENMILE CR > PACIFIC OCEAN
IS 70349	MALHEUR R > SNAKE R
IS 70350	MALHEUR R > SNAKE R
IS 70351	LAKE CR > MALHEUR R
IS 70352	BIG CR > LAKE CR
IS 70353	CROOKED R > DESCHUTES R
IS 70354	CROOKED R > DESCHUTES R
IS 70355	N FK CROOKED R > CROOKED R
IS 70356	N FK CROOKED R > CROOKED R
IS 70357	N FK CROOKED R > CROOKED R
IS 70358	S FK CROOKED R > CROOKED R
IS 70448	TENMILE CR > PACIFIC OCEAN
IS 70449	LARSON CR > LARSON SL
IS 70450	PALOUSE CR > PALOUSE SL
IS 70486	DREWS CR > GOOSE L

IS 70449 LARSON CR > LARSON SL  
IS 70450 PALOUSE CR > PALOUSE SL  
IS 70486 DREWS CR > GOOSE L  
IS 70487 DREWS CR > GOOSE L  
IS 70488 N FK MEACHAM CR > MEACHAM CR  
IS 70489 MEACHAM CR > UMATILLA R  
IS 70490 MEACHAM CR > UMATILLA R  
IS 70563 RYAN CR > UMATILLA R  
IS 70564 S FK WALLA WALLA R > WALLA WALLA R  
IS 70565 N FK WALLA WALLA R > WALLA WALLA R  
IS 70566 S FK UMATILLA R > UMATILLA R  
IS 70567 N FK UMATILLA R > UMATILLA R  
IS 70568 BUCK CR > S FK UMATILLA R  
IS 70569 THOMAS CR > S FK UMATILLA R  
IS 70570 CAMP CR > MEACHAM CR  
IS 70571 COUSE CR > WALLA WALLA R  
IS 70572 MILL CR > WALLA WALLA R  
IS 70573 COW CR > S UMPQUA R  
IS 70574 SEVENMILE CR > RANDOLPH SL  
IS 70583 JOSEPH CR > GRANDE RONDE R  
IS 70584 CHESNIMNUS CR > JOSEPH CR  
IS 70585 OCHOCO CR > CROOKED R  
IS 70586 OCHOCO CR > CROOKED R  
IS 70587 PETERSON CR > N FK CROOKED R  
IS 70588 S FK BEAVER CR > BEAVER CR  
IS 70589 SUGAR CR > BEAVER CR  
IS 70590 W FK MILL CR > MILL CR  
IS 70591 WILLOW CR > DESCHUTES R  
IS 70592 WOLF CR > BEAVER CR  
IS 70593 WOLF CR > OCHOCO CR  
IS 70594 MCKAY CR > CROOKED R  
IS 70595 MCKAY CR > CROOKED R  
IS 70596 ALLEN CR > MCKAY CR  
IS 70597 LITTLE MCKAY CR > MCKAY CR  
IS 70598 JOHNSON CR > N FK CROOKED R  
IS 70599 HOWARD CR > JOHNSON CR  
IS 70600 HORSE HEAVEN CR > CROOKED R  
IS 70601 GRAY CR > N FK CROOKED R  
IS 70602 E FK MILL CR > MILL CR  
IS 70603 CANYON CR > OCHOCO CR  
IS 70604 BRUSH CR > JOHNSON CR  
IS 70605 BEAVER CR > CROOKED R  
IS 70606 BEAR CR > CROOKED R  
IS 70607 ALLEN CR > JOHNSON CR  
IS 70608 MILL CR > OCHOCO CR  
IS 70609 MARKS CR > OCHOCO CR  
IS 70610 LOOKOUT CR > N FK CROOKED R  
IS 70611 OCHOCO CR > CROOKED R  
IS 70612 N FK BEAVER CR > BEAVER CR  
IS 70613 OCHOCO CR > CROOKED R  
IS 70640 JOHN DAY R > COLUMBIA R  
IS 70641 RAIL CR > JOHN DAY R  
IS 70642 ROBERTS CR > JOHN DAY R  
IS 70643 M FK CANYON CR > CANYON CR  
IS 70644 E FK CANYON CR > CANYON CR  
IS 70645 CANYON CR > JOHN DAY R  
IS 70646 PINE CR > JOHN DAY R  
IS 70647 N FK JOHN DAY R > JOHN DAY R  
IS 70648 N FK JOHN DAY R > JOHN DAY R  
IS 70649 CRANE CR > N FK JOHN DAY R

IS 70650 TRAIL CR > N FK JOHN DAY R  
IS 70651 INDIAN CR > M FK JOHN DAY R  
IS 70652 BIG BOULDER CR > M FK JOHN DAY R  
IS 70653 BIG CR > M FK JOHN DAY R  
IS 70654 S FK LONG CR > LONG CR  
IS 70655 MCCLELLAN CR > E FK BEECH CR  
IS 70656 SILVER CR > SILVER L  
IS 70657 W FK SILVER CR > SILVER CR  
IS 70658 BRIDGE CR > ISLAND BR SILVER CR  
IS 70659 BUCK CR > SILVER L  
IS 70660 CHEWAUCAN R > L ABERT  
IS 70661 CHEWAUCAN R > L ABERT  
IS 70662 DAIRY CR > CHEWAUCAN R  
IS 70663 DAIRY CR > CHEWAUCAN R  
IS 70664 ELDER CR > CHEWAUCAN R  
IS 70665 THOMAS CR > GOOSE L  
IS 70680 BRIDGE CR > W BIRCH CR  
IS 70681 E BIRCH CR > BIRCH CR  
IS 70682 MCKAY CR > UMATILLA R  
IS 70683 N FK MCKAY CR > MCKAY CR  
IS 70684 PEARSON CR > E BIRCH CR  
IS 70685 SQUAW CR > UMATILLA R  
IS 70686 STANLEY CR > W BIRCH CR  
IS 70687 W BIRCH CR > BIRCH CR  
IS 70688 S FK COOS R > COOS R  
IS 70689 W FK MILLICOMA R > MILLICOMA R  
IS 70690 W FK MILLICOMA R > MILLICOMA R  
IS 70691 WENAHA R > GRANDE RONDE R  
IS 70692 HURRICANE CR > WALLOWA R  
IS 70693 CANYON CR > METOLIUS R  
IS 70694 CANDLE CR > METOLIUS R  
IS 70695 DESCHUTES R > COLUMBIA R  
IS 70696 JACK CR > METOLIUS R  
IS 70697 JEFFERSON CR > METOLIUS R  
IS 70698 METOLIUS R > DESCHUTES R  
IS 70699 METOLIUS R > DESCHUTES R  
IS 70700 ODELL CR > DAVIS L  
IS 70742 QUARTZ CR > MCKENZIE R  
IS 70743 TURNER CR > N YAMHILL R  
IS 70744 TROUT CR > MOLALLA R  
IS 70745 PANTHER CR > N YAMHILL R  
IS 70746 N YAMHILL R > YAMHILL R  
IS 70747 MOLALLA R > WILLAMETTE R  
IS 70748 MARYS R > WILLAMETTE R  
IS 70749 MARYS R > WILLAMETTE R  
IS 70750 HASKINS CR > N YAMHILL R  
IS 70751 LAKE CR > N FK LAKE CR  
IS 70752 TUMALO CR > DESCHUTES R  
IS 70753 SQUAW CR > DESCHUTES R  
IS 70754 SQUAW CR > DESCHUTES R  
IS 70755 SPRING CR > METOLIUS R  
IS 70756 SNOW CR > DESCHUTES R  
IS 70757 LITTLE DESCHUTES R > DESCHUTES R  
IS 70758 LITTLE DESCHUTES R > DESCHUTES R  
IS 70759 LITTLE DESCHUTES R > DESCHUTES R  
IS 70760 INDIAN FORD CR > SQUAW CR  
IS 70761 FLY CR > METOLIUS R  
IS 70762 FALL R > DESCHUTES R  
IS 70763 DESCHUTES R > COLUMBIA R  
IS 70764 DESCHUTES R > COLUMBIA R

IS 70765 CRESCENT CR > LITTLE DESCHUTES R  
IS 70766 ABBOT CR > METOLIUS R  
IS 70767 BIG MARSH CR > CRESCENT CR  
IS 70780 JOSEPH CR > GRANDE RONDE R  
IS 70781 DRIFT CR > PUDDING R  
IS 70782 WILEY CR > S SANTIAM R  
IS 70783 NEAL CR > THOMAS CR  
IS 70784 LITTLE WILEY CR > WILEY CR  
IS 70785 STOUT CR > N SANTIAM R  
IS 70786 ROCK CR > N SANTIAM R  
IS 70787 MAD CR > N SANTIAM R  
IS 70788 LITTLE N SANTIAM R > N SANTIAM R  
IS 70798 CHERRY CR > FOURMILE CR  
IS 70799 S FK SPRAGUE R > SPRAGUE R  
IS 70800 S FK SPRAGUE R > SPRAGUE R  
IS 70801 S FK SPRAGUE R > SPRAGUE R  
IS 70802 S FK SPRAGUE R > SPRAGUE R  
IS 70803 SPENCER CR > KLAMATH R  
IS 70804 SPRAGUE R > WILLIAMSON R  
IS 70805 SPRAGUE R > WILLIAMSON R  
IS 70806 SPRAGUE R > WILLIAMSON R  
IS 70807 CROOKED CR > WOOD R  
IS 70808 DEMING CR > S FK SPRAGUE R  
IS 70809 FISHHOLE CR > S FK SPRAGUE R  
IS 70810 FORT CR > WOOD R  
IS 70811 JENNY CR > KLAMATH R  
IS 70812 KLAMATH R > PACIFIC OCEAN  
IS 70813 W UPPER KLAMATH L > KLAMATH R  
IS 70814 LONG CR > SYCAN R  
IS 70815 N FK SPRAGUE R > SPRAGUE R  
IS 70816 N FK SPRAGUE R > SPRAGUE R  
IS 70817 PARADISE CR > SKULL CR  
IS 70818 SPRING CR > WILLIAMSON R  
IS 70819 SUN CR > ANNIE CR  
IS 70820 SYCAN R > SPRAGUE R  
IS 70821 SYCAN R > SPRAGUE R  
IS 70822 SYCAN R > SPRAGUE R  
IS 70823 SYCAN R > SPRAGUE R  
IS 70824 WILLIAMSON R > E UPPER KLAMATH L  
IS 70825 WILLIAMSON R > E UPPER KLAMATH L  
IS 70826 WILLIAMSON R > E UPPER KLAMATH L  
IS 70827 WILLIAMSON R > E UPPER KLAMATH L  
IS 70828 WILLIAMSON R > E UPPER KLAMATH L  
IS 70829 WOOD R > W UPPER KLAMATH L  
IS 70830 SEVENMILE CR > W UPPER KLAMATH L  
IS 70831 ANNIE CR > WOOD R  
IS 70832 BROWNSWORTH CR > S FK SPRAGUE R  
IS 70861 SHEEP CR > GRANDE RONDE R  
IS 70862 S FK CATHERINE CR > CATHERINE CR  
IS 70863 PINE CR > SNAKE R  
IS 70864 PINE CR > SNAKE R  
IS 70865 N FK CATHERINE CR > CATHERINE CR  
IS 70866 LITTLE LOOKINGGLASS CR > LOOKINGGLASS CR  
IS 70867 LIMBER JIM CR > GRANDE RONDE R  
IS 70868 FLY CR > GRANDE RONDE R  
IS 70869 E PINE CR > PINE CR  
IS 70870 E PINE CR > PINE CR  
IS 70871 ELK CR > LAKE FK CR  
IS 70872 BEAVER CR > GRANDE RONDE R  
IS 70873 FIVE POINTS CR > GRANDE RONDE R

IS 70874 WINCHUCK R > PACIFIC OCEAN  
IS 70875 WILLOW CR > FLORAS CR  
IS 70876 WHEELER CR > E FK WINCHUCK R  
IS 70877 SIXES R > PACIFIC OCEAN  
IS 70878 SIXES R > PACIFIC OCEAN  
IS 70879 SIXES R > PACIFIC OCEAN  
IS 70880 SIXES R > PACIFIC OCEAN  
IS 70881 S FK SIXES R > SIXES R  
IS 70882 S FK CHETCO R > CHETCO R  
IS 70883 RED CEDAR CR > ELK R  
IS 70884 QUAIL PRAIRIE CR > S FK CHETCO R  
IS 70885 PISTOL R > PACIFIC OCEAN  
IS 70886 PANTHER CR > ELK R  
IS 70887 N FK CHETCO R > CHETCO R  
IS 70888 M FK SIXES R > SIXES R  
IS 70889 JACK CR > CHETCO R  
IS 70890 HUNTER CR > PACIFIC OCEAN  
IS 70891 FLORAS CR > NEW R  
IS 70892 EUCHRE CR > PACIFIC OCEAN  
IS 70893 EUCHRE CR > PACIFIC OCEAN  
IS 70894 EUCHRE CR > PACIFIC OCEAN  
IS 70895 ELK R > PACIFIC OCEAN  
IS 70896 ELK R > PACIFIC OCEAN  
IS 70897 ELK R > PACIFIC OCEAN  
IS 70898 E FK WINCHUCK R > WINCHUCK R  
IS 70899 E FK WINCHUCK R > WINCHUCK R  
IS 70900 EDSON CR > SIXES R  
IS 70901 DRY CR > SIXES R  
IS 70902 DEEP CR > PISTOL R  
IS 70903 CRYSTAL CR > SIXES R  
IS 70904 CROOK CR > PISTOL R  
IS 70905 CHETCO R > PACIFIC OCEAN  
IS 70906 CHETCO R > PACIFIC OCEAN  
IS 70907 CHETCO R > PACIFIC OCEAN  
IS 70908 CHETCO R > PACIFIC OCEAN  
IS 70909 CEDAR CR > EUCHRE CR  
IS 70910 BUTLER CR > ELK R  
IS 70911 BALD MTN CR > ELK R  
IS 70912 BLACKBERRY CR > ELK R  
IS 70913 BEAR CR > WINCHUCK R  
IS 70914 ANVIL CR > ELK R  
IS 70915 FOURMILE CR > NEW R  
IS 70916 FOURTH OF JULY CR > E FK WINCHUCK R  
IS 70942 ANDERSON CR > NEHALEM R  
IS 70943 CARCUS CR > CLATSKANIE R  
IS 70944 CLATSKANIE R > CLATSKANIE SL  
IS 70945 CLATSKANIE R > CLATSKANIE SL  
IS 70946 COOK CR > NEHALEM R  
IS 70947 LEWIS & CLARK R > YOUNGS BAY  
IS 70948 LOST CR > NEHALEM R  
IS 70949 N FK NECANICUM R > NECANICUM R  
IS 70950 PLYMPTON CR > WESTPORT SL  
IS 70951 ROY CR > NEHALEM R  
IS 70952 BEAR CR > COLUMBIA R  
IS 70953 BEAVER CR > DOBBINS SL  
IS 70954 BIG CR > COLUMBIA R  
IS 70955 NECANICUM R > PACIFIC OCEAN  
IS 70956 N FK KLASKANINE R > KLASKANINE R  
IS 70957 N FK NEHALEM R > NEHALEM R  
IS 70958 PETERSON CR > NEHALEM R

IS 70959 S FK KLASKANINE R > KLASKANINE R  
IS 70960 YOUNGS R > YOUNGS BAY  
IS 70975 E FK WILLIAMS CR > WILLIAMS CR  
IS 70976 W FK WILLIAMS CR > WILLIAMS CR  
IS 70977 JOSEPHINE CR > ILLINOIS R  
IS 70978 ELDER CR > E FK ILLINOIS R  
IS 70979 E FK ILLINOIS R > ILLINOIS R  
IS 70980 E FK ILLINOIS R > ILLINOIS R  
IS 70981 WILLIAMS CR > APPELEGATE R  
IS 70982 LITTLE APPELEGATE R > APPELEGATE R  
IS 70983 LITTLE APPELEGATE R > APPELEGATE R  
IS 70984 JUMPOFF JOE CR > ROGUE R  
IS 70985 GALICE CR > ROGUE R  
IS 70986 EVANS CR > ROGUE R  
IS 70987 EVANS CR > ROGUE R  
IS 70988 EMIGRANT CR > BEAR CR  
IS 70989 ELK CR > ROGUE R  
IS 70990 DITCH CR > PLEASANT CR  
IS 70991 DEER CR > ILLINOIS R  
IS 70992 DEER CR > ILLINOIS R  
IS 70993 BEAR CR > ROGUE R  
IS 70995 CLEAR CR > DEER CR  
IS 70996 W FK ILLINOIS R > ILLINOIS R  
IS 70997 W FK ILLINOIS R > ILLINOIS R  
IS 70998 W FK EVANS CR > EVANS CR  
IS 70999 WATERS CR > SLATE CR  
IS 71000 TRAIL CR > ROGUE R  
IS 71001 TRAIL CR > ROGUE R  
IS 71002 THOMPSON CR > MCMULLIN CR  
IS 71003 TAYLOR CR > ROGUE R  
IS 71004 SLATE CR > APPELEGATE R  
IS 71005 SLATE CR > APPELEGATE R  
IS 71006 S FK LITTLE BUTTE CR > LITTLE BUTTE CR  
IS 71007 S FK LITTLE BUTTE CR > LITTLE BUTTE CR  
IS 71008 S FK LITTLE BUTTE CR > LITTLE BUTTE CR  
IS 71009 PLEASANT CR > EVANS CR  
IS 71010 ROUGH & READY CR > W FK ILLINOIS R  
IS 71011 LOUSE CR > JUMPOFF JOE CR  
IS 71012 QUEENS BR > PLEASANT CR  
IS 71013 PLEASANT CR > EVANS CR  
IS 71014 S FK DEER CR > DEER CR  
IS 71015 LOUSE CR > JUMPOFF JOE CR  
IS 71016 CHENEY CR > APPELEGATE R  
IS 71017 BUTCHERKNIFE CR > SLATE CR  
IS 71018 BRIGGS CR > ILLINOIS R  
IS 71019 SIXMILE CR > ILLINOIS R  
IS 71020 FOOTS CR > ROGUE R  
IS 71021 FALL CR > ILLINOIS R  
IS 71022 ELK CR > W FK ILLINOIS R  
IS 71023 ELK CR > ROGUE R  
IS 71024 WOOD CR > W FK ILLINOIS R  
IS 71026 POWELL CR > WILLIAMS CR  
IS 71027 N FK DEER CR > DEER CR  
IS 71028 MURPHY CR > APPELEGATE R  
IS 71029 MULE CR > ROGUE R  
IS 71031 LAWSON CR > ILLINOIS R  
IS 71032 JUMPOFF JOE CR > ROGUE R  
IS 71033 INDIAN CR > ROGUE R  
IS 71034 GRAVE CR > ROGUE R  
IS 71035 GRAVE CR > ROGUE R

IS 71036 GRAVE CR > ROGUE R  
IS 71172 N UMPQUA R > UMPQUA R  
IS 71173 N UMPQUA R > UMPQUA R  
IS 71174 N UMPQUA R > UMPQUA R  
IS 71175 N UMPQUA R > UMPQUA R  
IS 71176 STEAMBOAT CR > N UMPQUA R  
IS 71177 STEAMBOAT CR > N UMPQUA R  
IS 71178 STEAMBOAT CR > N UMPQUA R  
IS 71179 TENMILE CR > LOOKINGGLASS CR  
IS 71180 TENMILE CR > LOOKINGGLASS CR  
IS 71181 CALAPOOYA CR > UMPQUA R  
IS 71182 DEER CR > S UMPQUA R  
IS 71183 ELK CR > UMPQUA R  
IS 71184 LITTLE R > N UMPQUA R  
IS 71185 LITTLE R > N UMPQUA R  
IS 71186 MYRTLE CR > S UMPQUA R  
IS 71187 N MYRTLE CR > MYRTLE CR  
IS 71188 OLALLA CR > LOOKINGGLASS CR  
IS 71189 OLALLA CR > LOOKINGGLASS CR  
IS 71190 S FK DEER CR > DEER CR  
IS 71191 S MYRTLE CR > MYRTLE CR  
IS 71192 S UMPQUA R > UMPQUA R  
IS 71193 S UMPQUA R > UMPQUA R  
IS 71194 DESCHUTES R > COLUMBIA R  
IS 71195 ANTELOPE CR > LITTLE BUTTE CR  
IS 71196 BIRDSEYE CR > ROGUE R  
IS 71197 FIELDER CR > EVANS CR  
IS 71198 GALLS CR > ROGUE R  
IS 71199 GRAYBACK CR > SUCKER CR  
IS 71200 GRIFFIN CR > BEAR CR  
IS 71201 JACKSON CR > BEAR CR  
IS 71202 LITTLE ELDER CR > E FK ILLINOIS R  
IS 71203 LIMPY CR > ROGUE R  
IS 71204 MENDENHALL CR > W FK ILLINOIS R  
IS 71205 RANCHERIE CR > ILLINOIS R  
IS 71206 WAGNER CR > BEAR CR  
IS 71207 WALKER CR > BEAR CR  
IS 71208 WARD CR > ROGUE R  
IS 71209 W FK TRAIL CR > TRAIL CR  
IS 71221 POWDER CR > NESTUCCA R  
IS 71222 PROUTY CR > MIAMI R  
IS 71223 SAND CR > SAND L  
IS 71224 S FK KILCHIS R > KILCHIS R  
IS 71225 S FK LITTLE NESTUCCA R > LITTLE NESTUCCA R  
IS 71226 S FK TRASK R > TRASK R  
IS 71227 S FK TRASK R > TRASK R  
IS 71228 S FK WILSON R > WILSON R  
IS 71229 SIMMONS CR > TILLAMOOK R  
IS 71230 SLICK ROCK CR > NESTUCCA R  
IS 71231 TESTAMENT CR > NESTUCCA R  
IS 71232 TILLAMOOK R > TILLAMOOK BAY  
IS 71233 W BEAVER CR > BEAVER CR  
IS 71234 WOLFE CR > NESTUCCA R  
IS 71235 TRASK R > TILLAMOOK BAY  
IS 71236 WILSON R > TILLAMOOK BAY  
IS 71237 WILSON R > TILLAMOOK BAY  
IS 71238 MOON CR > EAST CR  
IS 71239 MOSS CR > MIAMI R  
IS 71240 MUNSON CR > TILLAMOOK R  
IS 71241 NESKOWIN CR > PACIFIC OCEAN

IS 71242 NESTUCCA R > NESTUCCA BAY  
IS 71243 NESTUCCA R > NESTUCCA BAY  
IS 71244 NESTUCCA R > NESTUCCA BAY  
IS 71245 N FK KILCHIS R > KILCHIS R  
IS 71246 N FK OF N FK TRASK R > N FK TRASK R  
IS 71247 N FK TRASK R > TRASK R  
IS 71248 N FK WILSON R > WILSON R  
IS 71249 NIAGARA CR > NESTUCCA R  
IS 71250 PETERSON CR > MIAMI R  
IS 71251 KILLAM CR > TILLAMOOK R  
IS 71252 LITTLE NESTUCCA R > NESTUCCA BAY  
IS 71253 LITTLE NESTUCCA R > NESTUCCA BAY  
IS 71254 LITTLE N FK WILSON R > WILSON R  
IS 71255 LOUIE CR > LITTLE NESTUCCA R  
IS 71256 LITTLE S FK KILCHIS R > KILCHIS R  
IS 71257 M FK OF N FK TRASK R > N FK TRASK R  
IS 71258 MIAMI R > TILLAMOOK BAY  
IS 71259 FARMER CR > NESTUCCA R  
IS 71260 FAWCETT CR > TILLAMOOK R  
IS 71261 GREEN CR > TRASK R  
IS 71262 JORDAN CR > WILSON R  
IS 71263 KILCHIS R > TILLAMOOK BAY  
IS 71264 KILCHIS R > TILLAMOOK BAY  
IS 71265 E BEAVER CR > BEAVER CR  
IS 71266 EDWARDS CR > S FK TRASK R  
IS 71267 E FK OF S FK TRASK R > S FK TRASK R  
IS 71268 ELK CR > NESTUCCA R  
IS 71269 ELK CR > WILSON R  
IS 71270 FALL CR > WILSON R  
IS 71271 FALL CR > LITTLE NESTUCCA R  
IS 71272 BIBLE CR > NESTUCCA R  
IS 71273 CEDAR CR > WILSON R  
IS 71274 CLARENCE CR > NESTUCCA R  
IS 71275 CLEAR CR > KILCHIS R  
IS 71276 CLEAR CR > N FK TRASK R  
IS 71277 CLEAR CR > NESTUCCA R  
IS 71278 COAL CR > KILCHIS R  
IS 71279 DEVILS L FK > WILSON R  
IS 71280 EAST CR > NESTUCCA R  
IS 71281 THREE RIVERS > NESTUCCA R  
IS 71282 THREE RIVERS > NESTUCCA R  
IS 71283 ALDER CR > THREE RIVERS  
IS 71284 BARK SHANTY CR > N FK TRASK R  
IS 71285 BAYS CR > NESTUCCA R  
IS 71286 BEAR CR > E BEAVER CR  
IS 71287 BEAR CR > NESTUCCA R  
IS 71288 BEAR CR > LITTLE NESTUCCA R  
IS 71289 BEAVER CR > NESTUCCA R  
IS 71290 BEWLEY CR > TILLAMOOK R  
IS 71386 ALSEA R > ALSEA BAY  
IS 71387 ALSEA R > ALSEA BAY  
IS 71388 BEAR CR > SALMON R  
IS 71389 BEAR CR > SILETZ R  
IS 71390 CEDAR CR > SILETZ R  
IS 71391 DEER CR > SALMON R  
IS 71392 EUCHRE CR > SILETZ R  
IS 71393 MILL CR > YAQUINA R  
IS 71394 SALMON R > PACIFIC OCEAN  
IS 71395 SALMON CR > SALMON R  
IS 71396 YAQUINA R > YAQUINA BAY



IS 71397 YAQUINA R > YAQUINA BAY  
IS 71398 TENMILE CR > PACIFIC OCEAN  
IS 71399 FIVEMILE CR > TAHKENITCH L  
IS 71400 BIG CR > PACIFIC OCEAN  
IS 71401 CAPE CR > PACIFIC OCEAN  
IS 71402 DEADWOOD CR > LAKE CR  
IS 71403 ESMOND CR > SIUSLAW R  
IS 71404 FIDDLE CR > SILTCOOS L  
IS 71405 FISH CR > LAKE CR  
IS 71406 GREENLEAF CR > LAKE CR  
IS 71407 INDIAN CR > LAKE CR  
IS 71408 KNOWLES CR > SIUSLAW R  
IS 71409 LEITEL CR > TAHKENITCH L  
IS 71410 MAPLE CR > SILTCOOS L  
IS 71411 NELSON CR > LAKE CR  
IS 71412 LAKE CR > SIUSLAW R  
IS 71413 N FK SIUSLAW R > SIUSLAW R  
IS 71414 LAKE CR > SIUSLAW R  
IS 71415 N FK SIUSLAW R > SIUSLAW R  
IS 71416 N FK SIUSLAW R > SIUSLAW R  
IS 71417 S FK SIUSLAW R > SIUSLAW R  
IS 71418 SIUSLAW R > PACIFIC OCEAN  
IS 71419 SIUSLAW R > PACIFIC OCEAN  
IS 71420 SIUSLAW R > PACIFIC OCEAN  
IS 71421 SIUSLAW R > PACIFIC OCEAN  
IS 71422 SWEET CR > SIUSLAW R  
IS 71423 WHITTAKER CR > SIUSLAW R  
IS 71424 WILDCAT CR > SIUSLAW R  
IS 71425 WOLF CR > SIUSLAW R  
IS 71426 YACHATS R > PACIFIC OCEAN  
IS 71427 YACHATS R > PACIFIC OCEAN  
IS 71428 SCHOOL FK > YACHATS R  
IS 71429 N FK YACHATS R > YACHATS R  
IS 71430 WILLIAMSON CR > N FK YACHATS R  
IS 71450 BOSONBERG CR > LAKE CR  
IS 71451 BULLY CR > MALHEUR R  
IS 71452 CALAMITY CR > WOLF CR  
IS 71453 CALF CR > MALHEUR R  
IS 71454 LITTLE MALHEUR R > MALHEUR R  
IS 71455 MCCOY CR > LAKE CR  
IS 71456 N FK MALHEUR R > MALHEUR R  
IS 71457 PINE CR > MALHEUR R  
IS 71458 POLE CR > MALHEUR R  
IS 71459 S FK MALHEUR R > MALHEUR R  
IS 71460 S FK MALHEUR R > MALHEUR R  
IS 71461 S FK MALHEUR R > MALHEUR R  
IS 71462 S WILLOW CR > WILLOW CR  
IS 71463 SUMMIT CR > MALHEUR R  
IS 71464 SUMMIT CR > MALHEUR R  
IS 71465 SWAMP CR > S FK MALHEUR R  
IS 71466 WOLF CR > MALHEUR R  
IS 71467 BEAR CR > SILVIES R  
IS 71468 BEAR CR > SILVIES R  
IS 71469 RATTLESNAKE CR > NINEMILE SL  
IS 71470 SILVER CR > HARNEY L  
IS 71471 SILVER CR > HARNEY L  
IS 71472 SILVIES R > W FK SILVIES R  
IS 71473 SAWMILL CR > SILVER CR  
IS 71474 TROUT CR > SILVIES R  
IS 71475 NICOLL CR > SILVER CR

IS 71480 SANDY R > COLUMBIA R  
IS 71544 ALDER CR > SANDY R  
IS 71545 BEAVER CR > SANDY R  
IS 71546 BOULDER CR > SALMON R  
IS 71547 CAMP CR > ZIGZAG R  
IS 71548 CEDAR CR > SANDY R  
IS 71549 CHENEY CR > SALMON R  
IS 71550 CLEAR FK SANDY R > SANDY R  
IS 71551 CRYSTAL SPRINGS CR > JOHNSON CR  
IS 71552 GORDON CR > SANDY R  
IS 71553 HENRY CR > ZIGZAG R  
IS 71554 JOHNSON CR > WILLAMETTE R  
IS 71555 LOST CR > SANDY R  
IS 71556 OAK GROVE FK CLACKAMAS R > CLACKAMAS R  
IS 71557 SALMON R > SANDY R  
IS 71558 SALMON R > SANDY R  
IS 71559 SANDY R > COLUMBIA R  
IS 71560 S FK SALMON R > SALMON R  
IS 71561 STILL CR > ZIGZAG R  
IS 71562 TROUT CR > SANDY R  
IS 71563 ZIGZAG R > SANDY R  
IS 71609 BEAR BR > EVANS CR  
IS 71610 BEAVER CR > APPELLEGATE R  
IS 71611 BIG WINDY CR > ROGUE R  
IS 71612 DUTCHER CR > LIMPY CR  
IS 71613 FLAT CR > ELK CR  
IS 71614 FOREST CR > APPELLEGATE R  
IS 71615 GLADE CR > LITTLE APPELLEGATE R  
IS 71616 HOWARD CR > ROGUE R  
IS 71617 HUMBUG CR > APPELLEGATE R  
IS 71618 JACKSON CR > APPELLEGATE R  
IS 71619 JENNY CR > ROGUE R  
IS 71620 LONG BR > ROGUE R  
IS 71621 N FK LITTLE BUTTE CR > LITTLE BUTTE CR  
IS 71622 N FK LITTLE BUTTE CR > LITTLE BUTTE CR  
IS 71623 PICKETT CR > ROGUE R  
IS 71624 POORMAN CR > GRAVE CR  
IS 71625 SHAN CR > ROGUE R  
IS 71626 SNIDER CR > ROGUE R  
IS 71627 W BR ELK CR > ELK CR  
IS 71628 SUGARPINE CR > ELK CR  
IS 71629 YALE CR > LITTLE APPELLEGATE R  
IS 71660 DARK CAN CR > MEADOW CR  
IS 71661 CLEAR CR > GRANDE RONDE R  
IS 71662 CLARK CR > GRANDE RONDE R  
IS 71663 PHILLIPS CR > GRANDE RONDE R  
IS 71664 CHICKEN CR > SHEEP CR  
IS 71665 INDIAN CR > GRANDE RONDE R  
IS 71666 CABIN CR > GRANDE RONDE R  
IS 71667 BEAR CR > MEADOW CR  
IS 71668 BURNT CORRAL CR > MEADOW CR  
IS 71669 WILLOW CR > GRANDE RONDE R  
IS 71670 W CHICKEN CR > CHICKEN CR  
IS 71671 SPRING CR > GRANDE RONDE R  
IS 71672 S FK CABIN CR > CABIN CR  
IS 71673 ROCK CR > GRANDE RONDE R  
IS 71674 PELICAN CR > FIVE POINTS CR  
IS 71675 N FK CABIN CR > CABIN CR  
IS 71676 MEADOW CR > GRANDE RONDE R  
IS 71677 MEADOW CR > GRANDE RONDE R

IS 71678 MCCOY CR > MEADOW CR  
IS 71679 MARLEY CR > MEADOW CR  
IS 71680 LITTLE CR > CATHERINE CR  
IS 71681 LITTLE CATHERINE CR > CATHERINE CR  
IS 71682 JARBOE CR > LOOKINGGLASS CR  
IS 71683 GORDON CR > GRANDE RONDE R  
IS 71684 W EAGLE CR > EAGLE CR  
IS 71685 N POWDER R > POWDER R  
IS 71696 WOODWARD CR > EVANS CR  
IS 71697 FERRY CR > COQUILLE R  
IS 71732 CATHERINE CR > GRANDE RONDE R  
IS 71733 MILL CR > WILLOW CR  
IS 71734 WILLOW CR > GRANDE RONDE R  
IS 71793 M FK HOOD R > HOOD R  
IS 71794 LITTLE BADGER CR > BADGER CR  
IS 71795 BUCK HOL > DESCHUTES R  
IS 71796 BAKEOVEN CR > DESCHUTES R  
IS 71797 ANTELOPE CR > TROUT CR  
IS 71798 EIGHTMILE CR > FIFTEENMILE CR  
IS 71799 THREEMILE CR > WHITE R  
IS 71800 WHITE R > DESCHUTES R  
IS 71814 BORAX L  
IS 71921 OAK RANCH CR > NEHALEM R  
IS 71922 BEAVER CR > NEHALEM R  
IS 71923 FISHHAWK CR > NEHALEM R  
IS 71924 DEEP CR > NEHALEM R  
IS 71925 NORTHRUP CR > NEHALEM R  
IS 71926 FISHHAWK CR > BENEKE CR  
IS 71927 BUSTER CR > NEHALEM R  
IS 71928 COW CR > NEHALEM R  
IS 71929 QUARTZ CR > NEHALEM R  
IS 71930 W HUMBUG CR > HUMBUG CR  
IS 71931 E HUMBUG CR > HUMBUG CR  
IS 71932 HUMBUG CR > NEHALEM R  
IS 71933 SPRUCE RUN CR > NEHALEM R  
IS 71934 CRONIN CR > NEHALEM R  
IS 71935 W FK ELK CR > ELK CR  
IS 71936 BENEKE CR > NEHALEM R  
IS 71937 GODS VALLEY CR > N FK NEHALEM R  
IS 71938 NEHALEM R > NEHALEM BAY  
IS 71939 N FK NEHALEM R > NEHALEM R  
IS 71940 SOAPSTONE CR > N FK NEHALEM R  
IS 71941 ARCH CAPE CR > PACIFIC OCEAN  
IS 71942 N FK ELK CR > ELK CR  
IS 71943 S FK NECANICUM R > NECANICUM R  
IS 71944 SHORT SAND CR > PACIFIC OCEAN  
IS 71945 WOLF CR > NEHALEM R  
IS 71946 E FK NEHALEM R > NEHALEM R  
IS 72001 SALMON R > PACIFIC OCEAN  
IS 72002 PANTHER CR > SALMON R  
IS 72003 SULPHUR CR > SALMON R  
IS 72004 ROCK CR > DEVILS L  
IS 72005 BIG ROCK CR > ROCK CR  
IS 72006 LITTLE ROCK CR > ROCK CR  
IS 72007 OLALLA CR > YAQUINA R  
IS 72008 ELK CR > YAQUINA R  
IS 72009 GRANT CR > ELK CR  
IS 72010 FEAGLES CR > ELK CR  
IS 72011 S FK ALSEA R > ALSEA R  
IS 72012 FALL CR > ALSEA R

IS 72013 GREEN R > FIVE RIVERS  
IS 72014 LOBSTER CR > FIVE RIVERS  
IS 72015 MILL CR > SILETZ R  
IS 72016 ROCK CR > SILETZ R  
IS 72017 FIVE RIVERS > ALSEA R  
IS 72018 FIVE RIVERS > ALSEA R  
IS 72019 FIVE RIVERS > ALSEA R  
IS 72020 SILETZ R > SILETZ BAY  
IS 72023 SAWTOOTH CR > EMIGRANT CR  
IS 72024 COAL CR > M FK WILLAMETTE R  
IS 72025 GOLD CR > M FK WILLAMETTE R  
IS 72026 HILLS CR > M FK WILLAMETTE R  
IS 72034 WALLOWA R > GRANDE RONDE R  
IS 72035 WALLOWA R > GRANDE RONDE R  
IS 72036 WALLOWA R > GRANDE RONDE R  
IS 72061 FROG CR > CLEAR CR  
IS 72062 CEDAR CR > BOULDER CR  
IS 72063 BADGER CR > TYGH CR  
IS 72064 BOULDER CR > WHITE R  
IS 72065 CLEAR CR > WHITE R  
IS 72066 TYGH CR > WHITE R  
IS 72067 TYGH CR > WHITE R  
IS 72068 TYGH CR > WHITE R  
IS 72076 W FK HOOD R > HOOD R  
IS 72077 LAKE BR > W FK HOOD R  
IS 72078 S FK MILL CR > MILL CR  
IS 72079 N FK MILL CR > MILL CR  
IS 72080 DOG R > E FK HOOD R  
IS 72081 LINDSEY CR > COLUMBIA R  
IS 72159 ROCK CR > POWDER R  
IS 72160 S FK BURNT R > BURNT R  
IS 72161 S FK BURNT R > BURNT R  
IS 72162 W CAMP CR > CAMP CR  
IS 72163 WOLF CR > POWDER R  
IS 72164 ANTHONY FK > N POWDER R  
IS 72165 ANTHONY FK > N POWDER R  
IS 72166 ANTONE CR > N POWDER R  
IS 72167 BIG CR > POWDER R  
IS 72168 BURNT R > SNAKE R  
IS 72169 BURNT R > SNAKE R  
IS 72170 CLEAR CR > PINE CR  
IS 72171 CLEAR CR > WOLF CR  
IS 72172 CRACKER CR > POWDER R  
IS 72173 DALY CR > POWDER R  
IS 72174 DEER CR > POWDER R  
IS 72175 DUCK CR > N PINE CR  
IS 72176 DUTCH FLAT CR > N POWDER R  
IS 72177 E CAMP CR > CAMP CR  
IS 72178 ELK CR > S FK BURNT R  
IS 72179 LAKE FK CR > N PINE CR  
IS 72180 LAKE FK CR > N PINE CR  
IS 72181 LITTLE EAGLE CR > EAGLE CR  
IS 72182 LITTLE ELK CR > N PINE CR  
IS 72183 MCCULLY FK > POWDER R  
IS 72184 N FK ANTHONY FK > ANTHONY FK  
IS 72185 N FK BURNT R > BURNT R  
IS 72186 N FK BURNT R > BURNT R  
IS 72187 N POWDER R > POWDER R  
IS 72188 N POWDER R > POWDER R  
IS 72189 PINE CR > SNAKE R

IS 72190 POWDER R > SNAKE R  
IS 72191 POWDER R > SNAKE R  
IS 72192 POWDER R > SNAKE R  
IS 72193 POWDER R > SNAKE R  
IS 72194 ROCK CR > POWDER R  
IS 72500 E FK MILLICOMA R > MILLICOMA R  
IS 72501 E FK MILLICOMA R > MILLICOMA R  
IS 72502 JOHNSON CR > TENMILE L  
IS 72503 ROBERTS CR > JOHNSON CR  
IS 72504 BIG CR > M FK COQUILLE R  
IS 72505 WINCHESTER CR > SOUTH SL  
IS 72506 MINER CR > PACIFIC OCEAN  
IS 72507 CUNNINGHAM CR > COQUILLE R  
IS 72508 E FK COQUILLE R > N FK COQUILLE R  
IS 72509 ELK CR > E FK COQUILLE R  
IS 72510 FAT ELK CR > FAT ELK DR  
IS 72511 JOHNS CR > N FK COQUILLE R  
IS 72512 M FK COQUILLE R > S FK COQUILLE R  
IS 72513 MATSON CR > E FK MILLICOMA R  
IS 72514 MATSON CR > E FK MILLICOMA R  
IS 72515 MURPHY CR > N TENMILE L  
IS 72516 BENSON CR > TENMILE L  
IS 72517 BIG CR > N TENMILE L  
IS 72518 NOBLE CR > BIG CR  
IS 72519 BLACKS CR > N TENMILE L  
IS 72520 ADAMS CR > TENMILE L  
IS 72521 EEL CR > TENMILE CR  
IS 72522 UNN STR > EEL L  
IS 72523 WILKINS CR > N TENMILE L  
IS 72524 SHUTTER CR > ADAMS CR  
IS 72525 M FK COQUILLE R > S FK COQUILLE R  
IS 72526 S FK COQUILLE R > COQUILLE R  
IS 72527 M FK COQUILLE R > S FK COQUILLE R  
IS 72528 S FK COQUILLE R > COQUILLE R  
IS 72782 HALL CR > COQUILLE R  
IS 72783 GRAY CR > COQUILLE R  
IS 72784 RINK CR > COQUILLE R  
IS 72785 YELLOW CR > S FK COQUILLE R  
IS 72786 DEMENT CR > S FK COQUILLE R  
IS 72787 LOST CR > E FK COQUILLE R  
IS 72788 BRUMMIT CR > E FK COQUILLE R  
IS 72789 TWELVEMILE CR > M FK COQUILLE R  
IS 72790 ROCK CR > M FK COQUILLE R  
IS 72791 SLATER CR > M FK COQUILLE R  
IS 72792 SANDY CR > M FK COQUILLE R  
IS 72793 SALMON CR > M FK COQUILLE R  
IS 72794 KING CR > M FK COQUILLE R  
IS 72795 CHERRY CR > MIDDLE CR  
IS 72796 E FK BRUMMIT CR > BRUMMIT CR  
IS 72797 W FK BRUMMIT CR > BRUMMIT CR  
IS 72798 RHODA CR > S FK COQUILLE R  
IS 72799 SALMON CR > S FK COQUILLE R  
IS 72800 WOODWARD CR > S FK COQUILLE R  
IS 72801 BAKER CR > S FK COQUILLE R  
IS 72802 BEAVER CR > S FK COQUILLE R  
IS 72803 TWOMILE CR > PACIFIC OCEAN  
IS 72804 TWOMILE CR > PACIFIC OCEAN  
IS 72805 N FK COQUILLE R > COQUILLE R  
IS 72806 THREEMILE CR > PACIFIC OCEAN  
IS 72807 BOTTOM CR > WILLIAMS R

IS 72808 E FK COQUILLE R > N FK COQUILLE R  
IS 72809 N FK COQUILLE R > COQUILLE R  
IS 72810 N FK COQUILLE R > COQUILLE R  
IS 72811 N FK COQUILLE R > COQUILLE R  
IS 72812 FALL CR > S FK COOS R  
IS 72813 COLE CR > MYRTLE CR  
IS 72814 ROCK CR > MYRTLE CR  
IS 72815 JOHNSON CR > S FK COQUILLE R  
IS 72816 COAL CR > S FK COQUILLE R  
IS 72817 HAYES CR > S FK COQUILLE R  
IS 72818 SALMON CR > S FK COQUILLE R  
IS 72819 HUDSON CR > N FK COQUILLE R  
IS 72820 EVANS CR > N FK COQUILLE R  
IS 72821 BIG CR > S FK COOS R  
IS 72822 MIDDLE CR > N FK COQUILLE R  
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IS 72837 M FK CATCHING CR > CATCHING CR  
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IS 72844 ILLINOIS R > ROGUE R  
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IS 72846 LITTLE WINDY CR > ROGUE R  
IS 72847 MEADOW CR > ROGUE R  
IS 72848 WHISKEY CR > ROGUE R  
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IS 72850 STAIR CR > ROGUE R  
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IS 72883 N FK ALSEA R > ALSEA R  
IS 72884 BUMMER CR > S FK ALSEA R  
IS 72885 BEAR CR > ELK CR  
IS 72940 LITTLE MATSON CR > MATSON CR  
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IS 72943 BURNT CR > TIOGA CR

IS 72944 CATCHING CR > CATCHING SL  
IS 72945 CEDAR CR > WILLIAMS R  
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IS 72954 KENTUCK INLET > COOS BAY  
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IS 72959 TIOGA CR > S FK COOS R  
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IS 72961 MORGAN CR > DANIELS CR  
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IS 72964 WHISKY RUN > PACIFIC OCEAN  
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IS 72968 WILSON CR > CATCHING SL  
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IS 72971 WILLANCH INLET > COOS BAY  
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IS 72974 HUBBARD CR > PACIFIC OCEAN  
IS 73012 UNN STR > JOHNSON CR  
IS 73197 DEEP CR > N FK CROOKED R  
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IS 73200 FOURMILE CR > NEW R  
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IS 73204 LITTLE S FK HUNTER CR > HUNTER CR  
IS 73205 N FK HUNTER CR > HUNTER CR  
IS 73206 HUNTER CR > PACIFIC OCEAN  
IS 73207 BOULDER CR > EUCHRE CR  
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IS 73209 MUSSEL CR > PACIFIC OCEAN  
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IS 73320 SPARKS L > QUINN CR  
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IS 73322 QUINN CR > HOSMER L

IS 73326 BASIN CR > HEMLOCK CR  
IS 73327 HEMLOCK CR > LITTLE DESCHUTES R  
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IS 73374 CASTLE CR > ROGUE R  
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IS 73377 FOSTER CR > ROGUE R  
IS 73378 COPELAND CR > ROGUE R  
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IS 73384 STEVE FK CARBERRY CR > CARBERRY CR  
IS 73385 STURGIS FK CARBERRY > CARBERRY CR  
IS 73386 FOSTER CR > ROGUE R

TOTAL FILES = 922



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**RECEIVED**

TEL. (503)673-5528  
FAX (503)672-0977

February 23, 1994

**FEB 28 1994**

WATER RESOURCES DEPT.  
SALEM, OREGON

Steve Brown  
Water Resources Department  
Water Rights Section  
3850 Portland Road, NE  
Salem, Oregon 97310

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
# P198147560

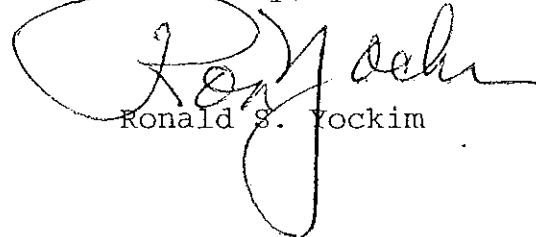
Re: Instream Water Right Applications  
#70230, 70229, 70228  
Our File No. 91111-C

Dear Mr. Brown:

Enclosed please find the Objections and Memorandum of Points and Authorities which are being submitted on behalf of the Oregon Cranberry Farmers Alliance.

We welcome the opportunity to work with the Department to resolve the various issues raised by the instream water right applications. If you have any questions please don't hesitate to contact me.

Sincerely,



Ronald S. Yockim

Enclosure

cc. Oregon Cranberry Farmers Alliance  
Jim Jackson  
Oregon Department of Fish & Wildlife

RECEIVED

FEB 28 1994

WATER RESOURCES DEPT.  
SALEM, OREGON

Ronald S. Yockim  
Cegavske, Johnston, Yockim & Associates  
425 SE Jackson St.  
P.O. Box 218  
Roseburg, OR. 97470  
(503) 673-5528

BEFORE THE WATER RESOURCES COMMISSION

STATE OF OREGON

IN RE THE INSTREAM WATER RIGHT	)	
APPLICATIONS Johnson Creek	)	No. 70228, 70229, 70230
(IS-70228), Crooked Creek	)	
(IS-70229) and Bear Creek	)	
(IS-70230), situated in	)	OBJECTIONS AND
Coos County <sup>1</sup> , Oregon.	)	MEMORANDUM OF POINTS
	)	AND AUTHORITIES
OREGON DEPARTMENT OF FISH AND	)	
WILDLIFE, Applicant,	)	
	)	
OREGON CRANBERRY FARMERS ALLIANCE,	)	
Petitioner.	)	

I.  
INTRODUCTION

The Oregon Cranberry Farmers Alliance files this objection to the "Satisfactory Report of Technical Review for Water Use Permit(s)" relative to the Oregon Department of Fish and Wildlife's instream water right applications on Johnson Creek (70228), Crooked Creek (70229), and Bear Creek (70230) all within Coos County.

The Objection raises as issues the fact that the instream water right applications do not satisfy the provisions of OAR 690-77-000 through OAR 690-77-044; and that the issuance of certificate for these instream water rights may impair or be detrimental to the public interest (OAR 690-77-0042).

This Objection identifies six public interest issues:

- 1) The unappropriated water should be conserved for the maximum economic development (higher public purpose) of the waters involved (OAR 690-77-042(4)(g);
- 2) the instream water right would preclude planned uses with a reasonable chance of development (OAR 690-77-042(4)(a)(D) & OAR 690-77-042(4)(b)(D));
- 3) the instream water right applications are not consistent with

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<sup>1</sup>. We note the technical review indicates that this stream is in Curry County, however the legal description in fact places this stream segment in Coos County.

the Coos County Comprehensive Plan (OAR 690-77-042(4)(b)(B)); 4) it is in the public interest to allocate part of the unappropriated water for agricultural (cranberry) use (OAR 690-77-042(4)(g), OAR 690-77-042(4)(a)(D), OAR 690-77-042(4)(b)(D)); 5) that it is in the public interest that the instream water right be limited to head of tidewater and that the applicant measure and monitor the flows (OAR 690-77-020(5)); 6) that the issuance of an instream water right requires a balancing of public interests (ORS 537.170(5)(b)); 7) the technical review failed to apply the 80% exceedence requirement; and 8) the applicant is requesting more water than necessary to support the fisheries described in the application.

## II. PUBLIC INTEREST REVIEW

Cranberry cultivation has been an established Oregon farming practice since Charles Dexter McFarlin established the first cranberry bog in 1885. Since its inception there has been a steady growth with approximately 1,567 acres currently under cultivation in Oregon. These acres are primarily located in Southern Coos County and Northern Curry County.

It is the policy of the State of Oregon to encourage the development of alternative crops such as cranberries. As part of this policy, the Oregon Legislature has adopted a policy to encourage and promote new and alternative crops, including cranberries (ORS 561.020(2) and ORS 561.700 et seq.). The Bandon cranberry industry is important not only to Oregon but on a national level as well. (Exhibit A)

The Bandon Cranberry Growing area is unique to the cranberry industry in its reliance upon upland terraced beds. These features enable both a highly efficient utilization of water and eliminate the reliance upon natural wetlands. As concerns mount nationwide over the use of wetlands for agricultural purposes, the production of cranberries in Oregon is expected to increase due to the local reliance on man-made upland beds.

Most of Oregon's cranberry crop is marketed cooperatively through Ocean Spray Cranberries, Inc. with a lesser amount marketed to Welches, Inc and other purchasers. The amount of acreage under production through the Ocean Spray Cranberries cooperative is closely controlled by the purchasing group with the growers competing for the right to increase their acreage under cultivation.

With respect to the major purchaser, Oregon Spray Cranberries, any acreage additions are allocated on a national level. Prior to any additions the cooperative invites applications. Once an application is approved the applicant has approximately three years to complete planting with the first crop being harvested approximately four years after planting.

Currently Ocean Spray Cranberries, Inc. has approved applications covering the period of 1988 to 1993 (Exhibit B). Several of these projects have already had a considerable expenditure of time and labor and have a high probability of being developed.

Not only are there several projects currently under development, the industry is projected to grow significantly in the near future. Over the last five years the industry has experienced a growth rate of 77 acres per year. This growth rate is expected to continue with an estimated increase to 5,933 acres within fifty years (Exhibit C).

The cranberry industry is a specialty crop which has a potential to help diversify the economy of both Oregon and Coos County. The Board of County Commissioners of Coos County also recognized the public benefits of this commodity to Coos County and incorporated a special zoning designation (EFU-10) to conserve lands which are especially suited for cranberry production. (Exhibit D).

In an attempt to diversify the timber and fisheries dependent economy of Coos County, the Board of Commissioners inaugurated the "Coos County Water Needs Analysis". This analysis was to identify water usage requirements for the future as well as needs for economic diversification. (Exhibit E) The Board of Commissioners adopted the findings as in the public interest of Coos County (Exhibit F).

This Objection to the Technical Review requests that the Department review the instream water right applications and weigh the public benefits relative to the fisheries values, which allegedly will be promoted by an instream water right, against the public benefits associated with allocating this unappropriated water to cranberry production.

Under the general provisions of the laws of Oregon relating to the appropriation of water, the Water Resources Commission (Commission) is to determine whether the instream water right application would impair or is detrimental to the public interest (ORS 537.170(5)).

In making this public interest determination the Commission is required to consider, among others, a) conserving the highest use of the water for all purposes, including but not limited to

irrigation and game fishing (ORS 537.170(5)(a)); b) the maximum economic development of the waters involved (ORS 537.170(5)(b)); c) the amount of waters available for appropriation (ORS 537.170(5)(d)); and d) the prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved (ORS 537.170(5)(e)).

This general public interest determination is required for both instream water right applications and out of stream appropriations. (ORS 537.170 & 537.343).

The Commission has adopted the following standards (OAR 690-11-195 & 690-77-042) which are to be followed in determining whether the proposed instream water right is within the public interest:

"(1) The Commission . . . shall weigh the effect of the proposed water use on each of the standards set out in ORS 537.170(5) to assess impairment or detriment to the public interest.

(3) In applying the standards set forth in ORS 537.170(5), the Commission . . . or the Director . . . shall evaluate the proposed water use in light of current uses planned uses and reasonably anticipated future demands for water from the source as established in the record. The evaluation shall recognize all known beneficial uses of water, including but not limited to the following categories:

(b) Economic development for agriculture, . . .

(4) The public interest determination shall be based on evidence which may include, but is not limited to, the following:  
a) Existing claims to water from the same source, including but not limited to:

D) Pending applications;

b) Land use goals, comprehensive plans, or other land use matters. Public interest determinations relating to land use may be based on, but not necessarily limited to:

A) Statewide Planning Goals;

B) Comprehensive Land Use Plans, including plan assumptions and policies;

D) Current, planned, or reasonably anticipated uses for land;

g) Agricultural potential of the area, including but not limited to an assessment of the following:

A) Crop or livestock production potential . . .

- B) Soil, topographic; and climatic characteristics;
- C) Transportation and market access; and
- D) Community and support facilities of the area.

ISSUE NO. 1: INSTREAM WATER RIGHT APPLICATIONS SHOULD BE  
CONDITIONED TO CONSERVE WATER FOR THE MAXIMUM ECONOMIC  
DEVELOPMENT OF THE WATERS INVOLVED.

In the issuance of an instream water right certificate the Commission must make a public interest determination which weighs the various uses and benefits to which the unappropriated water could be applied (ORS 537.170).

This public interest determination out of necessity requires the Commission to determine the future water needs of the basin, maximum economic development, relative economic value of the conflicting uses, and the prevention of wasteful, uneconomic, impracticable or unreasonable uses of the water.

Based upon this analysis, the Commission can then determine which of the potential uses will conflict and determine how to allocate the water to achieve the highest public interest.

With respect to Coos County and the Bandon Cranberry Growing Area, this future needs and economic analysis has already been done by the Board of Commissioners of Coos County.

The Board initiated the "Coos County Water Needs Analysis" in recognition that Coos County's resource dependent economy (timber & fisheries) was facing a very uncertain future and that any efforts to diversify would require identification and conservation of the water resource.

The Coos County Water Needs Analysis identified the Bandon Cranberry Growing Area as an area that could contribute to diversifying the economy and was therefore of high public benefit to the county as well as an area for which water should be conserved for future growth.

In adopting the "Coos County Water Needs Analysis" the Board of Commissioners was recognizing that it was in the public interest to protect and conserve these waters for the higher public purpose identified in the "Coos County Water Needs Analysis".

The Bandon Cranberry Growing Area is a significant part of the Coos County economy. Cranberry production from this area is projected to have a farmgate income of \$11,592,000 for the year 1991. Under the projected growth rate, this value is expected to

reach \$42,220,000 (assuming no inflation) by the year 2041 (fisheries production from the streams in this area do not approach this value).

However this growth can only be attained if there is sufficient water available. It is therefore in the public interest to conserve the waters of Johnson Creek, Crooked Creek, and Bear Creek for agricultural development. An area uniquely situated for the development of cranberries.

To conserve water for this public purpose the instream water right should be modified to allow for future growth in cranberry production within the Johnson Creek, Crooked Creek, and Bear Creek drainages.

ISSUE NO. 2: THE INSTREAM WATER RIGHT APPLICATIONS ARE NOT IN THE PUBLIC INTEREST SINCE THEY PRECLUDE PLANNED USES WITH A REASONABLE CHANCE OF BEING DEVELOPED THAT WOULD PROVIDE A GREATER BENEFIT TO THE PUBLIC FROM THE USE OF THE APPROPRIATED WATER.

As noted in the preceding discussion the Board of Commissioners of Coos County have adopted the Coos County Water Needs Analysis wherein it was found that the use of unappropriated water for expansion of cranberry production was in the public interest.

While the Coos County Water Needs Analysis identified the anticipated growth in cranberry production over the next fifty years, there are several projects which are currently planned or in various stages of development. These projects would be adversely affected by the instream water right application on Johnson Creek, Crooked Creek, and Bear Creek.

The amount of acreage under cranberry production like other commodities is closely controlled. For those growers that are members of the Ocean Spray Cranberries cooperative, acreage is only added in the Bandon Cranberry Growing Area if a contract is first approved by the cooperative. To add acres the cooperative solicits applications from all growers nationwide, the amount of available acres is then equally distributed among the applicants. Once an application is approved and applicant has three to five years to plant or he forfeits his acreage allocation.

For the application year 1993 there are 86.25 acres yet to be planted (Exhibit B). Since planting requires extensive site preparation there is a significant lead time and investment prior to planting. Several of these projects have already expended considerable amounts of time and money in engineering, design work, construction, and permit applications.

While not all of these acres are in the Johnson Creek, Crooked Creek, or Bear Creek area, we note that there are growers (Thomas Gant App. S-70386; Steve Gant App 72131 & R-72130; Steve and Gary Gant App. R-72132 & 72133; G. Fred Cox, App. 70447, G12157, 72610; John A. McMahon, App. 69932 & R-69931; Robert Stoltz R 71773, 71774, 69537, & February 1994 application; George Williams; App. 73753, R 73752; Ronny O. Haga, App R-70196, 70197; W. Scherer R-69708, 69654; Jim Jackson G-12797; Dave Evans planned 12 acre development on Johnson Creek in Section 9, T29S, R14W) in the Johnson Creek, Crooked Creek, and Bear Creek drainages with planned developments and pending applications. All of the projects within these drainages have a reasonable chance of being developed and would be adversely affected if the instream water right application were approved without conditioning the certificate to allow the above planned developments.

In addition, we note that the Bills Creek Reservoir Project (CH2M Hill project AG-3) and the Johnson Creek Reservoir Project (CH2M Hill project AG-2) are planned projects that would be affected by this instream water right. Both projects have a reasonable chance of being developed and would be adversely affected if the instream water right application were approved.

Under existing Water Resources Department policy, the Commission and Director are to evaluate each proposed instream water right in light of not only current uses but also "planned uses and reasonably anticipated future demands for water". (OAR 690-11-195(3) & 690-77-042(3)(b))

This evaluation is to consider planned and reasonably anticipated agricultural development. (OAR 690-11-195(3)(b) & 690-77-042(3)(b)) An evaluation that would consider the pending applications for cranberry use on Johnson Creek, Crooked Creek, and Bear Creek. These applications represent planned and reasonably anticipated agricultural development.

This standard should also be applied to those planned projects which are currently accepted by the cooperative and are under development.

ISSUE NO. 3: THE INSTREAM WATER RIGHT APPLICATIONS ARE NOT CONSISTENT WITH THE COOS COUNTY COMPREHENSIVE PLAN.

As part of the public interest determination the Commission and Director must evaluate the land use goals and comprehensive plan for this drainage (OAR 690-11-195(4)(b) & 690-77-042(4)(b)).

Statewide planning goals mandate the protection of both the water and agricultural interests of the state. To comply with statewide planning goals, all water applications and permits must



be compatible with the local comprehensive plans.

The Coos County Comprehensive Plan has allocated the Bandon Cranberry Growing Area to the EFU-10 zone. The EFU-10 zone is designed to conserve this unique area for cranberry production and to encourage the diversification of farming opportunities thereby increasing the commercial enterprises of the area.

Due to the unique soils and climatic conditions this area provides one of the few areas nationwide where high quality and high color cranberries can be grown.

If the Commission allocates all of the remaining unappropriated water for instream uses the Commission will have acted inconsistent with the local land use plan.

To comply with the comprehensive plan and land use goals any instream water right within the Bandon Cranberry Growing Area (EFU-10) and exclusive farm use zone should be conditioned to preserve and conserve these lands for production of cranberries and other crops.

**ISSUE NO. 4: THE COMMISSION MUST EVALUATE THE AGRICULTURAL POTENTIAL OF THE AREA AS PART OF ITS PUBLIC INTEREST REVIEW.**

As part of the public interest determination the Commission and Director are to consider the agricultural potential of the area. This evaluation is to consider the crop potential, soil & climatic characteristics, transportation and market access, and the local support facilities (OAR 690-11-195(4)(g) & 690-77-042(4)(g)).

The Bandon Cranberry Growing Area has been designated as "Exclusive Agriculture-10" under the Coos County Comprehensive Plan.

"The purpose of the "EFU-10" district is to conserve agricultural lands especially suited for cultivation and marketing of specialty crops, horticultural crops and other intensive farm uses, which are carried out on a commercial basis on relatively small ownerships. The "EFU-10" district is further intended to encourage a diversification of farming opportunities so as to increase the commercial agricultural enterprises of the area. . . The "EFU-10" district shall be restricted to the following townships/ranges: 27/14, 28/14, 28/15, 29/14, 29/15, 30/14, and 30/15." (Coos County Comprehensive Plan IV-2)

In adopting this special land classification the Coos County Board of Commission recognized the unique and special agricultural characteristics of the Bandon Cranberry Growing Area.

A recognition that is shared by Ocean Spray Cranberries, Inc. The national offices of Ocean Spray Cranberries, Inc. notes that due to the growing conditions in Oregon, cranberries produced here are two times more highly colored than cranberries grown elsewhere in the United States or Canada. In addition the national office considers the Bandon Cranberry Growing Area to be important to the national efforts of the company.

The local community of Bandon has recognized the cultural aspects of the cranberry industry and incorporated this heritage into the community's civic activities (ie. parades & cranberry days)

The cranberry industry in Bandon has established special market and support facilities. Among these are the Ocean Spray receiving station as well as a number of independent receiving stations. These receiving stations generally clean, pack, and ship cranberries grown by local growers.

The Johnson Creek, Crooked Creek, and Bear Creek areas (as with other areas within the Bandon Cranberry Growing Area) have a unique agricultural potential for growing cranberries. These unique attributes must be considered in evaluating whether the instream water right is in the public interest.

In balancing the public interest the contribution, both actual and potential, of the area to the fisheries and agricultural industries must be evaluated. In this case the agricultural benefits exceed the fisheries benefits. While the balancing of public interests lies in favor of agricultural development there is a potential for the two industries (agricultural and fisheries) to co-exist.

While it is generally true that out of stream uses are consumptive uses of water, this general principal does not apply to cranberry use. Cranberry production has developed into a highly efficient and conservative use of water. Due to the unique soil types involved in cranberry beds and the frequent use of terraced beds, water is recycled throughout the bed system and eventually returned to the creek either via migration through the peat or podzolic soils or by direct return flows. The net result is that the out of stream uses have only a minimal impact on the instream fish values.

The cranberry growers have long recognized the compatibility of cranberry production and fish production. Not only have the growers adopted extremely efficient water distribution system their projects have secondarily provided fish habitat.

In determining whether both the fisheries values and future cranberry development can both be accommodated, the Water Resources Department must consider not only whether it is in the

public interest to appropriate the waters in this stretch of the river to instream fisheries uses, but also whether allocating this volume of water serves the maximum beneficial use.

In the event the Department determines that fisheries is in the public interest, the question becomes at what point on the continuum from zero appropriation to the full request does the maximum beneficial use occur. In other words, does the fisheries use require all of the unappropriated water or could other uses be accommodated?

This question is particularly relevant on the lower reaches of a river system near its terminus with the ocean or where it becomes tidewater influenced. There is a point where, as the flow increases the value of each incremental increase in flow to the fisheries declines, this can be graphically illustrated by the bell shaped curve. The Department must weigh the public interest and determine where on the curve, for each reach of the stream, that the instream water right is the maximum beneficial use without waste. At some point on the curve other water uses could be accommodated.

The Petitioner submits that the maximum beneficial use of Johnson Creek, Crooked Creek, and Bear Creek can accommodate both fisheries and cranberries and that the instream water right should be conditioned to allow for additional cranberry production.

ISSUE NO. 5: THE INSTREAM WATER RIGHT MUST BE LIMITED TO THOSE WATERS ABOVE THE HEAD OF TIDEWATER AND CONDITIONED TO REQUIRE MONITORING AND MEASURING.

On Johnson Creek and Crooked Creek the ODF&W requested instream waters for the reach extending downstream to the head of tidewaters. We believe head of tidewater is the appropriate ending point for all instream water rights.

We note however that on Bear Creek the instream reach requested includes areas that are affected by tidewater. We believe the appropriate reach would delete any area that is tidewater affected. We suggest the following language: "From the confluence of Bill Creek to head of tidewater".

In addition, under the provisions of OAR 690-77-020(5) the instream water right applicant is encouraged to propose:

- "(a) A means and location for measuring the instream water right;

- (b) The strategy and responsibility for monitoring flows for the instream right; and
- (c) Any provisions needed for managing the water right to protect public uses."

Petitioner submits that if it is in the public interest to certificate instream water rights on Johnson Creek, Crooked Creek, and Bear Creek then as a practical matter the Applicant should provide a means to monitor, measure, and manage the instream water right.

ISSUE NO. 6: ISSUANCE OF AN INSTREAM WATER RIGHT REQUIRES A BALANCING OF PUBLIC INTEREST.

The provisions of ORS 537.170 set forth the process under which the Water Resources Commission is to determine whether a project would impair or be detrimental to the public interest. Among these various considerations is the issue of whether the proposed use allows for the maximum economic development of the waters involved. (ORS 537.170(5)(b)).

Inherent in this determination is a balancing between the water needs of the instream applicant and whether the applicant's use of water will be wasteful or otherwise will not accommodate or allow the maximum economic development of the waters involved. The balancing of needs must be done prior to the issuance of the instream water right.

In its public interest determination the Water Resources Commission must also consider reserving the unappropriated water for future economic development. This is of particular importance considering the Legislature in authorizing the three state agencies to request instream water rights also recognized that there must be a process for reserving water for future economic development. (ORS 537.356)

One must assume that it was not the Legislature's intent that there would be a race to file under the first in first time-first in right doctrine, with the winner receiving all of the unappropriated water. The more rational interpretation was that the Water Resources Commission would consider future economic development (such as planned agricultural developments) when it conducted its public interest determinations.

Obviously the Legislature did not expect a "land rush" between competing agencies. Likewise it did not expect one agency to be granted all of the water without a balancing of interest. If it had, it would merely have withdrawn all of the water from appropriation.

The Oregon Cranberry Farmers Alliance submits that the public interest review should consider the future economic development of this region, particularly as it applies to agricultural development of specialty crops such as cranberries. Any instream water right should be conditioned to reserve water for future development.

Among the future development projects that waters should be reserved for, include the previously mentioned cranberry field developments, as well as the Johnson Creek dam and reservoir project (Project AG-2) and the Bills Creek project (AG-3) as outlined by the CH2M Hill water study. The instream water right should be conditioned to allow water for these projects.

We note that the proposed project appears to be at the headwaters of this instream reach, however since the instream water will be a call on this stream segment the instream water right should be conditioned in order that it does not have priority over this project.

ISSUE NO. 7: THE TECHNICAL REVIEW FAILS TO APPLY THE 80% EXCEEDENCE REQUIREMENTS THAT HAVE BEEN APPLIED TO NON-AGENCY APPLICANTS.

The Water Resources Department has adopted an 80% exceedence requirement that was not applied in this case.

Our review of the application indicates that the ODF&W has applied for more water than the average flow of the stream. Applying the precedence that has been established for private landowners, the technical review should have resulted in an "unsatisfactory" finding. It appears the Department merely amended the application to allow the ODF&W all of the average flows.

The Department must process agency requests for instream water rights in the same manner as private landowner's applications.

In this case the proposed certificate flows are set at the average flows and not at the 80% exceedence levels.

If the 80% exceedence is properly applied, water for high flow events such as spawning and migration would still be protected. Therefore the instream water rights do not need to be issued for high flow events.

ISSUE NO. 8: THE INSTREAM WATER RIGHT APPLICATION REQUESTS WATER FLOWS THAT ARE ARBITRARILY SET AT AN ELEVATED LEVEL THAT DO NOT HAVE BIOLOGICAL SUPPORT.

The ODF&W has applied for an instream water right to provide "required" stream flows for fish passage of coho salmon, searun cutthroat trout, and winter steelhead. In addition the flows are requested for rearing juvenile salmonids and adult resident trout.

We note that in "Fish and Wildlife Resources of the South Coast Basin, Oregon, and their Water Requirements", the ODF&W reports that adult spawning steelhead and cutthroat are not present from June 1st to November 30th. Likewise spawning coho salmon are not present from Jan. 30th through November 15th. (p. 62 & 65)

It appears that the instream water right application is in fact seeking to maintain water flows during the June 1st to November 15th time period at a level that is in excess of the coho salmon, steelhead, and cutthroat needs. A time period when water is most important to the cranberry industry.

As noted in Water Availability for Oregon's Rivers and Streams: Volume 1; Overview the ODF&W is applying for periodic high flows to support salmon migrations during periods in which the South Coast region has traditionally a low flow period (ie. October).

Not only is it applying for high flows to support migration during a period of normally low flows (June 1 to Oct. 15), it is also a time when the fish are not migrating.

We also note that the flow needs for the migrating fish on this stream can be and are met by the application of the 80% exceedence formula. Therefore there is no public or scientific need to grant additional instream water for migration purposes.

In summary, it appears that flows specified in the application are in excess of (not necessary) the fisheries needs. And in at least one case, the ODF&W applied for instream rights to support spawning during a time when this activity is not occurring in this stream.

Under ORS 537.170(5) the amount of water requested would impair or be detrimental to the public interest in that it is wasteful, uneconomic, impracticable and unreasonable. Therefore the application should be denied or otherwise conditioned.

#### DISPUTE RESOLUTION

The Oregon Cranberry Farmers Alliance is willing to engage in formal discussions to attempt to resolve the technical review and public interest issues (OAR 690-11-180 & OAR 690-77-034).

By letter dated June 24, 1991, the Water Resources Department agreed that once it had completed its natural flow analysis, it would enter into discussions with the Oregon Cranberry Farmers Alliance relative to the issues raised during the earlier protest filings. As of this date we have had no communications from the Department on these issues.

CONCLUSION

The Oregon Cranberry Farmers Alliance has identified a number of elements relative to the proposed water use that may impair or be detrimental to the public interest. (OAR 690-11-170 & OAR 690-77-028) In addition the Oregon Cranberry Farmers Alliance has identified defects in the technical review (OAR 690-11-170 & OAR 690-77-028).

Respectfully submitted,  
CEGAVSKE, JOHNSTON, YOCKIM & ASSOC.



Ronald S. Yockim  
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transfer approval order or certificate is available.

(2) Upon closing and delivery of the instrument of conveyance in a real estate transaction involving the transfer of a water right, the seller shall also deliver to the purchaser evidence of any permit, transfer approval order or certificate of water rights if the permit, transfer approval order or certificate is available. In addition, the seller shall notify the Water Resources Department on a form prescribed by the department of:

- (a) The real estate transaction; and
- (b) The water right involved in the transaction.

(3) The failure of a seller to comply with the provisions of this section does not invalidate an instrument of conveyance executed in the transaction.

(4) This section does not apply to any transaction for the conveyance of real estate that includes a water right when the permit, transfer approval order or certificate evidencing the water right is held in the name of a district or corporation formed pursuant to ORS chapter 545, 547, 552, 553 or 554.

(5) As used in this section:

(a) "Certificate" means a certificate or registration issued under ORS 537.250 (1), 537.585, 539.140 or 539.240.

(b) "Permit" means a permit issued under ORS 537.211, 537.240 or 537.625.

(c) "Transfer approval order" means an order of the Water Resources Commission issued under ORS 540.520 or 540.530. [1979 c.535 §4; 1981 c.448 §1; 1991 c.411 §1]

### IN-STREAM WATER RIGHTS

**537.332 Definitions for ORS 537.332 to 537.360.** As used in ORS 537.332 to 537.360:

(1) "In-stream" means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(2) "In-stream water right" means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water in-stream for public use. An in-stream water right does not require a diversion or any other means of physical control over the water.

(3) "Public benefit" means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(4) "Public use" includes but is not limited to:

- (a) Recreation;

(b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement; or

(d) Navigation. [1987 c.859 §2]

**537.334 Findings.** The people of the State of Oregon find and declare that:

(1) Public uses are beneficial uses.

(2) The recognition of an in-stream water right under ORS 537.336 to 537.348 shall not diminish the public's rights in the ownership and control of the waters of this state or the public trust therein. The establishment of an in-stream water right under the provisions of ORS 537.332 to 537.360 shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any waters vested prior to the date the in-stream water right is established pursuant to the provisions of ORS 537.332 to 537.360. [1987 c.859 §3]

**537.335** [Formerly 537.280; renumbered 537.390 in 1987]

**537.336 State agencies authorized to request in-stream water rights.** (1) The State Department of Fish and Wildlife may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to the conservation, maintenance and enhancement of aquatic and fish life, wildlife and fish and wildlife habitat. The request shall be for the quantity of water necessary to support those public uses as recommended by the State Department of Fish and Wildlife.

(2) The Department of Environmental Quality may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state to protect and maintain water quality standards established by the Environmental Quality Commission under ORS 468B.048. The request shall be for the quantity of water necessary for pollution abatement as recommended by the Department of Environmental Quality.

(3) The State Parks and Recreation Department may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to recreation and scenic attraction. The request shall be for the quantity of water necessary to support those public uses as recommended by the State Parks and Recreation Department. [1987 c.859 §4; 1989 c.904 §68]

**537.338 Rules for state agency request for in-stream water right.** The Water Resources Commission by rule shall establish

standards, criteria and procedures by which a state agency included under ORS 537.336 may request an in-stream water right to be issued under ORS 537.336. [1987 c.859 §5]

537.340 [Formerly 537.290; renumbered 537.395 in 1987]

**537.341 Certificate for in-stream water right.** Subject to the provisions of ORS 537.343, the Water Resources Commission shall issue a certificate for an in-stream water right. The in-stream water right shall date from the filing of the application with the commission. The certificate shall be in the name of the Water Resources Department as trustee for the people of the State of Oregon and shall be issued by the commission according to the procedures established under ORS 537.338. The commission shall forward a copy of each certificate issued under this section to the state agency requesting the in-stream water right. [1987 c.859 §6]

**537.343 Hearing on request for in-stream water right; order.** (1) If in the judgment of the Water Resources Commission, the issuance of a certificate for an in-stream water right may impair or be detrimental to the public interest, or upon petition by any person, the commission may hold a public hearing on the request received under ORS 537.336.

(2) A hearing required under subsection (1) of this section shall be conducted in accordance with ORS 537.170.

(3) After the public hearing under subsection (2) of this section, the commission shall enter an order which may include any condition the commission considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The order may:

(a) Approve the in-stream water right for the quantity of water requested;

(b) Approve the requested in-stream water right for a lesser quantity of water; or

(c) Reject the requested in-stream water right.

(4) If the commission reduces or rejects the in-stream water right as requested, or conditions the in-stream water right, the commission shall include a statement of findings that sets forth the basis for the reduction, rejection or conditions. The commission shall be the final authority in determining the level of in-stream flow necessary to protect the public use.

(5) After the commission issues an order approving an in-stream water right, the commission shall issue a certificate for an in-stream water right according to the provisions of ORS 537.341. [1987 c.859 §7]

537.345 [Formerly 537.300; renumbered 537.400 in 1987]

**537.346 Conversion of minimum perennial streamflows to in-stream water rights.** All minimum perennial streamflows established on any waters of this state before September 27, 1987, shall be converted to in-stream water rights after the Water Resources Commission reviews the streamflows and issues a certificate for an in-stream water right in accordance with ORS 537.343 with the same priority date as the minimum perennial streamflow. The provisions of ORS 536.325 shall not apply to a revision conducted under this section. [1987 c.859 §8]

**537.348 Purchase, lease or gift of water right for conversion to in-stream water right; priority dates.** (1) Any person may purchase or lease an existing water right or portion thereof or accept a gift of an existing water right or portion thereof for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. A person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.578.

(2) Any person who has an existing water right may lease the existing water right or portion thereof for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of such lease, the use of the water right as an in-stream water right shall be considered a beneficial use. [1987 c.859 §9]

**537.350 Legal status of in-stream water right.** (1) After the Water Resources Commission issues a certificate for an in-stream water right under ORS 537.341 to 537.348, the in-stream water right shall have the same legal status as any other water right for which a certificate has been issued.

(2) An in-stream water right is not subject to cancellation under ORS 537.260 or 537.410 to 537.450 but an in-stream water right may be canceled under ORS 540.610 to 540.650. [1987 c.859 §10]

**537.352 Precedence of uses.** Notwithstanding any provision of ORS 537.332 to 537.343 and 537.350, the right to the use of the waters of this state for a project for multipurpose storage or municipal uses or by a municipal applicant, as defined in ORS 537.282, for a hydroelectric project, shall

take precedence over an in-stream water right when the commission conducts a review of the proposed project in accordance with ORS 537.170. The precedence given under this section shall not apply if the in-stream water right was established pursuant to ORS 537.346 or 537.348. [1987 c.859 §11]

**537.354 In-stream water right subject to emergency water shortage provisions.** An in-stream water right established under the provisions of ORS 537.332 to 537.360 shall be subject to the provisions of ORS 536.700 to 536.780. [1987 c.859 §12]

**537.356 Request for reservation of unappropriated water for future economic development.** Any state agency may request the Water Resources Commission to reserve unappropriated water for future economic development. [1987 c.859 §13]

**537.358 Rules for reservation for future economic development.** The Water Resources Commission shall adopt rules to carry out the provisions of ORS 537.356. The rules shall include a provision for a review under ORS 537.170 to be conducted:

- (1) At the time a reservation for future economic development is made; and
- (2) At the time the reserved water is applied to consumptive use or out-of-stream use. [1987 c.859 §14]

**537.360 Relationship between application for in-stream water right and application for certain hydroelectric permits.** If an application is pending under ORS chapter 537 for a water right permit to use water for hydroelectric purposes or under ORS 543.010 to 543.620 for a hydroelectric permit or license at the time the Water Resources Commission receives an application for an in-stream water right under ORS 537.336 for the same stream or reach of the stream, the commission shall not take any action on the application for an in-stream water right until the commission issues a final order approving or denying the pending hydroelectric application. [1987 c.859 §15]

**MISCELLANEOUS**

**537.390 Valuation of water rights.** In any valuation for rate-making purposes, or in any proceeding for the acquisition of rights to the use of water and the property used in connection therewith, under any license or statute of the United States or under the laws of Oregon, no value shall be recognized or allowed for such rights in excess of the actual cost to the owner of perfecting them in accordance with the provisions of the Water Rights Act. [Formerly 537.280; and then 537.335]

**537.395 Public recapture of water power rights and properties; no recapture of other rights.** (1) Any certificate issued for power purposes to a person other than the United States, or the State of Oregon or any municipality thereof, shall provide that after the expiration of 50 years from the granting of the certificate or at the expiration of any federal power license, and after not less than two years' notice in writing to the holder of the certificate, the State of Oregon, or any municipality thereof, may take over the dams, plants and other structures, and all appurtenances thereto, which have been constructed for the purpose of devoting to beneficial use the water rights specified in the certificate. The taking over shall be upon condition that before taking possession the state or municipality shall pay not to exceed the fair value of the property taken, plus such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the certificate, not taken over, as may be caused by the severance therefrom of the property taken.

(2) The fair value of the property taken and the severance damages, if any, shall be determined by agreement between the holder of the certificate and the state or municipality, or, in case they cannot agree, by proceedings in equity instituted by the state or municipality in the circuit court of the county in which the largest portion of the property is located.

(3) The right of the state or any municipality to take over, maintain and operate any property which has devoted to beneficial use water rights specified in the certificate, by condemnation proceedings upon payment of just compensation, is expressly reserved.

(4) The provision for the recapture of any rights other than for power purposes, as provided in this section, contained in any certificate issued before June 14, 1939, shall be of no force and effect and may be canceled from the records wherever recorded and a new certificate issued with the recapture clause eliminated.

(5) The owner of any certificate issued before June 14, 1939, for such rights may, upon surrendering the certificate, receive a new certificate therefor issued under and subject to the provisions of this section. [Formerly 537.290; and then 537.340]

**537.400 Reservoir permits.** (1) All applications for reservoir permits shall be subject to the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240, except that an enumeration of any lands proposed to be irrigated under the Water Rights Act shall not be required in the primary permit. But the party proposing to apply to a beneficial use the water stored in any such

OREGON WATER RESOURCES DEPARTMENT  
ADMINISTRATIVE RULES  
CHAPTER 690  
DIVISION 77  
INSTREAM WATER RIGHTS

**Purpose**

690-77-000

- (1) The purpose of this division is to establish the policy, procedures, criteria, standards and definitions which shall be applied by the Department and Commission in the evaluation of applications for establishing instream water rights.
- (2) This division also provides for the conversion of existing minimum streamflows to instream water rights; for the purchase, gift or lease of existing water rights for use as instream water rights; and for the enforcement of instream water rights which are held in trust by the Water Resources Department to protect the public uses.
- (3) In 1987, the Legislature created a new type of water right called an instream water right. Instream water rights are established by certificate from the Water Resources Commission, pursuant to ORS 537.332 to 537.360, to maintain and support public uses within natural streams and lakes. These public uses include, but are not limited to, recreation, scenic attraction, aquatic and fish life, wildlife habitat and ecological values, pollution abatement and navigation. Instream water rights may also be established as a result a of water conservation project governed by OAR Chapter 690 Division 18.
- (4) Instream water right differ from other water rights because control or diversion of the water is not required. Instream water rights are held in trust by the Water Resources Department but are regulated and enforced like all other water rights.
- (5) Instream water rights do not take away or impair any legally established right to the use of water having an earlier priority date than the instream right.
- (6) These rules apply to all applications on which no certificate has been granted, application rejected, or on which no contested case has been ordered, on or before June 5, 1992.

{adopted 10-28-88; adopted: 6-5-92}

**Definitions**

690-77-010 As used in this Division:

- (1) "Affected local government" means any local government, as defined in OAR 690-05-015, within whose jurisdiction the diversion, conveyance, instream or out-of-stream use, or reservation of water is proposed or established.
- (2) "Beneficial use" means the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state.

- (3) "Comment" means a written statement requesting the Director's report of the technical review for a particular application. The comment may identify elements of the application which, in the opinion of the commenter, would conflict with an existing water right or would impair or be detrimental to the public interest.
- (4) "Commission" means the Water Resources Commission.
- (5) "Contested case" means a hearing before the Department or Commission as defined in ORS 183.310(2) and conducted according to the procedures described in ORS 183.413 - 183.497 and OAR Chapter 690, Division 02.
- (6) "DFW" means the State Department of Fish and Wildlife.
- (7) "DEQ" means the Department of Environmental Quality.
- (8) "Department" means the Water Resources Department.
- (9) "Director" means the director of the Water Resources Department.
- (10) "EDD" means the Economic Development Department.
- (11) "Estimated average natural flow" means average natural flow estimates derived from watermaster distribution records, Department measurement records and application of appropriate available scientific and hydrological technology.
- (12) "Held in trust by the Water Resources Department" means that the water right must be enforced and protected for the public uses listed in the water right. Actions by the Department affecting instream water rights are limited by public trust obligations.
- (13) "Instream," as defined in ORS 537.332, means within the natural stream channel or lake bed or place where water naturally flows or occurs.
- (14) "Instream water right," as defined in ORS 537.332, means a water right held in trust by the Water Resources Department for the benefit of the people of the state of Oregon to maintain water instream for public use. An instream water right does not require a diversion or any other means of physical control over the water.
- (15) "Minimum streamflow," also "minimum perennial streamflow," means an administrative rule provision adopted in a basin program by the Water Resources Commission or its predecessors to implement ORS 536.235, 536.310(7) and 536.325 and support aquatic life, maintain recreation or minimize pollution.
- (16) "Multipurpose storage project" means any storage project which is designed and operated to provide significant public benefits and provides for more than two beneficial uses and/or purposes.
- (17) "Objection" means a written statement identifying a particular instream water right application and identifying defects in the Director's report of the technical review, or identifying the elements of the application which, in the opinion of the objector, would conflict with an existing water right or would impair or be detrimental to the public interest. Objections shall meet the requirements of in OAR 690-77-028(1).
- (18) "Parks" means the Parks and Recreation Department.

(19) "Planned" means a determination has been made for a specific course of action either by legislative, administrative or budgetary action of a public body, or by engineering, design work, or other investment toward approved construction by the public or private sector.

(20) "Planned uses" means the use or uses of water or land which has/have been planned as defined in this section. Such uses include but are not limited to the policies, provisions, and maps contained in acknowledged city or county comprehensive plans and land use regulations.

(21) "Protest" means a written statement filed by an objector identifying errors of law or fact in the Director's denial of an objection. Protests shall comply with the requirements of OAR 690-77-032(5).

(22) "Public benefit," as defined in ORS 537.332, means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(23) "Public use," as defined in ORS 537.332, includes but is not limited to:

- (a) Recreation;
- (b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;
- (c) Pollution abatement; or
- (d) Navigation.

(24) "Recreation" as a public use of water means any form of play relaxation, or amusement, mostly done during leisure, that occurs in or in conjunction with streams, lakes and reservoirs, including but not limited to boating, fishing, swimming, wading, and viewing scenic attractions.

(25) "Scenic attraction" means a picturesque natural feature or setting of a lake or stream, including but not limited to waterfalls, rapids, pools, springs, wetlands and islands that create viewer interest, fascination, admiration or attention.

(26) "Unappropriated water available" means water that exceeds the quantities required to meet existing water rights of record, minimum streamflows and instream water rights and for known and yet to be quantified Native American treaty rights.

{adopted 10-28-88; amended: 8-8-90; 6-5-92}

## **General Provisions**

690-77-015

(1) Instream water rights shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any rights vested prior to the date of the instream water right.

(2) The implementation of the instream water rights law is a means of achieving an equitable allocation of water between instream public uses and other water uses. When instream water rights are set at levels that exceed current unappropriated water available the water right not only protects remaining supplies from future appropriation but establishes a management objective for achieving the amounts of instream flows necessary to support the identified public uses.

(3) The amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right.

(4) If natural streamflow or natural lake levels are the source for meeting instream water rights, the amount allowed during any identified time period for the water right shall not exceed the estimated average natural flow or level occurring from the drainage system, except where periodic flows that exceed the natural flow or level are significant for the public use applied for. An example of such an exception would be high flow events that allow for fish passage or migration over obstacles.

(5) If the source of water for an instream water right is other than natural flow such as storage releases or inter-basin transfer, the source shall be developed or a permit for development approved prior to or coincident in priority with the instream water right. The development of environmentally sound multipurpose storage projects that will provide instream water use along with other beneficial uses shall be supported.

(6) Instream water rights in rivers and streams shall, insofar as practical, be defined by reaches of the river rather than points on the river.

(7) When instream water rights are established through transfers of existing water rights, the certificate shall define the appropriate reach or reaches to which the new instream water right shall apply. Normally, a new instream water right shall be maintained downstream to the mouth of the affected stream; however, it may be maintained farther downstream if the amount of the instream water right is a measurable portion of the flow in the receiving stream.

(8) Instream water rights shall conform with state statutes and basin programs. All natural lakes and streams in the state shall be considered classified to allow all instream public uses unless specifically withdrawn from appropriation for such use.

(9) Instream water rights shall be approved only if the amount, timing and location serve a public use or uses.

(10) The combination of instream water rights, for the same reach or lake, shall not exceed the amount needed to provide increased public benefits and shall be consistent with (4) and (5) above.

(11) An instream water right created through the conversion of a minimum perennial streamflow shall not take precedence over any rights having an earlier priority date, including storage rights except where an individual permit or water right specifies a subordination to future use or appropriations.

(12) An instream water right created through the conversion of a minimum perennial streamflow which consists in whole or part of waters released from storage are enforceable only as to the waters released to satisfy the instream water right.

(13) Instream water rights created through the conversion of minimum perennial streamflows shall carry with them any and all conditions, exceptions or exemptions attached to the minimum perennial streamflow, unless modified through hearing.

{ adopted 10-28-88; amended: 7-7-89; 6-5-92 }

### **Agency Applications for New Instream Water Rights**

690-77-020

(1) Only DFW, DEQ and Parks are authorized to submit applications to the Department to establish instream water rights. Applications may be submitted at any time.

(2) To promote coordination, DFW, DEQ and Parks shall notify each other of the proposed applications prior to submittal to the Department. The applying agency should notify the other agencies of its intent to develop an instream water right application on a specified stream or lake. Notice should be given as early as possible and the other agencies should respond as soon as possible if they would like to incorporate the public uses each is responsible for into the application.

(3) After October 28, 1989, all applications for instream water rights shall be based on methods of determining instream flow needs that have been approved by administrative rule of the agencies submitting the applications.

(4) Applications to establish instream water rights shall be submitted in writing and shall include the following:

- (a) Agency(ies) applying;
- (b) Public uses to be supported;
- (c) Stream or lake name;
- (d) If a stream, the reach delineated by river mile and stream to which it is tributary;
- (e) The appropriate section of a Department basin map with the applicable lake or stream reach identified;
- (f) Flow requested by month and year in cubic feet per second or acre-feet or lake elevation;
- (g) A description of the technical data and methods used to determine the requested amounts;
- (h) Evidence of notification of other qualified applicant agencies;
- (i) If a multi-agency request, the amounts and times requested for each category of public use;
- (j) Identification of affected local governments (pursuant to OAR 690-77-010) and copies of letters notifying each affected local government of the intent to file the instream water right application.

(5) The applicant is encouraged to propose:

- (a) A means and location for measuring the instream water right;
- (b) The strategy and responsibility for monitoring flows for the instream right; and
- (c) Any provisions needed for managing the water right to protect the public uses.

{adopted 10-28-88; amended: 8-8-90; 6-5-92}

## **Application Filing**

690-77-021 .

(1) Before receipt of an instream water right application for filing, the Department shall determine if the documents contain the information described in OAR 690-77-020.

(2) If the application does not contain the information described in OAR 690-77-020, the application shall not be received for filing and shall be returned to the applicant. Nothing in this section prohibits an applicant from resubmitting a completed or corrected application.



(3) If the application contains the information described in OAR 690-77-020, the Department shall assess the status of the body(ies) of water designated in the application as the water source(s). If the water source(s) has been withdrawn or classified so as to completely prohibit the proposed use of water by previous action of the Commission or the Legislature, the application shall not be received for filing and shall be returned to the applicant.

(4) The Department shall receive an application for filing and thereby establish a tentative priority date to appropriate the waters of the State of Oregon if:

(a) The application contains the required minimum information described in OAR 690-77-020; and

(b) The proposed water source(s) has not been withdrawn from appropriation or classified so as to prohibit the proposed use.

(5) The tentative priority date shall be the date the application was received for filing by the Department.

{ adopted 6-5-92 }

### **Incomplete Applications**

690-77-022

(1) If at any time during the processing of an application that has been received for filing, the Department determines that the application is defective or does not fulfill the requirements of OAR 690-77-020, the Department shall return the application to the applicant for the curing of defects or resubmittal with the required information.

(2) The Department's correspondence shall state a time within which the application and required information must be returned to the Department. The time allowed shall be at least 30 days but not more than one year from the date the application is returned to the applicant. If the applicant fails to return a complete application to the Department within the time specified, the tentative priority date is forfeited and the application shall be rejected.

{ adopted 6-5-92 }

### **Replacing or Amending Applications; Tentative Priority Date**

690-77-023 Applications may be replaced or amended without loss of the tentative priority date so long as the requested source of water and the nature of use are the same as was described in the original application and the requested quantity is not increased. If the replacement or amendment proposes different or additional sources or uses, or increases the amount of water requested, the original proposal shall retain the original tentative priority date and the additions or increases shall be assigned a new tentative priority date, as of the date the amendment is received by the Department.

{ adopted 6-5-92 }

## APPLICATION PROCESSING

### Public Notice and Comments

690-77-024

- (1) Upon filing of an instream water right application, the Director shall notify the following:
  - (a) Affected local, state and federal agencies, including the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse;
  - (b) Affected Indian tribes; and
  - (c) All persons on the Department's weekly mailing list.
- (2) The notice shall include but is not limited to the following information:
  - (a) Applicant agency(ies);
  - (b) County(ies) of water use;
  - (c) Application file number;
  - (d) Description of the characteristics and the purpose of the proposed instream water right;
  - (e) Amount of proposed instream water right by month or half month in cubic feet per second (cfs), acre feet (af), or lake elevation;
  - (f) Common name of surface water source(s); and
  - (g) The stream reach by mile or geographic location.
- (3) In addition to the information required in OAR 690-77-024(2), a notice shall include a tear-off comment tab to facilitate participation by interested and affected parties.
- (4) A 30-day comment period shall commence on the day the Department deposits the notice in the mail of the United States Postal Service. All comments must be received by the Department on or before the end of the 30-day comment period. The notice shall state the date by which comments must be received by the Department.
- (5) If no comments or land use information is received by the Department within the 30-day comment period, the Commission and Director may presume the proposed instream water right is compatible with the comprehensive land use plans and land use regulations of affected local governments and the proposed instream water right is not opposed by any person or entity and may act on the application pursuant to applicable statutes and rules.

{adopted 6-5-92}

### Technical Review

690-77-026

- (1) After an application is accepted for filing by the Department, the Director shall undertake a technical review of such application and prepare a report. A technical review shall include an analysis of an instream water right application by the Department which shall include, but is not limited to:
  - (a) Identifying defects in the application and supporting data;
  - (b) Assessing whether the proposed instream water right is restricted or prohibited by statute;

- (c) Assessing the proposed instream water right with respect to conditions previously imposed on other instream water rights granted for use of water from the same source;
- (d) Assessing the proposed instream water right with respect to other Commission administrative rules, including but not limited to the applicable basin program;
- (e) Evaluating the potential conflict with existing water rights;
- (f) Evaluating the information received from local government(s) regarding the compatibility of the proposed instream water use with land use plans and regulations;
- (g) Evaluating the estimated average natural flow available from the proposed source during the time(s) and in the amounts requested in the application; and
- (h) Evaluating whether the level of instream flow requested is based on the methods for determination of instream flow needs as directed by statute and approved by the administrative rules of the applicant agency.

(2) If the technical review indicates that water is available on a limited basis, or if the proposed instream water right can be restricted so as to avoid causing conflict with existing water rights and cause the use to be permitted within the programs or policies of the Commission, the Director shall propose permit conditions to reflect such limits or restrictions.

(3) Upon entry of the report of the technical review, an evaluation of the application shall be initiated to determine whether the proposed instream water right may impair or be detrimental to the public interest pursuant to the procedure set forth in OAR 690-77-036.

(4) The report of the technical review shall be distributed to the applicant and all individuals, including all governmental agencies, who have filed timely comments with the Department. In addition, any person may request a copy of the report of the technical review.

(5) The report of the technical review shall state the date by which objection(s) must be received by the Department. (See OAR 690-77-028).

(6) In the event the proposed instream water right described in an application is alleged by an affected local government to be incompatible with a comprehensive land use plan, or is otherwise the subject of a land use dispute as defined in OAR 690-05-015, the Commission or Director shall follow procedures set forth in OAR 690-05-040 (Resolution of Land Use Disputes).

{ adopted 6-5-92 }

## **Objections**

690-77-028

(1) A 60-day objection period shall commence on the day the Department deposits the report of technical review in the mail of the United States Postal Service for delivery to the applicant. Objection(s) must be received by the Department within said 60-day objection period. If the objector alleges that the Director's technical review is defective, the objection must set forth facts which support the allegation.

If the objector alleges that the proposed instream water right may impair or be detrimental to the public interest, the objection must specify the particular public interest standard(s) identified in ORS 537.170, OAR 690-77-015, and OAR 690-77-042 that the objector believes would prohibit the proposed instream water right. The objector must state facts to support the allegation that the proposed instream water right is not permitted by the specified standards. Objectors are encouraged to indicate if they would be interested in participating in settlement of their concerns through alternative dispute resolution or if the issues raised should be considered as a part of a contested case hearing.

(2) If no objection is received by the Department on or before the date stated in the report of the technical review, the Commission and Director may presume the application is not opposed by any person or entity.

{adopted 6-5-92}

### **Evaluation of Objections and Filing of Protests**

690-77-032

(1) If objection(s) are filed with the Department within the time limits prescribed in OAR 690-77-028(1), the Director shall transmit copies of such objection(s) to the applicant(s), all objectors and all commenters who indicated they would not oppose the permit if it was issued with the conditions recommended in the technical review. The Director shall assess such objection(s) to determine if the matters raised by the objector(s) demonstrate that the Director's technical review was defective or that the proposed instream water right may impair or be detrimental to the public interest.

(2) If the Director determines that the objection(s) contains facts that establish that the Director's technical review was defective or identifies elements of the proposed instream water right that may impair or be detrimental to the public interest, the Director shall advise the objector(s), the applicant and all commenters who indicated they would not oppose the permit if it was issued with the conditions recommended in the technical review that the parties may engage in discussions to attempt to resolve the technical review or public interest issues described in the objection.

(3) If the parties elect to engage in formal discussions to attempt to resolve the technical review or public interest issues, such discussions shall be conducted as prescribed in OAR 690-77-034.

(4) If the Director determines that the objection(s) does not contain facts that establish that the Director's technical review was defective or does not identify elements of the proposed instream water right that may impair or be detrimental to the public interest, the Director shall deny the objection and shall transmit notice of the denial to the applicant and objector(s) by mail.

(5) The objector(s) shall be allowed 30 days from the date of mailing of the denial of their objection(s) to protest the denial of their objection(s). The form and content of the protest along with the filing and service procedure must be in accordance with the standards set forth in OAR 690-02-030 through 080.

(6) If a protest(s) is timely filed, the Director shall refer the application with accompanying objection(s) and protest(s) to the Commission for review.

(7) If the objection(s) is denied and no protests are filed, the Director shall review the application to determine if the proposed instream water right may impair or be detrimental to the public interest pursuant to OAR 690-77-036 and 042.

{adopted 6-5-92}

### **Alternative Dispute Resolution**

690-77-034

- (1) If objection(s) is timely filed and is not denied, and if the applicant and objector(s) elect to engage in discussions, the applicant and objector(s) shall:
- (a) Inform the Director within 30 days of receipt of the copies of the objections mailed under OAR 690-77-032(1) of their election to enter into discussions;
  - (b) Notify the Director of the date, time and location of all discussion sessions not less than ten days before each session;
  - (c) Agree that the Director or the Director's designee may attend all discussion sessions;
  - (d) Submit a written report to the Director within 30 days of notice of their election to enter discussions (the written report shall include an estimated completion date for the discussions which shall not exceed 180 days from the date of notice of election);
  - (e) Submit monthly reports to the Director identifying the place, time and attendance of all discussion sessions and a summary of the matters discussed at each session;
  - (f) Agree to identify the issues to be addressed in the discussions before discussions are initiated;
  - (g) Acknowledge that no agreement of the applicant and objector(s) is binding on the state of Oregon until approved by the Director or the Commission;
  - (h) Agree to support their agreement for resolution of the matters under discussion if such agreement is presented to, and approved by, the Director or the Commission;
  - (i) Agree to hold the Director, the Department, and the Commission harmless for any act, omission or event resulting from, or related to, the discussions or any agreement resulting therefrom; and
  - (j) Agree that evidence of conduct or statements made during discussions or negotiations which are not included as a part of a settlement are not admissible in any subsequent hearing or action on the application, unless the applicant and objector(s) stipulate otherwise. This prohibition of admissibility does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of discussions or negotiations.
- (2) If the applicant or objector(s) fail to submit timely reports, fail to show progress toward resolution of the identified issues or fail to adhere to their schedule or the requirements set forth in this section, the Director shall terminate the discussions and refer the application to the Commission for review or schedule a contested case hearing. The Director may allow an extension of the completion date for good cause.
- (3) The applicant or objector(s) may request that the Director, or the Director's designee, facilitate the discussions.
- (4) If the applicant and objector(s) are able to resolve the issues raised by the objector(s), the applicant and objector(s) shall execute a settlement agreement setting forth such resolution and submit said settlement agreement to the Director for review.

## **Purchase, Lease or Gifts of Existing Water Rights for Conversion to Instream Rights**

690-77-070

(1) Any person may apply to the Commission to convert to an instream water right an existing right or a portion of a right which the applicant would acquire or has acquired through purchase, lease or gift.

(2) An application for conversion shall include the following information:

- (a) Name of person requesting change, mailing address and phone number;
- (b) Public use(s) for which the instream right is desired;
- (c) Source of water for the existing water right including stream or lake name and county;
- (d) Name of record on the certificate, decree or proof of appropriation;
- (e) Name and page of decree and certificate number, if applicable;
- (f) Permit number and certificate number, if applicable;
- (g) Date of priority;
- (h) The authorized existing use of water;
- (i) Place of use, by location in the public land survey and by tax lot or by block, lot and tax lot (if applicable) in a platted subdivision;
- (j) Name of deeded land owner/certificate owner and a notarized statement authorizing the transfer if the owner is not the applicant;
- (k) Copy of the current recorded deed;
- (l) If any encumbrances exist against the property to which the existing right is appurtenant, a notarized statement of no objection from each holder of an encumbrance;
- (m) Description of the quantity of water to be transferred and map delineating the present point of diversion, the lands which are the subject of the transfer and lands if any, from the existing right that would not be subject to transfer;
- (n) Recommendations, if any, for conditions on the instream water right that would avoid taking away or impairing existing permitted, certificated or decreed rights. Such conditions may include, but are not limited to the instream flow levels in cfs per month or total acre feet, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake level;
- (o) If the water right is acquired through lease, the specified period for the lease and the method of verifying that the original water right is not being used during the period of the lease;
- (p) If an instream water right exists on the same reach(es) or lake, or on portions thereof, a statement of whether the proposed conversion is intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right.

(3) The Director may require additional information needed to complete the evaluation of the proposed conversion.

{adopted 10-28-88}

## Processing a Transfer

690-77-075 Processing of the proposed transfer of a water right to an instream water right shall be pursuant to the water rights transfer rules in OAR 690 Division 15 and the following provisions.

(1) The Director shall provide notice of the proposed conversion in the Department's weekly mailing list, and to affected Indian tribes and cities, and to the planning department of each affected local government. Additional notice shall be provided in accordance with OAR Chapter 690, Division 15.

(2) The Director shall review all applications to determine whether:

(a) The amount and timing of the proposed instream flow is allowable within the limits and use, including return flows, of the original water right; and

(b) The proposed reach(es) is(are) appropriate considering:

(A) Instream water rights shall begin at the recorded point of diversion; and

(B) Locations of return flow. Where return flows occur at a definite point, a substantial distance below the point of diversion, an instream water right may be defined by more than one reach, for example one reach from the point of diversion to the location of the return flow and another from this point to the mouth of the stream; and

(C) The location of confluences with other streams downstream of the point of diversion, which shall be considered in accordance with OAR 690-77-015 (6); and

(D) Any known areas of natural loss of streamflow to the river bed. Where an instream water right passes through an area of known natural loss several reaches may be required to incorporate the reduced flows available, in accordance with (c)(B) below.

(c) The proposed flow(s) is (are) consistent with 690-77-015(5), (6) and (9), shall provide a public benefit for an instream use, and be appropriate considering:

(A) Return flows which shall be subtracted from the instream water right at the old point of diversion, unless the return flows occur at a definite point a substantial distance below the old point of diversion, in which case up to the entire amount of the diversion may be allowed between the point of diversion and the point(s) of return flow; and,

(B) Where an instream water right passes through an area of known natural losses these losses shall be prorated between the instream water right and the balance of the available flow.

(3) If the Director's findings under subsection (2) above are affirmative and if no protests to the transfer are filed within 20 days of the last notice in the newspaper, the Director shall approve the transfer and issue a permanent certificate or a certificate with a specific date of expiration for the instream water right. A copy of the certificate shall be mailed to the applicant and to DFW, DEQ and Parks as appropriate. The Director shall also issue a new certificate for any remaining right for the existing use. If the instream water right is time-dated, the Director shall enter an order suspending the use of the original water right during the effective period of the instream water right.

(4) If any of the Director's findings under subsection (2) above are negative or if a protest has been filed, the applicant, Director and protestants, if any, may negotiate to develop a proposed instream water right that would be satisfactory to all. The Director shall issue a certificate in the manner provided in subsection (3) above for any negotiated instream water right transfer that satisfies all parties.

(5) If under subsection (4) above the applicant or protestant choose not to negotiate, or the parties fail to reach agreement, the Director shall submit the proposed transfer to the Commission with the Director's findings under subsection (2) and a copy of any protests. The Commission shall decide:

(a) To issue the certificate with conditions as needed to prevent harm to other water right holders; or

(b) To conduct a contested case hearing to determine whether the proposed instream water right should be denied, modified or conditioned to meet the legal requirements for transferring a water right under OAR 690 Division 15.

(6) Contested cases under (5)(b) shall be heard according to the provisions of OAR 690 Division 02.

{adopted 10-28-88; amended: 8-8-90; 6-5-92}

### **Cancellation or Waiving of an Instream Water Right**

690-77-080

(1) There is a rebuttable presumption that an instream water right, or a portion thereof, that has not been put to a public use for five successive years in which water was available is forfeited.

(2) Upon making a preliminary finding that the instream water right has been forfeited the Director shall notify DEQ, DFW, Parks, and those persons and agencies on the Department's weekly mailing list of the Department's findings and of its intent to cancel the instream water right. The Department shall also publish the notice in the Secretary of State's bulletin once, and in a local newspaper one day a week for two weeks.

(3) Any person may file a protest within 60 days of publication in the Secretary of State's bulletin or the local newspaper.

(4) If no protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641 (1).

(5) If a protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641 (2).

(6) An instream water right established under ORS 537.336 through 537.338 (OAR 690-77-020) may be canceled pursuant to ORS 540.621 only upon the written certification from the original applicant agency(ies) that the instream water right has been abandoned. Proper notification of the public shall proceed as outlined in (2) above.

(7) An instream water right shall not be subject to forfeiture due to non-use when water was not available.

(a) Upon making a preliminary finding that the instream water right has been abandoned the Director shall notify DEQ, DFW, Parks, and those persons and agencies on the Division 11 mailing lists of the Departments findings and of its intent to cancel the instream water right. The Department shall also publish the notice in the Secretary of State's bulletin once, and in a local newspaper one day a week for two weeks;

(b) Any person may file a protest within 60 days of publication in the Secretary of State's bulletin or the local news paper;



- (c) If no protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641 (1);
- (d) If a protest is filed in the 60 day period, the Commission shall proceed with the process outlined in ORS 540.641 (2).

(2) An instream water right established under ORS 537.336 through 537.338 (OAR 690-77-020) may be cancelled pursuant to ORS 540.621 only upon the written certification from the original applicant agency(ies) that the instream water right has been abandoned. Proper notification of the public shall proceed as outlined in (1)(a) above.

(3) An instream water right shall not be subject to abandonment due to non-use when water was not available.

{adopted 10-28-88; amended: 6-5-92}

### **Drought Emergency Provisions**

690-77-090 An instream water right established under the provisions of ORS 537.332 to 537.360 shall be subject to the provisions of ORS 536.700 to 536.730.

{adopted 10-28-88}

### **Precedence of Future Uses**

690-77-100

(1) The applicants for a proposed multipurpose storage project may petition the Commission to establish precedence over an instream water right created through OAR 690-77-020.

(2) An applicant for a right to use water for municipal purposes may petition the Commission to establish precedence over an instream water right created through OAR 690-77-020.

(3) A municipal applicant, as defined in ORS 537.282, for a hydroelectric project, may petition the Commission to establish precedence over an instream water right created through OAR 690-77-020.

(4) Within six months of the receipt of the petition the Department shall conduct a public hearing in accordance with ORS 537.170. The hearing and decision on precedence may occur before the final decision on the permit.

(5) After the public hearing the Commission shall enter an order to:

- (a) Approve the requested precedence; or,
- (b) Approve the requested precedence conditionally; or,
- (c) Deny the requested precedence.

(6) The Department shall also publish a statement of findings that explains the basis for the decision made in (5) above.

{adopted 10-28-88}

**OREGON WATER RESOURCES DEPARTMENT**  
**ADMINISTRATIVE RULES**  
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State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: March 7, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Work Session Item, March 10, 1994 EQC Meeting  
Budget Development Strategy

**Statement of Purpose**

The purpose of this report is to present background information for the Commission's continuing discussion of the Department's 1995-97 budget proposal development. The report provides an update on budget-related activities since the Commission's January 27 work session and is intended to serve as a basis for a discussion of the goals of and principles underlying budget development.

**Background**

The Department's budget discussion is taking place under conditions of considerable uncertainty about the level of future funding for State government programs, coupled with strong public pressure for change in government. It is certain that there will be less revenue available to the Department from the State's General Fund as a result of the final phase of property tax limitation from Measure 5. The magnitude of that reduction is dependent not only on the total amount available to the state agencies, but also the Governor's allocation of funds among her priorities. We had anticipated receiving budget guidelines from the Department of Administrative Services, including agency-specific reduction targets, by the end of February, but they are not currently expected to be available prior to the Commission's March 10th work session. In absence of more specific information, the Department has assumed that reductions of about 16 to 20% of its current General Fund budget of \$18.6 million will be required, or about \$3 to 4 million.

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<sup>†</sup>Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

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In anticipation of major reductions and in response to public concerns about the role of government, the Department has undertaken a fundamental examination of the ways in which we pursue our mission to restore, enhance and maintain Oregon's environmental resources. Through this process, employees throughout the agency have made more than 150 suggestions dealing primarily with ways we might do business differently, using fewer resources, but also with alternate methods for funding the agency's work. The ideas fell into several general categories described in the staff report entitled Strategic Budget Planning and dated January 21, 1994:

- Changes in the permit and other regulatory processes;
- Reliance on certification by independent professionals or the regulated party that environmental requirements are being met (backed up with criminal enforcement if the certification is false);
- Consolidation of similar or related activities within the Department;
- Consolidation of functions across governmental agencies, including transferring functions to other entities;
- Discontinuing certain lower priority activities;
- Investment in new programs or technology that would allow the Department to more effectively meet environmental goals or perform existing functions more efficiently; and
- Changes in the revenue structure, primarily to ensure that those individuals or entities who use natural resources pay the full cost of required regulation for the oversight of that use

The Commission and staff discussed these ideas during the work session held on January 27. The purpose of the discussion was to explore these ideas and the Commission was not expected to provide specific direction at that time. The Commission did, however, indicate support for many of the concepts presented and the conversation centered on several basic themes.

Commission members expressed the importance of retaining DEQ's and Oregon's reputation for effectiveness in the environmental arena, reaffirming the agency's mission to be "an active force" in maintaining environmental quality. There was discussion of the extent to which the Department should rely on traditional programs that focus on ensuring compliance by regulated parties or, alternatively, place more of the responsibility on the regulated party. The latter strategy would move the Department from periodic inspection of all parties to an audit mode, and to more reliance on civil or criminal enforcement and penalties for noncompliance. This issue led to a discussion of the concept of performance-based regulation, in which the Department determines **what**

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environmental result must be achieved, allowing industry, municipalities and other parties to determine **how** to achieve it. And there was interest in finding new ways to encourage voluntary participation, along the lines of requiring air quality offsets as a condition of development.

The Commission also indicated a desire to better understand the effectiveness of implementing some of these changes and the magnitude of savings that might be expected from them.

In the interim, the Department has continued to develop some of the alternatives discussed and to plan for ways in which the expected General Fund reduction might be achieved. This staff report presents the guidelines under which the Department proposes to develop its 1995-97 budget, along with further discussion of the suggested program modifications.

### **Alternatives and Evaluation**

In spite of the expected reductions, the Department continues to reaffirm several principles which guide its planning and budgeting. Our goals are to:

- Attract and retain high quality staff and compensate them appropriately;
- Properly train and equip employees to effectively and safely carry out their duties;
- Maintain and improve the Department's infrastructure, including investment in appropriate technology to help us do our jobs, such as state of the art information systems;
- Maintain federal delegation for major environmental programs;
- Preserve or expand our emphasis on nonpoint source or areawide pollution, pollution prevention and technical assistance; and
- Maintain our commitment to decentralization, placing resources in close contact with communities we serve and with regulated parties

The Department has continued to evaluate the list of alternative ways to carry out its responsibilities. Staff has worked to develop more concrete plans for implementing selected ideas and to estimate their potential for reducing the resources used to conduct existing environmental programs. In addition, some of the revenue concepts are being considered in more detail. As a result of these efforts, we believe that the General Fund reduction should be reached using a three-pronged approach. The first part is savings to



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be gained in the next biennium by implementing some of the **program alternatives**, or "doing business differently", estimated to provide about \$750,000 to \$ 1 million. Roughly another third will be derived from **raising additional revenue**, particularly in areas where affected parties do not bear a fair share of regulatory costs. The final third, then, or approximately \$ 1 million, will need to come from **program cuts**, or reductions in resources devoted to some General Fund-supported activities. The principles stated above will be a strong determinant in making those choices. The program cuts, and to a lesser extent, the program alternatives, will not be without environmental impact, and the anticipated revenue increases will certainly impact those businesses and individuals required to pay them. But the Department feels that this approach should provide the appropriate balance between providing better and more efficient government with adequate protection of environmental resources.

In addition to generating savings, some program modifications may also represent opportunities to reinvest in programs with potentially greater environmental benefit, focusing on areas such as nonpoint source pollution, pollution prevention and technical assistance. Such an approach may have particular merit in areas where doing business differently will not produce general fund savings.

Specific budget recommendations, in particular the proposed program reductions, will be fully developed once targets are known, and presented for the Commission's consideration at either the June or August Commission meeting. We may, depending on the reduction targets, be able to reduce proposed cuts or revenue increases, or we may need to develop additional options.

The following portions of this report is a further discussion of the other two categories: program alternatives and revenue increases.

### Program Alternatives

In concert with interest expressed by the EQC at the January work session, discussion, the Department has focussed its attention on a few areas. One broad category, which we have termed "certification", is intended to reduce the Department's efforts to verify that regulated parties are complying with the rules and laws administered by the Department. A second category relates to the amount of resources devoted to detailing the specific requirements for each regulated entity. Both of these categories can also be related to the concept of performance-based regulation. Other recommendations, which may simply be described as operational efficiencies, were also pursued.

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Much work remains to more fully determine the feasibility of many of the recommendations and to project with more certainty the magnitude and timing of savings from implementing them. Many will require changes in state law or rule, including the associated opportunity for public input. Others that relate to federal delegated programs will require coordination with EPA. And most will require some effort to change internal processes. Based on preliminary planning efforts, however, the Department feels that savings in the range of \$750,000 to \$1,000,000 are attainable.

The certification category covers a range of concepts that will place more responsibility on municipalities and industry to comply with laws and regulations, and expend fewer Department resources ensuring that they do so. For example, in several of our current programs, the Department reviews and approves plans and specifications prior to allowing construction or operation of various kinds of facilities. Instead, the Department is considering relying more on owners and operators, or professionals engaged by them, to see that all such facilities are designed and operated properly. The Department's role would shift to measuring outcomes and taking enforcement action for noncompliance with standards. In other areas, the Department expends resources measuring adherence to permit conditions, an effort that could be shifted, at least in part, to the regulated party, with penalties for submitting falsified reports. Another sizable component of the Department's efforts is periodic inspection of all regulated facilities to ensure compliance with permit conditions, rules and laws. This effort could be reduced by requiring regulated parties to certify that they are in compliance. The Department would then rely on audits, reviewing compliance of a select sample of facilities. This concept could apply both to regulatory programs and less complex cleanups.

Closely related to placing more responsibility on others and holding them criminally liable, the Department is also pursuing the concept of delegating its authority for some programs to local government. Authority would be transferred along with funding mechanisms to entities where they may be more effectively implemented or consolidated with similar functions. Obviously, for such a transfer to work, both the transferor and transferee must be in agreement.

Another major category pertains to the permitting processes. Considerable effort is now devoted to specifying detailed permit conditions, sometimes for relatively minor sources. The air and water quality and solid waste programs are continuing work to determine what types of permittees might be regulated by a general permit, or permit conditions established by administrative rule. Similarly, some savings could be gained by lengthening the time between permit renewals, or perhaps allowing for permit extensions after limited review.

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Other efficiency recommendations will undoubtedly be included in the agency's final budget plan. Some of the information systems enhancements currently planned or under development, for example, promise to automate some manual staff efforts to gather and analyze information.

#### New or Increased Revenues

No specific plans have yet been formulated for increasing fees or establishing new ones. Some fees will need to be raised simply to keep pace with inflationary cost increases and would be brought to the Commission in any event. Others may be needed to replace General Fund in order to provide enough funding to maintain federal delegation of major environmental programs, or to continue to operate programs mandated by state law. For example, some additional fee revenue may be required in order support the enhanced vehicle inspection program, and other air quality programs needed to avoid continuation of industrial growth impediments and potential Clean Air Act sanctions, as well as the more basic goal of preventing unhealthy air quality conditions. We will also be examining programs partly funded by fees to ensure that fee payers are bearing their fair share of the cost of regulation. In addition, some mechanisms may be proposed to enable those who benefit from agency services to voluntarily provide sufficient funding if they wish to retain those services. Finally, the Department proposes, as plans to transfer functions to local government move forward, to request legislation to provide funding mechanisms to operate those programs.

#### Intended Future Actions

When budget instructions and General Fund figures are available from the Department of Administrative Services, the Department will be in a position to make more detailed recommendations within the categories of reductions, savings and increased revenues. Staff efforts to evaluate program alternatives, estimate the environmental affect, plan for their implementation and quantify potential savings will continue. The Department also proposes to form external advisory groups to provide input to the process, perhaps one of parties affected by proposed regulatory changes and another industry group to assist in evaluating and improving the Department's efficiency and effectiveness.

We expect to present a complete budget proposal by the August Commission meeting.

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**Department Recommendation**

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department on the proposed principles underlying budget development and the general plan outlined.

**Reference Documents (available upon request)**

Strategic Budget Planning Staff Report  
prepared for January 27, 1994 work session

Approved:

Section: Beth A. Woodrow

Division: Hydria K. Taylor

Report Prepared By: Beth Woodrow

Phone: 229-6270


Date Prepared: March 7, 1994

buddev  
baw

State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: March 2, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item 4, March 10, EQC Work Session  
Discussion of Collaborative Process

**Statement of Purpose**

The purpose of this item is to provide background information for a discussion of:

- Lessons learned from the recent Collaborative Process regarding the Combined Sewer Overflow Correction Program for the City of Portland, and
- Criteria for utilization of the Collaborative Process or other Alternative Dispute Resolution mechanisms by the Commission.

**Background**

The following paragraphs provide a brief summary of significant events that are important as a background and context for understanding and discussion of the Collaborative Process.

1. On August 5, 1991, Stipulation and Final Order No. WQ-NWR-91-75 (Order) came into effect. Under terms of this Order, The City of Portland (Respondent) was required to carry out necessary facility planning and implement corrective actions to eliminate the discharge of untreated overflows from the City's combined sewer system. The order imposed very stringent requirements for overflow reduction by allowing future overflows to occur during the summer months when a storm event with a one in ten year occurrence frequency occurs and during the winter months when a one in five year storm event occurs. When the order was enacted, overflows occurred on approximately 100 days per year.

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<sup>†</sup>Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

Thus, the order would require at least 99.6% reduction of the volume of overflows that presently occur.

2. Paragraph 13 of the Order provided for amendment of the requirements of the Order, in recognition that information acquired during the facilities planning process could lead to beneficial strategies that differed from the terms of the Order. Paragraph 13 read as follows:

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

At the time the parties agreed to the terms of the Order, it was understood that the City of Portland did not have sufficient information necessary to adequately characterize the City's combined sewer system. Several of the activities in the schedule set out in the Order were designed to develop that data so that an appropriate facilities plan could be developed and implemented. The order does not describe any process for reaching mutual agreement to amend the order; it only calls for notice and opportunity for public comment.

3. On July 1, 1993, as required by paragraph 7. h. of the Order, Portland submitted a facilities plan that included information on alternatives for meeting the terms of the Order. The facilities plan presented information on technologies and costs for complying with the requirements of the Order. It also included an evaluation of other possible allowable overflow frequencies, including environmental impacts, control technologies, costs, and other impacts of the control measures required to meet the alternative allowable overflow frequencies. Alternatives were presented to achieve the following results:
  - a. Total sewer separation at an estimated cost of \$1.4 billion.
  - b. 99.6% reduction in overflow volume to meet the SFO storm frequency criteria at an estimated cost of \$1 billion. (3 overflow events in 10 years on average with one of those during the summer)

- c. 96% reduction of overflow volume at an estimated cost of \$700 million. (3-4 overflow events per year on average with 1 event occurring during the summer when a storm with a 1 in 3 year occurrence frequency occurs)
  - d. 85% reduction of overflow volume at an estimated cost of \$650 million. (initially assumed minimum federal requirement, resulting in 8-10 overflow events per year with 1-2 occurring during the summer months)
4. Based upon information developed in the Portland facilities planning process, and growing citizen concerns regarding the perception that beyond the 96% removal level, the order required expenditure of substantial sums of money to produce a very small increment of water quality benefit, Portland believed that modification of the Order may be in the public interest, and approached the Department to develop a cooperative method for exploring the issue consistent with the provisions of paragraph 13. A positive approach that could secure greater public support was preferable to a confrontational approach.
5. A collaborative process between the Department, the Commission and the City of Portland was pursued with the intent of producing greater understanding of the value of the river and water quality to the public and the problem caused by combined sewers and greater public support for a very costly project. In the fall of 1993 a Collaborative Committee (Committee) was formed, consisting of two Environmental Quality Commission members, two City of Portland Commissioners, the Director of DEQ and the intergovernmental affairs coordinator for the City's Bureau of Environmental Services.

The Committee held four public informational meetings between October 18, 1993, and December 14, 1993, in which they heard presentations and public testimony about the history of the Willamette River; the value of the environment and the importance of the river to the City of Portland, the State and its residents; water quality and pollution; health risks related to CSOs; economic issues and alternative strategies for CSO control. Each meeting lasted about 4 hours. The committee held two additional public meetings in January 1994 to discuss issues and formulate recommendations. Public notice was given for all meetings. Opportunity for public testimony was provided at each meeting. Meetings were recorded, and minutes were prepared.

6. It was clearly indicated during the process that the Collaborative Committee was not a decision making body. The Environmental Quality Commission and the City of Portland had not delegated any of their decision making authority to the

Committee. The committee members were investing substantial time to learn about the issues involved and determine whether a consensus could be reached that would form a recommendation to the respective decision making bodies regarding potential modification of the Order.

7. The full Environmental Quality Commission was briefed during regular Commission meetings regarding the progress of the Collaborative Process. The briefings and discussions were intended to give all members an opportunity to express their concerns and views regarding the issues being considered.
8. The Collaborative Committee did reach consensus on a number of proposed revisions to the Order. Significant changes include acknowledging requirements already achieved, adding a preamble to better reflect the information and assumptions leading to the proposed revision of the order, modification of the allowable overflow frequency to permit acceptance of the 96% reduction option, addition of requirements to evaluate and implement additional controls beyond those necessary to achieve the 96% reduction where cost effective, and a requirement to present a facility plan at the end of the current order identifying options for further CSO reductions beyond the end of the order.

A process for public informational meetings and a formal public hearing prior to formal presentation to the City Council and Environmental Quality Commission was also developed. That process is underway at present, with the matter scheduled for formal consideration by the EQC in June.

9. A citizen expressed concern at the first Collaborative Process meeting regarding the legality of the process and suggested that EQC members should deliberate independently from City Council members, rather than sitting down together.
10. Commission members have also expressed concern about the use of the Collaborative Process and the need to discuss the matter and determine when and if it is appropriate to use such a process, or some variation of the process in the future.

In a related matter, the 1993 Legislature passed HB 3427 which authorizes agencies to use Alternative Dispute Resolution methods. The statute also directs that agency budgets for the 1995-97 biennium identify and reflect the amounts necessary for alternative means of dispute resolution. The bill was signed by the Governor on August 17, 1993, became effective November 4, 1993, and is now codified as ORS 183.502.



Section (1) of ORS 183.502 expresses the intent of the legislation:

**183.502 Authority of agencies to use alternative means of dispute resolution; policy; amendment of agreements and forms.**

- (1) Unless otherwise prohibited by law, agencies may use alternative means of dispute resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the agency is a party, and any other decision-making process in which conflicts may arise. The alternative means of dispute resolution may be arbitration, mediation or any other collaborative problem solving process designed to encourage parties to work together to develop mutually agreeable solutions to disputes. Use of alternative means of dispute resolution by an agency does not affect the application of ORS 192.410 to 192.505 to the agency, or the application of ORS 192.610 to 192.690 to the agency.

Notes: ORS 192.410 to 192.505 is commonly referred to as the Public Records Law.  
ORS 192.610 to 192.690 is commonly referred to as the Public Meetings Law.

Section (3) of ORS 183.502 provides that the Dispute Resolution Commission, in consultation with the Attorney General, may develop for agencies a model rule for implementation of alternative means of dispute resolution. No model rules or guidance have been developed to date.

Since the Department and Commission will be confronted with requests to employ Alternative Dispute Resolution processes in the future, it is appropriate to evaluate the Collaborative Process used with the City of Portland with the broader Alternative Dispute Resolution legislation in mind.

**Authority of the Commission with Respect to the Issue**

The EQC has broad authority to set policy consistent with statutory direction. The Commission therefore can establish reasonable criteria and procedures for use of a process similar to the Collaborative Process or other alternative dispute resolution procedures.

**A Working Definition of "Collaborative Process"**

The term "Collaborative Process" could describe any process where DEQ works cooperatively with people outside the agency to achieve a desired result. Such a definition would describe a wide range of staff activities including but not limited to technical assistance, complaint resolution, development of compliance programs and permit requirements, and use of advisory committees in development of rules.

For purposes of this discussion, however, it is desirable to focus on the unique situation where members of the Commission are involved in a cooperative effort with the regulated community to solve a problem or resolve a potential dispute.

**Results of the Portland Collaborative Process**

The following statements are intended to describe the potentially significant features and conclusions of the Portland Collaborative Process:

- A potentially unique feature of Collaborative Process was that the EQC was willing to step down out of its normal regulatory role to engage in peer level discussions with a body it normally regulates. While this is something that the Commission does not normally do, it is something that goes along with alternative dispute resolution when a regulatory agency is involved.
- The process with Portland resulted in a strong consensus that can help marshal community support for the costly CSO project.
- There was no clear regulatory basis for the allowable winter or wet weather overflow frequency requirements that were placed in the original order.

In order to stretch federal sewerage works construction grant funds, EPA historically prohibited use of grant funds for combined sewer separation projects. As a practical matter, EPA regulated municipalities through funding, and did not require combined sewers to be addressed until they were forced to do so through citizen suit challenges.

In 1981, the EQC adopted a policy on Sewerage Works Planning and Construction. The purpose of this policy was to provide some direction for setting priorities for sewerage works construction in light of inadequate and shrinking federal funding assistance. The policy was established without benefit

of any cost estimates or cost analysis. One provision of this rule reads as follows:

- (f) *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;*

There is no specific provision in EQC regulations for the one in five year winter time overflow frequency specified in the order.

EPA developed draft combined sewer overflow control guidance (with full involvement of municipalities and environmental groups) after the order was signed, but to date has not promulgated formal requirements. Less stringent control requirements than those contained in the Portland Order could meet the current draft federal guidance.

- Oregon's CSO requirement appears to be more stringent than programs being proposed by many states.
- Compliance with the bacteria standard was a driving force for the requirements in the order. Information presented made it clear that compliance with the current Portland Order would not result in compliance with the present bacteria standard. Compliance would not be achieved with the revised order under discussion either. EPA indicated that revision of the bacteria standard in a manner that would be compatible with a less costly alternative could be approved by EPA. Information presented also indicated that beneficial uses could be deemed to be reasonably protected with the less costly alternative that would remove 96% of the current CSO volume. The Department believes that the current bacteria standard must be revised. As part of the federally required triennial water quality standards review, DEQ is in the process of reviewing and developing a proposal for revision of the current water quality standard for bacteria.

- Beyond the 96% CSO reduction level, the costs for further improvement are very large and the benefit derived in terms of impact on beneficial uses appears to be quite small.

### Issues for Discussion

It is appropriate to discuss the recent Collaborative Process experience (keeping in mind the broader context of ADR) and draw some conclusions regarding whether to use the model in the future and if so, with what modifications. The following questions suggest issues to be discussed. Department observations are also noted.

1. What types of disputes or disagreements or issues should be candidates for a Collaborative Process (or another ADR process)?
  - **Rulemaking**

The Department believes its current advisory committee process for rulemaking should be viewed as the appropriate ADR process and that a Collaborative Process would neither be necessary or desirable if a rule change or new rule were at issue.
  - **Contested Cases**

In Notice of Violation and Civil Penalty Assessment letters, the Department includes an invitation for potential settlement discussions. This is a form of ADR which seeks to reduce the number of contested cases and has been effective in doing so.

The Department is considering addition of a step when permits are appealed to determine if settlement is possible prior to proceeding with the contested case.
  - **Stipulated Enforcement Orders**

These are developed through a negotiation process. Subsequent modifications are also a possibility.
  - **Permit Issuance**

The Department routinely meets with permittees during the process of reviewing permit applications. This affords an opportunity to

resolve issue before permit issuance so as to reduce the frequency of appeals.

Other actions where disputes could arise include 401 Certifications, engineering plan review, and legislative concept development.

2. What types of factual circumstances could warrant initiation of a collaborative process or other alternative dispute resolution process?
  - Issues where substantial new information becomes available.
  - Issues where precedent-setting new policy is being explored or formulated.
  - Issues where costs associated with a required action are very large.
  - Need to develop broad public acceptance for funding and implementation.
  - Potential conflicts with other governmental requirements or agencies.
  - Issues where there are no federal requirements, but there may be some in the future.
  - Issues where facts are in dispute.
  - Issues where interpretation of available science is in dispute.
  - Issues where cross-media considerations require that a careful and difficult balance be struck between potentially conflicting or counterproductive requirements.
  - Issues where there are no other existing processes for resolution or where a collaborative process offers a significantly more acceptable means of addressing the issues or concerns.
  - When specified by a rule or permit or order as a means of resolving disputes.

3. Under what circumstances should Commission members be involved in a collaborative process or other alternative dispute resolution effort?
- Should Commission members be involved when the Full Commission must make the ultimate decision? (e.g. rulemaking, contested cases, enforcement orders)
  - Should Commission members be involved when the Commission is not in a decision making role, but could see the matter later in an appeal? (e.g. permit issuance, 401 certification)
  - Should Commission members be involved when other established mechanisms are available that could result in resolution of the issue at hand? (e.g. informal discussions with the Department, variance requests, statutory appeal procedures)
  - Under what circumstances should a subcommittee of the Commission be used to more fully explore an issue that will later be presented to the full Commission for decision?
4. Is there a role for ADR type processes as a tool to prevent disputes that can necessitate costly processes for resolution?

For example, cleanup requirements are determined on a site by site basis. Rules define a process for making a determination rather than a standard. An ADR type process may have merit in some instances in reaching a decision on an acceptable cleanup level.

#### **Potential Criteria to Govern Collaborative Process Involving EQC Members**

The following are potential criteria for initiating a Collaborative Process involving Commission members.

#### **Procedures**

- A Collaborative Process involving the EQC will only be used in extraordinary circumstances.

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- The Department will evaluate requests and recommend Commission involvement only if criteria outlined below will be met.
- The process is initiated only by affirmative vote of Commission.
- The Collaborative Process will be a Public Process if Commission members are involved.

Criteria -- Following are criteria that may suggest appropriate use of a collaborative process to achieve extraordinary public benefit.

- It involves a public agency. Public agencies face different problems in making decisions and commitments. The process will assist in building the needed public acceptance to fund and implement.
- It will help to build consensus in the community.
- A lot is at stake -- socially or economically.
- Other options for resolution have been exhausted.
- Existing processes are not adequate to address the issue.
- A collaborative process offers a more acceptable means of addressing the issues or concerns.
- The issue to be addressed is naturally occurring and occasional rather than continuous and under full control of a source.
- No clear standards or guidance exists regarding the issue.
- The process may avoid costly litigation that is not productive.
- The public will benefit because stakeholders will feel more "invested" in decision.

#### **Department Recommendation**

It is recommended that the Commission discuss the questions and potential criteria above, and provide advice and guidance to the Department as appropriate.

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**Attachments**

None

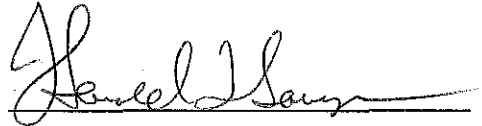
**Reference Documents (available upon request)**

- Minutes of Collaborative Process Meetings.
- ORS 183.502
- Draft Revised Stipulation and Final Order

Approved:

Section:

Division:



Report Prepared By: Harold Sawyer

Phone: 229-5776

Date Prepared: March 2, 1994

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A G E N D A  
ENVIRONMENTAL QUALITY COMMISSION MEETING  
March 10-11, 1994  
DEQ Conference Room 3a  
811 S. W. 6th Avenue  
Portland, Oregon

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**Thursday, March 10, 1994: Work Session**

**9:00 a.m.**

1. Work Session: Hazardous Waste Program Overview
2. Work Session: Strategic Budget Planning

**1:00 p.m.**

3. Work Session: Instream Water Rights
  4. Discussion of Collaborative Process
- 

**Friday, March 11, 1994: 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: Amendments to UST Financial Assistance Rules to Implement HB 2776
- D. †Rule Adoption: Proposed Amendment of UST Permit Fee Rule
- E. †Rule Adoption: Proposed Revision of Hazardous Waste Rules to (1) Adopt Federal Hazardous Waste Regulations by Reference; (2) Amend Rules Pertaining to Certain Special Wastes, Generator Standards, Laboratory Standards, and Confidentiality; and (3) Amend and Update Toxic Use Reduction and Hazardous Waste Reduction Regulations.
- F. †Rule Adoption: Proposed Amendments to Rules for Enforcement Procedures and Civil Penalties
- G. †Rule Adoption: Adoption of Amendments to LRAPA Rules as a Revision to the Oregon SIP
- H. Review of Instream Water Right Application Submission to WRD for the Coast Fork Willamette River, Rickreall Creek, and Bear Creek Basins
- I. Status Report on St. Johns Landfill Closure
- J. Commission Member Reports (Oral)
- K. Director's Report (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 April 21-22, 1994, for their next meeting. The meeting will be in the La Grande area. The specific location has not been established.*

*Copies of staff reports for individual 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.*

*If special physical, language or other accommodations are needed for this meeting, please advise the Director's Office, (503)229-5395 (voice)/(503)229-6993 (TDD) as soon as possible but at least 48 hours in advance of the meeting.*

*February 23, 1994*

*Minutes are not final until approved by the EQC*

## **ENVIRONMENTAL QUALITY COMMISSION**

Minutes of the Two Hundred and Thirty Fourth Meeting  
January 27 and 28, 1994

### **Work Session and Public Hearing**

The Environmental Quality Commission work session was convened at 11:10 a.m. on Thursday, January 27, 1994, in Conference Room 3A, Oregon Department of Environmental Quality (DEQ), 811 S. W. Sixth Avenue in Portland, Oregon. The following commission members were present:

William Wessinger, Chair  
Dr. Emery Castle, Vice Chair  
Henry Lorenzen, Commissioner  
Linda McMahan, Commissioner  
Carol Whipple, Commissioner (arrived at approximately 3:00 p.m.)

Also present were Fred Hansen, Director, DEQ, and other DEQ staff. Michael Huston, Assistant Attorney General, Oregon Department of Justice (DOJ), attended the public hearing portion of Thursday's meeting. Commissioner Whipple missed the first part of the Work Session because she was in Ashland at a conference sponsored by the Governor's Watershed Enhancement Board.

#### Work Session: Strategic Budget Planning

The purpose of this work session item was for the Commission to explore with staff possible alternate ways to allocate resources in achieving the Department's mission and to serve as guidance in the Department's preparation of budget recommendations for the 1995-97 biennium and beyond. Discussion was based on a staff report which presented a number of options to modify the Department's programs so that goals are achieved using fewer resources, to place more emphasis on other programs or to finance Department programs differently.

Director Hansen opened with a description of the context of discussion, including the factors affecting state government, such as the General Fund shortfall anticipated for the next biennium and actions the Department has taken to prepare for taking its share of the reductions.

Lydia Taylor and Beth Woodrow of the Management Services Division summarized the alternatives contained in the staff report which resulted from an agency-wide review of programs involving both staff and management. The options do not constitute a Department recommendation but rather are concepts deemed worth further consideration. The options were presented in six major groupings, the first three categories relate to ways in which Department programs might be conducted with fewer personnel:

- Reduce the workload associated with regulatory processes, especially permitting, by changing permit requirements, utilizing general permits more extensively, or lengthening permit periods and performing general rather than detailed compliance determination reviews.
- Increase reliance on third-party assurance that rules and laws are being complied with, reducing the Department's role to certifying professionals or auditing a sample of the regulated entities.
- Reduce effort in some programs, including combining similar efforts across programs.
- Consolidate programs with other agencies or transfer programs if they are more logically or effectively implemented elsewhere.
- Place more emphasis in certain program areas, such as nonpoint source pollution reduction, pollution prevention, market-based incentives and support of local government environmental efforts, including environmental teams. Invest in the Department's infrastructure, including records management and dissemination, and information system development.
- Modify fees charged so that they are better correlated to costs involved, the amount of pollution emitted or to create a market incentive to reduce pollution.

Director Hansen emphasized that the options put forward notably do not include several areas such as reducing the Department's effort to place resources closer to regulated parties, returning delegation of major programs to the U. S. Environmental Protection Agency (EPA) or diluting existing efforts (e.g., reducing training for staff).

The Commissioners and staff discussed several of the concepts in particular:

- Reducing Department review and inspection efforts by setting performance standards and relying on other mechanisms such as civil suits, criminal authority or periodic audits as compliance tools.
- Relying more on general permits and reducing emphasis on point source pollution.
- Reducing interagency review and relying on other governmental units to carry out programs related to environmental protection.
- Transferring functions to other agencies.

Director Hansen indicated that the Commission was not expected to reach conclusions at this work session but that staff would return to the March 10 work session with additional information, including the Governor's budget instructions if available, when the Commission would provide direction on the proposals discussed. Commissioner Wessinger expressed the need for information about the cost effectiveness of concepts proposed.

**Public Hearing on Proposed Rule Amendment:** Proposed Modification to the Special Policy Rule Which Prohibits Further Waste Discharges to the Clackamas River Subbasin, the McKenzie River Subbasin above Hayden Bridge, and the North Santiam River Subbasin (OAR 340-41-470(1))

Chair Wessinger opened the public hearing at 3:00 p.m. and gave a brief overview of the format for the hearing as follows:

- Statement by the Commission's Co-Chair, Commissioner Castle.
- Director's comments and overview of issue presented by Department staff.
- Statement from Kinross Copper Corporation as petitioner for the rulemaking proceeding.
- Public testimony in order of those who signed up to speak.

Commissioner Castle began by saying that at the December 10, 1993, Commission meeting, two developments had occurred. He said he wished to address those developments because he believed there was misunderstanding as to why the Commission and Department were taking up this issue.

First, he said, at issue was the Department's interpretation and implementation of the 1977 rule which prohibits further discharges to the waters of the Clackamas River Subbasin, North Santiam River Subbasin and McKenzie River Subbasin above Hayden Bridge. Second, a petition for rule making was submitted by the Kinross Copper Corporation to change the 1977 rule as it applies to a tributary of the North Santiam River.

He said that with respect to the petition for rule making, the Commission is required by law, within 30 days, to either notify the petitioner that their petition is denied or initiate rule making. He indicated that based on information presented, he made a motion to grant the petition to initiate the rule making process with the Commission directly hearing the testimony. The motion further authorized the Department to develop other alternative rule language that could address issues related to the rule.

Commissioner Castle said he stated his view and believed it was the entire Commission's view; that in the interest of responsible decision making, the Commission should receive testimony on the matter but there should be no presumption of a position on the issues involved.

He said the purpose of the hearing is to receive testimony on the issue pursuant to the hearing notice. The notice asked for written comments to be submitted by Monday, January 24, 1994, to give the Commission members a chance to read the written testimony before this hearing; the deadline was not intended to limit any opportunity for comment.

Concluding, Commissioner Castle said that following the close of testimony, the Commission will evaluate the testimony, and a decision would be made at the regular Commission meeting held on Friday, January 28, 1993. Options available to the Commission include, but are not limited to:

- Leave the rule unchanged.
- Adopt one of the rule amendment language proposals presented.
- Adopt a modification of the proposals presented.

- Defer a decision until a later time with some direction to the Department to develop and present additional information.

Director Hansen provided a brief overview of the staff report. He said the Department wanted to frame the issue in order to assist the Commission and those testifying. He said the Department and Commission are faced with two issues: one, should OAR 340-41-470(1) be amended to exempt the proposed Kinross Copper Mine from the prohibition on additional discharges to the North Santiam Subbasin; second, should OAR 340-41-470(1) be amended to exempt non-process waste water discharges such as storm water and short-term fill and removal projects from the prohibition on additional discharges to the Clackamas, North Santiam and McKenzie River Subbasins. He said that this issue raises substantial policy issues that are most appropriately addressed through a full, typical Department process using a citizens' advisory committee with all stakeholders. Director Hansen indicated that he would like those who testify to make clear if their comments are toward either the Kinross Copper Corporation issue, the broader issue of interim actions or both.

Mike Downs and Raj Kapur of the Water Quality Division provided a summary of the alternatives in the staff report, policy choices and requirements. They presented maps of the three basins involved. Mr. Downs said that Alternatives 1, 2 and 4 specifically address Kinross's request. Alternative 1 contains Kinross's proposed rule language; Alternative 2 is an amended version of the Kinross proposal that deals with the high quality waters policy. Mr. Downs stressed that even if the Kinross facility was exempted from rule 470, the company still must comply with the high quality waters policy. Alternative 4 specifically deals with the Kinross proposal. The alternative requires the high quality waters policy be met and that no measurable impact on water quality downstream of the mine discharge occur. He added that Alternative 3 is not a specific and direct proposed exemption for Kinross as are Alternatives 1, 2 and 4 but contained broader language. This alternative would allow the Commission to approve discharges of industrial process waste water or sanitary waste water facilities to any of the three basins if the discharge meets the high quality waters policy. Alternative 6 allowed for no change to the existing rule.

Margaret Kirkpatrick, attorney for Kinross Copper, presented written testimony which has been made a part of the record. She said the company was asking the Commission to amend the rule in the narrowest possible way to remove the prohibition on any consideration of a National Pollutant Discharge Elimination System (NPDES) permit while understanding that an NPDES permit would proceed through the permitting process with full public review.

Alan Gordon of Kinross Copper Corporation provided background information on the project. He said the company has been working on this project from the beginning of 1990. Mr. Gordon said that the two critical state permits outstanding are the NPDES and water rights which will be considered at the Water Resources Commission (WRC) meeting in February. He asked for prompt action in order to proceed with financing and construction.

Gene Andrews, water quality consultant with Environmental Associates in Seattle and Eugene, discussed the two primary water issues involving the operation: precipitation and runoff, and water discharged from the mining operation. Additionally, he described the water handling methods that would be used at the proposed mining site.

Burt Stone, resident project manager for Kinross Copper Corporation, spoke about the geology and nature of acid rock drainage. He said the bornite deposit is unique because the sulfides present are tightly bound and removed with the copper and 99 percent of the copper is recovered from the ore. He said tailings will be low in sulfides and would not cause an acid generation problem.

Chuck Bennett, government affairs and public relations consultant for Kinross, talked about the implications of the project related to the high quality waters requirement relative to socio-economic impacts.

Public testimony was then taken. Written testimony and a summary of oral testimony received is included in the record of the rulemaking hearing.

The public hearing ended at approximately 7:40 p.m. after all testimony was received.



### Regular Meeting

The regular meeting of the Environmental Quality Commission was convened at 8:35 a.m. on Friday, January 28, 1994, in Conference Room 3A, Oregon Department of Environmental Quality (DEQ), 811 S. W. Sixth Avenue in Portland, Oregon. The following commission members were present:

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

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

**A. Approval of minutes.**

Commissioner Lorenzen moved approval of the minutes of the December 10 regular meeting and minutes of the December 30 telephone conference call. Commissioner Whipple seconded the motion, and the motion was unanimously approved.

**B. Approval of tax credits.**

The Department recommended issuance of the following tax credits:

Application Number	Applicant	Description
TC 3814	Oregon Precision Industries	A reclaimed plastics facility consisting of an eight cavity hot runner mold for the production of plastic carrying handles.

Application Number	Applicant	Description
TC 3965	Lane T. Robertson, Lane International Corp.	A reclaimed plastics facility consisting of 2 two cavity Autotech Die plastic injection molds for the production of plastic products.
TC 4020	Jacqueline Vasquez ITA Services	A reclaimed plastics facility consisting of a Plastics Realized injection mold for the production of a plastic product.
TC 4124	Blount, Inc.	A water pollution control facility consisting of a Hyde HMMUF-2 Ultra Filtration System and a Hyde Skimmer (Model BR6100).
TC 4146	Brookman Cast Industries, Inc.	An air pollution control facility consisting of two refurbished mechanical shaker baghouses and support equipment.
TC 4196	Oregon Precision Industries	A reclaimed plastics facility consisting of four cavity molds for the production of plastic carrying handles.
TC 4197	Oregon Precision Industries	A reclaimed plastics facility consisting of a Cincinnati Milacron VT-165-5 molding press and a water chiller for the production of plastic carrying handles.

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

Application Number	Applicant	Description
TC 2394	United Disposal Service, Inc.	A solid waste pollution control facility consisting of a building and facilities for recycling solid waste materials.

Commissioner Whipple moved approval of the tax credit applications; Commissioner Lorenzen seconded the motion, and the motion was unanimously approved.

**NOTE:** Agenda Items C and D were removed from the agenda.

**E. Rule adoption: proposed adoption of base hazardous waste generation fee.**

This agenda item set the base hazardous waste generation fee, allowing invoices to be sent out. The fee amount is calculated to return one half of the legislatively approved revenue necessary to run the current hazardous waste generator inspection, monitoring and surveillance program during the current biennium, less funds collected through the registration verification fee of Oregon Administrative Rules (OAR) 340-102-065(5). The fee will be re-evaluated during the next billing cycle and may need to be raised or lowered due to waste volumes and management practices which vary year to year. The Department recommended adoption of the rule establishing the base hazardous waste generation fee as presented in Attachment A of the staff report.

Mary Wahl and Roy Brower of the Waste Management and Cleanup Division presented the item to the Commission. Chair Wessinger asked how people would learn about the fee. Mr. Brower responded that the Department would send out fact sheets. Chair Wessinger further asked how people know whether their wastes are hazardous. Director Hansen responded that under federal hazardous waste laws, each business is responsible for determining whether a waste is hazardous. Mr. Brower offered to explain the hazardous waste program and its efforts to provide outreach to the regulated community during the Commission's March work session.

Commissioner McMahan moved approval of the proposed rule adoption of the base hazardous waste generation fee; Commissioner Whipple seconded the motion, and the motion was unanimously approved.

**F. Approval of confined animal feeding operation (CAFO) memorandum of agreement (MOA).**

Oregon law requires that the Environmental Quality Commission and Oregon Department of Agriculture (ODA) enter into an MOA authorizing the ODA to operate a program to prevent and control water pollution from CAFOs. The law requires the transfer of enforcement responsibilities to the ODA. The Department recommended the Commission enter into an MOA with the ODA to operate a program for the prevention and control of water pollution from CAFOs and to assume enforcement responsibilities as presented in the draft MOA in Attachment A of the staff report.

Tom Lucas and Renanto Dulay of the Department's Water Quality Division provided a brief overview and were available for Commission questions. Chair Wessinger asked if the Department can monitor enforcement of the MOA. Mr. Lucas responded that the Department will work with the ODA to improve the rules. He said enforcement actions have been transferred to the ODA but this activity has not

eliminated enforcement capabilities for the Department. Commissioner Castle commented that it was significant that the agreement was with the Commission and the ODA. Director Hansen indicated that the arrangement had been specified by statute.

Commissioner Lorenzen moved approval of the CAFO MOA; Commissioner Castle seconded the motion. The motion was unanimously approved.

**G. Pulp mill contested case: proposed order dismissing case.**

By order dated August 10, 1992, the Commission granted the petitions from the pulp mills for reconsideration of the AOX conditions of the April 16, 1992, contested case order. A subsequent hearing was to be held by the Commission between July 1, 1993, and November 30, 1993, for the purpose of further clarifying the scope of the issues to be reconsidered and determining whether to reopen the evidentiary record. The delay was to allow the mills time to complete the installation of chlorine dioxide substitution equipment and to develop and present operating data to demonstrate the capability of such equipment. At the October 29, 1993, Commission meeting, the Commission entered an order extending the November 30, 1993, deadline for proceeding with the reconsideration until January 31, 1994.

On December 23, 1993, the Department issued an NPDES permit to the City of St. Helens (Permit No. 101173) and to James River Paper Company (Permit No. 101172). On January 11, 1994, a joint motion was filed by the City of St. Helens, James River Company, Inc. and Boise Cascade Corporation to dismiss the pulp mill contested case as moot. The permittees stated in their motion for dismissal that the permits are acceptable and that the contested case filed in 1990 is now moot. The Department recommended the Commission enter an order dismissing the contested case and authorize the Director to sign the order on behalf of the Commission.

Commissioner Lorenzen said that the pulp and paper mill industry should be complimented; he said he was very pleased with the resulting effort.

Commissioner Castle said that on behalf of the Chair, he moved acceptance of the order to dismiss the contested pulp mill case; Commissioner McMahan seconded the motion. The motion was unanimously approved.

**H. Proposed review and approval of City of Portland proposal for interim control measures for combined sewer overflows.**

The Commission is required by the terms of a Stipulation and Final Order (SFO) to review and approve interim control measures for the City of Portland's combined sewer overflows (CSOs). The control measures considered were measures that are in use in other cities or that appear to be technically reasonable and promising. Each of the control measures was evaluated against criteria and measured against whether the control construction could be part of the final overflow controls.

The Department recommended interim control measures which include disconnection of roof drains, reduction/regulation of batch discharges and increased diversion of flows to treatment plant.

Lester Lee from the City of Portland was available for Commission questions.

Commissioner Castle moved approval of the proposal for interim control measures for combined sewer overflows; Commissioner McMahan seconded the motion. The motion was unanimously approved.

**I. Proposed adoption of state integrated resource and solid waste management plan.**

The proposed adoption of the State of Oregon Integrated Resource and Solid Waste Management Plan was carried over from the December 10, 1993, Commission meeting. The members of the Commission believed that more time was needed to review and consider the impacts of the many and far-reaching policies contained in the proposed plan. Commission members individually reviewed the proposed plan and discussed concerns with the Department. As a result of the review, some changes were recommended in the plan being proposed for adoption.

The Department recommended adoption of the Oregon Integrated Resource and Solid Waste Management Plan, 1995-2005, dated January 1994, as presented in Attachment A of the Department staff report.

Susan Kiel, City of Portland, and also a member of the solid waste advisory committee, spoke to the Commission. She said the plan gives support where needed. Ms. Kiel added that technical assistance and grants are available in the solid waste plan for smaller cities and communities. She said that she liked the emphasis on waste minimization and reduction.

Commissioner McMahan moved that the State Integrated Resource and Solid Waste Management Plan be approved. The motion was seconded by Commissioner Castle and unanimously approved.

**J. Fifth annual environmental cleanup report.**

The Environmental Cleanup Report is submitted every year to the Commission, Governor and legislature. The purpose of the report is to highlight accomplishments of Oregon's cleanup program in discovering and assessing contamination of sites from hazardous substances and cleaning.

Mary Wahl and Sally Puent of the Waste Management and Cleanup Division were available to answer Commission questions.

Commissioner Lorenzen asked if there was staff concern about how voluntary cleanup was working. Ms. Wahl responded that the program was working well. She said that the number of cleanups had doubled and requests continue to be received. Commissioner Lorenzen asked if there was potential for expansion. Ms. Wahl said that there is more work than the Department can cover. She added that industry had suggested a fast-track cleanup method. Director Hansen said that the Department's goal is to meet the demand in a timely fashion. He said that the costs of the cleanup are fully borne by the entity. Commissioner McMahan commented that the list was impressive.

By consensus, the Commission accepted the report; no formal action was necessary.

**NOTE:** The Commission took up Agenda Items L, M and N before Agenda Item K which was heard at 1:00 p.m.

**L. Commissioners' report.**

- Commissioner Whipple reported about the Governor's Watershed Enhancement Board (GWEB) Conference in southern Oregon which focused on how the citizens of Oregon can make a difference. There were 400 people registered for the conference.
- Chair Wessinger reported on the City of Portland/Department collaborative process for the CSOs. He indicated that the Commission needed to decide how and when it is appropriate to use such a process again.

Director Hansen said the collaborative process has been successful. He reiterated that it was made clear during the process that the EQC representatives could not speak for the full Commission. He said that the collaborative committee reached consensus on a proposal for changes in the SFO. The next step will be to receive public comment on the proposed changes before the matter comes before the full Commission for consideration.

Commissioner Lorenzen expressed concern about the whether the meetings complied with open meeting laws. Director Hansen responded that all of the meetings were public meetings. Commissioner Lorenzen questioned whether the meetings involved a subcommittee of the Commission. He said he felt uneasy with the procedure and that the role of the Commission was diminished. Commissioner Castle said this issue needs to be addressed promptly. He said an early and thorough debate is needed. Commissioner Lorenzen said he had stayed away from the collaborative process meetings because of his concern regarding the decision making process.

Director Hansen said the collaborative process should be viewed as a pilot. The focus of the meetings was different because the Department does not have an explicit wet weather overflow policy. He said the order requires an expensive solution for the City of Portland.

**M. Director's report.**

Statement of Policy on Refillable Bottles

Director Hansen provided the Commission with a copy of a proposed statement of policy on refillable bottles. A copy of the statement has been made a part of this meeting's record. This issue was presented at the December 10 Commission by representatives of the Blitz Weinhard Brewing Company. The company has concerns about the refillable bottles since a grocery store chain refused the product since the store's automatic bottle return system crushed the bottles. The brewing representatives had asked the Department and Commission to provide support for refillable bottles.

Commissioner Lorenzen moved to accept the statement of policy on refillable bottles; Commissioner Whipple seconded the motion. Chair Wessinger abstained from voting, and the motion passed with four yes votes.

Joint Commissions/Directors Committee Designee

Director Hansen discussed the joint commissions/directors committee formed by the Departments of Transportation, Environmental Quality and Land Conservation and Development. The formal designee had been Commissioner Whipple. Director Hansen said that because of nature of the transportation rule being addressed (reduction in vehicle miles traveled) and that the other two commissions have used their chairs as the contact point, he would recommend to have the Commission's representative be the chair. Both Chair Wessinger and Commissioner Whipple agreed.

Vehicle Inspection Boundaries

The Portland area vehicle inspection boundary expansion is an important part of the ten-year ozone maintenance plan. About 13 percent additional vehicles need to be included in the program to provide the needed emission reduction credit. An advisory committee has helped develop criteria that will be used to draw the expanded boundary. The proposed new boundary is now being finalized and will be released for public comment next month. Public hearings will be held in April with Commission adoption scheduled for the July meetings. The start up for the new boundary is targeted for April 1995.

Title V Permit Pilot Program

As a first step in implementing the new federal operating permit program for new major sources, ten facilities have volunteered to participate in a process to develop Title V permits ahead of the federal deadlines. Experience from this pilot program will help identify any modifications needed in the program prior to full implementation. Over the next year several rule revisions will be proposed relating to permanent emission fees, hazardous pollutants and emission trading.

Forest Health Memorandum of Understanding

Agreement has been reached at the staff level among Blue Mountain forest land managers in eastern Oregon, the state Department of Forestry and Department on how the forest health program and the need to increase prescribed burning will meet the Clean Air Act and other environmental requirements. A Memorandum of Understanding has been drafted which relies on a "no net increase in emission" concept. The Department expects to brief the Commission on this issue at its April meeting in LaGrande. A tour of the forest health problem may be included.



### Environmental Equity

The Environmental Equity Advisory Committee held its first organizing meeting this week. Committee members will be asked to advise the Department on rules and procedures that may have a disproportionate effect on minority or low income groups.

### Legislative Update

The Department will be appearing before the Senate Agriculture Committee next Friday to provide updates on several issues including implementation of House Bill 2214 and plastics recycling.

The Joint Task Force on Orphan Site Financing will hold its first meeting on February 18.

The Department will be bringing a preliminary list of new legislative proposals to the Commission at the April meeting.

### Hearing Authorizations

**Solid Waste Permits:** The proposed rules make changes that were allowed or required by the 1993 legislature. The rule amendments would change the Solid Waste annual permit fee from an annual billing by the Department, to self-reporting either quarterly or annually (for all permittees except transfer stations). It would also establish a new soil treatment permit with a fee of \$2,500. Hearings will be held in March with Commission action expected in April.

**Hazardous Waste:** The proposed rule adopts by reference federal hazardous waste regulations through July 1, 1993, including new used oil management standards. The proposed rule amendments would also establish special waste management standards for treated wood waste and sandblast grit waste, require hazardous waste generators to meet specific container and tank management standards during accumulations of hazardous waste, and to maintain hazardous waste determination records. The proposal would also update and amend the toxic use reduction regulations.

**Field Burning:** The proposal updates and amends rules to conform with new legislation that requires a simplified and flexible acreage registration system for propane flaming and open field burning.

**Parent Corporation Liability:** The proposed rule provides that the Department shall require, prior to issuing a chemical mining facility permit and as a condition of the permit, that those persons or entities who control a chemical mine permittee also assume liability for any environmental injury, remediation expenses, and penalties which result as a consequence of activities that are associated with the permit. An exception to this requirement may be granted by the EQC pursuant to specific criteria in the rule.

Additionally, the Commission decided that their April meeting would be held in LaGrande.

**N. Petition for rule amendment from EEE ZZZ Lay Drain Company.**

Northwest EEE ZZZ Lay Drain Company petitioned the Commission to amend portions of the on-site sewage disposal rules pursuant to Oregon Revised Statutes (ORS) 183.390 and OAR 137-01-070. The purpose of the amendment is to allow the installation of a proprietary filter material in lieu of drain rock in the construction of on-site sewage disposal leach fields within Oregon. In addition, EEE ZZZ Lay Drain Company asked the Commission to allow the use of these materials in a special pipe system in non-standard disposal trenches and to reduce the size of disposal trenches when the system is used.

The Department is aware of deficiencies within the on-site sewage disposal rules and has formed a Technical Rule Review Committee to work on rule revisions. The Committee has been actively working on the revisions since June 1993. The Committee hopes to make recommendations for rule changes by the end of March 1994. An area actively being revised is the filter material definition so that filter media other than rock can be approved. The contemplated rule changes would not only allow systems such as EEE ZZZ Lay but other non-aggregate systems to be used as alternatives to the standard system.

The Department recommended the Commission accept the petition and directed the Committee and Department to consider the proposal as one alternative in the rule making process currently underway. The recommendation also included that the Committee and Department may develop and recommend alternative language to that presented in the petition.

Alex Mauck of EEE ZZZ Lay Drain and Vincent Salvi, representing Mr. Mauck, told the Commission they concur with the Department's recommendation. Mr. Mauck also presented supporting documents. Additionally, he commented that he was pleased with the selection of Gail Achterman as chair of the committee since the death of the previous chair, Arno Denecke.

Chair Wessinger asked Kent Ashbaker, staff person in charge of the technical advisory committee, about the committee's time line. Mr. Ashbaker responded that the committee would be completing their task by the end of March and then be holding public participation meetings on the proposed rules.

Commissioner Lorenzen moved to accept the petition and direct the Department and committee to consider the proposal in the rule making process underway; Commissioner Whipple seconded the motion. The motion was unanimously approved.

**K. Commission deliberation and action on: 1) proposed modification to the special policy rule which prohibits further waste discharges to the Clackamas River Subbasin, the McKenzie River Subbasin above Hayden Bridge, and the North Santiam River Subbasin (OAR 340-41-470(1)); and 2) potential findings to allow a discharge into Cedar Creek in the North Santiam Subbasin.**

In response to a petition submitted by Kinross Copper Corporation at the December 10, 1993, Commission meeting, the Commission directed the Department to proceed to rule making and bring a proposed rule for action by the Commission at the January meeting. The Commission authorized the Department to develop alternative proposals for consideration by the Commission. Five proposals were presented for consideration at the hearing.

Alternatives 1, 2 and 4 deal specifically with the proposed Kinross Copper Mine and would allow discharge into Cedar Creek and the unnamed tributary to Cedar Creek (designated Bornite Brook). Alternatives 3 and 5 would clarify what types of discharges OAR 340-41-470(1) applies to and exempt other discharges such as storm water from the rule. Additionally, the Department included an Alternative 6 which affirmatively makes no change to the existing rules and allows the Commission to either end the rule making process or direct the Department to go through its normal rule making process with the expectation that the Department would return to the Commission in approximately one year with any proposed rule changes.

The Department recommended that the Commission adopt the rule amendments regarding the proposed modifications to OAR 340-41-470(1) as presented in Alternative 5 of the staff report and direct the Department to immediately begin rule making using a broad-based advisory committee of interested parties to develop permanent rule amendments.

Chair Wessinger briefly summarized the public hearing held on Thursday, January 27. He said approximately 60 people testified. He indicated the Commission would not hear further comments but could ask staff or others questions; he said it was now time for the Commission to deliberate on the testimony received.

To start discussions, Chair Wessinger presented a scenario and asked the members of the Commission to comment on the scenario. He said that the rule before them needed modification and that in an ordinary course of events, an advisory committee would be established. He said the use of advisory committees has been the best way to achieve reasonable answers. As a result, he said, he would like to see the formation of an advisory committee as a beginning. Further, Chair Wessinger suggested that during the interim, Alternative 5 be selected but that the entire second paragraph be deleted. Paragraph 3 would be amended to allow during the period of the advisory committee either emergency or short-term operations that are necessary. In regard to Kinross, he said that he had no knowledge of what the advisory committee would propose, and, therefore, could not see any action that the Commission could take. He said he did not want to prejudge any modification proposed by the advisory committee.

Commissioners Castle and Lorenzen asked Chair Wessinger to clarify his modification to Alternative 5. Chair Wessinger responded that he was proposing retaining paragraph 3 with a slight modification; paragraph 2 would be deleted. Director Hansen restated Chair Wessinger's proposal by saying that there is only one exemption in paragraph 3, that is, "...short-term basis in order to respond to emergencies..." which is both a short term and an emergency. He suggested that the word "or" replace the words "in order" so that it would read "...short term basis, or to respond to emergencies..." Chair Wessinger agreed and emphasized that it is a temporary, not long-term, exemption. Director Hansen said that the Department would understand that to mean that permanent discharges would not be permitted. He added that the high quality waters requirement still must be met even if the situation involved an emergency or short-term use or only that the Commission would allow that type of activity to take place. Commissioner Whipple asked if paragraph 3 would stand until the advisory committee made their recommendation; Chair Wessinger replied yes.

Commissioner McMahan stated that she agreed with Chair Wessinger's proposal and that paragraph 3 be reworded to take care of concerns expressed at the public hearing about projects already underway. Commissioner Lorenzen asked what would guide the decision to allow a lower water quality. Director Hansen replied that the Department must make the determination that "maintain" or "protect" is achieved. If that is achieved, the Department could grant a permit under paragraph 3 only if it meant short term or emergency.

Commissioner Whipple said she did not have any problems with the first two parts of Chair Wessinger's proposal. She said the issue about Kinross troubled her. Commissioner Castle stated he agreed with Commissioner Whipple. He said he did not think it would be wise to deal with Kinross as a special case and, therefore, should wait until the advisory committee made a recommendation. On the other hand, he said, Kinross had done everything required of them and regretted that the Commission could not give them a decision in a more timely manner. He said he was in support of the Chair's scenario.

Commissioner Whipple asked Kinross about the water right they are trying to obtain. Ms. Kirkpatrick and Mr. Gordon responded to Commissioner's Whipple question. Mr. Gordon indicated that Kinross had submitted the applications for the water right in July or August of 1991. Ms. Kirkpatrick said that based on the information submitted by Kinross, the Water Resources Department (WRD) completed the technical review and issued the report sometime in the spring. She said an opportunity to comment on the technical report expired in September of 1993; some comments were filed, and the WRD reviewed the comments. She indicated that the matter had been scheduled for consideration and action by the WRC at their February meeting. There is still an opportunity for filing of a protest but that opportunity would expire February 3.

Director Hansen asked Gail Achterman, attorney for Kinross Copper Corporation, if she could explain the steps involved if a protest was filed. Ms. Achterman said that if a protest is filed, the WRC is required to have a contested case proceeding with a hearings officer. There are no fixed timelines under the Administrative Procedures Act which the contested case hearing is to be held. She added there are notice requirements which would take at least 90 days for the contested case hearing to go forward. Director Hansen asked if a protest were filed by February 3, does the matter automatically go to a contested case proceeding or does it still go before the WRC for them to make a determination to contested case. Ms. Achterman said that the issue would automatically go to a contested case.

Commissioner Whipple said she had wished the process had gone differently. She said that her concern is that the proposed jobs are important, the water quality at the cities and communities is important. Some of the testimony that concerned her are that the work most directly involved in this issue has not been recognized and given the standing it should receive. Commissioner Whipple said that mines need to accept the fact that they are preceded by a history that is less than outstanding. She said that she understands that the company has made every attempt to meet requirements. She said that she believes Kinross deserves an answer from the Commission as early as today. Commissioner Whipple said she would tend to support allowing Kinross to move from this point to the permit application. She added, however, that there are some requirements on the Commission, particularly in the area of preparing findings, that would make it difficult to allow the company to proceed.

Assistant Attorney General Michael Huston said that he and staff believe, with respect to the findings that are required under the high quality waters policy, that three options were available: 1) that the Commission does have legally adequate findings that could be adopted today; 2) conclude that the Commission is not comfortable with those findings but assign that task to a hearings officer and ask that the hearing be conducted in a reasonable timeframe; and 3) that the findings process be linked to the permit.

Commissioner Whipple said she would like to see the process move ahead and that the mine has presented itself and worked with the community in such a way that she could support the project. She expressed concern about the water rights issue in regard to timing. Commissioner Whipple suggested the Commission support the company moving ahead and working through that process and findings concurrently.

Mr. Huston asked Commissioner Whipple if she was suggesting adoption of Alternative 4; she responded yes. Director Hansen also proposed that Commissioner Whipple would suggest that no change to the rule would be made today but that the findings and permit process proceed and when it comes back, and, if convinced, then make the change to the rule.

Commissioner Lorenzen said that the issue has moved forward too quickly but that a normal timetable need not be followed and that some middle ground could be reached where the process could be concluded in a short time. He said that this will result in a one-year delay for Kinross but is necessary to provide participation and fair and thoughtful deliberation.

Commissioner Castle said that it would be very bad if Kinross lost another season for construction. He said they deserve an answer, and if there was some way to devise a process that the Commission could give them an answer by the second season and judge whether the high quality waters policy is applied equally, then that would be an ideal resolution. He said that some fine tuning of the Chair's proposal would permit that to happen.

Director Hansen said that the Department can appoint the advisory committee quickly. Meetings occur approximately once every three weeks, generally around six to nine meetings, resulting in six to nine months for rule making. About three months is needed for public hearing.

Director Hansen suggested that the advisory committee report to the Commission when it has completed its work. If the committee recommends a rule change that would remove the restriction for Kinross, the Commission could authorize a public hearing on findings on the high water quality issue and draft permit to proceed in parallel with the rulemaking process. He said that would allow the Commission to have information in a more timely manner.

Commissioner Whipple commented that if what Director Hansen suggested would give some interim point for opening the process, she would be willing to consider that. She said there needs to be some sense of certainty on timing for action on the application before them.

Director Hansen summarized a suggestion made by Commissioner Castle. He said that the advisory committee would be constituted, go through the normal process and recommend a draft rule to the Commission. At that time, the Commission would make a determination whether the Kinross facility could be considered under the proposed rule. If it could be considered, the Commission would authorize public review on the additional requirements in the other parts of the rule; that is, findings under the high quality waters and a draft permit. At the end of the public process, the Commission would have had a full public record on the findings of the high quality waters, on the draft permit and comments on the draft rule language.

Commissioner Whipple responded that she would probably still support allowing Kinross to proceed today. Mr. Huston summarized Commissioner Whipple's suggestion as a dual track starting today, whereas the rest of the Commission proposed a single track coming back to the Commission with the opportunity to start a dual track.

Commissioner McMahan stated she was happy with Commissioner Castle's alternative and understood Commissioner Whipple's concerns. She said the company has come to the Department in good faith. The second alternative provides more than what would be done under normal circumstances. Commissioner McMahan said this alternative met her need to do something in the company's benefit but to also protect the process.

Ms. Kirkpatrick responded that if the advisory committee could come back to the Commission quickly enough to make a determination so that the parallel rule making and high quality waters permit processes could proceed in the time to be concluded to allow the company to proceed in 1995, that would work. If the timeline would not allow for construction in 1995, then the company has lost 1995. She said the key is the deadline for the advisory committee reporting back to the Commission proposed rule language. Ms. Achterman indicated that the company would need to have the decision on the permit three to six months before beginning construction in order to complete engineering and arrange financing.

Ms. Achterman further stated that it is important to consider broader public policy considerations than the impact of this decision on Kinross's schedule. She said that since exemptions had been eliminated, a situation would be created in which the Department would be unable to process any NPDES permit applications other than storm water and emergency situations anywhere in three geographic areas which have been impacted by downturns in timber supply and pursuing alternative economic development. Ms. Achterman said that this would create a problem for the staff and hardship for others the longer this occurs. She stressed giving the advisory committee a very tight schedule.

Commissioner Lorenzen moved adoption of Alternative 5 as presented in Attachment A of the staff report with the following changes:

- Paragraph 2 would be deleted;
- Paragraph 3 would be modified, and the words "in order" would be substituted with the word "or";
- The remaining paragraphs would be appropriately renumbered.

Director Hansen added the following clarification to the changes in paragraph 3: "The Director or a designee may, however, allow lower water quality on a short-term basis, or to respond to emergencies...." The change included adding the word *however*, and adding a comma after the word *basis*.



Commissioner Lorenzen modified his motion to take into considerations the changes made by Director Hansen; Commissioner Castle seconded the motion. Director Hansen reiterated that the high quality waters policy remains in place for emergency and short-term activities. The Department must either determine that "maintain or protect" must be achieved or come to the Commission, and only the Commission may lower water quality for socio-economic reasons. Director Hansen and Mr. Downs discussed the requirements for the emergency and short-term activities.

The motion passed unanimously.

As a result of the action, OAR 340-41-470 was amended to read as follows:

- (1) In order to preserve the existing high quality water for municipal water supplies and recreative, it is the policy of the EQC to prohibit any ~~furthur~~ *new or increased* waste discharges to the waters of:
  - (a) The Clackamas River Subbasin;
  - (b) The McKenzie River Subbasin above the Hayden Bridge (river mile 15);
  - (c) The North Santiam River Subbasin.

~~(2) — The following discharges are exempt from Section (1) of this rule to the extent that they do not significantly impair existing water quality: storm water; short-term construction activities obtaining certification under section 401 of the Federal Clean Water Act; underground storage tank cleanup activities using best available treatment technology; filter backwash discharges from drinking water treatment plants; vehicle and equipment washing activities that do not use soaps, detergents or other chemicals; and non-contact cooling water.]~~

- (2) *The Director or a designee may, however, allow water quality on a short-term basis, or to respond to emergencies or to otherwise avoid imminent and serious danger to public health or welfare.*
- (3) *Section (2) of this rule is effective until January 28, 1995.*
- (4) The Environmental Quality Commission shall investigate, together with any other affected state agencies, the means of maintaining....

Environmental Quality Commission Minutes

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January 27 and 28, 1994

- (5) In order to improve water quality within the Tualatin River subbasin to meet the existing water quality standard for dissolved oxygen, and the 15 ug/l chlorophyll....
- (6) In order to improve water quality within the Yamhill River subbasin to meet the existing water quality standard for pH, the following special rules for ....

There was no further business, and the meeting was adjourned at 2:45 p.m.

# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item **B**  
March 11, 1994 Meeting

**Title:**

Approval of Tax Credit Applications

**Summary:**

New Applications - 23 tax credit applications with a total facility cost of \$2,415,497.00 are recommended for approval as follows:

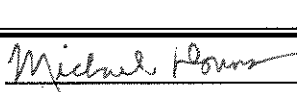
- |  |             |
|--|-------------|
| - 2 Air Quality facilities with a total facility cost of:  | \$1,166,009 |
| - 7 CFC facilities having a total facility cost of:  | \$ 17,760   |
| - 2 Field Burning related facilities recommended by the Department of Agriculture with a total facility cost of: | \$ 132,692  |
| - 1 Water Quality facility having a total facility cost of:  | \$ 187,682  |
| - 1 Plastics Recycling facility with a total facility cost of:   | \$ 13,340   |
| -10 Underground Storage Tank (UST) facilities costing:   | \$ 898,014  |

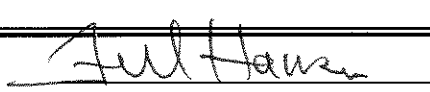
One application having a claimed facility cost exceeding \$250,000 has been reviewed by an independent accounting firm contractor and the review statement is attached to the application review report. No significant issues are highlighted for discussion in this report.

**Department Recommendation:**

- 1) Approve issuance of tax credit certificates for 23 applications as presented in Attachment A of the staff report.

  
Report Author

  
Division Administrator

  
Director

March 11, 1994


†Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

GW\WC12\WC12339.5

State of Oregon  
Department of Environmental Quality

Memorandum†

Date: March 11, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item B, March 11, 1994 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 4024	Loveland Enterprises, Inc.	A Reclaimed Plastics facility consisting of an AM Company Unlimited injection mold for the manufacture of reclaimed plastic product.
TC 4141	Darigold, Inc.	An Underground Storage Tank (UST) Water Quality facility consisting of a doublewall fiberglass tank and piping, a spill containment basin, tank gauge system, overfill alarm, automatic shutoff valves, line/turbine leak detectors, monitoring wells and Stage I and II vapor recovery piping.

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

Application Number	Applicant	Description
TC 4142	Hawk Oil Company	A UST Water Quality facility consisting of epoxy lining and impressed current cathodic protection around three steel tanks, fiberglass piping, spill containment basins, a tank gauge system, overfill alarm, sumps, automatic shutoff valves and Stage I and II vapor recovery piping.
TC 4176	B & E Imports	A CFC Air Quality facility consisting of a machine that removes and cleans automobile air conditioner coolant.
TC 4177	Ron Tonkin Chevrolet Co.	A CFC Air Quality facility consisting of a machine that removes and cleans automobile air conditioner coolant.
TC 4178	Ron Tonkin Gian Turismo	A CFC Air Quality facility consisting of a machine that removes and cleans automobile air conditioner coolant.
TC 4180	M. J. Goss Motor Company	A CFC Air Quality facility consisting of a machine that removes and cleans automobile air conditioning coolant.
TC 4183	Jeld-Wen, Inc.	An Air Quality facility consisting of a Clarke Pneu-Aire 100-20 secondary bag filter and a CBI 55-3 fan.
TC 4184	Douglas L. Pickell	A UST Water Quality facility consisting of a tank gauge system and check valves at the dispenser.
TC 4185	Performance Auto	A CFC Air Quality facility consisting of a machine that removes and cleans automobile air conditioner coolant.

Application Number	Applicant	Description
TC 4190	Texaco Refining and Marketing, Inc.	A UST Water Quality facility consisting of four doublewall fiberglass tanks and piping, spill containment basins, a tank gauge system, line/turbine leak detectors, an overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I vapor recovery equipment.
TC 4191	Texaco Refining and Marketing, Inc.	A UST Water Quality facility consisting of five doublewall fiberglass tanks and piping, spill containment basins, a tank gauge system, line/turbine leak detectors, an overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I vapor recovery equipment.
TC 4192	Texaco Refining and Marketing, Inc.	A UST Water Quality facility consisting of five doublewall fiberglass tanks and piping, spill containment basins, a tank gauge system, line/turbine leak detectors, an overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I vapor recovery equipment
TC 4193	Texaco Refining and Marketing, Inc.	A UST Water Quality facility consisting of four doublewall fiberglass tanks and piping, spill containment basins, a tank gauge system, line/turbine leak detectors, an overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I and II vapor recovery equipment,
TC 4198	Robert Hayes/Michael Moran Joint Venture	A UST Water Quality facility consisting of four doublewall steel/fiberglass tanks and flexible doublewall piping, spill containment basins, a tank gauge system, an overfill alarm, line leak detectors and Stage I and II vapor recovery piping.

Application Number	Applicant	Description
TC 4199	Robert Hayes/Michael Moran Joint Venture	A UST Water Quality facility consisting of four doublewall steel/fiberglass tanks and flexible doublewall piping, spill containment basins, a tank gauge system, an overflow alarm, line/leak detectors and Stage I and II vapor recovery piping.
TC 4200	J.C. Jones Oil Company, Inc.	A UST Water Quality facility consisting of an impressed current cathodic protection system around five tanks.
TC 4201	Licorice Lane Farm, Inc.	A Water Quality facility consisting of a two-cell wastewater holding pond, a solids/liquids separator, a concrete slab solids storage area, equipment to facilitate spreading of solids and irrigation of stored wastewater and other related facilities.
TC 4202	Greg's Auto Service	A CFC Air Quality facility consisting of a machine that removes and cleans automobile air conditioner coolant.
TC 4205	Earl's Automotive	A CFC Air Quality facility consisting of a machine that removes and cleans automobile air conditioner coolant.
TC 4206	Mr. & Mrs. Gary J. Kropf	A Field Burning (Air Quality) facility consisting of a Rear flail chopper.
TC 4209	Brentano Farms, Inc.	A Field Burning (Air Quality) facility consisting of an 18' x 100' x 200' steel truss grass seed straw storage building.

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

Application Number	Applicant	Description
TC 4129	Fujitsu Microelectronics, Inc.	An Air Quality facility to control nitric acid emissions consisting of a process exhaust nitric (PEN) system which includes a wet scrubber, a coalescing aerosol mist elimination filter and support equipment.

**Background**

There are no significant issues that are highlighted for review in this report.

**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 and Evaluation**

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 are consistent with statutory provisions and administrative rules related to the pollution control facilities and reclaimed plastic product tax credit programs.
- o Proposed March 11, 1994 Pollution Control Tax Credit Totals:

<u>Certificates</u>	<u>Certified Costs*</u>	<u>No.</u>
Air Quality	\$1,166,009	2
CFC	17,760	7
Field Burning	132,692	2
Hazardous Waste	0	0
Noise	0	0
Plastics	13,340	1
Solid Waste - Recycling	0	0
Solid Waste - Landfills	0	0
Water Quality	187,682	1
UST	898,014	10
TOTALS	\$ 2,415,497	23

Memo To: Environmental Quality Commission  
Agenda Item B  
March 11, 1994 Meeting  
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Calendar Year Totals Through December 30, 1993:

<u>Certificates</u>	<u>Certified Costs*</u>	<u>No.</u>
Air Quality	\$ 83,576	1
CFC	0	0
Field Burning	0	0
Hazardous Waste	0	0
Noise	0	0
Plastics	167,972	5
Solid Waste - Recycling	218,316	1
Solid Waste - Landfills	0	0
Water Quality	20,291	1
UST	184,465	2
TOTALS	<u>\$ 674,620</u>	<u>10</u>

\* 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.

Memo To: Environmental Quality Commission  
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**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.

**Intended Followup Actions**

Notify applicants of Environmental Quality Commission actions.

**Attachments**

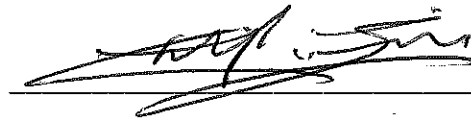
- A. Pollution Control Tax Credit Application Review Reports.

**Reference Documents (available upon request)**

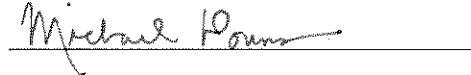
- 1. ORS 468.150 through 468.190.
- 2. OAR 340-16-005 through 340-16-050.
- 3. ORS 468.925 through 468.965.
- 4. OAR 340-17-010 through 340-17-055.

Approved:

Section:



Division:



Report Prepared By: Charles Bianchi

Phone: 229-6149

Date Prepared: February 22, 1994

Charles Bianchi:crw  
FEBEQC (GW\WC12\WC12338.5)  
Feb 22, 1994

Application No. TC-4024

State of Oregon  
Department of Environmental Quality

RECLAIMED PLASTIC TAX CREDIT  
TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Leland Loveland  
Loveland Enterprises, Inc.  
7025 S. W. Hoodview Pl.  
Beaverton, Oregon 97005

The applicant has designed and will distribute a foot operated crushing device to be used in home preparation of recyclable material. The applicant has purchased a mold to produce this item and has contracted with a plastic molding company to manufacture the crusher from reclaimed plastic using the applicant's mold.

Application was made for Reclaimed Plastic Tax Credit.

2. Description of Equipment, Machinery or Personal Property

Claimed Investment Cost: \$13,340 consisting of:

An injection mold manufactured by AM Company Unlimited. This mold will be used exclusively to manufacture a reclaimed plastic product from plastic regrind supplied by an Oregon reclaimed plastic dealer.

An invoice was provided.

3. Procedural Requirements

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

The investment met all statutory deadlines in that:

- a. The request for preliminary certification was received on April 8, 1993. The preliminary application was filed complete on April 8, 1993.
- b. The request for preliminary certification was approved on April 8, 1993, before the application for final certification was made.

- c. The investment was made on April 20, 1993, prior to June 30, 1995.
- d. The request for final certification was submitted on December 27, 1993 and was filed complete on January 4, 1994.

4. Evaluation of Application

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

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

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

This factor is applicable because the sole purpose of this mold is to manufacture a reclaimed plastic product. The waste plastic used to manufacture this product is generated persons other than the applicant.

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

The applicant investigated other alternatives and determined that no other type of equipment can be used for making this item on an injection molding machine.

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

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

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

5. Summation

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Reclaimed Plastic Tax Credit Certificate bearing the cost of \$13,340 with 100% allocated to reclaiming plastic material, be issued for the investment claimed in Tax Credit Application No. TC-4024.

WRB:wrb  
wp51\tax\tc4024rr.sta  
(503) 229-5934  
January 23, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Darigold, Inc.  
635 Elliott Ave., West  
Seattle, WA 98119

The applicant owns and operates a milk processing plant at 2720 SE 6th., Portland, OR, Facility No. 7299.

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 vapor recovery and Stage II vapor recovery piping.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are one doublewall fiberglass tank and piping, spill containment basin, tank gauge system, overflow alarm, sump, automatic shutoff valves, line/turbine leak detectors, monitoring wells and Stage I and II vapor recovery piping.

Claimed facility cost \$51,335  
(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 was substantially completed on March 1, 1992 and placed into operation on March 1, 1992. The application for certification was submitted to the Department on September 20, 1993 and was considered to be complete and filed on January 31, 1994, within two years of the completion date of the project.

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 9 regulated steel tanks and piping with no corrosion protection and no spill and overfill prevention or leak detection equipment. Four tanks were removed during the project. The five remaining were subsequently removed.

To respond to Air Quality regulations under OAR 340-22-400 - 403 and Underground Storage Tank requirements under OAR 340-Division 150, the applicant installed:

- 1) For corrosion protection - Doublewall fiberglass tank and piping.
- 2) For spill and overfill prevention - Spill containment basin, sump, automatic shutoff valves, and overfill alarm.
- 3) For leak detection - Tank gauge system, line/turbine leak detectors, and monitoring wells.
- 4) For VOC reduction - Stage I and II vapor recovery piping.

Contamination found at the site were reported to DEQ. Cleanup is in progress.

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

The Department concludes that the costs claimed by the applicant (\$51,335) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.



b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered installing doublewall tanks and piping as an alternative. 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 of 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
<u>Corrosion Protection:</u>			
Doublewall fiberglass tank and piping	\$13,307	53% (1)	\$ 7,053
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	201	100	201
Overfill alarm	195	100	195
Automatic shutoff valves	211	100	211
Sumps	797	100	797
<u>Leak Detection:</u>			
Tank gauge system	3,208	90 (2)	2,887
Line/turbine leak detectors	342	100	342
Monitoring wells	1,500	100	1,500
Stage I vapor recovery	168	100	168
Stage II vapor recovery piping	700	100	700
Labor and materials	30,706	100	30,706
Total	\$ 51,335	87%	\$ 44,760

- (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 \$13,307 and the bare steel system is \$6,202, the resulting portion of the eligible tank and piping cost allocable to pollution control is 53%.
- (2) The applicant's cost for a tank gauge system 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 87%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$51,335 with 87% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4141.

Barbara J. Anderson  
(503) 229-5870  
January 31, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Hawk Oil Company  
P. O. Box 1388  
Medford, OR 97501

The applicant owns and operates a retail gas station at 2232 Biddle Rd., Medford, OR, Facility No. 8855.

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 vapor recovery and Stage II vapor recovery piping.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are epoxy lining in and impressed current cathodic protection around three steel tanks, fiberglass piping, spill containment basins, tank gauge system, overflow alarm, sumps, automatic shutoff valves and Stage I and II vapor recovery piping.

Claimed facility cost \$84,412  
(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 was substantially completed on May 17, 1993 and placed into operation on May 18, 1993. The application for certification was submitted to the Department on September 21, 1993 and was considered to be complete and filed on January 31, 1994, within two years of the completion date of the project.

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 overfill prevention or leak detection equipment except for line leak detectors.

To respond to Air Quality regulations under OAR 340-22-400 - 403 and Underground Storage Tank requirements under OAR 340-Division 150, the applicant installed:

- 1) For corrosion protection - Epoxy lining in and impressed current cathodic protection around tanks and fiberglass piping
- 2) For spill and overfill prevention - Spill containment basins, sumps, automatic shutoff valves and overfill alarm.
- 3) For leak detection - Tank gauge system.
- 4) For VOC reduction - Stage I and II vapor recovery piping.

Soil and groundwater contamination found at the site were reported to DEQ. Cleanup is in progress.

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

The Department concludes that the costs claimed by the applicant (\$84,412) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered installing doublewall tanks and piping as an alternative. 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 of 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
	-----	-----	-----
<u>Corrosion Protection:</u>			
Epoxy lining and cathodic protection for tanks	\$30,931	100%	\$30,931
Fiberglass piping	4,951	60% (1)	2,971
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	531	100	531
Overfill alarm	214	100	214
Automatic shutoff valves	2,079	100	2,079
Sumps	1,485	100	1,485
<u>Leak Detection:</u>			
Tank gauge system	6,583	90 (2)	5,925
Labor & materials (incl. stage I & II vapor recovery piping)			
	37,638	100	37,638
	-----	-----	-----
Total	\$ 84,412	97%	\$ 81,774

- (1) The Department has determined the percent allocable on the cost of a corrosion protected piping system by using a formula based on the difference in cost between the protected 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 \$4,951 and the bare steel system is \$1,973, the resulting portion of the eligible tank and piping cost allocable to pollution control is 60%.
- (2) The applicant's cost for a tank gauge system 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 97%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$84,412 with 97% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4142.

Barbara J. Anderson  
(503) 229-5870  
January 31, 1994



State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

B & E Imports  
675 N.E. Burnside  
Gresham OR 97030

The applicant owns and operates an automobile sales and service establishment in Gresham, 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: \$3,400.00  
(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 29, 1992. The facility was placed into operation on October 1, 1992. The application for final certification was submitted to the Department on November 15, 1993, within two years of substantial completion of the facility. The application was found to be complete on January 31, 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/or recycling air contaminants, as defined in ORS 468.275.

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, 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 \$10.20/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

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 79%.

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 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 79%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$3,400.00 with 79% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4176.

BKF

January 31, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Ron Tonkin Chevrolet Co.  
122 NE 122nd Ave  
Portland OR 97233

The applicant owns and operates a used car dealership in Portland, 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: \$3,185.00  
(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 October 1, 1992. The facility was placed into operation on October 16, 1992. The application for final certification was submitted to the Department on November 15, 1993, within two years of substantial completion of the facility. The application was found to be complete on January 31, 1994.

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/or recycling air contaminants, as defined in ORS 468.275.

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, 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 \$10.20/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

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 sole purpose of the facility is 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 \$3,185.00 with 78% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4177.

BKF

January 31, 1994



State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Ron Tonkin Gian Turismo  
426 NE 102nd  
Portland OR 97220

The applicant owns and operates an automobile sales and service establishment in Portland, 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: \$1,790.00  
(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 29, 1992. The facility was placed into operation on September 29, 1992. The application for final certification was submitted to the Department on November 15, 1993. The application was found to be complete on January 31, 1994, within two years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce 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 \$5.07/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

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 \$1,790.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4178.

BKF

January 31, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

M.J. Goss Motor Company  
1415 Adams Ave.  
La Grande OR 97850

The applicant owns and operates an Automobile sales and service establishment in La Grande, 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: \$3,185.00  
(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 November 15, 1993. The facility was placed into operation on December 1, 1992. The application for final certification was submitted to the Department on November 18, 1993, within two years of substantial completion of the facility. The application was found to be complete on January 31, 1994.

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/or recycling air contaminants, as defined in ORS 468.275.

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, 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 \$11.80/pound. The applicant estimated an annual coolant recovery rate of 10 pounds.

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

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

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 sole purpose of the facility is 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 \$3,185.00 with 78% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4180.

BKF

January 31, 1994



State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Jeld-Wen, Inc.  
Oregon Strand Board Division  
P.O. Box 1329  
Klamath Falls, Oregon 97601

The applicant owns and operates an oriented strand board manufacturing facility in Brownsville, Oregon.

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

2. Description of Facility

The facility controls the emission of particulate from the facility's raw material storage and recovery system. The facility consists of a Clarke Pneu-Aire 100-20 secondary bag filter and a CBI 55-3 fan.

Claimed Facility Cost: \$223,719.36

A distinct portion of the claimed facility makes an insignificant contribution to the principal purpose of pollution control. The applicant claimed \$1,200.00 for installation of ductwork used to transfer particulate from the baghouse back to the raw material storage and recovery system.

Ineligible costs: \$1,200.00

Adjusted facility cost: \$222,519.36

The applicant indicated the useful life of the facility is 20 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 December 31, 1992 and placed into operation on January 4, 1993. The application for final certification was received by the Department on November 19, 1993. The application was found to be complete on January 14, 1994.

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, sections 015 and 030. The applicant's Air Contaminant Discharge Permit, 22-1037, Condition 9, requires the permittee to control the emission of particulate. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

The claimed facility controls the atmospheric emission of particulate generated from two silos and two cyclones. One of the silos is used to store raw material for strand board manufacturing and the other is used to store boiler fuel. The cyclones collect waste material delivered by the pneumatic transport system which removes particulate from trim saws in the work area.

The claimed facility consists of a Clarke Pneu-Aire 100-20 secondary bag filter and a CBI 55-3 fan. Installation of the facility required a foundation, ductwork, structural and electrical materials and labor, and a fire protection system. Department inspection records dated August 12, 1993 indicate that the facility is considered to be in compliance.

The baghouse system fan draws particulate emitted by the cyclones and silos, through ductwork and into the baghouse. The exhaust air stream is drawn through a series of fabric filters supported on tubular frames. The particulate collects on the outside of the bags. The filtered air then passes through the system fan and is emitted to the atmosphere. The accumulated particulate is removed by a purge fan which draws the material off the surface of the bag filters and pushes it through ductwork to one of the cyclones. The particulate is used as boiler fuel on site.

b. Eligible Cost Findings

In determining the percent of the pollution control facility cost allocable to controlling pollution, 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 waste material recovered by the facility is converted into a salable or usable commodity consisting of sawdust which is used for boiler fuel. The average annual value of this fuel is estimated to be \$176.53.

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

The annual operating expenses exceed income from the facility, so there is no return on investment.

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

Baghouses are technically recognized as an appropriate method for controlling the emission of particulate to the atmosphere.

- 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 \$58,328.00 annually.

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

The eligible facility costs have been determined to be \$222,519.36 after adjusting for distinct portions of the facility which do not have the principal purpose of pollution control. This is discussed in Section 2 of this report.

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 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 \$222,519.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4183.

Robyn Neaville  
SJO Consulting Engineers

January 28, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Douglas L. Pickell  
1549 Siskiyou Blvd.  
Medford, OR 97504

The applicant owns and operates a retail gas station and car wash at 1085 Stewart Ave., Medford, OR, Facility No. 8786.

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 a tank gauge system and check valves at the dispenser.

Claimed facility cost \$11,120  
(Documentation of cost 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 was substantially completed on May 1, 1993 and placed into operation on May 1, 1993. The application for certification was submitted to the Department on November 24, 1993 and was considered to be complete and filed on January 31, 1994, within two years of the completion date of the project.

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 underground Storage Tank requirements under OAR 340-Division 150, the applicant installed:

- 1) For spill and overfill prevention - Check valves at dispenser.
- 2) For leak detection - Tank gauge system.

Soil contamination found at the site was reported to DEQ. The clean up has proceeded under DEQ oversight.

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

The Department concludes that the costs claimed by the applicant (\$11,120) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant did not indicate that any alternatives 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 of 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
	_____	_____	_____
<u>Spill &amp; Overfill Prevention:</u>			
Check valves	200	100	200
<u>Leak Detection:</u>			
Tank gauge system	4,700	90 (1)	4,230
Labor and materials	6,220	100	6,220
	_____	_____	_____
Total	\$ 11,120	96%	\$ 10,650

- (1) The applicant's cost for a tank gauge system 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 96%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$11,120 with 96% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4184.

Barbara J. Anderson  
(503) 229-5870  
January 31, 1994



State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Performance Auto  
1078 Court Street #107  
Medford OR 97501

The applicant owns and operates an automobile repair establishment in Medford, 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: \$2,200.00  
(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 21, 1992. The facility was placed into operation on May 21, 1992. The application for final certification was submitted to the Department on November 26, 1993. The application was found to be complete on January 31, 1993, within two years of substantial completion of the facility.

4. Evaluation of Application

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

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 \$2,200 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4185.

BKF

January 31, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Texaco Refining and Marketing, Inc.  
Pacific Northwest Region  
1800 SW First Avenue, Suite 180  
Portland, OR 97201

The applicant owns and operates a retail gas station at 1048 N. Hwy 99, West, McMinnville, OR, Facility No. 1340.

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 vapor recovery.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are four doublewall fiberglass tanks and piping, spill containment basins, tank gauge system, line/turbine leak detectors, overflow alarm, monitoring wells, sumps, automatic shutoff valves and Stage I vapor recovery.

Claimed facility cost \$135,470  
(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 was substantially completed on January 30, 1992 and placed into operation on January 30, 1992. The application for certification was submitted to the Department on December 1, 1993 and was considered to be complete and filed on December 1, 1993, within two years of the completion date of the project.

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 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 under OAR 340-Division 150, the applicant installed:

- 1) For corrosion protection - Doublewall fiberglass tanks and piping.
- 2) For spill and overfill prevention - Spill containment basins, sumps, automatic shutoff valves and overfill alarm.
- 3) For leak detection - Tank gauge system, line/turbine leak detectors and monitoring wells.
- 4) For VOC reduction - Stage I vapor recovery.

Contamination found at the site was reported to DEQ. Cleanup is in progress.

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

The Department concludes that the costs claimed by the applicant (\$135,470) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered the methods chosen to be the best pollution control available. 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 of 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
<u>Corrosion Protection:</u>			
Doublewall fiberglass tanks and piping	\$43,746	66% (1)	\$28,872
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	4,420	100	4,420
Overfill alarm	342	100	342
Automatic shutoff valves	618	100	618
Sumps	2,040	100	2,040
<u>Leak Detection:</u>			
Tank gauge system	5,608	90 (2)	5,047
Line/turbine leak detectors	1,571	100	1,571
Monitoring wells	976	100	976
Stage I vapor recovery	732	100	732
Labor and materials	75,417	100	75,417
Total	\$135,470	89%	\$120,035

- (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 \$43,746 and the bare steel system is \$14,960, the resulting portion of the eligible tank and piping cost allocable to pollution control is 66%.
- (2) The applicant's cost for a tank gauge system 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 \$135,470 with 89% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4190.

Barbara J. Anderson  
(503) 229-5870  
January 31, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Texaco Refining and Marketing, Inc.  
Pacific Northwest Region  
1800 SW First Avenue, Suite 180  
Portland, OR 97201

The applicant owns and operates a retail gas station at 428 Barnett Rd., Medford, OR, Facility No. 1393.

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 vapor recovery.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are five doublewall fiberglass tanks and piping, spill containment basins, tank gauge system, line/turbine leak detectors, overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I vapor recovery.

Claimed facility cost \$138,731  
(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 was substantially completed on February 14, 1992 and placed into operation on February 14, 1992. The application for certification was submitted to the Department on December 1, 1993 and was considered to be complete and filed on December 1, 1993, within two years of the completion date of the project.

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 seven 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 under OAR 340-Division 150, the applicant installed:

- 1) For corrosion protection - Doublewall fiberglass tanks and piping.
- 2) For spill and overfill prevention - Spill containment basins, sumps, automatic shutoff valves and overfill alarm.
- 3) For leak detection - Tank gauge system, line/turbine leak detectors and monitoring wells.
- 4) For VOC reduction - Stage I vapor recovery.

Contamination found at the site was reported to DEQ. Cleanup is in progress.

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

The Department concludes that the costs claimed by the applicant (\$138,731) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered the methods chosen to be the best pollution control available. 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 of 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
<u>Corrosion Protection:</u>			
Doublewall fiberglass tanks and piping	\$50,522	62% (1)	\$31,324
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	6,459	100	6,459
Overfill alarm	397	100	397
Automatic shutoff valves	618	100	618
Sumps	2,040	100	2,040
<u>Leak Detection:</u>			
Tank gauge system	6,506	90 (2)	5,855
Line/turbine leak detectors	1,927	100	1,927
Monitoring wells	583	100	583
Stage I vapor recovery	748	100	748
Labor and materials	68,931	100	68,931
Total	\$138,731	86%	\$118,882

- (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 \$50,522 and the bare steel system is \$18,976, the resulting portion of the eligible tank and piping cost allocable to pollution control is 62%.
- (2) The applicant's cost for a tank gauge system 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 86%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$138,731 with 86% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4191.

Barbara J. Anderson  
(503) 229-5870  
January 31, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Texaco Refining and Marketing, Inc.  
Pacific Northwest Region  
1800 SW First Avenue, Suite 180  
Portland, OR 97201

The applicant owns and operates a retail gas station at 2690 River Rd., Eugene, OR, Facility No. 1388.

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 vapor recovery.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are five doublewall fiberglass tanks and piping, spill containment basins, tank gauge system, line/turbine leak detectors, overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I vapor recovery.

Claimed facility cost \$157,963  
(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 was substantially completed on December 3, 1993 and placed into operation on December 3, 1993. The application for certification was submitted to the Department on December 1, 1993 and was considered to be complete and filed on December 1, 1993, within two years of the completion date of the project.

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 five 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 under OAR 340-Division 150, the applicant installed:

- 1) For corrosion protection - Doublewall fiberglass tanks and piping.
- 2) For spill and overfill prevention - Spill containment basins, sumps, automatic shutoff valves and overfill alarm.
- 3) For leak detection - Tank gauge system, line/turbine leak detectors and monitoring wells.
- 4) For VOC reduction - Stage I vapor recovery.

Contamination found at the site was reported to DEQ. Cleanup is in progress.

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

The Department concludes that the costs claimed by the applicant (\$157,963) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.



b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered the methods chosen to be the best pollution control available. 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 of 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
<u>Corrosion Protection:</u>			
Doublewall fiberglass tanks and piping	\$52,180	64% (1)	\$33,395
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	6,099	100	6,099
Overfill alarm	395	100	395
Automatic shutoff valves	618	100	618
Sumps	2,280	100	2,280
<u>Leak Detection:</u>			
Tank gauge system	6,419	90 (2)	5,777
Line/turbine leak detectors	1,927	100	1,927
Monitoring wells	494	100	494
Stage I vapor recovery	877	100	877
Labor and materials	86,674	100	86,674
Total	\$157,963	88%	\$138,536

- (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 \$52,180 and the bare steel system is \$19,000, the resulting portion of the eligible tank and piping cost allocable to pollution control is 64%.
- (2) The applicant's cost for a tank gauge system 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 88%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$157,963 with 88% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4192.

Barbara J. Anderson  
(503) 229-5870  
January 31, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Texaco Refining and Marketing, Inc.  
Pacific Northwest Region  
1800 SW First Avenue, Suite 180  
Portland, OR 97201

The applicant owns and operates a retail gas station at 7090 SW Nyberg Rd., Tualatin, OR, Facility No. 1397.

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 four doublewall fiberglass tanks and piping, spill containment basins, tank gauge system, line/turbine leak detectors, overfill alarm, monitoring wells, sumps, automatic shutoff valves and Stage I and Stage II vapor recovery equipment.

Claimed facility cost \$158,784  
(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 was substantially completed on March 26, 1992 and placed into operation on March 26, 1992. The application for certification was submitted to the Department on December 1, 1993 and was considered to be complete and filed on December 1, 1993, within two years of the completion date of the project.

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 five 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 under OAR 340-Division 150, the applicant installed:

- 1) For corrosion protection - Doublewall fiberglass tanks and piping.
- 2) For spill and overfill prevention - Spill containment basins, sumps, automatic shutoff valves and overfill alarm.
- 3) For leak detection - Tank gauge system, line/turbine leak detectors and monitoring wells.
- 4) For VOC reduction - Stage I and II vapor recovery piping, hoses and nozzles for four dispenser islands.

Contamination found at the site was reported to DEQ. Cleanup is in progress.

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

The Department concludes that the costs claimed by the applicant (\$158,784) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered the methods chosen to be the best pollution control available. 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 of 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
<u>Corrosion Protection:</u>			
Doublewall fiberglass tanks and piping	\$48,786	62% (1)	\$30,247
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	5,899	100	5,899
Overfill alarm	397	100	397
Automatic shutoff valves	494	100	494
Sumps	2,040	100	2,040
<u>Leak Detection:</u>			
Tank gauge system	6,344	90 (2)	5,710
Line/turbine leak detectors	1,927	100	1,927
Monitoring wells	389	100	389
Stage I vapor recovery	748	100	748
Stage II vapor recovery (incl. 24 hoses & nozzles on four dispensers)	17,827	100	17,827
Labor and materials	73,933	100	73,933
Total	\$158,784	88%	\$139,611

- (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 \$48,786 and the bare steel system is \$18,302, the resulting portion of the eligible tank and piping cost allocable to pollution control is 62%.
- (2) The applicant's cost for a tank gauge system 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 88%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$158,784 with 88% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4193.

Barbara J. Anderson  
(503) 229-5870  
January 31, 1994



State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Robert Hays/Michael Moran Joint Venture  
P. O. Box 1220  
Medford, OR 97501

The applicant owns and operates a retail gas station at 392 South 4th, Coos Bay, OR, Facility No. 3603.

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 vapor recovery and Stage II vapor recovery piping.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are four doublewall steel/fiberglass tanks and flexible doublewall piping, spill containment basins, tank gauge system, overfill alarm, line leak detectors and Stage I and II vapor recovery piping.

Claimed facility cost \$69,918  
(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 was substantially completed on November 5, 1993 and placed into operation on November 8, 1993. The application for certification was submitted to the Department on December 16, 1993 and was considered to be complete and filed on January 31, 1994, within two years of the completion date of the project.

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 overfill prevention or leak detection equipment.

To respond to Air Quality regulations under OAR 340-22-400 - 403 and Underground Storage Tank requirements under OAR 340-Division 150, the applicant installed:

- 1) For corrosion protection - Doublewall steel/fiberglass tanks and flexible piping.
- 2) For spill and overfill prevention - Spill containment basins and overfill alarm.
- 3) For leak detection - Tank gauge system and line leak detectors.
- 4) For VOC reduction - Stage I and II vapor recovery piping.

Contamination found at the site was reported to DEQ. Cleanup is in progress.

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

The Department concludes that the costs claimed by the applicant (\$69,918) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant did not indicate that any alternatives 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 of 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
	-----	-----	-----
<u>Corrosion Protection:</u>			
Doublewall steel/fiberglass tanks and doublewall flexible piping	\$34,325	59% (1)	\$20,252
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	4,176	100	4,176
Overfill alarm	214	100	214
<u>Leak Detection:</u>			
Tank gauge system	7,411	90 (2)	6,670
Line leak detectors	1,316	100	1,316
Labor & materials (incl. stage I & II vapor recovery piping)	22,476	100	22,476
	-----	-----	-----
Total	\$ 69,918	79%	\$ 55,104

- (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 \$34,325 and the bare steel system is \$14,087, the resulting portion of the eligible tank and piping cost allocable to pollution control is 59%.
- (2) The applicant's cost for a tank gauge system 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 79%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$69,918 with 79% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4198.

Barbara J. Anderson  
(503) 229-5870  
January 31, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Robert Hays/Michael Moran Joint Venture  
P. O. Box 1220  
Medford, OR 97501

The applicant owns and operates a retail gas station at 47686 Hwy 58, Oakridge, OR, Facility No. 3593.

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 vapor recovery and Stage II vapor recovery piping.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are four doublewall steel/fiberglass tanks and flexible doublewall piping, spill containment basins, tank gauge system, overfill alarm, line leak detectors and Stage I and II vapor recovery piping.

Claimed facility cost \$81,681  
(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 was substantially completed on October 22, 1993 and placed into operation on October 25, 1993. The application for certification was submitted to the Department on December 16, 1993 and was considered to be complete and filed on January 31, 1994, within two years of the completion date of the project.

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 under OAR 340-Division 150, the applicant installed:

- 1) For corrosion protection - Doublewall steel/fiberglass tanks and flexible piping.
- 2) For spill and overflow prevention - Spill containment basins and overflow alarm.
- 3) For leak detection - Tank gauge system and line leak detectors.
- 4) For VOC reduction - Stage I and II vapor recovery piping.

Contamination found at the site was reported to DEQ. Cleanup is in progress.

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

The Department concludes that the costs claimed by the applicant (\$81,681) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant did not indicate that any alternatives 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 of 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
	-----	-----	-----
<u>Corrosion Protection:</u>			
Doublewall steel/fiberglass tanks and doublewall flexible piping	\$37,462	62% (1)	\$23,226
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	6,328	100	6,328
Overfill alarm	214	100	214
<u>Leak Detection:</u>			
Tank gauge system	5,242	90 (2)	4,718
Line leak detectors	1,316	100	1,316
Labor & materials (incl. stage I & II vapor recovery piping)	31,119	100	31,119
	-----	-----	-----
Total	\$ 81,681	82%	\$ 66,921

- (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 \$37,462 and the bare steel system is \$14,133, the resulting portion of the eligible tank and piping cost allocable to pollution control is 62%.
- (2) The applicant's cost for a tank gauge system 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 82%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$81,681 with 82% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4199.

Barbara J. Anderson  
(503) 229-5870  
January 31, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

J. C. Jones Oil Company, Inc.  
P. O. Box 429  
Salem, OR 97308

The applicant leases and operates a retail gas station at 508 NE Santiam Hwy., Mill City, OR, Facility No. 5179.

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 is an impressed current cathodic protection system around five tanks.

Claimed facility cost \$8,600  
(Documentation of cost 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 was substantially completed on August 31, 1993 and placed into operation on August 31, 1993. The application for certification was submitted to the Department on December 20, 1993 and was considered to be complete and filed on January 31, 1994, within two years of the completion date of the project.

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 epoxy lined steel tanks and two other tanks with no corrosion protection, bare steel piping, and no spill and overfill prevention or leak detection equipment at the facility.

To respond to underground Storage Tank requirements under OAR 340-Division 150, the applicant installed:

- 1) For corrosion protection - Impressed current cathodic protection around tanks.

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

The Department concludes that the costs claimed by the applicant (\$8,600) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant considered installing a zinc cathodic slave as an alternative. 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 of 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
	_____	_____	_____
<u>Corrosion Protection:</u>			
Impressed Current cathodic protection	\$8,600	100	\$8,600
	_____	_____	_____
Total	\$ 8,600	100%	\$ 8,600

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 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$8,600 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4200.

Barbara J. Anderson  
(503) 229-5870  
January 31, 1994

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

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1. Applicant

Licorice Lane Farm, Inc.  
4849 S.W. Rood Bridge Road  
Hillsboro, Oregon 97123

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

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

2. Description of Facility

The claimed facility is a dairy cattle waste management system consisting of a two cell waste water holding pond, a separator to separate solids from liquids, a concrete-slab solids storage area, and associated equipment to allow land spreading of solids and irrigation of stored waste water. The facility also includes gutters, downspouts and non-perforated drainage tiles to divert roof runoff away from the waste water collection system.

Department staff inspected the facility on January 6, 1994. The applicant's farm is bordered on one side by the Tualatin River. Prior to installation of the claimed facility, dairy cattle waste (mixed solids and liquids) was pumped directly onto the applicant's fields. During wet weather, this resulted in ponding of wastes, creating a potential for wastes to run off into the Tualatin River.

To prevent runoff to the Tualatin River, the applicant installed a system that would hold wastes through the wet season; all wastes will be land applied during the dry season. The applicant's plans were reviewed and approved by the Oregon Department of Agriculture. To prevent runoff, a two-cell holding pond was constructed. Solids must first be separated from the waste water to prevent filling of the ponds with solids, requiring separating equipment and a solids storage area. In addition, equipment to land spread the solids and irrigate the water in the ponds is now required. This equipment consists primarily of a spreader to land apply the large volume of solids, and a traveler and spray bar to irrigate waste water from the holding ponds. The spray bar is necessary to eliminate wind drift of waste water onto adjoining public roads and properties, as well as to minimize odors during waste water irrigation. The applicant confirmed that the spreader was for the sole purpose of land spreading the solid waste from the waste water facility, and would otherwise not be needed.

A selected number of receipts for the claimed facility were examined during the site inspection. All claimed costs matched the amounts on the receipts that were examined, and no costs were noted that would not be eligible.

Claimed Facility Cost: \$187,682

(Accountant's Certification was provided for the amount of \$177,237 as claimed on the original tax credit application. During the site visit, an additional \$10,445 was determined to be eligible and subsequently

added to claimed facility cost. Receipts for the additional amount were reviewed by Department staff).

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 23, 1993, and the application for certification was found to be complete on January 14, 1994, 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 use of treatment works for industrial waste as defined in ORS 468B.005.

b. Eligible Cost Findings

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

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

The facility does not recover or convert waste products into a salable commodity. The material collected by the facility is disposed of by beneficial reuse (land application) on the applicant's farm.

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

The claimed facility does not generate any income, therefore there is no annual percent return on the investment.

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 was not determined; however, the claimed facility requires additional operation and maintenance that the applicant previously did not have to perform.

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

There are no other factors to consider in establishing the



actual cost of the facility properly allocable to prevention, control or reduction of pollution.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution. This prevention is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$187,682 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4201.

(George F. Davis):(GFD)  
(TC-4201)  
(503) (229-5292)  
(January 14, 1994)

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Greg's Auto Service  
808 N.W. Buchanan  
Corvallis OR 97330

The applicant owns and operates an automobile repair establishment in Corvallis, 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: \$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 January 1, 1993. The facility was placed into operation on January 1, 1993. The application for final certification was submitted to the Department on December 28, 1993. The application was found to be complete on January 31, 1993, within two years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce 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 \$8.67/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

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. 4202.

BKF

January 31, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Earl's Automotive  
P.O. Box 5487  
Aloha OR 97006

The applicant owns and operates an automobile repair establishment in Aloha, 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: \$2,100.00  
(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 July 22, 1992. The facility was placed into operation on July 22, 1992. The application for final certification was submitted to the Department on January 4, 1994. The application was found to be complete on January 31, 1994, within two years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce 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 \$8.00/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

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 \$2,100 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. 4205.

BKF

January 31, 1994

State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Mr. and Mrs. Gary J. Kropf  
30659 Wyatt 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 a Rear's flail chopper, located at 30659 Wyatt Drive, Harrisburg, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$10,840  
(The applicant provided copies of the order form and receipt.)

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

The applicant has 278 perennial acres and 710 annual acres of grass seed under cultivation. Until recent years, the applicant open field burned as many acres as the weather and smoke management program permitted. The applicant began to experiment with alternatives to open field burning such as propane flaming, baling, plowing, flail chopping and composting.

The flail chopper was purchased to elevate flail chopping and composting as alternatives to open field burning from the experimental level to an annual farm practice activity. The applicant uses flail chopping in three distinct operations:

1. Bales straw off perennial acreage and flail chops the remaining stubble and residue once or twice depending on the effectiveness of the first run;
2. Flail chops the full straw load twice immediately behind the combine and followed with planting by no-till drill on some annual acreage.
3. Flail chops the full straw load once or twice depending on the effectiveness of the first run and plows the straw under on some annual acreage.

The flail chopper enables the applicant to increase the acreage flail chopped and composted and perform these activities in a timely manner. During the experimental phase the applicant averaged 587 acres flail chopped each season and now expects, based on the 1993 season, to flail chop 1,120 acres annually. When the second flail chopping on some acreage is considered this equates to approximately 390 acres and 740 acres respectively.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on September 27, 1993. The application was submitted on January 4, 1994; and the application for final certification was found to be complete on January 12, 1994. 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 the means to chop the straw fine for plowing back into the field or aiding the composting process.

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

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

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

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

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

There is an increase in operating costs of \$2,440 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

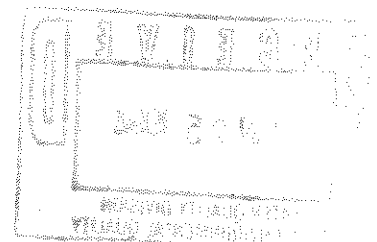
- a. The equipment was purchased in accordance with all regulatory deadlines.
- b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.
- c.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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$10,840, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4206.

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

jb:bmTC4206  
January 12, 1994



State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Brentano Farms, Inc.  
5009 Davidson Road NE  
St. Paul, OR 97137

The applicant owns and operates a grass seed farm operation in Marion 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 an 18' x 100' x 200' steel truss, grass seed straw storage building, located at 5009 Davidson Road NE, St. Paul, Oregon. The land and buildings are owned by the applicant.

Claimed facility cost: \$121,852  
(Accountant's Certification was provided.)

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

The applicant has 850 acres under perennial grass seed cultivation. He has eliminated open field burning on approximately 730 of those acres by baling off the bulk straw and flail chopping and plowing under the remaining stubble or propane flaming.

The custom baler who removed the straw in the past has informed the applicant that the straw will not be taken in the future unless a storage facility was provided to keep the straw dry. All the straw cannot be shipped during the summer months and storage space is mandatory during the wet winter months. The applicant constructed the storage building to insure the continued services of the custom baler so he would not be forced to resume open field burning and burning wet stacks in the field.

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 November 5, 1993. The application for final certification was found

to be complete on January 27, 1994. 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.

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

The actual cost of claimed facility (\$121,852) divided by the average annual cash flow (\$5,034) equals a return on investment factor of 24.206. Using Table 1 of OAR 340-16-030 for a life of 25 years, the annual percent return on investment is .25%. Using the annual percent return of .25% and the reference annual percent return of 5.5%, 95% 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 \$3,466 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 95%.

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 95%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$121,852, with 95% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-4209.

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

jb:bm4209  
January 27, 1994



State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

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

The applicant manufactures semiconductor integrated circuits.

Application was made for tax credit for an air pollution control facility installed at the applicant's Gresham manufacturing facility.

2. Description of Facility

The claimed facility controls nitric acid emissions from semiconductor wafer processing equipment. The facility consists of a process exhaust nitric (PEN) system, which includes a wet scrubber, coalescing aerosol mist elimination filter, and support equipment.

Claimed Facility Cost: \$943,490.00

Accountant's certification was provided.

The applicant indicated the useful life of the facility is 10 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:

Erection of the facility was substantially completed on January 15, 1992, and it was placed into operation on September 15, 1991. The application for final certification was received by the Department on August 6, 1993. The application was considered complete on January 6, 1994, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. Rationale For Eligibility

The facility is eligible because its sole purpose is to control air pollution. The air contaminants controlled are toxic pollutants. The Department is currently developing rules under Title III of the Clean Air Act Amendments of 1990, for the control of air toxics. In the interim, the Department is implementing guidelines that require new sources and major modifications to existing sources to quantify their emissions of air toxics. Proposed emission levels are evaluated relative to established significant emission rates (SER) for each air toxic. New sources that generate air toxics above the SERs are required to model concentration levels for site-specific conditions to determine whether emissions meet or exceed acceptable risk levels. With the scrubbers, the emission rates for each air toxic are below the SER. The control is accomplished by the elimination of air contaminants as defined in ORS 468.005.

The claimed facility controls the emissions of sub-micron size nitric acid mists. Semiconductor wafer processing equipment using heated nitric acid baths can produce these acid mists as a component of the fumes exhausted. Before the PEN system was installed, acid fume exhausts from all production equipment were processed through a wet scrubber system. This scrubber system periodically emitted a blue plume and equipment corrosion was visual evidence of the nitric acid emission problem. Standard wet scrubbing alone proved to be relatively ineffective for treatment of these small particles. The PEN system consists of ducting, a wet scrubber, a coalescing aerosol mist elimination filter (CECO filter), and high static pressure exhaust fans.

The PEN system collects the process exhaust that contains the nitric acid mist. Exhausts from the production equipment are collected by the ducting and pulled into the scrubber. The scrubber body is filled with plastic packing media with a high surface area. Water runs over the media, thereby providing a wet surface for the process exhaust to pass over. The system fan pulls exhaust through the scrubber, and exhaust fumes are adsorbed onto the media surface. The process exhaust is then pulled into ducting and routed to the CECO filter. The CECO filter has a large water saturated internal surface area which the nitric acid mists are adsorbed onto. The large surface area results from the fine pored high density media the CECO filter is composed of. High static pressure exhaust fans are needed because of the high density of the filter.

Following the installation of the PEN system, the blue plume was eliminated, and the corrosion was halted. Furthermore, air monitoring results using U.S. Environmental Protection Agency Method 5 indicate a reduction in nitric acid emissions from 3.885 pounds per hour before entering the CECO filter to 0.048 pounds per hour after exiting the filter.

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 annual operating expenses exceed income from the facility, so there is no return on investment.

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

Scrubbers are technically recognized as an acceptable method for controlling the emissions of particulate from semiconductor plants. A conventional scrubber was installed before the installation of the scrubbers with the CECO filters, but it was ineffective.

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

The applicant realizes a savings of \$5,000 per year, the cost of replacing corroded equipment. The increase in annual operating cost of the facility is approximately \$24,439 per year from the increased use of electricity.

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.

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 (see attached report).

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 factors is 100 percent.

5. Summary

- 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 Department statutes, rules, and permit conditions.
- d. An independent accounting firm under contract with the Department has concluded that no further review procedures be performed on TC-4129 (see attachment).
- e. The portion of the facility cost that is allocable to pollution control is 100 percent.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$943,490.00 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4129.

Tonia C. Garbowsky : PRC Environmental Management, Inc.  
February 16, 1994  
MISC\AH73310

**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 Fujitsu Microelectronics, Inc.'s (the Company's) Pollution Control Tax Credit Application No. 4129 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ) for the Air Pollution Control Facility in Gresham, Oregon (the Facility). The Application has a claimed Facility cost of \$943,490. 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 Charles Bianchi and Brian Fields.
4. We discussed the Application, the Statutes and OAR's with Tonia Garbowski of PRC Environmental Management, Inc., a consultant to DEQ.
5. We discussed certain components of the Application with June Ann Cole and Terry Kinner of the Company and Gordon Chun of CRS Sirrinc Engineers, Inc. (CRSS).
6. We toured the Facility with Ms. Cole and Mr. Chun.
7. We requested that Company personnel confirm the following:
  - a) There were no related parties or affiliates of the Company which had billings which were included in the Application.
  - b) All costs included in the Application relate directly to the construction of the Facility and were not related to maintenance and repairs.

# SYMONDS, EVANS & LARSON

CERTIFIED PUBLIC ACCOUNTANTS

- c) All amounts included in the Application relate directly to pollution control, and none of the amounts included in the Application relate to costs that would have been incurred by the Company to upgrade/maintain the Facility in the normal course of business.
- d) The Application does not include any costs related to the environmental remediation of the Facility.
- e) As a result of the installation of the process exhaust nitric system, the nitric acid emissions from the Facility were significantly reduced to negligible amounts.
- f) The \$154,021 in construction costs and \$98,144 in engineering costs charged to the Facility by CRSS is reasonable and does not include any significant costs that would not be properly allocable to pollution control.
- g) The Facility was installed primarily for the purpose of reducing the emission of nitric acid into the atmosphere. Although the installation of the Facility also reduced the amount of rust and maintenance on the Company's equipment, this was more than offset by the additional operating costs of the Facility.
- h) All of the costs (approximately \$98,000) of testing performed through mid-1991 were required to ensure the process exhaust nitric system would reduce emissions of nitric acid and are therefore considered allowable costs.

## Findings:

1. through 6.

No matters came to our attention that caused us to believe that the claimed Facility costs should be adjusted.

7. Company personnel 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 claimed Facility costs should be adjusted. Had we performed additional procedures or had we conducted an audit of the financial statements of the Company in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report relates only to the items specified above and does not extend to any financial statements of the Company, taken as a whole.

**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 No. 4129 with respect to its Air Pollution Control Facility in Gresham, Oregon and should not be used for any other purpose.

*Symonds, Evans & Larson*

February 16, 1994

# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item C  
March 11, 1994 Meeting

**Title:**


Amendments to UST Financial Assistance Rules

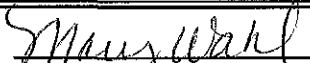
**Summary:**

The proposed rule amendments modify the UST financial assistance rules in response to House Bill 2776 adopted by the 1993 Oregon Legislature. The proposed rule limits financial assistance to essential service grants of 75% of UST project costs, not to exceed \$75,000, limits essential service grants to facilities retailing motor fuel to land based vehicles, provides funding for previously approved projects, reduces insurance copayment benefits, allows agreements other than property liens to secure grant monies, and modifies the Letter of Intent and Consent Agreement requirements.

**Department Recommendation:**

It is recommended that the Commission adopt the rule amendments as presented in Attachment A of the Department Staff Report.

  
Report Author

  
Division Administrator

  
Director

February 28, 1994

†Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).



State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: 2/28/94

**To:** Environmental Quality Commission  
**From:** Fred Hansen, Director *FJH*  
**Subject:** Agenda Item C, March 11, 1994, EQC Meeting  
Amendments to UST Financial Assistance Rules

**Background**

On December 14, 1993, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed rules which would limit financial assistance to only those retail motor fuel facilities located within small cities and rural areas of the state, limit this financial assistance to 75% of UST project work but not to exceed \$75,000, and modify other financial assistance rules as directed by HB 2776.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on January 3, 1994. A Public Hearing was held January 18, 1994, 3:00 PM, Conference Room 3A, Department of Environmental Quality, 811 S.W. 6th Ave., Portland, Oregon with Larry Frost serving as Presiding Officer.

The Hearing Notice for a second hearing and informational materials were mailed to the mailing list of those persons who have asked to be notified of rulemaking actions on January 31, 1994, 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 3, 1994.

A public hearing was held on February 16, 1994, 1:00 PM, Conference Room 10A, Department of Environmental Quality, 811 S.W. 6th Ave, Portland, Oregon with Larry Frost serving as Presiding Officer.

The Presiding Officer's Report (Attachments C-1 and C-2) summarizes the oral testimony presented at the hearing.

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<sup>†</sup>Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

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Written comment was received through February 16, 1994, 5:00 PM. A list of written comments received and the Department's evaluation of the comments are included as Attachment D. (A copy of the comments is available upon request.)

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 E.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

#### **Issue this Proposed Rulemaking Action is Intended to Address**

To obtain the pollution insurance required by federal regulations many retail motor fuel businesses are faced with spending \$100,000 to \$200,000 for cleanup of contamination and upgrading their tanks. Many of the small businesses will choose to close their tanks or their business rather than upgrade. Many cities and rural areas of the state will be without a retail source of motor fuel.

The 1991 Oregon Legislature recognized the problem and adopted a comprehensive financial assistance program (SB 1215) for facilities holding motor fuel for resale. After funding a few projects the program was halted after losing the funding source. The 1993 Oregon Legislature adopted HB 2776 and Senate Bill 81 that continued a limited financial assistance program and provided \$4,420,000 of lottery funds.

The proposed rule is necessary to implement HB 2776.

#### **Relationship to Federal and Adjacent State Rules**

This rule has no federal counterpart. Adjacent states provide relief from the federal financial responsibility requirements but do not directly address the issue of motor fuel availability.

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### **Authority to Address the Issue**

ORS 468.020 authorizes the Commission to adopt such rules and standards as it considers necessary and proper for performing the functions vested by law in the Commission. Adopting the proposed modifications to the underground storage tank financial assistance rules is within the Commission's authority.

### **Process for Development of the Rulemaking Proposal (including Advisory Committee and alternatives considered)**

The proposed rule was developed with the help of the UST Financial Assistance Advisory committee. The committee helped evaluate the policy issues plus reviewed and approved the proposed rule language.

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

Federal underground storage tank (UST) regulations require all owners and operators to demonstrate financial responsibility by December 31, 1993 of \$500,000 each occurrence, \$1,000,000 annual aggregate to pay for cleanup and any third party damages from petroleum leaks or releases from the tanks. Insurance at a reasonable price is only available if the tanks meet new tank standards and the site is contamination free. The service station owner must replace the tanks and cleanup any contamination to continue to sell fuel. Very few small businesses can afford the \$100,000 to \$200,000 required for this cleanup and upgrade work. Many of the more remote service stations are the only source of fuel in the community.

The 1991 Oregon Legislature recognized the problem and adopted a comprehensive financial assistance program (SB 1215) for owners, operators and property owners responsible for underground storage tanks (UST) holding motor fuel for resale. This UST financial assistance program provided assistance in the form of loan guarantees, loan interest rate subsidies, cash grants, and assistance with UST pollution insurance premiums. The \$100,000,000, fifteen year program was to be funded by a retail gasoline fee or alternately a petroleum load fee. Both revenue sources were found to be constitutionally dedicated to the highway trust fund and not available to the UST financial assistance program. The 1993 Oregon Legislature amended the program and provided \$4,420,000 of funding from lottery funds by adoption of House Bill 2776 and Senate Bill 81. The legislature intended to finance existing commitments and provide

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essential service grants for up to 48 retail facilities providing the only fueling services in a city or that are the only fueling service within 9-miles outside a city. These rules implement the amendments by;

- a. limiting financial assistance to essential service grants at a lower level of 75% of UST project cost, not to exceed \$75,000;
- b. limiting essential service grants to UST facilities retailing motor fuel except those retailing to aircraft and marine vessels;
- c. providing continued funding for previously approved projects;
- d. reducing insurance copayment benefits;
- e. allowing agreements other than property liens to secure grant monies; and
- f. modifying Letter of Intent and Consent Agreement requirements.

#### **Summary of Significant Public Comment and Changes Proposed in Response**

As shown in the Attachment D, three categories of comments were received from the public.

Two of the comment categories addressed the limitations of the statute to fund all retail facilities needing financial help in upgrading: 1) Request to reduce the 9 mile limit to 6 miles 2) keep the essential services grant benefits at 85%/\$85,000 maximum because the lower funding (75%/\$75,000 maximum) would be a financial hardship. The Department will not be amending the proposed rules since these changes can only be addressed by the legislature.

The third comment category was concerned that retail marine fueling facilities would be excluded from receiving financial assistance when funds become available for all assistance tiers. Marine (and aircraft) fueling facilities are only excluded from receiving Tier 4 essential service grants. The Department will be addressing all financial assistance benefits and the qualifications to receive financial assistance if in the future the legislature provides funding for additional benefits.

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

The proposed rule implements HB 2776 by limiting the financial assistance to essential service grant at 75% of the UST project cost, not to exceed \$75,000. The \$4,420,000 in lottery funds provided by SB 81 will allow the DEQ to provide essential service grants to approximately 48 retail motor fuel facilities in small cities and the rural sections of

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the state. The proposed rule also requires filing of a new letter of intent and consent agreement to remain eligible for financial assistance.

The proposed rule also replaces the temporary rule adopted by the Commission at the October 29, 1993 meeting that limited essential services grants to 75% of UST project cost, not to exceed \$75,000.

### **Recommendation for Commission Action**

It is recommended that the Commission adopt the rules/rule amendments regarding underground storage tank financial assistance 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 and List of Written Comments Received
- D. Department's Evaluation of Public Comment
- E. Advisory Committee Membership and Report
- F. Rule Implementation Plan

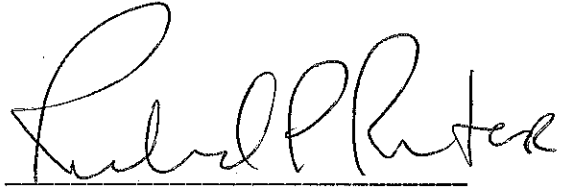
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**Reference Documents (available upon request)**

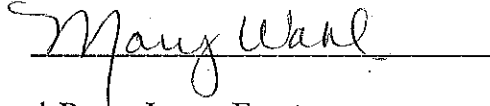
Written Comments Received (listed in Attachment D)  
(Other Documents supporting rule development process or proposal)

Approved:

Section:



Division:



Report Prepared By: Larry Frost

Phone: (503) 229-5769

Date Prepared: February 28, 1994

LDF:ldf  
STF194FC.RPT  
2/28/94

ATTACHMENT A

**ADOPTION OF AMENDED RULES OAR Chapter 340 - Division 172**

Amend OAR 340 - Division 172 by modifying:

**340-172-010 DEFINITIONS**

As used in these rules,

- (1) "Aboveground Storage Tank" or "AST" means one or a combination of tanks that is used to contain an accumulation of motor fuel for resale and is not an underground storage tank.

Note: Some examples of ASTs include: 1) tanks located entirely aboveground, 2) tanks located in vaults entirely aboveground and 3) tanks in a below ground vault where all portions of the tanks can be physically inspected. By contrast, a tank with 10% or more of its volume covered by soil is an underground storage tank.

- (2) "Commercial lending institution" means any bank, mortgage banking company, trust company, stock savings bank, saving and loan association, credit union, national banking association, federal savings and loan association, cooperative financial institution regulated by an agency of the Federal Government or this state, or federal credit union maintaining an office in this state.
- (3) "Commission" means the Environmental Quality Commission.
- (4) "Completed project" means UST that meets all the 1998 requirements of OAR Chapter 340, Division 150 or an AST that meets all federal, state and local regulations for ASTs and the property meets the cleanup levels in OAR Chapter 340, Division 122.
- (5) "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare, or the environment from a release of a regulated substance. "Corrective action" includes but is not limited to:
- (a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or
- (b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.
- (6) "Current Ratio" means CURRENT ASSETS mathematically divided by CURRENT LIABILITIES, as defined in Appendix A.
- (7) "Debt Service Coverage Ratio" means NET PROFIT + NON-CASH mathematically divided by CURRENT PORTION OF LONG TERM DEBT as defined in Appendix A.

- (8) "Debt to Equity Ratio" means TOTAL LIABILITIES mathematically divided by TOTAL EQUITY, as defined in Appendix A.
- (9) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.
- (10) "Department" means the Department of Environmental Quality.
- (11) "Director" means the Director of the Department of Environmental Quality.
- (12) "Essential services grant" means a grant provided to a person qualifying for Tier 4 benefits under these rules.
- (13) "Facility" means any one or combination of underground storage tanks and underground pipes connected to the tanks, used to contain an accumulation of motor fuel, including gasoline or diesel oil, that are located at one contiguous geographical site. The Department further defines facility to include all underground storage tanks that hold or have held an accumulation of motor fuel for resale at the site.
- (14) "Financial responsibility requirements" means the UST financial responsibility requirements in OAR 340-150-002, OAR 340-150-004 and FR 40 CFR 280.
- (15) "Grant" means payment for costs of UST project work.
- (16) "Guarantor" means any person other than the permittee who by guaranty, insurance, letter of credit or other acceptable device, provides financial responsibility for an underground storage tank as required under ORS 466.815.
- (17) "Imminent hazard" means petroleum contamination or threat of petroleum contamination to a ground water drinking water supply or potential ground water drinking water supply or where a spill or release of petroleum is likely to cause a fire or explosion that threatens public life and safety or where a spill or release of petroleum threatens a critical habitat or an endangered species.
- (18) "Investigation" means monitoring, surveying, testing or other information gathering.
- (19) "Licensed" means that a firm or an individual with supervisory responsibility for the performance of tank services has met the Department's minimum experience and qualification requirements to offer or perform services related to underground storage tanks and has been issued a license by the Department to perform those services.
- (20) "Licensed Public Accountant" means a Certified Public Accountant (CPA) or a Public Accountant (PA) licensed to practice in Oregon.
- (21) "Local unit of government" means a city, county, special service district, metropolitan service district created under ORS chapter 268 or political subdivision of the state.
- (22) "Motor fuel" means a petroleum or a petroleum-based substance that is a motor gasoline, No.1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.
- (23) "New tank standards" means modifying an UST or replacing an UST to



comply with the 1998 technical requirements of OAR Chapter 340, Division 150 and FR 40 CFR 280.

- (24) "Operator" means any person in control of, or having responsibility for, the daily operation of the UST or AST system.
- (25) "Owner" means the owner of an underground storage tank.
- (26) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or daily maintenance of an underground storage tank under a permit issued pursuant to OAR Chapter 340, Division 150.
- (27) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity or the Federal Government or any agency of the Federal Government.
- (28) "Phase I environmental audit" means a visual inspection of the property and adjacent properties, including inspection of public records, for the purpose of discovering environmental contamination from past uses.
- (29) "Phase II environmental audit" means investigation to discover or characterize environmental contamination.
- (30) "Pollution prevention grant" means a grant provided to a person qualifying for Tier 3 benefits under these rules.
- (31) "Property owner" means the legal owner of the property where the underground storage tank resides.
- (32) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.
- (33) "Retail facility" means business reselling or previously reselling motor fuel to the public.
- ~~(34{33})~~ "Retail gas sales facility" means business reselling motor fuel to the public at least three (3) days per week during eleven (11) months each calendar year.
- ~~(35{34})~~ "Site assessment" means evaluating the soil and groundwater adjacent to the UST system for contamination from motor fuel.
- ~~(36{35})~~ "Soil matrix cleanup service provider" is an individual or firm licensed to offer or perform soil matrix cleanup at regulated underground storage tanks in Oregon.
- ~~(37{36})~~ "Soil matrix cleanup supervisor" means a licensed individual operating alone or employed by a soil matrix cleanup service provider and charged with the responsibility to direct and oversee the performance of soil matrix cleanup at an underground storage tank facility.
- ~~(38{37})~~ "Stage I vapor collection system" means a system where gasoline vapors are forced from a tank into a vapor-tight holding system or vapor control system through direct displacement by the gasoline being loaded.

- (39{38}) "Stage II vapor collection system" means a system where at least 90 percent, by weight, of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling are transferred to a vapor-tight holding system or vapor control system.
- (40{39}) "Supervisor" means a licensed individual operating alone or employed by a contractor and charged with the responsibility to direct and oversee the performance of tank services at a underground storage tank facility.
- (41{40}) "Tank Services" include but are not limited to tank installation, permanent decommissioning, retrofitting, testing, and inspection.
- (42{41}) "Tank Services Provider" is an individual or firm registered and, if required, licensed to offer or perform tank services on regulated underground storage tanks in Oregon.
- (43{42}) "Tier" means one of four levels of financial assistance a person may qualify to receive under these rules.
- (44{43}) "Underground storage tank" or "UST" means an underground storage tank as defined in OAR Chapter 340, Division 150.
- (45{44}) "USTCCA Fund" means the Underground Storage Tank Compliance and Corrective Action Fund established by ORS 466.790.
- (46{45}) "UST Project work" means conducting corrective action, replacing UST systems with new UST systems meeting new tank standards, upgrading underground storage tank systems to new tank standards, replacing UST systems with aboveground storage tank systems, and installing stage I and stage II vapor collection systems, including hoses and nozzles, at an underground storage tank facility location holding or that held an accumulation of motor fuel for resale.

**340-172-015 INTERIM PROGRAM BENEFITS**

**Financial Assistance Program applications approved and confirmed for funding between July 1, 1993 and July 1, 1995 can only qualify for an essential services grant.**

**340-172-020 GENERAL PROVISIONS, UST FINANCIAL ASSISTANCE**

- (1) To qualify for financial assistance under these rules, a person:
- (a) must be the owner of the USTs at a facility holding or that held an accumulation of motor fuel for resale; or
  - (b) must be the person responsible for the USTs at a facility holding or that held an accumulation of motor fuel for resale. A person responsible for the USTs at the facility must be:
    - (A) the property owner; or
    - (B) the permittee of the USTs; and
  - (c) may be required to demonstrate financial need.

- (2) A person may apply for financial assistance at the UST facility jointly with other eligible persons as determined in subsection (1) of this rule ~~{section}~~ if the persons receiving financial assistance provide a copy of a signed legal contract with the application that defines the proportionate share of the financial assistance to be paid to each person;
- (3) A person owning or responsible for an UST may qualify to receive any or all of the following financial assistance for UST project work at a facility location. Individual tanks at a facility location with multiple tanks are not each eligible for separate assistance.
- (a) Copayment for a portion of the insurance premium for a policy that meets the UST financial responsibility requirements (See OAR Chapter 340, Division 174).
  - (b) Grant (See OAR Chapter 340, Division 175).
  - (c) Loan guarantee for a loan obtained from a commercial lending institution (See OAR Chapter 340, Division 176).
  - (d) Reduced interest rate for a loan obtained from a commercial lending institution (See OAR Chapter 340, Division 178).
- (4) A person owning or responsible for an UST may qualify to receive financial assistance for UST project work provided all of the following conditions are met.
- (a) The USTs are regulated or were previously regulated by OAR Chapter 340, Division 150 and FR 40 CFR 280.
  - (b) UST project work;
    - (A) was started after December 22, 1988;
    - (B) was approved for financial assistance by issuance of an UST financial assistance confirmation letter pursuant to OAR Chapter 340, Divisions 174, 175, 176 or 178 on or before December 31, 1994; and
    - (C) will be started by March 1, 1995.
  - (c) Each UST has a valid UST permit or had a valid UST permit before permanently decommissioning, as required by OAR Chapter 340, Division 150.
  - (d) The UST holds an accumulation of motor fuel for resale or that held an accumulation of motor fuel for resale before temporary or permanent decommissioning (closure).
  - (e) Financial assistance under these rules was not provided to another person for work approved under these rules.
  - (f) A site assessment for all tanks containing motor fuel for resale is to be or has been performed in accordance with OAR Chapter 340, Division 122 and these rules.
  - (g) The UST does not hold ~~{aviation}~~ motor fuel used as fuel for the operation of aircraft.
  - (h) The UST does not hold motor fuel used as fuel for the operation of boats or marine vessels.

~~(i)(h)~~ UST project work meets or will meet, upon project completion, the 1998 requirements of OAR Chapter 340, Division 150, including;

- (A) corrosion resistance;
- (B) spill prevention and overflow prevention;
- (C) leak detection; and
- (D) where applicable, Stage I and Stage II vapor collection system requirements in OAR Chapter 340, Division 22.

~~(j)(i)~~ The UST project site will meet the cleanup standards in OAR Chapter 340, Division 122.

- (5) A person owning or responsible for USTs permanently decommissioned (closed) in accordance with federal regulations 40 CFR 280 between December 22, 1988 and April 1, 1992 and not replaced with another UST shall meet the requirements of subsections (4)(a) through (i) of this rule ~~section~~.
- (6) Financial assistance may be provided for any or all of the following:
- (a) Site assessment and corrective action to clean up soil and groundwater contamination in accordance with OAR Chapter 340, Division 122 and/or in accordance with the decommissioning requirements in OAR Chapter 340, Division 150.
  - (b) upgrading or replacing an UST to new UST standards in accordance with OAR Chapter 340, Division 150 and federal UST regulations, FR 40 CFR 280.
  - (c) Replacing existing USTs with aboveground storage tanks in accordance with state or local fire codes and federal aboveground storage tank regulations, 40 CFR Part 112.
  - (d) Installation of stage I and stage II vapor collection system underground piping, hoses and nozzles in accordance with OAR Chapter 340, Division 22 to meet present or future requirements for stage I or stage II vapor collection.
  - (e) Copayment for a portion of the insurance premium for a policy that meets UST financial responsibility requirements of OAR Chapter 340, Division 150 and federal UST regulations, FR 40 CFR 280.

Note: The legislature intended to provide financial assistance for the purpose of upgrading motor fuel resale facilities to comply with Federal/State underground storage tank regulations. The Department will not approve financial assistance where the person intends to close a facility and not resell motor fuel.

- (7) Project costs for UST project work shall meet the requirements of this section.
- (a) Financial assistance for UST project work is available for:
    - (A) equipment, labor and materials provided by a licensed UST service provider;
    - (B) equipment, labor and materials to replace an UST with

an AST;

- (C) equipment, employee labor and materials supplied by the applicant, provided the labor charge and hours charged to the project are approved by the Department;
  - (D) interest paid lender during construction phase;
  - (E) loan fees;
  - (F) application and loan related project management, financial management or similar consultant fees;
  - (G) preparing engineering reports, schedules, plans, designs, and conducting project oversight and inspections;
  - (H) site assessment including engineering and hydrological investigations, testing of soil and water samples and related reports;
  - (I) corrective action to remove petroleum contamination of soil and surface and ground waters;
  - (J) treatment and disposal of contaminated soil, liquids, sludges, and USTs;
  - (K) tank tightness testing required as part of UST project work; and
  - (L) other costs that the Department may approve.
- (b) Financial assistance for UST project work is not available for:
- (A) work on an UST that is not supervised by a licensed UST supervisor;
  - (B) acquisition of land and rights-of-way;
  - (C) costs which are treated as operation and maintenance expenses under general accounting practices;
  - (D) costs previously paid under OAR Chapter 340, Division 170;
  - (E) Tax credits claimed and received as an Oregon Pollution Control Tax Credit under OAR Chapter 340, Division 16;
  - (F) costs resulting from lost business while an UST is being upgraded, an UST is being replaced or while corrective action is being conducted;
  - (G) insurance premiums or other costs associated with meeting state and federal UST financial responsibility requirements before completion of the project;
  - (H) labor provided by an employee of the applicant where the labor has not been approved by the Department;
  - (I) costs that are recoverable by the applicant, the property owner, the tank owner or permittee from insurance coverage or other persons or entities liable

- for those costs;
  - (J) costs for bodily injury or damage to personal property of a third party;
  - (K) costs not directly attributed or contributing to completion of the project;
  - (L) interest and financing charges due to untimely payment of contractors and suppliers of material, equipment and labor;
  - (M) labor performed by the applicant;
  - (N) tanks other than tanks containing motor fuel for resale;
  - (O) payment for insurance required to demonstrate financial responsibility in accordance with OAR 340-172-090;
  - (P) annual tank tightness testing not required as part of UST project work; and
  - (Q) other work not expressly included under Subsection (a) of this section.
- (8) An applicant may only receive financial assistance for UST project work if all applicable financial assistance confirmation letters are signed by the Department on or before December 31, 1996 ~~{1994}~~.
- (9) An applicant may receive financial assistance when relocating an existing facility to another geographical location, providing;
- (a) the new resale facility serves the same customer base as the original facility;
  - (b) the new resale facility is within five (5) road miles of the original facility unless the Department determines the facility meets the requirements of subsection (a) of this section;
  - (c) construction is completed at the new resale facility within 90 days after confirmation of UST project work unless otherwise approved by the Department;
  - (d) financial assistance is based upon the original location; and
  - (e) both facilities meet the requirements of these rules, including a site assessment in accordance with the requirements of OAR 340-172-050 at the location of any UST or AST at the new resale facilities.
- (10) If the applicant disputes a Department finding under this rule ~~{section}~~, the applicant may seek resolution of the dispute through the appeals procedures in OAR 340-172-110.

**340-172-025 DOCUMENTS REQUIRED TO RECEIVE FINANCIAL ASSISTANCE**

- (1) To receive financial assistance under this program an applicant must submit:
  - (a) the combination of:

- (A) on or before April 1, 1994 ~~{1992}~~, a Letter of Intent to apply for financial assistance, Appendix B of these rules; and
- (B) on or before October 1, 1996 ~~{1994}~~, an application for financial assistance, described by these rules; or
- (b) on or before April 1, 1994 ~~{1992}~~, an application for financial assistance, described by these rules.
- (2) To receive financial assistance under this program an applicant must submit, on or before October 1, 1994 ~~{1992}~~, a signed Consent Agreement, Appendix C of these rules.

Note: Applications previously submitted under Chapter 1071, Oregon Laws 1989, (HB 3080) will not meet the requirements of this rule ~~{section}~~. A new application is needed.

- (3) To qualify for an essential services grant an applicant must sign a property lien agreement or equivalent agreement as required by OAR 340-175-055.
- (4) Persons who filed a Letter of Intent by April 1, 1992 are not required to file the Letter of Intent required by subsection (1)(a)(A) of this rule. The Department will recognize a Letter of Intent filed by April 1, 1992 as complying with the present filing requirements.

#### 340-172-030 APPLICATION PROCESS FOR UST FINANCIAL ASSISTANCE

- (1) Any person wishing to obtain UST financial assistance from the Department shall submit a written application on a form provided by the Department. Applications must be submitted no later than October 1, 1996 ~~{1994}~~. All application forms must be completed in full, and accompanied by all required attachments (to be considered with the application).
- (2) Applications which are unsigned or which do not contain the required attachments will not be considered complete by the Department. The application will not be considered complete until the requested information is received.
- (3) After the application is determined complete, and reviewed by the Department and found to be in compliance with these rules, the Department will, where applicable:
  - (a) issue a loan guarantee certificate;
  - (b) issue a reduced interest rate certificate;
  - (c) issue an insurance premium copayment certificate;
  - (d) issue a pollution prevention or essential services grant certificate; or
- (4) If, upon review of an application, the Department determines that the application does not meet the requirements of the statutes and rules, the Department shall notify the applicant in writing of this determination.
- (5) Determinations by the Department may be appealed pursuant to OAR 340-172-110.

**340-172-040 INFORMATION REQUIRED ON FINANCIAL ASSISTANCE APPLICATION**

(1) The UST financial assistance application shall include, at a minimum:

(a) the applicant's name, mailing address and phone;

Note: An applicant must be the property owner, tank owner or permittee.

(b) the signatures and phone numbers of the property owner, the tank owner and the permittee of facility;

(c) the UST facility location information including;

(A) facility name, street address, city and county; and

(B) where the applicant intends to qualify for Tier 3 and Tier 4 financial assistance;

(i) the distance to nearest retail gas sales facility if the applicant's facility is outside an incorporated city measured in accordance with OAR 340-172-070 (2)(d)(C)(iii); or

(ii) the name of the city, if the applicant's facility is the only retail UST facility reselling motor fuel within a city listed in the 1991/1992 Oregon Blue Book;

(d) the UST facility number;

(e) the date of the application;

(f) Description of the UST project work area including a scaled drawing (contractor's or engineer's drawing) showing, but not limited to, property boundaries, location of structures, location and identification of the existing underground storage tanks containing an accumulation of motor fuel. Where AST(s) replace UST(s) the application shall also include:

(A) Description of the AST project work, installation specifications and an scaled installation drawing (contractor's or engineer's drawing) showing all information necessary to determine compliance with local and state fire codes and federal regulations, 40 CFR 112 including, but not limited to;

(i) spill containment structures,

(ii) control equipment to allow removal of motor fuel and rainwater from the spill containment area,

(iii) overfill prevention devices,

(iv) piping and valving,

(v) atmospheric and emergency venting, and

(vi) tank construction details.



(B) A copy of the Spill Prevention Control and Countermeasure (SPCC) Plan certified by a registered professional engineer, as required by federal regulations, 40 CFR 112;

(g) Description of the UST project work including a scaled drawing (contractor's or engineer's drawing) showing those items and activities that are not part of an UST system but are required because of construction interference;

Note: OAR 340-172-020(6)(a) through (e) describe the UST project work that may qualify for financial assistance.

(h) Total project cost in the form of a bid or estimate for the proposed UST project work or the actual cost where UST project work is completed prior to filing an application under these rules. Where there is no site assessment information on possible petroleum contamination, a bid or estimate shall include the following costs for corrective action:

(A) For a facility with:

(i) One (1) tank, include soil cleanup costs of \$6,000.

(ii) Two (2) tanks, include soil cleanup costs of \$9,000.

(iii) Three (3) tanks, include soil cleanup costs of \$12,000.

(iv) Four (4) tanks, include soil cleanup costs of \$15,000.

(v) Five (5) tanks, include soil cleanup costs of \$18,000.

(vi) Six or more tanks, include soil cleanup costs of \$21,000.

(B) Include groundwater cleanup costs of \$25,000 for each facility where seasonal groundwater exists at 10 feet or less below the surface of the ground according to available records from the Oregon Department of Water Resources, U.S. Soil Conservation Service, U.S. Geological Service, or equivalent information;

(i) for persons intending to qualify for Tier 2, Tier 3, and Tier 4 financial assistance, a determination of the financial assistance ratios in subsection (2) of this rule ~~section~~ by an Oregon licensed Public Accountant based upon the tank owner's business or personal financial information showing all assets, income from all sources, outstanding debts and liabilities, including financial information from sole proprietors, all partners of a partnership or joint venture, corporations, and all wholly owned subsidiaries of corporations. The information furnished by the applicant to the accountant shall be adequate to allow the licensed Public Accountant to prepare a compiled pro forma fiscal year-end financial statement and shall include:

(A) federal and state income tax filings for most recent

fiscal year; or

- (B) the most recent pro forma fiscal year-end financial statement or, where unavailable, on the most recent fiscal year, a compiled pro forma year end financial statement prepared by a licensed Public Accountant;
  - (j) where an UST remains in the ground and a site assessment is not part of the UST project work, the application shall include a report of the site assessment work described in OAR 340-172-050;
  - (k) insurer's written quote; and
  - (l) other information required by the Department.
- (2) A licensed Public Accountant shall determine the following financial ratios from the information provided by the applicant in subsections (1)(i) and (3) of this rule ~~{section}~~ and definitions in Appendix A. The calculated ratios shall be rounded upward to the nearest hundredth whole number.
- (a) Current Ratio;
  - (b) Debt to Equity Ratio; and
  - (c) Debt Service Coverage Ratio.

Note: See OAR 340-172-070(3) and Appendix A for criteria to determine the ratios in this subsection.

- (3) The following estimate of liabilities associated with upgrading the USTs containing motor fuel for resale shall be added to the applicant's compiled financial statement prior to calculation of the ratios in subsection (2) of this rule ~~{section}~~. For each facility for which an application is submitted for financial assistance the licensed public accountant shall add the liabilities associated with a \$125,000, 5.0% fixed interest rate, 10 year term loan. The \$125,000 pro forma liability for UST project work is comprised of \$35,000 for corrective action work and \$90,000 for other UST project work.

#### 340-172-050 SITE ASSESSMENT

- (1) Unless the Department finds the UST site meets the decommissioning requirements in OAR Chapter 340, Division 150 or the cleanup standards described in OAR Chapter 340, Division 122 based upon currently available information, a person applying for financial assistance must assess the site for contamination in accordance with this rule ~~{section}~~.
- (2) One of the following site assessments shall be conducted and submitted to the Department for approval.
  - (a) A complete report of a site assessment conducted after December 22, 1988.
  - (b) A site assessment following the sampling method described in subsection (3) of this rule ~~{section}~~. The proposed sampling plan shall be submitted to the Department for approval before initiating any work.

- (c) An alternate sampling plan and site assessment procedure determined by the applicant and approved by the Department before initiating any work.
- (3) Unless otherwise approved by the Department pursuant to subsection (2)(c) of this rule ~~{section}~~, collect soil or water samples by boring or test pits:
- (a) Where groundwater is not present, collect one sample in each boring or test pit from the native soils at an elevation below, but no more than two feet below, the bottom of any underground storage tank and from any soil that appears to be contaminated if encountered during installation of borings or test pits;
  - (b) Where groundwater is present, collect a soil and water sample at the soil/water interface in each boring or test pit;
  - (c) Borings or test pits shall be located along each side of an imaginary rectangular area drawn around an UST or group of USTs so that each side of the rectangle lies a maximum of three feet from the nearest UST.
    - (A) The imaginary rectangle may be drawn around a group of USTs when each UST is within six feet of an adjacent UST.
    - (B) A separate imaginary rectangle must be drawn around each UST that is located more than six feet from an adjacent UST.
    - (C) A minimum of one boring or test pit shall be located at the midpoint on each side of the imaginary rectangle. Where a side exceeds fifteen feet, two or more borings or test pits shall be located equally spaced along the side. Borings or test pits shall not be located more than twenty five feet apart along any side of the rectangle.
  - (d) Analyze the soil and/or ground water samples in accordance with OAR 340-122-205 through -360.
- (4) The sample collection and analytical procedures shall meet the requirements of OAR Chapter 340 Division 122.
- (5) The site assessment must be performed under the direction or supervision of a licensed UST soil matrix supervisor, registered professional engineer, registered geologist, or a certified professional soil scientist (a soil scientist with certification and inclusion in the American Registry of Certified Professionals in Agronomy, Crops, and Soils, Ltd. (ARCPACS)).

Note: In addition to the site assessment described by this rule ~~{section}~~, commercial lending institutions or insurers may require a person to complete Phase I and Phase II environmental audits before issuing a loan.

#### 340-172-070 DETERMINATION AND CONDITIONS OF FINANCIAL ASSISTANCE

- (1) The Department shall determine the applicant's financial assistance tier from;

- (a) information provided in the application;
  - (b) the financial ratios determined in accordance with OAR 340-172-040(2) by a licensed public accountant; and
  - (c) tank ownership information available in the Department's files or electronic database at the time of application. For purposes of financial need, tank ownership shall include all tanks at all facility locations with the same legal ownership such as sole proprietor, joint ventures, partnerships, corporations or other similar business ownerships. In the case of corporations, tank ownership shall include all tanks at all facility locations owned by parent corporations and all wholly owned subsidiaries of the parent corporation.
- (2) The Department shall award financial assistance to an applicant in accordance with these rules and OAR Chapter 340, Divisions 174, 175, 176, and 178 where the applicant meets the following financial assistance tier criteria:
- (a) Tier 1: Own or responsible for one (1) or more USTs holding or that previously held an accumulation of motor fuel for resale.
  - (b) Tier 2:
    - (A) Own or responsible for one hundred (100) or more USTs holding or that previously held an accumulation of motor fuel for resale; and
    - (B) meet two or more of the financial assistance criterion in subsection (3) of this rule ~~{section}~~.
  - (c) Tier 3:
    - (A) Own or responsible for one (1) to ninety nine (99) USTs holding or that previously held an accumulation of motor fuel for resale; and
    - (B) either:
      - (i) meet two or more of the financial assistance criterion in subsection (3) of this rule ~~{section}~~; or
      - (ii) meet the Tier 4 location requirements described at subsection (d)(C) of this section.
  - (d) Tier 4:
    - (A) Own or responsible for one (1) to twelve (12) USTs holding or that previously held an accumulation of motor fuel for resale; and
    - (B) Meet two (2) or more of the financial assistance criteria in subsection (3) of this rule ~~{section}~~; and
    - (C) The retail facility meets the criteria in one of subsections (i), (ii), (iii), or (iv) of this section; ~~{is either:}~~
      - (i) ~~T{t}~~he only retail facility with UST holding or that previously held an accumulation of motor

fuel for resale within a city {town} listed in the ~~{current edition of the 1991/1992}~~ 1993/1994 Oregon Blue Book.~~{ or }~~

(ii) The retail facility filing the first application within a city listed in the 1993/1994 Oregon Blue Book where a retail facility is not presently reselling motor fuel from an UST holding an accumulation of motor fuel.

(iii) The only retail gas sales facility in a city listed in the 1993/1994 Oregon Blue Book with other retail facilities within the city.

(iv) { (ii) } If { i } outside a city {town} listed in the ~~{current edition of the 1991/1992}~~ 1993/1994 Oregon Blue Book, the retail facility is nine (9) miles or more from a {another} retail gas sales facility measured in accordance with { (2) (d) (c) } { (v) } { (iii) } of this section.

(v) { (iii) } The distance shall be the shortest distance in any direction between facilities. The distance shall be measured between the nearest public driveway entrance of each facility over the shortest distance on a public road. Distances shall be rounded upward to the nearest tenth mile. The adjacent retail gas sales facility may be inside or outside a city {town}. The Department may verify the distance where the distance measured by the applicant is between 9 and 10 miles. Measurements by the Department shall be the final distance determination.

(3) Financial need criteria:

- (a) the Current Ratio (CR) is less than or equal to 1.60;
- (b) the Debt to Equity Ratio (DE) is greater than or equal to 1.60;
- (c) the Debt Service Coverage Ratio (DSC) is less than or equal to 3.20;

(4) The Department may reconsider an award of financial assistance where;

- (a) the applicant has requested reconsideration of the award, in writing;
- (b) UST project work including soil or groundwater cleanup has started;
- (c) a Tier of greater financial assistance is available for the facility;
- (d) the lender indicates the applicant can borrow additional monies necessary to complete the newly identified corrective

action work;

- (e) the Department determines the estimated soil and groundwater cleanup costs are appropriate and exceed \$40,000 (at least \$5,000 above the \$35,000 included for the initial financial need evaluation); and
  - (f) the applicant has provided a new determination of the financial ratios in accordance with subsection OAR 340-172-040(2), where the estimated corrective action costs above \$35,000 are added to the UST project work at the facility.
- (5) An award of financial assistance under these rules requires:
- (a) Department approval, where applicable, of the:
    - (A) completed application;
    - (B) site assessment conducted under OAR 340-172-050;
    - (C) corrective action plan required by OAR 340-122-250;
    - (D) estimated eligible costs; and
    - (E) time schedule for completing the work;
  - (b) that the USTCCA fund has sufficient money allocated to the program from which financial assistance is requested; and
  - (c) that the financial assistance requested does not exceed the financial assistance limits at OAR Chapter 340, Divisions 172, 174, 175, 176, and 178.
- (6) The Department may include conditions in an award of financial assistance, requiring the applicant to:
- (a) conduct work within a Department established time schedule where the USTCCA Fund cannot fund the UST project work as scheduled by the applicant;
  - (b) submit progress reports or payment records at stated intervals before disbursement of grant funds;
  - (c) allow Department personnel to enter and inspect the project site at reasonable times;
  - (d) maintain project accounts and records to support the eligibility of expenditures; the records must clearly separate eligible and ineligible project costs;
  - (e) obtain all titles and easements necessary to provide authority to complete the proposed project; and
  - (f) comply with other terms and conditions necessary to ensure the project is completed in accordance with the approved plans.

**340-172-080 FINANCIAL ASSISTANCE PRIORITY**

- (1) ~~{Until monies are collected and placed into the USTCCA Fund in accordance with Chapter 863, Oregon Laws, 1991 (Senate Bill 1215) monies in the USTCCA Fund,}~~ Monies, other than monies necessary to

pay the Department's program administration expenses, will be allocated in the following priority order:

(a) First to satisfy the ~~{present and future}~~ 1993- 1995 biennial obligations for the financial assistance commitments made prior to July 1, 1993 under ORS 466.705 through 466.835 and ORS 466.895 through 466.995, as amended by Chapter 1071, Oregon Laws, 1989 (House Bill 3080) and Chapter 863, Oregon Laws, 1991 (Senate Bill 1215).

(b) Second to fund Tier 4 UST project work allowed under these rules on a first come, first serve basis, based upon the date of Department determination of a complete application.~~{and meeting the following criteria:}~~

~~{(A) The facility must retail motor fuel.}~~

~~{(B) Only one facility per county.}~~

~~{(C) Applicant must agree to start construction in calendar year 1992.}~~

~~{(D) Applicant must have secured financing by October 31, 1992.}~~

~~{(E) For applications submitted and found complete by the Department before June 30, 1992 the distance between the facility and the nearest retail gas sales facility must exceed 25 miles.}~~

~~{(F) For applications submitted and found complete by the department on or after June 30, 1992 the facility must be the only retail facility in an incorporated city or the distance between the facility and the nearest retail gas sales facility must exceed 9 miles.}~~

~~{(G) Approval will be on first come, first serve basis, based upon date of Department determination of a complete application. In the event two complete applications for the same county are received on the same day, the facility farther from another retail gas sales facility will be awarded the financial assistance under this section.}~~

~~{(2) Monies collected and placed into the USTCCA Fund in accordance with ORS 466.705 through 466.835 as amended by Chapter 863, Oregon Laws 1991 (Senate Bill 1215), other than monies to pay the Department's program administration expenses, will be allocated in the following priority order:}~~

~~{(a) Each periodic transfer of new revenue into the fund shall be reserved to fund Tier 4 projects on a first come, first serve, basis.}~~

~~{(b) After funding Tier 4 projects the next forty percent (40%) of each periodic transfer of new revenue into the fund shall be used to fund applications for UST project work completed prior to April 1, 1992 on a first come, first serve, basis, based upon the date of Department determination of a complete application. Funds not expended during a transfer period shall be used for applications qualifying for funding in subsection (2)(c) of this section.}~~

~~{(c) The remaining Tiers 1, 2, and 3 applications shall next be funded on a first come first serve basis, based upon the date of Department determination of a complete application. Applications not funded during a funding transfer period qualify for funding during a subsequent period.}~~

~~{NOTE: It is expected that transfers of new revenue into the USTCCA Fund will occur monthly where the fund source is an assessment on motor fuel deposited into underground storage tanks for resale and will occur every three months where the fund source is a petroleum loading fee.}~~

~~{(3) The Department will receive and conditionally approve projects where ASTs replace existing USTs prior to the legislature reviewing and approving AST replacement projects for financial assistance under these rules. Applications for AST replacement projects receiving conditional approval will be immediately funded at the time of legislative action, subject only to funds being available in the USTCCA Fund.}~~

#### 340-172-120 ENFORCEMENT

- (1) Where a person who is the tank owner, property owner or permittee has submitted a financial assistance application or has filed a signed Letter of Intent or Consent Agreement (Appendix C), in accordance with these rules, the facility shall not be subject to enforcement action of the technical or financial responsibility requirements of OAR Chapter 340, Division 150 on the UST facility if the person has made a good faith effort to either secure a confirmation letter for UST project work by December 31, 1996 ~~{1994}~~ or permanently close the UST facility on or before December 31, 1996 ~~{1994}~~ except for;
  - (a) UST permit requirements, including permit fees;
  - (b) corrective action requirements in the event of an imminent hazard, as defined in OAR 340-172-010(17);
  - (c) permanent decommissioning requirements where the applicant permanently decommissions an UST at the UST facility;
  - (d) leak detection requirements. The person signing the Consent Agreement must provide monthly inventory records to the Department, on a form provided by the Department when requested by the Department, for each UST using manual inventory or daily inventory with monthly reconciliation as the sole method of leak detection; and
  - (e) the requirements of the signed Consent Agreement.
- (2) The Consent Agreement will be in force through December 31, 1996 ~~{1994}~~ or sixty (60) days after the UST project work is complete, which ever comes first.
- (3) The person signing the consent agreement must;
  - (a) report all suspected releases to the Department of Environmental Quality within 24 hours and investigate all suspected releases;
  - (b) report all confirmed releases to the Department of



Environmental Quality within 24 hours;

- (c) upon confirmation of a release take immediate action to prevent any further release of motor fuel into the environment; ~~and~~
- (d) determine whether an imminent hazard exists through adequate investigation and testing; and
- (e) ~~f(d)~~ take appropriate corrective action in accordance with OAR Chapter 340, Divisions 122 and 150 in the event of an imminent hazard as defined in OAR 340-172-010(17).

**340-172-130 ENFORCEMENT AND TERMINATION OF FINANCIAL ASSISTANCE**

- (1) The Department may terminate financial assistance and require repayment of any financial assistance by any person receiving financial assistance under these rules if the person:
  - (a) fraudulently obtains or attempts to obtain financial assistance;
  - (b) knowingly fails to report any release of a regulated substance at the UST facility as required by OAR 340-122-220 if the release occurred before or after filing an application under these rules.
  - (c) is ordered by the Department to comply with the requirements of Chapter 340, Divisions 172, 174, 175, 176 and 178 and applicable underground storage tank regulations in OAR Chapter 340, Divisions ~~Chapter~~ 122, ~~Chapter~~ 150, ~~Chapter~~ 160, and ~~Chapter~~ 162; or
  - (d) a civil penalty is assessed by the Director.
- (2) A written determination to terminate financial assistance shall be made by the Department for each affected facility and shall identify the facility, the UST project work, the financial assistance benefits, the persons responsible for repayment of the financial assistance, and the schedule for repayment of the financial assistance monies to the Department. Repayment shall be required for all monies expended for financial assistance under these rules including fees paid by the Department directly related to financial assistance at this facility.
- (3) Any person applying for assistance or receiving financial assistance under these rules is subject to the enforcement requirements of ORS 466.895 and 466.995 and OAR Chapter 340, Division 12.
- (4) Any person subject to enforcement under this rule ~~section~~ may appeal the enforcement action in accordance with OAR 340-172-110 of these rules and OAR Chapter 340, Division 11.

LETTER OF INTENT

Underground Storage Tank Financial Assistance Program  
Oregon Department of Environmental Quality

I am the (CHECK ALL THAT ARE TRUE ~~{ONE}~~) tank owner [ ], permittee [ ] or property owner [ ] of an underground storage tank facility that holds or that previously held an accumulation of motor fuel for resale, described below. By filing this letter of Intent I intend to insure that the facility described below remains eligible for financial assistance from the Department of Environmental Quality.

DEQ Facility Number: \_\_\_\_\_

Facility Name: \_\_\_\_\_

Facility Address: \_\_\_\_\_

County: \_\_\_\_\_

To remain eligible for UST financial assistance I understand that a Consent Agreement must be filed by October 1, 1994 ~~{1992}~~ and an application for financial assistance must be filed by October 1, 1996 ~~{1994}~~. The Consent Agreement will require the USTs containing motor fuel for resale to be closed by December 31, 1996 ~~{1994}~~ unless work to upgrade the USTs to new tank standards is started by March 1, 1997 ~~{1995}~~. Additionally, the Consent Agreement will require proof, within 60 days after completion of the UST upgrade, through insurance or other means, that the facility meets UST financial responsibility requirements. An application for financial assistance and the Consent Agreement will require signatures of the property owner, tank owner and the permittee.

I understand that signing this Letter of Intent does not require me to apply for financial assistance. (Tank owner, permittee or property owner must sign the Letter of Intent. Only one signature is required.)

(Signature): \_\_\_\_\_ Date: \_\_\_\_\_

Name (Print) : \_\_\_\_\_ Phone: \_\_\_\_\_

- Notes:
1. A separate Letter of Intent must be filed for each UST facility at which UST project work will occur.
  2. For facilities where tanks are permanently decommissioned before April 1, 1994 ~~{1992}~~, a former property owner, tank owner or permittee must sign the Letter of Intent.

TO QUALIFY FOR UST FINANCIAL ASSISTANCE UNDER CHAPTER 661 ~~{863}~~, OREGON LAW, 1993 ~~{1991}~~ THIS LETTER OF INTENT MUST BE HAND DELIVERED NO LATER THAN 5:00 PM ON APRIL 1, 1994 ~~{1992}~~ OR POSTMARKED NOT LATER THAN APRIL 1, 1994 ~~{1992}~~, IF MAILED.

## CONSENT AGREEMENT

Underground Storage Tank Financial Assistance Program  
Oregon Department of Environmental Quality

**I. AGREEMENT:** By seeking financial assistance for UST project work I agree to comply with the following requirements or permanently close, on or before December 31, ~~1996~~, the underground storage tanks that hold or previously held motor fuel for resale at this facility.

1. I will submit a financial assistance application by the estimated date shown below, but in no case later than October 1, ~~1996~~.
2. I will secure financial assistance confirmation letters pursuant to OAR Chapter 340, Divisions 174, 175, 176, and 178 for UST project work by December 31, ~~1996~~.
3. I will start UST project work by the estimated date shown below but in no case later than March 1, ~~1997~~ for all USTs holding or that previously held motor fuel for resale at the facility.
4. I will assure that UST project work on all USTs holding or that previously held motor fuel for sale shall meet the installation requirements for new USTs or requirements for upgrading USTs to new ~~tank~~ standards in OAR Chapter 340, Divisions 150 and 172. I understand the Department intends to provide financial assistance only to projects that will come into full compliance.
5. I will perform leak detection by UST inventory control in accordance with OAR Chapter 340, Division 150 except that the requirement for annual tank tightness testing is waived by this Consent Agreement until the UST project work is complete.
6. I understand the financial responsibility compliance dates in OAR Chapter 340, Division 150 are waived by this Consent Agreement until ~~{60 days after}~~ the UST project work is complete. Upon completion of the project and receipt of the UST insurance requirements letter I will meet the financial responsibility requirements in OAR 340-172-090 and OAR 340-174-060.
7. I will report all suspected releases to the Department of Environmental Quality within 24 hours and investigate all suspected releases.
8. I will report all confirmed releases to the Department of Environmental Quality within 24 hours.
9. I will determine whether an imminent hazard exists through adequate investigation and testing. I understand an imminent hazard exists when there is petroleum contamination or threat of petroleum contamination to a ground water drinking water supply or where a spill or release of petroleum is likely to cause a fire or explosion that threatens public life and safety or threatens a critical habitat or an endangered species.
- 10~~{9}~~. I will take appropriate corrective action in accordance OAR Chapter 340, Divisions 122 and 150 in the event of an imminent hazard ~~{involving petroleum contamination or threat of petroleum contamination to a ground water drinking water supply or where a~~

~~spill or release of petroleum is likely to cause a fire or explosion that threatens public life and safety or threatens a critical habitat or an endangered species}.~~

Should I at anytime not pursue financial assistance, and assuming I have not received any financial assistance under Chapter 661 ~~{863}~~, Oregon Laws, 1993 ~~{1991}~~, I can continue to operate my USTs as long as I am in compliance with all applicable requirements of OAR Chapter 340, Division 150, including all state and federal applicable financial responsibility requirements at the time of my decision. I will also notify the Department of Environmental Quality within 30 days of my decision not to pursue financial assistance. I further acknowledge that if I do not make a good faith effort to undertake the UST project work identified herein I may be subject to Department enforcement action.

**II. FACILITY INFORMATION:**

DEQ Facility Number: \_\_\_\_\_  
Facility Name: \_\_\_\_\_  
Facility Address: \_\_\_\_\_  
\_\_\_\_\_

**III. PROBABLE UST PROJECT WORK:**

Estimated Financial Assistance Application Date: \_\_\_\_\_  
Estimated UST Project Work Construction Start Date: \_\_\_\_\_  
Final number of motor fuel tanks: \_\_\_\_\_  
(Yes/No)

Install Corrosion Protection: \_\_\_\_\_  
Install Leak Detection: \_\_\_\_\_  
Install Spill & Overfill Protection: \_\_\_\_\_  
Soil Cleanup: \_\_\_\_\_  
Groundwater Cleanup (If Known): \_\_\_\_\_  
Stage I Vapor Recovery: \_\_\_\_\_  
Stage II Vapor Recovery: \_\_\_\_\_  
Stage II Hoses & Nozzles: \_\_\_\_\_

**IV: SIGNATURES:** (All three signatures are required)

Tank Owner (Print) : \_\_\_\_\_  
(Signature): \_\_\_\_\_ Date: \_\_\_\_\_  
Permittee (Print): \_\_\_\_\_  
(Signature): \_\_\_\_\_ Date: \_\_\_\_\_  
Property Owner (Print): \_\_\_\_\_  
(Signature): \_\_\_\_\_ Date: \_\_\_\_\_

**V. APPLICANT FOR FINANCIAL ASSISTANCE (Must be one of the above)**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

**NOTES:**

1. A Consent Agreement must be signed for each UST facility at which UST project work will occur.

2. TO QUALIFY FOR UST FINANCIAL ASSISTANCE UNDER CHAPTER 661 ~~{863}~~, OREGON LAW, 1993 ~~{1991}~~, THIS CONSENT AGREEMENT MUST BE HAND DELIVERED TO THE DEPARTMENT NO LATER THAN 5:00 PM, OCTOBER 1, 1994 ~~{1992}~~ OR POSTMARKED NO LATER THAN OCTOBER 1, 1994 ~~{1992}~~, IF MAILED.

February 28, 1993  
(E:\WP51\TECHFA94\RULE\72MODZA.94)  
(FROST:LDF)

ATTACHMENT A

ADOPTION OF AMENDED RULES OAR Chapter 340 - Division 174

Amend OAR 340 - Division 174 by modifying:

340-174-020 INSURANCE COPAYMENT BENEFITS

- (1) Any person eligible for Tier 2, Tier 3, or Tier 4 UST financial assistance under OAR Chapter 340, Division 172 will qualify for UST insurance copayment assistance upon receipt of an UST insurance copayment certificate.
- (2) In addition to the requirements of subsection (1) of this rule ~~section~~, where UST project work was started after December 22, 1988 and completed before December 31, 1993 ~~{1991}~~, a person qualifying for:
  - (a) Tier 2 is eligible for an annual 50% insurance copayment, not to exceed \$2,000 per year between October 1, 1991, and December 31 1995 ~~{1993}~~;
  - (b) Tier 3 is eligible for an annual 75% insurance copayment, not to exceed \$3,000 per year between October 1, 1991, and December 31 1996 ~~{1994}~~;
  - (c) Tier 4 is eligible for an annual 90% insurance copayment, not to exceed \$3,600 per year between October 1, 1993 ~~{1991}~~, and December 31 1996 ~~{1994}~~;
- (3) In addition to the requirements of subsection (1) of this rule ~~section~~, where UST project work was completed in the calendar year 1994 ~~{1992}~~, a person qualifying for:
  - (a) Tier 2 is eligible for an annual 40% insurance copayment, not to exceed \$1,600 per year between January 1, 1994 ~~{1992}~~ and December 31 1995 ~~{1993}~~;
  - (b) Tier 3 is eligible for an annual 65% insurance copayment, not to exceed \$2,600 per year between January 1, 1994 ~~{1992}~~ and December 31 1996 ~~{1994}~~;
  - (c) Tier 4 is eligible for an annual 85% insurance copayment, not to exceed \$3,400 per year between January 1, 1994 ~~{1992}~~ and December 31 1996 ~~{1994}~~;
- (4) In addition to the requirements of subsection (1) of this rule ~~section~~ where UST project work was completed in the calendar year 1995 ~~{1993}~~, a person qualifying for:
  - (a) Tier 2 is eligible for an annual 30% insurance copayment, not to exceed \$1,200 per year between January 1, 1995 ~~{1993}~~ and December 31 1995 ~~{1993}~~;

- (b) Tier 3 is eligible for an annual 55% insurance copayment, not to exceed \$2,200 per year between January 1, 1995 ~~{1993}~~ and December 31 1996 ~~{1994}~~;
  - (c) Tier 4 is eligible for an annual 80% insurance copayment, not to exceed \$3,200 per year between January 1, 1995 ~~{1993}~~ and December 31 1996 ~~{1994}~~;
- (5) In addition to the requirements of subsection (1) of this rule ~~{section}~~ where UST project work was completed in the calendar year 1996 ~~{1994}~~, a person qualifying for:
- (a) Tier 3 is eligible for an annual 45% insurance copayment, not to exceed \$1,800 per year between January 1, 1996 ~~{1994}~~ and December 31 1996 ~~{1994}~~;
  - (b) Tier 4 is eligible for an annual 75% insurance copayment, not to exceed \$3,000 per year between January 1, 1996 ~~{1994}~~ and December 31 1996 ~~{1994}~~;
- (6) In addition to the requirements of subsection (1) of this rule ~~{section}~~ where UST project work was completed between December 22, 1988 and December 31, 1996 ~~{1994}~~, a person qualifying for Tier 4 UST financial assistance is eligible for an annual 50% insurance copayment, not to exceed \$2,000 per year between January 1, 1997 ~~{1995}~~ and December 31, 1997 ~~{1995}~~;
- (7) In addition to the requirements of subsection (1) of this rule ~~{section}~~ where UST project work was completed between December 22, 1988 and December 31, 1996 ~~{1994}~~, a person qualifying for Tier 4 UST financial assistance is eligible for an annual 25% insurance copayment, not to exceed \$1,000 per year between January 1, 1998 ~~{1996}~~ and December 31, 1998 ~~{1996}~~;

February 22, 1994  
(174MODZA.94)  
(FROST:LDF)

ATTACHMENT A

ADOPTION OF AMENDED RULES OAR Chapter 340 - Division 175

Amend OAR 340 - Division 175 by modifying:

340-175-020 GRANT BENEFITS

- (1) A pollution prevention grant will fund up to 50% not to exceed \$50,000 of UST project work.
- (2) An essential services grant will fund up to 75%~~{85%}~~ not to exceed \$75,000~~{85,000}~~ of UST project work.

340-175-050 ADDITIONAL INFORMATION REQUIRED ON THE FINANCIAL ASSISTANCE APPLICATION.

In addition to the requirements of OAR 340-172-040, the financial assistance application shall include:

- (1) where the UST project work is partially or fully completed:
  - (a) a description of the completed UST project work including the date the UST was placed into service;
  - (b) cost of completed UST project work; and
  - (c) a description of all UST project work still to be done to meet new UST standards, including estimated cost and schedule of work; and
- (2) a signed agreement meeting the requirements of OAR 340-175-055 ~~{allowing the Department to file a property lien upon payment of an essential services grant}~~.

340-175-055 DOCUMENTS REQUIRED TO RECEIVE AN ESSENTIAL SERVICES GRANT

- (1) Where a property owner ~~{an applicant}~~ receives an essential services grant under OAR 340-175-030(2) the property owner ~~{applicant}~~ must sign a property lien agreement, described by subsections (2) and (3) of this rule ~~{section}~~. Where an applicant other than the property owner receives an essential services grant under OAR 340-175-030(2) and the property owner refuses to sign a property lien agreement the Department may allow an agreement meeting the requirements of subsections 4 through 8 of this rule to be substituted for a property lien agreement where the Department finds the agreement provides financial security equivalent to a property lien agreement.
- ~~(2){(3)}~~ The signed Property Lien Agreement shall require the property owner ~~{applicant}~~ to reimburse the underground storage tank essential services grant in full, to the Department, if the



property or the business reselling motor fuel is sold within five (5) years after the last payment of the essential services grant unless the purchaser of the property assumes the obligations of the property lien agreement. The purchaser shall be obligated under the property lien agreement for the five (5) year period of the original agreement.

- ~~(3) (2)~~ A property lien shall be recorded ~~{filed}~~ by the Department in the mortgage records of the county where the property is located ~~{before payment of the essential services grant}~~. The property lien agreement ~~{Department}~~ shall be satisfied ~~{withdraw the property lien within}~~ five (5) years ~~{and ten (10) days}~~ after the property lien agreement is signed by the property owner and the Department ~~{filed}~~ or when the essential services grant ~~{lien}~~ is repayed to the Department ~~{satisfied}~~.
- (4) The agreement shall be signed by an individual, a natural person, who is the applicant for the essential services grant.
- (5) The applicant shall provide proof of their ability to repay the essential services grant if the facility or business receiving the grant is resold within five (5) years after the last payment of the essential services grant.
- (6) The Department shall find the agreement equivalent to the repayment security provided by a property lien agreement signed by the property owner.
- (7) The signed agreement shall require the applicant to reimburse the full amount of the underground storage tank essential services grant to the Department, if the property or the business reselling motor fuel is sold within five (5) years after the last payment of the essential services grant unless the purchaser of the property assumes the obligations of the agreement. The purchaser shall be obligated under the agreement for the five (5) year period of the original agreement.
- (8) The agreement shall be satisfied five (5) years after the agreement is signed by the applicant and the Department or when the essential services grant is repayed to the Department.

# NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality Waste Management and Cleanup Division  
OAR Chapter 340

DATE: TIME: LOCATION:  
January 18, 1994 3:00 pm Portland, Oregon

HEARINGS OFFICER(s): Agency Staff

STATUTORY AUTHORITY: ORS 466.705 through 466.895, Chapter 661, Oregon Law 1993

ADOPT: OAR 340-172-015

AMEND: OAR 340-172-010, OAR 340-172-020, OAR 340-172-025, OAR 340-172-030,  
OAR 340-172-040, OAR 340-172-050, OAR 340-172-070, OAR 340-172-080,  
OAR 340-172-120, OAR 340-172-130, OAR 340-172-APPENDIX B, OAR  
340-172-APPENDIX C, OAR 340-174-020, OAR 340-175-020, OAR 340-  
175-055

REPEAL:

- This hearing notice is the initial notice given for this rulemaking action.
- This hearing was requested by interested persons after a previous rulemaking notice.
- Auxiliary aids for persons with disabilities are available upon advance request.

## SUMMARY:

The rule limits financial assistance to essential service grants of 75%, not to exceed \$75,000; excluding aviation and marine retail fueling facilities; provide continuing funding for previously approved projects, reducing insurance copayment benefits; allowing agreements other than property liens to secure grant monies; and modifying Letter of Intent and Consent Agreements.

LAST DATE FOR COMMENT: January 18, 1994

DATE PROPOSED TO BE EFFECTIVE: Upon adoption by the Environmental Quality Commission and subsequent filing with the Secretary of State.

AGENCY RULES COORDINATOR:

Harold Sawyer, (503) 229-5776

AGENCY CONTACT FOR THIS PROPOSAL:

Larry Frost

ADDRESS:

Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon 97204

TELEPHONE: (503) 229-5769 or Toll Free 1-800-452-4011

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments will also be considered if received by the date indicated above.

Signature

Date

12-15-93

Attachment B-1

State of Oregon  
Department of Environmental Quality

Memorandum

Date: February 25, 1994

**To:** Environmental Quality Commission  
**From:** Larry D. Frost  
**Subject:** List of Verbal and Written Comments Received and  
Department Evaluation of Public Comment  
  
Amendments to UST Financial Assistance Rules

The following persons either testified verbally at one of the hearings or submitted written comments as shown below.

<u>Name/Representing</u>	<u>Verbal</u>	<u>Date</u>
Daniel Bauer Redland, Oregon	*	February 16, 1994 Hearing
Ken & Kay Anderson Ashland, Oregon		February 16, 1994
Richard Worth Williams Valley Associates		February 15, 1994
John W. Rayburn Port of Newport		February 15, 1994

SUMMARIZED COMMENTS AND DEPARTMENT RESPONSE:

1. COMMENT (Bauer): Our service station, the only station in the community, provides needed services to the community of Redland. We are 6 miles east of Oregon City where other service stations exist. We would like to see the essential services grants extended to facilities such as ours.

DEPARTMENT RESPONSE: Presently the statute limits essential service grants to Tier 4 retail facilities (the only station in an incorporated city or in this case the only station within 9 miles). The Commission does not have statutory authority to offer essential services grants to other persons.

Memo To: Environmental Quality Commission  
February 25, 1994  
Page 2

2. COMMENT (Anderson, Worth): Do not lower the grant benefits to 75%/\$75,000 maximum from 85%/\$85,000 maximum. The loss of 10%/\$10,000 will make it very difficult for small stations to upgrade their facility.

DEPARTMENT RESPONSE: The essential services grant benefit is set by statute knowing that limited funds would be made available for grants and that all potential Tier 4 facilities would not be financially able to upgrade their tank at this lower benefit rate. Additionally, the Commission does not have statutory authority to increase the benefits.

3. COMMENT (Rayburn): Do not exclude marine fueling stations from receiving future financial assistance.

DEPARTMENT RESPONSE: Marine fueling stations are only excluded from receiving Tier 4 benefits. While this exclusion is not contained in the statute the legislature intended to fund only those facilities serving the motoring public in small and rural communities. The legislature intends to fund the other benefits, including those for Tiers 1, 2, and 3, if a new funding source is found in the future.

UST FINANCIAL ASSISTANCE ADVISORY COMMITTEE

Brian Doherty  
Miller, Nash, Wiener, Hager and Carlsen

Larry Hill  
Oregon Gasoline Dealers Association

Par McAllister  
Hood River Supply Association

Elden McGarvin  
US National Bank

Gregg Miller  
Northwest Pump and Equipment Company

Harvey Rogers  
Preston, Thorgrimson, Shidler, Gates & Ellis

Greg Spainhower  
C.J. Excavating

Glenn Zirkle  
Oregon Petroleum Marketers Association

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Amendments to UST Financial Assistance Rules

## Rule Implementation Plan

### Summary of the Proposed Rule

The proposed rule amendments implements the provisions of HB 2776 and;

- a. limits financial assistance to essential service grants at a lower level of 75% of UST project cost, not to exceed \$75,000;
- b. limits essential service grants to UST facilities retailing motor fuel except those retailing to aircraft and marine vessels;
- c. provides continued funding for previously approved projects;
- d. reduces insurance copayment benefits;
- e. allows agreements other than property liens to secure grant monies; and
- f. modifies Letter of Intent and Consent Agreement requirements.

Persons reselling motor fuel stored in underground storage tanks to the public may be affected by these rules.

### Proposed Effective Date of the Rule

The rule will be effective upon filing on approximately March 16, 1994.

### Proposal for Notification of Affected Persons

Underground storage tank owners, operators and property owners will be notified by a newsletter "Tankline" to be mailed in early 1994. Persons who filed a Letter of Intent or a Consent Agreement under the existing UST financial assistance program will receive a letter explaining the changes to the program.

**Proposed Implementing Actions**

As described above, DEQ will be sending a newsletter to each UST owner, operator and property owner plus contacting each person who showed interest in obtaining financial assistance under the existing program.

**Proposed Training/Assistance Actions**

The existing staff will be trained to assist persons that may qualify for essential services grants. DEQ will, as we have in the past, provide help to the applicants for financial assistance in completing the application and completing the UST upgrade project.

*Oregon Department of Environmental Quality*

## **A CHANCE TO COMMENT ON...**

**Amendments to UST Financial Assistance Rules**

Date Issued: January 26, 1994  
Public Hearings: February 16, 1994  
Comments Due: February 16, 1994

**WHO IS  
AFFECTED:**

Person who own or are in control of underground storage tanks (UST) used to store motor fuel for resale.

**WHAT IS  
PROPOSED:**

The Department of Environmental Quality is proposing to adopt rules amending OAR Chapter 340, Division 172, Division 174 and Division 175.

**WHAT ARE THE  
HIGHLIGHTS:**

As directed by the 1993 Legislature and HB 2776 the proposed rules modify the UST financial assistance rules:

- a. Limit financial assistance to essential services grants to certain facilities within small cities and rural locations.
- b. Reduce essential service grant benefits to 75%, not to exceed \$75,000 of UST project costs.
- c. Allow agreements other than property liens to secure grant monies.
- d. Reduce insurance copayment benefits.
- e. Modify "Letter of Intent" and "Consent Agreement" requirements.

**HOW TO  
COMMENT:**

Public Hearings to provide information and receive public comment are scheduled as follows:

Portland  
February 16, 1994  
3:00 pm, PST  
Conference 10A, Tenth Floor  
Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, Oregon 97204



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

11/1/86

**FOR FURTHER INFORMATION:**

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

**Attachment B-2**



Written comments must be received by 5:00 p.m. on February 16, 1994 at the following address:

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon, 97204

A copy of the Proposed Rule may be reviewed at the above address. A copy may be obtained from the Department by calling the Waste Management and Cleanup Division at 229-5733 or calling Oregon toll free 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.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Amendments to Underground Storage Tank Financial Assistance Rules

## 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 468.020 authorizes the Commission to adopt such rules and standards as it considers necessary and proper for performing the functions vested by law in the Commission. Adopting the proposed modifications to the underground storage tank financial assistance rules is within the Commission's authority.

2. Need for the Rule

The 1993 Oregon Legislature amended the Underground Storage Tank (UST) Financial Assistance Program and provided funding from lottery funds by adoption of House Bill 2776 and Senate Bill 81. These rule modification implement the HB 2776 and the intent of the legislature.

3. Principal Documents Relied Upon in this Rulemaking

Oregon Revised Statutes Chapter 466  
Chapter 863, Oregon Laws 1991 (SB 1215)  
Chapter 661, Oregon Laws 1993 (HB 2776)  
Chapter 765, Oregon Laws 1993 (SB 81)  
Legislative Record, HB 2776

4. Advisory Committee Involvement

The UST Financial Assistance Advisory Committee met twice over a month's time to review the adopted legislation, review proposed rules, address several key issues and recommended several modifications that are included in these rules.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Amendments to UST Financial Assistance Rules

## Fiscal and Economic Impact Statement

### Introduction

Federal underground storage tank (UST) regulations require all owners and operators to demonstrate financial responsibility by December 31, 1993 of \$500,000, \$1,000,000 annual aggregate to pay for cleanup and any third party damages from petroleum leaks or releases from the tanks. Insurance at a reasonable price is only available if the tanks meet new tank standards and the site is contamination free. The service station owner must replace the tanks and cleanup any contamination to continue to sell fuel. Very few small businesses can afford the \$100,000 to \$200,000 required for this work. Many of the more remote service stations are the only source of fuel in the community.

The 1991 Oregon Legislature recognized the problem and adopted a comprehensive financial assistance program (SB 1215) for owners, operators and property owners responsible for underground storage tanks (UST) holding motor fuel for resale. This UST financial assistance program provided assistance in the form of loan guarantees, loan interest rate subsidies, cash grants, and assistance with UST pollution insurance premiums. The \$100,000,000, fifteen year program was to be funded by a retail gasoline fee or alternately a petroleum load fee. Both revenue sources were found to be constitutionally dedicated to the highway trust fund and not available to the UST financial assistance program. The 1993 Oregon Legislature amended the program and provided \$4,420,000 of funding from lottery funds by adoption of House Bill 2776 and Senate Bill 81. The legislature intended to finance existing commitments and provide essential service grants for up to 48 retail facilities providing the only fueling services in a city or is the only fueling service within 9-miles outside a city. These rules implement the amendments by;

- a. limiting financial assistance to essential service grants at a lower level of 75% of UST project cost, not to exceed \$75,000;
- b. limiting essential service grants to UST facilities retailing motor fuel except those retailing to aircraft and marine vessels;
- c. providing continued funding for previously approved projects;
- d. reducing insurance copayment benefits;
- e. allowing agreements other than property liens to secure grant monies; and

f. modifying Letter of Intent and Consent Agreement requirements.

AFFECTED PARTIES	IMPACT	FINANCIAL IMPACT
UST Owners and Operators	- Direct	- \$75,000 grant.
Small and Large Business	- Direct - Indirect - Direct	- \$4,800,000 in construction goods and services. - \$9,600,000 in secondary economic benefits. - Availability of fuel in rural areas of state for commerce and employees.
Local Government	- Indirect	- Increased availability of motor fuel in rural areas of state.
General Public	- Direct - Indirect - Indirect	- Increased availability of motor fuel in rural areas of state. - Reduced threat to human health, safety and the environment; particularly groundwater resources. - Oregon communities receive a portion of the \$9,600,000 in secondary economic benefits.

**General Public**

These essential service grants will allow 48 retail service stations to upgrade their facilities thereby increasing motor fuel availability to the general public in the small cities and rural sections of the state. The improved availability of motor fuel will improve the local economy through increased commerce and tourism.

Upgrading a service station includes replacing or upgrading the fuel underground storage tanks and cleanup of any contaminated soil or groundwater. The general public benefits by the removal of existing environmental contamination and reduction of future threats to the environment from the tanks thereby maintaining valuable groundwater resources for present and future use. An estimated \$25,000 per site is currently being spent for cleanup and removal of existing tanks at sites receiving essential services grants.

**Small Business**

Approximately 48 small service station businesses will benefit directly from this rule amendment by receiving a grant of \$75,000 on a UST upgrading project of \$100,000. Other

small and large businesses as well as suppliers and contractors will directly benefit \$4,800,000 by providing goods and services to these projects. Secondary economic benefits to these and other communities in Oregon will total about \$9,600,000.

Without the grants most of the 48 service stations would cease selling motor fuel or close their businesses. Small business within the communities will benefit directly by having access to motor fuel for their vehicles and their employees vehicles. Without the community service stations motor fuel would only be available at another city or beyond 9 miles.

### **Large Business**

Some large businesses will benefit directly by providing goods or services to the UST upgrading projects. Additionally they benefit directly by having access to motor fuel when traveling through the communities where a grant is received.

### **Local Governments**

In many of these communities the local service station provides fuel for local government vehicles including those performing critical services such as fire, ambulance and police. With the retail service station local government would need to invest capital and labor to for their own UST.

### **State Agencies**

All state agencies vehicles traveling in the remote and rural sections of the state may benefit from the increased fuel availability.

The Department of Environmental Quality employs 5\* full time employees (FTE) to manage the issuance and supervision of these 48 grants and to manage the financial assistance funded by the previous programs under SB 1215. Without this rule the funds provided by the lottery will not be used and these employees will not be needed.

### **Assumptions**

1. A multiplier of two (2) is used to calculate secondary financial benefits resulting from each direct expenditure.

FSC0194F.IM2

\* Revised: January 26, 1994

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Amendments to Underground Storage Tank Financial Assistance Rules

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

As directed by the legislature and HB 2776 the proposed rules modify the underground storage tank financial assistance rules:

- a. Limits financial assistance to providing essential services grants to certain facilities located within small cities and rural areas of the state.
- b. Reduces essential services grant benefits.
- c. Allows agreements other than property liens to secure grant monies.
- d. Reduces insurance copayment benefits.
- e. Modifies Letter of Intent and Consent Agreement requirements.

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 \_\_\_ (if no, explain):

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, Seenic 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.

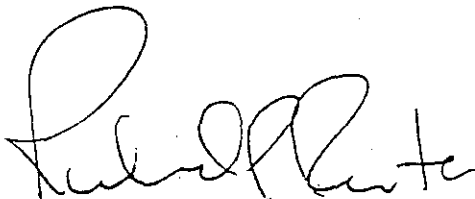
In applying criterion 2. above, two guidelines should be applied to assess land use significance:

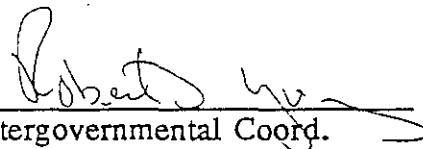
- The land use responsibilities of a program/rule/action that involves more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

The proposed rules do not have significant effects on statewide planning goals or local acknowledged comprehensive plans. The Department's state agency coordination program does not identify the underground storage tank program as a program significantly affecting land use.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility. Not applicable.

  
Division

  
Intergovernmental Coord.

12-15-93  
Date

State of Oregon  
Department of Environmental Quality

Memorandum

Date: January 19, 1994

**To:** Environmental Quality Commission  
**From:** Larry Frost  
**Subject:** Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: January 18, 1994, beginning at 3:00 PM  
Hearing Location: Conference Room 3A, Third Floor  
Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, Oregon 97204

Title of Proposal: Amendments to UST Financial Assistance Rules

The rulemaking hearing on the above titled proposal was convened at 3:05 PM.

Zero people were in attendance, zero people signed up to give testimony.

No testimony, oral or written, was given. The hearing was closed at 3:40 PM.



State of Oregon  
Department of Environmental Quality

Memorandum

Date: February 17, 1994

**To:** Environmental Quality Commission  
**From:** Larry Frost  
**Subject:** Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: February 16, 1994, beginning 3:00 PM  
Hearing Location: Conference Room 10A, Tenth Floor  
Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, Oregon 97204

Title of Proposal: Amendments to UST Financial Assistance Rules

The rulemaking hearing on the above titled proposal was convened at 4:04 PM. People were asked to sign witness registration forms if they wished to present testimony. People were advised that the hearing will be recorded and of the hearing procedures.

Seven (7) people were in attendance, one person signed up to give testimony.

Prior to receiving testimony, Larry Frost briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

The following witness was called to testify and presented the following testimony.

Mr. Daniel H. Bauer  
18150 S. Redland Rd.  
Oregon City, OR 97045

My station is located about 6 miles east of Oregon City in Redland. The station has existed approximately 43 years. With us not being able to continue operation of our station it puts quite a hardship on some of our customers. It is quite a large farming community. We are going to do something with it (the station's tanks) but any assistance would help. We would like to extend the program to provide an essential services grant to a facility such as ours that provides a needed service to the community.

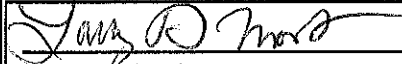
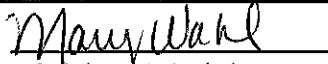

No one handed in written comments. There was no further testimony and the hearing was closed at 4:09 PM.

Attachment C-2

## Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item D  
March 11, 1994 Meeting

<b>Title:</b> Increase UST Permit Fee to \$35		
<b>Summary:</b> The rule amendments increase the UST permit fee from \$25 to \$35. This fee increase provides adequate revenue for the UST compliance program even though permitted tanks have reduced from 23,500 in 1988 to 12,400 in 1993.		
<b>Department Recommendation:</b> It is recommended that the Commission adopt the rule amendment as presented in Attachment A of the Department Staff Report.		
 Report Author	 Division Administrator	 Director

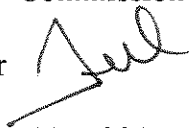
February 28, 1994

†Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: 2/28/94

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item D, March 11, 1994, EQC Meeting  
Increase UST Permit Fee to \$35

**Background**

On December 14, 1993, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed rules which would raise the UST permit fee from \$25 to \$35 per year.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on January 3, 1994. A public hearing was held on January 18, 1994, 1:00 PM, Conference Room 3A, Department of Environmental Quality, 811 S.W. 6th Ave, Portland Oregon with Larry Frost serving as Presiding Officer.

The Hearing Notice for a second hearing and informational materials were sent by mail to the mailing list of those persons who have asked to be notified of rulemaking actions on January 31, 1994, 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 3, 1994.

A public hearing was held on February 16, 1994, 1:00 PM, Conference Room 10A, Department of Environmental Quality, 811 S.W. 6th Ave, Portland, Oregon with Larry Frost serving as Presiding Officer.

The Presiding Officer's Report (Attachment C-1 and C-2 ) summarizes the oral testimony presented at the hearings.

Written comment was received through February 16, 1994, 5:00 PM. A list of written comments received and the Department's evaluation of the comments are included as

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<sup>†</sup>Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

Memo To: Environmental Quality Commission  
Agenda Item D  
March 11, 1994 Meeting  
Page 2

Attachment D. Based upon that evaluation, no modifications to the initial rulemaking proposal are being recommended by the Department.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

#### **Issue this Proposed Rulemaking Action is Intended to Address**

The present annual underground storage tank permit fee of \$25 does not provide adequate revenue to support the budgeted UST technical assistance and compliance activities. In response to the needed revenue the 1993 Oregon legislature modified ORS 466.785(1) by adopting Chapter 525, Oregon Laws 1993 (SB 87). This modification changed the maximum allowable UST permit fee from \$25 to \$35. The proposed rule amendment increases the \$25 annual UST permit fee to \$35.

#### **Relationship to Federal and Adjacent State Rules**

There is no equivalent federal requirement. Adjacent states or a local agency in the state require a similar permit fee for underground storage tanks; thus the Oregon requirement is no more stringent than the requirements of adjacent states.

#### **Authority to Address the Issue**

ORS 468.020 authorizes the Commission to adopt such rules and standards as it considers necessary and proper for performing the functions vested by law in the Commission. Adopting the proposed modifications to the underground storage tank rules is within the Commission's authority.

#### **Process for Development of the Rulemaking Proposal (including Advisory Committee and alternatives considered)**

Memo To: Environmental Quality Commission  
Agenda Item D  
March 11, 1994 Meeting  
Page 3

An advisory committee was not used to develop the rulemaking proposal. The proposed rule is simple and straight forward in that the fee increase balances the budget expenditures approved by the 1993 Oregon Legislature. The Commission may establish the fee at any level below \$35 after hearing public comment.

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

Underground storage tanks (UST) regulated by ORS 466.705 through 466.895 are required to obtain and pay for a UST permit for each tank. The annual UST permit fee is currently \$25. The proposed rule amendment authorized by the 1993 legislature (Chapter 525, Oregon Laws 1993, SB 87) will increase the fee by \$10 per year for each of the approximately 12,400 regulated tanks at some 4,100 locations. Many of these tanks are owned by small businesses, including a significant number of sole proprietorships. The average business will see increased costs of \$20 to \$30 per year. UST permittees include individuals, farmers, small business, large business, local government, state government agencies, and federal agencies.

Tank decommissionings have reduced the number of permitted tanks from 23,500 in 1988 to 12,400 in 1993. Revenue from permit fees has been reduced accordingly. The \$25 permit fee generated revenue of \$413,000 in 1988. Anticipated revenue for 1994 with the \$35 fee is \$420,000.

The permit fee provides revenue for the UST compliance program, the purpose of which is to prevent releases of petroleum products from USTs and to detect releases as early as possible. If undetected, a release could cause fire or explosion and threaten public health and the environment by contaminating soil and groundwater. Since 1988 the UST technical support and compliance program has reduced these threats by encouraging decommissioning of 11,000 tanks, discovering 2,500 releases and requiring cleanup of the releases.

**Summary of Significant Public Comment and Changes Proposed in Response**

As shown in Attachment D, two categories were included in the six testimonies received from the public.

Comments in the first category objected to increasing the UST permit fee from \$25 per tank per year to \$35. The stated reasons for objecting to the higher permit fee included;

Memo To: Environmental Quality Commission  
Agenda Item D  
March 11, 1994 Meeting  
Page 4

1. Disapproval of any fee increase;
2. State should reduce expenses rather than increase fees;
3. Higher fee may promote noncompliance;
4. Request of higher fee is an indication of mismanagement;
5. Request for higher fee is an attempt to defeat the intent of Measure 5; and
6. Technical assistance could be better provided by consultants.

The need for the fee increase was investigated and addressed by the 1993 Oregon Legislature; resulting in SB 87 authorizing the Commission to set the UST permit fee up to \$35 per tank per year. The Department documented the need for the increase as primarily caused by a reduction in permitted tanks from 23,500 in 1988 to 12,400 in 1993. Because of fewer permitted tanks, the proposed fee will only allow the Department to maintain existing staff levels in an attempt to meet the increased demand for technical support by UST owners, operators, property owners and consultants. The proposed fee increase is not an attempt to avoid the effects of Measure 5.

The two comments in the second category objected to the time allowed for public comment.

The Department regrets that production problems occurred during printing and mailing to the 2,800 interested parties. Those who previously expressed interest in Department rules received the rule proposal package a minimum of 15 days before the hearing. Others that the Department determined might be interested in or affected by the proposal received the notice 3 days later.

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

The UST program staff mails a bill for the UST permit fee to each tank permittee in February of each year. In 1994 the permittee will be billed \$35 for each underground storage tank.

#### **Recommendation for Commission Action**

It is recommended that the Commission adopt the rules/rule amendments regarding increasing the UST permit fee from \$25 to \$35 as presented in Attachment A of the Department Staff Report.

Memo To: Environmental Quality Commission  
Agenda Item D  
March 11, 1994 Meeting  
Page 5

**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 and Department's Evaluation of Public Comment
- E. Rule Implementation Plan

**Reference Documents (available upon request)**

Written Comments Received (listed in Attachment D)  
(Other Documents supporting rule development process or proposal)

Approved:

Section:

Division:

Report Prepared By: Larry D. Frost

Phone: (503) 229-5769

Date Prepared: February 28, 1994

LDF:ldf  
STF194TC.RPT  
2/28/94

## ATTACHMENT A

### ADOPTION OF MODIFIED RULE OAR 340-150-110

Amend OAR 340 - Division 150 by modifying:

#### OAR 340-150-110 UNDERGROUND STORAGE TANK PERMIT COMPLIANCE FEE

- (1) Beginning March 1, 1989, and annually thereafter, the permittee shall pay an underground storage tank permit compliance fee of \$25 per tank per year. For calendar year 1994 and every year thereafter the permittee shall pay an underground storage tank compliance fee of \$35 per tank per year.
- (2) The underground storage tank permit compliance fee shall be paid for each calendar year (January 1 through December 30) or part of a calendar year that an underground storage tank is not permanently closed in accordance with 40 CFR 280.71.
- (3) The compliance fee shall be made payable to the Department of Environmental Quality.



# NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality Waste Management and Cleanup Division  
OAR Chapter 340

DATE:                      TIME:                      LOCATION:  
January 18, 1994      1:00 pm              Portland, Oregon

HEARINGS OFFICER(s):      Agency Staff

STATUTORY AUTHORITY:      Chapter 525, Oregon Laws 1993

ADOPT:

AMEND:      ORS 340-150-110

REPEAL:

- This hearing notice is the initial notice given for this rulemaking action.
- This hearing was requested by interested persons after a previous rulemaking notice.
- Auxiliary aids for persons with disabilities are available upon advance request.

## SUMMARY:

The rule establishes a annual fee for the Underground Storage Tank Permit. The rule amendment increases the fee from \$25 to \$35.

LAST DATE FOR COMMENT: January 18, 1994

DATE PROPOSED TO BE EFFECTIVE: Upon adoption by the Environmental Quality Commission and subsequent filing with the Secretary of State.

AGENCY RULES COORDINATOR:

Harold Sawyer, (503) 229-5776

AGENCY CONTACT FOR THIS PROPOSAL:

Larry Frost, (503) 229-5769

ADDRESS:

Waste Management and Cleanup Division

811 S. W. 6th Avenue

Portland, Oregon 97204

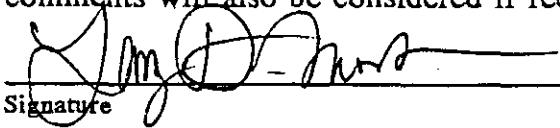
TELEPHONE:

(503) 229-5769

or Toll Free 1-800-452-4011

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments will also be considered if received by the date indicated above.

Signature



Date

12-15-93

Oregon Department of Environmental Quality

## A CHANCE TO COMMENT ON...

Modifications to UST Rules

Date Issued: January 27, 1994  
Public Hearings: February 16, 1994  
Comments Due: February 16, 1994

**WHO IS  
AFFECTED:**

Any person owning or operating an underground storage tank (UST).

**WHAT IS  
PROPOSED:**

The Department of Environmental Quality is proposing to adopt rules amending OAR Chapter 340, Division 150.

**WHAT ARE THE  
HIGHLIGHTS:**

The proposed fee of \$35 will allow the Department of Environmental Quality to continue providing technical assistance and compliance for UST owners, operators and property owners.

**HOW TO  
COMMENT:**

Public Hearings to provide information and receive public comment are scheduled as follows:

Portland  
February 16, 1994  
1:00 pm, PST  
Conference 10A, Tenth Floor  
Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, Oregon 97204

Written comments must be received by 5:00 p.m. on February 16, 1994 at the following address:

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon, 97204

A copy of the Proposed Rule may be reviewed at the above address. A copy may be obtained from the Department by calling the Waste Management and Cleanup Division at 229-5733 or calling Oregon toll free 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.



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

11/1/86

**FOR FURTHER INFORMATION:**

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

Attachment B-2

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Changing UST Permit Fee to \$35

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 468.020 authorizes the Commission to adopt such rules and standards as it considers necessary and proper for performing the functions vested by law in the Commission. Adopting the proposed modifications to the underground storage tank rules is within the Commission's authority.

2. Need for the Rule

As allowed by SB 87 adopted by the 1993 Oregon Legislature, the proposed rule raises the UST permit fee from \$25 to \$35 per year. The increase is needed to maintain adequate funding for the UST technical assistance and compliance program.

3. Principal Documents Relied Upon in this Rulemaking

Oregon Revised Statutes Chapter 466  
Chapter 525, Oregon Laws 1993 (SB 87)

4. Advisory Committee Involvement

An advisory committee was not used to develop the rulemaking proposal. The proposed rule is simple and straight forward in that the fee increase balances the budget expenditures approved by the 1993 Oregon Legislature. The Commission may establish the fee at any level below \$35 after hearing public comment.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Amendment to UST Rules

## Fiscal and Economic Impact Statement

### Introduction

- Statement of overall degree of economic impact:

Underground storage tanks (UST) regulated by ORS 466.705 through 466.895 are required to obtain and pay for a UST permit for each tank. The annual UST permit fee is currently \$25. The proposed rule amendment authorized by the 1993 legislature (Chapter 525, Oregon Laws 1993, SB 87) will increase the fee by \$10 per year for each of the approximately 12,400 regulated tanks at some 4,100 locations. Many of these tanks are owned by small businesses, including a significant number of sole proprietorships. The average business will see increased costs of \$20 to \$30 per year. UST permittees include individuals, farmers, small business, large business, local government, state government agencies, and federal agencies.

Tank decommissionings have reduced the number of permitted tanks from 23,500 in 1988 to 12,400 in 1993. Revenue from permit fees has reduced accordingly. The \$25 permit fee generated revenue of \$413,000 in 1988. Anticipated revenue for 1994 with the \$35 fee is \$420,000.

The permit fee provides revenue for the UST compliance program, the purpose of which is to prevent releases of petroleum products from USTs and to detect releases as early as possible. If undetected, a release could cause fire or explosion and threaten public health and the environment by contaminating soil and groundwater. Since 1988 the UST technical support and compliance program has reduced these threats by encouraging decommissioning of 11,000 tanks, discovering 2,500 releases and requiring cleanup of the releases.

- Summary Chart

AFFECTED PARTIES	IMPACT	FINANCIAL IMPACT
UST Permittees - Small Business - Large Business - Local Gov't - State Gov't - Federal Gov't	Direct	- \$10 per tank additional yearly permit expense. Average \$20 to \$30 per facility annually. - Gas stations could recover annual permit cost with 0.1-cent price increase. \$30 annual cost for permits - Very Low Volume Station: @ 5,000 gal/month the increase cost is \$0.006/gallon - Medium Volume Station: @ 50,000 gal/month the increase cost is \$.00006/gallon
Consumers of UST Products	Indirect	Consumers will pay more for fuel, 0.1-cents per gallon or less.
General Public	Indirect	Reduced threat to human health, safety and the environment; particularly groundwater resources.

**General Public**

As consumers the general public will pay more for motor fuel and other products stored in USTs. The cost is dependent upon the tank throughput but should be less than \$0.01 per gallon.

The revenue provided by the UST permit fee allows the Department of Environmental Quality to continue providing technical and compliance assistance to UST owners and operators. These activities help assure USTs will be installed and managed properly.

The general public benefits from the reduced threat to human health, safety and the environment, particularly in assuring the cleanliness and safety of groundwater resources. Cleanup of groundwater contamination is expensive and frequently exceeds \$100,000 per cleanup site.

**Small Business**

Small businesses will have an additional cost of \$10 per tank, averaging \$20 to \$30 per business. These fees will need to be absorbed by the business where competition dictates the cost of their product.

For a small retail gasoline station with a throughput of 5,000 gallons per month or less, the increased cost from permit fees is less than 0.1 cents per gallon. Large volume stations will more easily absorb the increased cost in the price of fuel.

Each business benefits from DEQ's technical assistance and compliance activities thereby reducing the effort and cost to determine the best way to comply with state and federal UST regulations and avoid the costly cleanup resulting from a tank or piping leak. Average cost of a UST cleanup exceeds \$65,000.

### **Large Business**

Large businesses will have an additional annual cost of \$10 per tank, averaging \$20 to \$30 per business. Generally, these fees will be absorbed by the large business. A large retail gasoline station could have an annual throughput of 1,000,000 gallons. The increased cost from permit fees would be less than 0.003 cents per gallon.

Each business benefits from DEQ's technical assistance and compliance activities thereby reducing the effort and cost to determine the best way to comply with state and federal UST regulations and avoid the costly cleanup resulting from a tank or piping leak. Average cost of a UST cleanup exceeds \$65,000.

### **Local Governments, State Agencies, Federal Agencies**

USTs owned by governmental agencies will have an additional annual cost of \$10 per tank. These permit fees will be absorbed by the agency.

Each agency benefits from DEQ's technical assistance and compliance activities thereby reducing the effort and cost to determine the best way to comply with state and federal UST regulations and avoid the costly cleanup resulting from a tank or piping leak. Average cost of a UST cleanup exceeds \$65,000.

### **State Agencies**

#### **- DEQ**

No additional FTE's are required to implement the increased permit fee.

The \$10 permit fee increase will generate approximately \$240,000 during the 1993/1995 biennium.

No additional expenses are associated with the UST permit fee increase.

#### **- Other State Agencies**

Other state agencies labor and operating expenses are not affected except by the UST permit fee increase of \$10 per year per tank.

**Assumptions**

1. Total permitted USTs during calendar 1994 and 1995 will be 12,400 tanks at 4,100 facilities.
2. The fee increase does not require any additional labor or expenses above that required for the existing fee since the cost to bill individual permittees will be the same regardless of the fee amount.

Revised: January 26, 1994  
Revised: February 28, 1994  
FSC0194T.IM2  
LARRY FROST

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Modifications to UST Permit Fee Rules

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rule modification, authorized by SB 87, raises the underground storage tank (UST) permit fee from \$25 to \$35.

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 \_\_\_ (if no, explain):

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.

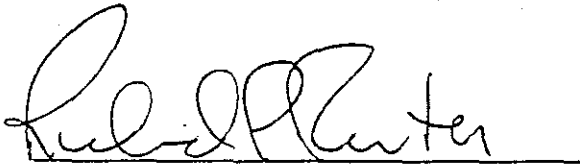
In applying criterion 2. above, two guidelines should be applied to assess land use significance:

- 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.**

The proposed rules do not have significant effects on statewide planning goals or local acknowledged comprehensive plans. The Department's state agency coordination program does not identify the underground storage tank program as a program significantly affecting land use.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility. Not applicable.

  
Division

  
Intergovernmental Coord.

12-15-93  
Date

State of Oregon  
Department of Environmental Quality

Memorandum

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Date: January 19, 1994

**To:** Environmental Quality Commission  
**From:** Larry Frost  
**Subject:** Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: January 18, 1994, beginning at 1:00 PM  
Hearing Location: Conference Room 3A, Third Floor  
Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, Oregon 97204

Title of Proposal: Increase UST Permit Fee to \$35

The rulemaking hearing on the above titled proposal was convened at 1:08 PM.

Zero people were in attendance, zero people signed up to give testimony.

No testimony, oral or written, was given. The hearing was closed at 1:45 PM.

State of Oregon  
Department of Environmental Quality

Memorandum

Date: February 17, 1994

**To:** Environmental Quality Commission  
**From:** Larry Frost  
**Subject:** Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: February 16, 1994, beginning 1:00 PM  
Hearing Location: Conference Room 10A, Tenth Floor  
Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, Oregon 97204

Title of Proposal: Increase UST Permit Fee to \$35

The rulemaking hearing on the above titled proposal was convened at 1:42 PM.

Zero people were in attendance, zero people signed up to give testimony.

No testimony, oral or written, was given. The hearing was closed at 2:03 PM.

State of Oregon  
Department of Environmental Quality

Memorandum

Date: February 25, 1994

**To:** Environmental Quality Commission  
**From:** Larry D. Frost  
**Subject:** List of Verbal and Written Comments Received  
Department Evaluation of Public Comment  
  
Increase UST Permit Fee to \$35

The following persons submitted written comments as shown below. No one provided verbal testimony.

<u>Name/Representing</u>	<u>Verbal</u>	<u>Date</u>
Howard Cockburn Cockburn Distributing Co.		February 7, 1994
William G. Nokes Tidewater Contractors		February 8, 1994
Mr. Hammer		February 17, 1994
Kenneth L. Wells Whistle Stop, Inc.		February 10, 1994
Margaret Johnson		February 14, 1994
Dave Leonard, P.E. Douglas County		February 10, 1994

SUMMARIZED COMMENTS AND DEPARTMENT RESPONSE:

1. COMMENT (Cockburn, Nokes, Hammer, Johnson, Leonard): I object to increasing the UST permit fee from \$25 to \$35. (Cockburn): DEQ should streamline their operation rather than increase the fee. (Nokes): The high fee will promote non-compliance. (Hammer): Don't need increase since demand for help is going down. (Leonard): The 40% fee increase is an indication of mismanagement or intent to defeat the intent of Measure 5. Technical assistance could be better provided by the consultant community.

DEPARTMENT RESPONSE: The need for the fee was investigated and addressed by the 1993 Oregon Legislature, resulting in SB 87 authorizing the Commission to set the UST permit fee up to \$35 per tank per year.

DEQ has experienced increased demand for technical support by property owners, tank owners and permittees through increased phone inquiries and requests for literature on tank installation, tank decommissioning, tank operation, leak detection, pollution liability insurance, cleanup liability, and property transfer investigations. Many of the people calling are consultants seeking information on property containing underground storage tanks. The Department has documented that the present level of technical support is expected and needed by the regulated community. The fee must be increased to \$35 to continue the present level of service.

2. COMMENT (Wells, Leonard): The time allowed to respond for public comment was inadequate. Please set date for hearings and final decision farther ahead of mailed notice.

DEPARTMENT RESPONSE: The Department regrets that production problems occurred during printing and mailing to the 2,800 interested parties. Those who previously expressed interest in Department rules received the rule proposal package a minimum of 15 days before the hearing. Others that the Department determined might be interested in or affected by the proposal received the notice 3 days later.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Increase UST Permit Fee to \$35

Rule Implementation Plan

**Summary of the Proposed Rule**

The proposed rule amends ORS 340-150-110 by increasing the underground storage tank annual permit fee from \$25 to \$35.

**Proposed Effective Date of the Rule**

The rule will be effective upon filing on approximately March 16, 1994.

**Proposal for Notification of Affected Persons**

Each permittee of an underground storage tank will be notified through mailing of the annual permit fee invoices.

**Proposed Implementing Actions**

DEQ will mail invoices for the \$35 annual UST permit fee. The permittee are required to remit the fee.

**Proposed Training/Assistance Actions**

No training is required as UST permit fee collection process does not change.

## Environmental Quality Commission

- Rule Adoption Item  
 Action Item  
 Information Item

Agenda Item E  
March 11, 1994 Meeting

**Title:**

Proposed Revision of Hazardous Waste Rules to (1) Adopt Federal Hazardous Waste Regulations by Reference; (2) Amend Rules Pertaining to Certain Special Wastes, Generator Standards, Laboratory Standards, and Confidentiality; and (3) Amend and Update Toxics Use Reduction and Hazardous Waste Reduction Regulations

**Summary:**

In order to maintain authorization and equivalency with the federal program, the Department proposes to adopt by reference federal hazardous waste regulations enacted between July 1, 1992 and July 1, 1993. In addition, The Department proposes establishing special waste management standards for treated wood waste and sandblast grit waste that fail the Aquatic Toxicity Test; eliminating duplicative hazardous waste characterization requirements under the state-only "3% and 10% " rule for Toxicity Characteristic constituents; requiring hazardous waste generators to meet specific container and tank management standards while accumulating hazardous waste and maintaining hazardous waste determination records; specifying in regulation the laboratory procedures for conducting a state-only hazardous waste determination using the Aquatic Toxicity Test; establishing procedures for claiming confidential business information for hazardous waste handlers; and updating and amending the Toxics Use Reduction and Hazardous Waste Reduction regulations.

**Department Recommendation:**

Adopt the hazardous waste and toxics use reduction and hazardous waste reduction regulations as presented in Attachment A of the staff report.

  
Report Author

  
Division Administrator

  
Director

March 2, 1994

†Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

State of Oregon  
Department of Environmental Quality

Memorandum

Date: March 11, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director *Fell*  
Subject: Agenda Item E, March 11, 1994

On March 1, 1994, the Department distributed its response to comments to interested parties. Several interested parties commented and suggested clarifying changes to the proposed regulations. The Department agrees that corrections and clarifying changes are necessary as follows:

1. Page A2, 340-100-002(1). The Department inadvertently referenced "279", federal used oil regulations in the wrong subsection. The federal regulations are proposed for adoption under Subsection (2); therefore, the Department proposes to delete the reference to "279" in Subsection (1).

2. Page A2, 340-100-002(2). The Department proposes to delete "to incorporate, by reference in rule OAR 340-100-002," in Subsection (2). This language is redundant because Subsection (2) is found in OAR 340-100-002. There are typographical errors to correct in this section as well (i.e., "code" should be spelled "Code"; "ammendments" should be spelled amendments; and "January" should be "July" because the Department is adopting the federal used oil regulations through July 1, 1993, not through January 1, 1993).

3. Page A15, 340-111-010(4). The rule was poorly written and did not explicitly state the Department's intentions. It should read as follows:

(4) Oil recovered from [parts cleaning unit] a non-halogenated parts cleaning media may be managed as used oil provided:

4. Page A16, 340-111-010(5). The Department unintentionally deleted the entire rule from the final proposal when it intended only to delete the second sentence of the original, proposed rule. Retaining the first sentence of the original rule has no material effect because it is only a reference to current administrative rules and statutes. The Department proposes to retain the first sentence of the original proposed rule as follows:


(5) Any person may petition the Department in writing following the procedures in OAR Chapter 183; OAR Chapter 137, Division 2; and OAR Chapter 340, Division 11, for declaratory ruling whether a material is a used oil under 340-111-002.



State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: March 1, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item E, March 11, 1994 EQC Meeting

Request to adopt federal hazardous waste regulations, including used oil management standards with clarifying language; amend Oregon Administrative Rules (OAR) pertaining to certain special wastes, hazardous waste generator standards, hazardous waste laboratory standards, hazardous waste confidentiality claims; and amend and update Toxics Use Reduction and Hazardous Waste Reduction (TUR) regulations.


**Background**

On January 7, 1994, the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed rules which would

- ▶ Adopt by reference federal hazardous waste regulations enacted between July 1, 1992 and July 1, 1993, including new used oil management standards with clarifying changes;
- ▶ Establish special waste management standards for treated wood waste and sandblast grit waste and eliminate hazardous waste determination requirements under the state-only 3% and 10% rule for Toxicity Characteristic constituents;
- ▶ Require hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records;
- ▶ Specify in regulation the laboratory procedures for conducting a state-only hazardous waste determination using the Aquatic Toxicity Test;
- ▶ Establish procedures for claiming confidential business information for hazardous waste handlers; and

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<sup>†</sup>Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).



Memo To: Environmental Quality Commission  
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March 11, 1994 Meeting  
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- ▶ Update and amend the Toxics Use Reduction and Hazardous Waste Reduction regulations.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on February 1, 1994. The Hearing Notice and informational materials were mailed to those persons who have asked to be notified of rulemaking actions, and to those persons known by the Department to be potentially affected by or interested in the proposed rulemaking action during the week of January 10, 1994. A total of 1,700 notices were mailed.

A Public Hearing was held February 22, 1994 from 9:00 a.m. until 9:55 a.m. in Room 3a, Third Floor, Department of Environmental Quality, 811 S.W. 6th Ave., Portland, with Gil Hargreaves serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through 5:00 p.m., February 23, 1994. 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 and have responded in detail (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 E.

The following sections summarize the issues that this proposed rulemaking action is intended to address, the authority to address the issues, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of 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.

#### **Issues this Proposed Rulemaking Action is Intended to Address**

1. **Adoption by Reference of the Federal Hazardous Waste Regulations enacted between July 1, 1992 and July 1, 1993, including Used Oil Management Standards with Clarifying Changes**

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The Department must adopt all federal hazardous waste regulations in order to retain EPA authorization to implement the hazardous waste program under RCRA<sup>††</sup> in lieu of the EPA. States are required to adopt clusters of federal regulatory changes one year after promulgation of hazardous waste rules by the EPA. The Department has already adopted federal hazardous waste regulations through July 1, 1992, and proposes to adopt new federal rules which will make the state rules current with the federal rules through July 1, 1993. (See Attachment A, page A2, no's. 1 and 2 for the proposed rule amendments; Attachment F for a summary of the federal regulations proposed for adoption; and Attachment G, no. 1, for the 1993 HW/TUR Advisory Committee recommendation). Included in this rulemaking are the new used oil management regulations with proposed clarifying language.

EPA amended the used oil management rules under 40 CFR Part 279 on September 10, 1992, and May 3 and June 17, 1993. The new rules define management methods for mixtures of used oil and other materials, and establish management standards for used oil generators, collection facilities, transporters, processors/re-refiners, burners, and marketers of used oil. The Department has proposed clarifying language to better reflect EPA's intent as described in the rules' preamble and EPA supports the proposed changes. Specifically, the definition of "used oil" is expanded to clarify what is and is not a used oil and a 5,000 BTU per pound limit is set to distinguish used oil that is burned for energy recovery. (See Attachment A, pages A2, no. 2, comment; A14, nos. 10 and 11; and A18, no. 13 for the proposed used oil rule amendments; and Attachment G, no. 2, for the 1993 HW/TUR Advisory Committee recommendation).

- 2. Establishing special waste management standards for treated wood waste and sandblast grit waste and eliminating hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents.**
  - a. Establishing special waste management standards for treated wood waste.**

Under current regulations, discarded pesticide treated wood waste, such as telephone poles, bridge pilings or mill ends, that are not regulated under the federal hazardous waste rules, may still be a state-only hazardous waste if they fail the aquatic toxicity test. Currently, these state-only hazardous wastes must be managed in accordance with federal hazardous waste management standards because no state-specific standards have

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<sup>††</sup>"RCRA" is the Resource Conservation and Recovery Act of 1984.

ever been established. The Department believes that pesticide treated wood waste may be safely managed in a modern, lined solid waste landfill because of low concentration of leachable pesticides remaining in the wood. The Department has also proposed modified storage limits and specifically promotes the recycling, use and reuse of pesticide treated wood. (See Attachment A, pages A1, no.1 and A6, no. 6 for the proposed rule amendments and adoptions; and Attachment G, no. 3, for the 1993 HW/TUR Advisory Committee recommendation).

**b. Establishing special waste management standards for sandblast grit waste.**

Under current regulations, sandblast grit waste resulting from sandblasting ships and marine structures to remove rust and old paint may contain antifoulant ingredients such as Tributyltin (TBT) or cuprous oxide used to control the growth of unwanted organisms on the hulls. Discarded sandblast grit that is not regulated under the federal hazardous waste rules may still be a state-only hazardous waste if it fails the aquatic toxicity test. Currently, these state-only hazardous wastes must be managed in accordance with federal hazardous waste management standards because no state-specific standards have ever been established. The Department believes that sandblast grit waste, which is a state-only hazardous waste, may be safely managed in a modern, lined solid waste landfill because of low concentration of leachable antifoulant remaining in the grit waste. The Department also proposes to minimize environmental exposure from state-only hazardous grit waste by requiring generators to prevent the waste from entering the environment during generation using Best Pollution Prevention Practices (BPPs), or equivalent methods; proposes modified storage limits and specifically promotes the recycling, use and reuse of sandblast grit waste. (See Attachment A, pages A1, no. 1 and A6, no. 6 for the proposed rule amendments and adoptions, and page A7, Appendix 1 to the proposed amendment for recommended BPPs; and Attachment G, no. 4, for the 1993 HW/TUR Advisory Committee recommendation).

**c. Eliminating hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents.**

Under this rule, any wastes that have either a total of 3% or greater concentration of any substance or mixture of substances identified as federal "P"<sup>†††</sup> listed chemicals or a total of 10% or greater concentration of any substance or mixture of substances

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<sup>†††</sup>"P" listed chemicals are unused commercial chemical products and are federal acute hazardous waste when discarded or spilled.

identified as "U"<sup>††††</sup> listed chemicals under the federal hazardous waste program are a state-only hazardous waste. Currently, the Department subjects these wastes to dual hazardous evaluation by requiring generators to evaluate a waste first under the federal Toxicity Characteristic Leaching Procedure<sup>††††</sup> (TCLP); and if it passes, again under the Department's hazardous waste "3% and 10%" rules. This creates a double hazardous determination standard and is unnecessary.

The Department proposes that wastes containing only the TCLP chemicals which are also listed on the federal "P" and "U" lists not be subject to dual evaluation under Oregon's "3% and 10%" rule, provided wastes containing those chemicals pass the TCLP for the chemical involved. This proposal eliminates twenty-four (24) "U" waste codes, and fifteen (15) "P" waste codes from the dual evaluation requirement. Three-hundred and two (302) "P" and "U" waste codes would remain subject to the "3% and 10%" test, because they are not subject to the TCLP. (See Attachment A, page A5, no. 5 for the proposed rule amendments; and Attachment H for the complete list of "P" and "U" waste codes being proposed for elimination from double evaluation; and Attachment G, no. 5, for the 1993 HW/TUR Advisory Committee recommendation).

3. **Requiring hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records.**
  - a. **Container and tank hazardous waste accumulation management requirements.**

The Department has adopted federal hazardous waste regulations governing hazardous waste that is accumulated and stored in containers and tanks. Under the federal rules, if any of these regulatory requirements are not met, such as failure to label or mark a drum "hazardous", the generator may be required to obtain a RCRA hazardous waste storage permit. In 1980, when EPA promulgated the regulation, EPA believed that such permits would be easily obtainable, but that has not proved to be the case. The Department and EPA generally prefer to see such violation corrected quickly rather than going through a costly and time-consuming permit process, although there may be some instances when failure to follow the requirements in 40 CFR 262.34 might trigger a storage permit.

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<sup>††††</sup>"U" listed chemicals are unused commercial chemical products and are federal toxic, ignitable or reactive hazardous wastes when discarded or spilled.

<sup>†††††</sup>The Toxicity Characteristic Leaching Procedure is a chemical specific test which is used to determine if a chemical listed in 40 CFR 261.24 is by definition a hazardous waste.

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Because of the results of a recent enforcement hearing, the Department proposes to make it clearly a duty of generators to meet the requirements outlined in 40 CFR 262.34 (a)-(f), while retaining the federal option of requiring a permit in egregious cases. (See Attachment A, page A14, no. 8 for the proposed rule amendment; and Attachment G, no. 6, for the 1993 HW/TUR Advisory Committee recommendation).

**b. Maintaining hazardous waste determination records.**

Hazardous waste generators are required to determine if the waste they generate is hazardous. The generator may make this determination through waste analysis or knowledge of the process. Because generators are not explicitly required to maintain written records on how their waste determination was made, it is often difficult for the Department and the generator to demonstrate how the determination is made and to accurately determine generator status. Generator status dictates which regulations apply. Inaccurate status determination can result in improper management of wastes which may be costly for the generator.

The proposed rule requires generators to maintain a copy of the documentation used to determine whether a residue is a hazardous waste as long as the waste is being generated, and for a minimum of three years after the waste stream is no longer generated. If no documentation is created in making the determination, then no new documentation need be created. (See Attachment A, page A13, no. 7 for the proposed rule amendment; and Attachment G, no. 6, for the 1993 HW/TUR Advisory Committee recommendation).

**4. Specifying in regulation the laboratory procedures for conducting hazardous waste determination using an aquatic toxicity test.**

Several methods of aquatic toxicity procedures exist today, and the Department has encountered some confusion over which Aquatic Toxicity Test procedure is required to be performed when making a hazardous waste determination of a pesticide residue. The Department proposes to amend OAR 340-101-033 to reference the document describing the Aquatic Toxicity Test procedure prescribed by the Department's laboratory. (See Attachment A, page A5, no. 5 for the proposed rule amendment; and Attachment G, no. 7, for the 1993 HW/TUR Advisory Committee recommendation).

**5. Establishing Confidential Business Information filing procedures.**

Currently, any hazardous waste information submitted to the Department is considered public information except when designated as trade secret. Hazardous waste rules require that any claim of confidentiality be made at the time of submission of the information; however, substantiation of the claim is not required until the public requests the information. After information substantiating the claim is received by the Department, a determination is made whether the claimed information qualifies as a trade secret.

To avoid delays in evaluating and deciding trade secret confidentiality claims, the proposed rule specifies that substantiation of a confidentiality claim must be made at the time the claim is made. The proposed rule is consistent with the trade secret confidentiality claim procedures used by the Toxics Use Reduction program. (The same people in the agency are responsible for managing both sets of confidential information). (See Attachment A, pages A2, no. 3 and A14, no. 9 for the proposed rule amendments; and Attachment G, no. 8, for the 1993 HW/TUR Advisory Committee recommendation).

**6. Updating and amending the Toxics Use Reduction and Hazardous Waste Reduction regulations.**

The Department proposes to update and amend the Toxics Use Reduction and Hazardous Waste Reduction regulations. There are three proposed revisions to the regulations: (1) exempting one-time hazardous waste generators from Toxics Use Reduction (TUR) planning requirements; (2) revision of OAR 340-135-040 so that cleanups are exempted from planning requirements consistent with the Toxics Use Reduction and Hazardous Waste Reduction Act of 1989; and (3) updating the list of toxic substances and hazardous wastes subject to the TUR planning requirements (OAR 340-135 Appendix I). (See Attachment A, pages A19, no. 14 and A21 no. 15 for proposed amendments; and Attachment G, no 9, for the 1993 HW/TUR Advisory Committee recommendation.)

**Authority to Address the Issue**

**1. Adoption by Reference of the Federal Hazardous Waste Regulations enacted between July 1, 1992 and July 1, 1993, including Used Oil Management Standards with clarifying changes.** ORS 466.020 requires the Commission to adopt rules to establish minimum requirements for the treatment, storage, disposal and recycling of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, storage and disposal sites, and requirements and procedures for selection of such sites.

ORS 466.020 requires the Commission to adopt rules pertaining to hearings, filing of reports, submission of plans and the issuance of licenses pertaining to generators, and to the transportation of hazardous waste by air and water.

ORS 468.869 provides that the Environmental Quality Commission shall adopt rules and issue orders relating to the use, management, disposal of and resource recovery of used oil. The rules shall include but not be limited to performance standards and other requirements necessary to protect the public health, safety and environment and a provision prohibiting the use of untested used oil for dust suppression.

**2. Establishing special waste management standards for treated wood waste and sandblast grit waste and eliminating hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents.**

ORS 466.015(3) allows the Environmental Quality Commission to declassify as hazardous those substances which the commission finds, after deliberate consideration, taking into account the public health, welfare or safety or the environment, have been properly treated, or decontaminated or contain a sufficiently low concentration of hazardous materials so that such substances are no longer hazardous. ORS 466.075(3) allows the Environmental Quality Commission to exempt by rule certain classes or types of hazardous waste generators from part or all of the requirements upon generators adopted by the commission.

**3. Requiring hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records.** ORS 466.020, general rulemaking authority.

**4. Specifying in regulation the laboratory procedures for conducting hazardous waste determination using an aquatic toxicity test.** ORS 466.020, general rulemaking authority.

**5. Establishing Confidential Business Information filing procedures.** ORS 466.020, general rulemaking authority; ORS 466.020 (4), rulemaking authority for hazardous waste reporting; 466.090, inspection and copying of Department records and Confidentiality and Trade Secret Claims; ORS 192 and ORS 646.

**6. Updating and amending Toxics Use Reduction and Hazardous Waste Reduction regulations.** ORS 465.009 requires the Commission to add or remove any toxic substance or hazardous waste from the provisions of ORS 465.003 to 465.034 which



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pertain to the guidelines for toxics use reduction plans, performance goals and annual progress reports.

OAR 340-135-040 (3) allows the EQC to add or delete from the lists of hazardous wastes and toxics substances identified in OAR 340-135 Appendix 1. In addition, OAR 340-135-040 (3)(b) specifies that any additions or deletions to Appendix 1 shall be made by rulemaking at least biennially.

**Process for Development of the Rulemaking Proposal (including Advisory Committee and alternatives considered)**

The Department organized a Hazardous Waste Advisory Committee in 1990 specifically to consider funding options and fee strategies for the Hazardous Waste Program in Oregon. This Committee assisted the Department in developing a permanent generator fee structure to support the program that would also encourage waste reduction and recycling. At the same time, the Department formed a Toxics Use Reduction Advisory Committee to advise the Department on rule development, program development and implementation of the 1989 Toxics Use Reduction and Hazardous Waste Reduction Act.

In 1991, these two committees were combined into a single standing Hazardous Waste/Toxics Use Reduction (HW/TUR) Advisory Committee. The role of this Committee is to counsel the Department on public policy issues related to the Hazardous Waste and Toxics Use Reduction Programs and rulemaking activities, as well as reflect concerns of affected parties. The HW/TUR Advisory Committee consists of representatives from small and large businesses, industry associations, consultants, waste management companies, recyclers, and environmental public interest groups.

In January 1993, the Hazardous Waste Program embarked on a rulemaking process that addressed several rules or sets of rules. This process was announced at the February Responsible Hazardous Materials Conference in Beaverton, Oregon, and discussed at the May meeting of the Associated Oregon Industries Environment Committee. It entailed staff research and development, internal review, and public and advisory committee review of proposed rules followed by a public discussion process which began in July 1993 and continued through October 1993.

The Department held six informal public meetings on the rules and met separately with many of the affected parties, primarily the woodtreating, ship repair, and used oil generating and processing industries. The initial proposed rules and staff report incorporated many of the informal comments prior to convening the Advisory Committee. During a series of six meetings, held between September and November

1993, the Advisory Committee evaluated the rule proposals, including those addressed here, and developed the recommendations found in Attachment G of this staff report.

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

1. **Adoption by Reference of the Federal Hazardous Waste Regulations enacted between July 1, 1992 and July 1, 1993, including Used Oil Management Standards with clarifying changes.** The Department is currently authorized by the federal government to operate the hazardous waste management program, in lieu of the U.S. Environmental Protection Agency (EPA). To retain authorization, states must adopt new federal rules, within specified time frames: adopting these rules keeps Oregon's hazardous waste rules current with federal rules. The Oregon Legislature and Environmental Quality Commission have supported the state's pursuit of authorization and have directed the Department to take any action necessary to maintain Oregon's authorization (ORS 466.086).

This group of federal rules includes new rules defining management methods for mixtures of used oil and other materials and establishing management standards for used oil generators, collection facilities, transporters, processors/re-refiners, burners and marketers of used oil. The Department has proposed clarifying language to better reflect EPA's intent as described in the rules' preamble. Specifically, the definition of "used oil" is expanded to clarify what is not a used oil and a 5,000 BTU per pound limit is set to distinguish used oil that is burned for energy recovery.

2. **Establishing special waste management standards for treated wood waste and sandblast grit waste and eliminating hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents.**

a. **Establishing special waste management standards for treated wood waste.** Under current regulations, discarded pesticide treated wood waste, such as telephone poles, bridge pilings or mill ends, that are not regulated under the federal hazardous waste rules, may still be a state-only hazardous waste if they fail the aquatic toxicity test. Currently, these state-only hazardous wastes must be managed in accordance with federal hazardous waste management standards because no state-specific standards have ever been established. The Department believes that pesticide treated wood waste may be safely managed in a modern, lined solid waste landfill because of low concentration of leachable pesticides remaining in the wood. The Department has also proposed modified storage limits and specifically promotes the recycling, use and reuse of pesticide treated wood.

b. **Establishing special waste management standards for sandblast grit waste.** Oregon shipyards generate about 400,000 tons of grit waste per year through paint stripping operations. Around 10 percent of this waste contains some kind of antifoulant ingredient. Besides the fine "sand" (copper, nickel, coal, slag, etc.), grit waste may contain: antifouling<sup>+++++</sup> ingredients, paint chips, and metals such as chromium, zinc lead and others. Historically, spent grit has been disposed in bays and rivers, or used as fill material. Currently, the only legal disposal option for hazardous waste (state or federal) grit is in a hazardous waste landfill. While this proposal does not alter management requirements for grit that is hazardous under the federal protocol the Department believes managing grit waste as special waste and providing an option of disposal in a lined, modern solid waste landfill adequately addresses the risk associated with this waste.

c. **Eliminating hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents.** This state-only rule is broader in scope than federal hazardous waste rules, and was originally adopted to fill a major loophole in the federal program by which certain hazardous used or unused chemicals could be mixed with or contained in wastes and avoid regulation under the federal program through dilution. The current Department rule regulates as hazardous those wastes containing 3% or 10% or more of the chemicals found on the federal "P" and "U" lists of hazardous waste, respectively.

Currently, some of the chemicals on the "P" and "U" lists are also found on other lists, such as such as the TCLP list. EPA's TCLP addresses more of the "3% and 10%" chemicals than before, and, therefore, some of the problems associated with mixing and diluting hazardous chemicals and wastes to avoid regulation have been eliminated.

The Department believes that subjecting hazardous chemicals to two hazardous waste evaluations, once under federal TCLP tests, and even if they pass, again under the 3% and 10% rule is unnecessary and burdensome. The federal tests show that the concentration of TCLP chemicals in a waste is sufficiently low enough to designate the chemicals non-hazardous for regulatory purposes.

3. **Requiring hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records.** The Department has adopted federal

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<sup>+++++</sup>Antifouling ingredients are pesticides such as Tributyltin (TBT) and cuprous oxide which are used to retard the growth of organisms on a ship's hull or on pilings.

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hazardous waste requirements that govern hazardous waste that is placed in containers and tanks by generators and stored on-site for 90 or 180 days. The federal regulations require standards that generators must meet to be in compliance: if these requirements are not met, through failure to label or mark a drum "hazardous", the generator may be required to obtain a permit. The Department and EPA generally do not require a permit because it is better to simply correct the violation than to go through a costly and time-consuming permitting process. In an enforcement hearing, the issue was raised that 40 CFR 262.34 does not clearly impose a duty on generators to meet the standards outlined in the federal program. The Department believes that a generator has a duty to comply with the requirements of 40 CFR 262 and applicable requirements of 40 CFR 262.34 (a), (b), (c), (d), (e), and (f). Under these requirements generators are required to comply with container and tank management standards, label and mark containers and tanks storing hazardous waste, have a Preparedness and Prevention plan in case of an emergency when storing hazardous waste on-site for 90 or 180 days, and to comply with waste analysis requirements if treating hazardous waste on-site.

Under the hazardous waste rules, a generator must determine whether residues are hazardous: all other hazardous waste requirements are based on this determination. The determination procedures are prescribed by regulation but generators are not explicitly required to maintain documentation of how the determination is made. Lack of testing records or information about the chemical and physical properties of potential hazardous chemicals in waste streams makes it difficult to accurately determine generator status; hence, to determine generator requirements and to track hazardous waste management practices. In addition, lack of determination information makes it difficult for a generator to demonstrate to an inspector that the determination was properly made in the first place. To insure proper waste management and accurate records, a generator conducting a written waste determination, must keep and maintain it on-site for future reference.

4. **Specifying in regulation the laboratory procedures for conducting hazardous waste determination using an aquatic toxicity test.** This is a technical correction to the Department's aquatic toxicity regulation to specify the correct aquatic toxicity test used to determine hazardous pesticide waste. The Department seeks to clarify the rule by referencing the Department's laboratory manual describing the testing procedures.

5. **Establishing Confidential Business Information filing procedures.** The current rule requires that claims of confidentiality be made at the time information is submitted to the Department. There are no procedures on how or when a claim is to be substantiated by a facility. Currently, the Department asks facilities to substantiate a confidentiality claim only after a public information request is made. The Department

must make the determination of whether the information meets the tests for confidentiality in order to fully respond to the public request. This process is clumsy and difficult for the facility and the Department since the claim may have to be justified many years after it is made.

6. **Amending and updating Toxics Use Reduction and Hazardous Waste Reduction regulations.**

a. **Exemption of one-time hazardous waste generators from Toxics Use Reduction planning requirements.** Large and small quantity generators of hazardous waste are required by statute (ORS 465.018) to develop TUR plans regardless of how the waste was generated (with the exception of generators of cleanup wastes). However, many generators produce waste that results from a one-time generation event, such as cleaning out a laboratory chemical storage room or decommissioning equipment. These facilities are usually conditionally exempt generators (CEG) prior to the one-time event and often will not generate additional hazardous waste following the event. The proposed rule allows flexibility for CEGs and simplifies administrative requirements of the TUR program.

b. **Exempt hazardous waste generated as a result of remedial actions from Toxics Use Reduction planning requirements.** Oregon Statutes (ORS 465.034) specify that the TUR planning requirements do not apply to waste that becomes subject to regulation solely as a result of remedial activities taken in response to environmental contamination. This exemption, while in statute, is not currently specified in rule.

c. **Updating the list of toxic substances and hazardous wastes subject to the Toxics Use Reduction and Hazardous Waste Reduction planning requirements (OAR 340-135 Appendix 1).** The list of toxic substances and hazardous wastes subject to the planning requirements is required to be updated on a biennial basis. This change simply updates the list of chemicals and wastes subject to TUR planning.

**Relationship to Federal and Adjacent State Rules**

The federal regulations being adopted by reference are identical to the federal program, except for the Department's clarifying changes, which meet the intent of the federal used oil management program as specified in the preamble to the federal rule.

Changes proposed to the treated wood waste rules and generator rules make the Department's program more equivalent to current federal regulations and most states' management requirements. The only difference between the federal generator hazardous

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waste characterization recordkeeping requirement and the Department's proposal is that generators will be required to retain documentation used to determine if a waste is not hazardous (the federal program requires such documentation be kept only if the waste is hazardous). Modifications to the "3% and 10%" rules make the Department's program equivalent to EPA's program for 39 hazardous constituents, although the Department continues to regulate 302 federal "P" and "U" constituents under the "3% and 10%" rule. Proposed changes to CBI are similar in intent to current federal regulations under 40 CFR Part 2. The proposed changes to TUR planning requirements have no federal equivalent although many states, including California and Washington, now have similar programs in place.

### **Summary of Significant Public Comment and Changes Proposed in Response**

Many of the comments received were supportive but suggested minor modifications to the Department's proposed rules. (See Attachment E for specific summary of responses to comments).

In response to comments, the Department did make significant changes to the proposed clarifications to the federal used oil regulations. Specifically, the Department deleted its proposed definition (OAR 340-111-002) of "used oil handler" because concern was expressed that the definition was limiting and could be construed to apply only to a portion of the universe of oil handlers. The Department agreed and removed all reference to "used oil handlers" in the proposed rule. In addition, the Department deleted its proposed definition of "solvent" (340-111-002). The Department had proposed to define "solvent" as any material that is used to solubilize (dissolve) or mobilize other constituents for activities such as degreasing, cleaning, painting or coating. This had the effect of limiting "solvents" from being construed as "used oil". Interested parties were concerned that excluding "solvents" from the definition of "used oil" would exclude lubricating oils from the definition, since they have secondary cleaning property. That, of course, was not the Department's intent: lubricating oils do indeed meet the definition of "used oil" when they become spent. However, the Department believes the issue needs addressing and is proposing to add the word "*primarily*" to the definition of "used oil" to clarify that "used oil" does not include oil based products that are used *primarily* as solvents. Finally, concern was expressed that registering the activities of used oil collection centers, transporters, transfer facilities, off-specification used oil burners, processors and marketers on hazardous waste notification forms implied that used oil is a hazardous waste. "Used oil" is not hazardous waste if properly recycled. The Department will retitle its notification form "Notification of Hazardous Waste and Used Oil Activity."

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Changes were also made to the proposed confidential business information rules as a result of comments received. Concern was expressed that the proposed rule could be construed to limit legitimate claims allowed under the Public Records Law and Trade Secrets Act. It is not the Department's intent to limit the scope of claims allowed by law. The Department proposes to adopt language suggested by AOI that clearly states the intention of the rule. The Department also agreed to specifically list which documents and materials would be subject to concurrent substantiation of a confidentiality claim. Substantiation for all other claims would be submitted upon the Department's request.

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

Public versions of the rules will be updated to reflect the newly adopted rule changes. Information factsheets, including ones for woodtreaters and used oil processors, will be developed for distribution to affected businesses. Information on these rules will be incorporated into the Department's on-going technical assistance efforts and training workshops, and notice of the final rule changes will be sent to the potentially affected regulated community.

### **Recommendation for Commission Action**

It is recommended that the Commission adopt the rule amendments as presented in Attachment A of the Staff Report.

### **Attachments**

- A. Rules Proposed for Adoption
- B. Supporting Procedural Documentation:
  - 1. Legal Notice of Hearing
  - 2. Notice to Interested and Affected Public
  - 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 and Responses to Public Comments
- F. Summary of Federal Hazardous Waste Regulations Proposed for Adoption
- G. Advisory Committee Membership and Report
- H. List of "P" and "U" Chemicals not Subject to Regulation under the State-only "3% and 10% Rule"

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**Reference Documents (available upon request)**

Written Comments Received (listed in Attachment D)

Approved:

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Division: Mary Wahl

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Phone: 229-6534

Date Prepared: March 1, 1994

Ca:Ca  
EQC31194  
March 1, 1994



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

In the Matter of Amending and ) Proposed Amendments, Adoptions, Deletions and  
Correcting OAR 340, Divisions ) Corrections  
93, 100, 101, 102, 105, 110,  
111 and 135 )

Unless otherwise indicated, material enclosed in brackets and crossed out e.g. [---], is proposed to be deleted and material that is underlined> is proposed to be added.

**1. Rule 340-93-190 is proposed to be amended as follows:**

**Wastes Requiring Special Management**

**340-93-190**

(1) The following wastes require special handling or management practices, and shall not be deposited at a solid waste disposal site unless special provisions for such disposal are included in a Special Waste Management Plan pursuant to OAR 340-94-040(11)(b)(J) or 340-95-020(3)(j), or their disposal is otherwise approved by the Department:

- (a) **Agricultural Wastes.** Residues from agricultural practices shall be recycled, utilized for productive purposes or disposed of in a manner not to cause vector creation or sustenance, air or water pollution, public health hazards, odors, or nuisance conditions;
- (b) **Construction and Demolition Materials.** Due to the unusually combustible nature of construction and demolition materials, construction and demolition landfills or landfills incorporating large quantities of combustible materials shall be designed and operated to prevent fires and the spread of fires, in accordance with engineering or operations plans required by these rules. Equipment shall be provided of sufficient size and design to densely compact the material to be included in the landfill;
- (c) **Oil Wastes.** More than 30 gallons of petroleum-bearing wastes such as used oil filters, oil-absorbent materials, tank bottoms or oil sludges shall not be placed in any

disposal site unless all recoverable liquid oils are removed and special provisions for handling and other special precautions are included in the facility's approved plans and specifications and operations plan to prevent fires and pollution of surface or groundwaters. See also OAR 340-93-040(3)(a), Prohibited Disposal;

- (d) **Infectious Wastes.** All infectious wastes must be managed in accordance with ORS 459.386 to 459.405:
  - (A) Pathological wastes shall be treated by incineration in an incinerator which complies with the requirements of OAR 340-25-850 to 340-25-905 unless the Department determines:
    - (i) The disposal cost for incineration of pathological wastes generated within the individual watershed exceeds the average cost by 25 percent for all incinerators within the State of Oregon which comply with the requirements of OAR 340-25-850 to 340-25-905; or the generator is unable to contract with any incinerator facility within the State of Oregon due to lack of incinerator processing capacity; and
    - (ii) The State Health Division of the Oregon Department of Human Resources has prescribed by rule requirements for sterilizing "cultures and stocks," and this alternative means of treatment of the pathological waste is available.

- (B) Sharps. Sharps may be treated by placing them in a leak-proof, rigid, puncture-resistant, red container that is taped closed or tightly lidded to prevent loss of the contents. Sharps contained within containers which meet these specifications may be disposed of in a permitted municipal solid waste landfill without further treatment if they are placed in a segregated area of the landfill.
- (C) Medical waste. Medical waste other than infectious waste as defined by ORS 459.386 or hazardous wastes as defined by ORS 466.055 may be disposed of without special treatment in municipal solid waste landfills permitted by the Department if such disposal is not prohibited in the permit.
- (e) Asbestos. Wastes containing asbestos shall be disposed of pursuant to OAR 340-25-450 through 340-25-469.
- (f) Abrasive Blast Media Containing Pesticides. Waste described in OAR 340-101-034(1) may be disposed of at a solid waste landfill if the site meets the design criteria of 40 CFR 258.40 for new municipal solid waste landfill units.
- (g) Pesticide Treated Wood. Waste described in OAR 340-101-034(2) may be disposed of at a solid waste landfill if the site meets the design criteria of 40 CFR 258.40 for new municipal solid waste landfill units.
- (2) Incinerator ash. Ash from domestic energy recovery facilities and from domestic solid waste incinerator disposal sites shall be disposed of at an ash monofill permitted by the Department. Such a monofill must meet standards in 40 CFR 258 and OAR Chapter 340, Division 94.
- (3) Polychlorinated Biphenyls (PCBs). Wastes containing polychlorinated biphenyls shall be disposed of pursuant to OAR Chapter 340, Division 110.

**2. Rule 340-100-002 is proposed to be amended as follows:**

**Adoption of United States Environmental Protection Agency Hazardous Waste and Used Oil Management Regulations.  
340-100-002**

- (1) Except as otherwise modified or specified by OAR Chapter 340, Divisions 100 to 106, 109, 111, and 120, the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Parts 260 to 266, 268, 270, 279 and Subpart A of 124, [~~58 FR 8658, February 16, 1993,~~] and amendments thereto promulgated through July 1, 1992~~13~~, except for 57 FR 7628, March 3, 1992, are adopted by reference and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080, and 466.090 to 466.215.
- (2) Except as otherwise modified or specified by OAR Chapter 340, Division 111 to incorporate, by reference in rule OAR 340-100-002, the rules and regulations governing the standards for the management of used oil, prescribed by the United States Environmental Protection Agency in Title 40 code of Federal Regulations, Part 279 and amendments thereto promulgated through January 1, 1993, are adopted by reference into Oregon Administrative Rules and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.

(Comment: The Department uses the federal preamble accompanying the federal regulations and federal guidance as a basis for regulatory decisionmaking).

**3. Rule 340-100-003 is proposed to be amended as follows:**

**Public Disclosure and Confidentiality.**

**340-100-003**

- (1) The provisions of this rule replace the provisions of 40 CFR 260.2.
- (2) All records, reports, and information submitted pursuant to the hazardous waste

statutes, rules, and regulations are open for public inspection and copying except as provided in sections (3) to (7) of this rule. Provided however, that nothing in this rule is intended to alter any exemption from public disclosure or public inspection provided by any provision of ORS Chapter 192 or other Oregon law.

~~(2)3(a)~~ Records, reports, and information submitted pursuant to the ~~set~~ hazardous waste statutes, rules, and regulations may be claimed as ~~confidential~~ trade secret by the submitter in accordance with ORS 192.410 through 192.505 and 466.090. ~~Such claim must be asserted at the time of submission by stamping the words "confidential business information", or the equivalent on each page containing such information. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with ORS 192.500 and 466.090(2).~~

(b) The Department shall designate a Document Control Officer for the purpose of receiving, managing, and securing confidential information. The following information shall be secured by the Document Control officer:

- A) claimed trade secret information until the claim is withdrawn by the submitter, determined not to be confidential under section (6) of this rule, or invalidated,
- B) information determined to be trade secret, and
- C) any other information determined by court order or other process to be confidential.

(c) All Uniform Hazardous Waste Manifest information submitted on any required report pursuant to the hazardous waste statutes, rules, and regulations is publicly available and is not subject to trade secret confidentiality claims.

(d) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

(4) The following procedures shall be followed when a claim of trade secret is made:

(a) Each individual page of any submission that contains the claimed trade secret information must be clearly marked as "trade secret," "confidential," "confidential business information," or equivalent. If no claim by appropriate marking is made at the time of submission, the submitter may not afterwards make a claim of trade secret.

(b) Written substantiation in accordance with paragraph 4(d) of this rule:

A) Must accompany any information submitted pursuant to OAR 340-102-012, 340-102-041, 340-104-075, 340-105-010, 340-105-013, 340-105-014, 340-105-020, 340-105-021, 40 CFR 262.12, 264.11, or 265.11 or

B) For all other information submitted to the Department, written substantiation must be provided pursuant to subsection 5 of this rule.

A late submission of the trade secret substantiation will invalidate the trade secret claim.

(c) Trade secret information must meet the following criteria:

(A) Not the subject of a patent;

(B) Only known to a limited number of individuals within an organization;

(C) Used in a business which the organization conducts;

(D) Of potential or actual commercial value; and

(E) Capable of providing the user with a business advantage over competitors not having the information.

(d) Written substantiation of trade secret claims shall address the following:

(A) Identify which portions of information are claimed trade secret.

(B) Identify how long confidential treatment is desired for this information.

(C) Identify any pertinent patent information.

(D) Describe to what extent the information

has been disclosed to others, who knows about the information, and what measures have been taken to guard against undesired disclosure of the information to others.

- (E) Describe the nature of the use of the information in business.
  - (F) Describe why the information is considered to be commercially valuable.
  - (G) Describe how the information provides a business advantage over competitors.
  - (H) If any of the information has been provided to other government agencies, identify which one(s).
  - (I) Include any other information that supports a claim of trade secret.
- (e) A public version of the document containing the claimed trade secret information must be submitted at the time the trade secret substantiation is required as provided in subsection 4 (b) (A) and subsection 5 (a) of this rule.
- (5) (a) Written trade secret substantiation as required under subsection 4 (b) (B) and a public version of the information as required by subsection 4 (e) shall be provided within 15 days of receipt of any Department request for trade secret substantiation or the public version of the information. The Department shall request the written trade secret substantiation or the public information version if:
- (A) a public records request is received which would reasonably include the information, if the information were not declared as trade secret, or
  - (B) it is likely that the Department eventually will be requested to disclose the information at some future time and thus have to determine whether the information is entitled to trade secret confidentiality. This includes information that relates to any permit, corrective action, or potential violation information.
- (b) A late submission of the written trade secret substantiation will invalidate the trade secret claim.

(6) When evaluating a trade secret claim the Department shall review all information in its possession relating to the trade secret claim to determine whether the trade secret claim meets the requirements for trade secret as specified in paragraphs 4(c) and 4(d) of this rule. The Department shall provide written notification of any final trade secret decision and the reason for it to the person submitting the trade secret claim within 10 working days of the decision date.

- (a) If the Department or the Attorney General determines that the information meets the requirements for trade secret, the information shall be maintained as confidential.
- (b) If the Department determines that the information does not meet the requirements for trade secret, the Department shall request a review by the Attorney General. If the Attorney General determines that the information does not meet the requirements for trade secret, the Department may make the information available to the public no sooner than 5 working days after the date of the written notification to the person submitting the trade secret claim.
- (c) A person claiming information as trade secret may request the Department to make a trade secret determination. The person must submit the written substantiation in accordance with paragraph 4(d) of this rule and the public version in accordance with paragraph 4(e) of this rule. The Department shall make the determination within 30 days after receiving the request, written substantiation, and the public version.

(f) ~~Records, reports, and information submitted pursuant to these rules shall be made available to the Environmental Protection Agency (EPA) upon request. If the records, reports, or information has been submitted under a claim of confidentiality, the state shall make that claim of confidentiality to EPA for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law.~~

(Comment: It is suggested that claims of trade secret be restricted to that information considered absolutely necessary and that such information be clearly separated from the remainder of the submission.)

**4. Rule 340-101-004 is proposed to be amended as follows:**

**Exclusions**

**340-101-004**

- (1) The provision of 40 CFR 261.4(b)(7) is deleted and replaced with section (2) of this rule.
- (2) Residues from the extraction and beneficiation of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore, are not hazardous waste.

(Comment: The State program is more stringent than the federal program in that the latter also excludes residues from processing.)

- (3) Residue described in 40 CFR 261.4 (b)(9) is exempted from Divisions 100-106 and 109.

**5. Rule 340-101-033 is proposed to be amended as follows:**

**Additional Hazardous Wastes.**

**340-101-033**

- (1) The residues identified in sections (2) and (3) of this rule are hazardous wastes and are added to and made a part of the list of hazardous wastes in 40 CFR 261.33.
- (2) Any residue, including but not limited to manufacturing process wastes and unused chemicals that has either:
  - (a) A 3% or greater concentration of any substance or mixture of substances listed in 40 CFR 261.33(e), except those substances or mixtures of substances containing only those toxic contaminants listed in 40 CFR 261.24 in Table 1; or
  - (b) A 10% or greater concentration of any substance or mixture of substances listed in 40 CFR 261.33(f), except U075 (Dichlorodifluoromethane) and U121 (Trichloromonofluoromethane) when they are intended to be recycled, and except those substances or mixtures of substances containing only those toxic contaminants listed in 40 CFR 261.24 in Table 1.

- (3) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water, of either:

- (a) A residue identified in subsection (2)(a); or
- (b) A residue identified in subsection (2)(b).
- (c) A residue identified in subsections (2)(a) or (2)(b) as a hazardous waste has the hazardous waste letters "OR" followed by the corresponding hazardous waste number(s) in 40 CFR 261.33(e) and (f).

- (4) The wastes identified in subsections (2)(a) and (3)(a) of this rule are identified as acutely hazardous wastes (H) and are subject to the small quantity exclusion defined in 261.5(e).

(Comment: Sections (2) and (3) of this rule shall be applied to a manufacturing process waste only in the event it is not identified elsewhere in this Division, but prior to application of section (5) of this rule.)

- (5) (a) Pursuant to "Department of Environmental Quality Hazardous Waste Aquatic Toxicity Testing Procedures," [A] a pesticide residue or pesticide manufacturing residue is a toxic hazardous waste if a representative sample of the residue exhibits a 96-hour aquatic LC<sub>50</sub> equal to or less than 250 mg/l, except for residues listed in Table 1 of 40 CFR 261.24 which pass the evaluation requirement of 40 CFR 261.24 (a).
  - (b) A pesticide residue or pesticide manufacturing residue identified in subsection (5)(a) of this rule but not in 40 CFR 261.24 or listed elsewhere in Subpart D of 40 CFR Part 261, has the Hazardous Waste Number of X001 and is added to and made a part of list of hazardous wastes in 40 CFR 261.31, until a representative sample of the residue no longer exhibits an LC<sub>50</sub> equal to or less than 250 mg/l.
- (6) (a) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates identified as follows are added to and made a part of the list in 40 CFR 261.33(e):
  - (b) P999. . . .Nerve agents (such as GB (Sarin) and VX).

- (7) Hazardous waste identified in this section is not subject to 40 CFR Part 268.

6. Rule 340-101-034 is proposed to be adopted as follows:

Wastes Requiring Special Management

340-101-034

- (1) Abrasive Blast Waste Containing Pesticides. Abrasive blast waste which contain pesticides that do not meet the criteria specified in 40 CFR Part 261, Subpart C, and are not a federal hazardous waste for any other reason, and meet the criteria identified in OAR 340-101-033 (5)(a) are not subject to Divisions 100 to 108 and 109 provided:
- (a) the waste is prevented from entering the environment; and,
- (Comment: The practices described in Appendix I "Best Pollution Prevention Practices for Abrasive Blast Media Waste from Shipyard Repair Facilities", or equivalent Best Pollution Prevention Practices should be used).
- (b) the waste is not stored for more than six months unless the generator demonstrates that a longer storage time is necessary to meet the management standards in OAR 340-101-034(1)(c); and,
- (c) the waste is recycled, disposed of according to OAR 340-93-190(1)(f), or disposed of at a hazardous waste facility or other facility authorized to receive such waste.
- (2) Pesticide Treated Wood. Spent treated wood that is used or reused for a purpose for which the material would be treated is exempt from this part and from OAR 340-101-033(5)(a). Waste resulting from the use of newly pesticide treated wood, including scrap lumber, shavings and sawdust; waste resulting from shaping pesticide treated wood, such as sawdust, shavings and chips; and treated wood removed from service that do not meet the criteria specified in 40 CFR Part 261, Subpart C, and are not a federal hazardous waste for any other reason; and, are not otherwise excluded by 40 CFR 261.4(b)(9), but meet the criteria identified in 340-101-033 (5)(a); are not subject to Divisions 100 to 108

provided:

- (a) the waste is not stored for more than six months unless the generator demonstrates that a longer storage time is necessary to meet the management standards in OAR 340-101-034(2)(b); and,
- (b) the waste is recycled, disposed of according to OAR 340-93-190(1)(g), or disposed of at a hazardous waste facility or other facility authorized to receive such waste.

Appendix 1

**BEST POLLUTION PREVENTION PRACTICES  
FOR ABRASIVE BLAST MEDIA WASTE  
FROM SHIPYARD REPAIR ACTIVITIES**

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Based on **Best Management Practices Manual For The Shipbuilding and Repair Industry,**  
The Commonwealth of Virginia State Water Control Board.

## FORWARD

There has been increasing concern in recent years about pollutants generated by the shipbuilding and repair industry. In particular, abrasive blast media, metals, metal related compounds, petroleum associated hydrocarbons and antifouling ingredients in paints have come under scrutiny. One reason for concern with pollutants generated by ship repair activities is the close proximity to water and the potential to pollute this resource. Technical inspections and toxics monitoring of shipyard effluent show that significant levels of pollutants are generated by shipbuilding, repair and maintenance operations. Inspections demonstrate a continuing effort by the DEQ to prevent shipyard-related pollutants from entering State waters, particularly to sensitive bays and estuaries.

As a result of these inspections, it was evident that Best Pollution Prevention Practices (BPP's) for the ship and boat repair industry were necessary. In 1993, the DEQ proceeded with the identification of general BPP's applicable to this industry. National Pollutant Discharge Elimination System (NPDES) permits were written to include BPP language, however, the permit wording was later determined to be too general. It was apparent that BPP's were needed that would contain exacting language, that would be enforceable, and would be practical in terms of their implementation at various facilities.

This manual was developed through literature search, yard inspections and discussions between DEQ and the marine industry, and is designed to serve as an introduction to pollution prevention for repair facilities that do abrasive blasting. Implementation of BPP's described herein should provide significant and economical pollution control at boat yard and repair facilities.

Because the Department of Environmental Quality is not responsible for the implementation and maintenance of the BPP's described in this manual, and does not have daily control over each facility's particular use of the BPP's, the Department will not guarantee or warrant the performance or results that may be obtained by the implementation of the BPP's described herein; only that the BPP's will perform substantially in accordance with the specifications and constraints set forth in this manual, assuming they are properly installed and maintained.

The BPP's described in this manual are part of state regulations, therefore are enforceable. Noncompliance with BPP's or equivalent management methods may result in penalties. These BPP's are intended to complement, not substitute, existing federal and state regulations.

## INTRODUCTION

The shipbuilding and repair industry presents a unique problem in terms of applying pollution control techniques. Although a given facility may not compare exactly with another facility in terms of repair capabilities, type and size of docks, and so on, there are enough similarities between facilities to describe pollution control techniques that can be adapted to suit a specific site.

There are several different functions that occur at ship and boat repair facilities. Some facilities employ a few people, while others employ many people, including various subcontractors, blacksmiths, boilermakers, chemists, carpenters, electricians, laborers, machinists, welders, painters, sandblasters, riggers, pipe fitters and a number of administrative and managerial staff.

Each of these facilities and associated shipyard services create their own unique set of potential environmental concerns. A tremendous amount of spent blast abrasive dust and grit is generated daily. Millions of gallons of vessel discharges are piped, collected, tested, treated, recycled or transported. Air pollution, noise pollution and water pollution can occur simultaneously with the variety of operations that take place.

There are hundreds of smaller shipyards and marinas which service small commercial and private boats, in addition to large shipyards which service everything from small vessels and marine equipment to super structures.

Abrasive blasting at repair facilities presents an especially challenging task in terms of pollution control because this activity results in a very fine airborne dust which is difficult to contain, it is generated in large volumes, and it takes place near water resources. Add to this complexity, antifouling ingredients which can be deadly to water organisms. Abrasive blasting clearly is what is known as a "cross media" pollutant which affects air, water and land.

While there are a variety of pollutants that may result from activities at repair facilities: abrasive blast and paint, lubricants and oils, solvents, vessel discharge, stormwater runoff, etc., all of which need to be properly managed to insure protection of the environment, this manual focuses on one of the biggest problems in the shipyard industry: controlling the pollutants associated with paint removal operations.



## SECTION ONE

### ABRASIVE BLASTING AND ANTIFOULING PAINT

There are a variety of abrasive blast materials that can be used in air or water blasting processes used to remove paint from vessels and marine structures. Blast material particles, also referred to as "grit", are about 1/8" in diameter. These normally jagged, or sharp-edged particles become rounded and somewhat reduced in size after being blasted against a vessel's hull, for example, to remove paint.

Vessels, depending on the size, can use an enormous amount of grit for both interior and exterior blasting. One large supertanker, for example, may require up to 40,000 tons of grit just to do interior blasting. The amount of grit needed to remove paint from a vessel's exterior depends on the surface condition of the hull (i.e., was the previous paint put on bare metal, or over existing paint), the nozzle diameter of the hose used in abrasive blasting, and the number of coats to be removed and other contract specifications.

Some of the brand names of abrasive blast material include: Black Blast, Black Beauty, Fines Blast and Green Diamond. The constituents of abrasive blast varies somewhat, but in general the primary components with approximate percentages are:

- |  |        |
|--|--------|
| <input type="checkbox"/> Silicon Dioxide | 20-50% |
| <input type="checkbox"/> Iron Oxide      | 15-40% |
| <input type="checkbox"/> Aluminum Oxide  | 0- 25% |
| <input type="checkbox"/> Calcium Oxide   | 0- 25% |

These four components comprise up to 90% of the abrasive grit composition. Other abrasive grits may contain as much as 10-15% zinc oxide or 20-25% magnesium oxide. Trace elements in these abrasive grits include: potassium oxide, sodium oxide, copper, titanium and sulfur.

Spent abrasive blast material may contain a variety of pollutants. Fresh, or unused abrasive blast media is even considered a "dangerous" or "special" waste in some states due to gill abrasion which can be fatal to some fish; therefore, abrasive blast media, used or unused, should not be discharged into State waters.

When hydroblasting, rust inhibitors such as sodium nitrite or diamonium phosphate may be used. In certain situations, antifreeze may also be part of the water jet to reduce ice formations.

Antifouling paints are used on vessels and marine structures to control the growth and attachment of "fouling" organisms such as barnacles, seaweed and algae. This is the intended effect of antifouling ingredients in paint. However, some antifouling ingredients, such as Tributyltin (TBT) can have a deadly effect on species

other than fouling organisms. TBT is highly toxic in small concentrations to fish, oysters, clams and other forms of water life, so proper management of TBT-containing paint, and while blasting vessels that have been painted with TBT paint, is extremely important.

How does Tributyltin, and other antifoulants get into the environment?

Here are some of the most common ways:

- External blasting out of dry docks or contained areas
- Uncovered or loosely covered sandblast waste piles where grit blows away, or rainwater leaches antifoulant into nearby surface water or ground water
- Sweeping or hosing sandblast grit waste into water
- Submerging dry docks with grit waste on them
- Overspray of TBT or other antifouling paints

Not only can mismanagement of waste containing antifoulants kill water organisms, but mismanagement of antifouling paints is a violation of hazardous and solid waste regulations.

The following section provides suggested Best Pollution Prevention Practices that are intended to be used as general guidelines to achieve the underlying objective of protecting the air, water and land from abrasive blast media, which may or may not contain antifouling ingredients.

## SECTION TWO

### ABRASIVE BLASTING: BEST POLLUTION PREVENTION PRACTICES

It is easy to understand the magnitude of controlling the pollutants associated with paint removal operations when the multitude of marine paints, which contain hazardous and toxic chemicals, is considered. And this is just one aspect of the activities that go on in ship repair. Besides blasting operations which are ongoing, there is the potential for large quantities of paints, thinners and solvents to enter State waters, either by accidental spills, poor cleaning procedures or improper disposal. When these paints are blasted off of vessels and marine structures, thousands of tons of grit waste are generated. The following Best Pollution Prevention Practices describe various methods of containing abrasive blasting:

**BPP ONE:**

**SHROUDING**

Vessel maintenance generally involves some amount of abrasive blasting with copper, nickel or some other type of slag, or steel shot. These operations may be carried out on the ship's interior tanks and compartments or on the exterior hull and upper decks. The use of blast abrasive or paint represents a major pollutant source which may be lost, directly or indirectly to the water during the repair work.

While performing abrasive blasting or painting operations in floating dry docks, wet slips and marine railways, or other areas where blast material may reach State water, shroud material should be erected to prevent the loss or scattering of these potential pollutants. Shroud material should be used in graving docks as well, particularly extending from the ship sides to the top of the graving dock walls. In addition, shrouding should be incorporated with all blasting or painting performed on super structures.

**BPP OBJECTIVE:**

The use of shrouds can reduce or prevent the loss of abrasive blast grit and paint to the water surface. Shrouding can also reduce the scattering effects of wind and localize the area needing cleanup.

**CRITERIA:**

The shroud must be large enough to adequately enclose or segregate the working area. The bottom of the shroud should be fastened to the dock floor.

The shroud must be sufficiently supported to withstand minor wind stress. Support structures should be used in conjunction with the shroud.

With the shrouding in place the drydock space beneath the shrouding would be considered a confined space. To comply with OSHA 1915 standards, fresh air respirators for all personnel is required and proper ventilation, blowers, fans and all electrical equipment must be intrinsically safe.

**Floating Drydocks**

It is recommended that lightweight, polyethylene shroud be used for vertical hanging. Small sections of the material can be tied together to form larger shrouds for hanging at the aft and bow sections of the dock. The shroud may have screened flaps or openings to lessen wind stresses. The material can also be manufactured with grommets and securing (spring type) hooks which are used to hang the shroud. Typically the shroud can be fastened to cables connected to dock wing walls or cables which are strung from the top of one wing wall to the other wing wall. Ropes or cables can be fastened to grommets on the center of the shrouds to enhance vertical hanging stability.

The material can also be used to shroud the larger sally ports of some docks. For work on upper sides of vessels, the shroud should be fastened from the ship decks to the dock wing walls. The bottom of the shroud should hang sufficiently upon the dock floor to allow it to be weighted down or fastened. Straw bales should be placed on the floor behind the bottom of the shroud. Periodically, scattered abrasive will be blown and trapped under the shroud. This material needs to be swept up daily to prevent it from escaping into the water. Shrouding, combined with other Best Pollution Prevention Practices should provide an effective method for controlling blast abrasive and paint overspray on floating dry docks.

**Graving Docks**

The primary concern at these facilities involves using shrouds to prevent blast abrasives and paint overspray from exiting the top of the dock. Therefore, shrouds should be erected between the vessel deck to the dock walls. Vessel deck abrasive blasting and painting activities should be shrouded in a dome-like fashion to prevent the scatter and loss of pollutants.

**Marine Railways**

Marine railways present a different problem in controlling spent abrasive blast material. These are areas that are essentially uncontained and open to the effects of the wind. Two methods are suggested to control abrasive scatter at railways. The first technique involves erecting poles or masts at each end of the railway in a semicircular fashion. The poles can hold roled-up shrouds that are lowered when needed. Shroud is also hung vertically from the railway wing wall scaffold to prevent abrasive loss on the railway sides. The top is then protected by stringing shroud from the vessel deck to the side wall scaffolds. Some railways may not have side wall scaffolds. It is then necessary to erect masts which encircle the entire railway work area.

Another acceptable technique involves segregating the water surface from the railway work area. Masts are erected along the shoreline which hold the shrouds. The vessel is raised and the shrouds are strung to form a barrier between the water surface and the work area. A portable scaffold is then placed around the immediate work area of the vessel. The scaffold is covered with shroud material. The workman is required to work within the shroud scaffold, which must be moved as the workman moves along the length of the vessel. Abrasive material that escapes the shrouding scaffold will be further confined to the work area by the shoreline shrouding. Timely cleanup and railway underpaving play an important and equal role in ensuring that the pollutants will not enter State waters. A lighter may be required in conjunction with shrouding for ships that overhang a marine railway, or on the pier side of a vessel in a wet slip.

### Wet Slip

Wet slips are the most difficult locations to attempt to control abrasive scatter and paint overspray. Such work in this area will most likely result in the loss of pollutants to the water surface. To properly conduct blasting and painting operations at wet slips, it will be necessary to use the pier, scaffolding, lighters and the vessel to erect shrouds. Only small sections of a vessel should generally be worked on at any time. Protecting surface waters from wet slip blasting and painting is a time consuming and difficult task which must conform to the varying size and shape of each vessel. This task can be made more efficient by erecting masts along the pier and by using magnets against the vessel hull to hold the shroud in place. The lighters and the pier should be cleaned up at the end of each work shift.

### CONCERNS

To be effective, the shrouding must be properly designed, constructed positioned and erected.

The use of magnets to hold shrouding may be acceptable if sensitive electronic equipment is on board the vessel. Enhance lighting outline in OSHA 1915.92 standards and forced supply and exhaust ventilation may be required for the shrouded work areas.

While certain concentrations of blast dust are airborne and during all painting evolutions, the concentrations of fumes and dust will require continuous monitoring for the LEL and O<sub>2</sub> contents by a Marine Chemist or OSHA Certified Competent Person.

### BPP TWO:

#### OVERWATER PROTECTION

General work and repairs are continually being performed around or adjacent to wet slip piers, floating dry docks, marine railways and the exterior and interior sides and the upper decks of ships. Much of this work generates trash and pollutants of various forms which potentially may fall onto the water surface below. The use and proper positioning of lighters (pontoons, small floating decks or barges, etc.) can enhance the ability to retrieve pollutants prior to inadvertent loss to surface waters.

### BPP:

Provide and position a lighter adjacent to ships, floating dry docks, piers and marine railways. These work platforms provide a catch surface for trash, paint spray, grit, paint slop, oil slop, etc.

Lighters should be used to protect the water surface underneath and adjacent to vessels in wet slips and vessels which overhang marine railways and floating dry docks.

### BPP OBJECTIVE:

The primary objective is to catch the waste pollutant material prior to being lost to the water surface where cleanup becomes more difficult. The lighters need not necessarily be used primarily for workmen or machinery support but rather to catch discarded materials and pollutants.

Lighters also provide a surface for performing work related operations. The lighter should carry a drip pan in which all fluids (paints, solvents, oils, etc.) are contained. A drop cloth should be placed under the drip pan to catch fluid "slosh" over the pan rim due to wave action or transport. Following use of the drip pan, it must be removed from the lighter and cleaned. The waste fluids should be placed in proper storage containers for subsequent disposal.

For abrasive blasting and painting operations, lighters are to be used in conjunction with shrouding. Booms and/or absorbent devices are to be placed around the lighter to contain contaminants which reach the water surface.

### CRITERIA:

Proper positioning of the lighter is of utmost importance to prevent pollutants from reaching surface waters. The lighter must be large enough to catch falling pollutants and stable enough to support workmen and required equipment. A tarpaulin or other protective coverings should be employed if the spacing between flooring boards is great enough to allow pollutants to fall through. The mixing of paints, solvents, or other hazardous materials should not be permitted on the lighter. This should be performed at a designated mixing area.

### CONCERNS

Use of a lighter requires that cleanup operations are periodically performed. Cleanup of the lighter should occur daily, and if, possibly, after every work shift. Cleanup procedures include sweeping or vacuuming spent abrasive and trash and placing the debris into designated disposal containers.

### BPP THREE:

#### WATER BLASTING, HYDROBLASTING, WATER-CONE BLASTING AND SLURRY BLASTING

Water blasting, hydroblasting, water-cone blasting and slurry blasting is performed to either clean sediment and marine growth from vessel hulls or to remove the top layers of hull paint. These techniques will generate large volumes of water with the potential of transporting existing pollutants to surface water.

**BPP:**

Water blasting, hydroblasting, slurry blasting and/or water-cone blasting should not be conducted unless prior cleanup of the dry dock or marine railway floor is complete.

Water blasting runoff should be channeled into floor sumps where the wastewater will be pumped to grit removal basins/sedimentation tanks for settling treatment. The effluent discharge from the sedimentation treatment must be NPDES permitted.

Prior to entering floor drains and sumps, water blasting runoff may also be channeled through straw bales and/or sand bags which will catch most of the particles of paint and marine growth. Once the floor is dry the collected particles may be removed employing graving dock and floating dry dock clean-up methods.

**BPP OBJECTIVE:**

Water blasting techniques produce a scattered water pattern which is difficult to control or immediately contain. Unless prior cleanup of the dock or marine railway floor has been conducted, it is difficult to prevent water blast from contacting pollutants.

**CRITERIA:**

Runoff generated from water blasting, hydroblasting, slurry blasting and/or water-cone blasting should not be allowed to discharge directly into surface waters from graving docks, floating dry docks, or marine railway work areas.

The design flow of the collection and treatment system must be adequate to receive the water blasting runoff flow rates. Special consideration should be given to pumping and treatment of slurry blast runoff.

**CONCERNS**

All pump connections, valves, meters and couplings must be watertight. Leaks must be immediately repaired when discovered.

**BPP FOUR:**

**ABRASIVE BLAST MATERIAL CONTAINMENT**

Abrasive blasting is generally one of the preliminary tasks performed when a vessel is docked for repairs and maintenance. The task typically involves blasting the vessel hull or upper decks with nickel, copper or some other type of slag or steel shot to remove layers of old paint. Blasting generates a tremendous volume of spent abrasive which must be cleaned up and contained on a frequent basis.

**BPP:**

Spent abrasive blast must be stored in proper containment vessels or structures while on the shipyard site. Containment bins, tanks or hoppers must have covers to prevent rainwater from entering the structure and percolating through the stored abrasive.

**BPP OBJECTIVE:**

The objective is to store all spent abrasive in appropriate containment vessels until ultimate disposal off site. Proper containment involves not allowing any stormwater runoff or accidental discharges to come into contact with the abrasive. This method eliminates the typical procedure of storing voluminous piles of spent abrasive on bare ground. Storing the abrasive in yard stockpiles promotes pollutant runoff.

**CRITERIA:**

The containment structures may consist of specifically designated hoppers for holding abrasive; metal bins with covers, or a concrete containment pit or slab (three-walled) with runoff channels to sedimentation treatment units.

**CONCERNS:**

Treatment units which provide a discharge must be NPDES permitted. The NPDES permit may require more advanced treatment than sedimentation.

There must be an appropriate storage volume available on site to contain all spent abrasive.

**BPP FIVE:**

**RECORD KEEPING**

Due to the nature of the shipyard repair business, BPP installations are in constant need of repair, replacement, inspection and cleanup. Records indicating a history of maintenance should be kept to provide a good indication of the current reliability of existing BPP's.

**BPP:**

Records should be maintained to document BPP's at the facility. The type of records which should be maintained include, but are not limited to, the following:

1. Quantities of abrasive which are used for blasting and quantities which are retrieved through cleanup.

2. Date of installation of a BPP control, inspections and subsequent repairs or replacements to the BPP including such items as how often straw bales, absorbent booms and other filtering devices are replaced and/or cleaned.

3. A listing of BPP equipment, and supplies.

4. Date, time, description and action taken for any chemical spills.

5. The location, quantities, destination and hauler of vessel discharge waters and spent abrasive material.

6. Waste inventory records.

**CRITERIA:**

Record keeping should be maintained by designated individuals responsible for the task. The records should be kept at a specified location for review upon request.

**BPP SIX:**

**BPP TRAINING**

**BPP:**

Shipyard management should provide all employees with regularly scheduled Best Pollution Prevention Practices seminars and discussions related to shipyard pollutants and pollutant runoff. The training should emphasize procedure, BPP techniques and supervisory responsibility and accountability. Subcontracting firms in the shipyard should be strongly encouraged to participate in the BPP program.

**BPP OBJECTIVE:**

Training each employee about the fundamentals of BPP control lessens the chance of recurrent pollutant discharges. Providing each officer, manager, supervisor, dock master, etc., with a strong sense of BPP commitment ensures solutions for recurring problems.

**CONCERNS:**

The primary concern is that not enough emphasis is given to teaching employees about the rudimentary aspects of Best Pollution Prevention Practices. Each new employee should be made aware of the BPP's as part of new employee training.

7. Rule 340-102-011(2)(f) is proposed to be added as follows:

**Hazardous Waste Determination**

**340-102-011**

- (1) The provisions of this rule replace the requirements of 40 CFR 262.11.
- (2) A person who generates a residue as defined in rule 340-100-010 must determine if that residue is a hazardous waste using the following method:
  - (a) Persons should first determine if the waste is excluded from regulation under 40 CFR 261.4 or rule 340-101-004.
  - (b) Persons must then determine if the waste is listed as a hazardous waste in **Subpart D of 40 CFR Part 261**, excluding application of rule 340-101-033.

**(Comment:** Even if the waste is listed, the

generator still has an opportunity under rule 340-100-022 to demonstrate to the Commission that the waste from his/her particular facility or operation is not a hazardous waste.)

(c) Regardless of whether a hazardous waste is listed in Subpart D of 40 CFR Part 261, persons must also determine whether the waste is hazardous under **Subpart C of 40 CFR Part 261** by either:

(A) Testing the waste according to the methods set forth in **Subpart C of 40 CFR 261**, or according to an equivalent method approved by the Department under rule 340-100-021; or

**(Comment:** In most instances, the Department will not consider approving a test method until it has been approved by EPA.)

(B) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(d) If the waste is determined to be hazardous, the generator must refer to Divisions 100-106 and 40 CFR Part 264, 265 and 268 for possible exclusions or restrictions pertaining to management of his/her specific waste.

**(Comment:** 40 CFR 268.3 prohibits dilution of a hazardous waste to meet Land Disposal Restriction treatment standards. Diluting waste without a permit to meet any hazardous waste standard is prohibited).

(e) If the waste is not identified as hazardous by application of subsection (2)(b) and/or (c) of this rule, persons must determine if the waste is listed under rule 340-101-033.

(3) A person who generates a residue, as defined in OAR 340-100-010(2)(Z), must keep a copy of the documentation used to determine whether the residue is a hazardous waste, under subsection (2) of this section, for a minimum of three years after the waste stream is no longer generated, or as prescribed in 40 CFR 262.40(c). If no documentation is created in making the wastestream determination, then no new documentation need be created.

8. Rule 340-102-034 is proposed to be amended as follows:

**Accumulation Time, Container and Tank Management Standards**

340-102-034

- (1) In addition to the requirements of 40 CFR 262.34, a generator may accumulate hazardous waste on-site for 90 days or less without a permit provided that, if storing in excess of 100 containers, the waste is placed in a storage unit that meets the requirements of 40 CFR 264.175.
- (2) A generator shall comply with provisions found in 40 CFR Part 262 and each applicable requirement of 40 CFR 262.34(a), (b), (c), (d), (e), and (f).

9. Rule 340-105-012 is proposed to be amended as follows:

**Confidentiality of Information.**

340-105-012

- (1) The provisions of this rule replace the provisions of 40 CFR 270.12.
- (2) An owner, operator, or applicant may claim submitted permit, closure, post-closure, or corrective action information as trade secret pursuant to OAR 340-100-003. In accordance with ORS 192.500 and 466.090(2), any information submitted to the Department pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission by stamping the words "confidential business information," or the equivalent, on each page containing such information. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If the claim is asserted, the information will be treated in accordance with the procedures in ORS 192.500 and 466.090(2).

(Comment: Any information stamped confidential must be accompanied by an explanation as to why it should be so considered under the criteria of ORS 192.500 and 466.090(2). The Department believes that very little, if any, information in an application will meet the criteria.)

~~(3) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.~~

~~(4) Any information submitted to the Department shall be available to the Environmental Protection Agency upon request. If the information has been submitted under a claim of confidentiality, the Department shall make that claim of confidentiality to the Environmental Protection Agency for the requested information. The federal agency shall treat the information that is subject to the confidentiality claim as confidential in accordance with applicable federal law.~~

10. Rule 340-110-020 is proposed to be amended as follows:

**Manufacturing, Processing, Distribution in Commerce and Use of PCB and PCB Items.**

340-110-020

The provisions of 40 CFR 761.20 through 761.30 are deleted.

(Comment: 40 CFR 761.20(e) is adopted by reference with the adoption of 40 CFR, Part 279 (Used oil management regulations) in OAR 340-100-002. 40 CFR 279.10 (i) requires used oil marketers and burners of used oil containing quantifiable levels of PCBs to meet the standards in 40 CFR 761.20(e).

11. Rule 340-111-010 is proposed to be amended as follows:

340-111-010

~~[340-111-020 Definitions~~

~~340-111-030 Prohibitions~~

~~340-111-040 Notification, testing, and record-keeping requirements~~

~~340-101-006 Used oil used in a manner constituting disposal~~

-i-

The rules below were adopted by the Environmental Quality Commission on August 10, 1990, and took effect on filing August 14, 1990. Also adopted at the same time (but not included here) were amendments to enforcement

~~rules classifying penalties for violations of the road oiling rules (amended rule 340-12-042 and new rule 340-12-072).~~

~~NEW RULES 340-111-010 to 340-111-040 and 340-101-006, relating to direct use of used oil in the environment, are adopted as follows:~~

~~Purpose, scope, and] Applicability~~

~~340-111-010~~

- ~~(1) [The purpose of rules OAR 340-111-010 to 340-111-040 is to provide standards and controls for the use or application of used oil on the ground for dust control, weed control, or other similar purposes or spread directly in the environment. The rules are not intended to apply to one-time accidental spills. (Comment: Persons should also consult 40 CFR Parts 260-266, 270, and 124, which are incorporated by reference in rule 340-100-002, and 40 CFR Part 761, to determine all applicable management requirements. In particular, 40 CFR 266.20 to 266.23 set specific requirements for the use of hazardous waste, including used oil mixed with or showing a characteristic of hazardous waste, for dust suppression or in other manners constituting disposal.)]~~

~~In addition to provisions under 40 CFR 279.10, the following provisions under sections (2) through (4) shall apply.~~

- ~~(2) [Any provision of rules OAR 340-111-010 to 340-111-040 relating to the use of used oil for dust suppression or as an herbicide that is more stringent than 40 CFR Parts 260-266, 270, 124, and 761 shall not apply to used oil that is generated by a business or industry and does not contain polychlorinated biphenyls, or contain hazardous waste or show a characteristic of hazardous waste as set forth in OAR 340-Division 101, or is generated by a household, provided that the used oil is:~~
- ~~(a) used on the property owned by the person who generated the used oil; or~~
  - ~~(b) generated and used on property leased by the person who generated the used oil or used on property immediately adjacent to property owned or leased by the person who generated the used oil, provided in both cases that written approval is obtained from the property owner on whose property the oil is to be applied.]~~

Mixtures and residues of used oil and other wastes

- (a) Used oil or materials containing used oil destined for disposal are subject to hazardous waste determination as required under OAR 340-102-011.
  - (b) Hazardous or non-hazardous substances or waste shall not be mixed with used oil for the purposes of rendering the substances or wastes non-hazardous except as provided in 40 CFR 279.10(b)(2)(iii) and 40 CFR 279.10(b)(3). Wastes that will reduce the recyclability of used oil shall not purposely be mixed with used oil.
  - (c) Wastes containing oils that do not meet the definition of used oil as defined in 340-111-002 may be subject to 40 CFR, Part 279 provided the waste would not be a hazardous waste if disposed and it contains sufficient oil to allow it to be managed in a manner similar to used oil provided state air quality and solid waste regulations are satisfied.
- (3) Burning for energy recovery
- (a) Any person who burns used oil for energy recovery must comply with applicable air emission requirements of the state or local air pollution authority.
  - (b) Mixtures of used oil and non-hazardous solid waste shall have a minimum energy value of 5,000 BTUs per pound when burned as a fuel for energy recovery.
  - (c) Mixtures of used oil and non-hazardous waste with energy values of less than 5,000 BTUs per pound may be burned for treatment or incineration if the mixture is not a hazardous waste under OAR 340-102-011 and if the requirements of Oregon solid waste and air quality regulations are satisfied.
  - (d) Residues produced from the burning of used oil for energy recovery are subject to the hazardous waste regulations in OAR 340, Divisions 100 to 110, 120 and 40 CFR, parts 260 through 266, 268, 270, and 124 if the materials are listed or identified as hazardous waste.
- (4) Oil recovered from parts cleaning unit non-halogenated cleaning media may be managed as used oil provided:

- (a) Parts are cleaned primarily to remove an oil that would meet the definition of a used oil as defined in 340-111-002, and
- (b) Listed or characteristic hazardous waste has not been mixed with the parts cleaning media.

~~ous waste, other than a hazardous waste identified solely due to the characteristic of ignitability; and~~

- (b) ~~the used oil has been tested and does not exceed the following levels for each of the following materials:~~

- (A) ~~Lead: 5 milligrams per liter;~~
- (B) ~~Cadmium: 1 milligram per liter;~~
- (C) ~~Chromium: 5 milligrams per liter;~~
- (D) ~~Arsenic: 5 milligrams per liter;~~
- (E) ~~Polychlorinated biphenyls: none detectable, with a testing detection limit of 1 milligram per liter or less;~~
- (F) ~~Total halogens (chlorine, bromine, and iodine): 1000 milligrams per liter, unless it is demonstrated that the concentration of each halogenated solvent or other halogenated molecules identified as hazardous waste in 40 CFR Part 261 does not exceed 100 milligrams per liter and that none of the concentration levels for halogenated molecules set in 40 CFR 261.24 are exceeded;~~
- (G) ~~Benzene: 0.5 milligrams per liter;~~
- (H) ~~Carbon tetrachloride: 0.5 milligrams per liter;~~
- (I) ~~Chloroform: 6 milligrams per liter;~~
- (J) ~~1,4 Dichlorobenzene: 7.5 milligrams per liter;~~
- (K) ~~1,2 Dichloroethane: 0.5 milligrams per liter;~~
- (L) ~~1,1 Dichloroethylene: 0.7 milligrams per liter;~~
- (M) ~~Tetrachloroethylene: 0.7 milligrams per liter; and~~
- (N) ~~Trichloroethylene: 0.5 milligrams per liter.~~
- (3) ~~The standards, prohibition, and requirements set forth in Section 2 of this rule and in OAR 340-111-040 shall not apply to:~~
  - (a) ~~the asphalt fraction derived from refining~~

12. Rule 340-111-020, 030, 040 and 340-101-006 are proposed to be repealed as follows:

**Definitions**

**340-111-020**

- (1) ~~"Asphalt fraction" means black, tar-like material that is solid at room temperature and that is a residual product from refining used oil.~~
- (2) ~~"Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.~~
- (3) ~~"Property immediately adjacent to" means that portion of any single lot, or set of contiguous lots with common ownership, that shares a common boundary with the property on which the used oil is generated, and that lies within 300 feet of the boundary of the property on which the used oil is generated.~~
- (4) ~~"Used oil" means a petroleum based oil which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.~~

**Prohibitions**

**340-111-030**

- (1) ~~Unless permitted pursuant to ORS 468.740, no person shall dispose of used oil by discharge into sewers, drainage systems, or waters of this state as defined by ORS 468.700(8).~~
- (2) ~~Except as allowed in Sections 3 of this rule, used oil, including products made from used oil, shall not be used as a dust suppressant or pesticide, or otherwise spread directly in the environment, unless:~~
  - (a) ~~the used oil has not been mixed with hazard-~~



used oil, provided that the asphalt fraction is not identified as a listed hazardous waste or does not show a characteristic of hazardous waste, as set forth in 40 CFR Part 261 or OAR 340-101-033;

- (b) disposal of used oil at a permitted hazardous waste disposal facility pursuant to OAR 340 Divisions 100 to 106; or
- (c) disposal of used oil at a permitted solid waste landfill provided that such disposal is in conformance with OAR 340 Division 61 and landfill permit requirements.

#### Notification, testing, and record keeping requirements

##### 340-111-040

Any person, except as excluded under OAR 340-111-010, who markets or uses used oil or used oil products for dust control or as a pesticide, or who otherwise spreads used oil directly in the environment, is subject to the following requirements:

- (1) Notification to the Department stating the location and general description of used oil management activities, on forms provided by the Department.
- (2) Used oil that has been tested and found to not exceed the limits set forth in OAR 340-111-030 (2) shall be stored separately from other used oil prior to use. If untested used oil is added to a tank or other storage container containing tested used oil, the entire tank or container shall be retested and determined to not exceed the limits set forth in OAR 340-111-030 (2) prior to use as a dust suppressant or pesticide or otherwise being spread directly in the environment.
- (3) The following records shall be produced and kept for a minimum of three years:
  - (a) Copies of testing results used to determine that used oil meets the specifications set in OAR 340-111-030 (2);
  - (b) Records on the quantity of oil in each tank or container tested, and quantity and geographic location where used oil was used directly in the environment, cross-referenced to the testing results used to determine that the used oil meets specifications;
  - (c) Copies of invoices stating the name, address, and EPA identification numbers of both the shipping and receiving facilities, the quantity

of oil delivered, date of delivery, a copy of test results, and the following statement: "This used oil is subject to the requirements of Oregon Administrative Rules 340 Division 111" for all used oil shipments intended or destined to be spread directly in the environment.

- (4) Any person, except as excluded under OAR 340-111-010, using used oil as a dust suppressant or pesticide or otherwise spreading used oil directly in the environment shall report to the Department on a quarterly basis on the use of used oil. Reports shall be filed with the Department within 45 days of the end of each calendar quarter. The quarterly report shall include:

- (a) the name, address, and U.S. EPA/DEQ Identification Number of the person spreading used oil;
- (b) the calendar quarter for which the report is being made;
- (c) the quantity, location, and date that used oil was spread;
- (d) if no used oil was spread, a statement to that effect; and
- (e) test results for the used oil, cross-references to the date and location where the used oil was spread.

#### Used oil used in a manner constituting disposal

##### 340-101-006

In addition to requirements set forth in 40 CFR 261.6 and 40 CFR Part 266, persons using used oil as a dust suppressant or pesticide or otherwise spreading used oil directly in the environment must meet the requirements set forth in OAR 340-111-010 to 340-111-040.

(Statutory Authority: ORS Ch. 466 & 468)]

13. Rule 340-111-001, 002, 011, 022, 023, 024, 042, 043, 057, 081 are proposed to be adopted as follows:

DIVISION 111  
USED OIL MANAGEMENT

<u>340-111-001</u>	<u>Purpose and Scope</u>
<u>340-111-002</u>	<u>Definitions</u>
<u>340-111-010</u>	<u>Applicability</u>
<u>340-111-012</u>	<u>Prohibitions</u>
<u>340-111-022</u>	<u>Used Oil Storage</u>
<u>340-111-023</u>	<u>On-site Burning in Space Heaters</u>
<u>340-111-024</u>	<u>Off-site Shipments</u>
<u>340-111-042</u>	<u>Notification</u>
<u>340-111-043</u>	<u>Used Oil Discharges</u>
<u>340-111-057</u>	<u>Operating Record and Reporting</u>
<u>340-111-081</u>	<u>Disposal</u>

(Statutory Authority: ORS Ch. 466 & 468)

**Purpose and Scope**

**340-111-001**

- (1) The purpose of this Division is to provide used oil management standards for generators, transporters, transfer facilities, processors and refiners, burners and marketers of used oil.
- (2) Division 111 to incorporate, by reference in rule 340-100-002 (2), used oil management regulations of the federal program, included in 40 CFR Part 279, into Oregon Administrative Rules. Therefore, persons must consult 40 CFR Part 279 and associated Federal Register preambles in addition to Division 111 of these rules to determine all applicable used oil management requirements.

**Definitions**

**340-111-002**

- (1) The definitions of terms contained in this rule modify, or are in addition to, the definitions contained in 40 CFR 279.1, OAR 340-100-010 and OAR 340-108-002.
- (2) When used in Division 111 of this chapter, the following terms have the meanings given below:
  - (a) "Hot Draining" means draining of used oil filters at or near the engine operating temperature and above room temperature (i.e., 60°F).
  - (b) "Terne plating" means a coating of lead and tin applied to certain oil filters.

- (c) Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used as a lubricant, coolant (non-contact heat transfer fluids), hydraulic fluid or for similar uses and as a result of such use is contaminated by physical or chemical impurities. Used oil includes, but is not limited to, used motor oil, gear oil, greases, machine cutting and coolant oils, hydraulic fluids, brake fluids, electrical insulation oils, heat transfer oils and refrigeration oils. Used oil does not include used oil mixed with hazardous waste except as allowed in 40 CFR 279.10(b)(2 and 3), oil (crude or synthetic) based products used primarily as solvents, antifreeze, wastewaters from which the oil has been recovered, and oil contaminated media or debris.

- (d) "Used oil mixture" means any mixture of used oil as generated and another waste.

**Prohibitions**

**340-111-012**

- (1) In addition to the provisions in 40 CFR 279.11, the following provisions (a) and (b) shall apply.
  - (a) The use of used oil as a pesticide is prohibited.
  - (b) Disposal at a solid waste disposal facility of liquid used oil or used oil purposely mixed with other materials for the purpose of disposal but not including cleanup materials from incidental or accidental spills where the used oil spilled cannot be feasibly recovered as liquid oil is prohibited.

**Used Oil Storage**

**340-111-022**

- (1) In addition to the provisions in 40 CFR 279.22, used oil generators shall comply with subsections (a) and (b) of this rule.
  - (a) Used oil shall be stored following applicable state and local fire marshall regulations
  - (b) Containers and tanks used to store used oil shall be closed or covered to prevent rainwater from coming in contact with the used oil, except when adding or removing oil or during maintenance.

**On-site Burning in Space Heaters**

**340-111-023**

- (1) In addition to the provisions in 40 CFR 279.23, used oil handlers shall comply with subsection (a) of this rule.

(a) The on-site space heater is operated according to manufacturers specifications.

**Off-site Shipments**

**340-111-024**

- (1) The provisions in 40 CFR 279.24(a)(1) and 40 CFR 279.24(b)(1) are replaced with subsection (a) of this rule.

(a) The generator transports the used oil in a vehicle owned or leased by the generator or owned by an employee of the generator.

**Notification**

**340-111-042**

- (1) The provisions in 40 CFR 279.42(b), 40 CFR 279.51(b), 40 CFR 279.62(b) and 40 CFR 279.73 are replaced with subsection (a) of this rule.

(a) A used oil transporter, transfer facility, processor/re-refiner, off-specification used oil burner or used oil fuel marketer, who has not received an EPA/DEQ identification number shall obtain one by notifying the Department of Environmental Quality of their used oil activity by submitting a completed "Notification of Hazardous Waste and Used Oil Activity" form to the Department as required in 340-102-012.

**Used Oil Discharges or Releases**

**340-111-043**

- (1) In addition to the provisions in 40 CFR 279.43(c), 40 CFR 279.45(h), 40 CFR 279.54(g) and 40 CFR 279.64(g) the provisions of OAR 340, Division 108 are applicable.

**Reporting**

**340-111-057**

- (1) The provision in 40 CFR 279.57(b) is replaced by subsection (a) of this rule.

(a) A used oil processor must report to the Department of Environmental Quality by March 1 of each year, on forms provided by the Department, the following information concerning used oil activities during the previous calendar year.

- (i) The EPA/DEQ identification number, name, and address of the processor/re-refiner;
- (ii) The calendar year covered by the report; and
- (iii) The quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed.

**Disposal**

**340-111-081**

- (1) In addition to provision under 40 CFR 279.81(b), used oils that are not hazardous wastes and cannot be recycled under Part 279 must be managed according to Oregon solid waste regulations in OAR Chapter, Division 93-97.
- (2) In addition to provisions under 279.81, unless permitted pursuant to ORS 468B.050, no person shall dispose of used oil by discharge into sewers, drainage systems, or waters of the state as defined by ORS 468.005(8).

14. **Rule 340-135-020 is proposed to be amended as follows:**

**Definitions**

**340-135-020**

- (1) "Commission" means the Environmental Quality Commission.
- (2) "Conditionally Exempt Generator" means a hazardous waste generator who generates in one calendar month less than, or equal to, 2.2 pounds of acute hazardous waste as defined in ORS 466.005 and OAR Chapter 340 Divisions 100 and 101, or who generates in one calendar month less than, or equal to, 220 pounds of hazardous waste or does not accumulate at any time greater than 2,200 pounds of hazardous waste as defined in ORS 466.005 and OAR Chapter 340 Divisions 100 and 101.
- (3) "Department" means the Department of Environmental Quality.
- (4) "Director" means the Director of the Department of Environmental Quality.

- (5) "Facility" means all buildings, equipment, structures and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person or by any person who controls, is controlled by or under common control with any person.
- (6) "Fully Regulated Generator" or "Large Quantity Generator" means as used in these rules a hazardous waste generator who generates in any calendar month greater than 2.2 pounds of acute hazardous waste, or accumulates at any time greater than 2.2 pounds of acute hazardous waste, or who generates in any calendar month greater than or equal to 2,200 pounds of hazardous waste as defined by ORS 466.005 and OAR Chapter 340 Divisions 100 and 101.
- (7) "Generator" means a person who, by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of hazardous waste.
- (8) "Hazardous Waste" has the meaning given that term in ORS 466.005 and OAR Chapter 340 Divisions 100 and 101.
- (9) "Large User" means a facility required to report under Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499).
- (10) "Person" means individual, the United States, the state or a public or private corporation, local government unit, public agency, partnership, association, firm, trust, estate or any other legal entity.
- (11) "Public Record" has the meaning given to it in ORS 192.410.
- (12) "Reclamation" means a process to recover a usable product, or to regenerate a usable material. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.
- (13) "Recycled" means used, reused, or reclaimed, and has the same meaning given it in 40 CFR 261.2.
- (14) "Remedial Activities" means the following environmental cleanup activities:
- (a) "Corrective Action" as defined in ORS 466.706(3);
  - (b) "Release" as defined in ORS 466.706(17);
  - (c) "Remedial Action" as defined in ORS 465.200(15);
  - (d) "Removal" as defined in ORS 465.200(17);

- (e) "Cleanup" as defined in ORS 466.605(2);  
and
  - (f) "Spill or Release" as defined in ORS 466.605(12).
- (1[4]5) "Small Quantity Generator" means a generator who generates in any calendar month greater than 220 pounds and less than 2,200 pounds of hazardous waste as defined by ORS 466.005 and OAR Chapter 340 Divisions 100 and 101.
- (1[5]6) "Toxic Substance" or "toxics" means any substance in a gaseous, liquid or solid state listed pursuant to Title III Section 313 of the Superfund Amendments and Reauthorization Act of 1986, or any substance added by the Commission under the authority of ORS 465.009 and OAR 340-135-040. "Toxic Substance" does not include a substance when used as a pesticide or herbicide in routine commercial agricultural applications, or any substance deleted by the Commission under the authority of ORS 465.009 and OAR 340-135-040.
- (1[6]7) "Toxics use" means use or production of a toxic substance.
- (1[7]8) "Toxics Use Reduction" means in-plant changes in production or other processes or operations, products or raw materials that reduce, avoid or eliminate the use or production of toxic substances without creating substantial new risks to public health, safety and the environment. Reduction may be proportionate to increases or decreases in production or other business changes. Reduction means application of any of the following techniques:
- (a) Input substitution, by replacing a toxic substance or raw material used in a production or other process or operation with a nontoxic or less toxic substance;
  - (b) Product reformulation, by substituting for an existing end product, an end product which is nontoxic or less toxic upon use, release or disposal;
  - (c) Production or other process or operation modernization, by upgrading or replacing existing equipment and methods with other equipment and methods;
  - (d) Production or other process or operation redesign or modifications;
  - (e) Improved operation and maintenance of production processes or equipment or

methods, and modifications or additions to existing equipment or methods, including techniques such as improved housekeeping practices, system adjustments, product and process inspections or production or process changes; or

- (f) Recycling, reuse or extended use of toxics by using equipment or methods that become an integral part of the production or other process or operation of concern, including but not limited to filtration and other methods.

(1[8]9) "Toxics user" means a large user, a large or a small quantity generator.

(1[9]20) "Trade Secret" has the meaning given to it in ORS 192.501.

(2[0]1) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to:

- (a) neutralize such waste,
- (b) recover energy or material resources from the waste,
- (c) render such waste non-hazardous or less hazardous,
- (d) make it safer for transport, storage, or disposal, or
- (e) make it amenable for recovery, amenable for storage, or reduce its volume.

(2[1]2) "Used or reused" means a material that is:

- (a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as a feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or
- (b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(2[2]3) "Waste Reduction" means:

- (a) Any recycling or other activity applied after hazardous waste is generated that is consistent with the general goal of reducing present and future threats to public health, safety and the environment. Reduction may be proportionate to the increase or decrease in production or other business changes. The recycling or other activity shall result in:
  - (A) The reduction of total volume or quantity of hazardous waste generated that would otherwise be treated, stored or disposed; or
  - (B) The reduction of toxicity of hazardous waste that would otherwise be treated, stored or disposed of; or
  - (C) Both the reduction of total volume or quantity and the reduction of toxicity of hazardous waste; and
  - (D) Does not result in: 1) the transfer of hazardous constituents from one environmental medium to another; 2) concentrate waste solely for the purposes of reducing volume; and 3) use dilution as a means of reducing toxicity.
- (b) On-site or off-site treatment may be included where it can be shown that such treatment confers a higher degree of protection of the public health, safety and the environment than other technically and economically practicable waste reduction alternatives.

**15. Rule 340-135-040 is proposed to be amended as follows:**

**Identification and Listing of Toxic Substances and Hazardous Waste**

**OAR 340-135-040**

- (1) Toxic Substances  
The chemicals and chemical categories listed in Appendix 1 of OAR Chapter 340, Division 135 are hereby incorporated in and made a part of this section and shall be considered to be toxic substances subject to the requirements of OAR 340-135-000 through OAR 340-135-110 and ORS 465.003 through ORS 465.037.

(2) Hazardous Waste

Hazardous waste as described in Appendix 1 of OAR Chapter 340, Division 135 ~~are~~ is hereby incorporated and made a part of this section and ~~are~~ is subject to the requirements of OAR 340-135-000 through OAR 340-135-110 and ORS 465.003 through ORS 465.037 except hazardous waste as described in subsections (a) and (b) of this section.

- (a) Hazardous waste that is generated as a result of remedial activities taken in response to environmental contamination as defined in OAR 340-135-020(14).
- (b) Hazardous waste produced by generators that were previously conditionally exempt from hazardous waste regulations, that is the result of one-time generation events:
  - (A) This includes, but is not limited to waste from industrial process modifications, storeroom cleanup and disposal of expired chemical inventories, as long as these generation events do not occur more frequently than once every five years.
  - (B) In the case where hazardous waste is generated in amounts greater than 220 pounds or acutely hazardous waste is generated in amounts greater than 2.2 pounds per calendar month, in a year following the original request for a one-time exemption, an additional exemption may be granted if the waste is generated under uncontrollable circumstances such as fire or flood.
  - (C) To qualify for an exemption to OAR 340-135-040, a generator seeking an exemption must provide written certification, to the Department, that the waste was generated from a one-time event.

(3) Identification

- (a) The Environmental Quality Commission may add to or delete from the lists of hazardous wastes and toxic substances identified in sections 1 and 2 of this rule and listed in Appendix 1 of OAR Chapter 340, Division 135. The Commission shall consider, at a minimum, the following conditions when adding to or deleting from the lists.

- (A) Proportionate volume of toxic substance or hazardous waste unique to Oregon; or
- (B) Amount of regional solid waste or hazardous waste off-site disposal or treatment capacity; or
- (C) Impact on statewide or regional air quality, surface water quality, ground water quality, or other environmental qualities; or
- (D) A substance is added to or deleted from 40 CFR Part 372 Subpart D or a hazardous waste is added to or deleted from OAR 340-100-002 and OAR 340-101.

- (b) Any additions or deletions to section 1 or 2 of this rule shall be made by rulemaking at least annually and shall be so identified in Appendix 1 of OAR Chapter 340, Division 135 as appropriate. Any additions or deletions under this rule shall take effect for purposes of plan completion and annual progress report completion in the calendar year following the addition or deletion. Any additions or deletions are hereby incorporated in and made a part of this rule.

16. Rule 340-135 APPENDIX 1 is proposed to be amended as follows:

340-135 APPENDIX 1

LISTING OF TOXIC SUBSTANCES AND HAZARDOUS WASTES

The following list of toxic substances and hazardous wastes is subject to the requirements of OAR 340-135-000 through OAR 340-135-110 and ORS 465.003 through ORS 465.037[-] except hazardous waste as described in OAR 340-135-040(2) subsections (a) and (b).

OAR 340-135 - APPENDIX 1

LISTING OF TOXIC SUBSTANCES AND HAZARDOUS WASTES

The following list of toxic substances and hazardous wastes is subject to the requirements of OAR 340-135-000 through OAR 340-135-110 and ORS 465.003 through ORS 465.037[-] except hazardous waste as described in OAR 340-135-040 subsections (a) and (b).

1. Toxic Substances

(a) Alphabetical List of Chemicals

Number	CAS Chemical Name	DeMinimis Concentration (percent)	Number	CAS Chemical Name	DeMinimis Concentration (percent)
75-07-0	Acetaldehyde	0.1	106-99-0	1,3-Butadiene	0.1
60-35-5	Acetamide	0.1	141-32-2	Butyl acrylate	1.0
67-64-1	Acetone	1.0	71-36-3	n-Butyl alcohol	1.0
75-05-8	Acetonitrile	1.0	78-92-2	sec-Butyl alcohol	1.0
53-96-3	2-Acetylaminofluorene	0.1	75-65-0	tert-Butyl alcohol	1.0
107-02-8	Acrolein	1.0	85-68-7	Butyl benzyl phthalate	1.0
79-06-1	Acrylamide	0.1	106-88-7	1,2-Butylene oxide	1.0
79-10-7	Acrylic acid	1.0	123-72-8	Butyraldehyde	1.0
107-13-1	Acrylonitrile	0.1	4680-78-8	C.I. Acid Green 3*	1.0
309-00-2	Aldrin [1,4:5,8-Dimethanonaphthalene, 1,0 1,2,3,4,10,10-hexochloro-1,4,4a,5,8,8a- hexahydro-(1.alpha.,4.alpha.,4a.beta., 5.alpha.,8.alpha.,8a.beta.)-]	1.0	569-64-2	C.I. Basic Green 4*	1.0
107-18-6	Allyl [A]alcohol	1.0	989-38-8	C.I. Basic Red 1*	0.1
107-05-1	Allyl chloride	1.0	1937-37-7	C.I. Direct Black 38*	0.1
7429-90-5	Aluminum (fume or dust)	1.0	2602-46-2	C.I. Direct Blue 6*	0.1
1344-28-1	Aluminum oxide (fibrous form)	0.1	16071-86-6	C.I. Direct Brown 95*	0.1
117-79-3	2-Aminoanthraquinone	0.1	2832-40-8	C.I. Disperse Yellow 3*	1.0
60-09-3	4-Aminoazobenzene	0.1	3761-53-3	C.I. Food Red 5*	0.1
92-67-1	4-Aminobiphenyl	0.1	81-88-9	C.I. Food Red 15*	0.1
82-28-0	1-Amino-2-methylanthraquinone	0.1	3118-97-6	C.I. Solvent Orange 7*	1.0
7664-41-7	Ammonia	1.0	97-56-3	C.I. Solvent Yellow 3*	0.1
			842-07-9	C.I. Solvent Yellow 14*	0.1
			492-80-8	C.I. Solvent Yellow 34*	
				(Aur[al]imine)	0.1
			128-66-5	C.I. Vat Yellow 4*	1.0

Number	CAS Chemical Name	DeMinimis Concentration (percent)
6484-52-2	Ammonium nitrate (solution)	1.0
7783-20-2	Ammonium sulfate (solution)	1.0
62-53-3	Aniline	1.0
90-04-0	o-Anisidine	0.1
104-94-9	p-Anisidine	1.0
134-29-2	o-Anisidine hydrochloride	0.1
120-12-7	Anthracene	1.0
7440-36-0	Antimony	1.0
7440-38-2	Arsenic	0.1
1332-21-4	Asbestos (friable)	0.1
7440-39-3	Barium	1.0
98-87-3	Benzal chloride	1.0
55-21-0	Benzamide	1.0
71-43-2	Benzene	0.1
92-87-5	Benzidine	0.1
98-07-7	Benzoic trichloride (Benzotrichloride)	0.1
98-88-4	Benzoyl chloride	1.0
94-36-0	Benzoyl peroxide	1.0
100-44-7	Benzyl chloride	1.0
7440-41-7	Beryllium	0.1
92-52-4	Biphenyl	1.0
111-44-4	Bis(2-chloroethyl)ether	1.0
542-88-1	Bis(chloromethyl)ether	0.1
108-60-1	Bis(2-chloro-1-methylethyl)ether	1.0
103-23-1	Bis(2-ethylhexyl)adipate	1.0
353-59-3	Bromochlorodifluoromethane (Halon 1211)	1.0
75-25-2	Bromoform (Tribromomethane)	1.0
74-83-9	Bromomethane (Methyl bromide)	1.0
75-63-8	Bromotrifluoromethane (Halon 1301)	1.0
106-99-0	1,3-Butadiene	0.1
141-32-2	Butyl acrylate	1.0
71-36-3	n-Butyl alcohol	1.0
78-92-2	sec-Butyl alcohol	1.0
75-65-0	tert-Butyl alcohol	1.0
85-68-7	Butyl benzyl phthalate	1.0
106-88-7	1,2-Butylene oxide	1.0
123-72-8	Butyraldehyde	1.0
4680-78-8	C.I. Acid Green 3*	1.0
569-64-2	C.I. Basic Green 4*	1.0
989-38-8	C.I. Basic Red 1*	0.1
1937-37-7	C.I. Direct Black 38*	0.1
2602-46-2	C.I. Direct Blue 6*	0.1
16071-86-6	C.I. Direct Brown 95*	0.1
2832-40-8	C.I. Disperse Yellow 3*	1.0
3761-53-3	C.I. Food Red 5*	0.1
81-88-9	C.I. Food Red 15*	0.1
3118-97-6	C.I. Solvent Orange 7*	1.0
97-56-3	C.I. Solvent Yellow 3*	0.1
842-07-9	C.I. Solvent Yellow 14*	0.1
492-80-8	C.I. Solvent Yellow 34*	
	(Aur[al]imine)	0.1
128-66-5	C.I. Vat Yellow 4*	1.0

\*C.I. means "Color Index"

Number	CAS Chemical Name	DeMinimis Concentration (percent)	Number	CAS Chemical Name	DeMinimis Concentration (percent)
7440-43-9	Cadmium	0.1	39156-41-7	2,4-Diaminoanisoie sulfate	0.1
156-62-7	Calcium cyanamide	1.0	101-80-4	4,4'-Diaminodiphenyl ether	0.1
133-06-2	Captan (1H-Isoindole-1,3(2H)-dione, 3a,4,7,7a-tetrahydro-2-[(trichloromethyl)thio]-]	1.0	25376-45-8	Diaminotoluene (mixed isomers)	0.1
63-25-2	Carbaryl [1-Naphthalenol, methylcarbamate]	1.0	95-80-7	2,4-Diaminotoluene	0.1
75-15-0	Carbon disulfide	1.0	334-88-3	Diazomethane	1.0
56-23-5	Carbon tetrachloride	0.1	132-64-9	Dibenzofuran	1.0
463-58-1	Carbonyl sulfide	1.0	96-12-8	1,2-Dibromo-3-chloropropane (DBCP)	0.1
120-80-9	Catechol	1.0	106-93-4	1,2-Dibromoethane (Ethylene dibromide)	0.1
133-90-4	Chloramben [Benzoic acid, 3-amino-2,5-dichloro-]	1.0	124-73-2	Dibromotetrafluoroethane (Halon 2402)	1.0
57-74-9	Chlordane [4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-]	1.0	84-74-2	Dibutyl phthalate	1.0
7782-50-5	Chlorine	1.0	25321-22-6	Dichlorobenzene (mixed isomers)	0.1
10049-04-[ ]4	Chlorine dioxide	1.0	95-50-1	1,2-Dichlorobenzene	1.0
79-11-8	Chloroacetic acid	1.0	541-73-1	1,3-Dichlorobenzene	1.0
532-27-4	2-Chloroacetophenone	1.0	106-46-7	1,4-Dichlorobenzene	0.1
108-90-7	Chlorobenzene	1.0	91-94-1	3,3'-Dichlorobenzidine	0.1
510-15-6	Chlorobenzilate [Benzenecetic acid, 4-chloro-.alpha.-(4-chlorophenyl)-.alpha.-hydroxy-,ethyl ester]	1.0	75-27-4	Dichlorobromomethane	1.0
75-00-3	Chloroethane (Ethyl chloride)	1.0	75-71-8	Dichlorodifluoromethane (CFC-12)	1.0
67-66-3	Chloroform	0.1	107-06-2	1,2-Dichloroethane (Ethylene dichloride)	0.1
74-87-3	Chloromethane (Methyl chloride)	1.0	540-59-0	1,2-Dichloroethylene	1.0
107-30-2	Chloromethyl methyl ether	0.1	75-09-2	Dichloromethane (Methylene chloride)	0.1
126-99-8	Chloroprene	1.0	120-83-2	2,4-Dichlorophenol	1.0
1897-45-6	Chlorothalonil [1,3-Benzenedicarbonitrile, 2,4,5,6-tetrachloro-]	1.0	78-87-5	1,2-Dichloropropane	1.0
7440-47-3	Chromium	0.1	78-88-6	2,3-Dichloropropene	1.0
7440-48-4	Cobalt	1.0	542-75-6	1,3-Dichloropropylene	0.1
7440-50-8	Copper	1.0	76-14-2	Dichlorotetrafluoroethane (CFC-114)	1.0
8001-58-9	Creosote	0.1	62-73-7	Dichlorvos [Phosphoric acid, 2-dichloroethenyl dimethyl ester]	1.0
120-71-8	p-Cresidine	0.1	115-32-2	Dicofol [Benzenemethanol, 4-chloro-.alpha.-(4-chlorophenyl)-.alpha.-(trichloromethyl)-]	1.0
1319-77-3	Cresol (mixed isomers)	1.0	1464-53-5	Diepoxybutane	0.1
108-39-4	m-Cresol	1.0	111-42-2	Diethanolamine	1.0
95-48-7	o-Cresol	1.0	117-81-7	Di-(2-ethylhexyl) phthalate (DEHP)	0.1
106-44-5	p-Cresol	1.0	84-66-2	Diethyl phthalate	1.0
98-82-8	Cumene	1.0	64-67-5	Diethyl sulfate	0.1
80-15-9	Cumene hydroperoxide	1.0	119-90-4	3,3'-Dimethoxybenzidine	0.1
135-20-6	Cupferron [Benzeneamine, N-hydroxy-N-nitroso, ammonium salt]	0.1	60-11-7	4-Dimethylaminoazobenzene	0.1
110-82-7	Cyclohexane	1.0	119-93-7	3,3'-Dimethylbenzidine (o-Tolidine)	0.1
94-75-7	2,4-D [Acetic acid, 2,4-dichloro-phenoxy)-]	1.0	79-44-7	Dimethylcarbonyl chloride	0.1
1163-19-5	Decabromodiphenyl oxide	1.0	57-14-7	1,1-Dimethyl hydrazine	0.1
2303-16-4	Diallate [Carbamothioic acid,bis (1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester]	1.0	105-67-9	2,4-Dimethylphenol	1.0
615-05-4	2,4-Diaminoanisoie	0.1	131-11-3	Dimethyl phthalate	1.0
			77-78-1	Dimethyl sulfate	0.1
			99-65-0	m-Dinitrobenzene	1.0
			528-29-0	o-Dinitrobenzene	1.0
			100-25-4	p-Dinitrobenzene	1.0
			534-52-1	4,6-[ ]Dinitro-o-cresol	1.0
			51-28-5	2,4-Dinitrophenol	1.0
			121-14-2	2,4-Dinitrotoluene	1.0
			606-20-2	2,6-Dinitrotoluene	1.0
			25321-14-6	Dinitrotoluene (mixed isomers)	1.0



Number	CAS Chemical Name	DeMinimis Concentration (percent)	Number	CAS Chemical Name	DeMinimis Concentration (percent)
117-84-0	<del>Di(n-octyl)n-Dioctyl</del> phthalate	1.0	96-33-3	Methyl acrylate	1.0
123-91-1	1,4-Dioxane	0.1	1634-04-4	Methyl tert-butyl ether	1.0
122-66-7	1,2-Diphenylhydrazine (Hydrazobenzene)	0.1	101-14-4	4,4'-Methylenebis(2-chloro aniline) [chloroaniline] (MBOCA)	<del>[1-0]</del> 0.1
106-89-8	Epichlorohydrin	0.1	101-61-1	4,4'-Methylenebis (N,N-dimethyl) benzenamine	0.1
110-80-5	2-Ethoxyethanol	1.0	101-68-8	Methylenebis(phenylisocyanate) (MBI)	1.0
140-88-5	Ethyl acrylate	0.1	74-95-3	Methylene bromide	1.0
100-41-4	Ethylbenzene	1.0	101-77-9	4,4'-Methylenedianiline	0.1
541-41-3	Ethyl chloroformate	1.0	78-93-3	Methyl ethyl ketone	1.0
74-85-1	Ethylene	1.0	60-34-4	Methyl hydrazine	1.0
107-21-1	Ethylene glycol	1.0	74-88-4	Methyl iodide	0.1
151-56-4	Ethyleneimine (Aziridine)	0.1	108-10-1	Methyl isobutyl ketone	1.0
75-21-8	Ethylene oxide	0.1	624-83-9	Methyl isocyanate	1.0
96-45-7	Ethylene thiourea	0.1	80-62-6	Methyl methacrylate	1.0
2164-17-2	Fluometuron [Urea, N,N-dimethyl-N'- [3-(trifluoromethyl)phenyl]-]	1.0	90-94-8	Michler's ketone	0.1
50-00-0	Formaldehyde	0.1	1313-27-5	Molybdenum trioxide	1.0
76-13-1	Freon 113 [Ethane 1,1,2-trichloro-1,2, 2-trifluoro-]	1.0	76-15-3	(Mono)chloropentafluoroethane (CFC-115)	1.0
76-44-8	Heptachlor [1,4,5,6,7,8,8-Heptachloro- 3a,4,7,7a-tetrahydro-4,7- methano-1H-indene]	1.0	505-60-2	Mustard gas [Ethane, 1,1'-thiobis [2-chloro-]	0.1
118-74-1	Hexachlorobenzene	0.1	91-20-3	Naphthalene	1.0
87-68-3	Hexachloro-1,3-butadiene	1.0	134-32-7	alpha-Naphthylamine	0.1
77-47-4	Hexachlorocyclopentadiene	1.0	91-59-8	beta-Naphthylamine	0.1
67-72-1	Hexachloroethane	1.0	7440-02-0	Nickel	0.1
1335-87-1	Hexachloronaphthalene	1.0	7697-37-2	Nitric acid	1.0
680-31-9	Hexamethylphosphoramide	0.1	139-13-9	Nitrilotriacetic acid	0.1
302-01-2	Hydrazine	0.1	99-59-2	5-Nitro-o-anisidine	0.1
10034-93-2	Hydrazine sulfate	0.1	98-95-3	Nitrobenzene	1.0
7647-01-0	Hydrochloric acid	1.0	92-93-3	4-Nitrobiphenyl	0.1
74-90-8	Hydrogen cyanide	1.0	1836-75-5	Nitrofen [Benzene, 2,4-dichloro- 1-(4-nitrophenoxy)-]	0.1
7664-39-3	Hydrogen fluoride	1.0	51-75-2	Nitrogen mustard [2-Chloro-N-(2- chloroethyl)-N-methylethanamine]	0.1
123-31-9	Hydroquinone	1.0	55-63-0	Nitroglycerin	1.0
78-84-2	Isobutyraldehyde	1.0	88-75-5	2-Nitrophenol	1.0
67-63-0	Isopropyl alcohol (manufacturing- strong acid process, no supplier notification)	0.1	100-02-7	4-Nitrophenol	1.0
80-05-7	4,4'-Isopropylidenediphenol	1.0	79-46-9	2-Nitropropane	0.1
120-58-1	Isosafrole	1.0	156-10-5	p-Nitrosodiphenylamine	0.1
7439-92-1	Lead	0.1	121-69-7	N,N-Dimethylaniline	1.0
58-89-9	Lindane [Cyclohexane 1,2,3,4,5,6-hex- achloro-,(1.alpha.,2.alpha.,3.beta., 4.alpha.,5.alpha.,6.beta.)-]	0.1	924-16-3	N-Nitrosodi-n-butylamine	0.1
108-31-6	Maleic anhydride	1.0	55-18-5	N-Nitrosodiethylamine	0.1
12427-38-2	Maneb [Carbamodithioic acid, 1,2- ethanediybis-, manganese complex]	1.0	62-75-9	N-Nitrosodimethylamine	0.1
7439-96-5	Manganese	1.0	86-30-6	N-Nitrosodiphenylamine	1.0
7439-97-6	Mercury 1.0	1.0	621-64-7	N-Nitrosodi-n-propylamine	0.1
67-56-1	Methanol 1.0	1.0	4549-40-0	N-Nitrosomethylvinylamine	0.1
72-43-5	Methoxychlor [Benzene, 1,1'-(2,2,2- trichloroethylidene)bis[4-methoxy-]	1.0	59-89-2	N-Nitrosomorpholine	0.1
109-86-4	2-Methoxyethanol	1.0	759-73-9	N-Nitroso-N-ethylurea	0.1
			684-93-5	N-Nitroso-N-methylurea	0.1
			16543-55-8	[N-]Nitrosornicotine	0.1
			100-75-4	N-Nitrosopiperidine	0.1
			2234-13-1	Octachloronaphthalene	1.0
			20816-12-0	Osmium tetroxide	1.0

Number	CAS Chemical Name	DeMinimis Concentration (percent)	Number	CAS Chemical Name	DeMinimis Concentration (percent)
56-38-2	Parathion [Phosphorothioic acid, [o]Q, [o]Q-diethyl-[o]Q-(4-nitrophenyl) ester]	1.0	68-76-8	Triaziquone [2,5-Cyclohexadiene -1,4-dione, 2,3,5-tris(1-aziridinyl)-]	0.1
87-86-5	Pentachlorophenol (PCP)	1.0	52-68-6	Trichlorfon (Phosphonic acid, (2,2,2-trichloro-1-hydroxyethyl)-, dimethyl ester]	1.0
79-21-0	Peracetic acid	1.0	120-82-1	1,2,4-Trichlorobenzene	1.0
108-95-2	Phenol	1.0	71-55-6	1,1,1-Trichloroethane (Methyl chloroform)	1.0
106-50-3	p-Phenylenediamine	1.0	79-00-5	1,1,2-Trichloroethane	1.0
90-43-7	2-Phenylphenol	1.0	79-01-6	Trichloroethylene	1.0
75-44-5	Phosgene	1.0	75-69-4	Trichlorofluoromethane (CFC-11)	1.0
7664-38-2	Phosphoric acid	1.0	95-95-4	2,4,5-Trichlorophenol	1.0
7723-14-0	Phosphorus (yellow or white)	1.0	88-06-2	2,4,6-Trichlorophenol	0.1
85-44-9	Phthalic anhydride	1.0	1582-09-8	Trifluralin (Benzeneamine, 2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-]	1.0
88-89-1	Picric acid	1.0	95-63-6	1,2,4-Trimethylbenzene	1.0
1336-36-3	Polychlorinated biphenyls (PCBs)	0.1	126-72-7	Tris(2,3-dibromopropyl) phosphate	0.1
1120-71-4	Propane sulfone	0.1	51-79-6	Urethane (Ethyl carbamate)	0.1
57-57-8	beta-Propiolactone	0.1	7440-62-2	Vanadium (fume or dust)	1.0
123-38-6	Propionaldehyde	1.0	108-05-4	Vinyl acetate	1.0
114-26-1	Propoxur [Phenol, 2-(1-methylethoxy)-, methylcarbamate]	1.0	593-60-2	Vinyl bromide	0.1
115-07-1	Propylene (Propene)	1.0	75-01-4	Vinyl chloride	0.1
75-55-8	Propyleneimine	0.1	75-35-4	Vinylidene chloride	1.0
75-56-9	Propylene oxide	0.1	1330-20-7	Xylene (mixed isomers)	1.0
110-86-1	Pyridine	1.0	108-38-3	m-Xylene	1.0
91-22-5	Quinoline	1.0	95-47-6	o-Xylene	1.0
106-51-4	Quinone	1.0	106-42-3	p-Xylene	1.0
82-68-8	Quintozene (Pentachloronitrobenzene)]	1.0	87-62-7	2,6-Xylidine	1.0
81-07-2	Saccharin (manufacturing, no supplier notification [1,2-Benzisothiazol-3(2H)-one,1,1-dioxide])	0.1	7440-66-6	Zinc (fume or dust)	1.0
94-59-7	Safrole	0.1	12122-67-7	Zineb [Carbamodithioic acid, 1,2-ethanediybis-, zinc complex]	1.0
7782-49-2	Selenium	1.0			
7440-22-4	Silver	1.0			
100-42-5	Styrene	0.1			
96-09-3	Styrene oxide	0.1			
7664-93-9	Sulfuric acid	1.0			
79-34-5	1,1,2,2-Tetrachloroethane	0.1			
127-18-4	Tetrachloroethylene (Perchloroethylene)	0.1			
961-11-5	Tetrachlorvinphos [Phosphoric acid, 2-chloro-1-(2,3,4,5-trichlorophenyl) ethenyl dimethyl ester]	1.0			
7440-28-0	Thallium	1.0			
62-55-5	Thioacetamide	0.1			
139-65-1	4,4'-Thiodianiline	0.1			
62-56-6	Thiourea	0.1			
1314-20-1	Thorium dioxide	1.0			
7550-45-0	Titanium tetrachloride	1.0			
108-88-3	Toluene	1.0			
584-84-9	Toluene-2,4-diisocyanate	0.1			
91-08-7	Toluene-2,6-diisocyanate	0.1			
26471-62-5	Toluenediisocyanate (mixed isomers)	0.1			
95-53-4	o-Toluidine	0.1			
636-21-5	o-Toluidine hydrochloride	0.1			
8001-35-2	Toxaphene	0.1			

(b) List of Chemical Categories

The metal compounds listed below, unless otherwise specified, are defined as including any unique chemical substance that contains the named metal (i.e., antimony, nickel, etc.) as part of that chemical's structure.

Toxic chemical categories are subject to the 1 percent de minimis concentration unless the substance involved meets the definition of a federal Occupational Safety and Health Act carcinogen, in which case the 0.1 percent de minimis concentration applies.

- o Antimony Compounds
- o Arsenic Compounds
- o Barium Compounds
- o Beryllium Compounds
- o Cadmium Compounds
- o Chlorophenols
- o Chromium Compounds
- o Cobalt Compounds
- o Copper Compounds \*
- o Cyanide Compounds - X<sup>+</sup>CN<sup>-</sup> where X = H<sup>+</sup>

\*\*Three substances were deleted from the Copper Compounds category and are not reportable beginning with calendar year 1991 (Form R reports due July 1992). They are C.I. Pigment Blue 15, CAS No. 147-14-8; C.I. Pigment Green 7, CAS No. 1328-53-6; and C.I. Pigment Green 36, CAS No. 14302-13-7.

- or any other group where a formal dissociation may occur. For example KCN or Ca(CN)<sub>2</sub>
- o Glycol Ethers - includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol. Polymers are excluded from the glycol ether category.
- o Lead Compounds
- o Manganese Compounds
- o Mercury Compounds
- o Nickel Compounds
- o Polybrominated Biphenyls (PBBs)
- o Selenium Compounds
- o Silver Compounds
- o Thallium Compounds
- o Zinc Compounds

2. Hazardous Waste

[Comment: The "Hazard Code" shown below indicates the basis used by the U.S. Environmental Protection Agency for listing the classes or types of wastes.

The codes have the following meaning:

- I - ignitable;                      E - [EP] toxic characteristic;
- C - corrosive;                    H - acute hazardous waste;
- R - reactive;                      T - toxic.]

- (a) Any characteristic hazardous waste meeting the criteria in 40 CFR Part 261 Subpart C and adopted by the state of Oregon under OAR Chapter 340, Divisions 100 and/or 101. [Note: The characteristics include ignitability, reactivity, corrosivity and toxicity.]

Hazardous Waste No.	Chemical Abstracts Service No.	Substance	Regulatory level: (PPM or mg/L)
D013	58-89-9	Lindane	0.4
D014	72-43-5	Methoxychlor	10.0
D015	8001-35-2	Toxaphene	0.5
D016	94-75-7	2,4-D	10.0
D017	93-72-1	2,4,5-TP Silvex	1.0
D018	71-43-2	Benzene	0.5
D019	56-23-5	Carbon tetrachloride	0.5
D020	57-74-9	Chlordane	0.03
D021	108-90-7	Chlorobenzene	100.0
D022	67-66-3	Chloroform	6.0
D023	95-48-7	o-Cresol	* 200.0
D024	108-39-4	m-Cresol	* 200.0
D025	106-44-5	p-Cresol	* 200.0
D026	1319-77-3	Cresol	* 200.0
D027	106-46-7	1,4-Dichlorobenzene	7.5
D028	107-06-2	1,2-Dichloroethane	0.5
D029	75-35-4	1,1-Dichloroethylene	0.7
D030	121-14-2	2,4-Dinitrotoluene	** 0.13
D031	76-44-8[A]	<u>Heptachlor</u>	<u>0.008</u>
	<del>[1024-57-3/</del>	<del>Heptachlor</del>	<del>0.008]</del>
		(and its epoxide)	
D032	118-74-1	Hexachlorobenzene	** 0.13
D033	87-68-3	Hexachlorobutadiene	0.5
D034	67-72-1	Hexachloroethane	3.0
D035	78-93-3	Methyl ethyl ketone (MEK)	200.0
D036	98-95-3	Nitrobenzene	2.0
D037	87-86-5	Pentachlorophenol	100.0
D038	110-86-1	Pyridine	** 5.0
D039	127-18-4	Tetrachloroethylene	0.7
D040	79-01-6	Trichloroethylene	0.5
D041	95-95-4	2,4,5-Trichlorophenol	400.0
D042	88-06-2	2,4,6-Trichlorophenol	2.0
D043	75-01-4	Vinyl chloride	0.2

CHARACTERISTIC HAZARDOUS WASTE:

Hazardous Waste No.	Chemical Abstracts Service No.	Substance	Regulatory level: (PPM or mg/L)
D001	-----	Ignitable waste	----
D002	-----	Corrosive waste	----
D003	-----	Reactive waste	----
D004	7440-38-2	Arsenic	5.0
D005	7440-39-3	Barium	100.0
D006	7440-43-9	Cadmium	1.0
D007	7440-47-3	Chromium	5.0
D008	7439-92-1	Lead	5.0
D009	7439-97-6	Mercury	0.2
D010	7782-49-2	Selenium	1.0
D011	7440-22-4	Silver	5.0
D012	72-20-8	Endrin	0.02

\* If o-, m-, and [0]p-Cresol concentrations cannot be differentiated, the total Cresol (D026) concentration is used. The regulatory level of total Cresol is 200 mg/L.

\*\* The quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

(b) Hazardous Waste from non-specific sources.

Industry and EPA hazardous waste No.	Hazardous Waste	Hazard Code
Generic:		
F001	The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene,	(T)

\*(I,T) Specifies mixtures containing ignitable and toxic constituents.

	<p>methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures</p>		<p>2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.</p>		
F002	<p>The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.</p>	(T)			
			F019	<p>Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing, when such phosphating is an exclusive conversion coating process.</p>	(T)
F003	<p>The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.</p>	(I)	F007	<p>Spent cyanide plating bath solutions from electroplating operations.</p>	(R,T)
			F008	<p>Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.</p>	(R,T)
			F009	<p>Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.</p>	(R,T)
F004	<p>The following spent non-halogenated solvents: Cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.</p>	(T)	F010	<p>Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.</p>	(R,T)
			F011	<p>Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.</p>	(R,T)
			F012	<p>Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process.</p>	(T)
F005	<p>The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and</p>	(T)	F024	<p>Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes from the</p>	(T)

- production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. [This listing does not include wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 261.32.] (T)
- F025 Condensed light ends, spent filters and filter aids, and spent desiccant waste from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.
- F020 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.) (H)
- F021 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives. (H)
- F022 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions. (H)
- F023 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.) (H)
- F026 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions. (H)
- F027 Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.) (H)
- F028 Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027. (T)
- F032 Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with §261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 and F035, and where the generator does not resume or initiate use of chlorophenolic formulations)). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. [~~Note: The listing of wastewaters that have not come into contact with process contaminants is stayed administratively. The listing for plants that have previously used chlorophenolic formulations is administratively stayed~~] (T)

~~whenever these wastes are covered by the F034 or F035 listings. These stays will remain in effect until further administrative action is taken.)]~~

F034 Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving process generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. [~~Note: The listing of wastewaters that have not come into contact with process contaminants is stayed administratively. The stay will remain in effect until further administrative action is taken.)]~~ (T)

F035 Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving process generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. [~~Note: The listing of wastewaters that have not come into contact with process contaminants is stayed administratively. The stay will remain in effect until further administrative action is taken.)]~~ (T)

F037 Petroleum refinery primary oil/water/solids separation sludge--Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters,

sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. (T) F038 Petroleum refinery secondary (emulsified) oil/water/solids separation sludge--Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.

F039 Leachate resulting from the treatment, storage, or disposal of wastes classified by more than one waste code under Subpart D, or from a mixture of wastes classified under Subparts C and D of this part. (Leachate resulting from the management of one or more EPA Hazardous Wastes and no other hazardous wastes retains its hazardous waste code(s): F020, F021, F022, F023, F026, F027 and F028.) (T)

(c) Hazardous wastes from specific sources.

Industry  
and EPA  
hazardous  
Hazard

waste No.    Hazardous Waste                      Code

**Wood preservation:**

K001    Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.    (T)

K016    Heavy ends or distillation residues from the production of carbon tetrachloride.    (T)

K017    Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.    (T)

K018    Heavy ends from the fractionation column in ethyl chloride production.    (T)

**Inorganic pigments:**

K002    Wastewater treatment sludge from the production of chrome yellow and orange pigments.    (T)

K003    Wastewater treatment sludge from the production of molybdate orange pigments.    (T)

K004    Wastewater treatment sludge from the production of zinc yellow pigments.    (T)

K005    Wastewater treatment sludge from the production of chrome green pigments.    (T)

K006    Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).    (T)

K007    Wastewater treatment sludge from the production of iron blue pigments.    (T)

K008    Oven residue from the production of chrome oxide green pigments.    (T)

K020    Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.    (T)

K021    Aqueous spent antimony catalyst waste from fluoromethanes production.    (T)

K022    Distillation bottom tars from the production of phenol/acetone from cumene.    (T)

K023    Distillation light ends from the production of phthalic anhydride from naphthalene.    (T)

K024    Distillation bottoms from the production of phthalic anhydride from naphthalene.    (T)

K093    Distillation light ends from the production of phthalic anhydride from ortho-xylene.    (T)

K094    Distillation bottoms from the production of phthalic anhydride from ortho-xylene.    (T)

K025    Distillation bottoms from the production of nitrobenzene by the nitration of benzene.    (T)

**Organic chemicals:**

K009    Distillation bottoms from the production of acetaldehyde from ethylene.    (T)

K010    Distillation side cuts from the production of acetaldehyde from ethylene.    (T)

K011    Bottom stream from the wastewater stripper in the production of acrylonitrile.    (R,T)

K013    Bottom stream from the acetonitrile column in the production of acrylonitrile.    (R,T)

K014    Bottoms from the acetonitrile purification column in the production of acrylonitrile.    (T)

K015    Still bottoms from the distillation of benzyl chloride.    (T)

K026    Stripping still tails from the production of methy ethyl pyridines.    (T)

K027    Centrifuge and distillation residues from toluene diisocyanate production.    (R,T)

K028    Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.    (T)

K029    Waste from the product steam stripper in the production of 1,1,1-trichloroethane.    (T)

K095    Distillation bottoms from the production of 1,1,1-trichloroethane.    (T)

K096    Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.    (T)

K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	(T)	K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K083	Distillation bottoms from aniline production.	(T)	K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	(T)
K103	Process residues from aniline extraction from the production of aniline.	(T)	K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	(T)
K104	Combined wastewater streams generated from nitrobenzene/aniline production.	(T)	K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	(T)	K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)			
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	(C,T)			
				<b>Inorganic chemicals:</b>	
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(I,T)	K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
K109	Spent filter cartridges from product purification from the production of 1, 1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(T)	K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
K110	Condensed column overheads from intermediate separation from the production of 1,1-di-methylhydrazine (UDMH) from carboxylic acid hydrazides.	(T)	K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene.	(C,T)	K031	By-product salts generated in the production of MSMA and cacodylic acid.	(T)
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)	K032	Wastewater treatment sludge from the production of chlordane.	(T)
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)	K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)	K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
			K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)
			K035	Wastewater treatment sludges generated in the production of creosote.	(T)



K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)	<b>Explosives:</b>
K037	Wastewater treatment sludges from the production of disulfoton.	(T)	K044 Wastewater treatment sludges from the manufacturing and processing of explosives.
K038	Wastewater from the washing and stripping of phorate production.	(T)	(R) K045 Spent carbon from the treatment of wastewater containing explosives.
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)	K046 Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.
K040	Wastewater treatment sludge from the production of phorate.	(T)	(R) K047 Pink/red water from TNT operations.
K041	Wastewater treatment sludge from the production of toxaphene.	(T)	<b>Petroleum refining:</b>
K098	Untreated process wastewater from the production of toxaphene.	(T)	K048 Dissolved air flotation (DAF) float from the petroleum refining industry.
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)	K049 Slop oil emulsion solids from the petroleum refining industry.
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	(T)	K050 Heat exchanger bundle cleaning sludge from the petroleum refining industry.
K099	Untreated wastewater from the production of 2,4-D.	(T)	K051 API separator sludge from the petroleum refining industry.
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salt.	(T)	K052 Tank bottoms (leaded) from the petroleum refining industry.
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	(C,T)	<b>Iron and steel:</b>
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	(T)	K061 Emission control dust/sludge from the primary production of steel in electric furnaces.
K-126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	(T)	K062 Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).
K-131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	(C,T)	<b>Primary copper:</b>
K-132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	(T)	K064 Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.
			<b>Primary lead:</b>
			K065 Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.
			<b>Primary Zinc:</b>
			K066 Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production.
			<b>Primary aluminum:</b>
			K088 Spent potliners from primary aluminum reduction.

**Ferroalloys:**

K090 Emission control dust or sludge from ferrochromiumsilicon production. (T)

K091 Emission control dust or sludge from ferrochromium production. (T)

production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations). (T)

**Secondary lead:**

K069 Emission control dust/sludge from secondary lead smelting (Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the **Federal Register**.) (T)

K100 Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting. (T)

K142 Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal. (T)

K143 Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal. (T)

K144 Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal. (T)

**Veterinary pharmaceuticals:**

K084 Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. (T)

K101 Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. (T)

K102 Residue from the use or activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. (T)

K145 Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal. (T)

K147 Tar storage tank residues from coal tar refining. (T)

K148 Residues from coal tar distillation, including but not limited to, still bottoms. (T)

(d) Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

**Ink formulation:**

K086 Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead. (T)

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in 40 CFR 261.2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

**Coking:**

K060 Ammonia still lime sludge from coking operations. (T)

K087 Decanter tank tar sludge from coking operations. (T)

K141 Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the

(A) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraph (E) or (F) of this section.

(B) Any off-specification commercial

chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (E) or (F) of this section.

- (C) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (E) or (F) of this section, unless the container is empty as defined in 40 CFR 261.7(b)(3).

**[Comment:** Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, EPA considers the residue to be intended for discard, and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.]

- (D) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (E) or (F) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (E) or (F) of this section.

**[Comment:** The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in ..." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraph (E) or (F). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed

in paragraph (E) or (F), such waste will be listed in either 40 CFR 261.31 or 40 CFR 261.32 or will be identified as a hazardous waste by the characteristics set forth in OAR 340-135-040(2)(a).

- (E) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (A) through (D) of this section, are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in 40 CFR 261.5(e). These wastes and their corresponding EPA Hazardous Waste Codes are:

Hazardous Waste No.	Chemical Abstracts No.	Substance
P023	107-20-0	Acetaldehyde, chloro-
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-
P057	640-19-7	Acetamide, 2-fluoro-
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P070	116-06-3	Aldicarb
P004	309-00-2	Aldrin
P005	107-18-6	Allyl alcohol
P006	20859-73-8	Aluminum phosphide(R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P008	504-24-5	4-Aminopyridine
P009	131-74-8	Ammonium picrate (R)
P119	7803-55-6	Ammonium vanadate
P099	506-61-6	Argentate(1-),bis(cyano-C)-, potassium
P010	7778-39-4	Arsenic acid H <sub>3</sub> AsO <sub>4</sub>
P012	1327-53-3	Arsenic oxide As <sub>2</sub> O <sub>3</sub>
P011	1303-28-2	Arsenic oxide As <sub>2</sub> O <sub>5</sub>
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic trioxide
P038	692-42-2	Arsine, diethyl-
P036	696-28-6	Arsonous dichloride, phenyl-
P054	151-56-4	Aziridine
P067	75-55-8	Aziridine, 2-methyl-
P013	542-62-1	Barium cyanide
P024	106-47-8	Benzenamine, 4-chloro-
P077	100-01-6	Benzenamine, 4-nitro-
P028	100-44-7	Benzene, (chloromethyl)-
P042	51-43-4	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)

Hazardous Waste No.	Chemical Abstracts No.	Substance	Hazardous Waste No.	Chemical Abstracts No.	Substance
P046	122-09-8	Benzeneethanamine, alpha, alpha-dimethyl-	P060	465-73-6	1,4,5,8 Dimethano-naphthalene,
P014	108-98-5	Benzenethiol			1,2,3,4,10,10-hexachloro-
P001	'81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%	P037	60-57-1	1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta, 8abeta)-2,7:3,6-Dimethano-naphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3beta, 6beta, 6alpha, 7beta, 7aalpha)-, & metabolites
P028	100-44-7	Benzyl chloride			
P015	7440-41-7	Beryllium			
P017	598-31-2	Bromoacetone			
P018	357-57-3	Brucine			
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino) carbonyl] oxime	P051	172-20-8	2,7:3,6-Dimethano-naphth[2,3-b]-oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3beta, 6beta, 6alpha, 7beta, 7aalpha)-, & metabolites
P021	592-01-8	Calcium cyanide			
P021	592-01-8	Calcium cyanide Ca(CN) <sub>2</sub>			
P022	75-15-0	Carbon disulfide			
P095	75-44-5	Carbonic dichloride			
P023	107-20-0	Chloroacetaldehyde			
P024	106-47-8	p-Chloroaniline	P044	60-51-5	Dimethoate
P026	5344-82-1	1-(o-Chlorophenyl) thiourea	P046	122-09-8	alpha, alpha-Dimethyl-phenethylamine
P027	542-76-7	3-Chloropropionitrile	P047	1534-52-1	4,6-Dinitro-o-cresol, & salts
P029	544-92-3	Copper cyanide			
P029	544-92-3	Copper cyanide Cu(CN)	P048	51-28-5	2,4-Dinitrophenol
P030	----	Cyanides (soluble cyanide salts), not otherwise specified	P020	88-85-7	Dinoseb
			P085	152-16-9	Diphosphoramide, octamethyl-
P031	460-19-5	Cyanogen	P111	107-49-3	Diphosphoric acid, tetraethyl ester
P033	506-77-4	Cyanogen chloride			
P033	506-77-4	Cyanogen chloride (CN)Cl	P039	298-04-4	Disulfoton
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol	P049	541-53-7	Dithiobiuret
			P050	115-29-7	Endosulfan
P016	542-88-1	Dichloromethyl ether	P088	145-73-3	Endothall
P036	696-28-6	Dichlorophenylarsine	P051	72-20-8	Endrin
P037	60-57-1	Dieldrin	P051	72-20-8	Endrin, & metabolites
P038	692-42-2	Diethylarsine	P042	51-43-4	Epinephrine
P041	311-45-5	Diethyl-p-nitrophenyl phosphate	P031	460-19-5	Ethanedinitrile
			P066	16752-77-5	Ethanimidothioic acid, N-[[[(methylamino) carbonyl]oxy], methyl ester
P040	297-97-2	O,O-Diethyl O-Pyrazinyl phosphorothioate			
P043	55-91-4	Diisopropylfluorophosphate (DFP)	P101	107-12-0	Ethyl cyanide
P004	309-00-2	1,4,5,8-Dimethano-naphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha, 8abeta)-	P054	151-56-4	Ethyleneimine
			P097	52-85-7	Famphur
			P056	7782-41-4	Fluorine
			P057	640-19-7	Fluoroacetamide
			P058	62-74-8	Fluoroacetic acid, sodium salt
			P065	628-86-4	Fulminic acid, mercury (2+) salt (R,T)
			P059	76-44-8	Heptachlor

Hazardous Waste No.	Chemical Abstracts No.	Substance	Hazardous Waste No.	Chemical Abstracts No.	Substance
P062	757-58-4	Hexaethyl tetraphosphate	P088	145-73-3	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
P116	79-19-6	Hydrazinecarbothioamide			
P068	60-34-4	Hydrazine, methyl-	P089	56-38-2	Parathion
P063	74-90-8	Hydrocyanic acid	P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P063	74-90-8	Hydrogen cyanide			
P096	7803-51-2	Hydrogen phosphide	P048	51-28-5	Phenol, 2,4-dinitro
P060	465-73-6	Isodrin	P047	1534-52-1	Phenol, 2-methyl-4,6-dinitro-, & salts
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-			
P092	62-38-4	Mercury, (acetato-O)phenyl-	P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P065	628-86-4	Mercury fulminate (R,T)	P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P082	62-75-9	Methanamine, N-methylN-nitroso-	P092	62-38-4	Phenylmercury acetate
P064	624-83-9	Methane, isocyanato-	P093	103-85-5	Phenylthiourea
P016	542-88-1	Methane, oxybis[chloro-	P094	298-02-2	Phorate
P112	509-14-8	Methane, tetranitro- (R)	P095	75-44-5	Phosgene
P118	75-70-7	Methanethiol, trichloro-	P096	7803-51-2	Phosphine
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester
			P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2(ethylthio)ethyl] ester
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester
P066	16752-77-5	Methomyl			
P068	60-34-4	Methyl hydrazine			
P064	624-83-9	Methyl isocyanate	P044	60-51-5	Phosphorodithioic acid, O,O-dimethylS-[2-(methylamino)-2-oxoethyl] ester
P069	75-86-5	2-Methylactonitrile			
P071	298-00-0	Methyl parathion			
P072	86-88-4	alpha-Naphthalenylthiourea	P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P073	13463-39-3	Nickel carbonyl	P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P073	13463-39-3	Nickel carbonyl (Ni(CO) <sub>4</sub> , (T,4)-			
P074	557-19-7	Nickel cyanide	P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P074	557-19-7	Nickel cyanide Ni(CN) <sub>2</sub>			
P075	154-11-5	Nicotine, & salts	P097	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester
P076	10102-43-9	Nitric oxide			
P076	10102-43-9	Nitrogen oxide NO			
P077	100-01-6	p-Nitroaniline			
P078	10102-44-0	Nitrogen dioxide	P071	298-00-0	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester
P078	10102-44-0	Nitrogen oxide NO <sub>2</sub>			
P081	55-63-0	Nitroglycerine (R)			
P082	62-75-9	N-Nitrosodimethylamine			
P084	4549-40-0	N-Nitrosomethylvinylamine	P110	78-00-2	Plumbane, tetraethyl-
			P098	151-50-8	Potassium cyanide
P085	152-16-9	Octamethylpyrophosphoramidate	P098	151-50-8	Potassium cyanide K(CN)
			P099	506-61-6	Potassium silver cyanide
P087	20816-12-0	Osmium oxide OsO <sub>4</sub> , (T-4)-	P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O[(methylamino)carbonyl]oxime
P087	20816-12-0	Osmium tetroxide			
			P101	107-12-0	Propanenitrile

Hazardous Waste	Chemical	Substance	Hazardous Waste	Chemical	Substance
<u>No.</u>	<u>Abstracts No.</u>	<u>Substance</u>	<u>No.</u>	<u>Abstracts No.</u>	<u>Substance</u>
P027	542-76-7	Propanenitrile, 3-chloro-	P120	1314-62-1	Vanadium oxide V <sub>2</sub> O <sub>5</sub>
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-	P120	1314-62-1	Vanadium pentoxide
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)	P084	4549-40-0	Vinylamine, N-methyl-N-nitroso-
P017	598-31-2	2-Propanone, 1-bromo-	P001	181-81-2	Warfarin, & salts, when present at concentrations greater than 0.3%
P102	107-19-7	Propargyl alcohol	P121	557-21-1	Zinc cyanide
P003	107-02-8	2-Propenal	P121	557-21-1	Zinc cyanide Zn(CN) <sub>2</sub>
P005	107-18-6	2-Propen-1-ol	P122	1314-84-7	Zinc phosphide Zn <sub>3</sub> P <sub>2</sub> , when present at concentrations greater than 10% (R,T)
P067	75-55-8	1,2-Propylenimine			
P102	107-19-7	2-Propyn-1-ol			
P008	504-24-5	4-Pyridinamine			
P075	154-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts			
P114	12039-52-0	Selenious acid, dithallium (1+)salt	<sup>1</sup> CAS Number given for parent compound only.		
P103	630-10-4	Selenourea			
P104	506-64-9	Silver cyanide			(F) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (A) through (D) of this section, are identified as toxic wastes (T), unless otherwise designated and are subject to the small quantity generator exclusion defined in 40 CFR 261.5(a) and (g). These wastes and their corresponding EPA Hazardous Waste Codes are:
P104	506-64-9	Silver cyanide Ag(CN)			
P105	26628-22-8	Sodium azide			
P106	143-33-9	Sodium cyanide			
P106	143-33-9	Sodium cyanide Na(CN)			
P108	157-24-9	Strychnidin-10-one, & salts			
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-			
P108	157-24-9	Strychnine, & salts			
P115	7446-18-6	Sulfuric acid, dithallium (1+)salt			
P109	3689-24-5	Tetraethyldithiopyrophosphate			
P110	78-00-2	Tetraethyl lead			
P111	107-49-3	Tetraethyl pyrophosphate	Hazardous Waste	Chemical	
P112	509-14-8	Tetranitromethane (R)	<u>No.</u>	<u>Abstracts No.</u>	<u>Substance</u>
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester	U001	75-07-0	Acetaldehyde (I)
P113	1314-32-5	Thallic oxide	U034	75-87-6	Acetaldehyde, trichloro-
P113	1314-32-5	Thallium oxide Tl <sub>2</sub> O <sub>3</sub>	U187	62-44-2	Acetamide, N-(4-ethoxyphenyl)-
P114	12039-52-0	Thallium(I)selenite	U005	53-96-3	Acetamide, N-9H-fluorene-2-yl-
P115	7446-18-6	Thallium(I)sulfate	U240	194-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester	U112	141-78-6	Acetic acid, ethyl ester (I)
P045	39196-18-4	Thiofanox	U144	301-04-2	Acetic acid, lead (2+) salt
P049	541-53-7	Thioimidodicarbonic diamide[(H <sub>2</sub> N)C(S)] <sub>2</sub> NH	U214	563-68-8	Acetic acid, thallium (1+) salt
P014	108-98-5	Thiophenol	See		
P116	79-19-6	Thiosemicarbazide	F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
P026	5344-82-1	Thiourea, (2-chlorophenyl)-	U002	67-64-1	Acetone (I)
P072	86-88-4	Thiourea, 1-naphthalenyl-	U003	75-05-8	Acetonitrile (I,T)
P093	103-85-5	Thiourea, phenyl-	U004	98-86-2	Acetophenone
P123	8001-35-2	Toxaphene	U005	53-96-3	2-Acetylaminofluorene
P118	75-70-7	Trichloromethanethiol			
P119	7803-55-6	Vanadic acid, ammonium salt			

Hazardous Waste	Chemical Abstracts No.	Substance	Hazardous Waste	Chemical Abstracts No.	Substance
U006	75-36-5	Acetyl chloride (C,R,T)	U221	25376-45-8	Benzenediamine, ar-methyl-
U007	79-06-1	Acrylamide	U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethyl-hexyl) ester
U008	79-10-7	Acrylic acid (I)	U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U009	107-13-1	Acrylonitrile	U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U011	61-82-5	Amitrole	U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U012	62-53-3	Aniline (I,T)	U107	117-84-0	1,2-Benzenedicarboxylic acid dioctyl ester
U136	75-60-5	Arsinic acid, dimethyl-	U070	95-50-1	Benzene, 1,2-dichloro-
U014	492-80-8	Auramine	U071	541-73-1	Benzene, 1,3-dichloro-
U015	115-02-6	Azaserine	U072	106-46-7	Benzene, 1,4-dichloro
U010	50-07-7	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[[(aminocar-bonyl)oxy]methyl]-1,1a,2,8,8a,8b,hexahydro-8a-methoxy-5-methyl-,[1aS-(1aalpha,8beta,8aalpha,8balpha)]-	U060	72-54-8	Benzene, 1,1'-(2,2-dichloro-ethylidene)bis[4-chloro-
U157	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	U017	98-87-3	Benzene, (dichloromethyl)-
U016	225-51-4	Benz[c]acridine	U223	26471-62-5	Benzene, 1,3-diisocyanato-methyl- (R,T)
U017	98-87-3	Benzal chloride	U239	1330-20-7	Benzene, dimethyl- (I,T)
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	U201	108-46-3	1,3-Benzenediol
U018	56-55-3	Benz[a]anthracene	U127	118-74-1	Benzene, hexachloro-
U094	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	U056	110-82-7	Benzene, hexahydro- (I)
U012	62-53-3	Benzenamine (I,T)	U220	108-88-3	Benzene, methyl-
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis [N,N-dimethyl-	U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl, hydrochloride	U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	U055	98-82-8	Benzene, (1-methylethyl)-(I)
U328	95-53-4	Benzenamine, 2-methyl-	U169	98-95-3	Benzene, nitro-
U353	106-49-0	Benzenamine, 4-methyl-	U183	608-93-5	Benzene, pentachloro-
U158	101-14-4	Benzenamine, 4,4' methyl-enebis [2-chloro-	U185	82-68-8	Benzene, pentachloronitro-
U222	636-21-5	Benzenamine, 2-methyl-hydro-chloride	U020	98-09-9	Benzenesulfonic acid chloride (C,R)
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-	U020	98-09-9	Benzenesulfonyl chloride (C,R)
U019	71-43-2	Benzene (I,T)	U207	95-94-3	Benzene, 1,2,4,tetrachloro-
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chloro-phenyl)-alpha-hydroxy, ethyl ester	U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloro-ethylidene)bis[4-chloro-
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-	U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloro-ethylidene)bis[4-methoxy-
U035	305-03-3	Benzenbutanoic acid, 4-[bis(2-chloroethyl)amino]-	U023	98-07-7	Benzene, (trichloro-methyl)-
U037	108-90-7	Benzene, chloro-	U234	99-35-4	Benzene, 1,3,5-trinitro-
			U021	92-87-5	Benzidine
			U202	181-07-2	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts

Hazardous Waste No.	Chemical Abstracts No.	Substance	Hazardous Waste No.	Chemical Abstracts No.	Substance
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	U114	1111-54-6	Carbamodithioic acid, 1,2-ethanediybis-, salts & esters
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	U062	2303-16-4	Carbamothioic acid, bis(1-methyl-ethyl)-, S- (2,3-dichloro-2-propenyl) ester
U090	94-58-6	1,3-Benzodioxole, 5-propyl-	U215	6533-73-9	Carbonic acid, dithallium (1+)salt
U064	189-55-9	Benzo[rs]t]pentaphene	U033	353-50-4	Carbonic difluoride
U248	181-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3- (3-oxo-1-phenylbutyl)-, & salts, when present at concentrations of 0.3% or less	U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U022	50-32-8	Benzo[a]pyrene	U033	353-50-4	Carbon oxyfluoride (R,T)
U197	106-5	1-4p-Benzoquinone	U211	56-23-5	Carbon tetrachloride
U023	98-07-7	Benzotrichloride (C,R,T)	U034	75-87-6	Chloral
U085	1464-53-5	2,2'-Bioxirane	U035	305-03-3	Chlorambucil
U021	92-87-5	[1,1'-Biphenyl]-4,4'-diamine	U036	57-74-9	Chlordane, alpha & gamma isomers
U073	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	U026	494-03-1	Chlornaphazin
U091	119-90-4	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethoxy-	U037	108-90-7	Chlorobenzene
U095	119-93-7	[1,1'-Biphenyl]-4,4'-diamine,3,3'-dimethyl-	U038	510-15-6	Chlorobenzilate
U225	75-25-2	Bromoform	U039	59-50-7	p-Chloro-m-cresol
U030	101-55-3	4-Bromophenyl phenyl ether	U042	110-75-8	2-Chloroethyl vinyl ether
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	U044	67-66-3	Chloroform
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-	U046	107-30-2	Chloromethyl methyl ether
U031	71-36-3	1-Butanol (I)	U047	91-58-7	beta-Chloronaphthalene
U159	78-93-3	2-Butanone (I,T)	U048	95-57-8	o-Chlorophenol
U160	1338-23-4	2-Butanone peroxide (R,T)	U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U053	4170-30-3	2-Butenal	U032	13765-19-0	Chromic acid H <sub>2</sub> CrO <sub>4</sub> , calcium salt
U074	764-41-0	2-Butene, 1,4-dichloro-(I,T)	U050	218-01-9	Chrysene
U143	303-34-4	2-Butenoic acid, 2-methyl, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]	U051	----	Creosote
		2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester,[1S-[1alpha(Z),7(2S*,3R*)],7aalpha]]-	U052	1319-77-3	Cresol (Cresylic acid)
U031	71-36-3	n-Butyl alcohol (I)	U053	4170-30-3	Crotonaldehyde
U136	75-60-5	Cacodylic acid	U055	98-82-8	Cumene (I)
U032	13765-19-0	Calcium chromate	U246	506-68-3	Cyanogen bromide (CN)Br
U238	51-79-6	Carbamic acid, ethyl ester	U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U178	615-53-2	Carbamic acid, methyl-nitroso-, ethyl ester	U056	110-82-7	Cyclohexane (I)
U097	79-44-7	Carbamic chloride, dimethyl-	U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha, 2alpha,3beta,4alpha, 5alpha,6beta)-
			U057	108-94-1	Cyclohexanone (I)
			U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexa-chloro-
			U058	50-18-0	Cyclophosphamide
			U240	194-75-7	2,4-D, salts & esters
			U059	20830-8	1-3Daunomycin
			U060	72-54-8	DDD
			U061	50-29-3	DDT
			U062	2303-1	6-4Diallate
			U063	53-70-3	Dibenz[a,h]anthracene
			U064	189-55-9	Dibenzo[a,i]pyrene



Hazardous Waste No.	Chemical Abstracts No.	Substance	Hazardous Waste No.	Chemical Abstracts No.	Substance
U066	96-12-8	1,2-Dibromo-3-chloropropane	U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U069	84-74-2	Dibutyl phthalate	U067	106-93-4	Ethane, 1,2-dibromo-
U070	95-50-1	o-Dichlorobenzene	U076	75-34-3	Ethane, 1,1-dichloro-
U071	541-73-1	m-Dichlorobenzene	U077	107-06-2	Ethane, 1,2-dichloro-
U072	106-46-7	p-Dichlorobenzene	U131	67-72-1	Ethane, hexachloro-
U073	91-94-1	3,3'-Dichlorobenzidine	U024	111-91-1	Ethane, 1,1'-[methylenebis (oxy)bis [2-chloro-
U074	764-41-0	1,4-dichloro-2-butene (I,T)	U117	60-29-7	Ethane, 1,1'-oxybis- (I)
U075	75-71-8	Dichlorodifluoromethane	U025	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
U078	75-35-4	1,1-Dichloroethylene	U184	76-01-7	Ethane, pentachloro-
U079	156-60-5	1,2-Dichloroethylene	U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U025	111-44-4	Dichloroethyl ether	U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U027	108-60-1	Dichloroisopropyl ether	U218	62-55-5	Ethanethioamide
U024	111-91-1	Dichloromethoxy ethane	U226	71-55-6	Ethane, 1,1,1-trichloro-
U081	120-83-2	2,4-Dichlorophenol	U227	79-00-5	Ethane, 1,1,2-trichloro-
U082	87-65-0	2,6-Dichlorophenol	U359	110-80-5	Ethanol, 2-ethoxy-
U084	542-75-6	1,3-Dichloropropene	U173	1116-54-7	Ethanol, 2,2'- (nitrosoimino)bis-
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)	U004	98-86-2	Ethanone, 1-phenyl-
U108	123-91-1	1,4-Diethyleneoxide	U043	75-01-4	Ethene, chloro-
U028	117-81-7	Diethylhexyl phthalate	U042	110-75-8	Ethene, (2-chloroethoxy)-
U086	1615-80-1	N,N'-Diethylhydrazine	U078	75-35-4	Ethene, 1,1-dichloro-
U087	3288-58-2	O,O-Diethyl S-methyl dithiophosphate	U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U088	84-66-2	Diethyl phthalate	U210	127-18-4	Ethene, tetrachloro-
U089	56-53-1	Diethylstilbesterol	U228	79-01-6	Ethene, trichloro
U090	94-58-6	Dihydrosafrole	U112	141-78-6	Ethyl acetate (I)
U091	119-90-4	3,3'-Dimethoxybenzidine	U113	140-88-5	Ethyl acrylate (I)
U092	124-40-3	Dimethylamine (I)	U238	51-79-6	Ethyl carbamate (urethane)
U093	60-11-7	p-Dimethylamino-azobenzene	U117	60-29-7	Ethyl ether (I)
U094	57-97-6	7,12-Dimethyl-benz[a]anthracene	U114	111-54-6	Ethylenebisdithiocarbamic acid, salts & esters
U095	119-93-7	3,3'-Dimethylbenzidine	U067	106-93-4	Ethylene dibromide
U096	80-15-9	alpha,alpha Dimethylbenzylhydroperoxide (R)	U077	107-06-2	Ethylene dichloride
U097	79-44-7	Dimethylcarbamoyl chloride	U359	110-80-5	Ethylene glycol monoethyl ether
U098	57-14-7	1,1-Dimethylhydrazine	U115	75-21-8	Ethylene oxide (I,T)
U099	540-73-8	1,2-Dimethylhydrazine	U116	96-45-7	Ethylenethiourea
U101	105-67-9	2,4-Dimethylphenol	U076	75-34-3	Ethylidene dichloride
U102	131-11-3	Dimethyl phthalate	U118	97-63-2	Ethyl methacrylate
U103	77-78-1	Dimethyl sulfate	U119	62-50-0	Ethyl methanesulfonate
U105	121-14-2	2,4-Dinitrotoluene	U120	206-44-0	Fluoranthene
U106	606-20-2	2,6-Dinitrotoluene	U122	50-00-0	Formaldehyde
U107	117-84-0	Di-n-octyl phthalate	U123	64-18-6	Formic acid (C,T)
U108	123-91-1	1,4-Dioxane	U124	110-00-9	Furan (I)
U109	122-66-7	1,2-Diphenylhydrazine	U125	98-01-1	2-Furancarboxaldehyde (I)
U110	142-84-7	Dipropylamine (I)	U147	108-31-6	2,5-Furandione
U111	621-64-7	Di-n-propylnitrosamine	U213	109-99-9	Furan, tetrahydro- (I)
U041	106-89-8	Epichlorohydrin	U125	98-01-1	Furfural (I)
U001	75-07-0	Ethanal (I)	U124	110-00-9	Furfural (I)
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-			

Hazardous Waste	Chemical	Substance	Hazardous Waste	Chemical	Substance
No.	Abstracts No.		No.	Abstracts No.	
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido-, D-	U075	75-71-8	Methane, dichlorodifluoro-
			U138	74-88-4	Methane, iodo-
			U119	62-50-0	Methanesulfonic acid, ethyl ester
U206	18883-66-4	D-Glucose, 2-deoxy-2-[[methyl-nitrosoamino)-carbonyl]amino]-	U211	56-23-5	Methane, tetrachloro-
			U153	74-93-1	Methanethiol (I,T)
U126	765-34-4	Glycidylaldehyde	U225	75-25-2	Methane, tribromo-
U163	70-25-7	Guanidine, N-methyl-N'-nitro-N-nitroso-	U044	67-66-3	Methane, trichloro-
			U121	75-69-4	Methane, trichlorofluoro-
U127	118-74-1	Hexachlorobenzene	U036	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-
U128	87-68-3	Hexachlorobutadiene			2,3,3a,4,7,7a-hexahydro-
U130	77-47-4	Hexachlorocyclopentadiene	U154	67-56-1	Methanol (I)
U131	67-72-1	Hexachloroethane	U155	91-80-5	Methapyrilene
U132	70-30-4	Hexachlorophene	U142	143-50-0	1,3,4-Metheno-2H-cyclobuta [cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b, 6-decachloro-octahydro-
U243	1888-71-7	Hexachloropropene			Methoxychlor
U133	302-01-2	Hydrazine (R,T)			Methyl alcohol (I)
U086	1615-80-1	Hydrazine, 1,2-diethyl-	U247	72-43-5	Methyl bromide
U098	57-14-7	Hydrazine, 1,1-dimethyl-	U154	67-56-1	1-Methylbutadiene (I)
U099	540-73-8	Hydrazine, 1,2-dimethyl-	U029	74-83-9	Methyl chloride (I,T)
U109	122-66-7	Hydrazine, 1,2-diphenyl-	U186	504-60-9	Methyl chlorocarbonate (I,T)
U134	7664-39-3	Hydrofluoric acid (C,T)	U045	74-87-3	Methyl chloroform
U134	7664-39-3	Hydrogen fluoride (C,T)	U156	79-22-1	3-Methylcholanthrene
U135	7783-06-4	Hydrogen sulfide			4,4'-Methylenebis(2-chloroaniline)
U135	7783-06-4	Hydrogen sulfide H <sub>2</sub> S			Methylene bromide
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl- (R)	U226	71-55-6	Methylene Chloride
			U157	56-49-5	Methyl ethyl ketone (MEK)(I,T)
			U158	101-14-4	Methyl ethyl ketone peroxide(R,T)
U116	96-45-7	2-Imidazolidinethione			Methyl iodide
U137	193-39-5	Indeno[1,2,3-cd]pyrene			Methyl isobutyl ketone (I)
U190	85-44-9	1,3-Isobenzofurandione	U068	74-95-3	Methyl methacrylate (I,T)
U140	78-83-1	Isobutyl alcohol (I,T)	U080	75-09-2	4-Methyl-2-pentanone (I)
U141	120-58-1	Isosafrole	U159	78-93-3	Methylthiouracil
U142	143-50-0	Kepon			Mitomycin C
U143	303-34-4	Lasiocarpine	U160	1338-23-4	1-35,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6- trideoxy)-alpha-L-lyxo-hexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U144	301-04-2	Lead acetate	U138	74-88-4	1-Naphthalenamine
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-	U161	108-10-1	2-Naphthalenamine
			U162	80-62-6	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U145	7446-27-7	Lead phosphate	U161	108-10-1	Naphthalene
U146	1335-32-6	Lead subacetate	U164	56-04-2	
U129	58-89-9	Lindane	U010	50-07-7	
U163	70-25-7	MNNG	U059	20830-8	
U147	108-31-6	Maleic anhydride			
U148	123-33-1	Maleic hydrazide			
U149	109-77-3	Malononitrile			
U150	148-82-3	Melphalan			
U151	7439-97-6	Mercury			
U152	126-98-7	Methacrylonitrile (I,T)			
U092	124-40-3	Methanamine, N-methyl-(I)	U167	134-32-7	
			U168	91-59-8	
U029	74-83-9	Methane, bromo-	U026	494-03-1	
U045	74-87-3	Methane, chloro- (I,T)			
U046	107-30-2	Methane, chloromethoxy-			
U068	74-95-3	Methane, dibromo-			
U080	75-09-2	Methane, dichloro-	U165	91-20-3	

Hazardous Waste	Chemical Abstracts No.	Substance	Hazardous Waste	Chemical Abstracts No.	Substance
U047	91-58-7	Naphthalene, 2-chloro-	U132	70-30-4	Phenol, 2,2'-methyl-enebis[3,4,6-trichloro-
U166	130-15-4	1,4-Naphthalenedione			Phenol, 4-nitro-
U236	75-57-1	2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dim ethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis[5-amino-4-hydroxy]-tetrasodium salt	U170	100-02-7	
			See		
			F027	87-86-5	Phenol, pentachloro-
			See		
			F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
			See		
U166	130-15-4	1,4-Naphthoquinone	F027	95-95-4	Phenol, 2,4,5-trichloro-
U167	134-32-7	alpha-Naphthylamine	See		
U168	91-59-8	beta-Naphthylamine	F027	88-06-2	Phenol, 2,4,6-trichloro-
U217	10102-4	5-Nitric acid, thallium (1+)salt	U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
					Phosphoric acid, lead(2+) salt (2:3)
U169	98-95-3	Nitrobenzene (I,T)	U145	7446-27-7	
U170	100-02-7	p-Nitrophenol			
U171	79-46-9	2-Nitropropane (I,T)	U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U172	924-16-3	N-Nitrosodi-n-butylamine			
U173	1116-54-7	N-Nitrosodiethanolamine	U189	1314-80-3	Phosphorus sulfide (R)
U174	55-18-5	N-Nitrosodiethylamine	U190	85-44-9	Phthalic anhydride
U176	759-73-9	N-Nitroso-N-ethylurea	U191	109-06-8	2-Picoline
U177	684-93-5	N-Nitroso-N-methylurea	U179	100-75-4	Piperidine, 1-nitroso-
U178	615-53-2	N-Nitroso-N-methyl-urethane	U192	23950-5	8-5Pronamide
			U194	107-10-8	1-Propanamine (I,T)
U179	100-75-4	N-Nitrosopiperidine	U111	621-64-7	1-Propanamine, N-nitroso-
U180	930-55-2	N-Nitrosopyrrolidine			N-propyl-
U181	99-55-8	5-Nitro-o-toluidine	U110	142-84-7	1-Propanamine, N-propyl-
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide			(I)
			U066	96-12-8	Propane, 1,2-dibromo-3-chloro
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloro-ethyl)tetra-hydro-,2-oxide	U083	78-87-5	Propane, 1,2-dichloro-
			U149	109-77-3	Propanedinitrile
			U171	79-46-9	Propane, 2-nitro- (I,T)
			U027	108-60-1	Propane, 2,2'-oxybis[2-chloro-
					1,3-Propane sultone
U115	75-21-8	Oxirane (I,T)			
U126	765-34-4	Oxiranecarboxyaldehyde	U193	1120-71-4	
U041	106-89-8	Oxirane, (chloromethyl)-	See		
U182	123-63-7	Paraldehyde	F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
U183	608-93-5	Pentachlorobenzene			
U184	74-01-7	Pentachloroethane	U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U185	82-68-8	Pentachloronitrobenzene (PCNB)			
			U140	78-83-1	1-Propanol, 2-methyl- (I,T)
See			U002	67-64-1	2-Propanone (I)
F027	87-86-5	Pentachlorophenol	U007	79-06-1	2-Propenamamide
U161	108-10-1	Pentanol, 4-methyl-	U084	542-75-6	1-Propene, 1,3-dichloro-
U186	504-60-9	1,3-Pentadiene (I)	U243	1888-71-7	1-Propene,1,1,2,3,3,3-hexachloro-
U187	62-44-2	Phenacetin			
U188	108-9	5-2Phenol			
U048	95-57-8	Phenol, 2-chloro-	U009	107-13-1	2-Propenenitrile
U039	59-50-7	Phenol, 4-chloro-3-methyl-	U152	126-98-7	2-Propenenitrile, 2-methyl-
U081	120-83-2	Phenol, 2,4-dichloro-			(I,T)
U082	87-65-0	Phenol, 2,6-dichloro-	U008	79-10-7	2-Propenoic acid (I)
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-,(E)-	U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U101	105-67-9	Phenol, 2,4-dimethyl-	U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U052	1319-77-3	Phenol, methyl-			

Hazardous Waste	Chemical	Substance	Hazardous Waste	Chemical	Substance
<u>No.</u>	<u>Abstracts No.</u>		<u>No.</u>	<u>Abstracts No.</u>	
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)	U221	25376-45-8	Toluenediamine
U194	107-10-8	n-Propylamine (I,T)	U223	26471-62-5	Toluene diisocyanate (R,T)
U083	78-87-5	Propylene dichloride	U328	95-53-4	o-Toluidine
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro	U353	106-49-0	p-Toluidine
U198	110-86-1	Pyridine	U222	636-21-5	o-Toluidine hydrochloride
U191	109-06-8	Pyridine, 2-methyl	U011	61-82-5	1H-1,2,4-Triazol-3-amine
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	U227	79-00-5	1,1,2-Trichloroethane
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	U228	79-01-6	Trichloroethylene
U180	930-55-2	Pyrrolidine, 1-nitroso-	U121	75-69-4	Trichloromonofluoromethane
U200	50-55-5	Reserpine	See		
U201	108-46-3	Resorcinol	F027	95-95-4	2,4,5-Trichlorophenol
U202	181-07-2	Saccharin, & salts	See		
U203	94-59-7	Safrole	F027	88-06-2	2,4,6-Trichlorophenol
U204	7783-00-8	Selenious acid	U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U204	7783-00-8	Selenium dioxide	U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U205	7488-56-4	Selenium sulfide	U235	126-72-7	Tris(2,3-dibromopropyl)phosphate
U205	7488-56-4	Selenium sulfide SeS <sub>2</sub> (R,T)	U236	72-57-1	Trypan blue
U015	115-02-6	L-Serine, diazoacetate (ester)	U237	66-75-1	Uracil mustard
See			U176	759-73-9	Urea, N-ethyl-N-nitroso-
F027	93-72-1	Silvex (2,4,5-TP)	U177	684-93-5	Urea, N-methyl-N-nitroso-
U206	18883-66-4	Streptozotocin	U043	75-01-4	Vinyl chloride
U103	77-78-1	Sulfuric acid, dimethyl ester	U248	181-81-2	Warfarin, & salts, when present at concentrations of 0.3% or less
U189	1314-80-3	Sulfur phosphide (R)			
See			U239	1330-20-7	Xylene (I)
F027	93-76-5	2,4,5-T	U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[3,4,5-trimethoxybenzoyloxy]-,methyl ester, (3beta,16beta, 17alpha, 18beta,20alpha)-
U207	95-94-3	1,2,4,5-Tetrachlorobenzene	U249	1314-84-7	Zinc phosphide Zn <sub>3</sub> P <sub>2</sub> , when present at concentrations of 10% or less
U208	630-20-6	1,1,1,2-Tetrachloroethane			
U209	79-34-5	1,1,2,2-Tetrachloroethane			
U210	127-18-4	Tetrachloroethylene			
See					
F027	58-90-2	2,3,4,6-Tetrachlorophenol			
U213	109-99-9	Tetrahydrofuran (I)			
U214	563-68-8	Thallium(I) acetate			
U215	6533-73-9	Thallium(I) carbonate			
U216	7791-12-0	Thallium(I) chloride			
U216	7791-12-0	Thallium chloride TlCl			
U217	10102-45-1	Thallium(I) nitrate			
U218	62-55-5	Thioacetamide			
U153	74-93-1	Thiomethanol (I,T)			
U244	137-26-8	Thioperoxydicarbonic diamide[(H <sub>2</sub> N)C(S)] <sub>2</sub> S <sub>2</sub> , tetramethyl-			
U219	62-56-6	Thiourea			
U244	137-26-8	Thiram			
U220	108-88-3	Toluene			

<sup>1</sup>CAS Number given for parent compound only.

(e) Any residue, including but not limited to manufacturing process wastes and unused chemicals that has either:

(A) A 3% or greater concentration of any substance or mixture of substances listed in 40 CFR 261.33(e); or

(B) A 10% or greater concentration of any substance or mixture of substances listed in 40 CFR 261.33(f), except U075 (Dichlorodifluoromethane) and U121

(Trichloromonofluoromethane) when they are intended to be recycled.

- (f) The wastes identified in subsections (e)(A) of this rule are identified as acutely hazardous wastes (H) and are subject to the small quantity exclusion defined in 40 CFR 261.5(e).

[**Comment:** Section (2)(e) of this rule shall be applied to a manufacturing process waste only in the event it is not identified elsewhere in OAR Chapter 340, Division 101, but prior to application of section (2)(g) of this rule.]

- (g) A pesticide residue or pesticide manufacturing residue is a toxic hazardous waste if a representative sample of the residue exhibits a 96-hour aquatic  $LC_{50}$  equal to or less than 250 mg/l, except for residues listed in Table 1 of 40 CFR 261.24 which pass the evaluation requirement of 40 CFR 261.24.

[**Comment:** A pesticide residue or pesticide manufacturing residue identified section (2)(g)(A) of this rule but not in 40 CFR 261.24 or listed elsewhere in Subpart D of 40 CFR Part 261, has the Hazardous Waste Number of X001 and is added to and made a part of the list of hazardous wastes in 40 CFR 261.31, until a representative sample of the residue no longer exhibits an  $LC_{50}$  equal to or less than 250 mg/l.]

- (h) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates listed as follows:

- (A) P999. . . Nerve agents (such as GB (Sarin) and VX).

(Rev. 10/16/92, Effective 11/1/92)

## **SUPPORTING PROCEDURAL DOCUMENTATION**

1. Legal Notice of Hearing
2. Notice to Interested and Affected Public
3. Rulemaking Statements (Statement of Need)
4. Fiscal and Economic Impact Statement
5. Land Use Evaluation Statement

## NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality, Waste Management and Cleanup Division  
OAR Chapter 340, Divisions 93, 100, 101, 102, 105, 110, 111, and 135

**DATE:** February 22, 1994  
**TIME:** 9:00 a.m. until completed  
**LOCATION:** Department of Environmental Quality,  
811 S.W. 6th Ave., Portland, Third Floor  
Room 3A

**HEARINGS OFFICER:** Gil Hargreaves

**STATUTORY AUTHORITY:** ORS 192, 465.009, 466.015, 466.020, 466.075, 466.090, 468.020,  
646

**ADOPT:** OAR 340-101-034, 340-111-001, 340-111-002, 340-111-012, 340-111-022, 340-111-023, 340-111-024, 340-111-042, 340-111-043, 340-111-057, 340-111-081

**AMEND:** OAR 340-93-190, 340-100-002, 340-100-003, 340-101-004, 340-101-033, 340-102-011, 340-102-034, 340-105-012, 340-110-020, 340-111-010, 340-135-020, 340-135-040, 340-135 Appendix 1

**REPEAL:** OAR 340-101-006, 340-111-020, 340-111-030, 340-111-040

- This hearing notice is the initial notice given for this rulemaking action.
- Auxiliary aids for persons with disabilities are available upon advance request.

**SUMMARY:** Adopting federal hazardous waste regulations, including used oil management standards and clarifications; amending Oregon Administrative Rules pertaining to special wastes management standards, generator standards, laboratory standards, and confidentiality; updating and amending and updating Toxics Use Reduction and Hazardous Waste Reduction regulations.

**LAST DATE FOR COMMENT:** received by 5:00 p.m., February 23, 1994

**DATE PROPOSED TO BE EFFECTIVE:** Upon adoption by the Environmental Quality Commission and subsequent filing with the Secretary of State.

**AGENCY RULES COORDINATOR:** Harold Sawyer, (503) 229-5776

**AGENCY CONTACT FOR THIS PROPOSAL:** Gary Calaba, (503)229-6534

**ADDRESS:** Waste Management and Cleanup Division, 811 S. W. 6th Avenue, Portland, Oregon 97204

**TELEPHONE:** (503) 229-6534, or Toll Free 1-800-452-4011

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments will also be considered if received by the date indicated above.

Signature

Date

*Galaba*

B-1

1-14-94

*(Handwritten mark)*

January 11, 1994

**To:** Interested and Affected Public<sup>1</sup>

**Subject:** Proposed Rulemaking: Authorization for rulemaking hearing on adopting federal hazardous waste regulations, including used oil management standards with clarifying language; amending Oregon Administrative Rules (OAR) pertaining to certain special wastes, hazardous waste generator standards, hazardous waste laboratory standards, hazardous waste confidentiality claims; and amending and updating Toxics Use Reduction and Hazardous Waste Reduction (TUR) regulations.

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt federal hazardous waste management rules, and to amend existing state hazardous waste management rules. If adopted by the Environmental Quality Commission (EQC), this proposal would:

- ▶ Adopt by reference federal hazardous waste regulations enacted between July 1, 1992 and July 1, 1993, including new used oil management standards with clarifying changes;
- ▶ Establish special waste management standards for treated wood waste and sandblast grit waste, and eliminate hazardous waste determination requirements under the state-only 3% and 10% rule for Toxicity Characteristic constituents;
- ▶ Require hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records;
- ▶ Specify in regulation the laboratory procedures for conducting a state-only hazardous waste determination using the Aquatic Toxicity Test;



<sup>1</sup>Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317 (voice)/(503)229-6993 (TDD).

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Memo To: Interested and Affected Public

January 11, 1994

Page 2

- ▶ Establish Confidential Business Information (CBI) generator filing procedures; and
- ▶ Update and amend the Toxics Use Reduction and Hazardous Waste Reduction regulations.

### 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" of the Rulemaking Hearing. (required by ORS 183.335)  |
| Attachment C | The official Rulemaking Statements for the proposed rulemaking action. (required by ORS 183.335)   |
| Attachment D | The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)                               |
| Attachment E | A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans. |
| Attachment F | Summary of federal hazardous waste regulations.  |
| Attachment G | List of "P" and "U" chemicals not subject to regulation under the state-only "3% and 10% rule".  |
| Attachment H | Hazardous Waste/Toxics Use Reduction Advisory Committee recommendations (1993).  |
| Attachment I | Letter from Mike Gearheard, U.S. EPA Region 10, to Roy Brower, DEQ, on the Department's used oil rule.   |

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Memo To: Interested and Affected Public  
January 11, 1994  
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## Hearing Process Details

You are invited to review these materials and present written or oral comment as follows:

**Date:** February 22, 1994  
**Time:** 9 a.m. until completed  
**Place:** Department of Environmental Quality, 811 S.W. 6th Ave., Portland, Oregon, Third Floor, Room 3A.

**Deadline for submittal of Written Comments:** 5:00 p.m., February 23, 1994

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

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

## What Happens After the Public Comment Period Closes

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

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is **March 11, 1994**. 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**

The Department is presenting a lengthy proposal recommending adoption of new and revisions of existing state hazardous waste regulations. The proposed changes address six topic areas: (1) adoption by reference of federal hazardous waste regulations enacted between July 1, 1992 and July 1, 1993, including new used oil management standards with clarifying changes; (2) establishment of special waste management standards for treated wood waste and sandblast grit waste and elimination of hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents; (3) requirements for hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records; (4) specifying in regulation the laboratory procedures for conducting hazardous waste determination using an aquatic toxicity test; (5) establishment of Confidential Business Information (CBI) filing procedures; and (6) updating and amending the Toxics Use Reduction and Hazardous Waste Reduction regulations.

Recommendations on the Department's proposed changes by the 1993 Hazardous Waste/Toxics Use Reduction Advisory Committee (1993 HW/TUR Advisory Committee) are included as Attachment H.

### **1. Adoption by Reference of the Federal Hazardous Waste Regulations enacted between July 1, 1992 and July 1, 1993, including Used Oil Management Standards with Clarifying Changes**

The Department must adopt all federal hazardous waste regulations in order to retain authorization from the Environmental Protection Agency (EPA) to implement the hazardous waste program under the Resource Conservation and Recovery Act (RCRA)<sup>2</sup> in lieu of the EPA. States are required to adopt clusters of federal regulatory changes one year after promulgation of hazardous waste rules by the EPA. The Department has already adopted federal hazardous waste regulations through July 1, 1992, and proposes to adopt new federal rules which will make the state rules current with the federal rules through July 1, 1993. (See Attachment A, page A2, no. 2 for the proposed rule amendment; Attachment C for a detailed discussion; Attachment F for a summary of the federal regulations proposed for adoption; and Attachment H, no. 1, for the 1993 HW/TUR Advisory Committee recommendation). Included in this rulemaking are the new used oil management regulations with proposed clarifying language.

EPA amended the used oil management rules under 40 Code of Federal Regulations (CFR)

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<sup>2</sup>"RCRA" is the Resource Conservation and Recovery Act of 1984.

Part 279 on September 10, 1992 and May 3 and June 17, 1993. The new rules define management methods for mixtures of used oil and other materials, and establish management standards for used oil generators, collection facilities, transporters, processors/re-refiners, burners, and marketers of used oil. The Department has proposed clarifying language to better reflect EPA's intent as described in the rules' preamble and EPA supports the proposed changes. Specifically, the definition of "used oil" is expanded to clarify what is and is not a used oil and a 5,000 BTU per pound limit is set to distinguish used oil that is burned for energy recovery. (See Attachment A, pages A2, no. 2, comment; A15, nos. 10 and 11; and A18, no. 13 for the proposed used oil rule amendments; Attachment C for a detailed discussion; and Attachment H, no. 2, for the 1993 HW/TUR Advisory Committee recommendation).

**2. Establishment of special waste management standards for treated wood waste and sandblast grit waste and elimination of hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents.**

**a. Establishment of special waste management standards for treated wood waste.**

Under current regulations, discarded pesticide treated wood waste, such as telephone poles, bridge pilings or mill ends, that are not regulated under the federal hazardous waste rules, may still be a state-only hazardous waste if they fail the aquatic toxicity test. Currently, these state-only hazardous wastes must be managed in accordance with federal hazardous waste management standards because no state-specific standards have ever been established. The Department believes that pesticide treated wood waste may be safely managed in a modern, lined solid waste landfill because of low concentration of leachable pesticides remaining in the wood. The Department has also proposed modified storage limits and specifically promotes the recycling, use and reuse of pesticide treated wood. (See Attachment A, pages A1, no.1 and A5, no. 6 for the proposed rule amendments and adoptions; Attachment C for a detailed discussion; and Attachment H, no. 3, for the 1993 HW/TUR Advisory Committee recommendation).

**b. Establishment of special waste management standards for sandblast grit waste.**

Under current regulations, sandblast grit waste resulting from sandblasting ships and marine structures to remove rust and old paint may contain antifoulant ingredients such as Tributyltin (TBT) or cuprous oxide used to control the growth of unwanted organisms on the hulls. Discarded sandblast grit that is not regulated under the federal hazardous waste rules may still be a state-only hazardous waste if it fails the aquatic toxicity test. Currently, these state-only hazardous wastes must be managed in accordance with federal hazardous waste management standards because no state-specific standards have ever been established. The Department believes that sandblast grit waste, which is a state-only hazardous waste, may be

safely managed in a modern, lined solid waste landfill because of low concentration of leachable antifoulant remaining in the grit waste. The Department also proposes to minimize environmental exposure from state-only hazardous grit waste by requiring generators to prevent the waste from entering the environment during generation, using Best Pollution Prevention Practices (BPPs), or equivalent methods; and proposes modified storage limits and specifically promotes the recycling, use and reuse of sandblast grit waste. (See Attachment A, pages A1, no. 1 and A5, no. 6 for the proposed rule amendments and adoptions, and page A7, Appendix 1 to the proposed amendment for recommended BPPs; Attachment C for a detailed discussion; and Attachment H, no. 4, for the 1993 HW/TUR Advisory Committee recommendation).

**c. Elimination of hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents.**

Under this rule, any wastes that have either a total of 3% or greater concentration of any substance or mixture of substances identified as federal "P"<sup>3</sup> listed chemicals or a total of 10% or greater concentration of any substance or mixture of substances identified as "U"<sup>4</sup> listed chemicals under the federal hazardous waste program are a state-only hazardous waste. Currently, the Department subjects these wastes to dual hazardous evaluation by requiring generators to evaluate a waste first under the federal Toxicity Characteristic Leaching Procedure<sup>5</sup> (TCLP); and if it passes, again under the Department's hazardous waste "3% and 10%" rules. This creates a double hazardous determination standard and is unnecessary. The federal program only regulates "P" and "U" listed wastes in their "pure" form, i.e., 100% concentration.

The Department proposes that wastes containing only the TCLP chemicals which are also listed on the federal "P" and "U" lists not be subject to dual evaluation under Oregon's "3% and 10%" rule, provided wastes containing those chemicals pass the TCLP for the chemical involved. This proposal eliminates twenty-four (24) "U" waste codes, and fifteen (15) "P" waste codes from the dual evaluation requirement. Three-hundred and two (302) "P" and "U" waste codes would still be subject to the "3% and 10%" test, however, because they are not yet subject to the TCLP. (See Attachment A, page A5, no. 5 for the proposed rule amendments; and Attachment G for the complete list of "P" and "U" waste codes being proposed for elimination from double evaluation; Attachment C for a detailed discussion; and

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<sup>3</sup>"P" listed chemicals are unused commercial chemical products and are federal acute hazardous waste when discarded or spilled.

<sup>4</sup>"U" listed chemicals are unused commercial chemical products and are federal toxic, ignitable or reactive hazardous wastes when discarded or spilled.

<sup>5</sup>The Toxicity Characteristic Leaching Procedure is a chemical specific test which is used to determine if a chemical listed in 40 CFR 261.24 is by definition a hazardous waste.

Attachment H, no. 5, for the 1993 HW/TUR Advisory Committee recommendation).

**3. Requirements for hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records.**

The Department has identified two hazardous waste generator rules that have created implementation difficulties and confusion for generators.

**a. Container and tank hazardous waste accumulation management requirements.**

The Department has adopted federal hazardous waste regulations governing hazardous waste that is stored and accumulated in containers and tanks. Under the federal scheme, which the Department has adopted, if any of these regulatory requirements are not met, such as failure to label or mark a drum "hazardous", then the generator may be required to obtain a hazardous waste RCRA storage permit. The Department and EPA generally do not require generators to obtain a RCRA permit for violation of these requirements because it is better to immediately correct the violation than to go through a costly and time-consuming permit process. (In 1980, when EPA promulgated the regulation, EPA believed that permits would be easily obtainable. Although there may be some instances when failure to follow the requirements in 40 CFR 262.34 might trigger a storage permit, correcting the violation, such as labeling a drum "hazardous", should suffice.)

Because of the results of a recent enforcement hearing, the Department proposes to make it clearly a duty on generators to meet the requirements outlined in 40 CFR 262.34 (a)-(f), while retaining the federal option of requiring a permit in egregious cases. (See Attachment A, page A14, no. 8 for the proposed rule amendment; Attachment C for a detailed discussion; and Attachment H, no. 6, for the 1993 HW/TUR Advisory Committee recommendation).

**b. Maintaining hazardous waste determination records.**

Hazardous waste generators are required to determine if the waste they generate is hazardous. The generator may make this determination through waste analysis or knowledge of the process. Because generators are not explicitly required to maintain written records on how their waste determination was made, it is often difficult for the Department and the generator to demonstrate how the determination is made and to accurately determine generator status. Generator status dictates which regulations that apply. Inaccurate status determination can result in improper management of wastes which may be costly for the generator.

The proposed rule requires generators to maintain a copy of the documentation used to

determine whether a residue is a hazardous waste as long as the waste is being generated, and for a minimum of three years after the waste stream is no longer generated. If no documentation is created in making the determination, then no new documentation need be created. (See Attachment A, page A13, no. 7 for the proposed rule amendment; Attachment C for a detailed discussion; and Attachment H, no. 6, for the 1993 HW/TUR Advisory Committee recommendation).

**4. Specifying in regulation the laboratory procedures for conducting hazardous waste determination using an aquatic toxicity test.**

The Department has encountered some confusion among Oregon's regulated community over which Aquatic Toxicity Test procedure is required to be performed when making a hazardous waste determination of a pesticide residue. Several methods of aquatic toxicity procedures exist today. The Department proposes to amend OAR 340-101-033 to reference the document describing the Aquatic Toxicity Test procedure prescribed by the Department's laboratory. (See Attachment A, page A5, no. 5 for the proposed rule amendment; Attachment C for a detailed discussion; and Attachment H, no. 7, for the 1993 HW/TUR Advisory Committee recommendation).

**5. Establishment of Confidential Business Information (CBI) filing procedures.**

Currently, any hazardous waste information submitted to the Department is considered public information except when designated as trade secret. Hazardous waste rules require that any claim of confidentiality be made at the time of submission of the information; however, substantiation of the claim is not required until a member of the public requests to view the information. After information substantiating the claim is received by the Department, a determination is made whether the claimed information qualifies as a trade secret.

To avoid delays in evaluating and deciding trade secret confidentiality claims, the proposed rule specifies that a substantiation of a confidentiality claim be made at the time the claim is made, rather than when a public request to view the information is made, which may be many years later. The proposed rule is consistent with the trade secret confidentiality claim procedures used by the Toxics Use Reduction program. (The same people in the agency are responsible for managing both sets of confidential information). (See Attachment A, pages A2, no. 3 and A14, no. 9 for the proposed rule amendments; Attachment C for a detailed discussion; and Attachment H, no. 8, for the 1993 HW/TUR Advisory Committee recommendation).

**6. Updating and amending the Toxics Use Reduction and Hazardous Waste Reduction regulations.**

The Department proposes to update and amend the Toxics Use Reduction and Hazardous Waste Reduction regulations. There are three proposed revisions to the regulations: (1)

exempting one-time hazardous waste generators from Toxics Use Reduction (TUR) planning requirements; (2) revisions of OAR 340-135-040 so that cleanups are exempted from planning requirements consistent with the Toxics Use Reduction and Hazardous Waste Reduction Act of 1989; and (3) updating the list of toxic substances and hazardous wastes subject to the TUR planning requirements (OAR 340-135 Appendix I). (See Attachment A, pages A20, no. 14 and A22 no. 15 for the proposed rule amendments; and Attachment H, no 9, for the 1993 HW/TUR Advisory Committee recommendation).

### How were the rules developed

The Oregon Department of Environmental Quality (DEQ) organized a Hazardous Waste Advisory Committee in 1990 specifically to consider funding options and fee strategies for the Hazardous Waste Program in Oregon. This Committee assisted the Department in developing a permanent generator fee structure to support the program that would also encourage waste reduction and recycling. At the same time, the Department formed a Toxics Use Reduction Advisory Committee to advise the Department on rule development, program development and implementation of the 1989 Toxics Use Reduction and Hazardous Waste Reduction Act.

In 1991, these two committees were combined into a single standing Hazardous Waste/Toxics Use Reduction Advisory Committee (HW/TUR). The role of this Committee is to counsel the Department on public policy issues related to the Hazardous Waste and Toxics Use Reduction Programs and rulemaking activities, as well as reflect concerns of affected parties. The HW/TUR Advisory Committee consists of representatives from small and large businesses, industry associations, consultants, waste management companies, recyclers, and environmental public interest groups.

In January 1993, the Hazardous Waste Program embarked on a rulemaking process that addressed several rules or sets of rules. This process was announced at the February Responsible Hazardous Materials Conference in Beaverton, Oregon, and discussed at the May meeting of the Associated Oregon Industries Environment Committee. It entailed staff research and development of, internal review of, public and advisory committee review of proposed rules followed by a public discussion process which began in July 1993 and continued through October 1993.

The Department held six informal public meetings on the rules and has met separately with many of the affected industries, primarily the woodtreating, ship repair, and used oil generating and processing industries. The proposed rules and staff report incorporated many of the informal comments prior to convening the Advisory Committee. During a series of six meetings of the Advisory Committee, held between September and November 1993, the Committee evaluated the rule proposals, including those addressed here, and developed the recommendations found in Attachment H of this staff report.



**How do the rules affect the public, regulated community, other agencies**

The general public is not directly affected by any of the proposed rules.

**1. Adoption by Reference of the Federal Hazardous Waste Regulations enacted between July 1, 1992 and July 1, 1993, including Used Oil Standards with Clarifying Changes**

No additional impact will be created by adoption of the federal rules by the EQC or the used oil rules because all but two of the rules are already in effect and being implemented by EPA. The clarifying used oil language proposed by the Department will have not additional impact.

**2. Establishment of special waste management standards for treated wood waste and sandblast grit waste and elimination of hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents.**

Generators of state-only hazardous wastes, such as treated wood and sandblast grit, will now have a solid waste landfilling option available, provided the generators meet certain management standards for the wastes. Previously, generators had to follow more prescriptive hazardous waste management standards. Generators of "3% and 10%" wastes that are regulated under the Toxicity Characteristic (TC) will no longer will be required to do duplicative hazardous waste evaluation of their waste, once under the TC and again under the 3% and 10% state-only regulation.

**3. Requirements for hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records.**

Generators storing hazardous waste on-site will have a clear duty to comply with federal hazardous waste container and tank management standards without necessarily triggering a permit requirement. In addition, generators will be affected by the requirement that hazardous waste determination records be kept; however, a majority of the regulated community already retains detailed waste analysis information.

**4. Specifying in regulation the laboratory procedures for conducting hazardous waste determination using an aquatic toxicity test.**

Generators will not be adversely affected by this regulation, since most generators already use the correct test.

**5. Establishment of Confidential Business Information (CBI) filing procedures.**

The proposed amendments related to CBI will affect some facilities. For those cases in which the Department does request substantiation, the proposed rules will simplify the process. Some generators will be required to provide substantiation of their confidentiality claim with their submittal where previously they might not have needed to submit any substantiation because the public may never make a request for the information.

**6. Updating and amending the Toxics Use Reduction and Hazardous Waste Reduction regulations.**

Through exemption of one-time hazardous waste generators from Toxics Use Reduction planning requirements, many small business who are normally conditionally exempt hazardous waste generators but fall out of this category due to one-time generator events may benefit from this rule change through reduced TUR planning requirements and associated reduced costs.

The updated list of toxic substances and hazardous waste subject to TUR planning requirements will have little or no economic impact on small businesses. The Department has not identified any small businesses or government agency that will be regulated by this proposed rule change. This rule may impact the wood treating industry, which is comprised of eight large hazardous waste generators statewide. The newly listed federal hazardous wastes may require the setting of TUR performance goals and subsequent evaluation of reduction options for the woodtreaters. However, since this industry is already subject under the TUR program, the proposed rule change may only slightly increase costs associated with the TUR planning process.

**How will the rules be implemented**

Public versions of the rules will be updated to reflect the newly adopted rule changes. Information factsheets, including ones for woodtreaters and used oil processors, will be developed for distribution to affected businesses. Information on these rules will be incorporated into the Department's on-going technical assistance efforts and training workshops, and notice of the final rule changes will be sent to the potentially affected regulated community.

**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: Gary Calaba, Hazardous Waste Policy and Program Development, at (503) 229-6534.

B-12

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for

Adopting federal hazardous waste regulations, including used oil management standards with clarifying language; amending Oregon Administrative Rules (OAR) pertaining to certain special wastes, generator standards, laboratory standards, and confidentiality; and amending and updating Toxics Use Reduction and Hazardous Waste Reduction regulations.

## Rulemaking Statements

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

### 1. Legal Authority

Adoption by Reference of the Federal Hazardous Waste Regulations enacted between July 1, 1992 and July 1, 1993, including Used Oil Management Standards with clarifying changes. ORS 466.020 requires the Commission to adopt rules to establish minimum requirements for the treatment, storage, disposal and recycling of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, storage and disposal sites, and requirements and procedures for selection of such sites.

ORS 466.020 classifies as hazardous wastes those residues resulting from any process of industry, manufacturing, trade, business or government or from the development or recovery of any natural resources, which may, because of their quantity, concentration, or physical, chemical or infectious characteristics:

- (a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- (b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

ORS 466.020 requires the Commission to adopt rules pertaining to hearings, filing of reports, submission of plans and the issuance of licenses pertaining to

generators, and to the transportation of hazardous waste by air and water.

ORS 468.869 provides that the Environmental Quality Commission shall adopt rules and issue orders relating to the use, management, disposal of and resource recovery of used oil. The rules shall include but not be limited to performance standards and other requirements necessary to protect the public health, safety and environment and a provision prohibiting the use of untested used oil for dust suppression.

Establishment of special waste management standards for treated wood waste and sandblast grit waste and elimination of hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents. ORS 466.015(3) allows the Environmental Quality Commission to declassify as hazardous those substances which the commission finds, after deliberate consideration, taking into account the public health, welfare or safety or the environment, have been properly treated, or decontaminated or contain a sufficiently low concentration of hazardous materials so that such substances are no longer hazardous. ORS 466.075(3) allows the Environmental Quality Commission to exempt by rule certain classes or types of hazardous waste generators from part or all of the requirements upon generators adopted by the commission.

Requirements for hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records. ORS 466.020, general rulemaking authority.

Specifying in regulation the laboratory procedures for conducting hazardous waste determination using an aquatic toxicity test. ORS 466.020, general rulemaking authority.

Establishment of Confidential Business Information (CBI) filing procedures. ORS 466.020, general rulemaking authority; ORS 466.020 (4), rulemaking authority for hazardous waste reporting; 466.090, inspection and copying of Department records and Confidentiality and Trade Secret Claims; ORS 192 and ORS 646.

Updating and amending Toxics Use Reduction and Hazardous Waste Reduction regulations. ORS 465.009 requires the Commission to add or remove any toxic substance or hazardous waste from the provisions of ORS 465.003 to 465.034 which pertain to the guidelines for toxics use reduction plans, performance goals and annual progress reports.

OAR 340-135-040 (3) allows the EQC to add or delete from the lists of hazardous wastes and toxics substances identified in OAR 340-135 Appendix 1. In addition, OAR 340-135-040 (3)(b) specifies that any additions or deletions to Appendix 1 shall be made by rulemaking at least biennially.

2. Need for the Rule

a. Adoption by Reference of the Federal Hazardous Waste Regulations enacted between July 1, 1992 and July 1, 1993, including Used Oil Management Standards with clarifying changes. The state of Oregon is currently authorized by the federal government to operate the hazardous waste management program mandated by Congress under the Resource Conservation and Recovery Act (RCRA) in lieu of the U.S. EPA. In order to maintain authorization, the state must adopt new federal rules and repeal any existing state rules which are less stringent, within specified time frames. Loss of authorization would result in both EPA and DEQ operating duplicative programs within the state. The Oregon Legislature and Environmental Quality Commission have supported the state's pursuit of authorization. The Legislature authorizes the Department and the Commission to take any action necessary to maintain Oregon's authorization (ORS 466.086). Therefore, the Department proposes to adopt the federal hazardous waste regulations promulgated between July 1, 1992 and July 1, 1993 by reference.

On September 10, 1992, the Environmental Protection Agency (EPA) published a set of used oil management rules under 40 CFR Part 279. The EPA amended the rules on May 3, and June 17, 1993. The new rules define management methods for mixtures of used oil and other materials and establish management standards for used oil generators, collection facilities, transporters, processors/re-refiners, burners and marketers of used oil. The Department proposes clarifying language to reflect EPA's intent as described in the rule's preamble. Specifically, the definition of used oil is expanded to clarify what is and is not a used oil and sets 5,000 BTU per pound limit to distinguish used oil that is burned for energy recovery. (See Advisory Committee discussion and recommendation in Attachment H.)

b. Establishment of special waste management standards for treated wood waste and sandblast grit waste and elimination of hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents.

Establishment of special waste management standards for treated wood waste.  
In 1992, the EQC exempted from hazardous waste regulation discarded wood

wastes containing only the Toxicity Characteristic (TC) pesticides that pass the TC test but fail the aquatic toxicity evaluation. Rationale was presented that evaluating discarded wood products that contained only the constituents found on the federal TC list was sufficient in determining if such waste was hazardous, and that an additional evaluation of the waste was redundant and unnecessary. However, the EQC did not exempt from hazardous waste regulations treated wood waste containing pesticides not listed in 40 CFR 261.24 that fails the aquatic toxicity evaluation and is therefore hazardous. Under current regulations, discarded pesticide treated wood wastes, such as telephone poles, bridge pilings, mill ends, or sawdust from shaping treated wood, that are not regulated under the federal hazardous waste rules may still be a state-only hazardous waste if they fail the aquatic toxicity test. Currently, these state-only wastes must be managed in accordance with federal hazardous waste management standards because no state specific standards have ever been established.

The Department's policy is to be no more stringent than the federal rules without appropriate rationale. The Department finds no compelling environmental reason to continue to regulate, as hazardous waste, discarded treated wood products (e.g. butt ends, waste resulting from the use of newly pesticide treated wood, including scrap lumber, shavings, sawdust, and chips from shaping pesticide treated wood, and treated wood removed from service) that fail the aquatic toxicity evaluation provided certain management standards are followed. The Department proposes to adopt special waste management requirements for treated wood waste that do not contain pesticide constituents listed in 40 CFR 261.24(a) and that fail the aquatic toxicity evaluation, provided the wastes are managed as special wastes and disposed of in a modern solid waste landfill having a liner, or disposed of at another facility permitted by the Department to receive such waste. The Department believes that the pesticide in the wood is low in concentration and that disposal in a modern, lined landfill will provide adequate protection to the environment from any releases that may occur over time. In addition, treated wood products that are reused for another purpose for which such products ordinarily would be used are exempt from the hazardous waste regulations.

Establishment of special waste management standards for sandblast grit waste. Oregon shipyards generate about 400,000 tons of grit waste per year. Around 10% of this waste contains some kind of antifoulant ingredient. Besides the fine "sand" (copper, nickel, coal, slag, etc.), grit waste may contain: antifouling<sup>1</sup> ingredients, paint chips, and metals such as chromium, zinc lead and others.

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<sup>1</sup>Antifouling ingredients are pesticides such as Tributyltin (TBT) and cuprous oxide which are used to retard the growth of organisms on a ship's hull or on pilings.

Historically, spent grit has been disposed in bays and rivers, or used as fill material. Currently, the only legal disposal option for hazardous waste grit is in a hazardous waste landfill.

Although grit waste with antifoulant ingredients is an environmental pollutant that must be properly collected and contained, the Department believes managing grit waste as special waste and providing an option of disposal in a lined, modern solid waste landfill adequately addresses the risk associated with this waste. Therefore, the Department is recommending amending the hazardous waste regulations to allow grit waste that is hazardous solely because it fails the state's Aquatic Toxicity test to be disposed in a solid waste landfill with liners, provided certain management methods are met. State-only hazardous grit waste that is properly recycled or reused would be exempt from the hazardous waste regulations.

Elimination of hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents. This state-only rule is broader in scope than federal hazardous waste rules, and was originally adopted to fill a major loophole in the federal program by which certain hazardous used or unused chemicals could be mixed or contained in wastes and avoid being regulated under the federal program because of dilution. The current Department rule regulates as hazardous those wastes containing 3% or 10% or more of the chemicals found on the federal "P" and "U" lists, respectively.

Currently, some of the chemicals on the lists are also found on other lists, such as such as the TCLP list, and those chemicals are regulated. EPA's TCLP test procedure (promulgated in 1991) now addresses more of the 3% and 10% chemicals than before, and, therefore, some of the problems associated with mixing and diluting hazardous chemicals and wastes to avoid regulation have been eliminated.

The Department believes that subjecting hazardous chemicals to two hazardous waste evaluations, once under federal TCLP tests, and even if they pass, again under the 3% and 10% rule is unnecessary and burdensome. The federal tests show that the concentration of TCLP chemicals in a waste is sufficiently low enough to designate the chemicals non-hazardous for regulatory purposes. Therefore, the Department proposes to exempt from the 3% and 10% percent rule those chemicals that pass the TCLP determination.

c. Requirements for hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records.

The proposed rule requires generators to maintain a copy of the documentation used to determine whether a residue is a hazardous waste. The documentation must be retained on site for a period of three years after the waste stream is no longer generated.

The first obligation a generator has under the hazardous waste program is to determine if residues are hazardous. All hazardous waste requirements rest with the determination. The determination procedures are prescribed by regulation, however, a generator is not explicitly required to maintain documentation of how the determination is made. Lack of testing records or information about the chemical and physical properties of potential hazardous chemicals in waste streams makes it difficult to accurately determine generator status; hence, to determine generator requirements and to track hazardous waste management practices. In addition, lack of determination information makes it difficult for a generator to demonstrate to an inspector that the determination was made in the first place. To insure proper waste management, accurate records, including a hazardous waste determination documentation must be kept and maintained on-site for future reference.

The second proposed rule clarification for generators requires that a generator has a duty to comply with the requirements of 40 CFR 262 and applicable requirements of 40 CFR 262.34 (a), (b), (c), (d), (e), and (f). Under these requirements generators are required to comply with container and tank management standards, label and mark containers and tanks storing hazardous waste, have a Preparedness and Prevention plan in case of an emergency when storing hazardous waste on-site for 90 or 180 days, and to comply with waste analysis requirements if treating hazardous waste on-site.

The Department has adopted federal hazardous waste requirements that govern hazardous waste that is placed in containers and tanks by generators and stored on-site for 90 or 180 days. The federal regulations require standards that generators must meet to be in compliance. If these requirements are not met, such as failure to label or mark a drum "hazardous", then the generator may be required to obtain a permit. The Department and EPA generally do not require a permit because it is better to immediately correct the violation than to go through a costly and time-consuming permitting process. In an enforcement hearing, the issue was raised that 40 CFR 262.34 does not clearly impose a duty on generators to meet the standards as outlined in the federal program. This proposed rule will clarify that generators must comply with 40 CFR 262 standards and applicable requirements of 262.34 (a)-(f).



c. Specifying in regulation the laboratory procedures for conducting hazardous waste determination using an aquatic toxicity test. This is a technical correction to the Department's aquatic toxicity regulation. The Department seeks to clarify by rule the aquatic toxicity testing procedures by referencing in rule the Department's laboratory manual describing the testing procedures.

d. Establishment of Confidential Business Information (CBI) filing procedures. The current rule requires that a claim of confidentiality be made at the time the information is submitted to the Department. There are no procedures on how a claim is to be substantiated by the generator. Currently, the Department must ask facilities to substantiate a confidentiality claim only after a public information request is made. The Department must make the determination of whether the information meets the tests for confidentiality in order to fully respond to the public request. This process is clumsy and difficult for the facility and the Department since the claim may have to be justified many years after the original claim is made.

The proposed rule establishes procedures to claim information as trade secret as allowed in ORS 466.090. The proposed rule specifies that substantiation must accompany the claimed trade secret submission if the facility has longer than 30 days to respond to the notice or request. If a shorter time is specified and after receiving the trade secret claim, DEQ may make a written request for substantiation if it is likely that a public information request will be received without waiting for the actual request.

The proposed rule also provides for a generator request prior to any public information request to get a Department determination of whether the claimed trade secret meets the requirements of trade secret as provided in the rule. This will allow the generator to take legal action if the Department determination is unfavorable.

The proposed rule makes the hazardous waste confidentiality procedures consistent with the Toxics Use Reduction procedures.

e. Amending and updating Toxics Use Reduction and Hazardous Waste Reduction regulations. Three revisions to the Toxics Use Reduction and Hazardous Waste Reduction Rules (OAR 340-135-000 through OAR 135-110) are proposed: a) exemption of one-time hazardous waste generators from Toxics Use Reduction and Hazardous Waste Reduction (TUR) planning requirements; b) exemption of hazardous waste generated as a result of remedial actions from TUR planning requirements as set in ORS 465.034; and c) update the list of toxic substances

and hazardous wastes subject to the Toxics Use Reduction and Hazardous Waste Reduction planning requirements (OAR 340-135 Appendix 1).

Exemption of one-time hazardous waste generators from Toxics Use Reduction planning requirements. Large and small quantity generators of hazardous waste are required by statute (ORS 465.018) to develop TUR plans regardless of how the waste was generated (with the exception of generators of cleanup wastes). However, many generators produce waste that results from a one time generation event such as cleaning out a laboratory chemical storage room or decommissioning of equipment. These facilities are usually conditionally exempt generators (CEG) prior to the one-time event and often will not generate additional hazardous waste following the event. The proposed rule allows flexibility for CEGs and simplifies administrative requirements of the TUR program.

Exempt hazardous waste generated as a result of remedial actions from Toxics Use Reduction planning requirements as set in ORS 465.034 - ORS 465.034 specifies that the TUR planning requirements shall not apply to waste that becomes subject to regulation solely as a result of remedial activities taken in response to environmental contamination. This exemption is not currently specified in rule.

Updating the list of toxic substances and hazardous wastes subject to the Toxics Use Reduction and Hazardous Waste Reduction planning requirements (OAR 340-135 Appendix 1) -The list of toxics substances and hazardous wastes subject to the planning requirements of ORS 465.003 through ORS 465.037 and OAR 340-135-000 through OAR 340-135-110 requires updating on a biennial basis as specified in OAR 340-135-040. The list of chemicals is contained in OAR 340-135 Appendix 1. To come into compliance with state regulations, it is necessary to update Appendix 1 in 1994.

### 3. Principal Documents Relied Upon in this Rulemaking

a. Adoption by Reference of the Federal Hazardous Waste Regulations enacted between July 1, 1992 and July 1, 1993, including Used Oil Standards with clarifying changes. Federal hazardous waste registers (See Attachment F for a complete list of registers). ORS 468.869 Used Oil Use, Management, Disposal and Resource Recovery Rules; ORS 468.865 Prohibited Disposal of Used Oil; 57 FR, No. 176, pg 41566 (September 10, 1992) Used Oil Management Final Rule; 50 FR, No. 230, pg 49164 (November 29, 1985) Burning of Waste Fuel and Used Oil in Boilers and Industrial Furnaces; 57 FR, No. 98, pg 21524 (May 20, 1992) Used Oil Identification and Listing of Hazardous Waste; 50 FR, No. 8, pg 1684

(January 11, 1985) Standards for the Management of Specific Wastes and Specific Types of Facilities; 56 FR, No. 184, pg 48000 (September 23, 1991) Used Oil Supplemental Notice of Proposed Rulemaking; 48 FR, No. 52, pg. 11157 (March 16, 1983) Enforcement Guidance, and the Hazardous Waste/Toxics Use Reduction Advisory Committee recommendations.

b. Establishment of special waste management standards for treated wood waste and sandblast grit waste and elimination of hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents. State-only hazardous waste regulations and Hazardous Waste/Toxics Use Reduction Advisory Committee recommendations.

c. Requirements for hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records. ORS 466.020, OAR, Chapter 340, Division 102; Code of Federal Regulations (CFR) Title 40, Part 262; "DEQ v Lafran Machine & Manufacturing Case No. HW-WVR-90-191"; "DEQ v Warren Sjothun dba/JB's Quality Metal Finishing, Inc Case No. HW-NWR-90-52"; and Hazardous Waste/Toxics Use Reduction Advisory Committee recommendations.

d. Specifying in regulation the laboratory procedures for conducting hazardous waste determination using an aquatic toxicity test. State-only hazardous waste regulations, and laboratory manual entitled "Department of Environmental Quality Hazardous Waste Aquatic Toxicity Testing Procedures", and Hazardous Waste/Toxics Use Reduction Advisory Committee recommendations.

e. Establishment of Confidential Business Information (CBI) filing procedures. State statutes ORS 192, ORS 466.090; OAR Chapter 340, Division 135; and the Hazardous Waste/Toxics Use Reduction Advisory Committee recommendations.

f. Amending and updating Toxics Use Reduction and hazardous waste Reduction regulations. ORS Chapter 465; ORS Chapter 466; ORS Chapter 468; Oregon Administrative Rules, Chapter 340, Division 135; and the Hazardous Waste/Toxics Use Advisory Committee recommendations.

#### 4. Advisory Committee Involvement

The Oregon Department of Environmental Quality (DEQ) organized a Hazardous Waste Advisory Committee in 1990 specifically to consider funding options and fee strategies for the Hazardous Waste Program in Oregon. This Committee assisted the Department in developing a permanent generator fee structure to support the program

Attachment C  
Rulemaking Statements

that would also encourage waste reduction and recycling. At the same time, the Department formed a Toxics Use Reduction Advisory Committee to advise the Department on rule development, program development and implementation of the 1989 Toxics Use Reduction and Hazardous Waste Reduction Act.

In 1991, these two committees were combined into a single standing Hazardous Waste/Toxics Use Reduction Advisory Committee (HW/TUR). The role of this Committee is to counsel the Department on public policy issues related to the Hazardous Waste and Toxics Use Reduction Programs and rulemaking activities, as well as reflect concerns of affected parties. The HW/TUR Advisory Committee consists of representatives from small and large businesses, industry associations, consultants, waste management companies, recyclers, and environmental public interest groups.

In January 1993, the Hazardous Waste Program embarked on a rulemaking process that addressed several rules or sets of rules. This process was announced at the February Responsible Hazardous Materials Conference in Beaverton, Oregon, and discussed at the May meeting of the Associated Oregon Industries Environment Committee. It entailed staff research and development of, internal review of, public and advisory committee review of proposed rules followed by a public discussion process which began in July 1993 and continued through October 1993.

The Department held six informal public meetings on the rules and has met separately with many of the affected industries, primarily the woodtreating, ship repair, and used oil generating and processing industries. The proposed rules and staff report incorporated many of the informal comments prior to convening the Advisory Committee. During a series of six meetings of the Advisory Committee, held between September and November 1993, the Committee evaluated the rule proposals, including those addressed here, and developed the recommendations found in Attachment H of this staff report.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Adopting federal hazardous waste regulations, including used oil management standards with clarifying language; amending Oregon Administrative Rules pertaining to certain special wastes, generator standards, laboratory standards, and confidentiality; and amending and updating Toxics Use Reduction and Hazardous Waste Reduction regulations.

Fiscal and Economic Impact Statement

1. Introduction

Adoption by Reference of the Federal Hazardous Waste Regulations enacted between July 1, 1992 and July 1, 1993, including Used Oil Management Standards with clarifying changes. In general, the federal regulations being proposed for adoption are either currently in effect in Oregon, or substantially equivalent to existing Oregon regulations. Therefore, there will be no additional fiscal or economic impact stemming from their adoption. In the case of the used oil management standards, EPA has performed extensive analyses of compliance costs, and estimates that most of the cost increase would be borne by used oil processors/re-refiners, for secondary containment of tank storage areas, reporting, additional operational record-keeping, and new closure requirements. EPA believes that most generators of used oil will face no costs beyond labeling of tanks or containers (See Federal Register (FR) Vol. 57, no. 176, pg. 41566, September 19, 1992, for EPA's complete analysis of the fiscal impact of the regulation). Estimated compliance costs for various facility types, and the numbers of each in Oregon, are shown below:

Facility Type	Estimated Number	Annual Cost For Affected Facilities
Independent Collector	14	\$6-\$1,976
Processor/Marketer	7	\$4,280-\$44,155
Off-specification Used Oil Burners	16	\$2-\$335

Costs vary with the size of the facility: the greatest impact is on small processors and fuel oil marketer-blender facilities, due to the low volume of used oil and the relatively high fixed costs of secondary containment and closure requiring soil cleanup (see table). Units of local government and state agencies should experience no fiscal or economic impact from this rule. Additional regulations proposed for Division 111 clarify the management standards used in the development of the federal rule and do not add to compliance costs.

Establishment of special waste management standards for treated wood waste and sandblast grit waste and elimination of hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents.

Treated wood and sandblast grit waste. The Department is proposing to adopt a special waste regulation that allows other management options for treated wood and sandblast grit waste that are state-only hazardous wastes. A new option previously unavailable to generators is the disposal of such wastes in a modern solid waste landfill. In addition, treated wood products that are reused for another purpose for which such products ordinarily would be used are exempt from the hazardous waste rules. Since disposal at solid waste landfills is much less costly than disposal at a hazardous waste landfill, costs to all parties should be substantially lowered by this rule.

Elimination of hazardous waste determination requirements under the state-only "3% and 10%" rule for Toxicity Characteristic constituents. The Department has historically regulated mixtures or solutions of certain hazardous used or unused chemicals under its "3% and 10% rule". Because the recently promulgated federal TCLP test procedure now addresses many more of these chemicals than before, and therefore addresses some of the problems associated with mixing and diluting hazardous chemicals and wastes. The Department believes that subjecting some hazardous chemicals to two evaluations, once under federal TCLP tests, and if they pass, again under the 3% and 10% rule is unnecessary, and proposes to exempt from the 3% and 10% rule those chemicals that pass the TCLP determination. Eliminating duplicate testing will save money for affected parties.

Amending generator standards, laboratory standards, and confidentiality.

Requirements for hazardous waste generators to meet specific container and tank management standards during accumulation of hazardous waste, and to maintain hazardous waste determination records. A person who generates a residue must determine if that residue is a hazardous waste, either through analysis or knowledge of process. The proposed rule would require that the generator

maintain any written documentation of the determination for three years after the waste is no longer generated. Generators are required to keep other hazardous waste records, and keeping a copy of their waste determination should have minimal impact. The rule will have little or no economic impact on the regulated community.

Another rule clarification pertains to the accumulation requirements for generators that store hazardous waste on-site. Federal hazardous waste requirements governing hazardous waste placed in containers and tanks and stored on-site by generators specify requirements that generators must meet. This proposed rule clarifies that generators must comply with those standards (40 CFR 262 and applicable requirements of 40 CFR 262.34 (a)-(f)) without triggering a storage permit. No fiscal or economic burden has been identified.

Specifying in regulation the laboratory procedures for conducting hazardous waste determination using an aquatic toxicity test. This is a technical correction to the Department's aquatic toxicity regulation, to make reference in the rules to the laboratory testing procedures that are already being used as the standard to test hazardous waste. No fiscal or economic impact has been identified.

Establishment of Confidential Business Information (CBI) filing procedures. The proposed rule establishes procedures for the submission and treatment of confidential business information. Very few companies claim information submitted to the hazardous waste program as confidential. Any fiscal or economic impact would be on those companies that would need to provide substantiation of the trade secret claim, where under the current rule they would not have to do so until a public request for their information was received. Companies that claim information to be trade secret are typically large businesses.

Amending and updating the Toxics Use Reduction and Hazardous Wastes Reduction requirements. Three revisions are proposed: exemption of one-time hazardous waste generators from Toxics Use Reduction (TUR) planning requirements; exempting hazardous waste generated as a result of remedial activities from TUR planning requirements; and updating the list of toxic substances and hazardous wastes subject to TUR planning requirements.

Exemption of one-time hazardous waste generators from TUR planning requirements. This proposed rule provides an exemption from TUR planning requirements for generators whose hazardous waste is generated from non-recurring cleanups. Facilities affected usually were conditionally exempt small quantity generators prior to the event and often do not generate additional

hazardous waste following the event. The main fiscal impact will be on small businesses, local governments and state agencies meeting the specified requirements. Where the exemption applies, these facilities will see some cost savings by not having to develop TUR plans.

Exempting hazardous waste generated as a result of remedial activities from TUR planning requirements. ORS 465.034 specifies that the TUR planning requirements shall not apply to waste that becomes subject to regulation solely as a result of remedial activities taken in response to environmental contamination. This exemption is not currently specified in rule. The proposed rule remedies this omission and will have no economic impact.

Updating the list of toxic substances and hazardous wastes subject to the TUR planning requirements (OAR 340-135 Appendix 1). The proposed rule adds ten newly listed federal hazardous wastes the Department is adopting by reference to Appendix 1. The wastes are not generated by local governments or state agencies. This rule revision may have a fiscal impact on the wood treating industry. Because generators and users must already track and report on these substances under federal requirements, the fiscal and economic impact will be negligible. Any costs incurred will likely be offset by savings resulting from reduction in toxics use and hazardous waste generation.

## 2. Impacts on the General Public

The proposed regulations do not apply to the general public.

## 3. Impacts on Small Business (Less than 50 Employees)

Used oil management standards. Most of the used oil collectors, processors and marketers in Oregon are small businesses. Based on EPA estimates, collectors will face annual compliance costs estimated at \$6 to \$1,976. Processors will experience additional costs of \$4,280 to \$44,155. Marketers will see an increase of \$4,280 to \$22,389 in annual compliance costs. (See discussion on page D1 and Federal Register (FR) Vol. 57, no. 176, pg. 41566, September 19, 1992 for EPA's complete analysis of the fiscal impact of the regulations.)

Exemption of one-time hazardous waste generators from TUR planning requirements. Small businesses that produce more than 220 pounds of hazardous waste per month are subject to the TUR planning requirements. In cases where a significant portion of this wastes derives from a one-time generation event, such small businesses could benefit from this rule change through reduced TUR planning requirements.



Updating the list of toxic substances and hazardous wastes subject to the TUR planning requirements. This rule proposal will have no economic impact on small businesses since the wastes being added are generated in industries which are typically large businesses. The Department has not identified any small Oregon businesses affected by this proposed rule.

#### **4. Impacts on Large Business (Greater than 50 Employees)**

Used oil management standards. The Department has identified no large businesses which would be affected by this rule.

Confidentiality. Businesses claiming confidentiality would have to substantiate their claims at the time they submit confidential information to the Department. Whereas under the current procedures, businesses would not have to prepare that substantiation unless and until a public information request was received by the Department. This may result in some slight cost increase for a small number of large businesses.

Exemption of one-time hazardous waste generators from TUR planning requirements. It is unlikely that this rule proposal will have an economic impact on any large businesses since most large businesses will not fall into the CEG category. However, large businesses that are also CEGs may benefit from this exemption.

Updating the list of toxic substances and hazardous wastes subject to the TUR planning requirements. This rule may impact the wood treating industry, which comprises eight hazardous waste generators statewide. The newly listed federal hazardous wastes may require the setting of TUR performance goals and subsequent evaluation of reduction options. However, since this industry is already subject under the TUR program, the proposed rule will only slightly increase the costs of the TUR planning process.

#### **5. Impacts on Units of Local Government**

No significant adverse fiscal and economic impacts on units of local government have been identified.

#### **6. Impacts on State Agencies**

No significant adverse fiscal and economic impacts on state agencies have been identified.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for

Adopting federal hazardous waste regulations, including used oil management standards with clarifying language, amending Oregon Administrative Rules (OAR) pertaining to certain special wastes, generator standards, laboratory standards, and confidentiality; and amending and updating Toxics Use Reduction and Hazardous Waste Reduction regulations.

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The purposes of the proposed rules are to make the Department's hazardous waste regulations and implementation policy equivalent with and consistent to federal regulations, and to maintain equivalency in order to remain authorized to implement the hazardous waste program in lieu of the Environmental Protection Agency (EPA). The major revisions to the hazardous waste regulations pertain to federal regulations that are already in effect in Oregon. Some of the regulations pertain to hazardous waste management facilities. The facility regulations are designed to control the impact of hazardous wastes on Oregon's environment. The rules apply to hazardous waste permits which require the submittal of land use compatibility statements acted upon by the affected local government. In addition, the proposed regulations will allow certain special wastes, such as sandblast grit and treated wood waste to be disposed in modern, permitted solid waste landfills. Current regulations require that such wastes be disposed in a hazardous waste landfill.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program? Yes X No

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

OAR 340-18-030(3)(a) and (3)(c) for the existing permits for solid waste and hazardous waste disposal facilities. OAR 340-120-001 through 025 for

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hazardous waste treatment and disposal facility permits.

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

Yes X No \_\_\_\_\_ (if no, explain):

The existing compatibility procedures involve the requirement of local government approval of the land use compatibility statement as well as written findings for hazardous waste permits as specified in OAR 340, Division 120.

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

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

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

N/A

Mary Walsh  
Division

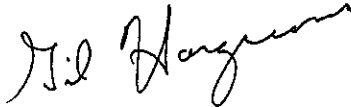
Robert Yon  
Intergovernmental Coord.

1/6/94  
Date

State of Oregon  
Department of Environmental Quality

Memorandum

Date: February 23, 1994

To: Environmental Quality Commission  
From: Gil Hargreaves, Hearings Officer   
Subject: Report of Public Hearing on Hazardous Waste Regulations

On January 7, 1994, the Director authorized a public hearing to consider adoption of federal hazardous waste regulations, including used oil management standards with clarifying language; amending Oregon Administrative Rules (OAR) pertaining to certain special wastes, hazardous waste generator standards, hazardous waste laboratory standards, hazardous waste confidentiality claims; and amending and updating Toxics Use Reduction and Hazardous Waste Reduction (TUR) regulations. Notice was published in the February edition of the Bulletin, and separately distributed to a Department mailing list of potential interested parties.

On February 22, 1994, the Department held a public hearing at the Department's headquarters in Portland. Fourteen people attended the hearing, which began at 9:00 AM. One person offered comments for the record, and a sound recording was made of that testimony. There being no more comments, the hearing officially ended at 9:55 AM.

I have summarized below the verbal testimony given during the hearing. Copies of the written comments that were received are included as attachments. The Department's responses to all the submitted comments will be included in the staff report to the Commission. The period to receive written public comments closed on February 23, 1994 at 5:00 PM.

#1 - Comments from Joel Scoggin, Columbia Helicopters, Inc. (CHI)

During a verbal testimony, Mr. Scoggin briefly described some of the concerns of CHI regarding the proposed rule changes, updates, amendments, and federal rule adoption as well

as other concerns regarding existing state regulations. A more detailed discussion of these concerns as well as some additional concerns of CHI can be found in the written comments submitted by CHI.

Mr. Scoggin began his testimony by stating that the proposed rule specifying that a substantiation of a confidentiality claim be made at the time the claim is made, rather than when a public request to view the information is made, should be deleted. He said this is already addressed by other regulations.

Mr. Scoggin also expressed that CHI feels the state hazardous waste regulations regarding aquatic toxicity testing have outlived their usefulness, and he requested that these rules be deleted in their entirety, and that Oregon use the federal waste characterization criteria only, with the exception of state only rules regarding nerve agents. He also stated that at a minimum, any waste that fails the aquatic toxicity test should be considered a characteristic waste instead of a listed waste.

He opposed the proposal for requiring generators of hazardous waste to maintain a copy of the documentation used to determine whether a residue is a hazardous waste as long as the waste is being generated, and for a minimum of three years after the waste stream is no longer generated. Mr. Scoggin stated that this could be misused and abused by individual inspectors in citing violations.

Another concern expressed by Mr. Scoggin regarded the proposed state definitions for "solvent" and "used oil" included in the clarifying changes of the new used oil regulations. He said the definition of "solvent" should be removed. He stated that even "motor oil" could meet the proposed definition of solvent. He also mentioned, that the used oil definition should include a statement referring to the rebuttable presumption. In addition, Mr. Scoggin stated that the word "antifreeze" included in the used oil definition should be replaced with ethylene glycol.

Another area in the proposed used oil clarifications that Mr. Scoggin feels should be deleted is Oregon Administrative Rules (OAR) 340-111-010(4)(b). This proposed rule states that oil recovered from parts cleaning units cleaning media may be managed as used oil providing that listed or characteristic hazardous waste has not been mixed with the parts cleaning media. Mr. Scoggin stated that CHI feels this is a redundancy of the federal used oil regulations.

Regarding used oil storage containers, Mr. Scoggins expressed that CHI believes that the language in the proposed state rule OAR 340-111-022(1)(b), stating that containers and tanks

used to store used oil shall be covered, should be changed to "closed or located under cover to prevent rainwater from coming into contact with the used oil". He stated that the rule, as it is, closely resembles the hazardous waste rules that require hazardous waste containers to be "closed" except when adding or removing hazardous waste.

The last verbal comment Mr. Scoggin expressed was in regard to Used Oil Handlers notifying the Agency of their used oil activities. He stated that a Used Oil Handler who has not received an EPA/DEQ identification number, should be required to submit an "EPA Notification of Regulated Waste Activity" form, not a "Notification of Hazardous Waste Activity" form.

Written comments were received from the following:

1. James Whitty, Associated Oregon Industries, P.O. Box 12519, 1149 Court Street, N.E., Salem, OR 97309-0519, February 23, 1994.
2. Dennis Fleming, Industrial Oil, Inc., 1291 Laverne Avenue, Klamath Falls, OR 97601, February 22, 1994.
3. Victor E. Lindenheim, American Wood Preservers Institute, 1945 Old Gallows Road, Suite 150, Vienna, VA 22182, February 22, 1994.
4. James Roewer, Utility Solid Waste Activities Group, c/o Edison Electric Institute, 701 Pennsylvania Avenue, N.W., Washington, D.C. 20004, February 22, 1994.
5. Joel Scoggin, Columbia Helicopters, Inc., P.O. Box 3500, Portland, OR 97208, February 21, 1994.
6. David Webb, Koppers Industries, 436 Seventh Ave., Pittsburgh, PA 15219-1800, February 18, 1994.
7. James Whitty, Associated Oregon Industries, P.O. Box 12519, 1149 Court Street, N.E., Salem, OR 97309-0519, February 18, 1994.
8. Gregory P. Robart, Oregon Department of Fish and Wildlife, 2501, S.W. First Avenue, Portland, OR 97207, February 18, 1994.
9. Dick Briggs, Consulting Services, 80 W. 23rd Ave., Eugene, OR 97405, February 17, 1994.

Memo To: Environmental Quality Commission  
February 23, 1994  
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Agenda Item C  
March 11, 1994  
Attachment C

10. Bruce G. Lines, Pacific Sound Resources, Inc., 2801 S.W., Florida St., Seattle, WA 98126, February 14, 1994.
11. Gerald H. Wright, Fuel Processors Inc., 4150 N. Suttle Rd., Portland, OR 97217, February 11, 1994.
12. R. Dennis Hayward, Western Wood Preservers Institute, 601 Main Street, Suite 401, Vancouver, WA 98660, February 10, 1994.
13. W.L. Briggs, Fuel Processors Inc., 4150 N. Suttle Rd., Portland, OR 97217, February 2, 1994.

**RULEMAKING REGARDING:**

Request to adopt federal hazardous waste regulations, including used oil management standards with clarifying language; amend Oregon Administrative Rules (OAR) pertaining to certain special wastes, hazardous waste generator standards, hazardous waste laboratory standards, hazardous waste confidentiality claims; and amend and update Toxics Use Reduction and Hazardous Waste Reduction (TUR) regulations.

**INDEX TO WRITTEN COMMENTS**

Summaries of all comments received on the proposed rule amendments and Department responses are contained in Attachment C. The following people submitted written comments on the proposed rules.

1. James Whitty, Associated Oregon Industries, P.O. Box 12519, 1149 Court Street, N.E., Salem, OR 97309-0519, February 23, 1994.
2. Dennis Fleming, Industrial Oil, Inc., 1291 Laverne Avenue, Klamath Falls, OR 97601, February 22, 1994.
3. Victor E. Lindenheim, American Wood Preservers Institute, 1945 Old Gallows Road, Suite 150, Vienna, VA 22182, February 22, 1994.
4. James Roewer, Utility Solid Waste Activities Group, c/o Edison Electric Institute, 701 Pennsylvania Avenue, N.W., Washington, D.C. 20004, February 22, 1994.
5. Joel Scoggin, Columbia Helicopters, Inc., P.O. Box 3500, Portland, OR 97208, February 21, 1994.
6. David Webb, Koppers Industries, 436 Seventh Ave., Pittsburgh, PA 15219-1800, February 18, 1994.
7. James Whitty, Associated Oregon Industries, P.O. Box 12519, 1149 Court Street, N.E., Salem, OR 97309-0519, February 18, 1994.
8. Gregory P. Robart, Oregon Department of Fish and Wildlife, 2501, S.W. First Avenue, Portland, OR 97207, February 18, 1994.
9. Dick Briggs, Consulting Services, 80 W. 23rd Ave., Eugene, OR 97405, February 17, 1994.



Agenda Item E  
March 11, 1994  
Attachment D

10. Bruce G. Lines, Pacific Sound Resources, Inc., 2801 S.W., Florida St., Seattle, WA 98126, February 14, 1994.
11. Gerald H. Wright, Fuel Processors Inc., 4150 N. Suttle Rd., Portland, OR 97217, February 11, 1994.
12. R. Dennis Hayward, Western Wood Preservers Institute, 601 Main Street, Suite 401, Vancouver, WA 98660, February 10, 1994.
13. W.L. Briggs, Fuel Processors Inc., 4150 N. Suttle Rd., Portland, OR 97217, February 2, 1994.

State of Oregon  
Department of Environmental Quality

Memorandum

Date: March 1, 1994

**To:** Environmental Quality Commission

**From:** Roy W. Brower, *Roy W. Brower* Manager, Hazardous Waste Policy and Program Development

**Subject:** Department's Evaluation and Response to Public Comments Regarding:

Adoption by reference of federal hazardous waste regulations, including used oil management standards with clarifying language; amendment of Oregon Administrative Rules (OAR) pertaining to certain special wastes, hazardous waste generator standards, hazardous waste laboratory standards, hazardous waste confidentiality claims; and amendment and update of Toxics Use Reduction and Hazardous Waste Reduction (TUR) regulations.

The Department received 13 written comments (see Attachment D) and responds as follows:

**ADOPTION BY REFERENCE OF THE FEDERAL HAZARDOUS WASTE REGULATIONS ENACTED BETWEEN JULY 1, 1992 AND JULY 1, 1993**

Only one comment was received by the Department on its proposal to adopt federal regulations by reference. Pacific Sound Resources, Inc. supports the adoption by the Department of the federal rule exempting from the definition of hazardous waste, arsenical-treated wood waste that fails the Toxicity Characteristic Leaching Procedure (TCLP) for federal hazardous waste codes D004 through D017. The exemption applies only if a waste is hazardous only for its toxicity characteristics, and if a waste is generated by persons who utilize the treated wood and wood products for the materials' intended end use.

## ADOPTION OF THE FEDERAL USED OIL REGULATIONS WITH CLARIFYING CHANGES

The Department proposes to adopt, by reference, federal used oil regulations pertaining to the management of used oil as published by EPA in 40 CFR Part 279. The Department proposes clarifying provisions to OAR 340, Division 111 and proposes to delete existing used oil provisions in that division. During the public comment period, the Department received comments on the used oil management rules from Associated Oregon Industries (AOI); Dick Briggs, Consultant; Bill Briggs and Gerald Wright, Fuel Processors; Industrial Oil, Inc.; and Columbia Helicopters (CHI). Following are comments received:

1. The Department proposed to adopt the federal used oil management rule (Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards, 40 CFR Part 279) by reference under the state hazardous waste program. Fuel Processors and Dick Briggs recommended that the federal used oil regulations be adopted under DEQ's "recycling division" in order to encourage recycling of used oil. Fuel Processors felt that the hazardous waste rules were designed to stop disposal of hazardous wastes and the used oil rules are for recycling and recovery.

Department response: The federal used oil management rule was developed under the authority of the Resource Conservation and Recovery Act (RCRA), Subtitle C, titled Hazardous Waste Management. As the state agency authorized to run the federal hazardous waste program, the Department must adopt equivalent used oil management standards under its hazardous waste rules. Used oil is categorically exempted from the definition of hazardous waste only when it is being recycled or recovered for subsequent recycling. Section 3014(a) of RCRA requires regulations establishing such performance standards and other requirements as may be necessary to protect the public health and the environment from the hazards associated with recycled oil. The federal used oil rule is not designed to be a recycling rule and does not define how used oil is to be recycled. In addition, the Department has no separate "recycling division," but rather discusses recycling of various wastes in appropriate rule divisions.

2. The Department proposed in OAR 340-100-002 that the used oil rules be adopted under 40 CFR Parts 260 to 266, 268 and 270, where the federal rules governing the management of hazardous waste are adopted. AOI and CHI recommend that a provision be added to OAR 340-111-001(2) that more appropriately states that the used oil regulations were adopted under the authority of 40 CFR Part 279.

Department Response: The Department agrees that the used oil regulations should be adopted under the authority of Part 279, and not Parts 260 to 266, 268 and 270 as originally stated. The recommendation has been incorporated into OAR 340-100-002(2) as a new paragraph, stating that the federal used oil management rule is adopted under the authority of 40 CFR Part 279, separate from the hazardous waste rule adoption section.

3. The Department proposed to define the term "solvent" in OAR 340-111-002(b) to differentiate petroleum and synthetic materials used for their cleaning properties from those used for lubricating properties. AOI, CHI, Dick Briggs, and Fuel Processors felt that the definition of solvent was too broad, and adoption of the proposed definition would potentially classify materials primarily used as lubricants as solvents, because they also solubilize and mobilize other constituents.

Department Response: In proposing to define the term "solvent" within the used oil management rule, the Department was attempting to clarify what it considers to be solvent use. The Department acknowledges that there may be confusion when an oil is used for both lubrication and cleaning and agrees to delete the proposed definition.

The preamble to Part 279 (found in FR Volume 57, September 10, 1992 (pg. 41574)) states that the definition of used oil does not include oil based products used as solvents. The preamble further states that EPA has always viewed petroleum solvents as separate and distinct from used oil. The Department does not intend to exclude petroleum products used for lubrication, cooling, or similar uses from the definition of "used oil." However, petroleum or synthetic materials used primarily for their solvent properties, for the purpose of dissolving or mobilizing other constituents in activities such as degreasing or cleaning, will not be considered "used oil."

4. The Department proposed to amend the definition of used oil in OAR 340-111-002(c) from the federal definition found in 40 CFR 279.1, clarifying what indeed is and is not a used oil. Dick Briggs and Fuel Processors commented that the clarification is unneeded and, in fact, may restrict recycling of many oils.

Department Response: The Department believes that the federal used oil definition, found in 40 CFR 279.1, is overly broad and does not adequately define used oil. It leaves to interpretation whether all materials containing petroleum derivatives, such as mineral spirits, antifreeze, paint wastes, and inks, are used oil. During the past few years, the Department has pursued several enforcement cases centering on the definition of "used oil", and the Department proposes to clarify the federal definition of used oil

in OAR 340-111-002(c) to minimize conflicting interpretations. Based on the used oil definition discussion found in the preamble to the federal rule (FR 57, September 10, 1992 (41575)), it was not EPA's intention to capture, under the definition of used oil, all petroleum derivatives, but rather only the majority of oil used as lubricants, coolants, and emulsions. The Department's Hazardous Waste/Toxics Use Advisory Committee recommended that the definition of used oil be clarified to minimize confusion. EPA Region 10 has reviewed the Department's proposed used oil definition and has agreed that it is equivalent to the intent of the federal used oil definition.

5. AOI and CHI recommended that the used oil definition be amended to include used oils that have been mixed with hazardous waste and contain less than 1,000 parts per million total halogens, following the rebuttable presumption provision in 40 CFR 279.

Department Response: The federal used oil management rule includes a rebuttable presumption provision in 40 CFR 279. Briefly stated, all used oil containing greater than 1,000 parts per million of total halogens is presumed to be mixed with hazardous waste. The presumption may be rebutted by showing, through analysis or knowledge of the process generating the waste, that the used oil has not been mixed with hazardous waste. AOI's and CHI's recommendation is based on the notion that listed hazardous waste may be mixed with used oil and the resultant mixture may be managed as a used oil if the total halogens content is less than 1,000 parts per million (ppm). Federal used oil regulations prohibit the mixing of "listed" hazardous waste with used oil. Regardless of the resultant total halogen content of the mixture, such mixture would not be considered used oil and would need to be managed as a listed hazardous waste. In order to maintain equivalency with the federal rules, the Department recommends no change based on this comment.

6. The Department proposed to include "antifreeze" as a material that is not used oil under the definition of used oil definition. AOI and CHI recommend that the term "antifreeze" be amended to "ethylene glycol".

Department Response: The term "antifreeze" applies to mixtures of materials, such as ethylene glycol, propylene glycol, alcohols and other additives, that are used as antifreeze. In a March 6, 1987 memorandum, the EPA indicates that "antifreeze" is not an oil and would not be classified as a used oil. It is not the Department's intent to limit only ethylene glycol from being mixed with used oil; rather, the Department proposes to limit all mixtures of materials used as antifreeze from the definition of used oil. Therefore, no change to the rule is recommended.

7. The Department proposed in OAR 340-111-010(4)(b) to allow oil removed from parts cleaning media that has not been mixed with listed or characteristic hazardous wastes to be defined as "used oil". AOI commented that this proposal is redundant and recommends that it be deleted.

Department Response: The Department's proposal allows oil removed from parts cleaning media to be managed as a used oil, provided certain criteria are met. The Department believes that this provision is not included in the federal rule. The Department's proposal will allow wastes that contain the same constituents as used oil to be managed as used oil, and believes that this is a logical way to manage wastes that are chemically similar.

8. The Department proposed in OAR 340-111-010(5) a method whereby persons may petition the Department, using the petitioning process in 40 CFR 260.20, to include as "used oil" materials that are not defined as used oil under OAR 340-111-02(c). AOI and CHI commented that the proposed petitioning procedures under 40 CFR 260.20 only applies to hazardous waste and propose that it be deleted. Fuel Processors commented that the provision is redundant to petitioning provisions already found in 40 CFR 279.

Department Response: The Department agrees that the petitioning process referenced in 260.20 applies only to hazardous waste. It was the Department's original intent to provide an administrative mechanism for the agency to consider the inclusion of materials unintentionally left out of the used oil definition. The Department recommends deletion of this provision.

9. AOI and CHI noted that there is a mis-numbered provision listed as OAR 340-111-011 in the Table of Contents.

Department Response: The Department has amended the Table of Contents to correctly read OAR 340-111-012 rather than OAR 340-111-011.

10. The Department proposed to add the requirement that used oil generators cover their used oil storage tanks and containers to prevent the entry of rainwater. AOI and CHI recommend that the provision be amended to require the containers to be "closed".

Department Response: The Department agrees with the comment and has amended the provision in OAR 340-111-022(1)(b) to include the word "closed".

11. The Department proposed to require that used oil transporters, transfer facilities, off-specification used oil burners, processors/re-refiners and marketers use the Department's "Notification of Hazardous Waste Activity" form in lieu of EPA's "Notification of Regulated Waste Activity" form to notify the Department of their used oil activity. AOI and CHI are against using a "Notification of Hazardous Waste Activity" form and recommend the use of the EPA "Notification of Regulated Waste Activity" form instead.

Department Response: The Department's form notification form is presently used by hazardous waste generators and off-specification used oil burners to notify the Department of their activities. Both the Department and EPA forms include provisions for used oil handlers to notify the agencies of their used oil activities. The Department's notification form is equivalent to federal form 8700-12, but the Department will rename its notification form "Notification of Hazardous Waste and Used Oil Activity", or will create two separate notification forms: one for hazardous waste and one for used oil activity.

12. The Department proposed to use the term "used oil handler" to generically define who is subject to certain used oil management requirements. AOI found this term confusing when applied in this manner and recommended it be deleted.

Department Response: The Department agrees with this comment and has deleted the term "used oil handler" in OAR 340-111-002, instead specifically indicating who is subject to the requirements.

13. The Department proposed to use the existing hazardous waste registration procedure to register used oil collection centers. The federal used oil management rule requires that used oil collection centers be registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil. The Department proposed to use the "Notification of Hazardous Waste Activity" form for this purpose. AOI does not support the extension of the notification requirements to used oil generators, used oil collection centers and aggregation points.

Department Response: The Department is proposing to use its existing registration procedure for used oil collection centers, and adopt federal rules which do not require used oil generators and used oil aggregation points to notify. The Department is not proposing to require generators or aggregation points to notify. However, the federal rule requires notification by used oil transporters, processors/re-refiners, marketers, burners of off-specification of used oil, and collection centers. As discussed in response 11 above, the Department will either re-name its notification form the "Notification of

Hazardous Waste and Used Oil Activity", or use separate forms.

14. The Department proposed to make used oil transporters, transfer facilities, processors, and off-specification used oil burners subject to the Department's oil and hazardous material spill response and management requirements in OAR 340, Division 108. The federal used oil management rules contain response provisions to be taken in case of "discharges" of used oil. The Department's definition of "discharge" in Division 108 is appropriately applied to the federal response requirements. AOI and CHI have state that the word "discharge" in Division 108 should be changed to "release" to be more consistent with the intent of the federal used oil rule.

Department Response: The federal used oil rule uses "discharge" and "release" interchangeably. The Department's proposal in OAR 340-111-043 is to indicate that persons involved in a "release or discharge" of used oil are subject to requirements under the Department's OAR 340, Division 108. The Department has amended the provisions in OAR 340-111-043 include the words "discharges or releases" as well.

15. AOI recommends that the Department add the definition of "discharge" to OAR 340-111-002 as defined in 40 CFR 112.2(b).

Department Response: The Department is not proposing to add this definition to Division 111. The term "discharge" is already defined as "spill or release" in OAR 340, Division 108. The Department's rule proposals direct persons to OAR 340, Division 108 in the event of a discharge or release of used oil.

16. Regarding federal used oil processor reporting requirements being proposed for adoption, AOI recommends that the Department amend the proposed reporting requirements by adding the words "Commencing in 1995".

Department Response: Once the used oil rule is adopted, the first report will not be due until March 1, 1995; therefore, the Department sees no need to add this amendment.

17. The Department proposed to add provisions regarding the mixtures of used oil and other wastes, burning for energy recovery, oil recovered from parts cleaners, and petitioning process for wastes that the Department does not regard as used oil. Fuel Processors commented that the provisions are redundant with the federal rule, are not necessary, and will discourage recycling of used oil. Fuel Processors also states that the Department does not have the studies to justify the added provisions.



Department Response: The proposed provisions respond to comments by staff, the public, and the Hazardous Waste/Toxics Use Advisory Committee and an analysis of current state law. The Department does not view the proposed provisions referred to in OAR 340-111-010 as redundant. Many of the proposed provisions include existing state requirements from other programs, such as air quality. No information was submitted to the Department demonstrating that the adoption of the proposed provisions will restrict recycling of used oil.

18. The Department proposed prohibiting the burning as a used oil fuel mixtures of used oil and non-hazardous waste containing a fuel value of less than 5,000 BTUs per pound. Under this provision, the Department will allow mixtures of used oil and non-hazardous waste to be burned for solid waste treatment or incineration if applicable air quality and solid waste regulations are met. Fuel Processors and Dick Briggs comment that this provision will seriously restrict the recycling of oily wastes and recommended that the provision be deleted. Dick Briggs argues that the 5,000 BTU limit applies only to used oil mixed with hazardous waste and not with used oil mixed with other materials.

Department Response: Used oil exhibiting one or more of the characteristic of hazardous waste (ignitability, corrosivity, reactivity or toxicity) is exempt from hazardous waste requirements when recycled. EPA estimates that approximately 70 percent of used oil is hazardous for one or more hazardous waste characteristics. Without the exemption under 40 CFR 261.6, used oil exhibiting one or more hazardous waste characteristics would be required to managed as a hazardous waste. The preamble to the 40 CFR 261.6 exemption (45 FR May 19, 1980, pg 33093) explained that the exemption is confined to bona fide "legitimate" and "beneficial" uses and recycling of hazardous waste. The preamble further states that sham uses, recovery or reclamation activities which are actually disposal, and burning of organic wastes that have little or no heat value in industrial boilers under the guise of energy recovery, are not within the scope and, if conducted in violation of Subtitle C requirements, will be subject to enforcement activities under federal RCRA, Section 3008.

The Department believes that burning oily wastes containing low energy value, such as oil contaminated soil, oily wastewater, oily sludges and absorbents, is treatment or incineration which constitutes disposal of a solid waste. Treatment or incineration should not be confused with legitimate energy recovery. This rule proposal does not prohibit the burning of oily wastes, but makes a distinction between treatment, incineration, and energy recovery. The Department recommends no change to the proposed rule.

19. The Department proposed adding the provision that states ".....no person shall dispose of used oil into sewers, drainage system, or waters of the state.....". Dick Briggs comments that the word "person" expands the scope and applicability of the used oil rule to individuals and feels the term should be deleted. He further states that the authority to apply the used oil management standards to individuals is not within the scope of the federal used oil regulations.

Department Response: The provision cited in OAR 340-111-081(2) mirrors existing ORS 468.865. ORS 466.005(13) defines "person" as the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust estate, or any other legal entity. The Department's position is that the statute gives authority to used the word "person." The Applicability Section of 40 CFR Part 279 specifies which "persons" are exempt from the requirements of this rule. The Department is not proposing to change this provision.

20. Dick Briggs proposed expanding the used oil collection system regulations under the federal rules to include other solid wastes. He adds that used oil collector permits should be as good as a solid waste permit and that this would encourage the collection of solid wastes through the used oil system at reduced costs.

Department Response: The federal used oil rule was promulgated to provide management standards necessary to protect public health and the environment from the hazards associated with recycling used oil. Currently, used oil collectors are not required to have an environmental permit from the Department. Collectors of solid waste are not required by the Department to have a permit, either, unless they operate a solid waste transfer or disposal facility. If a used oil collector desires to operate a solid waste transfer or disposal facility, a solid waste permit would be required. The solid waste permit is specific to the types of solid wastes collected and detail the type of management requirements needed.

21. The Department proposed to adopt, by reference, federal used oil regulations pertaining to the management of used oil as published by EPA in 40 CFR Part 279. The Department proposed deleting existing used oil regulations in Division 111 and adding clarifying language in that Division pertaining managing used oil. Industrial Oil, Fuel Processors and Dick Briggs recommend that the Department adopt the federal rule without change. They point out that 40 CFR 279 was the result of many years of development by the EPA and it represents a balanced and sensible regulatory system.

Department Response: The Department has spent the last year discussing the federal used oil management rule with used oil generators, transporters, processors and burners,

as well as with the Department's Hazardous Waste/Toxics Use Reduction Advisory Committee, EPA headquarters, and Region 10 staff. The Department's proposed approach - adoption of the federal used oil management rule in its entirety with only minor revisions to the federal rule added for clarity - is the result of this discussion and is consistent with the intent of the federal regulations.

### **ESTABLISHING SPECIAL WASTE MANAGEMENT STANDARDS FOR SPENT TREATED WOOD WASTE**

1. The Department proposed to allow spent treated wood waste that is hazardous because it fails the state-only Aquatic Toxicity test to be managed as special waste in solid waste landfills rather than hazardous waste facilities, provided certain standards are met. The American Wood Preservers Institute, Koppers Industries, Pacific Sound Resources, Inc., and the Western Wood Products Association support the amendment. The Utility Solid Waste Activities Group supports the rulemaking but suggests that the Department: (1) allow site-specific determinations governing the disposal of treated wood in municipal landfills that do not meet the design criteria in 40 CFR 258.40; (2) clarify that the recycling of treated wood as a fuel in qualified boilers and industrial furnaces is a legitimate recycling option under the proposal; and (3) clarify that treated wood that is reused is not "solid waste".

Department Response: (1) The Department believes that disposing of spent treated wood waste determined to be hazardous solely because it fails the state-only hazardous waste determination can be safely managed in solid waste landfills that meet the provisions of 40 CFR 258.40. These landfills are fully lined therefore leaching from waste material can be safely contained and managed. Solid waste landfills that do not have liners would not protect the groundwater or surface water from pesticide residue leachate. The Department does not recommend any change.

(2) The proposed rule provides for recycling of treated wood as a management option as well as disposal at a facility authorized to receive such waste. The Department believes that burning pressure treated wood in a qualified boiler or industrial furnace for energy recovery is appropriate, provided the facility meets regulatory standards. No change to the proposed amendment is necessary.

(3) The Department explicitly exempts spent treated wood waste that is used or reused from the aquatic toxicity evaluation and the special management standards being proposed for this waste. Federal regulations exempt materials that are used or reused as effective substitutes for commercial products and waste materials such as spent treated wood that is used or reused as an effective substitute for a commercial product are

exempt from Oregon's hazardous waste management regulations. The Department recommends no further regulatory changes.

### **ESTABLISHING SPECIAL WASTE MANAGEMENT STANDARDS FOR SANDBLAST GRIT WASTE**

1. The Department proposes to allow sandblast grit waste that is hazardous only because it fails the state-only Aquatic Toxicity test and is prevented from entering the environment by following a set of Best Pollution Prevention Practices, or other equivalent practices, to be managed as a special waste in a solid waste landfill meeting the design criteria in 40 CFR 258.40. The Oregon Department of Fish and Wildlife supports the rule. AOI and CHI suggest that the proposed rule language should be modified to include only abrasive blast wastes containing antifoulant coming from sandblasting ships and marine structures.

Department Response: The Department disagrees. Although the Department discussed the rule in the context of sandblasting ships and marine structures that have been painted with coatings containing antifoulants, the principles of the proposed rule legitimately apply to other structures that have been painted with coatings containing antifoulants or to other pesticide residues. The Department believes that such wastes may be managed safely in a solid waste landfill meeting 40 CFR 258.40 standards and sees no need to limit the scope of the rule.

### **ELIMINATING HAZARDOUS WASTE DETERMINATION REQUIREMENTS UNDER THE STATE-ONLY "3% AND 10%" RULE FOR TOXICITY CHARACTERISTIC CONSTITUENTS**

1. The Department proposed to eliminate the redundant requirements for the characterization of hazardous wastes containing 39 chemical constituents currently regulated under the federal TC Leaching Procedure (TCLP). In 1992, the Department similarly modified the Aquatic Toxicity characterization regulation, eliminating from the Aquatic Toxicity testing procedures those pesticides that are regulated under the TCLP. The Utility Solid Waste Activity Group supports the proposed amendment. AOI and CHI support this rule amendment, but assert that the state-only "3% and 10%" rules are no longer needed, since the federal program's characterization scheme has matured to encompass a broad range of chemicals addressed by these rules. They believe that these rules should be eliminated in their entirety and that Oregon should adhere only to the federal hazardous waste characterization criteria.

Department Response: The proposed changes to the "3% and 10%" rule eliminate duplicative federal and state characterization requirements only for wastes containing 39

chemicals listed on the federal Toxicity Characteristic (TC) list. The Department believes application of the "3% and 10%" rule criteria to other wastes not covered by the TC should remain intact until a better scientific assessment can be made.

Likewise, an overall assessment of the appropriateness of the aquatic toxicity evaluation in determining whether or not a pesticide residue is a hazardous waste pesticide residue, is beyond the scope of this rulemaking. Until an appropriate assessment can be conducted, the Department believes the Aquatic Toxicity test is a relevant mechanism for deciding which pesticide residues should be managed as a hazardous waste. One of the primary risks posed by pesticide residue is through surface and groundwater contamination. The Aquatic Toxicity test serves as the only way to "declassify" pesticide residues from the state's definition of hazardous wastes (ORS 466.005(7)(a)). The Department intends to evaluate the validity of using the aquatic toxicity test to characterize pesticide residue with a scientific workgroup after completion of this rulemaking.

2. AOI and CHI request that X001 state-only Aquatic Toxicity pesticide hazardous wastes be re-designated as "characteristic" rather than "listed" hazardous waste. They assert that the Aquatic Toxicity test more closely resembles a characteristic than a "listed" waste test because listed wastes are generated from industrial processes, are not dependent upon concentration of constituents, and are not tested.

Department Response: In 1992, the Department modified its Aquatic Toxicity regulation to make State-only hazardous wastes as determined by this test more "characteristic-like". Recognizing that the Aquatic Toxicity test is concentration dependent, like other characteristic tests, the Department modified the regulation allowing pesticide waste to escape "listing" as hazardous wastes if it no longer failed the characterization test. The modification had the practical effect of allowing exiting from listing of a pesticide rinsewater, that for example, failed and then because of subsequent rinsing, did not fail the test. The Department believes that the current listing requirement discourages dilution of pesticide rinsewaters, encourages waste reduction, and allows for cost effective and environmentally sound pesticide cleanups.

**REQUIRING HAZARDOUS WASTE GENERATORS TO MEET SPECIFIC  
CONTAINER AND TANK MANAGEMENT STANDARDS DURING  
ACCUMULATION OF HAZARDOUS WASTES, AND TO MAINTAIN HAZARDOUS  
WASTE DETERMINATION RECORDS**

1. The Department proposed requiring generators to maintain a copy of the documentation

used to determine whether a residue is a hazardous waste as long as the waste is being generated, and for a minimum of three years after the waste is no longer generated. CHI and AOI expressed concern with the proposed rule and how the Department's inspectors may administer and enforce the rule. They were concerned that the absence of written Department guidance could lead to misuse of the rule. Additional comments by AOI and CHI expressed concern that the proposed rule exceeds federal requirements. CHI and AOI requested that additional language be included for clarification.

Department response: The Department agrees with the commenters' concerns and proposes additional language to clarify the Department's intent. It was not the Department's intent to require that new documentation be created when determining a hazardous waste. Therefore, the Department is adding rule language stating that if no documentation is created in making a hazardous waste determination, no new documentation need be created because of this rule change.

The Department's hazardous waste inspectors will be requiring generators to provide documentation that a waste determination has been made either through analysis or knowledge of process. If no documentation has been created, no new documentation need be provided. The Department does not believe that this requirement may be misused by inspectors. The generator requirements are clear with respect to waste determinations and the inspectors are trained in the requirements for waste determination and recordkeeping.

#### **SPECIFYING IN REGULATION THE LABORATORY PROCEDURES FOR CONDUCTING HAZARDOUS WASTE DETERMINATION USING AN AQUATIC TOXICITY TEST.**

AOI supports the rule amendment.

#### **ESTABLISHING CONFIDENTIAL BUSINESS INFORMATION FILING PROCEDURES**

AOI and CHI supplied written comments. AOI recommends language changes, most of which the Department recommends adopting verbatim.

1. AOI was concerned that the proposed rule could be construed to limit legitimate claims to hold information confidential under Oregon law, and proposed additional language to OAR-340-100-003 (2) for clarification.

Department response: It is not the intent of the Department to limit what can be claimed as confidential under Oregon law. The Department recommends the proposed language be adopted verbatim, although the Department has been advised by the Department of Justice that there is no provision in the Public Records Law (ORS 192) that provides a confidentiality claim other than trade secrets for required hazardous waste information.

2. AOI was concerned about the Department's proposed provision to require written substantiation of trade secret claims at the same time the information is submitted for some types of information (i.e. when the submitter had 30 days or more to provide the information.) AOI agrees with this provision provided that a specific list of information subject to concurrent substantiation at the time the claim is submitted be substituted for the "30 day test."

Department response: The Department agrees with this suggestion and recommends the language proposed in OAR 340-100-003 (4)(b) be adopted verbatim. That language lists the information submissions which require accompanying substantiation at the time of submittal, when trade secrets are being claimed. This list replaces the "30 day test" which was originally proposed by the Department.

In addition, the Department proposes to adopt the intent of AOI's recommended change to the proposed language in two other places (OAR 340-100-003(5)(a) and OAR 340-100-003(4)(e)) which eliminates other references to the "30-day test". The Department's new language accurately states cross-references to other parts of the rule.

3. CHI objected to the adoption of all changes related to confidentiality procedures and stated that consistency with Toxics Use Reduction (TUR) Act rules is not adequate justification for the proposed rule changes. CHI distinguishes the TUR program from the hazardous waste program by saying that TUR substantiation is simple and straightforward as compared with the proposed hazardous waste substantiation because of the differences in program information complexities. CHI also recommends that the Department follow the EPA rules in this area.

Department response: The current state hazardous waste confidentiality rule has no standards identifying what constitutes a trade secret or what substantiation is required. The hazardous waste program needs a standard procedure to reasonably allow or disallow such claims, and the TUR confidentiality rule contains these standards. The TUR rule was used as a beginning point in discussions with the HW/TUR Advisory Committee and which lead to the version proposed here. Although there are differences in the reporting requirements of TUR and hazardous waste, the trade secret determination requirements are the same and the Department believes basic consistency is needed between these two

programs.

The Department generally follows the federal rules on confidentiality except that the Department has proposed that substantiation for some trade secret claims be provided at the time the claim is made, rather than upon a public request for the information. This was proposed to eliminate delays encountered in receiving substantiation information and making the claims determination and to reduce the possibility of spurious claims. AOI agreed with this change by identifying the applicable information and reports to which this provision applies.

4. CHI believes that the proposed rule may be interpreted in such a way as to limit other lawful confidentiality claims, especially financial information claims. CHI argues that ORS 192.501 (5) provides protection of financial data.

Department response: The Department does not intend with this rulemaking to disallow any lawful claim of confidentiality, and to clear up any confusion, the Department proposes new language that explicitly allows any other lawful confidentiality claim (See response no. 1 above). However, the Hazardous Waste Program does not require submission of financial or other business records as described in ORS 192.501(5).

5. CHI asserts that substantiation of confidentiality at the time of submittal is unnecessary and an inappropriate use of resources. CHI states that under the current rules, material submitted as confidential remains confidential until a public request for that information is made. CHI stresses that the Department makes the determination after the receipt of a public information request and that EPA has similar practices. CHI believes that this is a major burden for the few trade secrets that have historically been claimed.

Department response: The current state hazardous waste rules provide no guidance on this matter. Under past Department procedures, trade secret determinations are made only after public information requests. When the Department has asked for substantiation in the past, it has taken significant time to obtain, evaluate, and decide on these trade secret claims. This delay affects the public's right to a timely answer to any request for information. The federal rules require that trade secret substantiation be provided upon EPA's request. EPA may request the substantiation because a public information request is received, or when it is likely that public information request will be received, or for any other reason. The federal rules do not require that the substantiation be submitted only when a request is made.



6. CHI feels that the fiscal impact statement ignores the potential burden of the proposed rule to small businesses. CHI stated that small businesses may be claiming trade secrets on their information submissions to the Department.

Department response: Because this proposal does not change the scope of what is eligible for confidentiality or establish new information to be submitted, the Department does not expect that small businesses will begin to claim trade secrets since small businesses have not done so in the past. confidentiality in the past.

7. CHI thinks that any changes to the rules should be consistent with federal rules to the extent allowed by Oregon law. CHI further states that the Department should adopt a trade secret rule for the entire Department.

Department response: The Department's proposed rule is consistent with the federal rules. The only principal difference between the federal rules and the Department's proposed rule is that the Department would require substantiation to be provided with the submission of certain information in the hazardous waste program. This balances the interests of the public to have timely access to Department information, as provided in the Public Records Law (ORS 192), and the claim of confidentiality, which is also provided by Oregon law. Although consistency among the Department's programs is desirable, the hazardous waste program needs confidentiality standards and predictable procedures embodied in rule now.

#### **UPDATING AND AMENDING THE TOXICS USE REDUCTION AND HAZARDOUS WASTE REDUCTION REGULATIONS**

1. The Department proposed providing an exemption from the Toxics Use Reduction planning requirements under ORS 465.018 for hazardous waste generators who usually produce small quantities of hazardous waste, but due to a single cleanup event of wastes that have accumulated over time, change generator status. This exemption may be claimed once every five years unless uncontrollable circumstances are encountered.

AOI and CHI believe that the proposed five year time period between clean-out events of waste is a disincentive to responsible waste management activities. They believe that a five year limitation is a negative regulatory sanction for these generators.

Department response: The Department proposed this rule change to provide relief from an often complicated reduction planning process for generators who normally produce small amounts of hazardous wastes. Initially, the Department considered allowing this

exemption to be claimed only once during the life of a business to discourage unlimited storage, and encourage proper and timely management of hazardous waste. The five year time-frame was proposed because the Department realized that some circumstances might lead to recurrent clean-out events: an example being equipment changes that accompany changes in product design in response to shifting market conditions. The HW/TUR Advisory Committee debated whether it was appropriate for a hazardous waste generator to manage waste in a manner that encouraged single clean-up events to occur more than once in the life of a business and agreed upon the five year time frame. The Committee also recommended an additional exemption for waste generated under uncontrollable circumstances such as fires or floods. The Department has not changed the rule proposed.

**Federal Hazardous Waste Rules  
Promulgated Between  
July 1, 1992 and July 1, 1993  
that are Proposed for Adoption by the Department**

Following is a summary of the federal regulations proposed for adoption and includes those regulations which were promulgated between July 1, 1992 and July 1, 1993. Federal regulations promulgated under the Hazardous and Solid Waste Act of 1994 (HSWA) are already in effect in Oregon and being implemented by the EPA; whereas, Non-HSWA regulations are not effective in Oregon until adopted (but must be adopted within one year of promulgation). The Department adopts the federal regulations annually in order to maintain authorization. This summary is text provided verbatim from EPA's summary of Federal Register notices.

**Federal Register (FR) 108**

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Corrections

Vol. 57 No. 133 Friday, July 10, 1992 p 30657

**ACTION:** Final rule; corrections; HSWA provision.

**EFFECTIVE DATE:** The revision is effective July 10, 1992.

**AFFECTED REGULATIONS:** 40 CFR Part 261

[EPA/OSW-FRL-4151-2] RIN 2050-AA78

**SUMMARY:** On March 29, 1990, the Environmental Protection Agency (EPA) promulgated a rule (55 FR 11798) to revise the existing toxicity characteristics (TC) used to identify certain wastes defined as hazardous; these wastes are regulated under subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents. In the preamble, the exclusion from subtitle C regulation for arsenical-treated wood and wood products was revised inappropriately. This rule corrects that revision. Today's rule also deletes two additional references in the Code of Federal Regulations (CFR) to the Extraction Procedure (EP) Toxicity Characteristic and replaces them with references to the TC.

**FR109**

Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris

Vol. 57 No. 160 Tuesday, August 18, 1992 p 37194

ACTION: Final rule; HSWA provision.

EFFECTIVE DATES: This final rule is effective on June 30, 1992, except for §§ 148.17(a), 260.10, 261.3(c)(2)(ii)(C), 268.2, 268.5, 268.7, 268.9, 268.36(a), 268.40, 268.41, 268.42, 268.43, 268.45, 268.46, 268.50, 270.14, 270.42, 270.72, and 271.1, which are effective November 16, 1992; and §§ 262.34, 264.110, 264.111, 264.112, 264.140, 264.142, part 264 subpart DD, 265.110, 265.111, 265.112, 265.140, 265.142, 265.221, and part 265 subpart DD, which are effective February 18, 1993.

AFFECTED REGULATIONS: 40 CFR Parts 148, 260, 261, 262, 264, 265, 268, 270 and 271

[FRL-4132-4]

RIN 2050-AD36

SUMMARY: The Environmental Protection Agency (EPA) is finalizing treatment standards under the land disposal restrictions (LDR) program for certain hazardous wastes listed after November 8, 1984, pursuant to a proposed consent decree filed with the District Court that established a promulgation date of June 1992 (EDF v. Reilly, Civ. No. 89-0598, D.D.C.). EPA is also finalizing revised treatment standards for debris contaminated with listed hazardous waste or debris that exhibits certain hazardous waste characteristics (hereinafter referred to as hazardous debris), and several revisions to previously promulgated standards and requirements. These actions are being taken as part of the RCRA Reform Initiative, and are expected to facilitate implementation of the LDR program.

Certain aspects of this rule could be affected by the recently proposed Hazardous Waste Indemnification rule (57 FR 21450; May 20, 1992) which deals with the question of when wastes are hazardous, concentration levels, and circumstances where wastes aren't hazardous. That rule also examines when land disposal prohibitions might and might not apply. However, the present *mixture* and *derived from* rules remain in effect (57 FR 7268; March 3, 1992). The preamble to the August 18, 1992 rule codifies the "contained-in" policy with respect to contaminated debris. See 57 FR 37225, 3rd column, "2. Definition of Hazardous Debris."

**FR110**

Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment; Coke By-Products Wastes

Vol. 57 No. 160 Tuesday, August 18, 1992 p 37284

ACTION: Final rule; HSWA provision.

**EFFECTIVE DATE:** Final rule will become effective on February 18, 1993.

**AFFECTED REGULATIONS:** 40 CFR Parts 261, 271, and 302

[FRL-4134-2]

RIN 2050-AC85

**SUMMARY:** The Environmental Protection Agency is today amending its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous seven wastes generated during the production, recovery, and refining of coke by-products produced from coal. EPA is adding seven wastes to the list of hazardous wastes from specific sources. EPA is also amending appendix VII of 40 CFR part 261 to add the constituents for which these wastes are being listed. In addition, the Agency is finalizing the proposed determination not to list as hazardous wastes wastewaters from coking and tar refining operations.

The effect of listing K141 through K145, K147 and K148 will be to subject these materials to the hazardous waste regulations of 40 CFR parts 124, 262 through 266, 268, 270 and 271, the notification requirements of RCRA 3010, and the notification requirements under section 103 of CERCLA.

In addition to the listings, the Agency is today amending and clarifying an exclusion from the definition of solid waste for wastes from the coke by-products process that exhibit the TC and are recycled by being returned to coke ovens or mixed with coal tar. (57 FR 27880).

### **FR111**

**Burning of Hazardous Waste in Boilers and Industrial Furnaces**

Vol. 57 No. 165 Tuesday, August 25, 1992 p 38558

**ACTION:** Final rule; technical clarification amendments and corrections; contains both HSWA and Non-HSWA provisions.

**EFFECTIVE DATE:** August 11, 1992.

**AFFECTED REGULATIONS:** 40 CFR Parts 260, 261, 264, 265, and 266

[EPA/OSW-FR-92-SWH-FRL-4198-5]

**SUMMARY:** This action makes several technical clarification amendments and corrections to the final rule for boilers and industrial furnaces burning hazardous waste. The final rule was published on February 21, 1991 (56 FR 7134). These revisions provide clarification and correct unintended consequences of the rule.

The provisions are non-HSWA to the extent that they apply to sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators. Specifically, the revisions to the plasma arc and infrared incinerator definitions are non-HSWA provisions and do not take effect in an authorized State until the State becomes authorized. Both interim and final authorization are available for the HSWA provisions.

### **FR112**

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

Vol. 57 No. 176 Thursday, September 10, 1992 p 41566

**ACTION:** Final rule; contains both HSWA and Non-HSWA provisions.

**EFFECTIVE DATE:** March 8, 1993.

**AFFECTED REGULATIONS:** 40 CFR Parts 260, 261, 266, 271 and 279

[FRL-4153-6]

RIN: 2050-AC17

**SUMMARY:** The Agency is promulgating a final listing decision for used oils that are recycled and is simultaneously promulgating standards for the management of used oil under RCRA section 3014. EPA has made a final listing decision for used oils that are recycled based upon the technical criteria provided in sections 1004 and 3001 of RCRA. EPA determined that recycled used oil does not have to be listed as a hazardous waste since the used oil management standards issued in this rulemaking are adequately protective of human health and the environment. These standards cover used oil generators, transporters, processors and re-refiners, burners, and marketers. These standards are promulgated under the authority of section 3014 of RCRA and will be codified in a new part 279 of chapter 40 of the Code of Federal Regulations. When these management standards go into effect, service station dealers who collect used oil from do-it-yourself (DIY) generators and who are in compliance with the standards promulgated, may be eligible for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 114(c) liability exemption. EPA is continuing to evaluate the potential hazards associated with management of used oil. When this analysis is completed, the Agency will publish Notice(s) of Data Availability in the Federal Register over the next several months, as necessary. EPA will also, at that time, solicit opinion from the public on what, if any, additional steps may be necessary regarding used oil management.

### **FR113**

This rule consolidates the changes made by the following three rules:

- Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage
- Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Liability Requirements
- Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Financial Responsibility for Third-Party Liability, Closure, and Post-Closure

53 FR 33938-33960, 56 FR 30200, and 57 FR 42832-42844

ACTION: Final rule; September 16, 1992; Non-HSWA provision.

EFFECTIVE DATE: September 16, 1992

AFFECTED REGULATIONS: 40 CFR 264.141, 264.147, 264.151, 265.141, 265.147 and 265.151 as amended September 1, 1988 (53 FR 33938), July 1, 1991 (56 FR 30200), and (57 FR 42832); 40 CFR 264.147(f)(6) and 265.147(f)(6) as amended September 16, 1992 (57 FR 42832).

SUMMARY: On September 1, 1988, (53 FR 33938), the Agency issued a final rule that expanded the instruments available to owners and operators to demonstrate financial responsibility for third-party liability assurance. This rule also established, at §§264.147 and 265.147, a claims reporting requirement for third-party claims. Chemical Waste Management, Inc. (CWM) challenged several portions of this rule and on February 23, 1990 entered into a settlement agreement with EPA in which the Agency agreed to make several changes to the liability coverage requirements. Because of this litigation and resulting settlement agreement, the checklist (i.e. Revision Checklist 51) for this rule was withheld. The Agency encouraged States to not adopt the provisions addressed by the September 1, 1988 rule until all of the amendments agreed to in the settlement agreement were made. On July 1, 1991 (56 FR 30200) a final rule correcting the September 1, 1988 rule was issued. Specifically, that rule corrected the omission of "miscellaneous" units as subject to the requirements of 264.147(b) and, as part of satisfying the settlement agreement, references to 264.147(f) and 265.147(f) were inserted into 264.147(a)(2) and 265.147(a)(2), respectively. The Agency also withheld the checklist (i.e., Revision Checklist 93) for that rule because this correction did not address all of the regulatory amendments required by the settlement agreement. The remaining settlement agreement amendments were made by the September 16, 1992 rule (57 FR 42832). That notice also promulgated a conforming change to §§264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage.

#### FR114

Burning of Hazardous Waste in Boilers and Industrial Furnaces

Vol. 57 No. 190 Wednesday, September 30, 1992 p 44999

**ACTION:** Final rule; technical amendments and corrections; HSWA provision.

**EFFECTIVE DATES:** The effective dates of the regulations, August 21, 1991 for the regulations published at (56 FR 42504), and August 11, 1992 for the regulations published at (57 FR 38558), remain unchanged. The reinstatement of § 266.103(c) (1) and (3) is effective August 21, 1991. The technical corrections to (57 FR 38558) are effective August 11, 1992.

**AFFECTED REGULATIONS:** 40 CFR Part 266

[EPA/OSW-FR-92; SWH-FRL-4513-9]

**SUMMARY:** On August 27, 1991 (56 FR 42504) and August 25, 1992 (57 FR 38558), the Environmental Protection Agency (EPA) published several technical amendments, clarifications, and corrections to the final rule for boilers and industrial furnaces burning hazardous waste. Today's notice provides clarifications to the final rule by reinstating language deleted due to an administrative error and corrects two errors appearing in the August 25, 1992 amendments.

### **FR115**

**Hazardous Waste Management System: Identification and Listing of Hazardous Waste and CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment, Chlorinated Toluenes Production Wastes**

Vol. 57 No. 200 Thursday, October 15, 1992 p 47376

**ACTION:** Final rule; HSWA provision.

**EFFECTIVE DATES:** Today's final rule will become effective on April 15, 1993. See section VII of the Supplementary Information section concerning compliance dates.

**AFFECTED REGULATIONS:** 40 CFR Parts 261 (261.32 and 261 Appendix VII) 271, and 302

[SWH-FRL-4194-3]

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by adding three wastes (K149, K150 and K151) generated during the production of the alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups, collectively referred to in this document as "chlorinated toluenes," to the list of hazardous wastes from specific sources. EPA is also amending appendix VII of 40 CFR part 261 to add the constituents for which these wastes are being listed. The effect of this regulation is that these three wastes will be subject to regulation as hazardous wastes. In addition, EPA is amending regulations promulgated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that are related to today's waste listings. In particular, EPA is amending



CERCLA regulations by designating the listed wastes as CERCLA hazardous substances and establishing the reportable quantities applicable to these wastes.

**FR116**

Hazardous Waste Management System: Land Disposal Restrictions

Vol. 57 No. 203 Tuesday, October 20, 1992 p 47772

**ACTION:** Approval of Interim Final Hazardous Soil Case-By-Case Capacity Variance; HSWA provision.

**EFFECTIVE DATES:** This action becomes effective on October 13, 1992 and expires on May 8, 1993. Comments on this action must be submitted on or before November 19, 1992.

**AFFECTED REGULATION:** 40 CFR Part 268 (268.5, 268.35(c)-(e)).

[FRL-4524-5]

**SUMMARY:** In the final rule establishing land disposal restrictions (LDR) for Third Third hazardous wastes, EPA granted a national capacity variance for those hazardous soils whose best demonstrated available technology (BDAT) was incineration, retorting, or vitrification, as well as for soils contaminated with radioactive mixed waste, due to a lack of treatment capacity. Approximately 73 percent of the wastes restricted from land disposal by the Third Third rule received the national capacity variance when they were contained in soils. The national capacity variance expired on May 8, 1992.

While the variance was in effect, EPA received information from generators of hazardous soils and trade associations indicating that there would not be sufficient treatment capacity for hazardous soils when the variance expired on May 8, 1992. In response to this information, EPA gathered data to determine whether treatment capacity is available for hazardous soils to which the national capacity variance applied, and, if not, to determine the reasons that it is not available. Information obtained from various companies and trade associations indicated that a shortage of treatment capacity for hazardous soils continues to exist, for reasons beyond their control.

Under 40 CFR 268.5, EPA is approving an interim final case-by-case extension of the LDR effective date, to May 8, 1993, applicable to all persons handling Third Third hazardous soils whose BDAT is either incineration, retorting, or vitrification, or handling Third Third soils contaminated with radioactive mixed waste. No further applications will be required at this time from persons granted the extension by this action. However, EPA is requiring such persons to do certain recordkeeping, and to meet certain other requirements to qualify for the extension.

**FR117**

No Summary is currently available

**FR118**

Hazardous Waste Management; Liquids in Landfills

Vol. 57 No. 223 Wednesday, November 18, 1992 p 54452

ACTION: Final rule; HSWA provision.

EFFECTIVE DATE: May 18, 1993.

AFFECTED REGULATIONS: 40 CFR Parts 260, 264, 265, and 271

[FRL-4506-3]

RIN 2050-AA34

SUMMARY: This rule's purpose is to assure the stability of materials in hazardous waste landfills. It satisfies the HSWA requirement that EPA issue a rule prohibiting disposal in landfills of liquids that have been sorbed by materials that biodegrade or that release liquids when compressed, as might occur during routine landfill operations. Specifically, the Paint Filter Test, Method 9095, is adopted for testing containerized liquids to which sorbents were added prior to land disposal. This rule also lists classes of nonbiodegradable sorbents and gives examples in each class. Two tests are identified that may be used to determine nonbiodegradability of sorbents not within a class on the list. Lab packs must also have nonbiodegradable sorbents.

**FR119**

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Revision

Vol. 57 No. 227 Tuesday, November 24, 1992 p 55114

ACTION: Final rule; HSWA provision.

EFFECTIVE DATE: November 24, 1992.

AFFECTED REGULATIONS: 40 CFR Parts 261 and 271

[FRL-4536-5]

RIN 2050-AC32

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is amending its hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) for testing conducted to evaluate a solid waste for the Toxicity Characteristic. Specifically, this rule removes the quality assurance (QA) requirement found in Method 1311, Toxicity Characteristic Leaching Procedure (TCLP), for correcting measured values for analytical bias (also referred to within this rule as spike recovery correction). However, this rule retains appropriate QA provisions, including that matrix spike recoveries be calculated and that the method of standard additions be employed as the quantitation method for metallic contaminants when appropriate as specified in the method.

**FR119A**

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Revision

Vol. 58 No. 20 Tuesday, February 2, 1993 p 6854

**ACTION:** Correction

**EFFECTIVE:** On Publication.

**AFFECTED REGULATIONS:** 40 CFR Parts 261 and 271

[FRL-4536-5]

RIN 2050-AC32

**CORRECTION:** In rule document 92-28320 beginning on page 55114 in the issue of Tuesday, November 24, 1992, make the following corrections:

**PART 261-[CORRECTED]**

1. On page 55117, in part 261, in appendix II, in the second column, in the last paragraph, in the first line, 84.4.4 should read 8.4.4.

§ 271.1 [Corrected]

2. On the same page, in § 271.1, in Table 1, under Federal Register reference, "publication citation" should be removed.

**FR120**

Wood Preserving; Identification and Listing of Hazardous Waste; Standards and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

Vol. 57 No. 248 Thursday, December 24, 1992 p 61492

**ACTION:** Final rule; Non-HSWA provision.

**EFFECTIVE DATES:** This final rule will become effective on December 24, 1992 except for the amendments to the following provisions which are effective on June 24, 1993: §§ 264.570(c)(1), 264.573(a)(4)(i), and (b)(3), 265.440(c)(1), 265.443(a)(4)(i) and (b)(3) and the revision of hazardous waste number F032 in § 261.31.

**AFFECTED REGULATIONS:** 40 CFR Parts 261, 264, 265, and 302

[FRL-4155-5]

RIN 2050-AD35

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by modifying the technical standards for drip pads used to collect preservative drippage from treated wood and modifying the listings of three categories of hazardous waste from the wood preserving industry. These listings include wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use or have used pentachlorophenol (F032), that currently use creosote (F034), or that currently use inorganic preservatives containing arsenic or chromium (F035). This action modifies portions of the regulations that were previously finalized by EPA on December 6, 1990 (50 FR 50450). Portions of that final rule were administratively stayed on June 13, 1991 (56 FR 27332), and again on February 6, 1992 (published in the Federal Register on February 18, 1992 [57 FR 5859]) (Note: The Department did not adopt the June 13, 1991 stay since in the Department's opinion, the provisions had expired on February 6, 1992 and May 6, 1992 which was before the Department's rulemaking on October 16, 1992. The Department did adopt the February 6, 1992 stay for coatings and sealers which allegedly expired on October 31, 1992. However, EPA's amendments in this rulemaking constitute final action on the June 1991 Administrative Stay and result in termination of that stay. The February 6, 1992 stay is also terminated).

EPA's rulemaking also modifies the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) list of hazardous substances to reflect the modifications to the F032, F034, and F035 hazardous waste listings.

#### **FR121**

The Department adopted the Corrective Action Management Units (CAMU) regulation on July 23, 1993

#### **FR122**

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

Vol. 58 No. 83 Monday, May 3, 1993 p 26420

ACTION: Final rule; technical amendments and corrections; contains both HSWA and Non-HSWA provisions.

EFFECTIVE DATE: March 8, 1993.

AFFECTED REGULATIONS: 40 CFR Parts 261, 264, 265, 271, and 279

[EPA/530-Z-93-004; FRL-4619-7] RIN 2050-AC17

SUMMARY: This action corrects several technical errors and provides clarifying amendments to the final recycled used oil management standards rule. The final rule was published on September 10, 1992 (57 FR 41566). This action also corrects an error in the final used oil rule published on May 20, 1992 (57 FR 21524). These revisions provide clarification and correct unintended consequences of both rules.

**FR123**

Hazardous Waste Management System: Land Disposal Restrictions; Renewal of the Hazardous Debris Case-By-Case Capacity Variance and Renewal of Variance

Vol. 58 No. 92 Friday, May 14, 1993 p 28506

ACTION: Final rule; HSWA provision.

AFFECTED REGULATIONS: 40 CFR Part 268

[FRL-4655-1]

EFFECTIVE DATE: This rule and the extension become effective on May 8, 1993.

SUMMARY: On May 8, 1992, EPA granted a one-year case-by-case capacity variance of the Land Disposal Restrictions (LDR) to persons managing certain hazardous debris (see 57 FR 20766, May 15, 1992). In that document, EPA indicated that persons desiring a subsequent renewal of the variance—that is, past May 8, 1993—would need to submit an individual application. EPA has received almost 200 applications to date. Confirmed by a capacity analysis conducted by EPA, the large number of applications indicates that a lack of treatment capacity for hazardous debris continues to exist.

Therefore under 40 CFR 268.5, EPA is hereby renewing the extension of the case-by-case capacity variance to May 8, 1994, for all persons managing certain hazardous debris in lieu of responding to the individual applications. (Elsewhere this document explains more fully which hazardous debris is covered by the extension.) No further individual applications will be required from persons granted the extension by this action. However, information provided to EPA indicates that some capacity may exist, at least for some forms of debris. Therefore, EPA is requiring that generators submit a report demonstrating a good-faith effort to locate treatment capacity to qualify for the extension.

EPA wishes to make clear that no further variance or extension of the LDR effective date for hazardous debris can be given after May 8, 1994. By statute, EPA may extend the LDR effective date for a waste for a total of four years, two years by national capacity variance and up to two years for a case-by-case variance. With this renewal, the four years of statutory variance time for hazardous debris will end on May 8, 1994, and therefore no further extensions can be granted.

#### **FR124**

Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated

Vol. 58 No. 98 Monday, May 24, 1993 p 29860

ACTION: Interim final rule; HSWA provision.

AFFECTED REGULATIONS: 40 CFR Parts 264, 265, 268, 270, and 271

[FRL 4656-7]

EFFECTIVE DATES: This interim final rule is effective on May 10, 1993.

Comments may be submitted on or before July 9, 1993.

SUMMARY: The Environmental Protection Agency (EPA) is today amending the treatment standards under the land disposal restrictions (LDR) program for wastes displaying the characteristic of ignitability (EPA Hazard Code D001) other than those ignitable wastes containing greater than 10 percent total organic carbon (i.e., D001 high TOC subcategory), and corrosivity (EPA Hazard Code D002) that are managed in systems other than those regulated under the Clean Water Act (CWA), those zero dischargers treating wastewater by CWA-equivalent treatment prior to ultimate land disposal, and those injecting into Class I deep wells regulated under the Safe Drinking Water Act (SDWA). This action is being taken to comply with the September 25, 1992 decision of the U.S. Court of Appeals in *Chemical Waste Management v. EPA*, 976 F.2d 2 (D.C. Cir. 1992). The underlying rule at issue in the opinion was signed on May 8, 1990, and published on June 1, 1990 (55 FR 22520). In the court's decision, the deactivation treatment standards for certain ignitable and corrosive wastes were vacated. Because land disposal of these wastes would be prohibited if no

treatment standard is in place, EPA is replacing the vacated treatment standard before the court's mandate becomes effective to avoid an absolute ban on land disposal of these wastes.

Agenda Item E  
March 11, 1994  
Attachment G

**ADVISORY COMMITTEE MEMBERSHIP AND REPORT**



MEMBERSHIP LIST

HAZARDOUS WASTE AND TOXIC USE REDUCTION COMMITTEE

\*\*\*\*\*

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January 4, 1993

Mr. Fred Hansen, Director  
Oregon Department of Environmental Quality  
811 SW Sixth Ave  
Portland, OR 97204-1390

Re: Hazardous Waste/Toxics Use Reduction Advisory Committee  
Recommendations on 1993 Proposed Rulemaking Activities

Dear Fred:

Attached are recommendations on several proposed rules evaluated by the Hazardous Waste/Toxics Use Advisory Committee during the summer and fall of 1993. The Committee was formed two years ago to evaluate various hazardous waste and toxics use reduction rules and to offer recommendations on these rules to the Department. Represented on the Committee were small and large businesses, industry associations, consultants, waste management companies, recyclers, and environmental interest groups.

The Committee's work involved substantial public comment and extended Committee discussion of the proposed rules. This process resulted in the development of revisions to the rule concepts and language proposals. Although difficult at times, the informal public meetings used for these rules, followed by Committee meetings, resulted in a very thorough airing of the issues involved with the rules. As you are aware, the Department staff expended extra effort to make this process work. Any rules eventually adopted by the Commission will have greatly benefitted from the expanded public process used for these rules.

In general, the Committee believes that the proposed recommendations reflected in the attachment are protective of human health and the environment. The recommendations also support the goals of the Department while considering the economic concerns of persons and businesses who will be regulated by these rules if they are adopted.

CABLE, HUSTON, BENEDICT,  
HAAGENSEN & FERRIS

Mr. Fred Hansen

January 3, 1994

Page 2

I have enjoyed serving as Chair of the Committee for this phase of the Committee's work and appreciate the opportunity. Please let me know if you have any questions about the attached recommendations.

Very truly yours,



Donald A. Haagensen

cc: Roy Brower, DEQ  
Mary Wahl, DEQ  
Members, HW/TUR Advisory Committee

HAZARDOUS WASTE/TOXICS USE REDUCTION ADVISORY COMMITTEE  
RECOMMENDATIONS ON PROPOSED  
HAZARDOUS WASTE AND TOXICS USE REDUCTION RULES  
December 1993

INTRODUCTION

The Oregon Department of Environmental Quality (DEQ) organized a Hazardous Waste Advisory Committee in 1990 specifically to consider funding options and fee strategies for the hazardous waste program in Oregon. This committee assisted the Department in developing a permanent generator fee structure to support the program that would also encourage waste reduction and recycling. During the same period, the Department formed a Toxics Use Reduction Advisory Committee to advise the Department on rule development, program development and implementation of the 1989 Toxics Use Reduction and Hazardous Waste Reduction Act.

In 1991, these two committees were combined into a single standing Hazardous Waste/Toxics Use Reduction Advisory Committee (Committee). The role of the Committee was to counsel the Department on public policy issues related to the Hazardous Waste and Toxics Use Reduction Program and rulemaking activities, as well as reflect concerns of affected parties. The Committee consisted of representatives from small and large businesses, industry associations, consultants, waste management companies, recyclers, and environmental interest groups. During a series of six meetings, held between September and November 1993, the Committee evaluated the following rule proposals.

RECOMMENDATIONS

1. ADOPTION OF FEDERAL HAZARDOUS WASTE REGULATIONS ENACTED BETWEEN JULY 1, 1992 AND JULY 1, 1993 BY REFERENCE

*Background*

The Department must adopt all federal hazardous waste regulations in order to retain authorization from the Environmental Protection Agency (EPA) to implement the hazardous waste program under the Resource Conservation and Recovery Act (RCRA) in lieu of the EPA. States are required to adopt clusters of federal regulatory changes one year after promulgation of hazardous waste rules by the EPA. The Department has already adopted federal hazardous waste regulations through July 1, 1992, and is proposing to adopt new federal rules which will make Oregon's rules current with the federal rules through July 1, 1993. The rule cluster brought before the Committee consisted of eighteen rules to be adopted by reference, including the recycled used oil management standards. Because the federal recycled used oil management standards were extensive and the Department recommended revisions to these standards, they were addressed separately from the other seventeen rules in the cluster.

*Recommendation*

The Committee recommends adopting, by reference, the cluster of seventeen federal rules required for adoption by the state of Oregon to implement the federal hazardous waste program. The Committee's recommendations on the recycled used oil management standards are found below.

2. FEDERAL USED OIL REGULATIONS

*Background*

On September 10, 1992, the EPA published a set of used oil management standards (Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards)

in the *Federal Register* Vol 57, No. 176. The EPA amended its rules on May 3 and June 17, 1993. The new federal rules define management methods for mixtures of used oil and other materials and establish used oil management standards for used oil generators, collection facilities, transporters, processors/re-refiners, burners, and marketers of used oil. At a minimum, the Department is required, as part of its authority to run a federal hazardous waste management program, to adopt a state program equivalent to the federal recycled used oil management standards. The deadline for rule adoption is July 1, 1994. The Department proposed adoption of the federal recycled used oil management standards with changes to clarify definitions and align the federal rules with existing state rules.

#### *Recommendation*

Issues concerning the Department's proposed recycled used oil management standards (used oil rules) were identified through Committee discussion and public testimony to the Committee. At its October 15 meeting, the Committee asked staff to review and discuss four general areas of concern in the proposed rules: 1) preventing conditionally exempt hazardous waste generators (CEG)<sup>1</sup> from managing their chlorinated solvents with their used oil; 2) justification for using a value of 5,000 BTU's per pound for used oil being burned for energy recovery; 3) the need to clarify the definition of used oil; and 4) evaluation of the need and usefulness of including dispute resolution language within the used oil rules.

In regard to the four general areas the Committee concluded:

- The Department initially proposed to restrict CEGs from disposing their chlorinated solvents with their used oil. Currently these generators are not restricted from this activity under the federal hazardous waste rules or the new federal recycled used oil management standards. The Department, and some members of the Committee were concerned that much of this used oil is burned on-site in small space heaters and may pose a potential health risk to workers, as well as present an air quality problem due to the volatilization of solvent during burning. Other Committee members believed that because CEGs in rural areas have few disposal options, CEGs should be allowed to continue this practice to avoid having this material poured down a sink or end up in a ditch. Some Committee members expressed concern that allowing this practice, even for CEGs in rural areas, sends the wrong message to hazardous waste generators and creates an environmental risk. In part, based on Committee concerns, the Department deferred this proposal. The Committee recommended revisiting and resolving this issue during the promulgation of hazardous waste management rules specific to CEGs.
- The Department's proposed used oil rules limited the fuel value of used oil allowed to be burned for energy recovery to 5,000 BTUs per pound. Although not cited in the federal recycled used oil management standards, this limitation is consistent with EPA's definition of legitimate hazardous waste recycling which states that "legitimate energy recovery" applies to materials with a fuel value of at least 5,000 - 8,000 BTUs per pound [See *Federal Register* 56, No. 34, pg 48037, Sept 1991 and, 40 CFR<sup>2</sup> 266.103(a)(5)(ii)(B)]. The Committee supported adding language to the proposed used oil rules explaining that material with a lower fuel value may be incinerated as a hazardous waste (if it tests hazardous) in a permitted Boiler or Industrial Furnace, or as a solid waste in a permitted treatment unit or incinerator. After much discussion, the

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<sup>1</sup>CEG's are hazardous waste generators that produce 220 lbs or less of hazardous waste or 2.2 lbs or less of an acutely hazardous waste in a calendar month.

<sup>2</sup>CFR means *Code of Federal Regulations*

Committee supported the Department's proposal for establishing a minimum fuel value of 5,000 BTUs per pound for used oil being burned for energy recovery.

- The Committee agreed with the Department's proposal to clarify the definition of used oil to provide as much information as possible about substances that are and are not used oil, consistent with the EPA recycled used oil management standards and *Federal Register* preambles to the standards. The Committee agreed to include in the definition of used oil, information found in the preambles to the federal recycled used oil management standards, to add clarity to the definition.
- The Committee believed that because issues of dispute resolution have implications broader than used oil management standards, dispute resolution should not be addressed within the used oil rules. Rather, the Committee suggested that dispute resolution be addressed as the Department implements the provisions of House Bill 3427. In addition, based on suggestions from the Committee, a petition process is included in the rules that allows a used oil generator to obtain a determination from the Department whether a material fits the definition of used oil. If the determination is that the material does not fit the definition of used oil, the generator may petition the Department to amend the definition through rulemaking.

The Committee recommends adoption of the federal recycled used oil management standards as presented by staff in its used oil rules and as amended based on suggestions by the Committee.

### 3. TREATED WOOD WASTE RULE

#### *Background*

Under current state regulations, discarded pesticide treated wood wastes such as telephone poles, bridge pilings or mill ends that are not regulated under the federal hazardous waste program (as adopted by reference) may still be state-only hazardous wastes if they fail the Aquatic Toxicity Test (OAR 340-101-033)<sup>3</sup>. In 1992, the Environmental Quality Commission (EQC) exempted from the Aquatic Toxicity Test, discarded pesticide treated wood wastes regulated under the federal hazardous waste program, that contain pesticide residues found on the federal toxic characteristic waste list that have passed the Toxic Characteristic Leaching Procedure (TCLP)<sup>4</sup>. The EQC concluded that evaluating pesticide treated wood waste that contains only the constituents found on the federal list was sufficient in determining if the waste was a hazardous waste, and that another evaluation, should the waste pass the TCLP, was redundant and unnecessary. However, discarded treated wood waste containing pesticide constituents not listed in 40 CFR 261.24 would still be subject to hazardous waste determination under the Aquatic Toxicity Test.

It was brought to the Department's attention that many treated wood wastes not regulated by the TCLP, that would fail the Aquatic Toxicity Test, contain pesticide residues less toxic than those on the TCLP list. The Department agreed with this concept and proposed modifying the aquatic toxicity regulation to exempt from hazardous waste regulation, discarded treated wood waste that contains pesticide constituents not found in 40 CFR 261.24 but that fails the Aquatic Toxicity Test provided it is recycled, or disposed in a modern solid waste landfill meeting the requirements in 40 CFR 258.40 and the parallel Oregon rules.

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<sup>3</sup>OAR means *Oregon Administrative Rules*

<sup>4</sup>The Toxic Characteristic Leaching Procedure and lists of wastes regulated under the TCLP are described in 40 CFR 261.24 and OAR 340-100-102 (40 CFR 261.24 as adopted reference).

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*Recommendation*

The Committee generally agreed with the Department's recommendation to exempt this group of treated wood waste from hazardous waste requirements provided it is appropriately used, reused, recycled or managed as a solid waste. Strong opposition was raised by one member over establishing lessor standards for a state-only hazardous waste under this rule. The member stated that because this material will most likely fail an Aquatic Toxicity Test, relaxed management standards would pose a risk to human health and the environment. The member also stated that because this material is ubiquitous in its use and in the environment, the Department should not take for granted the potential risks associated with the material's use and disposal.

The Department revised the proposed rule to reflect the Committee's suggestions. As revised, the Committee recommends adoption of the proposed rule with one member dissenting.

#### 4. SANDBLAST GRIT WASTE MANAGEMENT

*Background*

Sandblast grit waste resulting from the sandblasting of ships, marine structures or equipment to remove rust and old paint is generated in large quantities and may contain trace amounts of heavy metals such as chromium or lead. In addition, this waste may contain antifoulant pesticide residues such as Tributyltin (TBT) or cuprous oxide used in the shipbuilding industry to control the growth of unwanted organisms such as barnacles.

Under federal regulations (40 CFR 261.24), adopted in Oregon in OAR 340-100-002, sandblast grit waste must be evaluated to determine if it is a hazardous waste due to its heavy metal content. This evaluation is accomplished using the Toxicity Characteristic Leaching Procedure (TCLP). In addition, because antifoulants are pesticides, any sandblast grit waste containing antifoulant residue is subject to the Aquatic Toxicity Test (OAR 340-101-033). If the sandblast grit waste fails the TCLP, the waste is a federal (and Oregon adopted) hazardous waste and must be managed as such. If the waste passes the TCLP test but fails the Aquatic Toxicity Test, it is a state-only hazardous waste and must still be managed as a hazardous waste.

Currently, spent grit waste classified as a state-only hazardous waste must be managed at a permitted hazardous waste facility or designated recycling facility. Because these disposal options may be limited or costly, the Department proposed to allow spent grit waste that is classified as hazardous, solely because it fails the state's Aquatic Toxicity Test, to be disposed of at a modern solid waste landfill meeting the design criteria specified in 40 CFR 258.40 and adopted in Oregon rules. The Department proposed to minimize environmental exposure from hazardous grit waste, by requiring that grit waste, which would otherwise be a state-only hazardous waste, be prevented from entering the environment using Best Pollution Prevention Practices (BPPs).

*Recommendation*

The Committee generally supported the sandblast grit management concept. Although support was provided in allowing this waste material to be managed in a solid waste landfill or recycled, there was also concern about regulating a potential state-only hazardous waste as a solid waste. In addition, there was general support to include BPPs within or as an appendix to the rule.

The Department revised the proposed rule to reflect the Committee's suggestions. As revised, the Committee recommends adoption of the proposed rule. Some members of the Committee recommended that the Department evaluate the process by which sandblast grit waste is generated on a multi-media basis.



## 5. 3% AND 10% RULES REGULATING SUBSTANCES OTHERWISE REGULATED UNDER TOXIC CHARACTERISTIC LEACHING PROCEDURE

### *Background*

Oregon's hazardous waste 3% and 10% rules (OAR 340-101-033) regulate a group of hazardous waste residues historically not covered by the federal hazardous waste program. Under these rules, any residues, manufacturing process wastes or unused chemicals that have either a total of 3% or greater concentration of any substance or mixture of substances identified as "P" listed chemicals or a total of 10% or greater concentration of any substance or mixture of substances identified as "U" listed chemicals under the federal hazardous waste program (contained in 40 CFR 261.33 (e) and (f)<sup>3</sup>) are state-only hazardous wastes.

Some of these state-only hazardous wastes, in concentrations higher than 3% or 10%, are also federal hazardous wastes according to the Toxic Characteristic Leaching Procedure (TCLP). The Department proposed that chemicals on the federal "P" and "U" lists that are also regulated under the TCLP rule are unnecessarily subjected to dual evaluation under Oregon's 3% and 10% rules, provided these wastes pass the TCLP for the chemical involved. The Department believed that if a waste passed TCLP evaluation, subjecting a lower concentration of this same waste under the state rule (OAR 340-101-033) was duplicative. Therefore, the Department recommended deleting the 3% and 10% state-only requirements for wastes on the "P" and "U" lists that passed the TCLP. Wastes containing constituents not found on the TCLP list, but present on the "P" or "U" lists, would still be subject to evaluation under the 3% and 10% state rules, because the wastes would not have been evaluated under the TCLP rule.

### *Recommendation*

The Committee supports the Department's proposed rule changes. One member did not support the rule change.

## 6. HAZARDOUS WASTE GENERATOR RULES

### *Background*

The Department continues to evaluate its existing hazardous waste generator rules to: 1) identify areas where state regulations are more stringent or broader in scope than federal regulations and determine whether those areas impose any unnecessary regulatory requirements; 2) address generator issues identified by staff and the regulated community; and 3) clarify confusion or inconsistencies in the existing rules. The Department identified two rules for proposed modification: 1) requirements applicable to generators that store hazardous waste on site [OAR 340-102-034(a)]; and 2) requirements for maintaining records of waste determination (OAR 340-102-011).

- As part of the process to obtain federal authorization for DEQ's hazardous waste program, the Department has adopted federal hazardous waste requirements that govern hazardous waste stored and accumulated in containers and tanks under 40 CFR 262.34(a)-(f). The federal regulations specify requirements that generators must meet to be in compliance with 40 CFR 262.34. If these requirements are not met, a hazardous waste permit may be required. Because application for and

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<sup>3</sup>Except U075 (Dichlorodifluoromethane) and U121 (Trichloromonofluoromethane) when they are intended to be recycled.

issuance of a hazardous waste storage permit is a lengthy and time-consuming process,<sup>6</sup> the Department believed that generator correction of a violation within a prescribed time-frame would be better than employing a costly and time-consuming permit process.

A concern was expressed that OAR 340-102-034(a) as written, does not clearly impose a duty on generators to meet the requirements outlined in 40 CFR 262.34. The Department's proposed rule clarified the duty on generators to meet applicable requirements of 40 CFR 262.34(a)-(f). In addition, the rule proposed to retain the option of requiring a generator to obtain a storage permit in aggrievous cases.

- A hazardous waste generator is required to determine if any waste generated on-site is hazardous. The generator may make this determination through analysis or knowledge of the process. Because generators are not explicitly required to maintain written records on how their waste determination was made, it is difficult to document hazardous waste management practices and to determine accurately their generator status. This proposed rule will make it easier for a generator to demonstrate, to an inspector, the basis for a hazardous waste determination.

The Department believed that, to insure proper waste management, accurate records, including records for a hazardous waste determination, should be maintained for future reference. The proposed rule requires generators to maintain a copy of the documentation used to determine whether a residue is a hazardous waste as long as the waste is being generated, and for a minimum of three years after the waste stream is no longer generated.

#### *Recommendation*

The Committee was in general agreement with the concepts expressed in both proposed rules. The Committee suggested language changes which the Department incorporated into each rule. As revised, the Committee recommends adoption of both rule changes.

### 7. TECHNICAL CORRECTION TO OREGON'S AQUATIC TOXICITY TEST (OAR 340-101-033)

#### *Background*

The Department has encountered some confusion among Oregon industry over whether an aquatic toxicity test procedure is required to make a hazardous waste determination on a pesticide residue waste. Therefore, the Department proposed to amend OAR 340-101-033 to reference the document describing the Aquatic Toxicity Test procedures prescribed by the Department's laboratory.

#### *Recommendation*

The Committee agreed that adding a reference to the test, in the rule, would be appropriate. A Committee member raised questions about the validity of the Aquatic Toxicity Test procedure as a hazardous waste determination measure. The Committee recommends adoption of the proposed rule.

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<sup>6</sup>A Part B permit under federal and Oregon regulations is required when storing hazardous waste for longer than the period of time allowed in 40 CFR 262.34 and would require an application fee of \$70,000.

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## 8. HAZARDOUS WASTE PROGRAM CONFIDENTIAL BUSINESS INFORMATION

### *Background*

Currently, any information submitted to the Department is considered public information except when designated by the Department as trade secret. When a facility submits required hazardous waste information (e.g. annual generator reports), OAR 340-100-003 requires that the confidentiality claim be made at the time of submission. It leaves to a later time, the justification to substantiate the claim of trade secret and the determination by the Department whether the information is trade secret and thus confidential.

After the initial trade secret claim is made by a facility, the Department generally informs the facility of additional information needed to evaluate the claim. In response, the facility must provide the requested information. This procedure can cause delays in evaluating and deciding trade secret confidentiality claims that may be inappropriate in certain situations. The Department's proposed rules specified the information requirements necessary to process a trade secret claim and generally made that information due at the time a claim is made.

In addition, the current hazardous waste rule (OAR 340-100-003) does not parallel the procedures outlined in OAR 340-135-100 which specify the Toxics Use Reduction Program trade secret procedure and information requirements. The Department's proposed rules also provided consistency with the trade secret claim procedures under the Toxics Use Reduction program.

### *Recommendation*

The Committee supported the Department's proposed revisions to the hazardous waste confidential business information rules with certain exceptions. The Committee suggested that the rule distinguish between routine information requests (such as permit applications and hazardous waste reporting requirements) and ad hoc information requests requiring less than a 30 day response time. In addition, the Committee suggested rule language to: 1) provide the process for a company to obtain a Department ruling in a timely manner; 2) provide a five working day response time after a trade secret denial notification has been sent to the facility submitting a claim, to allow the claimant to seek legal advice and a judicial determination if necessary; 3) provide for time sensitive and ad hoc information requests, such as information required during an inspection, to be handled in the current manner; and 4) include a cross reference in the rules to the Uniform Trade Secrets Act, ORS Chapter 646.

Based on the Committee's suggestions, the Department modified the proposed rules. As revised, the Committee recommends adoption of the proposed rules.

## 9. TOXICS USE REDUCTION AND HAZARDOUS WASTE REDUCTION RULES

### *Background*

The Department proposed three revisions to the Toxics Use Reduction and Hazardous Waste Reduction rules (OAR 340-135-000 through OAR 135-110): 1) exempting one-time hazardous waste generators from Toxics Use Reduction (TUR) planning requirements; 2) ensuring that OAR 340-135-040 is consistent with the Toxics Use Reduction and Hazardous Waste Reduction Act of 1989; and 3) updating the list of toxic substances and hazardous wastes subject to the TUR planning requirements (OAR 340-135 Appendix I).

- Large and small quantity generators of hazardous waste are required by ORS 465.018 to develop toxics use reduction plans regardless of how the waste was generated (with the exception of generators of cleanup wastes). However, many generators produce waste that results from one-time generation events. Such facilities usually were conditionally exempt small quantity generators prior to the event and often do not generate additional hazardous waste following the event. The Department recommended that facilities generating hazardous waste produced from a one-time event, such as a laboratory or store room clean out or decommissioning of process equipment, and that are not otherwise small or large quantity generators, be exempt from the TUR planning requirements.
- ORS 465.034 specifies that the TUR planning requirements do not apply to hazardous waste that becomes subject to regulation solely as a result of remedial activities taken in response to environmental contamination. This exemption is not currently specified in rule. To correct this omission, the Department proposed including this exemption in rule [OAR 340-135-040(2)(a)] and adding the definition of "remedial activities" to OAR 340-135-020.
- The list of toxics substances and hazardous wastes subject to the TUR planning requirements of ORS 465.003 through ORS 465.037 and OAR 340-135-000 through OAR 340-135-110 requires updating, on a biennial basis, as specified in OAR 340-135-040. The list of chemicals is contained in OAR 340-135 Appendix 1. The Department recommended adding ten new hazardous wastes to the list by adoption of these chemicals by reference. During this same rulemaking, several technical errors (such as spelling) were corrected as well.

#### *Recommendation*

The Committee supported the concept of the proposed changes. The Committee suggested adding a provision to the rule exempting one-time generation events from TUR planning requirements that would allow a generator to apply for an additional exemption in cases where hazardous waste is generated in amounts greater than 220 pounds per month or where acutely hazardous waste is generated in amounts greater than 2.2 pounds per month in a year following the original request for a one-time exemption, if the waste was generated under uncontrollable circumstances such as fires or floods. The Committee also suggested that the proposed rule cite all references to remedial actions and remedial activities from other DEQ programs (such as corrective action, underground storage tank).

The Department agreed to revise the proposed rules to reflect the Committee's suggestions. As revised, the Committee recommends adoption of the proposed rules.

## LIST OF "P" AND "U" CHEMICALS NOT SUBJECT TO THE "3% AND 10%" RULE

These "P" and "U" listed chemicals are proposed to be eliminated from hazardous evaluation under the state-only "3% and 10%" rule because the chemicals are already subject to evaluation under the Toxicity Characteristic Testing Procedure (TCLP).

<u>TCLP Code and Chemical</u>	<u>"P" or "U" Chemical</u>
D004 Arsenic	P010, P011, P012, Arsenic acid P011, P012, Arsenic oxide P036, Dichlorophenylarsine P038, Diethylarsine U136, Cacodylic acid
D005 Barium	P013, Barium cyanide;
D006 Cadmium	No P or U Listing
D007 Chromium	U033, Calcium chromate
D008 Lead	P110, Tetraethyl lead U144, Lead Acetate U145, Lead phosphate U146, Lead subacetate
D009 Mercury	P065, Mercury fulminate P092, Phenylmercuric acetate U151, Mercury
D010 Selenium	P103, Selenourea P114, Thallium (I) selenite U204, Selenious acid U205, Selenium disulfide
D011 Silver	P099, Potassium silver cyanide P104, Silver cyanide
D012 Endrin	*
D013 Lindane	*
D014 Methoxychlor	*
D015 Toxaphene	*
D016 2,4-D	*
D017 2,4,5-TP Silvex	*
D018 Benzene	U019, Benzene (F005)
D019 Carbon tetrachloride	U211, Carbon tetrachloride (F001)

D020	Chlordane	*
D021	Chlorobenzene	U037, Chlorobenzene (F002)
D022	Chloroform	U044, Chloroform (F025)
D023	o-Cresol	*
D024	m-Cresol	*
D025	p-Cresol	*
D026	Cresol	*
D027	1,4-Dichlorobenzene	--
D028	1,2-Dichloroethane	U077, 1,2-Dichloroethane (F024)
D029	1,1-Dichloroethylene	U078, 1,1-Dichloroethylene (F025)
D030	2,4-Dinitrotoluene	U105, 2,4-Dinitrotoluene
D031	Heptachlor (Heptachlor and its epoxide)	*
D032	Hexachlorobenzene	U127, Hexachlorobenzene (F025)
D033	Hexachlorobutadiene	U128, Hexachlorobutadiene
D034	Hexachloroethane	U131, Hexachloroethane
D035	Methyl ethyl ketone (MEK)	U159, Methyl ethyl ketone (F005)
D036	Nitrobenzene	U169, Nitrobenzene
D037	Pentachlorophenol	*
D038	Pyridine	U196, Pyridine
D039	Tetrachloroethylene	U210, Tetrachloroethylene (F001, F002)
D040	Trichloroethylene	U228, Trichloroethylene (F002, F025)
D041	2,4,5-Trichlorophenol	--
D042	2,4,6-Trichlorophenol	--
D043	Vinyl chloride	U043, Vinyl chloride

\* Wastes containing the corresponding TCLP pesticide chemicals are by definition pesticide residues and are not subject to the "3% and 10%" hazardous waste evaluation. Such residues would normally be subject to the aquatic toxicity test; however, the EQC ruled on June 1, 1991 that residues containing only the TCLP pesticides that passed the TCLP were not subject to an additional hazardous waste determination under the state-only aquatic toxicity test.

# Environmental Quality Commission

- Rule Adoption Item  
 Action Item  
 Information Item

Agenda Item F  
March 11, 1994 Meeting

**Title:**

Proposed amendments to Oregon Administrative Rules, Chapter 340, Division 12 pertaining to the Department's Enforcement Procedure and Civil Penalties.

**Summary:**

The 1993 Oregon Legislature adopted amendments to ORS 468.126 which provides for a five day warning notice before a civil penalty may be assessed to holders of certain air, water and solid waste permits. The amendments to ORS 468.126 set forth certain types of permits where the five day notice would not be required. The proposed rule conforms the Department's enforcement rules to the statute.

The 1992 amendments to the Department's enforcement rules added general provisions regarding the recovery of the economic benefit received through noncompliance and provided for the Department considering a violator's ability to pay a civil penalty assessment. The proposed rule amendments allow the Department to use computer models to calculate economic benefit and inability to pay.

The 1992 amendments to the Department's enforcement rules added selected magnitude determinations for use in calculating a civil penalty assessment. The Department's experience has been that these aid in the goal of consistency. The proposed rule adds additional selected magnitude determinations and better defines others.

Implementation of Title V of the Clean Air Act required a review of the existing classifications for air quality violations. The proposed amendments add Title V violations to the classifications.

The proposed amendments add an additional Class One violation for propane flaming which results in an open flame in a fire safety buffer zone along an Interstate Highway or other specified roadway.

The proposed amendments include a few "housekeeping" measures to conform the rules to existing Department organizational structure and remove inconsistencies in the existing rules.

**Department Recommendation:**

Adopt the rule revisions regarding the Department's Enforcement Procedure and Civil Penalties as presented in Attachment "A" of the Staff Report.

  
Report Author

  
Division Administrator

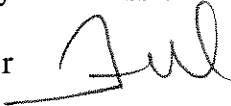
  
Director

February 22, 1994 †Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: February 22, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item F, March 11, 1994, EQC Meeting

**Background**

On, November 15, 1993 the Director authorized the Enforcement Section to proceed to a rulemaking hearing on proposed rules which would amend Oregon Administrative Rules Chapter 340, Division 12 relating to the Department's Enforcement Procedures and Civil Penalty Rules.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on December 1, 1993. On December 3, 1993, the Hearing Notice and informational materials were 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.

A Public Hearing was held on January 6, 1994. Melinda Holt of the Enforcement Section served as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through January 10, 1994. 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, the Department is recommending modifications to the initial rulemaking proposal. These modifications are summarized below and detailed in Attachment F.

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

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<sup>†</sup>Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).



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

### **Issues this Proposed Rulemaking Action is Intended to Address**

The 1993 legislature amended Oregon Revised Statute (ORS) 468.126. This amendment created additional exemptions by which an individual or company permitted by the Department does not need to receive a five day warning notice prior to receiving a civil penalty. The proposed rule amendments bring the Department's rules into conformance with the amended statute.

Other proposed rule amendments are being made to clarify the Department's methodology in calculating economic benefit, the ability of a violator to pay a civil penalty, and the determination of the magnitude of a violation.

With the reorganization of the Department, some rule amendments regarding who is authorized to sign certain enforcement actions are being proposed to bring the rules into conformance with the new structure of the Department.

### **Relationship to Federal and Adjacent State Rules**

The proposed enforcement rule amendments do not pertain to federal requirements, nor do the proposed rules have any effect on or relationship to adjacent states rules.

### **Authority to Address the Issue**

The Commissions authority to address the issue is contained in Oregon Revised Statutes (ORS), specifically: ORS 468.130(2)(c), ORS 468.130(2)(d), and ORS 468.126

### **Process for Development of the Rulemaking Proposal (including Advisory Committee and alternatives considered)**

The proposed rules stem from legislation adopted in 1993, and recommendations of the Department's Enforcement Advisory Committee. The rule amendments were developed by the Department's Enforcement staff in consultation with the affected Divisions within the Agency. The proposed rules and rule amendments were further reviewed by the Department's Enforcement Advisory Committee.

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

- The 1993 Oregon Legislature adopted amendments to ORS 468.126 which provides for a five day warning notice before a civil penalty may be assessed to holders of certain air, water and solid waste permits. The amendments to ORS 468.126 set forth certain types of permits where the five day notice would not be required. The proposed rule conforms the Department's enforcement rules to the statute.
- The 1992 amendments to the Department's enforcement rules added general provisions regarding the recovery of the economic benefit received through noncompliance and provided for the Department considering a violator's ability to pay a civil penalty assessment. The proposed rule amendments allow the Department to use computer models to calculate economic benefit and inability to pay.
- The 1992 amendments to the Department's enforcement rules added selected magnitude determinations for use in calculating a civil penalty assessment. The Department's experience has been that these aid in the goal of consistency. The proposed rule adds additional selected magnitude determinations and better defines others.
- Implementation of Title V of the Clean Air Act required a review of the existing classifications for air quality violations. The proposed amendments add Title V violations to the classifications.
- The proposed amendments add additional classifications of field, stack burning and propane flaming violations.

**Summary of Significant Public Comment and Changes Proposed in Response**

The Department received written comments from seven organizations in addition to the testimony of two individuals who testified at the public hearing. Comments included:

- A general acceptance of the Notice of Permit Violation (NPV) procedure and a desire to see the spirit of this process continue even though the Department is being required to except certain permit holders from receiving an NPV due to federal requirements. The proposed rules submitted to the Commission contains a

provision whereby certain permit holders who promptly correct permit violations will receive credit in a future civil penalty calculation.

- A recommendation to delete all of the proposed field, stack and propane flaming classifications, and to delete the reference to "allowing" in existing classification of violations. Two of the proposed classifications were removed from the proposed rules.
- A concern for the use of the US Environmental Protection Agency's BEN computer model to calculate the economic benefit gained by a violator through noncompliance. Additional language proposed by the Attorney General's office was added to clarify the procedures and use of the model.

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

The rules will be implemented by the Department's Enforcement staff during the civil penalty determination phase of a formal enforcement action for violation of the state's environmental laws or rules.

#### **Recommendation for Commission Action**

It is recommended that the Commission adopt the rules/rule amendments regarding the Department's Enforcement Procedures and Civil Penalties 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
- F. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
- G. Advisory Committee Membership and Report
- H. Rule Implementation Plan

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**Reference Documents (available upon request)**

Written Comments Received (listed in Attachment D)

Senate Bill 86, 67<sup>th</sup> Oregon Legislative Assembly - 1993 Regular Session

ORS Chapters 183, 468, 468A, 468B and 459

OAR Chapter 340, Division 12

October 15, 1993 letter from Gerald A. Emison, US EPA Region 10 Acting Regional Administrator to Fred Hansen, DEQ Director regarding air program permits and advance notice.

September 16, 1993 letter from Michael F. Gearheard, US EPA Region 10 Chief of the Waste Management Branch to Stephanie Hallock, DEQ Hazardous and Solid Waste Administrator regarding solid waste permits and advance notice.

Approved:

Section:

Van A. Kollins

Division:

Tom Beuphan

Report Prepared By: Ed Druback

Phone: 229-5151

Date Prepared: February 7, 1994

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February 7, 1994

## CHAPTER 340, DIVISION 12

### ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

#### POLICY

##### 340-12-026

- (1) The goal of enforcement is to:
  - (a) Obtain and maintain compliance with the Department's statutes, rules, permits and orders;
  - (b) Protect the public health and the environment;
  - (c) Deter future violators and violations; and
  - (d) Ensure an appropriate and consistent statewide enforcement program.
- (2) The Department shall endeavor by conference, conciliation and persuasion to solicit compliance.
- (3) The Department shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth in subsection (1) of this section.
- (4) Violators who do not comply with an initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

(Statutory Authority: ORS CH 468, 468A, 468B)

#### SCOPE OF APPLICABILITY

##### 340-12-028

Amendments to OAR 340-12-028 to 340-12-090 shall only apply to formal enforcement actions issued by the Department on or after the effective date of such amendments and not to any contested cases pending or formal enforcement actions issued prior to the effective date of such amendments. Any contested cases pending or formal enforcement actions issued prior to the effective date of any amendments shall be subject to OAR 340-12-028 to 340-12-090 as prior to amendment. The list of violations classified in these rules is intended to be used only for the purposes of setting penalties for violations of law and for other rules set forth in OAR Chapter 340.

## DEFINITIONS

340-12-030

Unless otherwise required by context, as used in this Division:

- (1) "Class One Equivalent" or "Equivalent", which is used only for the purposes of determining the value of the "P" factor in the civil penalty formula, means two Class Two violations, one Class Two and two Class Three violations, or three Class Three violations.
- (2) "Commission" means the Environmental Quality Commission.
- (3) "Compliance" means meeting the requirements of the Commission's and Department's statutes, rules, permits or orders.
- (4) "Director" means the Director of the Department or the Director's authorized deputies or officers.
- (5) "Department" means the Department of Environmental Quality.
- (6) "Documented Violation" means any violation which the Department or other government agency records after observation, investigation or data collection.
- (7) "Flagrant" means any documented violation where the Respondent had actual knowledge of the law and had consciously set out to commit the violation.
- (8) "Formal Enforcement Action" means an action signed by the Director or a Regional ~~{Operations}~~ Administrator or authorized representatives or deputies which is issued to a Respondent for a documented violation. Formal enforcement actions may require the Respondent to take action within a specified time frame, and/or state the consequences for the violation or continued noncompliance.
- (9) "Intentional", means conduct by a person with a conscious objective to cause the result of the conduct.
- (10) "Magnitude of the Violation" means the extent and effects of a violator's deviation from the Commission's and Department's statutes, rules, standards, permits or orders. In determining magnitude the Department shall consider all available applicable information, including such factors as: concentration, volume,

percentage, duration, toxicity, and the extent of the effects of the violation. ~~{In any case, the Department may consider any single factor to be conclusive.}~~ Deviations shall be categorized as major, moderate or minor as set forth in OAR 340-12-045(1)(a)(ii).

- (11) "Negligence" or "Negligent" means failure to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation.
- (12) "Order" means:
  - (a) Any action satisfying the definition given in ORS Chapter 183; or
  - (b) Any other action so designated in ORS Chapter 454, 459, 465, 466, 467, 468, 468A, or 468B.
- (13) "Person" includes, but is not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the Federal Government and its agencies.
- (14) "Prior Significant Action" means any violation established either with or without admission of a violation by payment of a civil penalty, or by a final order of the Commission or the Department.
- (15) "Reckless" or "recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.
- (16) "Residential Open Burning" means the open burning of any domestic waste generated by a single family dwelling and conducted by an occupant of the dwelling on the dwelling premises. This does not include the open burning of materials prohibited by OAR 340-23-042(2).
- (17) "Respondent" means the person to whom a formal enforcement action is issued.
- (18) "Risk of Harm" means the individual or cumulative possibility of harm to public health or the environment caused by a violation or violations. Risk of harm shall be categorized as major, moderate or minor.
- (19) "Systematic" means any documented violation which occurs on a regular basis.
- (20) "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof and

includes both acts and omissions. Violations shall be categorized as Class One (or I), Class Two (or II) or Class Three (or III), with Class One designating the most serious class of violation.

(Statutory Authority: ORS CH 468)

#### **CONSOLIDATION OF PROCEEDINGS**

**340-12-035**

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

(Statutory Authority: ORS CH 468)

#### **NOTICE OF PERMIT VIOLATIONS AND EXCEPTIONS**

**340-12-040**

- (1) Prior to assessment of a civil penalty for a violation of the terms or conditions of an Air Contaminant Discharge Permit, National Pollutant Discharge Elimination System Permit, Water Pollution Control Facilities Permit, or Solid Waste Disposal Permit, the Department shall provide a Notice of Permit Violation (NPV) to the permittee. The Notice of Permit Violation shall be in writing, specifying the violation and stating that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to the Department within five working days of receipt of the Notice of Permit Violation:
  - (a) A written response from the permittee acceptable to the Department certifying that the permitted facility is complying with all terms of the permit from which the violation is cited. The certification shall include a sufficient description of the information on which the permittee is certifying compliance to enable the Department to determine that compliance has been achieved; or,
  - (b) A written proposal, acceptable to the Department, to bring the facility into compliance with the permit. An acceptable proposal under this rule shall include at least the following:
    - 1) A detailed plan and time schedule for achieving compliance in the shortest practicable time;



- 2) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permitted facility is in compliance with the permit;
  - 3) A statement that the permittee has reviewed all other conditions and limitations of the permit and no other violations of the permit were discovered.
- (c) In the event that any compliance schedule to be approved by the Department pursuant to subsection 1(b) of this section provides for a compliance period of greater than six months from the date of issuance of the Notice, the Department shall incorporate the compliance schedule into an Order described in OAR 340-12-041(4)(b)(C) which shall provide for stipulated penalties in the event of any noncompliance therewith. The stipulated penalties shall not apply to circumstances beyond the reasonable control of the permittee. The stipulated penalties shall be set at amounts consistent with those established under OAR 340-12-048.
- (d) The certification allowed in subsection (1)(a) of this section shall be signed by a Responsible Official based on information and belief after making reasonable inquiry. For purposes of this rule "Responsible Official" of the permitted facility means one of the following:
- 1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one of more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - 2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively.
  - 3) For a municipality, State, Federal, or other public agency, either a principal executive officer or appropriate elected official.
- (e) For the purposes of this section, when a regional authority issues an NPV, different acceptability criteria may apply for (a) and (b) above.

- (2) No advance notice prior to assessment of a civil penalty shall be required under subsection (1) of this section and the Department may issue a Notice of Civil Penalty Assessment if:
- (a) The violation is intentional;
  - (b) The water or air violation would not normally occur for five consecutive days; or
  - (c) The permittee has received a Notice of Permit Violation, or other formal enforcement action with respect to any violation of the permit within 36 months immediately preceding the documented violation.
  - (d) The permittee is subject to the federal operating permit program under ORS 468A.300 to 468A.320 (Title V of the Clean Air Act of 1990) and violates any rule or standard adopted or permit or order issued under ORS chapter 468A and applicable to the permittee.
  - (e) The permittee is a solid waste permit holder subject to federal solid waste management requirements contained in 40 Code of Federal Regulations, Part 258 as of the effective date of these rules ("Subtitle D"), and violates any rule or standard adopted or permit or order issued under ORS chapter 459 and applicable to the permittee.
  - (f) The permittee has an air contaminant discharge permit and violates any State Implementation Plan requirement contained in the permit.
  - (g) The requirement to provide such notice would disqualify a state program from federal approval or delegation.
  - (h) For purposes of this section, "permit" includes permit renewals and modifications and no such renewal or modification shall result in the requirement that the Department provide the permittee with an additional advance warning if the permittee has received a Notice of Permit Violation, or other formal enforcement action with respect to the permit within 36 months.

(Statutory Authority: ORS CH 468)

## ENFORCEMENT ACTIONS

340-12-041

- (1) Notice of Noncompliance (NON):
  - (a) Informs a person of a violation, and the consequences of the violation or continued noncompliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated;
  - (b) Shall be issued under the direction of a manager or authorized representative;
  - (c) Shall be issued for all classes of documented violations.
- (2) Notice of Permit Violation (NPV):
  - (a) Is issued pursuant to OAR 340-12-040;
  - (b) Shall be issued by a ~~the~~ Regional ~~Operations~~ Administrator or authorized representative.
  - (c) Shall be issued for the first occurrence of a documented Class I violation which is not excepted under OAR 340-12-040(2), or the repeated or continuing occurrence of documented Class II or III violations where a NON has failed to achieve compliance or satisfactory progress toward compliance. A permittee shall not receive more than three NONs for Class II violations of the same permit within a 36 month period without being issued a NPV.
- (3) Notice of Civil Penalty Assessment (CPA):
  - (a) Is issued pursuant to ORS 468.130, and OAR 340-12-042 and 340-12-045;
  - (b) Shall be issued by the Director or authorized representative;

(c) May be issued for the occurrence of any Class of documented violation that is not limited by the NPV requirement of OAR 340-12-040(2).

(4) Order:

(a) Is issued pursuant to ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B;

(b) May be in the form of a Commission or Department Order, or a Stipulation and Final Order (SFO);

(A) Commission Orders shall be issued by the Commission, or the Director on behalf of the Commission;

(B) Department Orders shall be issued by the Director or authorized representative;

(C) All other Orders:

(i) May be negotiated;

(ii) Shall be signed by the Director or authorized representative and the authorized representative of each other party.

(c) May be issued for any Class of violation.

(5) The enforcement actions described in subsection (1) through (4) of this section in no way limit the Department or Commission from seeking legal or equitable remedies as provided by ORS Chapters 454, 459, 465, 466, 467, 468, 468A, and 468B.

(Statutory Authority: ORS CHS 454, 459, 465, 466, 467, 468, 468A and 468B)

#### **CIVIL PENALTY SCHEDULE MATRICES**

##### **340-12-042**

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Commission's or Department's statutes, rules, permits or orders by service of a written notice of assessment of civil penalty upon the Respondent. Except for civil penalties assessed under OAR 340-12-048 and 340-12-049, the amount of any civil penalty shall be determined through the use of the following matrices in conjunction with the formula contained in OAR 340-12-045:

(1)

\$10,000 Matrix

← Magnitude of Violation

C l a s s  o f  V i o l a t i o n		Major	Moderate	Minor
	Class I	\$6,000	\$3,000	\$1,000
	Class II	\$2,000	\$1,000	\$500
Class III	\$500	\$250	\$100	

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to the following types of violations:

- (a) Any violation related to air quality statutes, rules, permits or orders, except for the selected open burning violations listed in section (3) below;
- (b) Any violation related to ORS 164.785 and water quality statutes, rules, permits or orders, violations of ORS Chapter 454 and on-site sewage disposal rules by a person performing sewage disposal services;
- (c) Any violation related to underground storage tanks statutes, rules, permits or orders, except for failure to pay a fee due and owing under ORS 466.785 and 466.795;
- (d) Any violation related to hazardous waste management statutes, rules, permits or orders, except for violations of ORS 466.890 related to damage to wildlife;
- (e) Any violation related to oil and hazardous material spill and release statutes, rules, or orders, except for negligent or intentional oil spills;
- (f) Any violation related to polychlorinated biphenyls management and disposal statutes;

- (g) Any violation of ORS Chapter 465 or environmental cleanup rules or orders;
  - (h) Any violation of ORS Chapter 467 or any violation related to noise control rules or orders;
  - (i) Any violation of ORS Chapter 459 or any violation related to solid waste statutes, rules, permits, or orders, except any violation by a city, county or metropolitan service district of failing to provide the opportunity to recycle as required by law ; and
- (2) In addition to any other penalty provided by law, any person causing an oil spill through an intentional or negligent act shall incur a civil penalty of not less than one hundred dollars (\$100) or more than twenty thousand dollars (\$20,000). The amount of the penalty shall be determined by doubling the values contained in the matrix in subsection (1) of this rule in conjunction with the formula contained in 340-12-045.

(3) \$2,500 Matrix  
 ←———— Magnitude of Violation

^ C l a s s of V i o l a t i o n		Major	Moderate	Minor
	Class I	\$2,500	\$1,000	\$500
	Class II	\$750	\$500	\$200
	Class III	\$250	\$100	\$50

No civil penalty issued by the Director pursuant to this matrix shall be less than \$50. The total civil penalty may exceed \$2,500 for each day of each violation, but shall not exceed \$10,000 for each day of each violation.

This matrix shall be applied to any violation related to on-site sewage statutes, rules, permits, or orders, other than violations by a person performing sewage disposal services; and for violations of the Department's Division 23 open burning rules, excluding all industrial open burning violations, and violations of OAR 340-23-042(2) where the volume of the prohibited materials burned is greater than or equal to twenty-five cubic yards. In cases of the open burning of tires, this matrix shall apply only if the number of tires burned is less than fifteen. The matrix

set forth in section (1) above shall be applied to the open burning violations excluded from this section.

(4)

\$500 Matrix  
←————— Magnitude of Violation

^ C l a s s  o f  V i o l a t i o n		Major	Moderate	Minor
	Class I	\$400	\$300	\$200
	Class II	\$300	\$200	\$100
	Class III	\$200	\$100	\$50

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than five hundred dollars (\$500) for each day of each violation. This matrix shall apply to the following types of violations:

- (a) Any violation of laws, rules, orders or permits relating to woodstoves, except violations relating to the sale of new woodstoves;
- (b) Any violation by a city, county or metropolitan service district of failing to provide the opportunity to recycle as required by law; and
- (c) Any violation of ORS 468B.480 and 468B.485 and rules adopted thereunder relating to the financial assurance requirements for ships transporting hazardous materials and oil.

(Statutory Authority: ORS Ch. 454, 459, 456, 466, 467, 468, 468A & 468B )

#### CIVIL PENALTY DETERMINATION PROCEDURE

340-12-045

- (1) When determining the amount of civil penalty to be assessed for any violation, other than violations of ORS 468.996, which are determined according to the procedure set forth below in OAR 340-12-049(8), the Director or authorized representative shall apply the following procedures:

(a) Determine the class and the magnitude of each violation;

(i) The class of a violation is determined by consulting OAR 340-12-050 to 340-12-073.

(ii) The magnitude of the violation is determined by first consulting the selected magnitude categories in 340-12-090. In the absence of a selected magnitude, the magnitude shall be moderate unless:

(A) If the Department finds that the violation had a significant adverse impact on the environment, or posed a significant threat to public health, a determination of major magnitude shall be made. In making a determination of major magnitude, the Department shall consider all available applicable information including such factors as: the degree of deviation from the Commission's and Department's statutes, rules, standards, permits or orders, concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In making this finding, the Department may consider any single factor to be conclusive for the purpose of making a major magnitude determination.

(B) If the Department finds that the violation had no potential for or actual adverse impact on the environment, nor posed any threat to public health, or other environmental receptors, a determination of minor magnitude shall be made. In making a determination of minor magnitude, the Department shall consider all available applicable information including such factors as: the degree of deviation from the Commission's and Department's statutes, rules, standards, permits or orders, concentration, volume, percentage, duration, toxicity, and the extent of the effects of the violation. In making this finding, the Department may consider any single factor to be conclusive for the purpose of making a minor magnitude determination.

(b) Choose the appropriate base penalty (BP) established by the matrices of 340-12-042 after determining the class and magnitude of each violation;



- (c) Starting with the base penalty, determine the amount of penalty through application of the formula:

$BP + [(.1 \times BP)(P + H + O + R + C)] + EB$  where:

- (A) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. For the purposes of this determination, violations that were the subject of any prior significant actions that were issued before the effective date of the Division 12 rules as adopted by the Commission in March 1989, shall be classified in accordance with the classifications set forth in the March 1989 rules to ensure equitable consideration of all prior significant actions. The values for "P" and the finding which supports each are as follows:
- (i) 0 if no prior significant actions or there is insufficient information on which to base a finding;
  - (ii) 1 if the prior significant action is one Class Two or two Class Threes;
  - (iii) 2 if the prior significant action(s) is one Class One or equivalent;
  - (iv) 3 if the prior significant actions are two Class One or equivalents;
  - (v) 4 if the prior significant actions are three Class Ones or equivalents;
  - (vi) 5 if the prior significant actions are four Class Ones or equivalents;
  - (vii) 6 if the prior significant actions are five Class Ones or equivalents;
  - (viii) 7 if the prior significant actions are six Class Ones or equivalents;
  - (ix) 8 if the prior significant actions are seven Class Ones or equivalents;
  - (x) 9 if the prior violations significant actions are eight Class Ones or equivalents;

- (xi) 10 if the prior significant actions are nine Class Ones or equivalents, or if any of the prior significant actions were issued for any violation of ORS 468.996.
- (xii) In determining the appropriate value for prior significant actions as listed above, the Department shall reduce the appropriate factor by:
  - (I) A value of two (2) if the date of issuance of all the prior significant actions are greater than three years old but less than five years old;
  - (II) A value of four (4) if the date of issuance of all the prior significant actions are greater than five years old;
  - (III) In making the above reductions, no finding shall be less than 0.
- (xiii) Any prior significant action which is greater than ten years old shall not be included in the above determination.
- (xiv) A permittee, who would have received a Notice of Permit Violation, but instead received a civil penalty or Department Order because of the application of OAR 340-12-040 (2)(d), (e), (f), or (g) shall not have the violation(s) cited in the former action counted as a prior significant action, if the permittee fully complied with the provisions of any compliance order contained in the former action.
- (B) "H" is past history of the Respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation cited in any prior significant actions. In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:
  - (i) -2 if Respondent took all feasible steps to correct each violation contained in any prior significant action;

- (ii) 0 if there is no prior history or if there is insufficient information on which to base a finding;
- (C) "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows:
- (i) 0 if the violation existed for one day or less and did not recur on the same day;
  - (ii) 2 if the violation existed for more than one day or if the violation recurred on the same day.
- (D) "R" is whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act of the Respondent. The values for "R" and the finding which supports each are as follows:
- (i) 0 if an unavoidable accident, or if there is insufficient information to make a finding;
  - (ii) 2 if negligent;
  - (iii) 6 if intentional; or
  - (iv) 10 if flagrant.
- (E) "C" is the Respondent's cooperativeness and efforts to correct the violation. The values for "C" and the finding which supports each are as follows:
- (i) -2 if Respondent was cooperative and took reasonable efforts to correct the violation or minimize the effects of the violation;
  - (ii) 0 if there is insufficient information to make a finding, or if the violation or the effects of the violation could not be corrected;
  - (iii) 2 if Respondent was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.
- (F) "EB" is the approximated dollar sum of the economic benefit that the Respondent gained through noncompliance. The Department or Commission may increase the penalty by the approximated dollar sum of the economic

benefit, provided that the sum penalty does not exceed the maximum allowed for the violation by rule or statute. After determining the base penalty and applying the civil formula penalty above to determine the gravity and magnitude-based portion of the civil penalty, "EB" is to be determined as follows:

- (i) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable;
- (ii) The Department need not calculate nor address the economic benefit component of the civil penalty when the benefit obtained is de minimis;
- (iii) In determining the economic benefit component of a civil penalty, the Department may use the U.S. Environmental Protection Agency's BEN computer model, as adjusted annually to reflect changes in marginal tax rates, inflation rate and discount rate. With respect to significant or substantial change in the model, the Department shall use the version of the model that the Department finds will most accurately calculate the economic benefit gained by Respondent's noncompliance. Upon request of the Respondent, the Department will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect that Respondent's actual circumstance.
- (iv) As stated above, under no circumstances shall the imposition of the economic benefit component of the penalty result in a penalty exceeding the statutory maximum allowed for the violation by rule or statute. When a violation has extended over more than one day, however, for determining the maximum penalty allowed, the Director may treat

the violation as extending over at least as many days as necessary to recover the economic benefit of noncompliance. When the purpose of treating a violation as extending over more than one day is to recover the economic benefit, the Department has the discretion not to impose the gravity and magnitude-based portion of the penalty for more than one day.

- (2) In addition to the factors listed in subsection (1) of this rule, the Director may consider any other relevant rule of the Commission and shall state the effect the consideration had on the penalty. On review, the Commission shall consider the factors contained in subsection (1) of this rule and any other relevant rule of the Commission.
- (3) The Department or Commission may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the Department or Commission documentary evidence concerning Respondent's inability to pay the full penalty amount.
  - (a) When the Respondent is currently unable to pay the full amount, the first option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Department or Commission may reduce the penalty only after determining that the Respondent is unable to meet a long-term payment schedule.
  - (b) In determining the Respondent's ability to pay a civil penalty, the Department may use the U.S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, the Department shall use the version of the model that the Department finds will most accurately calculate the Respondent's ability to pay a civil penalty. Upon request of the Respondent, the Department will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.

- (c) In appropriate circumstances, the Department or Commission may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding its ability or incentive to remain in compliance.

(Statutory Authority: ORS CH 468)

**WRITTEN NOTICE OF ASSESSMENT OF CIVIL PENALTY; WHEN PENALTY PAYABLE**

**340-12-046**

- (1) A civil penalty shall be due and payable ten (10) days after the order assessing the civil penalty becomes final and the civil penalty is thereby imposed by operation of law or on appeal. A person against whom a civil penalty is assessed shall be served with a notice in the form and manner provided in ORS 183.415 and OAR Chapter 340, Division 11.
- (2) The written notice of assessment of civil penalty shall comply with ORS 468.135(1) and ORS 183.090, relating to notice and contested case hearing applications, and shall state the amount of the penalty or penalties assessed. The rules prescribing procedure in contested case proceedings contained in OAR Chapter 340, Division 11 shall apply thereafter.

(Statutory Authority: ORS CH 468)

**COMPROMISE OR SETTLEMENT OF CIVIL PENALTY BY DIRECTOR**

**340-12-047**

- (1) Any time after service of the written notice of assessment of civil penalty, the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final .
- (2) In determining whether a penalty should be compromised or settled, the Director may take into account the following:
  - (a) New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors contained in OAR 340-12-045;

- (b) The effect of compromise or settlement on deterrence;
- (c) Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;
- (d) Whether Respondent has had any previous penalties which have been compromised or settled;
- (e) Whether the compromise or settlement would be consistent with the Department's goal of protecting the public health and environment;
- (f) The relative strength or weakness of the Department's case.

(Statutory Authority: ORS CH 468)

### **STIPULATED PENALTIES**

**340-12-048**

Nothing in OAR Chapter 340 Division 12 shall affect the ability of the Commission or Director to include stipulated penalties in a Stipulation and Final Order, Consent Order, Consent Decree or any other agreement issued under ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B.

(Statutory Authority: ORS CH 454, 459, 465, 466, 467, 468, 468A, & 468B)

### **ADDITIONAL CIVIL PENALTIES**

**340-12-049**

In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below:

- (1) Any person who wilfully or negligently causes an oil spill shall incur a civil penalty commensurate with the amount of damage incurred. The amount of the penalty shall be determined by the Director with the advice of the Director of Fish and Wildlife. In determining the amount of the penalty, the Director may consider the gravity of the violation, the previous record of the violator and such other considerations the Director deems appropriate.
- (2) Any person planting contrary to the restriction of subsection (1) of ORS 468.465 pertaining to the open field burning of cereal grain acreage shall be assessed by the Department a civil penalty of \$25 for each acre planted contrary to the restrictions.
- (3) Whenever an underground storage tank fee is due and

owing under ORS 466.785 or 466.795, the Director may issue a civil penalty not less twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each day the fee is due and owing.

- (4) Any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 shall be assessed a civil penalty of \$500.
- (5) Any person who fails to pay an automobile emission fee when required by law or rule shall be assessed a civil penalty of \$50.
- (6) Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in this section that are property of the state.
  - (a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400.
  - (b) Each mountain sheep or mountain goat, \$3,500.
  - (c) Each elk, \$750.
  - (d) Each silver gray squirrel, \$10.
  - (e) Each game bird other than wild turkey, \$10.
  - (f) Each wild turkey, \$50.
  - (g) Each game fish other than salmon or steelhead trout, \$5.
  - (h) Each salmon or steelhead trout, \$125.
  - (i) Each fur-bearing mammal other than bobcat or fisher, \$50.
  - (j) Each bobcat or fisher, \$350.
  - (k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500.
  - (l) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United, but not otherwise referred to in this section, \$25;



(7) Any person who intentionally or recklessly violates any provision of ORS 164.785, 459.205 to 459.426, 459.705 to 459.790, ORS Chapters 465, 466, 467 or 468 or any rule or standard or order of the commission adopted or issued pursuant to ORS 459.205 to 459.426, 459.705 to 459.790, ORS Chapters 465, 466, 467 or 468, which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a penalty up to \$100,000. When determining the civil penalty sum to be assessed under this section, the Director shall apply the following procedures:

- (a) Select one of the following base penalties after determining the cause of the violation:
  - (i) \$50,000 if the violation was caused recklessly;
  - (ii) \$75,000 if the violation was caused intentionally;
  - (iii) \$100,000 if the violation was caused flagrantly;
- (b) Then determine the civil penalty through application of the formula:  $BP + (.1 \times BP) (P + H + O + C) + EB$ , in accord with the applicable subsections of OAR 340-12-045(1)(c).

(Statutory Authority: ORS CHS 466 & 468)

# AIR QUALITY CLASSIFICATION OF VIOLATIONS

340-12-050

Violations pertaining to air quality shall be classified as follows:

(1) Class One:

- (a) Violation of a Commission or Department Order, or variance;
- (b) Constructing or operating a source without the appropriate fan Air Contaminant Discharge P}permit;
- (c) Modifying a source with an Air ~~{Contaminant Discharge}~~ Permit without first notifying and receiving approval from the Department;
- (d) Violation of a compliance schedule in a permit;
- (e) Exceeding an allowable emission level of a hazardous air pollutant.
- (f) Exceeding an emission or opacity permit limitation for a criteria pollutant, by a factor of greater than or equal to two times the limitation, within 10 kilometers of either a Non-Attainment Area or a Class I Area for that criteria pollutant;
- (g) Exceeding the annual emission limitations of a permit, rule or order;
- (h) Failure to perform testing, or monitoring, required by a permit, rule or order;
- (i) Systematic failure to keep records required by a permit, rule or order;
- (j) Failure to submit semi-annual Compliance Certifications;
- (k) Failure to file a timely application for a Federal Operating Permit pursuant to OAR 340-28-2120;
- (l) Exceedances of operating limitations that limit the potential to emit of a synthetic minor source and that result in emissions above the Federal Operating Permit permitting thresholds pursuant to OAR 340-28-110(57);
- (m) Causing emissions that are a hazard to public safety;
- ~~{h)}~~(n) Failure to comply with Emergency Action Plans ~~{o}~~or allowing excessive emissions during

emergency episodes;

- ~~(i)~~(o) Violation of a work practice requirement for asbestos abatement projects which causes a potential for public exposure to asbestos or release of asbestos into the environment;
- ~~(j)~~(p) Storage or accumulation of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which causes a potential for public exposure to asbestos or release of asbestos into the environment;
- ~~(k)~~(g) Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation, or disposal of asbestos-containing waste material;
- ~~(l)~~(r) Conduct of an asbestos abatement project by a person not licensed as an asbestos abatement contractor;
- ~~(m)~~(s) Violation of a disposal requirement for asbestos-containing waste material which causes a potential for public exposure to asbestos or release of asbestos into the environment;
- ~~(n)~~(t) Advertising to sell, offering to sell or selling a non-certified wood stove;
- ~~(o)~~(u) Illegal open burning in violation of OAR 340-23-042(2);
- ~~(p)~~(v) Causing or allowing open field burning without first obtaining a valid open field burning permit;
- ~~(q)~~(w) Causing or allowing open field burning or stack burning where prohibited by OAR 340-26-010(7) or OAR 340-26-055~~(1)~~(e)(4);
- ~~(r)~~(x) Causing or allowing any propane flaming which results in visibility impairment on any Interstate Highway or Roadway specified in OAR 837-110-080(1) and (2);
- ~~(s)~~(y) Failing to immediately and actively extinguish all flames and smoke sources when any propane flaming results in visibility impairment on any Interstate Highway or Roadway specified in OAR 837-110-080(1) and (2);

- ~~f(t)~~(z) Causing or allowing propane flaming of grass seed or cereal grain crops, stubble, or residue without first obtaining a valid propane flaming burning permit;
- ~~f(u)~~(aa) Stack or pile burning grass seed or cereal grain crop residue without first obtaining a valid stack or pile burning permit;
- ~~f(v)~~(bb) Open field burning, ~~f(x)~~ propane flaming, stack or pile burning when State Fire Marshal restrictions are in effect;
- (cc) Causing or allowing propane flaming which results in sustained open flame in a fire safety buffer zone along any Interstate Highway or Roadway specified in OAR 837-110-080 (1) or (2);
- ~~f(w)~~(dd) Failure to install vapor recovery piping in accordance with standards set forth in OAR Chapter 340, Division 150;
- ~~f(x)~~(ee) Installing vapor recovery piping without first obtaining a service provider license in accordance with requirements set forth in OAR Chapter 340, Division 160;
- ~~f(y)~~(ff) Submitting falsified actual or calculated interim emission fee data;
- ~~f(z)~~(gg) Failure to provide access to premises or records when required by law, rule, permit or order;
- ~~f(aa)~~(hh) Any violation related to air quality which causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

- (a) Exceeding emission limitations other than an annual emission limitation or opacity limitations by more than 5% opacity in permits or rules;
- (b) Violating standards in permits or rules for fugitive emissions, particulate deposition, or odors;
- (c) Failure to submit a complete Air Contaminant Discharge Permit application 60 days prior to permit expiration or prior to modifying a source;
- (d) Failure to maintain on site records when required by a permit to be maintained on site;

- (e) Exceedances of operating limitations that limit the potential to emit of a synthetic minor source that do not result in emissions above the Federal Operating Permit permitting thresholds pursuant to OAR 340-28-110(57);
- (f) Illegal open burning of commercial, construction and/or demolition, and/or agricultural waste;
- ~~(d)~~(g) ~~{Failing to report excess emissions due to upset or breakdown of air pollution control equipment}~~ Failing to comply with notification and reporting requirements in a permit;
- ~~(e)~~(h) Failure to comply with asbestos abatement licensing, certification, or accreditation requirements;
- ~~(f)~~(i) Failure to provide notification of an asbestos abatement project;
- ~~(g)~~(j) Failure to display permanent labels on a certified woodstove;
- ~~(h)~~(k) Alteration of a permanent label for a certified woodstove ;
- ~~(i)~~(l) Failure to use Department-approved vapor control equipment when transferring fuel;
- ~~(j)~~(m) Operating a vapor recovery system without first obtaining a piping test performed by a licensed service provider as required by OAR Chapter 340, Division 160;
- ~~(k)~~(n) Failure to obtain Department approval prior to installing a Stage II vapor recovery system not already registered with the Department as specified in Department rules;
- ~~(l)~~(o) Failure to actively extinguish all flames and major smoke sources from open field or stack burning when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department;
- ~~(m)~~(p) Causing or allowing a propane flaming operation to be conducted in a manner which causes or allows an open flame to be sustained;

- ~~{(n)}~~{(q)} Installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons using approved recovery and recycling equipment;
- ~~{(e)}~~{(r)} Selling, or offering to sell, or giving as a sales inducement any aerosol spray product which contains as a propellant any compound prohibited under ORS 468A.655;
- ~~{(p)}~~{(s)} Selling any chlorofluorocarbon or halon containing product prohibited under ORS 468A.635;
- ~~{(g)}~~{(t)} Failure to pay an ~~{interim}~~ emission fee;
- ~~{(r)}~~{(u)} Substantial underpayment of an ~~{interim}~~ emission fee;
- ~~{(s)}~~{(v)} Submitting inaccurate ~~{actual or calculated interim}~~ emission fee data;
- ~~{(t)}~~{(w)} Any violation related to air quality which is not otherwise classified in these rules.

(3) Class Three:

- (a) Illegal residential open burning;
- (b) Improper notification of an asbestos abatement project;
- (c) Failure to display a temporary label on a certified wood stove;
- (d) Exceeding opacity limitation in permits or rules by 5% opacity or less.

(Statutory Authority: ORS CH 468A)

## NOISE CONTROL CLASSIFICATION OF VIOLATIONS

340-12-052

Violations pertaining to noise control shall be classified as follows:

(1) Class One:

- (a) Violation of a Commission or Department order or variance;
- (b) Violations that exceed noise standards by ten (10) decibels or more;
- (c) Exceeding the ambient degradation rule by five (5) decibels or more; or
- (d) Failure to submit a compliance schedule required by OAR 340-35-035(2);
- (e) Operating a motor sports vehicle without a properly installed or well-maintained muffler or exceeding the noise standards set forth in OAR 340-35-040(2);
- (f) Operating a new permanent motor sports facility without submitting and receiving approval of projected noise impact boundaries;
- (g) Failure to provide access to premises or records when required by law, rule, or order;
- (h) Violation of motor racing curfews set forth in OAR 340-35-040(6);
- (i) Any violation related to noise control which causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

- (a) Violations that exceed noise standards by three (3) decibels or more;
- (b) Advertising or offering to sell or selling an uncertified racing vehicle without displaying the required notice or obtaining a notarized affidavit of sale;
- (c) Any violation related to noise control which is not otherwise classified in these rules.

- (3) Violations that exceed noise standards by one (1) or two (2) decibels are Class III violations;

(Statutory Authority: ORS CH 467 & 468)

## WATER QUALITY CLASSIFICATION OF VIOLATIONS

340-12-055

Violations pertaining to water quality shall be classified as follows:

(1) Class One:

- (a) Violation of a Commission or Department Order;
- (b) Any discharge of waste that enters waters of the state, either without a waste discharge permit or from a discharge point not authorized by a waste discharge permit;
- (c) Failure to comply with statute, rule, or permit requirements regarding notification of a spill or upset condition which results in a non-permitted discharge to public waters;
- (d) Violation of a permit compliance schedule;
- (e) Any violation of any pretreatment standard or requirement by a user of a municipal treatment works which either impairs or damages the treatment works, or causes a major harm or poses a major risk of harm to public health or the environment;
- (f) Failure to provide access to premises or records when required by law, rule, permit or order;
- (g) Failure of any ship carrying oil to have financial assurance as required in ORS 468B.300 to 468B.335 or rules adopted thereunder;
- (h) Any violation related to water quality which causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

- (a) Operation of a disposal system without first obtaining a Water Pollution Control Facility Permit;
- (b) Failure to submit a report or plan as required by rule permit, or license;
- (c) Any violation of OAR Chapter 340, Division 49 regulations pertaining to certification of wastewater system operator personnel;
- (d) Placing wastes such that the wastes are likely to enter public waters by any means;



- (e) Failure by any ship carrying oil to keep documentation of financial assurance on board or on file with the Department as required by ORS 468B.300 to 468B.335 or rules adopted thereunder;
- (f) Any violation related to water quality which is not otherwise classified in these rules.

(3) Class Three:

- (a) Failure to submit a discharge monitoring report on time;
- (b) Failure to submit a complete discharge monitoring report;
- (c) Exceeding a waste discharge permit biochemical oxygen demand (BOD), carbonaceous biochemical oxygen demand (CBOD), or total suspended solids (TSS) limitation by a concentration of 20 per cent or less, or exceeding a mass loading limitation by 10 per cent or less;
- (d) Violation of a removal efficiency requirement by a factor of less than or equal to 0.2 times the number value of the difference between 100 and the applicable removal efficiency requirement (e.g., if the requirement is 65% removal,  $0.2(100-65) = 0.2(35) = 7\%$ ; then 7% would be the maximum percentage that would qualify under this rule for a permit with a 65% removal efficiency requirement);
- (e) Violation of a pH requirement by less than 0.5 pH;

(Statutory Authority: ORS CH 468B)

**ON-SITE SEWAGE DISPOSAL CLASSIFICATION OF VIOLATIONS**

**340-12-060**

Violations pertaining to On-Site Sewage Disposal shall be classified as follows:

(1) Class One:

- (a) Violation of a Commission or Department order;
- (b) Performing, advertising or representing one's self as being in the business of performing sewage disposal services without first obtaining and maintaining a current sewage disposal service license from the Department;

- (c) Installing or causing to be installed an on-site sewage disposal system or any part thereof, or repairing any part thereof, without first obtaining a permit;
  - (d) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by the Department;
  - (e) Failure to provide access to premises or records when required by law, rule, permit or order;
  - (f) Any violations related to on-site sewage disposal which cause major harm or pose a major risk of harm to public health, welfare, safety or the environment.
- (2) Class Two:
- (a) Installing or causing to be installed an on-site sewage disposal system, or any part thereof, or the repairing of any part thereof, which fails to meet the requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice at the site;
  - (b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization from the Agent;
  - (c) Operating or using a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion;
  - (d) Providing any sewage disposal service in violation of any statute, rule, license, or permit, provided that the violation is not otherwise classified in these rules;
  - (e) Failing to obtain an authorization notice from the Agent prior to affecting change to a dwelling or commercial facility that results in the potential increase in the projected peak sewage flow from the dwelling or commercial facility in excess of the sewage disposal system's peak design flow.
  - (f) Installing or causing to be installed a nonwater-carried waste disposal facility without first obtaining written approval from the Agent;
  - (g) Failing to connect all plumbing fixtures to, or failing to discharge waste water or sewage into, a Department approved system;

- (h) Operating or using an on-site sewage disposal system which is failing by discharging sewage or effluent onto the ground surface or into surface public water;
  - (i) Any violation related to on-site sewage disposal which is not otherwise classified in these rules.
- (3) Violations where the sewage disposal system design flow is not exceeded, placing an existing system into service, or changing the dwelling or type of commercial facility, without first obtaining an authorization notice are Class III violations.

(Statutory Authority: ORS CH 454 & 468B)

### **SOLID WASTE MANAGEMENT CLASSIFICATION OF VIOLATIONS**

#### **340-12-065**

Violations pertaining to the management, recovery and disposal of solid waste shall be classified as follows:

- (1) Class One:
  - (a) Violation of a Commission or Department Order;
  - (b) Establishing, expanding, maintaining or operating a disposal site without first obtaining a permit;
  - (c) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to the Department and obtaining Department approval;
  - (d) Violation of the freeboard limit which results in the actual overflow of a sewage sludge or leachate lagoon;
  - (e) Violation of the landfill methane gas concentration standards;
  - (f) Violation of any federal or state drinking water standard in an aquifer beyond the solid waste boundary of the landfill, or an alternative boundary specified by the Department;
  - (g) Violation of a permit-specific groundwater concentration limit, as defined in OAR 340-40-030(3) at the permit-specific groundwater concentration compliance point, as defined in OAR 340-40-030(2)(e);

- (h) Failure to perform the groundwater monitoring action requirements specified in OAR 340-40-030 (5), when a significant increase (for pH, increase or decrease) in the value of a groundwater monitoring parameter is detected.
- (i) Impairment of the beneficial uses(s) of an aquifer beyond the solid waste boundary or an alternative boundary specified by the Department;
- (j) Deviation from the approved facility plans which results in an actual safety hazard, public health hazard or damage to the environment;
- (k) Failure to properly construct and maintain groundwater, surface water, gas or leachate collection, treatment, disposal and monitoring facilities in accordance with the facility permit, the facility environmental monitoring plan, or Department rules;
- (l) Failure to collect, analyze and report groundwater, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or Department rules;
- (m) Violation of a compliance schedule contained in a solid waste disposal or closure permit;
- (n) Failure to provide access to premises or records when required by law, rule, permit or order;
- (o) Knowingly disposing, or accepting for disposal, used oil, in single quantities exceeding 50 gallons, or lead acid batteries;
- (p) Accepting, handling, treating or disposing of clean-up materials contaminated by hazardous substances by a landfill in violation of the facility permit and plans as approved by the Department or the provisions of OAR 340-61-060.
- (q) Accepting for disposal infectious waste not treated in accordance with laws and Department rules;
- (r) Accepting for treatment, storage or disposal wastes defined as hazardous under ORS 466.005, et seq, or wastes from another state which are hazardous under the laws of that state without specific approval from the Department;
- (s) Mixing for disposal or disposing of principal recyclable material that has been properly prepared and source separated for recycling;

- (t) Any violation related to the management, recovery and disposal of solid waste which causes major harm or poses a major risk of harm to public health or the environment.
- (2) Class Two:
- (a) Violation of a condition or term of a Letter of Authorization;
  - (b) Knowingly accepting for disposal or disposing of a material banned from land disposal under ORS 459.247, except those materials specified as Class I violations.
  - (c) Failure of a permitted landfill, solid waste incinerator or a municipal solid waste compost facility operator or a metropolitan service district to report amount of solid waste disposed in accordance with the laws and rules of the Department;
  - (d) Failure to report weight and type of material recovered or processed from the solid waste stream in accordance with the laws and rules of the Department;
  - (e) Failure of a disposal site to obtain certification for recycling programs in accordance with the laws and rules of the Department prior to accepting solid waste for disposal;
  - (f) Acceptance of solid waste by a permitted disposal site from a person that does not have an approved solid waste reduction program in accordance with the laws and rules of the Department;
  - (g) Failure to comply with any solid waste permit requirement pertaining to permanent household hazardous waste collection facility operations;
  - (h) Failure to comply with landfill cover requirements, including but not limited to daily, intermediate, and final covers, and limitation of working face size;
  - (i) Failure to comply with any ~~{site development and operational}~~ plan~~{s-as}~~ approved by the Department;
  - (j) Failure to submit a permit renewal application prior to the expiration date of the existing permit in accordance with the laws and rules of the Department;

- (k) Any violation related to solid waste, solid waste reduction, or any violation of a solid waste permit not otherwise classified in these rules.

(3) Class Three:

- (a) Failure to post required signs;
- (b) Failure to control litter;

(Statutory Authority: ORS CH 459)

**SOLID WASTE TIRE MANAGEMENT CLASSIFICATION OF VIOLATIONS**

**340-12-066**

Violations pertaining to the storage, transportation and management of waste tires or tire-derived products shall be classified as follows:

(1) Class One:

- (a) Violation of a Commission or Department Order;
- (b) Disposing of waste tires or tire-derived products at an unauthorized site;
- (c) Violation of the compliance schedule or fire safety requirements of a waste tire storage site permit;
- (d) Hauling waste tires or advertising or representing one's self as being in the business of a waste tire carrier without first obtaining a waste tire carrier permit as required by laws and rules of the Department;
- (e) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires;
- (f) Failure to provide access to premises or records when required by law, rule, permit or order;
- (g) Any violation related to the storage, transportation or management of waste tires or tire-derived products which causes major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

- (a) Violation of a waste tire storage site or waste tire carrier permit other than a specified Class One or Class Three violation;

- (b) Establishing, expanding, or operating a waste tire storage site without first obtaining a permit;
- (c) Any violation related to the storage, transportation or management of waste tires or tire-derived products which is not otherwise classified in these rules.

(3) Class Three:

- (a) Failure to submit required annual reports in a timely manner;
- (b) Failure to keep required records on use of vehicles;
- (c) Failure to post required signs;
- (d) Failure to submit a permit renewal application in a timely manner;
- (e) Failure to submit permit fees in a timely manner;
- (f) Failure to maintain written records of waste tire disposal and generation;

(Statutory authority: ORS CH 459)

**UNDERGROUND STORAGE TANK AND HEATING OIL TANK CLASSIFICATION OF VIOLATIONS**

**340-12-067**

Violations pertaining to Underground Storage Tanks and cleanup of petroleum contaminated soil at heating oil tanks shall be classified as follows:

(1) Class One:

- (a) Violation of a Commission or Department Order;
- (b) Failure to report a release from an underground storage tank or a heating oil tank as required by statute, rule or permit;
- (c) Failure to initiate and complete the investigation or cleanup of a release from an underground storage tank or a heating oil tank;
- (d) Failure to prevent a release from an underground storage tank;
- (e) Failure to submit required reports from the investigation or cleanup of a release from an underground storage tank or heating oil tank;

- (f) Failure to provide access to premises or records when required by law, rule, permit or order;
  - (g) Placement of a regulated material into an unpermitted underground storage tank;
  - (h) Installation of an underground storage tank in violation of the standards or procedures adopted by the Department;
  - (i) Failure to initiate and complete free product removal in accordance with OAR 340-122-235;
  - (j) Failure to initiate and complete the investigation or cleanup of a release from a heating oil tank;
  - (k) Providing installation, retrofitting, decommissioning, or testing services on an underground storage tank or providing cleanup of petroleum contaminated soil at an underground storage tank without first registering or obtaining an underground storage tank service providers license;
  - (l) Supervising the installation, retrofitting, decommissioning, or testing of an underground storage tank or supervising cleanup of petroleum contaminated soil at an underground storage tank without first obtaining an underground storage tank supervisors license;
  - (m) Any other violation related to underground storage tanks or heating oil tanks or cleanup of petroleum contaminated soil at heating oil tanks which poses a major risk of harm to public health and the environment.
- (2) Class Two:
- (a) ~~{Providing installation, retrofitting, decommissioning, or testing services on an underground storage tank site without first registering or obtaining an underground storage tank service providers license;}~~
  - ~~{(b) Providing supervision of the installation, retrofitting, decommissioning, or testing of an underground storage tank or providing supervision of cleanup of petroleum contaminated soil at an underground storage tank site without first obtaining an underground storage tank supervisors license;}~~
  - ~~{(c)}~~ Failure to conduct required underground storage tank monitoring and testing activities;



- ~~f(d)~~(b) Failure to conform to operational standards for underground storage tanks and leak detection systems;
- ~~f(e)~~(c) Failure to obtain a permit prior to the installation or operation of an underground storage tank;
- ~~f(f)~~(d) Failure to properly decommission an underground storage tank;
- ~~f(g)~~(e) Providing installation, retrofitting, decommissioning or testing services on a regulated underground storage tank or providing cleanup of petroleum contaminated soil at a regulated underground storage tank that does not have a permit;
- ~~f(h)~~(f) Failure by a seller or distributor to obtain the tank permit number before depositing product into the underground storage tank or failure to maintain a record of the permit numbers;
- ~~f(i)~~(g) Allowing the installation, retrofitting, decommissioning or testing of an underground storage tank or cleanup of petroleum contaminated soil at an underground storage tank by any person not licensed by the department;
- ~~f(j)~~(h) Allowing cleanup of petroleum contaminated soil at a heating oil tank by any person not licensed by the Department;
- ~~f(k)~~(i) Providing petroleum contaminated soil cleanup services at a heating oil tank without first registering or obtaining a heating oil tank soil matrix cleanup service provider license;
- ~~f(l)~~(j) Providing supervision of petroleum contaminated soil at a heating oil tank without first registering or obtaining a heating oil tank soil matrix cleanup supervisor license;
- ~~f(m)~~(k) Supervising petroleum contaminated soil cleanup services at a heating oil tank without first registering or obtaining a heating oil tank soil matrix cleanup supervisor license;
- ~~f(n)~~(l) Failure to submit a corrective action plan (CAP) in accordance with the schedule or format established by the Department pursuant to OAR 340-122-250;

- ~~f(e)~~(m) Failure by the tank owner to provide the permit number persons depositing product into the underground storage tank;
- ~~f(p)~~(n) Failure to report a suspected release from an underground storage tank;
- ~~f(q)~~(o) Any other violation related to underground storage tanks or heating oil tanks or cleanup of petroleum contaminated soil at a heating oil tank that is not otherwise classified in these rules.

(3) Class Three:

- (a) Failure to submit an application for a new permit when an underground storage tank is acquired by a new owner;
- (b) Failure of a tank seller or product distributor to notify a tank owner or operator of the Department's permit requirements;
- (c) Decommissioning, installing, or retrofitting an underground storage tank or conducting a soil matrix cleanup without first providing the required notifications to the Department;
- (d) Failure to provide information to the Department regarding the contents of an underground storage tank;
- (e) Failure to maintain adequate decommissioning records;

(Statutory Authority: ORS Chapter 466)

**HAZARDOUS WASTE MANAGEMENT AND DISPOSAL CLASSIFICATION OF VIOLATIONS**

**340-12-068**

Violations pertaining to the management and disposal of hazardous waste shall be classified as follows:

(1) Class One:

- (a) Violation of a Department or Commission order;
- (b) Failure to carry out waste analysis for a waste stream or to properly apply "knowledge of process";
- (c) Operating a treatment, storage or disposal facility (TSD) without a permit or without meeting the requirements of OAR 340-105-010(2)(a);

- (d) Failure to comply with the ninety (90) day storage limit by a fully regulated generator or the 180 day storage limit for a small quantity generator where there is a gross deviation from the requirement;
- (e) Shipment of hazardous waste without a manifest;
- (f) Systematic failure of a generator to comply with the manifest system requirements;
- (g) Failure to satisfy manifest discrepancy reporting requirements;
- (h) Failure to prevent the unknown entry or prevent the possibility of the unauthorized entry of persons or livestock into the waste management area of a TSD facility;
- (i) Failure to properly handle ignitable, reactive, or incompatible wastes as required under 40 CFR Part 264 and 265.17(b)(1), (2), (3), (4) and (5);
- (j) Illegal disposal of hazardous waste;
- (k) Disposal of waste in violation of the land disposal restrictions;
- (l) Mixing, solidifying, or otherwise diluting waste to circumvent land disposal restrictions;
- (m) Incorrectly certifying a waste for disposal/treatment in violation of the land disposal restrictions;
- (n) Failure to submit notifications/certifications as required by land disposal restrictions;
- (o) Failure to comply with the tank integrity assessments and certification requirements;
- (p) Failure of an owner/operator of a TSD facility to have closure and/or post closure plan and/or cost estimates;
- (q) Failure of an owner/operator of a TSD facility to retain an independent registered professional engineer to oversee closure activities and certify conformity with an approved closure plan;
- (r) Failure to establish or maintain financial assurance for closure and/or post closure care;
- (s) Systematic failure to conduct unit specific and general inspections as required or to correct hazardous conditions discovered during those inspections;

- (t) Failure to follow emergency procedures contained in response plan when failure could result in serious harm;
- (u) Storage of hazardous waste in containers which are leaking or present a threat of release;
- (v) Systematic failure to follow container labeling requirements or lack of knowledge of container contents;
- (w) Failure to label hazardous waste containers where such failure could cause an inappropriate response to a spill or leak and substantial harm to public health or the environment;
- (x) Failure to date containers with accumulation date;
- (y) Failure to comply with the export requirements;
- (z) Violation of any TSD facility permit, provided that the violation is equivalent to any Class I violation set forth in these rules;
- (aa) Systematic failure to comply with OAR 340-102-041, generator annual reporting requirements and OAR 340-102-012, annual registration information;
- (bb) Systematic failure to comply with OAR 340-104-075, Treatment, Storage, Disposal and Recycling facility annual reporting requirements and OAR 340-102-012, annual registration information;
- (cc) Construct or operate a new treatment, storage or disposal facility without first obtaining a permit;
- (dd) Installation of inadequate groundwater monitoring wells such that detection of hazardous waste or hazardous constituents that migrate from the waste management area cannot be immediately be detected;
- (ee) Failure to install any groundwater monitoring wells;
- (ff) Failure to develop and follow a groundwater sampling and analysis plan using proper techniques and procedures;
- (gg) Failure to provide access to premises or records when required by law, rule, permit or order;
- (hh) Any violation related to the generation, management and disposal of hazardous waste which causes major harm or poses a major risk of harm to public health or the environment.

- (2) Any violation pertaining to the generation, management and disposal of hazardous waste which is not otherwise classified in these rules is a Class Two violation.

(Statutory Authority: ORS CH 466)

**OIL AND HAZARDOUS MATERIAL SPILL AND RELEASE CLASSIFICATION OF VIOLATIONS**

**340-12-069**

Violations pertaining to spills or releases of oil or hazardous materials shall be classified as follows:

(1) Class One:

- (a) Violation of a Commission or Department Order;
- (b) Failure to provide access to premises or records when required by law, rule, permit or order;
- (c) Failure by any person having ownership or control over oil or hazardous materials to immediately cleanup spills or releases or threatened spills or releases;
- (d) Failure by any person having ownership or control over oil or hazardous materials to immediately report all spills or releases or threatened spills or releases in amounts equal to or greater than the reportable quantity;
- (e) Any violation related to the spill or release of oil or hazardous materials which causes a major harm or poses a major risk of harm to public health or the environment.
- (f) Any spill or release of oil or hazardous materials which enters waters of the state.

- (2) Any violation related to the spill or release of oil or hazardous materials which is not otherwise classified in these rules is a Class Two violation.

(Statutory Authority: ORS CH 466)

**PCB CLASSIFICATION OF VIOLATIONS**

**340-12-071**

Violations pertaining to the management and disposal of polychlorinated biphenyls (PCB) shall be classified as follows:

(1) Class One:

- (a) Violation of a Commission or Department Order;
- (b) Treating or disposing of PCBs anywhere other than at a permitted PCB disposal facility;
- (c) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit;
- (d) Failure to provide access to premises or records when required to by law, rule, permit or order;
- (e) Any violation related to the management and disposal of PCBs which causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

- (a) Violating a condition of a PCB disposal facility permit;
- (b) Any violation related to the management and disposal of PCBs which is not otherwise classified in these rules.

(Statutory Authority: ORS Chapter 466)

**USED OIL MANAGEMENT CLASSIFICATION OF VIOLATIONS**

**340-12-072**

Violations pertaining to the management of used oil shall be classified as follows:

(1) Class One:

- (a) Using untested used oil as a dust suppressant or pesticide, or otherwise spreading untested used oil directly in the environment, if the quantity of oil spread exceeds 50 gallons per event;
- (b) Spreading used oil contaminated with hazardous waste or failing to meet the limits for materials set in OAR 340-111-030;
- (c) Any violation related to the management of used oil which causes major harm or poses a major risk of harm to public health or the environment.
- (d) Failure to provide access to premises or records when required to do so by law, rule, permit or order.

(2) Class Two:

- (a) Failure to notify the Department of activities relating to spreading used oil;
- (b) Any violation related to the management of used oil which is not otherwise classified in these rules.

(Statutory Authority: ORS CHS. 466 & 468)

ENVIRONMENTAL CLEANUP CLASSIFICATION OF VIOLATIONS

340-12-073

Violations of ORS 465.200 through 465.420 and related rules or orders pertaining to environmental cleanup shall be classified as follow:

(1) Class One:

- (a) Violation of a Commission or Department order;
- (b) Failure to provide access to premises or records when required to do so by law, rule, permit or order;
- (c) Any violation related to environmental investigation or cleanup which causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

- (a) Failure to provide information under ORS 465.250;
- (b) Any violation related to environmental investigation or cleanup which is not otherwise classified in these rules.

(Statutory Authority: ORS Chapter 466)



SELECTED MAGNITUDE CATEGORIES

340-12-090

- (1) Magnitudes for select violations pertaining to Air Quality may be determined as follows:
  - (a) Opacity limitation violations:
    - (i) Major - Opacity measurements or readings of more than 25 percent opacity over the applicable limitation;
    - (ii) Moderate - Opacity measurements or readings from greater than 10 percent to 25 percent or less opacity over the applicable limitation.
    - (iii) Minor - Opacity measurements or readings of 10 percent or less opacity over the applicable limitation;
  - (b) Steaming rates and fuel usage limitations:
    - (i) Major - Greater than 1.3 times any applicable limitation;
    - (ii) Moderate - From 1.1 up to and including 1.3 times any applicable limitation;
    - (iii) Minor - Less than 1.1 times any applicable limitation.
  - (c) Air ~~{C}~~contaminant ~~{Discharge Permit}~~ emission limitation violations for selected air pollutants:
    - (i) Magnitude determination shall be made based upon the following Table:

Pollutant	Amount	
Carbon Monoxide	100 tons	
Nitrogen Oxides	40 tons	
Particulate Matter	25 tons	See note
(A) TSP	25 tons	
(B) PM 10	15 tons	
Sulfur Dioxide	40 tons	
Volatile Organic Compounds	40 tons	See note
Lead	1200 lbs.	
Mercury	200 lbs.	
Beryllium	0.8 lbs.	
Asbestos	14 lbs.	
Vinyl Chloride	1 ton	
Fluorides	3 tons	
Sulfuric Acid Mist	7 tons	
Hydrogen Sulfide	10 tons	
Total Reduced Sulfur (including hydrogen sulfide)	10 tons	
Reduced Sulfur Compounds (including hydrogen sulfide)	10 tons	

NOTE: For the nonattainment portions of the Medford-Ashland Air Quality Maintenance Area, and the Klamath Falls Urban Growth Area, the numbers to be used for Particulate Matter (both TSP and PM 10) shall be 5 tons, and for Volatile Organic Compounds shall be 20 tons.

(ii) Major:

- (A) Exceeding the annual ~~{permitted}~~ amount as established by permit, rule or order by more than the above amount;
- (B) Exceeding the monthly ~~{permitted}~~ amount as established by permit, rule or order by more than 10 percent of the above amount;

- (C) Exceeding the daily ~~{permitted}~~ amount as established by permit, rule or order by more than 0.5 percent of the above amount;
- (D) Exceeding the hourly ~~{permitted}~~ amount as established by permit, rule or order by more than 0.1 percent of the above amount.

(iii) Moderate:

- (A) Exceeding the annual ~~{permitted}~~ amount as established by permit, rule or order by an amount from 50 up to and including 100 percent of the above amount;
- (B) Exceeding the monthly ~~{permitted}~~ amount as established by permit, rule or order by an amount from 5 up to and including 10 percent of the above amount;
- (C) Exceeding the daily ~~{permitted}~~ amount as established by permit, rule or order by an amount from 0.25 up to and including 0.50 percent of the above amount;
- (D) Exceeding the hourly ~~{permitted}~~ amount as established by permit, rule or order by an amount from 0.05 up to and including 0.10 percent of the above amount.

(iv) Minor:

- (A) Exceeding the annual ~~{permitted}~~ amount as established by permit, rule or order by an amount less than 50 percent of the above amount;
- (B) Exceeding the monthly ~~{permitted}~~ amount as established by permit, rule or order by an amount less than 5 percent of the above amount;
- (C) Exceeding the daily ~~{permitted}~~ amount as established by permit, rule or order by an amount less than 0.25 percent of the above amount;
- (D) Exceeding the hourly ~~{permitted}~~ amount as established by permit, rule or order by an amount less than 0.05 percent of the above amount.

- (d) Asbestos violations:
  - (i) Major - More than 260 lineal feet or more than 160 square feet or more than 35 cubic feet of asbestos-containing material;
  - (ii) Moderate - From 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet or from 17 cubic feet up to and including 35 cubic feet of asbestos-containing material;
  - (iii) Minor - Less than 40 lineal feet or 80 square feet or less than 17 cubic feet of asbestos-containing material;
  - (iv) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than 5% asbestos.
- (e) Asbestos air clearance violations:
  - (i) Major - More than .1 fibers per cubic centimeter;
  - (ii) Moderate - More than .05 fibers per cubic centimeter up to and including .1 fibers per cubic centimeter;
  - (iii) Minor - More than .01 fibers per cubic centimeter up to and including .05 fibers per cubic centimeter.
- (f) Open burning violations:
  - (i) Major - Open burning of material constituting more than five cubic yards in volume;
  - (ii) Moderate - Open burning of material constituting from 1 up to and including 5 cubic yards in volume;
  - (iii) Minor - Open burning of material constituting less than one cubic yard in volume.
  - (iv) For the purposes of determining the magnitude of a violation only, five tires shall be deemed the equivalent in volume to one cubic yard.

(2) Magnitudes for select violations pertaining to Water Quality wastewater discharge limitations may be determined as follows:

(a) Major:

- (i) Greater than 1.6 times any applicable maximum flow rate, concentration limitation, or any applicable mass limitation; or
- (ii) Greater than 50 percent below any applicable minimum concentration limitation; or
- (iii) Greater than 2 pH units above or below any applicable pH range; or
- (iv) Greater than 10 percentage points below any applicable removal rate.

(b) Moderate:

- (i) From 1.3 up to and including 1.6 times any applicable maximum flow rate, concentration limitation, or any applicable mass limitation; or
- (ii) From 25 up to and including 50 percent below any applicable minimum concentration limitation; or
- (iii) From 1 up to and including 2 pH units above or below any applicable pH range; or
- (iv) From 5 up to and including 10 percentage points below any applicable removal rate.

(c) Minor:

- (i) Less than 1.3 times any applicable maximum flow rate, concentration limitation or any applicable mass limitation; or
- (ii) Less than 25 percent below any applicable minimum concentration limitation; or
- (iii) Less than 1 pH unit above or below any applicable pH range; or
- (iv) Less than 5 percentage points below any applicable removal rate.

- (3) Magnitudes for select violations pertaining to Hazardous Waste may be determined as follows:
- (a) Failure to make a hazardous waste determination:
    - (i) Major - Failure to make the determination on ~~{four}~~ five or more waste streams;
    - (ii) Moderate - Failure to make the determination on ~~{two or}~~ three or four waste streams;
    - (iii) Minor - Failure to make the determination on one or two waste streams.
    - (iv) The magnitude of the violation may be increased by one level, if more than 1000 gallons of hazardous waste is involved in the violation.
    - (v) The magnitude of the violation may be decreased by one level, if less than 250 gallons of hazardous waste is involved in the violation.
  - (b) Operating a hazardous waste storage facility without a permit by failing to meet the 40 CFR 262.34 and OAR Chapter 340, Division 102 generator requirements:
    - (i) Major - Failure to comply with 5 or more requirements listed in (iv) below, or any mismanagement of hazardous waste when more than 2000 gallons of hazardous waste are ~~{on site}~~ involved in the violation;
    - (ii) Moderate - Failure to comply with 3 or 4 requirements listed in (iv) below, or any mismanagement of hazardous waste when from 500 up to and including 2000 gallons of hazardous waste are ~~{on site}~~ involved in the violation;
    - (iii) Minor - Failure to comply with 2 or fewer of the requirements listed in (iv) below, or any mismanagement of hazardous waste when less than 500 gallons of hazardous waste are ~~{on site}~~ involved in the violation.
    - (iv) Failure to comply with:
      - (A) 40 CFR 262.34(a)(2) (accumulation date).
      - (B) 40 CFR 262.34(a)(3) (marked as hazardous waste).
      - (C) 40 CFR 265.171 (container condition).

- (D) 40 CFR 265.173 (container management).
- (E) 40 CFR 265.191 (tank system integrity assessment).
- (F) 40 CFR 265.196 (tank leak response).
- (G) Exceeding the applicable storage time limits.
- (H) Non-compliance with three or more 40 CFR 262.34 standards not listed above.

(c) Hazardous Waste disposal violations:

- (i) Major - Disposal of more than 150 gallons of hazardous waste, or the disposal of more than 3 gallons of acutely hazardous waste, or the disposal of any amount of hazardous waste or acutely hazardous waste that has a substantial impact on the local environment into which it was placed;
- (ii) Moderate - Disposal of 50 to 150 gallons of hazardous waste, or the disposal of 1 to 3 gallons of acutely hazardous waste;
- (iii) Minor - Disposal of less than 50 gallons of hazardous waste, or the disposal of less than 1 gallon of acutely hazardous waste.

(d) Hazardous Waste management violations:

- (i) Major - Failure to comply with hazardous waste management requirements when more than 2,000 gallons of hazardous waste, or more than 40 gallons of acutely hazardous waste, are involved in the violation;
- (ii) Moderate - Failure to comply with hazardous waste management requirements when 500 to 2,000 gallons of hazardous waste, or when 10 to 40 gallons of acutely hazardous waste, are involved in the violation ;
- (iii) Minor - Failure to comply with hazardous waste management requirements when less than 500 gallons of hazardous waste, or 10 gallons of acutely hazardous waste are involved in the violation.

(4) Magnitudes for select violations pertaining to Solid Waste may be determined as follows:

(a) Operating a solid waste disposal facility without a permit;

(i) Major - If the volume of material disposed of exceeds 400 cubic yards;

(ii) Moderate - If the volume of material disposed of is between 40 and 400 cubic yards;

(iii) Minor - If the volume of materials disposed of is less than 40 cubic yards.

(iv) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(Statutory Authority: ORS Chapter 468)



# NOTICE OF PROPOSED RULEMAKING HEARING

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

**AGENCY:** Department of Environmental Quality, Enforcement Section

The above named agency gives notice of hearing.

**HEARING TO BE HELD:**

**DATE:**

**TIME:**

**LOCATION:**

Jan. 6, 1994

1:30 p.m.

Department of Environmental Quality  
811 SW Sixth Avenue  
Portland Oregon  
Conference Room 3A

Hearings Officer:

Melinda Holt

Pursuant to the Statutory Authority of ORS Chapter 468, and SB 86, 1993 Legislature, the following action is proposed:

**ADOPT:**

**AMEND:** OAR 340-12-040, OAR 340-12-041, OAR 340-12-045,  
OAR 340-12-050, OAR 340-12-065, OAR 340-12-069, and  
OAR 340-12-090.

**REPEAL:**

Prior Notice Given; Hearing Requested by Interested persons

No Prior Notice Given

**SUMMARY:**

- OAR 340-12-040 is proposed to be amended to include additional exceptions to the five day advance warning notice (Notice of Permit Violation or NPV) in order to conform with SB 86, 1993 Legislature which amended ORS 468.126.
- OAR 340-12-041 is proposed to be amended to conform the issuance of a NPV by conforming the person(s) who can issue a NPV to the current Department organizational structure.
- OAR 340-12-045 is proposed to be amended in three areas:

(2) Authorizes the Department to use the U.S. EPA computer model BEN to determine the economic benefits received by a violator through avoided or delayed compliance;

(3) Authorizes the Department to use the U.S. EPA computer model ABEL to assist in determining the ability of a violator to pay a civil penalty the Department has assessed.

- OAR 340-12-050, 340-12-065 and 340-12-068 are proposed to be amended to include additional or revised classifications of violations.
- OAR 340-12-090 is proposed to be amended to include additional selected magnitude determinations.

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments received by January 10, 1994. 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:** Enforcement Section  
811 S. W. 6th Avenue  
Portland, Oregon 97204

**ATTN:** Ed Druback

**PHONE:** 229-5151 or Toll Free 1-800-452-4011

Ed Druback                      11/15/93  
Signature                                      Date

# **A CHANCE TO COMMENT ON...**

## **Enforcement Procedures and Civil Penalty Rules**

Date Issued:	12/1/93
Public Hearings:	1/6/94
Comments Due:	1/10/94

**WHO IS  
AFFECTED:**

Persons who violate Oregon's environmental statutes, rules, permits or Department orders and who are thereby subject to civil enforcement actions by the Department or the Environmental Quality Commission.

**WHAT IS  
PROPOSED:**

DEQ proposes to amend Chapter 340, Division 12 dealing with civil enforcement procedures and civil penalty assessments.

**WHAT ARE THE  
HIGHLIGHTS:**

- Implements amendments to ORS 468.126 by expanding the number of exceptions to violators on air, water and solid waste permits from receiving a five day warning notice (Notice of Permit Violation).
- Authorizes the Department to use the U.S. Environmental Protection Agency's BEN computer model to determine the economic benefits received by a violator through avoided or delayed compliance.
- Authorizes the Department to use the U.S. Environmental Protection Agency's ABEL computer model to assist in determining a violator's ability to pay a civil penalty.
- Adds additional selected magnitude determinations.
- Amends some classification of violations and adds additional classifications.



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:

January 6, 1994  
1:30 p.m.

at: Department of Environmental Quality  
811 S.W. Sixth Avenue  
Portland, OR 97204  
Conference Room 3A

Written comments must be received by 5:00 p.m. on January 10, 1994 at the following address:

Department of Environmental Quality  
Enforcement Section  
811 S. W. 6th Avenue  
Portland, Oregon, 97204

A copy of the proposed rule revisions may be reviewed at the above address. A copy may be obtained from the Department by calling Ed Druback of the Department's Enforcement Section at 229-5151 or calling toll free at 1-800-452-4011 extension 5151.

**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.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Enforcement Procedures and Civil Penalty Rules

## 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), Chapter 340, Division 12, under authority of Oregon Revised Statutes (ORS) 468.020, 468.996 and 459.995. ORS 468.020 requires the Environmental Quality Commission (EQC) to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the EQC.

Senate Bill 86, 67<sup>th</sup> Oregon Legislative Assembly - 1993 Regular Session amends the provisions of ORS 468.126 concerning when advance notice of a civil penalty assessment shall be given by the Department.

2. Need for the Rule

The rule is needed to:

- (1) Conform existing rules with recently enacted legislation;
- (2) Conform existing rules with the reorganized Department structure; and
- (3) Provide greater clarity on existing rules.

3. Principal Documents Relied Upon in this Rulemaking

- Senate Bill 86, 67<sup>th</sup> Oregon Legislative Assembly - 1993 Regular Session
- ORS Chapters 183, 468, 468A, 468B and 459
- OAR Chapter 340, Division 12
- October 15, 1993 letter from Gerald A. Emison, US EPA Region 10 Acting Regional Administrator to Fred Hansen, DEQ Director regarding air program permits and advance notice.
- September 16, 1993 letter from Michael F. Gearheard, US EPA Region 10 Chief of the Waste Management Branch to Stephanie Hallock, DEQ Hazardous and Solid Waste Administrator regarding solid waste permits and advance notice.

All documents referenced above are available for review at the Department of Environmental Quality (DEQ), Enforcement Section, 10<sup>th</sup> Floor, 811 SW Sixth Avenue, Portland, Oregon.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Proposed Enforcement Rule Amendments

**Fiscal and Economic Impact Statement**

**Introduction**

The proposed rules are amendments to the Department's current enforcement rules that have been considered on two occasions by the Department's Enforcement Advisory Committee. The rules were previously amended in July 1992. The fiscal and economic impact statement prepared at that time and the prior 1990 fiscal and economic impact statement generally still apply. The current amendments have the following fiscal and economic impacts:

**Potential Costs of the Proposed Amendments**

The proposed amendments will have no significant fiscal or economic impact on the general public, small businesses, large businesses, local governments or state agencies unless the entity or person is issued a Notice of Violation and Civil Penalty Assessment, as defined in the rules, for a violation of state environmental laws or rules. Significant adverse fiscal and economic impact may result from the assessment and imposition of civil penalties in accordance with these rules.

The specific adverse fiscal and economic effects to violators that may result from these proposed revisions to current enforcement rules include:

1. Implementing the legislature's amendments to Oregon Revised Statute 468.126 may result in some violators on certain air, water and solid waste permits being assessed civil penalties prior to receiving a five day warning notice (Notice of Permit Violation).
2. Implementing the use of the U.S. Environmental Protection Agency's (EPA) BEN computer model for calculating the economic benefit received through noncompliance or delayed compliance with environmental laws or regulations may result in larger civil penalty assessments.

3. Implementing amendments to the classifications of certain violations could subject a violator to a large civil penalty assessment if the violation is classified as a Class I violation.

#### **Neutral Effects of the Proposed Amendments**

Some of the proposed amendments will have no fiscal or economic impact on violators of state environmental laws or rules. Implementing additional specific magnitude determinations should have no fiscal or economic effect. Magnitude determinations made by the Department in the absence of magnitudes specifically set forth in the rules are made by comparison to past magnitude determinations. Specific magnitudes included in these rule amendments have been determined similarly.

#### **Potential Benefits of the Proposed Amendments**

Implementing the U.S. EPA ABEL computer model to assist the Department in determining the ability for a violator to both come into compliance and pay a civil penalty assessment may have a fiscal and economic benefit for some violators. Civil penalties are currently assessed on a gravity basis, without prior consideration of a violator's economic condition. Therefore, if both a large company with substantial resources and a small company or individual with limited resources commit an identical violation, the initial civil penalty would be the same in both cases. By uniformly considering a violator's ability to pay a violator with limited resources would be more likely to have a lowered civil penalty based on ability to pay.



State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Proposed Enforcement Rule Amendments

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The purposes of the proposed rules include:

- (a) Implementing in appropriate cases the U.S. Environmental Protection Agency's computer models for calculating the economic benefit for delayed or avoided compliance;
- (b) Adding selected magnitude categories to the existing selected magnitude determinations;
- (c) Adding exceptions to the Notice of Permit Violation (NPV) five day notice requirement as set forth in amended ORS 468.126; and
- (d) revision of some of the current enforcement rules.

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 \_\_\_ (if no, explain):

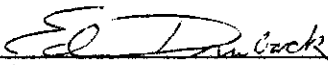
c. If no, apply the following criteria to the proposed rules.

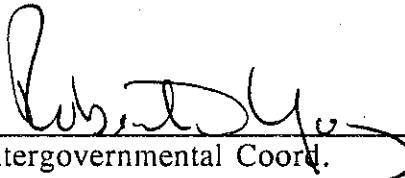
The proposed rules are not considered actions or programs affecting land use because they are not specifically referenced in the statewide planning goals, nor are they reasonably expected to have significant effects on either:

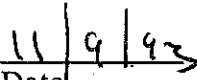
- a. resources, objectives or areas identified in the statewide planning goals, or
- b. present or future land uses identified in acknowledged comprehensive plans.

The criteria for this determination are contained in the DEQ SAC Program, approved by the Environmental Quality Commission on August 10, 1990, and certified by the Land Conservation and Development Commission on December 13, 1990. The criteria appear in Section III.2, at pages 21 to 22 of the SAC Program document.

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

  
\_\_\_\_\_  
Intergovernmental Coord.

  
\_\_\_\_\_  
Date

State of Oregon  
Department of Environmental Quality

Memorandum

Date: January 28, 1994

**To:** Environmental Quality Commission  
**From:** Melinda Holt  
**Subject:** Presiding Officer's Report for Rulemaking Hearing  
Hearing Date and Time: January 6, 1994, beginning at 1:30 p.m.  
Hearing Location: 811 S.W. 5th Avenue  
Portland, Oregon  
Room 3A

Title of Proposal: Enforcement Rule Amendments to Oregon Administrative Rules, Chapter 340, Division 12

The rulemaking hearing on the above titled proposal was convened at 2:05 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.

Eight people were in attendance, two people signed up to give testimony.

Prior to receiving testimony, Ed Druback, 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:

**Ed Martiszus**, who is a registered nurse, expressed his concern that while the changes to the rules addressed the economic benefit gained by individuals or corporations from environmental violations, the changes did not take into account the economic impact such violations may have on ecosystems, such as ground waters and landfills, which may be discovered years after a violation has occurred. He also indicated that the rules did not account for long-term health effects to humans and the economic impact such violations may have on the lives of individuals who may be exposed to environmental pollution by corporations. These individuals do not share in any corporate decision-making or profits, yet they are expected to shoulder the burden of health care bills which ultimately may have been caused by lax enforcement of the laws. He views the rule changes relating to economic benefit as an attempt by administrative

Memo To: Environmental Quality Commission  
January 28, 1994  
Presiding Officer's Report on  
January 6, 1994 Rulemaking Hearing  
Page 2

law to take away people's human rights to be free from being poisoned in their own environment.

Mr. Martiszus also discussed the potential liability for corporations and officers of the state which allow certain segments of the population, such as Native Americans, to be exposed to pollution for the economic benefit of the corporations who commit such violations. He believes that the courts will eventually be tied up with expensive litigation, brought directly against state and corporate officers under the responsible corporate executive theory of law, for allowing these segments of society to be exposed to pollution created by corporations.

He also expressed concern that decisions regarding economic benefit were being made using computer models such as Ben and Able, which quickly become obsolete as new factors come into play that weren't considered when the model was created.

**Tom McCue**, Environmental Safety Manager of Wacker Siltronic Corporation, expressed his concern that the 5-day warning notice previously given to most air permittees, was being eliminated. He believes that the 5-day notice has been extremely successful in Oregon, as it precipitates immediate results, either with quick correction of the problem, or a compliance plan for correction. It is in the interest of the State of Oregon to preserve the 5-day advance notice.

He asked that the Department review the proposed changes in light of the authorizing language in Senate Bill 86 to assure itself that it is the intent of Senate Bill 86 to apply this language so broadly, and to assure that such changes meet the needs of the Department's enforcement program.

There was no further testimony and the hearing was closed at 2:25 p.m.

## List of Written Comments Received

- 1 Mr. Dave Leonard, P.E.  
Director of Public Works  
Douglas County  
Department of Public Works  
Roseburg, Oregon
- 2 Mr. Thomas C. McCue  
Environmental and Safety Manager  
Wacker Siltronic Corporation  
Portland, Oregon
- 3 Mr. James M. Whitty  
Legislative Counsel  
Associated Oregon Industries  
Salem, Oregon
- 4 Mr. Douglas S. Morrison  
Environmental Counsel  
Northwest Pulp and Paper Association  
Bellevue, Washington
- 5 Mr. David S. Nelson  
Executive Secretary  
Oregon Seed Council  
Salem, Oregon
- 6 Mr. James VanLeeuwen  
Chairman  
Oregon Orchardgrass Seed Producers Commission  
Salem, Oregon
- 7 Mr. Donald A. Haagensen for  
Chemical Waste Management of the Northwest, Inc. and  
Western Compliance Services, Inc.  
Portland, Oregon

## Department's Evaluation of Public Comment

**ISSUE: Exceptions to the Notice of Permit Violation Process:**

**COMMENT:** Four commenters (# 1, 2, 3, 7) expressed concern over the consequences of including additional exemptions to the Notice of Permit Violation (NPV) in procedure OAR 340-12-040(2), and encouraged the Department to educate first and enforce second. Additionally, the commenters were highly supportive of the NPV and the manner in which it achieved the desired results. Two commenters (# 3, 7) proposed an amendment to OAR 340-12-045 to encourage prompt correction of permit violations.

**RESPONSE:** The Department agrees that the NPV procedure has worked well in achieving compliance without the necessity of resorting to the imposition of a civil penalty. However, the proposed amendments conform the Department's rules with newly amended ORS 468.126. The Department also agrees that there should be recognition of prompt correction of permit violations and is therefore proposing the addition of language to OAR 340-12-045 similar to that proposed by commenters. Hazardous Waste permit holders have not been subject to the NPV. The Department believes that the proposed language should apply only to those persons formerly subject to the NPV, but who are now exempted due to the statutory change.

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**ISSUE: Use of EPA's BEN model for computing Economic Benefit**

**COMMENT:** One commenter (# 4) expressed opposition to the proposed language in OAR 340-12-045(1)(c)(F)(iii) and recommended deletion in its entirety. The reasons cited included that the BEN computer model had not been subject to federal public notice and comment, that the model's weighted average cost of capital was in error, that the model was inflexible and that changes could not be made without further rulemaking. Another commenter (# 3) proposed a minor modification to the language.

**RESPONSE:** The Oregon Department of Justice has advised the Department that since the State had subjected the model to public notice and comment, the Department's use of the model would be independent from where the model stood on a Federal level. The commenter's concern about the model's weighted average cost of capital and the inflexibility of the model is alleviated by language in the proposed rule by allowing the Respondent to demonstrate that this figure does not apply to that particular Respondent, something that is not recognized in the Federal application of the model. With respect to changes in the model, the Department of Justice has advised the Department that mechanical updates, such as a change in the inflation rate, which are based on specific criteria (for the inflation rate, the rate is determined by a ten year floating average of the Cost of Plant index published by Chemical Engineering magazine) would not be considered a delegation needing additional rule making. The Attorney General's office

however has advised the Department to make two changes to the proposed rule to alleviate problems with structural changes in the model and address some of the concerns of the commenter.

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**ISSUE: Use of EPA's ABEL model for Computing Ability to Pay a Civil Penalty**

**COMMENT:** One commenter (# 4) expressed opposition to the proposed language in OAR 340-12-045(3)(b) and recommended deletion in its entirety. The reason cited was that the ABEL computer model had not under gone federal notice and public comment.

**RESPONSE:** The Department of Justice has advised the Department that since the State had subjected the model to public notice and comment, the Department's use of the model would be independent from where the model stood on a Federal level.

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**ISSUE: Air Quality: Class of Violation for Record Keeping required by Permit, Rule or Order**

**COMMENT:** One commenter (# 3) expressed concern that a "scrivener's error" may be a Class One violation if the language proposed in OAR 340-12-050(1)(h) concerning record keeping required by a permit, rule or order was adopted.

**RESPONSE:** The Department agrees that a "scrivener's error" should not be raised to the level of a Class One violation. To clarify the Department's intent, record keeping has been deleted from the proposed 340-12-050(1)(h) and included in a separate classification so that only "systematic failure to perform record keeping required by a permit, rule or order" will be considered a Class One violation. "Systematic" is defined in OAR 340-12-030(19) as a "documented violation which occurs on a regular basis."

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**ISSUE: Air Quality: Class of Violation for Failure to File a Timely Federal Operating Permit**

**COMMENT:** One commenter (# 3) expressed that "failure to file a timely application for a Federal Operating Permit pursuant to OAR 340-28-2120" should be classified as a Class Two violation and not a Class One violation. The reasons included making the violation similar in Class to failure to file for an Air Contaminant Discharge Permit and an expression that a significant amount of time transpires before a Class One violation would come into effect.

RESPONSE: The Department does not agree with the recommendation. The Air Quality Division's Industrial Source Advisory Committee supports the inclusion of this violation as a Class One violation. The sources subject to filing a Federal Operating Permit have been identified by the Department. These sources have, and will continue to receive, information about the permit and the date their application is due. Due to the Department's commitment to the U.S. EPA that one third of the sources in Oregon will be permitted in each of the next three years, timely permit applications are necessary for meeting the terms of the federal delegation of the Title V program.

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ISSUE: **Air Quality: Use of the Phrase "or allowing" in Field and Stack Burning Classification of Violations**

COMMENT: Two commenters (# 5, 6) expressed concern with the existing language in OAR 340-12-050(u) and (v). The concern was that the use of "or allowing" in these rules could place a field or stack burner in jeopardy of a civil penalty for an "act of God."

RESPONSE: The Department does not agree with the recommendation. Initially, the Department believes that this concern is better directed to the regulation that prohibits the causing or allowing of field or stack burning without a permit (OAR 340-26-010(2)) or the regulation that prohibits causing or allowing open field or stack or pile burning within 1/4 mile of either side of any Interstate freeway (OAR 340-26-010(7)). In classifying violations, the actual language of the violation is used whenever possible. The Department sees no benefit in making the "allowing" of one of these two violations subject to a lower potential civil penalty than the "causing" of the violation.

- - - - -

ISSUE: **Air Quality: Addition of three Proposed Class One Violations for Field, Stack or Propane Burning**

COMMENT: Two commenters (# 5, 6) expressed opposition to the inclusion of the proposed language in OAR 340-12-050(1)(bb), (cc) and (dd) and recommended deletion of all three in their entirety.

RESPONSE: The Department agrees with the commenters with respect to (cc) and (dd) and has withdrawn the proposed amendments. With respect to (bb) the Department believes that sustained open flame resulting from propane flaming in the safety buffer of an Interstate Highway is of sufficient gravity to be included as a Class One violation. The Department appreciates the efforts undertaken by the commenter (# 5) on working with the Department on defining "sustained open flame" for the purposes of enforcing this violation.



**ISSUE: Hazardous Waste: Proposal for Class Three Violations**

**COMMENT:** One commenter (# 7) expressed a desire to modify existing language contained in OAR 340-12-068(1) and proposed a number of additions to OAR 340-12-068 by the inclusion of eight Class Three violations for hazardous waste.

**RESPONSE:** Since the development of the classification of violations procedure in 1989, hazardous waste violations have been either set forth specifically as Class One violations, or if not specifically classed, were Class Two violations. The Department believes this system has worked well. Additionally, as this is a federally delegated program, the Department must look to the EPA for guidance in the determination of the class of violations. EPA mainly recognizes Class One and High Priority Violators in their hazardous waste violation classification scheme with just a few Class Two violations. EPA particularly does not believe in less than a Class One violation when the violations are committed by a permit holder. The Department is on a schedule to receive full delegation of the hazardous waste program from EPA. The Department believes continuing with the current classification scheme is necessary in this process so as not to give the impression that the Department is weakening hazardous waste enforcement through lowering a violation's class.

**340-12-045(1)(c)(A)(xiv)**

Recommended

A permittee, who would have received a Notice of Permit Violation, but instead received a civil penalty or Department Order because of the application of OAR 340-12-040 (2)(d),(e),(f), or (g) shall not have the violation(s) cited in the former action counted as a prior significant action, if the permittee fully complied with the provisions of any compliance order contained in the former action.

Hearing Proposal

None

Reason

The addition of this provision recognizes and encourages full and immediate compliance by a permittee for violations of a permit condition.

**340-12-045(1)(c)(F)(iii)**

Recommended

In determining the economic benefit component of a civil penalty, the Department may use the U.S. Environmental Protection Agency's BEN computer model, as adjusted annually to reflect changes in marginal tax rates, inflation rate and discount rate. With respect to significant or substantial change in the model, the Department shall use the version of the model that the Department finds will most accurately calculate the economic benefit gained by Respondent's noncompliance. Upon request of the Respondent, the Department will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect that Respondent's actual circumstance.

Hearing Proposal

In determining the economic benefit component of a civil penalty, the Department may use the U.S. Environmental Protection Agency's BEN computer model, as adjusted annually to reflect changes in marginal tax rates, inflation rate and discount rate. The model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect that Respondent's actual circumstance.

Reason

Providing the Department with the alternative to use the version of the model that most accurately calculates a Respondent's economic benefit received through noncompliance allows the use of future updates of the model. By specifically stating that the Department will provide information about the use of the model, the Department will have to respond to requests from violators concerning the inputs made by the Department and how the model calculates the benefit received.

**340-12-045(3)(b)**

Recommended

In determining the Respondent's ability to pay a civil penalty, the Department may use the U.S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount. With respect to significant or substantial change in the model, the Department shall use the version of the model that the Department finds will most accurately calculate the Respondent's ability to pay a civil penalty. Upon request of the Respondent, the Department will provide Respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.

Hearing Proposal

In determining the Respondent's ability to pay a civil penalty, the Department may use the U.S. Environmental Protection Agency's ABEL computer model to determine a Respondent's ability to pay the full civil penalty amount.

Reason

The change is made for the same reason as listed above for the use of the BEN model.

**340-12-050(1)(h)**

Recommended

Failure to perform testing or monitoring required by a permit, rule or order;

Systematic failure to keep records required by a permit, rule or order;

Hearing Proposal

Failure to perform testing, monitoring or record keeping required by a permit rule or order;

Reason

Eliminates minor deviations and scrivener's errors from being considered a Class One violation.

**340-12-050(1)(cc) and (dd)**

Recommended

do not adopt

Hearing Proposal

(cc) Causing or allowing the improper registration of grass seed or cereal grain fields;

(dd) Causing or allowing the open field burning, stack burning or propane flaming of more than one grass seed or cereal grain crop, stubble or residue under one burn permit;

Reason

An overly broad interpretation could be made of what constituted a violation of the proposed (cc). Proposed (dd) was similarly overly broad and appeared to classify as a violation some common permitted activities.

**340-12-067(2)(a) and (b)**

Recommended Deletion of 340-12-067(2)(a) and (b).

Hearing Proposal 340-12-067(2)(a) and (b) were inadvertently left in the rule package that was mailed.

Reason An error in the 1992 rule amendments to Division 12 led to these two violations being classified as Class One (OAR 340-12-067(1)(k) and (l) and Class Two (OAR 340-12-067(2)(a) and (b). The intent was that these violations be classified as Class One violations. By deleting these two classifications the violations will be Class One violations.

ENVIRONMENTAL ENFORCEMENT ADVISORY COMMITTEE

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## Advisory Committee Involvement

Two meetings of the Environmental Enforcement Advisory Committee were held. The first was prior to the work session with the EQC, and was held on August 16, 1993. A follow up meeting was held on November 8, 1993 to review the Department's proposed rule package in detail.

On August 16, 1993 the Enforcement Advisory Committee met in Portland to review the Department's planned work session with the EQC concerning the Department's use of EPA's BEN computer model to calculate the economic benefit gained by noncompliance with environmental regulations. The committee was also presented with an overview of the ABEL computer model to calculate whether a violator has the ability to pay a civil penalty assessment. Additionally, the committee was given a status report on the recent adoption of Environmental Crimes legislation.

After the presentation regarding the functioning of the BEN and ABEL computer models the committee discussed whether the models should be set forth in rule, or whether the existing rules concerning economic benefit and ability to pay were sufficient to use the models without further rulemaking. The committee recommended that the models be placed in rule form.

On September 9, 1993, the Enforcement Section had a work session with the EQC showing how the Department was proceeding with the calculation of the economic benefit gained through noncompliance and informed the EQC that the Enforcement Section would be coming forward with rulemaking due to the advisory committee's recommendation and also due to legislative changes in the Notice of Permit Violation (NPV) process.

On November 8, 1993, the advisory committee met in Portland to review the rules that the Department was proposing to be sent out for public comment. Significant discussion occurred concerning the proposed exceptions to the NPV procedure and wording was attempted to be worked out which would provide some of the same incentives to permit holders in the absence of the NPV. The wording of the presumptions contained in the use of the BEN computer model was also discussed in detail. The committee recommended the deletion of some of the language contained in the rule authorizing the use of the BEN model which was acceptable to the Department. The committee also recommended wording changes to a number of the other proposed amendments. The committee's recommendations to all of these changes were accepted by the Department. The rule package sent out for public comment reflected the recommendations of the committee except for the proposal changes to provide incentives for permit holders to return to compliance expeditiously.

The Department continued to work with the committee members concerned with the NPV procedure. During the public comment on the proposed rules, two committee members came forward with a proposal which the Department will be recommending to the EQC be adopted which will provide an incentive for permit holders to comply with the terms of their permit in an expeditious manner.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Enforcement Procedures and Civil Penalty Rules

## Rule Implementation Plan

### **Summary of the Proposed Rule**

The Department proposes to amend Chapter 340, Division 12 dealing with civil enforcement procedures and civil penalty assessments. Specifically the proposed rule amendments:

- Implements rule amendments necessitated by 1993 legislative amendments to ORS 468.126 by expanding the number of exceptions to violators on air, water and solid waste permits from receiving a five day warning notice (Notice of Permit Violation).
- Authorizes the Department to use the U.S. Environmental Protection Agency's BEN computer model to determine the economic benefits received by a violator through avoided or delayed compliance.
- Authorizes the Department to use the U.S. Environmental Protection Agency's ABEL computer model to assist in determining a violator's ability to pay a civil penalty.
- Adds additional selected magnitude determinations.
- Amends some classification of violations and adds additional classifications.

The rules affect persons who violate Oregon's environmental statutes, rules, permits or Department orders and who are thereby subject to civil enforcement actions by the Department or the Environmental Quality Commission.

### **Proposed Effective Date of the Rule**

Upon filing with and certification by the Secretary of State.

### **Proposal for Notification of Affected Persons**

As the rules affect future violators of the Oregon's environmental statutes, rules, permits or Department orders no additional notification is contemplated.

### **Proposed Implementing Actions**

The proposed rules will be implemented by the Department's Enforcement Section in the process of determining the appropriate enforcement action to pursue for a violation of Oregon's environmental statutes, rules, permits or Department orders.

### **Proposed Training/Assistance Actions**

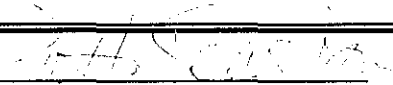
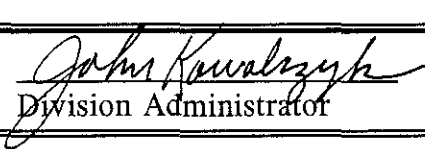
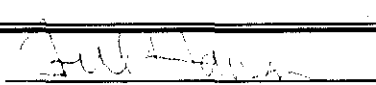
The Department's Enforcement Section has already received the appropriate training required for implementation of the proposed rules.



# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item G  
March 11, 1994 Meeting

<b>Title:</b> Air Quality State Implementation Plan (SIP): Adoption of Amendments to Lane Regional Air Pollution Authority (LRAPA) Rules as a revision to the Oregon SIP		
<b>Summary:</b> <p>These amendments have been adopted by the Lane Regional Air Pollution Authority Board of Directors and now must be submitted to EPA as SIP revisions. This is an administrative action by DEQ, as LRAPA cannot submit a SIP revision directly to EPA without EQC approval.</p> <p>The amendments affect LRAPA rules related to industrial permit fees, home wood heating curtailment enforcement, open burning, and New Source Review. The amendments are intended to make the rules affecting air pollution sources in Lane County consistent with State of Oregon rules and enable LRAPA to comply with requirements of the 1990 Clean Air Act amendments.</p>		
<b>Department Recommendation:</b> It is recommended that the Commission adopt these amendments to the Oregon SIP LRAPA rules as presented in Attachments A1 through A5 of this report. These rules are currently being implemented and enforced in Lane County. These amendments will be submitted to EPA upon adoption by the EQC.		
 Report Author	 Division Administrator	 Director


February 22, 1994

†Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: February 22, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item G, March 11, 1994, EQC Meeting

**Background**

The Clean Air Act requires the development of a State Implementation Plan (SIP) providing for attainment and maintenance of national ambient air quality standards. The Lane Regional Air Pollution Authority (LRAPA) is responsible for most air pollution sources in Lane County, and most of LRAPA's rules are part of the SIP. LRAPA is the only remaining regional air pollution authority in Oregon, and exercises the same air pollution control functions vested in the Commission and Department, subject to Commission and Department overview. After receiving authorization from the Department to act as hearings officer for the Environmental Quality Commission (EQC), LRAPA conducts a joint EQC/LRAPA rulemaking hearing. Upon adoption, these revisions are submitted with necessary documentation to the Department, for submittal to the Commission as a SIP revision. This agenda item is a proposed adoption as a SIP revision of new LRAPA rules that followed this procedure.

Five amendments to LRAPA's air quality rules are presented in this package for EQC adoption. Each of these amendments was submitted to the Air Quality Division for hearing authorization pursuant to ORS 468A.035. Hearings were held by LRAPA, as joint LRAPA/EQC hearings, on each of the five amendments. LRAPA has complied with hearing notice requirements, including publication in the Secretary of State's Bulletin and in newspapers of general circulation. Public Hearings were held on November 12, 1991; September 8, 1992; April 13, 1993; and July 13, 1993 with Donald R. Arkell, Director, LRAPA serving as Presiding Officer. The Presiding Officer's Reports (Attachment C) summarize the oral testimony presented at the hearing. A copy of written comments received is available upon request from LRAPA.

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<sup>†</sup>Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

Memo To: Environmental Quality Commission  
Agenda Item G  
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The following sections summarize the issues that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

### **Issue this Proposed Rulemaking Action is Intended to Address**

DEQ has been on a vigorous schedule to update its air quality rules to comply with and implement various requirements of the 1990 Clean Air Act Amendments and to maintain a current State Implementation Plan. LRAPA's rules are a component of Oregon's State Implementation Plan. LRAPA must update its air quality rules to be consistent with State rules and the EQC must adopt these as a SIP revision to maintain an up-to-date Oregon SIP.

These LRAPA rule amendments simplify enforcement procedures for home wood heating, increase permit fees, update New Source Review, and place additional restrictions on outdoor open burning. The EQC has taken action on equivalent State rules between 1991 and 1993.

### **Relationship to Federal and Adjacent State Rules**

These LRAPA rule amendments are at least as stringent as DEQ rules in effect at the time of LRAPA adoption of these rule amendments. This determination was made by the Air Quality Division in the case of each amendment prior to granting hearing authorization. The basic rules are part of the federally approved SIP; therefore, the SIP must be revised to reflect amendments to these rules.

### **Authority to Address the Issue**

Oregon Revised Statutes (ORS), Chapter 468A.135 defines the authority of the Commission with respect to regional authorities. ORS 468A.035 grants authority to the Department to develop comprehensive plans. Oregon Administrative Rules (OAR) 340-20-047 is the rule through which the SIP is revised.

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**Process for Development of the Rulemaking Proposal (including Advisory Committee and alternatives considered)**

LRAPA works independently with its own advisory committees in drafting rules for Lane County. Of these five rule amendments, LRAPA utilized an advisory committee to develop the amendments to Title 47 -- Outdoor Open Burning. The remaining rule amendments are procedural in nature and LRAPA informally involved affected parties in the development stages.

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

Five LRAPA rule amendments are including in this package:

**Title 16: Wood Heating Curtailment Enforcement**

This rule replaces an identical temporary rule adopted November 10, 1992. The rule establishes simpler enforcement procedures than are currently available through existing industrial enforcement rules, to account for a higher expected volume of violations on "no burn" days.

**Title 34: Permit Fees**

This rule amendment doubles air contaminant source permit fees to provide funding for a staff position to implement Title V requirements.

**Title 34: Permit Fees -- coffee roasters**

This rule amendment adds a category for coffee roasters, distinguishing coffee roasters from the general category of "minor sources". The reduced fee acknowledges the small size of coffee roasting operations.

**Title 38: New Source Review**

This rule amendment updates LRAPA's New Source Review rules to meet the requirements of the 1990 Clean Air Act.

**Title 47: Outdoor Open Burning**

This rule amendment was in response to an increasing number of citizen complaints about neighborhood backyard burning. It prohibits open burning year-round in the urban growth boundary on half-acre or smaller parcels, thereby broadening open burning restrictions outside of the city limits.

### **Summary of Significant Public Comment and Changes Proposed in Response**

DEQ submitted comments to LRAPA on Title 47, Outdoor Open Burning. Those comments were addressed by changes in the rule amendments and discussions with DEQ staff. EPA submitted comments to LRAPA on Title 38, New Source Review, which were incorporated into the rule amendments. LRAPA received numerous public comments on Title 47, Outdoor Open Burning; the vast majority were in full support of increased restrictions on outdoor open burning.

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

LRAPA is implementing pertinent rules through its ongoing Air Contaminant Discharge Permit Program.

### **Recommendation for Commission Action**

It is recommended that the Commission adopt, as revisions to the State Implementation Plan, the rule amendments regarding LRAPA Titles 16, 34, 34 (coffee roasters), 38, and 47 as presented in Attachment A of the Department Staff Report.

### **Attachments**

- A. Rule Amendments Proposed for Adoption
- B. Rulemaking Statements
  - 1. Statement of Need
  - 2. Fiscal and Economic Impact Statement
  - 3. Land Use Evaluation Statement
- C. Presiding Officer's Report on Public Hearings
- D. Minutes from LRAPA Board of Directors Meetings

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Reference Documents

Written Comments Received (listed in Attachment D)

Approved:

Section:

*Andrew Ginsburg, Acting*

Division:

*John Kowalzyk*

Report Prepared By: Patti Seastrom

Phone: 229-5143

Date Prepared: February 22, 1994

(PS)  
(311.RPT)  
(2-9-94)

# ***Attachment A***

## ***LRAPA Rule Amendments Proposed for Adoption as Revisions to the SIP***

# ***Title 16***



LANE REGIONAL AIR POLLUTION AUTHORITY  
TITLE 16  
Home Wood Heating Curtailment Program Enforcement

Section 16-001 Purpose

Lane County, Eugene and Springfield have enacted ordinances prohibiting the use of solid-fuel space heating devices under certain circumstances. Lane County enacted Ordinance Number 9-90 [Lane Code ("LC") 9.120 - 9.160], Eugene enacted Ordinance Number 19731 [Eugene Code ("EC") 6.250 - 6.270], and Springfield enacted Ordinance Number 5546 [Springfield Code ("SC") 4-8-4]. Each municipality also either delegated enforcement of the ordinances to LRAPA [L.C. § 9.145; Springfield Code § 4-8-4(4)], or authorized the City Manager to delegate enforcement to LRAPA (Eugene Code § 6.265). By Administrative Order No. 44-92-10, the Eugene City Manager has delegated authority to LRAPA to administer the ordinance. Thus, each jurisdiction has authorized LRAPA to enforce the solid-fuel space heating device ordinances. In addition, each jurisdiction has authorized LRAPA to use its own regulations and procedures to enforce the ordinances, and to impose penalties of \$50--\$500 for violations of the ordinances.

These regulations establish the procedures and penalties LRAPA will use to enforce those municipal codes. Except as expressly noted in this Title, these provisions shall provide the sole regulations for LRAPA's enforcement of the solid-fuel space heating provisions of the municipal codes.

Section 16-010 Definitions

Words and phrases used in this Title are defined as follows, unless the context requires otherwise:

1. "Director." The Director of the LRAPA and authorized deputies or officers.
2. "LRAPA." The Lane Regional Air Pollution Authority, a regional air quality control authority.
3. "Person." Any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character.
4. "Person in Charge of Property." An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property.

Section 16-100 Civil Penalty Schedule

In addition to any other penalty provided by law, LRAPA may assess, for violation of LC Section 9.135, EC Section 6.255, or SC Section 4-8-4(2), the following

amounts:

1. Class 1 violation - \$ 50
2. Class 2 violation - \$100
3. Class 3 violation - \$200
4. Class 4 violation - \$400

Section 16-110 Classification of Violations

1. Class 1 Violation. A violation by a person at a time when the person had no civil penalties under this Title 16 on his/her record during the previous 36 months.
2. Class 2 Violation. A violation by a person at a time when the person had only one civil penalty under this Title 16 on his/her record during the previous 36 months.
3. Class 3 Violation. A violation by a person at a time when the person had two civil penalties under this Title 16 on his/her record within the previous 36 months.
4. Class 4 Violation. A violation by a person at a time when the person had three or more civil penalties under this Title 16 on his/her record within the previous 36 months.
5. Penalties on Record. For purposes of this section, a person has a civil penalty on his or her record if the person has paid a civil penalty under this Title 16; LRAPA has entered a default order against the person for a violation of this Title 16; or a hearing official has entered an order against the person for violation of this Title 16 after a hearing.
6. Each day of violation is a separate offense, subject to penalty.

Section 16-120 Notice of Violation

1. A notice of violation may be issued, without any prior notice, whenever the Director has cause to believe that a violation of LC Section 9.135, EC Section 6.255, or SC Section 4-8-4(2) has occurred. The notice shall be served by certified mail or personal delivery at the address where the violation is alleged to have occurred.
2. If the notice contains an assessment of a civil penalty imposed pursuant to Section 16-100 of this Title, the notice shall also advise the person to whom the notice is directed that he or she may:
  - A. Waive any hearing on the matter and pay the civil penalty; or

- B. Waive any hearing on the matter, pay the civil penalty, and submit a written statement to be considered in mitigation of the violation; or
- C. Request a hearing on the matter, pursuant to Section 16-130 of this Title, to be conducted in the manner set forth in Section 16-140 of this Title.

The notice shall contain a statement that failure to comply with one of the options set forth above within 21 days of the date the notice of violation was mailed or served will result in the entry of an order of default and judgment based on the notice of violation.

- 3. No hearing or appeal rights shall be afforded if the notice of violation does not include the imposition of a penalty.

Section 16-130 Appeal of Civil Penalty

- 1. A person who has been served with a written notice of violation which includes the imposition of a civil penalty shall have 21 days from the date of mailing or personal delivery of the notice in which to file a written answer or an application for hearing.
- 2. In the answer, the person shall admit or deny all factual matters and shall affirmatively allege any and all affirmative claims or defenses the person may have and the reasoning in support thereof. Except for good cause shown:
  - A. Factual matters not controverted shall be presumed admitted;
  - B. Failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense;
  - C. New matters alleged in the answer shall be presumed to be denied unless admitted in a subsequent pleading or stipulation by LRAPA; and
  - D. Evidence shall not be taken on any issue not raised in the notice and the answer unless such issue is specifically determined by the hearings official to be within the scope of the proceeding.
- 3. In the absence of a timely answer, the Director, on behalf of LRAPA, may issue a default order and judgment, based upon a prima facie case made on the record, for the relief sought in the notice.
- 4. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. Informal settlement may be made by written agreement of the parties consenting to a fine or other form of intermediate sanction.

5. Upon a showing of good cause and general relevance, any party to a contested case shall be issued subpoenas to compel the attendance of witnesses and the production of books, records and documents.
  - A. Subpoenas may be issued by:
    - (1) A Hearings Officer; or
    - (2) LRAPA; or
    - (3) An attorney of record for the party requesting the subpoena.
  - B. Each subpoena authorized by this section shall be served personally upon the witness by the party or any person over 18 years of age.
  - C. Witnesses who are subpoenaed, other than parties or officers or employees of LRAPA, shall receive the same fees and mileage as in civil actions in the circuit court.
  - D. The party requesting the subpoena shall be responsible for serving the subpoena and tendering the fees and mileage to the witness.
  - E. A person present in a hearing room before a Hearings Officer during the conduct of a contested case hearing may be required, by order of the Hearings Officer, to testify in the same manner as if he or she were in attendance before the Hearings Officer upon a subpoena.
  - F. Upon a showing of good cause a Hearings Officer may modify or withdraw a subpoena.
  - G. Nothing in this section shall preclude informal arrangements for the production of witnesses or documents, or both.

Section 16-140 Conducting Contested Case Evidentiary Hearings

1. The contested case evidentiary hearing shall be conducted by and under the control of a Hearings Officer.
2. If the Hearings Officer has a potential conflict of interest as defined in ORS 244.020(4), that officer shall comply with the requirements of ORS Chapter 244 (e.g., ORS 244.120 and 244.130).
3. The hearing shall be conducted, subject to the discretion of the Hearings Officer, so as to include the following:
  - A. The staff report and evidence of the proponent in support of its action;
  - B. The statement and evidence of opponents;
  - C. Comments and questions;

- D. Any rebuttal evidence by proponents and opponents;
- E. Any closing arguments by parties.
- 4. The Hearings Officer shall have the right to question witnesses.
- 5. The hearing may be continued with recesses as determined by the Hearings Officer.
- 6. The Hearings Officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.
- 7. Exhibits shall be marked and maintained by LRAPA as part of the record of the proceeding.

Section 16-150 Evidentiary Rules

- 1. Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.
- 2. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
- 3. All offered evidence not objected to will be received by the Hearings Officer subject to the officer's power to exclude irrelevant, immaterial or unduly repetitious matter.
- 4. Evidence objected to may be received by the Hearings Officer. Rulings on its admissibility or exclusion, if not made at the hearing, shall be made on the record at or before the time a final order is issued.

Section 16-160 Final Orders

- 1. A final order shall be issued by the Hearings Officer, who may direct any party to prepare the final order.
- 2. Final orders on contested cases shall be in writing and shall include the following:
  - A. Rulings on admissibility of offered evidence when the rulings are not set forth in the record.
  - B. Findings of fact--those matters that are either agreed as fact or that, when disputed, are determined by the Hearings Officer on substantial evidence to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based.
  - C. Conclusion(s) of law--applications of the controlling law to the facts found and the legal results arising therefrom.

- D. Order--the action taken by LRAPA as a result of the facts found and the legal conclusions arising therefrom.

Section 16-170 Default Orders

1. When LRAPA has given a party an opportunity to request a hearing and the party fails to make a request within the specified time, or when LRAPA has set a specified time and place for a hearing and the party fails to appear at the specified time and place, the Director may enter a final order by default.
2. LRAPA may issue an order of default only after a prima facie case on the record has been made. The record may be made by either the two ways:
  - A. By the hearings officer at the time specified for the hearing; or
  - B. By the Director at a separate meeting convened by the Director.
3. The record shall be complete at the time of the notice at the time the default order is issued.
4. The record may consist of oral (transcribed, recorded or reported) or written evidence or a combination of oral and written evidence. When the record is made at the time the notice or order is issued, the LRAPA file may be designated as the record. In all cases, the record must contain substantial evidence to support the findings of fact.
5. When the Hearings Officer has set a specified time and place for a hearing in a matter in which only one party is before the Hearings Officer, and that party subsequently notifies LRAPA that the party will not appear at such specified time and place, the Hearings Officer may enter a default order, cancel the hearing and follow the procedure described in subsections 2 and 4 of this section.
6. Any default order shall be the final order of LRAPA.

# ***Title 34***

PROPOSED AMENDMENTS TO TABLE A  
NOVEMBER 12, 1991

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
1. Seed cleaning located in <del>[special control areas]</del> Air Quality Maintenance Areas commercial operations only (not elsewhere classified)	0723	[130] 260	[250] 500
2. <del>[Smoke houses with 5 or more employees]</del> RESERVED	[2013]	[130]	[175]
3. Flour and other grain mill products in <del>[special control area]</del> Air Quality Maintenance Areas			
(a) 10,000 or more tons per year	2041	[420] 840	[485] 970
(b) Less than 10,000 tons per year	2041	[330] 660	[210] 420
4. Cereal preparations in <del>[special control areas]</del> Air Quality Maintenance Areas	2043	[420] 840	[345] 690
5. Blended and prepared flour in <del>[special control areas]</del> Air Quality Maintenance Areas			
(a) 10,000 or more tons per year	2045	[420] 840	[345] 690
(b) Less than 10,000 tons per year	2045	[330] 660	[175] 350



**PROPOSED AMENDMENTS TO TABLE A**  
**NOVEMBER 12, 1991**

**AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE**

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
6. Prepared feeds for animals and fowl in [ <del>special control areas</del> ] <del>Air Quality Maintenance Areas</del>			
(a) 10,000 or more tons per year	2048	[420] 840	[485] 970
(b) Less than 10,000 tons per year	2048	[110] 220	[155] 310
7. Beet sugar manufacturing	2063	[550] 1,100	[2,400] 4,800
8. Rendering plant			
(a) 10,000 or more tons per year	2077	[670] 1,340	[825] 1,650
(b) Less than 10,000 tons per year	2077	[605] 1,210	[660] 1,320
9. Coffee roasting greater than 1 ton of coffee per year	2095	[265] 530	[320] 640
10. Sawmill and/or planing mill			
(a) 25,000 or more board feet per shift	2421	[165] 330	[310] 620
(b) Less than 25,000 board feet per shift	2421	[110] 220	[230] 460

PROPOSED AMENDMENTS TO TABLE A  
NOVEMBER 12, 1991

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
11. Hardwood mills	2426	[110] 220	[310] 620
12. Shake and shingle mills with air transfer systems	2429	[110] 220	[115] 230
13. Mill work [with 10 employees or more] (including structural wood members) 25,000 or more board feet per shift	2431 & 2439	[155] 310	[310] 620
14. Plywood manufacturing			
(a) [Greater than] 25,000 or more square feet per hour (3/8" basis)	2435 & 2436	[640] 1,280	[770] 1,540
(b) Less than 25,000 square feet per hour (3/8" basis)	2435 & 2436	[495] 990	[580] 1,160
15. Veneer manufacturing only (not elsewhere classified)	2435 & 2436	[110] 220	[310] 620
16. Wood preserving	2491	[650] 1,300	[580] 1,160
17. Particleboard manufacturing	2492	[725] 1,450	[1,040] 2,080
18. Hardboard manufacturing	[2499] 2493	[815] 1,630	[945] 1,890

PROPOSED AMENDMENTS TO TABLE A  
NOVEMBER 12, 1991

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
19. Battery separator manufacturing	[2499] 3069	[130] 260	[700] 1,400
20. Furniture and fixture manufacturing			
[ <del>(a) 100 or more employees</del> ] 25,000 or more board feet/shift	2511	[200] 400	[380] 760
[ <del>(b) 10 or more employees but less than 100 employees</del> ]			
21. Pulp mills, paper mills and paperboard mills	2611, 2621 & 2631	[1,550] 3,100	[4,040] 8,080
22. Building paper and building board mills	2661	[265] 530	[320] 640
23. Alkalies and chlorine manufacturing	2812	[450] 900	[835] 1,670
24. Calcium carbide manufacturing	2819	[485] 970	[835] 1,670
25. Nitric acid manufacturing	2819	[320] 640	[420] 840
26. Ammonia manufacturing	2819	[320] 640	[485] 970

**PROPOSED AMENDMENTS TO TABLE A**  
**NOVEMBER 12, 1991**

**AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE**

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
27. Industrial inorganic and organic chemicals manufacturing (not elsewhere classified)	2819 <del>2869</del>	[405] <del>810</del>	[580] <del>1,160</del>
28. Synthetic resin manufacturing	[2819] <del>2821</del>	[310] <del>620</del>	[460] <del>920</del>
29. Charcoal manufacturing	2861	[605] <del>1,210</del>	[1,340] <del>2,680</del>
30. <del>Pesticide</del> /Herbicide manufacturing	2879	[805] <del>1,610</del>	[4,180] <del>8,360</del>
31. Petroleum refining	2911	[1,605] <del>3,210</del>	[4,180] <del>8,360</del>
32. Asphalt production by distillation	2951	[330] <del>660</del>	[630] <del>1,260</del>
33. Asphalt blowing plants	2951	[320] <del>640</del>	[485] <del>970</del>
34. Asphalt concrete paving plants			
(a) Stationary	2951	[320] <del>640</del>	[380] <del>760</del>
(b) Portable	2951	[320] <del>640</del>	[485] <del>970</del>

**PROPOSED AMENDMENTS TO TABLE A**  
**NOVEMBER 12, 1991**

**AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE**

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
35. Asphalt felts [and] or coating	2952	[330] 660	[730] 1,460
36. Blending, compounding or refining of lubricating oils and greases and reprocessing of oils and solvents for fuel	2992	[285] 570	[450] 900
37. Glass container manufacturing	3221	[320] 640	[595] 1,190
38. Cement manufacturing	3241 & 3251	[1,035] 2,070	[3,065] 6,130
39. Redimix concrete	3271, 3272 & 3273	[110] 220	[155] 310
40. Lime manufacturing	3274	[485] 970	[320] 640
41. Gypsum products	3275	[255] 510	[345] 690
42. Rock crusher			
(a) Stationary	1429, 1442, 1446 & 3295	[285] 570	[380] 760
(b) Portable	1429, 1442, 1446 & 3295	[285] 570	[455] 910

PROPOSED AMENDMENTS TO TABLE A  
NOVEMBER 12, 1991

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
43. Steel works, rolling and finishing mills, electrometallurgical products	3312 & 3313	[815] 1,630	[835] 1,670
44. Incinerators	4853 & 7261		
[ <del>(a)</del> 1,000 pounds per hour and greater capacity]		[485]	[370]
[ <del>(b)</del> 40 pounds per hour to 1,000 pounds per hour capacity]		[130]	[195]
(a) 250 or more ton/day capacity or an off-site infectious waste incinerator		12,000	5,170
(b) 50 or more but less than 250 tons/day capacity		3,000	1,570
(c) 0.5 or more but less than 50 tons/day capacity		260	390
(d) crematoriums and pathological waste incinerators not elsewhere classified		260	390
(e) PCB and/or off-site hazardous waste incinerator		12,000	5,170

PROPOSED AMENDMENTS TO TABLE A  
NOVEMBER 12, 1991

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
45. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries (not elsewhere classified)	3321 & 3322 & 3324 & 3325		
(a) 3,500 or more tons per year production		[815] 1,630	[730] 1,460
(b) Less than 3,500 tons per year production	3325	[200] 400	[380] 760
46. Primary aluminum production	3334	[1,605] 3,210	[4,180] 8,360
47. Primary smelting of zirconium or hafnium or other ferrous or non-ferrous metals not elsewhere classified	3339	[8,040] 16,080	[4,180] 8,360
48. Primary smelting [or refining of ferrous and nonferrous metals (not elsewhere classified)] of silicon	3339	[870] 1,740	[1,960] 3,920
[ <del>(a) 2,000 or more tons per year production</del> ]			
[ <del>(b) Less than 2,000 tons per year production</del> ]		[165]	[700]
49. Secondary smelting and refining of nonferrous metals	3341	[385] 770	[485] 970
50. Nonferrous metal foundries (100 or more tons/year metal charged)	3361, 3362 & 3369	[110] 220	[195] 390

**PROPOSED AMENDMENTS TO TABLE A**  
**NOVEMBER 12, 1991**

**AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE**

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
51. Electroplating, polishing and anodizing [with 5 or more employees]	3471	[165] 330	[320] 640
52. Galvanizing and pipe coating--exclude all other activities	3479	[110] 220	[195] 390
53. Battery manufacturing	3691	[200] 400	[420] 840
54. Grain elevators--intermediate storage only, located in [special control areas] Air Quality Maintenance Areas			
(a) 20,000 or more tons per year	4221	[300] 600	[660] 1,320
(b) Less than 20,000 tons per year	4221	[165] 330	[320] 640
55. Commercial electric power generation or cogeneration			
(a) Solid fuel--[greater than] 25 MW or greater	4911	[6,490] 12,980	[4,235] 8,470
(b) Solid Fuel--less than 25 MW	4911	[3,890] 7,780	[2,090] 4,180
(c) Oil or gas fired	4911	[585] 1,170	[1,005] 2,010



PROPOSED AMENDMENTS TO TABLE A  
NOVEMBER 12, 1991

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
56. Gas production and/or manufacturing	4925	[615] 1,230	[485] 970
57. Grain elevators--terminal elevators primarily engaged in buying and/or marketing grain in [special control areas] Air Quality Maintenance Areas			
(a) 20,000 or more tons per year	5153	[815] 1,630	[835] 1,670
(b) Less than 20,000 tons per year	5153	[230] 460	[320] 640
58. Fuel burning equipment within the boundaries of [Eugene-Springfield] Air Quality Maintenance Areas (fees based on aggregate heat output for plant site)			
(a) Residual or distillate oil fired-- 250 million or more btu per hour (heat input)	4961	[265] 530	[320] 640
(b) Residual or distillate oil fired--5 or more but less than 250 million btu per hour (heat input)	4961	[220] 440	[230] 460
(c) Residual oil fired, less than 5 million btu per hour (heat input)	4961	[110] 220	[115] 230

PROPOSED AMENDMENTS TO TABLE A

NOVEMBER 12, 1991

## AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
59. Fuel burning equipment within the boundaries of [Eugene-Springfield] Air Quality Maintenance Areas (fees based on aggregate heat output for plant site)			
(a) Wood or coal fired--35 million or more btu per hour (heat input)	4961	[310] 620	[380] 760
(b) Wood or coal fired--less than 35 million btu per hour (heat input)	4961	[110] 220	[270] 540
60. Fuel burning equipment outside the boundaries of [Eugene-Springfield] Air Quality Maintenance Areas (fees based on aggregate heat output for plant site)			
(a) All wood, coal and oil fired--greater than 30 [ <del>10</del> <sup>41</sup> ] million btu per hour (heat input)	4961	[320] 640	[345] 690
61. New sources not listed herein which would emit 10 or more tons per year of the aggregate of any air contaminants, including but not limited to: particulates, SO <sub>x</sub> , NO <sub>x</sub> or hydrocarbons, if the source were to operate uncontrolled			
(a) High cost		[2,600] 5,200	[2,600] 5,200
(b) Medium cost		[450] 900	[450] 900
(c) Low cost		[230] 460	[230] 460

**PROPOSED AMENDMENTS TO TABLE A**  
**NOVEMBER 12, 1991**

**AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE**

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
62. New sources not listed herein which would emit significant malodorous emissions as determined by Authority review of sources which are known to produce similar air contaminant emissions			
(a) High cost		[2,600] 5,200	[2,600] 5,200
(b) Medium cost		[450] 900	[450] 900
(c) Low cost		[200] 400	[200] 400
63. Existing sources not listed herein for which an air quality problem is identified by the Authority, including but not limited to open storage of dusty or odorous material, dry material handling air transfer systems and sandblasting operations			
(a) High cost		[2,600] 5,200	[2,600] 5,200
(b) Medium cost		[440] 880	[440] 880
(c) Low cost		[200] 400	[200] 400
64. Bulk gasoline plants	5100 & 5171	[110] 220	[110] 420

PROPOSED AMENDMENTS TO TABLE A

NOVEMBER 12, 1991

## AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
65. Bulk gasoline terminals	5171	<del>[1,300]</del> 2,600	<del>[700]</del> 1,400
66. Liquid storage tanks--39,000 gallons or more capacity (not elsewhere classified) <del>except for water</del>	4200, <del>5169 &amp; 5171</del>	<del>[110]/tank</del> 220	<del>[200]/tank</del> 400
67. Can <del>or drum</del> coating	3411 <del>&amp; 3412</del>	<del>[1,950]</del> 3,900	<del>[1,255]</del> 2,510
68. Paper <del>or other substrate</del> coating	2641 & 3861	<del>[650]</del> 1,300	<del>[420]</del> 840
69. Coating flat wood	<del>2400 &amp; 2672</del>	<del>[650]</del> 1,300	<del>[420]</del> 840
70. Surface coating manufacturing			
(a) <del>[Greater than]</del> 100 tons <del>or more of</del> VOC per year	2500 & 3300	<del>[650]</del> 1,300	<del>[555]</del> 1,110
(b) <del>[Greater than]</del> <del>[20]</del> 10 tons <del>or more</del> but less than 100 tons VOC per year	2500 & 3300	<del>[130]</del> 260	<del>[280]</del> 560
(c) Greater than 1 ton but less than <del>[20]</del> 10 tons VOC per year	2500 & 3300	<del>[110]</del> 220	<del>[115]</del> 230

PROPOSED AMENDMENTS TO TABLE A  
NOVEMBER 12, 1991

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
71. Flexographic or rotogravure printing [60] 10 tons or more VOC per year per plant	[2751- & 1754] 2751, 2754 & 2759	[130] 260	[280] 560
72. New sources of VOC [are] not listed herein which have the capacity or are allowed to emit 10 or more tons per year VOC			
(a) High cost		[1,495] 2,990	[2,585] 5,170
(b) Medium cost		[450] 900	[450] 900
(c) Low cost		[200] 400	[200] 400
73. Sources subject to federal NESHAPS rules under section 112 of the federal Clean Air Act (except demolition or renovation)		[110] 220	[165] 330
74. Sources of toxic air pollutants (not elsewhere classified)			
(a) High Toxicity*		[450] 900	[450] 900
(b) Moderate Toxicity*		[275] 550	[330] 660
75. [ <del>Underground storage tank remediations involving strippers or condensers</del> ] Soil remediation Plants	1799	[275] 550	[330] 660

\* New York State Air Guide-1 1985-86 Edition

# ***Title 34 (Coffee Roasters)***

**TITLE 34, TABLE A  
DRAFT AMENDMENTS**

SEPTEMBER 8, 1992

**TABLE A  
AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE**

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
7. Beet sugar manufacturing	2063	1,100	4,800
8. Rendering plant			
(a) 10,000 or more tons per year	2077	1,340	1,650
(b) Less than 10,000 tons per year	2077	1,210	1,320
9. Coffee roasting <del>greater than 1 ton of coffee per year</del>			
(a) 1 to 40 Kg. roasting capacity	2095	260	320
(b) Greater than 40 Kg. roasting capacity	2095	530	640
10. Sawmill and/or planing mill			
(a) 25,000 or more board feet per shift	2421	330	620
(b) Less than 25,000 board feet per shift	2421	220	460
11. Hardwood mills	2426	220	620
12. Shake and shingle mills with air transfer systems	2429	220	230
13. Mill work (including structural wood members) 25,000 or more board feet per shift	2431 & 2439	310	620
14. Plywood manufacturing			

# *Title 38*



LANE REGIONAL AIR POLLUTION AUTHORITY

AMENDMENTS  
D R A F T  
April 13, 1993

TITLE 38  
New Source Review

Section 38-001 General Applicability

~~[Any proposed construction of an air contaminant source (as defined in Section 38-005) or a modification of an air contaminant source must meet the requirements of this title. In addition, the owner or operator of a proposed source or modification must demonstrate that the proposed source or modification can comply with all additional requirements of the Authority, the Department of Environmental Quality and the U. S. EPA. The additional requirements may include, but are not limited to, new source performance standards, emission standards for hazardous air contaminants, and the obtaining of an Air Contaminant Discharge Permit.]~~

No owner or operator shall begin actual construction of a major source or major modification of an air contaminant source without having received an Air Contaminant Discharge Permit from the Authority and having satisfied Sections 38-005 through 38-050.

No owner or operator shall begin actual construction of a non-major source or non-major modification of an air contaminant source without having received an Air Contaminant Discharge Permit from the Authority under Title 34. Such owner or operator is subject to other Authority rules including: application of Highest and Best Practicable Treatment and Control (Title 32); Emission Standards for Hazardous Air Pollutants (Title 43); and Standards of Performance for New Stationary Sources (Title 46).

Section 38-005 Definitions

The following definitions are relevant to this title. Additional general definitions can be found in Title 12.

1. "Actual Emissions" means the mass rate of emissions of a pollutant from an emission source.
  - A. In general, actual emissions as of the baseline period shall equal the average rate at which the source actually emitted the pollutant during the baseline period and which is representative of normal source operation. Actual emissions shall be calculated using the source's actual operating hours, production rates and types of materials processed, stored, or combusted during the selected time period.
  - B. The Authority may presume that existing source-specific permitted mass emissions for the source are equivalent to the actual emissions of the source, if they are within ten percent (10%) of the calculated actual emissions.
  - C. For any newly-permitted emission source which had not yet begun normal operation in the baseline period, actual emissions shall equal the potential to emit of the source.

2. "Air Contaminant Source" means, for the purposes of this title, any building, structure, or facility, or combination thereof, which emits or is capable of emitting air contaminants to the atmosphere, and is located on one or more contiguous or adjacent properties, and is owned or operated by the same person or by persons under common control. This includes all of the pollutant emitting activities which belong to the same industrial grouping, or major group (i.e., which have the same two-digit code) as described in EPA's Standard Industrial Classification (SIC) manual (U.S. Office of Management and Budget, 1987). This definition does not include fuel-burning equipment used to heat one- or two-family dwellings or internal combustion engines used in motor vehicles, aircraft, and marine vessels ~~enroute to or from a source.~~
3. "Baseline concentration" means that ambient concentration level for a particular regulated pollutant which existed in an area during the calendar year 1978. If no ambient air quality data is available in an area, the baseline concentration for any pollutant may be estimated using modeling based on actual emissions for the calendar year 1978. ~~[The following] Actual emissions increases or decreases occurring before January 1, 1978 will be included in the baseline concentration.~~
  - ~~[A. Actual emission increases or decreases occurring before January 1, 1978, and~~
  - ~~B. Actual emission increases from any major source or major modification on which construction commenced before January 6, 1975.]~~
4. "Baseline Period" means either calendar years 1977 or 1978. The Authority shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.
5. "Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction of each air contaminant subject to regulation under the Clean Air Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event shall the application of BACT result in emissions of any air contaminant which would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutants. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard shall, to the degree possible, set forth the emission reduction achievable and shall provide for compliance by prescribing appropriate permit conditions.
6. "Lowest Achievable Emission Rate (LAER)" means that rate of emissions which reflects:

- A. The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
- B. The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable new source performance standards or standards for hazardous air pollutants.

7. "Major Modification" means any physical change or change of operation of a source that would result in a net significant emission rate increase (as defined in this section) for any pollutant subject to regulation under the Clean Air Act. This criteria also applies to any pollutants not previously emitted by the source. Calculations of net emission increases must take into account all accumulated increases and decreases (not including mandated decreases) in actual emissions occurring at the source since January 1, 1978, or since the time of the last major source or major modification approval issued for the source pursuant to the rules for that pollutant, whichever time is more recent. If accumulation of emission increases results in a net significant emission rate increase, the modifications causing such increases become subject to the major modification requirements of this title, including the retrofit of required controls. For the purposes of this title, fugitive emissions shall be included in the calculation of emission rates of all air contaminants. Fugitive emissions are subject to the same control requirements and analyses required for emissions from identifiable stacks or vents. Secondary emissions shall not be included in calculations of potential emissions which are made to determine if a proposed source or modification is major. Once a source or modification is identified as being major, secondary emissions must be added to the primary emissions and become subject to these rules.
8. "Major Source" means a stationary source which emits, or has the potential to emit, any pollutant regulated under the Clean Air Act at a Significant Emission Rate (as defined in this section). For the purposes of this title, fugitive emissions shall be included in the calculation of emission rates of all air contaminants. Fugitive emissions are subject to the same control requirements and analyses required for emissions from identifiable stacks or vents. Secondary emissions shall not be included in calculations of potential emissions which are made to determine if a proposed source or modification is major. Once a source or modification is identified as being major, secondary emissions must be added to the primary emissions and become subject to these rules.
9. "Modification of an Air Contaminant Source" means any physical change or change in operation of a source which would result in a non-permitted increase in the air contaminant emissions from that source.

10. "Prevention of Significant Deterioration Increments" means maximum allowable ambient air quality impacts over baseline concentrations in areas designated Class I, II or III, as follows:

		Micrograms Per Cubic Meter		
		<u>Class I</u>	<u>Class II</u>	<u>Class III</u>
Particulate Matter--				
TSP Annual Geometric Mean		5	19	37
* TSP 24-Hour Maximum		10	37	75
Sulfur Dioxide--				
Annual Arithmetic Mean		2	20	40
* 24-Hour Maximum		5	91	182
* 3-Hour Maximums		25	512	700

(\* For these time periods, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.)

11. "Significant Air Quality Impact" means an ambient air quality impact which is equal to or greater than:

Pollutant	Annual	Pollutant Averaging Time			
		24-hour	8-hour	3-hour	1-hour
SO <sub>2</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>	---	25 ug/m <sup>3</sup>	---
TSP or PM10	0.2 ug/m <sup>3</sup>	1.0 ug/m <sup>3</sup>	---	---	---
NO <sub>2</sub>	1.0 ug/m <sup>3</sup>	---	---	---	---
CO	---	---	0.5 mg/m <sup>3</sup>	---	2 mg/m <sup>3</sup>

For sources of volatile organic compounds (VOC), a major source or major modification will be deemed to have a significant impact if it is located within thirty (30) kilometers of an ozone nonattainment area and is capable of impacting the nonattainment area.

12. "Significant Emission Rate" means emission rates equal to or greater than the following for air pollutants regulated under the Clean Air Act:

<u>Pollutant</u>	<u>Significant Emission Rate</u>	
Carbon Monoxide	100	tons/year
Nitrogen Oxides	40	tons/year
Particulate Matter	25	tons/year
PM10	15	tons/year
Sulfur Dioxide	40	tons/year
Volatile Organic Compounds	40	tons/year

Lead	0.6	ton/year
Mercury	0.1	ton/year
Beryllium	0.0004	ton/year
Asbestos	0.007	ton/year
Vinyl Chloride	1	ton/year
Fluorides	3	tons/year
Sulfuric Acid Mist	7	tons/year
Total Reduced Sulfur (including hydrogen sulfide)	10	tons/year
Reduced Sulfur Compounds (including hydrogen sulfide)	10	tons/year

For pollutants not listed above, the Authority shall determine the rate that constitutes a significant emission rate.

Any emissions increase less than these rates associated with a new source or modification which would construct within ten (10) kilometers of a Class I area and would have an impact on such area equal to or greater than  $1 \text{ ug/m}^3$  (24-hour average) shall be deemed to be emitting at a significant emission rate.

#### Section 38-010 General Requirements for Major Sources and Major Modifications

1. Prior to construction of new major sources or major modifications, the owner or operator must obtain from the Director [~~authority to construct or modify the source, and~~] a permit to discharge air contaminants (Title 34). [~~These Permits for major sources~~] are issued only after review and approval of the application according to the requirements of this title.
2. The owner or operator of a proposed new major source or major modification shall submit a[~~n~~] permit application on forms provided by the Authority, together with all information necessary to perform any analysis or make any determination required under these rules. Such information shall include, but not be limited to:
  - A. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;
  - B. An estimate of the amount and type of each air contaminant emitted by the source in terms of hourly, daily, seasonal, and yearly rates, showing the calculation procedure;
  - C. A visibility impact analysis;
  - [~~C~~]. A detailed schedule for construction of the source or modification;
  - [~~D~~]. A detailed description of the system of continuous emission reduction which is planned for the source or modification, and any other information necessary to determine that best available control technology or lowest achievable emission rate technology, whichever is applicable, would be applied;

- [E]F. To the extent required by these rules, an analysis of the air quality impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts; and
- [F]G. To the extent required by these rules, an analysis of the air quality impacts, and the nature and extent of all commercial, residential, industrial, and other growth which has occurred since January 1, 1978, in the area the source or modification would affect.
3. Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to ~~[these Rules]~~ ~~this section~~ or with the terms of any ~~permit~~ ~~[approval to construct]~~, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving an air contaminant discharge permit, shall be subject to appropriate enforcement action.
  4. ~~[Approval to construct]~~ ~~The permit~~ shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the scheduled time. The Authority may extend the eighteen (18) month period upon satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of its respective projected and approved commencement date.
  5. ~~[Approval to construct]~~ ~~Compliance with permit conditions~~ shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state, or federal law.
  6. Within thirty (30) days after receipt of a ~~[a]~~ ~~permit~~ application ~~[to construct]~~, or any addition to such application, the Authority shall advise the applicant of any deficiency in the application or in the information submitted. The date of the receipt of a complete application shall be, for the purpose of this section, the date on which the Authority received all required information.
  7. Notwithstanding the requirements of Title 34 of these rules, but as expeditiously as possible and at least within six (6) months after receipt of a complete application, the Authority shall make a final determination on the application. This involves performing the following actions in a timely manner:
    - A. Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

- B. Make available for a thirty (30) day period in at least one location a copy of the permit application, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.
- C. Notify the public, by advertisement in a newspaper of general circulation in the area in which the proposed source or modification would be constructed, of the application, the preliminary determination, [~~the extent of growth increment consumption that is expected from the source or modification,~~] and the opportunity for a public hearing and for written public comment.
- D. Send a copy of the notice of opportunity for public comment to the applicant and to officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: The chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency, any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification, the Oregon Department of Environmental Quality, and the U. S. Environmental Protection Agency.
- E. Upon determination that significant interest exists, provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations. Any hearing shall be conducted pursuant to Title 14, Section 120.
- F. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the permit application. No later than ten (10) working days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Authority shall consider the applicant's response in making a final decision. The Authority shall make all comments available for public inspection in the same location where the Authority made available preconstruction information relating to the proposed source or modification.
- G. Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.
- H. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Authority made available preconstruction information and public comments relating to the source or modification.

Section 38-015 Additional Requirements for Major Sources or Major Modifications Located in Nonattainment Areas

1. Proposed ~~n~~[N]ew major sources and major modifications which ~~[are located in]~~ would emit a nonattainment pollutant within a designated nonattainment area[s] shall meet the following requirements:
  - A. The owner or operator of the proposed major source or major modification must demonstrate that the source or modification will comply with the lowest achievable emission rate (LAER) for each nonattainment pollutant which is emitted at or above the significant emission rate (38-005-12). In the case of a major modification, the requirement for LAER shall apply only to each new or modified emission unit which increases emissions. For phased construction projects, the determination of LAER shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase.
  - B. The owner or operator of the proposed major source or major modification must demonstrate that all major sources owned or operated by such person (or by an entity controlling, controlled by, or under common control of such person) in the state are in compliance or on a schedule for compliance, with all applicable emission limitations and standards under the Clean Air Act.
  - C. The owner or operator of the proposed major source or major modification must demonstrate that the source or modification will provide emission reductions ("offsets") as specified by these Rules.
  - D. For cases in which emission reductions or offsets are required, the applicant must demonstrate that a net air quality benefit will be achieved in the affected area as described in Section 38-035 (Requirements for Net Air Quality Benefit for Offsets) and that the reductions are consistent with reasonable further progress toward attainment of the air quality standards.
  - E. ~~[An alternative analysis must be conducted for]~~ The owner or operator of a proposed new major source[s] or major modification[s] ~~of sources emitting volatile organic compounds or carbon monoxide locating in carbon monoxide or ozone nonattainment areas]~~ shall conduct an alternative analysis for each nonattainment pollutant at or above the significant emission rate (38-005-12), except that no analysis shall be required for Total Suspended Particulate (TSP). The analysis must include an evaluation of alternative sites, sizes, production processes, and environmental control techniques for such proposed source or modification which demonstrates that benefits of the proposed source or modification significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

Section 38-020 Additional Requirements for Major Sources or Major Modifications in Attainment or Unclassified Areas (Prevention of Significant Deterioration)

1. New major sources or major modifications locating in areas designated attainment or unclassifiable shall meet the following requirements:



- A. The owner or operator of the proposed major source or major modification shall apply best available control technology (BACT) for each pollutant which is emitted at a significant emission rate (see Section 38-005). In the case of a major modification, the requirement for BACT shall apply only to each new or modified emission unit which increases emissions. For phased construction projects, the determination of BACT shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase.
- B. The owner or operator of the proposed major source or major modification shall demonstrate that the potential to emit any pollutant at a significant emission rate, in conjunction with all other applicable emissions increases and decreases (including secondary emissions), would not cause or contribute to air quality levels in excess of:
  - (1) Any state or national ambient air quality standards, or
  - (2) Any applicable increment established by the prevention of significant deterioration requirements (see Section 38-005-10). (Note that the area classifications are found in OAR 340-31-120 through 340-31-130.) or
  - (3) An impact on a designated nonattainment area greater than the significant air quality impact levels (see Section 38-005).
2. Sources or modifications with the potential to emit at rates greater than the significant emission rate but less than one hundred (100) tons/year, and which are greater than fifty (50) kilometers from a nonattainment area are not required to assess their impact on the nonattainment area.
3. If the owner or operator of a proposed major source or major modification wishes to provide emission offsets such that a net air quality benefit as defined in Section 38-035 is provided, the Authority may consider the requirements of Section 38-020-1.B. to have been met.
4. All estimates of ambient concentrations required under these Rules shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guidelines on Air Quality Models (Revised)", EPA 450/2-780-027R U. S. EPA, September 1986, including Supplement A, July, 1987. Where an air quality impact model specified in the "Guidelines on Air Quality Models (Revised), including Supplement A," is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment and must receive approval of the Authority and the Environmental Protection Agency. Methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)", U. S. EPA 1984, should be used to determine the comparability of air quality models.
5. The owner or operator of a proposed major source or major modification shall submit with the application, subject to approval of the Authority, an analysis of ambient air quality in the area of the proposed project. This analysis shall be conducted for each pollutant potentially emitted at a significant emission rate by the proposed source or modification. As

necessary to establish ambient air quality levels, the analysis shall include continuous air quality monitoring data for any pollutant potentially emitted by the source or modification except for non-methane hydrocarbons. Such data shall relate to, and shall have been gathered over the year preceding receipt of the complete application, unless the owner or operator demonstrates that such data gathered over a portion or portions of that year or another representative year would be adequate to determine that the source or modification would not cause or contribute to a violation of an ambient air quality standard or any applicable increment. A possible exemption to the monitoring requirement is outlined in paragraph "B," below.

- A. Air quality monitoring which is conducted pursuant to this requirement shall be conducted in accordance with 40 CFR 58 Appendix B., "Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring" and with other methods on file with the Authority.
- B. The Authority may exempt a proposed major source or major modification from monitoring for a specific pollutant if the owner or operator demonstrates that the air quality impact from the emissions increase would be less than the amounts listed below or that the concentrations of the pollutant in the area that the source or modification would impact are less than these amounts:
  - (1) Carbon monoxide--575 ug/m<sup>3</sup>, 8-hour average;
  - (2) Nitrogen dioxide--14 ug/m<sup>3</sup>, annual average;
  - (3) Particulate Matter--10 ug/m<sup>3</sup>, 24-hour average for TSP, 10 ug/m<sup>3</sup>, 24-hour average for PM10;
  - (4) Sulfur dioxide--13 ug/m<sup>3</sup>, 24-hour average;
  - (5) Ozone--any net increase of 100 tons/year or more of volatile organic compounds from a source of modification subject to PSD is required to perform an ambient impact analysis, including the gathering of ambient air quality data;
  - (6) Lead--0.1 ug/m<sup>3</sup>, 24-hour average;
  - (7) Mercury--0.25 ug/m<sup>3</sup>, 24-hour average;
  - (8) Beryllium--0.0005 ug/m<sup>3</sup>, 24-hour average;
  - (9) Fluorides--0.25 ug/m<sup>3</sup>, 24-hour average;
  - (10) Vinyl Chloride--15 ug/m<sup>3</sup>, 24-hour average;
  - (11) Total reduced sulfur--10 ug/m<sup>3</sup>, 1-hour average;
  - (12) Hydrogen Sulfide--0.04 ug/m<sup>3</sup>, 1-hour average;
  - (13) Reduced sulfur compounds--10 ug/m<sup>3</sup>, 1-hour average;

C. When monitoring is required by 5.A, above, PM10 preconstruction monitoring ~~[shall be required according to the following transition program:~~

~~(1) Complete PSD applications submitted before May 31, 1988 shall not be required to perform new PM10 monitoring.~~

~~(2) Complete PSD applications submitted after May 31, 1988, and before November 30, 1988, must use existing PM10 or other representative air quality data or collect PM10 monitoring data. The collected data may come from non reference sampling methods. At least four months of data must be collected which the Authority judges to include the season(s) of highest PM10 levels.~~

~~(3) Complete PSD applications submitted after November 30, 1988,] must use reference sampling methods. At least four months of data must be collected which the Authority judges to include the season(s) of highest PM10 levels.~~

D. The owner or operator of a proposed major source or major modification shall, after construction has been completed, conduct such ambient air quality monitoring as the Authority may require as a permit condition to establish the effect which emissions of a pollutant (other than non-methane hydrocarbons) may have, or is having, on air quality in any area which such emissions would affect.

6. The owner or operator of a proposed major source or major modification shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator may be exempted from providing an analysis of the impact on vegetation having no significant commercial or recreational value.

7. The owner or operator shall provide an analysis of the air quality concentration projected for the area as a result of general commercial, residential, industrial and other growth associated with the major source or modification.

8. Where a proposed major source or major modification impacts or may impact a Class I area, the Authority shall provide notice to the Environmental Protection Agency and to the appropriate Federal Land Manager of the receipt of such permit application and of any preliminary and final actions taken with regard to such application. The Federal Land Manager shall be provided an opportunity in accordance with Section 38-010 to present a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air-quality-related values (including visibility) of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment for a Class I area. If the Authority concurs with such demonstration, the permit shall not be issued.

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Section 38-025 Exemptions for Major Sources and Major Modifications

~~[1. Resource recovery facilities burning municipal refuse and sources subject to federally mandated fuel switches may be exempted by the Authority from requirements of Section 38-015 1.C and 1.D, provided that:~~

~~A. No growth increment is available for allocation to such source or modification, and~~

~~B. The owner or operator of such source or modification demonstrates that every effort was made to obtain sufficient offsets and that every available offset was secured.~~

~~{Such an exemption may result in a need to revise the State Implementation Plan to require additional control of existing sources.}~~

[2]1. Temporary emission sources, which would be in operation at a site for less than two years, such as pilot plants and portable facilities, and emissions resulting from the construction phase of a new source or modification, must comply with Section 38-015-1.A and 1.B, or Section 38-020-1.A, whichever is applicable, but are exempt from the remaining requirements of Section 38-015 and Section 38-020, provided that the source or modification would impact no Class I area or no area where an applicable increment is known to be violated.

[3]2. Proposed increases in hours of operation or production rates, which would cause emission increases above the levels allowed in an air contaminant discharge permit and would not involve a physical change in the source, may be exempted from the requirement of Section 38-020-1.A (Best Available Control Technology) provided that the increases cause no exceedances of an increment or standard and that the net impact on a nonattainment area is less than the significant air quality impact levels. This exemption shall not be allowed for new sources or modifications that received permits to construct after January 1, 1978.

Section 38-030 Baseline for Determining Credit for Offsets

The baseline for determining credit for emission offsets shall be the Plant Site Emission Limit as established in these Rules or, in the absence of a Plant Site Emission Limit, the actual emission rate for the source providing the offsets. Sources in violation of air quality emission limitations may not supply offsets from those emissions which are or were in excess of permitted emission rates. Emission reductions which are required pursuant to any local, state or federal regulation shall not be used for offsets. Offsets, including offsets from mobile and area source categories, must be quantifiable and enforceable before the Air Contaminant Discharge Permit is issued and must be demonstrated to remain in effect throughout the life of the proposed source or modification. Approval of offsets shall not exempt the new major source or major modification from Best Achievable Control Technology (BACT), Lowest Achievable Emission Rate (LAER), New source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPS), where required.

Section 38-035 Requirements for Net Air Quality Benefit for Major Sources and Major Modifications for Offsets

1. A demonstration must be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the new source or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in the "Guidelines on Air Quality Models (Revised)," including Supplement A. Offsets for volatile organic compounds or nitrogen oxides shall be within the same ~~[general air basin]~~ nonattainment area as the proposed source. Offsets for total suspended particulate, PM10, sulfur dioxide, carbon monoxide, nitrogen dioxide, and other pollutants shall be within the area of significant air quality impact.
2. For new ~~major~~ sources or ~~major~~ modifications ~~[having a significant air quality impact within a designated nonattainment area or that will cause or contribute to a violation of the ambient air quality standards or exceed the PSD increments]~~, the emission offsets ~~within a designated nonattainment area~~ must provide reductions which are equivalent or greater than the proposed increases. The offsets must be appropriate in terms of short-term, seasonal, and yearly time periods to mitigate the impacts of the proposed emissions. For new sources or modifications locating outside of a designated nonattainment area, which have a significant air quality impact on the nonattainment areas, the emissions offsets must be sufficient to reduce impacts to levels below the significant air quality impact level within the nonattainment area. ~~[Proposed] New major sources or major modifications which emit volatile organic compounds or nitrogen oxides and are located [in or within] outside of but within thirty (30) kilometers of an ozone nonattainment area shall provide reductions which are equivalent or greater than the proposed emission increases. An exemption will be granted for those sources located outside the [AQMA] nonattainment area if the applicant demonstrates that the proposed emissions will not impact the nonattainment area. New major sources or major modifications locating within an ozone nonattainment area which emit volatile organic compounds or nitrogen oxides shall provide emission reductions at a 1:1 to 1:0 ratio (i.e., demonstrate a 10 percent net reduction).~~
3. The emission reductions must be of the same type of pollutant as the emissions from the new source or modification. Sources of PM10 must be offset with particulate in the same size range. In areas where atmospheric reactions contribute to pollutant levels, offsets may be provided from precursor pollutants if a net air quality benefit can be shown.
4. The emission reductions must be contemporaneous; that is, the reductions must take effect prior to the time of startup but not more than ~~[one]~~ two years prior to the submittal of a complete permit application for the new source or modification. This time limitation may be extended through banking as provided for in Section 38-040 (Emission Reduction Credit Banking). In the case of replacement facilities, the Authority may allow simultaneous operation of the old and new facilities during the startup period of the new facility, provided that net emissions are not increased during that time period.

Section 38-040 Emission Reduction Credit Banking

1. The owner or operator of a source of air pollution who wishes to reduce emissions by implementing more stringent controls than required by a permit, or [by] an applicable regulation, may bank such emission reductions [~~(except any such emission reduction attributable to facilities for which tax credit has been received on or after January 1, 1981, may be banked or used for contemporaneous offsets but may not be sold without reimbursement of the tax credits)~~]. Cities, counties or other local jurisdictions may participate in the emissions bank in the same manner as a private firm.
2. Emission reduction credit banking shall be subject to the following conditions:
  - A. To be eligible for banking, emission reduction credits must be in terms of actual emission decreases resulting from permanent continuous control of existing sources. The baseline for determining emission reduction credits shall be the actual emissions of the source [at] ~~or~~ the Plant Site Emission Limit established pursuant to these Rules.
  - B. Emission reductions may be banked for a specified period not to exceed ten (10) years unless extended by the Authority, after which time such reductions will revert to the Authority for use in attainment and maintenance of air quality standards [~~or to be allocated as a growth margin~~].
  - C. Emission reductions which are required pursuant to an adopted rule shall not be banked.
  - D. Permanent source shutdowns or curtailments other than those used within one year for contemporaneous offsets, as provided in Section 38-035-4, are not eligible for banking by the owner or operator but will be banked by the Authority for use in attaining and maintaining standards. [~~The Authority may allocate these emission reductions as a growth increment.~~] The [~~one (1)~~] ~~two (2)~~ year limitation for contemporaneous offsets shall not be applicable to those shutdowns or curtailments which are to be used as internal offsets within a plant as part of a specific plan. Such a plan for use of internal offsets shall be submitted to the Authority and receive written approval within one (1) year of the permanent shutdown or curtailment. A permanent source shutdown or curtailment shall be considered to have occurred when a permit is modified, revoked or expires without renewal, pursuant to the criteria established in Title 34.
  - E. The amount of banked emission reduction credits shall be discounted without compensation to the holder for a particular source category when new regulations requiring emission reductions are adopted by the Authority. The amount of discounting of banked emission reduction credits shall be calculated on the same basis as the reductions required for existing sources which are subject to the new regulation. Banked emission reduction credits shall be subject to the same rules, procedures, and limitations as permitted emissions.

3. Emission reductions must be in the amount of five (5) tons/year or more to be creditable for banking.
4. Requests for emission reduction credit banking must be submitted in writing to the Authority and must contain the following documentation:
  - A. A detailed description of the processes controlled,
  - B. Emission calculations showing the types and amounts of actual emissions reduced,
  - C. The date or dates of such reductions,
  - D. Identification of the probable uses to which the banked reductions are to be applied,
  - E. Procedure by which such emission reductions can be rendered permanent and enforceable.
5. Requests for emission reduction credit banking shall be submitted to the Authority prior to or within the year following the actual emissions reduction. The Authority shall approve or deny requests for emission reduction credit banking and, in the case of approvals, shall issue a letter to the owner or operator defining the terms of such banking. The Authority shall take steps to insure the permanence and enforceability of the banked emission reductions by including appropriate conditions in air contaminant discharge permits [and] or by appropriate revision of the State Implementation Plan.
6. The Authority shall provide for the allocation of the banked emission reduction credits, in accordance with the uses specified by the holder of the emission reduction credits. When emission reduction credits are transferred, the Authority must be notified in writing. Any use of emission reduction credits must be compatible with local comprehensive plans, statewide planning goals, state laws and these Rules.
7. Operators of existing sources requesting emission reduction credit for banking shall at the time of application pay the following fees:
  - A. Request for credit for any air contaminant of five (5) tons/year, but less than the rate equal to the significant emissions rate as defined in Section 38-005:
    - (1) A filing fee of \$75,
    - (2) An application processing fee of \$250,
    - (3) An annual recordkeeping fee of \$100.
  - B. Request for credit for any air contaminant of a rate equal to or greater than a significant emission rate as defined in Section 38-005:
    - (1) A filing fee of \$75,

- (2) An application processing fee of \$500,
- (3) An annual recordkeeping fee of \$100.

~~[Section 38-045 Requirements for Non-Major Sources and Non-Major Modifications~~

- ~~1. The owner or operator of a proposed non-major source or non-major modification shall submit to the Director all information necessary to perform any analysis or make any determination required by these rules. Such information shall include the following:
  - ~~A. Plans and specifications for any proposed new equipment or proposed modifications to existing equipment drawn in accordance with acceptable engineering practices;~~
  - ~~B. A description of the process and a related flow chart;~~
  - ~~C. An estimation of the amount and type of air contaminants to be emitted by the proposed new source or modification;~~
  - ~~D. Any additional information which may be required by the Authority.~~~~
- ~~2. Within sixty (60) days of receipt of all required information, the Authority shall make a determination as to whether the proposed new source of modification is in accordance with the provisions of these rules.
  - ~~A. If the proposed construction is found to be in accordance with the provisions of these rules, the Authority shall issue a "Notice to Proceed" with construction. This issuance shall not relieve the owner or operator of the obligation of complying with all other titles of these rules.~~
  - ~~B. If the proposed construction is found not to be in accordance with the provisions of these rules, the Director may issue an order prohibiting construction. Failure to issue the order within the sixty (60) day period shall be considered a determination that the construction may proceed in accordance with the information provided in the application.~~
  - ~~C. Any person against whom an order prohibiting construction is issued may, within twenty (20) days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for a hearing, and shall be submitted to the Director. Any hearing shall be conducted as a contested case pursuant to Title 14.~~
  - ~~D. Deviation from approved plans or specifications, without the written permission of the Director, shall constitute a violation of these rules.~~
  - ~~E. The Authority may require any order or other notice to be displayed on the premises designated. No person shall mutilate, alter, or remove such order or notice unless authorized to do so by the Authority.~~~~



- ~~3. Notice shall be provided in writing to the Authority of the completion of construction and the date when operation will commence. The Authority, following receipt of the notice of completion, shall inspect the premises.]~~

#### Section 38-045 Visibility Impact in Class I Areas

New major sources or major modifications located in Attainment, Unclassified or Nonattainment Areas shall meet the following visibility impact requirements.

##### 1. Visibility Impact Analysis

- A. The owner or operator of a proposed major source or major modification shall demonstrate that the potential to emit any pollutant at a significant emission rate (38-005) in conjunction with all other applicable emission increases or decreases (including secondary emissions) permitted since January 1, 1984, shall not cause or contribute to significant impairment of visibility within any Class I area.
- B. The owner or operator of a proposed major source or major modification shall submit all information necessary to perform any analysis or demonstration required by these rules pursuant to Section 38-010.
2. All estimates of visibility impacts required under this rule shall be based on the models on file with the Authority. Equivalent models may be substituted if approved by the Authority. The Authority will perform visibility modeling of all sources with potential emissions less than 100 tons/year of any individual pollutant and locating closer than 30 Km to a Class I area, if requested.
3. The results of the modeling must be sent to the affected land managers and the Authority. The land managers may, within 30 days following receipt of the source's visibility impact analysis, determine whether or not impairment of visibility in a Class I area would result. The Authority will consider the comments of the federal Land Manager in its consideration of whether significant impairment will result. Should the Authority determine that impairment would result, a permit for the proposed source will not be issued.

##### 4. Visibility Monitoring

- A. The owner or operator of a proposed major source or major modification which emits more than 250 tons per year of TSP, SO<sub>2</sub>, or NO<sub>2</sub> shall submit with the application, subject to approval of the Authority, an analysis of visibility in or immediately adjacent to the Class I area impacted by the proposed project. As necessary to establish visibility conditions within the Class I area, the analysis shall include a collection of continuous visibility monitoring data for all pollutants emitted by the source that could potentially impact Class I area visibility. Such data shall relate to and shall have been gathered over the year preceding receipt of the complete application, unless the owner or operator demonstrates that data gathered over a shorter portion of the year for

another representative year, would be adequate to determine that the source or major modification would not cause or contribute to significant impairment. Where applicable, the owner or operator may demonstrate that existing visibility monitoring data may be suitable. Pursuant to the requirements of these rules, the owner or operator of the source shall submit, for the approval of the Authority, a preconstruction visibility monitoring plan.

B. The owner or operator of a proposed major source or major modification shall, after construction has been completed, conduct such visibility monitoring as the Authority may require as a permit condition to establish the effect which emissions of pollutant may have, or is having, on visibility conditions within the Class I area being impacted.

5. The owner or operator of a proposed major source or major modification subject to 38-020(6) shall provide an analysis of the impact to visibility that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or major modification.

#### 6. Notification of Permit Application

A. Where a proposed major source or modification impacts or may impact visibility within a Class I area, the Authority shall provide written notice to the Environmental Protection Agency and to the appropriate Federal Land Manager within 30 days of the receipt of such permit application. Such notification shall include a copy of all information relevant to the permit application, including analysis of anticipated impacts on Class I area visibility.

B. Where the Authority receives advance notification of a permit application of a source that may affect Class I area visibility, the Authority will notify all affected Federal Land Managers within 30 days of such advance notice.

C. The Authority will, during its review of source impacts on Class I area visibility pursuant to this rule, consider any analysis performed by the Federal Land Manager that is provided within 30 days of notification required by these rules. If the Authority disagrees with the Federal Land Manager's demonstration, the Authority will include a discussion of the disagreement in the Notice of Public Hearing.

D. The Federal Land Manager shall be provided an opportunity in accordance with 38-010 to present a demonstration that the emissions from the proposed source or modification would have an adverse impact on visibility within any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment for a Class I area. If the Authority concurs with such demonstration, the permit shall not be issued.

Section 38-050 Stack Height and Dispersion Techniques

1. Title 40, Code of Federal Regulation, Parts 51.100(ff) through (kk), 51.118(a) and (b), and 51.164, as amended on November 7, 1986 in the Federal Register (51 FR 40656), is by this reference adopted and incorporated herein, concerning stack heights and dispersion techniques.
2. In general, the rule prohibits the use of excessive stack height and certain dispersion techniques when calculating compliance with ambient air quality standards. The rule does not forbid the construction and actual use of excessively tall stacks, nor use of dispersion techniques; it only forbids their use in compliance calculations.
3. The rule has the following general applicability. With respect to the use of excessive stack height, stacks 65 meters high or higher, constructed after December 31, 1970, and major modifications to existing plants after December 31, 1970 with stacks 65 meters high or higher which were constructed before that date, are subject to this rule, with the exception that certain stacks at federally-owned, coal-fired steam electric generating units constructed under a contract awarded before February 8, 1974, are exempt. With respect to the use of dispersion techniques, any technique implemented after December 31, 1970, at any plant, is subject to this rule. However, if the plant's total allowable emissions of sulfur dioxide are less than 5,000 tons per year, then certain dispersion techniques to increase final exhaust gas plume rise are permitted to be used when calculating compliance with ambient air quality standards for sulfur dioxide.
  - A. Where found in the federal rule, the term "reviewing agency" means the Lane Regional Air Pollution Authority (LRAPA), the Oregon Department of Environmental Quality (DEQ), or the U. S. Environmental Protection Agency (EPA), as applicable.
  - B. Where found in the federal rule, the term "authority administering the State Implementation Plan" means LRAPA, DEQ or EPA.
  - C. The "procedures" referred to in 40 CFR 51.164 are the New Source Review procedures at LRAPA (Title 38), and the review procedures for new, or modifications to, minor sources at LRAPA (Title 34 and rule 38-045).
  - D. Where "the State" or "State, or local control agency" is referred to in 40 CFR 51.118(a), it means DEQ or LRAPA.
  - E. Where 40 CFR 51.100 refers to the Prevention of Significant Deterioration program and cites 40 CFR 51.166, it means the EPA-approved new source review rules of LRAPA (see 40 CFR 52.1987), where they cover Prevention of Significant Deterioration.
4. Where found in the federal rule, the terms "applicable state implementation plan" and "plan" refer to the programs and rules of LRAPA, as approved by the Oregon Environmental Quality Commission (EQC) or EPA, or any EPA-promulgated regulations (see 40 CFR Part 52, Subpart MM).

5. Publications incorporated by reference in this rule are available from the office of the Lane Regional Air Pollution Authority.

# ***Title 47***

LANE REGIONAL AIR POLLUTION AUTHORITY  
August 11, 1992  
PROPOSED AMENDMENTS TO TITLE 47

Outdoor Open Burning

Open burning in compliance with the rules in this Title 47 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 this or any other governmental entity having jurisdiction.

Section 47-001 General Policy

In order to restore and maintain Lane County air quality in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the County, it is the policy of the Lane Regional Air Pollution Authority to eliminate open burning disposal practices where alternative disposal methods are feasible. As a result, all open burning is prohibited in Lane County except as expressly allowed by these rules or if exempted from these rules by Oregon Statute. Contained in these rules are the requirements for the open outdoor burning of residential, construction, demolition, commercial, and industrial waste.

Section 47-005 Statutory Exemptions from These Rules

Due to Oregon statutory exemptions, these rules shall not apply to the following:

1. The operation of residential barbecue equipment for the purpose of cooking food for human consumption.
2. Fires set or permitted by any public agency in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, a hazard to public health or safety, or for the instruction of employees in the methods of fire fighting.
3. Agricultural open burning.
4. Open burning on forest land permitted under the Forest Practices Smoke Management Plan filed with the Secretary of State.

Section 47-010 Definitions

The following definitions apply to this title, and additional general definitions can be found in Title 12 of these Rules and Regulations.

1. "Agricultural open burning" means the open burning of "agricultural wastes," which are materials actually generated or used by an agricultural operation.
2. "Commercial open burning" means the open burning of "commercial wastes," which are materials actually generated or used by a commercial operation.

3. "Construction open burning" means the open burning of "construction wastes," which are materials actually resulting from or produced by a building or construction project.
4. "Demolition open burning" means the open burning of "demolition wastes," which are materials actually resulting from or produced by the complete or partial destruction or tearing down of any man-made structure or the clearing of any site ~~to abate a nuisance~~, or land clearing for site preparation for development.
5. "Eugene-Springfield Urban Growth Area (ESUGA)" means the area within and around the cities of Eugene and Springfield, as described in the August 23, 1982 acknowledged Eugene-Springfield Metropolitan Area General Plan, as amended.
56. "Residential open burning" means the open burning of clean wood, ~~paper products, and yard debris~~ and woody yard trimmings and prunings which are actually generated in or around a dwelling for four (4) or fewer family living units. Once this material is removed from the property of origin it becomes commercial waste. Such materials actually generated in or around a dwelling of more than four (4) family living units are commercial wastes.
67. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and serving of food.
78. "Industrial open burning" means the open burning of "industrial wastes," which are materials produced as a direct result of any manufacturing or industrial process.
89. "Land clearing" means the removal of trees, brush, logs, stumps, debris, or man-made structures for the purpose of site clean-up or site preparation.
10. "Leaves" means needle or leaf materials which have fallen from trees, shrubs, or plants on the property around a dwelling unit.
911. "Open outdoor burning" includes burning in open outdoor fires, burn barrels, incinerators which do not meet emission limitations specified in Section 33-010 of these Rules and Regulations, and any other outdoor 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.
1012. "Responsible person" means each person who is in ownership, control, or custody of the property on which the open burning occurs, including any tenant thereof, or who is in ownership, control, or custody of the materials which are burned, or any person who causes or allows open burning to be initiated or maintained.
11. ~~"Yard debris" means wood, needle, or leaf materials from trees, shrubs, or plants from the property around a dwelling unit.~~

13. "Woody Yard Trimmings" means woody limbs, branches and twigs, with any attached leaves, which have been cut from or fallen from trees or shrubs from the property around a dwelling unit.

Section 47-015 Open Burning Requirements

1. General requirements--to be met by all open burning conducted in accordance with these Rules and Regulations:
  - A. All open burning shall be constantly attended by a responsible person or an expressly authorized agent, until extinguished.
  - B. It shall be the duty of each responsible person to promptly extinguish any burning which is in violation of any rule of the LRAPA Board or of any permit issued by the Authority.
  - C. No person shall cause, or allow to be initiated or maintained, any open burning which is prohibited by the burning advisory because of meteorological or air quality conditions.
  - D. No person shall cause, or allow to be initiated or maintained, any open burning which creates a private or public nuisance or a hazard to public safety.
  - E. No person shall cause, or allow to be initiated or maintained, open burning of any garbage, plastics, wire insulation, automobile parts, asphalt, petroleum by-products, petroleum-treated materials, rubber products, animal remains, or animal or vegetable matter resulting from the handling, preparation, cooking, or service of food; or of any other material which normally emits dense smoke, noxious odors, or hazardous air contaminants.
  - F. To promote efficient burning and prevent excessive emissions of smoke, each responsible person shall assure that all combustible material is dried to the extent practicable, and loosely stacked or windrowed to eliminate dirt, rocks and other non-combustible materials; and periodically restack or feed the burning pile to enhance combustion.
  - G. No person shall cause, or allow to be initiated or maintained, any open burning at any solid waste disposal site unless authorized by a Solid Waste Permit issued pursuant to OAR 340-61-005 through 340-61-085. The Authority shall be notified by the responsible person prior to such burning.
  - H. Fires involving materials less than three (3) cubic yards of volume, set for recreational purposes in designated recreational areas (such as parks, recreational campsites, and campgrounds) are allowed, except that prohibited materials listed in Section 47-015-1.E. shall not be burned.



- I. Outdoor barbecuing connected with group outings, festivals, fairs or similar occasions is allowed, except that prohibited materials listed in Section 47-015-1.E. shall not be burned.
- J. ~~Open burning in compliance with the rules in this Title 47 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 this or any other governmental entity having jurisdiction.~~

## 2. Residential Open Burning Requirements

- A. ~~Residential open burning of only yard debris is allowed in the Central Lane Control Area defined in Section 47-015-2.C. between October 1 and June 15, inclusive, only on approved burning days, between sunrise and sunset, with a valid fire permit (if required by fire district). The beginning time for burning varies and is set as part of the daily burning advisory; however, fires must always be out by sunset. (Note: All open burning is prohibited within the Eugene City Limits by City Ordinance.)~~
- B. All open burning is prohibited within the Eugene city limits.
- C. All open burning is prohibited within the Springfield city limits, except that burning of woody yard trimmings is allowed on lots of one-half acre or more.
- D. Within the ESUGA, burning is prohibited if required by local fire codes.
- E. Residential open burning outside the city limits of Eugene and Springfield but within the Eugene-Springfield Urban Growth Area is permitted subject to the general requirements of Section 47-015-1 with the following restrictions:
  - (1) The burning of yard debris is limited to the woody yard trimmings from trees and shrubs growing upon the same premises where the burning occurs;
  - (2) Open Burning of leaves and grass clippings is prohibited; and
  - (3) The premises upon which such burnings is to take place must be a private lot, as identified in the Lane County tax records, of one half acre in size or more.
- C. ~~The area that comprises the Central Lane Control Area includes the following:~~
- F. Residential open burning of woody yard trimmings, leaves and grass clippings is allowed within the fire districts identified below:

- (1) Bailey-Spencer RFPD
- (2) Coburg RFPD
- (3) Cottage Grove
- (4) Creswell RFPD
- (5) Crow Valley RFPD
- (6) Dexter RFPD west of the Willamette Meridian
- ~~(7) Elmira Noti RFPD~~
- ~~(8) Eugene Fire District~~
- (7) Eugene RFPD #1
- ~~(8) Fern Ridge Fire Dept. east of Range 7 West Willamette Meridian~~
- ~~(10) (9) Goshen RFPD~~
- ~~(11) (10) Junction City Fire District~~
- ~~(12) (11) Junction City RFPD~~
- ~~(13) (12) Lane RFPD #1 outside the ESUGA~~
- ~~(14) (13) Lowell RFPD~~
- ~~(15) (14) Marcola RFPD~~
- ~~(16) (15) McKenzie RFPD west of the Willamette Meridian outside the ESUGA~~
- ~~(17) (16) Monroe RFPD, that portion within Lane County~~
- ~~(18) (17) Oakridge RFPD~~
- ~~(19) (18) Pleasant Hill RFPD~~
- ~~(20) (19) Santa Clara RFPD outside the ESUGA~~
- ~~(21) (20) South Lane RFPD~~
- ~~(22) Springfield Fire Department and those areas protected by Springfield Fire Department~~
- ~~(23) Veneta RFPD~~
- ~~(24) (21) Willakenzie RFPD~~
- ~~(25) (22) Zumwalt RFPD~~
- ~~(26) Those unprotected areas which are surrounded, or bordered on all sides, by any of the above listed fire protection districts.~~

~~(Note: Some fire districts require burning permits. Persons wishing to conduct residential open burning should check first with their fire district.~~

~~BG. Residential open burning is allowed year-round outside of the Central Lane Control Area affected areas defined in Section 47-015-2.C subsections A through F of this section.~~

~~H. Failure to conduct residential outdoor open burning in accordance with this section is a violation of these rules and shall be cause for assessment of civil penalties. Citations will be issued by authorized enforcement agents to responsible person(s) upon site inspection where residential outdoor open burning rules are violated pursuant to this section.~~

### 3. Construction/Demolition Open Burning Requirements

~~A. Construction/demolition open burning is prohibited inside the ESUGA.~~

~~AB. Construction/demolition open burning is prohibited inside the Central~~

~~Lane Control Area affected areas described in subsection 2.F of this Section, unless authorized pursuant to Section 47-020.~~

BC. Construction/demolition open burning is allowed elsewhere in Lane County, subject to the general requirements of Section 47-015-1.

4. Commercial Open Burning Requirements

~~A. Commercial open burning is prohibited inside the ESUGA.~~

AB. Commercial open burning is prohibited elsewhere, unless authorized pursuant to Section 47-020.

5. Industrial Open Burning Requirements

~~A. Industrial open burning is prohibited inside the ESUGA.~~

AB. Industrial open burning is prohibited elsewhere, unless authorized pursuant to Section 47-020.

Section 47-020 Letter Permits

1. Open burning of commercial, industrial, construction, or demolition wastes on a singly occurring or infrequent basis, which is otherwise prohibited, may be permitted by a letter permit issued by the Authority in accordance with this Rule and subject to the general requirements in Section 47-015-1.

~~2. Prescribed burning of standing vegetation for the purpose of species or wetland conversion, pursuant to federal or state laws or programs to promote or enhance habitat for indigenous species of plants or animals, which is otherwise prohibited, may be permitted by a letter permit issued by the Authority in accordance with section 47-020.~~

23. Prior to any burning, the applicant must also obtain a valid fire permit issued by the fire permit issuing agency having jurisdiction.

34. Permits issued for commercial or industrial operations to conduct commercial, industrial, construction, or demolition open burning require a permit fee of \$100.

45. The following factors shall be evaluated in determining whether a letter permit will be approved or denied:

A. The quantity, type, and combustibility of the materials proposed to be burned;

B. The costs and practicability of alternative disposal methods, including on-site and landfill disposal;

C. The seasonal timing and expected duration of the burn;

- D. The willingness and ability of the applicant to promote efficient combustion by using heavy equipment, fans, pit incineration, or other appropriate methods;
  - E. The location of the proposed burn site with respect to potential adverse impacts;
  - F. The expected frequency of the need to dispose of materials by burning in the future;
  - G. Any prior open burning violations by the applicant;
  - H. Any additional relevant information.
56. Upon receipt and review of the required information, the Authority may approve the application if it is satisfied that:
- A. The applicant has demonstrated that all reasonable alternatives have been explored and no practicable alternative method for disposal of the material exists;
  - B. The proposed burning will not cause or contribute to significant degradation of air quality;
  - C. There will be no actual or projected violation of any statute, rule, regulation, order, permit, ordinance, judgment, or decree.
67. The Authority may revoke or suspend an issued letter permit, with no refund of the fee, via written or verbal notice, on any of the following grounds:
- A. Any material misstatement or omission in the required application information;
  - B. If the conditions of the permit are being violated;
  - C. Any actual or projected violation of any statute, rule, regulation, order, permit, ordinance, judgment, or decree;
  - D. Any other relevant factor.
78. Failure to conduct open burning according to the conditions, limitations, or terms of a letter permit, or any open burning in excess of that permitted by the letter permit, shall be a violation of the permit and shall be cause for assessment of civil penalties or for other enforcement action by the Authority.
89. Each letter permit issued by the Authority pursuant to this Rule shall contain at least the following elements:
- A. The location at which the burning is permitted to take place;

- B. A description of the material that may be burned;
  - C. The calendar period during which the burning is permitted to take place;
  - D. The equipment and methods required to be used by the applicant to insure efficient burning;
  - E. The limitations, if any, based upon meteorological conditions required before burning may occur;
  - F. Reporting requirements for both starting the fire and completion of the requested burning;
  - G. A statement that Section 47-015-1- is fully applicable to all burning under the permit;
  - H. Such other conditions that the Authority considers to be desirable.
910. Letter permits issued by the Authority pursuant to this Rule shall be forwarded to the fire permit issuing agency having jurisdiction.
101. Letter permits are valid only for the specified burning period and shall not be renewable unless there were no approved burning days during that period. Any requests to conduct additional burning shall require a new permit.

Section 47-025 Records and Reports

~~As required by ORS 478.960(7), fire permit issuing agencies shall maintain records of all open burning permits and the conditions thereof, and shall, upon request, submit such records or summaries thereof to the Authority.~~

Section 47-030 Summary of Seasons, Areas, and Permit Requirements for Open Outdoor Burning

<del>Type of Burning</del>	<del>Inside Central Lane Control Area</del>	<del>Outside Central Lane Control Area</del>
<del>Residential Open Burning</del>	<del>Burning of yard debris is allowed between October 1 and June 15 on approved burning days with a valid permit from the local fire district</del>	<del>Burning of clean wood, paper products, and yard debris is allowed on approved burning days with a valid permit from the local fire district.</del>

<del>Construction/Demolition</del>	<del>Burning is prohibited except by letter permit from LRAPA</del>	<del>Burning of approved materials is allowed year round with a valid permit from the local fire district.</del>
<del>Commercial</del>	<del>Burning is prohibited except by letter permit from LRAPA</del>	<del>Burning is prohibited except by letter permit from LRAPA</del>
<del>Industrial</del>	<del>Burning is prohibited except by letter permit from LRAPA</del>	<del>Burning is prohibited except by letter permit from LRAPA</del>

Section 47-030 Summary of Seasons, Areas, and Permit Requirements for Open Burning

Type of Burning	Inside City Limits of Eugene	Inside City Limits of Springfield	Elsewhere Inside the ESUGA	Inside Affected Fire Districts and Outside ESUGA	All Other Areas
Residential Open Burning (Section 47-015-2)	Prohibited by City Ordinance	Prohibited by City Ordinance, except that tree trimmings and shrub prunings, only, may be burned on lots of one-half acre or greater in size. Burning of grass clippings and fallen leaves is prohibited.	Prohibited by LRAPA Title 47, except that between October 1 and June 15, tree trimmings and shrub prunings, only, may be burned on lots of one-half acre or greater in size. Burning of grass clippings and fallen leaves is prohibited.	Burning of woody yard trimmings, leaves, and grass clippings is allowed between October 1 and June 15 on approved burning days with a valid permit from the local fire district (where required by fire district).	Burning of clean wood and yard debris is allowed year round on approved burning days with a valid permit from the local fire district (where required by fire district).
Construction/ Demolition Open Burning (Section 47-015-3)	Burning is prohibited by city ordinance and by LRAPA Section 47-020.3	Burning is prohibited by LRAPA Section 47-020.3	Burning is prohibited by LRAPA Section 47-020.3	Burning is prohibited, except by letter permit from LRAPA	Burning of approved materials is allowed year round on approved burning days with a valid permit from the local fire district (where required by fire district).
Commercial Open Burning (Section 47-015-4)	Burning is prohibited by city ordinance and by LRAPA Section 47-020.4	Burning is prohibited by LRAPA Section 47-020.4	Burning is prohibited by LRAPA Section 47-020.4	Burning is prohibited, except by letter permit from LRAPA	Burning is prohibited, except by letter permit from LRAPA
Industrial Open Burning (Section 47-015-5)	Burning is prohibited by LRAPA Section 47-020.5	Burning is prohibited by LRAPA Section 47-020.5	Burning is prohibited by LRAPA Section 47-020.5	Burning is prohibited, except by letter permit from LRAPA	Burning is prohibited, except by letter permit from LRAPA

General open burning requirements are contained in section 47-015.

In case of apparent conflict between this summary and the text of section 47-001 through 47-025, inclusive, the text shall apply.

\* Note: ~~All open burning is prohibited inside the city limits of Eugene, by city ordinance.~~

# *Attachment B*

## *Rulemaking Statements*



# *Title 16*

## STATEMENT OF NEED FOR PROPOSED RULE MAKING

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Eugene/Springfield Air Quality Maintenance Area.

### LEGAL AUTHORITY:

ORS 183; Lane Code 9.120-9.160; Eugene Code 6.250-6.270; Springfield Code 4-8-4; LRAPA 14-150 and LRAPA 16; and the Federal Clean Air Act Amendments of 1990.

### NEED FOR AMENDMENTS:

To minimize air pollution and thereby protect the public health, Lane County and the cities of Eugene and Springfield have enacted ordinances prohibiting the use of woodstoves and other solid-fuel space heating devices under certain circumstances. The local governments also have delegated to LRAPA the authority to enforce those ordinances, using LRAPA rules and procedures.

It is anticipated that there could be a significant number of violations written for burning on a single "red" (no-burn) advisory day. The procedures included in LRAPA Title 14 for conducting contested case proceedings for violations for industrial emissions, open burning and the like, are too cumbersome for use in the case of large numbers of appeals from residential wood burning violations. Use of the usual procedures would make this program much more time consuming and expensive. Title 16 provides an abbreviated appeals and hearings process for residential wood burning violations in the Eugene-Springfield Urban Growth Area.

The concept is similar to traffic court, wherein a day for hearing contested cases is established by the hearings officer soon after a "red day" episode and prior to the time Notices of Violation are served. Notices of Violation would have the hearing date on them. This contrasts with LRAPA's regular procedure for other violations, in which a hearing is set only after the alleged violator requests it.

Title 16 was adopted as an emergency temporary rule on November 10, 1992 in order to have the procedure in place during the 1992-93 heating season which began on November 1. These rules expired 180 days after their effective date and are no longer in force. This proposed rulemaking will establish permanent rules.

### PRINCIPAL DOCUMENTS RELIED UPON:

1. Attorney General's Uniform and Model Rules of Procedure;
2. LRAPA Titles 13, 14, and 15
3. LRAPA Staff Report to LRAPA Board of Directors, July 13, 1993;
4. Lane Code 9.120-9.160;
5. Eugene Code 6.250-6.270;
6. Springfield Code 4-8-4;

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7. Eugene-Springfield PM10 SIP;
8. ORS 183, 468 and 468A et. seq.; and
9. Clean Air Act Amendments of 1990

## **FISCAL AND ECONOMIC IMPACT STATEMENT**

### **IMPACT ON GOVERNMENT AGENCIES:**

A "red" advisory day in the Eugene-Springfield Urban Growth Area could result in significant numbers of violations and coresponding increase in enforcement workload. The provisions of proposed Title 16 allow for an abbreviated appeal process from what is used for other types of violations, significantly decreasing the amount of work needed to accomplish the issuance of notices, the appeals process and collection of fines. There is a savings to LRAPA of both staff time and attorney's fees.

### **IMPACT ON INDUSTRY:**

No anticipated impact on industry.

### **IMPACT ON PUBLIC:**

The abbreviated process makes it quicker and easier for persons receiving Notices of Violation and Civil Penalties to complete the enforcement process.

## **LAND USE CONSISTENCY STATEMENT**

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

DRA/MJD  
06/10/93

# *Title 34*

## STATEMENT OF NEED FOR PROPOSED RULE AMENDMENTS

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for PM10 for the Eugene/Springfield Non-Attainment Area.

### Legal Authority

ORS 183, 468.535 and the Federal Clean Air Act Amendments of 1990.

### Need for Amendments

The adopted FY '1991-92 budget for LRAPA includes an additional position whose duties include assisting in the development of an expanded permitting program to meet the requirements of the 1990 federal Clean Air Act Amendments. In order to fund this position, the adopted budget includes an increase in permit fees for air contaminant sources. The proposed amendments to Title 34, "Permits," Table A, "Air Contaminant Sources and Associated Fee Schedule," would generally double fees for all Air Contaminant Discharge Permits

Some additional minor fee adjustments are proposed for some source categories to reflect relative workloads among all affected categories.

### Principal Documents Relied Upon

1. Attorney General's Uniform and Model Rules of Procedure
2. LRAPA Title 34
3. 1991-92 LRAPA Budget, Adopted June 11, 1991
4. LRAPA Staff Report to LRAPA Board of Directors, September 11, 1991
5. Clean Air Act Amendments of 1990
6. ORS 183 and 468, et. seq.

## FISCAL AND ECONOMIC IMPACT STATEMENT

Impact on State Agencies: None.

Impact on Local Agencies: Positive. The increased revenues would represent about \$40,000 to \$50,000 used to fund additional staff to help meet the requirements of the 1990 Clean Air Act Amendments. There is additional cost recovery for LRAPA's permit program from the current 51% to 86%.

Impact on Regulated Industry: This action will directly impact all permitted sources. Most sources will be required to pay twice the current application processing fee and annual compliance determination fees.

## LAND USE CONSISTENCY STATEMENT

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

DRA/MJD  
09/13/91

# ***Title 34 (Coffee Roasters)***

## STATEMENT OF NEED FOR PROPOSED RULE AMENDMENTS

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Eugene/Springfield Air Quality Maintenance Area.

### Legal Authority

ORS 183, 468.065, 468A.135 and 468A.155, OAR 340-11-010 and 340-20-165 and LRAPA Titles 13, 14 and 34, and the Federal Clean Air Act Amendments of 1990.

### Need for Amendments

LRAPA receives complaints from citizens regarding odors from coffee roasting operations. Coffee roasters are required by current regulations to have Air Contaminant Discharge Permits. Placing the roasters on permits gives LRAPA a greater degree of control over emissions from those operations. All coffee roasters now operating in Lane County are relatively small, gourmet coffee roasters. The current fee included in Table A is considered too high relative to the costs associated with administering a permit program for these facilities. An adjustment in the existing fee schedule, to add a second category for the smaller roasters, with corresponding smaller fees, would provide a more reasonable level of cost recovery for the smaller coffee roasters.

### Principal Documents Relied Upon

1. Attorney General's Uniform and Model Rules of Procedure
2. LRAPA Titles 13, 14, and 34 (Table A)
3. LRAPA Staff Reports to LRAPA Board of Directors, June 9, 1992 and August 11, 1992
4. Clean Air Act Amendments of 1990
5. ORS 183, 468 and 468A et. seq.

## FISCAL AND ECONOMIC IMPACT STATEMENT

Impact on State Agencies: **None.**

Impact on Local Agencies: **Positive.** Although required by rule, coffee roasters have not been placed under permits in the past. The proposed, two-level fees would more accurately reflect the costs involved in permitting the small roasters; and placing the roasters on permits would give LRAPA a more appropriate means to handle odor problems and enhance the agency's ability to resolve citizen complaints satisfactorily.

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LRAPA Title 34, Table A  
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Impact on Public: **Positive.** Greater control over coffee roasting operations would help to reduce identified odor problems under control.

Impact on Industry: **Negative.** Coffee roasting operations would be placed on operating permits and would be required to pay permitting fees. **Positive.** The permit fees would be lower than in the current fee schedule. The permit also provides some protection for the permit holder against third-party actions by complainants, as long as the operation is in compliance with the conditions of the permit.

LAND USE CONSISTENCY STATEMENT

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

DRA/MJD  
08/11/92



# *Title 38*

## STATEMENT OF NEED FOR PROPOSED RULE AMENDMENTS

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action to amend Oregon's Revised State Implementation Plan (SIP) for Particulate Matter for the Eugene/Springfield Air Quality Maintenance Area.

### LEGAL AUTHORITY:

ORS 183, 468.065, 468A.135 and 468A.155; OAR 340-11-010 and 340-20-165; LRAPA Titles 13, 14 and 34; and the Federal Clean Air Act Amendments of 1990.

### NEED FOR AMENDMENTS:

The federal Clean Air Act Amendments of 1990 require states to make changes in the rules that govern the construction of new major sources or the major modification of existing sources of air pollution. The Oregon Environmental Quality Commission recently acted to amend the Department of Environmental Quality's rules to meet the new requirements. The attached amendments to LRAPA's rules (Title 38 and corresponding changes to Titles 12 and 34) are intended to meet the new federal and state requirements. A public hearing was conducted on April 13 as a concurrent LRAPA and EQC hearing. The hearing record will be left open until May 15 to allow for required publication of notice in the Secretary of State's Bulletin. These rules, when adopted, will become part of the Oregon State Implementation Plan.

### PRINCIPAL DOCUMENTS RELIED UPON:

1. Attorney General's Uniform and Model Rules of Procedure;
2. LRAPA Titles 12, 34, and 38;
3. LRAPA Staff Report to LRAPA Board of Directors, March 17, 1993;
4. Clean Air Act Amendments of 1990; and
5. ORS 183, 468 and 468A et. seq.

## FISCAL AND ECONOMIC IMPACT STATEMENT

### IMPACT ON GOVERNMENT AGENCIES:

- No significant workload increases;
- No offset transactions in recent years and expectation of infrequent transactions in the future; and
- Some additional work for the few that come in.

Statement of Need for Proposed Rule Amendments  
LRAPA Titles 12, 34 and 38

-2-

**IMPACT ON INDUSTRY:**

- Rules affect new or modified major sources in nonattainment areas;
- Virtually no offset transactions in recent years;
- VOC and NO<sub>x</sub> sources must obtain 1.1:1 offset ratio in O<sub>3</sub> nonattainment areas;
- Little information on market value of emission reduction credits which may be used for offsets.

**LAND USE CONSISTENCY STATEMENT**

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

DRA/MJD  
03/17/93

# *Title 47*

## STATEMENT OF NEED FOR PROPOSED RULE AMENDMENTS

Pursuant to ORS 183.335(2), the following statement provides information on the proposed action amend LRAPA's open burning rules.

### Legal Authority

ORS 183 and 468A.135, LRAPA Titles 13 and 14

### Need for Amendments

The cities of Eugene and Springfield each have ordinances either prohibiting or restricting backyard burning within the city limits. LRAPA rules for open burning, which differ from both the city ordinances, apply within the areas outside the city limits, but inside the Eugene-Springfield Urban Growth Area (ESUGA). LRAPA receives numerous complaints regarding smoke from open burning in the urban-density population areas outside the cities and inside the ESUGA. The LRAPA Board has determined that alternatives for disposal of yard debris are reasonably available to residents within the ESUGA. The proposed regulations would reduce health-related hazards associated with smoke from open burning and would reduce administrative problems associated with different rules across lines of jurisdiction within the ESUGA.

### Principal Documents Relied Upon

1. Attorney General's Uniform and Model Rules of Procedure
2. LRAPA Title 47
3. LRAPA Staff Report to LRAPA Board of Directors, August 11, 1992
4. Eugene Code Number 6.200
5. Springfield Ordinance Number 556
6. Proceedings of the LRAPA Citizens Advisory Committee
7. ORS 183, 468 and 468A et. seq.
8. OAR 340-23

## FISCAL AND ECONOMIC IMPACT STATEMENT

Impact on State Agencies: **None.**

Impact on Local Agencies:

**Positive.** LRAPA staff has historically spent a significant amount of time enforcing open burning rules in the populated areas just outside the Eugene and Springfield city limits. The proposal would reduce the amount of staff time needed for complaint investigation and resolution. The proposed burning

restrictions would also help to reduce overall PM10 levels within the Eugene-Springfield PM10 non-attainment area. Fire departments with split jurisdictions would have an easier time enforcing rules if there were fewer variations in regulations.

**Impact on Public:**

**Positive.** Smoke from open burning can be a local nuisance, as well as cause respiratory problems and, consequently, medical costs for exposed persons. Banning burning in the ESUGA would substantially reduce smoke impacts, and costs associated with impacts, even though some large lots within the ESUGA would still be allowed to burn woody materials. It would result in cleaner air in the local affected areas.

**Negative.** Those individuals who currently burn yard debris would need to use alternative disposal methods. Depending upon the kinds of disposal services available in each area, there could be extra expense of hauling and disposal fees, and inconvenience.

**LAND USE CONSISTENCY STATEMENT**

The proposed rule amendments are consistent with land use as described in applicable land use plans in Lane County.

DRA/MJD  
09/08/92

# *Attachment C*

## *Presiding Officer's Reports on Public Hearings*


# *Title 16*





MEMORANDUM

TO: Record of Adoption Proceedings, Permanent Rules, LRAPA Title 16

FROM: Donald R. Arkell,  Hearings Officer

SUBJ: Public Hearing, July 13, 1993

Summary of Procedure

Pursuant to public notice, a public hearing was convened by the Board of Directors of the Lane Regional Air Pollution Authority at 12:41 p.m. on July 13, 1993 in the Springfield City Council Chamber at 225 North 5th, Springfield. LRAPA had received designation from the DEQ Director as hearings officer for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing. The purpose of the hearing was to receive testimony concerning proposed adoption of permanent LRAPA Title 16, "Home Wood Heating Curtailment Program Enforcement," to replace temporary Title 16 which was adopted in November of 1992. There was no one present who wished to comment on the proposed rules.

Summary of Testimony

There was no public testimony presented at the hearing.

Action of the LRAPA Board of Directors

Notice of the hearing was published in the Eugene Register Guard and the Springfield News, as well as the Secretary of State's Oregon Bulletin. In addition, the draft rules were submitted for comment to Lane Council of Governments, Oregon DEQ and US EPA Region 10 (Oregon Operations). The only written comments received were from DEQ, stating that the proposed rules were at least as stringent as the state's rules and granting LRAPA authorization to serve as EQC hearings officer.

Based on the information presented, the board voted unanimously to adopt the proposed permanent Title 16.

DRA/MJD

# *Title 34*



## MEMORANDUM

To: Environmental Quality Commission

From: Donald R. Arkell, Hearings Officer

Subject: **Amendments to LRAPA Title 34, "Permits," Table A, "Air Contaminant Sources and Associated Fee Schedule," Public Hearing, November 12, 1991**

### SUMMARY OF PROCEDURE

Pursuant to public notice, a public hearing was convened by the Board of Directors of the Lane Regional Air Pollution Authority at 12:40 p.m., November 12, 1991 in the Springfield City Council Chamber at 225 North 5th, Springfield. DEQ staff had reviewed the proposal and determined that it is at least as stringent as state rules and is compatible with state rules. DEQ staff noted one typographical error, which LRAPA corrected before the final version of the fee schedule was presented at the public hearing on November 12.

LRAPA received designation from DEQ to conduct the hearing for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing.

The purpose of the hearing was to receive testimony concerning proposed doubling of LRAPA's fees for air contaminant source permits. The increase is to provide funding for a staff position to help prepare the necessary emissions inventories and permit issuance and emissions tracking programs to satisfy the requirements of Title V of the 1990 federal Clean Air Act.

This proposed fee increase was included in LRAPA's FY 1991/92 budget. Affected Lane County sources were made aware of this fee increase at the beginning of the year, during LRAPA's budget process. LRAPA has received no comments from industry concerning the increase.

Hearings Officer's Report  
LRAPA Title 34, Table A  
November 12, 1991  
-2-

## **PUBLIC HEARING**

No member of the public wished to testify at the hearing. Staff submitted into the record affidavits of publication of hearing notice in three area newspapers and the Secretary of State's Bulletin, as well as review responses from both state and local A-95 clearinghouses and DEQ's authorization to act as hearings officer.

## **ACTION OF THE LRAPA BOARD OF DIRECTORS**

Based on the information presented by staff and on the statements of need and fiscal impact, the board voted unanimously to adopt the adjusted fee schedule in order to facilitate compliance with federal law.

DRA/MJD

# ***Title 34 (Coffee Roasters)***



AIR POLLUTION AUTHORITY

Donald R. Arkell, Director

M E M O R A N D U M

TO: Record of Adoption Proceedings, LRAPA Title 34  
FROM: Donald R. Arkell, Hearings Officer  
SUBJ: Public Hearing, September 8, 1992

Summary of Procedure

Pursuant to public notice, a public hearing was convened by the Board of Directors of the Lane Regional Air Pollution Authority at 12:26 p.m. on September 8, 1992 in the Springfield City Council Chamber at 225 North 5th, Springfield. LRAPA had received designation from the DEQ Director as hearings officer for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing. The purpose of the hearing was to receive testimony concerning proposed adoption of amendments to LRAPA Title 34, "Permits," Table A, "Air Contaminant Sources and Associated Fee Schedule." There was no one present who wished to comment on the proposed rules.

Summary of Testimony

There was no public testimony presented at the hearing.

Action of the LRAPA Board of Directors

Prior to the authorization for hearing, the proposed rules were distributed to affected sources for comment. Several coffee roaster operators were present at the August 13, 1992 board meeting when authorization for hearing was requested. Their comments were noted at that time. Additional background information is contained in staff reports, dated August 13 and September 8, 1992 (Attachments A and B).

The board agreed that coffee roasters should be placed on LRAPA Air Contaminant Discharge permits; however, they did not feel it was necessary to charge the full fees for all operations, since only one had created significant workload for agency staff. Consequently, the board directed staff to initially place all existing small roasters on minimal permits, charging only the \$75 filing fee and waiving the application processing and permit compliance determination fees, as allowed by rule. From then on, administrative discretion would apply as to whether specific coffee roasters should be placed on regular permits.


Based on the information presented, the board voted unanimously to adopt the proposed amendments to Title 34, Table A.

DRA/MJD

# *Title 38*



MEMORANDUM

TO: Record of Adoption Proceedings, LRAPA Titles 12, 34 and 38  
FROM: Donald R. Arkell, Hearings Officer   
SUBJ: Public Hearing, April 13, 1993

Summary of Hearing Procedure

Pursuant to public notice, a public hearing was convened by the Board of Directors of the Lane Regional Air Pollution Authority at 12:48 p.m. on April 13, 1993 in the Springfield City Council Chamber at 225 North 5th, Springfield. LRAPA had received designation from the DEQ Director as hearings officer for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing. The purpose of the hearing was to receive testimony concerning proposed adoption of amendments to LRAPA Title 38, "New Source Review," and concurrent amendments to Title 12, "Definitions," and Title 34, "Air Contaminant Discharge Permits." There was no one present who wished to comment on the proposed rules.

Summary of Testimony

There was no public testimony presented at the hearing.

Participation by Affected Parties and Other Agencies, Public Notice

Prior to the authorization for hearing, the proposed rules were distributed to affected sources, as well as to DEQ and EPA for comment. A number of meetings were held with representatives of local industrial sources, and their comments were incorporated into the draft amendments presented at the hearing. In addition, DEQ staff concluded that the proposed amendments met the state's stringency requirements. EPA Region 10 submitted comments which are detailed in the attached correspondence. Those comments were also incorporated into the draft amendments.

Notice of the hearing was published in the Cottage Grove Sentinel, the Eugene Register-Guard, The Springfield News, and the Secretary of State's Bulletin. following the public hearing, the hearing record was left open until the May 11 meeting. No further comments were received.

Action of the LRAPA Board of Directors

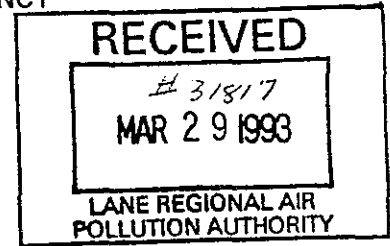
Based on the information presented, the board voted unanimously at the May 11 meeting to adopt the proposed amendments to Titles 12, 34 and 38, effective May 16, 1993.

DRA/MJD





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101  
March 24, 1993



Reply To  
Attn Of: AT-082

Ralph Johnston  
Lane Regional Air Pollution  
Authority  
225 North 5th, Suite 501  
Springfield, Oregon 97477

Dear Mr. Ralph Johnston:

In response to Don Arkell's request of February 10, 1993, enclosed are my comments and suggestions on the draft proposed revisions to LRAPA Titles 12, 34, and 38 (New Source Review). In general, the proposed revisions will bring LRAPA's New Source Review Rules up to date with respect to the Oregon DEQ's rules and the requirements of the Clean Air Act of 1990. There are, however, a couple of problem areas which need to be addressed as discussed in the enclosure.

I hope that you find these comments and suggestions useful in completing the revisions to your rules. If you have any questions, or would like to discuss this further, please give me a call at (206) 553-4253.

Sincerely,

David C. Bray  
Permit Programs Manager

Enclosure

cc: Paul Koprowski, OOO

**EPA COMMENTS AND SUGGESTIONS ON  
DRAFT PROPOSED REVISIONS TO  
LRAPA TITLES 12, 34, AND 38**

**TITLE 12 Definitions**

1. Definition .0083 "Authority-Approved Method" - The approved test methods for determining compliance with emission standards must be definitively established. As such, LRAPA should have a formal source-test manual which is referenced or incorporated in this definition.
2. Definition .0120 "Commence Construction" - This definition appears to blend the separate concepts of two different EPA terms - "begin actual construction" and "commenced construction". The term "begin actual construction" is used in the new source permitting programs as the activity which is prohibited without a permit. The term "commenced construction" is used in the new source review applicability provisions, essentially grandfathering sources which have "commenced construction" from new or revised permit program requirements. The provisions regarding binding agreements and contractual obligations are included only in the definition of "commenced construction". The permitting program should not prohibit a source from entering into agreements or contracts without a permit, so long as a source does so at its own risk.
3. Definition .0275 "Hazardous Air Contaminant" - Does this definition automatically include the pollutants listed in §112(b) of the Clean Air Act and any pollutants which may be listed pursuant to §112(b) in the future?
4. Definition .0360 "Nonattainment Area" - Under §107(d) of the Clean Air Act, EPA "designates" nonattainment areas, not a state. Although states submit recommendations to EPA for area designations, EPA makes the formal designations. Furthermore, EPA can unilaterally change a state's recommendations or make it own independent designations. As such, this definition needs to be expanded to any area designated by EPA.
5. Definition .0450 "Potential to Emit" - The term "enforceable" needs to be changed to "federally-enforceable" to meet the requirements of EPA's regulations. A source cannot be considered to be a minor source under the federal Clean Air Act if the restrictions or limitations are not enforceable as a matter of federal law.
6. Definition .0483 "Reference Methods" - Same comment as #1 above.

**TITLE 34 Air Contaminant Discharge Permits**

No comments or suggestions on the draft proposed revisions to this Title.

### TITLE 38 New Source Review

1. Section 38-005.2 "Air Contaminant Source" - In accordance with the GATX court decision, emissions from marine vessels while at dock are considered part of the stationary source and cannot be excluded from the determination of potential to emit. As such, the final sentence to this definition should be revised to indicate that only emissions from marine vessels enroute to and from a source are excluded.
2. Section 38-005.3 "Baseline concentration" - This definition is the converse of the EPA definition and as such, paragraph B. incorrectly includes increment-consuming emissions increases in the baseline. The definition needs to be revised to be consistent with the Clean Air Act and EPA definitions.
3. Section 38-020.6 - The visibility analysis required under the 40 CFR 51.166(o) applies to all areas, not just Class I areas. As such, this proposed addition must be deleted.
4. Section 38-025.1 - The exemption for resource recovery facilities is no longer allowed under the amended Clean Air Act and EPA regulations. As such, this provision must be revised to delete the reference to resource recovery facilities.
5. Section 38-035.2 - This provision previously allowed any source to provide offsets as needed to mitigate impacts on ambient standards or PSD increments. As proposed for revision, it would only apply to new sources located within designated nonattainment areas. LRAPA may want to reconsider this change as it would severely limit source options under the new source review program.
6. Section 38-045 Visibility Impact - This new section only applies to visibility impact in Class I areas as opposed to the general visibility impact requirement for PSD sources. To ensure that there is no confusion between the two, this section should be titled "Visibility Impact in Class I Areas."

# *Title 47*



MEMORANDUM

To: Record of Adoption Proceedings, Amendments to LRAPA Title 47  
From: Donald R. Arkell, Hearings Officer *[Signature]*  
Subject: Public Hearing, September 8, 1992

Summary of Procedure

Pursuant to public notice, a public hearing was convened by the Board of Directors of the Lane Regional Air Pollution Authority at 1:45 p.m. on September 8, 1992 in the Springfield City Council Chamber at 225 North 5th, Springfield. LRAPA had received designation from the DEQ Director as hearings officer for the Oregon Environmental Quality Commission, and this was a concurrent EQC/LRAPA hearing. The purpose of the hearing was to receive testimony concerning proposed adoption of amendments to LRAPA Title 47, "Outdoor Open Burning." The motion to adopt failed on a tie vote. At the October 13, 1992 meeting, the matter was brought back, and the proposed amendments were adopted.

Summary of Testimony

At the September 8, 1992 public hearing, four individuals testified, as follows:

1. Durward L. "Doc" Boyles, 3411 Baldy View Lane, Springfield, representing both Sycan B Corp., and himself as a property owner.

Boyles said he is opposed to the amendments because he does not feel LRAPA has the capability to enforce the restrictions. He stated that a public agency should not adopt rules unless it has the ability to enforce them. He said he had called LRAPA regarding some illegal open burning on a property adjacent to his and had received no response. Boyles said he feels there is inadequate coordination among the several agencies involved in enforcement, and the public is confused about which rules apply. He said part of the enforcement effort should be educating the public.

2. Alice Verret, 3195 Wayside Loop, Springfield, representing both the Game Farm Neighbors Association, and herself.
  - A. As a resident whose neighbors don't always burn only woody debris, she is in favor of the proposed ban.
  - B. As spokesperson for the Game Farm Neighbors Association, she said the majority of the neighbors would like to continue operating under the current rules, at least until there is curb-side pickup and/or chipping service available in their area.
3. Mert Davis, 335 Kourt, Eugene, representing himself.

Davis said he opposed the proposed changes, because he feels the area is getting more government than it needs. He said people in his area coordinate their burning so they don't bother each other, and people working together can deal with this better than government can. He said he is concerned that restrictions won't stop with the changes that are proposed at this time and that, eventually, people will not be allowed to have barbecues in their yards. Davis also said he did not feel that the people living in the affected areas did not receive adequate notification of the proposed rule amendments.

4. Martin DeForist, 133 Azalea Drive, Eugene, representing himself.

DeForist said he supports greater restrictions on backyard burning, because smoke from neighborhood burning is a problem for him. He said he has lost time from work due to health effects from backyard burning smoke. He said there are instances of burning on no-burn days and burning of prohibited materials. DeForist said he has called complaints to LRAPA and has gotten satisfactory response. He believes the only way to deal effectively with the problem of smoke from backyard burning is to ban the practice, entirely.

In addition to the oral testimony at the hearing, correspondence was received from the following (copies attached):

1. Gail O'Hoyt Cook, 4088 Scenic Drive, Eugene (River Road/Santa Clara), in support of rule amendments as proposed.
2. Cindy Zarycki, 118 Merry Lane, Eugene (River Road/Santa Clara), urged burning ban.

3. Denise Keown, 2510 Debra, Springfield (UGB north of Springfield), urged total burning ban.
4. Donna Fuess, 2645 N. 32nd, Springfield (UGB north of Springfield), urged total burning ban.
5. Thieme Family, 228 Ivanhoe Avenue, Eugene (River Road/Santa Clara), urged total burning ban.
6. Steve Balderson, 1691 Delrose Ave., Springfield (UGB north of Springfield), urged total burning ban.
7. David Nuss, City of Eugene, Public Safety Division, urged total burning ban.
8. Jana Simpson, 1315 Bethel Lane, Eugene (inside city limits near River Road/Santa Clara area), urged total burning ban.
9. James Johnson, Lane County Administrator, reported that the county had determined that adoption of the Eugene burning ban as part of the county's code was unintentional, and the county will not be enforcing a ban within the Eugene urban growth boundary.

Written comments were also received from DEQ prior to the September 8 hearing. Copies of those comments and LRAPA's response are attached.

LRAPA received authorization from DEQ to serve as hearings officer for a joint EQC/LRAPA hearing.

#### Concerns Raised at Public Hearing

Several concerns were raised by both the public and the board at the September 8 public hearing. Staff presented responses to those questions at the October 13 board meeting (see October 13 minutes for greater detail), as follows:

1. Enforcement. To be handled as now, responding to referrals, complaints and first-hand observations of rule violations.
2. Costs of Enforcement/Appeals. Approximate average cost of appealed open burning enforcement action is \$600.

3. Coordination with Other Jurisdictions. Staff works with fire districts and with city and county personnel, to keep LRAPA open burning rules as consistent as possible with city and county ordinances and codes, and to coordinate enforcement using incident reports from other jurisdictions.
4. Public Notification of Rule Amendments. In addition to notification required by statute, staff sent individual notifications to over 1,000 individual burning permit holders, complainants and other interested parties in the affected areas. The process has been in progress since June, and there has been a good deal of publicity by local media.
5. Lot Size Restrictions. A map generated by the Lane Council of Governments showed only about 25 to 30 lots of less than 1/2 acre in size which are located between larger lots and would thus be less likely to impact neighbors with smoke from open burning.
6. Exemptions for Barbecues. Current Oregon statutes exempt barbecues used for cooking of food for human consumption from regulation by state or local agencies.
7. Lane County Adoption of Eugene's Building and Fire Prevention Code. Lane County has determined that Eugene's burning ban was inadvertently adopted into the Lane Code. The county will not be enforcing a burning ban in areas which are outside the Eugene city limits but within the city's urban growth boundary.

#### Action of the LRAPA Board of Directors

Following initial action on the motion to adopt (which failed) at the September 8 public hearing, the board requested additional information from staff, in response to the testimony, to be presented at a subsequent board meeting. Staff prepared and presented information at the October 13 meeting regarding enforcement of the rules, the cost of enforcement actions, coordination between LRAPA and other jurisdictions, public notification, lot size restrictions, exemptions for barbecues, and Lane County's adoption of Eugene's Building and Fire Prevention Code. This information is described in detail in the September 8 and October 13 staff reports and meeting minutes.

Based on the information presented at the September 8, 1992 public hearing and at the October 13, 1992 meeting, the board voted 5 to 1 to adopt amendments to Title 47, as proposed.



State of Oregon  
Department of Environmental Quality

Memorandum

Date: September 1, 1992

To: Kevin Downing  
From: ~~Spence~~ Erickson  
Subject: LRAPA Open Burning Rules - Proposed Modifications


Doug Brannock and I have reviewed the proposed changes to the LRAPA open burning rules and have the following comments:

- 1) All counties in the Willamette Valley excepting Lane County must have domestic fires out two hours before sunset. While not required for Lane County by OAR 340-23 we would suggest that LRAPA also include such a provision in their rules because of the general degradation of ventilation just prior to sunset. Such a provision would reduce the impact of such fires on nighttime particulate levels. In addition, while not required of Lane County by OAR 340, all other counties in the Willamette Valley do not allowed residential open burning between December 15 and March 15. We would encourage LRAPA to write their rules so that Lane County is consistent with the surrounding counties.
- 2) Section 47-015 paragraphs 2B and 2C are not really part of this rule (they reference rules of the Cities of Eugene and Springfield respectively)
- 3) Section 47-015 paragraph 3B makes reference to "affected areas described in subsection C of this Section" which we are unable to locate. The description of those affected areas is critical to determining of the LRAPA rules allow Construction/demolition burning in area OAR 340-23 does not allow. The LRAPA rules may now allow any burning in areas and at time beyond that allowed by state statute.
- 4) Section 47-015 paragraph 4B appears to allow Commercial Open Burning in areas of Lane County not allowed by OAR 340-23-85(4) by allowing it within 3 miles of the city of Florence. It is not clear if prohibition of commercial open burning in the ESUGA is different than the non-allowed area described in OAR 340-23-85(4) since the state statute prohibits commercial open burning "east of Range 7 West Willamette Meridian."
- 5) The "Statement of Need for Proposed Rule Amendments" should reference OAR 340-23.



MEMORANDUM

TO: Kevin Downing

FROM: Don Arkell 

DATE: September 3, 1992

SUBJ: LRAPA Open Burning Rules, Response to DEQ's Proposed Modifications

1. Fires out time and open burning season.

- A. We appreciate the concern regarding the time fires must be extinguished; however, there is strong feeling among the fire districts in Lane County that a two-hour-before-sunset fires-out rule would be very difficult to administer since it is unclear to most people just when two hours before sunset actually occurs. On many days, we don't allow burning to begin until noon, and we are told that this creates, in essence, a no-burning day, if we were to require fires to be out two hours before sunset. The daily burning advisories are based on local meteorology and sometimes differ from what DEQ's advisories are during the same period. We believe we are quite conservative in that we allow burning to occur only on days of good ventilation, which would reduce the ground-level impact during the late afternoon/early evening hours around sunset.
- B. Local concern about a single burning season involves the problems involved in administering the program with two separate start and stop periods, raised by the local fire districts over ten years ago. We have considered, several times since then, whether or not we should go back to the double season, given the wintertime non-attainment problems for PM10 in the Eugene-Springfield non-attainment area (same as the Eugene-Springfield Urban Growth Area). After considering all the ramifications of this, and given the fact that we are essentially prohibiting burning year-round throughout the non-attainment area, there is not sufficient reason at this time to split the season.

2. We concur with the comment and have deleted the reference to the City of Eugene and City of Springfield ordinances.

Response to DEQ Comments  
Proposed Amendments to LRAPA Title 47  
September 3, 1992

-2-

3. We concur with the comment and have referred in subsection 3.B to the affected areas described in 2.F, which is the list of fire districts outside the ESUGA. OAR 340-23-85(5) prohibits construction and demolition burning unless a letter permit is issued. I believe with the prohibition of construction and demolition burning within the ESUGA, requiring letter permits in identified fire districts and allowing it generally, elsewhere, LRAPA's proposed rules are more restrictive than the state rules.
4. As I read OAR 340-23-85(4), commercial open burning would be allowed generally west of Noti. It is allowed within three miles of the city limits of Florence with a letter permit. LRAPA rule 47-015-4.B prohibits commercial open burning everywhere outside the ESUGA unless authorized by letter permit, making the LRAPA rules more restrictive than the state rules. I think the key phrase in OAR 340-23-85(4) is ". . . unless authorized pursuant to OAR 340-23-100 . . ." This is equivalent to our referencing LRAPA 47-020.
5. We concur and can reference 340-23 as a reference document in the Statement of Need.

I hope these responses are satisfactory. If you have any questions, please let me know.

DRA/mjd

***Attachment D***

***Minutes from LRAPA  
Board of Directors  
Meetings***

# *Title 16*

**MINUTES**

**LANE REGIONAL AIR POLLUTION AUTHORITY  
BOARD OF DIRECTORS MEETING  
TUESDAY--JULY 13, 1993  
CITY COUNCIL CHAMBERS  
SPRINGFIELD CITY HALL  
(225 North 5th Street)**

**ATTENDANCE:**

**Board** Terry Callahan, Chair--Oakridge; Steve Dodrill--Eugene; Beverly Ficek--Member-At-Large; Marie Frazier--Lane County; Nancy Nathanson--Eugene; Ralf Walters--Springfield  
(ABSENT: Toney O'Neal--Eugene)

**Staff** Don Arkell--Director, Mike Tharpe, Kim Partridge, Sharon Allen, Merrie Dinteman

**Other** Laurence Thorp

**OPENING:** Callahan called the meeting to order at 12:41 p.m.

**MINUTES:** **MSP (DODRILL/FICEK)(UNANIMOUS) APPROVAL OF MINUTES OF JUNE 8, 1993 MEETING, AS SUBMITTED.**

**EXPENSE REPORT:** Sharon Allen explained that the report in the agenda packets was not the final report for the end of fiscal year 1992/93. The report was based upon information available as of July 1, 1993 when some paperwork, such as bank statements, had not yet been received at that time.

**\*\* ACTION \*\*** **MSP (DODRILL/WALTERS)(UNANIMOUS) APPROVAL OF EXPENSE REPORT THROUGH JUNE 30, 1993, AS PRESENTED.**

**ADVISORY COMMITTEE:** No report.

**PUBLIC PARTICIPATION:** None.

**PUBLIC HEARING--  
LRAPA TITLE 16,  
RULES FOR  
ENFORCEMENT  
PROCEDURES,  
HOME WOOD  
HEATING  
CURTAILMENT:** Arkell explained that Title 16 had been adopted as temporary rules in November of 1992 and, as temporary rules, were valid for only 180 days. The proposal before the board was to adopt Title 16 as permanent rules. The rules in Title 16 provide for abbreviated enforcement and contested case hearings procedures for what could be a significant number of violations on a "no-burn" day. The enforcement and hearing would be handled like a traffic court, with a single hearing date already set at the time the violations are issued. The purpose of the rules is for the convenience of persons who do receive citations, as well as to save staff time and funds which would be expended if large numbers of appeals were issued through the agency's regular enforcement/appeals process.

Arkell added that, since there were no "red" (no-burn) days during the 1992/93 heating season, there was no opportunity to try the rules out to see how the procedures will work. Consequently, it was proposed to adopt Title 16 in its existing form.

**Public Hearing**

Callahan opened the public hearing at 12:46.

Arkell submitted into the record a copy of the hearing notice published in the Oregon Bulletin, affidavits of publication of hearing notice in the Eugene Register Guard and the Springfield News, and a letter from DEQ stating that Title 16 is at least as stringent as state rules and authorizing LRAPA to serve as hearings officer for the EQC. This hearing was a concurrent EQC/LRAPA hearing.

**\*\* ACTION \*\***

**AFTER BRIEF DISCUSSION, MSP (FRAZIER/DODRILL) (UNANIMOUS) ADOPTION OF PERMANENT LRAPA TITLE 16, AS PROPOSED.**

**APPROVAL OF MEMBERSHIP IN THE CITY/COUNTY INSURANCE POOL FOR THREE YEARS:**

Allen explained that LRAPA has found the City/County Insurance Pool to be highly competitive, and there is significant savings over the cost of the agency's previous coverage. She stated further that it is fairly standard for governmental agencies to belong to the trust. The new contract requires board approval.

**\*\* ACTION \*\***

**MSP (NATHANSON/FRAZIER)(UNANIMOUS) APPROVAL OF MEMBERSHIP IN THE CITY/COUNTY INSURANCE POOL FOR THREE YEARS, BEGINNING JULY 1, 1993.**

**APPROVAL OF SIGNERS FOR AGENCY CHECKING ACCOUNT:**

Allen explained that the bank needs an updated list of approved signers for the agency's checking account. The current list includes the name of an employee who was hired on a temporary basis two years to handle fiscal duties while Allen was on military leave. The proposed new list would take his name off the list and Allen's name put back on it. The new list requires board approval.

**\*\* ACTION \*\***

**MSP (NATHANSON/DODRILL)(UNANIMOUS) APPROVAL OF UPDATED LIST OF SIGNERS FOR AGENCY CHECKING ACCOUNT.**

**DIRECTOR'S REPORT:** Arkell touched briefly on some of the agency's activities during the past month:

**Industry**

Arkell said that EPA recently settled with Louisiana Pacific for violations of New Source Review (NSR) and Prevention of Significant Deterioration (PSD) requirements which have occurred over the past six to eight years. EPA has contacted a number of companies which have plants around the country in this regard, including Weyerhaeuser. Weyerhaeuser and LRAPA are currently in the process of reviewing all records for that period to determine

whether Weyerhaeuser has made any changes which might have triggered NSR or PSD reviews. If that has happened, staff will be coming to the board with a proposed stipulated agreement to require the company to rectify whatever wrong was committed. This may involve further control systems, or penalty, or making adjustments to operations to accommodate the needs of the airshed and requirements of the federal law. Arkell said that this situation is not adversarial. Weyerhaeuser has determined that they need to meet the requirements. LRAPA and Weyerhaeuser are working together to try to identify any problems and begin a resolution process. Arkell added that there may have been an impact on air quality because of these events; however, staff does not think so because there have been some reductions in production during that same time period.

**Title V Permitting** DEQ held a series of hearings around the state on the proposed major source permitting rules under which DEQ and LRAPA are to operate the federal permitting program. The hearing held in Springfield on June 28 was attended by about 30 persons, 6 of whom provided testimony. The bulk of testimony heard around the state was on the environmental side, rather than industrial. Many of those who spoke commented that notice of the state's hearings was not adequate. Industry comments involved the practicality of implementing some of the things in the rules. There is concern that administrative overburdening will kill industry's ability to comply with the federal law.

**HB2847** LRAPA's bill, HB2847, was passed by both the House and the Senate. It will go to the governor after the session is over. The bill improves the statutory basis of LRAPA's programs--inspection, rule adoption, enforcement and administration of a civil penalty process. Arkell said that a letter of appreciation is being sent to Rep. Cynthia Wooten for her assistance in carrying the bill through the legislature for LRAPA.

**Staff Training** In addition to field staff, some administrative staff members are learning the practical aspects of asbestos abatement. Three staff members attended a two-day course at the Lane County Courthouse in mid-June.

**New Staff Member** Arkell introduced Mike Tharpe, who assumed the duties of the Operations Manager on June 14. Mike is the main instigator of the agency's permitting and enforcement programs.

**Ozone** Nathanson said that some citizens in Eugene have begun collecting signatures on a petition to limit sales of ozone-depleting chemicals in Eugene. She said she had requested and received information and analysis from Arkell in this regard. It is not yet known whether this will be on the ballot. She said she has advised interested



persons to contact both the LRAPA director and the LRAPA board chair.

**OLD BUSINESS:**

**Agge Appeal**

Callahan said he had polled most of the board members during the month since the board received the review information package. He asked for board consensus regarding the length of time which should be planned for discussion and decision. Consensus was that this can be scheduled for a regular board meeting agenda, provided the agenda is limited to routine action items with the Agge appeal as the only major agenda item.

Callahan said he would like all board members to be present for the review discussion. Since at least one member is unavailable for the August meeting, the item was scheduled for the September 14 board meeting.

Arkell said that he would like to have questions in advance of the meeting, if possible, so that staff could locate pertinent sections of the record ahead of time to save time during the discussion; and so that a written record of those inquiries can be prepared and distributed to all parties before the meeting.

**Agency Compensation Review**

Callahan appointed Beverly Ficek, Toney O'Neal, Hilda Young and Don Nelson to the committee to review LRAPA's compensation package, with Don Churnside serving as an alternate. He said Don Nelson will chair the committee. Nelson will contact Arkell to get the information the committee will need to perform its review.

Dodrill asked that he be provided a copy of the compensation survey which was performed two years ago. Other board members would also like to receive a copy of the report.

**NEW BUSINESS:**

**Open Burning**

LRAPA received a letter from Diana Tonkin, mayor of Westfir, requesting that LRAPA amend its open burning rules to add Westfir to the list of areas affected by seasonal restrictions. Arkell said there appears to be support by the Westfir City Council and fire department, and that the fire department would probably be the primary responder to open burning incidents, with LRAPA doing some complaint response and adjudicating any enforcement actions which are taken. He said LRAPA takes referrals of illegal burning reports from several of the rural fire districts and often does not actually see the burn, relying instead on the fire district report.

In response to questions from the board, Arkell said he does not believe this action would have a significant adverse effect on the agency's budget; and that, over time, Lane County's increased fees for dumping debris at the landfills probably will not result in a significant increase in the incidence of illegal open burning.

Arnell asked for direction from the board regarding whether or not to proceed with a rule change in response to the City Westfir's request. Board consensus was that Arnell should develop the appropriate rule amendments for public hearing later in the year. It is to be determined later whether a hearing will be held in Westfir.

Rules

Arnell said he will be requesting public hearing on a number of rules in October. Those rules include enforcement, federal permit program, hazardous air pollutants, hospital incinerators and crematoriums.

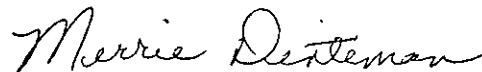
Meeting Schedule

Since several staff members will be away from the office during the week of the regularly scheduled meeting time in November, Arnell asked the board to reschedule the meeting to Tuesday, November 16. There was some discussion of canceling the November meeting; however, several board members said it would be more difficult for them to meet in December than on November 16. Board consensus was to reschedule the November meeting to November 16. As that date gets closer, it can be rescheduled again if there is a problem with it.

ADJOURNMENT:

There being no further business, the meeting adjourned at 1:30 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, August 10, 1993, at 12:30 p.m. in the Springfield City Council Chambers.

Respectfully submitted,



Merrie Dinteman  
Recording Secretary

# *Title 34*

# MINUTES

## LANE REGIONAL AIR POLLUTION AUTHORITY BOARD OF DIRECTORS MEETING

TUESDAY--NOVEMBER 12, 1991

SPRINGFIELD CITY COUNCIL CHAMBERS

225 North 5th Street

Springfield, Oregon

### ATTENDANCE:

Board George Wojcik, Chair--City of Springfield; Marie Frazier--Lane County; Bill Morrisette--City of Springfield; Paul Nicholson--City of Eugene; Darrel Williams--City of Cottage Grove (ABSENT: Debra Ehrman--City of Eugene; Randy MacDonald--City of Eugene)

Staff Don Arkell--Director; Ralph Johnston; Kim Partridge; Mike Crocker; Merrie Dinteman

OPENING: Wojcik called the meeting to order at 12:25 p.m.

MINUTES: MSP (Williams/Morrisette) approval of minutes of the October 1, 1991 meeting, as submitted.

EXPENSE REPORT: One change was made in the report. On page three of the report under Expenses, Materials row, Variance column, "0.00" was changed to \$29,659.23.

There was some discussion of the fact that revenues have been a bit low so far this fiscal year. Arkell explained that part of the reason for that is that the intergovernmental agreement between LRAPA and DEQ has not yet been finalized, and the federal portion of the base grant cannot be passed through DEQ to LRAPA until the agreement is signed. Arkell said he planned to sign the agreement on November 13, and DEQ will act on it as quickly as possible.

\*\* MOTION \*\* MSP (Williams/Morrisette)(unanimous) approval of expense report through October 31, as corrected.

PUBLIC PARTICIPATION: None.

Nicholson asked about the outcome of the joint board/advisory committee meeting which was held on November 6. Arkell said staff will prepare a summary of the discussion for distribution to board and advisory committee members. Morrisette commented that he felt it was a very productive meeting.

ADVISORY COMMITTEE: There was nothing new to report.

PUBLIC HEARING-- AMENDMENTS TO LRAPA TITLE 34, TABLE A: Arkell explained that the federal Clean Air Act requires state and local agencies to "ramp up" to implement Title V of the Act, the federal permitting program affecting major sources throughout the country. This includes emitters of 100 tons or more per year of criteria pollutants and 10 tons or more of toxic pollutants. LRAPA staff has developed a list of

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Lane County industries which are likely to be affected by Title V.

The current LRAPA budget includes funds for additional staff, revenues for which are to come from increased permit fees. The proposal would double LRAPA permit fees and would result in approximately 80% recovery of the cost of administering the permit program. (Cost recovery is currently approximately 50%.) In comparison, the EQC has approved an increase in DEQ's fees which triples the previous schedule. DEQ increased its fees in order to maintain the current level of service and avoid having to lay off employees. The revenues from LRAPA's proposed doubling of fees would be used to fill an additional staff position to help prepare the emissions inventory for VOC, NO<sub>x</sub>, CO and SO<sub>2</sub>, and develop permit issuance and emissions tracking programs which will satisfy the requirements of the new federal law.

Public Hearing

Wojcik opened the public hearing at 12:40 p.m.

Arnell submitted into the record affidavits of publication of hearing notice in the Cottage Grove Sentinel, the Eugene Register Guard, the Springfield News and the Secretary of State's Bulletin. In addition, the proposed amendments to Table A underwent A-95 review at both the local (LCOG) and state levels. Arnell also submitted a letter from DEQ stating that DEQ had reviewed the proposal and found that it was consistent with the state's rules, and authorizing LRAPA to serve as hearings officer for EQC at this hearing. Local industry was also notified about this fee increase at the time the LRAPA budget was developed. No comments had been received from industry regarding the proposal.

There being no one else who wished to comment on the proposal, the hearing was closed at 12:45 p.m.

**\*\* MOTION \*\***

MSP (Morrisette/Williams)(unanimous) adoption of amendments to Title 34, Table A, as proposed.

**APPROVAL OF  
STIPULATED FINAL  
ORDER, EUGENE  
CLINIC:**

Arnell explained the circumstances which brought about the enforcement action against the Eugene Clinic. During the course of remodeling a portion of the clinic, the contractor disturbed asbestos above the ceiling while preparing to mount new walls below. LRAPA responded to an anonymous complaint and found that there was asbestos-containing material in open areas. In addition, the contractor doing the work was not a certified asbestos abatement contractor. LRAPA staff notified the contractor and the engineer from the clinic of the situation and advised that it would need to be abated and that the clinic should take precautions to prevent additional asbestos from being dislodged. LRAPA returned several days later to find that additional asbestos material had been disturbed and

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had been scattered around the area and into the lobby. When the clinic administrator finally understood that the situation was placing people at risk for exposure to asbestos, the abatement was handled properly. LRAPA staff determined that a violation had occurred and met with clinic representatives several times over several months to negotiate a stipulated final order in which the clinic agreed to pay a fine of \$4,000 and to follow the proper procedures in future remodeling projects to assure that there is no human exposure to asbestos. Arkell said that the order could not be finalized until the board approved it.

**Discussion**

Nicholson stated that the administrator of a health care facility should be aware of the adverse health implications of exposure to asbestos. Also, the clinic is in a financial position to be able to do this type of job the way it is supposed to be done. He said he felt this situation could not be considered an act of pure ignorance, and LRAPA should impose the strongest possible enforcement action in this case.

Board members were of the opinion that the clinic was grossly negligent in allowing the construction activity to continue for several days after they were notified of the exposure risk. This is not acceptable in any situation; however, an added negative aspect in this instance is the fact that a health care facility bears a higher responsibility than a contractor or other type of facility to protect the public health. There was some reluctance to approve the order as submitted.

**\*\* MOTION \*\***

**MSP (Nicholson/Morrisette)(unanimous) to accept the settlement accompanied by a letter to the clinic expressing the board's opinion that a health care facility bears a higher responsibility than was exhibited in this particular instance and that a future violation of this type would be inexcusable and would receive maximum enforcement action.**

There was brief discussion regarding the fact that the penalties collected must, by state law, go into Lane County's general fund. Arkell said that this is a factor in whether or not the agency takes an enforcement action as far as it can, because the legal costs of contested case hearings are very high, and LRAPA does not have sufficient funds to prosecute many cases. It would be helpful if the agency could somehow recover its costs in these cases. Arkell said he has spoken with county staff about the possibility of LRAPA recovering from the county the amount actually collected through civil penalties. He said staff did not feel that the commissioners would be willing to approve that kind of arrangement. Frazier said that she would speak with county staff and the board of commissioners about this and report back to the LRAPA board at the December meeting. Arkell said he had not pushed this idea

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yet, because the county management and county counsel are still working on funding LRAPA through the road fund. He doesn't want to cloud the issue with the penalty recovery request.

**RESOLUTION  
AUTHORIZING  
EXPENDITURE OF  
SPECIAL-PURPOSE  
GRANT FUNDS:**

LRAPA Resolution No. 91-4 would authorize expenditure of \$15,000 in special-purpose grant funds from the state to assist in the woodstove curtailment program. Staff has developed a work schedule to enhance public information aspects of both the Eugene-Springfield and Oakridge curtailment programs. Arkell requested authorization to expend the funds for that purpose.

**\*\* MOTION \***

MSP (unanimous) adoption of LRAPA Resolution No. 91-4 as submitted.

**RESOLUTION  
REGARDING CITY/  
COUNTY INSURANCE  
SERVICES TRUST:**

LRAPA Resolution No. 91-5 would put the agency's liability coverage under the City/County Insurance Trust like an earlier resolution did with property insurance. Arkell requested authorization to do so.

**\* MOTION \***

MSP (Williams/Morrisette)(Unanimous) adoption of Resolution No. 91.5 as submitted.

**RESOLUTION  
AUTHORIZING  
EXPENDITURE OF  
SPECIAL-PURPOSE  
GRANT FUNDS:**

LRAPA Resolution No. 91-6 would authorize expenditure of \$80,000 in special-purpose grant funds from the state and EPA to develop the Oakridge PM10 SIP. A contractor has been hired to do the SIP development work for Oakridge. He has already completed work on the Eugene-Springfield SIP contingency plan. Plan development accounts for \$41,000 of the grant money.

A \$35,000 pilot program would provide incentives for replacement of old stoves. It has not yet been determined exactly how this is to be accomplished (through loans, partial payment of the cost of replacement, total payment for replacement, etc.) The decision will be made after data from a wood heating survey in Oakridge has been correlated. A good deal of public education still needs to be done in Oakridge.

Arkell explained that, since there are no other significant sources of PM10 in the vicinity, Oakridge is an ideal location for a study of the effectiveness of wood-stove replacement in reducing ambient PM10 levels. For that reason, Arkell indicated that there might be federal funding available to replace all woodstoves in Oakridge.

**\*\* MOTION \*\***

MSP (Frazier/Nicholson)(unanimous) adoption of Resolution No. 91-6 as submitted.

**DIRECTOR'S REPORT:** Since it was getting late and some of the board members needed to leave for other appointments, they dispensed with formal review of the director's report. Arkell offered to

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answer any questions board members might have on activities reported for October.

**OLD BUSINESS:** Intergovernmental Agreement. Lane County administration and counsel are still in the process of reviewing the intergovernmental agreement for LRAPA support. At issue is the viability of continuing to fund LRAPA through the county road fund. Arkell said that, if the agreement needs to be amended to provide for a different funding method for the county, all participating cities will need to approve the agreement again. Board members present agreed that the approved agreement should be in place before entities with multiple LRAPA board representation begin appointing lay members. Cottage Grove and Oakridge can begin rotation of their joint board position as soon as the agreement is in place. If Bill Morrisette decides not to continue on the board, the full board will need to appoint a replacement, since his is an at-large position created to provide an odd number of board members when Cottage Grove renewed its participation several years ago.

Director's Salary Adjustment. The members of the salary review committee were unable to meet and were, instead, contacted by telephone. All three members agreed to a 5% merit increase for Don Arkell, based on the positive performance evaluation he received from the board at the October meeting.

**\*\* MOTION \*\*** MSP (Frazier/Williams)(Unanimous) approval of a 5% merit increase in director's salary, retroactive to July 1, 1991.

**NEW BUSINESS:** Supplemental Budget--Portable Samplers. Oregon budget law allows unlimited sales and revenues; however, expenditures must be within the amount budgeted. The budget authorizes \$97,000 in expenditures. LRAPA has sold 72 samplers in the first four months of the fiscal year and will need to go well over the budgeted amount to purchase the parts necessary to build the samplers to fill the orders. Arkell said a supplemental budget is needed as soon as possible for the agency's sampler fund, and a public hearing will be scheduled for the December 10 board meeting. He added that a budget committee meeting will be scheduled for the same day, and the budget request will go to the board for public hearing immediately following the committee meeting.

Arkell asked whether board members would be available for the December 10 meeting. Wojcik indicated he was scheduled for a court appearance on that date but would be here if the court date were changed; Williams said he planned to attend the national League of Cities conference but that he did not think he would leave for that until the 11th; Nicholson said he should be available; Morrisette said he should be available; Frazier said she would be off work for an indefinite period of

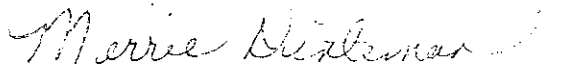


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time (three to four weeks) for medical reasons, but that she could be included in the meeting via telephone conferencing if necessary.

**ADJOURNMENT:** There being no further business, the meeting adjourned at 1:34 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, December 10, 1991, at 12:15 p.m. in the Springfield City Council Chambers.

Respectfully submitted,



Merrie Dinteman  
Recording Secretary

# ***Title 34 (Coffee Roasters)***

MINUTES

LANE REGIONAL AIR POLLUTION AUTHORITY  
BOARD OF DIRECTORS MEETING  
TUESDAY--SEPTEMBER 8, 1992  
SPRINGFIELD CITY COUNCIL CHAMBERS  
225 North 5th Street  
Springfield, Oregon

ATTENDANCE:

Board George Wojcik, Chair--Springfield; Terry Callahan--Oakridge; Steve Dodrill--Eugene; Marie Frazier--Lane County; Randy MacDonald--Eugene; Bill Morrisette--Springfield  
(ABSENT: Toney O'Neal--Eugene)

Staff Don Arkell--Director; Kim Partridge; Sharon Allen; Tom Freeman; Merrie Dinteman

OPENING: Wojcik called the meeting to order at 12:22 p.m.

MINUTES: MSP(Frazier/MacDonald)approval of minutes of the August 11, 1992 meeting, as submitted. Motion passed with Callahan and Wojcik abstaining due to their absence from the August meeting.

EXPENSE REPORT: MSP (unanimous) approval of expense report through August 31, as presented.

ADVISORY COMMITTEE: There was no report from the committee.

PUBLIC PARTICIPATION: Persons wishing to speak at this meeting all had comments for specific agenda items.

PUBLIC HEARING-- AMENDMENTS TO LRAPA TITLE 34, TABLE A, PERMIT FEES (COFFEE ROASTERS): The question before the board was whether to adopt a second category of coffee roasters with a smaller fee than the one currently in the rules. Staff recommended the reduced fee so that the small gourmet coffee roasters can be charged a more reasonable fee than the current fee. The higher fee in the current rules would be retained for any larger roasters which may begin operating in Lane County.

Public Hearing Wojcik opened the public hearing at 12:26 p.m., and asked whether anyone present wished to testify regarding the proposed rule amendments. Hearing no response, Wojcik closed the public hearing.

Discussion Even though the proposal is to provide a smaller fee for the roasters currently operating in Lane County, the board recognizes that it still represents a new fee which has not been charged to those sources in the past. On the other hand, with public agencies being encouraged to recover as much as possible of their operating costs through user fees, LRAPA cannot continue to use general funds to pay for the costs involved in dealing with the coffee roaster odor issue.

Consensus was that LRAPA should place coffee roasters on permits but should not impose the full permit fees on all roasters because of the odor complaint problems caused by a single roaster. Arkell indicated that staff can issue minimal permits to all coffee roasters currently operating in Lane County and charge only the \$75 filing fee, waiving the application processing and permit compliance determination fees. Then, if there are problems with an individual operation, that source can be put on a regular permit and be charged the full fees (the proposed new, lower fee).

**\*\* MOTION \*\***

MSP (MacDonald/Callahan)(unanimous) adoption of the reduced fee for coffee roasters, as an amendment to Table A of LRAPA Title 34. It is understood that minimal permits will be issued initially, with only the filing fee charged. Administrative discretion would allow issuance of regular permits for particular roasting operations which create odor problems.

**PUBLIC HEARING--  
AMENDMENTS TO  
LRAPA TITLE 47,  
OPEN BURNING:**

Arkell presented for the record one additional letter from the public and staff's response to DEQ's comments on the proposed amendments to Title 47, which were not included in the agenda packets sent out prior to the meeting but were distributed at the meeting. Arkell briefly described the process involved in developing the proposed amendments, from the joint board/advisory committee planning session, through the advisory committee discussions and public forum, to the committee's formal recommendations and staff's submittal of the proposed changes.

Arkell stated that notices of the hearing were published in local newspapers, and that all of the written comments received were in favor of a ban on burning, including a letter from the Eugene Fire Marshall. Staff reviewed all comments, including those from DEQ, and some additional recommendations from the advisory committee following their discussion at the September 2 meeting. He then went over the changes, as presented in the staff report.

Arkell asked the board to consider two additional issues:

1. The effective date of the rules. Staff recommended January 1, 1993 to coordinate with start up of Glenwood composting program in the spring and to give people in the affected areas the opportunity to clean up this fall and burn debris as they have in the past.
2. Whether or not the prohibition of burning of grass or fallen leaves should apply only in the ESUGA or also in the areas outside the ESUGA but within the fire districts.

On the latter issue, consensus was that the board intended for these rule amendments to apply only within the ESUGA where an air quality problem related to backyard burning has been identified. They do not wish to tackle changes which would affect areas outside the ESUGA at this time.

Callahan said that the City of Oakridge is working toward a possible split burning season so that backyard burning could occur only during certain months. He added that, at some point in the future, he would like to see the LRAPA board consider the split season option, county-wide.

Arkell entered into the record affidavits of hearing notice publication in local newspapers, and the correspondence received from DEQ and the public.

**Public Hearing**

Wojcik opened the public hearing, and the following individuals testified:

1. Durward L. "Doc" Boyles, 3411 Baldy View Lane, Springfield, representing both Sycan B Corp., and himself as a property owner. Mr. Boyles said he is opposed to the proposed changes. He feels that no public agency should adopt this type of rules unless it has the ability to enforce them, because if the rules are not enforced, it affects people's response to other laws. He does not believe LRAPA has the resources to enforce the proposed restrictions. He said that he has called and left several complaints on LRAPA's answering machine about a neighbor burning construction debris, but he has never heard from LRAPA regarding those calls.

In follow-up comments later in the meeting, Boyles added he feels the basic problem is twofold: there are too many agencies involved in enforcement and none of them knows what the others are doing; and there are too many people out there wanting to burn and not knowing what the rules are or whom to call. Boyles said that part of the enforcement effort for open burning should be educating the public.

2. Alice Verret, 3195 Wayside Loop, Springfield, representing both the Game Farm Neighbors Association, and herself. Ms. Verret spoke to the issue on two different levels.
  - A. As a resident whose neighbors don't always burn only woody debris, she is in favor of the proposed ban.
  - B. As spokesperson for the Game Farm Neighbors Association, Ms. Verret said the majority of the neighbors would like to continue operating under the current rules, at least until there is curb-side pickup and/or chipping service available in their area.
3. Mert Davis, 335 Kourt, Eugene, representing himself. Mr. Davis said he is opposed to the proposed changes, because he feels the area is getting more government than it needs. He said the people in his area coordinate their burning so that they don't bother each other, and that people working

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together can deal with it better than government can. Davis said he is concerned that the restrictions won't stop with what is proposed at this time and that, eventually, he will no longer be able to burn mesquite in his yard for an annual barbecue and social gathering. He also said he was concerned that not enough people in the affected areas were notified that these changes were being proposed. He said he found about it by accident.

4. Martin DeForist, 133 Azalea Drive, Eugene, representing himself. Mr. DeForist said he supports greater restrictions on backyard burning. Smoke from neighborhood burning is a problem for him, and there have been times when the smoke has made him so sick that he has lost time from work. He said most of the people with whom he has spoken about their burning don't even look into rules for open burning before they do it. He also said that some people, if they know the smoke aggravates a neighbor, will do it more often to purposely bother people. Some people also burn things other than yard waste. People often burn after 5:00 p.m. and on weekends when they know LRAPA offices are closed and there is no one to respond to complaints. He added that he has called complaints to LRAPA, and that LRAPA staff has responded satisfactorily to those complaints. DeForist said he feels the only way to handle the problem is to ban burning completely.

There being no further testimony, Wojcik closed the public hearing at 1:13 p.m.

#### Discussion

The board recognized that there are inconsistencies in enforcement of open burning rules, especially during off-duty hours. Arkell explained that LRAPA currently does enforce the rules during evenings, weekends and holidays, if violation situations are discovered, but that staff presently has no efficient way of accessing the complaints called into the complaint line in a timely manner. He said fire districts often respond to burning complaints and file copies of their reports with LRAPA. LRAPA then takes appropriate enforcement actions. He added that he has, for some time, been concerned about the lack of enforcement capability during off-duty hours. He said staff can explore different options to provide after-hours response. An answering service is one possibility. Having staff on-call during those times is also a possibility, although any after-hours coverage by LRAPA personnel would raise budget concerns. Dennis Shew, Springfield Fire Marshall, indicated that persons wishing to file an open burning complaint in the Springfield UGB during evening, weekend and holiday hours should call 911. The 911 operators will determine from what the caller says whether or not an emergency situation exists and will route the call to the proper office for response. Reports of any fire runs will be forwarded to him, and he will give copies to LRAPA for possible enforcement action.

Another point is the effect of Lane County's adoption, by reference, of Eugene's fire code on the affected areas of Lane County which lie inside the Eugene UGB. To date, it is not certain whether the burning ban will actually be enforced in those areas, particularly in the Santa Clara Fire District. If Lane County's code is, in fact, to be enforced throughout the Eugene UGB, then the proposed LRAPA rule amendments would be needed only for the Springfield UGB. There was some discussion regarding having the county adopt Springfield's city ordinance for the Springfield UGB, as it did with Eugene's ordinance. Dennis Shew indicated that he believes it might create some problems with other areas contained in the fire codes, such as hazardous waste handling. He said he thinks that the residents in the subject areas would be opposed to extending Springfield's ordinance provisions into their areas. Arkell said that one of the revisions to the proposed amendments is to prohibit burning if required by local fire codes. This is to leave the rules open so that, if Lane County should adopt the Springfield fire code for the Springfield UGB, the rules would still apply. Staff has attempted to make LRAPA rules compatible with city and county ordinances.

**\*\* MOTION \*\***

MacDonald MOVED approval of the proposed rule amendments.  
Morrisette SECONDED THE MOTION.

**Discussion of  
the Motion**

The comments made by board members during discussion of the motion are summarized as follows:

Dodrill expressed concern regarding the possibility of fire getting out of control in Eugene's south hills, where he lives. He said he would like to discuss the possibility of imposing a total ban, to take effect at the beginning of next year.

Frazier stated that she needed additional information, in light of the comments made by the public at this hearing, before she could make a decision regarding the proposed rules. Specific information requested included:

- A. Analysis of what actually happens in the violation/enforcement procedure.
- B. Potential legal costs, from the violation point, to the citation, to actual compliance.
- C. How the coordination will work between LRAPA, the fire districts, city jurisdictions and any others.
- D. What the notification process is for LRAPA public hearing, to address the concern brought up by Mr. Davis.
- E. Possible future impacts on recreational activities, such as the mesquite barbecue brought up by Mr. Davis.

MacDonald said he felt the proposal was better than the status quo. He stressed the fact that Eugene has banned open burning within the city limits for two decades, and that people have found other means to dispose of yard debris. If the burning ban works in a city of 117,000 people, it can work in the other areas of the ESUGA. He said he would urge jurisdictions who do not currently have a total ban to look at that option in the future.

Morrisette said that, although he agrees with Mr. Boyles, that enforcement must be consistent, it would be a giant step backward for the board not to adopt the proposed rule amendments. He said the City of Springfield is working toward an eventual burning ban but is doing so in steps which restrict burning without an outright ban, in order to provide time to educate the public and ease into a total ban. He added that SB50 will mandate recycling of green waste, and that will be a further push to ban burning.

Wojcik said that he agrees with Mr. Boyles, that LRAPA should not adopt rules which it cannot enforce consistently. He also sees as a problem the fact that alternate disposal methods are not yet in place for the affected areas. A third objection that he had to the proposal as submitted was the 1/2 acre size cutoff for the burning exception. He said the 1/2 acre is fine for inside the city limits; however, there are individuals inside the ESUGA who have lots which are not quite 1/2 acre in size but which are bordered by much larger lots. Burning could be allowed on some lots of less than 1/2 acre without impacting anyone. He said he would like to see some provision in the rules to address the proximity to neighbors and potential smoke impact, rather than a strict 1/2 acre lot size exception.

**\*\* VOTE \*\***

Wojcik asked for a show of hands of those in favor of the adopting the proposed amendments to LRAPA Title 47. Dodrill, MacDonald and Morrisette voted to adopt. Wojcik asked for a show of hands of those opposed to adoption. Callahan, Frazier and Wojcik voted not to adopt the amendments.

Following the vote, Mr. Davis again addressed the board to express his concern that several hundred burn permit holders in the River Road-Santa Clara are unaware that the Lane County code will prohibit them from burning. Frazier said that she would take that concern back to the commissioners.

Regarding notice for the development of these rules, Arkell said staff sent out notices of the June 16 public forum to over 1,000 burning permit holders in the UGB, using fire department records to get the names and addresses. Only about ten people came to the forum, and their opinions were split about 50:50, pro and con. He said staff could have sent out notices of this hearing to all 1,000-plus persons; however, it is assumed that persons interested in the issue would stay alert for further development. The hearing was noticed in the local newspapers, and there were news releases through TV and radio stations. Public notice



efforts have been more intensive for the open burning rule changes than they are for normal rule making or other public hearings.

**Staff Follow-Up** Arkell asked what the board would like to do with the rules, since they were not adopted at this meeting. The board asked that the proposal be taken back to the advisory committee for further review, along with today's public testimony and board comments. They would like to have the proposal brought back to them in November or December. Arkell will provide Commissioner Frazier with the information which she requested. He said he will write a new response to bring back to the board and that, perhaps, those who voted against the proposal today might reconsider if some of these issues are cleared up. He added that there might be some actions which could be taken at the staff level to address some of the concerns raised at this meeting, regarding enforcement.

**DIRECTOR'S REPORT:** Arkell said that the woodstove survey report which was included in the agenda packets includes most of long-range implications for what LRAPA will do with respect to woodstoves for the next several years. He said there is substantially less wood being used for home heating than when the survey was last done. Reasons for the reduction could include such factors as mild weather, wood availability and cost. That rate could go back up, if the area experiences very cold winters or if the cost of other forms of energy goes up substantially.

Staff continues to work on the Oakridge SIP grant, which is not going as quickly as expected. The program should accelerate woodstove replacement in the area, at least on a demonstration project.

**OLD BUSINESS:** Update on Bohemia, Vaughn, Boiler Compliance Schedule. Arkell reported that staff discovered that the company did not plan to do some of the things it committed to in the compliance agreement. Staff met with the company and told them that this is an enforceable order from the board, and they will be required to comply fully. A Notice of Violation and Civil Penalty Assessment will be sent, for failure to meet the interim milestones specified in the order. The boiler failed the source test after the company failed to install five of the items which they said they would. They may be replacing the consultant who advised them not to follow the plan. Arkell added that staff plans to impose all provisions of the agreement vigorously.

Director's Performance Appraisal. Wojcik said he had received evaluations from Dodrill, Morrisette and O'Neal. MacDonald's and Frazier's had been sent by them but not yet received by Wojcik. Callahan asked for another evaluation form and information packet and said he would get his evaluation to Wojcik right away. Allen asked that Wojcik submit a composite evaluation to the board at the next meeting.

MINUTES  
LRAPA BOARD OF DIRECTORS MEETING

September 8, 1992

8

NEW BUSINESS: None.

ADJOURNMENT: There being no further business, the meeting adjourned at 1:55 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, October 13, 1992, at 12:15 p.m. in the Springfield City Council Chambers.

Respectfully submitted,



Merrie Dinteman  
Recording Secretary

# *Title 38*

# MINUTES

LANE REGIONAL AIR POLLUTION AUTHORITY  
BOARD OF DIRECTORS MEETING  
TUESDAY--MAY 11, 1993  
SPRINGFIELD CITY COUNCIL CHAMBERS  
225 North 5th Street  
Springfield, Oregon

## ATTENDANCE:

Board Terry Callahan, Chair--Oakridge; Marie Frazier--Lane County; Nancy Nathanson--Eugene; Toney O'Neal--Eugene; Ralf Walters--Springfield  
(ABSENT: Steve Dodrill--Eugene. The at-large position was not yet filled at the time of this meeting.)

Staff Don Arkell--Director, Kim Partridge, Sharon Allen, Merrie Dinteman

OPENING: Callahan called the meeting to order at 12:35 p.m.

MINUTES: MSP (Frazier/Walters)(unanimous) approval of minutes of April 13, 1993 meeting, as submitted.

EXPENSE REPORT: MSP (Walters/Frazier)(unanimous) approval of expense report through April 30, 1993, as presented.

ADVISORY COMMITTEE: Kim Partridge reported that no official business was conducted at the meeting the previous week due to lack of a quorum.

PUBLIC PARTICIPATION: None.

FORMAL ACTION--  
PROPOSED AMEND-  
MENTS TO LRAPA  
TITLES 12, 34  
AND 38 (NEW  
SOURCE REVIEW): Callahan explained that the record was kept open following the public hearing at the April meeting. He said that no further comments had been received since that time. He said the options for board action were to adopt the rule amendments as proposed, to make changes to the proposed amendments, or to do nothing.

\*\* ACTION \*\* MSP (Nathanson/Walters)(unanimous) adoption of amendments to LRAPA Titles 12, 34 and 38, as proposed.

PUBLIC HEARING--  
LRAPA PLANNED  
PROGRAM BUDGET  
FOR FY 93/94: Arkell reminded the board that there were two actions required--one for a supplemental budget request for the Portable Sampler Fund for the current fiscal year, and the other for the proposed FY 93/94 budget.

Supplemental  
Budget Callahan opened the public hearing on the proposed supplemental budget for the Portable Sampler Fund at 12:40 p.m. Arkell submitted into the record affidavits of publication of hearing notice in the Cottage Grove Sentinel, The Register-Guard, and The Springfield News. There was no one present who wished to comment on the proposed supplemental budget. The public hearing was closed at 12:43 p.m.

\*\* ACTION \*\* MSP (Frazier/Walters)(unanimous) adoption of FY 92/93 supplemental budget for the Portable Sampler Fund as proposed.

Proposed  
FY 93/94  
Budget: Callahan opened the public hearing on the proposed program budget for FY 93/94 at 12:45 p.m. Arkell submitted into the record affidavits of publication of hearing notice in the Cottage Grove Sentinel, The Register-Guard, and The Springfield News. There was no one present who wished to comment regarding the proposed budget. The public hearing was closed at 12:46 p.m.

Discussion Frazier asked whether the percentage of materials and services to the sampler fund was staying the same as the total budget amount goes up. Allen responded that the improved version of the sampler is more expensive to make due to more expensive parts and is, therefore, being sold for more money. In addition, labor costs have gone down due to economies of scale. The difference in expenses versus the increased revenues is a wash.

Callahan reminded the board that the budget committee's action to approve the proposed budget included a recommendation that the board review the agency's cost-of-living and compensation package. He suggested that the board look at this package for next year.

Callahan said that one of the LRAPA Budget Committee members indicated he felt the committee is a "rubber stamp" committee because it does not have adequate involvement with development of the LRAPA budget. Board consensus was that the committee should be more involved in the budget development process; that the process should not involve a lot of extra meetings; and that the individual timetables of the committee members (for meeting scheduling purposes) should not hold up the budget process.

Nathanson suggested that, since there are several months before the next budget cycle will begin, the director could prepare a process for next year's budget development, which the board can adopt sometime prior to beginning the next cycle. Other board members agreed.

**\*\* ACTION \*\*** MSP (FRAZIER/O'NEAL)(UNANIMOUS) ADOPTION OF THE PLANNED PROGRAM BUDGET FOR FY 93/94, AS PROPOSED.

FAMILIARIZING  
BOARD WITH LRAPA  
ACTIVITIES: Arkell explained that, because there has been almost total turn-over of membership on the board in the past couple of years, there is a need to educate board members regarding LRAPA's programs and operations to provide adequate background knowledge upon which to base board decisions. To accomplish that objective, he suggested a series of educational presentations and field trips over the next few months. He presented a list of possible subjects and asked the board what subjects they are particularly interested in and what kinds of tours they would like. The elected members on the board felt that this type of information will also be helpful to them in their contacts with constituents who have questions on various air quality-related topics.

There was considerable discussion regarding subjects of interest to board members and about board meeting schedule, resulting in the following consensus:

Meeting Schedule: The monthly meetings will continue to be held on the second Tuesday of each month. They will include some educational presentations during the lunch period from 12:00 until 12:30. The public meetings will begin at 12:30 instead of 12:15.

Areas of Interest: These included transportation, indirect source permits, asbestos abatement, problem area discussions (things which LRAPA does not regulate but about which the agency receives complaints), air quality monitoring, prescribed burning, small business and major wood products industry tours. Tours can be held on board meeting days, or some other day. Board members can provide their own transportation to tours.

Public Education: It was also suggested that, at least for some of the discussion topics, community groups and schools be invited to attend the board meetings to participate, as part of the agency's public education program. Announcements could be sent to potentially interested groups and, if they are interested, the presentation and discussion could take place during the board meeting. If there is no response, the discussion could take place during the lunch period.

Rulemaking: Some prior discussion of issues around particular rules should be held before rules are presented for public hearing. Arkell said staff also plans to involve industry and others to a greater extent in rule development and other matters which affect them.

Glossary of Terms: Staff should update the general glossary of acronyms and terms and should include explanations of pertinent terminology with each discussion topic in board agenda packets.

Educational Videos: There was also some discussion regarding educational programs which have been developed by the California Air Resources Board (CARB) on various topics of air pollution and air quality control. Kim Partridge reported that she has been trying to get some of the 10- to 15-minute videos which are used in conjunction with these presentations; however, CARB is reluctant to allow their use without the handouts and instructional presentations that go with them. If LRAPA can get the videos, they will be used for board education.

**DIRECTOR'S REPORT:** Arkell touched briefly on some of the agency's activities during the past month.

Major Source  
Permitting

LRAPA has been working with DEQ to develop the program required by the Clean Air Act for permitting of major industrial sources. Rules have been developed, and there will be a number of public hearings around the state in the next couple of months. LRAPA will serve as hearings officer for a June 28 hearing in Springfield. Provisions have been built into the proposed rules for LRAPA's operation of the program in Lane County. After the rules have been in use for a while and the kinks have been worked out, LRAPA will adopt its own set of rules.

- Training Most LRAPA staff members took advantage of two weeks of courses offered in Portland by the California Air Resources Board in conjunction with WESTAR. The courses were very informative, and staff benefitted from this opportunity.
- Enforcement Appeal Egge Sand & Gravel has appealed the decision of the hearings officer in a contested enforcement action. All briefs have now been completed, and staff will be sending the briefing material to the board soon. The board will be asked to review the material to determine whether the hearings officer used proper procedures to arrive at his decision. The board chair will poll board members to determine how long it is likely to take to reach a decision. If it will take considerable time, it will be done at a separate meeting; if not, it will be done as an agenda item at a regular board meeting.
- Oakridge SIP A public hearing will be held in Oakridge on the proposed PM10 SIP. Whoever presides at the hearing will submit a hearings officer's report to the board so that the board may take action on the SIP.
- Operations Manager Mike Tharpe of Missouri has been hired as the agency's new operations manager and will begin in mid-June. Arkell said Tharpe's experience is well suited to LRAPA's current needs.
- OLD BUSINESS:**
- At-Large Member The board discussed the applications for the at-large board seat. Walters stated that JuneAnn Locklear's education and experience are impressive and make her a good candidate, even though she lives inside the city limits of Springfield. He said Locklear's years on the LRAPA Advisory Committee could be a valuable resource to the newer board members. He also felt her work with the American Lung Association would make her input valuable from a public health standpoint.
- Frazier agreed that Locklear's background with LRAPA would be an asset; however, she said she thought the geographic area of representation is more important, particularly in view of the fact that the entire board will be going through an educational process. She stressed the importance of having someone from a more rural area, to help balance the urban/rural representation on the board. Frazier supported appointment of Beverly Ficek. Ficek operates a business in Junction City and is in the process of moving to Junction City. Arkell noted that in a telephone conversation earlier in the day, Ficek confirmed that she is in the process of purchasing a home in Junction City and expects to move by mid-June. Another reason for Frazier's support of Ficek is her experience in service on a wide variety of boards and committees, both rural and metro.
- O'Neal noted that Donald Nelson is also a LRAPA Budget Committee member at the present time. Walters asked about Nelson's background. Arkell responded that he only knew that Nelson works for US West and is involved with cable television. Nelson's letter of application contained no further information.

**\*\* ACTION \*\*** MSP (FRAZIER/NATHANSON)(UNANIMOUS) appointment of Beverly Ficek to a two-year term as the at-large member of the LRAPA Board of Directors.

**NEW BUSINESS:** None.

**ADJOURNMENT:** There being no further business, the meeting adjourned at 2:00 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, June 8, 1993, at 12:15 p.m. in the LANE COUNTY BOARD OF COMMISSIONERS CONFERENCE ROOM in the Public Service Building at 125 E. 8th in Eugene. The meeting will include a presentation on asbestos abatement and a tour of the abatement project currently being performed at the courthouse.

Respectfully submitted,



Merrie Dinteman  
Recording Secretary



# *Title 47*

## MINUTES

LANE REGIONAL AIR POLLUTION AUTHORITY  
BOARD OF DIRECTORS MEETING  
TUESDAY--SEPTEMBER 8, 1992  
SPRINGFIELD CITY COUNCIL CHAMBERS  
225 North 5th Street  
Springfield, Oregon

### ATTENDANCE:

Board George Wojcik, Chair--Springfield; Terry Callahan--Oakridge; Steve Dodrill--Eugene; Marie Frazier--Lane County; Randy MacDonald--Eugene; Bill Morrisette--Springfield  
(ABSENT: Toney O'Neal--Eugene)

Staff Don Arkell--Director; Kim Partridge; Sharon Allen; Tom Freeman; Merrie Dinteman

OPENING: Wojcik called the meeting to order at 12:22 p.m.

MINUTES: MSP(Frazier/MacDonald)approval of minutes of the August 11, 1992 meeting, as submitted. Motion passed with Callahan and Wojcik abstaining due to their absence from the August meeting.

EXPENSE REPORT: MSP (unanimous) approval of expense report through August 31, as presented.

ADVISORY COMMITTEE: There was no report from the committee.

PUBLIC PARTICIPATION: Persons wishing to speak at this meeting all had comments for specific agenda items.

PUBLIC HEARING--  
AMENDMENTS TO  
LRAPA TITLE 34,  
TABLE A, PERMIT  
FEES (COFFEE  
ROASTERS): The question before the board was whether to adopt a second category of coffee roasters with a smaller fee than the one currently in the rules. Staff recommended the reduced fee so that the small gourmet coffee roasters can be charged a more reasonable fee than the current fee. The higher fee in the current rules would be retained for any larger roasters which may begin operating in Lane County.

Public Hearing Wojcik opened the public hearing at 12:26 p.m., and asked whether anyone present wished to testify regarding the proposed rule amendments. Hearing no response, Wojcik closed the public hearing.

Discussion Even though the proposal is to provide a smaller fee for the roasters currently operating in Lane County, the board recognizes that it still represents a new fee which has not been charged to those sources in the past. On the other hand, with public agencies being encouraged to recover as much as possible of their operating costs through user fees, LRAPA cannot continue to use general funds to pay for the costs involved in dealing with the coffee roaster odor issue.

Consensus was that LRAPA should place coffee roasters on permits but should not impose the full permit fees on all roasters because of the odor complaint problems caused by a single roaster. Arkell indicated that staff can issue minimal permits to all coffee roasters currently operating in Lane County and charge only the \$75 filing fee, waiving the application processing and permit compliance determination fees. Then, if there are problems with an individual operation, that source can be put on a regular permit and be charged the full fees (the proposed new, lower fee).

**\*\* MOTION \*\***

MSP (MacDonald/Callahan)(unanimous) adoption of the reduced fee for coffee roasters, as an amendment to Table A of LRAPA Title 34. It is understood that minimal permits will be issued initially, with only the filing fee charged. Administrative discretion would allow issuance of regular permits for particular roasting operations which create odor problems.

**PUBLIC HEARING--  
AMENDMENTS TO  
LRAPA TITLE 47,  
OPEN BURNING:**

Arkell presented for the record one additional letter from the public and staff's response to DEQ's comments on the proposed amendments to Title 47, which were not included in the agenda packets sent out prior to the meeting but were distributed at the meeting. Arkell briefly described the process involved in developing the proposed amendments, from the joint board/advisory committee planning session, through the advisory committee discussions and public forum, to the committee's formal recommendations and staff's submittal of the proposed changes.

Arkell stated that notices of the hearing were published in local newspapers, and that all of the written comments received were in favor of a ban on burning, including a letter from the Eugene Fire Marshall. Staff reviewed all comments, including those from DEQ, and some additional recommendations from the advisory committee following their discussion at the September 2 meeting. He then went over the changes, as presented in the staff report.

Arkell asked the board to consider two additional issues:

1. The effective date of the rules. Staff recommended January 1, 1993 to coordinate with start up of Glenwood composting program in the spring and to give people in the affected areas the opportunity to clean up this fall and burn debris as they have in the past.
2. Whether or not the prohibition of burning of grass or fallen leaves should apply only in the ESUGA or also in the areas outside the ESUGA but within the fire districts.

On the latter issue, consensus was that the board intended for these rule amendments to apply only within the ESUGA where an air quality problem related to backyard burning has been identified. They do not wish to tackle changes which would affect areas outside the ESUGA at this time.

Callahan said that the City of Oakridge is working toward a possible split burning season so that backyard burning could occur only during certain months. He added that, at some point in the future, he would like to see the LRAPA board consider the split season option, county-wide.

Arkell entered into the record affidavits of hearing notice publication in local newspapers, and the correspondence received from DEQ and the public.

**Public Hearing**

Wojcik opened the public hearing, and the following individuals testified:

1. Durward L. "Doc" Boyles, 3411 Baldy View Lane, Springfield, representing both Sycan B Corp., and himself as a property owner. Mr. Boyles said he is opposed to the proposed changes. He feels that no public agency should adopt this type of rules unless it has the ability to enforce them, because if the rules are not enforced, it affects people's response to other laws. He does not believe LRAPA has the resources to enforce the proposed restrictions. He said that he has called and left several complaints on LRAPA's answering machine about a neighbor burning construction debris, but he has never heard from LRAPA regarding those calls.

In follow-up comments later in the meeting, Boyles added he feels the basic problem is twofold: there are too many agencies involved in enforcement and none of them knows what the others are doing; and there are too many people out there wanting to burn and not knowing what the rules are or whom to call. Boyles said that part of the enforcement effort for open burning should be educating the public.

2. Alice Verret, 3195 Wayside Loop, Springfield, representing both the Game Farm Neighbors Association, and herself. Ms. Verret spoke to the issue on two different levels.
  - A. As a resident whose neighbors don't always burn only woody debris, she is in favor of the proposed ban.
  - B. As spokesperson for the Game Farm Neighbors Association, Ms. Verret said the majority of the neighbors would like to continue operating under the current rules, at least until there is curb-side pickup and/or chipping service available in their area.
3. Mert Davis, 335 Kourt, Eugene, representing himself. Mr. Davis said he is opposed to the proposed changes, because he feels the area is getting more government than it needs. He said the people in his area coordinate their burning so that they don't bother each other, and that people working

together can deal with it better than government can. Davis said he is concerned that the restrictions won't stop with what is proposed at this time and that, eventually, he will no longer be able to burn mesquite in his yard for an annual barbecue and social gathering. He also said he was concerned that not enough people in the affected areas were notified that these changes were being proposed. He said he found about it by accident.

4. Martin DeForist, 133 Azalea Drive, Eugene, representing himself. Mr. DeForist said he supports greater restrictions on backyard burning. Smoke from neighborhood burning is a problem for him, and there have been times when the smoke has made him so sick that he has lost time from work. He said most of the people with whom he has spoken about their burning don't even look into rules for open burning before they do it. He also said that some people, if they know the smoke aggravates a neighbor, will do it more often to purposely bother people. Some people also burn things other than yard waste. People often burn after 5:00 p.m. and on weekends when they know LRAPA offices are closed and there is no one to respond to complaints. He added that he has called complaints to LRAPA, and that LRAPA staff has responded satisfactorily to those complaints. DeForist said he feels the only way to handle the problem is to ban burning completely.

There being no further testimony, Wojcik closed the public hearing at 1:13 p.m.

#### Discussion

The board recognized that there are inconsistencies in enforcement of open burning rules, especially during off-duty hours. Arkell explained that LRAPA currently does enforce the rules during evenings, weekends and holidays, if violation situations are discovered, but that staff presently has no efficient way of accessing the complaints called into the complaint line in a timely manner. He said fire districts often respond to burning complaints and file copies of their reports with LRAPA. LRAPA then takes appropriate enforcement actions. He added that he has, for some time, been concerned about the lack of enforcement capability during off-duty hours. He said staff can explore different options to provide after-hours response. An answering service is one possibility. Having staff on-call during those times is also a possibility, although any after-hours coverage by LRAPA personnel would raise budget concerns. Dennis Shew, Springfield Fire Marshall, indicated that persons wishing to file an open burning complaint in the Springfield UGB during evening, weekend and holiday hours should call 911. The 911 operators will determine from what the caller says whether or not an emergency situation exists and will route the call to the proper office for response. Reports of any fire runs will be forwarded to him, and he will give copies to LRAPA for possible enforcement action.

Another point is the effect of Lane County's adoption, by reference, of Eugene's fire code on the affected areas of Lane County which lie inside the Eugene UGB. To date, it is not certain whether the burning ban will actually be enforced in those areas, particularly in the Santa Clara Fire District. If Lane County's code is, in fact, to be enforced throughout the Eugene UGB, then the proposed LRAPA rule amendments would be needed only for the Springfield UGB. There was some discussion regarding having the county adopt Springfield's city ordinance for the Springfield UGB, as it did with Eugene's ordinance. Dennis Shew indicated that he believes it might create some problems with other areas contained in the fire codes, such as hazardous waste handling. He said he thinks that the residents in the subject areas would be opposed to extending Springfield's ordinance provisions into their areas. Arkell said that one of the revisions to the proposed amendments is to prohibit burning if required by local fire codes. This is to leave the rules open so that, if Lane County should adopt the Springfield fire code for the Springfield UGB, the rules would still apply. Staff has attempted to make LRAPA rules compatible with city and county ordinances.

**\*\* MOTION \*\***

MacDonald **MOVED** approval of the proposed rule amendments.  
Morrisette **SECONDED THE MOTION.**

**Discussion of  
the Motion**

The comments made by board members during discussion of the motion are summarized as follows:

Dodrill expressed concern regarding the possibility of fire getting out of control in Eugene's south hills, where he lives. He said he would like to discuss the possibility of imposing a total ban, to take effect at the beginning of next year.

Frazier stated that she needed additional information, in light of the comments made by the public at this hearing, before she could make a decision regarding the proposed rules. Specific information requested included:

- A. Analysis of what actually happens in the violation/enforcement procedure.
- B. Potential legal costs, from the violation point, to the citation, to actual compliance.
- C. How the coordination will work between LRAPA, the fire districts, city jurisdictions and any others.
- D. What the notification process is for LRAPA public hearing, to address the concern brought up by Mr. Davis.
- E. Possible future impacts on recreational activities, such as the mesquite barbecue brought up by Mr. Davis.

MacDonald said he felt the proposal was better than the status quo. He stressed the fact that Eugene has banned open burning within the city limits for two decades, and that people have found other means to dispose of yard debris. If the burning ban works in a city of 117,000 people, it can work in the other areas of the ESUGA. He said he would urge jurisdictions who do not currently have a total ban to look at that option in the future.

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**\*\* VOTE \*\***

Wojcik asked for a show of hands of those in favor of the adopting the proposed amendments to LRAPA Title 47. Dodrill, MacDonald and Morrisette voted to adopt. Wojcik asked for a show of hands of those opposed to adoption. Callahan, Frazier and Wojcik voted not to adopt the amendments.

Following the vote, Mr. Davis again addressed the board to express his concern that several hundred burn permit holders in the River Road-Santa Clara are unaware that the Lane County code will prohibit them from burning. Frazier said that she would take that concern back to the commissioners.

Regarding notice for the development of these rules, Arkell said staff sent out notices of the June 16 public forum to over 1,000 burning permit holders in the UGB, using fire department records to get the names and addresses. Only about ten people came to the forum, and their opinions were split about 50:50, pro and con. He said staff could have sent out notices of this hearing to all 1,000-plus persons; however, it is assumed that persons interested in the issue would stay alert for further development. The hearing was noticed in the local newspapers, and there were news releases through TV and radio stations. Public notice

efforts have been more intensive for the open burning rule changes than they are for normal rule making or other public hearings.

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Staff continues to work on the Oakridge SIP grant, which is not going as quickly as expected. The program should accelerate woodstove replacement in the area, at least on a demonstration project.

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Director's Performance Appraisal. Wojcik said he had received evaluations from Dodrill, Morrisette and O'Neal. MacDonald's and Frazier's had been sent by them but not yet received by Wojcik. Callahan asked for another evaluation form and information packet and said he would get his evaluation to Wojcik right away. Allen asked that Wojcik submit a composite evaluation to the board at the next meeting.



MINUTES  
LRAPA BOARD OF DIRECTORS MEETING

September 8, 1992  
8

NEW BUSINESS: None.

ADJOURNMENT: There being no further business, the meeting adjourned at 1:55 p.m. The next regular meeting of the LRAPA Board of Directors is scheduled for Tuesday, October 13, 1992, at 12:15 p.m. in the Springfield City Council Chambers.

Respectfully submitted,

*Merrie Dinteman*

Merrie Dinteman  
Recording Secretary

## Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item H  
March 11, 1994 Meeting

### Title:

Review of Issues Regarding Instream Water Right Application Submission to WRD for Bear Creek (Rogue River Basin), Richreall Creek (Willamette River Basin) and the Coast Fork Willamette River.

### Summary:

The purpose of this agenda item is to provide the Commission an opportunity to comment on the instream water right applications developed by the Department prior to their submittal to the Water Resources Department.

A 1987 law provides the Department with the authority to submit applications to the Water Resources Department for instream water rights for pollution abatement. The Department has developed an instream rights program and the Commission has adopted rules (OAR 340-56) describing the Department's process for developing applications.

The Department's first priority is to request instream rights for streams identified as water quality limited. These stream do not currently have sufficient flow to assimilate current waste loads. These instream water right applications identify the stream flows necessary in the receiving stream to assimilate pollution loads and still achieve instream water quality standards.

The Department's instream rights program is being used as one tool to protect the investments made by both point and nonpoint sources as they come into compliance with total maximum daily load program requirements.

These instream rights are junior to existing out-of-the-stream rights.


If more than one instream right is requested for the same section of stream, the WRD does not grant the sum of the requests but the largest request and identifies the lesser flows as secondary.

### Department Recommendation:

The Department's recommendation is to submit these applications.

  
Joe Edney (MM)  
Report Author

  
Michael Houns  
Division Administrator

  
Bill Hovan  
Director

2/28/94

\*Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).

\*\*\*\*\*  
\*\*\* ACTIVITY REPORT \*\*\*  
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START TIME	02/25 14:57
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RESULT	OK

State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: February 28, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item H, March 11, 1994, EQC Meeting

Review of Issues Regarding Instream Water Right Application Submission to WRD for Bear Creek (Rogue River Basin), Rickreall Creek (Willamette River Basin) and the Coast Fork Willamette River

**Statement of the Issue**

The Department has the authority to submit applications to the Water Resources Department (WRD) for instream water rights to provide adequate stream flows for pollution abatement. The Department recently identified the pollution abatement flows for the subject basins through stream flow and carrying capacity modeling. These applications for instream water rights identify the flows necessary in the receiving streams to assimilate pollution loads and still achieve water quality standards. The instream water rights would be junior water rights to existing water rights and the issuance of these certificates would not guarantee the presence of these flows for pollution abatement.

The purpose of this agenda item is to provide the Commission an opportunity to comment on these instream water right applications prior to the Department submitting them to the Water Resources Department.

**Background**

Prior to 1987, water rights were issued only for out-of-stream uses of water. Senate Bill 140, adopted in 1987, gave the Department the authority to request instream water rights for pollution abatement. The bill also granted the Oregon Department of Fish and Wildlife (ODFW) and the State Parks and Recreation Department the authority to protect stream flows for fish and wildlife and recreation.

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<sup>†</sup>A large print copy of this report is available upon request.

Memo To: Environmental Quality Commission  
Agenda Item H  
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In December 1991, the Department established an instream water rights program and rules for requesting water rights were adopted by the Environmental Quality Commission (EQC). The Department's objective in requesting instream water rights is to attempt to provide an adequate amount of stream flow to maintain water quality standards and protect beneficial uses. The Department intends to use instream water rights to help protect water quality while simultaneously pursuing its primary goal of controlling and reducing pollution loads.

The first priority of the Department's instream water rights program is to address those basins identified as water quality limited and for which total maximum daily loads (TMDLs) have been established. The TMDL process is initiated when a receiving stream, or portion thereof, is identified as water quality limited, which is to say the stream violates water quality standards. The TMDL process identifies the scientifically derived total waste load (volume) which can be discharged to a stream and the stream will still achieve water quality standards. The size of the TMDL is directly dependent on the volume of water available in the receiving stream. As the instream flow decreases the TMDL decreases.

The identified TMDL for a receiving stream is distributed to point sources (Waste Load Allocations), nonpoint sources (Load Allocations) and a background/margin of safety/future growth (Reserve Capacity). The waste load allocations (WLAs) are made part of the point source NPDES permits issued in the affected WQL receiving stream. WLAs are set on a sliding scale directly related to the flows available in the receiving stream. Consequently, as the receiving stream flows are reduced the allowable waste load becomes smaller, the pollution sources must increase the level of treatment performed before discharging. Costs of treatment and the possibility of impact on instream water quality increases as the level of instream flow decrease.

Stream flows can reach a point where the receiving stream is not capable of diluting the discharged waste loads from both non-point sources and point sources. If such instream conditions are reached, e.g., continued drought, excessive consumptive uses, the Department is required to reduced discharges of waste loads to achieve instream standards. This could result in the curtailment of permitted point source discharges.

Silviculture and agriculture nonpoint sources are regulated by the Oregon Department of Forestry and Oregon Department of Agriculture respectively under the Forest Practices Act and the recently adopted Senate Bill 1010 process. The effect of inadequate stream flow on these sources would likely be the development and implementation of stricter land management practices in order to meet reduced waste loads resulting from the reduced flows.

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The instream water rights program is being used as a tool to protect, as best as it can, the wastewater treatment investments made by sources by identifying the flows necessary to allow assimilation of the waste loads allocated to point and nonpoint sources. If an adequate supply of water is not available to assimilate pollutant loads the NPDES permit holders and nonpoint sources will have to further reduce or alter their discharges to comply with water quality standards. This could adversely affect production and economic growth and likely result in additional costs for both the private and public sectors.

The three waterbodies addressed in these applications, have been identified as water quality limited basins. They each suffer from water quality problems severe enough to cause a nonsupport of beneficial uses during certain periods of the year. The Department has assigned TMDLs based in part on:

- Statistical estimations of minimum instream flows (7Q10); (In those instances where instream flows are a result of upstream dam releases the minimum flow is defined by the harmonic mean flow).
- The dilution rule of 10 parts receiving stream water to 1 part wastewater discharge;
- Carrying capacity of the waterbody at 7Q10 flows; and
- Computer modeled pollutant loads that can be discharged to the receiving stream from both point and nonpoint sources.

These applications for instream flows reflect the flows used to define the TMDLs for each of these waterbodies. The action of reserving instream flows through instream water rights for pollution abatement is intended to assist in solving the problems described above. However, it must be clearly understood that applying for instream water rights may not result in a solution to these problem, particularly where existing consumptive (out-of-stream) water rights (senior rights) currently exceed available flows. The water rights doctrine of "first in time - first in right" prevails in Oregon. Applications are submitted to the Oregon Water Resources Department (WRD). WRD evaluates each request and decides whether or not to grant the water right on a case-by-case basis.

Instream water rights are not additive. If all three authorized state agencies apply for instream water rights on the same stream reach, WRD does not grant the sum of these applications but issues a certificate which grants the largest of the flows and identifies lesser flows as secondary. In this way if the largest flow is extinguished by the requesting agency, the secondary flows would be protected by the same certificate.

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The certificates of instream water rights are held by WRD for the people of the State and can be extinguished when it is determined that the need for instream rights to protect the identified beneficial use no longer exists. By rule the Department will review all approved instream water rights every five years to determine if the need for those rights still remains.

### **Authority to Address the Issue**

The Department's submission of instream water right applications to WRD is supported by OAR 340-56 and provided for under ORS 537.332 - 537.360. The same legislative authority applies to the Departments of Fish and Wildlife and Parks and both have applied for instream water rights in the past.

### **Alternatives and Evaluation**

The Commission is not required by rule or statute to adopt findings related to the Department's decision to submit instream water right applications to WRD. This agenda item is presented to the Commission upon the Commission's request that it be kept informed of the Department's activity with regards to instream water rights. The following alternatives represents the choices the Department considered regarding these specific streams.

The Department examined two alternatives.

1. **Do not submit applications for instream water rights.**

The Department has the authority under state statute to submit applications for instream water rights to establish flows necessary for pollution abatement. The statute does not require the Department to submit applications, therefore implementing this alternative is legally possible.

Implementation of this alternative could result in reduced stream flows as out-of-stream water rights are granted and water is removed from the stream. As stream flow diminishes below the level necessary to assimilate establish total maximum daily loads, waste load and load allocations will have to be reduced so that instream standards are met in the reduced flow. This will require the Commission to take regulatory actions necessary to achieve the standards. The Department would also be adversely affected by this alternative because it would have to recalculate and enforce new waste load and load allocations as the stream flow diminished. This would result in the need to rewrite point source permits and nonpoint source program plans adding to staff resource needs.

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The streams identified in this agenda item are all water quality limited, consequently, current waste loads can not be assimilated in the current flows during certain periods of the year. Sources are being required to improve waste treatment levels to significantly reduce waste loads in order to achieve water quality standards. Selecting this alternative will not assist the sources in establishing pollution abatement flows and over time as stream flows are reduced these same sources will be asked to provide additional treatment.

If this alternative is selected it may result in the following;

- Requirements for dischargers to treat waste streams to higher levels of quality before discharge to the receiving stream. This could result in additional costs to the sources. The nonpoint sources, forestry, agriculture and urban runoff may face requirements for additional management practices to reduce their impact on the receiving stream;
  - Requirements for dischargers, both point and nonpoint sources to eliminate the discharge to the receiving stream. This again may add additional cost to the sources to come into compliance. Point sources may have to redesign treatment systems to meet requirements for land application of treated wastewater. Nonpoint sources may have to develop more efficient management practices to eliminate wastewater discharges.
2. Utilize the instream water right as a tool to attempt to provide stream flows necessary to assimilate point and nonpoint source discharges.

This alternative provides the Department with the option of identifying stream flows necessary to assimilate wastewater discharges and of submitting applications to WRD to establish instream water rights for these flows. Although the issuance of the water right certificate does not guarantee that the flows will be available, it does establish this right as senior to future water rights thus providing a level of protection from future water withdrawals to the significant public and private investments made to comply with water quality standards. Over time the potential exists that these rights could be filled through purchase or transfer of more senior water rights thus holding out the prospects that the rights will eventually have stronger standing.

In the TMDL basins, the Department is requiring point and nonpoint sources to make investments in additional wastewater treatment facilities and practices. This alternative helps to protect that investment from future out-of-stream consumptive uses.

The Department selected alternative 2.



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**Summary of Any Prior Public Input Opportunity**

On December 7, 13 and 14 of 1993 the Department held public information meetings in the cities of Dallas, Cottage Grove and Medford respectively. One meeting in each of the subject basins. The first 10 to 15 minutes were a presentation on the policies, methods and results of the Department's instream water rights program as it specifically applied to the subject waterbody. These meetings covered a number of different issues and concerns on water rights in general and some specific concerns as to the DEQ's requests. The results of these meeting are summarized in Attachment C.

**Recommendation for Commission Action**

The Department requests that the Commission review and comment on the attached instream water rights applications presented in Attachment A of this Staff Report prior to the Department's submittal to the Water Resources Department.

**Attachments**

- A. Applications for Instream Water Rights in Rickreall, and Bear Creeks and the Coast Fork Willamette River.
- B. Sign in sheets for each public meeting
- C. Summary of Public meetings and comments received.
- D. Letter received in response to the Public Meeting Notice

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**Reference Documents (available upon request)**

1. ORS 537.332 - 537.360
2. OAR Chapter 340 Division 56

Approved:

Section:

*Neil Mullane*  
Standards and Assessments

Division:

*Michael Downs*  
Water Quality Division

Report Prepared By: Joseph M. Edney A.I.C.P.

Phone: 229 5030

Date Prepared: December 15, 1993

JME/crw

SA\WC12\WC12347.5

24 Feb 94

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

## STATE OF OREGON

## WATER RESOURCES DEPARTMENT

Application for Instream Water Right  
by  
Oregon Department of Environmental Quality

Applicant: Fred Hansen for the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204

1. The name of the stream of the proposed instream water right is Rickreall Creek, a tributary of the Willamette River.
2. The public use this instream water right is based on is providing required stream flows for pollution abatement.
3. The amount of water (in cubic feet per second) needed by month for the category of public use is as follows:

PUBLIC USE(S): Pollution Abatement

<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7

4. The reach of the stream identified for an instream water right is from (upstream end) river mile 8.5, within the southwest quarter of section 30, Township 7 south, Range 4 west W.M., in Polk County to (downstream end) river mile 0, within the southeast quarter of section 25, Township 7 south, Range 4 west W.M., in Polk County.
5. Technical data relied on in this application are obtained from the United States Geological Survey's "National Water Information System" accessible through the "Automated Data Processing System"; State of Oregon Water Resources Department's stream flow data base; and the State of Oregon Department of Environmental Quality's stream flow data base.

The data analysis was empirically developed using observed relationships between monitoring sites, available flow statistics (U.S.G.S.) and flows estimated using drainage basin area, stream miles, location in the drainage and altitude at the reference site.

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

- 6. The following state agencies were notified of the intent to file for an instream water right on:

Oregon Department of Fish and Wildlife Date: 11-5-93
Oregon Department of Parks and Recreation Date: 11-5-93

- 7. If possible, include recommendations for measuring locations or methods:

Establish a gaging structure at or near the upper limit of the identified reach.

- 8. If possible, include recommendations for assisting the Water Resources Department in measuring and monitoring procedures:

Department of Environmental Quality personnel will assist the Watermaster in establishing a monitoring plan and program. The intent of DEQ assistance is to provide data collection activities where a WRD monitoring site is close to an NPDES permitted outfall or a Department's water quality monitoring site; equipment and training are available to assure data collection activities and reporting meet WRD standards.

- 9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5) (c)]:

NONE

- 10. Remarks:

NONE

An instream water right may be allowed for an instream beneficial use of water subject to existing water rights which have an effective date prior to the filing date of this application.

This type of beneficial use is for the benefit of the public and a certificate issued confirming an instream water right shall be held in trust by the Water Resources Department for the people of the State of Oregon, pursuant to ORS 537.341.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_
Fred Hansen, Director
Oregon Department of Environmental Quality

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

STATE OF OREGON

WATER RESOURCES DEPARTMENT

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<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2

4. The reach of the stream identified for an instream water right is from (upstream end) river mile 19.1, within the northwest quarter of section 3, Township 8 south, Range 6 west W.M., in Polk County to (downstream end) river mile 8.5, within the southwest quarter of section 30, Township 7 south, Range 4 west W.M., in Polk County.
5. Technical data relied on in this application are obtained from the United States Geological Survey's "National Water Information System" accessible through the "Automated Data Processing System"; State of Oregon Water Resources Department's stream flow data base; and the State of Oregon Department of Environmental Quality's stream flow data base.

The data analysis was empirically developed using observed relationships between monitoring sites, available flow statistics (U.S.G.S.) and flows estimated using drainage basin area, stream miles, location in the drainage and altitude at the reference site.

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

- 6. The following state agencies were notified of the intent to file for an instream water right on:

Oregon Department of Fish and Wildlife Date: 11-5-93
Oregon Department of Parks and Recreation Date: 11-5-93

- 7. If possible, include recommendations for measuring locations or methods:

Establish a gaging structure at or near the upper limit of the identified reach.

- 8. If possible, include recommendations for assisting the Water Resources Department in measuring and monitoring procedures:

Department of Environmental Quality personnel will assist the Watermaster in establishing a monitoring plan and program. The intent of DEQ assistance is to provide data collection activities where a WRD monitoring site is close to an NPDES permitted outfall or a Department's water quality monitoring site; equipment and training are available to assure data collection activities and reporting meet WRD standards.

- 9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5) (c)]:

NONE

- 10. Remarks:

NONE

An instream water right may be allowed for an instream beneficial use of water subject to existing water rights which have an effective date prior to the filing date of this application.

This type of beneficial use is for the benefit of the public and a certificate issued confirming an instream water right shall be held in trust by the Water Resources Department for the people of the State of Oregon, pursuant to ORS 537.341.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_
Fred Hansen, Director
Oregon Department of Environmental Quality

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

## STATE OF OREGON

## WATER RESOURCES DEPARTMENT

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 by  
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2. The public use this instream water right is based on is providing required stream flows for pollution abatement.
3. The amount of water (in cubic feet per second) needed by month for the category of public use is as follows:

PUBLIC USE(S): Pollution Abatement

<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
129	129	129	129	129	129	129	129	129	129	129	129

4. The reach of the stream identified for an instream water right is from (upstream end) river mile 6.4, within the northeast quarter of section 28, Township 18 south, Range 2 west, W.M., in Lane County to (downstream end) river mile 0, within the northwest quarter of section 11, Township 18 south, Range 2 west, W.M., in Lane County.
5. Technical data relied on in this application are obtained from the United States Geological Survey's "National Water Information System" accessible through the "Automated Data Processing System"; State of Oregon Water Resources Department's stream flow data base; and the State of Oregon Department of Environmental Quality's stream flow data base.

The data analysis was empirically developed using observed relationships between monitoring sites, available flow statistics (U.S.G.S.) and flows estimated using drainage basin area, stream miles, location in the drainage and altitude at the reference site.

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

- 6. The following state agencies were notified of the intent to file for an instream water right on:

Oregon Department of Fish and Wildlife Date: 11-5-93
Oregon Department of Parks and Recreation Date: 11-5-93

- 7. If possible, include recommendations for measuring locations or methods:

Establish a gaging structure at or near the upstream limit of the identified reach.

- 8. If possible, include recommendations for assisting the Water Resources Department in measuring and monitoring procedures:

Department of Environmental Quality personnel will assist the Watermaster in establishing a monitoring plan and program. The intent of DEQ assistance is to provide data collection activities where a WRD monitoring site is close to an NPDES permitted outfall or a Department's water quality monitoring site; equipment and training are available to assure data collection activities and reporting meet WRD standards.

- 9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5) (c)]:

NONE

- 10. Remarks:

NONE

An instream water right may be allowed for an instream beneficial use of water subject to existing water rights which have an effective date prior to the filing date of this application.

This type of beneficial use is for the benefit of the public and a certificate issued confirming an instream water right shall be held in trust by the Water Resources Department for the people of the State of Oregon, pursuant to ORS 537.341.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_
Fred Hansen, Director
Oregon Department of Environmental Quality



IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

## STATE OF OREGON

## WATER RESOURCES DEPARTMENT

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3. The amount of water (in cubic feet per second) needed by month for the category of public use is as follows:

PUBLIC USE(S): Pollution Abatement

<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
25	25	25	25	25	25	25	25	25	25	25	25

4. The reach of the stream identified for an instream water right is from (upstream end) river mile 20, within the northwest quarter of section 27, Township 20 south, Range 3 west, W.M., in Lane County to (downstream end) river mile 6.4, within the northeast quarter of section 28, Township 18 south, Range 2 west, W.M., in Lane County.
5. Technical data relied on in this application are obtained from the United States Geological Survey's "National Water Information System" accessible through the "Automated Data Processing System"; State of Oregon Water Resources Department's stream flow data base; and the State of Oregon Department of Environmental Quality's stream flow data base.

The data analysis was empirically developed using observed relationships between monitoring sites, available flow statistics (U.S.G.S.) and flows estimated using drainage basin area, stream miles, location in the drainage and altitude at the reference site.

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Establish a gaging structure at or near the upstream limit of the identified reach.

- 8. If possible, include recommendations for assisting the Water Resources Department in measuring and monitoring procedures:

Department of Environmental Quality personnel will assist the Watermaster in establishing a monitoring plan and program. The intent of DEQ assistance is to provide data collection activities where a WRD monitoring site is close to an NPDES permitted outfall or a Department's water quality monitoring site; equipment and training are available to assure data collection activities and reporting meet WRD standards.

- 9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5) (c)]:

NONE

- 10. Remarks:

NONE

An instream water right may be allowed for an instream beneficial use of water subject to existing water rights which have an effective date prior to the filing date of this application.

This type of beneficial use is for the benefit of the public and a certificate issued confirming an instream water right shall be held in trust by the Water Resources Department for the people of the State of Oregon, pursuant to ORS 537.341.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_
Fred Hansen, Director
Oregon Department of Environmental Quality

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

## STATE OF OREGON

## WATER RESOURCES DEPARTMENT

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by  
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3. The amount of water (in cubic feet per second) needed by month for the category of public use is as follows:

PUBLIC USE(S): Pollution Abatement

<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
18	18	18	18	18	18	18	18	18	18	18	18

4. The reach of the stream identified for an instream water right is from (upstream end) river mile 29.4, within the northeast quarter of section 28, Township 21 south, Range 3 west, W.M., in Lane County to (downstream end) river mile 20, within the northwest quarter of section 27, Township 20 south, Range 3 west, W.M., in Lane County.
5. Technical data relied on in this application are obtained from the United States Geological Survey's "National Water Information System" accessible through the "Automated Data Processing System"; State of Oregon Water Resources Department's stream flow data base; and the State of Oregon Department of Environmental Quality's stream flow data base.

The data analysis was empirically developed using observed relationships between monitoring sites, available flow statistics (U.S.G.S.) and flows estimated using drainage basin area, stream miles, location in the drainage and altitude at the reference site.

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

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- 9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5) (c)]:

NONE

- 10. Remarks:

NONE

An instream water right may be allowed for an instream beneficial use of water subject to existing water rights which have an effective date prior to the filing date of this application.

This type of beneficial use is for the benefit of the public and a certificate issued confirming an instream water right shall be held in trust by the Water Resources Department for the people of the State of Oregon, pursuant to ORS 537.341.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_
Fred Hansen, Director
Oregon Department of Environmental Quality

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

## STATE OF OREGON

## WATER RESOURCES DEPARTMENT

**Application for Instream Water Right  
by  
Oregon Department of Environmental Quality**

**Applicant:** Fred Hansen for the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204

1. The name of the stream of the proposed instream water right is Coast Fork Willamette River, a tributary of the Willamette River.
2. The public use this instream water right is based on is providing required stream flows for pollution abatement.
3. The amount of water (in cubic feet per second) needed by month for the category of public use is as follows:

**PUBLIC USE(S):** Pollution Abatement

<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
10	10	10	10	10	10	10	10	10	10	10	10

4. The reach of the stream identified for an instream water right is from (upstream end) river mile 36.5, within the southeast quarter of section 19, Township 22 south, Range 3 west, W.M., in Lane County to (downstream end) river mile 29.4, within the northeast quarter of section 28, Township 21 south, Range 3 west, W.M., in Lane County.
5. Technical data relied on in this application are obtained from the United States Geological Survey's "National Water Information System" accessible through the "Automated Data Processing System"; State of Oregon Water Resources Department's stream flow data base; and the State of Oregon Department of Environmental Quality's stream flow data base.

The data analysis was empirically developed using observed relationships between monitoring sites, available flow statistics (U.S.G.S.) and flows estimated using drainage basin area, stream miles, location in the drainage and altitude at the reference site.

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

- 6. The following state agencies were notified of the intent to file for an instream water right on:

Oregon Department of Fish and Wildlife Date: 11-5-93
Oregon Department of Parks and Recreation Date: 11-5-93

- 7. If possible, include recommendations for measuring locations or methods:

Establish a gaging structure at or near the upstream limit of the identified reach.

- 8. If possible, include recommendations for assisting the Water Resources Department in measuring and monitoring procedures:

Department of Environmental Quality personnel will assist the Watermaster in establishing a monitoring plan and program. The intent of DEQ assistance is to provide data collection activities where a WRD monitoring site is close to an NPDES permitted outfall or a Department's water quality monitoring site; equipment and training are available to assure data collection activities and reporting meet WRD standards.

- 9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5) (c)]:

NONE

- 10. Remarks:

NONE

An instream water right may be allowed for an instream beneficial use of water subject to existing water rights which have an effective date prior to the filing date of this application.

This type of beneficial use is for the benefit of the public and a certificate issued confirming an instream water right shall be held in trust by the Water Resources Department for the people of the State of Oregon, pursuant to ORS 537.341.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_
Fred Hansen, Director
Oregon Department of Environmental Quality

IWR Application # \_\_\_\_\_

Certificate # \_\_\_\_\_

STATE OF OREGON

WATER RESOURCES DEPARTMENT

Application for Instream Water Right  
by  
Oregon Department of Environmental Quality

Applicant: Fred Hansen for the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204

1. The name of the stream of the proposed instream water right is Bear Creek, a tributary of the Rogue River.
2. The public use this instream water right is based on is providing required stream flows for pollution abatement.
3. The amount of water (in cubic feet per second) needed by month for the category of public use is as follows:

PUBLIC USE(S): Pollution Abatement

<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
4	4	4	4	4	4	4	4	4	4	4	4

4. The reach of the stream identified for an instream water right is from (upstream end) river mile 30, within the Northwest quarter of section 20, Township 39 South, Range 2 East W.M., in Jackson County to (downstream end) river mile 21, within the Southeast quarter of section 32, Township 38 South, Range 1 East W.M., in Jackson County.
5. Technical data relied on in this application are obtained from the United States Geological Survey's "National Water Information System" accessible through the "Automated Data Processing System"; State of Oregon Water Resources Department's stream flow data base; and the State of Oregon Department of Environmental Quality's stream flow data base.

The data analysis was empirically developed using observed relationships between monitoring sites, available flow statistics (U.S.G.S.) and flows estimated using drainage basin area, stream miles, location in the drainage and altitude at the reference site.

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Department of Environmental Quality personnel will assist the Watermaster in establishing a monitoring plan and program. The intent of DEQ assistance is to provide data collection activities where a WRD monitoring site is close to an NPDES permitted outfall or a Department's water quality monitoring site; equipment and training are available to assure data collection activities and reporting meet WRD standards.

- 9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5) (c)]:

NONE

- 10. Remarks:

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Date: \_\_\_\_\_

Signature: \_\_\_\_\_
Fred Hansen, Director
Oregon Department of Environmental Quality



IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

## STATE OF OREGON

## WATER RESOURCES DEPARTMENT

**Application for Instream Water Right  
by  
Oregon Department of Environmental Quality**

**Applicant:** Fred Hansen for the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204

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10	10	10	10	10	10	10	10	10	10	10	10

4. The reach of the stream identified for an instream water right is from (upstream end) river mile 9.91, within the Northwest quarter of section 30, Township 37 South, Range 1 West W.M., in Jackson County to (downstream end) river mile 0, within the Northwest quarter of section 20, Township 36 South, Range 2 West W.M., in Jackson County.
5. Technical data relied on in this application are obtained from the United States Geological Survey's "National Water Information System" accessible through the "Automated Data Processing System"; State of Oregon Water Resources Department's stream flow data base; and the State of Oregon Department of Environmental Quality's stream flow data base.

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There is an establish USGS gaging structure at or near the upstream limit of the identified reach.

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- 9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5) (c)]:

NONE

- 10. Remarks:

NONE

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Date: \_\_\_\_\_

Signature: \_\_\_\_\_
Fred Hansen, Director
Oregon Department of Environmental Quality

IWR Application # \_\_\_\_\_ Certificate # \_\_\_\_\_

## STATE OF OREGON

## WATER RESOURCES DEPARTMENT

Application for Instream Water Right  
by  
Oregon Department of Environmental Quality

Applicant: Fred Hansen for the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204

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5	5	5	5	5	5	5	5	5	5	5	5

4. The reach of the stream identified for an instream water right is from (upstream end) river mile 21, within the Southeast quarter of section 32, Township 38 South, Range 1 East W.M., in Jackson County to (downstream end) river mile 9.91, within the Northwest quarter of section 30, Township 37 South, Range 1 West W.M., in Jackson County.
5. Technical data relied on in this application are obtained from the United States Geological Survey's "National Water Information System" accessible through the "Automated Data Processing System"; State of Oregon Water Resources Department's stream flow data base; and the State of Oregon Department of Environmental Quality's stream flow data base.

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- 9. If possible, include other recommendations for methods or conditions necessary for managing the water right to protect the public uses [see OAR 690-77-020 (5) (c)]:

NONE

- 10. Remarks:

NONE

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Date: \_\_\_\_\_

Signature: \_\_\_\_\_
Fred Hansen, Director
Oregon Department of Environmental Quality

\*\*\*\*\*  
\*\*\* ACTIVITY REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO.	3470
CONNECTION TEL	915033996706
CONNECTION ID	
START TIME	02/25 14:09
USAGE TIME	02'51
PAGES	3
RESULT	OK



SIGN-IN SHEET

Dallas

PLEASE PRINT

Instream Water Rights Meeting 12-7-93

NAME	ADDRESS	CITY, STATE, & ZIP
1. Ves Garner	15505 Monmouth Hwy	Mon. Or. 97361
2. Don Duhrhoff	1995 Reuben Boise Rd.	Dallas 97338
3. Red Yulish	550 Morrow Rd	Ind OR 97351
4. W. Braman	2840 Rickreall Rd	Rickreall Or.
5. Claude White	550 Morrow Rd	Ind OR 97351
6. Chick Halls	525 Morrow Rd	Ind OR 97351
7. Dave Cooper	The Itomizer - Observer	JB OR 97351
8. Jim Gardner	9145 Smith Rd	Monmouth 97361
9. GUS WYBENGA	8615 RICKREALL	RICKREALL 97371
10.		
11.		
12.		
13.		
14.		
15.		

Can't write slow





12/14/93

Medford

Attachment B

Inshore Work Right Meeting

SIGN-IN SHEET

\*\*PLEASE PRINT CLEARLY

NAME	STREET ADDRESS	CITY	ZIP	TELEPHONE #
Sandrya Dancy	1075 Peachwood Ct	Medford	97501	770-2865
Susan Hunt	220 Nutley St	Ashland	97520	482-9191
Myra Emen	300 Grandview Dr.	"	"	482-9293
Kenneth Glasgow	959 Terra Avs	"	"	482-3673
Frank H. Frost	655 Raiter Dr.	"	"	488-1098
Neal Widley	383 Oxford St.	Ashland	97520	488-5444
Victoria Barbour	5233 Pioneer Rd	Medford	97501	779-3289
Charles Linnan	814 Hillview Drive ROGUE VALLEY C.O.G.	Ashland	97520	482-4157
MARC PREVOST	155 S. SECOND ST. CITY OF ASHLAND	CENTRAL PT.	97502	664-6674
STEVE HALL	20 EAST MAIN ST. City of Medford	ASHLAND	97520	482-3211
Jim Hill	411 W. 8 <sup>th</sup> St. Medford Urban Renewal	Medford	97501	770-4520
Marsha Danielson	411 W. 8 <sup>th</sup> St., Rm 353	Medford	97501	770-4477
Pete Naumes	P.O. Box 996	Medford	97501	772-6268
Eric Dittmer	2217 Milford Medford, Or. 97501			7705936
Jim PENDLETON	3139 Merriman Rd. Medford Or			773-6121
B. WARD WEBER	3139 MEMIMAN RD MEDFORD OR			
BRIAN LANNING	Soil Conservation Service 1119 Ellen Avenue	Medford	97501	776-4267
John Billings	Jackson Blvd Chesham	Ashland	97520	482-2732



\*\*\*\*\*  
\*\*\* ACTIVITY REPORT \*\*\*  
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TRANSMISSION OK

TX/RX NO.	3469
CONNECTION TEL	915034743814
CONNECTION ID	
START TIME	02/25 14:03
USAGE TIME	04'21
PAGES	4
RESULT	OK

SUMMARY OF PUBLIC MEETINGS AND COMMENT

**Dallas; December 7, 1993 - 7:00pm - Community Center:**

In attendance were several members of the general public, an Associate Director of the Polk County Soil and Water Conservation District, and a representative of the local weekly newspaper.

Initially there was some confusion on the water right seniority these proposed instream rights would have in relation to existing rights. After several assurances that these proposed applications for instream rights would be junior to all existing rights, the discussion centered more on what WRD's interpretation of water law would be as a result of these instream water rights applications. Also, how that interpretation would effect existing and future water rights.

There seemed to be a general consensus that the concept of protecting the public use of surface water was a good idea. Yet the use of instream water rights to resolve that issue seems to intensify the conflict between competing interests in uses of the water. No solution to this dichotomy was offered.

The conversation made it clear that the process of instream water rights was further aggravating the overall special interests conflicts for use of water in the basin. The discussion suggested that water in the basin has become a limited resource.

It was suggested that the state needed to be moving in the direction of basin planning and long term allocation of water through a process of identification of all needs within the basin and prioritization of use (rights). There was an indication that the Polk County community is working towards a coordinated public planning and implementation effort for the Rickreall Creek basin and those present wanted to know whether the DEQ would participate in these efforts.

**Cottage Grove; December 13, 1993 - 7:00pm - Bohemia School Cafeteria:**

In attendance were several members of the general public and a representative of the interest group "Water for Life".

Initially there was a misunderstanding on the seniority these proposed instream rights would have in relation to existing rights. The questions relating to seniority of water rights focused on the taking of a senior right by the Department to fulfill this instream right. Assurances that these proposed application for instream rights would be junior to all existing rights, the Department is not the holder of these rights, and that the Department is not authorized to purchase senior rights seemed to bring this line of

questioning to and end.

A second group of questions centered on how the process for determining the 7Q10 flows worked. Upon further explanation those in attendance appeared to understand the process and use of the 7Q10 in support of the TMDL process.

A third area of questioning focused on the conversion of minimum flows to instream rights and the relationship between these application for instream rights and the converted minimum flows. This question was not answered to the satisfaction of the audience.

There was no general consensus that the concept of protecting the public use of surface water was a good idea.

Statements of concern were expressed and supported by those in attendance on the expenditure of public funds during this period of short budgets. The audience indicated that considering that a minimum flow conversion has occurred on the Coast Fork Willamette River there was no need for additional instream water rights and the agency is wasting time and money that should be spent working on other more threatening environmental problems.

**Medford; December 14, 1993 - 7:00pm - City Hall:**

In attendance were several members of the general public, representatives of both Ashland and Medford, and the Rogue Council of Governments as well as the TV media.

The initial questions centered on how the process for determining the 7Q10 flows worked and what it represents. The Representative of the Rogue Council of Governments indicated that the 7Q10 flow we have asked for on Bear Creek from Medford to the mouth of Bear Creek did not represent historic low flows. He felt that an agricultural irrigation diversion just down stream of the USGS flow gaging station site invalidated the data we used to determine this flow.

Again, there was a misunderstanding on the water right seniority issue. The questions relating to seniority of water rights focused on two areas.

- Instream water right being placed before senior rights to insure instream water availability, and
- The "public taking" of senior rights by the Department to fulfill the identified instream right.

Assurances that these proposed application for instream rights would be junior to all existing rights, the Department is not the holder of these rights, and that the Department is not purchasing senior rights seemed to bring this line of questioning to and end.

There was no general consensus, that the concept of protecting the public use of surface water was a good idea nor was the use of instream water rights to resolve the issues the solution of choice.

There were concerns expressed that Department staff present were not taking notes, nor recording the meeting and that the meeting was not a formal public hearing. It was explained that the Department was not making a final decision on the granting of a water right (such decisions are outside the authority of the Agency). The Department is acting as an agent of the people by evaluating, developing and submitting applications for instream water rights in the same manner that a private party would apply for a water right and WRD would be treating these applications in the same manner.

**Written Comments Received in Response to the Public Meeting Notice:**

Jennie & Allan Otley - Princeton, Oregon

The Otleys write in opposition to the instream water rights program indicating that:

**"Existing water rights of farm and ranch users would be in jeopardy of losing their ability to irrigate crops when necessary. Historic water rights could be abolished if all need for instream water rights are met ..."**

They have suggested that DEQ work with those with existing water rights to establish certain guide-lines. They state that public recreation should never take precedence over water for agriculture.

Mary-Kay Michelsen - Ashland, Oregon

Ms. Michelsen has indicated support for the instream water rights program for the Bear Creek basin. Indicating that the state needs to do more. Requesting that the Department:

**"...continue and strengthen your efforts on behalf of the public interests in protection of aquatic natural resources, dilution and transport of permitted pollution, and protection of public recreational opportunities by vigorously pursuing and if necessary expanding your applications for in stream water rights."**

Alan & Myra Erwin - Ashland, Oregon

The Erwins have written in support of the instream water rights program for the Bear Creek basin. The Erwins have indicated that the Department needs to apply for 10 cfs flows for the whole reach of Bear Creek and say that such action would provide **"a better chance that clean water can be achieved and aquatic habitat**

improved."

Susan A. Hunt - Ashland, Oregon

Ms. Hunt questions the methods used by DEQ staff in the development of the requested flows in the Bear Creek applications. Indicating that the 7Q10 process does not fit the human controlled flows in the basin (reservoir releases). She also questions the adequacy of the data base considering the location and duration of data collection for the USGS gaging stations.

Ms Hunt closes with a strong recommendation that the Department change the applications to request 10 cfs flows throughout the extent of Bear Creek below the dam.

R.M. Graves - Wasco County Soil & Water Conservation District -  
The Dalles, Oregon

Mr. Graves, Manager of the District has written in opposition to the instream water rights program indicating a belief that a "fundamental flaw in the procedures which allows DEQ to grant discharge permits and then to require additional instream flows to dilute the pollution" exists in the instream water rights program. He has asked that the Department:

**"identify sources of pollution, permitted discharges and dates permitted, and specific efforts made by DEQ and permittees to reduce discharges of pollutants into the streams in question."**

Steven M. Hall, P.E. - Public Works Director, City of Ashland,  
Oregon

Mr. Hall has indicated that the City of Ashland is not opposed to the instream water rights program but asks:

**"that the action proposed by DEQ for Bear Creek be deferred until such time as the results and conclusions of our discussions are completed."**

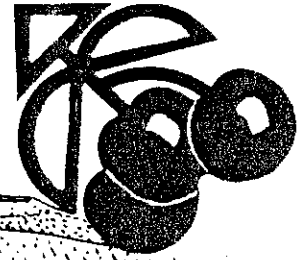
Over the last year the Cities of Ashland and Medford and other concerned groups in the Bear Creek basin have been working with all of the state agencies to resolve the water quality/quantity issues in the Bear Creek basin. Several agreements have been reached and progress is being made toward basin wide solutions. The city of Ashland asks to be reassured that this action is not being taken separately from the issue resolution process currently being followed.

**Conclusions**

- \* In general it appears that the concept of protecting the public's use of the State's water for assimilation and transport of pollutant loads is acceptable.
- \* The acceptance of Instream Water Rights as a process has little support from the water use community but is clearly supported by the discharge and environmental communities.
- \* Within these three basins there is expressed concern that the minimum flows set by WRD in 75-76 are of adequate size to accomplish the task of pollution dilution and these new instream water rights are not necessary. It should be noted that if the minimum stream flows are larger than the requested instream water rights the converted minimum flow would be the instream water right. If the requested instream right was larger than the minimum flow the Water Resources Department would have to determine if the additional flow above the minimum flow would be granted.
- \* Staff supports the requested flows and instream water rights concept. The 7Q10 flow analysis process is an acceptable scientific process and the flows presented in the application are the base flows upon which the final TMDL's for these basins have been set.
- \* There is controversy and disagreement from all sides on the reservation of instream flows. There seems to be support for some degree of protection for public use. An issue which has not been clearly addressed is basin wide planning, priorities development and conflict resolution as part of the big picture of water - quantity vs. availability vs. use vs. quality.
- \* The issues of using instream water rights and minimum flows have been addressed in past actions of the Commission and the state legislature. The issue which now must be address by the Commission is whether the flows that are proposed for instream water right of the proper size.
- \* The City of Ashland letter suggests that the Department is acting independently of the ongoing issue resolution process current taking place in the Bear Creek Basin. The issue resolution process is attempting to identify what flows would be desirable in Bear Creek to address a number of beneficial uses including fisheries, aesthetics, water quality, etc. The process also intends to attempt to identify where the water would come from to achieve these flows. Five years ago the Department and Commission established TMDLs, WLAs and LAs for Bear Creek. These were established based on meeting insteam standards in a specific amount of stream flow. The Department's instream water right applications identify those flows needed for pollution abatement. This is the flow upon which the TMDL and associated waste load and load allocations

were established. Identification of this flow provides the pollution abatement piece of the flow puzzle for Bear Creek.

# Wasco Co. Soil & Water Conservation District



PHONE: (503) 296-6178  
1505 W. 1st St., Suite #3  
THE DALLES, OREGON 97058

November 10, 1993

Oregon DEQ  
Water Quality Division  
811 S.W. 6th Ave.  
Portland, OR 97204

Ref: DEQ notice of intent to file applications for instream water rights  
Dated November 12, 1993

We object to your intention to file for instream water rights as stated in the referenced notice. We believe that there is a fundamental flaw in the procedures which allows DEQ to grant discharge permits and then to require additional instream flows to dilute the pollution.

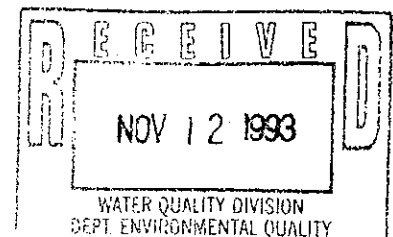
We commented at the time you were developing the administrative rules establishing filing procedures.

We request that you identify sources of pollution, permitted discharges and dates permitted, and specific efforts made by DEQ and permittees to reduce discharges of pollutants into the streams in question.

Sincerely,

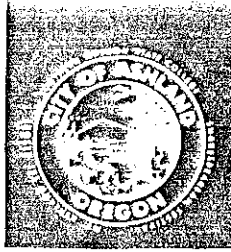
R. M. Graves  
District Manager

c: f  
Rep. Norris  
Rep. Walden  
Rep. Clarno  
Rep. Payne  
Sen. Cooley  
OACD Water Resources Committee  
Governor Roberts





# CITY OF ASHLAND



Attachment D (cont)

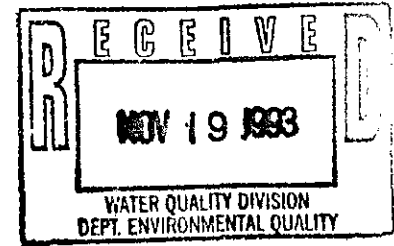
# CITY HALL

ASHLAND, OREGON 97520

telephone (code 503) 482-3211

November 16, 1993

The Department of Environmental Quality  
Water Quality Division  
811 S.W. Sixth Avenue  
Portland, Oregon 97204



Re: Water Quality Application for Instream Water Rights

To whom it may concern:

The City of Ashland wishes to express concerns about the timing of this proposal for Bear Creek.

Over the last several years, the City of Ashland has been working to have all of the affected state agencies come to the table and begin discussion on a basinwide strategy to deal with water quality issues for Bear Creek. We in Ashland found ourselves in a lose-lose situation.

The Oregon Department of Environmental Quality standards adopted by the Environmental Quality Commission would likely require Ashland to remove its treated wastewater from Bear Creek during the summer months. At the same time, the Oregon Water Resources Department was telling us that we could not remove the treated wastewater because of an "informal" attorney general's opinion which indicated that downstream water users may have a water right to utilize the treated wastewater. Concurrently, the Oregon Department of Fish and Wildlife stated that Ashland should be required to replace the treated wastewater we removed from Bear Creek. Those issues pushed Ashland to be extremely active participants in the deliberations that produced Senate Bill 206 during the 1991 legislative session.

At the insistence and prodding of Ashland, representatives of the Oregon Department of Environmental Quality and the Oregon Department of Fish and Wildlife began discussions with the City of Ashland. The intent of the discussions was to provide a broader perspective on the overall water health issues for Bear Creek, particularly as they relate to salmonid fish habitat.

*Paul called Steve Hall, Jim Hill, and Mark Prevost on Monday November 29<sup>th</sup> and explained the situation. They very much appreciated the call and they now have a much better understanding of the process.*

Through the efforts of Anne Squier, Governor Robert's Senior Policy Advisor for Natural Resources, discussions began between the Oregon Departments of Environmental Quality, Fish and Wildlife, Water Resources and Agriculture to deal with Bear Creek and the water quality issues in a holistic rather than piecemeal and fragmented approach.

The three major concerns are point source, non point source pollution, and water quantity. There was very little activity on these issues which were being dealt with in separate arenas under differing time frames.

On September 29 of this year, Anne Squier, Director of DEQ Fred Hansen, Director of OWRD Martha Pagel, Director of ODFW Randy Fisher and Assistant Director of ODA Phil Ward spent a full day in the Rogue Valley learning of the uniqueness of Bear Creek. The day culminated at a special City Council meeting in Ashland. At the council meeting, the state agencies agreed to work together with representatives of the Rogue Valley to seek a basinwide solution to the Bear Creek water quality standards including point and non-point pollution sources and water quantity.

Anne Squier and Fred Hansen set a time limit of six months for the issues to be explored and a resolution to be reached. The discussions are to be on a basinwide approach. They also asked the City of Ashland and the local 2050 Committee to draft a discussion paper for the initial meeting of all concerned agencies. The discussion paper is completed and an initial meeting is being arranged in Eugene to begin the discussions agreed upon for Bear Creek.

The 2050 Committee has been in existence in the Rogue Valley for nearly three years. During those three years, planning and research has been progressing in relation to supply and demand for water in the Rogue Valley with a special emphasis on Bear Creek. The 2050 Committee is a consortium of government agencies (city, county, state, and federal), irrigation districts, conservation groups such as Headwaters and Waterwatch, orchardists, agriculturists, and other interested parties. The purpose of the 2050 Committee is to plan for the long term needs of all suppliers and users of water in the Rogue Valley with the current emphasis on Bear Creek.

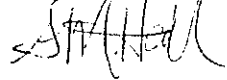
The City of Ashland and the 2050 Committee has a commitment from DEQ, ODFW, OWRD and ODA to work collectively and cooperatively in relation to Bear Creek water health considering the basinwide approach.

To focus on the water quantity issue as a separate issue flies in the face of a mutual commitment reached on September 29, 1993 between DEQ, ODFW, ORWD, ODA, the City of Ashland and the 2050 Water Committee. The current discussions have the high potential to provide for the best solution for all issues as they relate to Bear Creek water health.

The City of Ashland is asking that the action proposed by DEQ for Bear Creek be deferred until such time as the results and conclusions of our discussions are completed.

Thank you for your consideration of Ashland's request.

Sincerely yours,



Steven M. Hall, P.E.  
Public Works Director

cc: Brian Almquist, City Administrator  
Mayor and City Council  
Anne Squier, Governor's Office  
Fred Hansen, DEQ  
Martha Pagel, OWRD  
Randy Fisher, ODFW  
Bruce Andrews, ODA  
Marc Prevost, Rogue Valley Council of Governments  
Ed Olson, Chairperson, 2050 Committee  
Jim Hill, City of Medford

J E  
Mary-Kay Michelsen  
309 Avalon Dr.  
Ashland, OR 97520  
December 14, 1994

Oregon Department of Environmental Quality  
Water Quality Division  
811 S.W. 6th Ave.  
Portland OR 97204

Dear Department Members,

I would like to wholeheartedly voice my support for instream water rights. It is entirely reasonable for the state to hold in stream water rights for public benefit. It is particularly appropriate for the state to exert their prior claim in light of the fact that the state has allowed private citizens to benefit from state waters for so many years. Therefore, please accept this statement in support of DEQ's application for in stream water rights on Bear Creek (Rogue Basin).

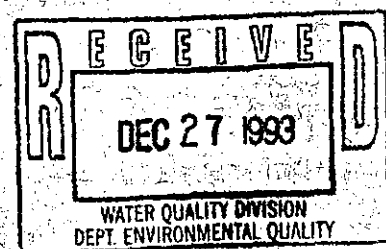
Both empirical measurements and casual observation show that Bear Creek is severely polluted. Bear Creek suffers from both direct pollution and runoff. These problems are exacerbated through the excessive withdrawals of water which have historically been allowed. These problems are especially severe during periods of drought.

It is obvious that permits for out-of-stream uses exceed the capacity of Bear Creek's ability to both maintain a healthy pollution free water flow and honor those permits. Please continue and strengthen your efforts on behalf of the public interests in protection of aquatic natural resources, dilution and transport of permitted pollution, and protection of public recreational opportunities by vigorously pursuing and if necessary expanding your applications for in stream water rights.

Sincerely yours,

*Mary-Kay Michelsen*

Mary-Kay Michelsen



JE

Attachment D (cont)

220 Nutley St.  
Ashland, OR 97520

Dec.17, 1993

OR DEQ  
Water Quality Division  
811 S.S. 6th Ave.  
Portland, OR 97204

I attended the meeting on DEQ proposed filing for instream water rights in BEar Creek, held 12-14-93. Staff at this meeting were not prepared to accept public testimony and did not takes notes of nor did they record public comment.

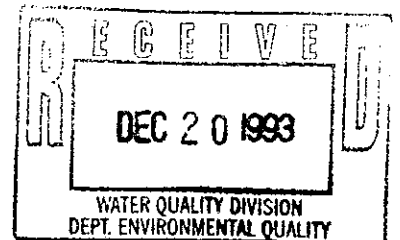
I have some questions about the method used to analyze minimum stream flow. It seems like the 7Q10 method, which works well for a natural system, is irrelevant when used on a totally artificial system. The flows could be anything- they are released from reservoirs and totally human-determined.

In addition, there is no way that there could be 7Q10 data for the whole of Bear Creek, since only the Gaging Station at Medford has been in operation for 10 years, The Ashland Gaging Station has been in operation for less than 2 years, and there is no station on Bear Creek below Medford.

I strongly recommend that you file for 10 cfs for all of Bear Creek, which would probably give an adequate flow for fish migration as well as for pollution dilution. Certainly that much water could easily be allotted between Ashland and Medford, where the City of Ashland is already discussing with Talent Irrigation District the possibility of leaving 10 cfs in below Ashland.

Sincerely,

Susan A. Hunt



Dec. 18, 1993

Oregon Dept. of Environmental Quality  
811 S W Sixth Ave.  
Portland, OR 97204

Comment on Water Quality Application for Instream Water Rights:

DEQ should not be allowed to obtain instream water rights covering the drainage basins of the Coast Fork Willamette River, Bear Creek (Rogue Basin) and Rickreall Creek (Willamette Basin).

Existing water rights of farm and ranch users would be in jeopardy of losing their ability to irrigate crops when necessary. Historic water rights could be abolished if all Need for Instream Water Rights are met as stated. (Public's health, safety and welfare).

Rather DEQ should work with those with existing water rights to establish certain guide-lines. Public Recreation should never take precedence over Agriculture.

Please consider my comment. Thank you.

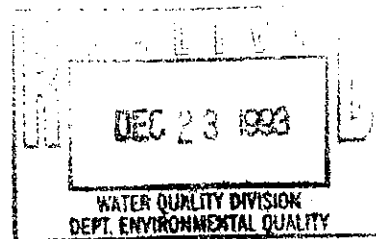
Sincerely,

Jennie Otley

HC 72 Box 55

Princeton, OR 97721

*Jennie Otley - Allan Otley* - Allan Otley



December 18, 1993

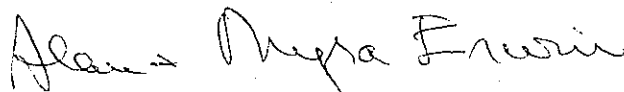
Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, OR 97204

Subject: Instream water rights for Bear Creek

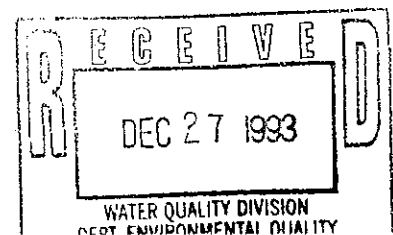
We are very supportive of your objective "to ensure that an adequate amount of stream flow remains in a stream to maintain water quality standards and protect beneficial uses." For this reason, we strongly urge you to apply for a minimum of 10 cfs for instream water rights for the entire Bear Creek system. It appears that the 7Q10 proposal is based on inadequate data and besides is valid only for natural flows. Data from only two locations are used, namely downtown Medford and Oak Street in Ashland, and those from Ashland have been measured for only two years, certainly an inadequate base for a stream so many miles long. Also Bear Creek does not have a natural flow system.

At least until more comprehensive and reliable data are gathered and examined, DEQ should acquire the maximum possible number of water rights. By so doing, there will be a better chance that clean water can be achieved and aquatic habitat improved.

Sincerely,



Alan and Myra Erwin 300 Grandview Dr. Ashland, OR97520



## Environmental Quality Commission

- Rule Adoption Item  
 Action Item  
 Information Item

Agenda Item I  
March 11, 1994 Meeting

**Title:**


Update on the St. Johns Landfill Closure

**Summary:**


Four years ago, the Department of Environmental Quality (DEQ) approved elements of METRO's closure plan for the St. Johns Landfill. Approved closure elements focused on the design and construction of a final cover over the landfill to minimize rainfall infiltration into garbage and leachate leakage from the landfill. Resolution of unapproved closure elements was not possible four years ago because final objectives for these elements are still being defined by:

- o Implementation of the Natural Resources Management Plan for Smith and Bybee Lakes;
- o Establishment of Total Daily Maximum Load limits for the Columbia Slough;
- o DEQ/City of Portland Consent Order related to Columbia Slough sediments; and
- o Implementation of Oregon's Groundwater Quality Protection Rules.

To clarify the St. Johns closure permit, DEQ plans to issue a permit addendum that summarizes approved closure elements, and creates a clear and enforceable schedule for completing remaining closure elements.

  
Report Author

  
Division Administrator

  
Director

February 24, 1994

†Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).



\*\*\*\*\*  
\*\*\* ACTIVITY REPORT \*\*\*  
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RESULT	OK

State of Oregon  
Department of Environmental Quality

Memorandum†

Date: February 22, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item I, March 11, 1994 EQC Meeting  
Update on the St. Johns Landfill Closure

**STATEMENT OF PURPOSE**

At the December 10, 1993 meeting of the Environmental Quality Commission (EQC), Mr. Mikey Jones voiced his concerns about the St. Johns Landfill closure (a transcript of his testimony is included as Attachment D). In response, the EQC directed the Department of Environmental Quality (DEQ) to prepare a staff report, updating the EQC on the status of the St. Johns Landfill closure and responding to Mr. Jones's concerns.

**BACKGROUND**

The St. Johns Landfill is a general purpose municipal landfill located in the North Portland Rivergate area near the confluence of the Columbia and Willamette Rivers. The landfill has been in operation since 1939 and now covers about 236 acres of what previously was predominately a marshy lake. Reportedly, early operations received almost any type of waste generated in the Portland metropolitan area. Some of the wastes, acceptable at the time, are now considered hazardous wastes unacceptable in a general purpose municipal landfill. In 1991 the St. Johns Landfill stopped taking most wastes, but continues to be authorized to accept construction and demolition type waste until final cover construction is completed in 1995.

**CLOSURE PROCESS AND STATUS**

On July 19, 1988 the Department issued a solid waste closure permit to METRO for the St. Johns Landfill, which included a schedule for: (1) submitting detailed closure and financial assurance plans; and (2) implementing the closure plan. In accordance with the permit schedule, METRO submitted to DEQ a closure and financial assurance plan dated September 1989. The closure plan portion was organized to conceptually describe the

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following nine closure plan elements: (1) Final Grading Plan; (2) Final Cover; (3) Stormwater Management; (4) Leachate Migration Control; (5) Gas Control; (6) Environmental Monitoring and Site Security; (7) Closure Time Schedule; (8) Post Closure Care; and (9) Mitigation of Offsite Contamination. By letter of April 6, 1990, DEQ approved the financial assurance portion, but disapproved the conceptual closure portion of METRO's plan because it lacked sufficiently detailed plans and specifications.

By application dated August 7, 1990, METRO requested modification of the closure permit to extend the date for completing closure from 1991 to 1995, because of the magnitude of the construction project and to reduce uneven garbage settlement that could compromise the effectiveness of the constructed landfill cover. On September 5, 1990 DEQ held a public hearing on both a proposed draft addendum to the closure permit and METRO's September 1989 closure and financial assurance plan. Subsequent to the hearing, DEQ issued a permit addendum on October 11, 1990 extending the date for completing closure construction to 1995.

Also during 1990, METRO worked closely with DEQ to develop detailed plans and specifications for constructing the final landfill cover. By letter of November 6, 1990, METRO provided a written response to DEQ's April 6, 1990 closure plan disapproval letter, and by subsequent letter of December 10, 1990, METRO transmitted 90% complete design drawings and specifications for final landfill cover construction. During this time, METRO and DEQ efforts were focused on developing closure plan elements directly related to constructing the final cover system. The rationale for this emphasis was that, by reducing rainfall infiltration and thus leachate leakage, the cover system would be the cornerstone of any solution seeking to minimize future environmental impacts from the landfill. Furthermore, it became apparent that final resolution of a number of closure elements depended on: (1) how Oregon's new Groundwater Quality Protection Rules would be implemented; (2) what objectives would be defined by comprehensive initiatives to cleanup the Columbia Slough (i.e., TMDLs and sediments); and (3) what specific end use objectives would be defined by implementation of the Natural Resources Management Plan for Smith and Bybee Lakes. Therefore, in order to move forward with predictable portions of landfill closure, DEQ by letter of April 15, 1991 conditionally approved only closure plan elements meeting DEQ requirements, and summarized the status of all other unresolved closure elements.

To implement the approved closure elements, METRO chose to sequence construction of the final cover system over the entire five-year closure period by dividing the total landfill area into five smaller "Subareas." Prior to each construction season, METRO awards a construction contract to close one or two Subareas at a time. Each time METRO prepares final construction contract documents, they are reviewed by DEQ to

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make sure that approved design plans and specifications have been properly translated into the contract requirements. Final cover was constructed over Subarea 1 in 1992 and Subarea 2 in 1993. Subareas 3, 4 and 5 remain to be closed by 1995.

As METRO and its contractors gained construction experience, it became evident that actual closure costs far surpassed initial estimates. As a result, METRO requested DEQ approval for a number of design changes which would reduce the initial capital cost of the cover while potentially increasing long term maintenance costs to achieve compliance. The most significant of the design changes involve: (1) reduced construction slopes; (2) a thinner soil layer above the geomembrane layer; and (3) elimination of the drainage layer from relatively flat areas of the final landfill cover. Relative to the initial design, these design changes will theoretically allow a small amount of additional rainfall to percolate through the cover system (i.e., on the order of a few percent). This additional percolation is probably insignificant within context of the cover's overall effectiveness at keeping rainfall out of the landfill (i.e., estimated to prevent over 95% of rainfall from percolating through the cover system). The Department conditionally approved the design changes based on METRO's assurance that risk of increased long term maintenance costs which might be necessary to achieve compliance was understood and accepted.

DEQ's Solid Waste program provides an opportunity for the public to comment whenever a new permit or permit with significant changes is proposed to be issued. To clarify the St. Johns closure permit, DEQ plans to issue a permit addendum that: (1) Updates the permit to reflect the current status of its closure elements; and (2) creates a clear and enforceable schedule for completing remaining closure elements. Interested parties will be provided with an opportunity to comment and request a public hearing on the proposed permit addendum.

Once a permit addendum defining significant plan specifications and schedules is issued, DEQ will request that METRO seek public comment on any proposal to further significantly change approved plans and specified schedules.

The table in Attachment C summarizes the status of each closure plan element.

### **SUMMARY OF ISSUES INFLUENCING FINAL CLOSURE OBJECTIVES**

Both METRO and DEQ have struggled to define the final objectives of the St Johns Landfill closure project. Because of the complexity of the environment in which the landfill is located, precise measurement of its impact on the surrounding area is difficult to assess. The setting of standards against which to measure performance is complicated by an already impacted environment. Listed below are some of the major factors which

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must be integrated into the establishment of final closure objectives. Each element and its relationship to landfill closure objectives is described in Attachment A:

- o The Natural Resources Management Plan for Smith and Bybee Lakes.
- o Total Maximum Daily Load (TMDL) limits for the Columbia Slough.
- o DEQ/City of Portland Consent Order related to Columbia Slough sediments
- o Oregon's Groundwater Quality Protection Rules

### **RESPONSES TO MIKEY JONES's CONCERNS**

DEQ staff have met with Mr. Mikey Jones a number of times both before and after the December 10, 1993 EQC meeting. In general, it's the impression of DEQ staff that at the heart of Mr. Jones's concerns lies the health of Smith and Bybee lakes, and how landfill closure relates to the health of the lakes and North Slough. Mr. Jones believes that METRO's role as both responsible party for the St. Johns Landfill closure, and as controller of the funding for the Natural Resources Management Plan for Smith and Bybee Lakes, creates a conflict of interest which results in only lip service being paid to implementation of the Natural Resources Management Plan for Smith and Bybee Lakes.

According to Mr. Jones, Smith and Bybee Lakes are hydraulically isolated except for outfall discharges into the lakes from the Port of Portland and groundwater recharge from beneath Bybee Lake. Mr. Jones believes that if the goal of the Natural Resources Management Plan for Smith and Bybee Lakes are to be realized:

- o Bybee Lake must be hydraulically reconnected to the lower Columbia Slough to return it to tidal conditions so that the natural tidal wetland ecosystem can reestablish itself; and
- o Smith Lake must be augmented with cleaner water from the Columbia River to maintain adequate water quality in Smith Lake, flush the stagnant water in North Slough, and control the lake level so that too much drawdown from providing flushing to the North Slough can be prevented.

Mr. Jones suspects that his approach is not being implemented because: (1) METRO is worried that returning Bybee Lake to tidal conditions would exacerbate groundwater pollution problems caused by the landfill; and (2) DEQ inaction has not yet forced METRO to clean up the North Slough, which according to surface water modeling studies would benefit greatly from flushing with cleaner water.

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Attachment B lists Mr. Jones's comments and questions, with each comment or question followed by a DEQ response.

**ATTACHMENTS**

- A. Summary of Issues Influencing Final Closure Objectives
- B. Responses to Mikey Jones's Concerns
- C. Table summarizing the status and closure objective for each element of the closure plan.
- D. Transcript of Mikey Jones's presentation at the December 10, 1993 meeting of the EQC.
- E. Tables providing examples of hazardous substances recently detected in groundwater.

Approved:

Section:

Division:

Report Prepared By: Joe Gingerich

Phone: 229-6844

Date Prepared: February 22, 1994

JG:jg  
MISC\EQC  
2/22/94

**ATTACHMENT A**

**Summary of Issues Influencing Final Closure Objectives**

## **SUMMARY OF ISSUES INFLUENCING FINAL CLOSURE OBJECTIVES**

The final cover system is expected to greatly reduce leakage from the landfill, and therefore significantly reduce adverse environmental impacts. However, additional closure measures may yet be necessary to achieve closure objectives which continue to be defined by the following ongoing processes:

### **1. Natural Resources Management Plan for Smith and Bybee Lakes.**

The Natural Resources Management Plan for Smith and Bybee Lakes (Management Plan) was adopted by the Portland City Council on November 8, 1990, after METRO submitted its closure and financial assurance plan. The Management Plan provides a framework for protecting and managing the Smith and Bybee Lakes area as an environmental and recreational resource for the Portland region. Since the St. Johns Landfill is part of the management area, closure must be consistent with the goal, objectives and policies of the Management Plan, including described beneficial uses for the management area. As the Management Plan is implemented beneficial uses will likely become more defined, as will related environmental and human health risks. In this way, objectives in the Management Plan may influence final landfill closure objectives, which in turn may influence the remedial measures ultimately required to close the landfill.

### **2. TMDL Limits For The Columbia Slough.**

To address pollution problems in the Columbia Slough, the DEQ will be establishing the Total Maximum Daily Load (TMDL) of pollutants that can enter the Columbia Slough. TMDL limits will be set on the pollutants that can be discharged from pollution sources identified along the Columbia Slough, including the St. Johns Landfill. DEQ's Water Quality Division has identified water quality parameters of concern in the Columbia and North Sloughs to consist of nutrients related to algal growth, toxics, bacteria, and oxygen demanding materials.

TMDL limits established for the Columbia Slough and specifically allocated to the St. Johns Landfill will partly define the landfill closure objectives, and therefore may influence the remedial measures that will ultimately be required to close the landfill.

### **3. Consent Order related to Columbia Slough Sediments.**

On October 7, 1993, the Department issued an Order on Consent (DEQ No. ECSR-NWR-93-09) to the City of Portland. The purpose of the Order on Consent (Consent Order) is to:

- o determine the nature and extent of contamination in sediments in the Columbia Slough;
- o identify sources of contamination to the Columbia Slough;



- o identify source control measures;
- o identify relative risks of the contamination;
- o identify remedial measures; and
- o take appropriate interim remedial actions to reduce identified risks associated with sources under the control of the City of Portland.

The approved closure plan requires METRO to maintain the water quality in the North Slough (thought to be primarily impacted by the landfill) at least comparable to that of the Columbia Slough. Therefore, DEQ intends to require METRO's endangerment assessment to include an investigation of sediments in North Slough, similar to what is being done in Columbia Slough. It is possible that the results of sediment testing in the Columbia and North Sloughs may influence the remedial measures that will ultimately be required to close the landfill.

In a related action, METRO was involved in an April-May 1993 toxics study which analyzed fish tissues from carp and crappie, caught in the lower Columbia Slough near the St. Johns Landfill. The results detected PCB levels of concern, leading state health officials to issue an advisory to avoid or limit consumption of carp and crappie caught in lower Columbia Slough.

#### **4. Groundwater Quality Protection Rules.**

Oregon's revised Groundwater Quality Protection Rules (GWQPRs) became effective on October 27, 1989, the same day METRO submitted its closure and financial assurance plan. Since hazardous substances were detected in groundwater monitoring wells (examples are provided in Attachment E), METRO must follow the process outlined by the GWQPRs to implement an acceptable remedial action. METRO has made much progress towards gathering the information required by the GWQPRs, and in constructing the final landfill cover which is considered to be the cornerstone of any remedial action. However, one key requirement remaining to be done is an "endangerment assessment" to identify and evaluate environmental and human health risks in the vicinity of the landfill. The results of the endangerment assessment may influence the remedial measures that will ultimately be required to close the landfill.

For many years, METRO has and continues to monitor the groundwater quality in the vicinity of the landfill. Currently, METRO is also developing a groundwater flow and solute transport model, which can be used to simulate the fate and transport of dissolved contaminants in groundwater. As required by DEQ letter of April 29, 1992, METRO must submit a final Water Quality Monitoring (WQM) Plan within 6 months after final cover construction is completed and certified. By that time the groundwater flow and solute transport model and endangerment assessment will have been completed, and TMDLs should have been established. Since the WQM Plan must be designed to comply with Oregon's GWQPRs, it may influence the remedial measures that will ultimately be required to close the landfill.

One major stumbling block anticipated in trying to implement the GWQPRs, is that the St. Johns Landfill is located in an area with a long industrial history and potentially numerous contamination sources impacting groundwater quality. It may prove extremely difficult to establish a compliance boundary along which only releases from the St. Johns Landfill would be measured. In other words, if contaminants are detected at a compliance point it may not be possible to distinguish if and how much of that contamination is caused by the St. Johns Landfill versus another pollution source(s). To implement the GWQPRs, it may become necessary to address area-wide groundwater quality impacts resulting from multiple sources of contamination in the general vicinity of the St. Johns Landfill. The effort to cleanup the Columbia Slough provides an illustrative example of the level of complexity that may be involved in a project addressing multiple pollution sources across a large area.

As implementation of the GWQPRs, management of the Smith and Bybee Lakes area, and efforts to cleanup the Columbia Slough progress, DEQ will seek to: (a) identify and distinguish between potential contaminant sources to groundwater in the vicinity of the St. Johns Landfill; and (b) use the most appropriate regulatory authority to address any area-wide groundwater quality impacts resulting from multiple contaminant sources.

**ATTACHMENT B**

**Responses to Mikey Jones's Concerns**

## **RESPONSES TO MIKEY JONES's CONCERNS**

With the following comments and questions, the Department of Environmental Quality (DEQ) has tried to capture the concerns related to the St. Johns Landfill closure that have been consistently voiced by Mr. Jones in his testimony before the Environmental Quality Commission (EQC), and in meetings and telephone conversations with DEQ staff. Each comment or question is followed by a DEQ response:

***Comment: DEQ is not enforcing its compliance schedules.***

***Response:*** Based on a schedule anticipated by METRO, DEQ's April 15, 1991 partial closure plan approval letter required:

- o A leachate seepage control plan to be submitted by October 1991 or on a schedule negotiated with DEQ's Water Quality Division; and
- o A work scope for conducting an endangerment assessment by October 1, 1991 completed in accordance with OAR 340-40-040(3)(c) and the applicable comments in DEQ's April 6, 1990 Plan Review Report.

METRO did not submit the required information by the specified dates, but in its December 2, 1992 annual report METRO proposed that by June 1993 it would:

- o "Finish a model of groundwater and surface water flow in the area surrounding St. Johns Landfill to be used for estimating liquid seepage through the perimeter dike and also assist in decisions which implement the Smith and Bybee Lakes Management Plan. Begin to develop updated options to control leachate seepage into the Sloughs."
- o "Hire a contractor to conduct an endangerment assessment of St. Johns Landfill. When the assessment is complete, begin discussions with DEQ regarding an alternative solid waste boundary or groundwater concentration limit variance."

When METRO again did not submit the information as proposed, DEQ issued a July 23, 1993 permit addendum requiring METRO to submit workplans and schedules for conducting an endangerment assessment and for developing a leachate seepage control plan by November 1, 1993. METRO submitted both workplans as required, and the workplans are awaiting DEQ review.

***Comment: DEQ should develop a clear and enforceable schedule for all elements of landfill closure.***

***Response:*** DEQ's partial approval of METRO's closure plan has created confusion about the schedule for completing closure plan elements that were not approved. Therefore, DEQ

will propose to issue an addendum to the closure permit this year that: (1) summarizes approved closure elements; and (2) creates a clear and enforceable schedule for completing remaining closure elements.

**Question:** *What is the status of groundwater and surface water modelling efforts?*

**Response:** A hydrodynamic model of surface water flow was completed by the City of Portland in 1992. At METRO's request the model was expanded to include the North Slough, and Smith and Bybee Lakes.

METRO has contracted with Portland State University to set up a groundwater flow model by May 15, 1994, and projects that a solute transport model will be added to the flow model by August 15, 1994.

Once completed, the outputs from the groundwater flow and solute transport model can be used as inputs to the hydrodynamic model of surface water to help determine how the landfill seepage is impacting surface water. Both the groundwater and surface water models will also be useful for conducting the required endangerment assessment.

**Comment:** *Leachate continues to visibly seep from the landfill into the sloughs, including areas where final cover has been constructed, and nothing is being done.*

**Response:** The approved landfill cover was designed to minimize the amount of precipitation percolating into the covered refuse. Where final cover is constructed there will be little recharge to the leachate mound inside the landfill. Therefore, visible surface seeps should disappear or be dramatically reduced with the passing of time. In addition, METRO has submitted a workplan to further evaluate the impacts of leachate seepage on surrounding water quality. METRO intends to use the groundwater flow and solute transport model being developed in its evaluation of leachate seepage. Based on the resulting information about contaminant transport to surface water, METRO will develop and submit to DEQ options for managing leachate seepage.

It has been difficult to establish clear goalposts for how effective landfill cover and seepage control measures need to be in order to protect human health and the environment. More specifically, evaluation of leachate seepage is partly dependent on TMDL discharge allocations being established for the Columbia and North Sloughs, and the results of groundwater flow and solute transport modelling. As noted above, METRO's groundwater flow and solute transport model should be completed by August 15, 1994. At about the same time, DEQ plans to have a TMDL proposal ready for the Columbia Slough. Therefore, METRO should be in a position to quantitatively evaluate leachate seepage impacts on surface water by the end of this summer.

**Comment:** *METRO is backpedaling on the landfill cover design.*

**Response:** The approved closure plan established specific material, design, and construction specifications for constructing final cover at the St. Johns Landfill. Some significant changes were subsequently made to the approved final cover plans by DEQ's December 30, 1992, June 22, 1993, and December 22, 1993 letters. More specifically:

- (1) DEQ's December 30, 1992 letter authorized METRO to:
  - o Eliminate the geonet composite drainage layer from flat top slopes; and
  - o Reduce the minimum construction slopes to whichever is the greater between: (a) 5 percent; or (b) 2 percent plus compensation for the estimated total differential settlement. As conditioned by the authorization, resulting post-closure depressions would have to be identified and repaired as proposed in Metro's December 8, 1992 letter, and further reductions in construction slopes would only be considered if Metro: (a) substantiated any such request with an updated differential settlement analyses based on improved data; and (b) showed how the resulting estimated increase in surface water infiltration would be acceptable in terms of impact to environmental and human receptors.
- (2) DEQ's June 22, 1993 letter authorized METRO to further reduce future construction slopes provided that the construction slopes are designed to achieve and maintain positive drainage off of the final cover, except for depressions smaller than those requiring repair in accordance with METRO's December 8, 1992 letter.
- (3) DEQ's December 22, 1993 letter authorized METRO to reduce the drainage sand thickness above the geomembrane layer from 18 inches to 12 inches provided that METRO demonstrates that the reduced sand thickness would not damage the geomembrane layer or compromise planned vegetation.

The Department believes that the authorized design changes may allow a small amount of additional rainfall to percolate through the cover system (i.e., on the order of a few percent). This additional percolation is probably insignificant within context of the cover's overall effectiveness at keeping rainfall out of the landfill (i.e., estimated to prevent over 95% of rainfall from percolating through the cover system). Further influencing DEQ's decision to authorize the described closure plan changes was METRO's insistence and willingness to accept the risk of: (a) potentially having to implement a more ambitious and costly seepage control plan; and (b) significantly increased long-term maintenance costs associated with repairing increased settlement depressions and cover erosion.

**Comment:** *DEQ approved an inadequate financial assurance plan. No money was budgeted for seepage control, groundwater protection, or water quality management in surrounding surface water.*

**Response:** METRO Ordinance No. 89-300 was adopted on August 8, 1989, creating the vehicle for establishing a 31.4 million dollar reserve fund earmarked for closure and post-closure care of the St. Johns Landfill and mitigation of any environmental impacts of the landfill. DEQ determined the form and amount of financial assurance (based on reasonable estimates at the time) to be in compliance with Oregon's solid waste rules, which require financial assurance to cover estimated closure and post-closure costs but not costs related to environmental impairment liability (e.g., such as the cost of cleaning up contaminated groundwater).

In the event that the financial assurance amount proves to be inadequate to finance responsible closure and post-closure maintenance of the St. Johns Landfill, METRO can use its revenue-raising abilities to pay for whatever needs to be done beyond what can be funded from the existing reserve fund.

**Comment:** *The closure plan did not address groundwater and surface water protection.*

**Response:** The landfill cover system is expected to significantly reduce releases to groundwater and surface water. DEQ's April 15, 1991 partial closure plan approval letter did not include approval of closure elements related to groundwater and surface water protection, including Leachate Migration Control, Environmental Monitoring and Site Security, and Mitigation of Offsite Contamination. METRO is required to develop and submit a final Water Quality Monitoring Plan designed to comply with Oregon's Groundwater Quality Protection rules, and a seepage control plan designed to comply with TMDLs. Closure objective for the St. Johns landfill are still being defined by the broader efforts to clean up the Columbia Slough, and manage the Smith and Bybee Lakes area. Within this context, any effort to define closure objectives earlier would likely have been a fruitless exercise.

**Question:** *Have the contaminant plumes from the St. Johns landfill been delineated in terms of their area, depth, and concentrations?*

**Response:** No contaminant plume(s) from the landfill has yet been delineated in terms of area, depth, and concentration. METRO continues to gather groundwater data and is developing a groundwater flow and solute transport model. Delineation of any contaminant plume(s) emanating from the landfill will be addressed in METRO's final Water Quality Monitoring Plan required to be submitted within 6 months after final cover construction is completed and certified.

**Question:** *Is contaminated groundwater impacting the water quality in Smith and Bybee Lakes?*

**Response:** DEQ is not aware of any definitive evidence to either support or refute a hypothesis suggesting the existence of contaminated groundwater recharge to Bybee Lake. In 1992, METRO installed numerous piezometers to measure water elevations and to evaluate this hypothesis. Data is still being gathered and evaluated by METRO. The hydrogeological interconnection between the lakes and groundwater will be addressed in METRO's final Water Quality Monitoring Plan required to be submitted within 6 months after final cover construction is completed and certified.

**Comment:** *The St. Johns Landfill should be a CERCLA site and its closure should have CERCLA oversight.*

**Response:** EPA under CERCLA authority evaluated the site in 1980, 1982, and 1988. According to EPA the file is still open and a final decision by EPA regarding further action has not yet been made. The Oregon DEQ Site Assessment Section, under CERCLA and Oregon Environmental Cleanup Law, evaluated the site in 1988 and deferred oversight to DEQ's Solid Waste Program as the site is permitted in accordance with the provisions of ORS Chapter 459 and Oregon's Solid Waste Management Rules.

As with many sites, the St. Johns Landfill could be closed under more than one authority (CERCLA, RCRA, etc). The decision regarding which authority is used to close and remediate a site ultimately depends on site specific circumstances. In general, RCRA permitted facilities are closed and remediated using RCRA authority, whereas unpermitted or abandoned facilities are closed and remediated using CERCLA or Oregon Environmental Cleanup Law authorities. Therefore, permitted landfills such as the St. Johns Landfill are typically regulated by Oregon's Solid Waste Management Rules, which also implement RCRA Subtitle D requirements.

**Question:** *When will TMDLs be established for the Columbia Slough?*

**Response:** This summer DEQ plans to have a TMDL proposal ready for the Columbia Slough.



## **ATTACHMENT C**

**Table summarizing the status and closure objective for each element of the closure plan.**

**SUMMARY OF EACH CLOSURE PLAN ELEMENT STATUS AND RELATED CLOSURE OBJECTIVE(S)**

CLOSURE PLAN ELEMENTS	STATUS OF CLOSURE ELEMENTS	CLOSURE ELEMENT OBJECTIVE(S)
<p><b>FINAL GRADING PLAN</b></p>	<ul style="list-style-type: none"> <li>* Conditionally approved by DEQ's April 15, 1991, and with subsequent modifications conditionally approved by DEQ letters of December 30, 1992, and June 22, 1993.</li> <li>* Before the revised grading plan for Subarea 3 can be approved more settlement information must be evaluated to determine appropriate construction slopes.</li> <li>* Grading plans for Subareas 4 and 5 will be reviewed as part of the Construction Contract Documents required to be submitted to DEQ for review prior to construction.</li> </ul>	<ul style="list-style-type: none"> <li>* Grades must maintain positive drainage to shed water off of the cover system.</li> </ul>
<p><b>FINAL COVER</b></p>	<ul style="list-style-type: none"> <li>* Conditionally approved by DEQ's April 15, 1991, and with subsequent modifications conditionally approved by DEQ letters of February 28, 1992, December 30, 1992, June 22, 1993, September 8, 1993, and December 29, 1993.</li> <li>* Construction of Subareas 1 and 2 has been completed, and Construction Contract Documents for constructing Subarea 3 in 1994 have been approved.</li> <li>* Final cover design and construction program for Subareas 4 and 5 will be reviewed as part of the Construction Contract Documents required to be submitted to DEQ for review prior to construction.</li> <li>* Construction certification reports must be submitted for each Subarea upon completion of construction.</li> </ul>	<ul style="list-style-type: none"> <li>* Must be constructed and certified in accordance with the approved closure plan and approved plan modifications.</li> <li>* Erosion must be minimized in compliance with the Uniform Building Code, the City of Portland's <u>Erosion Control Plans Technical Guidance Handbook</u>, and the NPDES storm water discharge permit.</li> <li>* Vegetation must be self-sustaining and compatible with the <u>Natural Resources Management Plan for Smith and Bybee Lakes</u>.</li> <li>* In conjunction with other closure measures, water percolation through the final cover must be sufficiently minimized to translate into compliance with Oregon's Groundwater Quality Protection rules, and Columbia Slough cleanup efforts (i.e., TMDLs and sediments).</li> </ul>

**SUMMARY OF EACH CLOSURE PLAN ELEMENT STATUS AND RELATED CLOSURE OBJECTIVE(S)**

<b>CLOSURE PLAN ELEMENTS</b>	<b>STATUS OF CLOSURE ELEMENTS</b>	<b>CLOSURE ELEMENT OBJECTIVE(S)</b>
<b>STORMWATER MANAGEMENT</b>	<ul style="list-style-type: none"> <li>* Conditionally approved by DEQ's April 15, 1991 letter.</li> <li>* NPDES stormwater discharge permit No. 1200-G was issued to METRO on March 5, 1992, and may need to be modified once TMDLs are established for the Columbia Slough.</li> </ul>	<ul style="list-style-type: none"> <li>* The stormwater drainage system must control erosion in accordance with the City of Portland's <u>Erosion Control Plans Technical Guidance Handbook</u>, and conform to Policy 22 of the <u>Natural Resources Management Plan for Smith and Bybee Lakes</u>.</li> <li>* The quality and quantity of stormwater discharge must comply with: (1) the NPDES permit; (2) TMDLs being established for the Columbia Slough; and (3) the Objectives of the <u>Natural Resources Management Plan for Smith and Bybee Lakes</u>.</li> </ul>
<b>LEACHATE MIGRATION CONTROL</b>	<ul style="list-style-type: none"> <li>* Leachate migration will primarily be controlled by the landfill cover system.</li> <li>* In October 1990, METRO submitted a report evaluating leachate migration through the landfill perimeter dike.</li> <li>* In 1992, the City of Portland completed a surface water flow model for the Columbia Slough, which at METRO's request was expanded to include the North and Smith and Bybee Lakes.</li> <li>* Awaiting DEQ's review is METRO's November 1, 1993 workplan and schedule for developing a seepage control plan. The major task remaining in the proposed workplan is to construct and calibrate a groundwater flow and solute transport model to simulate contaminant transport to surface water and groundwater adjacent to landfill. The intent is to use the groundwater model outputs as inputs to the existing surface water flow model to determine how landfill seepage is impacting surface water.</li> </ul>	<ul style="list-style-type: none"> <li>* In conjunction with other closure measures, leachate seepage must be controlled to collect or block significant visible seeps, and limit the quantity and quality of leachate seeps to: (1) comply with TMDLs being established for the Columbia Slough; (2) comply with Oregon's Groundwater Quality Protection Rules; (4) be compatible with cleanup objectives for Columbia Slough sediments; and (5) be compatible with objectives of the <u>Natural Resources Management Plan for Smith and Bybee Lakes</u>.</li> </ul>

**SUMMARY OF EACH CLOSURE PLAN ELEMENT STATUS AND RELATED CLOSURE OBJECTIVE(S)**

<b>CLOSURE PLAN ELEMENTS</b>	<b>STATUS OF CLOSURE ELEMENTS</b>	<b>CLOSURE ELEMENT OBJECTIVE(S)</b>
<b>GAS CONTROL</b>	<ul style="list-style-type: none"> <li>* Conditionally approved by DEQ's April 15, 1991 letter.</li> <li>* Gas control plans for Subareas 4 and 5 will be reviewed as part of the Construction Contract Documents required to be submitted to DEQ for review prior to construction.</li> <li>* Air Contaminant Discharge Permit No. 26-3310 was issued on December 14, 1993.</li> </ul>	<p>* The gas control system must: (1) relieve landfill gas pressure build-up; (2) prevent offsite migration of landfill gas; (3) be compatible with objectives of the <u>Natural Resources Management Plan for Smith and Bybee Lakes</u>; (4) maintain gas extraction wells accessible to measuring leachate elevations and collecting leachate samples; and (5) comply with the Air Contaminant Discharge Permit.</p>
<b>ENVIRONMENTAL MONITORING AND SITE SECURITY</b>	<ul style="list-style-type: none"> <li>* As required by DEQ's April 29, 1992 letter, a final Water Quality Management (WQM) Plan is required to be submitted within 6 months after final cover construction is completed and certified.</li> <li>* METRO has contracted with PSU to complete a groundwater flow and solute transport model by August 15, 1994.</li> <li>* Awaiting DEQ's review is METRO's November 1, 1993 workplan and schedule for conducting an Endangerment Assessment.</li> <li>* There is currently no DEQ hydrogeologist assigned to the St. Johns Landfill closure project.</li> </ul>	<p>* The final WQM Plan must adequately monitor groundwater and surface water to document ongoing compliance with: (1) Oregon's Groundwater Quality Protection rules; (2) TMDLs being established for the Columbia Slough; (3) applicable objectives of the <u>Natural Resources Management Plan for Smith and Bybee Lakes</u>; and (4) applicable sediment cleanup objectives for the Columbia Slough.</p>
<b>CLOSURE TIME SCHEDULE</b>	<ul style="list-style-type: none"> <li>* As required by addendum to the closure permit, construction of the final cover, stormwater management, and gas control systems must be completed in 1995 and certified by December 30, 1995.</li> </ul>	

**SUMMARY OF EACH CLOSURE PLAN ELEMENT STATUS AND RELATED CLOSURE OBJECTIVE(S)**

<b>CLOSURE PLAN ELEMENTS</b>	<b>STATUS OF CLOSURE ELEMENTS</b>	<b>CLOSURE ELEMENT OBJECTIVE(S)</b>
<b>POST CLOSURE CARE</b>	<p>* By letter of April 29, 1993, DEQ approved METRO's January 10, 1991 <u>Operations and Maintenance Plan</u> for implementation during the closure construction period, and required METRO to submit a final post-closure care plan within 6 months after final closure is completed and certified.</p> <p>* The post-closure care will be required for at least 30 years after final cover construction is completed and certified by December 30, 1995.</p>	<p>* The final post-closure care must describe a planned schedule of inspection, monitoring, and maintenance designed to: (1) maintain the integrity of the landfill cover, surface water management, gas control and monitoring systems; and (2) document continued compliance with applicable closure objectives.</p>
<b>MITIGATION OF OFFSITE CONTAMINATION</b>	<p>* Offsite contamination will be at least partially mitigated by the landfill cover system, which is designed to significantly reduce leachate migration from the landfill.</p> <p>* Awaiting DEQ's review are: (1) METRO's November 1, 1993 workplan and schedule for conducting an Endangerment Assessment; and (2) METRO's November 1, 1993 workplan and schedule for developing a seepage control plan.</p> <p>* The need for additional closure measures or offsite remediation will be determined as final closure objectives become more defined.</p>	<p>* Closure measures and offsite remediation must be implemented as necessary to achieve compliance with: (1) Oregon's Groundwater Quality Protection rules; (2) TMDLs being established for the Columbia Slough; (3) Oregon's Solid Waste Management rules; (4) Solid Waste Disposal Site Closure Permit No. 116; (5) applicable objectives of the <u>Natural Resources Management Plan for Smith and Bybee Lakes</u>; and (6) applicable sediment cleanup objectives for the Columbia Slough.</p>

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\*\*\* ACTIVITY REPORT \*\*\*  
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TRANSMISSION OK

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RESULT	OK

**ATTACHMENT D**

**Transcript of Mikey Jones's presentation at the December 10, 1993  
meeting of the EQC.**

**December 10, 1993 EQC Meeting**

**Transcript of Mike Jones's Testimony Before The EQC**

My name is Mike Jones, Mikey a lot of people call me, I've been here a couple of times before. I thought what I would do first is to tell you what I'd like to see happen so that when I get rambling my five minutes are up.....

What I'm here to do is to see if there's anything short of a lawsuit we can do about the St. Johns landfill closure. I've worked on it probably fifteen years I've been involved in that closure. I've met with Fred Hansen, been to a hundreds of hearings I've read at least 20 closure plans, and in doing that I didn't know if any of you know how bad it is to be a neighborhood activist. You know it's the worst thing in the world. It means you can never be on a committee, you know it means you can never, it's not been fun, but I've stayed with that process for a long time and a plan was developed, a closure plan and a financial assurance plan. When I saw the financial assurance plan, I went straight to Fred Hansen and I said, the money's not there. And that was after I took charge and stuff and had papers sticking everywhere and I wanted to show that it's not there and he said to me it doesn't matter it's not there because they will have to pay it. And I said to him then, they don't know that their going to have to pay it, they think this is it and he said I'll make sure they know.

Okay, then the closure plan itself, which I hated at the time, now I realize I've been lucky to get it, if we'd gotten it, the closure plan itself had nothing saying about the groundwater, which has been trashed and it didn't concern the surface water. When I raised those points, I was told that there would be an endangerment assessment required at that time, 1990, they said that requirements for 1992 and I said Jesus, you're supposed to have this plan five years before you close and now you're closing and we're going to get an endanger assessment in 1992.

Well, quickly I'll go with the endanger assessment, it wasn't submitted, but that's alright, because the DEQ's a forgiving agency, they didn't even write a letter for six months, you know, I came down, we talked, the letter was written, everything was fine. Now, this month or last month, the Metro comes up with a work plan for the endanger assessment, which should be the keystone of the closure plan. I was just flabbergasted, we're still not addressing the biggest problems on the landfill, but one of the things the closure plan did do, and I disagreed but understood where they thought it would work it they planned to cap the landfill so no more water could come into the landfill and provide more leachate, and the cap was to be originally, and in the closure plan was to be 5% slopes, 2 membranes, 2 foot clay layer underneath, 6 inch layer in between the membranes and then a 2 foot layer on top, or a one foot layer on top with earth on top of that and sod. But little by little one letter at a time that plan has been reduced to recycled closure initial closure cover, recycled cover, which was loaded with garbage and the seeps I was out there when they laid the membrane down, the seeps were just everywhere and I said to a women who was there, gosh can't you see these seeps, and she said my job is to check the wells. I ran down to the DEQ and they said well, it not so important because all that is going to be under the membrane. I said where's the other membrane, where's the clay? But anyway, to make a long story short, they have recycled garbage, then they have a membrane, then rather than clay, they made a deal with the port and covered it with dredge spoils, which



do not, by the way, shed water, and it would have shed a lot of water, even though the 5% slope. So I run back down to the DEQ and I say, well goddamn, what is left and they said well the 5% slopes are left, you know, well, at that time, I had a meeting with Mr. Hansen and the group and I had this, what they thought was a cockamamie theory that, the way they (Metro) were putting the caps on, they would drive the landfill down into the aquifer. And, you know, I kind of shrugged my shoulders and moved to Yamhill County and I said, what the hell, what can you do?

**(Comments related to Riverbend Landfill)**

In Yamhill County I'm reading the newspaper and it talks about these two people that live a mile from where I pump my well and they're sick, their animals are sick, and the DEQ is saying that it's not the landfill that is next to them. They said that they found ecoli and we need know that ecoli don't live in landfills and then all the bells went off. And after a couple of maneuvers, I had people test the water, somebody tested the water out there, and they found water that would kill people and just to make you understand how I feel and some people in Yamhill County is those people will die, if not this year, next. And, the problem with leachate is that it's so amorphous that usually every time you check it, you find something to worry about, but you never find the same levels as you checked it last time. So it's really hard to get a consistent, and you can think I'm crazy, whatever, you're not the first, but, I, at that time a went to a hearing about another landfill in Yamhill County and it reminded of 1969 at St. Johns. They were saying we have to keep this landfill open, so we can close it right.

**(Back to the St. Johns Landfill)**

I mean, I don't know if any of you understand, I was, a young man in 1969, I mean, and I actually believed a lot of that, I thought that it was OK if we have to keep it open so we can close it right, let's do it. Mike Burton shortly after that passed a bill that supposedly put enough money away at the time to take care of the closure, but what happened is the closure, between when the money was decided how much it needed and when the closure plan happened, there wasn't enough money there, after a lot of wrangling, we got more money, now see I'm running on, but with those slopes when I came back they said alright, we agree with you that yeah there's not much left of the closure plan, but we still have the 5% slopes. Well, recently, since they preloaded and things, the landfill sank into the aquifer, and the slopes are going to be very hard to maintain because preloading was so successful, as I told them it would be, that now we don't have 5% slopes, we're talking about how much ponding. After all these years, we're talking about how much ponding we can have on top of the landfill. You don't get any ponding with 5% slopes, I have to tell you, but now we've decided that if a pond is less than a city lot, it's allowable. That's where we are, there's nothing left to the closure plan. But at the time I told them there wasn't enough money, and they didn't agree with me, there's not enough money to even do what they've done now, so here we sit, we're going to wait two years for an endangerment assessment that should have been done when they wanted to keep the landfill open in 1969, some years ago. We're going to wait two more years and we're going to get further and further from the money, and I've been hanging around you guys long enough to know that if the money isn't there, you don't require it and I just don't know where to go, and I'm gonna tell you now, this is the threat part, you've heard this before, and I hope that someday I'll come and I'll threaten you and I'll have enough credibility that we won't have to go through this. Let me tell you what a lawsuit will be from me, I have a winery, I have a job, I have a family, but,

do not, by the way, shed water, and it would have shed a lot of water, even though the 5% slope. So I run back down to the DEQ and I say, well goddamn, what is left and they said well the 5% slopes are left, you know, well, at that time, I had a meeting with Mr. Hansen and the group and I had this, what they thought was a cockamamie theory that, the way they (Metro) were putting the caps on, they would drive the landfill down into the aquifer. And, you know, I kind of shrugged my shoulders and moved to Yamhill County and I said, what the hell, what can you do?

#### **(Comments related to Riverbend Landfill)**

In Yamhill County I'm reading the newspaper and it talks about these two people that live a mile from where I pump my well and they're sick, their animals are sick, and the DEQ is saying that it's not the landfill that is next to them. They said that they found ecoli and we need know that ecoli don't live in landfills and then all the bells went off. And after a couple of maneuvers, I had people test the water, somebody tested the water out there, and they found water that would kill people and just to make you understand how I feel and some people in Yamhill County is those people will die, if not this year, next. And, the problem with leachate is that it's so amorphous that usually every time you check it, you find something to worry about, but you never find the same levels as you checked it last time. So it's really hard to get a consistent, and you can think I'm crazy, whatever, you're not the first, but, I, at that time a went to a hearing about another landfill in Yamhill County and it reminded of 1969 at St. Johns. They were saying we have to keep this landfill open, so we can close it right.

#### **(Back to the St. Johns Landfill)**

I mean, I don't know if any of you understand, I was, a young man in 1969, I mean, and I actually believed a lot of that, I thought that it was OK if we have to keep it open so we can close it right, let's do it. Mike Burton shortly after that passed a bill that supposedly put enough money away at the time to take care of the closure, but what happened is the closure, between when the money was decided how much it needed and when the closure plan happened, there wasn't enough money there, after a lot of wrangling, we got more money, now see I'm running on, but with those slopes when I came back they said alright, we agree with you that yeah there's not much left of the closure plan, but we still have the 5% slopes. Well, recently, since they preloaded and things, the landfill sank into the aquifer, and the slopes are going to be very hard to maintain because preloading was so successful, as I told them it would be, that now we don't have 5% slopes, we're talking about how much ponding. After all these years, we're talking about how much ponding we can have on top of the landfill. You don't get any ponding with 5% slopes, I have to tell you, but now we've decided that if a pond is less than a city lot, it's allowable. That's where we are, there's nothing left to the closure plan. But at the time I told them there wasn't enough money, and they didn't agree with me, there's not enough money to even do what they've done now, so here we sit, we're going to wait two years for an endangerment assessment that should have been done when they wanted to keep the landfill open in 1969, some years ago. We're going to wait two more years and we're going to get further and further from the money, and I've been hanging around you guys long enough to know that if the money isn't there, you don't require it and I just don't know where to go, and I'm gonna tell you now, this is the threat part, you've heard this before, and I hope that someday I'll come and I'll threaten you and I'll have enough credibility that we won't have to go through this. Let me tell you what a lawsuit will be from me, I have a winery, I have job, I have a family, but,

I'm gonna do it, I for a long time thought, that a lawsuit will not get me what I want, it will be, you have know idea how expensive, but check in Seattle, because that's where I'll file this time, we made a mistake, we shouldn't have filed in Oregon, but check in Seattle and see what it cost them to close landfills one-fifth of the size of St. Johns. There is, the strongest part of a lawsuit has to do with the groundwater and I am ready to write off the groundwater, if we can sit down and talk. I mean, I understand that there's not much you can do, you have trashed the Troutdale aquifer with the St. Johns landfill, I mean we can drill more holes, and you will as soon as things happen, but I just believe that's there's got to be an easier way, or we file and you guys are frustrated and delayed real action and the lawsuit will be difficult and I'll tell you how I will win, eventually a circuit court judge will be so tired of the weight of paper, that he'll decide something has to be done, it will be another fifteen years, and it'll probably be the last thing I do before I die, but, and you can talk to anybody who knows me, there's nobody more stubborn than I am, so I mean it. The other problem that I've had a really hard time with is the St. Johns landfill is not just a landfill, it's a CERCLA site, it's on several accounts, but on one count in particular it is the largest confirmed release in the State of Oregon. It's not listed, several years ago I went and I said okay, let's be reasonable here and let's see if we can merge the CERCLA and the solid waste efforts, just see if we can get them together, and they said well, we've got these other sites and but next year, and this is in 1990, next year we're going to go back and review the ones that the Department is already handling. Well, that never happened, you know, I didn't forget to call regularly and see if it was going to happen yet, I talked to Fred Hansen about can't we get some CERCLA oversight on the St. Johns solid waste closure. And in fact, I tried to get something going between the solid waste people cause the solid waste people said to me, we can only do what solid waste people can do and I said hey, write them a letter, he did write them a letter. I asked them if she'd read the letter. She said I haven't read the letter, I haven't seen the letter.

**End.**

**ATTACHMENT E**

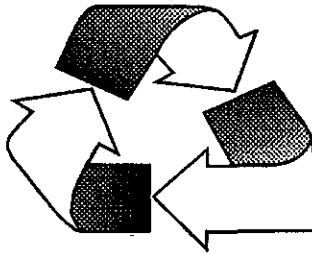
**Tables providing examples of hazardous substances recently detected in groundwater.**

**St. John's Landfill - Examples of detected hazardous substances from February 1992 groundwater sampling results.**

COMPOUNDS DETECTED (in ppb)	WELL D-4A	WELL D-3A	WELL D-2A	WELL G-5B	WELL D-6C	GWQPRs Reference Levels	Federal Drinking Water MCLs
BENZENE	2.4		1			5	5
CHLOROBENZENE	13	4	8				
1,4/1,3-DIMETHYL- BENZENE	1						
1,2-DIMETHYLBENZENE	1		1				
1,4-DICHLOROBENZENE	2		7				
TOLUENE			2				
1,1-DICHLOROETHYLENE					3	7	7
1,1-DICHLOROETHANE				3	5		
1,1,2,2-TETRA CHLOROETHYLENE				16	18		
1,2-DICHLOROETHENE					25		
TRICHLORO- ETHYLENE				8	11	5	5
1,1,1-TRICHLOROETHANE				5	8	200	200

**St. John's Landfill - Examples of detected hazardous substances from October 1993 groundwater sampling results.**

COMPOUNDS DETECTED (in ppb)	WELL D-2A	WELL D-3A	WELL D-4A	WELL D6-C	WELL K-2	WELL K-1	GWQPRs Reference Levels	Federal Drinking Water MCLs
CARBON DISULFIDE	19	3.5	3.7		7.2	28		
BENZENE	1.2				1	4	5	5
TOLUENE	3							
CHLOROBENZENE	14	3.1	2.2		31	10		
TOTAL XYLENES	1					2		
p-DICHLORO-BENZENE	6				3	3	75	75
CHLOROETHANE					65			
1,1-DICHLORO ETHYLENE				2			7	7
1,2-DICHLORO-ETHYLENE				40				
1,1-DICHLORO-ETHANE				6				
1,1,1-TRICHLORO ETHANE				8			200	200
1,1,2-TRI CHLOROETHENE				9				
TETRACHLORO-ETHYLENE				13			5	5



# Fuel Processors Inc.

## Petroleum Recycling Since 1979

March 10, 1994

Environmental Quality Commission  
State of Oregon  
811 S.W. Sixth  
Portland, OR 97201

Dear Commission Member:

I am Bill Briggs, an expert in recycling of used oil, oil filters, oily water and, over the last 14 years, have recycled and handled over 100 million gallons of these oily materials in the Northwest. The used oil industry is not like most businesses. There are only two rerefiners in Oregon, two or three collectors who are semi processors and three or four additional collectors who protect our environment from these oily materials. There are millions of generators!

Oil contaminated material is everywhere and it all can be recycled, hence E.P.A. has cautiously taken over 15 years to develop the best method, to date, under E.P.A.'s CFR-40 279 which could also be called a "Universal Oil Recycling System" to handle oily materials.

D.E.Q. has worked hard to bring their current proposal for your approval today and we support their efforts to adopt the Federal CFR-40 279 including D.E.Q. changes with two exceptions.

The first exception is part of D.E.Q.'s new definition of used oil which is not in the Federal rules; Page A-18 of 340-111-002, (C) the last 3 lines, "Waste waters from which the oil has been removed, and oil contaminated media or debris". By this simple, perhaps innocent, attempt to clarify what is regulated as used oil from recycling, it takes away perhaps 40% of the recycling material available for recyclers to remain profitable and without these materials there is a real question if any oil recycler can earn enough profits to continue to serve the needs of the state and protect human health and our environment.

Speaking for myself, since I have been operating under similar rules for over one year while

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appealing D.E.Q. enforcement action, our loss in sales has been over \$500,000, or about 30%, and our Oregon companys are presently operating at a loss. This can not continue. Operations have been curtailed to the point where 9 employees have been laid off as a direct result of enforcement action before the rule.

Enough about our company, lets consider the millions of generators, their costs will increase over 400% for disposal, testing, transportation, or treatment, and, some because of the high cost, will be illegally dumped. Others will go into our landfills where it can cause contamination. The B.T.U.'s are wasted to remain a part of our environment forever. D.E.Q. has not provided for the recycling of these oily products, only disposal.

Since these wastes are readily recyclable and CFR-40-279 allows it, and in fact, encourages their being recycled over disposal, D.E.Q. definition is flawed and only makes Oregon rules out of sync with the other states and more restrictive than Federal regulations under CFR-40-279.

You will find substantial regulatory support that far out weighs D.E.Q.'s limited out of context information that have been provided to you in their recommendation attached to your copy of my statement.

Don't be fooled if information has been withheld, your decisions will be flawed, we all will suffer as will our environment.

The second exception relates to the first, and that is Page A-15 340-111-010 (2) (b) & (c) dealing with the requirement that oily waste must have 5000 BTUs (30% oil) to be used for energy recovery.

You must consider again the question, "Do you have all the facts?" I don't find them in the information D.E.Q. has supplied to me, which is represented as being the same as yours. Wood waste (hog fuels) often do not have 5000 BTUs, nor does the garbage from households burned for energy recovery in two energy recovery plants in Oregon as well as other non-hazardous fuels.

In our case, oily sumps with soil, dirt, water, oil clean-up materials, solvents, crushed used oil filters and the oily material removed by processing used oil, etc. All of these can be handled under the Federal CFR-40 279. D.E.Q. simply makes it hazardous waste or only allows after treatment to go into our limited landfill where it remains forever!

Think about it -- 30% can be oil! Our equipment can orderly use all of the BTUs, even if it is only 1 BTU we recover over 75%. One must ask oneself, "Has D.E.Q. provided you with all the information necessary to make a good decision?" I have tried, but they have not included that information in your package. Who benefits? Is there a hidden agenda?

At this point, the action is yours, but by simply adopting CFR 40-279 and D.E.Q. recommendation without including that part of D.E.Q. used oil definition and the restrictive 5000 BTU hazardous waste rule, would be most protective to human health and the environment.



*Recovery*

If you still have questions, approve CFR-40-279, which has taken 15 years to develop, and refer the D.E.Q. portion to the Operating Oil Recycle Committee for more study and a recommendation when all the information is shared.

Thank you for your time, I would be happy to help further.

Yours Truly,



W. L. Briggs  
President

WLB:gw

Enclosures

## BTU'S OR USED OIL MIXTURES

1. Specs of used oil burned for Energy recovery does not include BTU's in listing of specifications.
2. Federal Register / Vol 57 No. 176 / 9-10-92 Recycling Presumptions Criteria

EPA has exempted waste waters contaminated with very small amounts of used oil, since such mixtures are not likely to pose a significant hazard. If mixtures of used oil and sorbent materials from which used oil can not be separated, however, are burned for energy recovery, the Agency believes that such recycling is acceptable.

3. Oregon DEQ Administrative Rules 340-61-010 #42

"Energy recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy of or from the material

4. Federal Register / Vol 58 / 9-23-91 #3 Rebuttal of Recycling Presumptions
5. E.P.A.- 530-2-42-Oil Preamble of Final Rules 279, Page 68

Re-refining residuals: For used oil processing and re-refining residuals, a hazardous waste determination will be necessary when the residuals are managed in a manner other than recycling for energy recovery or when re-refining distillation bottoms are used as a feed material for asphalt products (see discussion in Section IV of this preamble).

6. Page 19 E.P.A. 530-2-42 -- Oil Preamble of Final Rule 279. "e.g. Water content, BTU value - The Agency believes that recycling is more viable alternative than disposing of used oil as a characteristic waste" " Therefore, used oil handlers will react to market condition, thus selecting recycling over disposal".
7. See Page 67 E.P.A. 530-2-42 Oil Preamble of Final Rule 279 "e.g., water content level of contamination - the Agency has decided that specific criteria - are not necessary".
8. Final Rules page 82-9-10-93 of 279 -- "Used oil mixed with other solid wastes" (water) or other material -- are regulated as used oil."
9. See E.P.A. 530-2-42 Oil Preamble of Final Rule 279, Page 193. "Going for recycling not disposal are regulated under 279".
10. See Page 101 E.P.A. 530-2-42 -- Oil Preamble of Final rule 279: "person who generates mixtures of used oil and other materials or solid wastes" water-soil-rags-sorbitive minerals, scrap metal - "are subject to Part 279."
11. E.P.A. 530-2-42 Oil Preamble of Final Rules, page 68 "in a manner other than recycling".

12. See Federal register / Vol 58, No 83-5-3-93 (corrects 279.10 original)  
"Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this Part" (279).
13. E.P.A. 530-2-42-page 102 "Mixtures" all regulated under 279.
14. E.P.A. 530-2-42-page 80 "Mixtures" all regulated under 279.
15. E.P.A. 530-2-42-Page 193 "Mixtures" all regulated under 279.
16. E.P.A. 530-2-42-Page 101 "Mixtures" all regulated under 279.
17. E.P.A. 530-2-42-Page 195 "e.g., water content, BTU value or any other measure are not a meaningful measure of recyclability" are under 279.

## DEFINITION OF USED OIL

- I. EPA/530-2-42-011: Hazardous Waste Management System; Identification and listing of Hazardous Waste; Recycled Used Oil Management Standards  
U.S. EPA -- Final Rule

"2. Regulatory Actions Related to Used oil. -- On December 18, 1978, EPA initially proposed guidelines and regulations for the management of hazardous wastes as well as specific rules for the identification and listing of hazardous wastes under Section 3001 of the Resource Conservation and Recovery Act (RCRA) (43 FR) 58946). At that time, EPA proposed to list waste lubricating oil and waste hydraulic and cutting oil (*Footnote 1 -- The term "waste oil" included both used and unused oils that may no longer be used for their original purpose.*) as hazardous wastes on the basis of their toxicity. In addition, the Agency proposed recycling regulations to regulate (1) the incineration or burning of used lubricating, hydraulic, transformer, transmission, or cutting oil that was hazardous and (2) the use of waste oils in a manner that constituted disposal."

1. Oct 15, 1980 Appendix J, Federal Public Law

- A. Sec. 3 Section 1004 of the Solid waste Disposal Act is amended by adding the following new paragraphs at the end thereof:

"(36) The term 'used oil' means any oil which has been --

"(A) refined from crude oil,

"(B) used, and

"(C) as a result of such use, contaminated by physical or chemical impurities.

"(37) The term 'recycled oil' means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

"(38) The term 'lubricating oil' means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

"(39) The term 're-refined oil' means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process."

- B. Any State plan submitted under this subtitle may include, at the option of the State, provision to carry out each of the following:

"(1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of recycled oil in all appropriate areas of State and local government.

"(2) Encouragement of persons contracting with the State to use recycled oil to

the maximum extent feasible, consistent with protection of the public health and the environment.

"(3) Informing the public of the uses of recycled oil.

"(4) Establishment and implementation of a program (including any necessary licensing of persons and including the use, where appropriate of manifests) to assure that used oil is collected, transported, treated, stored, reused, and disposed of, in a manner which does not present a hazard to the public health of the environment.

2. Para 1321 Title 33 Navigation and navigable waters

(1) "oil" means oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil:

3. EPA/530-2-42-Oil (Preamble of Final Rule 279 (11-29-85))

In the May 19, 1980 regulations (45 FR 33084), EPA decided to defer promulgation of the recycling regulations for waste oils to consider fully whether waste- and use-specific standards may be implemented in lieu of imposing the full set of Subtitle C regulations on potentially recoverable and valuable materials. At the same time, EPA deferred the listing of waste oil for disposal so that the entire waste oil issue could be addressed one time. Under the May 19, 1980 regulations, however, any waste oil exhibiting one of the characteristics of hazardous waste (ignitability, corrosivity, reactivity, and toxicity) that was disposed, or accumulated, stored, or treated prior to disposal became regulated as a hazardous waste subject to all applicable Subtitle C regulations.

4. Federal Register / Vol 57 / 5-20-92

The term "waste oil" includes both used and unused oils that may no longer be used for their original purpose.

Use in a manner constituting disposal"

UORA defined used oil as "any oil which has been refined from crude oil, used, and as a result of such use, contaminated by physical or chemical impurities."

...the Agency is interested in obtaining the optimal level of used oil recycling.

5. State of Oregon November 7, 1991

"Used oil" means any oil that has been refined from crude oil or synthetic lubricating oil, used, and as a result of such use contaminated by physical or chemical impurities. Used oils include the following: (1) lubricating oils (spent automotive, engine, turbine, or

gear); (2) Spent transmission and brake fluids, and hydraulic oils; (3) Spent industrial oils, including compressor, turbine, and bearing oils, electrical oils, refrigeration oils, and railroad oil drainings; (4) spent industrial process oils; and (5) metalworking fluid, including, cutting grinding, machining, rolling, stamping, quenching, and coating oils. "Used Oil" also includes petroleum fuel oil that through use or management has become contaminated by physical or chemical impurities such that the fuel cannot be used for its specific originally-intended purpose, if such fuels are burned for energy recovery or rerefined.

This definition of used oil does not include the use of a petroleum substance as a solvent or cleaning agent. However, EPA may wish to further examine this issue to see if certain uses of solvents should qualify as used oil since the contaminants expected to be picked up by the solvents do not differ significantly from the contaminants commonly found in used oil. Since this definition of used oil is by use, it also would not include other types of petroleum substances sometimes improperly passed off as used oil including spent inks.

6. State of Oregon 340-122-210

Petroleum -- means gasoline, crude oil, fuel oil, diesel oil lubricating oil, oil sludge, oil refuse, and crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils, diesel fuels, and any other petroleum related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute. (NOTE: this definition does not include any substance identified as a hazardous waste under 40 CFR Part 261)

7. State of Oregon 468.850 Definitions:

(5) "Used Oil" means a petroleum based oil which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties. (1977 C d/83 S2)

8. RCRA Sec 1004 Definitions:

(38) The term "lubricating oil" means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

9. Federal Register / Vol 52 / No 130 7-8-87

This provision clearly states that recycled oil means any oil which is reused following its original use for any purpose, including burning.

10. EPA Subpart E Used Oil Burned for Energy Recovery

Prior to 279 rules

(a) The regulations of this subpart apply to used oil that is burned for energy recovery in any boiler or industrial furnace that is not regulated under Subpart O of Part 264 or 265 of this chapter, except as provided by para (c) and (e) of this section. Such used oil is termed "used oil fuel". Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment.

(b) "Used oil" means any oil that has been refined from crude oil, used and as a result of such use, is contaminated by physical or chemical impurities.

(c) Except as provided by para (d) of this section, used oil that is mixed with hazardous waste and burned for energy recovery, is subject to regulation as hazardous waste fuel under Subpart H of Part 266. Used oil containing more than 1000 ppm of total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part 261 of this chapter).

(d) Used oil burned for energy recovery is subject to regulation under this subpart rather than as hazardous waste fuel under Subpart H of this part if it is a hazardous waste solely because it:

- (1) Exhibits a characteristic of hazardous waste identified in Subpart C of Part 261 of this chapter, provided that it is not mixed with a hazardous waste or
- (2) Contains hazardous waste generated only by a person subject to the special requirements for small quantity generators under Section 261.5 of this chapter.

(e) Except as provided by para (c) of this section, used oil burned for energy recovery and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this subpart unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in the following table. Used oil fuel that meets the specification is subject only to the analysis and recordkeeping requirements under Section 266.43(b) (1) and (6) Used oil fuel that exceeds any specification level is termed "off-specification used oil fuel".

11. RCRA Definitions -- the term "used oil"

- (18) recoverable refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.
- (19) recovered material means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those material and byproducts generated from, and commonly reused within, an original manufacturing process.

- (20) recovered resources means material or energy recovered from solid waste.
- (22) resource recovery means the recovery of material or energy from solid waste.

12. EPA/530-2-42-Oil Preamble of Final Rule

On November 29, 1985 (50 FR 49239), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and ...

13. EPA/530-2-42-Oil Preamble of Final Rule

(IV) Definition of Used Oil

EPA's 1985 proposal to list used oil as a hazardous waste included the following proposed definition of used oil:

"Used oil" means petroleum-derived or synthetic oil including, but not limited to, oil which is used as a: i) lubricant (engine, turbine, or gear); ii) hydraulic fluid (including transmission fluid); iii) metalworking fluid (including cutting, grinding, machining, rolling, stamping, quenching, and coating oils); iv) insulating fluid or coolant, and which is contaminated through use or subsequent management.

14. EPA/530-2-42-Oil Preamble of Final Rule

All used oils, in general, are managed in similar manners (e.g., burned for energy recovery, re-refined to produce lube oil feedstock, or reconstituted as recycled products). Therefore EPA believes that all used oils, including used synthetic oils, should be regulated in a similar fashion and, hence EPA has decided to include synthetic oils in the definition of used oil...

... Today, EPA is promulgating a regulatory definition for "used oil" at 40 CFR 2610 as follows:

Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

This regulatory definition of used oil is drawn from the statutory definition of used oil found at #1004(36) of RCRA and is similar to the current definition of used oil found at 40 CFR 266.40(b). EPA believes that this definition covers the majority of oils used as lubricants, coolants (non-contact heat transfer fluids), emulsions, or for similar uses and are likely to get contaminated through use. Therefore, specific types of used oils are not identified in the definition.



The definition includes all used oils derived from crude oil, as well as used synthetic oils that are contaminated by physical (e.g., high water content) or chemical (e.g., lead, halogens, or other toxic or hazardous constituents) impurities as a result of such use. However, with today's rule, EPA is interpreting the definition of used oil contained in the statute to include used synthetic oils, including those derived from coal or shale or from a polymer base starting materials.

The agency's position continues to be that synthetic oils should be included in the definition of used oil due to the fact that these oils are generally used for the same purposes as petroleum-derived oils, are usually mixed and managed in the same manner after use, and present the same level of hazard as petroleum-based oils.

EPA has decided to adopt this approach and consider the technical criteria for making a listing determination, given a universe of used oils that are managed in accordance with a protective set of management standards.

In making a listing determination for recycled used oils, EPA evaluated the technical criteria for listing a waste as hazardous, the fate and plausible mismanagement of used oils that are recycled, and the impacts of the management standards proposed in 1985 and 1991 and finalized today. EPA has determined that used oils that are recycled do not pose a substantial present or potential hazard to human health or the environment when the used oils are managed properly from the time they are generated until they are recycled. As discussed in the next section of this preamble, EPA believes that used oil that is recycled and handled in compliance with the used oil management standards promulgated today will not pose serious adverse risks to human health and the environment.

15. Federal Register/ Vol. 58 No. 83 / 5-3-93

40 CFR Part 279 Petroleum, Recycling, Reporting and recordkeeping requirements, Used Oil.



# National Oil Recyclers Association

Christopher Harris, *General Counsel*

The Evening Star Building, Suite 800 • 1101 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004 • (202) 639-6320 • FAX (202) 628-4912

June 17, 1993

Director, Hazardous and Solid Waste Division  
Oregon Department of Environmental Quality  
State of Oregon  
811 S.W. Sixth Avenue  
Portland, Oregon 97204-1390

Dear Sir:

I am writing to express the views of the National Oil Recyclers Association ("NORA") concerning the adoption of used oil management standards by the State of Oregon. NORA strongly recommends that Oregon adopt the federal standards that were promulgated by the U.S. Environmental Protection Agency ("EPA") on September 20, 1992.

These comprehensive standards were the subject of lengthy rule-making by EPA following submission of the approximately 1100 comments. EPA's entire used oil docket undoubtedly involves the greatest volume of records in the entire RCRA program. EPA's careful consideration of this issue should be given great deference. The task EPA faced was to ensure that environmental protection could be assured in a way that also preserves the market incentives for legitimate used oil recycling. In our view, EPA has accomplished this objective admirably. EPA's used oil regulations focus on minimizing the risk of releases of used oil, establish new rules directly relating to the proper handling of used oil and incorporate the environmental safeguards mandated by a variety of other regulatory programs.

In addition, EPA's regulations encourage the establishment of Do It Yourself ("DIY") oil change collection facilities. As you are aware, improper disposal by the DIY oil changers is, by far, the single most significant source of pollution from used oil. As EPA's administrative record demonstrates, a regulatory regime resembling Subtitle C of RCRA would have completely destroyed DIY collection programs.

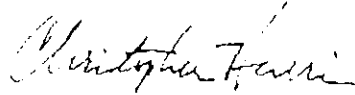
In summary, EPA's used oil management standards constitute a balanced and sensible regulatory system. While perfect uniformity with other states is unnecessary, there is a substantial benefit to the public and the regulated community to having a program that does not vary significantly from state to state. NORA respectfully urges DEQ to adopt the federal used oil management standards without significant modifications.

John J. Nolan  
*President*  
(703) 536-9732, FAX (703) 536-0263

Kathryn McWilliams  
*Executive Director*  
(216) 623-8397, FAX (216) 623-8393

NORA would be pleased to provide additional information to DEQ concerning this issue if such information would be helpful to the Agency's deliberations.

Sincerely,



Christopher Harris  
General Counsel



## *Universal Oil Recovery Could Be Another Oregon 1st*

Will EPA's new CFR-40-279 Used Oil Rules encourage recycling and assist in protecting the environment and human health in Oregon? Will the new rules reduce and protect our limited landfill space? Are they designed to allow generators, collectors and processors to continue to hold the line on costs, maximize the recovery of oily wastes, waters, fuels, used oils, and encourage new and better oil recovery technology?

A complete review of the background of the sometimes contradictive statements made in regulating the handling of oily wastes could make one believe that these wastes should be more severely regulated, as they contain small amounts of over 1,600 chemical or physical properties. However, EPA studies and history support that oily wastes should be handled under a special set of their own rules, but not as hazardous waste, when going for recycling. Today's technology allows universal oil recovery of these recyclable oily wastes.

Oregon's Department of Environmental Quality is now in the process of revising EPA's rules and would like to adopt more restrictive regulations which would be extremely damaging to the needed and protective small independent oil recycling industry.

Answers are needed to many questions, and there must be a review of DEQ's studies, copies of the factual basis for their proposed rule changes, information regarding the backgrounds of the experts who are proposing these changes and who support them, information on any other proposals which were reviewed and studied before DEQ arrived at these restrictive proposals!

One such question which may be under DEQ's consideration but for which the public has not been given any information, is, "Could EPA's CFR-40-279 be considered a Universal Oil Recovery Act?"

One must be careful to point out that DEQ states they are making a good-faith effort to develop better methods to manage used oil, but DEQ needs to step back and take a wider, overall view. They need to have a free and open discussion with outsiders who are also experts in the field of oily wastes and have a fuller background in EPA's new used oil rules under 279. This includes those who work in this needed oily waste recovery industry.

Let us explain what modern technology can do with oily wastes and how CFR-40-279's used oil regulations should be applied to help better protect our environment, rather than being more restrictive under DEQ's proposal which will reduce oil recovery.

## *Universal Oil Recovery*

### *Page 2*

1. Today's methods can make use of all oily wastes for energy or removal and recovery of oil from water down to parts per billion, and can make liquid oil into motor oil, diesel fuel, fuels, asphalt, etc. We can recover material such as steel from used oil filters, kitty litter from clean up material, usable water and inert soil which someday can become a material. These techniques require more volume than just used motor oil or lubricating oil, (which are approximately 40% of the oils or oily wastes in our environment) to be profitable and pay for the investments necessary to give this added protection to our environment. Any unnecessary restrictions and narrowing of the definition of what is or what can become used oil, reduces the recovery of oily wastes, leaving them exposed in the environment.
2. A review of Federal and State efforts and regulations to encourage material recovery, recycling, and energy from 1980 to date, will show that a wider interpretation, which is within DEQ's power using CFR-40-279, will offer better protection of both our environment and human health. At the same time it will encourage more investment to remove these ever present oily wastes in our environment.
3. A closer review of all the regulations, preambles, and background of the used oil and recycling rules, will support that universal recycling of all oily wastes which are not listed hazardous wastes or that have not been purposely mixed with hazardous wastes to dispose of these listed hazardous wastes, are or can be regulated under the used oil CFR-40-279 rules.

One must ask again and again as they review DEQ's and EPA's new rules, "Will this encourage the recycling of the oily wastes? Can known local technology now in use make use of the wastes and will the result be more protective to our environment, our landfill, our air and water, and our human health?"

Will the many people, businesses, and generators who use oil understand and abide by expensive and difficult to enforce rules? Simple, easy to access, logical, practical management rules have been shown time and time again to bring more oily wastes into the management system!

For DEQ to do other than a "Universal Oil Recovery system" by not allowing the widest interpretation of what is used oil, or what can become used oil when through use and by its own nature it becomes contaminated with the physical and chemical properties contained in used oil, would be damaging to Oregon's environment. These wastes can be properly recycled under the used oil management standards which have taken over 14 years of effort by Federal EPA!

*Universal Oil Recovery*  
*Page 3*

DEQ will damage our environment by narrowing these rules, discourage recycling, and miss the opportunity to be the first to clearly allow better protection through a Universal Oil Recovery Act within the Federal CFR-40-279 regulations.

DEQ should, therefore, adopt CFR-40-279 as written, including a written statement or preamble stating that all oily wastes are recyclable under today's modern technology and the generators should themselves assume that the collector/processor has and uses these technologies.

*Wolfe*  
*286-8312*

**SUBJECT: Oil Recycling in Oregon —Will it remain viable under Oregon DEQ's current proposals?**

Oregon policy and DEQ's statements encourage recycling over all other methods of handling wastes. Waste reduction and eliminating the formation of wastes are the only methods more desirable than recycling. Once the waste is present, recycling is the method to be encouraged.

Federal legislation and history, which is where Oregon obtains much of its body of laws, has long supported oil recycling. Since 1976 there have been any number of acts, rulings, etc., to make the recycling of all oily wastes possible. The most recent Federal document was released on September 10, 1992, and the minor corrections to that document were released in May of 1993.

Since oils in many forms are perhaps the most widely disseminated material that contains or can pick up hazardous substances in our society, congress has adopted a set of management standards that are more protective to human health and the environment than would be the case if Oregon's proposed rules are adopted.

Under Federal rules all oily wastes except those containing or mixed with listed hazardous wastes with some minor exceptions, can be managed under the used oil regulations contained in the Federal CFR-40-279 when they are going for recycling. If they are going for land disposal, they would need to meet all the requirements for hazardous waste, but not when going for recycling. Used oil processors operate under the used oil standards, not the hazardous waste rules which have been shown to discourage used oil recovery and recycling.

Oregon's present system does not encourage the recovery of these usable, recyclable oily wastes because DEQ emphasis, funding and programs are dominated by hazardous waste enforcement.

Oregon has given little in the way of support, funding, personnel, or efforts to form a working relationship with the used oil industry which consists of approximately five small firms of which three are considered to be reasonable in size. These three employ approximately 90 people, handle over 1,000,000 gallons of recyclable oils, 300,000 gallons of oily water, and 20,000 gallons of oily solids each month from all over areas in Oregon. They operate with little DEQ personnel or support.

*W. B. ... 206-8352*

# The Sad Thing About This Oil Spill Is That It's Not An Accident.



©1991 Charles Coppins

The Exxon Valdez. An accidental oil spill that dumped over 10 million gallons of crude into Prince William Sound.

Yet every year do-it-yourself oil-changers deliberately pour 20 to 30 times that amount right into our own backyards.

Please dispose of your used oil properly. Take it to a certified oil recycler or citizens' collection center. For information call N.O.R.A. headquarters at 216-623-8383.

After all, a clean, healthy environment doesn't happen by accident.





ING

QUALITY CO

March 10-11, 1974

CONFERENCE ROOM

1127 2nd Ave

Portland Oregon

Work Session

Portland

9:00 a.m.

Work Session: Hazardous Waste Program

Work Session: Strategic Budget Planning

Work Session: William West Report

Discussion of ... Process

March 11: Regular Meeting beginning at 9:30 a.m.

1974

Focus of the meeting is the need for an 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 so that the item is discussed at that time as possible. However, if the item may be modified or added to the agenda with a few days notice, the Commission will attempt to do so. The Commission will attempt to deal with the item of interest.

Public Forum: The Commission will break the meeting to allow an opportunity for the public 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. Individual presentations will be limited to 5 minutes. The Commission may discontinue the forum if an exceptionally large number of speakers wish to appear.

A. Approval of ...  
 B. Approval of Tax Credits